



Regulating Misleading Advertisements in India

For Prelims: [Supreme Court of India](#), [Central Consumer Protection Authority](#), [Consumer Protection Act, 2019](#), [Advertisement Standard Council of India](#)

For Mains: Consumer rights and prevention unfair trade practices, Prevention of Misleading Advertisements and Endorsements, Advertising regulations and public health concerns

[Source: TH](#)

Why in News?

In a move to safeguard consumers from **misleading advertisements**, the [Supreme Court of India](#) has issued directives for **advertisers to submit self-declarations** before promoting products in the media.

- In further development, the Union government has withdrawn an AYUSH Ministry letter, which "omitted" **Rule 170 of the Drugs and Cosmetics Rules, 1945, with immediate effect.**

Note:

- Rule 170 **prohibits advertisements** of [Ayurvedic, Siddha, or Unani drugs](#) without licensing authorities' approval.

What are the Key Directives from the Supreme Court?

- **Submission of Self-Declarations:**
 - Advertisers must submit **self-declarations** before promoting products in the media.
 - Advertisers are **now obligated to declare that their advertisements do not deceive or make untrue statements** about their products in order to prevent misleading consumers.
- **Online Portal for Advertisers:**
 - Advertisers intending to run TV ads must upload declarations on the '**Broadcast Seva**' portal, which serves as a one-stop facility for stakeholders to request permissions, registrations, and licenses for broadcast-related activities from the **Ministry of Information and Broadcasting**.
 - A similar portal for print advertisers is to be established.
- **Responsibility of Endorsers:**
 - Social media influencers, celebrities, and public figures endorsing products **must act responsibly**.
 - Endorsers should possess adequate knowledge about the products they promote to avoid deceptive advertising.
- **Ensuring Consumer Protection:**

- Establish a transparent process for consumers to report misleading advertisements and ensure they receive updates on complaint status and outcomes.

What Recent Cases of Misleading Advertisements have Emerged?

- The **Advertisement Monitoring Committee** at [Food Safety and Standards Authority of India \(FSSAI\)](#) identified 32 cases of misleading claims by **food business operators (FBOs)** bringing the total count of such violations to 170 in the last six months.
 - **Variety of Offenders:** Violators span diverse product categories, including health supplements, organic products, and staples.
- The [Supreme Court recently rebuked Patanjali Ayurved](#) for disseminating misleading advertisements, leading to a ban on its marketing activities.
 - The [Indian Medical Association](#) accused Patanjali of denigrating [allopathic medicine](#) and **spreading false information** about vaccines during [Covid-19](#).
 - The allegations led to legal arguments citing violations of the [Drugs & Other Magical Remedies Act, 1954](#), and the [Consumer Protection Act, 2019](#).

How Do Misleading Advertisements Violate Ethical Principles?

- **Violation of Truthfulness:** Honesty and truthfulness are essential ethical principles that should guide all business practices, including advertising.
 - These advertisements manipulate consumer perceptions and **exploit vulnerabilities for commercial gain; they** persuade individuals to make purchasing decisions based on false premises.
- **Fairness and Justice:** Misleading advertisements create an uneven playing field, giving an **unfair advantage to companies that engage in deceptive practices** over those that prioritize ethical advertising.
 - This violates the principle of fairness and justice in the marketplace, as it disadvantages honest competitors and undermines consumer trust.
 - **Example:** Companies making false **environmental claims** ([greenwashing](#)) to **capitalize** on the growing demand for sustainable products, while their competitors truthfully disclose their environmental impact.
- **Consumer Harm:** Misleading advertisements can lead to financial losses for consumers who purchase products or **services based on false claims, resulting in dissatisfaction**.
 - It can also harm consumers' physical or mental well-being if the advertised products or services are potentially harmful or ineffective.
- **Erosion of Trust:** Repeated exposure to misleading advertisements **erodes trust in products, brands, and advertising**, undermining the ethical principle of integrity in business and society.
 - When consumers feel deceived, they **lose confidence in the market's integrity, as words and actions become inconsistent**.

How Misleading Advertisements are Regulated in India?

- **Definition of Misleading Advertisement:**
 - A misleading advertisement is defined under **Section 2 (28) of the Consumer Protection Act, 2019**, as any advertisement that:
 - Provides a false description of a product or service;
 - Offers false guarantees that mislead consumers;
 - constitutes an unfair trade practice through express representation;
 - Deliberately omits essential information about the product.
- **Central Consumer Protection Authority:**
 - The [Central Consumer Protection Authority \(CCPA\)](#) operates under the **Department of Consumer Affairs**.
 - Established under section 10 of the [Consumer Protection Act, 2019](#), it regulates matters related to consumer rights violations and unfair trade practices.
 - The act empowers the CCPA to prevent false or misleading advertisements and ensure

consumer rights are protected.

- **Enforcement of Guidelines:**

- The CCPA enforces the '[Guidelines for Prevention of Misleading Advertisements and Endorsements for Misleading Advertisements, 2022](#)', which were issued per the powers conferred by the Consumer Protection Act, 2019.

