

Misleading Advertisements and Consumer

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Consumer Education Monograph Series 2

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**CENTRE FOR CONSUMER STUDIES
INDIAN INSTITUTE OF PUBLIC ADMINISTRATION**

New Delhi – 110002

Price: ₹. 50/-

ISBN : 81-86641-70-X

Revised and enlarged Edition– 2013

This Monograph is Published with the Financial Assistance from
Department of Consumer Affairs.
Ministry of Consumer Affairs, Food & Public Distribution,
Government of India

Printed at : New United Process, A 26, Phase II, Naraina Indl Area,
New Delhi-110028

PREFACE

Advertisements and consumer culture have become a part and parcel of our lives today. In the present globalised era, advertising plays an important role in developing a strong brand name of the corporation or products. In general, advertising is used to inform, persuade, and remind consumers about the products or services. Advertising is believed to enhance buyers' responses to products or services offered by a firm, thus enabling possibilities of increased profitability. Hence the purpose of advertising is to create awareness of the advertised product and provide information that will assist the consumer to make informed-purchase decision.

However, advertising has been accused of an array of sins ranging from an economic waste to purveying of harmful products, from sexism to deceit and manipulation, from triviality to intellectual and moral pollution. An ethical problem in the contemporary business environment is deceptive advertising, which can mislead consumers and injure competitors. The problem of misleading ads is getting worse day by day. Advertising today is giving rise to negative attributes like creating class consciousness, materialism, conspicuous consumption and other values which are not universally accepted. Though illegal in its most blatant forms, deceptive advertising can occur in subtle ways that are difficult to establish as outright deception. Thus consumer deception from misleading advertisements and strategies to counteract it are important issues in today's marketplace. For building effective defence against misleading ads not only tighter controls on the media are required; but also there is need to educate and develop more critical judgment among media consumers. People must make the effort to step back and judge the value advertisements, and master the skills required to separate spin from substance.

I am thankful to the Centre for Consumer Studies, IIPA particularly to Prof. Suresh Misra coordinator of the centre for giving me the opportunity to write this Monograph. I am confident that this monograph will help readers to understand the various dimensions of misleading advertisements.

New Delhi
February 10, 2013

Pushpa Girimaji

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CHAPTER 1

INTRODUCTION

The influence of advertisements on consumer choice is undeniable. And it's this fact that makes it imperative that advertisements be fair and truthful. Misleading and false advertisements are not just unethical; they distort competition and of course, consumer choice. False and misleading advertisements in fact 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.

Since advertisements are basically meant to promote a product or a service, one does see some exaggeration in the way they extol the virtues of the product. But when it goes beyond that and deliberately utters a falsehood or tries to misrepresent facts thereby misleading the consumer, then it becomes objectionable.

When does an Advertisement become “Misleading”?

- When an edible oil advertisement gives you the impression that you are free of heart problems so long as you are using that particular oil, then it is misrepresenting facts.
- When an advertisement of a water purifier that filters only bacteria (and not viruses) claims that it gives 100 percent safe water, then it is a false statement.
- When a cell phone service provider promises STD calls for 40 paise per minute, but omits to say that this rate is applicable only when calls are made to numbers serviced by the same provider, then it constitutes misrepresentation.
- When a manufacturer claims that the refrigerator marketed by him is the best or that it keeps the food inside germ-free, that claim should be backed by adequate data to substantiate the claim. Or else, it becomes a false statement.

- When an advertisement for a detergent says that it can remove grease in just one wash- it should be able to do just that and the manufacturer should be able to prove this. Or else, it is an incorrect statement or a false advertisement.
- When an advertisement promises to give you a “free gift” every time you buy the advertised product, the free gift should really be so. If the manufacturer is recovering either fully or even partly, the cost of the so-called free gift, then the advertisement becomes false and misleading.
- If a retailer claims that he is offering a special discount on his goods as part of a festival celebration, while he is actually using the festival as an excuse to get rid of old and outdated goods, then he is deceiving consumers.
- When a toothpaste advertisement says that it prevents cavities, one expects the manufacturer to have the data to prove this. If he fails to do that, then he is making an unsubstantiated claim or a false statement.
- If an advertisement for a face cream claims that it removes dark spots on the face and even prevents them from coming back, the manufacturer should be able to prove this. Or else, it is a deceptive advertisement.
- Even reducing crucial information about the product to minute letters at the bottom of the advertisement could be termed as an unfair trade practice, particularly if such information is not intelligible to the consumer.

