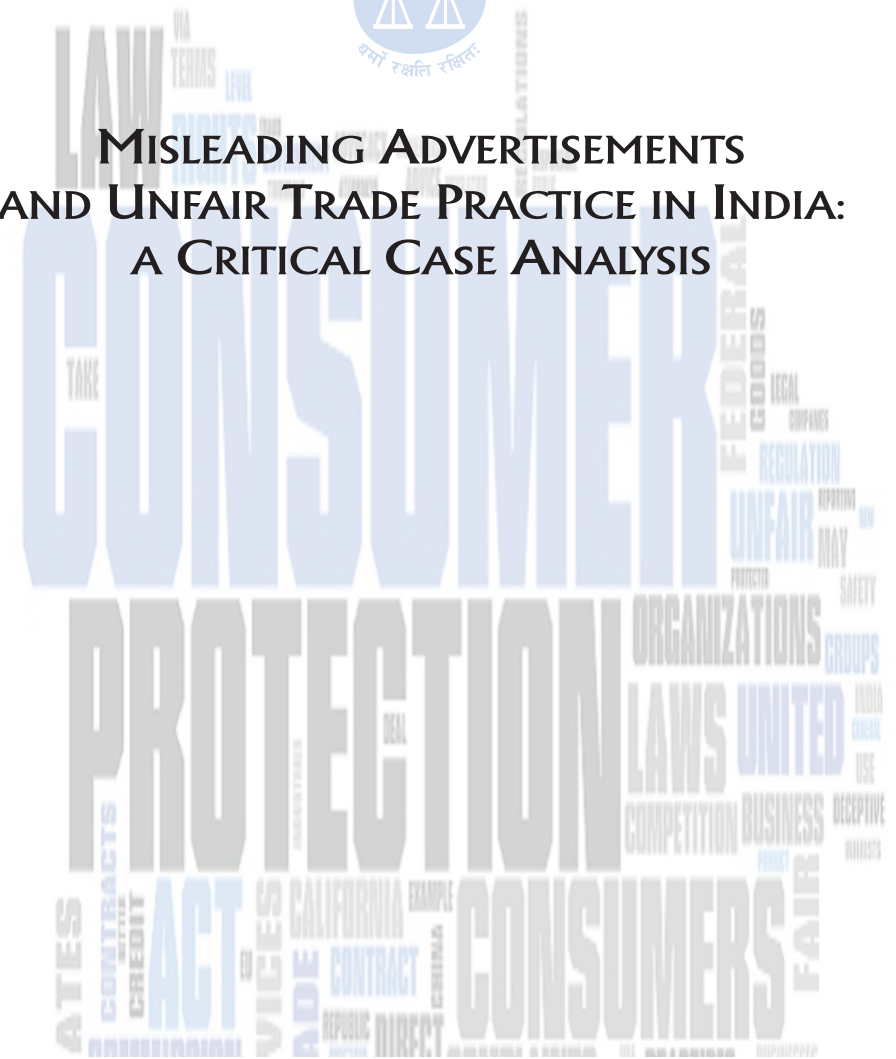




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# MISLEADING ADVERTISEMENTS AND UNFAIR TRADE PRACTICE IN INDIA: A CRITICAL CASE ANALYSIS



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Misleading Advertisements and Unfair Trade Practice in India: A Critical Case Analysis

**MISLEADING ADVERTISEMENTS AND  
UNFAIR TRADE PRACTICES IN INDIA:  
A CRITICAL CASE ANALYSIS**

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It is both my proud privilege and prodigious pleasure to write this message for the 2nd (updated) edition of the publication by the Chair on Consumer Law and Practice at National Law School of India University, Bangalore on Misleading Advertisements and Unfair Trade Practices in India: A Critical Case Analysis. In a country like India with a large consumer base, misleading menacing proportions. Besides being unethical, misleading advertisements and unfair trade practices also distort competition and consumer choice, violating several basic rights of consumers such as the right to choose; the right to be informed; the right to safety and protection against unsafe goods and services.

The Advertising Standards Council exists as a self-regulatory body in India. However, it does not have any legal tooth to prevent such unethical advertising and trade practices. Adding to the paucity of sufficient, empowered regulatory authorities, the Indian legal framework on this issue also wants a single, comprehensive and dedicated legislation governing misleading advertisements and unfair trade practices.

In this light, this book is an initiative of its kind, which will not only help increase awareness among readers who comprise segments of different stakeholders (students, academicians, professionals, governmental officials, NGOs, general public) but would also help facilitate greater clarity regarding an issue which has been till now a grey area.

I congratulate Prof. (Dr.) Ashok R. Patil, Chair Professor, Chair on Consumer Law and Practice and his research team for this work and wish them success in their future endeavours.

(D.K. JAIN)

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PUBLIC DISTRIBUTION  
Department of Consumer Affairs  
KRISHI BHAWAN, NEW DELHI - 110001**MESSAGE**

It gives me immense pleasure to learn that the Chair on Consumer Law and Practice, established by the Department of Consumer Affairs, Government of India, New Delhi at the National Law School of India University, Bangalore, is bringing out the 2<sup>nd</sup> and updated edition of its publication on "*Misleading Advertisements and Unfair Trade Practice in India: A Critical Case Analysis*".

The book is a key step towards addressing the information-gap existing between the concerned authorities/legislations and their target beneficiaries, who are the consumers. Knowledge and awareness regarding consumer protection provisions lies at the soul of any endeavour to ensure that the interest of all relevant stakeholders are safeguarded. By educating the readers with an analysis of judicial decisions and specific legislations and regulatory authorities dealing with prevention of misleading advertisements and unfair trade practices in India, this book will prove useful to a vast set of stakeholders, such as academicians, advocates, judges, NGOs, students, government officials and even the general public.

The current updated version of this book seeks to de-cloud the hitherto grey area of misleading advertisements in India. In the absence of any single, dedicated and comprehensive legislation protecting consumers from misleading advertisements and unfair trade practices in India, the great number of illustrative cases in this publication, along with its updates (covering new case-laws, legislations and specific regulatory authorities), will facilitate an easy and effortless understanding of the issue.

My best wishes of Prof. (Dr.) Ashok R. Patil, Chair Professor, Chair on Consumer Law and Practice and his diligent research team.

(Hem Pande)

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### FOREWORD

India is rapidly embracing consumerism, after globalization. The huge and ever-expanding consumer base in India has caused the competition in the market to increase to such an extent that the producers feel a compelling need to attract customers to buy their products. Consequently, misleading tactics to lure buyers through advertisements have also become the order of the day, distorting both prospects of fair competition and free consumer choice. Such a situation calls for a check on misleading advertisements and thus, a need for the sobering impact of the law is felt.

It delights me to note that the Chair on Consumer Law and Practice at the National Law School of India University, Bengaluru is publishing the second edition of *Misleading Advertisements and Unfair Trade Practices in India: A Critical Case Analysis*. The book in its second edition is better updated and provides a comprehensive analyses of cases on misleading advertisements and unfair trade practices. It will prove to be of great help and an effective information tool for diverse stakeholders including students, teachers, members of the consumer fora, professionals, policy-makers and everyone concerned about consumer protection.

I extend my hearty congratulations to Prof. (Dr.) Ashok R. Patil, Chair Professor, Chair on Consumer Law and Practice, for spearheading this one-of-its-kind initiative. My best wishes to Prof. Patil and his research team, for the success of this book. I wish and hope that it will be well-received by one and all.



Prof.(Dr.) R. Venkata Rao  
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### PREFACE

The Chair on Consumer Law and Practice at the National Law School of India University is proud to present the 2<sup>nd</sup> and updated edition of *Misleading Advertisements and Unfair Trade Practices in India: A Critical Case Analysis*, in 2016. In a country like India being one among the world's fastest growing consumer-markets and with rapidly increasing purchasing power of Indian consumers, advertisements prove to be a double-edged sword. While on one hand, in an atmosphere of intense competition amidst the growing variety of products, they serve the benign purpose of making consumers aware about new products in the market, on the other hand, they also pose several challenges when misleading tactics are used.

In the current regulatory/legal framework governing misleading advertisements in India, one glaring problem is the lack of effective enforcement of rules protecting the collective consumer interest. Further, there are only a limited number of provisions dealing with misleading advertisements, with no single, comprehensive and dedicated legislation nor any empowered regulatory authority tasked to look to misleading advertisements exclusively.

In this light, this book seeks to perform its bit by educating the readers about the up and coming trends and approaches to misleading advertisements. Towards this end, for the publication of this book, the Chair on Consumer Law and Practice took up research on this topic under the scope of all consumer-welfare legislations in India. The Chair has also conducted studies to examine and analyse the limitations of the existing legal regime and its suitability to Indian context. By and large, apart from an inadequate legal framework, another problem miring the

curbing of misleading advertisements in India is lack of enforcement of existing provisions, in order to afford protection to stakeholder-interests.

I am delighted to inform the readers that the current 2<sup>nd</sup> edition of this book has been updated significantly, to keep abreast with the most recent developments surrounding the topic at hand. Judicial decisions delivered by the Supreme Court till as late as 2016 have been included. In addition to the 29 legislations already covered in the pioneer edition, the object and summary of legislations where the provisions dealing with misleading advertisements and unfair trade practices feature, have been added, such as the Indian Contract Act, 1872, Sale of Goods Act, 1930, Indian Copyright Act, 1957, Companies Act, 2013, Information Technology Act, 2000, Indian Penal Code 1860, etc. A commentary on the Consumer Protection Bill 2015 also appears in this book, so are a new bunch of specific regulatory authorities dealing with the topic covered, added. These include the Council for Fair Business Practices (CFBP), Consumer Code of Association of Indian Engineering Industry (AIEI), Advertising Code for Cable Operators, etc.

It is essential to mention that none of this would have been possible without the assistance of Asst. Prof. Anita A. Patil. I would also like to extend my gratitude to Prof. (Dr.) R. Venkata Rao, Vice Chancellor, Prof. (Dr.) O.V. Nandimath, Registrar, NLSIU, OCMC Team and Ministry of Consumer Affairs, Government of India for their cooperation and support. I truly hope that this edition proves to be helpful to all concerned stakeholders, whether judiciary, the legal fraternity, NGOs or academia.



**Prof.(Dr.) Ashok R. Patil**  
Chair Professor  
The Chair on Consumer Law and Practice  
NLSIU, Bengaluru.

## List of Legislations

1. Consumer Protection Act, 1986.
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3. Competition Act, 2002.
4. Prize Competition Act, 1955.
5. The Emblems and Names (Prevention of Improper Use) Act, 1950.
6. Securities and Exchange Board of India Act, 1992.
7. Trade and Merchandise Marks Act, 1958 (Repealed)&Trade Marks Act, 1999.
8. Companies Act, 1956 (Repealed) &Companies Act, 2013.
9. Cigarette and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003.
10. Prevention of Food Adulteration Act, 1954 (Repealed).
11. Food, Safety and Standards Act, 2006.
12. Young Persons (Harmful Publication) Act, 1956.
13. Indecent Representation of Women Act, 1986.
14. Insurance Regulatory Development Act, 1999.
15. Banking Regulation Act, 1949.
16. Bureau of Indian Standard Act, 1986.
17. Legal Metrology Act, 2009.
18. Reserve Bank of India Act, 1934.
19. The Pre- Natal Diagnostic Techniques (Regulation And Prevention of Misuse) Act, 1994.
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21. The Press Council Act, 1978.
22. The Drugs and Cosmetics Act, 1940.

23. The Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954.
24. Telegraph Act, 1885.
25. Telecom Regulatory Authority of India Act, 1997.
26. The Infant Milk Substitute, Feeding Bottles and Infant Foods (Regulation of Production, Supply and Distribution) Amendment Act, 2002.
27. The Prasar Bharati (Broadcasting Corporation of India) Act, 1990.
28. The Cable Television Networks (Regulation) Act, 1995.
29. Indian Contract Act, 1872.
30. Sale of Goods Act, 1930.
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32. Information Technology Act, 2000.

### **List of Cases**

1. A. V. Mohan Rao and Anr v. M. Kishan Rao and Anr. AIR 2002 SC 2653
2. Ajay Gautam v. Amritsar Eye Clinic & Ors. Review Application No.79 of 2010
3. Ama Hospitality v. GNCT of Delhi 176 (2011) DLT 474
4. Amichand Doss Dwarakadoss v. T. Manavedan Tirumalpad (AIR) 1945 Mad 5 and Ors. Writ Petition No. 5295 of 2003
5. Anil Raj and Ors. v. Unitech Limited and Ors. MANU/CF/0105/2016
6. Arjanlaldas Brijlal & Co. v. Oriental Insurance Co. Ltd. OP No 72 of 1999
7. Asia Industrial Technologies Limited v. Ambience Sellers Ltd (1997) 99 BOMLR 613
8. B.V. Srinivas v. B.V. Manjunath Appeal No. 4175/2010
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26. Complaint against Amway India Pvt. Ltd. Complaint Case No.17 of 2012
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28. Consumer Unity and Trust Society v. State of West Bengal and Ors C.R. No. 11910(W) of 1988
29. Cox and Kings v. Joseph A. Fernandez RP No 366 of 2005
30. Data Infosys Ltd. And Ors.vs Infosys Technologies Ltd.C.M. APPL.14591/2012
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33. Deputy Registrar v. Ruchika Jain, RP No 1121 of 2005, III (2006) CPJ343 NC
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35. Dr. Anupam Bhattacharya v. Vodafone Essar East Limited Revision Petition No. 2197 of 2009
36. Dr. Kunhalan Gurukkal and Anr. v. A.M.Muhammed and Another, First Appeal No. 340 of 2010
37. Dr. M. Kumar v. Vijay Kumar Srivastava, Revision Petition No. 2772 of 2010
38. Dr. V. K. Aggarwal v. M/s Infosys Technologies OPNo 287 of 2001
39. Eby J. Jose v. Union of India AIR 2000 Ker 79
40. Eicher Goodearth Pvt. Ltd. v. Krishna Mehta and Ors. MANU/DE/1908/2015
41. Em Pee Motors Ltd. and Ors. v. Ramesh Kumar Bamal and Ors. MANU/CF/0195/2015
42. 'Goenkarancho Ekvot' A society v. Union of India AIR 2007 Bombay 1841830 of 2002, 2008 Indlaw MAD 4309
43. Gandour India Food Processing Pvt. Ltd Vs Union of India MANU/TN/0744/2015
44. Ganeshlhal v. Shyam MANU/SC/1134/2013
45. Ganga Immigration v Reena Pandey MANU/CF/0341/2014
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51. Hamdard Dawakhana v. Union of IndiaAIR 1960 554, 1960 SCR (2) 671
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53. Havells India Ltd. and Ors v. Amritanshu Khaitan and Ors. MANU/DE/0791/2015
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55. High Court of Jammu and Kashmir v. Union of India WPPIIL No. 14 OF 2014

56. Hotel Nyay Mandir v. Ishwarlal Jirabhai Desai, 2006 1 CPJ 521(Gujarat)
57. III T College of Engineering v. Vikas Sood RP No 648 of 2007
58. In Re: Netvision Web Technologies Limited and its directors WTM/ RKA/IVD/15/2012
59. Indian Institute of Professional Studies v. Smt Rekha Sharma Revision Petition No. 2864 Of 2011
60. Jagrut Nagrik and Ors. v. The Secretary, Ministry of Civil Aviation and Ors. MANU/CF/0587/2015
61. Jahnvi Worah v. ITC Ltd, Appeal No. 236 of 2010
62. Jai Bhagwan v. Estate Officer, Chandigarh Revision Petition No. 111 of 2011
63. Jain Irrigation Systems Ltd. v. M.B. Malipatil &Anr. Revision Petition No. 932 of 2007
64. Jaswinder Singh, Pradeep Kumar Gupta v. Corporation Bank Revision Petition No. 4662 of 2012
65. Jayanthilal and Anr. v. Abhinav Gold International Marketing Pvt. Ltd. Consumer Complaint No. 237 of 2012
66. Kaleesuwari Refinery Pvt. Ltd. v. M.K. Agrotech Pvt. Ltd.MANU/ TN/0403/2016
67. Khoday Distilleries Limited v. The Scotch Whisky Association and Ors. AIR 2008 SC 2737
68. Kingfisher Airlines v. M. L. Sudheen Revision Petition No. 3278 of 2007
69. Lakhnupal National Ltd v. Monopolies and Restrictive Trade Practices Commission 1989 Indlaw Supreme Court 776
70. Life Insurance Corporation of India v. Smt. Dhanalakshmi RP 3301 of 2007
71. M. Mohammad v. Union of India W.P. No.24999 of 2014
72. M.K. Raghavan Pillai v. Popular Vehicles and Services MANU/ SQ/0012/2014
73. M.R.Ramesh v. M/s. Prakash Moped House & Ors. Revision Petition No: 831 Of 2001
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75. M/s Malpani Infertility Clinic Pvt. Ltd. And Ors. v. Appropriate Authority, PNDDT Act
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77. M2K Country Heights, New Delhi and another v. Rajesh Kumar S/o Zile Singh 2013 Indlaw NCDRC 347
78. Mahesh Bhatt; Kasturi and Sons v. Union of India and Another 2008 Indlaw DEL 45
79. Mahesh Chandra Gupta v. The State All India Reporter 1964 All 572 MANU/SCOR/09330/2015
80. Marico Limited and another v. Adani Wilmar Limited 2013 Indlaw DEL 1027
81. Marine Container Services (India) Pvt. Ltd. v. Mercedes Benz India Ltd. and Anr. CCNo. 227 of 1998
82. Mega Corporation Ltd. v. SEBI (2009) 89 SCL 444 (SAT)
83. Narayanan v. State of Kerala 1970 Kerala Law Times All 865
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85. National Insurance Co. Ltd v. Shri D. P. Jain MANU/CF/0075/ 2007
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87. Orbit Tours & Trade Fairs Pvt. Ltd. v. Vivian Rodrigues MANU/ CF/0652/2014
88. Pacific Convergence Corporation Limited v. Data Access (India) Limited 2013 Indlaw Delhi 540
89. Pratibha Naitthani v. Union of India AIR 2006 Bombay 259
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91. Rajeev Nohwar and Ors. v. Sahajan and Hi Tech Construction Pvt. Ltd. MANU/CF/0123/2016
92. Ravikanth Shinde v. Managing Director 2003(4) ALD 400
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94. Reliance Life Sciences Pvt. Ltd. v. Umesh Singh Chandan Singh Saddiwal and Others. MANU/CF/0007/2016
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96. RMB Chemicals Pvt. Ltd. & Anr v. Union of India & Ors. Before Hon'ble High Court of Kolkata W rit Petition No. 4124 of 2015
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102. Shilpa Shetty; Reema Sen v. T. Dakshinamurthy 2008 Indlaw Madras 942
103. Shipra Sachdeva v. V.L.C.C. Health Care Ltd. & Another Revision Petition No. 2500 of 2008
104. Smithkline Beecham v. Paras Pharmaceuticals Ltd 2002 CCJ 1586
105. Smt. Divya Sood v. Ms. Gurdeep Kaur Bhui I (2007) Consumer Protection Judgement
106. South India Textiles v. Government of Andhra Pradesh AIR 1989 Andhra Pradesh 55
107. Suo Moto v. State of Rajasthan and others RLW 2005 (2) Raj 1385
108. T.V. Venugopal v. Ushodaya Enterprises (2011) 4 SCC85
109. Tata Eng & Locomotive Co. Ltd v. Director (Research) O/B Deepak Khanna & Ors
110. Tata Press Ltd v Mahanagar Telephone Nigam Ltd 1995 SCC (5) 139
111. Tesol India, Chandigarh v. Sh. Govind Singh Patwal In Appeal No.153 of 2009
112. The Commissioner v. Basaiah RP No 187 of 2011
113. The Federal Bank Ltd. and Ors. v. Sanjeev Nehra and Ors MANU/CF/0811/2015
114. Union of India v. Naveen Jindal Civil Appeal No. 2920 of 1996
115. United Breweries Limited v. Mumbai Grahak Panchayat 2006 Indlaw NCDRC 212
116. V. Natarajan v. SEBI (2013) 3 Company Law Journal 43 (SAT)
117. Voice (Consumer Care Council) v. The Commissioner of Police 1999(1) CTC 151
118. Win Medicare Ltd v. Reckitt Benckiser India Ltd. MANU/TA/0014/2015
119. Yugantar and Ors. v. Union of India and Ors. (1998)94 Comp 621(Delhi)

## List of Abbreviations

AIR	All India Reporter
ASCI	Advertising Standard Council of India
B.H.C.R	Bombay High Court Reports
C.P.C	Consumer Protection Cases
C.T.J	Consumer Protection & Trade Practices Journal
CCJ	Consumer Claims Journal
CPA	Consumer Protection Act
CPJ	Consumer Protection Judgment
CPR	Consumer Protection Reporter
Cri.L.J.	Criminal Law Journal
D.L.T	Delhi Law Journal
K.L.T	Kerala Law Times
MRTPC	Monopolies Restrictive Trade Practice Commission
NCDRC	National Consumer Dispute Redressal Commission
PNDT	Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994
SAT	Securities Appellate Tribunal
SC	Supreme Court of India
SCC	Supreme Court Cases

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# 1

## INTRODUCTION

*“A customer is the most important visitor on our premises. He is not dependent on us. We are dependent on him. He is not an interruption in our work. He is the purpose of it. He is not an outsider in our business. He is part of it. We are not doing him a favor by serving him. He is doing us a favor by giving us an opportunity to do so.”*

-Mahatma Gandhi

The United Nations Guidelines for Consumer Protection is a declaration of best practices in Consumer Protection Law and Policy. The Guidelines are not binding, but do provide a set of basic consumer protection objectives upon which governments have agreed, thereby serving as a policy framework for implementation at a national level. Whilst directed primarily at governments, some provisions of the guidelines are also directed at businesses. The earliest known statement of consumer rights at a political level was made on 15th March 1962, when President John F. Kennedy of the United States delivered a speech to the Congress in which he outlined four consumer rights: the right to safety, the right to be informed, the right to choose and the right to be heard. The guidelines originally covered seven areas: physical safety, promotion and protection of consumers' economic interests, standards for the safety and quality of consumer goods and services, distribution facilities for essential consumer

goods and services, measures enabling consumers to obtain redress, education and information programmes, and measures relating to specific areas (food, water, and pharmaceuticals). With their amendment in 1999, an eighth area, promotion of sustainable consumption, was added.

Advertisement has to be within the Constitutional framework. It should not be inconsistent with the Fundamental Rights of manufacturers, producers, distributors, dealers and service providers on the one hand and the consumers' right to receive information about the products and services on the other. It is worthy to mention here that commercial advertisement, as a form of speech and expression, is protected under the right to freedom of speech and expression guaranteed under Article 19(1) (a) of the Indian Constitution. Article 19(1)(g), which guarantees freedom to practice any profession, or carry on any occupation, trade or business, also protects and safeguards against the imposition of unreasonable restraints on the exercise of the right to advertise and this right can only be restricted on the grounds specified in Article 19(6) i.e. in the interest of general public. Although the commercial advertisement is protected under Article 19(1)(a), it can be restricted on the grounds of public order, decency and morality etc. under Article 19(2) of the Indian Constitution.

Commercial Advertising raises the issue of availability of the freedom of speech and expression guaranteed by the Article 19(1) (a)<sup>1</sup> of the Indian Constitution. The question is whether a manufacturer/seller has a right to advertise his product or service on the print or electronic media. The answer to the question depends on, whether a commercial advertisement is protected under Article 19(1)(a) of the Constitution. This question came for consideration before the Hon'ble Supreme Court in *Hamdard Dawakhana v. Union of India*<sup>2</sup>, where the constitutionality of Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954 was challenged. The Apex Court speaking through Justice Kapur though recognized, advertisement as a mode of expression falls within the ambit of Article 19 (1) (a) denied the protection of this clause to commercial advertisements on the grounds that such advertisements do not pertain

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1. Article 19(1)(a): All citizens shall have the right to freedom of speech and expression.

2. AIR 1960 SC 554.

to freedom of speech and expression but to trade and business and further they do not propagate any ideas-social, political or economic.

The Supreme Court in *Tata Press Ltd v. Mahanagar Telephone Nigam Limited & Others*<sup>3</sup>, set at rest the lingering controversy regarding the protection of commercial advertisement under Article 19(1)(a) of Constitution of India by holding that the commercial speech cannot be denied such protection merely because the same is issued by businessman. The right to receive information regarding products and services from advertisements in the print media has been expressly recognised by the Supreme Court. Thus it can be rightly said that Indian Constitution while protecting commercial advertisement under the 'Freedom of Speech and Expression' clause allowed the state to prohibit or regulate deceptive, unfair, misleading and untruthful or obscene or vulgar commercial advertisements.

The Consumer Protection Act, 1986 was enacted as a result of widespread consumer protection movement. With reference to the consumer movement and the international obligations under United Nations Guidelines on Consumer Protection, 1985 for protection of the rights of the consumer, provisions have been made in the COPRA with the object of interpreting the relevant law in a rational manner and for achieving the objectives set forth in the Act.

The main object of Consumer Protection Act, 1986 (COPRA), Consumer Protection Rules, 1987, & Consumer Protection Regulations, 2005, is to promote the basic rights of consumers. The COPRA was enacted with a view to provide, protect, preserve, and enforce consumer rights and provide simple, speedy and inexpensive remedy to the consumers' grievances. It provides for a separate enforcement machinery and redressal forum with the aim to provide the consumers a simple and expeditious solution to their problems. The COPRA, 1986 was amended three times in the years 1991, 1993 and 2002 to bridge the gap. Under the COPRA, a three-tier quasi-judicial consumer dispute redressal system is established at the National, State and District levels. These agencies are popularly known as Consumer Fora. The remedy under the COPRA shall be in addition to and not in derogation of the provisions of any other

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3. (1995) 5SCC 139.

law, for the time being in force. The remedies available to a consumer under this Act constitute an additional dispensation. Due to the consumer fora, merits like simple, quick, inexpensive, summary proceedings, a layman can approach consumer forum for redressal without any fear.

After globalization, India has rapidly begun embracing consumerism. Competition in the market has increased manifold and the producers face an increasing need to attract customers towards their products. Therefore, several tactics are employed to lure the audience. As long as the techniques used are fair, there will be healthy competition translating to the benefit of the consumers. But the problem arises when misleading tactics are used. They have adverse impact on the consumers. They, especially misleading advertisements, affect consumers' freedom of choice, purchasing behaviour and may sometimes prove to be hazardous. Hence, a check on misleading advertisement becomes imperative. The advertisement also has a very strong psychological impact. Even if a person is not in need of a product, advertisements create an urge in him/her to buy the product.

In India, advertising Industry has been facing a lot of criticism in the recent times as the advertising practices have not always been ethical. But we rarely notice the danger caused both monetary and health-wise through ads that make un true, semi-true or false claims with little accountability. Our consumer courts are overloaded with cases about faulty appliances or defective or inadequate services. What is even more disappointing is the lack of knowledge or the tendency to just avoid the consequent hassles, as was interrelated through the surveys conducted regarding misleading claims, which lead to large and exemplary settlements as in the developed world, which is not a very common instance.

Deceptive advertising is the use of false or misleading statements in advertising. Advertisements have the potential to persuade the consumers to involve themselves in commercial transactions that they might otherwise avoid. In most of the countries, authorities have found it necessary to impose some form of regulation over advertising. It is believed that the principle of caveat emptor is no longer appropriate in today's market place.

No consumer in the society can escape from the effects of misleading advertisements. Misleading and false advertisements are not only unethical by way of disturbing competition in the market, but also play an important role in consumer choice. False and misleading advertisements violate several basic rights of consumers: the right to information, the right to choice, the right to be protected against unsafe goods and services as well as unfair trade practices.

A Misleading Advertisement is an advertisement which is other than labelling, which is misleading in respect; and in determining whether any advertisement is misleading, there shall be taken into account not only representation made or suggested by statement, word, design, device, sound, or any combination thereof, but also the extent to which the advertisement fails to reveal facts materials in the light of representation or material with respect to consequences which may result from the use of the commodity to which the advertisement relates under the conditions prescribed in said advertisement, or under such conditions as are customary or usual. Advertisements can be misleading if they contain false statements of fact, conceal or leave out important facts, include or imply a promise to do something without the intention of carrying it out, or create a false impression, even if everything stated may be literally true. They also affect a consumer's economic behaviour or are likely to injure a competitor of the advertiser.

Misleading advertisements cause tremendously adverse effects to the society, hampering each and every individual; sometimes it creates a “fantasy” world for the consumers, which is not real for them. The need here is to discuss the impacts of misleading advertisements more vividly. Misleading advertisements affects the society in three approaches; whether they are fraudulent, false, and/or misleading. Fraudulence focuses on the advertisers and assumes a deliberate intent to create false beliefs about the products. Falsity, in an advertisement refers to the existence of a claim fact discrepancy. Falsity includes price and availability claims, such as when a vendor advertises a product at a reduced price. 'Literal Truthfulness' requires both that the item be sold at the advertised price and also that a reasonable number of such items be available for sale. Misleadingness completely focuses on a consumer's belief. A demonstration of misleadingness requires the observation of false

consumer's belief in conjunction with exposure to the advertisement. This kind of advertisement deals with belief fact discrepancy.

Misleading advertisements creates confusions in the viewer's minds, as sometime a person may think that an advertisement, such as that, it would create monetary gains for him. These are usually tied to pricing strategies or they may also be tied to misguided information about the product content. Consequently, consumers end up purchasing items at a higher price or at a lesser quality than they had intended. In certain scenarios, misleading advertisements may occur in order to boost an individual's status as it is in the case of political advertising where it is shown that by donations the average mediocre class may raise themselves as higher class. Misleading advertisements create intense consumer confusions, and the advertisers play on them, depending on how the consumer reacts to them and how the market is influenced. These kinds of advertisements cover the products that are beyond the customers' needs and by exaggerating, try to sell the product that the customer regrets buying after purchase or the consumer feels that the product does not fully satisfy the required quality and efficiency shown in the advertisement before.

Misleading advertisements thus mislead the public by deceiving public opinion, ignoring the public culture of the society, insulting the intelligence of the audiences, showing immoral scenes, showing unusual life styles, using any means to achieve goals, exaggerating and overstating, expressing unrealistic about the product, using professional concepts for more effects, faking license, false warranties, using cinematic tricks and misleading images, discounts and gifts.

Misleading advertisements also have an adverse effect on the market supply and demand of the products, due to which many people have been affected negatively. The awareness among the consumers is the most important factor to deal with misleading advertisements.

This book is aimed towards sensitising laymen, law students and the daily consumer about the various operating legislations, judicial decisions and the other framework related to consumer protection and serves as a source of insightful information regarding recent developments and endeavours of consumer protection in various sectors.

### **Initiation of National Advertisement Monitoring Service**

One of the most effective measures taken is the setting up of the National Advertisement Monitoring Service (NAMS) in 2012. As compared to other developed nations such as UK and the US, India receives very less number of complaints and a lot of misleading advertisements escape the scrutiny of ASCI. The primary reason for the same is the low level of awareness among the population in India.

In order to address this issue, ASCI initiated NAMS whose objective is to monitor almost all the TV channels and leading newspapers for such misleading advertisements and report all such false advertisements to the CCC of the ASCI. The researchers are of the opinion that such an initiative by ASCI has given *suo motu* powers to the ASCI to lodge a complaint itself against the offending advertisers. With such an initiative, the number of complaints has increased almost four times the number before NAMS.

Therefore, the need of the hour was felt by the government on 9<sup>th</sup> March, 2012 the government decided to set up a National Consumer Protection Agency (NCPA) with executive as well as *suo motu* powers under the Ministry of Consumer Affairs, Government of India. NCPA to monitor and penalize companies that make misleading claims in their advertisements. It would be empowered to take severe action, including recall of the product and slapping cases against the firms. The NCPA will also have an executive as well as *suo motu* powers to take action against the erring companies<sup>4</sup>. It is expected that the NCPA functions in an efficient way to curb the misleading advertisements from affecting the consumers. In addition to these powers it is submitted that the Agency should also have powers to grant interim injunctions so that the impact of misleading advertisements on people is reduced. It is a receptive initiative step taken by government.

### **Grievances Against Misleading Advertisements Portal (GAMA)**

The Department of Consumer Affairs has launched this portal for registering online complaints for Grievances Against Misleading

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4. Ritu Kant Ohja, Government plans watchdog to check misleading advertising advertisements, 09.02.2014 available at <http://www.indianexpress.com/news/govt-plans-watchdog-to-check-misleading-ads/921694/>.

Advertisements (GAMA). In simple terms any advertisement that gives false information, making false claims or contravening any other provision of the advertising code can be termed as a misleading advertisement. Advertisements appearing in News Papers, hoardings, handbills, wall writing as well as advertisements in the electronic media such as TV channels, radio channels, internet sites etc. are some examples. As an aware Consumer, once can register a complaint along with a copy / video / audio of such advertisement through the web portal the GOI at <http://gama.gov.in> .

### **Steps to register any grievance on misleading Advertisement on GAMA Portal**

Step 1. A onetime registration is required for lodging a complaint. For registration one has to go to the web portal <http://gama.gov.in> and click on the login link and then sign up giving details required, verify through email. The User id and password are created.

Step2. Using this user id and password, enter into the portal and fill in require details of complaint attaching necessary audio / video / paper clip / photograph (if available).

One can even register a complaint along with the copy / video / audio of such advertisement through the nearest Grahak Suvidha Kendra or designated Voluntary Consumer Organizations (VCOs) who will in turn lodge your grievance through the web portal of the GOI at <http://gama.gov.in> to bring it to the notice of the Government.

Regional Language and local complaints will be taken up by Grahak Suvidha Kendras / Voluntary Consumer Organizations (VCOs) as the case may be with appropriate local authorities. National level complaints would be forwarded to the concerned regulator of the sector to which the complaint pertains. Complaints would also be monitored for follow up action by the Department of Consumer Affairs.

Regulators will be in turn take up the matter with the concerned Company / Agency for remedial action. All VCOs, regulators and DoCA will update the action taken by them regularly through the web portal. All unresolved complaints will be placed before the Inter-Ministerial Committee constituted by the Department of Consumer Affairs, for arriving at a logical conclusion. Every complaint will be registered and a Unique



Complaint ID is issued. The complainant can track the status of the complaint using this ID. The complaint will be forwarded to the concerned regulator / authority for action against those responsible for the misleading advertisement. Action according to the provisions of the existing law will be initiated.

The **Consumer Protection Bill, 2015** was introduced in Lok Sabha on August 10, 2015 by the Minister of Consumer Affairs, Food and Public Distribution. The Bill replaces the Consumer Protection Act, 1986. The Statement of objects and reasons of the Bill states that this is to widen the ambit and modernise the law on consumer protection due to the changes in the markets. A consumer, under the Consumer Protection Act, 1986, is defined as any person who buys a good or hires a service for a consideration. This includes the user of such good or service, but not one who obtains the good for resale or commercial purposes. It covers transactions through all modes including offline, online through electronic means, teleshopping, or multi-level marketing. The rights of consumers include the right to: (i) be protected against marketing of goods and services which are hazardous to life and property, (ii) be informed of the quality, quantity, potency, purity, standard and price of goods or services, (iii) be assured of access to a variety of goods or services at competitive prices, and (iv) to seek redressal against unfair or restrictive trade practices. The central government will set up the Central Consumer Protection Authority (CCPA) to promote, protect and enforce the rights of consumers. The CCPA will carry out the following functions, among others: (i) inquiring into violations of consumer rights, investigating and launching prosecution at the appropriate forum; (ii) passing orders for recall of goods, or withdrawal of services and reimbursement of the price paid, and pass directions for discontinuation of unfair trade practices; (iii) issuing safety notices and order withdrawal of advertisements; and (iv) declaring contracts that are unfair to a consumer as void. A new Chapter on Product liability is inserted. If defects in the manufacture, construction, design, testing, service marketing etc. of a product results in any personal injury or property damage to a consumer, the manufacturer is liable in a product liability action. Consumer Disputes Redressal Commissions are to be set up at the district, state and national levels. A consumer can file a complaint with these commissions, regarding: (i) unfair or restrictive trade practices, (ii) defective goods or services,

(iii) overcharging or deceptive charging, (iv) the offering of goods or services for sale which may be hazardous to life and safety, and (v) incurring loss due to an unfair contract. The District Commission may issue the following orders regarding a complaint: remove the defect, replace the good, return the price amount, stop the sale or manufacture of hazardous products, discontinue unfair trade practices or pay compensation for any loss suffered by the consumer. Appeals from its decisions will be heard by the State Commission. Further appeals may be filed before the National Commission, and then before the Supreme Court. The Bill introduces mediation as a mode of consumer dispute resolution. Consumer Mediation Cells will be established and attached to the redressal commissions at the district, state and national levels. Any person who fails to comply with an order of either of the Commissions would be liable for imprisonment from one month to three years, or with a fine from 10,000 rupees to 50,000 rupees.

This book intends to look for whether the consumers are well protected from misleading and unfair trade practice through case law. The legislations which are covered under this book are:

1. Consumer Protection Act, 1986.
2. Monopolies And Restrictive Trade Practise Act, 1969 (Repealed)
3. Competition Act, 2002.
4. Prize Competition Act, 1955.
5. The Emblems and Names (Prevention of Improper Use) Act, 1950.
6. Securities and Exchange Board of India Act, 1992.
7. Trade and Merchandise Marks Act, 1958 (Repealed) & Trade Marks Act, 1999.
8. Companies Act, 1956 (Repealed) & Companies Act, 2013.
9. Cigarette and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003.
10. Prevention of Food Adulteration Act, 1954 (Repealed).
11. Food, Safety and Standards Act, 2006.

12. Young Persons (Harmful Publication) Act, 1956.
13. Indecent Representation of Women Act, 1986.
14. Insurance Regulatory Development Act, 1999.
15. Banking Regulation Act, 1949.
16. Bureau of Indian Standard Act, 1986.
17. Legal Metrology Act, 2009.
18. Reserve Bank of India Act, 1934.
19. The Pre-Natal Diagnostic Techniques (Regulation And Prevention of Misuse) Act, 1994.
20. The Children Act, 1960.
21. The Press Council Act, 1978.
22. The Drugs and Cosmetics Act, 1940.
23. The Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954.
24. Telegraph Act, 1885.
25. Telecom Regulatory Authority of India Act, 1997.
26. The Infant Milk Substitute, Feeding Bottles and Infant Foods (Regulation of Production, Supply and Distribution)Amendment Act, 2002.
27. The Prasar Bharati (Broadcasting Corporation of India) Act, 1990
28. The Cable Television Networks (Regulation) Act, 1995.
29. Indian Contract Act, 1872.
30. Sale of Goods Act, 1930.
31. Indian Copyright Act, 1957.
32. Information Technology Act, 2000.
33. Indian Penal Code 1860.
34. Consumer Protection Bill, 2015.



## 2

### **CONSUMER PROTECTION ACT, 1986**

#### **2.1. Object and Summary:**

This Act is to provide for better protection of the interests of consumers and for that purpose to make provision for the establishment of consumer councils and other authorities for the settlement of consumers' disputes. The main objective of the Act is, to provide simple, speedy and inexpensive redressal to the consumer's grievances. To provide for this, three-tier quasi-judicial machinery at the national, state and district levels has been envisaged under the Act; the National Consumer Disputes Redressal Commission (National Commission), the State Consumer Disputes Redressal Commission (State Commission) and the District Consumer Disputes Redressal Forum (District Forum).

The Consumer Protection Act, 1986 was enacted in view of the emerging consumerism in India and sought to curb the menace of unfair trade practices, deficiency in goods and services, among other things in a speedy and inexpensive manner. Under this Act, a person or a company can be held liable for representing any information, which he/she knows to be false with regard to the usefulness or need of the good or service.

The Hon'ble consumer fora have adjudicated upon various cases with regard to misleading advertisements and have provided satisfactory relief

to the consumers. Based on the precedent set, any consumer who has been wronged based on these false claims can approach the consumer fora.

Sec. 2(1)(d) of the Consumer Protection Act defines a consumer. Any person who avails of a good or service for a consideration and without any commercial purpose, unless for self-employment, is a consumer. Misleading advertisements can be curbed under the Consumer Protection Act under Sec. 2(1) (r), which penalises unfair trade practices. A complaint may be made by 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.

The aggrieved consumer can approach any of the fora based on the compensation claimed. The fora have been instituted with a very consumer-friendly view and seek to provide speedy and inexpensive relief. In fact any consumer can appear before the commission and need not even hire a lawyer to argue one's case. Any person can approach these fora within 2 years from the date of cause of action has begun (limitation period), for a negligible court fee. 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 advertisement at the cost of the opposite party responsible for issuing such misleading advertisement.

## **2.2 Food Sector**

**2.2.1 Name of the Case:** Reliance Life Sciences Pvt. Ltd. v. Umesh Singh Chandan Singh Saddiwal and Others.

**Legislation:** Consumer Protection Act, 1986.

**Citation:** Revision Petition Nos. 1033 and 1034, 1037, 1038 and 1039 of 2015 and IA/2571 and 2572/2015, MANU/CF/0007/2016

**Keyword:** Food and Commodities

**Commission:** National Consumer Disputes Redressal Commission, New Delhi

**Facts:** The complainants/respondents are farmers growing crops such as sugarcane and banana etc. in their respective fields. The case of the complainants is that respondent-M/s. Surana Irrigators, who is agent of the petitioner company, persuaded them to purchase Tissue Culture Banana Plantlets of the petitioner company, representing that they would be earning 240/- per banana plant within a year. According to the complainants, they planted the aforesaid tissue culture banana plantlets in their respective fields as per the guidance and instructions of respondent-M/s. Surana Irrigators, incurring substantial expenditure on purchase of fertilizers and pesticides etc., but some plantlets did not grow, whereas some other got damaged. The matter was reported by them to the representative of the respondent-M/s. Surana Irrigators but no relief was provided to the complainants, either by the petitioner company or by respondent-M/s. Surana Irrigators. The complainants thereupon made complaint to the Agriculture Officer, Panchayat Samiti, Paranda followed by complaint to the District Agriculture Development Officer. The District Seeds Grievance Redressal Committee visited their fields and reported that the plantlets were defective. It was stated by the petitioner company that it had imported the said plantlets from Israil and was not responsible for the loss if any sustained by the complainants. It was also claimed by the petitioner, that it had not received any notice from the District Seeds Grievance Redressal Committee.

**Issue:** Is there an unfair trade practice adopted as a result of supplying defective seeds?

**Decision:** Banana plantlets sold to the complainants were defective and therefore granted compensation to the complainants. District Forum and State Commission upheld the decision. Revision petition was dismissed. However, before parting with these cases, judge emphasized that if the farmer alleges any defect in any seed of a notified kind or variety, the seed inspector or for that matter, a committee formed by the Government to investigate into a complaint alleging defect in the seeds of such a kind or variety must necessarily follow the procedure prescribed in Rule 23A

of the Seeds Rules. In any case, the complainants cannot be made to suffer for the failure of the committee to follow the aforesaid procedure.

**2.2.2 Name of the Case:** Cadbury India Ltd. v. Kanteppa and Ors.

**Sector:** Food Sector

**Legislation:** Consumer Protection Act, 1986.

**Citation:** Revision Petition No. 1051 of 2010, MANU/CF/1039/2015 decided on 03.12.2015

**Keyword:** Food and Commodities

**Commission:** National Consumer Disputes Redressal Commission, New Delhi

**Facts:** The Complainant purchased two Cadbury Dairy Milk Chocolates, manufactured by Cadbury from its retailer, viz. Roshan Bakery and Sweetmart, Janata Bazaar Complex, Near Gandhi Chowk, Bijapur-Respondent No. 2 herein, for Rs. 10 against receipt. The Complainant gave one of the chocolates to his son and another to his wife to eat. He also had a small bite of the chocolate. However, while eating the same he found some worms and its eggs in the chocolate. Immediately, he stopped his wife and son from eating the same, but by that time they had consumed the chocolate. According to the Complainant, all three of them had nausea and vomiting. They had to be rushed for medical aid. After the first aid by a family Doctor, they were sent back to the home. Because of the trauma the family had undergone on account of consumption of the chocolates, the Complainant got a Panchanama of the remaining portion of chocolates prepared and approached the Retailer for replacement of the same. The Retailer declined to oblige him. Alleging deficiency in service on the part of Cadbury and its retailer in supplying and selling contaminated chocolates, the Complainant filed the complaint.

**Issue:** Whether there was any deficiency in service on the part of the Cadbury and its retailer in supplying and selling contaminated chocolates.

**Decision:** Supplying of chocolates to a dealer from whom the Respondent No. 1 has purchased the chocolates on payment of Rs.10 has suffered mental agony and deficiency in service or unfair trade practice in selling of such chocolates without taking proper care and proper production by



the manufacturer. Whereby Cadbury had been directed to pay to the Complainant, Respondent No. 1 herein, a sum of Rs. 10 as the cost of one piece of Cadbury Dairy Milk Chocolate, Rs. 10,000 as compensation for mental agony and Rs. 2,000 for the medical expenses, along with a sum of Rs. 25,000 towards costs.

**2.2.3 Name of the Case:** Eicher Goodearth Pvt. Ltd. v. Krishna Mehta and Ors.

**Legislation:** Consumer Protection Act, 1986; Code of Civil Procedure, 1908.

**Citation:** I.A. No. 8010/2014 (Order 39 Rule 1 and 2 CPC), I.A. No. 13372/2014 (Order 39 Rule 4 CPC) in CS(OS) 1234/2014, MANU/DE/1908/2015 decided on 29.06.2015.

**Court:** High Court of Delhi

**Keyword:** Unfair Trade Practice, Trade and Commerce

**Facts:** The plaintiff is a company running renowned chain of retail stores and galleries showcasing and selling unique lifestyle products which are classy and exclusive in design, style, pattern, quality and standard. The plaintiff's stores under the name Good earth sells the lifestyle, home making products and decor items which are exclusively designed at the creative house of the plaintiff Company by a specialized creative team and are unique. Defendants are accused of being engaged in the illegal acts of imitating the unique motifs, pattern, art works and designs of the plaintiff and applying the same in various permutations and combinations on their products for sale and thereby are directly engaged in illegal acts of passing-off, unfair competition and dilution. The plaintiff is the originator, inventor and owner of the said motifs, pattern, designs and piece of art and the plaintiff is seeking restrain orders by way of present suit before this Court against the defendants who are adopting and using visually, structurally and deceptively similar motifs, pattern, designs and piece of art of the plaintiff and selling their products with the impugned design on their website [www.indiacircus.com](http://www.indiacircus.com) are clearly violating plaintiff's rights. The defendants' such acts constitutes passing off, unfair competition and dilution and are contested to be misleading in nature.

**Issue:** Has the defendant resorted to unfair trade practice by using similar styles for the products?

**Decision:** The products used by the defendants in relation to the various designs are almost same to the products of the plaintiff. The defendants have failed to assign any explanation as to why they have adopted and used the product in similar designs for commercial purposes and in relation to the same business. Therefore, the interim injunction was granted for the same. The defendants were also restrained from using similar titles for same kind of activities but can use in unconnected activities.

**2.2.4 Name of the Case:** Jahnvi Worah v. ITC Ltd

**Legislation:** Consumer Protection Act, 1986.

**Citation:** Appeal No. 236 of 2010

**Keyword:** Food

**Facts:** In the case the complainant had bought a packet of chips which claimed to be '50% extra' on the wrapper. However once she opened the packed she found out that this was not so. Upon comparing the amount with similar products of other manufacturers she found out that this claim was false and misleading. Thus aggrieved, she filed a complaint in the consumer forum.

**Issue:** Whether the advertisement amounted to an unfair trade practice?

**Decision:** The National Commission held that it was clear that the respondent had indulged in unfair and deceptive trade practices. And as a result innocent consumers were being duped into believing that the quantity was 50% extra when it was the same as comparable products of other manufacturers. Hence compensation was awarded which as per the claim of the complainant and was to be deposited into the consumer welfare fund.

**2.2.5 Name of the Case:** Hotel Nyay Mandir v. Ishwarlal Jirabhai Desai

**Legislation:** Consumer Protection Act, 1986.

**Citation:** 2006 1 CPJ 521(Gujarat)

**Keyword:** Food

**Facts:** The complainant, on 14.05.2003 he purchased four bottles of cold drink Mirinda for which the petitioner/opposite party no.1 charged excessive amount of Rs.72/- whereas the actual cost of one bottle was Rs.12.50 ps. The complainant alleged that the petitioner/opposite party no.1 ought to have charged Rs.12.50/- per bottle as it was the actual price appearing on the label of the bottle but it had charged Rs.18/- per bottle. Taking this sole ground and pleading deficiency in service .The opposite party sold 'Miranda' soft drink for Rs. 18/- per bottle, against MRP. Of Rs. 12.50/-. There was no board displaying that consumers has to pay service charges if soft drinks were consumed by occupying space in hotel. The Menu Card also showed charges of Rs. 18/- for soft drinks.

**Issue:** Whether the respondent had adopted unfair trade practice by selling the soft drink more than the MRP price.

**Decision:** Gujarat State Commission held the practice to be unfair. The State Commission while dismissing their appeal and also imposing a cost of Rs.6000/- on them, has upheld the finding recorded by the District Forum. The District Forum vide its order dated 18.08.2005 had allowed the complaint of the respondent/complainant and directed the petitioner/ opposite party no.1 to refund the amount of Rs.22/- being the excess amount charged towards cold drinks served to the complainant and also pay Rs.5000/- and Rs.1000/- as compensation for mental agony and cost of litigation respectively. Besides, the District Forum had also directed the petitioner/opposite party no.1 to pay a sum of Rs.1,50,000/- to be deposited in a Consumer Welfare Fund within a period of 30 days.

**2.2.6 Name of the Case:** Big Bazaar v. Government of Gujarat

**Legislation:** Consumer Protection Act, 1986.

**Citation:** Revision Petition No. 1674 Of 2007

**Keyword:** Food and Commodities

**Commission:** National Consumer Disputes Redressal Commission, New Delhi

**Facts:** In this case the petitioner, a departmental store known as Big Bazaar had many branches in the city of Ahmedabad and other places and carried on retail business in various commodities and sells the same

to the consumers. In order to promote their business from time to time, this store frames various schemes for attracting the customers in the instant case; the store framed a scheme valid for Republic Day on 26.01.2006 and declared this as a Mega Saving Day. The petitioner published advertisements through newspapers / radio / posters on the occasion of 'Mega Saving Day' saying that various commodities shall be sold at prices less than the usual prices. Hence to manage the rush of the customers the petitioner floated scheme on that very day, according to which currency coupons of the value of Rs.50/- were to be issued and they decided that only those persons shall be allowed to enter the store who purchase a coupon after making a payment of Rs.50/-. It was also stated that the value of the coupon, i.e., Rs.50/- will be adjusted towards the total price of the purchase made by the consumers. It was also made clear that in case a consumer did not fully utilise the amount of the coupon, the balance amount of the coupon shall be refunded to the consumers. Hence 3712 coupons were sold in one day and utilized by the consumers. Now the Department of Weights and Measures and Consumer Affair, Government of Gujarat filed a Consumer Complaint in the District Forum that selling of such coupon were illegal as it had adopted unfair trade practice as shop-owner has no right to refuse entry to the public, It is the absolute right of the shop-owner to restrict the entry of customers in his store. In this case, it was not an entry fee but even if an entry fee is imposed, is it a legally permissible practice.

**Issue:** Whether only those persons shall be allowed to enter the store who purchase a coupon after making a payment of Rs.50/-. Can be considered to fall under the purview of the unfair trade practice and could lure the customer by such publication of advertisement in the newspapers.

**Decision:** The District Forum allowed the complaint and directed the petitioner to pay Rs.1,95,000/- to the complainant along with interest @9% p.a. from the date of filing of the complaint till realisation. They were also directed to pay Rs.10,000/- to the complainant towards mental agony and costs of the complaint. The petitioner challenged the order of the District Forum in the State Commission, but the State Commission vide impugned order dismissed the appeal saying that the issuing of currency coupons amounted to levy of entry fee and hence it was unfair trade practice.

## **2.3 Sector : Construction/Residential Layout Sector**

**2.3.1 Name of the Case:** Naren P. Sheth and Ors.v. Lodha Group and Ors.

**Legislation:** Consumer Protection Act, 1986.

**Citation:** Consumer Case No. 198 of 2011 decided on 05.05.2016, MANU/CF/0122/2016

**Commission:** National Consumer Disputes Redressal Commission, New Delhi

**Keyword:** Construction/Residential Layout Sector

**Facts:** Dr. Naren P. Sheth and Dr. Sudha N. Sheth, the complainants, are senior citizens and M/s. Lodha Group and M/s. Sri Sainath Enterprises, OPs 1 & 2, transacts the business of constructing buildings, both commercial and residential. The complainants came across the proposal of the OP Nos. 1 & 2 of constructing a residential complex named, 'Lodha Luxuria' in Thane, Mumbai. The complainants paid a sum of Rs. 1,02,13,803/- out of the total consideration of Rs. 1,04,75,694/-, by way of installments. It was agreed that they would get the flat bearing No. 0203 on 2 floor, measuring 1118 sq.ft., (carpet area) in the building named, 'Fairfield' in the above said project of the OPs. A copy of the cost details/ proposal was given by the OPs to the complainants. The reminder amount of Rs. 2,61,891/- was to be paid at the time of taking the possession. The complainants had to withdraw their Fixed Deposit Receipts for the above said payment and it caused a loss of Rs. 3,00,000/- towards interest and other charges. The OPs also avoided executing the agreement with the complainants. First two floors from the ground were reserved for car parking for which the OPs illegally demanded additional amount from the complainants. The complainants were informed by the OPs through one of their office bearer's that they should make the payments for car parking charges as demanded, otherwise, they will have to execute an indemnity bond to the effect that they shall not be availing the car parking facility and they will not allow to park their car there. The agreement clearly stipulates that no further charges would be demanded. Later the flat was sold to someone else.

**Issue:** Do the actions of the opposite party amount to unfair trade practice?

**Decision:** It depicts deficiency in service and amounts to unfair trade practices. The Commission also opined that, it was surprising to note that after receiving almost the entire amount, the OPs chose to cancel the same, without giving the delivery of possession. The commission directed the OP to pay a sum of Rs. 1,02,13,803/- with interest @ 18% from the date of its deposit till its realisation. It also directed the OP to pay compensation in the sum of Rs. 1 lakh to the complainants within 90 days from the order (otherwise would carry a 9% interest on it till realization).

**2.3.2 Name of the Case:** Rajeev Nohwar and Ors. v. Sahajanand Hi Tech Construction Pvt. Ltd.

**Legislation:** Consumer Protection Act, 1986.

**Citation:** Consumer Case No. 198 of 2011 decided on 06.05.2016, MANU/CF/0123/2016.

**Commission:** National Consumer Disputes Redressal Commission, New Delhi- NCDRC

**Keyword:** Construction/Residential Layout Sector

**Facts:** The complainants booked a residential apartment in tower 24 of a Project namely Lodha Belmondo, which the opposite party was developing in Pune. The total consideration for the aforesaid unit was agreed at Rs. 1,68,88,095/-. The complainant has already paid 19.9% of total agreed sale consideration to the opposite party. The opposite party issued an allotment letter to the complainants referring to their application and inter-alia stating that the terms and conditions as stated in the application form shall continue to be binding in respect of the allotment of the flat. Later, the opposite party sent the payment schedule to the complainants. The said draft agreement was wholly one-sided. The grievance of the complainants however, was not addressed. The opposite party also sent a pre-termination notice to the complainants threatening to cancel the booking if a sum of Rs. 1,24,68,259/- which included interest amounting to Rs. 1,39,833 was not paid to it within fifteen days. However, later, the opposite party sent a cheque of Rs. 1,23,28,426/- to the complainant towards refund of the amount which they had remitted. The

brochure of the apartment showed several facilities which were taken to be common in nature for all the apartment owners but in fact were not common facilities.

**Issue:** Do these actions by the construction company amount to unfair trade practices?

**Decision:** By not disclosing the common areas and facilities meant for all the apartment owners, despite a statutory mandate and mentioning a large number of amenities and facilities under the heading, without intending them to be the common areas and facilities for all the apartment owners, the opposite party induced the buyers, such as the complainants, to believe that the said facilities and amenities were in fact common areas and facilities meant for all the apartment owners. Such an act amounts to unfair trade practice adopted for the purpose of sale of the flats to the prospective buyers. The practices enumerated in Section 2(1)(r) of the Consumer Protection Act, are illustrative and not exhaustive, meaning thereby that there can be unfair methods or unfair or deceptive practices other than those specifically enumerated in the said Clause. The opposite party was directed to pay a sum of Rs. 25,000/- to the complainants towards the cost of litigation. In case the complainants choose to execute the agreement, OP will pay a sum of Rs. 10,00,000/- (ten lacs) as compensation to the complainants, for the deficiency in the services rendered to him and will not charge any interest for the delay in making balance payment. In case the complainants are not executing the agreement, the opposite party shall refund the entire amount of Rs. 1,58,28,221/- received from them along with simple interest @ 12% per annum from the date of receipt of each payment till the date on which the said amount is refunded, along with compensation quantified at Rs. 10,00,000/- (ten lacs).

**2.3.3 Name of the Case:** Anil Raj and Ors. v. Unitech Limited and Ors.

**Legislation:** Consumer Protection Act, 1986.

**Citation:** Consumer Case No. 346 of 2013 decided on 02.05.2016, MANU/CF/0105/2016

**Commission:** National Consumer Disputes Redressal Commission, New Delhi

**Keyword:** Construction/Residential Layout Sector

**Facts:** The Complainants applied for allotment of a residential plot in a project by Unitech and an agreement to sell was entered into by the parties. The payment was made by way of a housing loan. Though the possession was to be delivered within 12 months from the date of signing of the Agreement, but even after a lapse of almost two years, there was no development at the site. The Complainants were not even able to locate the allotted plot in the area.

**Issue:** Does the action by the construction action amount to unfair trade practice?

**Decision:** Where possession of property is not delivered within the stipulated period, the delay so caused is not only deficiency in rendering of service, such deficiencies or omissions tantamount to unfair trade practice. Unitech was directed to pay to the Complainants simple interest @ 18% p.a. from the date of each deposit, till its realization. It is also directed that Unitech shall pay to the Complainants costs of Rs 3,00,000/- and deposit a further sum of Rs 2,00,000/- in the Consumer Welfare fund. The amount deposited by the Complainants, after accounting for the amounts paid during the pendency of this Complaint along with interest, as directed, shall be paid to them within six weeks failing which it would attract interest compounded quarterly.

**2.3.4 Name of the Case:** Pyramid Arcades Pvt. Ltd. and Ors. v. Nandlal Krishnani

**Legislation:** Consumer Protection Act, 1986.

**Citation:** Consumer Case First Appeal No. 225 of 2015 decided on 27.05.2015, MANU/CF/0358/2015

**Commission:** National Consumer Disputes Redressal Commission, New Delhi

**Keyword:** Construction/Residential Layout Sector

**Facts:** Appellants/ Opposite parties involved in the business of property and construction through its representations influenced the complainants/ respondent to book apartments in their project. Each respondent, paid Rs. 4,40,000/- in installments for which receipts were issued by the



appellants. Thereafter, respondents learnt from other prospective purchasers, that appellants have got revised the plan from the sanctioning authority and no sanction has been granted for sixth floor where the flats of the respondents situated. Respondents also learnt that appellants have abandoned the construction of 6 floor, but gave no intimation to them. Respondents approached appellants for payment of balance consideration. Ultimately, appellants said that they have cancelled booking of the flats and a cheque was sent as refund.

**Issue:** Have the construction company adopted unfair trade practice?

**Decision:** The appellants (construction company) have indulged in "Unfair Trade Practice" by adopting "Deceptive Practice" at the time of booking of the flats for 6 floor. In this manner, they allured the respondents to part with the hard earned money for a project which was not in existence at all. Punitive damage of Rs. 50,000/- (Rupees Fifty Thousand only) for each of such unfair trade practice adopted against each consumers have to deposited in the Consume Legal Aid Account failing which they will be liable to pay 9% interest per annum on the amount. The refund of amount Rs. 4,40,000/- was also granted. Each of the complainant should be given a compensation of Rs 10,00,000 for the loss suffered. The commission also granted each of the complainant Rs. 25,000/- as compensation towards mental harassment and Rs. 5000/- towards cost of each of the complaint.

