



Food Ads and Claims

- Are existing and proposed consumer protection laws adequate enough?
- Pushpa Girimaji



Misleading Food Advertisements: Injurious to health

Promoting unhealthy foods as healthy foods!!

“HAPPY HEART”, “HEALTHY SOUPS”

Maggie Soup, 2007

On INDEPENDENT TESTING, THE PRODUCT WAS FOUND TO CONTAIN HIGH LEVELS OF SALT WHICH RELEASES SODIUM INTO THE BODY-NOT DESIRABLE FOR A HEALTHY HEART- **claim of Maggie soup misleading-ASCI (2007)**



Misleading Advertisements: Injurious to health !

- Profit over (consumers') health!
- “NOW, EAT ALL YOU WANT AND DO NOT WORRY ABOUT THE FLUCTUATIONS IN SUGAR LEVEL”-Amul sugar- free probiotic frozen dessert
- Sugar level is also affected by consumption of milk and milk derivatives and particularly fats, which are rich in sugar-these could enhance the blood sugar level- ASCI (2007)

Misleading Food Ads: Injurious to health

- 1. “Protect Your Heart with Natural Oryzanol in Sunpure”,
- 2. “For Stronger Heart & Healthy Body”-
- M.K Agrotech Private Limited
- 1 Not substantiated and is misleading by
- implication as the reference of oryzanol benefits pertain to Rice Bran oil and have not been established for the advertised product i.e. Sunflower oil- ASCI
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- 2. claim not substantiated and was misleading-ASCI, Nov 2016

Promotion of Junk food: injurious to consumer health



Celebrity endorsements of junk foods: injurious to consumer health



Problems with food ads/labelling promotion

- False claims- Ex: 'organic food'; 'Diabetic Friendly'
- Misleading Claims: 'Brings down blood pressure', 'brings down sugar level', 'keeps your heart healthy and strong', 'helps you lose weight'
- Promoting unhealthy, junk food through celebrity endorsements.
- Indirect promotion : Pizza Hut offered free pizzas to all Sindhu and Sakshi namesakes- thereby linking the food to sportspersons and sports.
- Indirect endorsement: Advertising masked as editorial content

Problems with food ads/labelling promotion

Advertisements today have a wider canvas, larger reach:

Print media

Television,

The internet/world wide web

Use of social media

Celebrity endorsements on social media

Mobile-text messaging

E-mail, viral marketing

Pamphlets

Hoarding

- laws fail to
- keep up with
- advances in
- technology

Important laws on food ads: do they measure up?

- Law specific to food:
- Food Safety and Standards Act
- Other laws dealing with false and misleading ads including food:
- CABLE TELEVISION NETWORKS (REGULATION) ACT AND RULES
- Consumer Protection Act, 1986



Existing laws: Are they adequate?

- **Food Safety and Standards Act, 2006**
- **24. Restrictions of advertisement and prohibition as to unfair trade practices.**
- (1) No advertisement shall be made of any food which is misleading or deceiving or contravenes the provisions of this Act, the rules and regulations made thereunder.



Existing laws: Are they adequate?

- **Food Safety and Standards Act, 2006**
- **24. Restrictions of advertisement and prohibition as to unfair trade practices.**
- (2) No person shall engage himself in any unfair trade practice for purpose of
- promoting the sale, supply, use and consumption of articles of food or adopt any unfair or
- deceptive practice including the practice of making any statement, whether orally or in
- writing or by visible representation which -
- (a) falsely represents that the foods are of a particular standard, quality, quantity or
- grade-composition;
- (b) makes a false or misleading representation concerning the need for, or the
- usefulness; 26
- (c) gives to the public any guarantee of the efficacy that is not based on an adequate
- or scientific justification thereof:
- Provided that where a defence is raised to the effect that such guarantee is based on
- adequate or scientific justification, the burden of proof of such defence shall lie on the
- person raising such defence.



Existing laws: Are they adequate?

- **Food Safety and Standards Act, 2006**
- **53. Penalty for misleading advertisement.**
- (1) Any person who publishes, or is a party to the publication of an advertisement,
 - which–
 - (a) falsely describes any food; or
 - (b) 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.
- (2) In any proceeding the fact that a label or advertisement relating to any article of
 - food in respect of which the contravention is alleged to have been committed contained an
 - accurate statement of the composition of the food shall not preclude the court from finding
 - that the contravention was committed



Existing laws: Are they adequate

- Food Safety and Standards Act
- Section 3(1)(b) The Act defines ‘advertising’ as ‘any audio or visual publicity, representation or pronouncement made by means of any light, sound, smoke, gas, print, electronic media, internet or website and includes through any notice, circular, label, wrapper, invoice or other documents.