Two Categories of False and Misleading Advertisements

Broadly, one can classify false and misleading advertisements into two groups: In the first, I would put all those advertisements that peddle health cures and drugs of questionable efficacy and health gadgets of unknown values. I would also include in this group, nutrition-related false claims, particularly those targeting children, senior citizens and those with certain health problems such as diabetes. This group of advertisements is the most dangerous, as they can have a severe repercussion on the health of the consumer.

I would include in the second category, all other kinds of false and misleading advertisements (non-health, nutrition related), that

violate the consumers' right to information and choice and thereby have the potential to cause the consumer, financial loss and even mental agony.

The best example of the first category of advertisements would be that of Neeraj Clinic, Rishikesh. Despite the Drugs and Magic Remedies (Objectionable Advertisements) Act, which specifically prohibits advertisements pertaining to several diseases including epilepsy, R.K. Gupta advertised with impunity, his clinic and claimed that he was offering a sure cure for epilepsy. Ironically, way back in 2000, the Indian Medical Association had declared him a quack after a committee had found that he was giving his patients toxic drugs in high doses. Yet, he continued to advertise.

Again in May 2003, on a complaint from a consumer, the Advertising Standards Council of India (ASCI), a self-regulatory body of the advertising industry, had held that the advertisement was in violation of the Drugs and Magic Remedies (Objectionable Advertisements) Act and the Rajasthan Patrika wherein the advertisement had appeared had informed ASCI that the advertisement department had been advised to withhold further advertisements of the clinic.¹ Yet, R.K. Gupta continued to advertise in other newspapers- in fact on the front pages of major English dailies and also on television channels, wherein he produced "testimonials" from people who, the advertisements claimed, had been cured of epilepsy. In the end, on a complaint from a non-resident Indian, who visited the clinic for the treatment of his son and got suspicious about the medicines that the enforcement agencies finally acted. Following a complaint filed by Mr. Anjon Chowdhury, through the Indian High Commission in Canada, the Drug Controller got the medicines prescribed by the clinic tested and found that it contained drugs which were either banned or controlled under Narcotic Drugs and Psychotropic Substances Act. His clinic was then raided and R.K. Gupta was subsequently arrested under the NDPS Act. He was also booked under the Drugs and Magic Remedies (Objectionable Advertisements) Act.

Similarly, in the year 2003, Consumer Education and Research society, Ahmedabad, had to bring to the notice of the regulatory

¹ 18th Report and Accounts for the year 2003-04, ASCI, p.41.

authority in Gujarat, the sale and promotion of certain health gadgets by Conybio Health Care, in violation of the Drugs and Magic Remedies (Objectionable Advertisements) Act. The company was promoting and distributing sun shade to cure migraine and sun stroke, socks for acidity, pillow covers for spondylitis, palm guards for Parkinson's disease, eye-shade for sinusitis, T-shirts for high, low blood pressure, short pants that cure gas, acidity, prostate, piles, urinary system problems, ladies briefs for menstrual problems, bed sheets for curing paralysis/ strokes and brassieres for breast cancer!!.

When the regulator asked the company to produce scientific evidence to support the effect of infrared rays which it claimed was present in the products, the company said it had never undertaken such studies by any recognized Indian institute. Subsequently, the regulator prohibited the sale and promotion of the products.²

In the second category, I would put advertisements pertaining to 'discount sales', advertisements on vehicles making misleading or false claims about their petrol consumption, false claims about the purity of gold / jewellery, shampoos that claim to 'stop hair fall', face creams that promise 'wrinkle removal', toothpastes that claim to prevent tooth decay and cavity and advertisements of educational institutions that make false claims about their recognition or affiliation or about the employment prospects.

