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Study on the Status of Law Enforcement for Misleading Advertisements in India and its Impact on Consumers



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Executive Summary

Advertising is a form of communication to draw the attention of consumers. It has become an integral and important part of business today. Advertisements and advertising agencies have seen a boom since globalisation and marketing.

Advertisement itself is not a problem but an important means to grow business and to reach out to larger market of consumers. But when advertisement is used to induce consumers by way of unsubstantial claims, it is against their interests.

Now manufactures or service providers are spending large amount of budget on marketing and there is a boom in advertisement market. Consumers are lured in many ways whether it be health drinks, or fast foods, we have today a scenario where availability is no longer an issue, the issue is of affordability. This trend has considerably changed the consumption pattern and the new trends in advertising has been one of the first industries to make use of the trend.

When such dream stories are sold through the media whether it be the audio-visual or print media in the most imaginative and near perfect pictures of life, products or services it is obvious that these rises a desire to own such effects. However, when advertisements are deceptive, false or misleading then it is a question actually of ethics of manufacturers and sellers. Since such attributes exist in minimum quantum, it becomes necessary to look at regulatory bodies/laws that compel the miscreants to stop or curb such activities.

In India we have the Advertising Council of India (ASCI) which is a self-regulatory body where those advertisers with ethics are members. Mechanisms like Consumer Forums, ASCI, Reserve Bank of India (RBI) and Telecom Regulatory Authority of India (TRAI) along with a plethora of laws continue to be in existence. There exist powers of *suo moto* action even with the Consumer Protection Act (COPRA), which however, have limited access as there is no mechanism to address the plight of consumers promptly.

The objective of the study is to come up with an idea of an effective system to deal with the complicated menace of misleading advertisements. The study differentiates between ethical and unethical advertisements and various laws to come into force for the protection of consumers. Despite having several laws in place to deal with adulteration, misleading advertisements, safety, Right to Life is in question along with other human rights' issues. Given the Indian scenario, the study is proposing a three pronged or three phase strategy to control misleading advertisements.

- Improve/strengthen the monitoring and implementation of existing laws/regulations/ mechanisms
- Harmonise and update the existing laws/regulation
- Improve system/environment, slowly move to self-regulation and also control regulatory system

The recommendations of the study can be classified into three broad categories. Strengthening the mechanism for self-regulation, a new mechanisms/set up at the Department of Consumer Affairs, Government of India, being the nodal department, to deal effectively with the menace of misleading advertisements and strict enforcement of provisions related to misleading advertisements in the existing laws.

I. Methodology

The following methods and framework were used for gathering the information required for the study.

- Literature Review

This study is an attempt to see the role of advertisements in the present scenario. In order to understand the issue the areas of coverage is based on the sources of information. For this purpose, misleading advertisements in the area of food, investments, employment, cosmetics and health etc. have been identified. The misleading advertisements have been segregated as per the categories under which they fall. There is also an effort to see some of the existing laws and the relevance and enforceability of regulations with regard to the issue. These laws and the portions which are pertinent have been placed and also discussed.

- Interviews with Key Stakeholders

Representatives of Advertising Council of India (ASCI), Telecom Regulatory Authority of India (TRAI) & the consumer organisations, Voluntary Organisation in the Interest on Consumer Education (VOICE), Consumer Education Research Centre (CERC) and the Media (Moneylife) have been interviewed on the issue.

- Discussions within CUTS Team & Sharing of Experiences

These interviews were in addition to several rounds of rich discussions within CUTS, with staff members of consumer protection team, having vast and rich experience on the topic. As a result, some recommendations have been made. However, it is imperative to understand forms and mediums through which advertising is done.

II. Introduction

'Look younger.....use...age miracle cream....'
'Ensure your family's security in 10 minutes.....'
'Increase your memory power.....'
'Loan in 5 minutes.....'
'Fairness creams that work in days.....'

Knowing of the fact that we are constantly surrounded by such advertisements, there is very little need to empirically establish that there are misleading advertisements that are telecasted in the electronic and print media every day. This phenomenon is neither new nor unaddressed. It has been the story of selling and buying that is time immemorial. Advertising has been in use to sell happiness and a quality at a competitive price. The issue is primarily of being able to identify illusion from reality.

2.1 Advertising & its Purpose

It must be recognised that here has been a long tradition of advertising in India even when the first newspapers were published in India in the 19th century. In fact, the first advertising agency was established in 1905, B. Dataram and Company, followed by The India-Advertising Company in 1907, the Calcutta Advertising agency in 1909, S.H.Bensen in 1928, J. Walter Thompson Associates through its Indian associate, Hindustan Thompson Associates in 1929, Lintas (Lever international Advertising Services) in 1939 and McCann Erikson in 1956. Advertising expenditure in the 1950s was estimated at US\$300,000.

Under the more socialist political environment of the 1960s and 1970s there was little incentive for companies to advertise since advertising was not tax exempted. In the 1970s there was a 58 percent growth in the number of registered agencies from 106 in 1969 to 168 in 1979, and this included a growth in Indian agencies. The first advertising appeared on state television in 1976.



A Coca-Cola advertisement from the 1890s

With the opening of the economy in the 1980s there was a growth in the number of alliances with multinational agencies and an expansion in advertising though foreign network participation in agency ownership was limited. In 1987, Hindustan Thompson was affiliated to J. Walter Thompson, today popularly known as HTA. Lintas, the 2nd ranking agency, held only four percent of its subsidiary, as did Ogilvie and Mather. Saatchi and Saatchi/Compton had minority interests in Compton as did Lintas.

A study done in 1984 of the largest companies in India found that the ratio of advertising expenditure to sales had risen from 64 in 1976, to 71 in 1980 to 74 in 1984. Foreign controlled corporations had the dominant share of total advertising expenditure, and 80 percent of these were in the consumer goods' sectors. Advertising was very concentrated with the top 50 advertisers

accounting for 80 percent of the advertising spending and the top 10 advertisers made up 40 percent of that figure, 32 percent of the total. The largest advertiser throughout the period was Hindustan Lever which was nearly 10 percent of the advertising budget of the corporate sector companies. Pharmaceutical companies were also significant advertisers at this time.

Without losing sight of the main purpose of advertising which is meant to be educational and a form of communication used to encourage or persuade an audience, i.e. viewers, readers or listeners, to continue or take some new action. It had become an important part of modern business and industry. One knows of new products, their specifications, components, ingredients and comparative prices and then knowledge about a range of products and ability to choose from them. Advertising provides consumer education, information and competitive pricing and fulfils the 'Right to Information' and 'Right to Choice' for consumers. Most commonly, the desired result is to drive consumer behaviour with respect to a commercial offering. Advertising has the potential to persuade people into commercial transactions that they might otherwise avoid.

Advertisements also remind us about many things to do such as to brush the teeth two times a day, use better shampoo for hair falling problem etc. Advertisements makes us aware more about the specifications of the product such as price, features, availability, sources, company name, even ingredients of the product. Commercial advertisers often seek to generate increased consumption of their products or services through "branding," which involves the repetition of an image or product name in an effort to associate certain qualities with the brand in the minds of consumers. To cite an example, any detergent powder is commonly referred to as SURF just as photocopy is referred to as XEROX although both are companies and not the product.

The importance of advertising is well understood as being an imperative part of a market economy. The importance of advertising as a source of information and education of both products and services available for consumers is undeniable. The issue is to understand that while advertisements are informative and educational it ought not to be untruthful and misleading for consumers who believe in the authenticity of the message and are often lead to buying or investing based on the results or enhancement of investments for which the consumer pays.

What is necessary and needs updating is discerning the truth from the half-truths which is a whole lie. It is, therefore, necessary to define and redefine misleading advertisements. In order to take a view we have set areas and stakeholders who play a key role with re and minuscule purposes of the law regard to the issues. For this purpose, it is imperative that we follow a certain path and identify the issues, organisations and the existing laws and how these are actionable or enforceable by law.



2.2 Forms of Advertising

Advertising takes various forms which can be broadly stated as follows: direct mail advertising, informational advertising, institutional, corporate advertising, outdoor advertising, product advertising, specialty, branding, reminder advertising, social network advertising etc.

Another commonly used advertising is celebrity advertising when a celebrity endorses a product or service and the advertisement focuses upon using celebrity power, fame, money, popularity to gain recognition for products and promote specific products.

Another form of advertising is what is termed as covert advertising when a product or brand is embedded in entertainment and media. For example, in a film, the main character can use an item of a definite brand.

Comparative advertising in particular, the comparisons should relate to goods or services which meet the same needs or are intended for the same purpose; relate to products with the same designation of origin; deal objectively with the material, relevant, verifiable and representative features of those goods or services, which may include price. Comparative advertising explicitly or by implication makes reference to a competitor or competing goods or services. This type of advertising is only permitted when it is not misleading. It can be a legitimate means of informing consumers of what is in their interests.

III. Understanding Misleading Advertisements - Current Scenario

3.1 When does an Advertisement become “False or Misleading”?

The Constitution of India guarantees freedom of speech. Special restraint is needed in commercial speech including advertising. An advertisement is called deceptive when it misleads people, alters the reality and affects buying behaviour.



An advertisement becomes false or misleading, when false or misleading statements are used in advertising. False advertising is any published claim that is deceptive or untruthful. Misleading advertising in any published claim that gives a consumer an incorrect understanding of the product. "Truth" refers to essentially that customers have the right to know what they are buying, and that all necessary information should be on the label as well as in the content of advertisement should be correct.

In an age and date when there is a general notion that almost everything is purchasable, a soft drink brings happiness to a family is blasphemous to anyone with the slightest understanding would know that just as excellence is a stage that always remains to be attained similar happiness does not come with a price tag.

The misleading nature of these advertisements could affect the economic behaviour of consumers and traders, or may be detrimental to a competitor. The misleading nature of advertisements depends on a set of criteria, the characteristics of the goods or services (availability, nature or composition, method of manufacture or provision, origin, etc.), the results to be expected from their use, and the results of quality checks carried; the price or the manner in which the price is calculated; the conditions governing the supply of the goods or services; the nature, qualities and rights of the advertiser (identity and assets, qualifications, intellectual property rights, etc.).

According to US Federal Trade Commission, deception occurs when:

- there is misrepresentation, omission, or a practice that is likely to mislead;
- the consumer is acting responsibly in given circumstances; and
- the practice is material and consumer injury is possible because consumers are likely to have chosen differently if there is no deception.

Deception exists when an advertisement is introduced into the perceptual process of the audience in such a way that the output of that perceptual process differs from the reality of the situation. It includes a misrepresentation, omission or a practice that is likely to mislead.

Misleading advertising occurs when a claim about a product or service is materially false or misleading, in an attempt to persuade the consumer to buy it. To the conscious consumer no advertisement is free as well what is sold is also recovered from to whom it has been sold. "Truth" refers to essentially the same concept, that customers have the right to know what they are buying, and that all necessary information should be available to the prospective purchaser. This process

necessitates the fact that we understand what is competitive advertising, that explicitly or by implication, identifies a competitor or goods or services offered by a competitor

3.2 Two Broad Categories of False and Misleading Advertisements

Misleading advertisements can be categorised into two broader groups. In the first group would be those that basically violate consumers' right to information and choice and thereby have the potential to cause the consumer, financial loss and even mental agony. The second category would include those that peddle health cures and drugs of questionable efficacy and health gadgets of unknown values. This class of advertisements is the most dangerous, as they can also have a severe repercussion on the health and safety of the consumer.

