

False Promises, Real Consequences: A Legal Examination of Misleading Advertisements

Dola Gokul Sai Reddy¹

Naina Singh²

ABSTRACT

Misleading advertisements refers to a product which is marketed as too good to be true but often turns out to be exactly that is untrue. Advertisements which aim to mislead consumers by showcasing advertisements with false hopes which turn significantly influencing purchasing decisions and shaping consumers trust and often leads to consumer deceptions. Such advertisements influence the buyers decisions and the buyers often fall in the trap of such advertisements and regret later. This paper aims to evaluate the impact of misleading advertisements on consumers and how they influence them to change their buyer - decision making behavior. It will further explore the role of the influencers and social media marketing in propagating misleading claims, often blurring the line between the promotional content and factual information. Additionally, the paper will examine the regulations of the consumer laws designed to safeguard buyers from misleading advertisements , with a focus on judicial precedents that highlights the need for greater consumer awareness. This paper adopts the doctrinal research method to critically examine the role and responsibility of regulatory authorities in curbing such practices of advertisements. It will assess whether the current legal frameworks which include the Consumer protection Act, 2019 and guidelines issued by the advertising standards Council of India (ASCI), are adequate in deterring deceptive advertising practices. By analysing the statutory provisions , this study aims to provide recommendations through which the consumers are protected from getting manipulated by the misleading advertisements . By identifying the regulatory loopholes the paper aims to propose stricter enforcement measures.

Keywords: Misleading advertisements, Consumer Protection Act , Deceptive Marketing , Regulatory Framework, Buyer- Decisions Making.

¹ Student at School of Law, Christ University, Bangalore.

² Student at School of Law, Christ University, Bangalore.

INTRODUCTION

Misleading advertisements have become a pervasive issue in modern consumer markets, influencing buyer decisions and shaping perceptions of products and services. Business often uses deceptive strategies to mislead the consumers by making false claims or about the exaggerated claims which leads to emotional and financial losses of the consumers. The Consumer Protection Act, 2019 defines misleading advertisements as promotions that present false, incomplete or deceptive information to influence consumer choices. The impact of such advertisements extends beyond financial losses, often creating unrealistic expectations, emotional manipulation, and even health risks³. This research paper critically examines the effects of misleading advertisements on consumer behavior, the role of social media marketing and the legal framework governing deceptive advertising. By analyzing judicial pronouncement, regulatory measures and technological interventions, this paper aims to propose recommendations to enhance consumer protection and ensure transparency in advertising practices⁴.

IMPACT OF CONSUMERS DECISION

Advertisement plays a key role when it comes to the consumer to make a decision to buy any sort of products which is known as the Buyer-decisions concept. Promotion plays a vital role in attracting a customer to buy any product⁵. The business tends to play with consumers' feelings by manipulating them by showcasing and promoting inappropriate information which is incorrect and that tends the customers to buy the product. The information which is passed to the customer without any sort of correctness is considered as deceptive information. Business tends to pass down deceptive information to promote their business so that the customers are attracted by the products and thereby, they come and buy the products wherein, later on the buyer faces loss as the information which is passed through the business is incorrect they usually use this technique so that their business gets profit. In this paper, it will lay down various factors which influences a consumer to fall into the trap of misleading advertisements⁶:

³ R. Chakravarty, *The Role of Emotional Appeal in Deceptive Advertising: An Analysis of Consumer Vulnerability*, 20 J. CONSUMER BEHAV. 233 (2021).

⁴ PHILIP KOTLER & KEVIN L. KELLER, *MARKETING MANAGEMENT* (15th ed. Pearson Educ. 2016).

⁵ V. Kumar, *Consumer Deception and Regulatory Challenges: The Case of Digital Advertisements*, 8 INT'L J. CONSUMER L. & PRAC. 105 (2020).

⁶ S.A. Narayana & S. Venkat, *Impact of Misleading Advertisements on Consumer Trust and Purchase Decisions*, INDIAN J. MKTG. (2021).

