Chapter - 12

SELF REGULATION OF ADVERTISING

12.1 INTRODUCTION:

Every Indian, being the citizen of free democratic country, has freedom of speech, freedom of expression, and as a consumer has a choice in what he will or will not buy. By introducing strict laws and regulations for advertising, the freedom of choice gets restricted, because advertising has an important role to play in persuading the consumers and in the exercise of their freedom of choice. History had shown on number of occasions that consumers are too anxious to try out new things. For example - Original automobile was considered unsafe at 15 miles per hour, tomatoes were poison, Frenchmen were reluctant to try potatoes, it took several years to persuade enough people to buy electric refrigerators to make it profitable to produce in economical quantity. People have to be persuaded with skill, persistence and imagination of advertising to overcome traditions, fear, suspicion and inertia. Advertising is highly imaginative craft, necessary for the creation of final consumption.

The credibility of advertising and integrity of advertisers has come under scrutiny in past few years and since specially with the campaign of Tuff Shoes. But for just small minority, if strict laws and regulations are introduced, the good majority as
Can also be worn with jeans and a T-shirt.
well as consumers will suffer. The main argument in favour of legal restraints is that unfair and unethical advertising affects the community at large. So through the law, there is necessity to exercise protection. It is also argued that to leave the advertising industry to operate their own regulatory system is unlikely to be strong enough to overcome wide range of abuses.

Advertising industry in number of countries has been keen on adoption of more industry codes and more advertising self-regulation. The International Advertising Association, which was heavily involved in developing positive image of advertising industry through effective advertising on Star Plus channel in early 1996, has also helped in establishing self-regulatory codes in some countries. So in number of countries, it seems that balance between the two systems is evolving, with the main emphasis being on self-regulatory approach. While the systems vary somewhat from one country to another the basic approach is normally fairly similar.

12.2 EVALUATION OF SELF-REGULATORY SYSTEM:

Within the advertising industry, there is a need for recognition of the fact that advertising should be regulated. Just as other powerful and influential institutions whether police, government or the medical profession, requires to be regulated, so does advertising.

In every country in the world, advertising today works
within the framework of law. The real question is how much self-
regulation? Where self-regulation is weak, then there is inevitably
need for more law.

A good self-regulation system brings very real benefits both
to consumers and industry in general. Some of the benefits to
consumers and society at large are:

1. It is Speedy:
Offending advertisements that are misleading can be dealt with,
within few days and if the complaints are upheld, then the
advertisements can be withdrawn from the media.

2. It is Cheaper for Consumer to Complain:
It is easy and cheap for the consumer to approach the self-
regulatory body, since the access is extremely simple and informal.
The layman does not need legal advice in order to make a
case.

3. All Sorts of Issues can be Dealt with, by Self-
Regulation:
Many times the complaints about advertisements are about some
small issues and do not involve any gross deception. These small
issues hardly justify legal proceedings, but nevertheless are, though
small individually, should be regulated in maintaining scrupulously
high public standards.
4. **It is Even Capable to Cover 'Grey' Areas of Advertising:**
   Self-Regulatory System can see the things clearly where the eyes of the law can see only dimly. Issues of facts are generally relatively easy to determine. But self-regulation is also in the position to handle more difficult issues, where subjective issues like taste and decency arise.

5. **Self-Regulatory System is Financed by Advertising Industry and not by the Consumer.**

   **Benefits to the Advertising Industry:**

   1. **It Encourages Better Standards of Behaviour and Develops Self-Responsibility within the Industry:**
      A system is run by the industry itself and backed fully by its leaders, inevitably set the standards by which the industry is prepared to be judged.

   2. If a self-regulatory system works effectively, honestly and fairly, then it builds trust in the integrity of the industry.

      But there are number of 'musts' to have an effective system of self-regulation.

      1. A system of self-regulation must set the standards which are acceptable to not only advertisers, ad agencies and media, but also to the government and consumer
bodies as well. This code must clearly be accepted fully and supported wholeheartedly.

3. The code must be kept under continuous review, since code can never be static in a dynamic society.

4. The system has to be well organised to deliver what it promises. It needs the resources to deal effectively and swiftly with consumer complaints.