**2.3.5 Name of the Case:** Ganeshlal v. Shyam

**Legislation:** Consumer Protection Act, 1986.

**Citation:** Civil Appeal No. 331 of 2007, MANU/SC/1134/2013 decided on: 26.09.2013

**Court:** Supreme Court of India

**Keyword:** No delivery of possession

**Facts:** The Appellant herein had agreed to sell a plot of land to the Respondent by virtue of an agreement entered into with him. But the Appellant failed to hand over the possession of the concerned plot of land. Even after repeated requests, the possession was not handed over and hence it amounted to unfair trade practice. The jurisdiction of the consumer forum to entertain in such issues were also questioned.

**Issue:** Is there a deficiency of service and is sale covered under the Consumer Protection Act?

**Decision:** Failure to hand over possession of the plot of land simpliciter cannot come within the jurisdiction of the District Consumer Forum, State Commission or National Commission. When it comes to "housing construction", the same has been specifically covered under the definition of 'service' by an amendment. Where a sale of plot of land simpliciter is concerned, and if there is any complaint, the same would not be covered under the Consumer Protection Act.

**2.3.6 Name of the Case:** B.V. Srinivas v. B.V.Manjunath

**Legislation:** Consumer Protection Act, 1986

**Citation:** Appeal No. 4175/2010

**Commission:** Karnataka State Consumer Disputes Redressal Commission

**Keyword:** Service, Residential Layout

**Facts:** Complainant was lured away with the advertisement issued by the opposite party (OP) who had claimed to be the Promoter and the developer of residential layout of purchasing site and as a result of which he had executed a sale agreement on 03.07.2008 for a total consideration of Rs 4,56,000/- and had paid an advance of Rs 1,80,000/- and the same was also acknowledged by the opposite party. Opposite party had promised that the said layout would be completed within 6 months from the date of entering into the agreement the same was not done and the complainant felt that the OP is not going to complete the said project and hence he sought for the cancellation of the said layout along with the refund of the cost paid.

**Issue:** The issues raised in the said case was that the complainant was lured by the misleading advertisement issued by the opposite party "that he claimed himself to be the promoter and developer of residential layout of purchasing site" and on the basis of which he entered into an agreement and paid money in advance ,the promise given by the opposite party to finish the layout within 6 months was not fulfilled hence the case was filed by the complainant and a notice was sent to the opposite party but was returned as not claimed and was placed Ex parte.

**Decision:** After hearing the arguments in both the district forum and the Appeal the case was decided in favour of the complainant and the Appeal by the opposite party was dismissed.

**2.3.7 Name of the Case:** Brig. (Retd.) Kamal Sood v. M/S.DLF Universal Ltd

**Legislation:** Consumer Protection Act, 1986

**Citation:** C.No.61/2000

**Commission:** National Consumer Disputes Redressal Commission

**Keyword:** Booking Apartment

**Facts:** In this case M/s DLF Universe Ltd (Hereinafter referred to as the DLF) had indulged in unfair trade practices and had done delay in handling over the possession of the flat. DLF had published an advertisement for booking apartment in DLF Qatar Enclave. As per the advertisement, the price DLF Regency park ranged from 8.05 lakh to 13.77 Lakh and with specific emphasis on “And remember, now all prices are escalation free, so that the price you book at is the price you pay irrespective of what it might cost DLF” was highlighted.

The complainant a retired brigadier was lured by such advertisement as he had invested his money for purchase of a flat and that he was compelled to pay escalation cost, despite delay in construction by the builder and the promise made in the colourful brochure published by the builder for attracting the buyer that no escalation cost cover be recovered. Hence the complainant filed the complaint to the State Commission for the refund of the escalation amount.

**Issues:** The issue was that whether any builder could give alluring advertisement promising delivery of possession of the constructed building or flat to the purchase /consumer within the stipulated time and subsequently on his failure can he contend and make an excuse that his failure was due to the lack of governmental permissions such as non – approval of zonal plan, layout plan and schematic building plan.

**Decision:** The State Commissions after conducting the facts rejected the prayer for the refund of the escalation amount, and with regard to the interest for keeping the money which was recovered from the complainant

for execution of the conveyance deed directed DLF to pay interest @ 10% p.a on the amount deposited by the complainant from the date of deposit till the date of execution of the conveyance deed and also one lakh compensation for the delay.

**2.3.8 Name of the Case:** The Commissioner v. Basaiah

**Legislation:** Consumer Protection Act, 1986

**Citation:** RP No 187 of 2011

**Commission:** National Consumer Disputes Redressal Commission

**Keyword:** Construction

**Facts:** In this case the respondents on the basis of an advertisement decided to buy property at a particular rate. However later when instalments had been paid the petitioners informed them that according to new government regulations the prices had been increased.

**Issue:** Whether such an action was justified or whether it represented an unfair trade practice?

**Decision:** The National Commission held that in no way had the complainant agreed to the heightened fee and since there was no government regulation to justify the same the petitioner's conduct was not justified by law.

## **2.4 Education Sector**

**2.4.1 Name of the Case:** Tesol India, Chandigarh v. Sh. Govind Singh Patwal

**Legislation:** Consumer Protection Act, 1986, Sec 2(1)(r)(vi )

**Citation:** In Appeal No.153 of 2009, State Consumer Disputes Redressal Commission, Union Territory, Chandigarh

**Keyword:** Education, Deficiency of Service

**Facts:** Sh. Govind Singh Patwal on being attracted by an advertisement in the newspaper which stated "Overseas Job Guaranteed" and job would fetch "Monthly 1-3 Lacs Plus" and after paying the full fee of Rs.49,950/-, took admission in the Tesolprogramme with the Opposite Party. As per the complainant, after completing the said course, no placement was

given to him for a job. He was told by the OP that the OP was part of Tesol Global College. Canada It was averred that when the complainant approached OP along with some other students, it flatly refused to help. It was told to the complainant by the OP that it had nothing to do with the police of the Global Tesol College, Canada though at the time of admission. Alleging the aforesaid acts of OP as deficiency in service as well as unfair trade practice on its part, the complainant had filed the present complaint.

**Issue:** Whether the advertisement made by Tesol India in the newspaper which stated “Overseas Job Guaranteed” and job would fetch “Monthly 1-3 Lacs Plus” was misleading the students?

Whether the advertisement made by Tesol India violated Sec 2(1)(r)(vi) of Consumer Protection Act, 1986?

**Decision:** It is a clear case not only of deficiency in service but is also of unfair trade practice as defined under Section 2(1)(r)(vi) of Consumer Protection Act, 1986, which reads as under: “makes a false or misleading representation concerning the need for or usefulness of any goods or services.” It is relevant to mention that the brochure repetitively mentions and assures 100% job guarantee and thus, we are in total consonance with the view held by learned District Forum that OP is guilty of deficiency in service as well as unfair trade practice. It is also relevant to mention here that such misleading advertisements, which attract the global consumer, cannot be permitted to be published and this trend needs to be sternly curbed. Thus, the impugned order needs to be modified to this extent. Consequently, the all the three appeals bearing No.153, 154 and 155 all of 2009 being devoid of merit are dismissed with exemplary costs, which quantify as Rs.5,000/- in each appeal because the appellant has unnecessarily dragged the complainants into an unwarranted litigation. The impugned order is upheld with the modification that the appellant/ OP is also now directed not to issue any misleading advertisement and also to amend its brochure accordingly.

**2.4.2 Name of the Case:** Buddhist Mission Dental College and Hospital v. Bhupesh Khurana and Ors.

**Legislation:** Consumer Protection Act, 1986 Section 2(1)(g) and 2(1)(r)

**Citation:** (2009) 4 Supreme Court Cases 484

**Court:** Supreme Court of India

**Keyword:** Education

**Facts:** The appellant published an advertisement in the Hindustan Times, inviting applications for admission in the Degree Course of Bachelor of Dental Surgery (for short, BDS). In the said advertisement, it was specifically highlighted that the appellant college is a premier dental college of Bihar established and managed by the Vishwa Buddha Parishad. It was also mentioned right under the name of the appellant's college that the said institution is "The Buddhist Mission Dental College and Hospital" under Magadh University, Bodh Gaya and Dental Council of India, New Delhi. The complainants, respondents herein, who have all passed 12th standard examination with Physics, Chemistry and Biology and have secured good marks and were in search of brighter career prospects, believing the facts incorporated in the advertisement of the appellant to be true, applied for admission to the appellant's college in the academic session 1992-93. The complaint stated that in the advertisement it was specifically mentioned "No Capitation Fee". This obviously gave the impression that no capitation fee would be charged from the students. But in fact, at the time of admission, Rs. 1,00,000/- was taken in cash from each of the respondents and despite repeated requests made by the respondents, no receipt for the amount paid by them was given. When the complaint asked the receipt threatened that the admission would be cancelled.

**Issue:** Whether the advertisement given by the appellant was misleading? Whether there was a deficiency in service by the appellant?

**Decision:** The Commission held that the respondent college which was neither affiliated nor recognized for imparting education. This clearly falls within the purview of deficiency as defined in the Consumer Protection Act, therefore the commission rightly held that the appellant institute by giving totally misleading and false advertisement clearly misled the respondents that the institute is affiliated by the Magadh University and recognized by the Dental Council of India. Therefore the Commission held that the respondents (complainants) would be entitled to the compensation as directed by the National Consumer Disputes Redressal Commission. Further direct the appellant institute to additionally pay

compensation of Rs. one lakh to each of the respondents (complainants). And directed the appellant institute to pay cost of litigation which is quantified at Rs. one lakh to each of the respondents.

**2.4.3 Name of the Case:** Brilliant Classes v. B.M. Gupta

**Legislation:** Consumer Protection Act, 1986

**Citation:** Revision Petition No.281 of 2007

**Keyword:** Education

**Commission:** National Consumer Disputes Redressal Commission

**Facts:** In this case the petitioner had made an advertisement in its prospectus regarding preparatory course of Engineering /Medical -2006-07, which was to be conducted at Dwarka and to be managed by the Opposite Party No.2 and the location of said institute was to be close to the residence of the Respondent. So lured by the advertisement given by the petitioner the respondent took admission in the Institute and paid a sum of Rs 20,000/-, but after that the petitioner came to know that such study Centre at Dwarka was not at all opened by the petitioner, therefore the complaint was filed before the District Forum which was filed by B.M. Gupta, guardian of Respondent refund of the sum of Rs.20,000/- to the Respondent along with Rs.5000/- towards compensation and costs.

**Issue:** In this the misleading advertisement was with regard to the opening of study center at Dwarka which was promised as per pamphlet P-2 but was not started by O.P. as promised. The second issue of the complainant is with regard to requirement of appearing for screening test and making payment of Rs.350/- for that purpose and a sum of Rs 20,000/- was paid by the complainant for the admission.

**Decision:** Complaint was filed before the District Forum filed by B.M. Gupta, guardian of Respondent refund of the sum of Rs.20,000/- to the Respondent along with Rs.5000/- towards compensation and costs . The decision given by the State Commission was that it allowed for compensation of Rs/- 2500 instead of Rs 5000/- and as the Petitioner had failed to start the study centre at Dwarka and also to provide mathematics teacher, petitioner had committed deficiency in service, below have rightly directed the Petitioner to refund the fee collected by it from the Respondent.

**2.4.4 Name of the Case:** Indian Institute of Professional Studies v. Smt Rekha Sharma

**Legislation:** Consumer Protection Act, 1986

**Citation:** Revision Petition No. 2864 Of 2011

**Keyword:** Education

**Commission:** National Consumer Disputes Redressal Commission

**Facts:** In this case the petitioner had published an advertisement in Dainik Bhaskar newspaper where it had asked for fresh admission in the M.P.Ed. (Master of Physical Education) course for the year 2009-2010. Hence the complainant was lured by such advertisement and had sent a demand draft on 08.06.2009 for Rs.200/- from Sate Bank of India, Kota for application form for application to the said course. The demand draft (DD) was sent by speed post on 9.6.2009 which involved a further expenditure of Rs.25/- in addition to Rs.30/- spent by the respondent as DD charges. The opposite party sent a prospectus to the complainant but in the prospectus no information was given about M.P.Ed. Course treating this as an instance of false advertisement and an unfair business transaction on the part of the Original Petition, the complainant sent a letter on 30.6.2009 through registered post requesting for refund of Rs.275/-. The Original Petition, however, did not refund the money. Aggrieved by this and also alleging that she lost her one academic year in the process, the complainant filed a consumer complaint with the District Forum praying for compensation from the Original Petition.

**Issue:** The main issues was whether the respondent was covered within the meaning of consumer as given under consumer Protection Act, 1986 as she had only purchased the application form as the Original Petition contested the complaint and submitted that the M.P.Ed course in question had been started in that year itself but the new prospectus had been sent for printing and hence the Original Petition had sent old prospectus which also contained information about the M.P.Ed course. It was claimed by the Original Petition that the complainant either could not see or misplaced the same deliberately.

**Decision:** On the basis of the evidence adduced by the complainant and supported by documents, the District Forum held that there was deficiency



in the matter on the part of the Original party. The District forum passes the order that the complaint of the complainant is decided ex-parte against the opposite party and ordered that the opposite party shall pay the complainant Rs.280/- for DD amount, Rs.10,000/- towards mental agony and Rs.2000/- for litigation expenditure within two months from the date of order. Due to act of the opposite party, complainant lost her one year for which the opposite party shall pay Rs.25,000/- to the complainant. If the payment is not made in stipulated period then the complainant shall be entitled to get interest @ 9% P.A. On the decreed amount and aggrieved by the decision the Opposite party filed an appeal against the same before the State Commission which was dismissed by the State Commission and hence the petitioner filed the present revision petition challenging the aforesaid order of the State Commission. It is contended by him that first and foremost the respondent is not a consumer since she had only purchased application form including prospectus but had not been admitted to the course in question. His second contention is that in response to the request of the complainant, a copy of the new prospectus which was earlier under print was sent to the complainant and hence no deficiency could be held on the part of the petitioner/OP. He has, therefore, submitted that order dated 28.4.2010 passed by the District Forum, Kota accepting the complaint of the respondent and upholding thereof by the State Commission by dismissing the appeal of the petitioner are arbitrary, illegal and against the mandatory provisions of law and hence are liable to be set aside.

**2.4.5 Name of the Case:** C.M.S. Computer Institute v. Shri Gaurva Sharma

**Legislation:** Consumer Protection Act

**Citation:** Appeal No. FA-884/2006

**Commission:** State Consumer Dispute Redressal Commission, New Delhi

**Keyword:** Education

**Facts:** The appellant published the advertisement in the newspaper that “Why wait for 6 months to 1 year? Get job as soon as you enroll 10 % Job guarantee – Learn Hardware & Networking with the leaders. At CMS you are a winner any way for you have a job on joining the

programme or immediately after the programme.” By reading this in the newspaper the respondent got admitted to the Freedom Jumbo Course floated by the appellant who had duration of 310 hours i.e. 8 months approximately, by paying 30,000/- each. After completion of course respondents were not provided the job, and then the respondent filed the complaint before the District Forum. District Forum has held the appellant guilty for unfair trade practice by giving false and misleading advertisement and directed it to refund the entire fees of Rs.6,000/- paid by the respondents and also pay Rs. 20,000/- by way compensation and Rs. 2,000/- as cost of litigation. By this impugned order the appellant has come for an appeal before the State Commission of Delhi.

**Issue:** Whether reporters of local newspapers are allowed to see the judgment? To be referred to the Reporter or not?

**Decision:** The Commission held that the appellant had deficiency in imparting training of the course and they were unable to get the job for the respondent as stated in the advertisement it is misleading to the general public, the court also had held that compensation and cost of Rs. 5,000/- over and above refund of the fees to each of the respondents.

**2.4.6 Name of the Case:** Deputy Registrar v. Ruchika Jain

**Legislation:** Consumer Protection Act, 1986

**Citation:** RP No 1121 of 2005, III (2006) Consumer Protection Judgement 343 NC

**Commission:** National Consumer Dispute Redressal Commission, New Delhi

**Keyword:** Education

**Facts:** In this case a student who was admitted through management quota was later denied permission to sit in the exam on the grounds that she did not possess the adequate marks.

**Issue:** Whether education can be construed a service under Consumer Protection Act, 1986?

**Decision:** The National Commission held that education had become exceedingly commercialized, and misleading and false advertising were being used by educational institutions to lure students and for charging

capitation fee from them in return of promises for a bright future. The forum also relied upon the Supreme Court judgement in Inamdar and held that for function such as admissions educational institutions come under the Consumer Protection Act, 1986.

**2.4.7 Name of the Case:** IIT College of Engineering v. Vikas Sood

**Legislation:** Consumer Protection Act, 1986

**Citation:** RP No 648 of 2007

**Commission:** National Consumer Dispute Redressal Commission, New Delhi

**Keyword:** Education

**Facts:** In this case the college in its prospectus had stated how it was affiliated to the University of Himachal Pradesh and affiliate to AICTE, New Delhi. However after completing on trimester the students came to know that the college was affiliated to neither.

**Issue:** Whether this constituted an unfair trade practice?

**Decision:** The National Commission held that such advertising was misleading and the conduct of the college amounted to an unfair trade practice thus the students were liable to receive compensation.

**2.4.8 Name of the Case:** HCM Education, Philippines v. Narendra Pal Singh

**Legislation:** Section 2(1)(r), Consumer Protection Act, 1986

**Citation:** Revision Petition No. 2161 of 2012

**Commission:** National Consumer Disputes Redressal Commission, New Delhi

**Keyword:** Education

**Facts:** The facts of this case are as follows. The Respondent/ complainant were assessed by Opposite Party 1 for his educational qualifications with respect to eligibility for entrance into an MBBS course offered by Opposite Party 2. Opposite Party 2 after perusing the complainant's qualifications admitted him into the program after the full payment of fees to Opposite Party 1. The Complainant was also provided a visa for

travel and education in Philippines. The Complainant successfully completed one semester of the course in the Opposite Party 2 College. However while giving the last examination of the second Trimester, the Commission for Higher Education (CHED), Philippines had a resolution passed that the two Ops had offered an MBBS program without the proper CHED memorandum order prescribing such a program. Consequently, the CHED had the MBBS program cancelled. A resolution was also passed by the CHED that the affected students could continue their course but had an added requirement of first passing a B.Sc. course before continuing their MBBS. The complainant returned to India and requested repayment of fees paid by him. The OPs turned a deaf ear to his plea. The complaint was subsequently filed by the complainant in the Consumer Court.

**Issue:** Whether the Consumer Courts had jurisdiction to hear the matter at hand?

Whether the service rendered by HCMI was deficient?

Whether their acts could be construed to be Unfair Trade Practices under COPRA

**Decision:** The Consumer Courts did have jurisdiction to hear the matter. While the policy decisions of a country cannot be subjected to consumer complaints, the fact that OP 2 did not have the proper accreditation necessary for actually offering an MBS course was what resulted in the final cancellation of the MBBS program. While it was a policy decision by the CHED, Philippines to cancel MBBS programs this was only a result of the underlying fault of OP 2. The petitioner's intention was clearly to mint money. Knowing the fact that OP 2 did not have the necessary required clearance to actually offer an MBBS course, OP 1 still obtained fees from the respondent/complainant in this case and facilitated his admission to OP 2 College. Therefore in facilitating the complainant's admission to a college without proper accreditation OP1 was deficient in its service. HCMI has also indulged in an Unfair Trade Practice by misleading complainant regarding the quality and nature of the MBBS program that OP2 could and did provide. Therefore the two OPs were jointly and severally held liable to refund to the fee, deposited by the Complainant.

**2.4.9 Name of the Case:** Business Institute of Management Studies v. State of Himachal Pradesh

**Legislation:** University Grants Commission Act, 1956.

**Citation:** CWP Nos. 8789 and 8781 of 2014, MANU/HP/0207/2016 decided on 27.04.2016

**Court:** High Court of Himachal Pradesh

**Keywords:** Misleading advertisement, Education

**Facts:** The petitioner institute is a registered education society, under the Societies Registration Act, 2006 and would claim that it was recognized by the Sikkim Manipal University and thus entitled to run various courses on its behalf. Petitions were filed by private parties seeking refund of admission fee paid to the petitioner for MBA PGDM course, on the ground that the same was exorbitant and had never been approved either by the State Government or by the UGC. Admission fee paid to the petitioner for MBA PGDM course, on the ground that the same was exorbitant and had never been approved either by the State Government or by the UGC.

**Issue:** Is there a misleading advertisement in the form of unfair trade practice present in the case?

**Decision:** Education institution of the petitioner is no less than a commercial shop, where the aspiring needs of the students stand defeated due to the malpractices and frivolous activities of the petitioner. Such advertisements are misleading in nature. The private institutions cannot be permitted to operate like money minting institutions, rather it has to be ensured that they comply with all the rules, regulations and norms before they are granted permission to operate within the State of Himachal Pradesh. The innocent people of this State cannot be allowed to be duped any further. The petitions were accordingly dismissed with costs of Rs. 10,000/- each to be paid by the petitioner to the H.P. State Legal Services Authority (for short 'Authority') within a period of three months. There was a tremendous increase in the number of affiliated colleges, and in such scenario, the mushrooming of private universities has only led to a cut-throat competition leading to misleading advertisements which can only be termed to be persuasive, manipulative and exploitative, to attract

the widest possible audience. These institutes trap into their web the innocent, vulnerable and unsuspecting students. In these given circumstances, the Chief Secretary to Government of Himachal Pradesh was directed to constitute a committee which shall carry out inspection of all the private education institutions at all levels within 3 months. The Committee shall further report regarding violations being carried out by the educational institutions with respect to the guidelines issued by the UGC. It shall specifically report as to whether any University/Deemed University/Institution is offering any programme through open and distance learning (ODL) in gross violation of the policy of the UGC and, at the same time also issuing misleading advertisements by stating that their programmes are recognized.

## **2.5 Drug Sector**

**2.5.1 Name of the Case:** Smt. Divya Sood v. Ms. Gurdeep Kaur Bhui

**Legislation:** Consumer Protection Act, 1986

**Citation:** I (2007) Consumer Protection Judgement

**Commission:** National Consumer Dispute Redressal Commission, New Delhi

**Keyword:** Drugs

**Facts:** An advertisement was given by 'The Body Care' in The Times of India newspaper that without dieting, weight would be reduced. The complainant, who has paid the amount, after undergoing the treatment, found that the said advertisement was bogus because after taking the treatment, her weight did not reduce. Hence, the complainant filed before the District Forum, Bangalore. The District Forum came to the conclusion that this would be an unfair trade practice and awarded a sum of Rs. 25,000/- as compensation and also directed the petitioner herein to refund the amount of Rs. 10,500/- paid by the complainant to the petitioner. Being aggrieved by the decision of District Forum filed an appeal before the State Forum of Karnataka here also the State Forum confirmed the order passed by the District Forum.

**Issue:** Whether the advertisement in the newspaper leads to misleading to the consumers?

**Decision:** The National Commission held that the tempting advertisements, giving misleading advertisements with regard to the alleged treatment, are increasing day-by-day and are required to be controlled so that persons may not be lured to pay large amount to such bodies in a hope that they can reduce their weight by undergoing the so-called treatment. It was also held that the award made by the fora is very low. Thus the revision petition was dismissed.

**2.5.2 Name of the Case:** Bhanwar Kanwar v. R.K. Gupta and Anr.

**Legislation:** Consumer Protection Act, 1986.

**Citation:** Civil Appeal No. 8660 of 2009, MANU/SC/0305/2013 decided on: 05.04.2013, II (2013) CPJ

**Keyword:** Misleading advertisement and Unfair Trade Practice

**Court:** Supreme Court of India

**Sector:** Drugs

**Facts:** Prashant, son of the appellant born in May, 1989 had suffered from febrile convulsions during fever at the age of six months. He was taken to nearby Doctor who after examining him informed that the children can get such kind of fits during fever. He was treated by giving paracetamol tablet. Even after that Prashant had high fever and he suffered convulsions for which he was treated by one Dr. Ashok Panagariya, According to the Appellant, she came across an advertisement published in a newspaper 'Jan Satta' dated 8.8.1993 offering treatment of the patients having fits with Ayurvedic medicine by Dr. R.K. Gupta-Respondent. The advertisement impressed the Appellant as the Respondent claimed total cure of fits. Respondent assured that he had specialised treatment for the problem of Prashant by ayurvedic medicines. Under his advice, the son was treated. But unfortunately, despite medicines being given regularly the condition of Prashant started deteriorating day by day and the fits which were occasional and occurred only during the high fever, started occurring even without fever. On being informed of the condition of Prashant Respondent intimated that the medicine being ayurvedic had slow effect. He instructed the Appellant to regularly administer the medicines. He assured that the line of treatment was correct. The appellant consulted another doctor and came to know that there was no hope of the child becoming normal again. The

respondent was passing off allopathic medicines as ayurvedic and administered medicines not meant for children on Prasanth.

**Issue:** Is there a misleading advertisement and unfair trade practice?

**Decision:** Respondent have made the false representation and was guilty of unfair trade practice. He adopted unfair method and deceptive practice by making false statement orally as well as in writing. Both Prashant and the Appellant suffered physical and mental injury due to the misleading advertisement, unfair trade practice and negligence of the Respondents. The Appellant and Prashant thus are entitled for an enhanced compensation for the injury suffered by them. An amount of compensation at Rs. 15 lakhs for payment in favour of the Appellant is granted with a direction to the Respondents to pay the amount to the Appellant within three months.

## **2.6 Medical Sector**

**2.6.1. Name of the Case:** Ajay Gautam v. Amritsar Eye Clinic & Ors.

**Legislation:** Consumer Protection Act, 1986

**Citation:** Review Application No.79 of 2010 & Review Application No. 209 of 2011.

**Keyword:** Medical

**Commission:** National Consumer Disputes Redressal Commission New Delhi.

**Facts:** In this case the Respondent doctor and the hospital were guilty of adopting unfair trade practice by publishing misleading advertisement in the newspaper. In this case the qualification of the doctor was not denied but the main question was with regard to the misleading advertisement given by the doctor in the newspaper which was prima facie misleading to the reader as “it gave an impression that any defective vision could be corrected to the normal vision of 6/6 by the use of excimer laser machine”. The complainant relying on the truthfulness of such advertisement had undergone the surgery but later on the doctor denied that assurance or promise of the said treatment.

**Issue:** The main issues raised was whether doctor was entitled to publish such an advertisement as mentioned above or it was unethical to do so



under various legislations dealing with medical ethics, and under general parlance a medical practitioner is permitted to make formal announcement in Press regarding his type of practice, temporary absence from duty, on resumption of another practice, on succeeding to another practice.

**Decision:** The State Commission in this case held that the doctor and the hospital were guilty of adopting unfair trade practice within the meaning of section 2(1)(r) of the Consumer Protection Act, 1986 and also violating the code of Ethics Regulations (Regulation no 6.1) by publishing Misleading Advertisement. It ordered the doctor to pay compensation of Rs.1, 00,000/- at 12% p.a.

**2.6.2 Name of the Case:** Dr.V. K. Aggarwal v. M/s Infosys Technologies

**Legislation:** Consumer Protection Act, 1986

**Citation:** OP No 287 of 2001

**Commission:** National Consumer Dispute Redressal Commission

**Keyword:** Medical

**Facts:** The complainant was shareholder of the shares issued by the opposite party. Certain bonus shares were issued by the Company which the complainant did not receive and as a result suffered financial loss. Thus it was contended by him that this amounted to a deficiency in service and thus he should be compensated the differential if the loss would not have occurred.

**Issue:** Whether a shareholder is a consumer, under section 2(1)(d) of the Consumer Protection Act, 1986?

**Decision:** The National Commission held that the case fell under the commercial purpose exception of the Act, since dealing in shares was not his means of livelihood. It was also held that cases involving shares involved complex appreciation of evidence and hence were more suitable for the jurisdiction of a civil court.

**2.6.3 Name of the Case:** Baby Preeti Goel v. Batra Hospital

**Legislation:** Consumer Protection Act, 1986

**Citation:** OP No 166 of 1996

**Commission:** National Consumer Dispute Redressal Commission

**Keyword:** Medical

**Facts:** In this case a four year old girl was admitted with acute abdominal pain and fever was admitted into the hospital. Based upon a series of tests it was concluded that she was suffering from sub-acute intestinal infection which necessitated an explorative surgery. The complainant contended that this procedure was indicative of medical negligence as the tests could have been misleading and thus demanded compensation.

**Issue:** The issue in this case was whether the tests relied upon was misleading and thus the hospital had negligently performed the procedure?

**Decision:** The National Commission held that the requisite tests conducted were conclusive and could not be held to be misleading and rather fulfilled the requirement of the procedure. Hence there was no medical negligence on part of the hospital and the complaint was dismissed.

**2.6.4 Name of the Case:** Dr. Baleshwar Prasad v. Firtu Das Mahant

**Legislation:** Consumer Protection Act, 1986

**Citation:** RP No. 1949 of 2003

**Commission:** National Consumer Dispute Redressal Commission

**Keyword:** Medical

**Facts:** A suit of medical negligence was filed by the complainant against the opposite party doctor and his doctor for unfair trade practices. The latter was practicing under an invalid rural practitioners' license while his compounder gave the complainant's son an injection when he was not trained to do so resulting which the son died. Therefore the complainant demanded compensation.

**Issue:** Whether the conduct of the opposite party doctor and compounder constituted an unfair trade practice since they did not possess the requisite medical qualifications so could the commission order a closure of their dispensary?

**Decision:** The National Commission held that the conduct constituted an unfair trade practice since they were misleading the patients by running a dispensary without possessing the requisite medical qualifications. Thus the appeal by the opposite party was dismissed.

**2.6.5 Name of the Case:** Goyal Hospital v. Kishan Gopal Shukla

**Legislation:** Consumer Protection Act, 1986

**Citation:** RP No 4023 of 2011

**Commission:** National Consumer Disputes Redressal Commission

**Keyword:** Medical

**Facts:** In this case a pregnant woman lost her life after delivery due to certain cardio-vascular complications. It was contended by the respondents (complainants) that the doctors treating her had shown medical negligence since one of the doctors treating her was not a qualified cardiologist even though he had written his qualification as 'Physician and Cardiologist', thereby leading to a flawed diagnosis which eventually led to her death.

**Issue:** Whether the doctors treating her had committed medical negligence?

**Decision:** The National Commission held that doctors were guilty of medical negligence. Portraying one's self as possessing certain qualifications when in reality one does not possess them amounts to a clear case of misrepresentation and misleading advertisement. Hence, compensation was awarded.

**2.6.6 Name of the Case:** Dr. M. Kumar v. Vijay Kumar Srivastava

**Legislation:** Consumer Protection Act, 1986

**Citation:** Revision Petition No. 2772 of 2010 in Appeal No. 255/2004

**Commission:** National Consumer Disputes Redressal Commission

**Keyword:** Medical

**Facts:** The Complainant/ Respondent took his son to the Petitioner/ Opposite Party who represented himself as a B.D.S. to remove certain tooth. The Opposite Party however, not only removed those tooth but also a few other tooth which he wasn't supposed to. The Complainant on realizing this rushed back to the Opposite Party's Dental Clinic and asked him about the mistake. The Opposite Party assured the Respondent that the teeth would grow back in no time. However this did not happen. As a result, the complainant filed a consumer complaint against the Opposite

Party, where it was discovered that the Opposite Party only had a B.D.S. (Alt.) degree and not a B.D.S. degree.

**Issue:** Whether the Opposite Party adopted unfair trade practice as a result of misrepresentation on his part.

**Decision:** The National Commission held that Opposite Party had in actuality misrepresented himself to be a Dentist with a degree recognized by the Medical Council of India. The letter head of the Petitioner has written that he has a B.D.S. degree when he actually does not. It is a result of this misrepresentation that the Complainant brought his son to the Opposite Party's Dental Clinic and if not for such misrepresentation he would not have done so. Therefore the Opposite Party did adopt unfair trade practice as under the definition of Section 2(r), COPRA, 1986 and was held liable for the same.

**2.6.7 Name of Case:** Dr. Kunhalan Gurukkal and Anr. v. A.M.Muhammed and Another

**Legislation:** Consumer Protection Act, 1986

**Citation:** First Appeal No. 340 of 2010

**Commission:** National Consumer Disputes Redressal Commission

**Keyword:** Medical

**Facts:** The complainant's son suffered from cancer in the leg (Osteosarcoma right distal femur with marrow involvement) as diagnosed by the Regional Cancer Centre, Thiruvananthapuram and had as such been advised to undergo amputation of leg in order to ensure that the cancer does not spread to other parts of the boy's body. However, coming across a newspaper article in which it was stated that OP1 and OP2 had the skill to cure the cancerous tumours of children, the complainant decided to go to OP1 and OP2 for his son's treatment. The treatment failed and the cancer ended up spreading to other parts of the son's body, ultimately resulting in his death. Additionally the filing of the appeal by the OPs was beyond the general bar and they did not provide any cogent reasons for such delay.

**Issue:** Whether the two OPs were guilty of adopting unfair trade practices and were deficient in their service. Whether the delay can be condoned for the present appeal?

**Decision:** By holding out to the public that they could cure a life threatening and difficult to cure disease like cancer, the two OPs did adopt unfair trade practices. They misled the public about their skill regarding the curing of cancer. In a situation like the complainant's where he was in a desperate mental condition and vulnerable, assuring something like the curing of cancer is akin to exploiting the desperation of the public. In the present case the victim's parents were themselves the victims of misleading publicity and verbal assurances of the opposite parties. Therefore there is no doubt that the two OPs have adopted unfair trade practices. They were also deficient in their imparting of any treatment as the victim's condition did not improve in any way. Also they tried to use Ayurvedic medication to cure cancer when one of the OPs is a fully qualified doctor who ought to have known that amputation of the leg of the complainant's son gave him the maximum possibility of survival. The appeal was also disallowed on the grounds of delay in the filing of the appeal. When there is a plea to condone a particular delay the party requesting such condonation needs to give proper, cogent reasons for the same delay. There were no such reasons in the present case. As such the delay was not condoned.

## **2.7 Automobile Sector**

**2.7.1 Name of the Case:** M.R.Ramesh v. M/s. Prakash Moped House & Ors.

**Legislation:** Consumer Protection Act, 1986

**Citation:** Revision Petition No: 831 Of 2001

**Commission:** National Consumer Disputes Redressal Commission, New Delhi

**Keyword:** Automobiles, Defective Good

**Facts:** This case pertains to a motorbike Hero Honda CD-100 that Mr. M.R. Ramesh bought in Bangalore in February 1993. His contention was that at the time of purchase, he was assured that the bike would run 80 kms on a litre of petrol. However, the bike gave 22 kms less than promised. He filed before the National Consumer Disputes Redressal Commission, New Delhi, an advertisement published in October 1993, wherein the manufacturer had made such a claim about the mileage of

the motorcycle. The manufacturer, on the other hand, brought on record advertisements issued during the period which carried an asterisk on the numerical figure of 80 and at the foot of the advertisement in small print, said “at 40 kmph/130 kg”, thereby qualifying the claim.

**Issue:** The National Commission made two important observations here: (1) that there was no explanation from the manufacturer as to how the advertisement shown by the consumer did not carry any such qualifying statement. (2) Even advertisements that specified at the bottom in fine print, “40kmph/130 kg” or “under standard conditions” were not intelligible to the consumer and were therefore deceptive.

**Decision:** National Commission held that “Such an advertisement as put out by the respondents is misleading. /\*It amounts to unfair trade practice. When the respondents claimed that motor cycle can give mileage of 80 kms per litre, they cannot just be absolved of their responsibility not to clearly indicate that this would be so when the motor cycle is driven at a speed of 40kms per hour and the load would be 130kg. Simply by putting an asterisk and then indicating such condition in small print at the bottom of the advertisement is certainly deceptive. Moreover, when it is stated that this mileage can be obtained at a particular speed and load under “standard conditions”, then those standard conditions must be indicated so that the consumer is duly informed of the bargain he is in it. Rather in our view any such advertisement should take into account the conditions of the roads in the cities”. It directed the manufacturer not to make such a claim in future without stating clearly, intelligibly and “in the same type of letters”, the basis for the claim. The consumer wanted the price of the motor cycle to be refunded to him. However, keeping in mind the fact that the case was almost ten years old, the National Commission instead awarded the consumer a compensation of Rs 25,000/-.

**2.7.2 Name of the Case:** Dr. Anupam Bhattacharya v. Vodafone Essar East Limited

**Legislation:** Consumer Protection Act, 1986

**Citation:** Revision Petition No. 2197 of 2009

**Commission:** National Consumer Disputes Redressal Commission

**Keyword:** Automobile

**Facts:** The respondent company which was the service provider for mobile phone and networks had advertised through messages in the various operating networks and had done Misleading Advertisement by making “an offer that one could win an offer of Kinetic Velocity Motorcycle” if someone participates in the said offer and accordingly the petitioner participated in the offer and the Respondent denied of the said offer.

**Issue:** In this case, the petitioner was lured by the message on his mobile phone which mentioned that by participation in the one could win an offer of Kinetic Velocity Motorcycle. But certain messages which the respondent company offered were incomplete and hence the participation of the petitioner was not registered. Since despite long persuasion by the petitioner consumer complaint was filed seeking direction to company to hand over to the prize as per the advertisement to the petitioner.

**Decision:** District forum accepted the claim of the petitioner and directed the respondent company to hand over the winning prize of the Kinetic Velocity Motorcycle to petitioner along with compensation of Rs 500/- and also cost of Rs 1000/-, it also mentioned the default clause that in case award was not given 60 days from the date of the order, an award of Rs 6000/- would have to be given with interest @ 8 % p.a.

**2.7.3 Name of the Case:** Marine Container Services (India) Pvt. Ltd. v. Mercedes Benz India Ltd. and Anr.

**Legislation:** Consumer Protection Act, 1986

**Citation:** Consumer Complaint No. 227 of 1998

**Commission:** National Consumer Disputes Redressal Commission

**Keyword:** Automobile

**Facts:** The complainant Company, coming across an advertisement decided to advance book a Mercedes Benz E250D manual transmission car by paying the specified amount. However coming across some articles which stated that this model of the Mercedes Benz was being planned to be phased off Indian roads while a new model the E300D was to be released, the complainant decided to seek clarification. A clarification

was issued stating that there was no plan to phase out the vehicle E250D and there were no immediate plans to release a new model in India. The complainant Company sought a guarantee from Mercedes Benz that no new model would be released in India within the next 5 years. Mercedes Benz did not give such guarantee. When the time for paying the full amount did come, the complainant company got an upgrade to a full transmission version of the E250D model and paid the amount in full. Also, no complaints were raised by the complainant company about the quality of the vehicle itself. However when a new model of the Mercedes Benz was released 1 year after the sale made to the complainant, the complainant company filed a suit against Mercedes Benz claiming unfair trade practice and also prayed for an exchange of their old model for the newer model. Their contention was that if they had known about the newer model, they would not have purchased the old model and would have waited for the release of the newer model.

**Issue:** Whether Opposite Party adopted unfair trade practice as defined under COPRA, 1986 by releasing a new model of their vehicle despite clarifications sought against the same by the complainant company?

**Decision:** The National Commission held that there was no unfair trade practice adopted by the opposite party. Instead it held that the complaint was actually an unfair means used by the Company to exert pressure on the opposite party to accede to their unjustified demand to replace their older vehicles with newer ones. The Opposite Party did not assure the complainants that they would not result a newer vehicle in a period of 5 years, instead they only assured them that there were no immediate plans for the same. 'Immediate' cannot be construed to mean a period of a year.

**2.7.4 Name of the Case:** Em Pee Motors Ltd. and Ors. v. Ramesh Kumar Bamal and Ors.

**Legislation:** Consumer Protection Act, 1986.

**Citation:** Revision Petition Nos. 3666-3667, 3925 and 3980-3981 of 2014, MANU/CF/0195/2015 decided on 16.01.2015

**Commission:** National Consumer Disputes Redressal Commission, New Delhi



**Keyword:** Mileage and other issues

**Facts:** The complainant purchased a Toyota Itios car, for a total consideration of Rs. 5,48,485. According to the complainant, since very beginning the vehicle was giving mileage of 13 kms per litre without air conditioner and 11 kms per litre with air conditioner as against the assurance/claim of 17.57 kms per litre given by the opposite parties i.e. the manufacturer of the vehicle Toyota Motors and the seller Em Pee Motors Ltd. According to the complainant he had also brought it to the notice of the workshop of Em Pee Motors Ltd. that the vehicle was giving mileage of 13 kms per litre and was assured that the fuel consumption would improve but later on there was no improvement in the mileage.

**Issue:** Is the assurance misleading in nature and an unfair trade practice?

**Decision:** The mileage given by a vehicle is the result of a number of factors including, (a) the road on which the vehicle is driven like traffic, fuel quality, driving speed, brake usage etc. Therefore, a vehicle which gives a particular mileage under standard test conditions will never be able to deliver the same mileage when it is driven on a city road and that too, under conditions different from the conditions under which it was test driven. Thus the report cannot be the basis of concluding Unfair Trade Practice. The opposite parties cannot be said to have used unfair trade practices for selling the vehicle. No compensation was awarded.

**2.7.5 Name of Case:** Tata Eng & Locomotive Co.Ltd v. Director (Research) O/B Deepak Khanna & Ors.

**Legislation:** Monopolies and Restrictive Trade Practices Act, 1969

**Citation:** Civil Appeal No. 2069/2006, MANU/SCOR/09330/2015 decided on 07.09.15

**Court:** Supreme Court of India

**Keyword:** Automobile, Unfair Trade Practice

**Facts:** The appellant is a company engaged in manufacture and sale of automobiles. The practice under scrutiny is of the year 1999 when the appellant was to begin the manufacture and delivery of newly introduced Tata Indica cars into the market with effect from February 1999, with the installed capacity of approximately 60,000 cars in a year. The appellant

invited the prospective customers to book the car through dealers. The booking amount demanded by the appellant was quite high and close to the estimated price finally payable which would include excise duty, sales tax and transportation charges. The order booking form mentioned in Clause 7 that the person concerned had carefully read the terms and conditions of the bookings and agreed to the same. Although the initial allotment was confined only to 10,000 cars, due to overwhelming response they introduced a second phase of delivery of next set of cars as an option for customers to select, and the ones who did not choose this were refunded immediately. But they increased the booking amount. The contention was that this practice was unfair trade practice.

**Issue:** Will the action fall under the definition of Unfair Trade Practice?

**Decision:** The definition of “unfair trade practice” in Section 36-A mentioned above is not inclusive or flexible, but specific and limited in its contents. The preliminary investigation report does not point to any unfair trade practice in this case. the rule is to say that substantial falsity is, on the one hand, necessary, and, on the other, adequate, to establish a misrepresentation” and “that where the entire representation is a faithful picture or transcript of the essential facts, no falsity is established, even though there may have been any number of inaccuracies in unimportant details. Conversely, if the general impression conveyed is false, the most punctilious and scrupulous accuracy in immaterial minutiae will not render the representation true. There is no unfair trade practice in this case.

**2.7.6 Name of the Case:** M.K. Raghavan Pillai v. Popular Vehicles and Services

**Legislation:** Consumer Protection Act, 1986.

**Citation:** Appeal No. 664 of 2013, MANU/SQ/0012/2014 decided on 09.07.2014

**Keyword:** Unfair Trade Practice, Automobile.

**Commission:** State Consumer Disputes Redressal Commission, Kerala

**Facts:** Appellant purchased a second hand Maruti 800 Car from the opposite party based on opposite party's advertisement during April 2011, which stated the 1st opposite party offered an MP3 player free of cost to the purchasers who purchases second hand Maruti cars from them

between 7.4.2011 and 10.4.2011. Appellant impressed on the advertisement purchased Maruti 800 car from the opposite party and issued two cheques. However the said cheques were not issued and delivery of vehicle delayed. One of the cheques were not encashed due to technical reasons and the appellant gave cash in place of it later and on the same day the car was delivered. The opposite parties charged service charge for registration of the vehicle and did not give the MP3 player as per the advertisement. The appellant also had to buy a steering cover.

**Issue:** Was any unfair trade practice adopted ?

**Decision:** The acts of the opposite parties are a clear deficiency in service and unfair trade practice which caused financial loss. The Respondent/ opposite party is directed to pay a sum of Rs. 6,000 towards compensation as non-delivery of MP3 player and opposite party/ Respondent is further directed to pay a sum of Rs. 2,000 towards cost of litigation. The payment shall be made within a period of 30 days from the date of receipt of the copy of the judgment.

## **2.8 Insurance Sector**

**2.8.1 Name of the Case:** Arjanlaldas Brijlal & Co. v. Oriental Insurance Co. Ltd.

**Legislation:** Consumer Protection Act, 1986

**Citation:** OP No 72 of 1999

**Keyword:** Insurance

**Facts:** In this case the complainant company tried to get an insurance cover issued for goods which had been destroyed in a storm earlier that day. This was done through a certain officer in the insurance company. Later the complainant filed a complaint against the insurance company for deficiency in service as it had repudiated the claim.

**Issue:** Whether the insurance was justified in repudiating the insurance claim that is whether there was a deficiency in service?

**Decision:** It was held that there was no deficiency in service and the company was justified in repudiating the claim in the first place. The National Commission held that the insurance was in breach of the principle of uberrima fides since the complainant had committed a fraud on the

insurance company with the connivance of one of its own officials. Since when the cover note for the insurance was issued by the officer it was already known that the goods had been destroyed in the storm. The note was thus issued through misrepresentation and unfair trade practice. Hence it was held that the company was not entitled to any claim.

**2.8.2 Name of the Case:** Chairman and Managing Director, Oriental Insurance v. Balaji Cotton Traders

**Legislation:** Consumer Protection Act, 1986

**Citation:** First Appeal No 389 of 2007

**Commission:** National Consumer Disputes Redressal Commission

**Keyword:** Insurance

**Facts:** In this case the complainant (cotton traders) had filed for insurance for their cotton stocks which had been gutted in a fire. But the claim was denied by the company on the grounds that the complainant had changed their name and the insurance was thus not in their name. The complainant however contended that the change in name had been intimated.

**Issue:** Whether the Insurance Company was justified in denying the claim of the cotton traders?

**Decision:** The National Commission held that the complainants had intimated regarding the change name and the insurance cover could not be denied on ground of such mere technicalities as it was clear that the proprietor was the same. Also, the IRDA guidelines had to be adhered to and in keeping with them the interest should be levied.

**2.8.3 Name of the Case:** Life Insurance Corporation of India v. Smt. Dhanalakshmi

**Legislation:** Consumer Protection Act, 1986

**Citation:** RP 3301 of 2007

**Commission:** National Consumer Disputes Redressal Commission

**Keyword:** Insurance

**Facts:** In this case the second instalment for the policy had not been made and hence the policy lapsed. The wife of the deceased tried to renew it after the death of the deceased.

**Issue:** Whether such a policy can be renewed?

**Decision:** It was re-affirmed in this case that a life insurance policy can only be renewed during the life time of the insured and not after especially since the grace period was over.

## **2.9 Cosmetic Sector**

**2.9.1 Name of the Case:** Shipra Sachdeva v. V.L.C.C. Health Care Ltd. & Another

**Legislation:** Consumer Protection Act, 1986

**Citation:** Revision Petition No. 2500 of 2008 in Appeal No. 542 of 2007

**Commission:** National Consumer Disputes Redressal Commission

**Keyword:** Cosmetics

**Facts:** The Complainant contacted opposite party No 1 and obtained a package for reduction of her weight to the extent of 20 Kg after reading an advertisement in the newspapers for reduction of weight without help of medicines. She deposited a sum of Rs 33,060 with the OP No. 1 with receipt dated 11.07.2005. It is further averred by Dr. Poonam Bhatia, Authorised person of OP No. 1 that her weight would be reduced by 20Kg, within a period of 5 to 8 months. As per the complainant, her weight did not reduce in spite of attending exercises, having tucks and following diet, as advised by OP Institute, subsequently repeated the same.

**Issue:** Whether the advertisements made about the package misleading in nature?

**Decision:** The OP were directed to pay the Complainant a consolidated amount of Rs 25,000 as compensation within a period of 30 days from the date of receipt of certified copy of this order failing which the decretal amount till the date of actual payment.

**2.9.2 Name of the Case:** Gillette India Limited v. Reckitt Benckiser (India) Pvt. Ltd.

**Legislation:** Consumer Protection Act, 1986.

**Citation:**CS (OS) 251/2016, MANU/DE/1381/2016 decided on 01.06.2016

**Court:** High Court of Delhi

**Keyword:** Cosmetic, cream

**Facts:** The application is filed by the plaintiff in this suit for injunction and damages against the stated disparaging video advertisement issued by the defendant. Plaintiff is Gillette India Ltd. which manufactures razors for hair removal and plaintiff sells these razors under the trademark VENUS and SIMPLY VENUS. Plaintiff's razors have a typical light blue colour. Defendant/Reckitt Benckiser (India) Pvt. Ltd. manufactures hair removal creams and sells the said hair removal creams under the trademark 'VEET'. The issue to be decided by this Court is the grant of ad interim injunction, till the disposal of this injunction application, against the defendant airing the impugned advertisement which as per the plaintiff is disparaging and contains falsehood and is misleading in nature. The following was brought up based on the grounds:

- (i) The razor shown in the impugned advertisement being of blue colour and which will necessarily have co-relation only to the plaintiff's razor because plaintiff's razors are blue in colour and no other company sells razor of blue in colour.
- (ii) In the impugned advertisement disclaimer of ordinary razors is shown in extremely fine print, whereas it should be bolder as to be seen in normal way by the ordinary customer.
- (iii) The defendant while showing a razor for hair removal in the impugned advertisement does not show the razor with use of foam, etc., and which use of foam is a necessary pre-condition before use of the razor of the plaintiff and as provided in the printed instructions on the product of the plaintiff.
- (iv) Defendant claims that hair removal cream is twice as better as a razor and which assertion is not puffery but malicious because the same is not supported by any evidence of an independent/neutral body.

**Issue:** Is there a misleading advertisement and can an injunction be granted?

**Decision:** The contention that the shapes of the razors were different, even though same in colour and hence they are different goods was not accepted by the court. In view of the identical colour of the razors of plaintiff to the razor shown in the impugned advertisement a viewer of

the impugned advertisement would therefore necessarily co-relate the razors in the impugned advertisement with the razors of the plaintiff. It is not expected that the ordinary consumer will place any emphasis on the shape of the razors. Defendant is bound not to use the razor in the impugned advertisement which would have the same colour of the razors of the plaintiff. In regard to case of misleading advertisement, the judges noted that no injunction on this aspect can be granted for the reason that it is conceded on behalf of the plaintiff that in its instructions given in the cover of the razor, use of the foam is only said to be a better alternative while using the razor and it is not that the use of the foam is said to be mandatory.

## **2.10. Aviation Sector**

**2.10.1 Name of the Case:** Kingfisher Airlines v. M. L. Sudheen

**Legislation:** Consumer Protection Act, 1986

**Citation:** Revision Petition No. 3278 of 2007

**Commission:** National Consumer Disputes Redressal Commission

**Keyword:** Aviation

**Facts:** The appellants were initially Air Deccan, but during the pendency of the suit, Air Deccan was taken over by Kingfisher Airlines. Air Deccan had floated a scheme on its website which allowed for the purchase of 26 air tickets for the price of Rs. 50,000. However when the Respondent/Complainant purchased the 26 tickets under the scheme, he was not allowed to fly a particular route (Delhi- Bangalore and Mumbai-Bangalore). This was because the scheme had a particular conditionality that only those sectors were allowed which had ATRs flying. The conditions of the scheme also stated that the entire amount of purchase was meant to be non-refundable. As such the Respondent/Complainant was not refunded the amount of Rs. 50,000.

**Issue:** Whether the scheme floated by Air Deccan (Kingfisher) amounted to unfair trade practice. Whether the amount should be refunded to the Complainant.

**Decision:** Rejecting the holding of the District and State Commissions, the National Commission held that there was no misrepresentation on

the part of the Appellant. The conditions of the scheme were clearly mentioned on the website itself. The Complainant being an educated person also cannot claim that he had not known the non-refundability of the money he used to purchase the tickets. Therefore there is no question of an unfair trade practice in this case. Even though the conditions clearly stipulated that the money would be non- refundable, the complainant had not used even one of those tickets. He had not used the service of Air Deccan at all. The Opposite Party, Air Deccan had also not adduced any evidence to show that the sector that the Complainant wanted to fly was not covered by the scheme. In light of the special circumstances of the case, the National Commission held that the money should be refunded to the Complainant.

**2.10.2 Name of the Case:** Jagrut Nagrik and Ors. v. The Secretary, Ministry of Civil Aviation and Ors.

**Legislation:** Consumer Protection Act, 1986

**Citation:** Consumer Case No. 13 of 2008 decided on 14.08.2015, MANU/CF/0587/2015

**Commission:** National Consumer Disputes Redressal Commission

**Keyword:** Aviation

**Facts:** The complainant, Jagrut Nagrik is a Public Trust, registered under the Bombay Public Trust and Societies Act and is stated to be working as a Voluntary Consumer Association, providing legal help to the consumers and undertaking activities for their awakening. According to the complainants, airlines have been advertising sale of tickets on throwaway prices, ranging from Rs. 0/- to Rs. 999/- while in fact, charging much more than the price advertised by them. The respondent airlines, according to the complainant, are thereby misrepresenting the passengers, through misleading advertisements, as regard the fare being charged by them. This is also the case of the complainants that the airlines are charging fuel surcharge, congestion charges and transaction fee, which is much higher than their actual cost in this regard. The aforesaid action of the airlines, according to the complainants amounts to unfair trade practice and deficiency in the services to the passengers.



**Issue:** Are the advertisements misleading in nature and have the airlines adopted unfair trade practice?

**Decision:** The advertisements disclosing only the minimum basic fare to the potential consumers is to say the least misleading, when viewed in the light of the fact that the other charges payable by a passenger, far exceed the said minimum basic fare. The obvious purpose behind issuing such misleading advertisements is to lure the customers to the website of the carrier by misrepresenting to them that they would be able to travel on payment of the fare advertised by the carrier whereas, in fact, they have to pay much more than the said minimum basic fare. Though, the whole of the fare including its break up into different components would be known to the passengers before he books a ticket on the website of the carrier, the ulterior motive behind issue of such advertisements is duly served by that time, since having gone to the website of the carrier not all the potential consumers would retract without booking tickets. Having taken the trouble of accessing the website of the concerned carrier, some of them are likely to book the tickets, despite the fact, that the total amount payable by them is much higher than the amount advertised by the carrier. Such advertisements also serve the purpose of increasing the number of persons visiting the website of the carrier since not all of them would visit if they are not allured by the promise of the travelling on fare which is much below the actual fare payable by the passengers. For the reasons stated hereinabove it was held that issue of advertisements such as those issued by several airlines whether in newspapers or otherwise, constitutes unfair trade practice as defined in Section 2(1)(r) of the Consumer Protection Act, 1986. Airlines like Deccan Aviation and Jet Airways which used such practices were directed to deposit Rs. 5,00,000/- and Rs. 25,00,000/- respectively as compensation in the Consumer Welfare Fund of Government of India.

## **2.11.Unfair Trade Practice/Misleading Advertisements**

**2.11.1 Name of the Case:** Jai Bhagwan v. Estate Officer, Chandigarh

**Legislation:** Consumer Protection Act, 1986

**Citation:** Revision Petition No. 111 of 2011

**Commission:** National Consumer Disputes Redressal Commission

**Keyword:** Unfair trade practices; Misleading notification; Deficiency of services; Land.

**Facts:** In this case the appellant, after two adverse orders from the District Forum and State Commission, filed a revision petition before the National Commission. The problem at hand is with regard to the non-allotment of an industrial plot for which he had paid the requisite fee of Rs. 1000/- on the basis of oral assurances of the Opposite Party. The appellant's contentions were that there was a deficiency of service by way of unfair trade practices, and that refund was made only after 30 years when he ought to have been allotted the land, despite several representations to the OP.

**Issue:** The basic question to be addressed is as to whether or not the assurances of the OP that land would be allotted could be considered as an unfair trade practice and hence misleading on their part.

**Decision:** The National Commission dismissed the appeal and upheld the orders passed by the State Commission. It held the complaint to be frivolous and that the appellant was trying to rake up an old matter citing irrelevant cases, and was asking to be allotted land simply on the justification that he had spent Rs. 1000/- 30 years before. The limitation period could not be breached simply because he had been refunded the amount 30 years later. Further, even if the complaint were accepted, the assurances made by the OP were merely oral with no documentary evidence adduced on the part of the appellant. Also, the representations made to the OP by the appellant did not convince the commission of his interests in being allotted the land. Thus, there was no unfair trade practice and hence, could not have been misleading.

**2.11.2 Name of the Case:** Jain Irrigation Systems Ltd. v. M.B. Malipatil & Anr.

**Legislation:** Consumer Protection Act, 1986

**Citation:** Revision Petition No. 932 of 2007

**Commission:** National Consumer Disputes Redressal Commission

**Keyword:** Unfair trade practices

**Facts:** This case deals with an advertisement by the appellant for issue culture plants of G-9 variety have a very high yield of bananas. The respondent had purchased and planted 4500 of the seedlings, with due care and nurturing strictly in accordance with instructions as laid down by the appellant. But later, most of the seedlings had failed and plant growth was stunted, with weak stems and dried up bunches. Despite several representations, there was no response from the appellant. Several experts from the Horticultural Dept. inspected the fields and the plants and it was reported that 65% of the plants had failed owing to defective and diseased seedlings. Thus a complaint on the grounds of unfair trade practices was filed to make good the loss. The appellant argued that the wrong method of irrigation was used instead of drip irrigation which lead to overflowing. Further, the banana seedlings had been planted alongside virus infected watermelons, on poor quality sandy soil which had low nutrient and water holding capacity.

**Issue:** The basic issue was as to whether or not there were unfair trade practices committed by the appellants with respect to sale of defective seedlings. The underlying issue is with reference to the misleading advertisement by the appellant as to the genuineness of the seedlings and the instructions that could have been possibly misconstrued by the respondent.

**Decision:** The District Forum and the State Commission rejected the appellant's arguments and held it liable to compensate the respondent for the losses without an in-depth analysis of the report and findings of the experts. The National Commission observed that there was no evidence adduced to prove that the disease was caused primarily due to defective seedlings. There was enough proof to show that the seeds had failed due to poor agronomic practices like planting next to diseased watermelons, low fertility soil. As regards the misleading part of the advertisement, the fora below had looked into the wording and stated conclusively that drip irrigation was only recommended and not mandatory, which could not have expected of the respondent and thus not a reason for stating that the losses were entirely the respondent's fault. But the National Commission also looked into all these factors as being contributory to the failure of the seedlings. Thus, there was no unfair trade practice and consequently no misleading advertisement, although this was not expressly mentioned.

**2.11.3 Name of the Case :** M2K Country Heights, New Delhi and another v. Rajesh Kumar S/o Zile Singh

**Legislation:** Consumer Protection Act, 1986

**Citation:** 2013 Indlaw NCDRC 347

**Commission:** National Consumer Disputes Redressal Commission

**Keyword:** Unfair trade practices; misleading advertisement; Housing projects

**Facts:** Lured by an advertisement by the petitioner Company, the complainant booked an apartment in the housing project as proposed in it, involving a payment of Rs. 3,00,000/-. However, no information was provided to the latter with regard to the location and progress of the project. The complainant also claimed that the project was being undertaken without any license to construct or CLU. But the Company (OP/petitioner) contested these claims as being frivolous because they had already informed the complainant of the specifications, tentative dates and other necessary information, and that all construction had been commenced with due prior permission and approvals. The orders of the District Forum and the State Commission were not in favour of the petitioners and hence this revision petition before the National Commission.

**Issue:** The main question before the Commission was as to whether the impugned orders of the fora below were faulty and based on incorrect appreciation of facts. As relevant to the scope of this project, the issue to be addressed is with regard to whether or not there was deficiency in services provided by the petitioner, and impliedly leading to the conclusion that the advertisement of the petitioner was misleading.

**Decision:** The Commission dismissed this case and upheld the orders of the state commission. The petitioner was held to be deficient in services. The claims of the petitioner that requisite instalments needed to be paid by the respondent were rejected. The claims that necessary information had been supplied were not sufficient in this regard, because the complainant was not even aware of the whereabouts of the project. Even so, the information supplied stated that the construction would be completed within 36 months from the date of commencement of construction as in the supplied information. However, five years had passed

since the commencement date had elapsed. This by itself amounts to deficiency and a major deviation from the advertisement's declarations since five years was much beyond even considerable leeway.

