

## Fraudulent Advertisement: A Skirmish between the Manufacturers and the Consumers

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**Abstract:** In this era of technological boom Consumers are largely dependent on the electronic media to get them acquainted about the line of products. Many of us purchase day to day products such as toiletries inclusive of soap, shampoos etc on the basis of tempting advertisements. Till a certain extent these advertisements are necessary to help us choose the products. due to the intense competition that exists in the market, every brand puts forth their best in front of the consumers through their advertisements. This introduces the scope for unfair trading. To reach market targets and preserve their goodwill, advertisers sometimes overstep the legal norms. Advertisements today contain elements of fraud and misrepresentation, often made with the objective of misleading people.

This paper has three parts. The first part presents the status quo of fraudulent advertisements in India. It presents a brief overview on bait advertisement and addresses the issue under the tab of vulnerability of children and other sections of the society. The second part of the paper touches the constitutional aspect of the problem. It exhibits how the said problem is gross violation of Rights protected under the neo expansion of Article 21, vis a vis Right to information, Right to choice and Right to safety. This part ends with a note on consumerism and the corrective and distributive justice involved in addressing this very issue. The last part deals with the grievances caused because of such activities. The paper concludes with a set of recommendations that can be incorporated in order to decline the rate of fraudulent advertisement in India.

**Keywords:** RTI, Consumerism, Puffery, Bait Advertisement, Vulnerable society, judicial pronouncements

### I. Introduction

A commercial practice becomes misleading as soon as the information becomes false, incorrect and thereby untruthful. Deception in respect of quality, quantity, risk, danger, services, price, etc. are all covered under the ambit of fraudulent advertisements, which practically impairs a person's freedom of choice.

False claims about safety issues, money, prize, persistent and unwanted solicitations by telephone, fax, email and other remote media makes these advertisements misleading. They act as direct exhortations to children to buy an advertised product or persuade their parents or other adults to buy it for them. Some of the examples of misleading advertisement could be a commercial promoting a particular tonic or dairy product claiming to make someone a mastermind or a child enthralled after smelling particular incense sticks so much that s/he started following each and every command of his or her guardians, a girl being mesmerized by the fragrance of a particular brand of cologne so much that they start following him (the man) blindly like rats behind a pied piper or drinking a particular soft drink and being able to perform any stunt possible or wearing a particular vest which will make a man burlier or a particular advertisement claiming that it will make a man/women fairer which it cannot. All such claims in a commercial are fraudulent and misleading. Announcement of free gift with a particular product and increasing its amount is also covered under the scope of fraudulent advertisement.

#### **In case of M.R. Ramesh v/s M/S Prakash Moped House and Others:**

The apex consumer court warned against advertisements that use fine print to hide crucial information pertaining to products and services, thereby misleading the consumer.

In case of *Colgate vs Vicco* it was stated that Advertisement promoting Vicco showed another oval-shaped tin without any label and was described as useless. The court held that since the advertisement created an impression among the viewers that the can was of Colgate, it would be a case of disparagement.

Another way of misleading the consumers is through puffery advertisements, which is wildly exaggerated, fanciful or vague claims for a product or service that nobody could possibly treat seriously, and that nobody could reasonably be misled by.

Examples of puffery include 'best food in town' or 'freshest taste ever'.

Often these advertisements tempt the consumers and later they feel cheated and agitated since what was promised was not delivered. This often leads to not only monetary but at times physical injury to the consumers due to high risk and lack of knowledge about the same.

For instance a particular food item claiming to be fat free and claiming that it can make a person reduce by 40 kgs within a week without any reasons, justifications or consultations by any doctor or dietician often causes serious health trepidations.

## **II. Constitutional Aspect**

The Constitution of India promises the right to freedom of speech and expression vide Article 19(1)(a). This freedom extends itself to public speaking, radio, television, and press, however is limited by Article 19(2) which imposes certain reasonable restrictions in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence.