3.2.1 Violates Consumers' Right to Information

Use of untrue paid testimonials to convince buyers, quoting misleading prices, disparaging a rival product in a misleading manner is some examples of misleading. Advertisers of anti-aging creams, complexion improving creams, weight loss programmes, anti-dandruff shampoos, and manufacturers of vitamins or dietary supplements are usually guilty of making exaggerated product claims. Some of the examples of advertisements in this category are:

A fairness cream is advertised with the claim that its user will get a fair complexion within a month.

Biscuits putting a tall claim of being 'the World's largest selling biscuits' on its package on the basis of the results of a survey done in the Year 2003 by A. C. Nielsen.

Many colleges misrepresent in their prospectus that the institution is affiliated to a particular university and an accredited one. In one of the cases decided in 2004 the complainant took admission believing representations made in prospectus that college was recognised by the Government of Punjab and was also approved by the Central Council of Indian Medicine for the whole course of five and a half years. The complainant deposited Rs 1,00,000 as donation and Rs 65,000 as admission fees. Four years after 1996-97 no exams were being held. The Punjab University, CCIM and Baba Farid University did not grant any affiliation for want of requisite infrastructure. It was held to be a case of unfair trade practice and deficiency in service.

In the case of Bhupesh Khorana vs Vishwa Buddha Parishad a class action suit was filed by twelve students who had joined the BDS course offered by the Buddhist Mission Dental College run by Vishwa Buddha Parishad. The students' complaint was that the college, in its advertisement and prospectus inviting applications for the course, had given the impression that it was affiliated to Magadh University, Bodh Gaya and recognized by the Dental Council of India and was fully equipped to give the degree of Bachelor of Dental Science. However, after joining the college and attending classes, the students found to their dismay that the annual examinations were not being held because the college was neither affiliated to Magadh University, Bodh Gaya and nor recognized by the Dental Council of India. As a result the students lost two precious academic years, but also spent money on fees, hostel charges, etc. holding the college to be deficient the National Commission directed it to refund the admission expenses of all the twelve students along with interest of 12 percent.

When an advertisement for cooking oil says that using the said oil frees the user from heart problems, then such an advertisement is misrepresenting the facts. Companies advertise products highlighting health cures and drugs of questionable efficacy and health gadgets of unknown values.



Many of the canned/bottled juice, sherbet, wafer manufacturing companies do not mention the ingredients used in it. For example, a reputed manufacturer offers many types of sherbets which are artificially flavoured but the front side of the package has big and attractive pictures of the fruit itself, creating misunderstanding amongst the consumers.

3.2.2 Violates Consumers' Right to Choice

When material facts which are likely to influence buying decisions are not disclosed the advertisement becomes deceptive. In several advertisements it is stated that 'conditions apply' but these conditions are not stated. Not disclosing material facts amounts to deception. For example, the recent print ad for Videocon mentions a 1-ton split-AC available for Rs. 15,990/, a very attractive offer. But there is a small asterisk which mentions three things in small font. They are:

Conditions apply

Prices valid in Delhi and NCR under exchange only

Actual products may differ from those displayed in the offer

Such ads not only mislead consumers by concealing important information from them.

Indian auto major Maruti Udyog Ltd (MUL) has been ordered by the New Delhi District Consumer Disputes Redressal Forum asked to pay Rs one lakh to one of its customers as compensation for "inducing" Robini resident Sharma to buy a car through misleading advertisements on its mileage.

Holding MUL guilty of resorting to unfair trade practice, also asked it to conduct its own fuel efficiency test and inform buyers about the minimum and maximum possible mileage in its future advertisements.

Sharma had alleged that MUL in its advertisement in a leading newspaper had claimed that its Zen car had a fuel efficiency of 16.7 km per litre, relying on which he purchased a Maruti Zen LX in 2005.

Source: www.indianexpress.com/news/misleading-ad-maruti-suzuki-pays-rs-1l/992102

3.2.3 Violates Consumers' Right to Safety



This includes health cures and drugs of questionable efficacy and health gadgets of unknown values. This class of advertisements is the most dangerous, as they can also have a severe repercussion on the health and safety of the consumer.

Tempted by an advertisement, claiming to increase a person's height, Nadiya, a Class VIII student having a height of 135 cms got admitted to Fathima Hospital for surgery, on 24-7-1996, for increasing her height. The surgery was conducted and a ring fixator was fixed on the legs which had to be adjusted every six hours. To her dismay Nadiya found her left leg shorter by 1/2 inches, and therefore she could not walk. By September 1996, the pain had increased and the complainant was bed-ridden till March, 1998. The Commission held the hospital and the doctors negligent and deficient in their service and directed them to pay Rs 5,00,000 with costs amounting to Rs 2,000 to the complainant.

Doctor fined Rs 1 lakh for publishing misleading advertisement

In matter of Ajay Gautam Vs. Amritsar Eye Clinic and 6/6 Lasik Laser Centre, Dehradun & others National Consumer Disputes Redressal Commission (NCDRC) (Judgement Dated : 26.02.2010) held that doctors cannot advertise anything that would mislead a person into going for a treatment based merely on the doctor's claim that he/she would be cured completely, according to a judgement

The Dr Dinesh Sharma of Amritsar Eye Clinic, Dehradun had advertised that his laser surgery could correct visual acuity and therefore one could get rid of spectacles. Upholding a fine of Rs 1 lakh on the doctor, the commission, found the doctor and the hospital where the surgery was done "guilty of adopting unfair trade practice", and violating the MCI code of ethics by publishing "misleading advertisement". The doctor was fined Rs 1 lakh for publishing misleading advertisement.

Advertisements for general medicines available over the counter, never talk of the side effects that may result from their frequent use.

IV. Ways of Misleading the Consumer

4.1 Pricing-based Methods

The following are some of the methods related to pricing.

4.1.1 Hidden fees and surcharges

Service providers often tack on the fees and surcharges that are not disclosed to the customer in the advertised price. Manufacturers disadvantage customers through various methods such as

- Unfair contract terms, notably with respect to consumer compensation.
- Use customer data for purposes other than they were obtained for.
- Apply unfair fees, charges and penalties on transactions.
- Place artificial restrictions on the time period during which customers can submit claims.

4.1.2 Misuse of the word "free"

The usual meaning of "free" is "devoid of cost or obligation". However, retailers often use the word for something which is merely included in the overall price. One common example is a "buy one, get one free" sale. The second item is not "free" under the normal definition, since, to obtain it, the buyer is obliged to pay the full cost of the first item.

Until recently and sometime at regular intervals we come across free calls in mobile phone Tariff Plans which were very attractive till the consumer realised that in order to get a “free” service of a call or an SMS, very often one call or SMS is required to be made to actually paid for all the so called free ones. Very often there are some hidden fees and surcharges. This is most common inactivation of services such as mobile phones Advertisements of salestill stocks last are a bait that persuades a consumer to buy at a given time to merely push a product as if it is the last piece of the product or service irrespective of the affordability and the real need as opposed to created need. Also when a mobile operator promises STD calls for 40 paise per minute and conveniently omits to say that this rate is applicable_only when calls are made to another mobile of the same company, then it constitutes misrepresentation.



When any advertisement uses or rather misuse of the word “free” ("buy one, get one free" sale) there it is an established fact that the consumer is very definitely paying for what is apparently free. Additionally even the advertising costs in most cases actually are paid for by the consumer. Similarly for the conscious consumer whenever there is a gift on purchase of a product, it ought to be a genuine gift and not something that equivalent amount for which has already been included while purchasing the product or service.

4.1.3 Warranty & Guarantees

Any representation that purports to be a warranty or guarantee of a product, or a promise to replace, maintain or repair an article, or any part of an article, where it is materially misleading or where there is no reasonable prospect that the warranty, guarantee or promise will be carried out is another example. In the name of competition, advertising for products and services often take to double

ticketing occurs when a seller puts two or more prices on a product or service, and the consumer is not charged the lowest price.

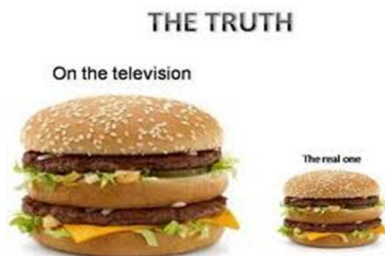
The audio-visual medium to which the future generation is exposed does acrobats on motorcycles or jump from buildings, carry with them statutory warnings in such fine print that before the young audience has understood the implications the act and its impact might be unimaginable. They also prohibit making performance representations which are not based on adequate and proper tests, misleading warranties and guarantees, false or misleading ordinary selling price representations, untrue, misleading or unauthorised use of tests and testimonials, bait and switch selling, double ticketing and the sale of a product above its advertised price. Further, the promotional contest provisions prohibit contests that do not disclose required information.

4.1.4 Contest & Prizes

Any promotional contest that does not disclose the number and approximate value of prizes, the area or areas to which they relate and any important information relating to the chances of winning, such as the odds of winning also come within the preview of misleading advertisements.

Telemarketing is one of the most common forms of direct contact advertising used by a wide range of businesses for their advertising and sales. Telemarketing is contact, via a telecommunications service, from an individual or organisation whose aim is to supply, provide, advertise or promote goods and services. This includes contact by landline, mobile, SMS and fax the source and services are difficult to identify and there exists a fair and often chances of being misled. Telemarketing has become a cognisable offence.

4.2 Other Deceptive Methods



One of the most common methods is the manipulation of measurement units and standards despite the fact that there is a specific law against it. This includes the fact it is common experience that fillers and over-sized packaging used both in the advertisement or the product are also examples of such products which are increasing the circumference of toothpaste tube.

There are also untruthful manipulations of terms both in food and cosmetics for example herbal, organic food, light food etc.

The advertising world is flooded with incomplete comparisons for instance using the terms "better" or "best", without any basis or meaning this is commonly made to be said by young children in television advertisement which attract both the young and the elder or old audience. Inconsistent Comparison of an item is compared with many others, however only as seen for insurance advertisements compared with companies not having the same attributes and pleading that the viewer call other financial companies and see the difference themselves and implying that others are devils who do not care for the best interest of their clients.

Misleading illustrations show the items to be larger than they really are. False colouring which is used to make people think food is riper, fresher, or otherwise healthier than it really is. Angel dusting an ingredient which would be beneficial, in a reasonable quantity, is instead added in an insignificant quantity which will have no consumer benefit, and make the claim that it contains that ingredient.

To further identify the issue it is necessary to attempt at defining misleading advertisements, its categories, differences such as false advertisements, deceptive advertisements, surrogate advertisements, unethical advertisements and even advertisements that are suggestively indecent in nature. The attempt is to be comprehensive on the issue however it is not a claim to be exhaustive in nature. For lack of established terminology, sometimes examples have been cited for clarity.