**2.11.4 Name of the Case:** Jaswinder Singh, Pradeep Kumar Gupta v. Corporation Bank

**Legislation:** Consumer Protection Act, 1986

**Citation:** Revision Petition No. 4662 of 2012

**Commission:** National Consumer Disputes Redressal Commission

**Keyword:** Unfair trade practices; Misleading and fraudulent notification; Auction of mortgaged properties

**Facts:** Both petitioners filed their respective petitions against the orders passed by the State Commission against their respective complaints. The respondent here, i.e., Corp. Bank, issued a notification, for the sale of mortgaged properties by auction. Both accordingly paid the requisite initial investment money, and succeeded their respective properties as the highest bidders. In order to remit the balance amount, the complainants approached other banks with the documents of the succeeded property for obtaining loans. However, they all turned down the loan requests on the grounds that the title deeds had several defects, which was also approved and verified by legal consultants. Further, even when the respondent was approached with the same documents for housing loans, the requests were denied without any sufficient reasons. Subsequently several representations were made to the bank for repayment of the initial investment money. But the bank responded that the money had been forfeited because the bid amount and the remaining money had not been paid within the prescribed number of days. This was rejected by the District Forum but upheld by the State Commission.

**Issue:** The basic issue to be addressed is as to whether or not there was deficiency of services on the part of the Bank for having auctioned property using defective title deeds, thereby rendering the notification of auction false and misleading by necessary implication.

**Decision:** The National Commission set aside the orders of the State Commission and allowed the petition. It looked into the 'as-is-where-is' principle of notifications such as these, wherein the seller is not responsible

for the title deeds and the burden of looking into the merit of the same lay on those looking to purchase the property. However, there had been deliberate concealment of the defects on the part of the bank, which had refused to provide the said documents to the complainants before the auction and thus they could not have decided about bidding before. This was held to be fraudulent and an unfair trade practice for publishing misleading notifications about defective property.

**2.11.5 Name of the Case:** Jayanthilal and Anr. v. Abhinav Gold International Marketing Pvt. Ltd.

**Legislation:** Consumer Protection Act, 1986

**Citation:** Consumer Complaint No. 237 of 2012

**Commission:** National Consumer Disputes Redressal Commission

**Keyword:** Misleading and fraudulent notification; Consumer; Investment, Trading, etc.

**Facts:** In this case, complaints were filed by two 'consumers' collectively on behalf of a number of alleged individual consumers, because the right and interest of present complainants and all other individual and numerous consumers were identical and co-extensively cumulative, by virtue of the nature of privity of contract. The OP, engaged in the business of trading, marketing, and agency dealings of gold, silver, etc., carried extensive marketing and investment programmes across several regions, and also publicized their activities on a mass scale, inviting customers to invest in large numbers with assurances of high returns. However, they later on started indulging in evasive tactics and avoidance. Plans and schemes were unilaterally modified or withdrawn, excuses were fabricated to cover up deficiencies and dishonest intention, and finally the Company abruptly winded up without due notice. Several criminal cases were also filed against the respondents for cheating and fraud. The present complaint was filed asking for remittance and repayment of the amount as assured and payable to the investors/consumers.

**Issue:** The overall question before the commission was with regard to whether the complainants were consumers as under the purview of the Consumer Protection Act, and whether they could thus file the complaint. With relevance to the scope of this project, the issue that is impliedly

addressed is as to whether or not the publications of the OP were misleading and fraudulent.

**Decision:** The Commission out rightly dismissed the complaint stating that the complainants were not consumers as per the definition under the Consumer Protection Act, since they themselves accepted that they were investors with the sole purpose of earning profits. However, it is obvious that the advertisements on the part of the OP were misleading, dishonest and fraudulent considering the implied nature of their actions, and the criminal cases filed against them.

**2.11.6 Name of the Case:** United Breweries Limited v. Mumbai Grahak Panchayat

**Legislation:** Consumer Protection Act, 1986,

**Citation:** 2006 Indlaw NCDRC 212

**Commission:** National Consumer Redressal Commission

**Keyword:** Misleading surrogate notifications; Unfair Trade Practices; Railways; Liquor.

**Facts:** The background of this case, is with respect to a complaint against the appellant (UB) as well as Western Railways for having adopted Unfair Trade Practices in prominently displaying/exhibiting false, misleading and surrogate Liquor Advertisements on the coaches of the Western Railway trains and to seek discontinuance of the same along with corrective advertising by the opposite parties to neutralise the effect of the said advertising and punitive damages. The advertisement made a claim that the products in contention (Bagpiper, London Pilsner and Derby Special) were India's No.1 and World's No.3. Further, it was observed that the first two products were in fact not 'soda' as had been claimed, but actually beer or whiskey. It also proclaimed, 'Ab cold drinks out' in an attempt to replace cold drinks with liquor, especially in young minds. This was considered to be highly objectionable, deplorable and patently illegal. When the railways were approached all representations were spurned stating that agreements had already been made. The Railways claimed that the advertisements had already been removed in consonance with the railway guidelines against the advertising of alcoholic substances. The matter was also taken up with the Advertising Standards Council of India, with

respect to the misleading nature of the advertisements. The main contention of UB was that 'Soda' was not covered under any of the legislations prohibiting advertisement of liquor such as Sec. 24 of the Bombay Protection Act, the Cable Network Act, ASCI Code or the Railway Guidelines for commercial advertising.

**Issue:** The main questions that were placed before the Commission were as to whether or not use of the term 'Soda' was misleading in nature. Whether the impugned advertisements created a sense of false belief regarding the said products.

**Decision:** ASCI held that the advertisement was misleading by ambiguity since the headline, "Ab cold drink out" and the claim of "Rs. 16 only Rs. 3 refundable deposit", was not supportive of the product mentioning 'pint glasses', and contravened Chapter 1.4 of Advertisement Code. Similarly, the complaint against Bagpiper Soda was also upheld. The mention of the word "Soda" in an inconspicuous manner, while boldly stating the brand name "Bagpiper" with the baseline, "India's largest, World's No. 3", was misleading by its ambiguity and contravened Chapter 1.4 of the Advertisement Code. It was also held that the advertisements were surrogate advertisements for alcohol producing brands and contravened Chapter III. 6 of the Advertisement Code. The Commission on the other hand, upheld the order passed by the State Commission and dismissed the petition of the appellant. Firstly, with regard to the question of the use of the term 'Soda', it was observed that the products were not available in the markets as soda but only available as whiskey or beer. Thus liquor replaced other cold drinks and not soda. Secondly, the claims of being No. 1 or 3 etc., could not be substantiated which collectively made them misleading and illegal. More so these were surrogate advertisements, which could have disastrous impacts, not just on younger generations, but also on unintended target groups. Thus, the issuance of corrective advertisements was upheld for the purpose of obliterating to the maximum extent any potential damage involved, which was a significant cost per se.

**2.11.7 Name of the Case:** Cox and Kings v. Joseph A. Fernandez

**Legislation:** Consumer Protection Act, 1986

**Commission:** National Consumer Dispute Redressal Commission



**Citation:** RP No 366 of 2005

**Keyword:** Misleading Advertisement, Unfair Trade Practice

**Facts:** In this case the respondent tourists had taken a Star Ship cruise relying on advertisement which said that the cruise would be for two nights and three days. However the actual cruise was much shorter thus the complainants spent one and a half day less cruising against what had been promised to them. Thus they sued the tour operator.

**Issue:** Whether this would be a case of false and misleading advertisement and thus fall under Section 2(1)(r) of the Consumer Protection Act, 1986?

**Decision:** The National Commission held that this was a pure case of false and misleading advertising and thus fell within the ambit of the Section 2(1)(r). The complainant has relied upon the advertisement and the actual cruise being much shorter than what had been promised was clear indication of an unfair trade practice and thus under Section 14(1)(f) of the Act the Commission ordered the withdrawal of the misleading advertisement.

**2.11.8 Name of the Case:** Rupasi Multiplex vs. Mautusi Chaudhuri and Ors.

**Legislation:** Consumer Protection Act, 1986

**Commission:** National Consumer Dispute Redressal Commission

**Citation:** Revision Petition No. 3972 of 2014 decided on 10.08.2015, MANU/CF/0731/2015

**Keyword:** Unfair Trade Practice

**Facts:** The respondents/complainants purchased tickets for watching a movie at a cinema hall owned by the petitioner, paying a sum of Rs. 330/- for the purpose. They were not allowed to carry drinking water inside the cinema hall, though the ticket contained no prohibition on carrying water inside the cinema hall. This was mainly because of security reasons, since it is not possible for the management of the cinema hall to verify or check whether any restricted liquid had been mixed with the drinking water in the container/bottle. When the complainants raised the concern

of getting drinking water inside, it was stated that water facility was available just near the entry gate of the hall in the lobby.

**Issue:** Does prohibition on carrying water amount to deficiency in service and unfair trade practice?

**Decision:** A cinema hall, which seeks to prohibit carrying of drinking water inside the cinema hall for security reasons, must necessarily provide free portable and pure drinking water through water coolers installed inside the cinema halls, before such a prohibition can be enforced. An appropriate water purifiers such as Aqua-guards, needs to be installed with the water coolers so that the water available to the cinema-goers free from the impurities. Disposable glasses in sufficient quantity need to be kept available near the water coolers. It has also to be ensured that the water supply is actually available through the water coolers before the movie starts as well as throughout the screening of the movie including interval. If for any reason, water supply is not available on a particular day, alternative arrangements for supply of free pure and portable drinking water to the cinema-goers needs to be made available by the owners of the cinema hall. The cinema hall is also required to ensure that the water coolers as well as water purifiers remain fully functional and are regularly serviced from time to time so that only purified water is dispensed through the coolers. If this is not done, the owner of the cinema hall would be liable to pay appropriate compensation for the deficiency in rendering services to the cinema-goers. Mere availability of the drinking water from the cafeteria would not be sufficient to enforce prohibition of carrying drinking water inside the cinema halls and any such action can be considered as unfair trade practice.

**2.11.9 Name of the Case:** General Motors (India) Private Limited vs. Ashok Ramnik Lal Tolat

**Legislation:** Consumer Protection Act, 1986.

**Citation:** Civil Appeal Nos. 8072-8073 of 2009, MANU/SC/0919/2014 decided on 09.10.2014

**Court:** Supreme Court of India

**Keyword:** Unfair Trade Practice and Misleading Advertisement

**Facts:** The complainant had passion for driving and dreamt to visit Leh Ladakh, Jammu & Kashmir and Nepal by driving a motor car. By surfing the internet, he read advertisement given by the Appellant and relying upon the same, he visited the agents of the Appellant. He was assured that the vehicle offered for sale will realise his dream. The brochure also assured that the vehicle in question was the best that he could find. He was also shown visual presentation of the vehicle and was also given a copy of the VCD. Accordingly, he purchased the vehicle for Rs. 14 Lakhs and got accessories worth Rs. 1,91,295/- fitted and also got the vehicle insured and registered. Thereafter he realised that the vehicle was not fit for "off-road, no road and dirt road" driving as represented and had defects. Accordingly, he approached the Appellant and its dealers who referred to the owner's manual printed by the Company. He found that the owner's manual was contrary to the assurance in the brochure, internet and the book given to him. He also realised that the vehicle was not SUV but a mere passenger car.

**Issue:** Did the automobile company carry out unfair trade practice? Can punitive damages be awarded in such circumstances when not pleaded for it?

**Decision:** The assurances and representations made to the consumer were misleading and it amounted to unfair trade practice. A refund of Rs. 12,50,000/- (Rupees Twelve Lacs Fifty Thousand only) to the Petitioner towards price of the vehicle subject to the Petitioner returning the vehicle in question without accessories to the Respondents was directed. A sum of Rs. 50,000/- (rupees fifty thousand) in favour of the complainant to meet his cost of litigation was also awarded. These directions were to be implemented within 6 weeks from the date of order. The award of Rs 25 lakhs by the National Commission by way of punitive damages is invalid and was struck down and such damages when not pleaded for cannot be granted.

**2.11.10 Name of the Case:** Ganga Immigration v. Reena Pandey

**Legislation:** Consumer Protection Act, 1986

**Commission:** National Consumer Dispute Redressal Commission

**Citation:** Revision Petition No. 1397 of 2014 and I.A. No. 1682 of 2014 decided on 01.04.2014 MANU/CF/0341/2014

**Keyword:** Employment Sector

**Facts:** An advertisement was given for staff requirement. The job was in Malaysia and food, accommodation and travel were part of the job package and even an attractive salary was specified in the advertisement. The complainants took up the job based on this advertisement. But, the complainants were asked to pay money for the tickets and accommodation and were forced to work for cheap labour. Their passports were taken by the employers and they were treated like slaves. None of the facilities mentioned in the advertisement were provided.

**Issue:** Does the failure to comply with the assurances given by the recruiting company amount to unfair trade practice?

**Decision :** Petitioners have taken unfair advantage of the respondents by indulging in unfair trade practices to collect money from the unsuspecting respondents showing them dreams of much better job opportunities in Malaysia and having collected their money abandoned them to their own devices after taking their passports. They forced them to do labour work on very cheap salaries. Petitioners promised them to give all other facilities like accommodation, food, medical insurance etc. which they also denied them. The petitioners must have also similarly duped other individuals with their misleading advertisements and glib promises. It was held that the petitioners are guilty not only of unfair trade practice but also deficiency in service.

**2.11.11 Name of the Case:** Havells India Limited v. The Advertising Standards Council

**Legislation:** Consumer Protection Act, 1986; Trade Marks Act, 1999.

**Commission:** National Consumer Dispute Redressal Commission

**Citation:** CS (OS)3187/2015, IA Nos. 22366-22368/2015 High Court of Delhi, 2016 (155)DRJ435, MANU/DE/0297/2016 decided on 03-02-2016

**Keyword:** Durables & Appliances

**Facts:** The suit filed by the plaintiff was directed against the Advertising Standards Council of India (ASCI). The plaintiff company states that it is engaged in the business of manufacture and supply of Fast Moving Electrical Goods (FMEG). It is engaged, inter alia, in the production of electrical cables and wires. In respect of wires & cables, the plaintiff

has adopted/ used the tagline "Wires that don't catch fire". It has been running an advertising campaign for its wires & cable products using the said tagline. The plaintiff states in paragraph 2 of the plaint that the suit relates to the illegal direction dated September 15, 2015 issued by the defendant, directing the plaintiff to withdraw or appropriately modify an advertisement of the plaintiff's advertisement campaign featuring its distinctive tagline and trade mark "Wires that don't catch fire", which tagline has been uninterruptedly and continuously used since the year 2007, inter alia, in numerous advertising campaigns issued on national scale on national television channels by the plaintiff, and which is the back bone of the plaintiff's promotion of its fire retardant wire & cable products. ASCI considered the tagline as misleading in nature.

**Issue:** Whether the advertisement by on cables were misleading and exaggerated without substantiated evidence. Is the advertisement misleading in nature?

**Decision:** ASCI's decision was on the premise that the advertisement of the defendant using the tagline "Wires that don't catch fire" is misleading and exaggerated. The defendant has not sought to raise any challenge to the claim of trade mark or copyright laid by the plaintiff either in "HAVELLS" or in the tagline in question. Thus, no cause of action has arisen in favour of the plaintiff to assert its claim for a declaration that its mark/ expression "Wires that don't catch fire" is a well-known trade mark. As rightly argued by learned counsel for the defendant, since the defendant has not questioned the plaintiff's claim for a trade mark in the said tagline, the plaintiff cannot seek the said relief in the present suit, as the assertion of the said right would not have any real opposition. The court was convinced in considering the advertisement to be misleading. ASCI decision was based on the conclusion that the advertisement was misleading. The decision never raised any challenge on its trademark or copyright. Hence the petitioner company does not have the grounds to challenge the decision. It was held that the said advertisement is misleading as concluded by ASCI and it is not a question of trademark that arises here. The ASCI decision was held to be valid.

**2.11.12 Name of the Case:** Consumer Education and Research Society, Suraksha Sankool and Ors. v. Taj Mahal Hotel and Ors.

**Legislation:** Consumer Protection Act, 1986.

**Citation:** Original Petition No.148 of 2003, MANU/CF/0936/2015 decided on 02.07.2015

**Keyword:** Telecom, luxury services

**Commission:** National Consumer Disputes Redressal Commission, New Delhi

**Facts:** The complainant no.2 stayed at Taj Hotel and made some telephonic calls from his room. Hotel charged a sum of Rs. 168 for the said telephonic calls. The complainant No. 2 on scrutiny of the bill and the call details found that opposite party No. 1 had charged Rs. 8 per call instead of the usual applicable rates Rs. 1.20 per call for 3 minutes or less. He brought this to the opposite party's notice, and made a request for refund of the said amount after deducting the charges as per the legal norms.

**Issue:** Can overcharged telephonic calls be called as unfair trade practice?

**Decision:** There is no compulsion on the guest to use telephone instrument for making outside calls. It is the option of the guest whether to use the facility provided by the hotel in the room or to take pains and make his outside calls from a PCO installed in the lobby of the hotel. The excess charges are for the added facility provided to the guest for making outside call in the privacy of the room and, therefore, it cannot be termed as unfair trade practice or deficiency in service.

**2.11.13 Name of the Case:** Orbit Tours & Trade Fairs Pvt. Ltd. v. Vivian Rodrigues

**Legislation:** Consumer Protection Act, 1986.

**Citation:** Revision Petition No. 1551 of 2013 and I.A. No. 2699 of 2013 (For Stay) MANU/CF/0652/2014 decided on 17.10.2014.

**Commission:** National Consumer Disputes Redressal Commission

**Keywords:** Misleading brochure, Tours and Travel

**Facts:** Respondents/Complainants accepted the offer of the petitioner to participate in Orbit Tour Programme in China during the period from 25.4.2005 to 30.4.2005. The agreed consideration of 77,700/- (US \$

1468) was paid at that time by the respondents to participate in the tour which was branded as "Canton Fair 2005" where about 7500 stalls of different displays were displayed with modern technology. The respondents were interested to know the latest technique of furniture and interior. Therefore, they participated in the said tour programme. Both parties have relied on the brochure of the said tour programme printed and published by the petitioner as an organizer, received from the original event manager in China namely, Canton Fair organizers. The said brochure was with certain terms and conditions. The respondents were not satisfied with the visit as the required display of furniture and interior was already concluded prior to their visit to the said fair. Further, the class accommodation as promised was not provided and also the air conditioning at the lodging arrangement went out of order for more than 24 hours causing great inconvenience and discomfort to the respondents. Being dissatisfied with the tour, respondents on return to India sent notice for refund of the amount paid on account of said tour trade fair but the petitioner did not accept the same.

**Issue:** Was there misleading advertisement which amounted to Unfair Trade Practice?

**Decision:** Complainants wanted to see and learn new things, new materials, new designs of international standards which they could not due to deficiency in services by Opposite Party (Appellant here). The tour organizers are not supposed to give false and misleading advertisement in order to lure the customers if they do so, it certainly amounts to unfair trade practice. The kind of accommodation as promised was also not provided. OP is therefore are liable for not providing services as promised in the brochure. Tour organizers published brochures promising the services which they could not offer is not only deficiency in services but also unfair trade practice and therefore liable to refund the full amount charged for the tour to the Complainants which is sufficient to recompense with a cost of Rs 5000. Petitioner (opposite party) is directed to deposit the cost by way of demand draft in the name 'Consumer Legal Aid Account' of this Commission, within four weeks from the date of judgment which otherwise will attract an interest of 9% per annum.

## **2.12 Banking Sector**

**2.12.1 Name of Case:** The Federal Bank Ltd. and Ors. v. Sanjeev Nehra and Ors.

**Legislation:** Consumer Protection Act, 1986

**Citation:** Revision Petition No. 75 of 2008 Decided On: 24.11.2015, MANU/CF/0811/2015

**Commission:** National Consumer Disputes Redressal Commission

**Keyword:** Banking Sector

**Facts:** Complainants were the shareholders of the Bank and the Bank issued share certificates to the Complainants. According to the Complainants, for eight years, i.e. from 1997 to 2004, they did not receive any call notice from the Bank asking them to pay the balance amount in respect of the allotted shares. Suddenly, the Bank issued final notice to the Complainants, threatening forfeiture of the Rights shares if the payment with interest was not paid within 14 days from the date of notice. The complainant gave the payment through demand drafts which were encashed but did not pay the demanded interest. Later they received a letter from the bank stating that the shares stood forfeited and the freshly received amount was refunded.

**Issue:** Is there unfair trade practice on part of the bank?

**Decision:** If notice threatening forfeiture did not strictly comply with provisions in Articles of Company conferring power of forfeiture, notice would be bad and forfeiture of shares pursuant thereto would be invalid. Interpretation of specified clause of Articles of Association of Petitioner shows that the forfeiture was incorrect and the deviation from the provisions specified amounts to unfair trade practice. Besides that, compensation of 10,000/- to each of the Complainants, total litigation cost of 5,000/- was also awarded.

## **2.13 Industrial Sector**

**2.13.1 Name of Case:** GMMCO Limited v. Ecovinal International Private Limited (SC)

**Legislation:** Consumer Protection Act, 1986



**Citation:** Civil Appeal No. 1385 of 2015 (Arising from SLP(C) No. 10639/2012), MANU/SC/0673/2015 decided on: 30.01.2015

**Court:** Supreme Court of India

**Keyword:** Industry and Commercial Purpose

**Facts:** The complainant (respondent) had purchased a 250 KVA CAT Diesel Generator Set from the Appellant on 09.12.2005. When the afore-stated generator set was installed at the factory premises of the Respondent at Kunigal, it was found to be defective. The Respondent brought the defects in the generator set to the notice of the Appellant, and asked the Appellant to either repair the same or to replace the generator set. The communication addressed by the Respondent to the Appellant did not receive any response from the Appellant. There was no response even to the legal notice sent. The District Forum, State and National Commission decided in favour of the respondent. The contention was that the purchase was for commercial purpose and hence the respondent is not a consumer.

**Issue:** Was the purchase an exception to the definition of consumer being for a commercial purpose?

**Decision:** The activity, to which the Respondent had put the diesel generator set purchased from the Appellant, is deemed to be a commercial activity, not limited to the earning of an individual's livelihood, by means of self-employment. As a result the invocation of the proceedings under the provisions of the Act was without jurisdiction. The orders passed by the District forum, State Commission and the National Commission were set aside.



## 3

# **MONOPOLIES AND RESTRICTIVE TRADE PRACTICES (PROHIBITION) ACT, 1969- REPEALED**

### **3.1 Object & Summary:**

The Monopolies and Restrictive Trade Practices Act, 1969, aims to prevent concentration of economic power to the common detriment, provide for control of monopolies and probation of monopolistic, restrictive and unfair trade practice, and protect consumer interest.

Misleading advertisements fall within the ambit of unfair trade practices. Under the MRTP Act, misleading or deceptive advertising is sought to be regulated by way of a 'cease and desist' order, or any other appropriate direction, issued by the MRTP Commission. Before passing such an order, the Commission was required to conduct an inquiry into the alleged misleading advertisement. The MRTP Commission was empowered to initiate such an inquiry on any one of the four bases provided under Sec.36(b) of the Act which include a complaint received from any consumer.

On completion of the inquiry, if the Commission was of the opinion that the said advertisement is prejudicial to the public interest or to the interest of any particular consumer or to consumers in general, it can direct the

party concerned to discontinue the advertisement and not to repeat the same in future. Such an order is generally referred to as a 'cease and desist' order. It would also issue correctives and order for compensation. The order which was passed by the Commission was a mandatory order, enforceable like a court order or decree. It can be appealed to only before the Supreme Court of India, on specified grounds. Non-compliance would amount to imprisonment or fine.

Unfair practices can be broadly outlined as unreasonably high prices, limiting technical development, limiting capital investment, lower quality of goods and services and preventing/lessening competition. Regulation of these monopolistic practices was to be done by the Central Government; however this Act has been repealed by the Competition Act, 2002.

**3.2 Name of the Case:** New Era Education Society (Regd.) and Others v. H.L.Kalsi & Others

**Legislation:** Consumer Protection Act, 1986 Citation: 1997(3) CPR 501

**Keyword:** Education

**Facts:** The Complaint relates to admission of Baby Sanya, 3 years old at the relevant time, granddaughter of Mr H.L. Kalsi and daughter of Sunil Kalsi to the Nursery Class of the New Era Junior School. The Case of the complainants was that New Era Public School (recognised) was a duly recognised School under the Delhi School Education Act, 1973. Advertisement in the Hindustan Times was issued by O.P 2 giving notice regarding admission to Nursery and Pre-Classes for the academic session 1994-95. The said public notice was issued the heading 'New era Public School'. It may here be pointed out that there is no dispute that the Junior Schools with Nursery Classes are being run under the name and style of New Era Junior School at Rajouri Garden, Naraina, Pochanpur etc. The Public Notice, therefore amounted to representation that the New Era Junior School, Rajouri Garden, where the complainant's child was admitted, was a branch of the New Era Public School which was a recognised institution.

**Issue:** Whether the advertisements made about the New Era Public School is misleading in nature?

**Decision:** It was vehemently contended that Sec 14(1) (f) of Consumer Protection Act 1986, only empowered the fora to pass a “cease and desist” order. The Section 12B of MRTP Act which empowers the MRTP Commission to award the suitable compensation. There is no analogous provision in Section 14 of the Consumer Protection Act and clause (f) thereof only empowers the fora to direct discontinuance of the unfair trade practice or a direction not to repeat the same. The Appeal was partly allowed. The directions given by District Forum with regard to refund of the amount and compensation are set aside. The directions with regard to discontinuance of the unfair trade practice are however, affirmed. It will be open to the complainants to have their remedy for the recovery of compensation etc, in the appropriate Forum including MRTP Commission according to law.

**3.3 Name of the Case:** Colgate-Palmolive (India) Limited v. Anchor Health and Beauty Care Private Limited, Mumbai

**Legislation:** The Consumer Protection Act, 1986, The Monopolies and Restrictive Trade Practices Act, 1969, The Competition Act, 2002, The Cable Television Networks Rules, 1994.

**Citation:** 2008 Indlaw MAD 4309

**Court:** Madras High Court

**Keyword:** Television advertisement; Toothpaste; False Publicity campaigns.

**Facts:** This case is based upon a suit filed by Colgate Palmolive and its stockist against the defendant for publishing disparaging and slandering advertisements offending the former's products, asking to place an injunction on publishing of the advertisements on television. Their basic problems with the advertisements was that firstly, it claimed that Anchor toothpaste was the only brand to have all three of the important ingredients of fluoride, calcium and trichlosan, secondly that it is the first to provide all round protection, and other contentions as to the effectiveness of the ingredients. Thus, the courts looked into the aspect of misleading advertisements and a variety of legislations which prohibit misleading advertisements or other advertisements that depict falsity, illegality, etc.

**Issues:** The basic issue is with regard to whether or not one Company, institution, etc., could file a suit against another for disparaging the products of the former by giving the view that the latter's products are superior, under the banner of a misleading advertisement which ideally caters to the consumer's interests. Whether false publicity campaigns can be legally restrained. Whether the use of the words “only” and “first” would amount to being misleading and subsequently an unfair trade practice.

**Decision:** Held that there was no codified law restraining manufactures from indulging in false publicity campaigns except for the MRTP Act (under Sec. 36A – Unfair Trade Practices) and the Consumer Protection Act. If an advertisement is found to be in consonance with an unfair trade practice, orders could be issued to correct the said advertisement. However, manufacturers could not claim any rights under this rule on account of the Consumer Protection Act being pro-consumer, and hence the civil court must be approached. The repealing of the MRTP Act by way of Sec. 66 of the Competition Act disables them from approaching the MRTP Commission as well and henceforth only the Competition Commission as and when Sec. 66 would be notified. Further, the usage of the words 'only' and 'first' do tend to mislead the consumer and sends the message that the said brand is the only product which provides such ingredients as opposed to several others also including the same ingredients in their products. Due to its misleading and false nature, this usage does amount to an unfair trade practice, but not held to be disparagement of the petitioner's brand, given the larger question of public interest.

**3.4 Name of the Case:** Smithkline Beecham v. Paras Pharmaceuticals Ltd

**Legislation:** Monopolies and Restrictive Trade Practices Act, 1969

**Citation:** 2002 Consumer Claims Journal 1586

**Commission:** Monopolies Restrictive Trade Practice Commission

**Keyword:** Drugs

**Facts:** In this case applicant filed an application under Sections 36B (d) and 36D of Monopolies and Restrictive Trade Practices Act, 1969, for a false, misleading and disparaging TV advertising campaign in relation to 'Moov'. The applicant is engaged in the manufacture and sale of Iodex in

amber coloured bottle appearing to be black in colour with product inside it. The respondent is in the business amongst others in the manufacture of pain balm marketed under brand name "Moov" which is purple in colour. The series of the advertisements issued by the respondent to promote its product. The latest advertisement in the series impugned in the application is the one wherein a young lady wakes up in the middle of the night with waist pain and starts searching for the pack of 'Moov'. She opens the drawer near the bed and picks up a black coloured bottle without a label, rejects it stating that, "This one is not for waist pains" and continues her search for Moov. In the bottom drawer finding pack of Moov, she is delighted and exclaims that "who is there in your house .... Waist pains or Moov." the applicant contended that the bottle picked up by the lady in the video clip seemingly resemble Iodex which is a well-established product in the market associated with amber coloured bottle with green label on it. It is a only amber coloured bottle in the rubefacient market which appears black with the product inside it. Instead of showing the band around the bottle, the respondent has very cleverly shown the green carton placed along with the voice over "this is not for waist pains". Iodex has been known in the market for giving long lasting relief from back ache, waist pains, muscle strains and sprains as printed on its label. After the intervention of ASCI the respondent stopped to air the aforesaid advertisement and came out with another advertisement on 18.6.1998 referring to Iodex as "Voh Kala Moch Wala Malam Dena" again denigrating the product of the applicant the advertisement was modified on assurance given to ASCI by the respondent.

**Issue:** Does a reasonable man on reading the advertisement form a belief different from what the truth is?

**Decision:** The Court held that the respondent to modify its advertisement under reference by changing the colour of the bottle appearing as black. Interim injunction under Section 12-A in terms of above is passed and the respondent is directed to comply with the directions within four weeks of the receipt of the orders.

**3.5 Name of the Case:** Lakhanpal National Ltd v. Monopolies and Restrictive Trade Practices Commission

**Legislation:** Monopolies and Restrictive Practices Act, 1969.

**Citation:** 1989 Indlaw Supreme Court 776

**Court:** Supreme Court of India

**Keyword:** Unfair Trade Practices, False representations, Electricity

**Facts:** In this case, the MRTP commission, the respondent had initially issued a show cause notice to the appellant under Sec. 36B of the MRTP act, with respect to proceedings that had been instituted in order to enquire as to whether or not the appellant Company, manufacturer of Novino batteries in collaboration with M/s. Mitsushita Electrical Industrial Co., was indulging in unfair trade practices detrimental to public interests. It was alleged and held that the appellant had been issuing advertisements which proclaimed that the batteries were being manufactured in collaboration with National Panasonic of Japan using National Panasonic techniques, which was a misrepresentation and misleading issuance causing losses to consumers at large. The appellant's pleas that National and Panasonic were merely products of Mitsushita Electricals and that the collaboration, adopting of materials etc., were from that of the latter alone, were rejected on the grounds that the use of the words National and Panasonic would mislead the Indian consumer as being brand names signifying collaboration.

**Issue:** The court mainly had to look into whether or not the Commission was justified in giving such an order against the appellant Company. Thus, it was also required to see if the commission had the power to issue such an order. For this, the court had to verify whether there had been any unfair trade practices under Sec. 36A of the MRTP court by way of the allegedly misleading advertisements.

**Decision:** The court allowed the appeal and dismissed the order of the MRTP commission. Firstly, as to whether looking into the view of the consumers was necessary under the MRTP act, and thereby whether the commission had the power to issue such an order, the court pointed out the amendments made to the act under Sec. 36A to Sec. 36E for the purposes of consumer welfare, although not originally provided for. The next question, with regard to the misleading nature of the appellant's advertisement, the Court held that without mentioning important brand names such as 'Panasonic' and 'National' of the collaborating Company, the consumer could not be conveyed anything significant about the



collaboration. Further, where the standard of quality is in question, it is not important whether the manufacturing Company is indicated by its actually correct name, products, etc. It also looked into the real meaning or definition of 'unfair trade practices' under Sec. 36A. It cited that "The definition of 'unfair trade practice' in Sec. 36-A is not inclusive or flexible, but specific and limited in its contents. The object is to bring honesty and truth in relationship between the manufacturer and consumer. When a problem arises as to whether a particular act can be condemned as an unfair trade practice or not, the key to the solution would be to examine whether it contains a false statement and is misleading and further what is the effect of such a representation made by the manufacturer on the common man? Does it lead a reasonable person in the position of a buyer to a wrong conclusion? The issue cannot be resolved by merely examining whether the representation is correct or incorrect in the literal sense. The position will have to be viewed with objectivity in an impersonal manner." Thus, there had been an erroneous description of the manufacturing company. But it was not enough to attract Sec. 36A and thus the advertisements were held to be not misleading.



# 4

## COMPETITION ACT, 2002

### **4.1 Object & Summary:**

This Act was enacted in 2002 by repealing the Monopolies and Restrictive Trade Practices Act, 1969. It aims to govern any kind of activities that may have an adverse impact on competitions in India. All cases of Unfair Trade Practices pending before the council constituted under the MRTP, except those related to disparaging of goods, will be transferred to the National Consumer Disputes Redressal Commission.

Though the words “Restrictive Trade Practices” is not used in this Act, the provisions in respect of anti-competitive agreements in Section 3 and Abuse of Dominant position in Section 4 are similar to those under the MRTP Act. Hence, the case law under MRTP will be relevant, though they may not be binding on the Competition Commission. While a misleading advertisement can be construed as an abuse of dominant position under Section 3 and a case may be filed, no explicit provisions have been mentioned.

**4.2 Name of Case:** Win Medicare Ltd v. Reckitt Benckiser India Ltd.

**Legislation:** Competition Act, 2002

**Citation:** 2015 Comp LR 0299 (CompAT), UTPE No. 43/2001 decided on 19.3.2015, MANU/TA/0014/2015

**Commission:** Competition Appellate Tribunal, New Delhi

**Keyword:** Advertisement, Puffery

**Facts:** Advertisements issued by the respondent showed comparison of its product, namely - Dettol with other antiseptics including Betadine Standardised Solution manufactured by the complainant. Another advertisement was issued by the respondent in the form of a chart showing relative efficacy of Dettol vis-à-vis Betadine in certain concentrations.

**Issue:** Whether this advertisement was in contravention with the provisions of Monopolies and Restrictive Trade Practices Act and amounted to unfair trade practice?

**Decision:** Advertisement issued by Respondent was based on wrong facts and was clearly misleading. Whole object of Respondent was to berate or denigrate Complainant's product. Moreover no exception could be taken to Respondent's projection that Dettol was better than other antiseptics/disinfectants. That could be treated as mere puffery, but what was most crucial was that advertisements in question did not contain any indication that Dettol was used after dilution, whereas Betadine Antiseptic Solution was marketed in diluted form. The advertisement published in Journal of Medical Association had reached professionals in the medical field especially. The publishing of advertisement which was misleading amounted to an unfair trade practice. Hence it was clear in view of aforesaid circumstances that advertisements issued by Respondent, fall within ambit of unfair trade practice

**4.3 Name of the Case:** Belarani Bhattacharyya v. Asian Paints Ltd

**Citation:** Case No. 102 of 2015, MANU/CO/0007/2016 decided on 27.01.2016

**Commission:** Competition Commission of India

**Keywords:** Maintenance and Painting, Residential Construction

**Facts:** The Opposite Party brings out several advertisements in various daily newspapers promising various services relating to painting of house such as painting by trained painters with supervision, one year warranty in respect of jobs done etc. to the public at large. Attracted by such advertisements and brand name of the Opposite Party and expecting high quality and smooth service, the complainant opted to avail the services

of the Opposite Party for painting of her residential premises. In response to the request of the Complainant, through the helpline number of the Opposite Party, Mr. Jayanta Das, acting as a representative of OP, visited and inspected the premises of the Complainant and gave estimates for painting. Payment were also made accordingly. The Complainant was shocked to find that there were no receipt vouchers from the Opposite Party pertaining to various jobs undertaken rather they were in the name of Colour Concepts. The Complainant for the first time was made aware of the tie up which the Opposite Party seems to have entered into with Colour Concepts. As per the complainant, for the said painting works no colour plan was approved by her rather the Opposite Party went ahead with its own colour plan. It is averred that even after receiving the payments from time to time, the painting jobs were not up to the mark as the paint was peeling out at number of places and all the painting works were not completed. The complainant contended that there was abuse of dominant position u/s 3 and 4 of the Competition Act

**Issue:** Has Asian paints committed unfair trade practice through its misleading advertisement? Is there an infringement of Sec 3 and Sec 4 of Competition Act?

**Decision:** The Commission held that none of the provisions of either section 3 or section 4 of the Act were violated by M/s. Asian Paints Ltd. The Commission held that there was no case of any agreement between Asian Paints and other paint companies or practice adopted by any association of painting companies operating in the relevant market, thus section 3(3) of the Act does not apply to the facts of the case. With regard to the allegation of violation of section 4 of the Act the Commission held that the Opposite Party was not in a dominant position in the relevant market of 'providing home solution services for painting homes in geographical area of Kolkata' because all the major companies such as Berger, Nerolac, etc. are providing home solution services for painting homes. Thus the advertisement cannot be considered to be misleading in nature.



# 5

## **THE PRIZE COMPETITION ACT, 1955**

### **5.1 Object & Summary:**

It is expedient to provide for the control and regulation of prize competitions.

The Prize Competitions Act, 1955 controls and regulates prize competitions in certain parts of India and prohibits the advertisement of unauthorized prize competitions. Section 4 and Section 5 of the Act explicitly prohibits any kinds of competitions whose prize money exceeds one thousand a month. Therefore all kinds of promoters are barred from advertising any competition which seeks to exceed the prescribed sum of prize money. Failure to comply with Section 4 and Section 5 is punishable by imprisonment upto three months or a fine upto thousand rupees or both. A case can also be filed for creating any unauthorized competitions by any corporations and persons. The case can be heard only by a court superior to that of the magistrate and imprisonment for up to 3 months with a fine of 500 rupees can be imposed.

This Act prohibits the prize competition in which the total values of the prize or prizes (whether in cash or otherwise) to be offered in any month

exceeds one thousand rupees and in every prize competition, the number of entries shall not exceed two thousand. Section 11 of the Act declares that if any person with a view to the promotion or conduct of any prize competition except in accordance with the provisions of a licence under this Act or in contravention of the provisions of this Act or in connection with any prize competition promoted or conducted except in accordance with such provision –

- (i) prints or publishes any ticket, coupon or other document for use in the prize competition; or
- (ii) sells or distributes or offers or advertises for sale or distribution, or has in his possession for the purpose of sale or distribution any ticket, coupon or other for use in the prize competition;
- (iii) prints, publishes or distributes or has in his possession for the purpose of publication or distribution- any advertisement of the prize competition, any list (whether complete or not) of prize winners in the prize competition, any such matter descriptive of, or otherwise relating to, the prize competition as is calculated to act as an inducement to persons to participate in that prize competition or any other prize competition; or
- (iv) brings, or invites any person to send into the territories to which this Act extends, for the purpose of sale or distribution on, any ticket, coupon or other document for use in, or any advertisement of, the prize competition;
- (v) sends, or attempts to send, out of the territories to which this act extends any money or valuable thing received in respect of the sale or distribution of any ticket, coupon or other document for use in the prize competition; or
- (vi) uses any premises, or causes or knowingly permits any premises to be used for purpose connected with the promotion or conduct of the prize competition; or
- (vii) causes, procures or attempts to procure any person to do any of the above mentioned acts, shall be punishable with imprisonment

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1. Section 4, Prize Competitions Act, 1955.



for a term which may extend to three months, or with fine which may extend to five hundred rupees.

Section 15 of the Act provides for the forfeiture of newspapers and publications containing prize competition promoted or conducted in contravention of the provisions of the Act.

This law has a vertical application on advertisements and seeks to penalise any kind of advertisement in contravention with certain restrictions imposed upon the organization of these prize competitions.

**5.2 Name of the Case:** Mahesh Chandra Gupta v. The State

**Legislation:** The Prize Competition Act, 1955

**Citation:** All India Reporter 1964 All 572

**Court:** Allahabad High Court

**Keyword:** Competition

**Facts:** In this case the petitioners were promoters of a prize competition that was prohibited by the provisions of the Prize Competition Act. However the question arose whether they can also be convicted under Sec. 11 which provides for a penalty for those who participate in the specified acts with a view to promote or the conduct of the competition.

**Issue:** Whether Sec. 11 would be attracted when conviction has already taken place for contravention of other provisions of the Prize Competition Act, 1955?

**Decision:** The court held that since the conviction had already been upheld for certain provisions of the Prize Competition Act, the accused further cannot be convicted for a lesser charge under Sec: 11. Since they were the promoters in any case they cannot be held liable on another charge of participating in advertising the price competition. Hence the conviction under Sec. 11 was set-aside.

**5.3 Name of the Case:** Voice (Consumer Care Council) v. The Commissioner of Police

**Legislation:** Price Competition Act, 1955

**Citation:** 1999(1) CTC 151

**Court:** Madras High Court

**Keyword:** Newspaper

**Facts:** The petitioners (a consumer welfare organization) in this case contended that certain newspapers had been conducting prize competitions which were in violation of the provisions of not only the Prize Competition Act, 1995 but also the Prize Chits and Money Circulation Act, 1978. It was contended that this was being done without fulfilling the requisite procedure under these acts. And the advertisements that had thus been published were unfair and misleading innocent consumers.

**Issue:** Whether advertisements regarding prize competitions which otherwise contravened the provisions of the acts could be permitted?

**Decision:** The court held that such advertisements of price competitions that violated the provisions of the acts were misleading and thus could not be permitted since they were inducing innocent consumer to squander the hard earned money and hence it was imperative to prohibit such misleading advertisements.

## **6**

### **EMBLEMS AND NAMES (PREVENTION OF IMPROPER USE) ACT, 1950 OBJECT & SUMMARY**

This Act prohibits the unauthorised use of specified national emblems for the purpose of any trade, business, calling, profession in the title of any patent or in any trade mark or design.

The Act seeks to prevent the improper use of names, emblems, etc., for the purpose of trade, business, calling, profession, patent or design and to impose a penalty for misuse of emblems, etc. No person can use, for any trade, business, calling or profession, or in the title of any patent, in any trade mark or design, any name or emblem or official seal or pictorial representation or any colourable imitation of the following without the previous permission of the Central Government. Under Section 3, no person is allowed to use certain emblems and names for professional and commercial purposes without the prior permission of the Central Government. Any contravention of the provisions of Section 3 is punishable with a fine which may extend up to Rs.500/-. A consumer cannot suo moto file a complaint in this matter, under Section 6 of the Act, only the Central Government or any of its authorized officers can sanction prosecution. Therefore, a consumer can bring this matter to the

committee instituted for this under the Emblems and Names (Prevention of Improper Use) Rules, 1982. The government is mulling hiking penalty for improper use of names and emblems conveying state patronage or ownership for the purpose of professional and commercial gains to Rs. 5,00,000/-. Besides a huge fine, the government is also looking at amending other clauses of Act and to introduce more stringent measures to punish the offenders.

The Act prohibits the use of any name or emblem<sup>1</sup> specified in the following or any colourable imitation thereof for the purpose of any trade, business, calling or profession or in the title of any patent or in any trademark or design, without the previous permission of the Central Government<sup>2</sup>. However, the Central Government is empowered to add to or alter the schedule and such addition and alteration shall have the effect as if it has been made by this Act<sup>3</sup>.

In *Sable Waghire and Co. v. Union of India & others*<sup>4</sup>, the question before the apex court was whether the prohibition under the Section 3 violates the petitioners' right under Article 19(1)(f)<sup>5</sup> & Article 19(1)(g)<sup>6</sup> of the Indian Constitution. The Apex Court answered it in the negative and held: "The petitioner's right to trade in bidis is not at all interfered with by the legislation. Section 3 in terms provides for enabling the affected persons to adjust their business or affairs in as much as the Central government can permit some time to alter their emblems, design etc. to carry on with their trade. There is built in safeguard in Section 3 itself for mitigating any hardship to persons or any rigor of the law. The provisions are accordingly regulatory in nature and impose only reasonable restrictions on the exercise of rights under Article 19(1)(f) and (g)".

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1. Section 2(a)- Emblems and Names (Prevention of Improper Use) Act, 1950, Section 2(a)- "emblem" means any emblem, sea flag, insignia, coat-of -arms or pictorial representation specified in the schedule.
  2. Section 3, Emblems and Names (Prevention of Improper Use) Act, 1950.
  3. Section 8, Emblems and Names (Prevention of Improper Use) Act, 1950.
  4. (1975) 1 SCC 763.
  5. Indian Constitution , Article 19(1)(f): Right to acquire, hold and dispose of property, omitted by constitution.
  6. Article 19(1)(g): Right to practice any profession or to carry on any occupation, trade or business.

The violator of Section 3 shall be punished with fine which may extend to five hundred rupees<sup>7</sup>. However, no prosecution for any offence punishable under this Act shall be instituted, except with the previous sanction of the Central Government or of any other officer authorised in this behalf by general or special order of the Central Government<sup>8</sup>.

**6.1 Name of the Case:** Sanjay Gupta v. State of Maharashtra

**Legislation:** Emblem and Names (Prevention of Improper Use) Act, 1950

**Citation:** Criminal Application No. 304 of 2012

**Court:** Bombay High Court

**Keyword:** Entertainment

**Facts:** In this case the petitioners who are the makers of the movie Shoot out at Wadaala were accused of advertising by using the seal of the Police Commissioner and his name. By the use of the name of the commissioner and the official seal of the police the public was wrongly misled in to believing that the police had called a public meeting. Thus they were charged with contravening the provisions of the Emblem and Names (Prevention of Improper Use) Act, 1950.

**Issue:** Whether the use of the police emblem constituted a contravention of the Emblem and Names (Prevention of Improper Use) Act, 1950?

**Decision:** The court held that the use of the police emblem was not one of the prohibited emblems under the Act. Also, since the petitioner lacked any intention to deceive and any reasonable person could have understood that the advertisement was not serious the charge against them was dismissed.

**6.2 Name of the Case:** 'Goenkarancho Ekvot' A society v. Union of India

**Legislation:** Emblems and Names (Prevention of Improper Use) Act, 1950

**Citation:** AIR 2007 Bombay 184

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7. Section 5, Emblems and Names (Prevention of Improper Use) Act, 1950.

8. Section 6, Emblems and Names (Prevention of Improper Use) Act, 1950.

**Court:** Bombay High Court

**Keyword:** Emblem

**Facts:** The petitioner filed a writ petition contending that the respondent were reusing the name of Goa in relation to their products which consisted of Gutka and Pan Masala. These products were not only harmful but also against the larger public interest. The petitioners contended that marketing under this trade mark was leading to the creation of an adverse perception of the state and thus was in express violation of the Emblems and Names (Prevention of Improper Use) Act, 1950.

**Issue:** Whether by using the name of the place 'Goa' the petitioners had violated the provisions of Sec. 3 of the Emblems and Names (Prevention of Improper Use) Act, 1950?

**Decision:** The Court held that the petitioners had failed to show the use of such a trade mark was causing any harm to public interest. They also pointed out that Sec. 3 of the Act dealt with those instances when the emblem of any state government or the name of the state government were being utilized in a manner as to create the impression that government had backed the product. However in this case the mere use of the name of a place would not indicate this and thus the petition was dismissed.

**6.3 Name of the case:** Ravikanth Shinde v. Managing Director

**Legislation:** Emblem and Names (Prevention of Improper Use) Act, 1950

**Citation:** 2003(4) ALD 400

**Court:** Andhra High Court

**Keyword:** Public Interest Litigation

**Facts:** The petition was filed by an advocate in Public Interest against the respondents who are manufactures of kitchen salt. It was contended that the trademark of Dandi and the packaging which had a pictorial representation in the background that created the impression that Mahatma Gandhi, Father of the Nation was picking up salt. The petitioner contended that this was in contravention to the Emblem and Names (Prevention of Improper Use) Act, 1950.

**Issue:** Whether such a pictorial representation which created the impression of Mahatma Gandhi picking salt amounted to a misleading advertisement?

**Decision:** The Court held that the pictorial representation was unequivocal in its representation of Mahatma Gandhi and any potential consumer would have inferred the same. Hence this use of trademark was in clear violation of the Act as it involved the usage for commercial purpose of an emblem which was expressly prohibited by the Act.

**6.4 Name of the Case:** Eby J. Jose v. Union of India

**Legislation:** Emblems and Names (Prevention of Improper Use) Act, 1950

**Citation:** AIR 2000 Ker 79

**Court:** Supreme Court of India

**Keyword:** National Flag

**Facts:** In this case certain journalists had filed a petition before the court contending that the National Flag was being misused in certain parts of the district. Especially the flag was being printed on carry bags for shopping purposes.

**Issue:** Whether this amounted to a breach of the provisions of the Emblems and Names (Prevention and Improper Use) Act, 1950?

**Decision:** The Court held that this represented improper use of the National Flag as it being an emblem under the Act could not be used for commercial purpose. Thus it ordered that authorities should take speedy steps so that authorities realize the importance of the national flag and its proper use.

**6.5 Name of the Case:** Union of India v. Naveen Jindal

**Legislation:** Emblems and Names (Prevention of Improper Use) Act, 1950

**Citation:** Civil Appeal No. 2920 of 1996

**Court:** Supreme Court of India

**Keyword:** National Flag

**Facts:** Naveen Jindal the Joint Managing Director of a Public Limited Company was prevented by government officials from flying the National Flag on the official premises of his Company. The Emblems and Names (Prevention of Improper Use) Act, 1950 prohibits the use of national flag for any commercial purpose. He thus filed a petition in the court claiming his right to fly the National Flag as the expression of his national pride.

**Issue:** Whether the flying of National Flag would come under the commercial purpose prohibition of the Emblems and Names (Prevention of Improper Use) Act, 1950?

**Decision:** The Court held that there was a right to fly the National Flag and it was the legitimate expression of one's national pride. However at the same time it maintained that the 1950 Act regulated the use of the National Flag for commercial purpose, merely flying it would not attract these provisions.

**6.6 Name of the Case:** South India Textiles v. Government of Andhra Pradesh

**Legislation:** Emblems and Names (Prevention of Improper Use) Act, 1950

**Citation:** AIR 1989 Andhra Pradesh 55

**Court:** Andhra High Court

**Keyword:** Emblems

**Facts:** In this case certain partners under the Indian Partnership Act, 1932 had filed for the registration of their firm under the name of “South India Textiles”. However their application was returned back with the contention that the word 'India' should be removed since it contravened the provisions of The Emblems and Names (Prevention of Improper Use) Act, 1950. The firm thus filed a petition against this order.

**Issue:** Whether the use of the word 'India' constituted a breach of the provisions of The Emblems and Names (Prevention of Improper Use) Act, 1950?



**Decision:** The Court held that use of the word of 'India' had not been in any improper way. Also, it did not signify any patronage from the Government of India which would attract Sec. 3 of the Emblems and Names (Prevention of Improper Use) Act, 1950. Thus the order of the registry was quashed and the name permitted.

**6.7 Name of the Case:** M/s Sable Waghire & Co. v. Union of India

**Legislation:** Emblems and Names (Prevention of Improper Use) Act, 1950

**Citation:** 1975 All Indian Reporter 1172

**Court:** Supreme Court of India

**Keyword:** Bidi

**Facts:** The Manufactures of Bidi by the trademark of “Chhatrapati Shivaji” were prevented from using the aforementioned trademark since the Central Government through gazette notification by the powers conferred to it by the Emblems and Names (Prevention of Improper Use) Act had prohibited the use of the name for any commercial purpose. The petitioner firm had been using this name since long and thus filed a suit challenging the constitutionality of the Act itself.

**Issue:** Whether prohibitions of using certain Name and Symbols under the Emblems and Names (Prevention of Improper Use) Act, 1950 was constitutionally valid?

**Decision:** The Court held that such a prohibition was justified as it was imperative to protect the sanctity of certain names and symbols. It also held that the context (National Movement) in which the manufactures had used the name Chhatrapati Shivaji thereby invoking the name of a national hero had now changed, and post-independence it was important to preserve the heritage of the name. Hence such a prohibition was constitutionally valid.



# 7

## **SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992**

### **7.1 Object & Summary:**

This Act is for establishment of a board to protect the interests of investors in securities and to promote the development of, and to regulate the securities market and for matters connected. The Act has prescribed few regulations in the name of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Markets) Regulations, 2003. The board is authorized to conduct investigations against anyone who violates these provisions. It is mandatory for such companies to make certain disclosures in their offer documents.

Under the SEBI Guidelines, the term 'advertisement' has been assigned very wide meaning. As defined under the Guidelines, advertisement includes notices, brochures, pamphlets, circulars, showcards, catalogues, hoardings, placards, posters, insertions in newspapers, pictures, films, cover pages of offer documents, as well as radio, television, etc. The Securities & Exchange Board of India (SEBI) is the only regulator to fix the problem of Mis-selling of mutual funds. Mis-selling is not restricted to false statements, but can also happen by 'concealing or omitting material facts' or 'concealing associated risks' and not taking care to ensure

'suitability of the scheme to the buyer'. Section 4(2)(f) of the SEBI Regulations, 2003 prohibits misleading advertisements in any form and if the investigating officer's claims before the board, if proved true can lead to suspension or cancellation of license. A consumer cannot file a case before the Securities Appellate Tribunal for any misleading advertisements as was held recently, but the tribunal can direct the SEBI to investigate in the matter.

**7.2 Name of the Case:** SEBI v. Kishore R. Ajmera

**Legislation:** Securities and Exchange Board of India Act, 1992

**Citation:** Civil Appeal No. 2818 of 2008, MANU/SC/0212/2016

**Keyword:** Fraud, negligence

**Court:** Supreme Court of India

**Sector:** Securities and Investment

**Facts:** The Respondent-Kishore R. Ajmera is a broker registered with the Bombay Stock Exchange. M/s. Prakash Shantilal & Company is one of the sub-brokers through whom the two clients, namely, Mayekar Investments Pvt. Ltd. and M/s. K.P. Investment Consultancy are alleged to have indulged in matching trades thereby creating artificial volumes in the scrip of one Malvica Engineering Ltd. (MEL) during the period 20.12.1999 to 31.3.2000 and 7.8.2000 to 31.8.2000. The gravamen of the allegations levelled against the sub-broker for which the Respondent has been held to be vicariously liable is that during the aforesaid period the two clients, who are related to each other through majority shareholding in the hands of common family members, had through the sub-broker bought 66,300 shares and sold 77,700 shares of MEL during the first period and a total of 32,500 and 28,800 shares of MEL, respectively, during the second period. Not only both the clients were related but they were also beneficiaries of the allotment of the shares made directly by the parent company i.e. MEL. The said allotment incidentally was made out of the shares that were forfeited on account of failure to pay call money by the allottees, following a public offer. The scrip in question was a illiquid scrip where the volume of trading is normally minimal. A note of caution had also been struck by the Bombay Stock Exchange by circulating an advice requiring brokers to be aware of any unnatural

(voluminous) trading in any such illiquid scrip. Yet, the transaction in question was gone through by the sub-broker acting through the terminal of the broker i.e. Respondent-Kishore R. Ajmera. It is on the said facts that charges of negligence, lack of due care and caution were levelled against the sub-broker and in turn against the broker.

**Issue:** The question of law arising in this group of appeals may be summarized as follows What is the degree of proof required to hold brokers/sub-brokers liable for fraudulent/manipulative practices under the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations and/or liable for violating the Code of Conduct specified in Schedule II read with Regulation 9 of the Securities and Exchange Board of India (Stock-Brokers and Sub-Brokers) Regulations, 1992?

**Decision:** The scrips in which trading had been done were of illiquid scrips meaning thereby that such scrips were not listed in the Bombay Stock Exchange and, therefore, was not a matter of everyday buy and sell transactions. While it is correct that trading in such illiquid scrips is per se not impermissible, yet, voluminous trading over a period of time in such scrips is a fact that should attract the attention of a vigilant trader engaged/engaging in such trades. The above would stand fortified by the note of caution issued by the Bombay Stock Exchange in the form of a notice/memorandum alerting its members with regard to the necessity of exercising care and caution in case of high volume of trading in illiquid scrips. In the absence of any direct proof or evidence showing the involvement of the sub-broker in allegedly matching the trades and thereby creating artificial volumes of trading resulting in unnatural inflation of the price of the scrip, the charges are not substantiated.

**7.3 Name of the Case: In Re:** Netvision Web Technologies Limited and its directors Mr. Bharatbhai Jivanlal Patel, Mr. Sanjiv C. Patel, Mr. Hemant J. Patel, Mr. Himanshu J. Patel, Mr. Dharendra B. Patel, Mr. Kantibhai N. Patel, Mr. Parmesh G. Shah, Mr. Jay P. Shah and Mr. Shibu George K.

**Legislation:** SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 (Herein after “PFUTP”)

**Citation:** WTM/RKA/IVD/15/2012

**Tribunal:** Securities Appellate Tribunal

**Keyword:** Scrips

**Facts:** Net vision Web Technologies Limited is a Company having its shares listed on the Bombay Stock Exchange Limited (BSE). SEBI conducted an investigation in the scrip of the Company for a period of three months in the year 2005. The investigation showed that the price of the shares of the Company was falling but 8 favourable corporate announcements were given by the Company on BSE. Out of the 8 favourable corporate announcements, except for one relating to payment of dividend, none of them actually fructified. A show cause notice was therefore issued to the Company. It was alleged in the Show Cause Notice that the notices, by giving such favourable corporate announcements which never materialized, had tried to influence the decision of the investors.

**Issue:** Whether the Company issued false and misleading announcements in violation of the Regulations.

**Decision:** As there was no manipulation in prices of the scripts themselves, the Member of the Board held that the charge under Regulation 4(2)(e) of the PFUTP Regulations by the notices as alleged in the SCN, was not sustainable. At the same time the false, misleading and distorted information in the announcements had the potential to induce the shareholders of the Company to remain invested in the scrip on the belief that their earnings per share would increase when the Company's worth also gets enhanced by earnings from the announced projects/plans. Further, they also had the potential to induce the general investors to purchase and hold shares of the Company on the belief that they may stand to make profits from their investments in the scrip of the Company. Thus, the announcements made by the Company had the potential to influence the investment decision of the investors and induce sale or purchase of the shares of the Company. Therefore the Member of the Board held that the notices had contravened the provisions of section 12 A(b) and (c) of the SEBI Act read with regulations 3 (c) and (d), 4 (1), 4 (2) (f), (k) and (r) of the Regulations.

#### **7.4 Name of the Case:** V. Natarajan v. SEBI

**Legislation:** SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003.

**Citation:**(2013) 3 Company Law Journal 43 (SAT)

**Tribunal:** Securities Appellate Tribunal

**Keyword:** Securities

**Facts:** The appellant at the relevant time was the chairman cum whole time director of a Company called Pyramid Saimira Theatre Ltd., whose shares were listed on different stock exchanges in the country. It was alleged that during the financial year 2007-08 the board of directors of the Company inflated its revenues and profits by fictitious entries in its accounts and disclosed the same in quarterly and annual accounts to the stock exchanges and thereby mislead the investing public in their investment decisions. There were serious irregularities in its books of accounts and by showing inflated profits and revenues it lured the general public to invest in the shares of the Company. The financial results as disclosed to the public through the stock exchanges were also false and inaccurate. The appeal was raised in order to question the decision of the full time member of the Board of Securities regarding the punishment meted out on to the appellant.

**Issue:** Whether misleading information regarding securities was actually publicised, thereby violating Regulations 3 and 4. Whether the punishment meted out to the appellant was proportionate and valid?

**Decision:** The Appellate Tribunal, on the facts of the case, held that the appellant, being the chairman and whole time director of the Company was a part of the board of directors which approved the financial results. As a result the Tribunal was satisfied that the provisions of regulations 3 and 4 of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 were violated. It further held that the Board was justified in keeping the appellant out of the Securities Market for a period of three years, and not allowing him to be the director of any listed Company for the same period.