A Wider Canvas for Misrepresentation through Advertisements

What is of utmost concern is that false and misleading advertisements now have a wider canvas: while earlier, one saw them only in the print media, besides other conventional media such as pamphlets and hoarding, today you can see them on television, influencing a larger number of people and impacting even the illiterate. Proliferation of advertisements through television marketing networks promoting health cures and 'beauty' gadgets of unproven value is another cause of great concern. More so because they reach even the remotest corner of the country. And undoubtedly, the impact of the visuals on the television screen is far greater than the newspapers. You can see on certain television channels that beam such

² CERS press release, Nov 21, 2003

advertisements, magical cures for arthritis, ‘herbal chai’ for instant weight reduction, potions for hair growth and quick remedies for diabetes. And many of those who see them are illiterate and tend to have an unflinching belief in them.

Similarly, mass mobile text messaging is being used to convey false and misleading messages, particularly about weight reduction potions and gadgets. Many of them guarantee satisfaction- your money back if not satisfied, they say, but do not respond to calls/ messages demanding a refund. Similar mass marketing (viral marketing) is accomplished through e-mails- of particular concern are get-rich-quick schemes and misleading health claims/magical cures that are sent through electronic mail.

Reach of the Media

As per the Indian Readership Survey³ the print media reaches over 35 crore population, while the television, 55 crore and cable and satellite TV, 47 crore. The radio listeners is 15 crore. As per the Internet World Stats , the internet users in India went up dramatically from 5 million in 2000 to 121 million by the end of 2011 (10.2 percent penetration of the total population) and India’s mobile phone subscriber base touched 929.37 million in May 2012 (TRAI).

Proliferation of the Worldwide Web

False and misleading advertisements, particularly pertaining to health cures/magical cures can be found in abundance on the world wide web too- after all, such advertising is a worldwide phenomenon.

The proliferation of false and deceptive advertisements on this relatively new medium of communication can be gauged from the fact that even way back in 2002, a network of consumer protection and health authorities from around the globe had found as many as 1400 websites making questionable, unsubstantiated health claims and promising “miracle” cures. Among such websites were those that promoted slimming and weight loss cures; all purpose pills that alleviated anything from arthritis, diabetes, hypertension, heart disease to kidney problems, tuberculosis, asthma and hepatitis; herbal products that promised to rid you of colds , stomach ulcers, hangovers and arthritis; magnets and magnetic devices that treated anything from

³ Media Consumption, IRS, Q1, 2012

headache and back injuries to insomnia, arthritis, circulation problems and sprains; multi-coloured shirts that claimed to relieve stress, make the wearer more intelligent and perceptive. On sale were also devices that claimed to obliterate all viruses in the body including AIDS, hepatitis and flu; an enriched urine treatment for incurable illnesses and products that enhanced sexual performance and reversed the process of ageing!

More recently, such international “internet sweep” has unearthed a wider range of false and misleading sites. In 2009, for example, the International Consumer Protection and Enforcement Network (ICPEN) (earlier called International Marketing Supervision Network) found, in addition to unsubstantiated health claims, proliferation of ‘business opportunities’ marketed as ‘recession proof’ and a way to a substantial income with limited efforts. Another area of concern was sports investment sites that promised easy returns and fraudulent online ticketing websites. ICPEN consists consumer protection and enforcement authorities from over 40 countries around the world that investigate thousands of websites and takes suitable action to protect consumers from such sites.

CHAPTER 2

SELF-REGULATION: DOES IT WORK?

Before I go on to the various laws meant to curb false and misleading advertisements, let me write about the attempts at self-regulation by the industry body, the Advertising Standards Council of India (ASCI), established in 1985. A voluntary body of all those involved in advertising, including advertisers, advertising agencies and the media, ASCI has drawn up a comprehensive advertising code for self-regulation. The four fundamental principles of the code are:

1. To ensure the truthfulness and honesty of representations and claims made by advertisements and to safeguard against misleading advertisements.
2. To ensure that advertisements are not offensive to generally accepted standards of public decency.
3. To safeguard against the indiscriminate use of advertising for the promotion of products which are regarded as hazardous to society or to individuals to a degree or of a type which is unacceptable to society at large.
4. To ensure that advertisements observe fairness in competition so that the consumer's need to be informed on choices in the market place and the canons of generally accepted competitive behaviour in business are both served.