Concept Note: FSSAI

“Guidelines - Code of Self Regulation in Food Advertisement”

- C. General Principles:
- i. Advertising and communication for food and beverages should not be misleading or deceptive. This means that claims about particular ingredients in a food and beverage product or the underlying health benefits thereto should have a sound, authentic scientific basis and supported by evidence whenever required.
- ii. Advertising and/or marketing communications for food and/or food & beverage products that include what an average consumer, acting reasonably, might interpret as health or nutrition claims shall be supportable by appropriate scientific evidence and should meet the requirements of the basic Food standards laid down under the Food Safety Standards Act , 2006 and rules, wherever applicable.
- iii. Advertisements should not disparage good dietary practice or the selection of options, such as fresh fruit and vegetables that accepted dietary opinion recommends should form part of the average diet.
- iv. Advertisements should not encourage excessive consumption or inappropriately large portions of any particular food. They should not undermine the importance of healthy lifestyles. Advertisements should rather try to promote moderation in consumption and the need to consume in suggested portion sizes



Concept Note: FSSAI

“Guidelines - Code of Self Regulation in Food Advertisement”

- v. Care should be taken to ensure advertisements do not mislead as to the nutritive value of any food. Foods high in sugar, fat, TFA and/or salt should not be portrayed in any way that suggests they are beneficial to health.
- vi. The nature of the audience should be taken into account particularly when selling products in rural areas, to urban poor or to children. Advertisements and communications should not exploit their lack of experience or knowledge and always provide truthful information. In such cases, nutritional or health-related comparisons should be based on an objectively supportable and clearly understandable basis.
- vii. Communications for Food and/or Beverage Products including claims relating to material characteristics such as taste, size, suggested portions of use, content, nutrition and health benefits shall be specific to the promoted product/s and accurate in all such representation.
- viii. Advertisements should not mislead consumers especially children to believe that consumption of product advertised will result directly in personal changes in intelligence, physical ability or exceptional recognition unless supported with adequate scientific evidence.
- ix. Advertisements containing nutrient, nutrition or health claims and advertisements directed at children should observe a high standard of social responsibility.
- x. Communications for Food and/or Beverage Products not intended or suitable as substitutes for meals shall not portray them as such.
- xi. Claims in an advertisement should not be inconsistent with information on the label or packaging of the food



Concept Note: FSSAI

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Guidelines - Code of Self Regulation in Food Advertisemen

- Advertisements for food and beverages should not claim or imply endorsement by
- any government agency, professional body, independent agency or individual in
- particular profession in India unless there is prior consent, the claim is current and
- the endorsement verifiable and the agency or body named.
- xiii. Celebrities or prominent people who promote food should recognize their
- responsibility towards society and not promote food in such a way so as to
- undermine a healthy diet.
- xiv. Advertisements should not undermine the role of parental care and guidance in
- ensuring proper food choices are made by Children
- xv. Advertisers and communicators must recognize their social and professional
- responsibility towards promoting a healthy lifestyle and strive to achieve high
- standards of public health. All advertisements and communications should be thus
- truthful, legal, decent and honest reflecting their social and professional
- responsibility



FSSAI takes action

- M/S Jivo Wellness Pvt Ltd: claimed that their Canola Oil prevents diabetes and heart diseases and they even claimed that Fortis Hospital (C-Doc) had put their seal on these two claims. Directed to withdraw the ad
- KC Food Products Pvt Ltd of Jammu and Kashmir claimed that their 'Digestive biscuits' were the best in India , because they used the highest content of wheat flour as compared to similar biscuits in the market. The advertisement was withdrawn



FSSAI signs an MOU with ASCI

- New Delhi, June 28th 2016: The Food Safety and Standards Authority of India (FSSAI) signed an MoU partnering with the Advertising Standard Council of India (ASCI) for addressing misleading advertisements in the Food and Beverage sector
- ASCI will comprehensively monitor these advertisements across various media.
- ASCI has been given a suo moto monitoring mandate by FSSAI to process complaints against misleading F&B advertisements. MoU also requires ASCI to report to FSSAI noncompliance of ASCI's decisions for further action as required per provisions of FSSAI .
- FSSAI received cases of misleading advertisement through “GAMA PORTAL”. Out of 21 cases received till date, FSSAI disposed 06 cases and remaining cases are in different stages of scrutiny/disposal.