**7.5 Name of the Case:** Mega Corporation Ltd. v. SEBI

**Legislation:** Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003.

**Citation:** [2009] 89 SCL 444 (SAT)

**Tribunal:** Securities Appellate Tribunal

**Keyword:** Scrips

**Facts:** An investigation was conducted by the Board into the unusual price movements of the scrip of Mega Corporation Ltd., the appellant Company, during a period of 9 months in the year 2005. Based on the findings in the investigation, the Board charged the appellant with manipulating the market in its own shares by several means. According to the show cause notice issued by the Board, a group of persons connected with the appellant indulged in a large number of trades among themselves to generate large trading volumes which resulted in raising the price. The show cause notice further alleged that the appellant sought to generate investor interest in its scrip by publishing false and misleading announcements in the press about the Company's prospects and business plans which projected unduly high revenues and profits for the Company. It was also alleged that the Company reported a huge profit by manipulating their books of accounts to induce the investors to buy the shares of the Company. The Board in its final order prevented the appellant from accessing the securities market for a period of one year. The appeal to the Tribunal was made against this order.

**Issue:** Whether the appellants involved in a large number of trades within themselves to raise the price of the scrip. Whether the appellants wanted to generate public interest in the scrip through false and misleading advertisements. Whether the appellant manipulated its accounts.

**Decision:** The Tribunal held that all three accusations failed. With regards to the first accusation, no link could be found between the traders and the Company. The advertisements were also not blatantly false as the appellant was able to produce proof to indicate that the claims made by it in public were on the basis of certain facts and documents which it was able to produce before the Tribunal. The final accusation failed as



the appellant had not been allowed to cross examine a witness during the initial hearing before the Board, thereby violating the principles of natural justice.

#### **7.6 Name of the Case:** SEBI v. Shri Anirudh Sethi

**Legislation:** SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003.

**Tribunal:** Securities Appellate Tribunal

**Keyword:** Investment Tips/Advice

**Facts:** SEBI looked into the advertisements issued by one Shri Anirudh Sethi in the name of "Stock Market Navigator" in the stock quotation section of financial dailies viz. "Business Standard" and "Financial Express". In the advertisement, Shri Anirudh Sethi has solicited business from prospective investors to subscribe to "Stock Market Navigator" on payment of Rs. 50000 p.a. per investor for receiving recommendation to buy or sell the shares of listed companies. It was noticed that the advertisement issued by Shri Anirudh Sethi also contains a stock specific recommendation with an Amichand Doss not made public. Shri Anirudh Sethi has made price sensitive announcement viz. future plans of the companies, bonus etc which on verification by the exchanges with the concerned Company were either found to be denied by the said Company or the Company has not made any announcement to that effect to the exchange. The major objective of Shri Anirudh Sethi for issuing such advertisement is to attract the investors to subscribe to his services provided through emails and/or SMS messages on making certain payment to him.

**Issue:** Whether the accused violated Regulations 4(1) and 4(2)(k) by advertising the 'service' he provided with regards to securities trading.

**Decision:** The member of the Board held that by providing information regarding the rise or fall of prices of shares and scrips that was not substantiated by any declaration made by the Company itself and which was not true, the accused had tried to mislead the public with regards to the advice he gave on the purchasing of scrips/shares. He was therefore in violation of Regulation 4(1). The advertisements themselves were also misleading as he published this information through the print as well as

the electronic media. Therefore he was also in violation of Regulation 4(2)(k).

**7.7 Name of the Case:** Dayco Securites (P) Ltd., Kolkata v. Assessee

**Legislation:** Securities and Exchange Board of India Act, 1992, Income Tax Act.

**Citation:** ITA No. 1798/Kol/2012, MANU/IK/0200/2016

**Commission:** Income Tax Appellate Tribunal – Kolkata

**Keyword:** Tax, Trade and Commerce

**Facts:** The assessee is a company and it is a registered stock broker of CSE, BSE and NSE. The assessee filed its return on 13.11.2006 declaring a total income of Rs.76,51,070/-. During the year under consideration, the assessee moved an application for obtaining Deposit based Membership of Bombay Stock Exchange Limited. The said membership was Trading Membership of the cash segment of Bombay Stock Exchange. As per the terms and conditions stipulated for the membership, the assessee apart from deposit of Rs.1 crore was required to pay other amounts to Bombay Stock Exchange Ltd. The assessee in order to obtain membership paid admission fee (non-refundable) of Rs.2,50,000/- and Broker Contingency Fund (non-refundable) of Rs.2,50,000/-. The said payments have been considered as revenue expenditure by the assessee.

**Issue:** Are the payments made to Bombay Stock Exchange towards broker contingency fund and admission fees, both stated to be non-refundable are capital expenditure or revenue expenditure?

**Decision:** The assessee paid penalty for various defaults to Bombay Stock Exchange like that of National Stock Exchange conducting their business control under SEBI during the course of its business transactions, therefore, the Bombay Stock Exchange is not a statutory body and any penalties or fines paid as the case may be under regulations and bye-laws can be considered as regulations for controlling the internal obligations. There was no violation of law by the assessee and the fine paid were only for non-observation of internal regulations of stock exchange. The payment made by the assessee to the Stock Exchange is a condition for carrying on of the trade on the floor of the Exchange and, therefore, it is

clear that it would be an expenditure of capital nature. The expenditure would certainly help in the business of the assessee and may also help in profit-making, would not be sufficient to treat the same as revenue expenditure because it still retains the character of capital expenditure since the expenditure is directly related to the acquiring of right of carrying on of the business or to ensure the source of carrying on of the business.



# 8

## **TRADE AND MERCHANDISE MARKS ACT, 1958 (REPEALED) BY TRADE MARKS ACT, 1999**

### **8.1 Object & Summary:**

The Trade and Merchandise Mark Act had been enacted with a view to protect trade interests to prevent the deception of the consumers by the misuse or abuse of the trademark.

Trademarks are distinctive signs used to differentiate between identical or similar goods and services offered by different producers or services providers. It may be a distinctive word, phrase, logo, Internet domain name, graphic symbol, slogan or other device that is used to identify the source of a product and to distinguish a manufacturer's product from others. Here, the term 'distinctive' means unique enough to help consumers recognize a particular product in the market place.

In a way, trademark is a specified set of promises from the manufacturer to the consumer. So, a consumer can claim damages if his reasonable expectations are not fulfilled. Further, since the use of trade mark enables the manufacturer to distinguish his product from that of the others, the consumer becomes fully aware of the advantages of using that particular product.

S.2(1)(f) of this act comprehensively describes “false trade description” under 5 broad categories. The registration of a trade mark confers upon the owner the exclusive right to use that mark. Thus, it is his responsibility to educate the consumers on the unique features of his product as against products of other manufacturers. The main reason being that there is high level of consumer awareness of the goods and its manufacturer. Now, lots of alternatives are available for almost every product. So, the manufacturer or the owner of trade mark has to come up to the expectations of the consumers to make his Trade Mark acceptable to them. It must be noted that this Act was repealed and replaced by the Trade Marks Act, 1999.

A 'trademark' is a sign which serves to distinguish the products of one enterprise from the products of the other enterprises. Apart from other functions, a trade mark has an advertising function. Through the power of association created between a mark and a product or service, marks familiarize the public with such product or service. Thus, marks help their owners stimulate and retain consumer demand. At the same time they also inform the consumer as to products or services available on the market. Therefore, it is important that marks should not be confusing, deceptive, false and misleading and should not contribute in any other way to promote unfair competition<sup>1</sup>.

Section 103 of the Act, prescribes the penalty for applying false trademarks, trade descriptions etc. According to it any person who (a) falsifies any trade mark; or (b) falsely applies to goods or services any trade mark; or (c) makes, disposes of, or has in his possession, any die, block, machine, plate or other instrument for the purpose of falsifying or of being used for falsifying a trade mark; or (d) applies any false trade description to goods or services; or (e) applies to any goods to which an indication of the country or place in which they were made or produced or the name and address of the manufacturer or person for whom the goods are manufactured is required to be applied under Section 139, a false indication of such country, place, name or address; or (f) tampers with, alters or effaces an indication of origin which has been applied to any goods to which it is required to be applied under section 139; or (g)

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1. See generally, Ashwini Kumar Bansal, Law of Trade Marks in India (Commercial Law Publication Pvt Ltd. 2003).

causes any of things above mentioned in this section to be done, shall, unless he proves that he acted, without intent to defraud, be punishable with imprisonment for a term which shall not be less than six months but which may extend to three years and with fine which shall not be less than fifty thousand rupees but which may extend to two lakh rupees provided that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than six months or a fine of less than fifty thousand rupees.

Section 104 imposes penalty for selling goods or providing service to which false trade mark or false trade description is applied. The Section declares that any person who sells, lets for hire or exposes for sale, or hires or has in his possession for sale, goods or things, or provides or hires services, to which any false trade mark or false trade description is applied or which, being required under section 139 to have applied to them an indication of the country or place in which they were made or produced or the name and address of the manufacturer, or person for whom the goods are manufactured or service provided, as the case may be, are without the indications so required, shall, unless he proves- (a) that, having taken all reasonable precautions against committing an offence against this section, he had at the time of commission of the alleged offence no reason to suspect the genuineness of the trade mark or trade description or that any offence had been committed in respect of goods or service; or (b) that, on demand or on behalf of the prosecutor, he gave all the information in his power with respect to the person from whom he obtained such goods or things or services; or (c) that otherwise he had acted innocently, be punishable with imprisonment for a term which shall not be less than six months but which may extend to three years and with fine which shall not be less than fifty thousand rupees but which may extend to two lakh rupees provided that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than six months or a fine of less than fifty thousand rupees.

**8.2 Name of the Case:** Havells India Ltd. and Ors v. Amritanshu Khaitan and Ors.

**Legislation:** Trade Marks Act, 1999

**Constitution Provision:** Art. 19(1)(a) and Art. 19(2)

**Citation:** CS (OS) 107/2015, MANU/DE/0791/2015 decided on 17.03.2015

**Court:** High Court of Delhi

**Keyword:** Comparative Advertising, Durables

**Facts :** Plaintiffs have impugned the promotional campaign / advertising of the defendants wherein they have compared their product i.e. 'Eveready LED Bulb' with the plaintiffs' product i.e. 'Havells LED Bulb' as according to the plaintiffs the same has resulted in disparagement and misrepresentation besides misleading the consumers. Defendants' impugned advertisement dealt with value and conveyed an impression that it offered better value for lesser price.

**Issue:** Whether the advertisement was misleading and whether it amounted to unfair trade practice?

**Decision:** In determining meaning of an advertisement, Court has to take into account fact that public expects a certain amount of hyperbole in advertising and test to be applied is whether a reasonable man would take claim being made as one made seriously. Comparative advertising is legal and permissible as it is in interest of vigorous competition and public enlightenment. However, comparative advertising can be resorted to only with regard to like products. Further primary objective of Sections 29(8) and 30(1) of the Trade Marks Act is to allow comparative advertising as long as use of a competitor's mark was honest. Test of honest use is an objective test which depends on whether use is considered honest by members of a reasonable audience. Moreover failure to point out a competitor's advantages is not necessarily dishonest. However, care must be taken in ensuring that statements of comparison with competitors' products are not defamatory or libellous or confusing or misleading according to Art. 19 of the Indian Constitution. It is necessary to interpret the Trade Marks Act and Advertising Standards Council of India Code in a sense favourable to comparative advertising while at same time always ensuring consumers are protected from possibly misleading advertising. For any advertisement to be considered misleading this Court noted that two essential elements must be satisfied - First, misleading advertising must deceive persons to whom it is addressed or at least, must have



potential to deceive them. Secondly, as a consequence of its deceptive nature, misleading advertising must be likely to affect economic behaviour of public to whom it is addressed, or harm a competitor of advertiser. Also in the present case, features being compared were not misleading. It is open to an advertiser to highlight a special feature/characteristic of his product which sets it apart from its competitors and to make a comparison as long as it is true. Hence it could be concluded there was no denigration or disparagement of Plaintiffs' mark. The advertisement was neither misleading.

**8.3 Name of the Case:** Delhi Public School Society v. Dps World Foundation.

**Legislation:** Trade and Merchandise Marks Act, 1958; Trade Marks Act, 1999.

**Citation:** IA 2920/2016 in CS(COMM) 154/2016, MANU/DE/0914/2016 decided on 18.4.2016.

**Court:** High Court of Delhi

**Keyword:** Trade Mark

**Facts:** In the year 1948 the plaintiff first conceived and adopted the distinctive crest of the school which comprises of a hand holding a torch (mashaal) along with the school motto 'Service Before Self?' and the words 'Delhi Public School?' written inside a shield device with other distinctive artistic features comprised therein. The said crest is registered. Since then, the unique Crest of the plaintiff has become a mark which is identified with the name of plaintiff and is widely recognized in India as well as across borders. The name Delhi Public School / DPS is well known for the quality education provided by the institutions set up by the plaintiff. Defendant no.1 is functioning under the trade name "DPS World Foundation" by adopting the identical trademark/name "DPS" and a deceptively similar logo/ crest mark. The plaintiff came to know that the defendants are also maintaining a website [www.dpsworldfoundation.com](http://www.dpsworldfoundation.com) wherein, the impugned trade mark of the defendants "DPS" and crest / logo is prominently displayed. Defendants' vision was to establish schools or other educational institutions, similar to that of the plaintiff and is using the aforesaid impugned trademarks in relation to the said services.

**Issue:** Is there a trademark infringement?

**Decision:** 1. The defendants, their life trustees, terms trustees, members, franchisees, officers, employees, agents, delegates, representatives, associates and all other acting for and on their behalf, are restrained from offering their services, advertising, offering franchisees, selling goods, and stationery, adopting, using and/or dealing in any manner with the registered mark/name "DPS" or any other mark identical or deceptively similar to the registered mark of the plaintiff, amounting to infringement and passing off the plaintiff's registered trademark till the disposal of this suit;

2. The defendants, their life trustees, terms trustees, members, franchisees, officers, employees, agents, delegates, representatives, associates and all other acting for and on their behalf are restrained from using the impugned trademark/name "DPS", or any other trademark identical or deceptively similar to it, amounting to passing off the plaintiff's trademark/ name, till the disposal of the suit.

**8.4 Name of the Case:** Data Infosys Ltd. and Ors.v. Infosys Technologies Ltd.

**Legislation:** Trade and Merchandise Marks Act, 1958; Trade Marks Act, 1999

**Citation:** C.M. APPL.14591/2012, 14592/2012 &11302/2013 decided on 5.02.2016

**Court:** High Court of Delhi

**Keyword:** Domain Name, Trademark, Technology

**Facts:** The respondent, Infosys Technologies Ltd. (hereafter called "Infosys") sued the preset appellant Data Infosys (hereafter referred to as "the defendant") and claimed permanent injunction against infringement of its registered trademarks in "Infosys" and allied marks. Infosys also sought relief against the use of its corporate name, including the use by the defendant of the domain name - www.datainfosys.net which - it was argued- amounted to infringement of its registered trademarks. The defendant entered appearance and contested the suit. It argued that whereas Infosys was in the field of software development, the defendant was providing internet services within India only and that the two business

activities were different. During the pendency of the suit, the defendant's application for registration of its mark "Data Infosys" was accepted and its registration was granted in class 38, i.e. telecommunication, communication by computer, by fibre, electronic transmission of voice, etc. The defendant was also granted registration of the same mark "Data Infosys" in Class 9 as on 22.03.2004, i.e. computer hardware. The defendant sought leave of the Court to amend its written statement and incorporate these developments. Infosys thereafter sought rectification of the registered trademark "Data Infosys" before the Intellectual Property Appellate Board (IPAB). Upon becoming aware of these proceedings, the defendant moved an application alleging that the initial filing of rectification proceedings without seeking leave of the Court constituted an abuse of process and that the proceedings before the IPAB were, therefore, null and void.

**Issue:** Is the invalidity plea tenable or untenable with the rectification proceeding pending?

**Decision:** Irrespective of whether, or not, the Court finds the plea of invalidity prima facie tenable, once a rectification application is filed by the concerned party within the specified time, or extended time, the proceedings in the suit are bound to be stayed to await the final disposal of the rectification proceedings. The Court has no discretion in the matter of stay of the suit, once it is brought to its notice that removal/rectification proceedings in respect of the registered trademark in question is pending, and the plea of untenability of the registered trade mark is subsisting (and not withdrawn, abandoned or deemed to be abandoned) in the suit. This is so, because the jurisdiction to rectify the register vis-à-vis a registered trademark exclusively vests in the Registrar or the Appellate Board. As long as registration of the trademark subsists, the Court would honour the said registration and enforce the exclusive rights of the use of the trademark in favour of the registered proprietor of the trademark, subject to other considerations provided for in the Act and as evolved by the Courts on considerations of equity.

**8.5 Name of the Case:** Cipla Ltd v. Cipla Industries Pvt. Ltd.

**Legislation:** Trade and Merchandise Marks Act, 1958

**Citation:** Suit No. 1906 OF 2012, MANU/MH/0609/2016

**Keyword:** Trade Mark, drugs, health

**Court:** High Court of Bombay

**Facts:** The Plaintiff, a well-known manufacturer of pharmaceutical products, has been using the mark CIPLA for a long time. It is also part of its corporate name. CIPLA is in fact an abbreviation of its earlier corporate name. There is no doubt, however, that within Class 05, the Plaintiff has only ever used the mark for pharmaceutical and medicinal preparations. This is not the Defendants' use of the mark. The Defendants have the mark as part of their corporate name, and they use it in a slightly different form in respect of household articles, such as soap dishes, photo frames, ladders and so on. The Defendants claim to have a registration of a very similar mark 'CIPLA PLAST' in their favour in Class 21 of the Fourth Schedule to the Trade Mark Rules, 2002.

**Issue:** Is there an infringement of registered trademark?

**Decision:** In the case of a 'well known mark' it is entirely possible that there may be an infringement by use of the mark as a trade name but for dissimilar goods. The decision of the Division Bench does not contemplate such a situation at all. Here the two operate in different fields and in different ways. Hence the decision of the division bench by holding it an infringement has to be relooked and the matter is placed before Hon'ble Chief Justice for his decision.

**8.6 Name of the Case:** Khoday Distilleries Limited v. The Scotch Whisky Association and Ors.

**Legislation:** Trade and Merchandise Marks Act.1958

**Citation:** All India Reporter 2008 SC pg 2737

**Court:** Supreme Court of India

**Keyword:** Deceptively Similar/Passing off

**Facts:** Appellant is a company incorporated under the Companies Act, 1956. It manufactures whisky under the mark 'Peter Scot'. An application was filed by it for registration of its mark. Appellant was informed that its application was accepted and allowed to proceed with the advertisement. A proceeding was initiated as regards registration of the trade mark. No opposition was filed by the respondent. It is to be the

whisky comes in a box the carton of which contains the emblem of 'Rampant Lion'. It is a malt whisky. On one side of the box it is stated 'Pride of India' and on the Other 'Khoday Distilleries Private Limited'. Apart from the said information on the right hand side of the label it is stated 'Distilled from the Finest Malt and Blended with the Choicest Whiskies by Scotch Experts under Government Supervision'. The Respondents filed a claim after a long period of letting the appellants use the name 'Scot'.

**Issue:** Whether the term 'Scot' would itself be a sufficient ground to opine that the mark 'Peter Scot' was deceptive or confusing.

**Decision:** The Court held for the Appellants stating that in the present case we are concerned with the class of buyer who supposed to know the value of money, the quality and content of Scotch whisky. They are supposed to be aware of the difference of the process of manufacture, the place of manufacture and their origin. As such they would know the difference between a genuine Scotch whisky and a Whisky just using the name 'Scot'. As such Khoday Distilleries cannot be held to be passing off its products as another or even misleading customers.

**8.7 Name of the Case:** T.V. Venugopal v. Ushodaya Enterprises

**Legislation:** Trade and Merchandise Marks Act, 1958, Trade Marks Act, 1999

**Citation:** (2011) 4 Supreme Court Cases 85

**Court:** Supreme Court of India.

**Keyword:** Deceptively Similar

**Facts:** The Appellant was the sole proprietor of a firm carrying on as manufacturers of incense sticks (agarbathis) in the name of Ashika Incense incorporated at Bangalore. The Appellant started his business in the year 1988 and adopted the mark 'Ashika's Eenadu'. 'Eenadu' is a word meaning 'this land' in Kannada, Tamil and Malayalam. In Telugu the word means 'today'. He therefore devised an artistic label with Eenadu written on it. The Appellant applied for registration of the trade mark. After receiving a certificate for the same he also applied for a copyright. Appellant's incense sticks were well received and his annual business came close to 11 crores. Respondent was a newspaper publishing in

Telugu and was also called 'Eenadu', and filed a suit against the Appellant for infringement of copyright and passing off in trade mark. The Respondent claimed they had been in the business of publishing newspapers, advertising, broadcasting, financing and were also developing a film city. Through various levels of appeal, the case was finally appealed to the Supreme Court by the Appellant.

**Issue:** Whether the Trade Marks Act, 1999 is applicable or not. Whether the use of the term 'Eenadu' is passing off in trade mark and therefore misleading.

**Decision:** The Court held that the 1999 Act was not applicable as provided by Section 159(4) of the Trade Marks Act, 1999. As the legal proceedings began under the Trade and Merchandise Marks Act, 1958 the Court proceedings must continue as if the new legislation had not been enacted. The Court further held that the Respondent's Company's mark had acquired an extraordinary reputation in Andhra Pradesh and had acquired a secondary meaning. Also the use of the words Eenadu by the Appellant is ex facie fraudulent and is being used to piggy back on the Respondent Company's good will in Andhra Pradesh. The Appellant cannot be allowed to continue using the term Eenadu as it would be misleading to the customers. The Court further held that no one can be permitted to encroach upon the reputation and goodwill of others.

**Comment:** A number of similar cases involving deceptive trade marks are filed in the Courts. For Example, Atlas Cycles (Haryana) Ltd. v. Atlas Products Pvt. Ltd. [(2007) ILR 4 Delhi 4, High Court of Delhi].

# 9

## COMPANIES ACT, 2013

### **9.1 Object & Summary:**

The Companies Bill, vetted twice by the Parliamentary Panel, was passed by the Lok Sabha on December 18, 2012 and by the Rajya Sabha on August 8, 2013. On receiving the assent of the Hon'ble President of India on August 29, 2013, it was notified on August 30, 2013 as the Companies Act, 2013 (Act 18 of 2013) consisting of 470 Sections and 7 Schedules. The Companies Act, 2013 is a historic legislation all set to replace the existing company law, which is 56 years old. It consolidates and amends the law relating to the companies and intends to improve corporate governance and to further strengthen regulations for the corporate sector. It is a modern and contemporary law, enacted after several rounds of deliberations with various stakeholders. It moves from the regime of control to that of liberalisation/self-regulation. In appropriate cases, it enables the authorities to make rules through subordinate legislation, thus ensuring that the law remains relevant at all times in the changing economic environment. It demonstrates the Government's commitment to ushering in a new era of corporate regulation. Major corporate frauds and misdemeanours witnessed in recent times, which were the consequences of mismanagement and gross neglect of legal and compliance requirements by certain companies, have affected the

image of the country in general, and the corporate sector in particular. These could have been avoided if proper compliance procedures had been followed and due diligence was exercised by relevant experts and professionals associated with such companies. The Act has put in place suitable mechanisms to guard against such incidents. The success of these initiatives would largely depend upon how diligently the professionals discharge their responsibilities in furtherance of objectives sought to be achieved through such mechanisms.

The Act is passed to consolidate and amend the law relating to Companies. Section 30 provides that where an advertisement of any prospectus of a company is published in any manner, it shall be necessary to specify therein the contents of its memorandum as regards the objects, the liability of members and the amount of share capital of the company, and the names of the signatories to the memorandum and the number of shares subscribed for by them, and its capital structure. Further, while making private placement through issue of a private placement offer letter, no company offering securities shall release any public advertisements or utilize any media, marketing or distribution channels or agents to inform the public at large about such an offer<sup>1</sup>. The Act also prescribes that where any notice, advertisement or other official publication, or any business letter, billhead or letter paper of a company contains a statement of the amount of the authorized capital of the company, such notice, advertisement or other official publication, or such letter, billhead or letter paper shall also contain a statement, in an equally prominent position and in equally conspicuous characters, of the amount of the capital which has been subscribed and the amount paid-up<sup>2</sup>.

If any default is made in complying with the requirements of sub-Section (1), the company shall be liable to pay a penalty of ten thousand rupees and every officer of the company who is in default shall be liable to pay a penalty of five thousand rupees, for each default<sup>3</sup>.

Another important provision relation to advertising is found in Schedule IV, which deals with the Code for Independent Director. Part III of this

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1. Section 42(8)
  2. Section 60(1)
  3. Section 60(2)



schedule deals with the Duties of Independent Directors. Under such duty an obligation is imposed on the independent directors not to disclose confidential information, including commercial secrets, technologies, advertising and sales promotion plans, unpublished price sensitive information, unless such disclosure is expressly approved by the Board or required by law.

The Companies Act 1956 (Repealed) stipulated that no deposits from the general public should be accepted by public companies (other than non-banking financial companies) without issuing advertisement following the prescribed norms. The Companies Act has also specified various provisions relating to advertisement by Indian companies.

Sec.68 of this act penalises the fraudulent inducement of persons to invest money with a fine that may extend to Rs.10,000. In cases of misleading advertisements, a consumer can also write to the Ministry of Corporate Affairs.

Investors can claim compensation for loss suffered by them on account of misstatements made in prospectus under Sec.62 and Sec.63. Sec.73(2A) and 73(2B) can be referred to in case of delay in despatch of allotment letter/ refund orders. The above provided sections are just a few examples and Sec.621 can be referred for various other broad misrepresentations.

This Act set the code of conduct for the corporate sector in relation to issuance, allotment, transfer of securities and disclosures to be made in public issues. It has been repealed by the Companies Act, 2013. A material change in this act penalises fraudulent inducement with imprisonment and not just a fine in Sections 34, 35, 36 & 37.

**9.2 Name of the Case:** A. V. Mohan Rao and Anr v. M. Kishan Rao and Anr.

**Legislation:** Companies Act, 1956

**Citation:** AIR 2002 SC 2653

**Court:** Supreme Court of India

**Keyword:** False Prospectus

**Facts:** The appeal actually involves the quashing of Criminal Complaint that was on file of the Court of the Sub-Judge, Economic Offices at

Hyderabad on the basis of whether a prima facie case can be made out against the appellants in the case. The appellants in this case were the Directors of a Company of the name of Spectrum Power Generation Limited (hereinafter 'Spectrum'). The Respondent in the present appeal made out a case against the appellants claiming that the appellants made certain false, deceptive and misleading statements by suppressing various relevant facts. This was done for the purpose of inducing a number of people to purchase the shares of the Company and also raised millions of Dollars from NRIs. The original investors in the Company were also not actually provided with any shares. As such the first Respondent (who was also a director of the Company) filed a complaint to the Sub-Judge, Economic Offices following which the Sub-Judge issued summons to the persons accused. A petition was filed by the accused appealing to the High Court of Andhra Pradesh to quash the orders on the basis of non-maintainability of the suit because of the absence of any prima facie case against them as one of the grounds. However, the High Court of Andhra Pradesh refused to quash the proceedings.

**Issue:** Whether the suit against the appellants in the Criminal Complaint No. 24/99 before the Sub-Judge, Economic Office was maintainable or not on the grounds of there being no prima facie case against the appellants. **Decision:** The Supreme Court held that there should be no quashing of the criminal complaint against the appellants. By the facts of the case it was clear that there was prima facie misrepresentation done by the Directors of the Company in the provision of information regarding the Company and its shares. As such the appeal was dismissed by the Supreme Court.

**9.3 Name of the Case:** Amichand Doss Dwarakadoss v. T. Manavedan Tirumalpad

**Legislation:** Indian Companies Act (VII of 1913)

**Citation:** All India Reporter (AIR) 1945 Mad 5

**Court:** High Court of Madras

**Keyword:** Misleading Prospectus

**Facts:** A prospectus was published in a newspaper which was calling for subscriptions for shares being issued by the Cochin Furniture Company,

Ltd. The appellant, going by the information in the prospectus applied for 250 shares. However the capital that was required was not obtained by the Company and as such the Company was liquidated. As such the appellant filed a Civil Suit asking for the rescission of the contract formed as a result of certain misrepresentations which were present in the Prospectus as well as compensation. Certain questions were raised by the director of the Company regarding the maintainability of the case as a result of the Limitation Period not being adhered to, which resulted in the appeal to the High Court of Madras.

**Issue:** Whether the appellant had any right to compensation as a result of misrepresentation in the Prospectus as well as what the Limitation Period regarding such a claim is.

**Decision:** The High Court held that there was misrepresentation in the Prospectus and as such the appellant could claim compensation. The appellant could be awarded compensation of Rs. 450. At the same time, it was held that under Article 36, Limitation Act, the limitation period for such a claim was 2 years and as such the appeal was dismissed.

**9.4 Name of the Case:** Pacific Convergence Corporation Limited v. Data Access (India) Limited

**Legislation:** Companies Act, 1956

**Citation:** 2013 Indlaw Delhi 540

**Court:** Delhi High Court

**Facts:** Respondent Company was directed to be wound up by Court and the Secured creditor in question inventoried respondent's assets and sought publishing of advertisement for sale. The Official Liquidator (OL) published advertisement through applicant advertisement agencies for which applicant sought payment to which the secured creditor objected payment as it was not in accordance with the rate of Directorate of advertising and visual publicity (DAVP).

**Issue:** The issues were related to as to in the absence of DAVP rates, it would not be fair to expect advertising agencies to be subsidising OL's or even secured creditor's costs of publication - Hence, secured creditors would now make payments to applicants in terms of bills raised after adjusting sums already released to them by Official liquidator.

**Decision:** In the absence of DAVP rates, it would not be fair to expect advertising agencies to be subsidising OL's or even secured creditor's costs of publication - Hence, secured creditors would now make payments to applicants in terms of bills raised after adjusting sums already released to them by OL - Direction issued to secured creditors to pay applicants amounts as per bills raised by them respectively, after accounting for sums already released to them by OL Applicants dismissed.

# 10

## **CIGARETTE AND OTHER TOBACCO PRODUCTS (PROHIBITION OF ADVERTISEMENT AND REGULATION OF TRADE AND COMMERCE, PRODUCTION, SUPPLY AND DISTRIBUTION) ACT, 2013**

### **10.1 Object & Summary:**

The Act put restriction on tobacco products including cigarettes, gutka, panmasala (containing tobacco), cigar, cheroot, Beedi, Snuff, chewing tobacco, hookah, and tooth powder containing tobacco. It prohibits all direct and indirect advertising of tobacco products in all media under Section 5 except at the direct points of sale or on the tobacco product packs.

Any contravention with regard to advertisements will attract a penalty under Sec.22 and Sec.23 of the Act. This is a heavy penalty of imprisonment of two years with/ without fine of 1000 rupees for the first

offence. Subsequent conviction can land an offender in jail for years. A consumer can complain to the supervisory authority and if the owner, manager, supervisor etc. fails to act upon any complaint he is liable to a fine equivalent to the number of individual offences recorded on his premises.

If you observe or note a possible violation, please notify the owner or manager of the establishment. They are responsible for compliance and are required to take action against a person who is smoking. Also, anyone can file a complaint on toll-free help line / online reporting system i.e. National Toll Free Helpline-1800-110-456 or the concerned authorized officer as mentioned in the rules.

**10.2 Name of the Case:** Godfrey Phillips India Ltd. v. Ajay Kumar

**Legislation:** The Cigarettes & Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003.

**Citation:** All India Reporter 2008 SC 1828

**Court:** Supreme Court of India

**Keyword:** Cigarettes and other Tobacco Products

**Facts:** This case is with respect to an advertisement by “Red & White” for the sale of cigarettes stating that “Red & White smokers are one of a kind”. The main aspects are that Akshay Kumar endorsed the brand, posed with a cigarette in his hand, and also a statutory warning of the health effects of smoking cigarettes and tobacco. The National Commission held that the slogan in the advertisement that "Red & White smokers are one of a kind" showing the image of Akshay Kumar indicated that "smokers of Red & White cigarettes could be super actor performing all the film stunts without duplicates". “Seeing comparative size of the letters etc. the statutory warning in our view loses its prominence which is usurped by more prominent and attractive Akshay Kumar and is sufficient to detract the attention of the viewers from the statutory warning to the image of Akshay Kumar with the slogan indicating smokers of Red and White cigarette could be super actors performing all the film stunts." This case is a petition challenging this decision of the National Commission.

**Issue:** Whether or not the issuing of advertisements under the brand name of “Red & White” for cigarettes in newspapers and magazines in 1999 is an unfair trade practice, or rather a misleading advertisement. Whether or not the Akshay Kumar's endorsement of the brand in the advertisements overshadows the statutory warning against smoking and tobacco. Whether or not the endorsement is indicative of the view that actors such as the above mentioned could not perform stunts like those of the same without smoking, i.e., the use of the said brand, which may subsequently influence the public having access to the advertisement in contention.

**Decision:** The Supreme Court dismissed both the appeal and decision of the NC on the grounds of the express prohibition of any form of advertisement of cigarettes and other tobacco products as under Sec. 5 of the Cigarettes Advertisements Act as well as the Cigarettes and Other Tobacco Products Act. The NC's decision holding the advertisement as misleading and needed to be corrected was indefensible because such advertisements were prima facie illegal.

**10.3 Name of the Case:** Kasturi and Sons v. Union of India and Another

**Legislation:** The Cigarettes & Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003, Cable Television Networks (Regulation) Act, 1995, Cigarettes (Regulations of Production, Supply And Distribution) Act, 1975, Cigarettes and other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution (Amendment) Rules, 2005.

**Citation:** 2008 Indlaw DEL 45

**Court:** Delhi High Court

**Keyword:** Cigarettes and other Tobacco Products

**Facts:** This case deals with the constitutionality of the Cigarettes & Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003. In particular, it was a writ petition filed against the amended rules under the act which was contended to be stifling of the film, electronic and print media from expressing themselves and curtailing their freedom to

communicate the reality of society to the public. Considerable emphasis was placed upon the fact that the business and use of tobacco was legal and is not *res extra commercium*. It was also contended that these rules would not permit even the dissemination of news in public interest. The basic provisions in contention were those of the act relating to the prohibition of advertisement of cigarettes and other tobacco products.

**Issue:** The basic issue laid down before the court were with respect to the power of the central government to enact such a legislation and rules.

Whether the amended rules were *ultra vires* the parent statute being the Cable Television Network (Regulation) Act, 1995 which was a non-tobacco related legislation?

**Decision:** The Court held that commercial advertisements were entitled to only merely limited protection under Art. 19(1)(a) given the condition that they are in public interest. Here is where they also addressed the question of surrogate advertisements, which may indirectly promote the use of tobacco products. Thus, these commercial surrogate advertisements which mislead the consumers into purchasing tobacco products would not have the same sort of protection under Art. 19(1)(a). But it also differentiated commercial advertisements from news, which is of the purpose and object to disseminate information. Thus, for this differentiation and clarity in distinction, the predominant nature, intent and character of the form of media would have to be looked into.

The Court held the impugned Act and rules to be *intra vires* and valid since Art. 19(1)(a) would also need to be harmoniously construed in favour of public interest. The Central Government did have the power to enact such legislations in larger public interest. The restrictions on electronic media and cinematographic films were held to be reasonable and justified in order to prevent publication of any brand names or logos of tobacco producing companies for the purposes promotion of the Right to life of all those who are affected by tobacco and its harmful effects.



# 11

## PREVENTION OF FOOD ADULTERATION ACT, 1954 (REPEALED)

### **11.1 Object & Summary:**

A set of rules have been provided in the Prevention of Food Adulteration Rules, 1955 to regulate misleading advertisements. Sec.43A restricts any advertisements in contravention of this Act.

This has been repealed and replaced by the Food Safety and Standards Act, 2006 which clearly defines advertisements and imposes penalties for misleading ones.

**11.2 Name of the Case:** Consumer Unity and Trust Society v. State of West Bengal and Ors.

**Legislation:** Fruit Products Control Order, 1955, Food Adulteration Act, 1954

**Citation:** C.R. No. 11910(W) of 1988

**Court:** In the High Court of Calcutta

**Keyword:** Food

**Facts:** A petitioner sought writ of mandamus directing respondent to confiscate Article name Frooti and Appy under Act of 1995 and Act of 1954 analysis of sample of aforesaid articles submitted by director prima facie satisfies that composition of product further requires investigation licensing authority to take decision after taking into account of analysis report and giving reasonable opportunity to petitioner. It is the further case of the writ petitioner that the respondent Company has been permitting the sale of their products directly and indirectly, namely, 'Frooti' and 'Appy' by publishing through printed electronic media hoardings, namely, Boards and wall painting at shops including T.V., newspapers and delivery vans of the Company as fruit drinks depicting the picture of mango and apples on their packs as well as in the advertisement one of which appeared in the magazine 'Bombay' of April 22 and May 6, 1986. According to the petitioner, the packs of Frooti and Appy did not contain the full details and the actual percentage of the ingredients of the contents of the said fruit drinks, as required under the Essential Commodities Act as well as Prevention of Food Adulteration Act, 1954.

**Issue:** Whether Clause 11(1) of the Food Products Order, 1995, was violated?

"11(1)-Any beverage which does not contain at least 25 per cent of fruit juice in its composition shall not be described as a fruit syrup, fruit juice, squash or cordial or crush shall be described as synthetic syrup."

**Decision:** The respondent Company has deliberately and wilfully not printed the word 'SYNTHETIC' on the said packs of "Frooti" and "Appy", as required under the provisions of Clause 11(2) of the said Order. The respondent Company sought to mislead the petitioner society which being an official member of the Central Consumer Protection Council is bound to promote and protect the rights of the consumers provided in the Consumer Protection Act 1986 which in this instance is the "Right to be informed" under Section 6(b) of the said Act. Pending final decision by the Licensing Officer, the respondent Company is restrained from making any publicity of the product in the newspapers, mass media, including Television, in respect of the product.

# 12

## **FOOD SAFETY AND STANDARDS ACT, 2006**

### **12.1 Object & Summary:**

It was 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 (FS SAI). The Act was enacted 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 FSSA, 2006.

FSSA 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 prescribes 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.

The responsibility is with food safety and standards authority of India (FSSAI) established under FSS Act, 2006. Its top level assignment is to lay down science based standards in the areas of manufacturing, distribution and sale of food related stuff. Imported food also comes under its purview.

Under this Act, every state government shall appoint a Commissioner of Food safety for the state. Among others the state commissioner has the duty to prohibit manufacture of a certain food brand, carry out survey of food industries, sanction prosecution of offenders, etc.

**12.2 Name of the Case:** M/s Amrut Distilleries Ltd vs. A.O Chennai and Ors.

**Legislation:** Food Safety and Standards Act, 2006

**Citation:** Writ Petition No. 33478 of 2014, MANU/TN/0716/2015

**Court:** Hon'ble High Court of Madras

**Keyword:** Manufacture, Expiry Date

**Facts:** The Petitioner had imported Active Dry Yeast which was referred to the first respondent by the Customs Department for compliance under the Act. By the impugned order, it was informed to the petitioner that one of the food items, viz., Active Dry Yeast, does not meet the labelling requirement under Food Safety and Standards Act, 2006 (and hence, the samples could not be drawn). The reason mentioned was that as per the guidelines issued by the Food Safety and Standards Authority of India, in wholesale package if 'Best Before Date' and 'Expiry Date' are given, then two should be different and clearly specified, however, as regards the above said food item of the petitioner, both 'Expiry Date' and 'Best Before Date' are mentioned as one and the same.

**Issue:** Whether it is not mandatory for wholesale packages to have both 'best before' and 'expiry date' on the product. Does violation of labelling standards amount to unfair trade practice?

**Decision:** On 19.03.2015, by imposing cost of Rs. 30,000 on the petitioner, it was held with the observation that it is not mandatory for wholesale packages to have both 'best before' and 'expiry date', the choice is left to the manufacturer either to declare the 'expiry date' or 'best before' date or to give both dates, but when both dates are given, they should be mandatorily mentioned as different dates and not as same date.

**12.3 Name of the Case:** Gandour India Food Processing Pvt. Ltd Vs Union of India .

**Legislation:** Food Safety and Standards Act, 2006.

**Citation:** Writ Petition No. 5285 of 2015, MANU/TN/0744/2015 decided on 25.03.2015.

**Court:** Hon'ble High Court of Madras

**Keyword:** Samples, Labelling Facts: Petitioner who was engaged in the business of manufacturing confectionery items, cakes, wafers etc., imported as consignment of 12.5 tonnes of "Desiccated Coconut Fine Grade" from a supplier at Malaysia. The consignment arrived at the Chennai Port and the Deputy Director, Authorised Officer under the Act refused to issue the No Objection Certificate on the ground that the complete address of the manufacturer/packer is not mentioned in the product as required under Regulation and did not meet the standards specified in Food and Standards Act.

**Issue:** Whether violation of labelling standards was misleading?

**Decision:** On 23.03.2015, after hearing the submissions of the learned counsels, the Hon'ble High Court of Madras dismissed the Writ Petition observing that the impugned consignment did not satisfy the labelling requirements as provided under the Regulation and no grounds were made to interfere with the impugned rejection report. Violation of such labeling standards can mislead the consumers and such acts can be considered as under unfair trade practice.

**12.4 RMB Chemicals Pvt. Ltd. & Anr. v. Union of India & Ors. Before Hon'ble High Court of Kolkata**

**Legislation:** Food Safety and Standards Act, 2006

**Citation:** Writ Petition No. 4124 of 2015

**Court:** Hon'ble High Court of Kolkata

**Keyword:** Packaging and Labelling

**Facts:** A Writ Petition No.4124/2015 was filed before the Hon'ble High Court of Kolkata by the petitioner who has imported 23 M.T. Monosodium Glutamate from China, challenging the order of FSSAI informing the petitioner that the samples cannot be drawn for analysis on the ground that the imported goods of the petitioner did not indicate the name and complete address of the manufacturer/packer as required under Regulation 2.2.2:6(i) of the Food Safety and Standards (Packaging and Labelling) Regulation, 2011. Petitioner who has imported 23 M.T. Monosodium Glutamate from China, was informed that his samples cannot be drawn for analysis on the ground that the imported goods of the petitioner did not indicate the name and complete address of the manufacturer/packer as required under Regulation 2.2.2:6(i) of the Food Safety and Standards (Packaging and Labelling) Regulation, 2011.

**Issue:** Whether violation of labelling standards was an unfair trade practice?

**Decision:** On 23.03.2015, after hearing the submissions of the learned counsels, the Hon'ble High Court of Kolkata dismissed the Writ Petition observing that the matter related to food safety and health and, admittedly, the impugned consignment at the time of import did not satisfy the labelling requirements as provided under the Regulation. Hence, the order directing affixation of the name and address of the manufacturer cannot be passed and the assignment cannot be given to the petitioner considering the safety of the consumers.

**12.5 Name of the Case:** M. Mohammad v. Union of India.

**Legislation:** Food Safety and Standards Act, 2006.

**Citation:** Writ Appeal No.1491 of 2014 in W.P. No.24999 of 2014

**Court:** Hon'ble High Court of Madras

**Keyword:** Packaging and Labelling

**Facts:** Petitioner had imported Betel Nuts from Sri Lanka. The product sample was analysed by the notified laboratory at Chennai and the referral laboratory at Mysore, where-in it was found that the said consignment

had damaged/ discoloured units more than the prescribed standards under the regulation 2.3.47(5) of FSS (Food Products Standards and Food Additives) Regulations, 2011.

**Issue:** Whether violation of food safety standards amount to unfair trade practice?

**Decision:** The Areca nut (Betel Nut) was an agricultural product which fell within the definition of primary food as per Section 3(2) of the FSS Act, 2006, hence, it shall undergo all the standards prescribed under the FSS Regulations, 2011 and as the sample drawn from the import consignment did not conform to the standards laid down under the FSS Regulations and hence the consignment cannot be released to the petitioner.

**12.6 Name of the Case:** Marico Limited and another v. Adani Wilmar Limited

**Legislation:** Food Safety and Standard Act 2006.

**Citation:** 2013 Indlaw DEL 1027, 2013 (199) DLT 663, 2013 (54) PTC 515.

**Keyword:** Comparative advertisement relating to product cooking oil.

**Court:** Delhi High Court

**Facts:** Plaintiff in these two suits for permanent injunction restraining the defendant from broadcasting, printing and publishing advertisement of its product cooking oil under the brand name for, averred by the plaintiff to be disparaging the goodwill and reputation of the plaintiff's product, also a cooking oil in the brand name SAFF, and for damages, claims interim injunction restraining the defendant from publishing, printing, airing, broadcasting the impugned advertisement

**Issue:** Whether any prima facie case of disparagement of the product of the plaintiff was made out. Held, though considerable time was spent by the plaintiff in arguing that the comparative product in the electronic/ television advertisement was unmistakably of the plaintiff but once it was held that comparative advertising was permissible, the said argument had no relevance except to the extent that the customer in the said advertisement was shown as abandoning the comparative product for

the product of the defendant after being satisfied of the defendant's product being better. Plaintiffs own cooking oil also had RBO as significant component and the plaintiff also in fact in its advertisements and website was claiming similar if not the same benefits of Oryzanol?

**Decision:** High Court did not find any part of either of the impugned advertisements to be denigrating the product of the plaintiff. Only thing which the advertisements did was to inform the consumer that the Oryzanol content in the product of the plaintiff was less than that required by the human body and that the Oryzanol content in the product of the defendant satisfied the daily requirement for Oryzanol of the human body. Advertisements thus amounted to nothing but comparing the advantages of the defendant's goods over the goods of others. No parts of the advertisements were found to be saying that the plaintiff's goods were bad. Applications dismissed.

**12.7 Name of the case:** Complaint against Amway India Pvt. Ltd.

**Legislation:** Food Safety and Standards Act, 2006.

**Citation:** Complaint Case No.17 of 2012

**FSSAI Officers:** Adjudicating Officer (FSSA) cum Additional District Magistrate (E), Gautam Budh Nagar, Greater Noida, UP.

**Keyword:** Misleading label

**Facts:** A Complaint case bearing no. 17 of 2012 was filed by the Designated Officer of Lucknow, Dr.Manisha Narayanan, on behalf of FSSAI in year 2012 before the Adjudicating Officer in Greater Noida in respect of entire label/advertisement of the respondent's product Nutrilite Daily which was found in violation of Section-24 of the Food Safety and Standards Act, 2006. It was contended that the product labelling was misleading and that such an action was misleading in nature.

**Issue:** Whether the labelling was misleading and whether such an action was unfair trade practice?

**Decision:** Amway India Pvt. Ltd. was circulating false information to the general public through labelling on its products which is a flagrant violation of Section-24 of FSS Act, 2006. A penalty of Rs. 10, 00,000/- was imposed on Amway India Pvt. Ltd. under Section 53 of the FSS



Act, 2006 for violating sub-Section (1) and (2) of Section 24 of FSS Act, 2006. It was also mentioned in the order that penalty mentioned supra would be recovered as arrears of land revenue. The advertisement was held to be misleading and such an action was decided to be an unfair trade practice.

**12.8 Name of the Case:** Kaleesuwari Refinery Pvt. Ltd. v. M.K. Agrotech Pvt. Ltd.

**Legislation:** Food Safety and Standards Act, 2006

**Citation:** O.A. No. 1151 of 2015 in C.S. No. 858 of 2015, MANU/TN/0403/2016 decided on 29.02.2016

**Court:** High Court of Madras.

**Keyword:** Misleading Advertisement, Food.

**Facts:** The applicant is stated to be a market leader in the refined edible sunflower oil sector. The applicant has been marketing the product under the brand name Gold Winner since 1990. The respondent is a late entrant in the sunflower oil segment, having a minuscule market presence. The respondent released several advertisements both in the print and electronic media to promote its product, claiming superiority over the products manufactured by others in the market. The respondent as part of its advertisement campaign, resorted to defamatory advertisement - to promote its product- "Sun Rich Sunflower Oil" and to brand the sunflower oil manufactured by the applicant and other manufacturers as one causing cancer. According to the applicant the respondent has gone to the extent of releasing a commercial advertisement wherein guest artists were shown dining in one of their friends house where they make a generic swipe in a friendly banter that they are consuming chemical pakodas chemical del tadka, chemical poori, transfat gulabjmoon etc. implying thereby that they are cooked with oils which have chemicals and trans fat. The applicant therefore filed the suit to restrain the respondent from resorting to such generic disparagement of refined sunflower oil, besides payment, of a sum of Rs. 25 lakhs as damages for conceiving, telecasting and exhibiting the offensive disparaging and misleading advertisement.

**Issue:** Whether Respondent erred in giving disparaging and misleading advertisement and that whether Appellant was entitled to injunction?

**Decision:** In this case attempt was made by Defendant to show that, products of Plaintiff were all of inferior quality, a cause of action would arise to file a suit either for a restraint order or for damages. In case Defendant was in a position to prove that there was nothing in advertisement which was untrue or misleading, and attempt was not made to brand product of Plaintiff as inferior quality, no action for disparaging would lie. If an advertiser made a consumer aware, of truth, there was nothing wrong in that. Reason was a party could not be held responsible for libel when all that had been told was truth, which was a complete defense against any assault or challenge, regardless of any damage sustained as a result of it. Applicant admitted that they were using commercial processing method for refining sunflower oil and that Applicant was using anti-oxidants to prevent deterioration. There was nothing on record to show that, Respondent had resorted to generic disparagement of sunflower oil manufactured by leading companies including Applicant. Further Applicant miserably failed to prove primary condition that, Respondent had attempted to distinguish its product from products marketed by Applicant and similar other players in market in a manner derogatory to them. Respondent wanted to convey that, refined sunflower oil available in market was processed by chemical processing. However, their product was not refined by using such harmful chemicals. Such being factual position, it could not be said that, Respondent was guilty of disparagement. Truth was always a defense in an action for libel. Such being, position, it would not be possible to injunct the respondent. Materials produced by Respondent showed that, claim made in advertisement was supported by relevant materials. Therefore, there was no reason to injunct the respondent. In case Defendant was in a position to prove that there was nothing in advertisement which was untrue or misleading, and attempt was not made to brand the product of Plaintiff as inferior quality, no action for disparaging would lie.

# 13

## YOUNG PERSONS (HARMFUL PUBLICATION) ACT, 1956

### 13.1 Object & Summary:

In the society, after women, the next vulnerable class who becomes the victims of objectionable advertisement is children or young persons<sup>1</sup>. This Act prohibits advertisements relating to any harmful publication i.e., any publication that tends to corrupt a young person (person under the age of 18 years) by inciting or encouraging him or her to commit offenses or acts of violence or cruelty or in any other manner whatsoever.

This Act, under Section 3, provides penalty for a person who (a) sells, let's to hire, distributes, publicly exhibits or in any manner puts into circulation, any harmful publication<sup>2</sup>, or (b) for purpose of sale, hire, distribution, public exhibition or circulation, prints, makes or produces or has in his possession any harmful publication; or (c) advertises or makes known by any means whatsoever that any harmful publication can be

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1 Section 2( c) of Young Persons (Harmful Publication) Act, 1956 – “Young person” means a person under the age of twenty years.

2 Section 2 (a)- Harmful Publication.

procured from or through any person, such person shall be punishable with imprisonment which may extend to 6 months, or with fine, or with both.

Advertisements have been given a very broad definition in this Act. An offender can be fined and/or imprisoned for six months. All the offences under this Act are cognizable and a consumer can directly bring it to the notice of the state government and its authorities.

In *Narayanan v. State of Kerala*<sup>3</sup>, the question before the Kerala High Court was whether the proprietor and the manager of the printing press who had nothing to do with the authorship of certain obscene literature and the editing and circulation of it can be tried and convicted under section 3(1)(a) & (b) of the Act. The Court answered it in the negative and discharged the proprietor and manager of the press.

On conviction under Section 3, the court may order the destruction of all the copies of the harmful publication in respect of which the conviction was and which are in the custody of the court or remain in possession of power of the person convicted<sup>4</sup>. The State Government, if it is of opinion after consultation with principal law officer of the state, whether called the Advocate General or by any other name, that any publication is harmful publication declare by order notified in the official gazette, that every copy of such publication shall be forfeited to the government and every such notification shall state the ground for the order<sup>5</sup>.

Any person aggrieved by an order of forfeiture passed by the State Government under Section 4 may, within 60 days of the date of such order<sup>6</sup>, apply to the High Court to set aside such order. Power to seize and destroy harmful publication has been entrusted to any police officer or other officer empowered in this behalf by the State Government<sup>7</sup>. Any first Class Magistrate may, by warrant, authorise any police officer not below the rank of sub-inspector to enter and search any place where any stock of harmful publication may or may be reasonable suspected to

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3 1970 Kerala Law Times 605.

4 Section 3 (2), Young Persons (Harmful Publication) Act, 1956.

5 Section 4 ,Young Persons (Harmful Publication) Act, 1956.

6. Section 5,Young Persons (Harmful Publication) Act, 1956.

7. Section 6(1), Young Persons (Harmful Publication) Act, 1956.

be<sup>8</sup>. Publication seized shall be produced, as soon as before magistrate of first class and if the opinion of Magistrate or court such publication is harmful publication, the Magistrate or court may cause it to be destroyed<sup>9</sup>.

**13.2 Name of the Case:** Shilpa Shetty; Reema Sen v. T. Dakshinamurthy

**Legislation:** Young Persons (Harmful Publication) Act, 1956

**Citation:** 2008 Indlaw Madras942

**Court:** Madras High Court

**Keyword:** Publication

**Facts:** The respondent had filed a complaint against the petitioners regarding the publication of some 'obscene and lascivious' pictures in a Tamil daily. He also stated that the pictures were accompanied by filthy slogans which would promote immorality and crimes against women. Thus provisions of the Press and Registration of Books Act, 1967 must be resorted to.

**Issue:** Whether advertisements of this nature constituted a breach of Sec 3. of the Young Persons (Harmful Publication) Act, 1956?

**Decision:** The Court held that to constitute a breach of the provisions of the Act the publication should be portraying the commission of an offence, acts of violence or cruelty or incident of a violent and repulsive nature. However the publication in this case did not fit into any of these descriptions and thus would not constitute a breach of any of its provisions.

**13.3 Name of the Case:** Narayanan v. State of Kerala

**Legislation:** Young Persons (Harmful Publications) Act, 1956

**Citation:** 1970 Kerala Law Times All 865

**Court:** Supreme Court of India

**Keyword:** Press

**Facts:** The question arose whether the manager of a printing press who had no role to play in the editing, transmission of obscene materials could be convicted under the Act.

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8. Section 6(2), Young Persons (Harmful Publication) Act, 1956.

9. Section 6 (3 & 4), Young Persons (Harmful Publication) Act, 1956.

**Issue:** Whether Sec. 3 of the Young Persons (Harmful Publication) Act, 1956 applied to manger of a printing press?

**Decision:** The court held that the proprietor manager of the printing press had no role to play in the actual transmission, thus he lacked the necessary guilty mind. Hence such a person could not be convicted under the provisions of the Act.

# 14

## INDECENT REPRESENTATION OF WOMEN ACT, 1986

### 14.1 Object & Summary:

The Indecent Representation of Women (Prohibition) Act, 1986 came into force on 2<sup>nd</sup> October 1987<sup>1</sup>. The Act aims to prohibit indecent representation of women in advertisements or in publication, writings, paintings, figures or in any other manner. The term “indecent” is not defined under the Act. However, the phrase “indecent representation of women” is defined under the Act. According to Section 2(c) of the Act “indecent representation of women” means the depiction in any manner of the figure of a women, her body or any part thereof in such a way as to have the effect of being indecent, or derogatory to or denigrating women or is likely to deprave, corrupt or injure the public morality or morals.

Section 3 of the Act prohibits advertisements containing indecent representation of women which says: “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”.

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1. The Preamble of the Act says: An Act to prohibit indecent representation of women through advertisements or in publications, writing, paintings, figures or in any other manner and for matters connected therewith or incidental thereto.

The term “advertisement” for the purpose of the Act includes any notice, circular, label, wrapper or other document and also includes any visible representation made by means of any light, sound, smoke or gas<sup>2</sup>. Though, it is doubtful whether this definition of advertisement includes within its ambit internet advertisement (e-advertisement), the phrase “any visible representation” appearing in it may be interpreted as to include e-advertising.

Section 4 of the Act prohibits publication or sending of books, pamphlets, etc. carrying indecent representation of women. In *Abhik Sarkar v. State*<sup>3</sup>, the Calcutta High Court refused to quash criminal proceedings launched against the petitioners for the publication of a nude photograph of Boris Becker along with a nude lady published on the second page of *Anand Bazaar Patrika*. One of the contentions of the petitioners in the instant case was that the said publication fell within the ambit of exception engrafted in Section 292 of IPC as well as exception in Section 4(1) of the Indecent Representation of Women (Prohibition) Act, 1986<sup>4</sup>.

Section 5 of the Act empowers an authorised Gazetted Officer for entry and search and to seize any indecent advertisement, Pamphlet etc. Section 6 makes provision for punishment for contravention of the provisions regarding prohibition of advertisements and publication of books, pamphlets etc. containing indecent representation of women<sup>5</sup>. Manufacturing companies can also be held liable under this Act for the contravention of Section 3 or Section 4 of the Act<sup>6</sup>.

This Act 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. Section 2 comprehensively describes advertisements, Section 5 gives powers to the government to enter and search and Section 5 provides for penalty for contravention of this Act.

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2. Section 2(a) Indecent Representation of Women Act, 1986.

3. 2004-110-CrLJ-2937-Cal.

4. Manoj Kumar Padhy, “Consumer Protection and Advertisement Laws”, Satyam Law International, New Delhi, India p.76.

5. Section 6, Indecent Representation of Women Act, 1986.

6. Section 7(1), Indecent Representation of Women Act, 1986.



This Act has broadened the scope of the audio visual media and materials in electronic form and enhanced penalties. Now advertisements in any form- mobile clip or CD will invite strict punishment. A complaint can be made before the police for violation of any of the provisions of the said act through any advertisements.

**14.2 Name of the Case:** High Court of Jammu and Kashmir v. Union of India

**Legislation:** Indecent Representation of Women Act, 1986 and Cable Television Network (Regulations) Act, 1995.

**Citation:** WPIL No. 14 OF 2014 decided on 11.02.2015.

**Keyword:** Indecent and Obscene

**Court:** High Court of Jammu and Kashmir

**Facts:** While advertising the products in television, the advertisers persuade the viewers to buy their products by depicting women in an indecent manner, which has the effect of denigrating women, and the said act violates the provisions of the Indecent Representation of Women Prohibition Act, 1986. It is also the contention of the petitioner that some advertisers and television in promoting their products through the programmes telecast throughout the country, which has the effect of promoting superstition among the general masses dragging them towards magical remedies and magical cure by misleading the public at large in gross violation of the Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954. Since the said Acts have not been made applicable to the State of Jammu & Kashmir, petitioner has prayed to issue a direction to the Government to consider drafting of Laws on the analogy of aforementioned Acts as the purpose before the enactment in other areas used to protect the moral fabric of the society. By way of an Public Interest Litigation, he also contended that it infringes the Cable Television Network Regulation's Act. During the pendency of the writ, ASCI decision came against the said advertisement but the same ads continued to be telecasted.

**Issue:** Is there an infringement of the provisions relating to Indecent representation of women? Are such laws applicable to the content telecasted in Jammu and Kashmir?

**Decision:** Since the petitioner failed to provide the proof of non-adhering to the decision of ASCI, the court was silent on this matter. But it directed the government to frame laws on the lines of Indecent Representation of Women Prohibition Act, 1986 so that such cases may be decided (the present law is inapplicable in the state).

**14.3 Name of the Case:** Pratibha Naitthani v. Union of India

**Legislation:** Indecent Representation of Women (Prohibition) Act, 1986

**Citation:** All India Reporter 2006 Bombay pg 259

**Court:** Bombay High Court

**Facts:** In this case a teacher had filed writ petition against the telecast of adult and obscene films shown by the electronic media and obscene posters and photographs printed by the print media. This was being done without any requisite permission from the central board of film certification.

**Issue:** Whether such publication of advertisement constituted a violation of the Indecent Representation or Women (Prohibition) Act, 1986?

**Decision:** The Court that such advertisements were in flagrant violation of the provisions of the Indecent Representation of Women (Prohibition) Act, 1986. And thus newspapers and other publications were restrained from publishing such advertisements.

