

**Report of the Study to Analyse and  
Document the Knowledge Gaps for the Issues/Challenges Arising from  
Unfair and Misleading Advertising in India**



**Submitted to:**

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## Introduction

The GIZ-MoCA project on “Consumer Policy and Protection” seeks to strengthen the enforcement instruments for consumer protection in the country. To this end, the project has conducted studies to assess the limitations of the existing policy regime and has also sought to extrapolate from international best practices by examining them for their suitability to the Indian context. The challenge is to identify the legal and institutional modalities that would suit the legal and political system of the country to provide most effective protection of the interests at stake.

On the basis of the findings of the workshop on misleading advertising and unfair trade practices (UTPs) held at New Delhi on April 01-02, 2013. Important key issues were identified by engaging different stakeholders, which deserve further investigation in order to propose concrete proposals for the envisaged new design of the enforcement architecture of the law against misleading advertising and UTPs.

Based on the foundation of earlier studies conducted and the above mentioned workshop, GIZ assigned this short study to CUTS.

The purpose of this study is to objectively investigate the current context and undertake a situation analysis and document the knowledge gaps of issues resulting from unfair and misleading advertising in India and recommend a clear way forward on how to address the issue within the framework of Indian law.

**Advertising** is a form of marketing communication used to encourage, persuade, or manipulate an audience (viewers, readers or listeners; sometimes a specific group) to take or continue to take some action. Most commonly, the desired result is to drive consumer behaviour with respect to a commercial offering, although political and ideological advertising is also common.

Advertising is considered a very versatile and creative medium. This purpose of the study is neither to comment on the pros and cons of advertising nor to make out a case to ban it.

In India, advertising – both traditional and online, has grown in a major way. Ecommerce too is growing exponentially. Internet advertising is said to have contributed greatly to the growth of online shopping in India. Advertising in India takes a number of forms and is not confined to just selling of products and services. One would come across various forms of advertising in direct-mail, magazines, newsletters, newspapers, slogans, online discussion groups and chat groups, posters and bulletin boards, radio announcements, telemarketing, webpages, yellow pages, outdoor, public service advertising, etc. Online advertising is the most recent form of advertising that is gaining popularity in India.



The overall Indian scenario of UTPs and misleading advertisements was probed in earlier studies, so this study aims to focus on the knowledge gaps on issues and challenges arising out of those gaps, with the possible solutions as per the terms of reference (ToR) for the assignment.

Given the sheer growth in volume of online advertisements in India, study focuses more on advertisements targeted through internet and mobiles in India.

India offers huge business potential for online advertising industry with rising population, growing income level and changing lifestyle. With increasing number of educated people and migration to urban areas, increased adoption in Internet and online advertising is being witnessed. The online advertising market in India is projected to reach Rs 2,938 crore by March 2014, according to the findings of Advertising in India Report by the Internet and Mobile Association of India (IAMAI) and IMRB International.

The online advertising market in India, comprising search, display, mobile, social media, email and video advertising, which was valued at Rs 1,750 crore in March, 2012 has grown by 29 percent over the previous year to reach Rs 2,260 crore by March, 2013. Advertisements on mobile phones and tablets have grown from a seven percent share during 2011-2012 to 10 percent of the Indian online ad market during 2012-2013, totalling to spend of around Rs 230 crore.

Social media, email and video advertising constitute 13 percent (Rs 300 crore), three percent (Rs 68 crore) and seven percent (Rs150 crore) of the online advertising market, respectively. The BFSI, travel and auto sectors continue to be the top three spenders in online advertising. Increased spending by ecommerce players has been one of the highlights of the online advertising industry in 2011-12. Their share of spends is estimated to decline in 2012-13.

*The number of Internet users in India is expected to nearly triple from 125 million in 2011 to 330 million by 2016, says a report by Boston Consulting Group (BCG). This rise in Internet penetration will lead an increase in digital influence.*

*According to the report entitled "From Buzz to Bucks: Capitalising on India's "Digitally Influenced" Consumers," 40 percent of India's 90 million urban Internet users say that online activities, such as product research and price comparison influence what they buy. The digital influence, currently affecting US\$30bn of urban consumer spending is expected to greatly accelerate over the next four years.*

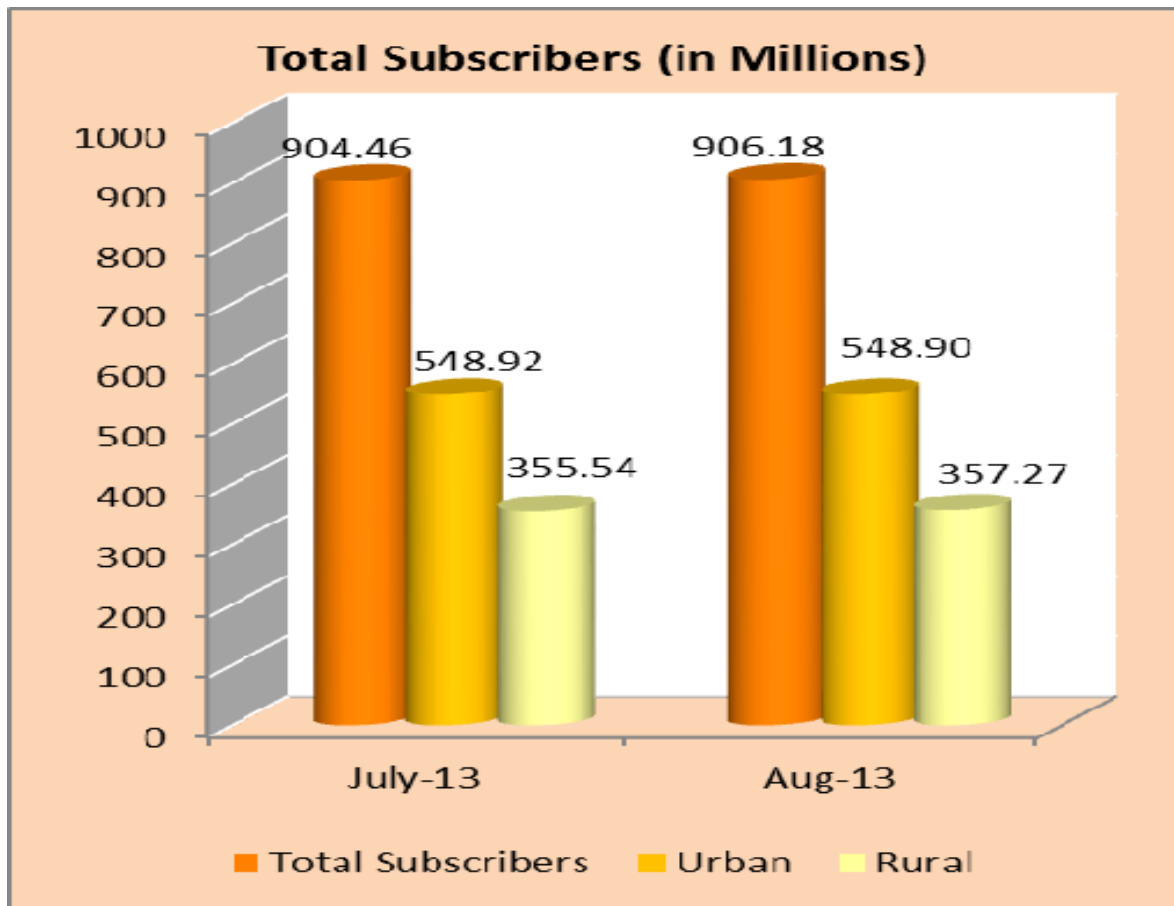
*The demographics of Indian Internet use revealed that men are far more likely than women to be on the Internet (32 percent vs 12 percent) and more than three times likely to be digitally influenced (14 percent versus 4 percent). Although higher income levels are well represented online, even 18 percent of the lower-income "strugglers" (whose annual household income is less than Rs 1.5 lakh) have Internet access, and 6 percent are engaged in commercial activity online, the report said.*

*The report also showed that only 30 percent of online buyers were drawn to Internet shopping for discounts. A higher proportion (37 percent) valued the convenience of shopping from home, and 29 percent said that they appreciated the expanded variety of products available online compared with what is available at brick-and-mortar stores.*

*Overall, the Internet has the highest penetration among people ages 18 to 24 (48 percent) and the lowest among those older than 54 (6 percent). The Internet is projected to reach small towns and the low rungs of the economic ladder more quickly than retail chains will, bridging geographic barriers and feeding the growing appetite for consumer goods, the report said.*

*Source: [www.business-standard.com/article/technology/internet-users-in-india-to-triple-by-2016-113042500185\\_1.html](http://www.business-standard.com/article/technology/internet-users-in-india-to-triple-by-2016-113042500185_1.html)*

As per Telecom Regulatory Authority of India's (TRAI) telecom subscriber data<sup>i</sup> the number of telephone subscribers in India increased from 904.46 million at the end of July 2013 to 906.18 million at the end of August 2013. With this, the overall tele-density in India increased from 73.54 at the end of July, 2013 to 73.60 at the end of August, 2013.