5. It must be active, not passive. It is not enough to wait for complaints and then act upon them. The system must have as a responsibility, task of monitoring advertisements particularly in sensitive fields.

6. It must have teeth and bite when the occasion requires. So the control body have the required powerto remove advertisement from media in time and to penalise unco-operative advertisers.

7. Though the system is financed by advertising industry. It should remain aloof from all commercial pressures.
12.3 SOME INTERNATIONAL CODES ON ADVERTISING:

The first International Codes of Advertising dates back to 1937. It was revised several times, in the subsequent years (1949, 1955, 1966, 1973, 1975) and has been adopted by more than 200 organisations in 30 countries around the world. The code seeks to promote high standards of ethics in marketing by self-regulation against the background of laws, based on principles of 'Social Responsibility towards the consumers and community'. Although it is prepared basically as a self-regulating measure for advertisers, agencies and media, it can also be used by the courts of law as a reference document. Enforcement of the code is in the hands of ‘International Chamber of commerce’ and at the national level, in the hands of the bodies set-up for the purpose.

The code guidelines state that it should be applied 'in the spirit as well as in the letter'. Advertisements should be judged "by their impact on the consumer, bearing in mind that the consumer is usually motivated by the impression gained from the brief scanning of the advertisement". The code suggests that the "advertisements should be legal, decent, honest and truthful; every advertisement should be prepared with due sense of social responsibility and should conform to the principles of fair competition". No advertisement should be such as to impair public confidence in advertising. The code specifically states that advertisements should not play on fear without justifiable reasons and also not play on superstitions, nor should they contain
anything that would lend support to the acts of violence. Apart from other issues, it gives clear guidelines about comparative advertising, use of testimonials, shows concern about safety aspects and forbids any practice or situation which could cause harm. It insists on taking special care of those advertisements which are directed at or depicting children. It has a separate section on mail order advertisements because of additional vulnerability of the citizens in respect of such advertisements. The United Nations Centre on Transnational Corporations (TNC) has also a code of conduct, but this is often violated.

Along with ICC code it is necessary to consider British, Australian and Singapore codes. These codes are considered as a basis for forming the codes by many countries. Even the Indian code of self-regulation is framed with the help of British Code. British code and Singapore Code are almost similar, except on certain issues. Infact, Singapore Code is stricter and covers wider issues than British Code.

In U.K., the Advertising Standards Authority of Britain had first formulated its code for self-restrain in advertising in 1961. British code is considered to be one of the best code in the world. The structure employed by the British Authorities is a four-tier system designed to implement the British Code of Advertising Practices. While introducing the code, it was felt by the advertisers that "restrains which are self-imposed are, for that very reason, more likely to be readily accepted, than restrains imposed from outside". Industry in Britain too realised that if it did not itself
monitor the advertisements and sales promotions, then government agencies would surely intervene with appropriate laws to protect the consumer. Even the self-regulatory system had been the subject of official scrutiny because of alert and watchful legal and official system. Thus self-regulatory system is not left to the conscience of an individual, but government felt that, in addition to professionals monitoring of advertisements there should be a statutory back-up and control by Director General of Fair Trading. In 1988, these powers were given to Director General, with the passage of the Control of Misleading Advertisements Regulations. The Advertising Standards Authority, on its part, tries to ensure that advertisements follow the standards set through the Code of Advertising Practice Committee, which is directly responsible for the contents of the British Code of Advertising Practices and British Codes of Sales Promotion Practices.

In Australia, almost all the commercial media and majority of advertising agencies are bound into a self-regulation system, which is introduced by Australian Industries Council. If the advertising material is found to be misleading or offensive or if the advertisers or advertising agencies contravene the other requirements of the self-regulation codes, a range of penalties are applicable to them. In many cases the penalties result in considerable financial loss to the offending companies. For example - Advertising material may be withdrawn for amendment, or at times, may be totally withdrawn. In more severe cases the media commission normally paid to advertising agencies may be suspended. The Advertising Standards Council uses the money got by way of penalty, to promote self-regulation system.
Another recent International Advertising Association's Research Report 'Advertising Self-Regulation' by Neelan Kavil and Stridsberg has documented the self-regulatory activities in some forty-nine countries. This describes the nature of self-regulation and its importance in the overall regulatory schemes in these countries. The table presented by them clearly classifies the countries according to the level of self-regulation. But even in those countries, where self-regulation is employed, however, it has rarely been seen as being adequate to replace legislation.