In the process of attempting to understand the difference between misleading and deceptive advertisements it is said that those advertisements that affect the economic behaviour of those exposed to it is known as deceptive advertisements. The most common of these are property advertisement where consumers invest with the hope that a certain investment would assure a certain quality turns out to be a mirage rather than a reality. In that sense one can state that false or deceptive advertisements are more or less the same. False advertising or deceptive advertising is the use of false or misleading statements in advertising. As advertising has the potential to persuade people into commercial transactions that they might otherwise avoid.

To suggest that pomegranate juice is good for health is acceptable however to claim that it prevents cancer is an issue that remains debatable. Advertisers should always be able to justify the validity of any claims they make. Therefore, advertisers (not consumers) should provide evidence of the accuracy of their claims. Similarly, when an edible oil advertisement gives the sense of relief that as long as consumers use it they are free from any heart ailment, it is as deceptive as a water purifier that claims to be 100 percent free of any water borne bacteria, both the examples reiterate the fact that not only is there exaggeration, incorrect assurance these products when bought and put into use is not only incorrect and misleading, the consumer tends to feel protected which is a misnomer. Doubtful advertisements are misleading, deceptive, suggestive, exaggerated and surrogate that we are today surrounded with.

It means taking advantage of consumer psychology and depriving consumers of a choice. For example, a consumer is lured into a retail outlet by an advertisement for a low cost item and then is sold a higher priced version or to be defective. Once the consumer enters the store, he or she is pressured to purchase another more expensive item. On visiting such stores, one finds a handful of outdated products on the discount announced and other better products as 'fresh stock'.

Puffery and Exaggeration: It means the use of harmless superlatives. The advertisers use them to boast of the merits of their products (best, finest, number one, etc.). Even law permits trade puffing or exaggeration. Subjective statements of opinion about a product's quality are so untrue that it becomes an outright spoof and which is not true. In 1997, Monopolies & Restrictive Trade Practices (MRTP) Commission asked Hindustan Lever company to stop its campaign that a certain toothpaste was 102 percent better than the Colgate toothpaste. Hindustan Lever was restrained from "referring to any other Toothpaste in any manner, either directly or indirectly, by means of any allusion or hint in its TV commercials or newspaper advertisements or hoardings, by comparison of its New Toothpaste with any other product in general, and a certain dental cream in particular.

V. Sectoral Specific and Other Illusory Practices

5.1 Financial Products

Investment in property and insurance schemes is another sector where it has been seen that people have lost their life savings at the hands of unscrupulous ‘fly by night’ companies that have taken in money and disappeared overnight. Similarly, there have been incidents of suicide owing to being in bad debt that consumers have fallen trap to. In India, there are regulatory bodies, such as the Reserve Bank of India, yet the telephonic pressures from banks and other such financing institutes have resulted in ‘depression, anxiety and many such damages’ that are apparently not measurable have marred the life of many individuals and families.



Advertisements by some financial companies such as doubling money in a given short time without any basis to justify claim are deceptive in nature. Plant a teak tree and double your money in five years. Similarly, ridiculous advertisements which claim that their insurance advisors are have the best interest of the investors for life insurance etc. are not just exaggerating, they are making claims without any basis and in other words defaming other companies by saying that “just call us and see the difference.”

Advertisements also create a desire to be part of the elite has led the consumer to often take loans for cars and consumables individuals put in more than they can actually afford the immediate availability and playing into the hands of those who have a CAAR as opposed to CAR. It is a known fact that today banks have a parallel and prosperous setup of used cars markets which are those cars that have been taken away for lack of being able to repay the loans for it.

Securities Appellate Tribunal In Re: Vital Communications Ltd. ... vs Unknown (Order dated February 20, 2008)

Securities and Exchange Board of India (SEBI) conducted investigation into the misleading advertisements issued by certain companies including Vital Communications Ltd. (VCL). VCL is a Delhi based company came out with an Initial Public Offering of 20 lakh equity shares of Rs 10 each in December 1995 and was subsequently listed on various Stock Exchange on February 26, 1996.

Investigations revealed that VCL had issued advertisements in various news *dailies* during May and June 2002 indicating that a meeting of its Board of Directors was to be held shortly to inter-alia, consider buyback of its shares, issue of bonus shares and preferential issue of shares at the rate of rupees 35 per share. The preferential allotment was however approved at a price of Rs 10 against the stated price of Rs 35 in the advertisement. It was found that from the advertisements that VCL was intentionally issuing misleading advertisements to induce demand for its shares in the market.

It was found violation of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Markets) Regulations, 2003.

5.2 Multilevel Marketing & Employment Opportunities

In the same category of misleading advertisements are pyramid selling or multilevel marketing plans that use certain specific deceptive means to obtain money. There is a vast area of advertisements which deal with jobs and business opportunities which have often caused job seekers a great deal of hardship and difficulty. Such cases in common parlance are scams which have often lead to giving money and causing immense anxiety for prospective job seekers and entrepreneurs.

5.3 Health & Safety



A whole plethora of advertisements that fall in the category of misleading advertisements are those which deal with the growth of children and health drinks which almost compel guardians and parents especially mothers to facilitate in having sharper, taller and stronger children from conception to birth, infancy to childhood to adolescence. Additionally, when an edible oil advertisement gives the impression that you are free of heart problems so long as you are using that particular oil, then it is misrepresenting facts. Also when an advertisement of a water purifier that filters only bacteria and not viruses, claims that it gives 100 per cent safe water, then it is a false statement. The competitive existence and the market seem to be running a race where everyone is supposed to be the best, which raises hopes and nose dives when it crashes with reality.

5.4 Cosmetics, Apparels and Accessories

Rejection in marriage, jobs and any social sphere are often attributed to fair complexion, height, weight etc. It has and continuous to cause havoc on the minds of many. Beauty creams, weight loss miracles are constantly playing on the minds and pockets of the consumer, very often leading to low self-esteem, and detrimental impact on health which can take a hazardous turn.



The use of age miracle creams claims to arrest a fact and that is TIME which if scientifically thought is impossible. Just consuming a certain kind of tea or wearing a belt would ensure weight losses without any exercise are myths yet the very fact that they are being advertised it is stating the obvious and that there is a section of consumers who fall into such a trap. Consumers tend to be manipulated by an advertisement's promise that the product will do something special for them. It promises all kinds of things, which may establish the wrong priorities. Ads assure consumers that goods can make them more attractive to the opposite sex, give them power, lift their spirits and bring them instant self-gratification.

A girl facing rejection in relationships or marriage due to her having dark complexion, adolescents being called names for being short in height are factors that play havoc with a person and the desire to attain fair complexion, gain height, weight loss and other such physical attributes often compel the consumer in a psychosomatic manner that even as experimentation and desperation there is wasteful expenditure that consumers undertake.

5.5 Health & Food



Illustrations are often illusive and that is true for both packaging and sizes of food items that give the impression of being a particular size and therefore quantum which it is not explicit in nature but at one point of time or the other most consumers fall prey to such deceptive packaging or illustrations. Similarly, when an advertiser says that his refrigerator is the best or that it keeps the food inside germ-free, that claim should be backed by adequate scientific data that substantiates the claim. Or else, it becomes a false statement. Advertisements for health drinks making children in their growing years have an edge over other children has had as disastrous an impact as stated in the opening example of an impact on a child.

Various types of advertisements that depict false colouring, food items or food being fresher than it actually impacts the health adversely in more than one way. Health drinks having ingredients that will increase the memory of students and their ability to recall during examinations etc. more often than not have no scientific research or data to back them. Additionally, when weights and measures are not compiled with, also come under the preview of misleading advertisements.

5.6. Surrogate Advertisements



consumer.

Since alcohol and tobacco have been declared as products that injurious to health advertisers have devised methods that are commonly known as surrogate advertising in which the brand name being well established advertises for music CDs or even sponsors popular sports like cricket where besides the players and those at the field has a wide coverage as it is telecast. The same is true for popular alcohol brands that in recent times have sponsored sports and even run airlines with the same brand which is a psychological play with the

Surrogate advertisements on alcohol and tobacco being banned which is the auto suggests making 'Life Large...' specially when it denotes success, in careers, in professions coming from icons or celebrities send many into believing that their yard stick of success or happiness revolves around imitating other aspects of working for success.

5.7 Advertisements directed at Children



Children in India constitute 18.7 percent of the world kids' population and one-third of our country's population is under the age of 15 years. Thus in India, children form a massive 30 percent of the total population and this segment is growing at a rate of 4 percent per annum. This means a huge target market of 300 million is available to advertisers and they are already focusing on the kid channels.

A survey by A C Nielsen UTV's research partner showed that an average child

watches TV for about three hours on week days and 3.7 hours on weekends, the time spent on television goes up with age, and the preferred language of viewing is Hindi across all age groups. Apart from the programmes children also view a lot of the advertisements.

In India the advertising expenditure per year on products meant for children but purchased by parents, like health drinks, is 12 to 15 percent of the total Rs 38,000 million. Ad expenditure per year on products meant for children and also bought by them such as chocolates is seven to eight per cent. The advertisers rely on the children's pester power on their parents. The ethical issues involved are advertisers try to exploit young children by advertising products that are not conducive to their health.

"Children are naïve and gullible and are vulnerable to advertiser's enticements.

" They lack independent judgment and experience.

"The line between the children's shows and commercials is fading

" Is the strategy of selling to parents by convincing the children a fair one? Most parents would think it is unfair.

5.8 Use of Sex Appeals



Sex appeal is used explicitly to sell all kinds of things. It is used to gain consumer attention. It is used where it is not even appropriate to the product or service being advertised. Women are shown as decorative objects or as sexually provocative figures for advertisements for products and services where women are not required. The corporate sector should be encouraged to eliminate the violation of women's rights online and the internet service providers to undertake efforts to minimise pornography, trafficking and all forms of gender based violence.

VI. Negative Impact of Misleading Advertisements

May 11, 2011 – The Economic Times carried news that mentioned that –*Unfair and misleading advertisements leads to a child's death*- The news was as follows:

‘A boy named Ravi reading in Class V in Delhi committed suicide because he was influenced by the advertisement of a health drink and he wanted to gain height in a short time.’

While this might be an extreme situation there is no doubt that misleading advertisements do have an impact, from the sheer logic that are telecast and are in the print medium.

Jumping off buildings in search of the favourite soft drink come with a statutory warning in minuscule writing that such acts should not be imitated at home, the impact of such a scene in the situation that children can hardly read has resulted in many mishaps.



We see advertisements of motorbikes at very high speed which also carry similar warning has had disastrous accidents and loss of life at the prime of youth has been reported in the newspapers time and again.

Buddhist Mission Dental College & Hospital Versus Bhupesh Khurana & Others (Judgement dated February 13, 2009) Supreme Court of India

Relying upon the false advertisement by the Buddhist Mission Dental College & Hospital many student sort admission in the college and after several months came to know that the claim made by the appellant to the respondents in the advertisement as well as in the prospectus was false, because the appellant college was neither affiliated to the Magadh University nor it was recognised by the Dental Council of India.

Supreme Court directed the institute to additionally pay compensation of Rs. one lakh to each complainant and also direct the institute to pay cost of litigation which is quantified at Rs. one lakh to each of the complainants.