India has become the world's third largest Internet user after China and the US, and its users are significantly younger than those of other emerging economies, global digital measurement and analytics firm comScore stated in a report. India now has nearly 74 million Internet users, a 31 percent increase over March 2012, the report says in PC and laptop-based Internet usage.

The TRAI pegged the number of Internet subscribers in India at 164.81 million as of March 31, 2013, with seven out of eight accessing the Internet from their mobile phones. "Mobile phone based Internet usage is a key component of Indian Internet usage, and I'd say the recent growth is being driven by mobile Internet usage," Nilotpai Chakravarti, spokesperson of the Internet and Mobile Association of India told *The Hindu*.<sup>ii</sup> In addition, many Netizens were using dongles to access the Internet. Three-fourths of India's online population is under 35 as against just over half worldwide, the comScore report, India Digital Future in Focus 2013, says, possibly reflecting India's more recent improvements in literacy.

**Online advertising**, also called **Internet advertising**, uses the Internet to deliver promotional marketing messages to consumers. It includes email marketing, search

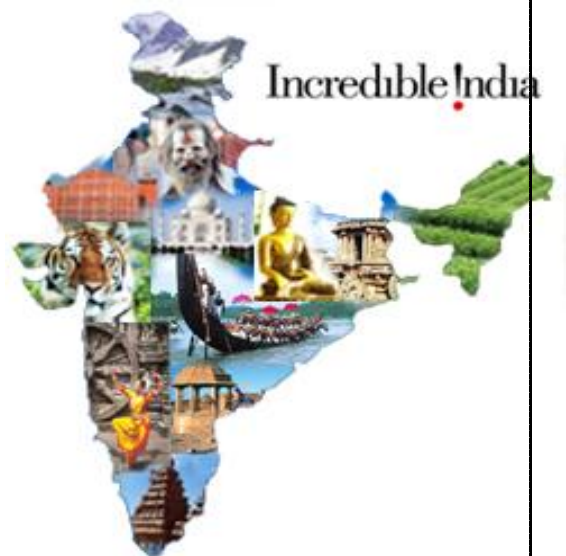




engine marketing, social media marketing, many types of display advertising (including web banner advertising), and mobile advertising.

The first widely publicised example of online advertising was conducted via electronic mail. On May 03, 1978, a marketer from Digital Equipment Corporation (DEC), Gary Thuerk, sent an email to most of the ARPANET's American west coast users, advertising an open house for a new model of a DEC computer.

Mobile advertising is ad copy delivered through wireless mobile devices, such as smartphones, feature phones, or tablet computers. Mobile advertising may take the form of static or rich media display ads, Short Message Service (SMS) or Multimedia Messaging Service (MMS) ads, mobile search ads, advertising within mobile websites, or ads within mobile applications or games (such as interstitial ads, “advergaming,” or application sponsorship).



Not the advertisements but the intention behind them is the key in the desired outcome. Many advertisements are very useful and convey message in very positive and powerful way in very short duration. To start with positive note, an example can be quoted of very successful Incredible India ad campaign by the Ministry of Tourism (Government of India) and many more ad campaigns in delivering social messages, like pulse polio.

Like any other tools, use of advertisement depends upon the user's intention. It can be used for benefits of consumers and also for consumer exploitation. It is observed that in the race to enhance the profits by drawing more business to them, many traders resort to adopt UTPs, such as misleading advertisements.

The Consumer Protection Act, 1986 defines UTPs and misleading advertisements are covered under the preview of the definition, instead of defining it separately.

Advertisement Standards Council of India (ASCI) which is a voluntary self-regulation council, registered as a not-for-profit company under Section 25 of the Indian Companies Act. It has a code for self-regulation which defines advertisement as a paid-for communication, addressed to the public or a section of it, the purpose of which is to

influence the opinions or behaviour of those to whom it is addressed. Any communication which in the normal course would be recognised as an advertisement by the general public would be included in this definition even if it is carried free-of-charge for any reason.

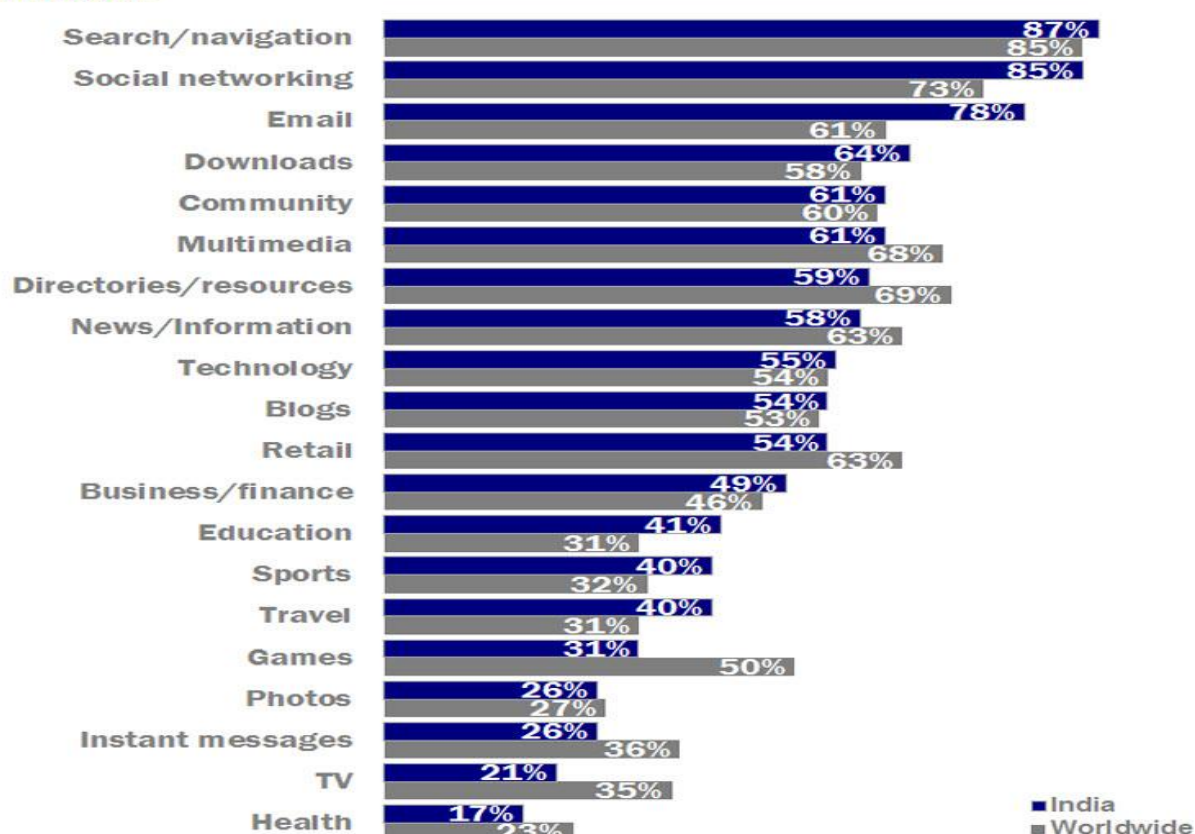
In a country like India, where even to monitor and curb misleading ads via traditional methods is not very effective, new technologies have opened flood gates for marketing agencies to reach directly to consumers pocket and bag via internet and mobiles.

The new technologies pose a great challenge for regulating content, and all such violations have brought forth new regulation.