(a) **Creation of unrealistic expectation:** The Section 2 (28) of the Consumer Protection Act, 2019 defines Misleading advertisement which in simple terms basically mean any sort of promotion which is made by giving false or incomplete information to influence the consumers choice⁷. Misleading advertisements often leads to creation of false and inflated expectations about a product's usage, benefits or its quality which often leads the consumers to buy the products as the aggregated claims are beneficial for the customers but later on regrets the buying decisions. One of the leading Indian perspective cases was of Emami Fair and Handsome vs Hindustan Unilever Limited, 2024 when it comes to the Indian judiciary in this case The Fair and Handsome cream claimed in their advertisement that if the consumers used this product it would bring glow to their skin. One of the consumers brought the product as the company claimed that it would bring fairness but when the consumer started to use the products there was no improvement in his skin tone. So, the consumer sued the company and claimed that the advertisement was made by Sharukh Khan who promised that if the customers used it the person would look fair and which would mean that the person looks handsome. As the consumer skin tone was not improved so in this case the District consumer commission found that the Emami claims were deceptive and unsupported by evidence which led the Emami to withdraw the misleading advertisement and pay a fine of Rs. 15 Lakh⁸.

(b) **Emotional Manipulation:** It is one of the most powerful tools when it comes to influence of consumer behaviors. Advertisers usually manipulate emotions such as creating fear, happiness and urgency which impact customers' psychological impact that derives purchasing decisions. Advertisers usually use tactics such as discounted products by claiming that the discount is only available for a particular period and later on the customers if they don't buy it then they would lose on the products but as the consumers you must have found that certain times the discount is expanded for certain days so this are manipulative tactics named as fear-based advertising which causes fear in the consumer mindset which led them to buy the products. These tactics are usually

⁷ Consumer Protection Act, 2019, § 2(28), No. 35, Acts of Parliament, 2019 (India).

⁸ Emami Ltd. v. Hindustan Unilever Ltd., 2024 SCC OnLine Cal 3579 (India).

considered as the fear of missing out (FOMO) tactics which pressurise a customer to buy the product⁹.

(c) **Social media proof and Media Impact:** The social media marketing has been defined as a means of communication received, stored, transmitted, edited or processed by a digital media platform¹⁰. Brands usually create or buy fake reviews which a customer assumes that it is a natural claim and then the customer tends to buy the products as the reviews which are shown on the website tend to be defective ones which lead to misleading advertisements in social media. Some of the examples are Fitness influencers promoting fat-loss supplements without any sort of sponsorship or scientific backing. This usually encourages the followers to buy the product as their favourite influencer influences them and later the customer tends to regret as the influencer only promoted the products for getting paid for the promotions. During the pandemic Patanjali claimed its *coronil* medicine which could cure COVID-19, This misleading advertisement was spread rapidly and which created false hope in the customers. Later the Supreme Court of India held Patanjali liable for misleading advertisement¹¹.

ROLE OF INFLUENCERS AND SOCIAL MEDIA MARKETING

Influencer marketing is a form of marketing which is done digitally where the brands collaborate with influencers or individuals with a significant online number of followers to promote products or services. These influencers leverage their personal brand, credibility and audience trust to shape consumer opinions and drive purchase decisions. There are various factors how influencers are contributing to misleading advertisements. One of the major concerns is of Promotions without disclosure that is, when a brand approaches an influencer and gives money for promotion for those influencers who have a high profile account on various sites, the brands usually approach the influencers to promote their products. In various ways when the influencers promote the products, usually the one who promotes fails to give proper testimony but still the followers of the influencers tend to buy it as they get influenced

⁹ P. Verma & M. Sharma, *Misleading Advertisements in the Digital Age: A Study on Indian Consumers*, 61 INT'L J. L. & MGMT. 275 (2019).