If a consumer or even an industry, feels that an advertisement contravenes the code or is of the view that an advertisement could be false or misleading, a complaint can be sent to ASCI. In fact, ASCI's advertisements exhort consumers to complain, whenever they come across advertisements which they think is false or misleading or unethical. "If an ad is wrong, we will set it right"; "If an ad is misleading, we will set it right", "If an ad is dishonest, we will set it right" says ASCI in its advertisements issued at regular intervals.

On receipt of a complaint, ASCI seeks the comments of the advertiser and gives him two weeks to respond. And then places the response and the complaint before the Consumer Complaints Cell (CCC) of ASCI for their decision. If there is no response from the advertiser, CCC can take an *ex-parte* decision. The CCC has 12 non-advertising professionals (including consumer activists) and nine advertising practitioners from the member firms. If, in the opinion of CCC, an advertisement violates ASCI's code, then the advertiser is asked to either withdraw the advertisement or modify it. While ASCI members are bound to comply with the decision of CCC, in respect of others, ASCI tries to persuade them and if necessary uses peer group influence and pressure to achieve its objective.

Here are a few samples of ASCI's work in the area of misleading advertisements:

In June 2003, ASCI received a complaint about an advertisement spot telecast on Cine Cable Channel, Sahara TV, in October 2002, wherein the advertisement for Ajanta Dento White Toothpaste said "Indian Dental Association has endorsed this product with its seal of acceptance". IDA confirmed that such endorsement had not been provided by them. In the absence of any comments from the advertiser, ASCI took an *ex-parte* decision in July 2003, saying that the claim was false.¹

In July 2003, ASCI received a complaint about an advertisement published in the Hindustan Times, Delhi in June 2003 by Ford India, with the caption: "Prices starting ₹4.49 lakhs, lowest interest rate-7.9 percent" the ad showed the logo and picture of the new "Ford Ikon NXT" but carried the specifications and offer on the 1.3 NXT and 1.6 NXT models and the review of the "Ikon NXT" done by Autocar, a leading auto magazine. The complainant said that on speaking with the authorized Ford dealers mentioned in the ad, he was informed that the bargain price was not for the NXT, but for the old "Endura" model of Ford, which was phased out earlier that year. Nowhere in the ad did this fact come up nor did the dealers mention it, till the complainant pointedly asked them about it. In August 2003, CCC held that the "Car model different from the one quoted at

¹ 18th Report and Accounts for the year 2003-2004, the Advertising Standards Council of India, p.43, (Complaints that were upheld by the CCC during April 2003 to March 2004)

₹ 4.49 lakhs, likely to directly mislead the consumer about the claim: prices starting ₹ 4.49 lakhs in the ad”. The advertisement was withdrawn.²

Another complaint registered in October 2003, referred to an advertisement that appeared in Sunday Times of India in September that year and issued by Hindustan Lever (HL), saying Pepsodent is “one and a half times better at fighting germs than the popular toothpaste”. The complainant alleged that HL’s own clinical tests confirmed that Pepsodent Germicheck fights germs up to 150 that is only 0.5 times better and not one and a half times better, as claimed in the ad. CCC held in December 2003 that the claim “one a half times better at fighting germs than the popular toothpaste” was misleading. The advertisement was withdrawn.

Yet another complaint pertained to an advertisement of Glucovita Badam Energy shown on sun TV in April 2004. The complaint said that though the ad as well as the pack showed liberal doses of almonds, the stated contents on the pack did not mention almonds or real almond extracts in the product. In June, CCC held that the visual depiction of ‘whole almonds’ in the TVC and on the pack, and the claims of ‘Badam Energy’ and ‘Exciting badam’ in the TVC and on the pack, to be false and misleading. The advertiser assured that the ad campaign was being modified and till such time, the ad in its present form would be discontinued.³

Here are a few more recent examples from the records of ASCI.⁴

- Piramal Healthcare advertisement on ‘Superactiv Complete’ claims: ‘get complete energy in eight days or money back’. But CCC finds that there is no independent scientific study to substantiate it.
- Airtel Digital TV promises in its advertisement: ‘free regional pack for life’. But CCC finds that since the license is valid up to May 2018, its claim is misleading.

