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## ***ABOUT US***

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

# **A STUDY ON THE IMPACT OF MISLEADING ADVERTISEMENTS ON CONSUMERS AND ITS RELATED ISSUES**

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## **ABSTRACT**

One of the primary objectives of Advertisements is to persuade consumers to perform a particular task, which includes buying or trying the products or services offered which in turn helps develop a favourable attitude towards the brand. In today's globalised era, Advertisements are an essential tool to facilitate the trade of goods and services. But if these Advertisements are false or misleading in nature, they can have a serious and drastic impact on consumer buying behaviour. Competition has become such intense that each company wants to compete on a large scale. Tall claims are made for which consumers fall prey to it, impacting them negatively. In today's digital era, misleading advertisements have grown enormously, and various companies use various mala fide tactics or strategies to deceive consumers. It can be said that consumers are highly vulnerable to misleading advertising claims which advance a consumer to form misperceptions and acquire incorrect information. A company's main goal is to skyrocket its profits, they tend to use advertisements that conceal costs, omit important facts or use misleading images which deprive the consumer of perceiving correct information and making well-informed decisions. False demand is created in the market for goods and services by using eulogistic languages. There arises a need where consumers to be vigilant and report such malpractices followed in the business world. The Government and the Consumer Protection Act 2019 play a major role in regulating false advertisements. The current study examines and highlights the present scenario of growing misleading advertisements and gives an overview of the issues faced by consumers.



**Keywords:** Advertisements, Misleading Advertisements, Consumers, Deception.

“The aim of Marketing is to know and understand the customer so well the product or service fits him and sells itself” – **Peter Drucker.**

## **INTRODUCTION**

Advertising plays a major role in the world of commerce and trade. It has become a part and parcel of our lives. With the pace of development of the business industry globally, advertising practitioners continuously search for various ways to promote their products and services.

## **OBJECTIVES**

- To study the meaning of Misleading advertisements with illustrations.
- To study the provision of Misleading advertisement in the Consumer Protection Act 2019.
- To study the Issues and impact of Misleading advertisements.

## **DEFINITION OF AN ADVERTISEMENT**

American Marketing Association has defined advertising as “any paid form of non – personal presentation of ideas, goods and services by an identified sponsor”.

It is a medium through which the common public is informed about the details of the product for sale, describing the necessary information. Which in turn helps the consumer to make informed and rational decisions.

## **MISLEADING ADVERTISEMENTS**

Misleading advertisements are those advertisements that contain false or unsubstantiated claims or give the consumer a false impression about a product or service. It is basically an unethical form of advertising.

Examples of Misleading advertisements include making false claims about the effectiveness of a product, using deceptive visuals or language, or exaggerating the benefits of a product. Considering today's time where technological evolution is highly prominent, even when one is casually scrolling through any mobile application, it is sure that you will encounter an advertisement or business



promotion somewhere along the way. Consumers especially when they come across such advertisements become completely addled which makes them take wrong decisions. Such false or misleading advertisements violate the basic rights of a Consumer.

## **WHEN DOES AN ADVERTISEMENT BECOME MISLEADING?**

An advertisement becomes misleading when it represents false ideas about a product or service.

According to the Federal Trade Commission's (USA) "Deception Policy Statement", an advertisement is deceptive if it contains a statement - or omits information - that:

- Is likely to mislead consumers acting reasonably under the circumstances; and
- Is "material" - that is, important to a consumer's decision to buy or use the product.

### **Some examples are elucidated below:**

- I. When a cooking oil advertisement gives us the impression that one can be free from heart ailments so long as they are using that particular oil. Hence the advertisers are misrepresenting the facts.
- II. When a Face cream claims that it can lighten the tone of the face skin by 5 shades after its first application itself, is a misleading advertisement.
- III. When a toothpaste advertisement claims that it prevents cavities. If there is no adequate data to prove this it is a false statement and constitutes a misleading advertisement.
- IV. When a company claims that one can grow tall after drinking their milk product, is deceptive in nature.
- V. A water purifier company insisting that its product makes water 100% safe by eliminating all bacteria is misleading.