¹⁰ ADVERTISING STANDARDS COUNCIL OF INDIA, GUIDELINES FOR INFLUENCER ADVERTISING IN DIGITAL MEDIA (Aug. 2023)

¹¹ In re Patanjali Ayurved Ltd. Through Its Managing Director, Acharya Balkrishna & Baba Ramdev, Suo Motu Contempt Pet. (Civ.) No. 4 of 2024 in Writ Pet. (Civ.) No. 645 of 2022 (India).

by such influencers. On 27th July 2021, there was a tweet which the well-known cricketer had posted on twitter stating that the 10% contingent of Indian Olympics are from Lovely Professional University and hence he also mentioned that LPU sends students to the Indian Cricket team also. And hence the controversy arose when the followers knew that it was a promotional post but virat failed to mention the tag of promotional one, however there was no disclosure label as was required by the ASCI influencer guidelines¹². In my perspective whenever an influencer is getting paid for the promotion of a product that influencer must always mention the tag as whether it is a promotional advertisement or not so that it can help the consumer be aware whether it is a promotional or a genuine advertisement¹³. Another factor is Exaggerated or False claims which deals mainly with Influencers overhype the products' benefits to increase the sales often without real evidence. There have been various instances where the influencers usually promote the products in their social media or websites where they have never used it but often promote it so that people can buy it¹⁴. For example certain beauty influencers will be promoting various products as a part of promotion but tends to prove with the real testimony but in some instances a followers tends to buy it just because the person who is promoting is their favourite ones. In the case of Horlicks Limited and Anr. vs Zydus wellness for a TVC that compared one cup of complan to two cups of horlicks contending that that is more beneficial for a consumer for consumption. The Delhi high court ruled that the advertisement was misleading the consumer and the court also ruled that the advertisement was intentionally misleading because it didn't give viewers enough time to read the disclaimers. The court restrained the advertisement from being broadcasted as it was misleading the consumers¹⁵.

LEGISLATIVE FRAMEWORK

The issue of misleading advertising is addressed through various legislation frameworks which are designed to protect the consumer rights and ensure fair practices in the market. In India, the primary legislation which governs the area of consumers rights are mainly the consumer protect act, 2019 under this legislation the few factors which have been laid down in this legislation are

¹² ADVERTISING STANDARDS COUNCIL OF INDIA, THE ASCI CODE & GUIDELINES.

¹³ ADVERTISING STANDARDS COUNCIL OF INDIA, GUIDELINES FOR INFLUENCER ADVERTISING IN DIGITAL MEDIA, <https://www.ascionline.in/wp-content/uploads/2023/08/GUIDELINES-FOR-INFLUENCER-ADVERTISING-IN-DIGITAL-MEDIA.pdf>.

¹⁴ E. Djafarova & O. Trofimenko, "Instafamous"—Credibility and Self-Presentation of Micro-Celebrities on Social Media, 22 INFO., COMM. & SOC'Y 1432 (2019).

¹⁵ Horlicks Limited and Anr. v. Zydus Wellness Products Ltd., CS (Comm) 464 of 2019.

the definition which the authors have already discussed in the paper, later on the main component are the Penalties which are mentioned under the act is that the Section 89¹⁶, This section states that if there's any sort of misleading advertisement the punishment must extend to two years with a fine which may extend to 10 lakhs. The rules which are in lieu with the misleading advertisement put forth by the Ministry of consumer affairs which has enacted the consumer protection Rule, 2020 set out various guidelines which are for prevention of false or misleading advertisement and endorsement. The CCPA has issued guidelines in relation to prevent "non- misleading and a valid advertisement", "false claims advertisement. Advertisements making "free" claims must clearly and prominently disclose all associated conditions¹⁷ There is an establishment of the Consumer Protection Authority which can help the people to approach the court of law if there's any sort of infringement in their rights due to misleading advertisements.

JUDICIAL PRONOUNCEMENT

The legal understanding of misleading advertisement has evolved over a time as reflected in a series of key case laws. The mentioned case laws have not only clarified the scope of existing regulations but also addressed emerging challenges in the field of advertising. The landmark case of Hamdard Dawakhana V. Union Of India, 1959 this case laid down the important principles which needs to be followed when it comes to advertising a product. In this case the company made false claims that if they use this particular medicine the person will be cured from the disease. Later a person raised a concern regarding that when he did the usage the disease wasn't cured so in this case the court held while a company promotes their products they must keep in mind about the reasonable restriction for promotion of their event¹⁸. In the case of Colgate Palmolive (India) Ltd. and Hindustan Unilever Ltd, 2010 it centered on competing claims in their toothpaste advertisement which primarily concerns their efficacy and ingredients of their products. The court mainly put forth that the need for advertisers to mislead the consumers must be avoided and their must be evidence given if the company is promoting any sort of claims¹⁹. Another case which was very significant in the legal scope is the Patanjali case this case mainly involved unsubstantiated claims and the disparagement of modern medicine which underscores the importance of truthful advertising and the need for rigorous

¹⁶ Consumer Protection Act, 2019, § 89, No. 35, Acts of Parliament, 2019 (India).