**14.4 Name of the Case:** Babban Prasad Mishra v. P.S. Diwan

**Legislation:** The Indecent Representation of Women (Prohibition) Act, 1986

**Citation:** 2006 Criminal Law Journal 3263

**Court:** Chattisgarh High Court

**Keyword:** Indecent representation of women

**Facts:** In this case an Advertisement was published in Daily Navbharat, Hindi Edition, Raipur relating to some oil and other capsules shown to be useful to strengthen the nerves and the names of the stockist/medical stores at Raipur, Durg, Bhilai and Rajnangaon were also published. On one side of the publication, a half size standing photograph of a woman is shown taken in lap of a man from side pose. This was taken as an offending

depiction by the complainant/respondent No. 1 herein, who filed a criminal complaint in the Court of Judicial Magistrate First Class, Dhamtari, Distt. Raipur (M.P.), now Chhattisgarh, under Section 3 of The Indecent Representation of Women (Prohibition) Act 1986 .The Magistrate took cognizance in the matter and after registration of the case under the aforementioned provisions of the Act, issued notices to the petitioner who is Editor, Publisher and Printer of the aforesaid Newspaper. The petitioner appeared before the trial Court, filed his bail bond and simultaneously he also filed this petition Under Section 482 of the Cr. P.C. for quashment of the proceedings of said Criminal Case.

**Issue:** The main issue was Whether the advertisement (contained in Annexure-A) amounts to indecent representation of women as defined under The Indecent Representation of Women (Prohibition) Act 1986, is a question for consideration in this petition?

**Decision:** The Magistrate in the first instance ascertained on the basis of the photograph that it did not offend any provision of Section 3 of the Indecent Representation of Women (Prohibition) Act, 1986 and it came out with the conclusion that the publication did not offend any of the provisions and therefore the complaint was to be quashed since if it would be allowed it would lead to waste of judicial time and an abuse of process of Court. The aggrieved party filed an appeal before the Apex Court. The Apex Court referred to cases such as of Madhavrao Jiwaji Rao Scindia v. Sambhajirao Chandrojirao Angre, Chandrakant Kalyandas Kakodkar v. State of Maharashtra, Madhavrao's case (1988 Cri LJ 853) (supra) while rendering the judgement and held that when any prosecution in the initial stage is quashed the test to be applied by the court is to whether the uncontroverted allegations as made prima facie establish the offence. The Apex Court further held that it is also for the Court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue therefore held that where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

By applying all these principles, it is to be judged as to whether the advertisement contained in Annexure 'A' is the indecent representation

of women as defined in the Act? If we carefully examine the picture, it would appear that the same is a side pose picture of a woman showing her in the lap of a man. It is a half size hypothetical photograph, black and white dotted. Only half of the left arm of the woman is visible. As such, there is no exposure of her breasts and genitalia. The picture has been printed for advertisement of the above oil and capsule showing them to be useful to strengthen nerves and to remove weakness. The entire scenario along with the circumstances around it would suggest that for promoting the sale of the aforesaid products through various medical shops at different places, such an advertisement was published along with the above hypothetical dotted form picture. And In view of the changed scenario of the society where the sexual literacy is also a part of modern human life, such depictions does not carry much weight to classify them to be indecent or derogatory to or denigrating the women or likely to deprive, corrupt or injure the public morality of morals. That is more so, because the present depiction will fall in simple category among what has already been available to the society at large though the print and electronic media is much higher than what has been depicted in the case in hand along with the overall surrounding circumstances. Considering the facts and circumstances of this case, in the opinion of this Court, on the above principles, no useful purpose is likely to be served by allowing the criminal prosecution to continue in this matter. The proceedings of Criminal Case No. 701 / 1996 (P.S. Deevan v. Baban Prasad Mishra) are quashed. The petition is allowed.

# 15

## **INSURANCE REGULATORY DEVELOPMENT ACT, 1999**

### **15.1 Object & Summary:**

This Act provides for the establishment of an authority to protect the interests of holders of insurance policies, to regulate, promote and ensure orderly growth of the insurance industry.

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.

Section 2(d) of this act defines unfair misleading advertisements. Any complaints can be filed at this link- [www. http://www.policyholder.gov.in/](http://www.policyholder.gov.in/). It lays down a comprehensive and easy-to-follow mechanism for redressal of any grievances related to insurance policies, including misleading advertisements made in this context. To file a complaint, it is necessary that the complaint is written and is supported by all the relevant details. The guidelines issued by the IRDA mandate the complainant to take a written acknowledgement of the complaint with the date and the insurance company has to acknowledge this within 3 days and the complaint has to be dealt within 15 days from the acknowledgement.

If the complainant is dissatisfied with the response he/she received, if ever he/she gets a response, they can choose any of the following courses of action:

1. Call the toll-free helpline number 155255 (or) 1800 4254 732
2. Send an email to [complaints@irda.gov.in](mailto:complaints@irda.gov.in)
3. Register and track the progress of the complaint using the Integrated Grievance Management System (IGMS) at <http://www.igms.irda.gov.in/>
4. A letter or fax can be sent to the IRDA with the complaint, the format for which has been provided in the website relating to awareness about IRDA.

Address for filing complaint by post or courier:

Consumer Affairs Department  
Insurance Regulatory and Development Authority  
3-5-817/818, United India Towers, 9th Floor  
Hyderguda, Basheerbagh  
Hyderabad – 500 029  
Fax number: 040-66789768

**15.2 Name of the Case:** National Insurance Co. Ltd v. Shri D. P. Jain.

**Legislation:** Insurance Regulatory and Development Act, 1999.

**Citation:** MANU/CF/0075/2007

**Commission:** National Consumer Dispute Redressal Commission

**Keyword:** Insurance

**Facts:** In this case the complainant/respondent had bought a Nokia handset which according to the advertisement had insurance cover for one year. The handset was later stolen and the complainant thus files for insurance. But he was denied the same on the grounds that the theft fell under the exception clause of the need for violence and threat under the terms and conditions mentioned in the policy. Thus being aggrieved he approached the consumer forum.

**Issue:** Whether in light of Consumer Protection regulations such exception clauses would be binding?

**Decision:** The National Commission held that the consumer was not made aware of the exception clause at the time of advertising. Also, the advertisement was very lucrative in nature and hence in the interest of consumer welfare such an exception would not hold. Thus the mobile company was directed to pay the insurance amount to the consumer.





# 16

## **BANKING REGULATION ACT, 1999**

### **16.1 Object & Summary:**

Bank regulations are a form of government regulation which subject banks to certain requirements, restrictions and guidelines. This regulatory structure creates transparency between banking institutions and the individuals and corporations with whom they conduct business, among other things.

The Act applies to the categories of banks like nationalized banks, co-operative banks and it also look after borrowing, raising or taking of money, giving advance, bills business, bank guarantee, indemnity, foreign exchange, providing safe deposit vaults, collecting and transmitting money, managing, selling and realizing any property that may come in to the possession of the bank in satisfaction or part satisfaction of any of its dues etc. The Reserve Bank of India has powers to remove the managerial and other persons from office, suspension of board of directors of multi state co-operative banks etc. and the High Court can order suspension of business, and can order winding up.

**16.2 Name of the Case:** Reserve Bank of India v. Shri Imran Arshaf Furniturewala.

**Legislation:** Banking Regulation Act, 1949.

**Citation:** 2010 Indlaw Mumbai 969

**Court:** High Court of Bombay

**Keyword:** Misrepresentation

**Facts:** Accused No. 1, a Cooperative Bank, is entitled to carry on banking business which includes acceptance of deposits from the public and advance of loans. As such, it is governed by the provisions of Banking Regulations Act, 1949. Under Section 29 of the same Act, the Bank is required to prepare a balance sheet and profit and loss account on the last working day of each financial year. The profit and loss account and the balance sheet prepared under Section 29 and the audit report under Section 30 are required to be published in the prescribed manner and 3 copies of such accounts and balance sheet together with auditors' report are to be furnished as returns to the Reserve Bank of India within 3 months from the last date of period to which they refer. It is contended that the respondent No. 1 Bank submitted the balance sheet and profit and loss accounts for the years ending March, 2006, March 2007 and March 2008 showing the profit of Rs. 13.34 lakh, Rs. 5.95 lakh and Rs. 5.77 lakh respectively. However, as directed by Reserve Bank of India, the accused No. 1 Bank got the accounts audited by a statutory auditor. The report revealed that the bank had actually gone in loss. In view of these facts, RBI found that the accused No. 1 Bank, and all its Directors, Special Adviser and CEO had committed offence punishable under Section 46 of the Banking Regulation Act.

**Issue:** Whether the act by Bank is violative of Section 46(1), RBI Act. Whether the Board of Directors in its entirety is responsible as they wilfully made false statements in the returns of the said 3 years.

**Decision:** The Court held that it was clear that the Bank was violative of Section 46(1). By indicating that they were making a profit on their balance accounts while they were actually making a loss, The Bank was wilfully making a false statement, and such statement would go a long way in misleading and influencing a number of depositors and investors. The Court additionally held that it was unconscionable that only the bank and the CEO would be held criminally liable while the Chairman, Vice-Chairman, other Directors and the special advisor would all go free. Therefore the RBI's revision petition was allowed.

# 17

## **BUREAU OF INDIAN STANDARDS ACT, 1986**

### **17.1 Object & Summary:**

Bureau of Indian Standards (BIS) is the National Standards Body of India and aims at providing third party guarantee of quality, safety and reliability in case of products and services through the Standard mark (ISI) and assurance of purity of gold and silver jewellery through Hallmark.

It also regulates the standardisation, grading, certification of goods, etc. The authority has the power to issue licenses, grant, renew, suspend or cancel a license and to make such inspection and take such samples of any material or substance.

In order to safeguard the interest of consumers against spurious marking/ misuse of BIS Standard Marks, the Bureau of Indian Standards Act 1986, provides for penalty on such persons and firms, for misuses of the mark, with imprisonment for a term which may extend up to one year or with a fine which may extend up to Rs. 50,000 or with both.

Complaints may be sent by email to [enf@bis.org.in](mailto:enf@bis.org.in), [henf@bis.org.in](mailto:henf@bis.org.in), [ddgenf@bis.org.in](mailto:ddgenf@bis.org.in) by providing details of products and address where misuse is taking place along with name/ address and telephone number of the complainant.

**17.2 Name of the Case:** Bureau of Indian Standards v. Pepsico India Holdings Pvt. Ltd. And Anr.

**Legislation:** Bureau of Indian Standards Act, 1986

**Citation:** 155 (2008) DLT 588

**Court:** Delhi High Court

**Keyword:** Packaged Drinking Water

**Facts:** The Respondents in the case were Pepsico Holdings. Pepsico packages water under the label of Aquafina. The use of the words Pure, Crisp, Refreshing, Purified and Purity Guaranteed and the pictorial representation of snow-capped mountain and the sun on the label of Pepsico's packaged drinking water was questioned to be misleading and was therefore prohibited by law. The picture of snow-capped mountains and the words Purity Guaranteed, according to the Appellants creates a confusion in the minds of the public about the origin, composition, nature and the properties of the packaged water marketed by Pepsico.

**Issue:** Whether the BIS has jurisdiction regarding issues concerning labelling. Whether the pictorial representation of snow-capped mountains and the words Purity Guaranteed were misleading with respect to the label of a packaged water bottle.

**Decision:** The various provisions of the BIS Act and the Specifications under it for packaged drinking water need to be construed widely so as to allow the BIS power over labelling requirements of articles. It is within the ambit of the power of the Bureau to prohibit such activities which creates confusion in the mind of the public or any way misleads the public about the nature, origin, composition and properties of any good or article sought to be marketed under the BIS standard mark. The pictorial device of snow-capped mountains creates a misleading impression in the minds of consumers that the water has its origins in the mountains. However the expression Purity Guaranteed does not contravene any provisions under the BIS Act or the PFA Rules. As such, the words can still be used by the Respondent Company.

# 18

## LEGAL METROLOGY ACT, 2009

### 18.1 Object & Summary:

With a view to provide a coherent scheme and uniform standards of weights & measures, the erstwhile Act namely, Standards of Weights & Measures Act, 1956 was enacted. It also became necessary to keep the regulation pragmatic to the extent required for protecting the interests of consumers and at the same time keep the industry free from undue interference.

It prohibits any person, in relation to goods, to quote any price or publish any advertisement or indicate the net quantity of a pre-packaged commodity or express in relation to any transaction, any quantity or dimension which shall not be in accordance with the standard unit of weight, measure or numeration as provided under LMA.

It also provides that no person shall manufacture, pack, sell, import, distribute, deliver, offer, expose or possess for sale any pre-packaged commodity unless such package is in such standard quantities as prescribed and any advertisement mentioning the retail sale price of a pre-packaged commodity shall contain a declaration as to the net quantity in such form as prescribed.

In the event of contravention of the provisions of this act, various penalties are prescribed for depending upon the nature of the contravention an imposition of fine from Rs. 2,000/- to Rs. 1,00,000/- and / or with an imprisonment from 3 months to 1 year.

This Act also provides for the establishment of rules and rules for packaging of commodities have been provided in the Legal Metrology (Packaged Commodities) Rules, 2011. In case of any complaints, the consumer should first contact the shopkeeper/ Manufacturer and then proceed to the District Legal Metrological Officer or Controller. In case of any further queries, recourse can be taken to the national toll free consumer helpline number: 1800-11-4000.

**18.2 Name of the Case:** Ama Hospitality v. GNCT of Delhi

**Legislation:** Standards of Weights and Measures (Enforcement) Act, 1985.

**Citation:** 176 (2011) DLT 474

**Court:** High Court of Delhi

**Keyword:** Packaged Commodity labelling

**Facts:** The present case involves the seller of certain fast foods such as muffins, brownies cakes, cookies etc. When an individual purchases these products from the seller for take away, the food product is generally wrapped in a paper package after being heated and combined in the store and are then sold over the counter. A Legal Metrology Officer of the Government of NCT Delhi charged the seller under Section 33 and 51, Standard Weights and Measures (Enforcement) Act, 1985 for not having the requisite information on the packaging of the product.

**Issue:** Whether the products sold by the petitioner falls under the definition of pre-packaged commodity and should therefore follow the labelling requirements as stipulated by the law.

**Decision:** It was held that the packaging done was not meant to be of a durable nature. The wrapper being loose and the food item perishable, it was expected that the consumer would consume the product not very long after the purchase. The Petitioner's wrapper for the brownies does not fall within the definition of package. As it is sold in an over the counter

form, it is not handed over in a 'packaged' form. Therefore the labelling requirements need not be followed.

**18.3 Name of the Case:** Britannia Industries Limited v. Union of India (UOI) and Ors.

**Legislation:** Standards of Weights and Measures Act, 1976

**Citation:** Writ Petition No. 685 of 2001

**Court:** Bombay High Court

**Keyword:** Food packet

**Facts:** The petitioners are a Company that manufactures biscuits. They manufactured a biscuit known as '50-50 biscuits' which were being sold in a standard pack size of 75g. However in order to increase sales, the petitioner also provided 20% extra free of cost in the same packet. The packet therefore actually weighed 90g. In 3 separate instances Legal Metrology officers seized packets of '50-50 biscuits' as they did not conform to the standard size as specified in the III Schedule to the Standards of Weights and Measures Act, 1976 read with Rules 23(1), 4 and 5 of Standards of Weights and Measures (Packaged Commodity) Rules, 1977. Several show-cause notices were sent to the Petitioner. The Inspector of Legal Metrology further went on to file a complaint to the Metropolitan Magistrate. However no actual process of hearing took place until the filing of the petition by the Petitioner.

**Issue:** Whether Rule 5, Standards of Weights and Measures (Packaged Commodity) Rules, 1977 read with III Schedule, Standards of Weights and Measures Act, 1976 is constitutionally valid. Whether the notices sent to the Petitioner by the Legal Metrology Officers is illegal, *ultra vires*, unconstitutional and void.

**Decision:** Rule 5 mandates that specified commodities are to be packed and sold only in the standard package and the said standard quantities are specified in relation to a particular commodity in the IIIrd Schedule to the said Act. It is obligatory on the part of the manufacturer/distributor to sell the commodity in the standard package mentioned in the Third Schedule. Merely because the manufacturer/distributor wants to give 15% or 20% of the commodity free of cost it would not be open for him to pack it with the standard quantity commodity which is being sold for a

price. This is because the main object of the Act is Consumer Protection. If the manufacturer or distributor is interested in giving something free of cost, it would be open for such manufacturer or distributor to pack the said quantity in a separate package along with standard package or pack it in a standard quantity package. The Rule is further not arbitrary and violation of Article 14, Indian Constitution as it allows for a manufacturer or producer to pack the commodity which is given free of cost either separately or in such a manner so as to ensure that both the paid portion and the free portion result in a commodity which is of standard size. The Rule is also not violative of Article 19(1)(g) as it forms only a reasonable restriction on the right to do business, which is allowed. As the notices were sent under the said Rule and Act they are not illegal, *ultra vires* the authority of the Legal Metrology Officers, unconstitutional or void.



# 19

## RESERVE BANK OF INDIA ACT, 1934

### **19.1 Object & Summary:**

This Act, along with the Companies Act, which was amended in 1936, was meant to provide a framework for the supervision of banking firms in India. It regulates the issue of bank notes and keeps reserves for securing the monetary stability in India.

Under Section 45J of the Act banks regulate or prohibit issue of prospectus or advertisement soliciting deposits of money as it is considered necessary in the public interest. It regulates or prohibits the issue by any non-banking institution and specifies the conditions subject to which any prospectus or advertisement may be subject to penalty provisions which include imprisonment and fines.

The Reserve Bank of India has set up a Consumer Education and Protection Cell (CEP Cell) in all its Regional Offices.

Any person who has a grievance against any department of the Reserve Bank may lodge his complaint with CEP Cell. The complaint should contain the name and address of the complainant, the department against which the complaint is being made, and facts of the case supported by documents, if any, relied upon by the complainant. In the event of the complainant

not getting a reply within a period of 35 days or his/her not being satisfied with the reply received, he/she may write to the Chief General Manager, Reserve Bank of India, Consumer Education and Protection Department, Central Office, 1st Floor, Amar Building, Perin Nariman Street, Mumbai 400 001.

RBI is one among many authorities which regulates advertising in the financial and monetary domain. Others include IRDA, TRAI, SEBI and the MCI. Multiplicity of legislations must be countered to effectively regulate the advertisements in this sector.

**19.2 Name of the Case:** Yugantar and Ors. v. Union of India and Ors.

**Legislation:** Reserve Bank of India Act, 1934

**Citation:** [1998] 94 Comp Cas 621(Delhi)

**Court:** High Court of Delhi

**Keyword:** Share Issuing

**Facts:** The petitioners in the present case were supposedly impelled to file the present writ petition, when they found that respondent No. 5, Bank of India, had taken out the public issue of 15 crore, when the bank was suffering and incurring losses for the last several years. The petitioners found the advertisement issued offering shares, deceptive and misleading. The petitioners also accused the Reserve Bank of India of having failed to comply with the provisions of Sections 58B and 58C of the Reserve Bank of India Act of 1934, since there was wilful omission to mention in the advertisement the material fact of losses incurred by the bank. This was with the intention to collect public money through misleading information in the advertisement and the prospectus. Therefore the petitioners filed the writ petition.

**Issue:** Whether the Bank of India had tried to mislead the public in order to obtain deposits from them and as such had violated Section 58B of the RBI Act.

**Decision:** The Court held that it was not a misleading advertisement. While the Bank of India had actually made operative profits over the years, the new accounting policy of the RBI had resulted in them being shown as making a loss due to the stringent provisioning norms and the

capital adequacy norms. The Government of India as the largest shareholder put in more capital. The statement in the advertisement that the Bank of India was “India's highest profit making nationalised bank”, was not misleading as a result of the fact that there were other representations that were also made in the same offer document. They also had declared their losses. Therefore the Bank of India's advertisement was not misleading and the petition was dismissed.

**19.3 Name of the Case:** Sancheti & Co. v. Inspector of Police (EOW-II) and Suneel H. Shah

**Legislation:** Reserve Bank of India Act, 1934

**Citation:** Cri. R.C. Nos.1827 and 1830 of 2002

**Court:** High Court of Madras

**Keyword:** Money Deposits

**Facts:** The petitioners themselves formed into an Association of individuals and carried on the business of receiving deposits inducing the public to deposit the amount with the accused financial with intent to deceive the depositors. According to the prosecution, the accused collected deposits in violation of Section 45S of the R.B.I. Act, which is punishable under Section 58B of the Act. The further allegation against them is that they have collected about Rs. 12 lakhs as deposit and subsequently committed default in returning the same after maturity.

**Issue:** Whether the petitioners were in violation of Section 45S, RBI Act and therefore punishable under Section 58B, RBI Act.

**Decision:** The Court held that the petitioners were violative of Section 45S, RBI Act as they formed an unincorporated association, and used it for the purpose of obtaining deposits from the public. The scheme was being run from Deepavali to Deepavali every year and was being used by the petitioners in order to cheat people who were well acquainted with them. The petitions were therefore dismissed by the High Court.



## **20**

# **THE PRE-NATAL DIAGNOSTIC TECHNIQUES (REGULATION AND PREVENTION OF MISUSE) ACT, 1994**

### **20.1 Object & Summary:**

This is an Act to provide for the regulation of the use of pre-natal diagnostic techniques for the purpose of detecting genetic or metabolic disorders or chromosomal abnormalities or certain congenital malformations or sex linked disorders and for the prevention of the misuse of such techniques for the purpose of pre-natal sex determination leading to female foeticide; and, for matters connected there with or incidental thereto.

Parliament enacted this Act to provide for the regulation of the pre-natal diagnostic techniques for the purpose of detecting genetic or metabolic disorders or chromosomal abnormalities or certain congenital malformations or sex-linked disorders and for the prevention of the misuse of such techniques for the purpose of pre-natal sex determination leading to female foeticide; and prohibition of advertisements relating to sex-determination.

Section 22 of this Act stipulates that:

(i) no person, organization, Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic shall issue or cause to be issued any advertisement in any manner regarding facilities of the pre-natal determination of sex available at such centre, Laboratory, Clinic or any other place; or (ii) no person or organisation shall publish or distribute or cause to be published or distributed any advertisement in any manner regarding facilities of pre-natal determination of sex available at any Genetic Counselling Centre, Genetic Laboratory, genetic Clinic or any other place.

The violators of these provisions shall be punishable with imprisonment for a term which may extend to three years and with fine which may extend to ten thousand rupees<sup>1</sup>. The appropriate authority is empowered under this Act to enter and search at all reasonable times such Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic or examine any record, register, document, book, pamphlet, advertisement or any other material object found therein and seize the same, if he has reason to believe that an offence under this Act has been or is being committed<sup>2</sup>. Companies can also be held liable under this Act<sup>3</sup>.

Under the Act there is a prohibition of advertisement relating to pre-natal determination of sex, and if any person, organization or company doing the same shall be punished with an imprisonment which may extend to three years and a fine which may extend to ten thousand rupees. A written complaint has to be made to the Appropriate Authority of the State or District or sub-district. The Appropriate Authority (AA) is a senior health department official, such as the Chief medical Officer at the District level or a Ward Medical Officer in the Municipality. Action has to be taken within 15 days of lodging the complaint.

The AA will investigate the complaint. The clinic will be searched and documents examined and seized if offence is taking place. The AA would file the case.

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1 Section 12(3), Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994.

2 Section 30, Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994.

3 Section 26, Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994.

**20.2 Name of the Case:** CEHAT and Ors. v. Union of India

**Legislation:** Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994.

**Citation:** (2003) 8 Supreme Court Cases 412

**Court:** Supreme Court of India

**Keyword:** Implementation of Amendment

**Facts:** The petitioners filed the writ petition with regards to the implementation of the new amendments to the Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994 which is named as the Pre- Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Amendment Act, 2002 and is now known as Preconception and Prenatal Diagnostic Techniques (Prohibition of Sex Selection) Act. As very few people know of this amendment, and therefore the Court should direct the Union Territories and the State Governments to properly implement the amendments.

**Issue:** To properly implement the amendment to the PNDT Act, 1994.

**Decision:** The Court held that it was the duty of the Union Government along with the UTs and the State Governments to ensure that the newly enacted law is properly implemented all over the country. Therefore the Court directed UTs and the State Governments to file affidavits regarding the same within a span of 10 days.

**20.3 Name of the Case:** M/s Malpani Infertility Clinic Pvt. Ltd. And Ors. v. Appropriate Authority, PNDT Act and Ors.

**Legislation:** The Pre- Natal Diagnostic Techniques (Regulation and Prevention Of Misuse) Act, 1994.

**Citation:** Writ Petition No. 5295 of 2003.

**Court:** High Court of Bombay

**Keyword:** Registration Suspended

**Facts:** The petitioners filed a writ petition challenging the cancelling of their registration under the PNDT Act. The petitioners raised the contention that the show cause notice as specified under Section 20(1), an opportunity of hearing as contemplated under Section 20(2) and sufficient reasons

as under Section 20(3) were not provided. However the facts of this case were very peculiar. The Petitioners had actually joined as Respondent no. 38 in the writ petition filed by CEHAT before the Supreme Court and had tried to support sex determination on the grounds of family balancing. They later tendered an apology, but they were prosecuted for a criminal offence under the Act. Their website also stated that sex- determination was done in the Clinic.

**Issue:** Whether the license could be suspended.

**Decision:** On the basis of the curious facts of this case, and the fact that the Clinic still advertised itself to be a place where sex determination could be done, the Court held that discussion was not necessary where the details could be given in writing. Also the Appropriate Authority had looked at the criminal proceedings and on the basis of it had suspended the Petitioner's license.



# 21

## THE CHILDREN ACT, 1960

### **Object & Summary:**

Children in India constitute 18.7 per cent 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 per cent of the total population and this segment is growing at a rate of 4 per cent per annum. This means a huge target market of 300 million is available to advertisers and they are already focusing on the kid channels.

Sec.37 of this Act prohibits the disclosure of names and address and other particulars of any child involved in any proceedings or inquiry.

This Act does not have an explicit provision in relation to misleading advertisements. The only provision which penalises action which are in the nature of advertisements is Sec.37 which provides for a fine of Rs.1000 for publication of any names, address, school or any other fact which may lead to the identification of the child.



## 22

### THE PRESS COUNCIL ACT, 1978

#### 22.1 Object & Summary:

This Act's objective is to ensure the freedom of the press and improve the standards of newspapers and news agencies in India. This is also a self-regulated agency like ASCI. The Council is guided by its "Norms of Journalistic Conduct" in the regulation of advertisements. The Press Council has the power to hold an inquiry into a complaint against a newspaper and if it finds that the newspaper has violated the standards prescribed by the council, it may warn, admonish or censure the newspaper, the editor or journalist as the case may be.

It is open to any person to lodge a complaint with the Press Council against a newspaper for a breach of the recognized ethical canons of journalistic propriety and taste. The complainant need not necessarily be the person aggrieved or directly involved. The alleged breach may be in the publication or non-publication of a news-item or statement, or other material, like cartoons, pictures, photographs, strips or advertisement which are published in a newspaper. Cases can also be initiated by any member of the public against any professional misconduct by an editor, working journalist, staff of a newspaper or engaged in freelance work. There can also be a complaint against any matter transmitted by a news agency by any means whatsoever.

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.

## 23

### **THE DRUGS AND COSMETICS ACT, 1940 & THE DRUGS AND MAGIC REMEDIES (OBJECTIONABLE ADVERTISEMENTS) ACT, 1954**

#### **23.1 Object & Summary:**

This Act (Drugs and Magic Remedies), inter alia, prohibits:

- i. The advertisement of certain drugs for treatment of certain diseases and disorders;
- ii. Misleading advertisements relating to drugs; and
- iii. The advertisement of magic remedies for treatment of certain diseases and disorders.

The Drugs and Cosmetics Act prohibits the use of a test or analysis made by the Central Drugs Laboratory or by a Government Analyst, or any extract from such report, to advertise any drug. Doing so is a criminal offence. 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.

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. Section 29 of the Act imposes penalty for use of Government Analyst's report for advertising which states: "Whoever uses any report of a test or analysis made by the Central Drugs Laboratory or by a Government analyst or any extract from such report for the purpose of advertising any drug (or cosmetic) shall be punishable with a fine which may extend to five hundred rupees.

Before passing of this Act there had been a great increase in the number of objectionable advertisements published in newspapers or magazines or otherwise relating to alleged cures of venereal diseases, sexual stimulants and alleged cures for diseases and conditions peculiar to women. These advertisements lead the ignorant and the unwary to resort to self-medication with harmful drugs and appliances or to resort to quacks who indulged in such advertisements for treatments which caused great harm. Therefore to control the advertisement of drugs in certain cases, to prohibit the advertisement for certain purposes of remedies alleged to possess magic qualities and to provide for matters connected therewith, the Parliament enacted the Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954. Section 3 of the Act prohibits advertisement of drugs for treatment of disease and disorders. It deals with procurement of miscarriage in women or prevention of conception; or with maintenance or improvement of capacity of human beings for sexual pleasure or with diagnosis and cure of venereal and other diseases.

In *State of Karnataka v. Dr. R.N.K Sirasubramanya*<sup>1</sup>, The Karnataka High Court held that for publication of an advertisement to amount to an

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1. 1978 CRLJ, 853.

offence under Section 3, it should have reference to a drug and that drug should have been suggested as a cure for certain ailments mentioned in clause (a) to (d) of Section 3.

In *K.S. Saini and Another v. Union of India*<sup>2</sup>, the Punjab High Court held that for terming an advertisement as objectionable the necessary condition is that the advertisement must induce others into using the drug advertised. So where pamphlets claimed that treatment for “certain “diseases was given by scientific methods with aid of electricity, the advertisement was not held to be objectionable.

In *A.S.P Kurup v. Union of India*<sup>3</sup>, the Kerala High Court held that the advertisement of 'Chloroquin' by short slogan printed on postcards and inlands released by Government of India in order to control malaria and to popularize use of 'Chloroquin' is not objectionable. As we have noted in the preceding Chapter the Court has upheld the validity of the Act in general and Section 3 in particular in the Hamdard Dawakhana Case<sup>4</sup>.

Section 4 prohibits a misleading advertisements relating to drugs which directly or indirectly give false impression regarding the true character of the drug; or make a false claim for the drug; or is otherwise false or misleading in any material particular. Section 5 of the Act prohibits advertisements of magic remedies<sup>5</sup>. For the purposes specified in Section 3.

In *Smt Kantirani Jaynarayan Mangal v. The State of Maharashtra*<sup>6</sup>, the petitioner was prosecuted under Section 3 of the Act for selling the Article known as “Bust developer” along with a booklet containing instruction showing the use of “Bust developer” with another photograph showing the instrument itself and the sketch of the supposed pump which is to be utilized in the process of using of this treatment. The submission

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2. AIR 1967 Punj 322 at 324.

3. AIR 1983 Ker. 2.

4. AIR 1960SC 554.

5. The term “magic remedy” includes a talisman mantra kavacha, and any other charm of any kind which is alleged to possess miraculous powers for or in the diagnosis, cure, mitigation, treatment or prevention of any disease in human beings or animals or for affecting or influencing in any way the structure of any organic function of the body of human beings or animals.

6. 1982 CrLJ 1454.

of the petitioner was that the alleged instrument is only a device to improve the general body of female. The object and purpose of instrument was improving the beauty with regard to breast. So, the instrument and the advertisement in booklets were not offending and much within Section 3 of the Act. Affirming the contentions of the petitioner the High Court held that the pair of beautiful breast is an essential part of the body of women. The contents of the advertisements do not relate any of the so called magic cures. The advertisements about remedies provided for health, sociability or developing beauty are not hit by Section 3.

The Act also prohibits the import into and export from India, any document containing an advertisement of the nature referred to in Sections 3, 4 & 5. Section 143, however, excludes registered practitioners, treatises or books, advertisement sent confidentially to medical practitioners, wholesale or retail chemists for distribution among registered medical practitioners or to hospitals or to laboratories. It also excludes advertisements printed or published by Government or with the previous sanction of the Government.

In *Dr. Yash Pall Sahi v. Delhi Administration*<sup>7</sup>, the apex Court of India held that Section 3 is subject to the provision of Section 14 and if the appellant's case falls under Section 14, Section 3 cannot be invoked against him. The prosecution has to show that the person to whom the list was sent is not a medical practitioner. Once this is established it is for the appellant to satisfy the court that his case falls under Section 14 (c).

The violators of any of the provisions of the Act shall, on conviction, be punishable, in the case of a first conviction, with imprisonment which may extend to six months or with fine, or with both. In the case of a subsequent conviction, they shall be punished with imprisonment which may extend to one year, or with fine or with both<sup>8</sup>. The State Government is also empowered to authorize any Gazetted Officer to enter and search at all reasonable times and to seize any advertisement which he has reason to believe contravenes any of the provisions of this Act<sup>9</sup>. Companies may also be held liable under this Act<sup>10</sup>.

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7. AIR 1964 SC 784.

8. Section 7, The Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954.

9. Section 8, The Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954.

10. Section 9, The Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954.



**23.2 Name of the Case:** Hamdard Dawakhana v. Union of India

**Legislation:** The Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954.

**Citation:** AIR 1960 554, 1960 SCR (2) 671

**Court:** Supreme Court of India

**Keyword:** Advertisement of certain drugs

**Issue:** Advertisement, Control of Advertisement, when relates to free of speech-Statute prohibiting advertisements of drugs for certain diseases-Constitutionality of whether curtails freedom of speech-Conferment of power on executive to add to diseases falling within mischief of statute-If amounts to delegation of legislative power-Statute empowering executive to seize offending Articles, without providing safeguards-Whether imposes reasonable restrictions- Constitution of India, Arts. 19(1)(a), 19(1)(g), 19(1)(f) and 19(6). The Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954 (21 of 1954), Sec.2(a), 3(d), 8 and 14(c).

**Decision:** The Supreme Court was faced with the question as to whether the Drugs and Magic Remedies Act, which put restrictions on the advertisements of the drug in certain cases and prohibited advertisements of drug having magic qualities for curing diseases, was valid as it curbed the freedom of speech and expression of a person by imposing restrictions on advertisements. The Supreme Court held that, an advertisement is no doubt a form of speech and expression but every advertisement is not a matter dealing with the expression of ideas and hence advertisement of a commercial nature cannot fall within the concept of Article 19(1) (a).



## 24

# TELEGRAPH ACT, 1885 AND TELECOM REGULATORY AUTHORITY OF INDIA ACT, 1997

### 24.1 Object & Summary:

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.

If you receive any unsolicited commercial communications seven days after registration of your telephone number in the NCPR, you may register a complaint by: A. Dialling the toll free number 1909 or sending a SMS to 1909. The complaint has to be registered from the telephone number on which unsolicited commercial communication has been received. Your complaint must be made within three days of receipt of the unsolicited commercial communication.

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.

**24.2 Name of the Case:** Reliance Communications Ltd. & v. The Union of India & Ors.

**Legislation:** Telecom Regulatory Authority Act, 1997.

**Citation:** WP 482 (W) of 2016, MANU/WB/0200/2016 decided on 28.03.2016.

**Court:** Calcutta High Court (Appellate Side)

**Keyword:** Telecom services

**Facts:** At all material times the appellant no. 1 (in short 'RCL') was and still is engaged in the business of providing telecom services throughout India. A licence agreement dated 14 November, 2003 was entered into by and between the RCL and the Union of India for provision of Unified Access Services after Migration. The Union of India issued a Notice Inviting Applications for auction of spectrum in some bands. Clause 3.0 of the notice provided for liberalization of existing spectrum holding in 800 MHz band which did not stipulate payment of One Time Spectrum Charges as a pre-condition for liberalization. Later, the Union of India issued a notice demanding payment of One Time Spectrum Charges as a pre-condition for liberalization at a rate which was higher than the earlier demanded. RCL requested the Union of India to revise the rate and bring it in conformity with the 2012-13 rates. By a letter dated 5 January, 2016, the Union of India rejected such request of RCL.

**Issue:** Is this Unfair Trade Practice and are the Telecom Disputes Settlement and Appellate Tribunal competent to adjudicate the matter?

**Decision:** The fact here does not establish any unfair trade practices adopted by the defendant. Neither it is restrictive in nature. The TDSAT has jurisdiction to decide the disputes between the parties which come under the TRAI Act.

**24.3 Name of the Case:** Tata Press Ltd v. Mahanagar Telephone Nigam Ltd.

**Legislation:** Telecom Regulatory Authority of India Act 1997

**Citation:** 1995 AIR 2438, 1995 SCC (5) 139

**Court:** Supreme Court of India

**Keyword:** Shares

**Facts:** The Nigam is a Government Company substantially controlled by the Government of India. The Government holds 80% of the total shares of the Company. The Nigam is a licensee under the Act and as such is required to establish, maintain and control the telecommunication services within the territorial jurisdiction of the Union Territory of Delhi and the areas covered by the Municipal Corporations of Bombay, New Bombay and the Thane. Till 1987 the Nigam/Union of India used to publish and distribute, on its own, the telephone directory consisting of white pages only. However, of late, the Nigam started entrusting the publication of its telephone-directory to outside contractors. From 1987 onwards, the Nigam has permitted such contractors to raise revenue for themselves. by procuring advertisements and publishing the same as “Yellow Pages” appended to the telephone directory. In other words, the telephone directory published and distributed by the Nigam consists of the white pages which contain alphabetical list of telephone subscribers and also “Yellow Pages” consisting of advertisements procured by the contractor to meet the expenses incurred by the contractor in printing, publishing and distributing the directory. There had been appeal has arisen from a civil suit instituted before the Bombay by the Mahanagar Telephone Nigam Limited (the Nigam) and the Union of India for a declaration that they alone have the right to print/publish the list of telephone subscribers and that the same cannot be printed or published by any other person without express permission of the Nigam/Union of India.

**Issue:** The question was whether commercial advertisement was part of Article 19(1)(a) of the Indian Constitution.?

**Decision:** Three judges bench of the Supreme Court held that commercial advertisement was definitely a part of Article 19(1) (a) as it aimed at the dissemination of the information regarding the product. The court also made it clear that the government could regulate commercial advertisements which are deceptive unfair, misleading and untruthful.



## **25**

# **THE INFANT MILK SUBSTITUTE, FEEDING BOTTLES AND INFANT FOODS (REGULATION OF PRODUCTION, SUPPLY AND DISTRIBUTION) AMENDMENT ACT, 2003**

### **25.1 Object & Summary:**

This Act prohibits advertisements for the distribution, sale or supply of infant milk substitutes, feeding bottles or infant foods, as specified under the Act. It also contains requirements dealing with packaging and distribution of the relevant products.

These two legislations also have a vertical application on advertising. Under this Act, companies can also be charged for an offence, by charging all those who were aware of the violation and are in a position of responsibility. Offences under this act are bailable and cognizable.





## 26

# THE CABLE TELEVISION NETWORKS (REGULATION) ACT, 1995

### **26.1 Object & Summary:**

Almost everybody in the country is familiar with the cable television. It has been spreading its wing from the initial urban cities, right to remote villages. There has been a haphazard mushrooming of cable television networks all over the country due to availability of signal of foreign television network via satellites. To check the screening on these channels and to regulate the operation of the cable television networks in the country so as to bring uniformity in their functioning, the Parliament enacted the Cable Television Network (Regulation) Act, 1995. Section 6 of the Act says: “No person shall transmit or re-transmit through a cable service any advertisement unless such advertisement is in conformity with the prescribed advertisement code”.

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. A court

shall take cognisance of any contravention under this act only upon written complaint from an authorised officer and the complaint has to be made through him only.

Rule 7 of the Cable Television Network Rules, 1994 (Amended up to 2000) lays down the Advertising Code.

- i. Advertising carried in the cable service shall be so designed as to conform to the laws of the country and should not offend morality, decency and religious susceptibilities of the subscribers.
- ii. No advertisement shall be permitted which promotes directly or indirectly production, sale or consumption of cigarettes, tobacco products, wine, alcohol, liquor or other intoxicants; infant milk substitutes, feeding bottle or infant foods.
- iii. No advertisement shall be permitted, where the objects are wholly or mainly of religious or political nature; advertisement must not be directed towards any religious or political end.

The violators of the provisions of this Act shall be punishable (a) for the first offence, with imprisonment for a term which may extend to two years or with fine which may extend to one thousand rupees or with both; (b) for every subsequent offence, with imprisonment for a term which may extend to five years and with fine which may extend to five thousand rupees<sup>1</sup>.

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.

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1. Section 16, The Cable Television Network (Regulation) Act, 1955.

**26.2 Name of the Case:** Asia Industrial Technologies Limited v. Ambience Sellers Ltd.

**Legislation:** The Cable Television Networks (Regulation) Act 1995

**Citation:** (1997) 99 BOMLR 613

**Court:** Bombay High Court

**Keyword:** ZEE TV channel

**Facts:** The plaintiff in this case was the owner of copyright in some programs produced in India which it exclusively licensed to the third plaintiff to broadcast over the channel named ZEE TV. The broadcast was made from Hong Kong via Asiasat -1, the footprint of which covers India. The Sponsors/ advertisers chose the program in which they wish to advertise and the third plaintiff then combined the advertisements with the programs and broadcast the same. The defendants owned, controlled and operated cable television networks in several cities in India. During the broadcast of the plaintiff's programs on ZEE TV, the defendants started to substitute their own advertisements for the advertisements appearing in between the plaintiff's programs. Moreover the defendant also ran a stream of advertisements on the lower part of the screen, along with the main programs of the plaintiff's. The plaintiff's sued the defendants for inducing a breach of contract, passing off, infringement of copyright and broadcast reproduction rights and conversion.

**Issue:** The issue that the court examined was whether the defendants had the right to substitute the plaintiff's advertisement with their own.

**Decision:** The court held that defendants were indulging in an unfair trade practice, as they were trying to make profits by capitalizing on the programs of the products.

**26.3 Name of the Case:** Suo Moto v. State of Rajasthan and others

**Legislation:** The Cable Television Networks (Regulation) Act 1995

**Citation:** RLW 2005 (2) Raj 1385, 2005 (4) WLC 163

**Court:** Rajasthan High Court

**Key word:** Depiction of women in undignified manner

**Facts:** In this case, a petition was filed against the depiction of women in an undignified manner in advertisements on Indian television. Jodhpur, the Heritage City of Rajasthan, otherwise considered a calm City with low crime rate, was shocked with the news of an auto rickshaw Driver and his accomplice allegedly raped German tourist. As per the Information, the victim, a German lady aged 47 years arrived in the City of Jodhpur on Wednesday i.e. 11.5.2005. She checked-in a Guest House in the walled city area. In the evening, she went to a hotel viz., Taj Hari for taking dinner. After taking dinner, she hired an auto- rickshaw from outside the said hotel for the Guest House. The driver drove the auto-rickshaw in the opposite direction on Jodhpur-Pali highway. The driver was accompanied by his associate sitting on the corner of the driving seat. It is alleged that they took her to a deserted place near dry bed of Jojari River. Both of them alleged to have robbed and committed rape on her. The screams of the victim attracted the nearby villagers of 'Meghvalonki Dhani'. The villagers rescued the lady and informed the police. The police registered the case for offence Under Section 376 IPC and allied offences. The accused persons were nabbed promptly. Recoveries of incriminating articles were made. The test Identification parade was arranged. Statement of the prosecutrix was recorded Under Section 164 of the Cr.P.C. on 13.5.2005 the issue was whether the Union of India was required to cooperate with the state agencies to ensure strict compliance of the aforesaid acts and rules as well as take concrete steps to prevent the deception of women in an undignified manner through broadcasting ,telecasting and advertisement etc.

**Issue:**The issue was whether the Union of India was required to cooperate with the state agencies to ensure strict compliance of the aforesaid acts and rules as well as take concrete steps to prevent the deception of women in an undignified manner through broadcasting, telecasting and advertisement etc.

**Decision:** The court held that the present provisions of the Cable Television Networks (Regulation) Act as well as the rules which were evolved would ensure that the advertisements not in compliance with such rules would be discontinued. The Union of India was directed to authorize a responsible person to ensure strict compliance of the Cable Television Networks Regulation Act,1955 and Rules framed thereunder

and the provision of Indecent Representation of Women Prohibition Act 1986 is required to cooperate with the state agencies to ensure strict compliance of the aforesaid acts and rules, as well as take concrete steps to prevent the depiction of women in an undignified manner through broadcasting telecasting and advertisement etc.



# 27

## INDIAN CONTRACT ACT, 1872

### 27.1 Object & Summary:

The expressions 'false', 'misleading' and advertisement are not found in Indian Contract Act, 1872, but it provides relief against 'false statement'. A 'false statement' may be a 'misrepresentation' or a 'fraud'. When a false statement is made with the knowledge that it is false and also with the intention to deceive the other party and make him enter into a contract on that basis, it is known as 'fraud' but, when the person making a false statement believes the statement to be true and does not intend to mislead the other party to the contract, it is known as 'misrepresentation'. When the consent of a party to the contract has been obtained either by the fraud or by misrepresentation, the contract is voidable at the option of the party whose consent has been so obtained<sup>1</sup>. Law does not cast a duty on the sellers/manufactures to disclose defects in his goods<sup>2</sup>. However, they must not make any false statement (fraud or misrepresentation) to induce the consumers through advertising. False statement allows three remedies to consumers:

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1. Section 19, Indian Contract Act, 1872.
  2. Section 17 of Indian Contract Act, 1872.

- (a) a right to rescind the contract;
- (b) a right to damages in deceit, if the representation is fraudulent;
- (c) a right to damages if the representation is negligent.

Remedies which are available under the Indian Contract Act are limited so far as the protection of consumers against false or misleading advertising is concerned because of the manufacturer who misrepresents is unlikely to be party to the contract with the consumer. The consumers' legal rights derive primarily from the contract he has entered into with the seller of goods or the supplier of services. It provides legal basis for remedies against the seller, if the latter does not fulfil his part of the contract. It is quite surprising that manufacturers, who determine quality, standard, potency etc. of products and decides, how product are to be advertised and what information should be attached is a stranger to the contract entered into between the consumer and retailer. So, due to doctrine of 'privity of contract' the consumer cannot sue the manufacturer. Contrary to the popular belief those manufacturers are liable for the false and misleading advertisement, it is the retailers who are responsible in law, although the retailer in turn may sue the manufacturer.

However, there are three instances where the consumer can directly sue the manufacturer:

- i. The consumer can bring an action in tort against the manufacturer even though there was no contract between the manufacturer and the consumer<sup>3</sup>, but this principle is limited to law of torts only;
- ii. If the manufacturer's advertisement about the product quality is intended to create a contractual relation with consumers as in *Carlil v. Carbolic Smoke Ball Co*<sup>4</sup>. where the manufacturer in an advertisement promised to pay 100 pounds to a consumer who could disprove the claim made in the said advertisements. In that case the court found that, manufacturer's advertisement gave rise to collateral contracts with the consumers who bought the product from the retailers. However, advertisements similar to one made in the instant case are rare;

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3 Dongoghue v. Stevenson, 1932 AC 562.

4. 1893 1 QB 256.



- iii. Another way to hold manufacturer liable is guarantees by which they are undertake to repair products. But the legal status of manufacturer's guarantee is uncertain due to lack of consideration. Though there is an argument that when a consumer knows about a guarantee beforehand, a collateral contract is formed with the manufacturer, but this argument fails where the consumer had no prior knowledge about the guarantee.

Thus it is clear from the foregoing that the advertisers and manufacturers cannot generally be held liable for a breach of contract due to operation of the privity of contract in such a situation. It is heartening however, to note that this deficiency in the law of contract has been remedied by the Consumer Protection Act, 1986.



# 28

## SALE OF GOODS ACT, 1930

### **28.1 Object & Summary:**

The Sale of goods Act attempts to define the position and liability of every manufacturer, dealer and seller of goods against the purchaser. Though the term 'Advertisement' is not used in this Act, still some of its provisions may have a bearing of varying degree on commercial advertisements. The first place is the recognition of the doctrine of caveat emptor in Section 16 of the Act which means "let the buyer beware". The principle says that it is for the buyer to satisfy himself that the goods which he is purchasing one is of quality which he requires or, if he is buying them for specific purposes, that they are fit for that purpose. It means that before buying any goods whether on the basis of advertisements in the print or electronic media he should assure himself about the quality or contents of those goods. This principle is however, subject to the exceptions such as (i) fitness for buyer's purpose; (ii) sale under trade name; (iii) merchantable quality ; (iv) conditions implied by trade usage; and (v) sale by sample. Most of these exceptions are hardly of any use where a purchase is made on the basis of a commercial advertisement. Section 15 of the Act lays down the condition that where there is a contract for the sale of goods by description there is an implied condition that the goods shall correspond with the description. This provision

can be of some relevance from the point of view of the regulation of commercial advertisements, if the sale is based on an advertisement were covered by the expression 'sale by description'. But in the absence of any case law it is difficult to say that such sale is covered under Section 15 of the Act.

Thus, the Sale of Goods Act, 1930 is of very limited relevance in the context of the regulation of commercial advertisement. Even otherwise, the Act has become by and large obsolete and hence need to be replaced by a legislation which is in tune with the complexity of the commercial transaction and the market place. It should be remembered that this Act is only limited to goods and does not extend to services and unfair trade practices or restrictive trade practices.

# 29

## INDIAN COPYRIGHT ACT, 1957

### 29.1 Object & Summary:

The importance of copyright was recognized after the invention of the printing press which enabled the reproduction of books in large quantity. The Indian Copyright Act thus passed in 1957. But, during the last four decades, modern and advanced means of communication like broadcasting, litho-photography, television etc. made inroads in the Indian economy. It necessitated the fulfilment of international obligations in the field of copyright. A comprehensive legislation had to be introduced to completely revise the Copyright law. This was achieved by the passing of a Copyright Act 1957 by the Parliament. Section 13 of the Act states the work in, which copyright subsists. Sub-Section (1) of Section 13 declares that subject to the provisions of this section and the other provisions of this Act, Copyright shall subsist throughout India in the following classes of works, that is to say, (a) original literary, dramatic, musical and artistic work; (b) cinematographic films; and (c) sound recording.

Advertisements to be protected under the Act must be original, i.e. (a) must not be copied from another, or (b) must not have been common place that is in the public domain. It does not mean that the work must be the expression of original thought. It may exist in the information given by a list of advertisements or advertisement themselves<sup>1</sup>.

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1. Manoj Kumar Padhy, "Consumer Protection and Advertisement Laws", Satyam Law International, New Delhi, India, p.109



# 30

## INFORMATION TECHNOLOGY ACT, 2000

### **30.1 Object & Summary:**

The growing popularity of internet advertising or online advertising among the advertisers as well as internet users create an environment of demand for e-advertising regulation in India. The IT Act, 2000 which has been passed to provide legal recognition to 'e-commerce' only prohibits the publishing of information which is obscene in electronic form.

The objective of the IT Act, 2000 is to provide legal recognition for transactions carried out by means of electronic data interchange and other means of electronic communication, commonly referred to as “electronic commerce”, which involve the use of alternatives of paper based methods of communication and storage of information, to facilitate electronic filing of documents with the Government agencies and further to amend the Indian Penal Code, Indian Evidence Act, 1872, the Bankers Book Evidence Act, 1891 and the Reserve Bank of India Act, 1934 and for matters connected therewith or incidental thereto.

Interestingly, the IT Act, 2000 does not create any civil liability for false and misleading advertisement in online medium unlike Consumer

Protection Act, 1986, Indian Contract Act, 1872 and Law of Torts etc. It creates a criminal liability in certain cases. Any person who sends, by means of a computer resource or a communication device any information which he knows to be false, but for the purpose of causing annoyance, inconvenience, danger, obstruction, insult, injury, criminal intimidation, enmity, hatred, or ill will, persistently makes by making use of such computer resource or a communication device, shall be punishable with imprisonment for a term which may extend to 3 years and with fine<sup>1</sup>. This provision creates confusion as to whether it can be extended to include unfair trade practice including false and misleading advertisement because in order to constitute unfair trade practice, the false information is required to be given 'for the promotion of sale', but no such phrase is used in this provision.

The Act mainly focuses on publishing or transmitting obscene material in electronic form. According to Section 67 whoever publishes or transmits or causes to be published in the electronic form, any material which is lascivious or appeals to the prurient interest or if its effect is such as to tend to deprave and corrupt persons who are likely, having regard to all relevant circumstances, to read, see or hear the matter contained or embodied in it, shall be punished on first conviction with imprisonment of either description for a term which may extend to two three years and with fine which may extend to five lakhs rupees and in the event of a second or subsequent conviction with imprisonment of either description for a term which may extend to 5 years and also with fine which may extend to 10 lakh rupees. Therefore, publishing or transmitting online advertising, which is obscene in nature attracts this provision.

But the advertisements, which are transmitted in the digital medium for publishing or transmitting of material containing sexually explicit act, etc. carries more stringent punishment than the aforesaid provision. Accordingly, whoever publishes or transmits or causes to be published or transmitted in the electronic form any material which contains sexually explicit act or conduct shall be punished on first conviction with imprisonment of either description for a term which may extend to five years and with fine with which may extend to 10 lakh rupees and in the

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1. Section 66 A of Information Technology Act, 2000.



event of second or subsequent conviction with imprisonment of either description for a term which may extend to 7 years and also with fine which may extend to 10 lakh rupees<sup>2</sup>.

The most rigorous punishment is provided for publishing or transmitting of material depicting children in sexually explicit act, etc. in electronic form. It mandates that whoever, (a) publishes or transmits or causes to be published or transmitted material in any electronic form which depicts children engaged in sexually explicit act or conduct or (b) creates text or digital images, collects, seeks, browses, downloads, advertises, promotes, exchanges or distributes material in any electronic form depicting children in obscene or indecent or sexually explicit manner or (c) cultivates, entices or induces children to online relationship with one or more children for and on sexually explicit act or in a manner that may offend a reasonable adult on the computer resource or (d) facilitates abusing children online or (e) records in any electronic form own abuse or that of others pertaining to sexually explicit act with children, shall be punished on first conviction with imprisonment of either description for a term which may extend to five years and with a fine which may extend to ten lakhs rupees and in the event of second or subsequent conviction with imprisonment of either description for a term which may extend to seven years and also with fine which may extend to ten lakh rupees<sup>3</sup>.

Internet advertisement has emerged not only as an effective means of advertising but also raise a number of legal issue trademark and copyright issues of non-solicited pornography and marketing etc. Though it carries punishment for publishing and transmitting false information, but it is not clear whether it can be extended to include unfair trade practice including false and misleading advertisement. However, the information Technology Act, 2000 prohibits the publication of information which is obscene in electronic form<sup>4</sup>. The Act is silent about the other aspects of unfair trade practice including false and misleading advertisement. Therefore an urgent

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2. Section 67 (A) of Information Technology Act, 2000.

3. Section 67 (B) , Information Technology Act, 2000.

4. See generally, Nandan Kamath, "Law relating to computers Internet & E-Commerce (Universal Bok Traders, New Delhi, 2000); J.H. Gray Smith, Internet Law and Regulation (Sweet and Maxwell, London, 2002).

need to regulate internet advertising either by extending the provisions of existing advertising legislation to it or by enacting an e-advertising legislation<sup>5</sup>.

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5. Manoj Kumar Padhy, "Consumer Protection and Advertisement Laws", Satyam Law International, New Delhi, India, p.117.

# 31

## INDIAN PENAL CODE, 1860

### **31.1 Object & Summary:**

In India, the main law relating to obscene or indecent advertisement is contained in IPC, 1860 and Indecent Representation of Women Act, 1986, respectively. Apart from this the Information Technology Act, 2000 aims to prohibit obscenity in online advertising and the Cable and Television Network (Regulation) Act, 1995 aims to prohibit obscenity in television advertising. Section 292 and 293 of the IPC prohibit obscenity in advertisements. Section 292 & 293 of the IPC have been enacted for protecting and safeguarding the public morals by making sale etc., of obscene literature and publication in general and to young persons in particular, a cognizable offence. A person is also liable to punishment if he advertises or makes known by any means whatsoever that any person is engaged in or is ready to be engaged in any act which is an offence under Section 292.



## 32

### ADVERTISING STANDARD COUNCIL OF INDIA

#### **32.1 Object:**

ASCI are registered as a Not-for-Profit company under Section 25 of the Indian Companies Act 1956. ASCI promote self-regulation in advertising. This NGO is a self-regulatory and voluntary organization set up as an interface between the advertisers, advertising agency and the media. Apart from ensuring that advertisements meet certain standards of truth, law, honest, decency, safety especially of children and not objectifying women, it also publishes a verdict on such advertisements upon receiving a complaint and deem them to be violative of the ASCI Code. One major drawback with this organization is that they lack enforcement powers.

If a consumer, at any given time, feels that a certain advertisement has violated these norms set by ASCI, they can log onto their website and file a complaint on this link <http://www.ascionline.org/index.php/lodgeur-complaints.html> by submitting their essential details and requisite details of the advertisement (including link, if possible). To ensure accountability, they can also track their complaints. A call can be made to their toll free number 1-800-22-2724, an email can be sent to [contact@ascionline.org](mailto:contact@ascionline.org)

or a postal mail can be sent to their address which is available at [ascionline.org](http://ascionline.org).

In order to ensure efficiency and receptiveness, the identity of the complainant is not revealed by ASCI. A Consumer Complaints Council (CCC) adjudicates upon the issue and publishes its decision within 12 days. The Fast Track Intra Industry complaint (FTCC) redressal process publishes the decision within 7 working days.

#### **Summary:**

Since May 2012 ASCI has initiated National Advertising Monitoring Service (NAMS) which monitors ads for any misleading claims. ASCI has no legal recognition but 80% of its decisions have been upheld by the advertisers and those ads have been withdrawn accordingly.

In 2006, an amendment was made to the Cable Television Network Rules 2004 to regulate television commercials as per the ASCI code. ASCI has recently tied up with the TAM Media Research for setting up of NAMS to suo moto monitor and regulate the advertisements in various forms. NAMS initiative is a paradigm shift for self-regulation in Indian advertising & probably a benchmark for other countries as something like this doesn't seem to have been attempted at this scale anywhere in the world.

### **32.2 Drugs and Cosmetics Sectors Upheld**

#### **1. COMPANY: Rajsee Ayurvedic Capsules**

**COMPLAINT:** Rajsee capsules Ad is product for man to increase power to sexually satisfy the partner. The objections were as follows:

1. Rajsee Capsules AD gives thorough discussion of ADS being published in magazines and newspapers and how they misguide and mislead consumers with false promises as if they are magical remedies, but after finishing the course as advertised there is no improvement in the condition and the customer is not in a position to say anything because it's a matter of self-image. Nobody checks the company's credentials as to its prestige product quality, company's promises and their trust-worthiness, prices and the efficacy of the products. Companies only offer attractive packing with titillating pictures of women and customers are fooled. But Rajsee capsules are different. A 30 day course costs only Rs. 360/- so be alert and know the facts before buying the medicines for treatment.

2. AD contravene the Drugs and Magical Remedies Act as they offer products for sexual pleasure.

3. This field has become a lucrative business proposition in recent times and herbal and Ayurvedic product is 100% safe without any side effects is the main point of targeting the consumers. Kindly look into the above objections and call for company reply and decide on my complaint. Kindly keep me informed.

**DECISION: UPHELD**

The ASCI approached the advertiser for their response in addressing the grievances of the complainant. The Advertiser was offered an opportunity for Personal Hearing with the ASCI Secretariat. The advertiser representatives did not seek personal hearing. CCC also noted that no response was received from the advertiser prior to the due date. The CCC viewed the advertisement. In the absence of comments from the Advertiser, the CCC concluded that the claims in the Ad (in Gujarati) as translated in English, "Rajsee capsule is an effective combination produced with mainly five different extracts. Its 21-day course is definitely helpful", were not substantiated and were misleading. Also, specific to the claims implying treatment for sexual disease (virility problems), the advertisement is in Breach of the law as it violated The Drugs & Magic Remedies Act. The advertisement contravened Chapters I.1, I.4 and III.4 of the ASCI Code. The complaint was upheld.