² *Ibid* at p. 19 (Complaints that were upheld by the CCC during April 2003 to march 2004)

³ *Ibid* at p. 4 (list of complaints that were upheld by the CCC from April to June 2004, issued by the Advertising Standards council of India)

⁴ Source: Report of Consumer Complaints Council; (Complaints upheld by the CCC, April 2010-March 2011, Ads modified/withdrawn/concluded)

- Nuzen Herbal Pvt. Limited promises hair growth, black hair, reduction in dandruff and no side effects and no age restriction for its oil, Nuzen Gold Hair Oil. But cannot substantiate the claims when questioned by CCC.
- United Spirits Ltd puts up billboards promoting McDowell's platinum whisky and Romanov Vodka in the heart of Guwahati, despite a ban on alcohol advertising.
- Hindustan Unilever claims in its TV advertisement of Clinic plus Strong and Long Shampoo that it makes the hair strong and the hair will grow 3 cms longer in three months. CCC concludes that while it does made the hair stronger, it does not increase or stimulate hair growth from the root.

During 2010-11, ASCI's consumer complaints cell met 12 times and considered 777 complaints against 190 advertisements, of which 104 were upheld. Out of these, 84 ads were withdrawn or modified and written assurances of compliance were not received in respect of the remaining 20 advertisements. Out of the 190 advertisements complained against, 80 were intra industry complaints. Seven were *suo motu*- taken up by ASCI on its own, 13 were from consumer organizations and 90 were from the general public.⁵ The next year 2011-2012, ASCI received 2,986 complaints against 176 advertisements out of which 103 were upheld and 89 were withdrawn or modified as per the directions of the CCC-taking the rate of compliance to 86 percent. The CCC met 16 times during the year. ASCI have also now introduced a National Advertising Monitoring Service which monitors 1500 TV and 45,000 print advertisements every month.

ASCI's efforts are really commendable, but the problem is, it takes anywhere between four to six weeks for the Consumer Complaints Council to take a view on an advertisement and for ASCI to convey its decision. And then the advertisers are given a fortnight to either modify the ad or withdraw it as suggested by the CCC. But by then the advertisement would have already conveyed the message. In such cases, the only way the message can be obliterated or corrected in the mind of the consumer is through corrective

⁵ Report of the Board of Governors, 25th Annual Report of the ASCI together with the statement of accounts for April 2010-March 2011.

advertisements, but as a self-regulatory body, ASCI does not undertake to issue such directions.

Then there are the obvious problems associated with self-regulation- the black sheep among the members who may violate the code or not comply with the CCC's decision or those in the industry who do not believe in self-regulation and therefore do not want to become members of ASCI at all. During 2010-2011, for example, ASCI enrolled 20 new members, but 14 members did not renew their membership. The total number of members stood at 313, that year.

CHAPTER 3

MISLEADING ADVERTISEMENTS: LAWS AND REGULATIONS

There are a number of Laws and Regulations that prohibit false and misleading advertisements. These have been enacted to protect the consumers from various forms of exploitation. The major problem relates with the effective implementation of these Acts, as a result little or no action is taken. The following are some of the important ones:

1. Drugs and Magic Remedies (Objectionable Advertisements) Act

The Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954, basically prohibits four kinds of advertisements pertaining to drugs and magical cures. Section 3 of the Act says that no person shall take any part in the publication of any advertisement promoting a drug or leading to the use of a drug for:

- (a) The procurement of miscarriage in women or prevention of conception in women.
- (b) The maintenance or improvement of the capacity of human being for sexual pleasure.
- (c) Correction of menstrual disorders in women.