Full judgment is available at; <http://judis.nic.in/supremecourt/helddis.aspx>

VII. Existing Mechanisms and Laws dealing with Misleading Advertisements

7.1 Key Laws related to Misleading Advertisements

With regard to Acts and Laws that are there to both protect and punish offenders are not only enshrined in the Constitution of India, we have various other provisions of law or bodies that prevent and punish offenders. These laws can be divided into two categories.

A. Laws having horizontal application on advertising

- The Consumer Protection Act, 1986
- The Emblems and Names (Prevention of Improper Use) Act, 1950
- Trade and Merchandise Marks Act, 1958.
- Cable Television Networks (Regulation) Act, 1995
- Indecent Representation of Women (Prohibition) Act, 1986
- Monopolies and Restrictive Trade Practices Act, 1969

B. Laws having vertical application on advertising

- Drugs and Cosmetics Act, 1940
- Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954
- Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994
- Prevention of Food Adulteration Act, 1954/ Food Safety and Standards Act, 2005
- Prize Chits and Money Circulation Schemes (Banning) Act, 1978
- Prize Competition Act, 1955
- The Infant Milk Substitute, Feeding Bottles and Infant Foods (Regulation of Production, Supply and Distribution) Act, 1992 and Amendment Act, 2002
- Transplantation of Human Organs Act, 1994
- The Young Persons (Harmful Publications) Act, 1956

C. The following Regulatory authorities have power to regulate advertising in their respective domain.

- Insurance Regulatory Development Authority
- Telecom Regulatory Authority of India
- Securities and Exchange Board of India
- Reserve Bank of India
- Medical Council of India

D. Some of the important features of various laws concerning advertising are:

D1. The Consumer Protection Act, 1986



The Constitution of India, which is divided into different parts, has two very important parts. Part III deals with Fundamental Rights and Part IV deals with Directive Principles of State Policy. These two parts denote two

important features of our constitution. The former denotes the existing and enforceable legal rights and the latter denotes the targeted social and economic goals which our founding fathers desired, our successive governments to achieve.

In pursuance of achieving one such goal, Consumer Protection Act (COPRA) came into force in the year 1986. That as per the preamble of the Act it was brought to provide for the better protection of the interests of consumers and for settlement of consumers' disputes. Although there were remedies in other laws like Contract Act, Sales of Goods Act, Torts, IPC and procedure prescribed in C.P.C. and Cr.P.C. the purpose of enactment of COPRA, 1986 was to provide specialised redressal to the consumer grievances.

COPRA 1986 protects interests of consumers in India. The three tier-quasi-judicial mechanism at the district, state and national level is the backbone of COPRA for providing simple, speedy and inexpensive redressal of the disputes of the common consumers.

The COPRA is having strong provisions to deal with misleading advertisements. To fulfil the objects of the Act the Central Government has established the Central Consumer Protection Council, and the State governments have established the District forums and the State Consumer Protection Councils in their respective states. A complaint may be made by either the consumer, the government, a recognised consumer society or by one or more consumers having a common interest, within two years of the grievance arising.

A few instances when such a complaint may be made include losses caused to a consumer as a result of unfair trade practice, defect in goods, deficiency in services, charging in excess of price displayed etc. Once the complaint has been received the other party will be asked to give their version of the case. If the matter pertains to defective goods, the same may be sent to a laboratory for testing. If it relates to a service matter then both parties shall be asked to produce evidence in support of their claims. If the authority is convinced that the complaint is valid then it may order the producer to remove the defect, replace the goods, return the price paid by the consumer, or pay an amount to the consumer as compensation for any loss or injury suffered. An appeal may be made against such orders to the next highest authority. If a trader or any person against whom an order has been made, fails to comply with the order then they may be fined or imprisoned. On the other hand if a complaint is found to be frivolous or malicious then the complainant may be fined.

One of the major developments in the COPRA has been with respect to whether services provided by the medical profession, especially when it is a free service as in the case of government hospitals can fall under the Act. It had been argued that technically such professions do not provide any contracts 'for services'. The courts however keeping in mind the fact that the Act was intended to protect consumers have held that all professional services whether free or paid for would render a person a consumer under the Act.

The procedures under the Act and under the Commissions are relatively simpler and more informal than under normal litigation. In fact any consumer can appear before the commission and need not even hire a lawyer to argue one's case. Despite the simple procedures there have not been too many consumer cases in India unlike the US where the courts are filled with consumer grievances.

One of the reasons for this fact has been the lack of adequate consumer awareness of their rights in India and the seemingly intimidating structure of courts and the legal profession. However, to its credit, it must be said the COPRA remains one of those rare laws which allows for a speedy and simple protection of the rights of ordinary people, and judicious use of the same would foster a greater consumer movement in India in this age where the market is flooded with more products but not necessarily more information.

The COPRA, 1986, applies to advertisements for all products in the market place. A consumer may file a complaint related to false and misleading advertisements, which are included under the definition of unfair trade practice (Section 2 (r) The law mentions seven classes of unfair trade practices in six subsections of this section of the law. The consumer courts can however, take the following actions under Section 14 of the COPRA, 1986:

- Issue interim orders stopping such advertisements pending disposal
- To pass cease and desist orders.
- Award compensation for loss or suffering, punitive damages and cost of litigation to the affected party.
- Direct the advertiser to issue corrective advertisement

D1.1 Specific Provisions of CoPRA to deal with misleading advertisements



advertisement at the cost of the opposite party responsible for issuing such misleading advertisement.

Section 2 (r) of the COPRA gives a comprehensive definition of Unfair Trade Practices (UTPs) and section 14 deals with the directions that the court can give to deal with such practices. The consumer fora can issue interim orders stopping such advertisements pending disposal of the case. They can give directions to the advertiser to discontinue such advertisements and not to repeat it and can award compensation for any loss or suffering caused on account of such false advertising. They can also award punitive damages and costs of litigation. Most important, they can direct the advertiser to issue corrective advertisement to neutralise the effect of misleading

D1.2 Remedies

The forums/commissions can order the following relief:

- Removal of defects from the goods
- Replacement of the goods
- Refund of the price paid
- Award of compensation for the loss or injury suffered.
- Removal of defects or deficiencies in the services.
- Discontinuance of UTPs/restrictive trade practices and directing not repeating them
- Withdrawal of the hazardous foods from being offered for sale
- Award for adequate costs to practice.

D1.3 Limitation of COPRA/Consumer Fora

The consumer fora can only adjudicate over complaints filed before them. The consumer courts neither have the power nor the infrastructure to investigate like earlier MRTP Commission, *suo motto* into misleading advertisement nor take up such cases on their own. Nor do they have an investigative wing. Inordinate delays in pronouncing the final verdict.

There is no clarity about the jurisdiction of consumer fora in case of misleading advertisements. If someone complain against any such advertisement who have not had actual loss, so which fora he should complain?

D2. Food Safety & Standards Act (FSSAI) 2006



FSSAI, 2006 is an Act enacted to keep with changing needs/requirements of time and to consolidate the laws relating to food and to establish the Food Safety and Standards Authority of India (FSSAI). The Act was needed to bring out a single statutory body for food laws, standards setting and enforcement so that there is one agency to deal and no confusion in the minds of consumers, traders, manufacturers and investors which was due to multiplicity of food laws. Food Safety and Standards Authority of India, established on September 05, 2008 in association with State Food Authorities are responsible for implementation & enforcement of FSSAI, 2006.

The main mandate assigned to the Food Authority is (i) to lay down science based standards for articles of food; (ii) to regulate manufacture, storage, distribution, sale and import of food; and (iii) to facilitate food safety.

FSSAI seeks to regulate the law relating to advertising and unfair trade practices in the food sector. Section 24 of the Act places restrictions of advertisement and prohibits UTPs. It lays down the general principles for advertisement.

Section 52 and 53 of the Act prescribe the punishment for selling misbranded food and also for misleading advertisements. Section (53) prescribes that any person who publishes, or is a party to the publication of an advertisement, which falsely describes any food or is likely to mislead as to the nature or substance or quality of any food or gives false guarantee shall be liable to a penalty which may extend to ten lakh rupees. Some laws directly

On Nov. 30, 2012 minister of state for health A H K Choudhary in a written reply before the Lok Sabha that the alleged misleading claims in the advertisements for 38 food items were monitored by Food Safety Standards and Authority of India (FSSAI) and the manufacturer of these articles were served with show-cause notices and their replies were examined at FSSAI by a three-member committee. As per recommendations of the committee, prosecutions have been launched in 19 cases by designated officers at regional level.

D3. The Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954



This is an Act to control the advertisement of drugs in certain cases and this prohibits the advertisement for certain purposes of remedies alleged to

possess magic qualities and to provide for matters connected therewith. This Act extends to the entire country with the exception of the states of Jammu and Kashmir.

Whenever any medicine is prescribed the Act superficially states under Section 3 of the Indian Medical Degrees Act, 1916 (7 of 1916) or specified in the Schedules to the Indian Medical Council Act, 1956 (102 of 1956); that only those registered as a medical practitioners under any law for the time being in force in any State can only prescribe any medicine. The Act also prohibits any medical practitioner to be involved in advertising for any medical product whether in print or through the audio-visual medium prohibition of misleading advertisements relating to drugs.

According to the provisions of this Act, no medical person shall take any part in the publication of any advertisement relating to a drug if the advertisement contains any matter which-directly or indirectly gives a false impression regarding the true character of the drug, or makes a false claim for the drug, or is otherwise false or misleading in any material particular. No person carrying on or purporting to carry on the profession of administering magic remedies shall have committed an offence under this Act.

This Act basically prohibits advertisements pertaining to drugs and magical cures. Section 3 further prohibits any advertisement promoting drugs for the diagnosis, cure, mitigation, treatment or prevention of any disease, disorder or condition specified in the Schedule Section 4 of the Act prohibits advertisements relating to a drug if the advertisement contains any matter which directly or indirectly gives a false impression regarding the true character of the drug or makes a false claim for the drug or is otherwise false or misleading. Section 5 of the Act prohibits advertisements of magic remedies for treatment of certain diseases and disorders.

The Delhi High Court on May 16, 2012 issued notice to the central and Delhi governments on plea seeking action against a self-styled baba who advertises offering magic treatment to patients. The petitioner alleged that Nirmal Baba had been advertising in different electronic and print media claiming to offer magical treatment while claiming to be a representative of god. The petitioner sought a ban on all advertisements by the baba, saying that such publicity was contrary to the provisions of the Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954. The common man is being misled by the self-styled Nirmal Baba under the belief that the problems of a particular person will be solved with his blessings.

Magical remedies for diseases has known to have cost the lives of many persons who have been sold the idea of being “No Risk” remedies when actually it involves risks and safety and are prohibited by law. The fact that products and advertisements are studied and targeted with market research and addresses and creates needs often when there are no real ones. Children, their health and well-being are targeted in a manner that mothers often stretch their family budget depriving themselves of essentials.

D4. Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003.



An act to prohibit the advertisement of, and to provide for the regulation of trade and commerce in, and production, supply and distribution of, cigarettes and other tobacco products and for matters connected therewith or incidental thereto.

Before stating the implications of the Act it is universally accepted that smoking is not just wasteful expenditure, it also severely damages of not just the smoker but all those around a smoker, known as passive smoking. Smokers spend a larger proportion of their lives coping with functional disabilities than do non-smokers, and they are far more likely to die prematurely, according to a study on the relationship between smoking and disability-free life expectancy.