**2. Company: Ratnasagar Herbals Pvt Ltd**

**PRODUCT:** Joy Honey & Almonds Nourishing Lotion

**COMPLAINT:** We would like to draw your attention towards an advertisement of the product Joy Honey & Almonds Nourishing Body Lotion - Poshan Wala Lotion running as an audio visual advertisement on various TV channels and on You Tube. The audio visual advertisements breach the spirit of the Infant Milk Substitutes, Feeding Bottles and Infant Foods (Regulation of Production, Supply and Distribution) Act, 1992 and as well as the Amendment Act of 2003 (IMS Act) by depicting bottle feeding practice for children as a nutritional source. (Annexure 1: Attached is the copy of statement of objects and reasons) According to the IMS Act (law) "breastfeeding is an integral part of the reproductive process. It is established as a natural and ideal way of feeding the infant

and provides a unique biological and emotional basis for healthy child development. The anti-infective properties of mother's milk protect infants against diseases. Breastfeeding is therefore the key aspect of primary health care for a child. It is therefore, essential to protect and promote breastfeeding and to protect pregnant women and nursing mothers from any influence that could disrupt it. Inappropriate feeding practices lead to malnutrition, morbidity in our children. Promotion of infant milk substitute and related products like feeding bottles and teats do constitute a health hazard. Promotion of infant milk substitute and related products has been more extensive and pervasive than the dissemination of information concerning the advantages of mother's milk and breastfeeding and contributes to decline in breastfeeding. The advertisement emphasis on "potion" English meaning of this word is "nutrition". Joy, the company claims that their body lotion is nutrition for human skin like food is for every human being. The depiction of nutrition for a baby in this advertisement is bottled milk which is openly promoting the practice of bottle feeding. Bottle feeding as mentioned above falls under inappropriate feeding practices and has been proven to cause health hazards to children. We understand the conceptualization of the advertisement intends to depict nutritional needs of various species and position the product as nutritional supplement for human skin. But, what bothers us is the fact that this depiction might influence mothers that could disrupt breastfeeding by strengthening bottle feeding culture. To facilitate a better understanding for the advertisement makers we would like share that according to the National Guidelines on Infant and Young Child Feeding by the Department of Women and Child Development, Government of India (Annexure 2) infants should be exclusively breastfed for six months; means the babies should be only given breast milk and nothing else-no other milk, food, drinks and not even water. At six months the babies should be given appropriate complementary feeding , while continuing breastfeeding( up to 2 years of age) to meet the growing needs of the baby. Complementary food includes family's staple home cooked food. So, nowhere does the national guideline mention bottle feeding as an appropriate feeding practice? In fact the World health Organization (WHO) also recommends exclusive breastfeeding up to 6 months of age, with continued breastfeeding along with appropriate complementary foods up to two years of age or beyond. (Annexure 3) We therefore, request you to



kindly take suitable action to advise the company to withdraw the advertisement from all media avenues or amend it with appropriate visuals or pictorial of breastfeeding as the primary nutrition for baby/infant than promoting bottle feeding.

**DECISION: UPHELD**

The ASCI approached the advertiser for their response in addressing the grievances of the complainant. The Advertiser was offered an opportunity for Personal Hearing with the ASCI Secretariat. The advertiser representatives did not seek personal hearing. The CCC also noted that no response was received from the advertiser prior to the due date. The CCC viewed the TVC. In the absence of comments from the Advertiser, the CCC concluded that the visual depicted in the TVC, of a baby being fed in a bottle seen in conjunction with the claim of “Poshan” implicitly promotes bottle feeding and encourages negligence towards breast-feeding, The TVC contravened Chapter III.3 of the ASCI Code. The complaint was UPHELD.

**3. Company: Amrutanjan Health Care Ltd**

**PRODUCT:** Amrutanjan Pain Balm

**COMPLAINT:** “India's No.1 Pain Balm”

**NATURE OF COMPLAINT:** In the product label - the company mentions that it is India's no. 1 pain balm. I am a regular balm user. Recently I came across a pack of Amrutanjan pain balm in a shop. To my utter surprise, I found that in the pack label of the product, the company states that it is “India's no. 1 pain balm”. In my view the said claim by the company is totally false. In the market there are balm brands like zandu balm, tiger balm, vicks vaporub which are far more popular than this balm. I think the company is trying to fool the consumers into believing what is untrue. I would request you to take action against the company over such false claims made by it.

**DECISION: UPHELD**

The Advertiser was offered an opportunity for Personal Hearing with the ASCI. The advertiser representatives sought this personal hearing via telecom wherein they were requested to submit market research data to support their leadership claim. The advertiser submitted their

written response. The CCC viewed the product packaging and considered the advertiser's response. The advertiser argues that their pain balm is best in the Indian market and they are the first in India to launch a pain balm. They further stated that they have built brand value over the last 100 years ago and are not saying India's No.1 selling on value or volume. Also their balm is the only one yellow in colour. Based on the above facts, they claim to be India's No.1 pain balm. The CCC noted that the advertiser's claim of being No.1 is a market leadership position claim and not of being the first to market. Advertiser did not provide any market leadership data in support of the claim. The CCC concluded that the claim "India's No.1 pain balm" was not substantiated and is misleading. The product packaging contravened Chapters I.1 and I.4 of the ASCI Code. The complaint was UPHELD.

#### **4. Company: Bajaj Corp Ltd PRODUCT: Bajaj Almond Drops Hair Oil**

**COMPLAINT:** The advertisement as published in above media makes false and misleading claim, visualization and comparison. The advertisement also denigrate entire coconut hair oil category, content for comparison are chosen to derive artificial advantage, for the reasons as detailed in the complaint below.

**NATURE OF COMPLAINT:** Bajaj Almond drops has 300% extra Vitamin E as compared to ordinary coconut oils. "Ordinary coconut oil" is embossed/placed on a blue bottle Challenge. The Complainant is one of the leading players in the FMCG market in India, and has products which include edible coconut oil and perfumed coconut hair oil. PARACHUTE and NIHAR Naturals Edible Coconut Oil are two of the leading products of Complainant. The product sold under the brand PARACHUTE has been sold as edible oil since 1948 and in a blue bottle since the year 1979. Since then Complainant has continuously sold its products under the brand PARACHUTE in blue bottles. It is further submitted that Parachute Edible Coconut Oil has about 48% market share in India. Complainant also sells edible coconut oil under the brand NIHAR Naturals and coconut oil under the brand NIHAR have been sold since the 1990's. The product NIHAR Naturals is sold in a bottle which was subject matter of design registration NO. 183198 which expired on 11th August 2015 and is currently subject matter of trade mark application

NO. 3049201. Nihar has been sold in the said bottle shape since 8th November 2000. The Complainant recently came across the impugned advertisement in which a blue bottle was depicted stating that it was “ordinary coconut oil”. On comparing the blue bottle as shown in the impugned advertisement, it is clear that the Advertiser has used Parachute’s blue colour along with the Nihar Naturals' bottle shape for the purpose of unfair comparison. The visuals of the advertisement as shown above are clearly aimed at denigrating the Complainant's products. It is pertinent to point out, that the Advertiser is making a completely incorrect comparison as it is comparing a edible oil with an hair oil. From the perspective of an average person with imperfect recollection it is a very unfair comparison. Such comparison cannot be permitted as it misleads the public into the utility of Complainant's aforesaid products. It is reiterated that Parachute and Nihar Naturals are edible oils. In addition to the above, the Advertiser has also placed the words “Ordinary Coconut Oil” on the blue bottle. This is incorrect as a food has a different functionality and utility than a hair oil. By using the adjective “ordinary” along with the indicative word “coconut oil” with respect to food, which is consumed, is not only derogatory but misleading. Such a linkage between the two products with completely different utility misleads the consumers. The advertisement seeks to give an impression that the Coconut Oil sold in the blue bottle is hair oil whereas in reality it is edible oil. This is clearly designed to give an incorrect impression to the viewer that coconut oil is substandard, and the use of the word ordinary is clearly in a derogatory and denigrating manner.

**CLAIM :** 300% MORE VITAMIN E As we have already submitted that the Advertiser is making a completely incorrect comparison as it is comparing a food product with a hair oil. Further Coconut oil does not contain Vitamin E. Comparison with a product/oil that contain zero or no vitamin E is an unfair comparison. It is not a like-to-like comparison that by itself clearly establishes the unfairness of the comparison. It is a fact that Coconut Oil does not contain vitamin E and mere presence of trace level of any vitamin which is not part of formulation by design cannot be considered as fair comparison. PARACHUTE ADVANSED Hair Oil, which is also sold in a different blue bottle. If it is in fact coconut hair oil being sold in a blue bottle with which a comparison is being made, the claim of 300% more Vitamin E is factually incorrect as it contains more

vitamin E than Advertiser`s Product. This is a deliberate anti-competitive action taken by the Advertisers only to increase its market share by misleading the consumers through unfair and unlawful means. Further advertisement amounts to creating a false propaganda about Coconut Oil to peddle their product by drawing a misconceived comparison, the very foundation of which is incorrect.

**Claim:** a. Give complete nutrition to hair from root to tip (Bengali Advertisement) this is enriched with almonds' nutrition that gives your hair complete nourishment. (Marathi Advertisement)

**Challenge:** Advertiser is misleading consumers by advertising that the impugned product will provide Complete Nourishment to the consumer's hair, this is against the consumers interest, they are attempting to convince consumers that using their product Consumer do not need any other remedy/solution for their hair problems. Further they are seeking to convey that almond oil can provide complete nourishment, which is factually incorrect. All statements/claims/visual presentation is intended to mislead the consumer for commercial gain. They are not based on any adequate scientific study and in gross violation of the ASCI Code.

**DECISION: UPHELD**

The claim support data for Review was reviewed by the technical expert of ASCI. The CCC viewed the print advertisement, the TVC, and considered the Advertiser's response for Review as well as the opinion of the Technical expert presented at the meeting. As claim support data, the advertiser provided published paper of International Food Research Journal 20/5/2013 (more recent than the 2011 paper cited earlier, namely, American Journal of Applied Sciences 8(5): 407-412, 2011) as well as other reports that show the presence of Vitamin E in virgin or pure coconut oil. A case was also made that the variable reports in the literature of differing Vitamin E content in coconut oil may arise from differing sources (fresh or from copra, genetic variants) of the oil and also different processing conditions (virgin, as expelled, processed, purified, etc.). Emphasis was given to the actual analytical reports submitted, e.g., of coconut oil from the Coconut Development Board, which shows 22 ppm of vitamin E in coconut oil, and an independent test party report from Intertek. This shows two batches of Bajaj Almonds Drop Oil testing at 300% or better than coconut oil of various brands tested. It was also

noted that the commercially obtained coconut oil is normally solvent extracted, processed or refined and could lose the natural Vitamin E in virgin coconut oil. Based on the above opinion, the CCC concluded that the claim, “300% more Vitamin E”, was substantiated. This complaint is Not Upheld on Review. Advertiser further argues that the claim, “Rich with almond Oil”, is based on the fact that Bajaj Almond Hair oil does contain almond oil in required proportion among other vegetable oils. However this was not substantiated with authentic quantitative evidence. There was no substantiation such as penetration of the ingredients into hair (of Almond oil / of Vitamin E) to support the claims, “It is rich with Almond oil and because of which hair get complete nourishment” and “Gives complete nourishment from root to tip”. This contravened Chapter I.1 of the ASCI Code. This decision of complaint being upheld stands on Review.

**5. COMPANY: Hindustan Unilever Ltd.**

**PRODUCT:** Clinic Plus Shampoo

**COMPLAINT:** (1) Clinic plus contains as kind of protein material which is not available from body (2) 35X stronger hair

**NATURE OF COMPLAINT:** My objections are as follows: 1) Ad has catch line when (whose) roots are strong, (its) hair are strong, and to explain this it gives information that clinic plus contains as kind of protein material which is not available from body. It gives roots nourishment and makes them 35 times strong. It shows a pictorial depiction of mother-daughter smiling and daughter pulling her hair with both hands to show the strength. There is another catch line strong hair strong relations. 2) In small print it says this product does not have any classification of cosmetics and it does not have any medicinal or treatment kind of rules and regulations (laws) to govern. 3) The 35 times stronger is tested in lab against non-conditioning shampoo. And new clinic plus means a new formulation and pack. 4) Company is trying to fool the consumer by telling it is a cosmetic product, whereas in reality company uses special protein, not available from body, as nourishment to make the roots strong. What is the meaning nourishment to make the roots strong? Is it not medicinal application? Secondly the company makes a comparison of their product a hair conditioner shampoo with a non-conditioner shampoo to prove 35 times more strong roots from within. If the protein makes the

roots stronger with nourishment, it should make the roots stronger irrespective of the product being a conditioner shampoo or a non-conditioning shampoo. The argument of the company is just to fool the consumer with word or gimmicks. I think the company must answer this question- Is nourishment of roots with a protein a cosmetic effect or a medicinal effect? Their answer should prove my point. Ask any expert the difference between cosmetic effect and medicinal effect.”

**DECISION: UPHELD**

The Advertiser was offered an opportunity for Personal Hearing with the ASCI Secretariat. The advertiser representatives did not seek a personal hearing and submitted their written response. The CCC viewed the print advertisement and considered the Advertiser's response. Advertiser states, that Clinic Plus contains Lysine as an ingredient which is an amino acid which forms the building blocks of the proteins, and is one of the 9 essential amino acids which the body cannot produce. Advertiser provided scientific literature which would establish the nature and role of Lysine. The advertiser provided data to support the claim of hair strengthening benefit attributed to the product. However, the CCC noted that in the print advertisement the hair strengthening benefit was attributed to the protein ingredient. The CCC concluded that the claim, “Clinic Plus has such a protein element, which the body cannot produce. It nourishes hair roots and makes hair up to 35X more strong”, was not substantiated, and is misleading. The advertisement contravened Chapters I.1 and I.4 of the Code. This complaint was UPHELD.

**6. COMPANY: Dindayal Industries Ltd**

**PRODUCT:** Shilajit Power Capsules

**COMPLAINT:** “Shilajit Power Capsules - One capsule every morning boosts stamina, energy and vigour”, “303 Capsules - India's No.1 energy booster”

**NATURE OF COMPLAINT:** I enclose herewith AD of Dindayal Aushadhi for their product 303 capsules and Shilajit Power Capsules which appeared in Divya Bhaskar, Vadodara on 19/1/2016. My objections are as follows: 1) The Ad is for product 303 capsules which is a product for sex enhancement. The AD offers Shilajit Power worth Rs.215/- free

with every pack of 303 capsules worth Rs.295/-. The 303 capsules are for men only and one of the free product is also for men only. The other free product is for women only, but both these free products are products for enhancing strength, vigour and stamina. 2) Both products in the Ad contravene ASCI code as well as Drugs and Magic Remedies Act and there are no substantiative proofs to show the benefits said to be obtained by consuming these products. Again company declares its product 303 capsules as No.1 power enhancing product in India, without giving any study details which found it at the top.

**DECISION: UPHELD**

The Advertiser was offered an opportunity for Personal Hearing with the ASCI Secretariat. The advertiser representatives did not seek a personal hearing and submitted their written response. The CCC viewed the print advertisement and considered the Advertiser's response. Advertiser states that the formulations of the product advertised has been developed as per the regulations of the Ayurvedic Formulary of India (AFI) which compiles the scattered information and formulations of Ayurveda and serves as a basis to meet the requirements of Drugs and Cosmetics Act. The CCC concluded that the claim (in Gujarathi) as translated in English, “Shilajit Power Capsules - One capsule every morning boosts stamina, energy and vigour”, was not substantiated with product efficacy data. The claim, “303 Capsules - India's No.1 energy booster”, was not substantiated with market leadership data. Also, the claims are misleading. The claims pertaining to the benefits of the product read in conjunction with advertisement hadline and a qualifier on the pack that the product is for men only, implies that the product is meant for enhancement of sexual pleasure, which is in Breach of the law as it violated The Drugs & Magic Remedies Act. The advertisement contravened Chapters I.1, I.4 and III.4 of the ASCI Code. The complaint was UPHELD.

**7. COMPANY: Dindayal Industries Ltd**

**PRODUCT:** Rangoli Tablet

**COMPLAINT:** The best energy booster for women An effective energy booster with the power of gold, silver, pearl and saffron and prepared with special ingredients known since centuries.

**NATURE OF COMPLAINT:** “I enclose herewith AD of Dindayal Aushadhi for their products 303 capsules and Rangoli Tablet which appeared in Divya Bhaskar, Vadodara on 28/1/2016. My objections are as follows: 1) The Ad is for product 303 capsules which is a product for sex enhancement. The AD offers Rangoli Tablets worth Rs.240/- free with every pack of 303 capsules worth Rs.295/-. The 303 capsules are for men only and one of the free product is also for men only. The other free product is for women only, but both these free products are products for enhancing strength, vigour and stamina. 2) Both products in the Ad contravene ASCI code as well as Drugs and Magic Remedies Act and there are no substantiative proofs to show the benefits said to be obtained by consuming these products.”

**DECISION: UPHELD**

The Advertiser was offered an opportunity for Personal Hearing with the ASCI Secretariat. The advertiser representatives did not seek a personal hearing and submitted their written response. The CCC viewed the print advertisement and considered the Advertiser's response. Advertiser states that for the question of giving free products as a promotion, it is the prerogative of the company to decide what it needs to offer as per its marketing strategy. The formulations of the products advertised have been developed as per the regulations of the Ayurvedic Formulary of India (AFI). The CCC concluded that the claims (in Gujarathi) as translated in English, “The best energy booster for women”, “An effective energy booster with the power of gold, silver, pearl and saffron and prepared with special ingredients known since centuries”, were not substantiated with product efficacy data. Also, the claims are misleading. The advertisement visual showing a energy capsule for men only and visual of a couple in intimate position implies that the products are meant for enhancement of sexual pleasure, which is in Breach of the law as it violated The Drugs & Magic Remedies Act. The advertisement contravened Chapters I.1, I.4 and III.4 of the ASCI Code. The complaint was UPHELD.

**8. COMPANY: Emami Limited**

**PRODUCT: Fair & Handsome**



**COMPLAINT:** “Long Lasting Fairness”, “Instant Brightness”, “Dark Spots Reduction”

**DECISION:** UPHELD

For the claim of "Long lasting fairness", measurements were done instrumentally by CHROMAMETRY and showed 165% variations above baseline of L8 and ITA values at T+28. Post four week usage, 82% panelists agree to the statement that "the product gives long lasting fairness." This was considered to be a test of sustained performance with continued usage ("evolution in time"), and not “long-lasting fairness after stoppage of use”. From the test report, the fairness test does not appear to have been done some days after stoppage of use, hence the claim of “long-lasting fairness” was not substantiated. The advertisement contravened Chapter I.1 of the Code. This complaint was UPHELD.

**9. COMPANY: Colorbar Cosmetics Pvt. Ltd**

**PRODUCT:** Colorbar U.S.A. Hydra White Intense Whitening Hydrating Day Lotion

**COMPLAINT:** Usage Results: \*70% felt an increase in skin brightness, freshness and radiance \*75% felt their skin tone looked more clear \* 80% agreed their skin remained hydrated all day long \* 80% loved the light-weight texture Our PATENTED Illumeskin Whitening Complex \* is proven to illuminate your skin tone by minimizing existing dark spots and providing a renewed surge of long-lasting hydration. \*Patent Pending.

**DECISION:** UPHELD

The CCC viewed the product packaging and considered the Advertiser's response. Advertiser argues that the claim of “Usage Results” is the basis of an internal self-assessment study conducted only on 20 female consumers. The advertiser has provided examples of certain competitor products making efficacy claims. The CCC noted that the advertiser has used a small sample size of 20 consumers to derive the product benefit claims. This sample size is neither statistically significant, nor reliable especially for a perception based claims. The CCC concluded that the claims of Usage Results: “70% felt an increase in skin brightness, freshness and radiance”, “75% felt their skin tone looked more clear”, “80% agreed their skin remained hydrated all day long”, “80% loved the

light-weight texture”, were not substantiated and were likely to mislead consumers. The product packaging contravened Chapters I.1 and I.4 of the ASCI Code. This complaint was UPHELD. The advertiser mentions the word “PATENTED” on the pack, and by way of a disclaimer, states that the “patent is pending”. Advertiser argues that this seems to be an industry practice and they have cited an example of a competitor product. The CCC noted that the Advertiser has not provided proof/data to substantiate that their patent has been applied and is pending. The CCC did not agree that examples quoted of similar claim/s by competitor products can be an accepted precedence as these claims by competitors have not been scrutinized by CCC. The CCC acknowledged that an article shall be deemed to have had obtained a patent in India, if the article is engraved, stamped or impressed with the words “patent” or “patented”. Based on these facts, the CCC concluded that the claim “Our PATENTED Illumeskin Whitening Complex\* (\*Patent pending)” on product packaging was not substantiated and was misleading by implication. The pack communication contravened Chapters I.1 and I.4 of the ASCI Code. This complaint was UPHELD.

**10. COMPANY: Hindustan Unilever Ltd.**

**PRODUCT:** Dove Hair Fall Rescue Shampoo with Nutrilock Actives

**COMPLAINT:** 1) “MISLEADING COMMUNICATION: The TVC begins with asking “How many hair strands do you lose every day?” / Har Din Aapke kitne Baal Girte Hain?” The above conversation refers to “NORMAL / NATURAL HAIR FALL” women experience which is shown to be varied from 50 to 100 to 150, and the same is clearly not an indicative of HAIR FALL DUE TO HAIR BREAKAGE. The next shot comes with the claim on screen and voice over “Stop Counting falling hair / Ab girte balon ko ginna bhool jaeye”. This communication shown is completely misguiding as now the communication is with respect to hair fall due to hair breakage while the TVC begins on the note of talking about NORMAL / NATURAL HAIR FALL, which is a known fact, leaving behind an impression on the consumers assumptions / belief system that the product works on NORMAL / NATURAL HAIR FALL and not only on Hair fall due to breakage. This is completely misleading the consumers to believe that usage of shampoo will reduce normal hair fall which may not only be due to breakage. There is no qualifier for reduction

in NORMAL/NATURAL HAIR FALL as the number of hair strands spoken about at the beginning of the TVC i.e. 50/100/150 is not substantiated through any super. While the TVC further progresses reaching to the end part the advertiser claims “Ab girte balon ki ginti ho band” with the same numerical figures on screen, as shown initially i.e. 50/100/150, implying that the use of the shampoo will 100% stop both types of hair fall as referred above i.e. hair fall due to hair breakage and normal hair fall. This is an outrageously exaggerated claim and needs scientific and clinical validation. The qualifiers used to support claims are only with respect to Hair Fall due to Hair Breakage and nowhere the support for “NATURAL/NORMAL HAIR FALL” is used in the commercial. The advertiser is asked to provide valid substantiation for such tall claims made by him in the TVC. 2) MISLEADING CLAIM: Nourishes Damaged Hair From Roots Up “Yeh damage balon ko jadon se upar poshan de aur unhe banaye siron se majboot”. The advertiser claims to deliver nourishment to damaged hair from roots up. We would like the advertiser to substantiate how a shampoo which is designed to clean up, provide nourishment to its users. We would like the advertiser to provide details with respect to the formulation technology and active ingredients mode of action that penetrates into the roots and provides nourishment to damaged hair thus making them strong along with lab tests, clinical study reports to support nourishment to damaged hair. Moreover, the super provided in the Advertisement does not talk about in which laboratory the product was tested to provide such reliefs and also the date of such testing is missing from the Advertisement. It just mentions “Lab Test Par Aadharit, Tootne Ke Kaaran Hair Fall Vs. Non – Conditioning Shampoo” Considering the above facts, we would like to draw your kind attention that the entire storyline in TVC focuses mainly on Hair Fall and Nourishment from root up, to damaged hair. The communication is highly misleading as the voice over, claims on screen/ shots and super does not correlate at all and the claims are unsubstantiated and hence misleading.

**NATURE OF COMPLAINT:** These claims needs to be substantiated with necessary support data

**DECISION: UPHELD**

The claim support data was reviewed by the technical expert of ASCI. The CCC viewed the print advertisement, the TVC, and considered the Advertiser's response as well as opinion of the Technical expert presented at the meeting. The CCC noted that the opening shots of the advertisement refer to hair fall in the range of 50 to 150 and this correspond to physiological hair loss and not called out as hair fall due to breakage. While the disclaimers in the print ad and the TV indicate the product is addressing the problem of hair breakage the overall advertisements/voice-over refer to "hair fall" thus creating ambiguity. Advertiser states that by showing Dove action on the hair shaft, and also the root, it is implied that breakage is being referred to. The CCC concluded that the advertisement is misleading by ambiguity because consumer will believe that Dove will also reduce natural hair fall; Whereas the context of product benefit is with reference to hair fall due to breakage, as specified in the disclaimer. The print advertisement and the TVC contravened Chapter I.4 of the ASCI Code. This complaint was UPHELD. As for the claim, "Yeh damage balon ko jadon se upar poshan de aur unhe banaye siron se majboot" ("Nourishes Damaged Hair From Roots Up"), the advertiser has provided in-house lab report and also literature compilation which shows penetration of lysine, sunflower oil and glycerin into the hair-shaft and roots. The CCC concluded that this claim when seen in conjunction with the visual of hair strand being nourished above scalp level (not roots) was substantiated. This complaint was NOT UPHELD for the TVC. However, the claim as used in the print advertisement was considered to be misleading by ambiguity and implication that the product is effective of physiological hair loss. The print advertisement contravened Chapter I.4 of the ASCI Code. This complaint was UPHELD.

**11. COMPANY: Ban Labs Ltd**

**PRODUCT:** Sesa Oil

**COMPLAINT:** "8X"

**NATURE OF COMPLAINT:** These claims needs to be substantiated with necessary support data.

**DECISION: UPHELD**

The CCC viewed the print advertisement and considered the Advertiser's response. The Advertiser argues that by saying "8X", they mean that

their product helps to fight 8 problems related to scalp & hair disorders. ASCI had also advised the Advertiser to provide substantiation for the claims referring to the eight benefits being offered by the product. No data was received from the advertiser in time for the meeting. The CCC concluded that the claim of “8X” referring to the 8 benefits of the product were not substantiated. The advertisement contravened Chapter I.1 of the Code. The complaint was UPHELD.

**12. COMPANY: Shree Maruti Herbal**

**PRODUCT:** Stay-On Oral Liquid

**COMPLAINT:** “100% Ayurvedic” “Quick Acting” “Get charged for the intense pleasure” “Herbal Drink for Men & Women.”

**DECISION: UPHELD**

The Advertiser was offered an opportunity for Personal Hearing with the ASCI Secretariat. The advertiser representatives did not seek a personal hearing. Advertiser sought additional time to respond to the complaint which was granted to them. The claim support data was reviewed by the technical expert of ASCI. The CCC viewed the print advertisement and considered the Advertiser's response as well as opinion of the Technical expert presented at the meeting. The advertiser argues that the product is an oral liquid supplement for men as well as women. It is purely herbal product which helps enhance and improve enthusiasm and happiness. Also, the advertisement has no reference any which way implied or otherwise that it is an Aphrodisiac. However, the CCC observed that the statements in the advertisement such as, “to be taken 30 minutes before”, “quick acting”, “Get charged for the intense pleasure” and reference to the use of “Also use Stay-On Spray for better results” clearly suggests that the product is meant for sexual performance. Based on this assessment, the CCC concluded that the advertisement is in Breach of the law as it violated The Drugs & Magic Remedies Act. The CCC noted that the claims “Quick Acting” “Get charged for the intense pleasure” were not substantiated for this proprietary product. The advertisement contravened Chapters I.1 and III.4 of the ASCI Code. The complaint was UPHELD.

**13. COMPANY: Marico Ltd**

**PRODUCT:** Livon Hairgain Tonic

**COMPLAINT:** “It controls Hairfall in 90 days”

**DECISION: UPHELD**

The advertiser representatives were given personal hearing by ASCI. As claim support data for Review, the Advertiser submitted additional details of the study conducted – (1) Study on 36 Female Volunteers (2) Study on 32 Male Volunteers with Androgenetic Alopecia. The claim support data was reviewed by the technical expert of ASCI. The CCC viewed the website advertisement and considered the Advertiser's response for Review as well as opinion of the Technical expert presented at the meeting. The study conducted on male volunteers showed photographs taken on Day 0, 45 and 90. The photographs were graded on a scale given by expert dermatologists. The photo grading scores were analyzed by Wilcoxon signed rank test. The subjects enrolled in the study have been enrolled based on their hair fall status. The inclusion criteria indicates men suffering from androgenic alopecia with grade 2, 3, 4 However, The photographs were graded as 'zero' on Day 0. There is no statistical difference between 0 and 45 days (in spite of assuming day 0 scores as 'zero') as well as no difference between 45 and 90 days. The statistical difference is significant between zero and 90 days, perhaps due to assumption of day 0 scores as zero, which is actually not so as per the grade at baseline. If this score of zero is considered as a baseline (as done in this particular analysis) against which the treatment results have been compared then the product is exhibiting “moderate” improvement in androgenic alopecia. Based on the above opinion, the CCC concluded that the claim, “It controls Hairfall in 90 days”, was not substantiated adequately as the product was at most helpful in moderately improving the condition. The website advertisement contravened Chapter I.1 of the Code. The decision of complaint being Upheld stands on Review.

**14. COMPANY: Mosons Extractions Pvt Ltd**

**PRODUCT:** Indulekha Bringha Oil

**COMPLAINT:** Indulekha Bringha oil or simply Bringha Oil is complete ayurvedic hair oil to all modern day hair problems. In Ayurveda hair care involves two stages: Kesapadasamanam (Hair fall reduction),

Kesavardhanam (Stimulate new hair growth). There are specific herbs and natural elements that are prescribed in Ayurveda to prevent hair fall and promote new hair growth. The Ayurvedic Medicine propose to claim as Promotes New hair growth through the ingredients documented in ayurveda. Is the product delivering same benefit? How can the product Hair Oil can claim for the new hair growth, by no science it is proved for new hair growth.

**DECISION: UPHELD**

The CCC viewed the contents of the Website and considered the Advertiser's and the Ad. Agency's response. The advertiser argues that the contents of the website were prepared and posted on the website by their Ad. Agency, without their consent. The CCC concluded that the claims in the website, "Indulekha Bringha oil or simply Bringha oil is complete ayurvedic hair oil to all modern day hair problems. In Ayurveda hair care involves two stages. Kesapadasamanam (Hair fall reduction), Kesavardhanam (Stimulate new hair growth). There are specific herbs and natural elements that are prescribed in Ayurveda to prevent hair fall and promote new hair growth", were not substantiated. The Website advertisement contravened Chapter I.1 of the Code. The complaint was UPHELD.

**15. COMPANY: Dabur India Ltd - (Dabur Vatika Enriched coconut Oil)**

**COMPLAINT:** 'Vatika Enriched Coconut Hair Oil provides natural nourishment to your hair, giving it body & radiance while taking care of the critical balance of nutrients. Unlike ordinary coconut oil, Vatika's coconut oil is enriched with the goodness of 8 time-tested herbs. They work magic on your hair, giving your hair & scalp complete nourishment for that problem free, healthy crowning glory.' What is critical balance of nutrients to hairs? How is possible through hair oil external application. How it can termed as magical ingredients- magic on your hair, giving your hair & scalp complete nourishment for that problem free, healthy crowning glory. What is termed here as Scalp nourishment for problem free hairs. This is consumer misleading to say problem free hairs only by hair oils.

**DECISION: UPHELD**

The CCC viewed the website/internet advertisement and considered the Advertiser's response. The CCC noted that the claim "Vatika Enriched Coconut Hair Oil provides body & radiance while taking care of the critical balance of nutrients. Unlike ordinary coconut oil, Vatika's coconut oil is enriched with the goodness of 8 timetested herbs. They work magic on your hair, giving your hair & scalp complete nourishment for that problem free, healthy crowning glory." were not adequately substantiated with product and ingredient specific data. The website/internet advertisement contravened Chapter 1.1 of the ASCI Code. The complaint was UPHELD.

**16. COMPANY: Dabur India Ltd**

**PRODUCT:** Dabur Chyawanprash

**COMPLAINT:** The ad starts with the actress telling us about the pollution levels and how it is harming us and it is equivalent to breathing 10 cigarettes a day. The actress then says eating chyawanprash will protect us from pollution by building immunity. This is absolutely wrong. There's no study or scientific research to prove chyawanprash can protect you from pollution. Besides it's not possible that eating chayanprash can protect us from PM2.5 and PM10 particles in our lungs which are the small pollutants we breathe in. Dabur is milking the pollution scare among people by misleading people by saying using their product can protect them from pollution even though it will not affect them in any way. The ad should be brought down immediately and Dabur should be fined for misleading people.

**DECISION: UPHELD**

The claim support data was reviewed by the technical expert of the ASCI. The CCC viewed the TVC and considered the Advertiser's response as well as opinion of the Technical expert presented at the meeting. The Advertiser argues that there is no claim whatsoever in the advertisement that consumption of Chyawanprash will affect the intake of polluted air in any manner and what is sought to be conveyed is that if the immunity level of a person is enhanced, a person has a better capacity to fight infections including respiratory problems / allergies which may be caused by polluted air. The CCC noted that while the advertiser provided product licence copy to indicate that Chyawanprash is a classical



product, no details of the product label or product sample were provided by the Advertiser to verify product composition / ingredient details against claims. The data submitted as claim support for the effectiveness of Dabur Chyawanprash based on Beedi Smokers in terms of antioxidant activity was not considered to be a direct and adequate substantiation of the claim of prevention of pollution related ailments. Data previously submitted for an earlier complaint was not considered relevant for the specific claims in this advertisement. The CCC concluded that while Chyawanprash can be considered to be a general preventive care product, its direct relevance to pollution was not substantiated. The claim, “eating Chyawanprash will protect us from pollution by building immunity”, was not adequately substantiated. Though the TVC was in Hindi, the voiceover/ supers were in English. The TVC contravened Chapter I.1 of ASCI Code and ASCI Guidelines on Supers. The complaint was UPHELD.

#### **FOOD SECTORS UPHELD**

##### **17. COMPANY: ITC Ltd**

**PRODUCT:** Aashirvaad Atta-Multigrain

**COMPLAINT:** Claim objected to: “India's No.1 Atta”

**NATURE OF COMPLAINT:** “This Ad On 1st Page Of TOI, Dated 12/03/2016, About AASHIRVAAD ATTA with MULTIGRAINS, Boasts Boldly At The Top As Being India's No.1 Atta. At the Same Time, It Quotes 2 Years Old " Nielsen Retail Audit MAT (March 2014), Report Of All India Market Share Of Aashirvvaad Atta. This Is Grossly Misleading”.

##### **DECISION: UPHELD**

The advertiser representatives were given personal hearing by ASCI. The CCC viewed the print advertisement and considered the Advertiser's response. As claim support data, the advertiser provided Nielsen study of March 2014 showing Aashirvaad as India's No.1 packaged atta in India, Nielsen study of November 2014 to October 2015 showing their market share almost four times than their nearest competitor, and IMRB Report of February 2015 to January 2016 showing the product having highest volume share at an All India Urban level. The CCC noted that the claim support was for the motherbrand Ashirvad whereas the

advertised product was only one variant i.e. Ashirvaad Atta with Multigrains. Also, the disclaimer was not as per Nielsen criteria. The CCC concluded that the claim, “India's No. 1 Atta”, is misleading by ambiguity. The advertisement contravened Chapters I.3 and I.4 of the Code. The complaint was UPHELD.

**18. COMPANY: Nutricia International Pvt. Ltd**

**PRODUCT:** Protinex Health Drink

**COMPLAINT:** "80% Indian Diet are Protein Deficient"

**NATURE OF COMPLAINT:** Advertisement starts with telling about survey, that "80% Indian Diet are Protein Deficient" and then our regular diet isn't sufficient for protein. 1) So I just want to know is which survey shows that "80% Indian diet are protein deficient". and on what basis survey were conducted. 2) Could you please provide that authority survey was conducted? 3) Could you please provide which regular diet does not have sufficient protein? Could you please provide in percentage unit? 4) Could you please provide survey report ?

**DECISION: UPHELD**

The advertiser representatives were given personal hearing by the ASCI. The claim support data was reviewed by the technical expert of ASCI. The CCC viewed the TVC and considered the Advertiser's response for Review as well as opinion of the Technical expert presented at the meeting. As claim support data, the advertiser has provided a research study that they conducted via IMRB. The CCC noted that the survey methodology was 24 hour recall method. This survey methodology was not considered to be a robust method, unlike a diary method, as it could give inaccurate results for quantification of the actual intake of protein rich food. Presenting the survey results as “80% of Indian diets are protein deficient” based on a limited survey was therefore considered to be inadequately substantiated and misleading by exaggeration. The survey did not cover incidence of protein deficiency. The CCC concluded that the presentation of the advertisement was likely to mislead by implying that protein deficient diet as determined by the 24 hour recall survey would result in Protein deficiency, when that was not the case. The claim, “And your regular diet isn't sufficient to meet your daily protein

requirement”, was considered to be misleading by implication, as it implies that Protinex is a replacement for regular diet. The TVC contravened Chapters I.1 and I.4 of the Code. The decision of complaint being Upheld stands on Review.

**19. COMPANY: Nutricia International Pvt. Ltd.**

**PRODUCT:** Protinex Health Drink

**COMPLAINT:** Advertisement Text as below: A survey shows that 80% Indians have a protein deficient diet. Protein deficiency causes fatigue and weakness and your regular diet is insufficient to meet your daily protein requirements. That is why you need Protinex, which has 50% extra proteins compared to ordinary health drinks that helps bridge the protein gap and keeps you active all day. Protinex, the protein expert! Audio clip, snapshot of Advt and link attached. This is a highly misleading, unethical and potentially hazardous advertisement creating a fear psychosis of protein deficiency with consumption of usual diets in 4/5 of population. There is a blatant attempt to entice and force lay people to consume Protinex (protein supplement) to bridge this protein gap with illusionary health claims (remain active all day and don't suffer from weakness or fatigue). The reasons for labelling this as a misleading, unethical and potentially hazardous advertisement are: 1. The survey with questionable methodology was conducted by the company itself (conflict of interest) and published in a non-indexed journal. It uses a poor method (24 hour recall), which cannot quantify accurate intakes, and estimates protein consumption from an outdated NIN reference (updated recently). The cut-off point used is RDA, which meets requirements of 95% population. With appropriate cut-offs to define deficiency (~5% population), the prevalence would be much lower. Further, findings from 30-55 years are extrapolated to entire population, including vulnerable segments like pregnant and lactating women, infants and children. 2. Health claims are made without necessary regulatory approvals (FSSAI or DCGI) or randomized controlled trials. With such health claims, ideally the product should be categorised as a drug to be prescribed by medical practitioners. 3. Scientific evidence indicates that unregulated consumption of protein supplements, as propagated by the advertisement, will prove hazardous for subjects with overt or occult chronic kidney disease, which is assuming

epidemic proportions in India. Further, unnecessary supplementation can also cause renal damage in vulnerable infants and children, and result in fetal loss and growth retarded babies in pregnant women. Action is requested to immediately initiate steps to withdraw the advertisement and censure the company.

**DECISION: UPHELD**

The advertiser representatives were given personal hearing by ASCI. As claim support data, the advertiser has provided a research study that they conducted via IMRB. The claim support data was reviewed by the technical expert of ASCI. The CCC viewed the TVC, heard the Radio spot, and considered the Advertiser's response as well as opinion of the Technical expert presented at the meeting. The CCC noted that the survey methodology was 24 hour recall method. This survey methodology was not considered to be a robust method, unlike a diary method, as it could give inaccurate results for quantification of the actual intake of protein rich food. Presenting the survey results as "80% of Indian diets are protein deficient" based on a limited survey was therefore considered to be inadequately substantiated and misleading by exaggeration. The survey did not cover incidence of protein deficiency. The CCC concluded that the presentation of the advertisement was likely to mislead by implying that protein deficient diet as determined by the 24 hour recall survey would result in Protein deficiency, when that was not the case. The claim, "And your regular diet isn't sufficient to meet your daily protein requirement", was considered to be misleading by implication, as it implies that Protinex is a replacement for regular diet. The TVC and the Radio advertisement contravened Chapters I.1 and I.4 of the Code. The complaint was UPHELD.

**20. COMPANY: Coca-Cola India Pvt. Ltd (Coca-Cola Zero)**

**COMPLAINT:** "Great coke taste/zero sugar"

**NATURE OF COMPLAINT:** My objections are as follows: 1) The AD highlights Coca-Cola Zero and says -You don't know till you've tried it. Great coke taste/zero sugar. And in very small print what is given is readable with real great difficulty but with a magnifying glass what can be read is this Coca-Cola Zero and the Dynamic Ribbon are the trademarks of the Coca-Cola Company. Coca-Cola Zero contains no fruit. Coca-Cola Zero contains added flavours. Contains artificial

sweeteners and for calorie conscious. This carbonated water contains an admixture of aspartame and acesulfame potassium. Not recommended for children. No sugar added in the product. Not for phenylketonurics 2015. The Coca-Cola Company. 2) It is clear from what is given in small print that the company wants to hide important and necessary information from the gullible consumers and hence do not print in easily readable type. The product is not recommended for children but the major consumption of this drink is by children in the age group 5-15 years. Even children of 2-5 years are also hooked on it due to demand and leniency of the parents. The other group for which product is not offered is phenylketonurics. Because it is not printed in readable type even these consumers would not keep away and suffer dangerous consequences. There is no sugar but the danger of artificial sweetness used is not mentioned. Aspartame is a sweet poison for them. 3) It is a MNC and markets their product by hook or crook, which should stop. Let company print everything in readable type and market their product.

**DECISION: UPHELD**

The CCC viewed the print advertisement and considered the Advertiser's response. The Advertiser agrees that the disclaimer is not as per the size stipulated in the ASCI Guidelines for Supers. The CCC concluded that disclaimer in the advertisement is not clearly legible. The advertisement contravened the ASCI Guidelines on Supers. The complaint was UPHELD.

**21. COMPANY: Medinn Belle Herbal Care (P) Ltd**

**PRODUCT:** Endura Mass

**COMPLAINT:** "India's most trusted weight gainer".

**NATURE OF COMPLAINT:** Complaint "Our objections: 1. How does Endura Mass claim to be India's most trusted weight gainer? Is it backed by Independent report? 2. Gaining weight and being fit is a false statement. They are independent of each other. 3. Has the product been approved by any National/International Regulatory Authority? 4. Has the results been confirmed by an Independent Agency? 5. How long does it take for the product to show results? 6. What conditions are required for this? 7. How long does the effect lasts? What conditions are required for this?"

8. Is the treatment safe for all patients? What are the side effects?
9. Claims 1 to 4 need to be substantiated with independent scientific studies”.

**DECISION: UPHELD**

The ASCI approached the advertiser for their response in addressing the grievances of the complainant. The Advertiser was offered an opportunity for Personal Hearing with the ASCI Secretariat. The advertiser representatives did not seek personal hearing. CCC also noted that no response was received from the advertiser prior to the due date. The CCC viewed the advertisement. In the absence of comments from the Advertiser, the CCC concluded that the claim in the Ad, “India's most trusted weight gainer”, was not substantiated and the claim is misleading by exaggeration. The advertisement contravened Chapters I.1 and I.4 of the ASCI Code. The complaint was UPHELD.

**22. COMPANY: Jivo Wellness Pvt Ltd**

**PRODUCT:** Jivo Canola Oils

**COMPLAINT:** Print Advertisement Claims M/s. Jivo Wellness Private Limited through the above referred Print Advertisement is communicating in the market with following patently false, baseless, unsubstantiated and misleading claims and statements. Indian is heading towards the EPIDEMIC of Diabetes & Heart Disease and through their communication they are suggesting that (as such prescribing) JIVO CANOLA OIL is the remedy for Diabetes and Heart Disease. Approximately 4 people may be dying per minute because of heart problem and 2 people every minute of diabetes. Bring the world's most preferred and Healthiest Choice – Canola Oil in your kitchen. Why Canola Oil is a better choice as your cooking oil - tabular demonstration of comparison of various other cooking oils namely Olive Oils, Sunflower Oil, Corn Oil, Soybean Oil, Rice Bran Oil and Coconut Oil and its comparison of its contents of Saturated “Bad” Fat and Unsaturated “Good” Fat. Bring home Cholesterol free Canola Oil In United States, Canola is the second most consumed oil, “In Canada, over 70% of the population uses nothing but Canola”, “In Japan, over 50% of the population swears by Canola”. Website Claims: Benefits of Canola Oil: “Heart Smart”, “Boost Memory”, “Effective in diabetes”, “Reduce Belly Fat”, “Effective On Cancer”, “Rejuvenate Joints”, “Reduce High B.P”.

### **DECISION: UPHELD**

The advertiser representatives were given personal hearing by the ASCI. The CCC viewed the print/website/internet advertisement and noted that the Advertiser has not provided any data to substantiate their claim prior to the due date. In the absence of any claim support data, the CCC concluded that the claims in the print advertisement “Approximately 4 people may be dying per minute because of heart problem and 2 people every minute of diabetes. Surely YOU do not want to be one among 66.8 Million diabetes patients in India” “Let your head be where your heart is...in the lap of CANOLA HEALTH” “Make no compromise when it comes to health of yourself and family” “Bring the world's most preferred and Healthiest Choice – Canola Oil in your kitchen” “A slight Lifestyle modification can save you from so many health problems” “Why Canola Oil is a better choice as your cooking oil” “In United States, Canola is the second most consumed oil”, “In Canada, over 70% of the population uses nothing but Canola”, “In Japan, over 50% of the population swears by Canola” were not substantiated and were misleading by exaggeration and implication. The website claims “Heart Smart”, “Boost Memory”, “Effective in diabetes”, “Reduce Belly Fat”, “Effective On Cancer”, “Rejuvenate Joints”, “Reduce High B.P.” were not substantiated and were misleading by exaggeration and implication. The print/website/internet advertisement contravened Chapters 1.1 and 1.4 of the ASCI Code. The complaint was UPHELD.

### **UNFAIR TRADE PRACTICE AND RESTRICTIVE TRADE PRACTICE UPHELD**

#### **23. COMPANY: Kalyan Jewellers**

**COMPLAINT:** The ad is about a daughter taking her mother to Kalyan Jewellers showroom in T.nagar, Chennai and introducing it as the biggest jewellery showroom in the world. Joy Alukkas T.nagar Showroom is about 70k sq. ft. large while Kalyan showroom is only about 40k sq. ft. What is the criteria to call themselves biggest/largest showroom? This advertisement is misleading.

### **DECISION: UPHELD**

The advertiser representatives were given personal hearing by ASCI. During the personal hearing the Advertiser verbally informed ASCI that

Joy Alukkas may have had a bigger showroom 4-5 years ago but their current space for retail is not as big. The advertiser did not have any comparative data to validate their claim. The CCC noted that no written response was received from the advertiser prior to the due date. In the absence of comments from the Advertiser, the CCC concluded that the claim, “Kalyan Jewellers is the biggest jewellery showroom in the world”, was not substantiated with comparative data versus other similar showrooms and is misleading by exaggeration. The TVC contravened Chapters I.1 and I.4 of the Code. The complaint was UPHELD.

**24. COMPANY: TVC Sky Shop Limited**

**PRODUCT:** Rashi Ratna

**COMPLAINT:** “If you wear big Rashi Ratna, stalled works get done and source of wealth opens. So we are giving you excessively big, natural, beautiful 11.25. Rati Rashi Ratna in just Rs. 1999 along with Change your Fortune Guide. Anyone who wears it as per the guide he will definitely get success. Wear the big Rashi Ratna and experience a complete life of health, happiness, property and prosperity”.

**NATURE OF COMPLAINT:** Digital copy of the advertisement is attached. URL: <http://epaper.patrika.com/741379/Patrika-Khandwa/07-03-2016#page/9/1> The advertisement claims: If you wear big Rashi Ratna, stalled works get done and source of wealth opens. So we are giving you excessively big, natural, beautiful 11.25. Rati Rashi Ratna in just Rs. 1999 along with Change your Fortune Guide. Anyone who wears it as per the guide he will definitely get success. Wear the big Rashi Ratna and experience a complete life of health, happiness, property and prosperity. The advertiser says wearing precious stones in a prescribed manner will bring health, wealth, happiness, property and prosperity. This is occult. Advertisement cannot be medium for occult. Only those things should be allowed to be advertised which stand the test of science and reason.

**DECISION: UPHELD**

The ASCI approached the advertiser for their response in addressing the grievances of the complainant. The Advertiser was offered an opportunity for Personal Hearing with the ASCI Secretariat. The advertiser did not seek a personal hearing with the ASCI and no response was received



prior to the due date. The CCC viewed the print advertisement. In the absence of comments from the Advertiser, the CCC concluded that the claims in the Ad (in Hindi) as translated in English, “If you wear big Rashi Ratna, stalled works get done and source of wealth opens. So we are giving you excessively big, natural, beautiful 11.25. Rati Rashi Ratna in just Rs.1999 along with Change your Fortune Guide. Anyone who wears it as per the guide he will definitely get success. Wear the big Rashi Ratna and experience a complete life of health, happiness, property and prosperity”, were false, not substantiated, misleading by exaggeration, and the advertisement exploits the consumers' lack of knowledge and is likely to lead to grave or widespread disappointment in the minds of consumers. The advertisement contravened Chapters I.1, I.4 and I.5 of the ASCI Code. The complaint was UPHELD.

**25. COMPANY: Johnson & Johnson Ltd.**

**COMPLAINT:** “Johnson & Johnson-Making clinically proven mild products for more than 100 years!” Complaint J & J banner ad claims that is has been making products that are clinically proven mild for over 100 years! It's a blanket statement to make. Seems to imply “all” products made by Johnson & Johnson. Also, manufacturing clinically proven mild products for 100 years need to be proven/ substantiated.

**NATURE OF COMPLAINT:** These claims needs to be substantiated with necessary support data.

**DECISION: UPHELD**

The CCC viewed the website advertisement and considered the Advertiser's response. The advertiser has thanked ASCI for bringing this issue to their attention. In the absence of specific comments from the advertiser, the CCC concluded that the claim “Johnson & Johnson-Making clinically proven mild products for more than 100 years!” was not substantiated. The website advertisement contravened Chapter 1.1 of the ASCI Code. The complaint was UPHELD.

**26. COMPANY: Hindustan Unilever Ltd.**

**PRODUCT:** Lifebuoy Clini-Care 10 Soap

**COMPLAINT:** 10 X better germ protection” “10 X more skin care” “10 X more skin care moisturizers”.

**NATURE OF COMPLAINT:** These claims needs to be substantiated with necessary support data.

**DECISION: UPHELD**

Complainant provided a photograph of the wrapper of Lifebuoy clini-care 10 soap (mfg date August 2015). This pack claims, “10 X better germ protection”, “10 X more skin care”. Advertiser provided sample of the product pack (mfg date September 2015). This pack claims, “10 X better germ protection”, “10 X more skin care moisturizers”. Advertiser argues that the current pack claim of 10x better germ protection is made against soap without actives, as per a laboratory test which establishes the superiority of Lifebuoy Clini-care 10 in comparison to a soap without actives. The claim support data was reviewed by the technical expert of ASCI. The CCC viewed the product packaging provided by the complainant and the advertiser and considered the Advertiser's response as well as the opinion of Technical expert presented at the meeting. The advertiser claims that the packaging recently changed shows the claim of "10X better germ protection\*" on the front of the pack, with a disclaimer on a side panel saying " \*vs soap without actives and added moisturizers" and "\*as per lab tests on an indicator organism". Advertiser provided third party test reports to substantiate the claim of 10X germ protection. The reference to Consumer Voice Test report pertains to grades as per BIS classification and is not relevant to the performance of the product. The claim of “10X more skin care” does not appear in the current pack. This complaint was NOT UPHELD. The advertiser did not provide any test report to substantiate the claim, "10X more skin care moisturizers", nor was this objection addressed in the advertiser's response. These claims were not substantiated and contravened Chapter I.1 of the Code. This complaint was UPHELD.

**27. COMPANY: Karm Infrastructure Pvt. Ltd-(Karm Infra)**

**COMPLAINT:** “Buy one flat & get 2 flats free” “100% assurance of flats or cash discount of same amount”.

**NATURE OF COMPLAINT:** The claims are misleading and deceptive. It seems to be a con.

**DECISION: UPHELD**

The ASCI approached the advertiser for their response in addressing the grievances of the complainant. However, no response was received from the advertiser prior to the due date. The CCC viewed the print advertisement. In the absence of comments from the Advertiser, the CCC concluded that the claims in the advertisement, “Buy one flat & get 2 flats free”, and “100% assurance of flats or cash discount of same amount”, were not substantiated, and were misleading by exaggeration. The advertisement contravened Chapters I.1 and I.4 of the Code. The complaint was UPHELD.

#### **EDUCATION AND PLACEMENTS SECTORS UPHELD**

##### **28. COMPANY: Shri Ram Murti Smarak International Business School**

**COMPLAINT:** “Salary Package 2011-13- Minimum: 3.00 Average: 4.00 2012-14- Minimum: 3.22 Average: 4.20” “% of Placements at the end of the Trimester (2012-14) IVth Trimester - 52% Vth Trimester - 24% VIth Trimester - 24%” “100% Placement assistance”.

**NATURE OF COMPLAINT:** These claims need to be substantiated with necessary support data.

##### **DECISION: UPHELD**

The ASCI approached the advertiser for their response in addressing the grievances of the complainant. The Advertiser was offered an opportunity for Personal Hearing with the ASCI Secretariat. The advertiser representatives did not seek personal hearing. CCC also noted that no response was received from the advertiser prior to the due date. The CCC viewed the advertisement. In the absence of comments from the Advertiser, the CCC concluded that the claims in the Ad, “Salary Package - 2011-13 - Minimum: 3.00 Average: 4.00, 2012-14 - Minimum: 3.22 Average: 4.20”, “% of Placements at the end of the Trimester (2012-14) – IV th Trimester - 52% V th Trimester - 24% VI th Trimester - 24%”, “100% Placement assistance”, were not substantiated. Also, the claim, “100% Placement assistance”, is likely to mislead the consumers that the advertiser is giving 100% assistance for placements. The advertisement contravened Guidelines for Advertising of Educational Institutions and Programs as well as Chapters I.1 and I.4 of the ASCI Code. The complaint was UPHELD.

**29. COMPANY: Saveetha School of Management**

**COMPLAINT:** “Dynamic corporate relationship for 100% placements”.

**NATURE OF COMPLAINT:** This claim needs to be substantiated with necessary support data.

**DECISION: UPHELD**

The advertiser was granted an extension of five days to the standard lead time of five days to submit their reply. Also, the advertiser was offered an opportunity for Personal Hearing with the ASCI Secretariat. The advertiser representatives did not seek a personal hearing and submitted their written response. The CCC viewed the advertisement and considered the Advertiser's response. Advertiser states that their intention was only to convey to that they are striving for 100% placement through dynamic corporate relationship. The CCC concluded that the claim, “Dynamic corporate relationship for 100% placements”, was not substantiated with supporting data. Also, the claim is misleading by ambiguity in the absence of disclaimer/qualifier. The advertisement contravened Guidelines for Advertising of Educational Institutions and Programs as well as Chapters I.1 and I.4 of the ASCI Code. The complaint was UPHELD.

**30. COMPANY: Jaipuria Institute of Management**

**COMPLAINT:** “Near 100% Placement with average package of Rs.5.68 lac and highest package of Rs.13 lac” Jaipuria Lucknow – “Near 100% Placement with average package of Rs.5.68 lac and highest package of Rs.13 lac” Jaipuria Jaipur – “Near 100% Placement with average package of Rs.5.68 lac and highest package of Rs.13 lac.” Jaipuria Indore – “Near 100% Placement with average package of Rs.5.68 lac and highest package of Rs.13 lac.”

**NATURE OF COMPLAINT:** These claims need to be substantiated with necessary support data.

**DECISION: UPHELD**

The Advertiser was offered an opportunity for Personal Hearing with the ASCI Secretariat. The advertiser representatives did not seek a personal hearing and submitted their written response. The CCC viewed

the advertisement and considered the Advertiser's response. The advertiser submitted placement report for batch 20132015 as on 31st July 2015, as support data for the claim of average and highest CTC offered. However, there was no additional evidence to prove that the individual students were indeed given the offer. The CCC concluded that the claim, "Near 100% Placement with average package of Rs.5.68 lac and highest package of Rs.13 lac", was not substantiated with authentic data. Also, the claim of "Near 100% Placement" is misleading by ambiguity. The advertisement contravened Guidelines for Advertising of Educational Institutions and Programs as well as Chapters I.1 and I.4 of the ASCI Code. The complaint was UPHELD.

**31. COMPANY: Mar Athanasios College for Advanced Studies Tiruvalla**

**COMPLAINT:** "100% Employment"

**NATURE OF COMPLAINT:** This claim needs to be substantiated with necessary support data.

**DECISION: UPHELD**

The ASCI approached the advertiser for their response in addressing the grievances of the complainant. The Advertiser was offered an opportunity for Personal Hearing with the ASCI Secretariat. The advertiser representatives did not seek personal hearing. CCC also noted that no response was received from the advertiser prior to the due date. The CCC viewed the advertisement. In the absence of comments from the Advertiser, the CCC concluded that the claim in the Ad, "100% employment", was not substantiated and is misleading by exaggeration. The advertisement contravened Guidelines for Advertising of Educational Institutions and Programs as well as Chapters I.1 and I.4 of the ASCI Code. The complaint was UPHELD.

**32. COMPANY: LEAD College of Management**

**COMPLAINT:** "100% Placement records"

**NATURE OF COMPLAINT:** This claim needs to be substantiated with necessary support data.

**DECISION: UPHELD**

The Advertiser was offered an opportunity for Personal Hearing with the ASCI Secretariat. The advertiser representatives did not seek a personal hearing and submitted their written response. The CCC viewed the print advertisement and considered the Advertiser's response. As claim support data, the advertiser provided records of placement of past two years in excel sheets. Advertiser argues that the guidelines do not prevent them from claiming their past placement record, but requires a disclaimer that past record is not a guarantee for future prospects. The CCC noted that the Advertiser has not provided evidence such as the batch size, enrolment forms, appointment letters and contact details of the students who got placements, for verification. The CCC concluded that the claim in the Ad, "100% Placement Records", was not substantiated with authentic data and is misleading by ambiguity in the absence of any disclaimers. The advertisement contravened Guidelines for Advertising of Educational Institutions and Programs as well as Chapters I.1 and I.4 of the ASCI Code. The complaint was UPHELD.

**33. COMPANY: Institute of Health Management Research**

**COMPLAINT:** "100% Placement Track Record".

**NATURE OF COMPLAINT:** This claim needs to be substantiated with necessary support data.

**DECISION: UPHELD**

The Advertiser was offered an opportunity for Personal Hearing with the ASCI Secretariat. The advertiser representatives did not seek a personal hearing and submitted their written response. The CCC viewed the print advertisement and considered the Advertiser's response. Advertiser argues that they are not claiming any placement guarantee or 100% placement assurance to students, but are only claiming 100% placement track record, and the guidelines do not prevent them from claiming their past placement record. As claim support data, the advertiser provided some details of placement of past two years. The CCC noted that the Advertiser has not provided details such as the batch size, enrolment forms, appointment letters and contact details of the students who got placements for verification. The CCC concluded that the claim in the Ad, "100% Placement Track Record", was not substantiated and is misleading in the absence of any disclaimer. The advertisement

contravened Guidelines for Advertising of Educational Institutions and Programs as well as Chapters I.1 and I.4 of the ASCI Code. The complaint was UPHELD.

**34. COMPANY: ICBM-School of Business Excellence**

**COMPLAINT:** 1) Highest Salary 6.2 L & Avg Salary 3.6 L 2) 100% Placements.

**NATURE OF COMPLAINT:** These claims needs to be substantiated with necessary support data.

**DECISION: UPHELD**

The Advertiser was offered an opportunity for Personal Hearing with the ASCI Secretariat. The advertiser representatives did not seek a personal hearing and submitted their written response. The CCC viewed the print advertisement and considered the Advertiser's response. As claim support data, the advertiser provided the list of students placed for the last 3 years with their company and their package. Advertiser submitted copy of an offer letter for package of 6.2 L of one student. The CCC concluded that the claim, "Highest Salary 6.2 L & Avg Salary 3.6 L", was not substantiated with evidence to prove that the individual students were indeed given the salary offer. The claim, "100% Placements", was not substantiated with details of batch size, enrolment forms, appointment letters and contact details of the students who got placements, for verification and is considered to be misleading by ambiguity. The advertisement contravened Guidelines for Advertising of Educational Institutions and Programs as well as Chapters I.1 and I.4 of the ASCI Code. The complaint was UPHELD.