## **SOME COMPANIES FOUND GUILTY OF MISLEADING ADVERTISING**

- 1) Sensodyn Toothpaste: The advertisement made claims that Sensodyn is recommended by dentists worldwide. They also claimed that it is the world's no.1 sensitivity toothpaste which works in 60 seconds. The advertisement was found to be misleading.
- 2) Oral-B Neem Toothbrush: Oral-B stated that they had invented a new brush that contains

neem extract, and it is supposedly found in the bristles. The research found that no such neem extract was present in the toothbrush. The advertisement was taken down due to its false and misleading content.

- 3) Dove Hair Fall Shampoo: The shampoo advertisement claimed that customers using its product would experience nearly zero hair fall, this was proved to be inaccurate. The advertisement was found to be misleading hence it was removed.
- 4) Dabur Chyawanprash: Dabur had published that consumption of its Chyawanprash would ensure protection against COVID-19. However, there was no scientific evidence to prove this, hence the advertisement was false and misleading.

## **MISLEADING ADVERTISEMENTS AND THE CONSUMER PROTECTION ACT**

Advertisers are barred to make claims they cannot support. Misleading Advertisements violate the rights of Consumers they include the right of choice, the right to be informed, and the right to be protected against unsafe goods and services as well as unfair trade practices.

The Consumer Protection Act 2019 contains strict provisions for product endorsers and celebrities who endorse products or services which are false and misleading.

The Central Consumer Protection Authority (CCPA) has the power to impose fines up to Rs. 10 lakhs, they also have the power to impose imprisonment for a term of 2 years. If the endorser is a repeat offender, he can be levied a fine of Rupees 50 lakhs and imprisonment for a term of 5 years.

Endorsers can be barred from promoting advertisements for a year extending up to 3 years for repeat offenders.

In India the Department of Consumer Affairs has launched a portal for lodging complaints for Grievances Against Misleading Advertisement (GAMA). Any Misleading or false advertisements seen across any platform, online or offline can be registered on the GAMA portal. Complaints filed on the portal are then forwarded to The Advertising Standards Council of India (ASCI) responsible for regulating Misleading Advertisements in India by issuing advisories to companies for

noncompliance.

Grievances Against Misleading Advertisement (GAMA) revealed on its online portal that over 6,000 Complaints of misleading advertisements were received in the year 2019 to 2021.

## **OTHER EXISTING LEGISLATION WHICH DEALS WITH MISLEADING ADVERTISEMENTS**

They are a number of legislations that deal with misleading advertisements some of them are:

- i. Food Safety and Standards Act, 2006.
- ii. The Drugs and Cosmetic Act, 1940.
- iii. Prize Competition Act, 1955.
- iv. Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954.
- v. The Cigarettes and other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply, and distribution) Act, 2003.

## **EXISTING REGULATORY AUTHORITIES**

Following are some of the Regulatory Authorities having the power to regulate advertisements:

- Securities and Exchange Board of India (SEBI).
- Telecom Regulatory Authority of India (TRAI).
- Food Safety and Standards Authority of India (FSSAI).
- Insurance Regulatory Development Authority of India (IRDAI).
- Reserve Bank of India (RBI).

## **ISSUES AND IMPACT**

Misleading advertisements being unproven, false, and deceptive in nature impacts the consumers negatively. There are plenty of issues with regard to misleading advertisements plaguing the minds of consumers.

Following are the issues of misleading advertisements that affect consumers directly and indirectly in today's society:

### **1) Concealing or Omitting Important facts**

Advertisers may conceal or omit Salient facts which directly result in the consumer taking wrong decisions, which is one of the strategies used in misleading the consumers. For example, a car manufacturer may omit the fact that the car gives a loud humming sound when it is in an idle position is misleading and deceptive.