The National Population Health Survey found that smoking not only reduces the number of years that a person may hope to live, it also has a negative impact on their quality of life. Smoking has been associated with a variety of chronic conditions ranging from bronchitis to asthma to high blood pressure.

A Resolution passed by the 39th World Health Assembly (WHO), in its Fourteenth Plenary meeting held on May 15, 1986 urged the member States of WHO which have not yet done so to implement the measures to ensure that effective protection is provided to non-smokers from involuntary exposure to tobacco smoke and to protect children and young people from being addicted to the use of tobacco; the 43rd World Health Assembly in its Fourteenth Plenary meeting held on May 17, 1990, reiterated the concerns expressed in the Resolution passed in the 39th World Health Assembly.

World Health Assembly and urged Member States to consider in their tobacco control strategies plans for legislation and other effective measures for protecting their citizens with special attention to risk groups such as pregnant women and children from involuntary exposure to tobacco smoke, discourage the use of tobacco and impose progressive restrictions and take concerted action to eventually eliminate all direct and indirect advertising, promotion and sponsorship concerning tobacco; it is considered expedient to enact a comprehensive law on tobacco in the public interest and to protect the public health. In order to prohibit the consumption of cigarettes and other tobacco products which are injurious to health with a view to achieving improvement of public health in general as enjoined by Article 47 of the Constitution.

In order to prohibit the advertisement of, and to provide for regulation of trade and commerce, production, supply and distribution of, cigarettes and other tobacco products and for matters connected therewith or incidental thereto be it enacted by the Parliament. According to the Act, no person is allowed to smoke in any public place. In keeping with the spirit of the act it also goes without saying that seller of tobacco in any form is not allowed in close proximity of schools, however, it is a known fact that there are some vendors who pay the fine for the offence and carry on with the business and repeat the same process the following day.

There are provisions of the Code of Criminal Procedure, 1973, shall apply to every search and seizure the tobacco being sold. However, on payment of the costs ordered by the court, the seized packages shall be returned to the person from whom they were seized on condition that such person shall, before making any distribution, sale or supply of such packages of cigarettes or other tobacco products, get the specified warning and indication of nicotine and tar contents incorporated on each such package. This always leaves the probability that such products could be resold.

D5. Cable Television Networks (Regulation) Act, 1995

This law lays down the procedure for registration of a cable television network and also regulates the programmes and advertisements transmitted on cable network in India. The registering authority is

the Head Post Master of a Head Post Office of the area within whose territorial jurisdiction the office of the cable operator is situated.

D6. Drugs and Cosmetics Act, 1940

This law regulates the production, manufacture and sale of all drugs and cosmetics in the country. The Act prescribes a fine of up to Rs 500 for any person using any report or extract of report of a test or analysis made by the Central Drugs Laboratory or a government analyst for advertising of a drug or cosmetic.

D7. Section 292 and Section 293 of the Indian Penal Code, 1860

This section prohibits the dissemination of any obscene matter. The Indian Post Office Act, 1898, imposes a similar prohibition on the transmission of obscene matter through the post. The Customs Act, 1962, allows the detention and seizure of any obscene matter sought to be imported into the country.

D8. The Children's Act, 1960 prohibits the disclosure of names and address and other particulars of any child involved in any proceedings.

D9. The Indecent Representation of Women (Prohibition) Act, 1986 forbids the depiction of women in an indecent or derogatory manner in the mass media. No person shall publish, or cause to be published, or arrange or take part in the publication or exhibition of, any advertisement which contains indecent representation of women in any form.

D10. The Emblems and Names (Prevention of Improper Use) Act, 1950 prohibits the use by any private party of certain names, emblems, etc.

7.2 Standards and Self-Regulation

7.2.1 Advertising Standards Council of India (ASCI)



Advertising Standards Council of India (ASCI) is a self-regulatory voluntary organisation of the advertising industry. The role and functioning of the ASCI in dealing 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 consequently in contravention of the ASCI Code for Self-Regulation in Advertising. If a consumer or even the industry, feels that an advertisement contravenes the code, a complaint can be sent to ASCI. In fact, ASCI's advertisements exhort consumers to complain, whenever they come across advertisements which they think is false or misleading or unethical.

ASCI, established in 1985, was formed with the support of all four sectors connected with Advertising, viz. Advertisers, Ad Agencies, Media (including Broadcasters and the Press) and others like PR Agencies, Market Research Companies etc. Its main objective is to promote responsible advertising thus enhancing the public's confidence in Advertising. Except ASCI, there is no other non-governmental body in India which regulates the advertising content that is released in India.

When an advertiser is creating an ad, the consumer is his audience. The feedback from a consumer is important to the advertiser so he can be assured if his message has been correctly conveyed. If a consumer feels that a particular advertisement is in bad taste or is false in its claims, they need a body or council to whom they can air their grievances and who will take any appropriate action, if necessary.

ASCI as a self-regulatory body governing advertising content is the ideal medium as its purpose is to serve both the advertisers as well as the consumers. ASCI code for Self-Regulation is mainly to ensure the truthfulness and honesty of representations and claims made by advertisements and to safeguard against misleading advertisements. In addition the code is to ensure that advertisements are not offensive to generally accepted standards of public decency.

In September 2012, Consumer Complaints Council (CCC) of the Advertising Standards Council of India (ASCI) upheld complaints made against 15 out of 22 advertisements. During the same period, it did not uphold complaints against 7 ads. The effective functioning of ASCI's National Advertising Monitoring Service (NAMS) continues to help track down misleading advertisements that were otherwise missed as consumers did not lodge complaints to ASCI against them.

www.bestmediainfo.com/2012/12/asci-pulls-up-15-misleading-ads-in-september-2012/

7.2.1.1 Limitations of ASCI

Advertising self-regulation does not replace statutory legislation but Comparative advertising explicitly or by implication makes reference to a competitor or competing goods or services. This type of advertising is only permitted when it is not misleading. It can be a legitimate means of informing consumers of what is in their interests. An existing framework of law to provide robust and proportionate consumer protection with advantages for consumers, business and governments. Though self-regulation is laudable but existing time lag between a claim not supported by facts and corrective measures is wide and hence unacceptable. Besides, membership of ASCI is not compulsory and hence representation on ASCI from the advertisers category continues to be poor, all major advertisers are not yet members of ASCI.

7.2.2. The News Broadcasters Association (NBA)

NBB represents the private television news & current affairs broadcasters. The NBA has presently 21 leading news and current affairs broadcasters (comprising 40 news and current affairs channels) as its members. NBA also have its Code of Ethics & Broadcasting Standards ("Code") for its members and any person aggrieved by any breach by a Member or an Associate Member of the News Broadcasters Association ("NBA") of the Code of Ethics & Broadcasting Standards ("Code") in relation to any programme broadcast by such Member/Associate Member, has a right to file a complaint in that regard before the News Broadcasting Standards Authority ("Authority").

Now the issue of paid news is also coming up, where news are used to advertise or promote anything. So in such matters NBA and the Press Council of India (PCI) have role to check and control such news.

VIII. Stakeholder Consultation & Interviews

Perceptions of Key Stakeholders

8.1. Alan Collaco, Secretary General, ASCI & other Staff of ASCI

ASCI is managed by Board of Governors consisting of 16 members having equitable representation of Advertisers, Agencies, Media and other Advertising Services, the individual member firms being leaders in their respective industries or services. The 21 member Consumer Complaints Council (CCC), which has 12 non-advertising professionals representing civil society, who are eminent and recognised opinion leaders in their respective disciplines such as Medical, Legal, Industrial Design, Engineering, Chemical Technology, Human Resources and Consumer Interest Groups; 9 are advertising practitioners from ASCI member firms.

The CCC is ASCI's heart and soul. There are three types of complaints which are received by ASCI

1. Complaints from the general public including from govt. officials, consumer groups, etc.
2. *Suo moto* complaints
3. Intra industry complaints

If an ad that is released in India seems objectionable, a person can write to ASCI with their complaint. This complaint will be deliberated on by the CCC after providing due process to advertiser to defend the ad against the complaint and depending on whether the ad is in alignment with the ASCI code and law of the land, the complaint is upheld or not upheld and if upheld then the ad is voluntarily either withdrawn or modified. CCC meet twice every month from the earlier once a month meeting for the speed up the process of complaints handling. Still it will take about 25 days to complete the process.

In 2007, the Government of India amended the Cable TV Network Rules' Advertising Code by which ads which violate ASCI code cannot be permitted on TV. ASCI's Code for Self-Regulation in Advertising is now part of ad code under Cable TV Act's Rules. Violation of ASCI's Code is now violation of government rules. As per the rules of Cable TV Networks (Regulation) Act 1995, '*No advertisement which violates the code for self-regulation in advertising, as adopted by ASCI, Mumbai for public exhibition in India, from time to time, shall be carried in the cable service*'. Nowhere in the world has such recognition of an advertising Self-Regulatory Organisation (SRO) been granted by the Government.

The ASCI has joined hands with TAM Media Research to introduce National Advertising Monitoring Service (NAMS) which came into effect from May 01, 2012. The aim of the monitoring service is to reduce the number of misleading and unsubstantiated advertisements. AdEx India, a division of TAM, is monitoring televisions and newspaper advertisements released every week.

According to the ASCI's agreement with TAM, AdEx India will identify ads which are potential violation of Chapter 1 of ASCI code – to ensure truthfulness and honesty of representation and claims made by advertisements against misleading advertisements. The advertisements that violate the ASCI advertising code will be forwarded to ASCI on a weekly basis, post which ASCI would process them suo motu as per its complaint redressal procedure involving its CCC for adjudication.

AdEx India is also monitoring ads in the auto, banking, financial services and insurance, FMCG (including F&B), consumer durables, educational institutions, health care products and services, telecom and real estate sectors. AdEx will track more than 30 newspapers which is said to contribute over 80 percent of national newspaper readership and all television channels across India in all languages.

Most of the ads, against which a complaint is upheld by CCC, are modified or withdrawn voluntarily in writing by advertiser. In case there no compliance, such cases are referred to I&B ministry, in turn Ministry issues notice to those channels continue to telecast those ads asking explanation for not withdrawing their licence. In fact, the I&B Ministry sends all the complaints it receives to ASCI for adjudication. In print, nearly 80 percent ads voluntarily comply with CCC rulings.

European Advertising Standards Alliance (EASA) is the single authoritative voice on advertising self-regulation issues at the international level. As a non-profit organisation based in Brussels, it brings together national advertising SROs and organisations representing the advertising industry in Europe and beyond. ASCI's membership of EASA ensures that it gets valuable advice, learning and even influence at the international level.

The following are the recommendations emerged during the interview and discussions to further strengthen ASCI.

1. Need for generating awareness about ASCI among the consumers across the county.
2. DoCA to include an advertisement in the *Jago Grahak Jago* campaign about ASCI for educating common consumers about ASCI and its functions.
3. To amend Press Council Act 1978 to make ASCI code mandatory for newspapers as well.

8.2. Sucheta Dalal, Trustee, Moneylife Foundation and Consumer Education and Research Centre, Ahmedabad; Managing Editor, Moneylife Magazine, Mumbai; and Member, CCC, ASCI

False and misleading advertisements are rampant and are getting more outrageous and they come in many forms. Paid news, social media blogs and tweets masquerading as independent opinion are hard to detect or prove.