The marketeers are using innovative strategies, connecting with consumers on social media websites, through emails, and on their mobile phones, increasingly on a personalised basis.

### **Reach of key online categories: India vs Worldwide**

**Search, social networking and e-mail are the top three key online categories for online communities in India, with social networking and email being significantly more popular categories in India than the rest of the world.**



[www.DigitalStrategyConsulting.com](http://www.DigitalStrategyConsulting.com)

Source: comScore Media Metrix, March 2011

5192

Notes: Internet audience aged 15+ accessing the internet from home or work



## Here are few actual case stories of consumer exploitation through misleading ads

### 1. Forge Advertisements by [www.100bestbuy.com](http://www.100bestbuy.com)

Company through advertisement promised to send Zebpad 7 tablets and Samsung Galaxy Grand Duos mobile by paying Rs 6999 to aggrieved consumer Sumit Soni (07566036382). The ad also indicated that the amount will be 100 percent cash back and the consumer Sumit Soni would get the desired product in 6-7 days. Besides the above products, company also promised to send few other products along with but the consumer did not receive any after paying the desired money. Thereafter, there was no response from the company. Soni chased the company but to no redressal then he approached consumer forum of his city and got his money back after court's judgment. The money was repaid back online.

(Source: CUTS CHIAS)

### 2. Another Case Against 100bestbuy.com

Another aggrieved consumer Vilas Abrol (08884611740) also had complaint with the same online company. On the basis of fake advertisement through internet, he too paid Rs 8798 to buy some products online and after not receiving those, he wrote nearly 40 mails to all their mail Id's and made call to them nearly 200 times without any response. No one in this company pays heed to his request or plea. Whenever the cheated consumer called their customer care no. 080-67536400, then their response is that their senior will call them in 15 minutes but to no response. Vilas is still following up with the company but to no redressal as yet.

(Source: CUTS CHIAS)



### 3. Fake Mobile Messages

Shubra, another aggrieved consumer got a message on her mobile from the no. 9036013514 saying that she is the one winner out of 20 numbers and won Apple iPhone 5 and she will get the complimentary of Austin pair watch and Rs 300 shopping voucher along with the secret pin code which she need to tell to the person who calls her. Later, she did receive the call but there were no secret pin and nor Rs 300 voucher and thereafter no communication from the company. This was a clear case of false promises through net.

(Source: CUTS CHIAS)

### 4. Forge Online Promotion of Medicine

Online advertisement issued by the New Udaya Pharmacy and Ayurvedic Laboratory through internet promoting an ayurvedic proprietary medicine

'Kamilari'. Claiming to be a sure cure for jaundice, viral hepatitis and gall bladder stone, the advertisement said the medicine had absolutely no side effects. The advertisement concluded: "Kamilari pills and syrup are effective even in critical stages of jaundice. If you have a bottle of Kamilari in your house, then jaundice is common cold to you". Following a complaint from a consumer Nitin Bhargava of Delhi saying that the advertisement had not helped him with his gall bladder stone. The Monopolies and Restrictive Trade Practices Commission (MRTPC) sent a notice of enquiry and asked the laboratory to prove the efficacy of the drug. On its failing to do so, the Commission issued a "Cease and Desist" order of removing the advertisement from the net.

[August 12, 1994, reported in (1994)2 CTJ 381]

**5. Money getting doubled through online- A total false promise**

Similarly when S. K. Agro Industries Pvt Limited promised to double within two years, the amount invested by consumers in its horticulture project through misleading ads online, the Commission issued a 'Cease and Desist' order against the advertisement holding that the respondent had indulged in an UTP. The MRPTC said, "The advertisement does not give the slightest hint as to how it is possible to double the amount in two years. Even the explanation furnished to the Director General, Investigation of MRTPC during investigations proved failed to convince any reasonable person that it is possible to earn 100 percent profit on such an investment just within two years"

(January 20, 1994, reported in 1994 2 CYJ 73)

**6. CUTS puts offerbean.com into dock**

Jayaraj Thecool, Sukhraj Singh and Ishan Sharma all the three together had complaints against M/S Offerbean.Com. They ordered different consumer durables through online but did not receive the same even after paying the required amount. The three aggrieved consumers then approached CUTS and after constant follow ups by CUTS, the three managed to get the refunds back.

(Source: CUTS CHIAS)

**7. Bazee.com made to learn a lesson**

CEO of bazee.com was arrested in December 2004 because a CD with objectionable material was being sold on the website. The CD was also being sold in the markets in Delhi. The Mumbai and Delhi Police got into action. The CEO was later released on bail. This opened up the question as to what kind of distinction do we draw between Internet Service Provider and Content Provider. The burden rests on the accused that he was the service provider and not the content provider. It also raises a lot of issues regarding how the police should handle the cyber-crime cases and a lot of education is required.

(Source: Cyber Law & Information Technology by Talwant Singh Additional District & Sessions Judge, Delhi)

#### **8. SMC Pneumatics (India) Pvt. Ltd. v. Jogesh Kwatra**

In India's first case of cyber defamation, a Court of Delhi assumed jurisdiction over a matter where a corporate's reputation was being defamed through emails and passed an important ex-parte injunction. In this case, the defendant Jogesh Kwatra being an employ of the plaintiff company started sending derogatory, defamatory, obscene, vulgar, filthy and abusive emails to his employers as also to different subsidiaries of the said company all over the world with the aim to defame the company and its Managing Director R K Malhotra. The plaintiff filed a suit for permanent injunction restraining the defendant from doing his illegal acts of sending derogatory emails to the plaintiff.

(Source: Cyber Law & Information Technology by Talwant Singh Addl. Distt. & Sessions Judge, Delhi)

#### **9. Sony.Sambhand.Com Case**

India saw its first cybercrime conviction recently. It all began after a complaint was filed by Sony India Private Ltd, which runs a website called [www.sony-sambandh.com](http://www.sony-sambandh.com), targeting non-resident Indians. The website enables NRIs to send Sony products to their friends and relatives in India after they pay for it online.

The company undertakes to deliver the products to the concerned recipients. In May 2002, someone logged onto the website under the identity of Barbara Campa and ordered a Sony Colour Television set and a cordless head phone. She gave her credit card number for payment and requested that the products be delivered to Arif Azim in Noida. The payment was duly cleared by the credit card agency and the transaction processed. After following the relevant procedures of due diligence and checking, the company delivered the items to Arif Azim.

At the time of delivery, the company took digital photographs showing the delivery being accepted by Arif Azim. The transaction closed at that, but after one and a half months, the credit card agency informed the company that this was an unauthorised transaction as the real owner had denied having made the purchase.

The company lodged a complaint for online cheating at the Central Bureau of Investigation (CBI) which registered a case under Section 418, 419 and 420 of the Indian Penal Code (IPC). The matter was investigated into and Arif Azim was arrested. Investigations revealed that Arif Azim, while working at a call centre in Noida gained access to the credit card number of an American national which he misused on the company's site.

The CBI recovered the colour television and the cordless head phone. In this matter, the CBI had evidence to prove their case and so the accused admitted his guilt. The court convicted Arif Azim under Section 418, 419 and 420 of the IPC this being the first time that a cybercrime has been convicted.

The court, however, felt that as the accused was a young boy of 24 years and a first time convict, a lenient view needed to be taken. The court therefore released the accused on probation for one year.

The judgment is of immense significance for the entire nation. Besides being the first conviction in a cybercrime matter, it has shown that the IPC can be effectively applied to certain categories of cyber-crimes which are not covered under the Information Technology Act 2000. Secondly, a judgment of this sort sends out a clear message to all that the law cannot be taken for a ride.

(Source: Cyber Law & Information Technology by Talwant Singh Additional District & Sessions Judge, Delhi)

#### **10. Nasscom vs. Ajay Sood & Others**

In a landmark judgment in the case of National Association of Software and Service Companies vs Ajay Sood & Others, delivered in March 2005, the Delhi High Court declared 'phishing' on the internet to be an illegal act, entailing an injunction and recovery of damages. Elaborating on the concept of 'phishing', in order to lay down a precedent in India, the court stated that it is a form of internet fraud where a person pretends to be a legitimate association, such as a bank or an insurance company in order to extract personal data from a customer such as access codes, passwords, etc. Personal data so collected by misrepresenting the identity of the legitimate party is commonly used for the collecting party's advantage.