FSSAI signs an MOU with ASCI

- FSSAI will also redirect complaints against misleading F&B advertisements to ASCI, which will be reviewed using ASCI's code and guidelines. The review will include violation of the FSS Act and Regulations related to advertisements making misleading, unsubstantiated or false claims.
- This partnership will put in place a mechanism to monitor misleading advertisements and will lead towards streamlining advertisements effectively through structured guidelines and appropriate action



Existing laws: are they adequate

- **Cable Television Network Regulation Act and Rules:**
- All advertisements should be in conformity with the prescribed advertising Code.
- The code, drawn up under the Cable Television Network Rules, stipulates that all ads should conform to relevant laws of the country, the product or service should not suffer from any defect or deficiency as mentioned in the Consumer Protection Act, 1986 and should not contain references which are likely to lead the public to infer that the product advertised or any of its ingredients has some special or supernatural or miraculous properties or quality which is difficult of being proved



Existing laws- are they adequate?

- **Cable Television Network Regulation Act and Rules:**
- An amendment to the Cable TV Network Rules, 1994, notified on August 2, 2006, incorporated the ASCI Code. It says: “No advertisement which violates the Code for Self Regulation in Advertising, as adopted by the Advertising Standards Council of India, Mumbai, for public exhibition in India from time to time, shall be carried in the cable service”.



Cable Television Network Regulation Act and Rules

- Contravention: attracts seizure of the equipment used by the cable operator for operating cable TV network
- Chapter IV of the Act, under 'Offences and penalties' prescribes for first offence, imprisonment which may extend to two years or fine which may extend to Rs 2000 or both.
- Subsequent offence- imprisonment of five years or Rs 5000 or both;



Cable Television Network Regulation Act and Rules

- Authorized offer can also prohibit transmission or re-transmission of any programme or channel if it is not in conformity with the advertising code. The Act gives the central government the authority to regulate or prohibit transmission of such advertisements or programmes.
- Enforcement by any authorized officer or the sub divisional magistrate or the commissioner of police or any other officer notified by the central or state government.
- Even though the Code was formulated under the Rules in 1994, it was only in September 2005 that the I&B ministry issued an order for setting up district and state level monitoring committees

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Inter-ministerial Committee on misleading ads

- The union ministry of consumer affairs has now constituted an inter-ministerial committee on misleading advertisements and has created a web portal on which consumers can complain-gama.gov.in
- The focus will be on six key sectors: Food & Agriculture, Health, Education, Real Estate,
- Transport and Financial Services.



Gama.gov.in

- The complaints received on the portal (gama.gov.in), will be referred to ASCI for action.
- In case of non-compliance, escalated to a sub-committee of the Inter- ministerial monitoring committee , headed by the Joint Secretary , department of consumer affairs, which in turn will forward them to the regulators/government departments concerned for suitable action.
- But is that enough?

100% PLACEMENT GUARANTEED BY BALDNE 100% CURA

CAUTION, CARE, AWARENESS
YOUR WEAPON AGAINST
FALSE MISLEADING AD PROMISES

100% WIN Job Guarantee

JAGO GRAHAK JAGO

'International MBA in 6 Months !'
'Lose upto 15 Kgs in 20 days !'
'Job Opportunity abroad !'
'Buy 1 Get 5 Free' !'

Advertisements such as above can mislead. Your surest weapon against such dubious claims - is your own insight. Read, verify, cross check before taking a decision.

Advertisements that Mislead are Acts of Misdeed.

PLOTS FLOORS

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Consumer Protection Act and misleading advertisements

- Can direct modification or withdrawal of false or misleading advertisements (Unfair trade practice)
- Award Compensation, costs, punitive damages
- Issue directions for corrective advertisements.
- Powers limited- No suo motu powers
- No investigative wing
- Cannot fill the vacuum left by the MRTP Commission .
- Delays in deciding case, provision for corrective ads –most powerful weapon- barely used



Self-regulation by the industry

- ADVERTISING STANDARDS COUNCIL OF INDIA
-
- ASCI'S CODE OF SELF REGULATION SAYS:
-
- ADS SHOULD BE TRUTHFUL AND FAIR TO CONSUMERS AND COMPETITORS
-
- ASCI'S CODE INCORPORATED IN THE CABLE TELEVISION NETWORKS REGULATION ACT



ASCI guidelines on food ads

- 1) Advertisements should not mislead consumers to believe
- that consumption of product advertised will result directly
- in personal changes in intelligence, physical ability or
- exceptional recognition. Such claims if made in
- advertisements should be supported with adequate
- scientific substantiation.
- All nutritional and health benefit claims in foods & beverage advertisements are required to be substantiated scientifically.