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 and the schedule lists a number of diseases, disorders or conditions such as diabetes, cataract, cancer, fevers (in general), obesity, rheumatism, impotence, high or low blood pressure, female diseases, epilepsy, stature of persons, venereal diseases, glaucoma, sterility in women, dropsy, etc. 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 about 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. Violation of the law attracts imprisonment for six months or fine or both, for first conviction and for subsequent conviction, imprisonment for a year or fine or both.

Earlier, AIDS/HIV was not in the Schedule of the Act. But subsequently, the Union Ministry of Health included HIV/AIDS too in the schedule to the Rules. What prompted this move was the Kerala High Court's order in 2002, against the manufacture, sale and promotion of the Ayurveda drug Immuno QR as a sure cure for AIDS. In response to a public interest litigation, the Bombay High Court had also restrained Mr Majid from making "tall and unfounded claims" about the drug.¹

The problem with the law is that it is quite outdated and is inadequate to deal effectively with the problem as it exists today. Besides, the law would be far more effective if it prescribed as penalty, corrective advertisements and heavy financial penalties, instead of imprisonment or fine or both. The Act prescribes imprisonment up to six months or fine or both for the first offence and up to one year or fine or both for the subsequent offence. But even as it exists today, its enforcement by the State drug control authorities- barring a few exceptions- is poor because one sees any number of such advertisements, promoting indigenous cures or medicines for a variety of ailments listed in the Schedule of the Act.

One gets an idea of the number of such advertisements that appear in the media in violation of the law, from a newspaper report that appeared on August 23, 2012 (Mid-day.com) which, quoting a source from the Food and Drug Administration, Maharashtra, said that in July the FDA had filed 67 complaints at police stations across the state under various sections of the Drugs and Magic Remedies (Objectionable Advertisements) Act, 1955. FDA, Maharashtra, is one of the few enforcement agencies in the country which takes this law seriously.

¹Press Information Bureau press release, titled "Kerala High Court bans magic drug; court order to be severe deterrent for quacks", dated February 22, 2002

2. The Cable Television Network Regulation Act and Rules

The Act mandates that all advertisements transmitted through the cable television network adhere to the Advertising Code formulated under it. Section 6, Chapter II of the Cable Television Networks (Regulation) Act, 1995 says that “No person shall transmit or re-transmit through a cable service, any advertisement, unless such advertisement is in conformity with the prescribed advertising code. The Advertising Code, drawn up under the Cable Television Network Rules, 1994, stipulates that all advertisements should conform to the relevant laws of the country, the product or service advertised 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 property or quality which is difficult of being proved.

An amendment to the Cable Television Network Rules, 1994, notified on August 2, 2006, incorporated the ASCI code. The amendment states that “(9) 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”. Under the Act, any ‘Authorized Officer’, either the district magistrate or the sub divisional magistrate or the commissioner of police or any other officer notified by the central or the state government can take action against any violation of the Advertising Code.

For contravention, the Act provides seizure of the equipment being used by the cable operator for operating the 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 ₹ 2000 or both. For every subsequent offence, it can go up to five years or ₹ 5000 or both.

The Act says that “No court shall take cognizance of any offence punishable under this Act except upon a complaint in writing made by any authorized officer.” The Authorized officer can also prohibit transmission/re-transmission of any programme or channel if it is not in conformity with the Advertising Code. The Act also gives the central government the authority to regulate or prohibit transmission of such advertisements or programmes.

The problem with this law is the enforcing agency. Such an advertising code should be enforced by an independent regulator, like the broadcasting regulator. In Australia, for example, the Broadcasting Regulator looks at violations of advertising codes on television. In any case, this law is hardly enforced because one sees any number of highly misleading advertisements on the television, blatantly promoting ‘miracle’ products- concoctions of questionable efficacy that bring down your weight without any effort and without any side effects, ‘ayurvedic tablets’ that enhance the sexual prowess of men, potions that cure you of a variety of diseases - Ironically all of them violate the Cable Television Network Regulation Act (or the Advertising Code) and yet, they continue to dominate the screen on certain channels.

Even though the Advertising Code was formulated under the Rules in 1994, it was only in September 2005 that the union ministry of Information and Broadcasting issued an order for setting up of district and state level monitoring committees to enforce the Act.