The court also stated, by way of an example, that typical phishing scams involve persons who pretend to represent online banks and siphon cash from e-banking accounts after conning consumers into handing over confidential banking details. The Delhi HC stated that even though there is no specific legislation in India to penalise phishing, it held phishing to be an illegal act by defining it under Indian law as 'a misrepresentation made in the course of trade leading to confusion as to the source and origin of the e-mail causing immense harm not only to the consumer but even to the person whose name, identity or password is misused.' The court held the act of phishing as passing off and tarnishing the plaintiff's image.

The plaintiff in this case was the National Association of Software and Service Companies (Nasscom), India's premier software association. The defendants were operating a placement agency involved in head-hunting and recruitment. In order to obtain personal data, which they could use for purposes of headhunting, the defendants composed and sent e-mails to third parties in the name of Nasscom.

The high court recognised the trademark rights of the plaintiff and passed an ex-parte interim injunction restraining the defendants from using the trade name or any other name deceptively similar to Nasscom. The court further restrained the defendants from holding themselves out as being associates or a part of Nasscom.

The court appointed a commission to conduct a search at the defendants' premises. Two hard disks of the computers from which the fraudulent e-mails were sent by

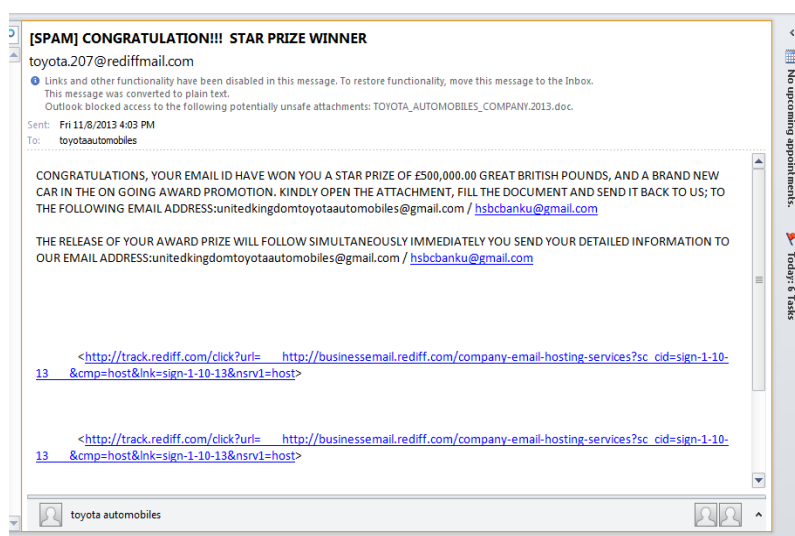
the defendants to various parties were taken into custody by the local commissioner appointed by the court. The offending e-mails were then downloaded from the hard disks and presented as evidence in court.

During the progress of the case, it became clear that the defendants in whose names the offending e-mails were sent were fictitious identities created by an employee on defendants' instructions, to avoid recognition and legal action. On discovery of this fraudulent act, the fictitious names were deleted from the array of parties as defendants in the case. Subsequently, the defendants admitted their illegal acts and the parties settled the matter through the recording of a compromise in the suit proceedings. According to the terms of compromise, the defendants agreed to pay a sum of Rs 1.6 million to the plaintiff as damages for violation of the plaintiff's trademark rights. The court also ordered the hard disks seized from the defendants' premises to be handed over to the plaintiff who would be the owner of the hard disks.

This case achieves clear milestones: It brings the act of 'phishing' into the ambit of Indian laws even in the absence of specific legislation; It clears the misconception that there is no "damages culture" in India for violation of IP rights; This case reaffirms IP owners' faith in the Indian judicial system's ability and willingness to protect intangible property rights and send a strong message to IP owners that they can do business in India without sacrificing their IP rights.

(Source: Cyber Law & Information Technology by Talwant Singh Additional District & Sessions Judge, Delhi)

*Some more such ads appearing on internet are shown below, which are clearly misleading and unfair:*





## APPLE iPhone 5

ON YOUR BUDGET

MRP 45,400

Our Price **Rs. 699/-**

**BUY NOW**

Hurry up Offer valid for limited time



Samsung Galaxy Note 3  
N9000 with Samsung  
Galaxy Gear

**Our Price Rs 899/-**

[Buy Now](#)



Samung Ga,laxy Note 2  
**Our Price Rs 699/-**

[Buy Now](#)



Samung Galaxy S4  
**Our Price Rs 799/-**

[Buy Now](#)



Samsung Galaxy S3  
**Our Price Rs 599/-**

[Buy Now](#)



Nokia Lumia 920  
**Our Price Rs 699/-**

[Buy Now](#)



Apple iPhone 4s  
**Our Price Rs 399/-**

[Buy Now](#)

[\\*Offer valid stocks last.Terms & Conditions apply](#)



[.100% Secure Shopping](#)

[.30 Days Replacement](#)

It is pertinent to mention before moving forward that there are two kinds of advertisements; the first is advertisement, which may or may not be misleading and the second one are invariably misleading. Both have different implications and different way to deal with. One is UTP and the second is simply phishing or scam.

### **Phishing**

Phishing is the act of attempting to acquire information such as usernames, passwords, and credit card details (and sometimes, indirectly, money) by masquerading as a trustworthy entity in an electronic communication. Communications purporting to be from popular social web sites, auction sites, banks, online payment processors or IT administrators are commonly used to lure unsuspecting public. Phishing emails may contain links to websites that are infected with malware. Phishing is typically carried out by email spoofing or instant messaging and it often directs users to enter details at a fake website whose look and feel are almost identical to the legitimate one.

Phishing is an example of social engineering techniques used to deceive users and exploits the poor usability of current web security technologies. Attempts to deal with the growing number of reported phishing incidents include legislation, user training, public awareness, and technical security measures.

India is one of the countries with highest phishing exposure. With the penetration of internet/mobile the outreach of scammers have expanded to billions of people, many of them are new to these technologies and totally unaware about the ways to protect themselves.

The youth, women, old age population of internet .mobile users are easy target and highly prone to the scammers by following tricks:

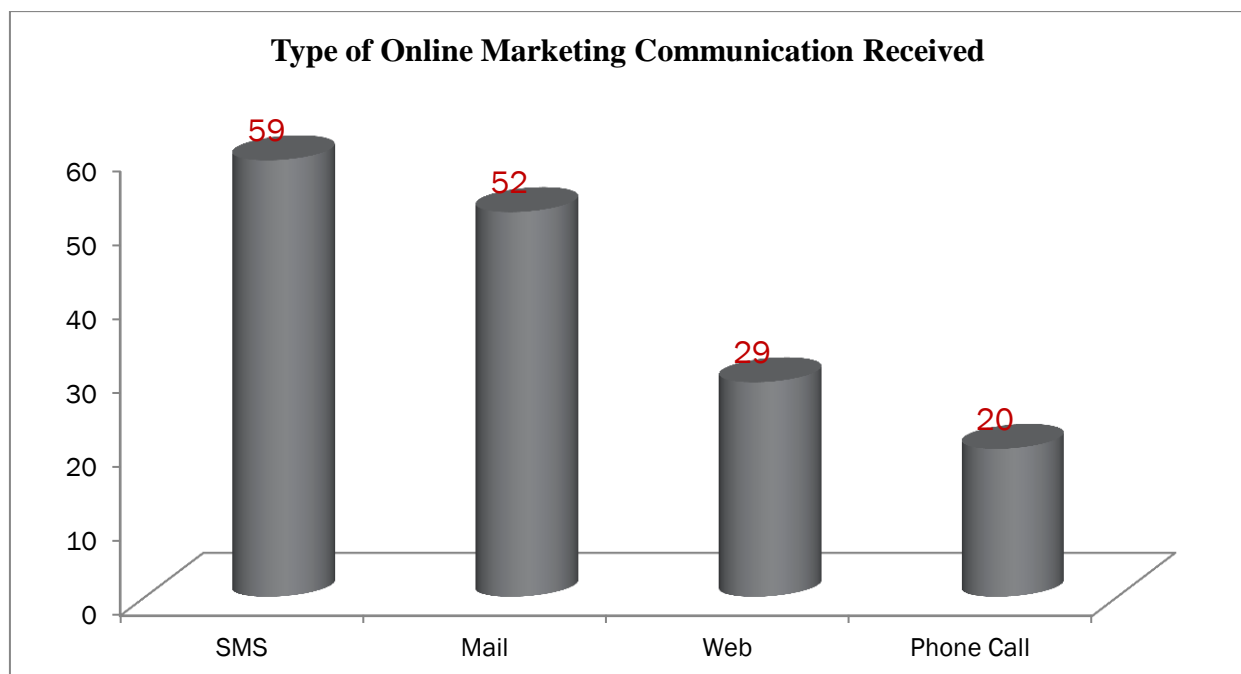
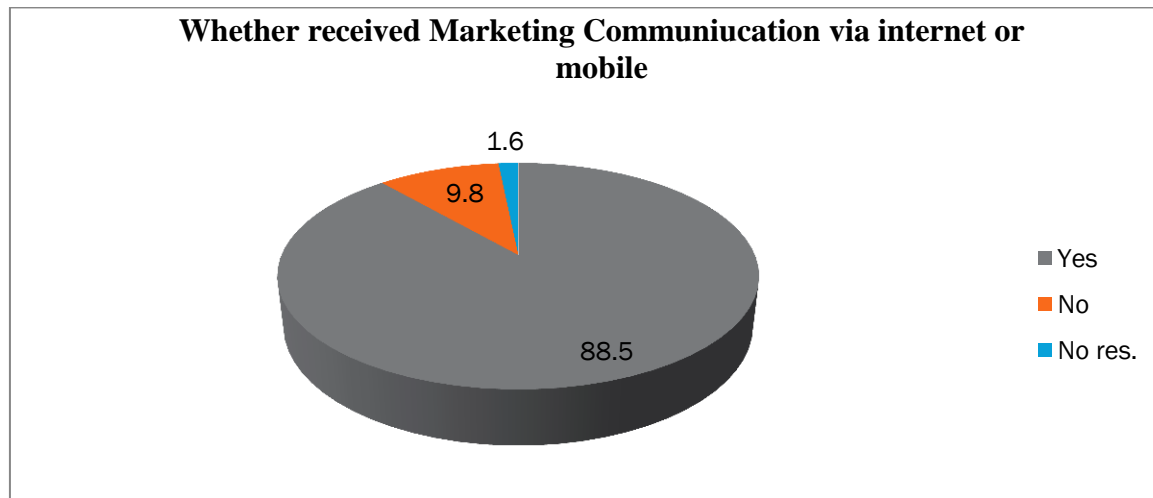
- Phishing scams with mail appearing to come from genuine website
- Fake employment offers
- Fake investment companies offering high returns
- Click ads scam
- Paid survey scam
- Fake online home jobs
- Fake lottery jackpot offer
- Foreign money transfer scam etc.

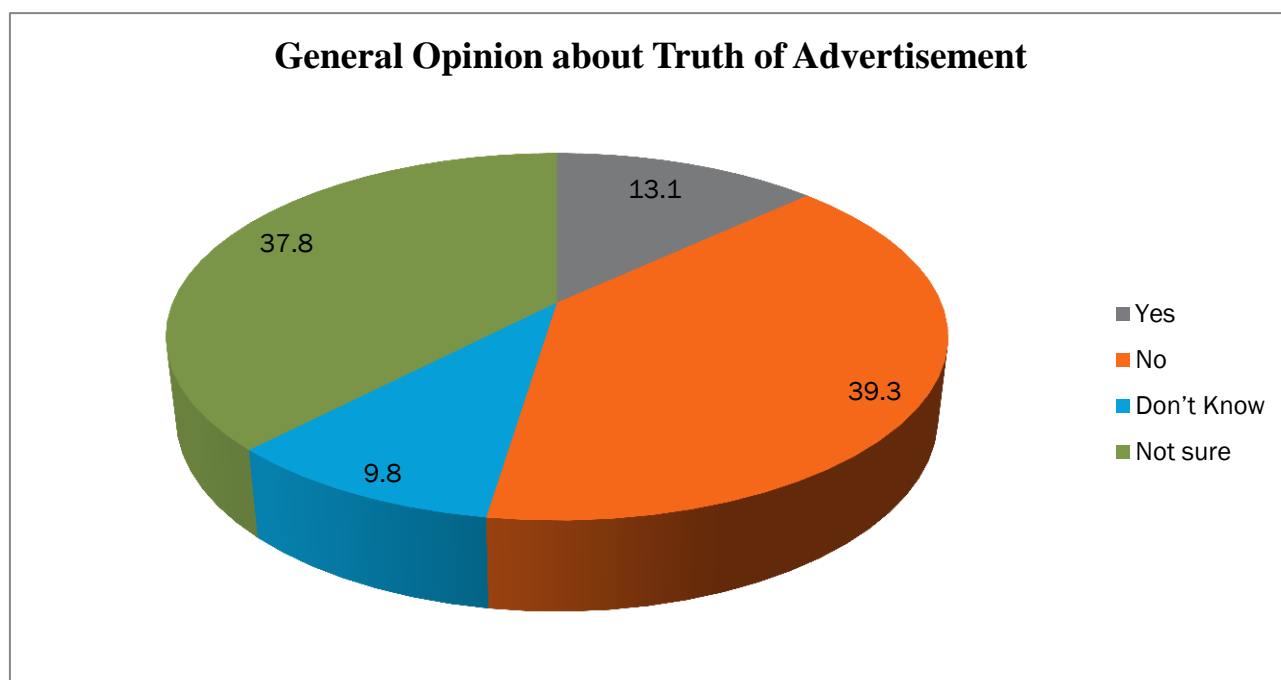
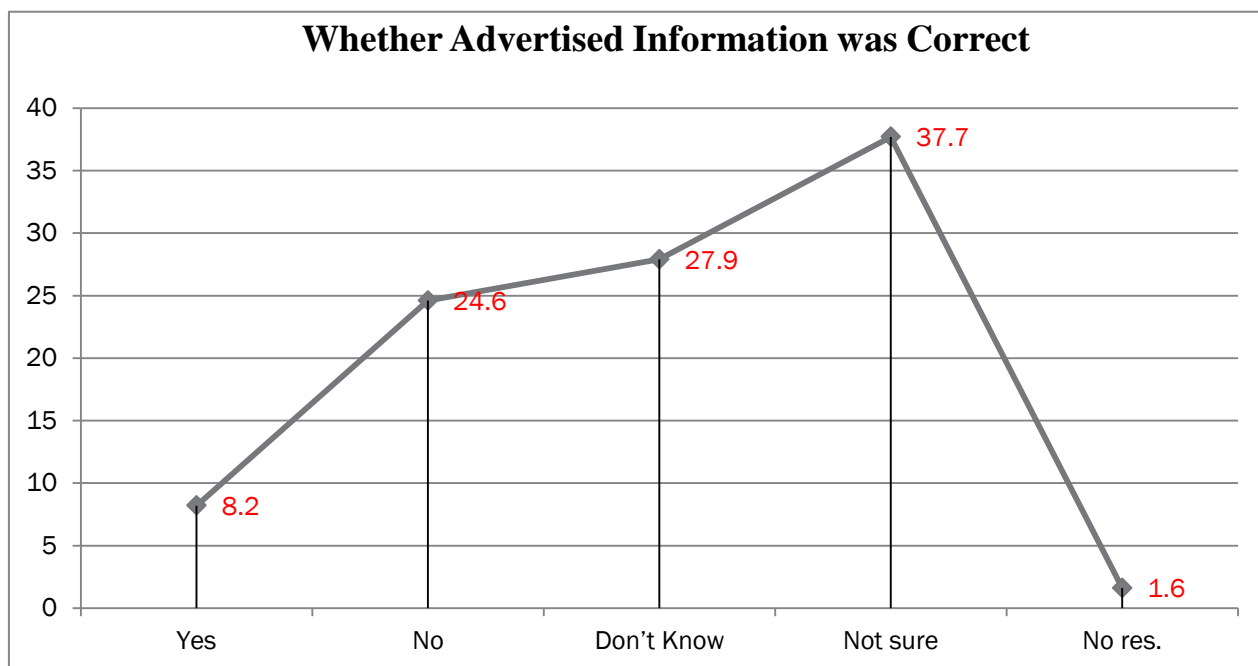
India has various legislations to deal with such cyber-crimes mainly the Information Technology Act, IPC etc.