**Table 12.1**

**Countries With or without Self-Regulation**.

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<th>A</th>
<th>Countries with Central Self-Regulatory Bodies</th>
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<th>C</th>
<th>Countries with No Self-Regulation</th>
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<td>Zambia</td>
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12.4 INDIAN EXPERIENCE - FORMATION OF ADVERTISING STANDARDS COUNCIL OF INDIA (ASCi):

After considering some of the International Codes of Self-Regulation and success stories of self-regulation in some countries, it is necessary now to consider Indian conditions. India, according to Table 12.1, falls in the category of the countries where there is some form of self-regulation. But that self-regulation was also introduced after much delay. As far back as 1977, consumers themselves had voiced their disenchantment with Indian advertising practices. It was found necessary to draw-up a code whereby advertising business could restrict itself to factual and informative advertisements that can be truly legal, decent, honest and truthful. But there was no response from advertising business.

In April 1982, International Advertising Association in co-ordination with Advertising Club of Bombay, tried to set-up self-regulatory body. But with their efforts also, nothing really materialised. In 1984, Voluntary Organisation in the Interest of Consumer Education (VOICE) and Indian Federation of Consumer Organisation (IFCO) of Delhi, filed a claim before MRTPC against the multinational giant ITC Ltd, which had indulged in unfair trade practice, which was also harmful to public interest; when they advertised "Made for each other" advertisement. Similarly Consumer Education and Research Centre of Ahmedabad filed a complaint against Sheri Louise slimming centres before MRTPC stating that certain of their statements about weight loss and accompanying statements about health were misleading.
In both the cases MRTPC had favourable attitude towards the complaints and in Sheri Louise case, respondents were ordered not to publish such harmful and misleading advertisements and were forced to publish corrective advertisements.

It was only after these cases had been fought, that advertising business found that "Consumers are having an increasing disbelief in advertising and growing resentment". Some serious threats were also realised by many individuals working for various constituents of the advertising fraternity. The most important among them were:

1. Threat of statutory regulations and procedure for censorship by Government, which could have made even fair, truthful and decent advertising also cumbersome, if not impossible.

2. It was also noticed that false and misleading advertisements were leading to unfair competition and these individuals felt that this could lead to market place disaster.

3. An unfortunate fact of marketing was quantity of false, misleading and offensive advertising. Those were the days when no one much interested in checking, stopping such advertisements which led to an increasing disbelief in advertisement and growing resentment in consumers.
Only after that 43 socially conscious and socially accepted personalities connected to advertising one way or the other got together in their individual capacities to incorporate Advertising Standards Council of India. Some of them were Late Ramkrishna Bajaj, F.T. Khorakiwala, Harish Mahendra, A. K. Bose, K. Kurian, Mukul Upadhyay, Brahma Vasudeva, Amin Sayani, Dr. Ram Tarneja, R. K. Swamy and many more. The Self-Regulatory Code introduced by ASCI aims at the commitment to honest advertising and fair competition in market place. It stands for the protection of the legitimate interest of the consumers and all concerned about advertising, whether they be advertisers, media, advertising agencies and others, who help in creation or placement of advertising.

The code of self-regulation seeks to ensure:

1. The truthfulness and honesty of representations and claims made by advertisements and to safeguard against misleading advertisements.

2. ............. that the advertisements are not offensive to generally accepted standards of public decency.

3. ............. that advertisements observe fairness in competition, so that the consumers need to be informed on the choices in market place and canons of generally accepted competitive behaviour in business, are both served.
4. To safeguard against the indiscriminate use of advertising for the promotion of products which are regarded hazardous to society or to individuals to a degree or of a type which is unacceptable to society at large.