### **2) Use of Deceptive Images**

Images used in advertisements must be a truthful representation of a product or service. Advertisers use false/untrue images to grasp the attention of the public. At the very first sight of viewing a consumer gets persuaded. At times the image of a product shown in an advertisement is not the same when it is physically delivered. Previously printed banners were common ways of advertising, in today's time digital advertisements have dominated the market and in this case the images used to describe the product or service always bring a question of doubt in the minds of the consumers. The impact ultimately leads to financial loss.

### **3) Tall claims**

An Advertisement's main aim is to grab the attention of a consumer and they are designed to create hype among consumers that is the reason why advertisers resort to tall claims. Products shown in advertisements are not the same as those shown in reality whereby, they are misrepresented. An example of a Drink that makes one lose weight after consumption of 2 glasses daily and promises other health and nutrition benefits. Such tall claims are unscientific and unproven and consumers fall for them blindly. Such types of advertisements possess serious health hazards. This clause doesn't only apply to food products but it also has application to all products sold in the market another important example includes beauty products.

### **4) Unfair comparisons**

Advertisers unfairly compare their own products or services to those of a competitor. This type of deceptive practice makes consumers believe one product is superior to another when it may not be, and ultimately in this situation, a consumer is truly misguided.



### **5) Deceptive Pricing**

Advertisers make false or deceptive pricing claims about a product or service. It includes a false representation of costs or exaggeration of discounts. A consumer is lured by an advertisement for a low-cost item and then is sold at a higher-priced version.

### **6) Superlative Languages or Over Exaggeration**

Advertisers commonly use superlatives while advertising their products or services. Superlatives like the best, finest, cheapest, greatest, etc. are used. Superlatives do not match the expectations a consumer prefers in a product or service. Quality and quantity should be generally looked upon when advertisers use such statements containing superlatives or make an attempt to over-exaggerate the features of the same.

### **7) Hidden Fees or Surcharges**

False advertising of a product or service may involve hidden fees or surcharges which can cause the final price paid by a consumer to be substantially higher than the advertised price.

### **8) Duplicate Goods**

Many advertisers online or offline portray products at a cheaper price in advertisements to grab the attention of consumers. Branded goods are sold at a very cheap price, but in fact, these types of goods are duplicate ones. Manufacturers use a brand that is in demand and create an exact replication of the original brand. Consumers having no knowledge of the same easily get deceived.

### **9) Bait and Switch**

This deceptive practice involves misrepresenting a product or service in order to lure a customer in and then switching them to a more expensive or inferior product. This adversely affects the buying behaviour of consumers.

### **10) False Endorsements**

Companies appoint celebrities to promote their products or services through advertisements. Falsely endorsing products and services is one of the top strategies of companies. These celebrities generally mislead and misguide consumers to buy their products by flaunting their acting skills. Consumers get

mesmerized which Ultimately leads to deception by falsely claiming and misleading the positives of a product or service.

### **11) Use of Sex Appeal**

An Advertisement is considered to be indecent if it is an incentive to sensuality and has the tendency to deprave and corrupt those whose minds are open to such immoral influence and obscene material. Sex appeal in advertising is used to attract the attention of a consumer towards a brand. Companies use this type of appeal to any product or service where it is not even appropriate to use the same. Ultimately after purchase, the consumer is deceived by such a false attraction.

### **12) Offering Free Gifts, Prizes, Promotional Offers, etc.**

The offering of free gifts, prizes, or other promotional means is commonly used in advertisements to attract consumers. Generally, a gift or a prize is offered with a product or service free of cost, but in actual the price of the free gift or prize is already included in the product cost itself. This method of deception is mostly common in Television advertisements. It is frequently evident that consumers are misled when a free gift or prize is offered. Another way of misleading advertisement is offering promotional contests like giving lotteries on purchases made. This is a deceptive method mainly used for increasing sales.