Basically these are cyber-crimes not typically advertisements but appear like advertisements to trap consumers. The intention from the beginning is to cheat consumers not to promote any product or service. There is fine distinction between phishing/scam and misleading advertisements, though both tend to mislead consumers.

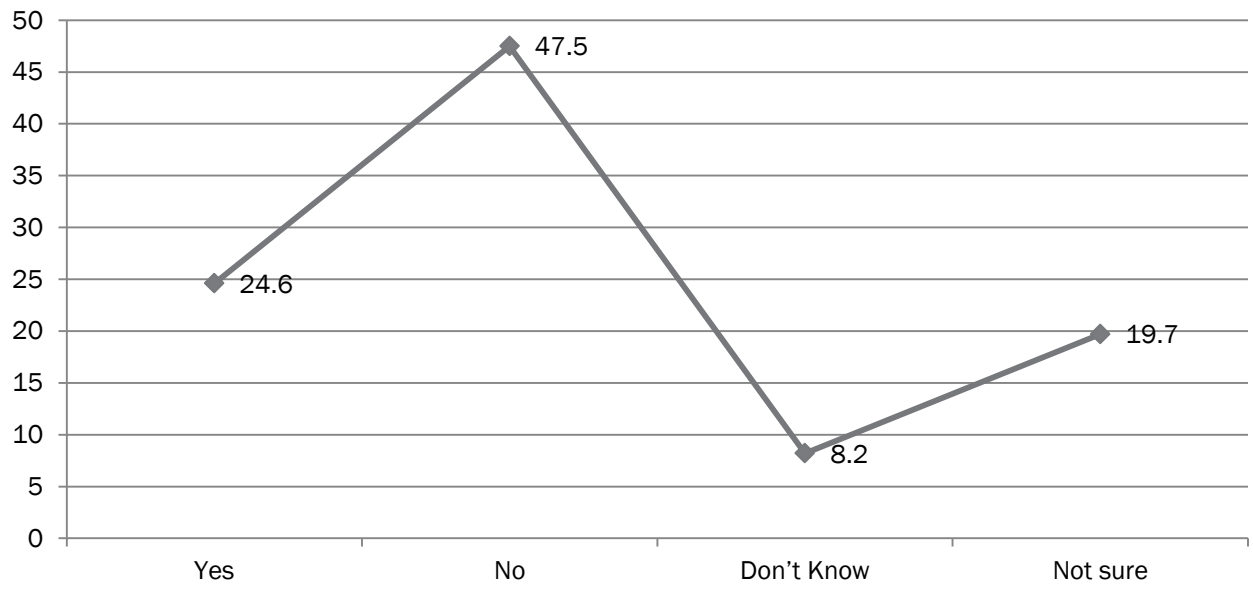
## Field Research Results

Under the assignment, a short field study was conducted to check the ground reality of consumer awareness, type of issues faced and suggestions to control misleading advertisements. Total 61 consumers were asked to fill a questionnaire out of which 21 were women and 40 men. Below are few graphs showing the result of data analysis.

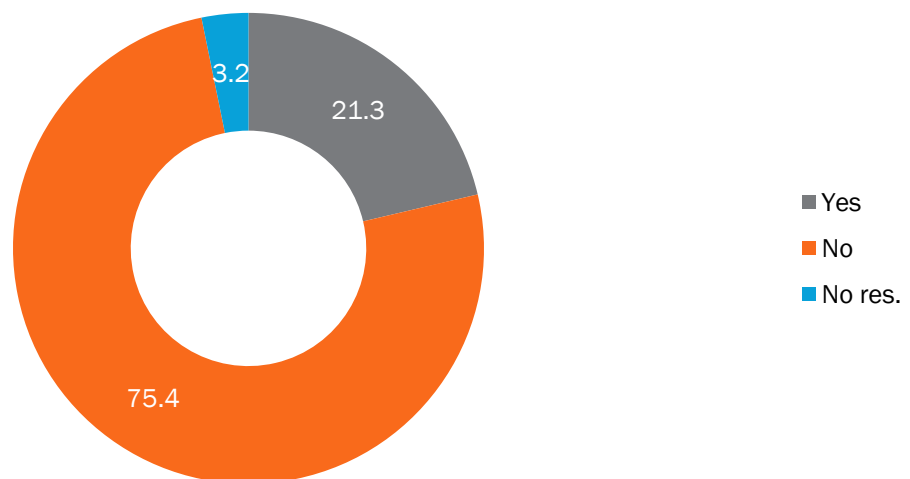




**Whether Such Advertisements are Good for Consumers**

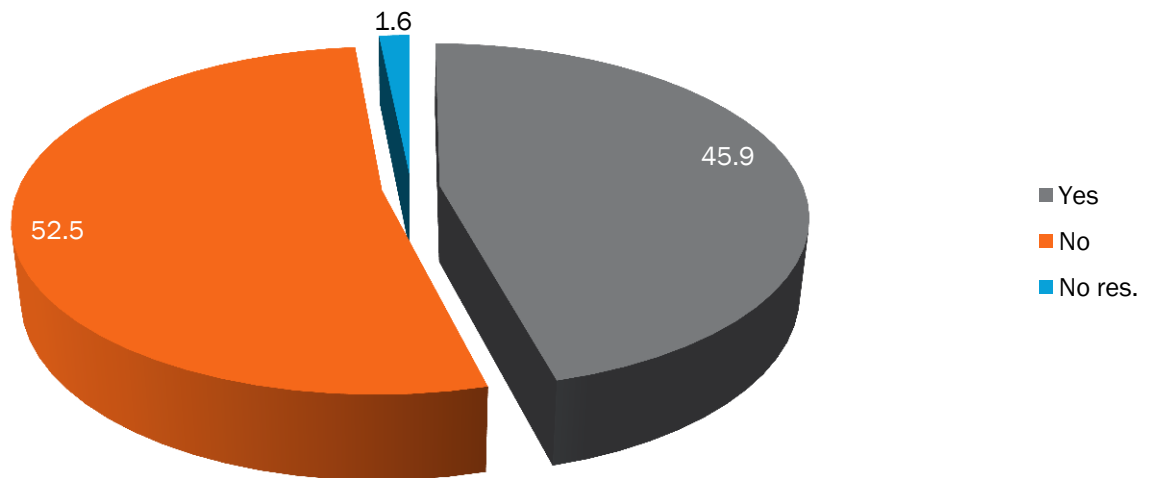


**Got Cheated by Such Advertisements**

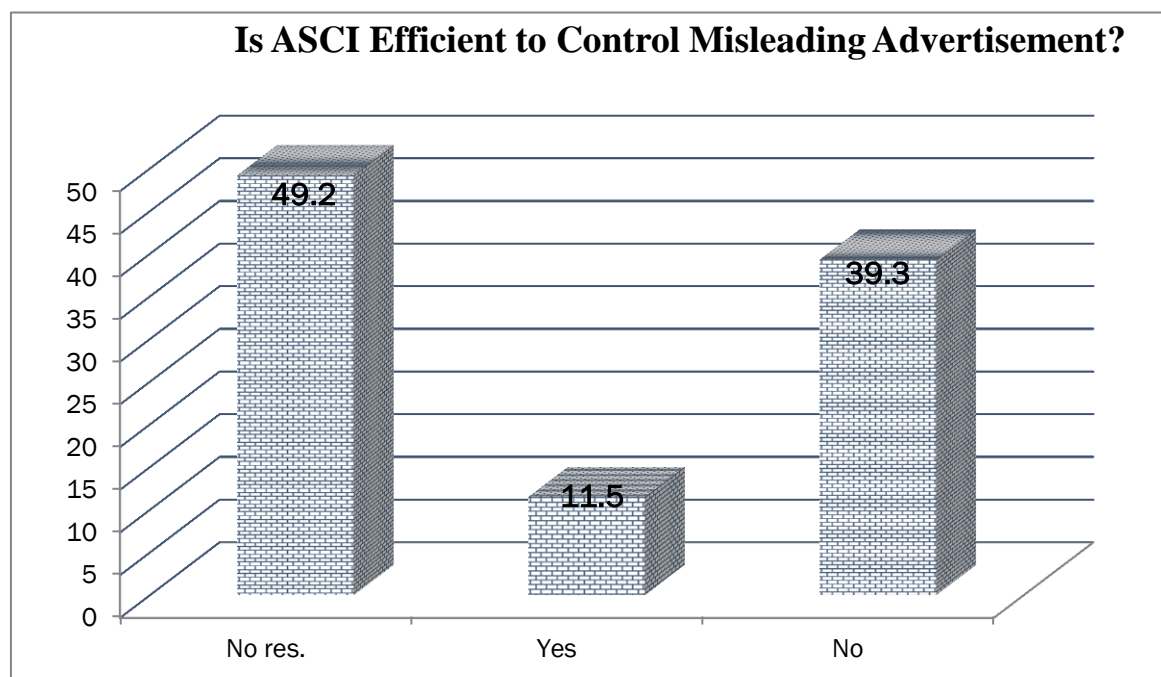




### Aware about Complaint Mechanism



### Is ASCI Efficient to Control Misleading Advertisement?



The field survey results show that most of consumers have received marketing communications on internet and mobile which were misleading and many of them also got cheated by trusting the information given.