### **In Case Of Tata Yellow Pages Case The Court Stated That**

... Article 19(1)(a) not only guaranteed freedom of speech and expression but also protected the rights of an individual to listen, read and receive the said speech. As far as the economic needs of a citizen are concerned, the Supreme Court opined that their fulfillment has to be guided by the information disseminated through the advertisements. The court also stated that the protection of art. 19(1)(a) is available to the speaker as well as to the recipient of the speech.

Constitution guarantees right to safety to every citizen, that ensures protection from marketing of goods and services that are perilous to health or life. There is a need for the consumers to be protected against fraudulent or misleading advertising, labeling or sales practices. They should be given the facts needed to make informed choices and wrongful information should not be conveyed via any medium.

The Right to Choose is another right that the constitution of India guarantees. It assures, wherever possible, access to a variety of products and services at competitive prices: and in those industries where competition is not workable and Government regulation is substituted, an assurance of satisfactory quality and service at fair prices. Every consumer is guaranteed a right to make a choice from a wide variety of similar goods. Very often sellers try to use pressure tactics to sell goods of poor quality. Mostly, consumers are carried away by advertisements on the TV. These possibilities can be avoided if consumers are conscious of this right. There is a dire need for spreading awareness regarding the provisions shielding the consumers from unfair trade practices and making strict laws to ensure that consumers are not cheated via misleading advertisement.

The Right to Information protects the consumers against fraudulent, deceitful or grossly misleading information, advertising, labeling, or other practices, and to be given the facts s/he needs to make an informed choice. It provides effective access to information for citizens of India, which is under the control of the public authorities. It also promotes transparency and accountability in the working of every public authority.

The Right to be Heard assures the consumer that their interests will receive full and sympathetic consideration in the formulation of Government policy, and fair and expeditious treatment in its administrative tribunals.

Right to Safety's demand appears in a society where people feel the need for a norm on which to base an actionable claim for protection from physical, social, or emotional harm. This need is also strengthened when societal agreement and action take hold. Article 3 of Universal Declaration of Human Rights states, "Everyone has the right to life, liberty and security of person." It also contains within it rights that relate specifically to the ability to live in good health. Following the same principle false claims in advertisements regarding health and safety should be heavily penalized. There is a dire need of stringent laws in this area.

## **III. Inferences And Effects**

The promoters know how to influence the target audience. Advertisements are made in the spirit of blind over consumerism. They often use peer pressure very comprehensively. Advertisers can and often do bend and curve the truth for their own benefit and in order to promote and advertise their own product. Certain advertisement often widens the gap between the rich and a poor that frequently becomes a tool for bullying the person using inferior products. Cost of advertisement is charged from the consumer that he is not informed about.

Now a days more emphasis is put on the brand name rather than the quality and quantity. Companies while endorsing their brands prefer comparing their product with their competitor to spoil the competitor's market instead of revealing the benefits of the product they are selling. This practice gives rise to feeling of superiority among a particular class or group of people and also created a barrier between people belonging to different financial backgrounds.

Often certain advertisements play with the sentimentalities of the people and insight certain group of people to rebel against their own family beliefs and values. An advertisement featuring a lady riding a bike and asking why can't a particular gender do what the other can? Prompts a person to protest. Certain part of the society still follows conformist approach having orthodox mentality and such advertisement creates drifts in the family and a feeling of disrespect for their own family members.

In India Majority of Indian women are housewives who religiously follow daily soaps. Endorsing a particular product in their favorite television serial is a good tactic to increase sale, or when during recess one of the most popular face of a particular serial promotes a brand, women blindly purchase it without enquiring much about its implications with a psychology that their favourite television actor/actress has promoted it who "never

lie” in their daily soaps. Later they are found to be of substandard quality, detrimental and precarious.

Advertisements encourage children to coax their parents to purchase a particular product shown in commercial by their favorite cartoon or movie star whether beneficial or not. The little ones tend to get obdurate, if they are not bought the product. Children often tend to misapprehend the messages conveyed in commercials. They often get stuck in a vicious circle of materialistic pleasure and miss out on the other small things in life which is beyond class, status and brands.