**35. COMPANY: Indus Business Academy**

**COMPLAINT:** "5.4 Lacs Average CTC".

**NATURE OF COMPLAINT:** This claim needs to be substantiated with necessary support data.

**DECISION: UPHELD**

The ASCI approached the advertiser for their response in addressing the grievances of the complainant. The Advertiser was offered an opportunity for Personal Hearing with the ASCI Secretariat. The advertiser

representatives did not seek personal hearing. CCC also noted that no response was received from the advertiser prior to the due date. The CCC viewed the advertisement. In the absence of comments from the Advertiser, the CCC concluded that the claim in the Ad, “5.4 Lacs Average CTC”, was not substantiated and is misleading. The advertisement contravened Guidelines for Advertising of Educational Institutions and Programs as well as Chapters I.1 and I.4 of the ASCI Code. The complaint was UPHELD.

**36. COMPANY: Holy Grace Academy of Management Studies**

**COMPLAINT:** “Highest Placement in India in 2007 Batch. Rs.1 Crore Annum”.

**NATURE OF COMPLAINT:** This claim needs to be substantiated with necessary support data.

**DECISION: UPHELD**

The Advertiser was offered an opportunity for Personal Hearing with the ASCI Secretariat. The advertiser representatives contacted ASCI over phone and submitted their written response. The CCC viewed the print advertisement and considered the Advertiser's response. As claim support data, the advertiser provided e:mail offer letter of Mr. Syam Haridas, which indicated the designations such as flight attendant / desk officer etc. that were unlikely to fetch the package claimed in the ad. For verification, ASCI further requested the Advertiser to provide evidence that he was the student of their institution. ASCI also requested evidence of the acceptance of job offer by the student and his designation for which he was appointed. Advertiser was unable to provide this information. The CCC concluded that the claim in the Ad, “Highest Placement in India in 2007 Batch. Rs.1 Crore Annum”, was not substantiated adequately and is misleading by exaggeration. The advertisement contravened Guidelines for Advertising of Educational Institutions and Programs as well as Chapters I.1 and I.4 of the ASCI Code. The complaint was UPHELD.

**37. COMPANY: Gitam School of International Business**

**COMPLAINT:** “100% placement”.



**NATURE OF COMPLAINT:** This claim needs to be substantiated with necessary support data.

**DECISION: UPHELD**

The Advertiser was offered an opportunity for Personal Hearing with the ASCI Secretariat. The advertiser representatives did not seek a personal hearing and submitted their written response. The CCC viewed the print advertisement and considered the Advertiser's response. As claim support data, the advertiser provided the placement details. Advertiser argues that they do not guarantee job to students admitted in the School. They would endeavour to support the students in placement in the corporate world using its established tie-ups with industries in the country. The CCC noted that the claim made by the institute is subject to several conditions that exclude students in the calculation for 100% placement. The CCC concluded that the claim, "100% Placement", was not substantiated with details of batch size, enrolment forms, appointment letters and contact details of the students who got placements, for verification and is also misleading by ambiguity. The advertisement contravened Guidelines for Advertising of Educational Institutions and Programs as well as Chapters I.1 and I.4 of the ASCI Code. The complaint was UPHELD.

**38. COMPANY: D.J. Academy for Managerial Excellence**

**COMPLAINT:** "100% Profile driven placements".

**NATURE OF COMPLAINT:** This claim needs to be substantiated with necessary support data.

**DECISION: UPHELD**

The Advertiser was offered an opportunity for Personal Hearing with the ASCI Secretariat. The advertiser representatives did not seek a personal hearing and submitted their written response. The CCC viewed the print advertisement and considered the Advertiser's response. Advertiser states that they do only profile driven placements for which they have attached the profiles for their students this year. As claim support data, the advertiser has provided the list of few companies that have conducted placement drives for their students. The CCC concluded that the claim, "100% Profile driven placements", was not substantiated

and is misleading by ambiguity. The advertisement contravened Guidelines for Advertising of Educational Institutions and Programs as well as Chapters I.1 and I.4 of the ASCI Code. The complaint was UPHELD.

**39. COMPANY: Indira Institute of Management**

**COMPLAINT:** “Average Salary Package Rs.5 Lacs per annum (Highest salary Rs.8 lacs per annum)”.

**NATURE OF COMPLAINT:** This claim needs to be substantiated with necessary support data.

**DECISION: UPHELD**

The advertiser representatives were given personal hearing by ASCI. The CCC viewed the advertisement and considered the Advertiser's response. Advertiser did not provide any data in support of their claim. The CCC concluded that the claim in the Ad, “Average Salary Package Rs.5 Lacs per annum (Highest salary Rs.8 lacs per annum)”, was not substantiated and is misleading. The advertisement contravened Guidelines for Advertising of Educational Institutions and Programs as well as Chapters I.1 and I.4 of the ASCI Code. The complaint was UPHELD.

**40. COMPANY: Institute of Health Management Research (IIHMR)**

**COMPLAINT:** “An average Package of 6 lakhs and highest package of 12 lakhs”.

**NATURE OF COMPLAINT:** This claim needs to be substantiated with necessary support data.

**DECISION: UPHELD**

The Advertiser was offered an opportunity for Personal Hearing with the ASCI Secretariat. The advertiser representatives did not seek a personal hearing and submitted their written response. The CCC viewed the advertisement and considered the Advertiser's response. Advertiser provided placement details of students for batch 2014-2016, as support data for the claim of average and highest CTC offered, and employment offer letter of one of their student as proof of highest salary offered. The CCC noted that this employment offer letter provided to the candidate is

for overseas employment. There was no evidence to prove that the individual students were indeed given the offer. The CCC concluded that the claim in the Ad, “An average Package of 6 lakhs and highest package of 12 lakhs”, was not substantiated adequately. Also, the claim is misleading by ambiguity about the job location and corresponding salary in foreign currency. The advertisement contravened Guidelines for Advertising of Educational Institutions and Programs as well as Chapters I.1 and I.4 of the ASCI Code. The complaint was UPHELD.

**41. COMPANY: Manipal University (Jaipur)**

**COMPLAINT:** “Average Package 4.45 Lakhs”

**NATURE OF COMPLAINT:** This claim needs to be substantiated with necessary support data.

**DECISION: UPHELD**

The Advertiser requested for a personal hearing with the ASCI Secretariat for which they were offered an opportunity for a telecon. Advertiser did not provide data in support of their claim. The CCC viewed the advertisement and considered the Advertiser's response. The CCC concluded that the claim, “Average Package 4.45 Lakhs”, was not substantiated and is misleading. The advertisement contravened Guidelines for Advertising of Educational Institutions and Programs as well as Chapters I.1 and I.4 of the ASCI Code. The complaint was UPHELD.

**42. COMPANY: JK Lakshmipat University**

**COMPLAINT:** “100% Campus Placement since Inception”.

**NATURE OF COMPLAINT:** This claim needs to be substantiated with necessary support data.

**DECISION: UPHELD**

The Advertiser was offered an opportunity for Personal Hearing with the ASCI Secretariat. The advertiser sought a personal meeting with the ASCI Secretariat via telecon with their team and the ASCI Secretariat. The CCC viewed the advertisement and considered the Advertiser's response. As claim support data, the Advertiser provided batch wise detailed list of students. ASCI Secretariat further requested the advertiser

to provide additional data such as detailed list of students who have been placed through their Institute, the batch size of the students and appointment letters received by the students, and also evidence regarding when the Institute was operational. Advertiser responded that they were unable to provide the supporting data of all the batches who have graduated from their University to prove their claim. The CCC concluded that the claim in the Ad, “100% Campus Placement since Inception”, was not substantiated and is misleading by exaggeration. The advertisement contravened Guidelines for Advertising of Educational Institutions and Programs as well as Chapters I.1 and I.4 of the ASCI Code. The complaint was UPHELD.

**43. COMPANY: Faculty of Management Studies - Institute of Rural Management**

**COMPLAINT:** 1) 100% Placement Record 2) Highest Package 2015 SBI Escorts @ Rs.9.0 Lacs

**NATURE OF COMPLAINT:** These claims need to be substantiated with necessary support data.

**DECISION: UPHELD**

The ASCI approached the advertiser for their response in addressing the grievances of the complainant. The Advertiser was offered an opportunity for Personal Hearing with the ASCI Secretariat. The advertiser representatives did not seek personal hearing. CCC also noted that no response was received from the advertiser prior to the due date. The CCC viewed the advertisement. In the absence of comments from the Advertiser, the CCC concluded that the claims in the Ad, “100% Placement Record”, and “Highest Package 2015 SBI Escorts @ Rs.9.0 Lacs”, were not substantiated and were misleading. The advertisement contravened Guidelines for Advertising of Educational Institutions and Programs as well as Chapters I.1 and I.4 of the ASCI Code. The complaint was UPHELD.

**44. COMPANY: Dr. D.Y Patil Vidyapeeth Global Business School & Research Centre**

**COMPLAINT:** “100% placement record”

**NATURE OF COMPLAINT:** This claim needs to be substantiated with necessary support data.

**DECISION: UPHELD**

The Advertiser was offered an opportunity for Personal Hearing with the ASCI Secretariat. The advertiser representatives did not seek a personal hearing and submitted their written response. The CCC viewed the advertisement and considered the Advertiser's response. Advertiser stated that the mentioned placement record is of the students passed out in year 2014, and as per practice, since all students who have asked for the placement assistance got placed, they have stated 100% placement. The CCC concluded that the claim, "100% placement record", was not adequately substantiated with detailed list of students who have been placed through their Institute, their contact details, enrolment forms, the batch size of the students and appointment letters received by the students etc., for verification and is misleading. The advertisement contravened Guidelines for Advertising of Educational Institutions and Programs as well as Chapters I.1 and I.4 of the ASCI Code. The complaint was UPHELD.

**45. COMPANY: Jain Institute of Management & Entrepreneurship**

**COMPLAINT:** "100% placement since inception".

**NATURE OF COMPLAINT:** This claim needs to be substantiated with necessary support data.

**DECISION: UPHELD**

The Advertiser requested for an extension of date for Personal Hearing with the ASCI Secretariat. They were offered a personal hearing via telecom with their team and the ASCI Secretariat. The CCC viewed the advertisement and considered the Advertiser's response. Advertiser did not provide any claim support data and acknowledged their error. The CCC concluded that the claim in the Ad, "100% Placement since inception", was not substantiated and is misleading by exaggeration. The advertisement contravened Guidelines for Advertising of Educational Institutions and Programs as well as Chapters I.1 and I.4 of the ASCI Code. The complaint was UPHELD.

**46. COMPANY: Institute of Management Research & Technology**

**COMPLAINT:** “Highest Salary 5.5 Lac Avg. Salary 2.2 Lac”.

**NATURE OF COMPLAINT:** This claim needs to be substantiated with necessary support data.

**DECISION: UPHELD**

The ASCI approached the advertiser for their response in addressing the grievances of the complainant. The Advertiser was offered an opportunity for Personal Hearing with the ASCI Secretariat. The advertiser representatives did not seek personal hearing. CCC also noted that no response was received from the advertiser prior to the due date. The CCC viewed the advertisement. In the absence of comments from the Advertiser, the CCC concluded that the claim in the Ad, “Highest Salary 5.5 Lac Avg. Salary 2.2 Lac”, was not substantiated and is misleading. The advertisement contravened Guidelines for Advertising of Educational Institutions and Programs as well as Chapters I.1 and I.4 of the ASCI Code. The complaint was UPHELD.

**47. COMPANY: M.S. Ramaiah Institute of Management**

**COMPLAINT:** “The placement record at MSRIM has been nearly 100% over the last 10 years”.

**NATURE OF COMPLAINT:** This claim needs to be substantiated with necessary support data.

**DECISION: UPHELD**

The Advertiser was offered an opportunity for Personal Hearing with the ASCI Secretariat. The advertiser representatives did not seek a personal hearing and submitted their written response. The CCC viewed the advertisement and considered the Advertiser's response. As claim support data, the advertiser provided information about the number of students enrolled, graduated, and placed for jobs for the last ten years. The CCC concluded that the claim in the Ad, “The placement record at MSRIM has been nearly 100% over the last 10 years”, was not substantiated adequately with detailed list of students who have been placed through their Institute, their contact details, enrolment forms, the

batch size of the students and appointment letters received by the students etc., for verification. Also, the claim is misleading by ambiguity. The advertisement contravened Guidelines for Advertising of Educational Institutions and Programs as well as Chapters I.1 and I.4 of the ASCI Code. The complaint was UPHELD.

**48. COMPANY: Mangalmay Institute of Management & Technology**

**COMPLAINT:** “The average salary for MBA placements in Delhi NCR, Noida and Greater Noida has been Rs.4.5 Lacs p.a.”.

**NATURE OF COMPLAINT:** This claim needs to be substantiated with necessary support data.

**DECISION: UPHELD**

The Advertiser was offered an opportunity for Personal Hearing with the ASCI Secretariat. The advertiser representatives did not seek a personal hearing and submitted their written response. The CCC viewed the advertisement and considered the Advertiser's response. Advertiser argues that since the placement average in the region is close to 4.5 lacs PA it makes them a top college with an excellent placements. Also, the objective of communication is that their placements are closer to the overall average figures given in the area for various B schools. The CCC concluded that the claim in the Ad, “The average salary for MBA placements in Delhi NCR, Noida and Greater Noida has been Rs.4.5 Lacs p.a.”, was not substantiated with supporting data and is misleading by ambiguity. The advertisement contravened Guidelines for Advertising of Educational Institutions and Programs as well as Chapters I.1 and I.4 of the ASCI Code. The complaint was UPHELD.

**49. COMPANY: Disha Institute of Management and Technology**

**COMPLAINT:** “100% Placements”

**NATURE OF COMPLAINT:** These claims needs to be substantiated with necessary support data.

**DECISION: UPHELD**

The Advertiser was offered an opportunity for Personal Hearing with the ASCI Secretariat. The advertiser representatives did not seek personal hearing and submitted their written response. The advertiser was

requested to provide additional data in support of their claim as their initial response was not exhaustive and complete. However, the advertiser informed ASCI that due to the non-disclosure policy of the Institute pertaining to sharing of information of the students to third party they are unable to furnish any further details. The CCC concluded that the claim in the advertisement, “100% Placements”, was not adequately substantiated as evidence such as the batch size, enrolment forms, appointment letters and contact details of the students who got placements were not provided for verification. The advertisement was considered misleading by ambiguity in absence any disclaimers / qualifier. The advertisement contravened Guidelines for Advertising of Educational Institutions and Programs as well as Chapters I.1 and I.4 of the ASCI Code. The complaint was UPHELD.

#### **HEALTH SECTORS UPHELD**

##### **50. COMPANY: Adesh Group of Institutions & Hospital**

**PRODUCT:** Adesh Hospital

**COMPLAINT:** “Adesh Hospital has Punjab's first Coblation machine”

**NATURE OF COMPLAINT:** Adesh hospital have published an advertisement in the newspapers of the region that they are doing tonsillectomy using coblator .this is true.. However they are misleading the people that they were the first hospital in punjab to acquire this machine. Which is not true at all. Thapar hospital and research institute in moga acquired this machine before Adesh Hospital and i know few other hospitals who have this machines even before us this is true. However they are misleading the people that they were the first hospital in Punjab to acquire this machine. Which is not true at all. Thapar hospital and research institute in moga acquired this machine before adesh hospital. This is trying to influence the consumers with false propaganda and giving false information which should be discouraged.

#### **DECISION: UPHELD**

The ASCI approached the advertiser for their response in addressing the grievances of the complainant. The Advertiser was offered an opportunity for Personal Hearing with the ASCI Secretariat. The advertiser



representatives did not seek personal hearing. CCC also noted that no response was received from the advertiser prior to the due date. The CCC viewed the advertisement. In the absence of comments from the Advertiser, the CCC concluded that the claim in the Ad, “Adesh Hospital has Punjab's first Coblation machine”, was not substantiated and is misleading by exaggeration. The advertisement contravened Chapters I.1 and I.4 of the ASCI Code. The complaint was UPHELD.

**51. COMPANY: Brad Ayurveda**

**PRODUCT:** Brad Ayurveda Eye Drop

**COMPLAINT:** Brad Ayurveda' misleading advertisement that use of eye drops can rid of glasses. There is no scientific evidence that eye drops can give away glasses use. The so called ayurvedic physician running this pharmacy doesn't even have a valid degree also.

**NATURE OF COMPLAINT:** These claims needs to be substantiated with necessary support data.

**DECISION: UPHELD**

The ASCI approached the advertiser for their response in addressing the grievances of the complainant. The Advertiser was offered an opportunity for Personal Hearing with the ASCI Secretariat. The advertiser representatives did not seek personal hearing. CCC also noted that no response was received from the advertiser prior to the due date. The CCC viewed the TVC. In the absence of comments from the Advertiser, the CCC concluded that the claims in the TVC, “Helps in reducing the numbers for eyes”, “Increases the brightness of eyes, removes blurriness”, were not substantiated, and the claims are misleading. Also, specific to the claims implying improvement in eye sight, the TVC is in Breach of the law as it violated The Drugs & Magic Remedies Act. The TVC contravened Chapters I.1, I.4 and III.4 of the ASCI Code. The complaint was UPHELD.

**52. COMPANY: Tara Homeopathy Clinic**

**PRODUCT:** Tara Clinic Re-grow Hair on Bald Head.

**COMPLAINT:** “Re-grow hair on bald head by using advanced scientific method.”

**NATURE OF COMPLAINT:** 1) Digital copy of the advertisement is attached. 2) URL: <http://epaper.bhaskar.com/Khandwa/162/01032016/mpcg/1/> The advertisement says that Tara Clinic will re-grow hair on bald head by using advanced scientific method. The method is not disclosed. The advertisement says 'conditions apply'. What are these conditions? Phone numbers are given so that they, while talking, can gauge your financial ability etc.

**DECISION: UPHELD**

The ASCI approached the advertiser for their response in addressing the grievances of the complainant. The Advertiser was offered an opportunity for Personal Hearing with the ASCI Secretariat. The CCC noted that no response was received from the advertiser prior to the due date. The CCC viewed the print advertisement. In the absence of comments from the Advertiser, the CCC concluded that the claim in the Advertisement, (in Hindi) as translated in English, “re-grow hair on bald head by using advanced scientific method”, was not substantiated. The visuals showing the images of before and after the treatment were misleading. Specific to the claim of “100% guarantee” implying cure of baldness (a condition referred in Schedule J of the Drugs and Cosmetics Act), the advertisement is in Breach of the law as it violated The Drugs & Cosmetics Rule 106. The advertisement contravened Chapters I.1, I.4 and III.4 of the ASCI Code. The complaint was UPHELD.

**53. COMPANY: Dr. Khalid's Positive Health Clinic**

**COMPLAINT:** Complaint “Digital copy of the advertisement is attached. URL: <http://epaper.patrika.com/740519/Patrika-Khandwa/06-03-2016/#page/17/1> The advertisement claims to treat successfully extraordinary diseases with unani drugs like: Woman specific diseases, Man specific diseases, Stomach diseases (Acidity, constipation, stone, gas, colitis, piles, hepatitis, IBS).”

**NATURE OF COMPLAINT:** These claims needs to be substantiated with necessary support data.

**DECISION: UPHELD**

The ASCI approached the advertiser for their response in addressing the grievances of the complainant. The Advertiser was offered an opportunity

for Personal Hearing with the ASCI Secretariat. The advertiser representatives did not seek personal hearing. The CCC also noted that no response was received from the advertiser prior to the due date. The CCC viewed the print advertisement. In the absence of comments from the Advertiser, the CCC concluded that the claim in the Advertisement, (in Hindi) as translated in English “Successful treatment of all incurable diseases with Unani Drugs”, is misleading by gross exaggeration and was not substantiated. The advertisement contravened Chapters I.1 and I.4 of the ASCI Code. The complaint was UPHELD.

**54. COMPANY: Shree Narayanan Ayurvedic Pharmacy**

**PRODUCT:** Lion Brand Va-nari Vati Special Pill

**COMPLAINT:** When you lose energy Containing 14 energy booster herbs 'Lion Brand' Va-nari vati special Removes physical weakness Strengthens weak limbs Nourishes the seven elementary substances of the body Nourishes endocrine glands.

**NATURE OF COMPLAINT:** I enclose herewith ad of product promoted for Sex-Power Enhancement, which appeared in Divya Bhaskar, Vadodara, dt 28/02/2016: Lion Brand Va-nari Vati Special by Shree Nar Naraya Ayurveda Pharmacy, Ahmedabad-13 My objections are as follows: The product is promoted and sold for enhancement of sex power, to remove the deficiency of erection for men, to nourish the internal sex hormones and 'saptadhatu'. Va-nari vati ad declares it being popular and in use for 68 years. 1) It is an ayurvedic product and no ingredients are mentioned nor did any scientific study quote which has certified the effectiveness of the products for the claims made. 2) It has become a fashion now-a-days to promote sex enhancement products under the guise of ayurvedic / herbal products, without any side effects. There are no substantive proofs of any claim.

**DECISION: UPHELD**

The ASCI approached the advertiser for their response in addressing the grievances of the complainant. The advertiser was offered an opportunity for Personal Hearing with the ASCI Secretariat. The advertiser representatives did not seek personal hearing. The CCC also noted that no response was received from the advertiser prior to the due date. The

CCC viewed the print advertisement. In the absence of comments from the Advertiser, the CCC concluded that the claims in the advertisement, (in Gujarathi) as translated in English, "Removes physical weakness", "Strengthens weak limbs", "Nourishes the seven elements of the body", "Nourishes endocrine glands" were not substantiated and are misleading. The advertisement contravened Chapters I.1 and I.4 of the ASCI Code. The complaint was UPHELD.

**55. COMPANY: Dr. Mohana's Hair Transplant Centre (Hair Transplant)**

**COMPLAINT:** "Digital copy of the advertisement is enclosed URL: <http://epaper.patrika.com/740519/Patrika-Khandwa/06-032016#page/17/1> The advertisement claims: (1) "You will nowhere else get the benefit of the treatment of hairplant you get here". (2) Re-establishing of hair by advanced technological method in a natural way (3) Scientific procedure without incision or stitching (4) High density mega special [30000] 6000 hairs in one day".

**NATURE OF COMPLAINT:** These claims needs to be substantiated with necessary support data.

**DECISION: UPHELD**

The Advertiser was offered an opportunity for Personal Hearing with the ASCI Secretariat. The advertiser representatives did not seek a personal hearing and responded that they wanted to have more information on the complaint. On ASCI's request, the advertiser further provided his contact number and subsequently, without providing any specific comments on the complaint, informed that the advertisement has been withdrawn. The CCC viewed the print advertisement and concluded that the claims (in Hindi) as translated in English, "You will nowhere else get the benefit of the treatment of hair plant you get here", "Re-establishing of hair by advanced technological method in a natural way", "Scientific procedure without incision or stitching", "High density mega special [30000] 6000 hairs in one day", were not substantiated and were misleading by exaggeration. Also, the visuals showing the images of before and after the treatment were misleading. The advertisement contravened Chapters I.1 and I.4 of the ASCI Code. The complaint was UPHELD.

**56. COMPANY: Health Care Global Enterprises Limited**

**PRODUCT:** HCG Hospital- Cyber Knife

**COMPLAINT:** “In Cyberknife Surgery There's No Knife. No Actual Surgery And, By The End Of It. No Cancer”.

**NATURE OF COMPLAINT:** These claims needs to be substantiated with necessary support data.

**DECISION: UPHELD**

The Advertiser was offered an opportunity for Personal Hearing with the ASCI Secretariat. The advertiser representatives did not seek personal hearing and submitted their written response. The advertiser's response was reviewed by the technical expert of ASCI. The CCC viewed the Website/Internet advertisement and considered the Advertiser's response as well as the opinion of Technical expert presented at the meeting. The CCC noted that the advertisement mentions “no cancer” at the end of treatment, implying cure from cancer and also a small number of cases have been presented as claim support data. The CCC concluded that the claims, “In Cyberknife Surgery ..... And, By The End Of It. No Cancer” were not substantiated. Also, specific to the claim implying cure for cancer, the advertisement is in Breach of the law as it violated The Drugs & Magic Remedies Act. The website advertisement contravened Chapters I.1 and III.4 of the ASCI Code. The complaint was UPHELD.

**57. COMPANY: Mission Health**

**PRODUCT:** Non-surgical spine care technologies

**COMPLAINT:** Neck pain, back pain, slipped disc, sciatica?” “No medicine, no injections, no surgery” “Indias 1st super speciality spine clinic in Ahmedabad” Worlds most advanced non-surgical spine care technologies” “12,000 + patients treated successfully”.

**NATURE OF COMPLAINT:** These claims needs to be substantiated with necessary support data.

**DECISION: UPHELD**

The ASCI approached the advertiser for their response in addressing the grievances of the complainant. However, no response was received from

the advertiser. The CCC viewed the print advertisement. In the absence of comments from the Advertiser, the CCC concluded that the claims, “Neck pain, back pain, slipped disc, sciatica?” “No medicine, no injections, no surgery” “India's 1st super speciality spine clinic in Ahmedabad”, “Worlds most advanced non-surgical spine care technologies” “12,000+ patients treated successfully” were not substantiated. The advertisement contravened Chapter I.1 of the ASCI Code. The complaint was UPHELD.

**58. COMPANY: Dr. Reddy's Laboratories Ltd.**

**PRODUCT:** (Hairrootz )

**COMPLAINT:** “Dermatologist recommended brand”, “Biotic and folic acid help prevent hairfall” “Minerals to keep brittle and greying hair nourished”, “20 x more effective anti- oxidants derived from grapeseed extracts”.

**NATURE OF COMPLAINT:** My objections are as follows: 1) The product is from Dr. Reddy's who are in pharma business. Product is also a medical product for healthy hair. AD has a bold catchline – Your hair is starving and you don't even know it. AD gives some information about hairfall and hairloss – how it takes place, to identify the signs of it and advises to nourish your hair with hairrootz everyday. In small size actual pack photo one can read with a magnifying glass – Biotin, Grapeseed extract, Minerals and Amino Acid. 1 – Dermatologist recommended brand. Net contents – 15 sachels. A proprietary food. In any other copy information is given about ingredients – 1. Biotic and folic acid help prevent hairfall. 2. Vitamins & Minerals to keep brittle and greying hair nourished. 3. 20 x more effective anti- oxidants derived from grapeseed extracts. For all 3 company gives sources or information. 2) It is clear from the above that all that is mentioned is from published sources and not experimentally proved with their own product in any approved laboratory. I don't know if they have carried out premarketing in-patient trials of their own product and get positive results of what they claim. Company says – product is available on Health Kart - authenticity guaranteed and at all leading chemist outlets. Fruits shown in the AD are only for illustration purpose and have no relevance for product property or quality. Nowadays 'hair loss' has become a booming business proposal and hordes of

companies are offering oils, herbs, medicines, etc. for nourishment. This product seems to be one in that like. But from Dr. Reddy's? I am sure it's an imaginative move from the company to cash-in, but why misguide the consumers with cooked up stories? Show the facts. Show the results of your own product and its effectiveness, success rate in real stopping hairfall with true figures – what percentage and in what time? If it is a nourishing proprietary food, how long it will be required to be consumed to get the desired effect? Vague information from literature and published sources will not suffice.

**DECISION: UPHELD**

The advertiser representatives were given personal hearing by the ASCI. The advertiser argues that the product is a “proprietary food product” and not a medical product and the visuals of fruit shown in the advertisement are for illustrative purpose only. The advertiser did not substantiate the claim “your hair is starving” and no product efficacy data was submitted to demonstrate how the advertised product nourishes hair, and claims “Minerals to keep brittle and greying hair nourished”, “20 x more effective anti- oxidants derived from grapeseed extracts”. There was no rationale provided for choosing the particular product composition. The CCC considered the claims to be misleading by ambiguity and implication. The claim “Dermatologist recommended brand” appearing on pack visual was not substantiated. The advertisement contravened Chapters 1.1 and 1.4 of the ASCI Code. The complaint was UPHELD.

**TELECOM SECTORS UPHELD**

**59. COMPANY: Bharti Airtel Ltd**

**PRODUCT:** Airtel 4G

**COMPLAINT:** “71, 21,302 minutes of free wynk music, movies and games” “Wynk music alone claims 1.8 million songs in play store”. “How did they quantify time on games?”

**NATURE OF COMPLAINT:** These claims need to be substantiated with necessary support data.

**DECISION: UPHELD**

The Advertiser was offered an opportunity for Personal Hearing with the ASCI Secretariat. The advertiser representatives did not seek this a personal hearing and submitted their written response. The CCC viewed the TVC and considered the Advertiser's response. The CCC noted from the response that the offer “71,21,302 minutes of free wynk music, movies and games” is available to any customer who buys an Airtel pack and is qualified with appropriate disclaimer. The CCC also considered the response submitted for the claims “Wynk music alone claims 1.8 million songs in play store” and did not find the same as objectionable. The complaint was NOT UPHELD. However, the CCC observed that the language and the hold duration of the super in the advertisement was not as per the ASCI guidelines on super. The TVC contravened the ASCI Guidelines on Supers. This complaint was UPHELD.

**60. COMPANY: Vodafone India Ltd**

**PRODUCT:** Vodafone 4G Network

**COMPLAINT:** “World's Largest 4G Network, now in Kochi”

**NATURE OF COMPLAINT:** These claims needs to be substantiated with necessary support data.

**DECISION: UPHELD**

The ASCI approached the advertiser for their response in addressing the grievances of the complainant and offered an opportunity for Personal Hearing with the ASCI Secretariat. The advertiser representatives did not seek a personal hearing. No response was received from the advertiser prior to the due date. The CCC viewed the advertisement hoarding. In the absence of comments from the Advertiser, the CCC concluded that, the claim, “World's Largest 4G Network, now in Kochi” was not substantiated. Also, the claim was misleading in the absence of appropriate disclaimer/qualifier. The advertisement hoarding advertisement contravened Chapters I.1 and 1.4 of the ASCI Code. The complaint was UPHELD.

**61. COMPANY: Hathway Cable & Datacom Pvt. Ltd.**

**PRODUCT:** Hathway Broadband Internet

**COMPLAINT:** “10 times faster internet” and “50mbps” speed.



**NATURE OF COMPLAINT:** These claims needs to be substantiated with necessary support data.

**DECISION: UPHELD**

The advertiser representatives were given personal hearing by ASCI. The CCC viewed the Ad - pamphlets/website/You Tube advertisements/ TVC and considered the Advertiser's response for Review. For the claim, "50 Mbps speed", the Advertiser informs that there was a one off technical issue at the complainant's premises and the same was resolved. The advertiser provided evidence of complaint resolution. The advertiser also submitted supporting data to substantiate their claim of "50 Mbps speed". The CCC concluded that the advertiser's claim was substantiated. This complaint was NOT UPHELD. For the claim, "10 Times Faster", the Advertiser argues that majority of the broadband service providers are providing on an average 5 Mbps speed to the subscribers whereas the advertiser is able to provide 10 times faster speed of 50 Mbps based on their latest DOCIS 3.0 technology. As claim support data, the advertiser submitted a comparison chart of various tariff plans issued by different Internet service providers The CCC concluded that while the claim, "10 TIMES FASTER" was substantiated, it was misleading by omission of an appropriate disclaimer. The Ad – pamphlets/website/You Tube Ad/ TVC contravened Chapter I.4 of the Code. The decision of this complaint being upheld stands on Review.

**62. COMPANY: Reliance Communications**

**PRODUCT:** Reliance Upgrade to 3G

**COMPLAINT:** "Enjoy seamless voice and data connectivity on India's finest & technologically advanced 3G network."

**NATURE OF COMPLAINT:** These claims needs to be substantiated with necessary support data.

**DECISION: UPHELD**

The Advertiser was offered an opportunity for Personal Hearing with the ASCI Secretariat. The advertiser representatives did not seek personal hearing and submitted their written response. The CCC viewed the print advertisement and considered the Advertiser's response. The advertiser argues that by partnering with Ericsson - a global leader in 3G, they have

implemented signaling related features of 3GPP-R7 to provide longer battery life, and majority of Node B is connected with fast superlative MEN back haul to ensure best and most consistent throughput as compared to other 3G networks. However, no data was provided as to how the Reliance 3G is finer than the rest of the 3G networks. The CCC concluded that while “technologically advanced” adjective was acceptable, the claim, “India's finest 3G network”, was not adequately substantiated and is misleading by exaggeration. The print advertisement contravened Chapters 1.1 and I.4 of the ASCI Code. The complaint was UPHELD.

**63. COMPANY: Vodafone India Ltd (Superfast Vodafone Network)**

**COMPLAINT:** “Welcoming Reliance Customers to superfast Vodafone network”

**NATURE OF COMPLAINT:** “I saw a news advertisement in Assam from Vodafone thereby welcoming Reliance Customers to "superfast" Vodafone network. This advertisement unabashedly claim that Vodafone's network is 'superfast' without citing any basis for making such a huge claim. The ad also says that there are terms and conditions which apply in an illegible font. As such like a curious customer I went on the website to check the applicable terms and conditions to verify their claim as I wanted to switch to Vodafone's, but to my surprise there were no T&Cs of any report or reference given available in their website. I find this ad highly disturbing and misleading. This ad has been made to misguide general public in believing that Vodafone has a better network than others without providing any justification. If they ate calling their network as "superfast" then they should also clarify in comparison to whom and how? This is blatant false advertising and a heavy fine should be levied against such big brands who resort to such practices to fool the general public.”

**DECISION: UPHELD**

The advertiser was granted an extension to the standard lead time to submit their reply in response to their request while seeking response from the correct legal entity Vodafone Spacetel Limited. The advertiser submitted their preliminary response in which, the advertiser argues that the said advertisement is not making any comparison of services,

technology or prices with any of the competitors and hence the objection raised on the use of the word “Superfast”, is unjustified. The CCC viewed the print advertisement. In the absence of any additional data and specific comments from the Advertiser, the CCC concluded that the claim, “superfast Vodafone network”, is a superlative claim that was not substantiated with any technical rationale or comparative data. Also, the claim is misleading in the absence of appropriate disclaimers. The advertisement contravened Chapters I.1 and I.4 of the Code. The complaint was UPHELD.

#### **APPLIANCES AND DURABLES SECTORS UPHELD**

##### **64. COMPANY: Hewlett Packard India Sales Pvt. Ltd**

**PRODUCT:** Hewlett Packard printer

**COMPLAINT:** HP Printer will print up to 480 black and white pages with single ink black and white cartridge which cost 475 rupees and cartridge code is 678”.

**NATURE OF COMPLAINT:** These claims needs to be substantiated with necessary support data.

##### **DECISION: UPHELD**

The advertiser representatives were given personal hearing by ASCI. As claim support data for Review, the Advertiser has submitted the ISO Test Report for Deskjet IA3545 using HP Cartridge 678 and the packaging of printer and cartridge which mention that the yields indicated are as per ISO standards and that actual yield may vary based on content printed and other factors. Advertiser states that the printer came with a full ink cartridge and not a demo cartridge and hence there was no requirement for a disclaimer to be provided. The claim support data for Review was reviewed by the technical expert of ASCI. The CCC viewed the TVC and considered the Advertiser's response as well as opinion of the Technical expert presented at the meeting. According to the complainant he was able to print much less number of pages compared to the stated number in the advertisement and he experienced this issue twice for the first cartridge that was used in installation as well as for a repeat purchase. As claim support data, Advertiser has submitted a detailed description of the testing process (HPISO 247 11 Ink Yield Test Report). The advertiser

has submitted a report to substantiate the claim regarding the yield of the cartridge and has arrived at an average value of 480 for the black cartridge. The advertiser further qualifies the claim as (actual yield may vary based on content printed and other factors). Based on this data, the CCC concluded that the claim of “Up to 480 pages” was substantiated. This complaint is Not Upheld on Review. However, the CCC noted that the TVC shows all the print-outs in bright colors whereas the claim of “Upto 480 pages” is with reference to ISO test page yield for a black cartridge under standard test conditions. The coloured print outs are not representative of the standard page yield corresponding to the number of 480. The CCC concluded that, regardless of the disclaimer, the visuals of coloured print outs appearing along with the headline “Upto 480 pages for just Rs. 475/- per cartridge” is misleading by ambiguity and implication. The TVC contravened Chapter I.4 of the ASCI Code. This decision of complaint being upheld stands on Review.

**65. COMPANY: Jaquar and Company Ltd**

**PRODUCT:** Jaguar Lighting

**COMPLAINT:** 1. Eco-friendly mercury free, 2. Energy efficient, more than 80 percent saving, 3. Lastsup to 30 years

**NATURE OF COMPLAINT:** These claims needs to be substantiated with necessary support data.

**DECISION: UPHELD**

The Advertiser was offered an opportunity for Personal Hearing with the ASCI Secretariat. The advertiser representatives did not seek a personal hearing and submitted their written response. The claim support data was reviewed by the technical expert of ASCI. Advertiser argues that they have not claimed to be the only mercury free LED and have provided calculations for claims of “80% more saving” and “lasts up to 30 years”. The CCC viewed the print advertisement and considered the Advertiser's response as well as the opinion of Technical expert presented at the meeting. The CCC noted that all LED lamps and several other types of lamps are mercury free. The claim, "eco-friendly mercury free" was therefore, considered to be misleading by omission of reference to other products that are not mercury free. The claim, “Energy efficient, more than 80 percent saving”, was not substantiated with results from

independent test agency. Also, this claim is misleading by omission of mention of comparison to CFL and tubelights. Advertiser without any justification states that the life of the lamp as 27,000 hours and states that at 2.5 hrs/day it would last 30 years. But it does not give a test report to validate this claim of 27,000 hrs, nor does it state if this life is at one continuous run or in intermittent use; especially when it is well known that some devices have a much short intermittent life. The claim, “lasts up to 30 years”, was not substantiated. The advertisement contravened Chapters I.1 and I.4 of the Code. The complaint was UPHELD.

**66. COMPANY: MRF Ltd**

**PRODUCT:** MRF ZSLK Tyres

**COMPLAINT:** 1. When you drive on MRF ZSLK, Delhi Breaths a Little easier. 2. MRF ZSLK India's Eco-Friendly Car tyre.

**NATURE OF COMPLAINT:** These claims needs to be substantiated with necessary support data.

**DECISION: UPHELD**

The Advertiser was offered an opportunity for Personal Hearing with the ASCI Secretariat. The advertiser representatives did not seek a personal hearing and submitted their written response. The CCC viewed the Ad – signboard and considered the Advertiser's response. The CCC concluded that the claims, “When you drive on MRF ZSLK, Delhi Breaths a Little easier”, and “MRF ZSLK India's Eco-Friendly Car tyre”, were not substantiated with supporting data to prove that the MRF ZSLK Tyres results in vehicle consuming significantly less fuel and as a result emit lower emission. The CCC considered the claims to be misleading by exaggeration. The Ad - signboard contravened Chapters I.1 and I.4 of the ASCI Code. The complaint was UPHELD.

**67. COMPANY: Future Value Products Pvt. Ltd**

**PRODUCT:** Dr. Back Orthopedic Mattress

**COMPLAINT:** The advertisement claim that “Since 1982, Pyare Lal Group is the only manufacturer in the world, who manufactures all types of mattresses under one roof.”

**NATURE OF COMPLAINT:** These claims needs to be substantiated with necessary support data.

**DECISION: UPHELD**

The ASCI approached the advertiser for their response in addressing the grievances of the complainant. The Advertiser was offered an opportunity for Personal Hearing with the ASCI Secretariat. The advertiser representatives did not seek personal hearing. The CCC also noted that no response was received from the advertiser prior to the due date. The CCC viewed the print advertisement. In the absence of comments from the Advertiser, the CCC concluded that the claim in the advertisement, “Since 1982, Pyare Lal Group is the only manufacturer in the world, who manufactures all types of mattresses under one roof”, was not substantiated and was misleading by gross exaggeration. The print advertisement contravened Chapters I.1 and I.4 of the ASCI Code. The complaint was UPHELD.

**68. COMPANY: KAFF Appliances (India) Pvt. Ltd. (KAFF)**

**COMPLAINT:** 1. “KAFF is now India's Most Trusted Brand. Consumer Validated 2015” 2. “In a nationwide survey conducted by IBC Infomedia and consumersurvey.com, KAFF has been declared as the most trusted Brand of 2015 in the Kitchen Appliance category. This award by India's Most Trusted Brand Awards Council just reaffirms what we always believed 3. “A fact validated by consumers” 4. “Think Green with KAFF”.

**NATURE OF COMPLAINT:** These claims needs to be substantiated with necessary support data.

**DECISION: UPHELD**

The ASCI approached the advertiser for their response in addressing the grievances of the complainant. The Advertiser was offered an opportunity for Personal Hearing with the ASCI Secretariat. The advertiser representatives did not seek personal hearing. The CCC also noted that no response was received from the advertiser despite a reminder. The CCC viewed the magazine advertisement. In the absence of comments from the Advertiser, the CCC concluded that the claims, “KAFF is now India's Most Trusted Brand. Consumer Validated 2015”, “In a nationwide survey conducted by IBC Infomedia and consumersurvey.com, KAFF

has been declared as the most trusted Brand of 2015 in the Kitchen Appliance category. This award by India's Most Trusted Brand Awards Council just reaffirms what we always believed", "A fact validated by consumers", "Think Green with KAFF", were not substantiated. The magazine advertisement contravened Chapter I.1 of the ASCI Code. The complaint was UPHELD.

**69. COMPANY: Tata Motors Ltd.**

**PRODUCT:** GENX Nano Easy Shift

**COMPLAINT:** Show that these vehicles can reach ahead of any other vehicles on traffic signal while on red by zig-zag driving to overtake standing vehicles. Such advertisements promote how to distort traffic rules by wrong way over taking & out of rules driving. Young generation follow the same on our road.

**NATURE OF COMPLAINT:** These claims needs to be substantiated with necessary support data.

**DECISION: UPHELD**

The advertiser representatives were given personal hearing by ASCI. The CCC viewed the TVC and considered the Advertiser's response. The advertiser argues that in the said scene, there is no reference to any red lights and in a slow moving traffic situation, the driver sees an opening and vacant lane ahead of him and as a natural practice takes the car ahead, without cutting off any vehicle or by displaying any rash driving, by overtaking the car ahead of him. The CCC acknowledged that while the overall advertisement is acceptable, in one frame of the TVC, the vehicle indicator light is not lit while overtaking another vehicle. This visual is in violation of traffic rules and shows an unsafe practice. The TVC contravened the Guidelines on advertisement of automotive vehicles and Chapter III.3 of the ASCI Code. The complaint was UPHELD.

**70. COMPANY: Porta Mart**

**PRODUCT:** Flip cover for Xolo Black 1x

**COMPLAINT:** The advertisement claims that the product is "In Stock", and I successfully placed an order. Later, they send a mail saying that "Product is not in Stock" I checked after the mail was sent by Portamart.

The product is still available. I believe this is false advertising, and they are fooling their customers. I ordered a flip cover for Xolo Black 1x from Portamart. While ordering, the product showed 'In Stock' I received a confirmation about the order. Later I received an email from Portamart citing that the product was not in stock, and they suggest an inferior alternative. After I received this mail, I checked again on the website, and the product still shows as 'In Stock'. Today morning also, the product shows as 'In Stock' I believe this is an act of false advertising. It seems to be a deliberate act to fool customers/provide false information on the website. Other on-line shopping sites clearly state "Not Available Currently" or 'Not in Stock' if the product is not available. I have also attached, a screenshot from what reflects today on the website. Product still is “In Stock”.

**NATURE OF COMPLAINT:** These claims needs to be substantiated with necessary support data.

**DECISION: UPHELD**

The CCC viewed the website advertisement and considered the Advertiser's response. The CCC concluded that the claim offer of, “Flip cover for Xolo Black 1x - in stock – Rs. 249/-”, is false. Also, the claim offer distorts facts and is misleading, as the product is actually not in stock and the advertiser is offering an alternative product in replacement of the same. The website advertisement contravened Chapters I.1 and I.4 of the Code. The complaint was UPHELD.

**E-COMMERCE AND TECHNOLOGY SECTOR UPHELD**

**71. COMPANY: SIFYTNVAT (Sify Technologies)**

**COMPLAINT:** The email sales promotion campaign of Sify Technologies is misleading the business people in Tamilnadu. TN govt has mentioned that those have digital signature need not submit hard copy of sales tax documents for monthly e-filing. This is purely an option. Sify claims that digital signature is mandatory for all business people to do monthly sales tax e-filing. This email campaign shows to be an fraudulent claim for sales. Sify has to be banned from selling digital signatures and apologize to all the email recipients. Rule 25 in TNVAT new guidelines: Those who do not have digital signature should submit hard copy to their sales tax branch. It is not mandatory and government is clear in it.



**NATURE OF COMPLAINT:** These claims needs to be substantiated with necessary support data.

**DECISION: UPHELD**

The Advertiser was offered an opportunity for Personal Hearing with the ASCI Secretariat. The advertiser representatives did not seek a personal hearing and submitted their written response. The CCC viewed the Ad – promotional email and considered the Advertiser's response. The CCC concluded that the claim in the promotional email, "Tamilnadu Commercial Tax announced digital signature is mandatory for Sales Tax Filing from March 20, 2016", is false and misleading, as digital signature is not mandatory for filing tax returns as per TNVAT new guidelines. The Ad – promotional email contravened Chapters I.1 and I.4 of the ASCI Code. The complaint was UPHELD.

**72. COMPANY: Amazon.com, Inc (Amazon-Return Policy)**

**COMPLAINT:** Complaint is related to TVC ad of amazon India, named as Apnidukan. Ad shows as where customer has purchased any product from amazon India in 2 or more units (which are same in color, design, quality, specifications) can return back to Amazon India as per easy return policy. Whereas return policy of Amazon India says Mobile phones/ large appliances/ Furniture, etc. are not part of return policy. This advertisement of Amazon India is mis-guiding Indian consumers who gets attracted towards Amazon India for online shopping and in-case they don't like the ordered product, return policy is not as easy/ flexible. Advertisement should show its return policy in TVC when they are claiming for EASY RETURNS in Telecommercial.

**Amazon Return Policy:** <https://www.amazon.in/gp/help/customer/display.html?nodeId=201149900>

**NATURE OF COMPLAINT:** These claims needs to be substantiated with necessary support data.

**DECISION: UPHELD**

The Advertiser was offered an opportunity for Personal Hearing with the ASCI. The advertiser representatives did not seek personal hearing and submitted their written response. The CCC viewed the TVC and considered the Advertiser's response. The advertiser argues that due to

the simplistic nature of the process involved in returning products purchased through the Amazon platform, the same has been advertised as “Easy Returns”. The terms of its Returns Policy are available on the Amazon website. The CCC noted that the advertiser's web-site communication provides the terms and conditions applicable for the claim. However, the TVC does not have any reference to terms and conditions. The claim “Easy Returns” is therefore misleading by omission of appropriate disclaimer in the TVC. The TVC contravened Chapter I.4 of the ASCI Code. The complaint was UPHELD.

**73. COMPANY: Saturday Sunday Media Internet Pvt Ltd**

**PRODUCT:** Bookmyoffer.com

**COMPLAINT:** “Rayban Aviator with 3 pairs of Branded Socks”

**NATURE OF COMPLAINT:** They are promising the original & factory made rayban shades with three pairs of socks again from a branded brand like Adidas, puma etc. I ordered the same and paid. When opened it's all fake. I paid 1048/- for total. Exact things: Rayban duplicate: available in market for Rs. 350/- only. Socks: 3 pairs rs. 100/- only. URL:<http://www.bookmyoffer.com/mensingle-day-deal/rayban-aviator-with-3-pairs-branded-socks/p-080467786401453797-cat.html> I want strict action against them and block of such websites which misleads the persons and consumers by showing original products and delivering duplicate things. They must mention over it, these are the copies or duplicate products. At least the consumers have the choice whether to purchase them or not.

**DECISION: UPHELD**

The ASCI approached the advertiser for their response in addressing the grievances of the complainant. The advertiser was offered an opportunity for Personal Hearing with the ASCI Secretariat. The advertiser representatives did not seek personal hearing. The CCC also noted that no response was received from the advertiser prior to the due date. The CCC viewed the website/internet advertisement. In the absence of comments from the Advertiser, the CCC concluded that the claim, advertisement, “Rayban Aviator with 3 pairs of Branded Socks” was not substantiated and is misleading. The website/internet advertisement contravened Chapters I.1 and I.4 of the ASCI Code. The complaint was UPHELD.

#### **74. COMPANY: Just Dial Limited**

**PRODUCT:** Just Dial

**COMPLAINT:** They write "JD Verified" against the suppliers/service provider without verifying the fact. In the present advertisement a chocolate supplier M/s Chocolate Mozart A-231, + DLF Phase 1 Gurgaon-121002 has been suggested by them as reliable co. which do not have F&B licence, Vat No. , has no factory, Service Tax No. etc Just Dial is misleading public by promoting the business of Persons who don't hold any professional expertise by charging money through it's website.

**NATURE OF COMPLAINT:** These claims needs to be substantiated with necessary support data.

**DECISION: UPHELD**

The ASCI had approached the advertiser for their response in addressing the grievances of the complainant. However, in the absence of response prior to the due date, the matter was examined by the CCC on the basis of the materials available then and an ex parte decision was taken. On receiving ASCI's communication requesting confirmation of compliance with the CCC recommendation, the advertiser responded with their comments. ASCI accepted their response for a Review of the CCC decision. The Advertiser was offered an opportunity for Personal Hearing with the ASCI Secretariat. The advertiser representatives did not seek a personal hearing. The CCC viewed the website advertisement and considered the Advertiser's response. Advertiser argues that "JD Verified" mark, states that the information of business establishments, professionals or service providers has been verified as existing and correct at the time of the advertiser's application to register with Just Dial. The CCC observed that there is neither any indication about the nature of verification, nor a hint or a rider to suggest that the verification is restricted to a particular aspect such as "self-declaration by the business establishment" in the claim "JD verified" itself. The unsuspecting consumer has no clue that a restricted / limited / qualified interpretation has been assigned to the JD Verified and "thumbs up" icon. The CCC noted that the claim, "JD Verified" implies that the advertiser himself has verified the business establishment for certain parameters and are giving their stamp of approval; whereas the advertiser has put this responsibility on the business establishment

and has accepted their declarations as such, without any checks from their side. Regardless of the disclaimer or “Terms of Use for Information Dissemination”, the claim is therefore misleading by ambiguity and implication, giving a wrong sense of security to the viewer / customer. The CCC concluded that the website advertisement contravened Chapter I.4 of the ASCI Code. The decision of complaint being upheld stands on Review.

**75. COMPANY: Hike Ltd.**

**PRODUCT:** Hike Messenger

**COMPLAINT:** 1st complaint- In the advertisement, the so called messenger promoting its hike direct service. 1. This service is nothing but a modified Bluetooth service, in where both having hike messenger in their phone can share files, videos, movies etc.... why this hypocrisy? 2. But the main offensive of this advertisement is that it provoking misbehaviour and filthy approach to study. They should find another sensible situation to fit their purpose. But please do not let them to make the environment of the classroom as filthy as a club room. 2nd complaint- It shows a class room scene where a teacher is seriously teaching Calculus. The BACKBENCHERS are playing on mobiles, downloading movies, making sounds on the mobile. Teacher is shown as inefficient and unable to handle the class. Students should not be shown as going to college to have fun, down load movies, play on mobiles inside the classroom when the class is being taught. This tantamount to demeaning the Institution of Class rooms, Class room learning and the Teachers, who are architects of the future citizen. 3rd complaint - The Hike advertisement shows college boys sharing video files while lecture is going on in class. Promoting use of phone and the app in class even without a net connection, disregard, disrespect for teacher and lesson taught. This is a bad idea and the advertiser is encouraging young boys to involve in any activity other than studies. The youth is already losing interest in education and is further being misled by encouraging and showing newer ways to be away from books. 4th complaint - The advt by Hike Messenger service being telecast on tv these days where a bunch of backbenchers use hike in the class is a bad ad, it does not convey a good message. The content is bad as if promoting back- benchers hooliganism. It is sad when such things are shown, as young students having vulnerable minds easily get concepts

like doing such behaviour in class is a hero's behaviour. In a country like ours where parents squeeze themselves to send their kids to obtain good education in schools and colleges by paying through their noses, and if instead of paying attention to the lecture's/ teacher's teachings, if students indulge in such irresponsible acts it is sad and detrimental to the future of students, such rotten ads should be scrapped.

**NATURE OF COMPLAINT:** These claims needs to be substantiated with necessary support data.

**DECISION: UPHELD**

The ASCI had approached the advertiser for their response in addressing the grievances of the complainant. However, in the absence of response from the advertiser, an ex parte decision was taken. On receiving ASCI's communication of request for confirmation of compliance, the advertiser informed ASCI that they did not receive ASCI's earlier communication. The advertiser was once again granted an opportunity to respond to the complaint along with the dates for Personal Hearing with the ASCI Secretariat. The advertiser representatives did not seek personal hearing and submitted their written response. The CCC viewed the TVC and considered the Advertiser's response for Review. The advertiser argues that the advertisement was merely intended to be a light-hearted advertisement without intending to denigrate the teachers or the teaching profession/ community in any manner. The advertiser also cited an example of a "bad teacher" depicted in popular fiction "Harry Potter" Series of children fiction. The CCC acknowledged that the overall advertisement is humorous. However the CCC concluded that the scene shown in the TVC of students playing a prank and as a result "a bursting sound in the class room while the teacher is teaching", shows a dangerous practice and this depiction could be avoided. The TVC contravened Chapter III.3 of the ASCI Code. The decision of complaint being Upheld stands on Review.

**76. COMPANY: Xerojin Retail Pvt. Ltd- (Jabong.com- Offer of extra 30% Off)**

**COMPLAINT:** "Shop from app and get extra 30% off on minimum purchase of 2999 use code EXTRA30".

**NATURE OF COMPLAINT:** Coupon ad on jabong website claiming (Shop from app and get 30% off on minimum purchase of 2999 use code EXTRA 30). False advertisement - when I try to order using the coupon EXTRA 30 from jabong mobile app it states that it is not valid which is deceptive and false promotion of their mobile app as it differs from what is being publicized on their website (<http://www.jabong.com/mobileapp/>) and the customer service was very fine with saying that the code expired on 11th of December whereas i saw the offer code on 13th dec on the website. Jabong should be answerable to this kind of misguided mobile app promotion and false advertisement. They may in the future also display 100% off on all products, and when someone tries just say that the coupon has expired. Really offensive and unsatisfactory on jabong's side.

**DECISION: UPHELD**

The ASCI approached the advertiser for their response in addressing the grievances of the complainant. However, no response was received from the advertiser prior to the due date. The CCC viewed the website advertisement. In the absence of comments from the Advertiser, the CCC concluded that the claim, “Shop from app and get extra 30% off on minimum purchase of 2999 use code EXTRA 30”, is false, and misleading by omission of the mention of the validity of the offer. The website advertisement contravened Chapters I.1 and I.4 of the ASCI Code. The complaint was UPHELD.

**77. COMPANY: Ibibo Group P. Ltd.**

**PRODUCT: redBus.in**

**COMPLAINT:** “Mumbai to Goa Rs. 350/-”

**NATURE OF COMPLAINT:** Claiming availability of Mumbai To goa bus fare of Rs 350 but not offering in actual e-commerce website of Redbus.in Misleading people to drag on website to improve sales. I have been searching on web for Mumbai to goa Journey, I visited Redbus.in after I saw an advertisement of ticket availability in just Rs. 350 cheaper than any other offering but in actual they do not have any such rates for this journey.

**DECISION: UPHELD**

The CCC viewed the website/internet advertisement and considered the Advertiser's response. As claim support data, the advertiser provided a sample copy of three tickets booked by different redBus customers priced between Rs.300 and Rs.350 (both inclusive), between Mumbai and Goa, on 1st and 7th December 2015. Also, they stated that they are unable to provide sample tickets for the period 23rd to 27th December 2015, during which the complainant had visited their portal. Based on the above, the CCC concluded that the claim in the offer, "Mumbai to Goa Rs. 350/-", is not substantiated with ticket reservation history corresponding to the period when the complainant visited the portal and is misleading. The website/internet advertisement contravened Chapters I.1 and I.4 of the Code. The complaint was UPHELD.

**78. COMPANY: Bharti Airtel Ltd.**

**PRODUCT:** Airtel Broadband

**COMPLAINT:** The broadband plans mentioned on website says 'per billing cycle' but they charge as six monthly plans. I have subscribed to 615 monthly plan as advertised on their website but they have billed me in advance for six months saying that there's no monthly plan available. Kindly find attached the desired proof wherein the page 2 clearly states 'half yearly Scheme charges' as Rs. 3383/- Find attached the screenshot from Airtel's website wherein it is clearly stated Rs. 615 per billing cycle but they are charging for 6 month plan claiming that there's no monthly plan.

**NATURE OF COMPLAINT:** These claims needs to be substantiated with necessary support data.

**DECISION: UPHELD**

The website advertisement and considered the Advertiser's response. The CCC noted that while the web-site communication refers to plan of INR 165 "per billing cycle", the billing plan was also available under the advance rental scheme. The CCC concluded that in absence of any disclaimers, the website communication of "per billing cycle" was misleading by ambiguity. The website advertisement contravened Chapter 1.4 of the ASCI Code. This complaint was UPHELD.

**79. COMPANY: Amazon.com, Inc**

**PRODUCT:** Adraxx Crosman Roof Prism Binoculars.

**COMPLAINT:** On Amazon they are selling Adraxx Crosman Roof Prism Binoculars 10X42 [Toy] for some 9500, if you zoom the picture the actual size is 8X42, it is really false advertising.

**NATURE OF COMPLAINT:** These claims needs to be substantiated with necessary support data.

**DECISION: UPHELD**

The CCC viewed the website/internet advertisement and considered the Advertiser's response. The CCC noted the discrepancy between the specification declared on the web-site and specification mentioned on the product visual and concluded that the advertisement is misleading. The advertisement contravened Chapter 1.4 of the ASCI Code. The complaint was UPHELD.

**TOBACCO RELATED PRODUCTS SECTOR UPHELD**

**80. COMPANY: Som Fragrances Pvt Ltd**

**PRODUCT:** Dilbagh Pan Masala

**COMPLAINT:** Pan Masala ad showing the celebrities or models promoting the pan masala in the very glamorous and fascinating way. Pan Masala ad should completely be banned from the television as these ad affecting the youth in negative ways. I don't believe that just showing the warning at the end of the ad is helping in any way. Also, warning being shown very small letters at the below corner which many don't see. Pan Masalas are definitely harmful for health but they are also harmful for clean India i.e. Swacch Bharat. Those who chew these products, peak anywhere and make places dirty. Also, they spread diseases which are communicable as they peak in the public places. Pan Masala doesn't only affect the person who chew but others also in many ways. Lot of growing kids are picking up habits of chewing pan masalas by seeing celebrities and models promoting these products in very fascinating way. I strongly recommend that we ban these ads and promote "HEALTHY AND CLEAN INDIA".



**NATURE OF COMPLAINT:** These claims needs to be substantiated with necessary support data.

**DECISION: UPHELD**

The Advertiser was offered an opportunity for Personal Hearing with the ASCI Secretariat. The advertiser representatives did not seek a personal hearing and submitted their written response. The CCC viewed the TVC and considered the Advertiser's response. Advertiser stated that they have not used any model or celebrity and the TVC is animation based. The CCC concluded that the TVC is not in contravention of the Chapter III.2 (e) of the ASCI Code as it did not depict any personality from the field of cinema, sports and music. This complaint was NOT UPHELD. However, the TVC is misleading by omission of a statutory cautionary message/warning via super that "Pan Masala is injurious to health and cannot be purchased or used by minors". The TVC contravened Chapter III.4 of the Code and ASCI Guidelines on Supers. This complaint was UPHELD.

**81. COMPANY: G K Tobacco Co Pvt Ltd**

**PRODUCT:** Zafri Pan Masala

**COMPLAINT:** "Showing the celebrities or models promoting the pan masalas in the very glamorous and fascinating way. Pan Masala ad should completely be banned from the television as these ads are affecting the youth in negative ways. I don't believe that just showing the warning at the end of the ad is helping in any way. Also, warning being shown very small letters at the below corner which many don't see. Pan masalas are definitely harmful for health but they are also harmful for clean India i.e. Swacch Bharat. Those who chew these products, peak anywhere and make places dirty. Also, they spread diseases which are communicable as they peak in the public places. Pan masala doesn't only affect the person who chew but others also in many ways. Lot of growing kids are picking up habits of chewing pan masalas by seeing celebrities and models promoting these products in very fascinating way. I strongly recommend that we ban these ads and promote "HEALTHY AND CLEAN INDIA"."