¹⁷ CENTRAL CONSUMER PROTECTION AUTHORITY, GUIDELINES FOR PREVENTION OF MISLEADING ADVERTISEMENTS AND ENDORSEMENTS FOR MISLEADING ADVERTISEMENTS (2022).

¹⁸ Hamdard Dawakhana (Wakf) Lal Kuan, Delhi v. Union of India, AIR 1960 SC 554.

¹⁹ Colgate Palmolive (India) Ltd. v. Hindustan Unilever Ltd., AIR 2010 Bom. 123.

enforcement of regulatory guidelines, thereby reinforcing the central argument of this paper regarding the ongoing challenges posed by deceptive marketing practices.²⁰

RECOMMENDATION TO PROTECT CONSUMERS FROM DECEPTIVE ADVERTISEMENTS

The following factors are crucial for the proposed recommendations . Here are the following recommendations:-

(a) **Clear Labelling of sponsored claims:** When a person who is a well-known personality tends to promote the content on their social media profile they must be careful and be very precise by inserting the labels about whether the person is promoting the products or not. This will help to distinguish between the products which are really being used by the well known personality or they are promoting the products just because they are getting paid for the products. Lets understand through an illustration for say Person A is following an influencer from a long time and the personality posts about a product so that his followers buy it. The personality was being paid for the products but he didn't mention it. So if Person A faces any sort of problems he will directly point out that the personality was promoted due to which the consumer was influenced and bought the products²¹. So if the person faces any infringement he/she will directly point it out on the personality so if there's any sort of promotion that is being done by any influencer he/she must always mention that it is a promotional advertisement so that the consumers or the persons who follow them are aware of the products and then they should make the Buyers-decision.

(b) **Enhanced Consumer Education:** There must be consumer awareness campaigns in the form of TV advertisements , radio spots,social media campaigns, community outreach programs initiated by the government so that the consumers are aware about such misleading advertisements and the consumers don't fall under the scam of such things²².

²⁰ In re Patanjali Ayurved Ltd. Through Its Managing Director, Acharya Balkrishna & Baba Ramdev, Suo Motu Contempt Pet. (Civ.) No. 4 of 2024 in Writ Pet. (Civ.) No. 645 of 2022 (India).

²¹ N.J. Evans, J. Phua, J. Lim & H. Jun, *Disclosing Instagram Influencer Advertising: The Effects of Disclosure Language on Advertising Recognition, Attitudes, and Behavioral Intent*, 17 J. INTERACTIVE ADVERT. 138 (2017).

²² A. Bhatnagar, *Consumer Protection and Deceptive Advertising in India: Legal Framework and Challenges*, 63 INT'L J. L. & MGMT. 56 (2021).

There must be basic awareness present in the people of the society so that they can identify the advertisement which is being claimed falsely and if there's any sort of false claimant they must take steps to avoid getting into the trap of such advertisement. Some of the tactics which the business use for promotion includes ambiguous language, deceptive imagery, exaggerated claims or hidden costs. Through the consumer awareness the consumers will be able to get aware about the misleading advertisement and that will help them to not get into the trap of such claims which are falsely presented²³.

(c) **Transparency and Accountability**: When it comes to transparency and accountability it plays a huge role in preventing the consumers from falling into the trap of misleading advertisements. One of the key elements to ensure transparency is by mandating the clear disclosure of the potential details of the products by inserting the subject to “terms and conditions”²⁴. Often advisers use fine print or vague language to obstruct critical information. Which leads the consumer to make uninformed purchasing decisions. By enforcing such strict disclosure requirements, regulatory authorities can ensure that the companies provide complete and accurate information about their products and services²⁵. Additionally, the social media influencers have been issued with the guidelines that whenever they promote any brand in terms of paid promotion they must always mention the label of the paid promotion. Furthermore, whenever it comes to any sort of advertisement which are related to any financial services and health products such advertisements must be seen in a very stricter manner as the consequences would be huge when it comes to the misleading advertisement²⁶. Such as if there is any deceptive advertisement that are made related to health related in that case it might lead to even losing of someone's life so such field should always have transparency and accountability to ensure that the advertisement is true and not a misleading one.