Commercial displaying dangerous stunts featuring an actor or a cricketer drinking a particular beverage, leaves a huge impact on kids who often try to imitate at home that gives lethal results.

It is also seen that junk food, such as pizzas, burgers and soft drinks, are heavily promoted during children's TV viewing time. This develops a craving for fatty, sugary and fast foods in kids, thereby affecting their health adversely.

#### **IV. Legal Provisions Involved**

- Section 2 ( r ) of the Consumer Protection Act gives a inclusive definition of unfair trade practice and Section 14 deals with the directions that the court can give to deal with such practices.
- Section 14 h ( c ) of the Act , describing the powers of the court, says that the court can order “ corrective advertisement to neutralize the effect of misleading advertisement at the cost of the opposite party responsible for issuing such misleading advertisement”. This is the most important provision and can really have a deterrent effect, if used effectively. Unfortunately, this provision has hardly or perhaps never been used.
- Section 36 A of MRTP Act lists several actions to be an unfair trade practice

In case of *Bhupesh Khurana vs Vishwa Buddha Parishad*, the students’ complained that the college, in its advertisement while calling for applications for admission to the course, had given the impression that it was affiliated to Magadh University, Bodh Gaya and recognised by the Dental Council of India and was fully equipped and qualified to give the Bachelor of Dental Science degree to the students which was not so. The National Commission directed it to refund the admission expenses of all the twelve students along with 12 per cent interest calculated from the date of receipt of the amount till the date of payment. In addition, it also directed the institution to pay Rs 20,000 to each of them by way of compensation for the expenses defrayed on purchase of books, hostel, etc and for the loss of two academic years. It also awarded Rs 10,000 as costs of the petition.

*In case of New Pepsodent vs Colgate Case* it was held that the comparative product in the television commercial could, thus, be identified as the Colgate Dental Cream. Thus, it became a case of comparative advertisement and a claim could be made of disparagement of Colgate’s products.

Despite the existing legislations the legal framework is not sufficient to curb the problems.

#### **V. Recommendations**

The need of the hour is to make sterner provisions for ensuring safety of the consumers with respect of section Section 14 h ( c ) of the consumer protection act.

Blacklisting a particular brand from promoting via electronic media or asking to pay huge amount of damages to the victims is needed. Fraudulent advertisements doesnot effect a particular person but society at large therefore it can turn out to be extremely ruinous. Another problem that arises is the valuation of losses incurred by the affected company.

Major concern in favor of granting interim injunction however is that if the accusations made in the advertisement turned out to be untrue, consumers would be swindled without any recourse to compensation.

The companies should be bound to certify that the statements that form a part of the commercial practice correspond to the facts. The major drawback in a suit against fraudulent advertisement is that it is time consuming and by the time verdict is delivered the damage is already done. In fact, by the time interim injunction is granted, the advertisement may have already done the damage.

#### **VI. Conclusion**

There is no law that declares fraudulent advertisements as illegal, however, it defines a restrictive ambit, proven to fall out of which legal consequences in terms of injunction and restraint orders as well as imposition of punitive damages may follow. Statutes such as the Trade Marks Act and the provision in the Constitution on the Freedom of Speech and Expression, coupled with the limitations governing it, provide statutory support to the subject.

The Indian Courts through their jurisprudence have evolved sufficient guidelines, which may be kept in mind both by advertisers as well as by the courts in deciding disputes. The primary advantage of such a scheme is that the parties are free to vouch their stand vehemently, while the court is steered in a direction to take decisions on a case-to-case basis.

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The importance and impact that advertisements have is unquestionable. The coming in of the television, satellite relay systems and cable networks undoubtedly boosted this industry. While the industry seems to be at a high, in terms of prominence, precision and penetration, it is indeed pleasant to note that the scenario appears to be devoid of ambiguity and doubt, at least as far as the realm of comparative advertising stretches.

There is a need to have speedy trials in cases where huge loss of reputation is involved. It is also required that new provisions should be added in the consumer protection act with respect to fine and penalty in case of fraudulent advertisements. An advertisement should be broadcasted only after proper check.

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