ASCI guidelines on food ads

- 2) Unless a food product has been nutritionally designed as a meal replacement, it should not be portrayed as such.
- 3) Messages in advertising to children will portray accurately the products, in a way that is in keeping with their ability to understand
-) Visual presentation of foods and beverages in advertisement should not mislead the consumers of the material characteristics of the products advertised



ASCI guidelines on food ads

- Caution and care therefore should be observed in
- advertising of Foods & Beverages especially ones containing relatively high Fat, Sugar and Salt
- Advertisements should not show over consumption of Foods & Beverages. It should reflect moderation in consumption and portion sizes appropriate to occasion or situation.



ASCI: Complaint redress

- You can complain to ASCI online, or through their mobile app (WhatsApp)
- The Consumer Complaints Cell will scrutinize the complaint and if it violates the Code, will ask for withdrawal of the complaint or modification to the complaint.
- According to ASCI, 92 per cent of its decisions are complied with by the industry. (100 per cent of TV ads and 88 per cent of print)



ASCI: Complaint redress

- ASCI has also started monitoring television and newspaper ads for violation of its code , in partnership with AdEX India, a division of TAM Media.
- They monitor 45,000 print and 1500 TV ads every month on an average, according to ASCI



Self regulation: is it adequate?

- ASCI'S EFFORTS AT SELF REGULATION ARE COMMENDABLE, BUT NOT ADEQUATE
- DELAY: CCC'S DECISION TAKES ABOUT 12 WORKING DAYS AND THEN THEY HAVE TO GIVE TIME TO THE ADVERTISER TO COMPLY. BY THEN THE AD WOULD HAVE ALREADY CONVEYED THE MESSAGE
- NO PROVISION FOR CORRECTIVE ADVERTISEMENTS
- NO PROVISION TO PUNISH THE OFFENDER (NO PENALTY)
- PROBLEM OF COMPLAINTS-EVEN IF IT IS ONLY 8 PER CENT



Needed: a comprehensive law/independent regulator to protect consumers

- The Consumer Protection Bill, 2015 , meant to replace the 1986 Act, provides for a Consumer Protection Authority-
- a strong regulator to enforce the rights of consumers, including the right to be protected from unfair trade practices, including false and misleading advertisements.



The Consumer Protection Bill, 2015

- The Authority will have a Commissioner and five deputy commissioners dealing with:
- Safety in goods and services
- Quality assurance and standards
- Prevention of consumer detriment and unfair terms in consumer contracts
- Prevention of unfair trade practices, including misleading advertisements
- Enforcement of consumer protection laws



Hope ahead.... CP Bill 2015

- The Central Authority can
- Monitor advertisements
- Issue directions for discontinuance of advertisements Or suggest modifications
- Can direct issuance of corrective advertisements
- Impose financial penalty
- Order payment of compensation to the consumer
- The law makes specific reference to food ads
- Parliamentary Standing Committee has suggested imprisonment for celebrity endorsers. Under consideration by the government. Bill to be reintroduced in Parliament in Budget session.



Work for Regulatory Authority/Commissioner: unfair trade practices

- 1. Formulate detailed regulations under the law on misleading advertisements, particularly with reference to food and health related advertisements
- 2. Incorporate provisions requiring pre-approval for food and health related advertisements making any claims on their efficacy/special benefits.
- 3. Constitute a separate cell consisting experts and activists to monitor and receive complaints about food and health-related advertisements



Work for Regulatory Authority:

- Incorporate measures to protect children from promotion of unhealthy food
- Incorporate provisions to hold celebrities accountable for not just misleading/false ads, but also for promoting unhealthy food
- Incorporate provisions for tackling false and misleading advertisements and promotion of unhealthy foods on social media by celebrities and also by manufacturers on their websites . Also holding of contests, sponsorship and such other activities to promote unhealthy foods and drinks.



Work for Regulatory Authority:

- 4. Impose steep penalty on wrong doers and punitive damages.
- 5. Stop celebrity endorsements of unhealthy/junk food, not just on television, but also on social media
- While tobacco kills six million a year, diet-related non communicable diseases kill over 11 million. There is need to strictly prohibit/control promotion of unhealthy/junk food
- Corrective advertisement should become the new mantra- issue directions for advertisements correcting the earlier erroneous impression for the same duration the earlier ads ran –it could be the most effective weapon to deal with false and misleading ads- which advertiser will want to spend money on an ad that brings adverse publicity?



Consumer courts should do better

- Consumer courts too need to take a more serious view of such advertisements
- award hefty penalty/compensation/punitive damages
- and direct issuance of corrective advertisements



Thank you

- *Pushpa Girimaji*
- *Author, columnist, specialist in consumer law, rights and Safety issues*
- *pgirimaji@gmail.com*
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