While maintaining the fundamental right of "Freedom of commercial speech and expression", given to the advertisers, ASCI is trying its level best to avoid any kind of censorship by government. ASCI is now in the position to achieve high degree of assurance of compliance by advertisers and advertising agencies that offending advertisements will be modified appropriately or withdrawn. The goal of ASCI is to maintain and enhance the public confidence in advertising. It tries to propagate its code and sense of responsibility for its observance among advertisers, advertising agencies and others, who are connected with the creation of advertising and the media. ASCI encourages the public to complain against those advertisements which they find unacceptable and ensure that each complaint receives prompt and objective considerations.

12.5 ROLE OF CONSUMERS COMPLAINTS COUNCIL OF ASCI:

To take care of the complaints received by ASCI on the basis of the code, ASCI has formed a completely independent impartial Consumers Complaint Council (CCC). CCC compromises of
14 eminent people - only six of them are connected with advertising. CCC's membership is given to professors, retired judges, women's representative, consumer organisations representative, doctors and chartered accountants. Council takes into consideration advertiser's point of view also before taking any appropriate decision. Diagram 1, explains the procedure for processing consumer's complaints.

If any complaint is upheld by CCC, then ASCI tries its level best to ensure that the offending advertisement is either suitably modified or withdrawn. The pressure that ASCI can exert is primarily ethical. They try to achieve the compliance of its decision through reasoned persuasion and power of public opinion. But these methods are also quite effective because media is likely to refuse to carry any advertisement judged to be against the code, preventing the pollution of advertising space and time. Council issues the releases declaring offending advertisements which are unethical, that alone may be enough. For the first time in 1995 September, ASCI has directly approached all the media outlets, requesting them to help in protecting their constitutuional freedom in a responsible manner and protect the larger interest of the consumers. It is too early to say, but mercifully enough, there has been a positive response from the media.

12.6 PERFORMANCE OF CCC:

In ten years since its inception, CCC has come a long way. The initial teething problems are over. In the process of
Processing A Consumer Complaint

1. Complaint received by ASCI with a specimen or description of the offending advertisement.

2. Advertiser and/or Agency asked to comment on complaint and submit substantiation where necessary.

3. Reply/Substantiation received.

4. No substantiation received, substantiation unsatisfactory or advertiser disputes alleged breach.

5. Consumer Complaints Council considers complaint and reply, if any.

6. Consumer Complaints Council orders further investigation.

7. Consumer Complaints Council decides no further investigation is required.

8. Investigation report considered by the Consumer Complaints Council.


10. Complaint not upheld by the Consumer Complaints Council.

11. Assurance sought by ASCI from advertiser to withdraw advertisement.

12. Assurance received.

13. Assurance not received.

14. Agency/media asked not to carry advertisement.

15. Consumer Complaints Council's decision and follow-up action by ASCI conveyed to complainant.

Diagram : 1
(Source - Advertising Standards Council of India).
settling down, they had many difficulties. In the initial years there was a reluctance for action. At times, time gap between complaint and decision was as wide as 6 months to 1 year. For example - In the famous controversy of Bajaj Auto Ltd's mileage claim. For its Kawasaki Motor Cycle, they took 6 months to take decision. One should note that 75% effect is achieved by the advertisement within 3 weeks from the date of its release. But it is successful is settling amicably, the controversies between famous and reputed brands like Cinthol and Life, BPL and Videocon, Cocoraj and Parachute. It has not shown any hesitation in pulling up the established advertisers like Colgate Palmolive, Nirma, Chemical works, Mahindra and Mahindra, Standard Chartered Bank, Indian Oil Corporation for taking unfair advantage of goodwill of competitor or other firms under Chapter IV of the code. It has also upheld the releases of public sector undertakings like Canara Bank, Nuclear Power Corporation, National Insurance Company, United India Insurance Company, New India Assurance Company, Joint Sector Committee of Public Sector Banks, HDFC Ltd, National Saving Commissioner - Directorate of Small Savings for giving misleading advertisements under Chapter 1.4 of the code. It has shown no hesitation in withdrawing advertisements of financial giants and multinationals like Hindustan Coco-Products, Hindustan Lever, City Bank, Hong Kong and Shanghai Banking Corporation, Birla Yamaha, Eureka Forbes, State Bank of India, Narmada Cement and many more for misleading claims under Chapter 1.4 or Chapter 1.1 for lack of substantiation of claims.

