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REGULATORY FRAMEWORK

Advertisement, often described as commercial speech, enjoys its protection under Article 19(1) (a) of the Indian Constitution. As a facet of the right to information, it facilitates the dissemination of information about the sellers and their products. Advertising is self-publicizing as the content of advertising message is a matter of public record. Competitors and consumers both are in good positions to expose the dishonest or misleading advertising.

In post-globalisation era, competition has increased manifold and to sustain the competition by all means, in recent years, the quantity of false, misleading and offensive advertising has increased. It has resulted in consumers having an increasing disbelief in advertising, and a growing resentment of it.

In order to protect the consumers from unethical and untruthful advertising, statutory regulation as well as self-regulations are introduced in India. viz.

a) By the govt agencies enforcing laws, rules and regulations.
b) By the advertising agencies and the media groups that impose self-regulation upon members and advertisers.
c) By the advertisers themselves, acting through enlightened self-interest and sense of social responsibility.
d) By the consumers through the Consumer Associations.

6.1 REGULATIONS BY GOVERNMENT:

The govt agencies in order to safeguard the interest of the consumers, may impose different restrictions and some stipulations may be directed, to protect consumer and to encourage a healthy atmosphere in the society. The organizational advertising programme may be restricted by the government agencies and can affect various aspects such as-

◆ Types or categories of the products that cannot be advertised
◆ The message or the content of the advertisement which is objectionable in nature cannot be used.
◆ Restriction may be imposed on certain media in advertising specific type of products
◆ Restriction on certain type of language in specific type of media
In India there are different regulatory provisions and Acts to protect the interest of the consumers and to safeguard the interest of the society and the nation as enlisted below:

(1) Drugs and Cosmetics Act, 1940.- (Sec. 28)
(2) Drugs Control Act, 1950. (Sec. 10)
(3) Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954. (Sec. 21)
(4) Copyright Act, 1957.
(5) Trade and Merchandise Marks Act, 1958. (Sec. 98)
(7) Pharmacy Act, 1948.
(8) Prize Competition Act, 1955. (Sec. 2, 4, 5 & 11)
(9) Emblems and Names (Prevention of Improper Use) Act, 1950. (Sec. 310)
(15) Any political advertisement forty hours prior to polling time under the Representation of People Act, 1951.
(16) Doordarshan Code.

**Main Features of Doordarshan Code for Advertising:**

Doordarshan has served as an effective instrument for advertisers to advertise their goods and services. As a public service broadcasting organisation, Doordarshan has responsibility to ensure that the advertisements either in terms of contents, tone or treatment, do not mislead the viewers as well as the consumers or are not in bad taste. Therefore Doordarshan has issued guidelines to advertisers known as “Doordarshan Code”. Following are the main features of DD code.

1) Advertisement of Tobacco products including ‘Pan Masala’ and liquors are not permitted.
2) The goods and services advertised should follow the laws of the country enacted to protect the rights of the consumers.
3) The commercials should never project a derogatory image of women and should not endanger the safety of children.

4) Doordarshan prohibits the following contents in advertisements:
   ◆ Criticism of friendly countries;
   ◆ Attack on religions or communities.
   ◆ Anything obscene or defamatory.
   ◆ Glorifying violence or anything against maintenance of law & order.
   ◆ Anything amounting to contempt of court.
   ◆ Aspersions against the integrity of the President and Judiciary.
   ◆ Anything affecting the integrity of the Nation, and criticism by name of any person.

5. Visual and verbal representation of actual and comparative prices and costs shall be accurate.

6. Testimonials must be genuine and used in a manner not to mislead the viewers. Advertisers or Advertising Agencies must be prepared to produce evidence in support of their claims.

7. No advertisement shall contain the words ‘Guarantee’ or Guaranteed’, etc. unless the full terms of the guarantee are available for inspection by the Director General, Doordarshan.

8. Indecent, vulgar, suggestive, repulsive or offensive themes or treatment shall be avoided in all advertisements.

Previously Doordarshan was not accepting advertisements for the following products/services but of late it has started accepting them.

◆ Advertisement of Educational institutions/Colleges which are genuine and ensure that students do not get misled.
◆ The advertisements relating to holiday resorts and hotels.
◆ The advertisements relating to real estate including sale of flats, land, flats for rent both commercial and residential purpose.
◆ Doordarshan has also allowed the telecast of:
  (i) Foreign products and foreign banks including financial services;
  (ii) Jewellery and precious stones;
  (iii) Mutual funds approved by SEBI;
  (iv) Hair dyes;
(v) Matrimonial agencies;

However, to ensure that viewers do not get misled by false claims, it has been decided that all such advertisements must carry a statutory message at the end in the form of super imposition or caption as - “VIEWERS ARE ADVISED TO CHECK THE GENUINENESS OF THE CLAIMS MADE”

6.2 REGULATIONS BY AAAI:
(Advertising Agencies Association of India):

In India, Advertising Agencies Association of India plays a significant role in self regulation. As a national organisation of advertising agencies, the AAAI promotes their interests so that they continue to make an essential and ever–increasing contribution to the nation by following the code of standards formulated by AAAI.