Sucheta is of the opinion that by setting up 'an independent regulator to monitor advertising', can't stop this, but it is guaranteed to ensure red tape, corruption, delays, extortion, higher costs and selective enforcement – in other words, a sure poison for advertising creativity.

She quoted the example of the FSSAI whose powers of enforcement and punishment were notified in 2011. FSSAI impressively shot off show-cause notices to some of India's food brands such as Complan, Bournvita Little Champs, Maggie Noodles, Top Ramen and Horlicks Junior for making 'tall claims'. But no action was initiated against them. Empowering FSSAI, she says, has only led to a sharp increase in corruption. It is same with the Indian Medical Council and the Food and Drug Administration.

In fact, several statutes have provisions to protect consumers from false claims and misleading

advertisements, but they are either full of loopholes or rendered useless or the lack of coordination between ministries and regulators. Statutes that have failed include: The Young Persons (Harmful Publications) Act, 1956, the Indecent Representation of Women (Prohibition) Act, 1986 and Drugs and Magic Remedies Objectionable Advertisement Act (DMROA), 1954. The Act needs to be empowered to monitor cosmetics advertisements and to act against them. Millions of Indians are being duped by mushrooming chit funds and Ponzi schemes across India. These are covered by the Prize Chits & Money Circulation Schemes (Banning) Act, 1978. The following are some her suggestions for inclusion in the recommendations of the study.

- DoCA needs to devote time and attention to plugging loopholes in several statutes and frame appropriate guidelines under the COPRA.
- Financial sector needs cohesive regulation with empathy. Instead, there is multiplicity of regulators, RBI, SEBI, Insurance Regulatory Development Authority (IRDA), with huge differences in regulatory standards. Hence, there has to be standardisation of rules and implementation of the same by all financial regulators.
- ASCI diligently review each offensive advertisement in a fair and impartial manner and rules on complaints, but it can do little about habitual offenders. ASCI has no mandate to punish or demand a corrective advertisement/apology; consequently, these entities are back with another misleading advertisement after a few months. DoCA can create an effective system by seeking a quarterly report from ASCI and asking habitual offenders to issue corrective advertisements which is a powerful deterrent.

8.3. Sebastian and Mathew Palamattam, Telecom Regulatory Authority of India (TRAI)

These officials of TRAI were very categorical in stating that their intervention is only restricted to advertisements which deal with tariff rates and the cases brought to their notice, based on which the law takes its course is often reported or objected to by the competitors in the Telecom industry.

In the 1990s the Indian Telecom sector saw a rapid growth. The government gradually allowed the entry of the private sectors into telecom equipment manufacturing value added services, radio paging and cellular mobile services. In 1994, the government formed the National Telecom Policy (NTP) which helped to attract foreign direct investments and domestic investments. The entry of private and international players resulted in need of independent regulatory body. As a result, The TRAI was established on February 20, 1997 by an Act of the Parliament called "Telecom Regulatory Authority of India Act 1997".

The mission of TRAI is to create and nurture an environment which will enable the quick growth of the telecommunication sector in the country. One of the major objectives of TRAI is to provide a transparent policy environment. TRAI has regularly issued orders and directions on various subjects like tariff. TRAI on regular basis conducts workshops on the activities of the organisation and issues of tariff. Additionally, whenever competitors within telephone companies are brought to the notice of TRAI it responds to that particular advertisement and insist on withdrawal of that advertisement.

TRAI is not empowered to take up any advertising issue to court however, if such cases are filed TRAI represents if called for on the appropriate laws and the existing mechanism for justice in the Sessions, High and the Supreme Court procedure which are presently time taking and involve costs which TRAI refrains from taking.

Sebastian and Mathew Palamattam recalled that they had served a notice for an advertisement which suggested physical fitness to 'walk while you talk' as such a practice would make the consumer susceptible to accidents just as drivers are prevented by the law to use cell phones while driving. Thankfully the personnel of TRAI were pleased that the advertisement was withdrawn without any debate both by the service provider and the advertisers.

8.4 Ashim Sanyal, COO and Secretary of Voluntary Organisation in the Interest on Consumer Education (VOICE)

“Misleading advertisements and UTPs are two sides of the same coin” said Ashim Sanyal of VOICE – a voluntary action group of academicians, professionals and volunteers channelising their energies towards creating informed consumers. It raises awareness in consumers not only about malpractices perpetuated in the market place, but also about her/his rights. VOICE aims at being the most powerful tool in the hands of the consumer to help them fight for value for their money. Consumer awareness has become important because of the liberalising economy. Consumers need guidance to make informed choice in the products and services available.

Sanyal added advertising is not restricted to products that are good for people. According to law in India advertisements for cigarettes, liquor, paan masala, products that are harmful to the public continue to find a place despite the ban imposed by the government in private channels, cable, and through the use of surrogates. Examples include Mc. Dowell's Soda, and Wills lifestyle stores which are seen as surrogate advertising for Mc Dowell's Whiskey and Wills cigarettes respectively. The issues he raised are:

- Whether such products should be advertised or not?
- If they should be advertised, and they will need to be advertised so long as their production is not banned, in what media should they be advertised?
- Further, if they are permitted to be advertised, whether the warning signs on the packages of these products really serve any purpose?

The role of in-film advertising and surrogate advertising in promoting the sale of these products also needs to be examined more closely. Advertisers pay film producers to place their products in certain film scenes by integrating the products

IX. A Set of key Recommendations Emerged out of the Study

Given the Indian scenario, the possible strategy to control misleading advertisements can be three pronged or say in 3 phases.

- Firstly, to improve/strengthen the monitoring and implementation of existing laws/regulations/mechanisms
- Secondly, to harmonise and update the existing laws/regulation
- Thirdly, in the improved system/environment, slowly move to self-regulation and los the control regulatory system.

The recommendations can be classified into three broad categories. Strengthening the mechanism for self-regulation, some new mechanisms/set up with Dept. of Consumer Affairs to deal effectively with menace of misleading advertisements and strict enforcement of provisions in the existing laws.

9.1 Strengthening the Mechanism for Self-Regulation

ASCI needs to be further strengthened and its responsibilities and role need to be publicised. It is a better strategy to have regional units considering the volume of advertising in a geographically vast country as ours. The implication of strengthening ASCI entails not just human and other resource, it also includes the fact that as concern for the consumer the visibility of ASCI is enhanced and it becomes as known as an agency like the Censorship Board for the film industry.

The process of strengthening ASCI should be able to not just ask advertisers to modify an ad or stop it from being telecast it ought to be not just self-regulatory but also be mandatory. There is no provision for corrective ads to nullify the damage already done by a false and misleading ad. There is urgent need for a policy for corrective ads.

ASCI must have regular mechanism for interaction with consumer organisations to appreciate consumers' concerns. Modify ASCI Code to impose corrective ads, which can also act as a deterrent to advertisers. Many countries have such provisions. The fast track system of ASCI is currently only for advertiser to advertiser. This system should be made available for complaints which have a serious impact on the health, safety or financial interests of the consumer. The benefit of ASCI's review system for the CCC's decisions, now available only to advertisers, should be extended to complainants as well.

The Ministry of Consumer Affairs need to incorporate ASCI in the '*Jago Grabak Jago*' campaign for educating common consumers about ASCI and its functions and to promote its redressal mechanism.

The following are some specific suggestions.

- Mandatory membership of ASCI. Membership of ASCI be made compulsory for all industry players with exposure to advertising industry in India – the media vehicles, the advertisers and advertising agencies.
- Expand coverage of ASCI code to digital and social media: A strong digital outreach programme is required to monitor digital and home shopping networks including outdoor

advertising and mobile advertising. Large digital companies like Google, YouTube, and Twitter must join as members and compulsorily sign on to ASCI code.

- Integrate ASCI Code into statutory provisions: Sub rule (9) of rule 7 having Advertising Code of the Cable Television Network Rules, 1994 prohibits TV channels from carrying any advertisement that is in violation of the ASCI Code. Similar provisions may be introduced in other statutes like Press Council of India's Advertising Code to ensure that advertisements while in conformity with the statutory provisions also adheres to the ASCI Code.
- Suspension, pending investigation: Control is required on account of advertising with sexual overtones, religious underpinning, and delivery of magical remedies/promotions in the mushrooming Indian advertising industry. To stop airing such advertisements a special fast track process which involves temporary suspension of an advertisement, which prima facie causes harm to the society, pending final decision by CCC can be implemented.
- ASCI should have a mechanism to collate the information about habitual offenders and share that information about advertisers/ad agencies with the nodal ministry for strict action.

9.2 New set up at DoCA, Government of India

- DoCA should be made the nodal department to deal with misleading advertisements. To address bureaucratic bottlenecks, there could be a Committee [like the Censor Board or earlier MRTTP Commission] under DoCA with representatives from government, experts, ASCI and consumer groups to screen ads, take suo motu actions and to deal with complaints of habitual offenders. An inter-ministerial committee to oversee the functioning of this committee can be formed. The new mechanism must facilitate preventive as well as corrective actions.
- The COPRA itself gives state and Central governments the power to file complaints on behalf of consumers. These would act like a class action and act as a strong deterrent to dubious companies, but the DoCA has yet to frame clear rules to decide the circumstances in which such suo moto action would be appropriate. This is important, because the power would otherwise become a tool for vindictive action. DoCA needs to devote time and attention to plugging loopholes in several statutes and frame appropriate guidelines under the COPRA.
- ASCI diligently review each offensive advertisement in a fair and impartial manner and rules on complaints, but it can do little about habitual offenders. These include multinationals, media houses and educational institutions, who dutifully withdraw offending advertisements after an adverse ruling knowing fully well that they have already served their purpose. ASCI has no mandate to punish or demand a corrective advertisement/apology; consequently, these entities are back with another misleading advertisement after a few months. DoCA can create an effective system by seeking a quarterly report from ASCI and asking habitual offenders to issue corrective advertisements which is a powerful deterrent and has been successfully used by consumer fora in Mumbai.
- Hence a coordination mechanism between ASCI and DoCA to be created as an effective solution to co-regulate with the government bodies to ensure smooth control over the misleading advertisements in that market.

This new set-up can be a nodal agency to coordinate among the agencies responsible to control, monitor, regulate and punish misleading advertisements.

9.3 Strict Enforcement of Existing laws & strengthening of Consumer Fora

As discussed in earlier sections, the several acts/laws in India is having strong provisions to deal with unfair trade practices and misleading advertisements. What is lacking is the enforcement of those provisions. In addition there is a need for strengthening the existing grievance redressal mechanism, especially under CoPRA. Few of the suggestions to strengthen the consumer grievance redressal mechanism in India are given below.

- Consumer fora should be provided with necessary investigation, research support by the proposed new set-up in matter of misleading advertisements, as and when required.
- There is need to enable electronic filing of complaints by anyone as well as power to consumer fora to take suo-moto action.
- Complaints should be provided with financial/legal support in the matter and the burden of proof should be on the respondent, rather complainant.
- In order to make grievance redressal process more convenient for consumer the effective consumer education with respect to consumer rights should be given free technical/ legal assistance to complainant will make the process more convenient for consumers.