Realising the need of the hour, they have even updated their code once in just over a period of ten years to make
it more effective and to bring it on the lines of other international self-regulatory codes. Total number of complaints handled by the CCC in last ten years excluding the complaints which were considered non-issue-from advertising point of view is given in Table 12.1.

### Table 12.2
Number of Complaints Handled by CCC.

<table>
<thead>
<tr>
<th>Years</th>
<th>85-88</th>
<th>88-90</th>
<th>90-91</th>
<th>91-92</th>
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<th>93-94</th>
<th>94-95</th>
<th>95-96</th>
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<tr>
<td>Out come of Complaints</td>
<td>Complaints upheld</td>
<td>62</td>
<td>76</td>
<td>85</td>
<td>94</td>
<td>82</td>
<td>78</td>
<td>101</td>
</tr>
<tr>
<td></td>
<td>Complaints not upheld</td>
<td>35</td>
<td>45</td>
<td>86</td>
<td>102</td>
<td>87</td>
<td>69</td>
<td>53</td>
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<tr>
<td>Total number of complaints handled</td>
<td>96</td>
<td>121</td>
<td>171</td>
<td>196</td>
<td>169</td>
<td>147</td>
<td>164</td>
<td>225</td>
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</table>

(Source - From Annual Reports Published by ASCI)

Total volume of work has increased many folds. If the complaints received and upheld are further analysed in details, what is disturbing is the incidence of complaints and upheld complaints against financial advertisements, Educational Institution's advertisements and surrogative advertisements of alcoholic drinks. These kinds of advertisements and incidence of complaints against such advertisements has increased in volumes. Particularly in the year 1994-95, there were 44 complaints upheld of surrogative advertisements of alcoholic drinks against almost all the brands. These 44 advertisements were
published in various newspapers, but the maximum were in Times of India and Mid-Day. It is surprising to note that personalities like Ram Tarneja, Khalid Ansari were closely associated with the working of ASCI and still, Times of India and Mid-Day had such high number surrogative advertisements. This raises doubt about seriousness of media in implementing code or is it due to the lack of legal authority of ASCI ?

Another problem of ASCI is its helplessness in implementing code and its decisions due to lack of legal authority. Number of advertisers take undue advantage of this situation. One obvious example that can be quoted is of Max-Well Industries producers of VIP Frenchies. The complaint against the advertisement of this particular advertiser has been upheld twice by CCC. Even the respondents of the primary survey have strongly condemned it, on the grounds of vulgarity. But still the advertisers continue to use same photo-copy with little or no variation --- unabatedly.

Considering the present scenario, the experience of CCC, government should trust CCC with some legal authority, at least, to give an immediate injunction against those advertisements which they feel objectionable, at face value. This is highly essential, since these kind of advertisements do enough damage in their initial period, immediately after the release. By the time action is taken by CCC or any other law-enforcement agency, so much time is lost, that the advertisement and its message is generally out of public memory. Another avenue which needs immediate attention is the code itself. The code is totally unequipped to bring various kinds of advertisements within its functional limits.
HOW BOLD CAN YOU GET?

THE DESIGN IS REBELLIOUS. THE PRINTS ARE BRASH. THE CHARACTER, SINGULARLY OUTSTANDING. THAT’S VIP FRENCHIE.

NOW IN A RANGE OF PREMIUMS IN CLASSIC PLAINS, AND TRENDS IN SNAZZY PRINTS AND STRIPES. AS USUAL, UNUSUAL...

12.2 (Source - Femina; July 23, 1995).

Please note that these copies of advertisements have been released after the similar advertisements of the same company were upheld twice by CCC.
Around these parts, this is what separates the men from the boys.

12.3 (Source - Lokaprabha; April 6, 1996)
12.7 **DEFICIENCIES OF INDIAN CODE AS COMPARED TO BRITISH AND SINGAPORE CODE:**

Indian code is compared with the codes of these two countries since self-regulatory codes in these two countries, are practised in letter as well as in spirit. They are drafted with such minute details and care that they give no scope for the advertisers as well as ad-agencies to mislead the consumers. These codes are considered as basis for forming the self-regulatory advertising codes internationally. Indian code which are given in Appendix C, is also framed on similar lines as the British code. But it is deficient and moreover, it remains silent about many sensitive issues.