**NATURE OF COMPLAINT:** These claims needs to be substantiated with necessary support data.

**DECISION: UPHELD**

The ASCI approached the advertiser for their response in addressing the grievances of the complainant. The Advertiser was offered an opportunity for Personal Hearing with the ASCI Secretariat. The advertiser representatives did not seek personal hearing. CCC also noted that no response was received from the advertiser prior to the due date. The CCC viewed the TVC. The CCC noted that the TVC features Samir Soni - a celebrity from the field of cinema for a product which has a health warning that it is injurious to health and cannot be purchased or used by minors. The CCC concluded that minors are very likely to be exposed to the TVC. The celebrity in the advertisement would have a significant influence on minors who are likely to emulate the celebrity in using the product. Also, the supers/statutory warning in the Hindi TVC were not in the same language as the audio of the TVC and were also not clearly legible. The TVC contravened Chapter III.2 (e) of the ASCI Code and ASCI's Guidelines for Supers. The complaint was UPHELD.

**82. COMPANY: Kamla Kant & Company LLP**

**PRODUCT:** Rajshree Pan Masala

**COMPLAINT:** The TV commercial of 'Kamla Kant & Company LLP – Rajshree Pan Masala' “Anti Dowry Ad featuring Annu Kapoor. ASCI code does not permit the use of celebrities (e. g. In the field of cinema, sports and music) in ads of products which by law require health warning on its pack or cannot be purchased or used by minors. These advertisements can influence minors and encourage unsafe practices. Also supers are not as per ASCI guidelines”.

**NATURE OF COMPLAINT:** These claims needs to be substantiated with necessary support data.

**DECISION: UPHELD**

The ASCI approached the advertiser for their response in addressing the grievances of the complainant. The Advertiser was offered an opportunity for Personal Hearing with the ASCI Secretariat. The advertiser representatives did not seek personal hearing. The CCC also noted that no response was received from the advertiser prior to the due date. The CCC viewed the TVC (Anti-dowry theme) and noted that the TVC

features Anu Kapoor – a celebrity from the field of cinema for a product which has a health warning “Pan Masala is injurious to health” and which cannot be purchased or used by minors. The CCC concluded that minors are very likely to be exposed to the TVC. The celebrity in the advertisement would have a significant influence on minors who are likely to emulate the celebrity in using the product. The TVC contravened Chapter III.2 (e) of the ASCI Code which specifically states that Advertisements “should not feature personalities from the field of sports, music and cinema for products which, by law, either require a health warning in their advertising or cannot be purchased by minors”. The complaint was UPHELD.

### **83. COMPANY: DJ Group**

**PRODUCT:** Pan Bahar Pan Masala & Pan Bahar Crystal Pan Masala

**COMPLAINT:** The TV commercial of 'DJ Group- Pan Bahar Pan Masala & Pan Bahar Crystal Pan Masala' Party ad featuring Saif Ali Khan. As per ASCI code advertisements should not feature personalities from the field of sports, music and cinema for products which, by law, require health warning on its pack or cannot be purchased or used by minors'. These advertisements can influence minors and encourage unsafe practices. Also, Supers are not as per ASCI guidelines.

**NATURE OF COMPLAINT:** These claims needs to be substantiated with necessary support data.

### **DECISION: UPHELD**

The ASCI approached the advertiser for their response in addressing the grievances of the complainant. The Advertiser was offered an opportunity for Personal Hearing with the ASCI Secretariat. The advertiser representatives did not seek personal hearing. The CCC also noted that no response was received from the advertiser prior to the due date. The CCC viewed the TVC and noted that the TVC features Saif Ali Khan – a celebrity from the field of cinema for a product which has a health warning “Pan Masala is injurious to health” and which cannot be purchased or used by minors. The CCC concluded that minors are very likely to be exposed to the TVC. The celebrity in the advertisement would have a significant influence on minors who are likely to emulate the celebrity

in using the product. The TVC contravened Chapter III.2 (e) of the ASCI Code which specifically states that Advertisements “should not feature personalities from the field of sports, music and cinema for products which, by law, either require a health warning in their advertising or cannot be purchased by minors”. The supers/statutory warning were not clearly legible and hold duration of the supers was not adequate. The TVC contravened ASCI's Guidelines for Supers. The complaint was UPHELD.

**84. COMPANY: Pan Parag India Ltd.**

**PRODUCT:** Pan Parag Pan Masala

**COMPLAINT:** Pan Masala ad showing the celebrities or models promoting the pan masala in the very glamorous and fascinating way. Pan Masala ad should completely be banned from the television as these ad affecting the youth in negative ways. I don't believe that just showing the warning at the end of the ad is helping in any way. Also, warning being shown very small letters at the below corner which many don't see. Pan Masalas are definitely harmful for health but they are also harmful for clean India i.e. Swacch Bharat. Those who chew these products, peak anywhere and make places dirty. Also, they spread diseases which are communicable as they peak in the public places. Pan masala doesn't only affect the person who chew but others also in many ways. Lot of growing kids are picking up habits of chewing pan masalas by seeing celebrities and models promoting these products in very fascinating way. I strongly recommend that we ban these ads and promote "HEALTHY AND CLEAN INDIA".

**NATURE OF COMPLAINT:** These claims needs to be substantiated with necessary support data.

**DECISION: UPHELD**

The Advertiser was offered an opportunity for Personal Hearing with the ASCI Secretariat. The advertiser representatives did not seek a personal hearing and submitted their written response. The CCC viewed the TVC and considered the Advertiser's response. The Advertiser argues that the product has statutory warnings as per the rules and regulations. The CCC noted that the TVC features Sachin Khedekar - a celebrity

from the field of cinema for a product which has a health warning that it is injurious to health and cannot be purchased or used by minors. The CCC concluded that minors are very likely to be exposed to the TVC. The celebrity in the advertisement would have a significant influence on minors who are likely to emulate the celebrity in using the product. Also, the supers/statutory warning in the Hindi TVC were not in the same language as the audio of the TVC. The TVC contravened Chapter III.2 (e) of the Code and ASCI's Guidelines for Supers. The complaint was UPHELD.

**85. COMPANY: Paras Surti Products Private Limited**

**PRODUCT:** Paras Pan Masala

**COMPLAINT:** "ASCI Code does not permit the use of celebrities (e.g. In the field of cinema, sports and music) in ads of products which by law require health warning on its pack or cannot be purchased or used by minors. These advertisements can influence minors and encourage unsafe practices".

**NATURE OF COMPLAINT:** These claims needs to be substantiated with necessary support data.

**DECISION: UPHELD**

The advertiser was granted an extension of two days to the standard lead time of five days to submit their reply. The Advertiser was offered an opportunity for Personal Hearing with the ASCI Secretariat. The advertiser representatives did not seek a personal hearing and submitted their written response. The CCC viewed the TVC and considered the Advertiser's response. The Advertiser argues that the product has mandatory declarations in their advertising. The CCC noted that the TVC features Arbaaz Khan - a celebrity from the field of cinema for a product which has a health warning that it is injurious to health and cannot be purchased or used by minors. The CCC concluded that minors are very likely to be exposed to the TVC. The celebrity in the advertisement would have a significant influence on minors who are likely to emulate the celebrity in using the product. Also, the supers/statutory warning in the Hindi TVC were not in the same language as the audio of the TVC, and were not clearly legible. The TVC contravened Chapter III.2 (e) of the ASCI Code and ASCI's Guidelines for Supers. The complaint was UPHELD.

**86. COMPANY: Vishnu Pouch Packaging Pvt. Ltd. (Vimal Pan Masala)**

**COMPLAINT:** Complaint No.1 Ajay Devgan is seen celebrating 25yrs of vimal pan masala and is seen spraying saffron on other people. He is seen telling people that the celebrations would continue and they would surprise everybody. This advertisement blatantly endorses pan masala and exhorts youngsters to take up this masala. Ajay Devgan is a celebrated hero and people will ape him and would be influenced by his persona. Children and youngsters see tv and internet and they need to be spared from such content. Complaint No.2 Film stars are endorsing a product which is harmful they glorify the product on National channels which is watched by children also. Such advertisements are detrimental to health of children adults and society at large consumption of Pan masala has no health benefits and such advertisement should be withdrawn forthwith

**NATURE OF COMPLAINT:** These claims needs to be substantiated with necessary support data.

**DECISION: UPHELD**

The Advertiser was offered Personal Hearing to discuss the complaint. However, the Advertiser did not avail of the same. The Advertiser was also given additional time to respond to the complaints raised. The CCC viewed the TVC, website/internet advertisement and considered the Advertiser's Response. The Advertiser argues that for the product, there is no government regulation or any other rule stopping celebrity from advertising the product. The CCC concluded that minors are very likely to be exposed to the TVC and the internet advertisement. Both, the product pack and the TVC, has in it as per FSSAI rules a health warning that "Pan Masala is injurious to health". The advertisement has presence of a celebrity from the field of cinema which would have a significant influence on minors who are likely to emulate the celebrity in using the product. The website/internet advertisement contravened Chapter III 2 (e) of the ASCI Code which specifically states that Advertisements "should not feature personalities from the field of sports, music and cinema for products which, by law, either require a health warning in their advertising or cannot be purchased by minors". Both the complaints were therefore UPHELD.

## **INDECENT REPRESENTATION AND ILLEGALITY UPHELD**

### **87. COMPANY: Ashok Nandavanam Properties Pvt Ltd (Ashok Nandavanam)**

**COMPLAINT:** “The TV commercial of Ashok Nandavanam Properties Pvt Ltd shows “a young couple discuss the prospect of buying real estate. The wife says that she prefers to buy into a particular project as they are offering a free car. The husband responds by saying that it is easy to take the wife for a ride as the property developer is taking money from one's pocket and gives it back as a car gift. The husband says "if your father has not bothered to give us a free Car gift for our marriage how do you expect the real estate Developer to give one" the statement of the husband legitimizes that The girl's parents must give expensive dowry gifts like a car... This not only sounds ugly but is patently illegal as it promotes dowry which is banned by law. The TVC must drop this reference to dowry”.

**NATURE OF COMPLAINT:** These claims needs to be substantiated with necessary support data.

### **DECISION: UPHELD**

The ASCI approached the advertiser for their response in addressing the grievances of the complainant. The Advertiser was offered an opportunity for Personal Hearing with the ASCI Secretariat. The advertiser representatives did not seek personal hearing. CCC also noted that no response was received from the advertiser prior to the due date. The CCC viewed the TVC. In the absence of comments from the Advertiser, the CCC concluded that the statement in the TVC, "your father has not bothered to give us a free Car gift for our marriage”, by implication, encourages dowry and is in violation of The Dowry Prohibition Act, 1961. The CCC concluded that the TVC is in breach of the law and contravened Chapter III.4 of the ASCI Code. The complaint was UPHELD.

### **88. COMPANY: Castrol India Ltd.**

**PRODUCT:** Castrol Active Scooter Oil

**COMPLAINT:** Show that these vehicles can reach ahead of any other vehicles on traffic signal while on red by zig-zag driving to overtake standing vehicles. Such advertisements promote how to distort traffic

rules by wrong way over taking & out of rules driving. Young generation follow the same on our road. Similarly for two wheeler today watched on Masti channel around 5.25 pm in advertisement of Castrol oil where shown the swiftness means zig-zag driving”.

**NATURE OF COMPLAINT:** These claims needs to be substantiated with necessary support data.

**DECISION: UPHELD**

The Advertiser was offered an opportunity for Personal Hearing with the ASCI Secretariat. The advertiser representatives did not seek a personal hearing and submitted their written response. The CCC viewed the TVC and considered the Advertiser's response. Advertiser argues that no traffic signal is shown as being broken. In fact, the rider stops at the pedestrian crossing at 0:14 seconds of the commercial and at 0:23 seconds of the commercial, the rider only moves when the signal turns green and this is clearly focused upon. The CCC concluded that the two scenes in the TVC show the vehicle overtaking on the wrong side and portrays violation of traffic rules and encourages unsafe practices. The CCC concluded that the TVC contravened Chapters III.3 and III.4 of the ASCI Code. The complaint was UPHELD.

**89. COMPANY: Kerala Fashion Jewellery (KFJ)**

**COMPLAINT:** The advertisement shows parents from many households introducing their daughters as "Tension"....After this the celebrity Prakash Raj appears and says girls of marriageable age are not the tension but rather the tension is to accumulate lots of gold for their marriage! The advertisement seems to depict the case that all women of marriageable age are a tension irrespective of their achievements... It show s women more as a commodity that needs to be given away with bags of gold without much self respect... It glorifies the concept of giving loads of Gold during the marriage which is a form of hidden dowry... In today's age and time are parents so materialistic or are girls having such less self respect??? The ad offends the sentiment of women like me. We choose to not be bartered for gold and hence not be seen as TENSION!!!!

**NATURE OF COMPLAINT:** These claims needs to be substantiated with necessary support data.



**DECISION: UPHELD**

The Advertiser was offered an opportunity for Personal Hearing with the ASCI. The advertiser representatives did not seek personal hearing and submitted their written response. The CCC viewed the TVC and considered the Advertiser's response. The advertiser argues that in the communication the word 'tension' is with reference to purchase of gold for wedding. The CCC concluded that the reference in the TVC, to daughters of marriageable age being "tension" derides gender and is derogatory for a girl child. The TVC also has an implied reference to the practice of "Dowry", which is in violation of The Dowry Prohibition Act, 1961. The TVC contravened Chapters III.1 (b) and III.4 of the ASCI Code. The complaint was UPHELD.

**90. COMPANY: Vinr Communications Shantketan Entertainments (Ishq Junoon)**

**COMPLAINT:** The visual is vulgar and indecent especially in depiction of a woman and not suitable to be viewed by minors".

**NATURE OF COMPLAINT:** These claims needs to be substantiated with necessary support data.

**DECISION: UPHELD**

The ASCI approached the Advertiser (VINR Communications) as per their contact details available in the public domain to seek their response in addressing the grievance of the complainant and was offered an opportunity for Personal Hearing with the ASCI. The advertiser representatives did not seek personal hearing and submitted their written response. The advertiser argues that the production houses for this movie promo are Shantketan Entertainment and VINR Films and not VINR Communications. They further sought date and time to have discussion with ASCI Secretariat. However, the advertiser representatives did not attend the meeting on the meeting scheduled by ASCI. The CCC viewed the movie posters on various media such as You Tube, Facebook, and the homepage of VINR Group and considered the Advertiser's response. The CCC noted that the movie promo is produced by Shantketan Entertainment in association with VINR Films. The homepage of VINR Group does provide the address of VINR Communication in their "Contact

Us” page. The CCC did not accept the advertiser's (VINR Communication) response denying any responsibility. The CCC concluded that the visual in the movie promo is vulgar, indecent and repulsive especially in depiction of a woman and not suitable to be viewed by minors. In the light of generally prevailing standards of decency and propriety, the visual will cause grave and widespread offence to general public. The poster – movie promo (internet version) contravened Chapter II of the ASCI Code. The complaint was UPHELD.

**91. COMPANY: Balaji Telefilms Ltd**

**PRODUCT:** Kya Kool Hai Hum

**COMPLAINT:** It is complete vulgar and weird. This is a complete damage to the ethical aspects of cinema making. It is pure porn. We should maintain some ethics in Filmmaking. Please stop this complete Nonsense Advertisement. Please note that there are millions and millions of children who are surfing web and seeing this porn advertisement in TV. I am not sure what they are learning and what our ASCI is doing to stop such kind of advertisement.

**NATURE OF COMPLAINT:** These claims needs to be substantiated with necessary support data.

**DECISION: UPHELD**

The complaint was considered under Suspension Pending Investigation (SPI). The advertiser representatives were given personal hearing by ASCI, at which time the Advertiser assured that the Ad-Movie trailer will be modified. Also they pulled out the Ad from the YouTube with immediate effect. The CCC viewed the Ad – movie promo and considered the Advertiser's response. The CCC concluded that the suggestive scenes in the movie promo showing “two men and women on the beach” are indecent, vulgar and repulsive, which, in the light of generally prevailing standards of decency and propriety, will cause grave and widespread offence to general public. The Ad – movie promo contravened Chapter II of the Code. The complaint was UPHELD.

**92. COMPANY: Pritish Nandy Communications Ltd**

**PRODUCT:** Mastizaade Movie Trailer

**COMPLAINT:** Media - Television Music Channels This is the most vulgar obnoxious trailer of any movie. Please see the url link I have provided below. You will understand what I am trying to say. I am an Adolescent Health Expert Pediatrician. I conduct workshops on Media Awareness and Media Literacy for school children and adolescents. Kindly immediately stop this advertisement / trailer with immediate effect. Will give a very wrong message to the children, adolescents and young people and have a negative impact on the young brains. The Pre Frontal Cortex part of the brain, which is associated with emotional functions only matures by the age of 24 – 25 years. Such images can be very harmful for the maturing brain. Also such movies are ruining the culture of India, and finishing the Values inherited from our older generations. Hoping that an action will be taken. YouTube link provided by Complainant: [https://www.youtube.com/watch?v=2H44\\_uMHJLs](https://www.youtube.com/watch?v=2H44_uMHJLs) Complaint 2 Mastizaade movie promo depicts a man with penile erection. [www.bollywoodhungama.com/.../videos/.../2485647](http://www.bollywoodhungama.com/.../videos/.../2485647) Very vulgar movie promo.

**NATURE OF COMPLAINT:** These claims needs to be substantiated with necessary support data.

**DECISION: UPHELD**

The complaint was considered under Suspension Pending Investigation (SPI). The advertiser representatives were given personal hearing by ASCI. The CCC viewed the YouTube Ad, TVC promo aired on TV channel, and considered the Advertiser's response. For the TV promos, the advertiser states that they ensure that the material is CBFC certified, before the same is telecast on the medium. Advertiser further stated that the Movie Trailer (internet version) of the film has not been aired on any TV or Music Channel within the territory of India. What has been aired on Music Channels are the CBFC censored songs of the film. The CCC concluded that the TV promo videos were not considered likely to cause grave and widespread offence. Although the CBFC certificate requires that the promo are required to have disclaimers to indicate restrictions specific to “parental guidance video” category, the CCC did not consider the TV promos to be objectionable. This complaint was NOT UPHELD. For YouTube / Internet promos, the advertiser states that it is Non-advertising, editorial content that provides a glimpse into the film, its

characters and its storyline for those who want to know what the film is about. Media typically includes the internet and/or any media that is uncensored, requires no certification from the CBFC/any other applicable body and is available freely to the general public. Advertiser argues that the Movie Trailer (internet version) of the film has been shared only on the internet. ASCI's Code for Self-Regulation in Advertising does not apply to content on YouTube. The advertiser argues that they have only uploaded such editorial content onto YouTube with a disclaimer that it is suitable for an adult population of persons above the age of 18. YouTube has also age-gated their content, it is only available, upon signing in, to a user above the age of 18. The CCC does not agree with the advertiser's contention that the ASCI code does not apply to the impugned advertisement of 'Mastizaade' because, as it is "content" on YouTube / internet. The ASCI code applies to all media including internet. The Definition of Media as per the ASCI Code for Self-Regulation in Advertising is "any means used for the propagation of advertisements and include press, cinema, radio, television, hoardings, hand bills, direct mail, posters, internet, etc.". It was also noted that the Age-gating of the You-Tube video was implemented post ASCI invoking the SPI.

It was also pointed out that the said internet version was also available on urls other than YouTube as was pointed out to the advertiser by the ASCI. The CCC viewed the Internet promo and considered the following scenes / sequences to be objectionable – especially as these were accessible for non-age-gated links. Scenes for the movie trailer (internet version) – “20 seconds - Blow job scene”, “43 to 45 seconds - Woman's covering gets blown off”, “52 to 53 seconds – implying Semen splash”, “1.23 to 1.25 minutes - Coin jumps on erection”, “2.06 to 2.10 minutes - Time telling by pressing donkey's balls”, “2.23 to 2.31 minutes - French fries covered up by exposed breasts”, “2.41 to 2.48 minutes - man - donkey sex scene”, “3.06 to 3.15 minutes - Coin jumps on erection caused by woman's vulgar movements”, are indecent, vulgar and repulsive, which, in the light of generally prevailing standards of decency and propriety, will cause grave and widespread offence to general public. The Ad – movie promo (internet version) contravened Chapter II of the Code. The complaints were UPHELD for the Ad – movie promo (internet version).

**93. COMPANY: Viacom 18 Media Private Limited**

**PRODUCT:** Bigg Boss 9

**COMPLAINT:** The new ad on Colors TV for Bigg Boss featuring SRK & Salman Khan in the Temple of Goddess Kali, WITH THEIR SHOES ON. This is a complete & open disrespect of religious beliefs of Hindus. We must learn to "respect" each other's religious beliefs as well as practices; even those that are completely contradictory to ours; no Hindu temple will permit anyone to enter the premises with their shoes on.

**NATURE OF COMPLAINT:** These claims needs to be substantiated with necessary support data.

**DECISION: UPHELD**

The CCC viewed the TVC provided by the Complainant and considered the advertiser's response. The Advertiser argues that the said promo was shot with the actors on a set and the background of the temple was graphically super imposed during editing and the actors were not present in a real temple at any point. The CCC concluded that the TV promo advertisement depicting the protagonists wearing shoes in a temple is likely to cause grave and widespread offence and the promo advertisement contravened Chapter III .1 (a) of the ASCI Code. The complaint was UPHELD.

**CAB SERVICES UPHELD**

**94. COMPANY: ANI Technologies Pvt. Ltd**

**PRODUCT:** OLA Cabs

**COMPLAINT:** "Ride an OLA for just Rs.8/km"

**NATURE OF COMPLAINT:** These claims needs to be substantiated with necessary support data

**DECISION: UPHELD**

Personal hearing and submitted their written response. The CCC viewed the print advertisement and considered the Advertiser's response. The CCC concluded that the claim, "Ride an OLA for just Rs.8/km", was not substantiated and was also misleading by ambiguity. The advertisement contravened Chapters I.1 and I.4 of the ASCI Code. The complaint was UPHELD.



## 33

### **ROLE OF SELF-REGULATORY AGENCIES TO CONTROL MISLEADING ADVERTISEMENT IN INDIA**

Self-Regulation refers to a mechanism which involves members involved within the activity (advertising) actually coming together and setting up guidelines/codes for the airing of advertisements. It also needs a mechanism to listen to complaints against different advertisements which do not actually follow the Code, as well as a form of censure for not following the Code. In India the self-regulatory mechanism that exists is the Advertising Standards Council of India (ASCI). It is a voluntary Self-Regulation council, registered as a not-for-profit Company under section 25 of the Companies Act. The sponsors of the ASCI, who are its principal members, are firms of considerable repute within Industry in India, and comprise Advertisers, Media, Advertising Agencies and other Professional/ Ancillary services connected with advertising practice. The ASCI is not a Government body, nor does it formulate rules for the public or the relevant industries. The ASCI has laid down codes and guideline as a self-regulatory measure to regulate commercial advertisements<sup>1</sup>.

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1. Manoj Kumar Padhy, "Consumer Protection and Advertisement Laws", Satyam Law International, New Delhi, India, p.277.

The Consumer Complaints Council (CCC) of ASCI forms the wing of the ASCI that looks at the infringement of the ASCI advertising Codes by different parties as a result of a complaint being filed to ASCI by a consumer. The recent National Advertising Monitoring System (NAMS) instituted by ASCI involves the tracking of a number of advertisements in both the print and electronic media by ASCI, and also allows for suo moto action by ASCI against advertising parties.

It is quite difficult to provide a specific area of advertisement which is generally litigated against misleading advertisement. The general direction that litigation against advertisements has followed has been when a particular unproven claim is made by a product about its efficacy. It has therefore been the Cosmetics industry which seems to have the maximum number of cases made against, from fairness creams to shampoos to soaps. However this is not to say that this is the only sector which produces misleading advertisements. Misleading advertisements are also made about the efficacy of drugs or about the capability of doctors, insurance schemes, and so on. However the only legislation which provides for the actual protection of, and ensures the welfare of consumers from the effects of misleading advertisements is the Consumer Protection Act, 1986. The other type of misleading advertisements involves the passing off of a product as that of a more well-known Company or Party. However these are more often litigated by the Company whose identity is being used to mislead the public along with members of the public themselves. Unfair advertisement is a different type of advertisement that is prohibited in India. Unfair advertising could of course be misleading but that is not the only facet to unfair advertising. Unfair Advertising could also refer to comparative advertisements which disparage the products of a competitor or the competitor himself. While comparative advertisements are acceptable, they should be in such a manner that they did not reduce the reputation of the competitor and his trademark. While the law does provide for a number of laws against advertisements (both regulatory and prohibitory in nature), the only legislation which actually keeps in mind the consumer and the compensation that a consumer needs in any comprehensive sense is COPRA, 1986. While other legislations try to protect consumers from being misled by manufacturers of products or the providers of services, they do not really provide for compensating consumers. There are also laws in place which protect competitors from



unfair methods of competition. However the fact that the Courts in the country are already overburdened and in pursuance of justice for all, the Courts are sorely inefficient with respect to timely awarding of compensation, or injunctions or any other order prayed for or disposing off the complaint in a timely fashion. As such, a regulatory mechanism that involves all the major players in the advertising field the advertisers themselves, the advertising agencies, the newspapers and television channels, market research agencies etc., would be and is extremely effective. ASCI and the CCC have (according to information provided by them) been receiving nearly 170 complaints per month till the NAMS initiative. With the NAMS initiative, they have increased the number of advertisements being monitored, with nearly 1500 TV commercials and 45000 print advertisements per month. 120 cases on average are taken up by the CCC suo moto after the NAMS initiative started up.

Despite not having any actual enforcement powers, the fact that so many parties of civil society are involved in ASCI, it means that CCC actually ends up having a very high success rate with respect to advertisements that were held to be either misleading or unfair being taken off the air or from newspaper or other print media circulation. The decisions of ASCI also take around 4 to 6 weeks for the decision to be passed from the time of the registration of the full complaint.

The ASCI Code, while not having legal enforceability, it has been made applicable legally to Television Advertisements, through the fact that it was made a part of the Cable TV Network Rules, 1994 through a Notification passed by the Indian Government. The amended Cable Television Network Rules, 1994 includes the provision that, “No advertisement which goes against the Self-Regulation Codes of ASCI shall be aired on a cable service”. Looking at the immense potential that self-regulation has, and the effectiveness that ASCI seems to have with regards to advertisements, it appears logical that the ASCI Codes be made a part of the legal enforcement structure and the legal structure which controls advertisements. This can be done in a number of ways-

1. As done in the Cable Television Network Rules, 1994, the ASCI Code could be given legal recognition by making it a part of legislations which involve advertising and advertisements.

2. Another mechanism which could be used is that the decisions of the ASCI be given some legal status by allowing the moving of the Courts in order to ensure the enforcement of the decision made by ASCI as well as appeals against ASCI's decision. This would naturally first involve a detailed analysis of the ASCI Codes themselves prior to such legal status being provided.
3. The constitution of the CCC would also need to be changed to provide for the involvement of certain individuals who are in consonance with some legal criterion that should be set out in the CCC's Constitution.

These are just a few of the possible mechanisms that could be used to include the ASCI Code and ASCI itself within a possible new mechanism to enforce advertising codes against misleading the consumers or other forms of unfair advertising.

### **33.1. Council for Fair Business Practices (CFBP)**

The CFBP seeks to create an environment where business confidence is built through best practices and fostered in an atmosphere of trust and respect between business and professionals, on the other hand<sup>2</sup>, and consumers and other stakeholders on the other hand.

It works to promote the highest ethical standards in business and professions, maximum transparency, objective consideration of consumers' view points as well as satisfying consumers with prompt, efficient and friendly service at a reasonable price<sup>3</sup>.

The 'Code of Fair Business Practices' formulated by the CFBP is another milestone in the history of self-regulation of advertising in India<sup>4</sup>. The

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2. The Department of Consumer Affairs, Ministry of Food and Agriculture, Government of India, has recognized the CFBP and extended a grant to enable it to step up redressal of consumer complaints and conduct education programmes for the benefit of consumers. An MOU has been signed between the Department of Consumer Affairs and the CFBP at the office of the Department in New Delhi.

3. For more details See <http://cfbp.org>.

4. A. Rebello, *Societal Response to Consumer Movement: Business, Consumer Education Series 8* (Consumer Education and Research Centre, Ahmedabad, 1991), as quoted in Gurjeet Singh, "Business Self-Regulation and Consumer Protection in India: A Critique", CPJ, 15 (1998).

Code aims to ensure justice and a fair deal to consumers and includes among other things prescription on the publication of misleading advertisements. The Fair Business Practices listed in the Code include inter alia: To maintain the highest ethical standards in business and professions; to ensure maximum transparency to the satisfaction of consumers and other stakeholders; to consider objectively the view point of the consumers; and to satisfy the consumer with prompt, efficient and friendly service at a reasonable price. Further not to use media to mislead consumers; knowingly, support activities which are against the laws of the land; and misuse an advantageous market position to the detriment of consumers. The CFBP has framed obligations which, if followed by the majority of businessman, would need no “protection” for consumer at all, since all his rights would be met with. However, The Council has had a mixed taste of success. While the Council, has been able to generate an awareness of the need to adopt norms of self-discipline, their effective enforcement still remains a distant goal<sup>5</sup> because it has no sanctions to compel any one to join it or to take deterrent action against erring businessmen. CFBP has a Consumer Grievances Redressal Committee to receive and address the consumer complaints vis-à-vis commercial complaints. The Consumer Grievances Redressal Committee of the CFBP consists of eminent Consumer Activists as its members. Complaints received by CFBP are first screened on merits. In the next stage CFBP writes to the respondent for comments, with a view to arriving at a solution. If required both the parties are invited for a meeting at CFBP in an attempt to bring about a mutually acceptable settlement. CFBP acts as a catalyst and helps promote dialogue, compromise and resolution of the dispute by conciliation rather than confrontation. The Committee has formulated rules and regulations for handling the complaints<sup>6</sup>.

### **33.2. FICCI's Norms of Business Ethics**

The Federation of Indian Chamber of Commerce and Industry (FICCI), the apex body of Indian trade and industry claims to have been deeply

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5. Ramkrishna Bajaj, “Two Decades of Business”, CFBP Silver Jubilee Souvenir (1966-1986), as quoted in Gurjeet Singh, “Business Self-Regulation and Consumer Protection in India: A Critique”, CPJ,15 (1998).

6. Manoj Kumar Padhy, “Consumer Protection and Advertisement Laws”, Satyam Law International, New Delhi, India, p.291.

involved in the area of promotion of consumer welfare. In 1985, FICCI has set up its 10 points Norms of Business Ethics as a measure of self-regulation. Its Code of Conduct requires members of the federation

- i. To ensure quality and safety of articles manufactured, processed or sold and to adhere to specific standards;
- ii. Not to manufacture, store or sell adulterated goods;
- iii. To maintain accuracy in weights and measures of goods for sale;
- iv. To support free distribution of goods and avert creation of artificial scarcity;
- v. Not to deal knowingly in smuggled or spurious products;
- vi. To avoid publishing misleading advertisements;
- vii. To ensure that warranty of a product or service is based on adequate data or tests;
- viii. To conform to specified or accepted norms for ensuring safety of products;
- ix. To provide effective after sales services for consumer durables
- x. To encourage setting up of consumer affairs cells in industrial houses to attend to consumer complaints and to get proper feedback.

### **33.3 Consumer Code of Association of Indian Engineering Industry (AIEI)**

AIEI is one of the All India bodies representing a number of industrial and commercial units. Its “Consumer Code” urges for the members of the engineering industry to follow the following norms in relation to publication of advertisements:

- i. In advertisements and other promotional media merits of one's own products and or likely advantages to the buyer may be mentioned and likely competitors should not be compared in any manner which explicitly describes their products;

- ii. Information of a misleading nature should not be given in the promotional media (advertisements, leaflets, etc.);
- iii. Use of sex symbols should be avoided unless relevant to the products; and
- iv. Market Research Data should be used only with qualifications and not in a manner which can be misleading.

### **33.4 Code for Commercial Advertising over all India Radio<sup>7</sup>**

#### **SCOPE**

- i. The Director General, All India Radio, shall be the sole judge of the suitability or otherwise of an advertisement or a sponsored programme for broadcast his decision in this regard shall be final.
- ii. Broadcast time shall be sold to the Advertiser / Advertising Agencies at the sole discretion of the Director General, All India Radio, according to the prescribed rates.
- iii. The Advertisement must be clearly distinguishable from the programme.
- iv. A Sponsored programme shall constitute a substantive broadcast / programme, as distinct from material which directly advertise any specific wares or goods / products / services. The name of the sponsor shall be broadcast immediately before and after the sponsored programme.

The Sponsor shall, however, undertake to indemnify All India Radio against any legal claim that may be brought against it as a result of the broadcast of a Sponsored Programme or any portion thereof.

Advertising is an important and legitimate means for the seller to awaken interest in his goods and services. The success of advertising depends on public confidence; hence no practice should be permitted which tends to impair this confidence. The standards laid down here should be taken as minimum standards of acceptability, which would be liable to be reviewed from time to time in relation to the prevailing norm of listeners' susceptibilities.

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7. For More Details See <http://allindiaradio.gov.in/Information/Commercial%20Code/Pages/default.aspx>.

The following standards of conduct are laid down in order to develop and promote healthy advertising practices in All India Radio. Responsibility for the observance of these rules rests equally upon the Advertiser and the Advertising Agency.

### **33.5 The Code**

#### **33.6 General Rules of Conduct in Advertising:**

1. Advertising shall be so designed as to conform to the laws of the country and should not offend against morality, decency and religious susceptibilities of the people.
2. No advertisement shall be permitted which:-
  - i. derides any race, caste, color, creed and nationality;
  - ii. is against any of the directive principles, or any other provision of the Constitution of India;
  - iii. tends to incite people to crime, cause disorder or violence, or breach of law or glorifies violence or obscenity in any way;
  - iv. presents criminality as desirable;
  - v. adversely affects friendly relations with foreign States;
  - vi. exploits the national emblem, or any part of the constitution or the person or personality of a national leader or State Dignitary;
  - vii. relates to or promotes cigarettes and tobacco products, liquor, wines and other intoxicants;
3. No advertisements message shall in any way be presented as News.
4. No advertisements shall be permitted the objects whereof are wholly or mainly of a religious or political natures; advertisement must not be directed towards any religious or political end or have any relation to any industrial dispute.

Proviso: "But advertisements in the form of spots and jingles on payment of prescribed fees, from Political parties / Candidates / any other person shall be accepted only in respect of General Elections to Lok Sabha / General Elections to the

State Assemblies / General Elections to Local bodies during the period when the model Code of Conduct is in force. Such advertisements shall be subject to pre-broadcast scrutiny by the Election Commission of India / authorities under the Election Commission of India in respect of elections to Lok Sabha and the State Assemblies and State Election Commissions in the case of Local bodies."

(As per DG: AIR's I.D.No. 15/3/2008-PIV dated November 20, 2008).

5. Advertisements for services concerned with the following shall not be accepted:-
  - i. Money lenders;
  - ii. Chit funds;
  - iii. Saving schemes and lotteries other than those conducted by Central and State Government Organisations, Nationalized or recognized banks and Public Sector Undertakings;
  - iv. Unlicensed employment services;
  - v. Fortune tellers or sooth-sayers etc. and those with claims of hypnotism;
  - vi. Foreign goods and foreign banks.
  - vii. Betting tips and guide books etc. relating to horse-racing or the other games of chance.
6. The items advertised shall not suffer from any defect or deficiency as mentioned in Consumer Protection Act 1986.
7. No advertisement shall contain references which are likely to lead the public to infer that the product advertised or any advertised or any of its ingredients has some special or miraculous or super-natural property or quality, which is difficult of being proved, e.g. cure for baldness, skin whitener, etc.
8. No advertisement shall contain the words 'Guarantee' or 'Guaranteed' etc., unless the full terms of the guarantee are available for inspection by the Directorate General, All India Radio, and are clearly set out in the advertisement and are

made available to the purchaser in the writing at the point of sale or with the goods; in all cases, terms must include details of the remedial action available to the purchaser. No advertisement shall contain a direct or implied reference to any guarantee which purports to take away or diminish the legal rights of a purchaser.

9. Advertisers or the agents must be prepared to produce evidence to substantiate any claims or illustrations. The Director General reserves the right to ask for such proofs and get them examined to his full satisfaction. In case of goods covered by mandatory quality control orders, the advertiser shall produce quality certificate from the institutions recognised by the Government for this purpose.
10. Advertisements shall not contain disparaging or derogatory references to another product or service.
11. Testimonials must be genuine and used in a manner not to mislead the listeners. Advertisers or Advertising Agencies must be prepared to produce evidence in support of their claims.
12. No advertisement of any kind of jewellery (except artificial jewellery) or precious stones shall be accepted.
13. Information to consumers on matters of weight, quality or prices of products, where given, shall be accurate.
14. Advertisements indicating price comparisons or reductions must comply with relevant laws.
15. No advertisement shall be accepted which violates AIR Broadcast Code which is reproduced below:-

### **33.6 General AIR Code**

#### **AIR broadcast does not permit:-**

1. Criticism of friendly countries;
2. Attack on any religion or community;
3. Anything obscene or defamatory.



4. Incitement to violence or anything against maintenance of law and order;
5. Anything amounting to contempt of court;
6. Aspersions against the integrity of the President and Judiciary;  
"Note: Advertisements concerning jewellery, foreign goods and foreign banks, besides those related to Indian Equity / Debenture issued for NRIs will, however, be accepted as far as the external services of All India Radio are concerned."
7. Anything affecting the integrity of the Nation and criticism by name of any person.
16. Any such effects, which might startle the listening public, must not be incorporated in advertisements. For example, and without limiting the scope, the use of the following sound effects will not be permitted: Rapid gunfire or rifle shots; Sirens; Bombardments; Screams; Raucous laughter and the like.
17. Any pretense in advertising copy must be avoided and such copy shall not be accepted by All India Radio. The 'simulation' of voices of a personality in connection with advertisements for commercial products is also prohibited unless bonafide evidence is available that such personality has given permission for the stimulation and it is clearly understood that stations broadcasting such announcements are indemnified by the advertiser or advertising agency against any possible legal action.

### **33.7 Advertising And Children**

18. No advertising for a product or service shall be accepted if it suggests in any way that unless the children themselves buy or encourage other people to buy the products or services, they will be failing in their duty or lacking in loyalty to any person or organisation.
19. No advertisement shall be accepted which leads children to believe that if they do not own or use the product advertised they will be inferior in some way to other children or that they are liable to the condemned or ridiculed for not owning or using it.

20. No advertisement likely to bring advertising into contempt or disrepute shall be permitted. Advertising shall not take advantage of the superstition or ignorance of the general public.
21. No advertising of talismans, charms and character-reading from photographs or such other matter as well as those which trade on superstition of general public shall be permitted.
22. Advertising shall be truthful, avoid distorting facts and misleading the public by means of implications by false statements, as to:
  - I. the character of the merchandise, i.e. its utility, materials, ingredients, origin etc.
  - II. the price of the merchandise, its value, its suitability or terms of purchase.
  - III. the services accompanying purchase, including delivery, exchange, return, repair, upkeep etc.
  - IV. personal recommendations of the article or service.
  - V. the quality or the value of competing goods or trustworthiness of statement made by others.
23. Testimonials of any kind from experts etc. other than Government recognised standardisation agencies shall not be permitted.
24. No advertisement shall be permitted to contain any claim so exaggerated as to lead inevitably to disappointment in the minds of the public.
25. Methods of advertising designated to create confusion in the mind of the consumer as between goods by one maker and another maker are unfair and shall not be used. Such methods may consist in:
  - i. the imitation of the trademark of the name of competition or packaging or labeling of goods; or
  - ii. the imitation of advertising devices, copy, layout or slogans.
26. Indecent, vulgar, suggestive, repulsive or offensive themes or treatment shall be avoided in all advertisements. This also supplies

to such advertisements which themselves are not objectionable as defined above, but which advertise objectionable books, photographs or other matter and thereby lead to their sale and circulation.

27. No advertisement in respect of medicines and treatments shall be accepted which is in contravention of the code relating to standards of advertising medicines and treatments as per Annexure II.

Note I : In all other respect, the Director General will be guided for purposes of commercial broadcasting in All India Radio by Code of Ethics for Advertising in India as modified from time to time ( relevant excerpts appended at Annexure-I).

Note II : Notwithstanding anything contained herein, this code is subject to such modification/ directions as may be made / issued by the Director General from time to time.

Note III : All advertising agencies shall adhere to the standards of practice as prescribed by Advertising Agencies Association of India, Mumbai, as given in Annexure III.

**PROCEDURE FOR THE ENFORCEMENT OF THE CODE:**

1. Complaints or reports on contraventions of the code, received by All India Radio may in the first instant be referred by Director General to Advertiser's Association concerned with request for suitable action.
2. If complaints under the Code cannot be satisfactorily resolved at Association-(s)'s level, they shall be reported to Director General who will then consider suitable action.
3. For any Complaints under the Code received by All India Radio concerning a party outside the purview of various member Association(s), the Director General will draw attention of such party to the complaint and where necessary, take suitable action on his own.

### **33.8 Annexure I**

#### **EXCERPTS FROM THE CODE OF ETHICS FOR ADVERTISING IN INDIA ISSUED BY THE ADVERTISING COUNCIL OF INDIA.**

Along with the development of a very complex distribution system, the requirements of a market economy, faced with the need for ensuring a regular flow of mass production, have given rise to the development of new techniques of sales promotion. Of these, advertising has proved itself to be of inestimable value for producers and distributors as well as for consumers. It enables the former to maintain contact with customers who are widely scattered and often unknown, and it assist the latter in choosing those goods and services that are the best suited to their particular requirements.

Advertising has become an important social and economic force in the world today. It is therefore, essential that any unfair advertising practice likely to alienate public confidence would be eliminated. Hence the need for rules of conduct drawn up for the purpose of preventing possible abuses and of promoting and increasing sense of responsibility towards the consumer on the part of the advertisers, advertising agencies and media owners and suppliers.

Recognising that the legitimate function of advertising is the advocacy of the merits of particular products or services, this code is intended to be applied in the spirits as well as in the letter and should be taken to set out the minimum standards to be observed by the parties concerned. This code does override all ethical standards in advertising laid down by individual organisations, but it does not supersede the standards of practice laid down by individual organisations as incumbent upon their own members and applying to their own particular trade or industry.

### **33.9 Annexure II**

#### **33.10 Code of Standards in Relation to the Advertising of Medicines and Treatment**

This code has been drafted for the guidance of advertisers, manufactures, distributors, advertising agents, publishers and suppliers or various advertising media. The harm to the individual that may result from

exaggerated, misleading or unguaranteed claims justified the adoption of a very high standard and the inclusion of considerable detail in a Code to guide those who are concerned with this form of advertising.

Newspaper and other advertising media are urged not to accept advertisements in respect of any other product or treatment from any advertiser or advertising or publicity relating to that product or treatment. The provisions of this Code do not apply to an advertisement published by or under the authority of a Government, Ministry or Department, nor to an advertisement published in journals circulated to Registered Medical Practitioners, Registered Dentists, Registered Pharmacists or Registered Nurses.

## **SECTION I**

General Principles:

1. **Cure:** No advertisement should contain a claim to cure any ailment or symptoms of ill-health, nor should any advertisement contain a word or expression used in such a form or context as to mean in the positive sense the extirpation of any ailment, illness or disease.
2. **Illness etc., properly requiring medical attention:** No advertisement should contain any matter which can be regarded as offer of medicine or product for, or advise relating to, treatment of serious diseases, complaints, conditions, indications or symptoms which should rightly receive the attention of a Registered medical practitioner (see Sec.2).
3. **Misleading or Exaggerated Claim:** No advertisement should contain any matter which directly or by implication misleads or departs from the truth as to the composition, character or action of the medicine or treatment advertised or as to its suitability for the purpose for which it is recommended.
4. **Appeals to fear:** No advertisement should be calculated to induce fear on the part of the reader that he is suffering, or may without treatment suffer from an ailment, illness or disease.
5. **Diagnosis or treatment by correspondence:** No advertisement should offer to diagnose by correspondence diseases, conditions or any symptoms of ill-health in a human being or request from

any person or a statement of his or any other person's symptoms of ill-health with a view to advertising as to or providing for treatment of such conditions of ill-health by correspondence. Nor should any advertisement offer to treat by correspondence any ailment, illness, disease or symptoms thereof in a human being.

6. Disparaging references: No advertisement should directly or by implication disparage the products, medicines or treatments of another advertiser or manufacturer or registered medical practitioner or the medical profession.
7. College, clinic, institute, laboratory: No advertisement should contain these or similar terms unless an establishment corresponding with the description used does in fact exist.
8. Doctors, hospitals etc.: No advertisement should contain any reference to doctors or hospitals, whether Indian or foreign, unless such reference can be sustained by independent evidence and can properly be used in the manner proposed.
9. Products offered particularly to women: No advertisement of products, medicines or treatments of disorders or irregularities peculiar to women should contain expression, which may imply that, the product, medicine or treatment advertised can be effective in inducing miscarriage.
10. Family Planning: Advertisements for measures or apparatus concerning family planning would be permissible in so far as they conform to the generally accepted national policy in this behalf.
11. Illustrations: No advertisement should contain any illustration, which by itself or in combination with words used in connection therewith is likely to convey a misleading impression, or if the reasonable inference to be drawn from such advertisement infringes any of the provisions of this Code.
12. Exaggerated copy: No advertisement should contain copy, which is exaggerated by reason of improper use of words, phrases or methods of presentation e.g., the use of words' magic, magical, miracle, miraculous.

13. Natural remedies: No advertisement should claim or suggest contrary to the fact, that the article advertised is in the form in which it occurs in nature or that its value lies in its being a 'natural' product.
14. Special claim: No advertisement should contain any reference which is calculated to lead the public to assume that the article, product, medicine or treatment advertised has some special property or quality which is in fact unknown or unrecognised.
15. Sexual weakness, premature aging, loss or virility: No advertisement should claim that the product, medicine or treatment advertised will promote sexual virility or be effective in treating sexual weakness or habits associated with sexual excess or indulgence or any ailment, illness or disease associated with those habits. In particular such terms as 'premature aging', 'loss of virility' will be regarded as conditions for which medicines, products, appliances or treatment may not be advertised.
16. Slimming, weight reduction or limitation or figure control: No advertisement should offer any medical product for the purpose of slimming, weight reduction or limitation or figure control. Medical products intended to reduce appetite will usually be regarded as being for slimming purposes.
17. Tonics : The use of this expression in advertisements should not imply that the product or medicine can be used in the treatment of sexual weakness.
18. Hypnosis : No advertisement should contain any offer to diagnose or treat complaints or conditions by hypnosis.
19. Materials to students : Materials meant for distribution in educational institutions must not carry advertisement of anything other than those of value to students.

## **SECTION 2.**

Restrictions imposed by statute on advertising on Medicines and Treatments :

1. Rule 106 of the Drug rules, 1945, provides that, no drug may convey to the intending user thereof any idea that it may prevent or cure one or more of the diseases or ailments specified in schedule J.

Schedule 'J'.

Blindness, Bright's disease, Cancer, Cataract, Deafness, Delayed Menstruation, Diabetes, Epilepsy, Hydrocele, Infantile Paralysis, Leprosy, Leucoderma, Lockjaw, Locomotor Ataxia, Insanity, Tuberculosis, Tumors, Venereal Diseases(in general), Female diseases (in general), Fevers (in general), Fits, Galucoma, Goitre, Gonorrhoea, Soft Cancer, Heart Diseased, High Blood Pressure, Lupus, Obesity, Paralysis, Plague, Rupture, Sexual impotence, Small Pox.

2. No drug may purport or claim to procure or assist to procure, or may convey to the intending user thereof any idea that it may procure or assist to procure miscarriage in women.

**Definition:**

'Drug' includes for internal or external use for human being or animals all substances intended to be used for or in the treatment, mitigation, or prevention of disease in human being or animals, other than medicines and substances exclusively used or prepared for use in accordance with the Ayurvedic or Unani system of medicines.

**33.11 Annexure III**

**33.12 Standards of Practice for Advertising Agencies**

(As approved by the Advertising Agencies Association of India, Mumbai);

1. Every member of the Association shall carry on his profession and business in such a manner as to uphold the dignity and interests of the Association.
2. Every member shall refrain from canvassing Advertisers or prospective Advertisers in such a way as to reflect detrimentally upon Advertising Agents as a whole or this Association or any Advertising Agent in particular.



3. Canvassing is permitted to the condition that a member may make known to the client of another member its own capabilities as an Advertising Agency but may not submit a specific report or detailed recommendations concerning the clients' advertising unless so requested by him in writing.
4. No members shall pay or undertake to pay or allow to an advertiser or his agent or representative the whole or any portion of the standard rate of commission resulting or to result to such member from any advertising medium nor promise or procure or undertake to procure advertising space or facilities free of charge, to any advertising, or at a reduced rate nor supply free or partly free to any advertiser, any advertising material, including finished drawings, or other art work, photographs, blocks stereos matrices or the like, type setting or printing nor defray in whole or in part the salary of any employee of an advertiser nor grant any allowances, discount or the like nor render any service having the effect of rebating the commission allowed by an advertising medium. The sharing of commission with member or overseas agency or with agent by this Association shall, however be permitted.
5. The practice of submitting speculative campaigns is unhealthy to the growth of the advertising services and no speculative campaign shall be submitted by any member of the Advertising Agencies Association of India.

By speculative campaign, it is meant, producing a campaign unsolicited by an advertiser and equally producing a campaign where the advertiser had requested one or more advertising agencies to do so, unaccompanied by a firm offer of business. Those members shall notify the Secretary of the Association if any such queries were made by prospective advertiser, and that such information shall be circulated by the Secretary to all member.

6. Any member relinquishing an Account on the ground of slow payment, doubtful credit or incurring a bad debt, shall immediately notify the Secretary of the Association and such information shall be circulated in strictest confidence for information and protection of the members.

7. No business shall be accepted which is conditional upon the payment of commission fee or reward to a third party not a full time employee of the members either for introducing the business or for services in connection with the account thereafter. This rule, however, shall not preclude a member from employing copywriters or production men at fees commensurate with the values of their work.

**33.13 Obligation to Client:**

1. Member Agencies must continue to render full Agency Service in reasonable conformity to the Association Agency Service Standards.
2. Member shall retain either commission granted by media owners or charge the clients a service fee which shall never be less than 15% of the Client's gross expenditure.
3. Nor shall they supply material for advertising on any basis that can be considered as direct or indirect or secret, rebating. Where no commission is allowed by the Media Owner, the member will charge his clients minimum of 15% on the gross cost.
4. Member will not accept discount or commission, other than the regular agency commission allowed by the publishers without the client's knowledge and consent.
5. Member shall at all-time use their best efforts to obtain for their clients the lowest rates to which such clients are entitled.

**33.14 Obligation to Suppliers:**

Member shall take all steps to assure themselves as to the financial soundness of their clients.

Obligations to Fellow Agencies:

1. Members are required to use fair methods of competition; not to offer the services enumerated above or services in addition to them without adequate remuneration or extension of credit facilities or banking services.
2. Members shall neither prepare nor place any advertisement in any medium, which -

- a. is knowingly a copy or a plagiarism of any other advertisement of any kind whatsoever;
- b. makes attacks of a personal character, or makes uncalled for reflections on competitors or competitive goods;
- c. is indecent, vulgar, suggestive, repulsive or offensive either in theme or treatment;
- d. is objectionable medical advertising and an offer of free medical treatment, advertising that makes remedial or curative claims, either directly or by inference not justified by the facts of common experience;
- e. concerns a product known to the member to contain habit forming or danger drugs; or any advertisement which may cause money loss to the reader, or injury in health or morals or loss of confidence in reputable advertising and honorable business or which is regarded by the Executive Committee of the Advertising Agencies Association of India, as unworthy.

In the event of a member providing to the satisfaction of the Executive Committee that a client has withdrawn his Account on the grounds of the Member's refusal to undertake unethical Advertising (as described above) no other member shall accept any business whatever from the said clients.

### **33.15 Advertising Code for Cable Operators**

In recent years there has been haphazard mushrooming of cable television networks all over the country. There has been a 'cultural invasion' in many quarters since the programmes available on these satellites channels are predominantly western and totally alien to our culture and mode of life. To check the menace of unsocial, immoral, anti-business and unethical advertising, an Advertising Code has been adopted under the Cable Television Network (Regulation) Act, 1995. This Code is different from the other Codes discussed above in as much as it attracts penal liability on being contravened. Section 6 of the Act prohibits the transmission or retransmission of any advertisement through a cable service which is not in conformity with the prescribed Advertisement Code. Rule 7 framed under the Cable Television Network Rules, 1994 (revised up to 2000) lays down the Advertising Code as under:

Rule-7. Advertising Code. - (1) Advertising carried in the cable service shall be so designed as to conform to the laws of the country and should not offend morality, decency and religious susceptibilities of the subscribers.

(2) No advertisement shall be permitted which-

- (i) derides any race, caste, colour, creed and nationality;
- (ii) is against any provision of the Constitution of India.
- (iii) tends to incite people to crime, cause disorder or violence or breach of law or glorifies violence or obscenity in any way;
- (iv) presents criminality as desirable;
- (v) exploits the national emblem, or any part of the Constitution or the person or personality of a national leader or a State dignitary;
- (vi) in its depiction of women violates the constitutional guarantees to all citizens. In particular, no advertisement shall be permitted which projects a derogatory image of women. Women must not be portrayed in a manner that emphasises passive, submissive qualities and encourages them to play a subordinate, secondary role in the family and society. The cable operator shall ensure that the portrayal of the female form, in the programmes carried in his cable service, is tasteful and aesthetic, and is within the well-established norms of good taste and decency;
- (vii) exploits social evils like dowry, child marriage;
- (viii) promotes directly or indirectly production, sale or consumption of-

(A) cigarettes, tobacco products, wine, alcohol, liquor or other intoxicants; provided that a product that uses a brand name or logo, which is also used for cigarettes, tobacco products, wine, alcohol, liquor or other intoxicants, may be advertised on cable service subject to the following conditions that:-

- (i) the story board or visual of the advertisement must depict only the product being advertised and not the prohibited products in any form or manner;

- (ii) the advertisement must not make any direct or indirect reference to the prohibited products;
- (iii) the advertisement must not contain any nuances or phrases promoting prohibited products;
- (iv) the advertisement must not use particular colours and layout or presentations associated with prohibited products;
- (v) the advertisement must not use situations typical for promotion of prohibited products when advertising the other products;

Provided further that-

- (i) the advertiser shall submit an application with a copy of the proposed advertisement along with a certificate by a registered Chartered Accountant that the product carrying the same name as cigarettes, tobacco products, wine, alcohol, liquor or other intoxicants is distributed in reasonable quantity and is available in substantial number of outlets where other products of the same category are available and the proposed expenditure on such advertising thereon shall not be disproportionate to the actual sales turnover of the product.
- (ii) All such advertisements found to be genuine brand extensions by the Ministry of Information and Broadcasting shall be previewed and certified by the Central Board of Film Certification as suitable for unrestricted public exhibition and are in accordance with the provisions contained in sub-clause (i) to (v) of the first proviso, prior to their telecast or transmission or retransmission.

(B) Infant milk substitutes, feeding bottle or infant food.

- (3) No advertisement shall be permitted, the objects whereof, are wholly or mainly of a religious or political nature; advertisements must not be directed towards any religious or political end.
- (3A) No advertisement shall contain references which hurt religious sentiments.
- (4) The goods or services advertised shall not suffer from any defect or deficiency as mentioned in Consumer Protection Act, 1986.

- (5) No advertisement shall contain references which are likely to lead the public to infer that the product advertised or any of its ingredients has some special or miraculous or super-natural property or quality, which is difficult of being proved;
- (6) The picture and the audible matter of the advertisement shall not be excessively loud;
- (7) No advertisement which endangers the safety of children or creates in them any interest in unhealthy practices or shows them begging or in an undignified or indecent manner shall not be carried in the cable service;
- (8) Indecent, vulgar, suggestive, repulsive or offensive themes or treatment shall be avoided in all advertisements;
- (9) No advertisement which violates the Code for self-regulation in advertising, as adopted by the Advertising Standard Council of India (ASCI), Mumbai, for public exhibition in India, from time to time, shall be carried in the cable service;
- (10) All advertisement should be clearly distinguishable from the programme and should not in any manner interfere with the programme viz., use of lower part of screen to carry captions, static or moving along side the programme;
- (11) No programme shall carry advertisements exceeding twelve minutes per hours, which may include up to ten minutes per hour of commercial advertisements, and up to two minutes per hour of the channel's self-promotional programmes.

### **33.16. Appraisal on Regulatory Codes**

The above Regulatory Codes discussed supplement the law, fill gaps where the law does not reach and often provide an easier way of resolving disputes than by civil litigation or criminal prosecution. For this reason they have received wide coverage and popularity. At the same time despite their good intentions and wide coverage these codes have been criticized in recent times on a number of grounds<sup>8</sup>.

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8. Manoj Kumar Padhy, "Consumer Protection and Advertisement Laws", Satyam Law International, New Delhi, India, p.314.

- i. Being often on a voluntary compliance basis, self-regulation tends to break down when a number of firms in the industry find it in their interest to depart from joint standards. Again, on occasions, even members of ASCI, themselves might choose not to accept the code or decisions of the Council, let alone non-members who have no obligation of any sort to accept the Code and abide by it.
- ii. The trade associations are slow in the enforcement of voluntary standards.
- iii. Consumers have not much confidence in business self-regulation because voluntary standards are usually drawn up by business without canvassing the viewpoint of consumers.
- iv. The time when the media houses of the country are planning to make their papers globally relevant, most of the media codes may seem traditional and orthodox to them.
- v. The system lacks independent machinery for its implementation and the procedures which exist are likely to be shrouded in secrecy. The major problem with self-regulation is that it is without any sanction and without any remedy. While there is some truth in these allegations, the role and importance of Voluntary Codes and Codes having government backing or legal support in creating healthy advertising practice and creating mass awareness against false, deceptive or obscene, indecent and vulgar advertisements are amendable. Infact the need of the hour is a closer and constructive partnership between the government advertising and consumer organizations to secure the better compliance of the self-regulatory codes by the advertisers, advertising agencies and the media.





# 34

## OVERALL RECOMMENDATIONS

An over reaching and comprehensive framework to deal with the misleading, deceptive, fraudulent and all other forms of unfair advertisement is the need of the hour in pursuance of the same. Few of the recommendation are as follows:

1. Keeping in mind the numerous provisions in each of the legislations that have been cited in this book and otherwise, a new and comprehensive legislation needs to be drafted on the subject of misleading advertisement and unfair trade practice.
2. A Consumer Protection regulatory body needs to be constituted for the purposes of implementing and enforcement of the provisions of the above mentioned legislation.
3. Complaints can be placed before the above mentioned regulatory body by individuals or companies, suo moto cognitive action can be taken by this authority.
4. This authority will also coordinate and harmonise all initiatives towards consumer protection and welfare aimed at redressal against misleading advertisement & other UTPs.
5. This authority will also coordinate with ASCI in particular to carry forward its projects and its efforts to ensure greater implementation.

6. Habitual wrongdoer before ASCI, forum or commissions should be imposed heavy penalty.
7. This authority shall not limit itself to the provisions of the proposed legislations but shall also entertain complaints under advertisement provisions in other legislations.
8. Considering the geographical and linguistic diversity within the nation, this authority must be divided into zonal levels for case of actions and more efficient handling of complaints at the local levels.
9. This proposed regulatory authority shall be empowered to impose high penalties for non-compliance of the orders of the body.
10. It is essential that awareness should be spread to all stake holders including consumers, advertisers, advertising agencies etc. on the negative effects of misleading advertisements. In furtherance of creating such awareness a module on consumer protection in general and misleading advertisements in particular must be included in the curricula of schools, colleges, and educational institutions.
11. To protect the consumer from misleading advertisement there should be a code of conduct for all advertisements for all sectors so that they cannot mislead the consumer by hiding material information or presenting it in an unclear, unintelligible, ambiguous or untimely manner.
12. Marketing communications must not materially mislead by omitting the identity of the marketer.
13. Intermediaries including endorsers & brand ambassadors should held liable for misleading advertisements.
14. Regulatory bodies in specific sectors have to implement effectively & efficiently to control misleading ads and also authorities have to check and monitor over the misleading ads telecasted to attract the consumers.

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