The Central Government has already considered some of these suggestions and proposed amendment to the CCOPRA, 1986 through Consumer Protection Amendment Bill, 2011. This Bill is still pending before the Parliament. After implementing this amendment COPRA will become better than before. (Source: State of the Indian Consumer 2012, which can be seen at:

[http://www.cuts-international.org/CART/consumersup/pdf/Report State of the Indian Consumer-2012.pdf](http://www.cuts-international.org/CART/consumersup/pdf/Report%20State%20of%20the%20Indian%20Consumer-2012.pdf)

9.4 Few sectorial specific suggestions are given below

9.4.1 Financial Products

Financial sector needs cohesive regulation with empathy. Instead, there is multiplicity of regulators, RBI, SEBI, IRDA, with huge differences in regulatory standards. The Securities & Exchange Board of India (SEBI) took a considered decision to disallow celebrities from hawking investment products or endorsing initial public offerings (IPOs) in the first few years of its existence. But the insurance regulator and the Reserve Bank of India continue to ignore civil society requests to bar celebrity endorsement of financial products in their domain. Hence there has to be standardisation of rules and implementation of the same by all financial regulators. An authority on the lines of US Financial Products Business Protection Bureau could be set up. For financial ads, a special regulatory framework should be in place. Standardisation of rules and implementation of the same by all financial regulators

9.4.2 Food & Children

The Food Safety and Standards Act, 2006 provides for stiffer penalties. The Act needs to be strictly implemented. Advertising and marketing of food loaded with fat, salt and sugar to school children need to be effectively dealt with. If the Implementation of World Health Organisation (WHO) recommendation on the marketing of foods and non-alcoholic beverages to children is followed in letter and spirit there would be lesser deception. This perhaps calls for a special framework for protection against children-targeted ads. Government regulations to protect children and parents from the pressures of junk food marketing practices could be another method.

9.4.3 Consumer Empowerment

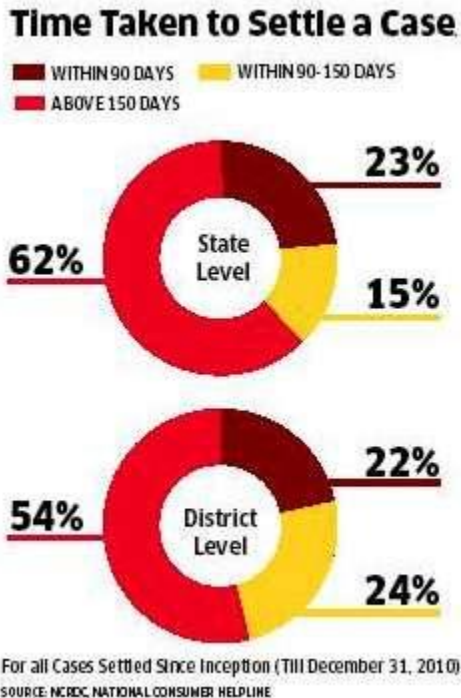
We can have excellent laws, regulations and structures to implement, but all these are futile if peoples do not have information about these. Empowered consumers can play great role not only in process of making the laws/regulations apt but also in helping effective implementation of those. There is need to involve consumers in the policy /legislation making process so that they own them and also come forward to protect them. Consumer empowerment is strongly recommended to curb misleading ads.

X. Annexures

Annexure – I

Are consumer courts really serving the consumers?

The Economic Times, April 12, 2011



Ajay Saldanah is agitated. Seated in the last row of the 20 x 20 room in the community centre that is the Janakpuri Consumer Court, he waits impatiently with his lawyer for his case to come up. A languorous air hangs over the dilapidated court-room, which, at most times, has more lawyers than aggrieved consumers. Tired of waiting, they have stepped out. Saldanah too is tired of waiting, for his turn, for a verdict.

"This is going nowhere," says the exporter from Delhi. "I have come here 10 times in four years." He's here because a car he purchased in 2006 allegedly had handling issues from day one and the manufacturer refused to replace it. He thought a consumer court would help, but it's been a "harrowing experience".

"I have been paying a monthly loan instalment of 18,000 for three years without using the car lest the company argue it's an ageing problem." Last year, an expert supported Saldanah's claim in court, but still no verdict. "What else is the court looking for?" he asks bitterly. It's a question that strikes resonance with many who seek redress in the 630 consumer courts in India, but end up trapped in the cycle of

dates and hearings.

It's ironical. Consumer courts were conceived, 25 years ago, in 1986, as a dedicated and speedier alternative to civil courts, but they have come to resemble the latter. "The same ills have crept into the system," says Suresh Misra, professor & chairman, Centre for Consumer Studies, Indian Institute of Public Administration (IIPA). The government numbers suggest consumer courts have done what they set out to do. It says that 91 percent of cases in the district courts have been settled, 80 percent in the state courts and 87 percent in the national court.

What these numbers hide, and therein lies the story of the decay of consumer courts, is the time taken to settle those cases. The COPRA, 1986, the blueprint for consumer rights in India, mandates all cases be settled in 90-150 days.

According to the National Consumer Disputes Redressal Commission, the Supreme Court in the consumer space, only 46 percent of cases in the district courts were settled in the mandated time and 38 percent in the state courts. And, according to the ministry of consumer affairs, food & public distribution, there are 350,000 cases pending, led by Uttar Pradesh and Maharashtra (See graphic: Time Taken to Settle a Case).

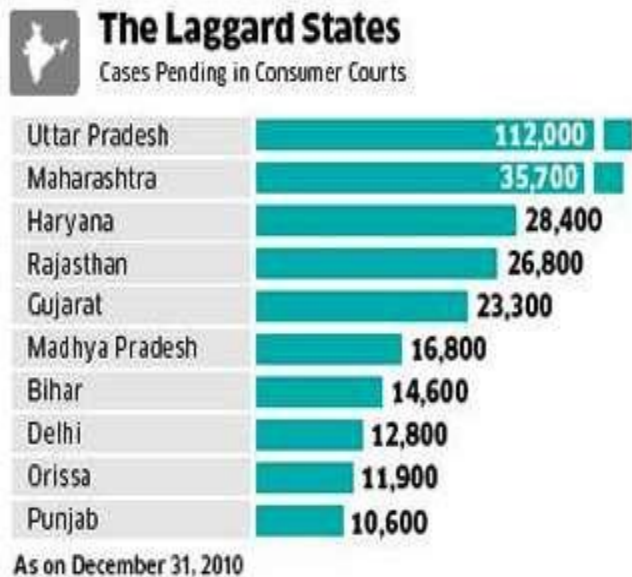
The States say the Centre doesn't give them enough funds to run the courts. The Centre points out that consumer affairs is a state subject; and that though it gives them grants, the states neither use it well nor do they supplement it with their own support.

As the Centre and States trade charges, consumers like Saldanah wait. "We don't advise consumers to approach these courts, especially if the compensation value is likely to be small," says Ashim Sanyal, COO of Voice, a Delhi-based voluntary organisation that works on consumer rights.

Three-tier structure

Consumer courts have a three-tier structure, like general courts. At the lowest level, there are district courts, one for a district. Called 'district consumer forums', who hear cases where the compensation sought is less than 20 lakh. At the middle level, there are state courts (equivalent to the High Court in civil courts). They are called 'state consumer disputes redressal commission' (SCDRC), and each state and union territory has one. They deal with cases where the likely compensation is between 20 lakh and 1 crore; they also hear appeals from district courts. At the top, there is the NCDRC, which hears cases where the compensation sought is above 1 crore and appeals from state courts.

Each consumer court has a judge. In district courts, it can be either a retired district judge or a lawyer



eligible to be a district judge. In state courts, a retired High Court judge. In NCDRC, there is a retired Supreme Court judge. Each court also has members, who can conduct hearings, but not give verdicts.

Each district and state court has two members, while the NCDRC has at least four. Sanyal of Voice says most judges in consumer courts approach cases with a legal mind-set. "They don't show a serious understanding of consumer issues or a consumer's state of mind," he says. Lawyers, especially from the company's side, add to the legalese.

Says Sanyal: "They prolong the case by taking adjournments on flimsy grounds. They complicate issues, which an ordinary consumer is not competent to match."

And if the judge or members are on leave, a verdict can't be given. A district member in Delhi, on the condition of anonymity, says the 90-150 days deadline is unrealistic. "Each case involves several stages and each takes some time," says the member. "It would normally need at least two years. Actually, there's no point in having a time-frame because each case is different."

Absent, your honour

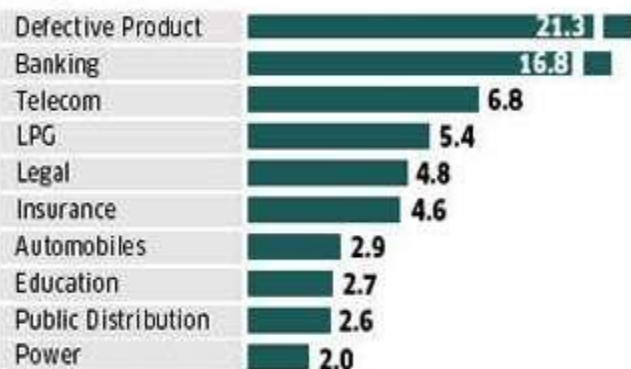
The bald truth is that consumer courts don't have enough benches to hear cases. For example in Uttar Pradesh, which had about 28,500 cases pending on February 28, operates with two benches.

"It will need 10 more benches to clear this backlog over three years," says Justice Bhanwar Singh, president, SCDRC, Uttar Pradesh. Forget adding more benches, even the existing ones are not occupied right now.

As on February 28th 2010, there were 315 vacancies for judges and members in consumer courts. Assuming each of the 630 courts needs a judge and two members means a total judicial staff of 1,900. In other words, 16 percent of positions are lying vacant, which adds to the backlog.

Justice Ashok Bhan, president of the NCDRC, says appointments are "low priority" for states. Bhan says the NCDRC advises states to start the process six months before an incumbent member retires, but this is rarely followed. "It is never on time," he says. "And, in many cases, the members are political appointees who have no clue." Then, members are poorly paid, despite the recommendations of the PD Shenoy Committee in 2008. At the Delhi district court, for example, a member is paid 9,000 per month and 5,000 as conveyance. Maharashtra pays 8,000, Orissa 6,500. The pittance for a salary dis-incentivises people from

The Worst Offenders Percentage of Cases



Between March 2010 and February 2011

becoming a member and breeds corruption. "It becomes easier for companies involved in disputes to bribe members," says a senior official of the Department of Consumer Affairs (DoCA), the ministry arm for consumer issues. Judges are better paid. Retired judges, for example, receive their last salary drawn minus pension. The courts themselves struggle to meet running expenses. "In many cases, the court asks a complainant to pay to send a notice," says Misra of IIPA. Briefly stating Misra states that it is "It's absurd."

Centre-state conflict

Adding judicial and administrative staff, and improve infrastructure, calls for funding. And that is a bone of contention between the Centre and

the states. Says Singh of the UP state commission: "There's a need for a clearly defined formula to decide the funds needed by a state commission, and how it is to be split between the Centre and the state."