Following are some brief deficiencies of Indian codes:

1. Singapore as well as British code warn the advertisers and admen, that advertising should not play with fears without justifiable reasons and should not exploit superstitions. This clause which is not covered by the Indian code is particularly important, since Indian consumer classification, indicates vast percentage of consumers as illiterates. In addition to this, Indians including the educated class have a weakness for superstitions.

2. Maximum number of complaints upheld by ASCI are on the ground of misleading claims or lack of truthfulness.
In relation to misleading claims, Singapore code has clearly laid down the rules with regard to kind of information which should be disclosed by the advertisers. This leaves advertisers with no margin to mislead. To avoid misleading advertisements on the grounds of lack of truthfulness, British code has a separate Appendix (Appendix A), which gives clear directions to the advertiser about the precautions he has to take, by making reference to certain categories of product and services.

3. Both the codes have framed the rules meticulously on the issue of price comparisons and value of goods. But Indian code makes a mere passing reference to this issue.

4. Indian code does not allow the advertisers to take unjustifiable advantage by using the name of person, firm or institution without consent. Both the codes go a step ahead on this issue by prohibiting the reference to government or Sovereign. Singapore code warns the advertisers to refer to the provisions of the government before making reference to Singapore Arms, flags and National Anthem. British code does not permit any advertiser giving any suggestion that Queen has endorsed the product.

5. Both the codes prevent the advertiser from making claims based on the performance or low price. Had Indian code included this clause it would not have
become necessary to uphold the number of advertisements of two wheelers claiming certain mileage per litre.

6. Both the codes have clearly defined rules for using testimonials, endorsements and related issues to which Indian code even fails to mention.

7. Indian code makes a passing reference to medical claims in Chapter 1.5(d). But both the codes have separate chapters for advertisements of medical and related products along with advertisements making health claims. Singapore code is extremely particular. It is even a step ahead of British code, where rules relating precautions to be taken while advertising number of products related to health of consumers are mentioned. The list of products is made carefully and covers products within its ambit. On reading the list, we become aware that these products, if not advertised properly are likely to do damage to our health.

8. Indian code has a brief chapter of a few lines on offensive advertisements which are against the accepted standards of decency, whereas both the codes specifically spell out unacceptable practices connected with advertising.

9. Indian code has handled the issue of children quite well, in comparison with the attention given to other issues. Yet it lacks the meticulousness in drafting the
rules. Singapore code is more conscious of the two about the problem of influence of advertisements on children as well as young. Realising the severity of the problem, Singapore code has given the Appendix (Appendix B), which gives the guidelines to the advertiser to design advertisements which involve children and young people.

10. Similarly both the codes lay down specific rules relating to advertising for Slimming, Financial advertising, Mail order advertising and advertising for hair and scalp products and Alcoholic drinks. These rules have been framed with utmost care. They give no scope for exploiting consumer’s innocence. In the matter of alcoholic drinks, a subject on which consumer organisations in India are very sensitive, these codes are extremely strict. Along with the other rules, they specifically warn the advertisers that advertisements should not be directed at the young.

11. In addition to all these rules and guidelines, British code has Appendixes on advertising on Cigarettes (Appendix K) and advertising claims for vitamins and minerals (Appendix H).

12. To avoid misleading advertisements of ‘SALE’ and ‘DISCOUNTS’, Singapore code has Appendix F on Sales advertisements. If this clause is included in Indian code, it can help in avoiding the damage caused by bogus sales conducted by advertisers in India.
12.8 CONCLUSION:

After judging the performance of CCC and Indian Code in comparison with the Singapore and the U.K. codes, one realises that there is a scope for improvement in Indian code. But for these improvements strong determination on the part of advertisers and advertising agencies is required. If they do not show this 'will and determination' in good time, the consumer organisations will pressurise the government to pass further legislation, putting restrictions on advertising activities. Consequently, they will be forced to undergo censorship.

REFERENCES