### **13) Targeting Children**

Children in India constitute nearly a fifth of the world's child population and one-third of the country's population is under the age of 15 years (Census India 2011, Central Statistics Office Report 2018). Children being innocent may find it difficult to differentiate between what is right and what is wrong. Advertisers target young children by advertising products that may have a serious impact on their health and behaviour.

- Advertisements may persuade a child in the wrong way. Which may lead the child to demand frequently the same product as shown in the advertisement.
- The message conveyed in the advertisement may be interpreted the wrong way and the child may mainly focus on the negatives rather than the positives.
- A child may also get persuaded by the false images displayed in the advertisement.

- Sexual objectification in advertisements is also a cause of concern.
- It also happens that certain advertisements portray dangerous stunts; it may so happen that a child may attempt to imitate the same.
- Food-related advertisements possess health risks especially junk food portrayed in an advertisement misleads a child in its eating habits.

#### **14) Harmful Products**

Products that carry a risk to human life and health are advertised in open. Many goods are advertised in the open which lack product safety standards. Also, in spite of a ban on certain products like Cigarettes, tobacco, or alcohol from being advertised, there are many loopholes that are still prevalent and hence these harmful products have a very negative impact on consumers.

#### **15) Poor Enforcement of Laws**

Outdated laws, and poor enforcement are the main reasons for misleading advertisements. Laws are legislated but they are not strictly and systematically enforced, whereby advertisers take undue advantage by using unethical means in advertising their products.

### **CONCLUSION**

Misleading advertisements influence a consumer truly negatively. Though there are many legal provisions to regulate false advertisements they are not strong enough to regulate them. Companies in spite of knowing the consequences are floating their misleading advertisements without any fear. A successful law always depends on its implementation. If it is implemented in a systematic manner such noncompliance can be easily avoided. In India, the GAMA portal and the ASCI should be approached to report any kind of misleading Advertisements.

### **SUGGESTIONS**

#### **3-DIMENSIONAL APPROACH TOWARDS MISLEADING ADVERTISEMENTS**

- 1) **Establishment of an Independent Regulatory Authority:** Considering the current scenario, there should be a system where advertisements are approved and scrutinized on a prior basis before being aired, uploaded or published. This should be done by one independent regulatory

body solely responsible for misleading advertisements and this system should be constituted in all the states for better efficacy. Else a regulatory body can be established centrally who can regulate such misleading advertisements and issue advisories. This will reduce the amount of falsity and misleadingness of advertisements in the market.

- 2) **Artificial Intelligence Approach:** Artificial Intelligence based tracking system by means of auto-detection to monitor advertisements can be implemented on a large scale. This method will be one of the prime methods in detection and prevention considering today's digital era where various online platforms are flooded with enough advertisements.
- 3) **Ad -Conscious Approach:** Lastly, Consumers should be aware of their rights. Where there is a right there is always a remedy. Consumers should be vigilant and must have the presence of mind to report such deceptive advertisements. One must not hesitate to do so. Reporting misleading advertisements will have a direct impact on bringing action against the violator. Consumers must be up-to-date on the latest trends and regulations concerning advertising. Also, they should make sure that the information that is being given through advertisements is accurate and unbiased.

## REFERENCES

- 1] Nikesh Sharma and Vinod Sharma (2021) Misleading Advertisements and their impact on consumers, Journal Nx- A multidisciplinary peer reviewed journal, vol.7. 112.
- 2] Dr. Sheetal Kapoor and Sukirti Kapoor (2020) Misleading Advertisement and its impact on children.
- 3] <https://www.scribd.com/document/491698944/False-and-Misleadiang-Advertisement>.
- 4] [https://www.ftc.gov/system/files/documents/public\\_statements/410531/831014deceptionstmt](https://www.ftc.gov/system/files/documents/public_statements/410531/831014deceptionstmt).
- 5] Dr. V.K. Agarwal (2009) Consumer Protection (Law and & Practice)7<sup>th</sup> Ed. New Delhi; B.L.H Publishers Distributors Pvt. Ltd.