He suggests an equal contribution. At present, the Centre gives periodic grants to states, usually, as a per court amount. At times, it runs special schemes, and disburses an additional amount. In other words, the Centre's contribution is unpredictable. So, the state contribution essentially determines the funding levels. Mostly, it is inadequate, leading to dues piling up. One line of thinking in the ministry is that the Centre can use its Consumer Welfare Fund, which has 130 crore, to help in paying salaries. "It (the fund) is mostly under-utilised," says a ministry official, not wanting to be named. "And each year, the Budget makes new provisions."

The DoCA official is scathing of the state's approach to consumer affairs. "No state has put consumer affairs on priority," he says. The ministry that handles consumer affairs also handles public distribution and civil supplies. "For state governments, the other two functions are more 'lucrative' and carry more weight." Professor Sriram Khanna, a consumer expert, dismisses the DoCA official's argument. "Lack of will in administration at the Centre and the states has ensured a graveyard for consumer redress. The Centre can't wash its hands off," says the principal coordinator of the National Consumer Helpline.

Weaker courts

The Centre-state conflict is an enduring one, and it tends to loom over even quasi-celebratory occasions. As it did happen on March 15 in New Delhi, when state and Centre officials dealing with consumer affairs met on World Consumer Day for their annual conference. Officials from the Centre pointed out that only five of the 32 states and union territories had filed an action-taken report on the raft of resolutions passed at last year's conference. The resolutions related to salaries, settlement of cases, monitoring, funding and training, among other things.

The conference ended on the note that such an exercise was a waste of time. Such brinkmanship has weakened consumer courts. The district consumer court has the same powers as a civil court. "But seldom

do companies pay heed to consumer courts. Their reports, orders and summons are routinely ignored," says George Cheriyan, director, Consumer Unity & Trust Society (CUTS) International, a Jaipur-based NGO working on consumer rights. If a dispute goes to consumer courts, Honda Siel Cars views the case with the approach the customer is right, says Jnaneswar Sen, VP-marketing. "But once it goes legal, it has to be dealt with legally, though such instances are rare," he says. Many companies have a legal team, which can stretch a case, as Asha Garg will testify.

Since 2007, this homemaker from Delhi has been making four trips a year to a district court trying to recover 50,000 from an investment firm. "As in family courts, advocates should be discouraged from entering consumer forums, except in special circumstances," says Cheriyan of CUTS.

There are various initiatives underway to strengthen consumer rights and make companies more accountable, but none have statutory powers. There's the National Consumer Helpline (NCH), which records consumer complaints and forwards them to companies. There are the consumer councils that work to protect consumer rights and create awareness. Delhi has started mediation centres.

"Their decisions are taken on-record by consumer courts," says Rajeev Agarwal, secretary, DoCA. The upcoming consumer policy plans to encourage industry to make consumer redress part of its corporate social responsibility agenda. "We would expect industry and large companies in each sector to appoint some kind of ombudsman," says Agarwal. But in the absence of legal powers, all these initiatives have limited utility. The consumer courts remain the only legal option. And they are in shambles.

Forget the court room, try the chat room

Sometimes, when it comes to catching the attention of companies, 140 characters can say more than a case-sheet of many pages. About two years ago, one @Kiruba tweeted: "Clear trip .com took my money and did not book my ticket to Malaysia. Had a harrowing experience at airport..."

Within days, 40 Twitter users either re-tweeted the post or drove their own nail into the travel portal. Clear trip apologised to Kiruba on Twitter and promised to look into the issue immediately. Social media is a great leveller against big and powerful companies that err in their ways.

Companies don't fear a consumer's voice in a court, where it has legal eagles on its side and there isn't an audience looking on. But on the World Wide Web, there are people reading, and reacting. It's the place where companies have something to lose and consumers have a voice. And given the sorry report-card of consumer cases, hitting the social media before braving the courts is worth a shot.

This news item can also be viewed at: <http://economictimes.indiatimes.com/>

Annexure II

CII White Paper suggests strengthening self-regulation for controlling misleading advertising

ANI – Mon 1 Oct, 2012

New Delhi, Oct.1 (ANI): The CII National Committee on Marketing released a White Paper on "Self-Regulation in Advertising in India- A critical Evaluation" on Monday.

The White Paper identifies key concerns regarding misleading advertisements and analyses the prevailing issue from an independent point of view. The paper critically evaluates the role and responsibilities of all stake holders -regulators, industry, activists and consumers.

It has also taken into account the concerns raised by the Department of Consumer Affairs (DCA) of the Ministry of Consumer Affairs, Food and Public Distribution contemplating the need for stronger government intervention.

The White Paper also suggests that the solution to the problems posed by misleading advertisements is not to add one more legislation, in the form of an Administrative Authority as proposed by the DCA, to the basket of existing laws landscape.

It advocates that given Advertising Standards Council of India's (ASCI) track record in self-regulation of ad content, co-regulation between ASCI and regulators like DCA, Food Safety and Standards Authority of India (FSSAI, Ministry of Information and Broadcasting etc as an effective solution. Co-regulation will ensure that ASCI and the government work together with all stakeholders to enforce compliance currently vested with ASCI but without any punitive powers.

The White Paper recommends only in cases of non-compliance of the Consumer Complaints Council's (CCC) decisions should the matter be referred to the related/ parent regulatory body for further required actions. It highlights the effectiveness of self-regulation and how ASCI has been at the forefront of settling disputes regarding ad claims, indecent and unfairly competitive advertising over the last two decades.

The paper appreciated the role of ASCI as a model self-regulatory body stating that ASCI is committed to the cause of self-regulation in advertising and protection of the interests of consumers through first of its kind initiatives like :National Advertising Monitoring Service (NAMS) for monitoring of almost all TV and print ads in India to ferret out ads making misleading, false and unsubstantiated claims

Some of the White Paper's key recommendations are:

Fast Track for speedier resolutions of complaint by one member against ad of another's.

Bi monthly Consumer Complaints Council (CCC meetings) v/s monthly earlier for speedier resolutions of consumer complaints against ads

Mandatory membership of ASCI. Membership of ASCI be made compulsory for all industry players with exposure to advertising industry in India- the media vehicles, the advertisers and advertising agencies. For instance, rules in Holland require all organisations releasing ads on TV and Radio to be member of its SRO.

Integrate ASCI Code into statutory provisions: Sub rule (9) of rule 7 having Advertising Code of the Cable Television Network Rules, 1994 prohibits TV channels from carrying any advertisement that is in violation of the ASCI Code. Similar provisions may be introduced in other statutes like Press Council of India's Advertising Code to ensure that advertisements while in conformity with the statutory provisions also adheres to the ASCI Code.

Expand coverage of ASCI code to digital and social media: A strong digital outreach programme is required to monitor digital and home shopping networks including outdoor advertising and mobile advertising. Large digital companies like Google, YouTube, and Twitter must join as members and compulsorily sign on to ASCI code

Suspension pending investigation: This is one of the major concerns, and therefore control is required on account of advertising with sexual overtones, religious underpinning, and delivery of magical remedies/promotions in the mushrooming Indian advertising industry. To stop airing such advertisements a special fast track process which involves temporary suspension of an advertisement, which prima facie causes harm to the society, pending final decision by CCC can be implemented.

Co-regulation between ASCI and DCA as an effective solution instead of a new legislation. The committee has drawn a parallel with the successful model of Advertising Standards Authority (ASA) in UK, which does not possess any punitive powers but co-regulates with the government bodies to ensure smooth control over the

misleading advertisements in that market.

The paper also recommends building awareness about ASCI's role and code amongst the stakeholders through actively leveraging various media vehicles. ASCI should supplement communication with key stakeholders- industry, regulators, consumers and activists.

To stimulate the discussions at national level, all the corporate and industry associations should engage with the Indian advertising industry to support, defend and engage actively on the Code of Standards for Advertising, in India.

Specific areas where support is required are: Industry members promote the code on all occasions

The decisions of the Consumer Complaints Council be respected and complied with in relation to current and future campaigns. The paper further stresses on an incessant drive to improve the complaints handling system with an emphasis on continuous review and improvements to the system. This will revitalise ASCI as a more efficient and transparent Self-Regulatory Organisation (SRO).

Adi Godrej, President CII, said: "This comprehensive and independent white paper further reinforces that self-regulation in advertising works across the globe in controlling misleading advertising, as seen in over 70 countries already. In India too, we believe in the efficacy of ASCI to regulate misleading advertising and more importantly its ability for speedy redressal. We urge the Department of Consumer Affairs to reconsider its recent proposal to set up a parallel Administrative Authority which we strongly feel will delay the process of consumer redressal and be counter-productive to its intent. Instead, we request them to consider partnering with and strengthening the current mechanism of self regulation through ASCI further, a win-win for consumers, industry and the Government." (ANI)

Annexure III

Regulators warn companies on misleading mortgage advertising

By Emily Stephenson

WASHINGTON | Mon Nov 19, 2012

WASHINGTON (Reuters) - Regulators have begun investigating 19 companies whose advertisements for mortgage products may mislead consumers, the Federal Trade Commission and the Consumer Financial Protection Bureau said on Monday.

Regulators also have sent letters to an additional 32 mortgage lenders, brokers, home builders and other companies warning that their ads may violate federal prohibitions against misleading mortgage-related claims.

The agencies did not name the companies involved.

Problematic ads contained official-looking logos that could have made consumers think they came from government agencies, offered "low" rates without explaining loan terms, or misrepresented the amount of cash or credit available.

"Misrepresentations in mortgage products can deprive consumers of important information while making one of the biggest financial decisions of their lives," CFPB Director Richard Cordray said in a statement. "Baiting consumers with false ads to buy into mortgage products would be illegal."

Regulators have been trying to boost lending standards and improve industry transparency after millions of foreclosures occurred in the wake of the 2007-2009 financial crisis.

The consumer bureau, which was created by the 2010 Dodd-Frank financial law and is charged with watching over products such as mortgages, and the FTC share responsibility for enforcing a 2011 rule banning misleading claims about mortgage products.

Regulators found the problematic claims during a review of about 800 newspaper, online and mail ads for mortgage loans, refinancing and reverse mortgages.

The agencies did not say how many companies were reviewed. The rule applies to non-bank entities that advertise mortgages.

The warning letters instruct companies to review their ads to make sure they are not misleading. Companies that are under investigation could face enforcement actions if they are found to have violated bans on misleading advertising.

"It may well be that mortgage advertising and mortgage lending will be ramping up in the near future," said Thomas Pahl, assistant director of the FTC's financial practices division.

"One of the things that we wanted to do through conducting this sweep was to make sure that ... they are aware of their obligation to make sure that none of those ads contain deceptive claims."

The CFPB is conducting six of the investigations, and the FTC is handling 13 investigations.

Pahl said the agencies determined which companies to investigate by looking at how many seemingly misleading claims they made, how clearly false the claims were, and how much the claims might hurt consumers who saw them.

The CFPB said its review focused on mortgage ads that targeted older Americans or veterans. The FTC looked at home builders, realtors and lead generators.

http://www.reuters.com/article/2012/11/19/us-financial-regulation-mortgages-idUSBRE8AI16920121119?feedType=RSS&feedName=businessNews&utm_source=feedburner&utm_medium=feed&utm_campaign=Feed%3A+reuters%2FbusinessNews+%28Business+News%29