

Legal Liability for False and Misleading Claims in Food Sector

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Current law on Advertisement

- Consumer Protection Act (Unfair Trade Practices)
- Cable Television Networks (Regulation) Act, 1995 (Advertisement Code)
- Food Safety & Standards Act, 2006 (Labeling of packages and advertisements u/s. 23 & 24 of the Act)
- Other Laws like Drugs and Magic Remedies Act etc.

ASCI

- Justice should not only be done, but also should be seen to be done.
- Not following rules of natural justice: Response of advertiser is not shared with the complainant.
- One sided procedure: Review and personal hearing available only to advertiser and not the complainant
- By the time ASCI decides the complaint, normally the ad campaign runs its course. ASCI can claim compliance only when the ad campaign is stopped midway.
- ASCI does not isolate and separately report repeat violators, though ASCI can easily do this.
- Only Recommendatory jurisdiction

Lacuna of current law and enforcement

- Individual consumer not inclined / authorized to file complaint
- ASCI has only declaratory powers
- Government has no special machinery
- No deterrent
- No corrective advertisement is issued.
- Consumers hardly know about ASCI decisions

Current Law ineffective in preventing misleading advertisements

- * Present situation can encourage purposeful misleading advertisement as advertiser can go scot-free after Misleading Ad
- * Individual consumer do not pursue action against Misleading Ad, hence role of Govt. important
 - * Repeat violators not identified

Food related Advertisements

- UK now prohibits advertisement of food with high fat, salt and sugar in children media or other media where children make up over 25% of the audience.
- FSSAI has published Draft regulations for health supplements, nutraceuticals, etc. still to be finalized.
- Though alcohol advertisements are banned, surrogate ads abound. These ads are violative of the Advertise Code under Cable Television Networks (Regulations) Act [Reference Rule 7 Advertising Code, Clause (v)]
- No reported cases of prosecution for misleading advertisement, though provisions exist under Cable Television Networks Act which provides for imprisonment upto five years.

Dealing with Misleading advertisements in other developed countries

- U.K. law provides for imprisonment upto two years for misleading advertisement
 - Canada can launch criminal proceedings in case of certain misleading advertisements and deceptive marketing practices
- Canada – Bell Canada fined \$ 10 million by Federal Competition Bureau for misleading advertisement claims (2011)
- New Zealand – Calling Card Company fined \$ 1 lac for misleading advertisement (2011)
- Australia – Harvey Normal case – fine of \$.125 million by Federal Court for misleading catalogue (2011)
 - Australia – The Federal Court ordered Optus to pay penalty of \$5.26 million for misleading broadband advertising (2011)
- Australian Consumer and Competition Commission fined \$2.25 m to Apple for misleading consumers through advertisement (2012)

Misleading claims about Food

- * Chewing gum company Wrigley settles the suit in US Court against advertisement which misled consumers by claiming its Eclipse brand gum and mints were scientifically proven to kill germs that cause bad breath. (2010)
- * Federal Trade Commission, USA ordered Kellogg to pay \$ 2.5 m to affected consumers and to donate \$ 2.5m worth of products to charity for misleading consumers about the so called immunity-boosting properties of *Rice Krispies*. (2010)
 - * Kellogg agreed to pay \$ 4 m for settling suit for misleading advertisement in respect of Mini-Wheats, which claimed it improves children's attentiveness, memory and other cognitive functions. (2013)
 - * Dannon forced to pay \$ 45 m in damages in class action settlement before USA Court for false claim of nutritional benefits of the product *Activia* yogurt (2010)
 - * Herbal supplement Airborne claim it helped ward off harmful bacteria and germs etc. It had to settle US class action suit with \$ 30 m (2008)

Remedial measures / Suggestions

- Specified Authority to prosecute misleading ads
- All misleading ads to be taken to its logical end, including corrective advertisement
- All food ad violators to be prosecuted under Section 53 of the FSSA
- Law needs to be amended to check repeat violators.
- Financial penalty needs to be imposed on the line of penalty for restrictive trade practices under Competition Act
- Advertising agencies which make Ad copy should also be made liable for code violation