²³ R. Chatterjee, *Reading Between the Lines: Fine Print and Consumer Deception in Indian Advertising*, 8 J. CONSUMER POL'Y STUD. 145 (2020).

²⁴ N.J. Evans, J. Phua, J. Lim & H. Jun, *Disclosing Instagram Influencer Advertising: The Effects of Disclosure Language on Advertising Recognition, Attitudes, and Behavioral Intent*, 17 J. INTERACTIVE ADVERT. 138 (2017).

²⁵ NATIONAL COUNCIL OF APPLIED ECONOMIC RESEARCH, CONSUMER TRUST AND REGULATORY IMPACT IN DIGITAL INDIA (2021), <https://www.ncaer.org/news/consumer-trust-and-fake-ads-2021-report>

²⁶ H. Thomas & A.T. Thomas, *The Power of Celebrity Endorsements in the Indian Marketing Landscape: Impact, Regulations, and Ethical Considerations*, INT'L J. MOD. ENGINEERING RES. (2023).

(d) Use of Technology for better Monitoring: With the increase of digital marketing , misleading advertisements have become increasingly sophisticated which is leading to a mandated use of technology to track and monitor the regulation²⁷. One of the most effective tools to analyse misleading advertisements can be through the Artificial Intelligence (AI), which can be used to track and identify deceptive advertisements across various digital platforms. AI-powered systems can help to analyze ad content, detect false claims, and flag potentially misleading advertisements in real time. Usage of machine learning algorithms , these tools can also recognise patterns of deceptive advertising and help the regulatory bodies to take measures against the violators²⁸.

CONCLUSION

Misleading advertisements pose a significant challenge to consumer rights, ethical business practices, and fair competition. The rapid expansion of digital marketing and influencer-driven promotions has made deceptive advertising more sophisticated and widespread. While regulatory frameworks such as the Consumer Protection Act, 2019, and guidelines issued by the Advertising Standards Council of India (ASCI) aim to curb misleading practices, enforcement remains a challenge. Judicial pronouncements have played a crucial role in holding brands accountable, yet deceptive marketing continues to evolve, necessitating stronger oversight²⁹.

To mitigate the effects of misleading advertisements, a multi-pronged approach is required. This includes stricter regulations on influencer marketing, enhanced transparency in advertising claims, and greater accountability for businesses. Consumer education initiatives must be strengthened to enable individuals to recognize deceptive marketing tactics. Additionally, the integration of technology, such as AI-powered ad monitoring and blockchain-based verification systems, can play a crucial role in identifying and preventing false claims. Ultimately, protecting consumers from misleading advertisements requires collective efforts from regulatory authorities, businesses, influencers, and consumers themselves. By fostering a

²⁷ M. Garg, M. Sindhu & P. Mathurkar, *Detecting Fraudulent Marketing in Online Social Networks and Mitigating Cyber Threats with Advanced Security Approaches*, 2024 IEEE 4TH INT'L CONF., <https://ieeexplore.ieee.org/document/10911458>.

²⁸ N. MANSOUR & L.M.B. VADELL, *ARTIFICIAL INTELLIGENCE, DIGITALIZATION AND REGULATION* (Springer 2024).

²⁹ H. Sayyed, J. Kasture & K.D.V. Prasad, *Exploring the Interplay Between Advertisements, Media Law, and Society in India*, 15 LEX HUMANA J. (2023).

culture of transparency, ethical advertising, and informed consumer decision-making, it is possible to minimize the harmful impact of deceptive marketing and create a more trustworthy marketplace³⁰.



³⁰ T. Sultana, M.R. Farooqi & M.A. Akhtar, *Ethical Dimensions of Indian Advertising – A Comprehensive Study*, THIRD CONCEPT J. (2024).