There is clear lack of consumer awareness about the redressal mechanism and also trust in effectiveness of ASCI in dealing with misleading ads.




















National Consumer Helpline (NCH) supported by the Department of Consumer Affair, Government of India, did not receive any complaint of misleading/unfair advertisements through mobile and internet from January-September 2013. NCH received total 22 complaints misleading from newspaper advertisements/calls/TV advertisements. This does not include fraud complaints. Total calls were received at NCH during January-September 2013 is 109867.

The importance of the ads shown to be true and not misleading become much more crucial given very high level of consumer trust in ads in India as per below 'Global Survey of trust in advertisement' conducted by Neilson.

Whether it is advertising via old standbys like TV, newspapers and radio or newer media like mobile and online, earning consumer trust is the holy grail of a successful campaign, according to Nielsen's latest Trust in Advertising report. In fact, the study reveals that trust in online advertising is increasing, as is trust in ads on TV, radio and movie screens. Trust in advertising on branded websites increased 9 percentage points to 69 percent in 2013 as the second most trusted format in 2013, a jump from fourth-place ranking in 2007.

**TO WHAT EXTENT DO YOU TRUST  
THE FOLLOWING FORMS OF ADVERTISING?**

Global Average - Percent of Completely/Somewhat Trust

FORM OF ADVERTISING	2013	2007	DIFFERENCE 2013 VS. 2007
 Recommendations from people I know	84%	78%	6%
 Branded websites	69%	60%	9%
 Consumer opinions posted online	68%	61%	7%
 Editorial content such as newspaper articles	67%	*	*
 Ads on TV	62%	56%	6%
 Brand sponsorships	61%	49%	12%
 Ads in newspapers	61%	63%	-2%
 Ads in magazines	60%	56%	4%
 Billboards and other outdoor advertising	57%	*	*
 Ads on radio	57%	54%	3%
 Emails I signed up for	56%	49%	7%
 Ads before movies	56%	38%	18%
 TV program product placements	55%	*	*
 Ads served in search engine results	48%	34%	14%
 Online video ads	48%	*	*
 Ads on social networks	48%	*	*
 Display ads on mobile devices	45%	*	*
 Online banner ads	42%	26%	16%
 Text ads on mobile phones	37%	18%	19%

\*Not included in Nielsen 2007 Global Survey.  
Source: Nielsen Global Survey of Trust in Advertising, Q3 2007 and Q1 2013.

**nielsen** AN UNCOMMON SENSE OF THE CONSUMER™

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## Present Scenario of Mechanisms to Deal Misleading Advertisements

### **Self-regulatory Mechanism**

To monitor certain standards and fairness in the domain of advertising, Advertising Standards Council of India (ASCI) was established in India in 1985 which is a self-regulatory voluntary organisation. The role and function of the ASCI is to deal with complaints received from consumers and industry against advertisements which are considered as false, misleading, indecent, illegal, leading to unsafe practices or unfair to competition and in contravention to the advertising code laid down by the ASCI.

Like other ads, ASCI also empower to deal with online and mobile ads.

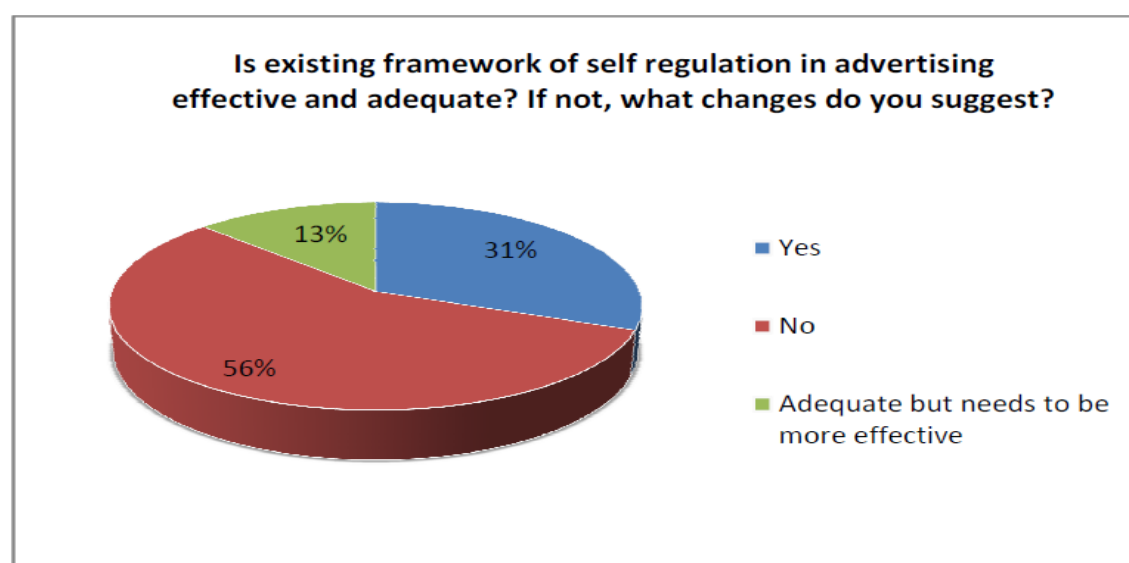
In the field survey, it was found that most of consumers feel that ASCI is neither much known nor effective in dealing with misleading ads.

During the desk research, data of consumer complaints related to misleading ads via internet and mobile were received. ASCI inputs on their limitations and suggestions to effectively deal with misleading ads, especially online ones were also sought. But despite several attempts, required information from ASCI was not received.

During September 2013, ASCI has for the first time taken action against a digital ad, asking Bharti SoftBank to withdraw an online commercial for its free messaging app Hike Messenger because it violated its codes.

In order to understand the self-regulatory framework and its effectiveness in advertising in India, the Federation of Indian Chambers of Commerce & Industry (FICCI) conducted a survey among top tier professionals working in the advertising & marketing space including advertisers across sectors, agencies (media, direct and digital marketing), media (print, TV & radio), market research companies, premier B schools of the country and independent marketing consultants.

Some relevant findings of the survey<sup>iii</sup> are given below:



- 31 % of the respondents were in the agreement that the and effective. They felt that the self-regulatory body is effective and better for industry vis a vis Government regulation. Public awareness should be created about the effective work done by ASCI.
- 13 percent of respondents opined that existing framework can be made more effective. The implementation mechanism needs enough monitoring punitive power. The body needs to be enlarged and regional centres be set up for speedy decisions and monitoring compliance. It should become more nimble and metamorphose with the changing media
- 56 percent of respondents were of the opinion that the existing self-regulatory framework is inadequate and ineffective. The primary reasons given for the same are as follows:
  - There is not enough knowledge among various stakeholders regarding the scope of the regulatory mechanism and the process of making complaints.
  - Advertising standards are governed by code which is dated and not able to keep pace with the changing trends.
  - The Consumer Complaints Council (CCC) meets physically to decide on complaints. It usually takes around 12-15 weeks for the council to take a final call against a complaint. In today's highly competitive arena most advertising campaigns are short term in nature and by the time the committee meets to decide on an issue, it is late to arrest the damage done. Action delayed is virtually equal to action not taken. The result is that the ethics in advertising are not met. The entire mechanism is reactive in its approach.
  - There are ads which making false claims and there is no medical research to substantiate the claim. The message is not conveyed in the right spirit and the present framework is not addressing this.