CODE OF STANDARDS:

A) Rules of conduct vis-a-vis the customer:

1) Advertising should conform not only to the laws but also to the moral and aesthetic sentiments of the country in which it is published.

2) Advertising should not take advantage of the superstition or credibility of the general public.

3) Advertising should tell the truth and avoid distorting facts and misleading by means of implications and omissions.

4) No advertising should contain any claim so exaggerated as to lead to disappointment in the minds of the customers on using such products.

B) Rules of Ethics between Advertisers:

1) Advertising should not create confusion in the mind of the consumer by:
   ● Any kind of imitation of the trademark or name of the competitor, on the packaging or labelling of goods or
   ● The imitation of advertising devices, copy, layouts or slogans.

2) Direct comparison with competing goods or firms should be avoided and goodwill of the public should be gained on the basis of merits of goods or services advertised.
6.3 REGULATIONS BY ADVERTISERS THROUGH ASCI
(Advertising Standards Council of India):

Self Regulation in advertising is practised and duly recognized in many countries including India. It has been pursued and monitored in India in inexpensive and expeditious manner by the Advertising Standards Council of India (ASCI), a voluntary and non-profit organization set up by a group of advertisers, advertising agencies and media in 1985.

The ASCI Code aims to protect the legitimate interests of the consumers by regulating patently false, misleading, and objectionable advertisements broadcast on television, radio, and internet by advertisers, media, and advertising agencies.

The key objectives of ASCI code is to ensure that advertisements must -

- Make truthful and honest representations and claims which is essential to prohibit misleading advertisements;
- Not be offensive to public decency or morality;
- Not promote products which are hazardous or harmful to society or to individuals, particularly minors; and
- Observe fairness in competition keeping in mind consumer’s interests.

The ASCI code of advertising practices has 4 chapters and each of the chapter deals with a certain aspect of advertising -

Chapter 1 has guidelines to ensure truthfulness and honesty of representation and claims made by advertisement and to safeguard against misleading advertisements.

Chapter 2 has guidelines to ensure that advertisements are not offensive to generally accepted standards of public decency.

Chapter 3 has guidelines regarding advertisements addressed to children and also for the promotion of products which are regarded as hazardous to individuals or society at large.

Chapter 4 has provisions to ensure that advertisements obseerve fairness in competition.
ASCI’s has got legal recognition -

ASCI’s role has been acclaimed by various agencies including the Government. However, it lacked the force of legal recognition. The Government of India has at last, taken note of this and by one stroke on 2nd August 2006 vide a notification in The Gazette of India: Extraordinary {Part II –sec. 3(i)}, made sure that at least as far as TV Commercials go, they abide by the ASCI code. The amendment made in Cable Television Networks (Amendment) Rules, 2006 now states: “No advertisement which violates the Code for Self-Regulation in Advertising, as adopted by the Advertising Standards Council of India (ASCI), Mumbai for public exhibition in India, from time to time, shall be carried in the cable service”. Thus in Television advertising ASCI code has been made compulsory.

ASCI encourages the public to complain against advertisements which they consider to be false, misleading, offensive or unfair. All complaints are evaluated by an independent Consumer Complaints Council (CCC) which has 21 members-12 members are Non-Advertising professionals representing civil society, who are eminent and recognised opinion leaders in their respective disciplines such as Medical, Legal, Industrial Design, Engineering, Chemical Technology, Human Resources and Consumer Interest Groups; 9 are advertising practitioners from the member firms. The CCC has to decide upon the complaints within a period of 4 to 6 weeks. Recent statistics Suggest that in as many as 85% of the complaints upheld against TV advertisements, the advertisers & channels have confirmed in writing to have complied with the decisions of CCC, either by withdrawing or modifying appropriately the subject advertisements. ASCI has now sought the support of the concerned associations such as Indian Broadcasting Foundation (IBF) to persuade the TV channels to adhere to ASCI’s Code as well as implement the decisions of its CCC. In this regard ASCI’s service is free of cost to the public.

Highlights of ASCI’s contribution in self regulation -

- The Advertising Standards Council of India has introduced certain additions to its code on advertising of automotive vehicles and food and beverages.

- ASCI’s Consumer Awareness TV campaign ran on channels sponsored by members of Council and non-members, during the period – August to December 2006, without charge to council, as a public and consumer interest service.

- There has been a number of instances where in advertisers/agencies have either withdrawn or modified their advertisements appropriately, merely on their being approached by ASCI for comments in respect of complaints received.
Advertiement of ‘Mr. White’ detergent claiming their product washing white clothes more whiter while competing brands deteriorate whiteness of the cloth. ASCI asked Henkel India (Advertiser) to disclose on what basis such comparison is made.

Gillette blade advertisement claiming that one blade can be used for shaving 21 times. However it was found that it works only for seven times. ASCI asked the advertiser to withdraw such advertisement from TV.

6.4 REGULATIONS BY CONSUMER ASSOCIATIONS:

The consumers now a days are more aware regarding their rights and are more careful about the advertising practices. The Consumer Protection Act empowers an individual consumer to take action against the manufacturer and the advertiser for unfair trade practices. Moreover, consumer associations like CGSI (Consumer Guidance Society of India), Mumbai Grahak Panchayat and Others also take up matters related to wrong advertising practices.