- **Objective of the Guidelines:**

- The guidelines seek to ensure that **consumers are not being fooled by unsubstantiated claims, exaggerated promises, misinformation and false claims.**
- Such advertisements violate various rights of consumers such as **the right to be informed, the right to choose and the right to be safeguarded against potentially unsafe products and services.**

- **Provisions of the Guidelines:**

- The guidelines define "**bait advertising**", "**surrogate advertisement**" and "**free claim advertisements**".
- They also lay down provisions to **protect children from exaggerated or unsubstantiated claims** in advertisements.
 - Advertisements targeting children are prohibited from featuring personalities from sports, music, or cinema for products that require a health warning or cannot be purchased by children.

- Disclaimers in advertisements should not hide material information or attempt to correct misleading claims.

- The guidelines also outline the **duties of manufacturers, service providers, advertisers, and advertising agencies** to bring more transparency and clarity to advertisements.

- This aims to help consumers make informed decisions based on facts.

- **Penalties for Violations:**

- CCPA can **impose penalties of up to 10 lakh rupees** on manufacturers, advertisers, and endorsers for misleading advertisements.
 - For subsequent violations, the penalty can be up to 50 lakh rupees.

- The Authority can also **prohibit the endorser of a misleading advertisement from making any endorsements** for up to 1 year, and for subsequent violations, the prohibition can extend up to 3 years.

- **Food Safety and Standards Authority of India (FSSAI):**

- Deceptive advertising falls under **Section-53 of the Food Safety and Standards Act, 2006**, making it punishable. FSSAI mandates advertisements to be truthful, unambiguous, and substantiated scientifically.
- FSSAI uses the **Food Safety and Standards (Advertisements & Claims) Regulations, 2018** which specifically deal with **food (and related products)** while CCPA's regulations cover goods, products and services.

- **Legislations Governing Advertising:**

- **ASCI (Advertisement Standard Council of India):**

- It is a **nonstatutory tribunal** established as a self-regulated mechanism to introduce advertising ethics in India.
- It judges advertisements based on its [Code of Advertising Practice, also known as the ASCI code](#) which applies to advertisements seen in India, even if they are from abroad and directed at Indian consumers.

- **Consumer Protection Act, 1986:**

- Grants consumers the right to be informed about goods and services' quality, quantity, and price.
 - Section 2(r) covers false advertisements under the definition of unfair trade practices.
- Provides redressal against misleading advertisements.

- **Cable Television Network Act of 1995 and the Cable Television Amendment Act of 2006:**

- Prohibits transmission of advertisements that do not conform to the prescribed advertisement code.
- Ensures advertisements do not offend morality, decency, or religious sensitivities.

- **Restrictions on Tobacco Advertisement:**

- Prohibits direct and indirect advertisement of [tobacco products](#) in all forms of media.
- Enforced under the Cigarettes and Other Tobacco Products Act, 2003.
- **Drug and Magic Remedies Act, 1954 & Drugs and Cosmetics Act, 1940:**
 - It regulates drug advertisements. Prohibits the use of test reports for advertising drugs.
 - Penalties for violations include fines and imprisonment.
- **Regulation of Prenatal Diagnostic Techniques:**
 - Prohibits advertisement related to prenatal sex determination under the [Prenatal Diagnostic Techniques \(Regulation and Prevention of Misuse\) Act, 1994](#).
 - Advertising harmful publications under the Young Persons (Harmful Publications) Act, 1956, is punishable.
- **Criminality of Advertisements under the Indian Penal Code (IPC):**
 - [IPC](#) prohibits obscene, defamatory, or inciteful advertisements.
 - Offenses related to inciting violence, terrorism, or crime are illegal and punishable under IPC provisions.

Initiatives for Consumer Protection

- [Consumer Welfare Fund](#)
- [Integrated Grievance Address Mechanism \(INGRAM\) Portal](#)
- [Bureau of Indian Standards \(BIS\)](#)
- [Jago Grahak Jago Campaign](#)
- [National Consumer Day](#) (24th December)
- [Central Consumer Protection Council](#).
- National and State Consumer Helplines.

Drishti Mains Question:

Q. Describe the legislative framework governing advertising practices in India. How do these laws and institutions contribute to maintaining ethical standards in advertising?

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UPSC Civil Services Examination Previous Year Question

Prelims

Q.1 With reference to 'consumers' rights/privileges under the provisions of law in India, which of the following statements is/are correct ? (2012)

1. Consumers are empowered to take samples for food testing.
2. When a consumer files a complaint in any consumer forum, no fee is required to be paid.
3. In case of death of consumer, his/her legal heir can file a complaint in the consumer forum on his/her behalf.

Select the correct answer using the codes given below:

- (a) 1 only
- (b) 2 and 3 only
- (c) 1 and 3 only
- (d) 1, 2 and 3

Ans: (c)

Mains

Q. What are social networking sites and what security implications do these sites present? **(2013)**

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