### **Business Sector**

Business is the genesis of advertisement and their role is the most important to see that their advertisements are not misleading. If the business sector is responsible enough toward consumers than there is neither need of any regulatory or monitoring bodies nor spending on creating awareness.

It is due to UTPs and marketing by business that we need to strengthen other stakeholders to make them behave responsibly. It is not only the fly by night operator but also the big business houses are found involved in misleading consumers by advertising.



Generally about 15-20 percent of total revenues of companies goes in marketing and out of which fast-moving consumer goods (FMCG) sector has highest expenses in marketing in India. The marketing expenses are on growing trend as shown below:

Company	FY13 (Rs in Crore)	FY12 (Rs in crore)	Change (%)
ITC	806.65	682.69	18.16
HUL	3,231.88	2,634.79	22.66
Dabur	502.37	397.66	27 (almost)
Emami	253.11	208.87	21.18
Britannia	534.28	419.6	27.33

With the growing competition, some businessmen tend to resort to misleading marketing to maximise their profits without understanding long-term implications.

Marketing practices and approaches used by different categories of enterprises in India were analysed. It was noticed that marketing strategies used by different categories of enterprises were mainly dependent upon their products/services and the market for the same. It also depends upon their revenues as well.

There is certainly growth in internet and mobile marketing and it is going to further emerge as main marketing tool with more penetration of internet and mobile in India.



For the study, main industry and business associations; CII, ASSOCHAM, FICCI to have their views on issues were contacted.

Dr Sanjeevan Bajaj; CEO, FICCI Quality Forum and her team were interacted. But in CII and ASSOCHAM nobody was ready to interact or to provide required information despite visiting their Delhi office and writing emails.

It was concluded that business associations are not consumer-friendly. Their mandate is to pursue interests of their members and that is their only focus. The main concern of business class in regard to advertisements is the loss of companies by ad of fake products.

However we feel that for larger interest of business, they should work to control misleading ads to gain consumer trust.



### **Service Providers**

The advertisement agencies and the ad carrier like internet service providers, websites, mobile service providers are concerned to grow their business and least bothered about consumers in the absence of proper monitoring and regulatory mechanism in India.

The most used search engine like Google is adopting practices to show sponsored search results. There are charges against such large internet service providers to use UTPs and misusing their dominant position to promote their own products and services as well as misusing consumer trust by showing sponsored results.

They are tracking consumer data by their service for targeted advertisement, which is especially a grave concern in case of vulnerable consumer groups like children, women and old age.

There is Internet and Mobile Association of India (IMAI), which is association of internet and mobile marketing agencies and e-commerce websites. From their website and reports it appears that IMAI is involved in lobbying and advocacy for their members.

We thought to take their view on the study issues being the representative of all these service providers. We visited their Delhi office and also chased by emails but they were neither ready to meet nor to provide required information.

It seems they see consumers as their opponents instead of allies to work with to control misleading ads.

### **Government Agencies**

The government has the duty to protect rights and interests of citizens. Various government agencies are there at national level as Ministry of Communications and Information Technology, Department of Consumer Affairs and Telecom Regulatory Authority of India apart from law enforcement agencies.

Despite their efforts the menace of misleading ads is not only prevailing but increasing day by day and consumers are ripped off with their hard earned money.

Certainly, there are many lacunas in laws and policies to deal with misleading ads and also the half-hearted implementation of the same.

The Telecom Regulatory Authority of India (TRAI) has regulated the time of ad shown on TV in an hour and also regulated mobile marketing. But marketing agencies are violating these regulations and there is not required stern action against them.

The Food Safety and Standards Authority of India (FSSAI) also regulate ads of food items.

The agencies are working on their own but not very cooperative to work with consumers and to provide the required information by consumers and their feedback.

We visited TRAI and FSSAI but were not successful in getting any information and feedback from them. Given the time constraints, we have not filed applications under the Right to information Act for the required information, which seems the only tool to get information from government agencies.

### **Defining Vulnerable Consumers**

The term ‘vulnerable consumer’ is not defined in any Indian legislation. Some other countries have such provisions, such as European Parliament resolution of 22 May 2012 on a strategy for strengthening the rights of vulnerable consumers. But there are some legislation to protect children from marketing of some products and showing obscenity etc.

*European Consumer Consultative Group Opinion on consumers and vulnerability* states that ‘vulnerable consumers’ is a well-known expression but there is no commonly accepted or widely agreed legal definition due the heterogeneity of this group. Indeed, each sector has its own approach for considering a group as composed of ‘vulnerable consumers’. Temporary life events (childhood, illness...) or market factors (information asymmetry, market power, exploitative supplier motivations and complex products/transactions, education...) as well as non-accessible environments, systems, products and services make consumers vulnerable.<sup>iv</sup>

We feel that in Indian context, the defining vulnerable consumers would not make much sense or difference. Generally children, uneducated, old-age, house-wives classes are deemed in vulnerable consumer class in India. But in different contexts different classes may be vulnerable, for instance in the matter of online advertisements the first time users who are not techno-friendly are more vulnerable thought they may be highly educated than the uneducated who rarely uses internet.

Definition also has other implication of limiting the scope and technicalities to avoid the enforcement based on the wording of the definition.

What is required at most is the proper implementation of laws in India. However, the policy focus should be on the vulnerable classes instead of legislative definitions in local context of India.

### **Recommendations**

1. In a country like India, only self-regulation is not sufficient, there should be some government mechanism to monitor, control and check that ads are not misleading. The Ministry of Consumer Affairs is working on similar lines but still there is no clear picture about the same. It is high time to come with a mechanism to deal with misleading ads, which can supplement, support and strengthen the existing self-regulatory system of ACSI.

2. Need to strengthen ASCI, make it more effective and popularise among consumers. Extending ASCI code to all kind of advertisements and making it mandatory for all involved in advertising even if they are not member.
3. Need to improve the law enforcement specially the cyber laws. There should be some strict law against spam.
4. Presently, there is multiplicity of agencies and laws in the matter of misleading advertisements. The Ministry of Consumer Affairs should be made single point to deal with all policy issues; and at state level Department of Consumers can be single point at state level.
5. There is also need to not only hold responsible the company/person advertising but also the mediums to disseminating the misleading ads if there is any loss to consumers. This will also force them to develop their check and balances to see that the ads disseminated by them are not violating any laws.
6. There is need to build bridges between consumers; government agencies and business class to understand concerns of each other and to work together to deal with misleading ads.
7. Last but not least, consumer self-protection by being aware and vigilant seems the only workable solution in the present scenario. Consumer organisations in collaboration with other stakeholders should run consumer awareness campaigns pan India. Capacity building is also required of voluntary consumer organisations mainly to deal with internet-related laws and issues involved in relation to misleading ads.



The Indian Company Act has provided for companies to spend certain percentage of revenue in CSR, which can be tapped to fund such campaigns especially from e-commerce websites, marketing agencies and internet ad mobile service providers.

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<sup>i</sup> [www.trai.gov.in/WriteReadData/WhatsNew/Documents/PR-TSD-Aug,%2013.pdf](http://www.trai.gov.in/WriteReadData/WhatsNew/Documents/PR-TSD-Aug,%2013.pdf)

<sup>ii</sup> [www.thehindu.com/sci-tech/technology/internet/india-is-now-worlds-third-largest-internet-user-after-us-china/article5053115.ece](http://www.thehindu.com/sci-tech/technology/internet/india-is-now-worlds-third-largest-internet-user-after-us-china/article5053115.ece)

<sup>iii</sup> [www.ficci.com/Sedocument/20240/Survey\\_on\\_Advertising\\_Standards.pdf](http://www.ficci.com/Sedocument/20240/Survey_on_Advertising_Standards.pdf)

<sup>iv</sup> [http://ec.europa.eu/consumers/empowerment/docs/eccg\\_opinion\\_consumers\\_vulnerability\\_022013\\_en.pdf](http://ec.europa.eu/consumers/empowerment/docs/eccg_opinion_consumers_vulnerability_022013_en.pdf)