And then almost three years later (in February 2008), saying that the enforcement of the Act in many parts of the country was not satisfactory either due to lack of clear understanding of the role of the District Monitoring Committees or a suitable mechanism to enforce the provisions of the Act, it issued guidelines to define the role of the state and district monitoring committees to ‘ensure effective functioning of the committees’.

Besides specifying the constitution of the state level committees, the guidelines stipulated that a complaint cell headed by a nodal officer should be established at the district level and this should be given wide publicity so that the public may lodge complaints regarding the content. As for complaints pertaining to violation of programme and advertising codes against national channels, such complaints should be forwarded to the I&B ministry through the chief secretary of the state, the ministry said.

3. Food Safety and Standards Act, 2006

This relatively new law has a provision to deal with false and misleading advertisements pertaining to food. Here, the word advertisement includes advertisement and publicity through all media, including the electronic media. Even promotional material on labels, wrappers and invoice are brought under the definition of

advertisement.

Section 24 of the Act (Restrictions of advertisement and prohibition as to unfair trade practices) says that:

- (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.
- (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;
 - 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 defense 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 defense. Section 53 provides for penalty for misleading advertisements, extending to ₹10 lakhs.

Problem with the law: However, there is no provision here for corrective advertisement, which is very unfortunate. As I have repeatedly said earlier too, it is only corrective advertisements that can wipe out the message conveyed by false and misleading advertisements and for any law to effectively protect the interests of consumers, there should be a provision for directing issuance of corrective advertisements and that provision should be effectively enforced.

4. Drugs and Cosmetics Act, 1940

Rule 106 of the Drugs and Cosmetics Rules, 1945 framed under the Drugs and Cosmetics Act refers to “Diseases which a drug may not purport to prevent or cure”-

- a. No drug may purport or claim to prevent or cure or 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

- b. 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.

Schedule J contains over 50 diseases, disorders and conditions such as AIDS, genetic disorders, baldness, cataract, diabetes, improvement in height of children and adults, improvement in vision, myocardial infarction, obesity, spondilitis, stones in gall bladder, varicose vein, etc.

5. The Bureau of Indian Standards Act, 1986

The Bureau of Indian Standards (Certification) Regulations, 1988 Rule 7 (1) (l), (g) and (h) prohibits misleading advertisements pertaining to BIS certification.

It says:

- (g) The licensee shall state in documentation brochures or through advertising media that the organization or location to which the license applies have been assessed and approved by the Bureau. In such advertisement the Indian Standard(s) on Management Systems(s) for which a license has been granted is/are to be stated and any other level(s) of approval than granted is not to be implied.
- (h) A licensee who has been granted a license for management system certification shall not claim or imply that the product manufactured by him has been certified or approved by the Bureau unless he is holding a valid license for that product under the recognized product certification scheme of the Bureau.

Two laws that strictly prohibit certain advertisements and are enforced better are:

6. The Infant Milk Substitute, Feeding Bottles and Infant Foods (Regulation of Production, Supply and Distribution) Act, 1992 and the Infant Milk Substitute, Feeding Bottles and Infant Foods (Regulation of Production, Supply and Distribution) Amendment Act, 2002

This law prohibits advertisements and promotion of infant milk substitutes, feeding bottles, and infant foods because their promotion creates a misconception and thereby misleads consumers into believing that infant foods or milk substitutes sold in the market are as good or better than mother's milk.

Section 3 of the Act says that No person shall (a) advertise or take part in the publication of any advertisement, for the distribution, sale or supply of infant milk substitutes or feeding bottles or infant foods (b) give an impression or create a belief in any manner that feeding of infant milk substitutes and infant foods is equivalent to or better than mother's milk.

7. Cigarettes and other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003

The law clearly prohibits advertisements/promotion of cigarettes and other tobacco products. It says:

Section 5 - Prohibition of advertisement of cigarettes and other tobacco products- (1) No person engaged in, or purported to be engaged in the production, supply or distribution of cigarettes or any other tobacco products shall advertise and no person having control over a medium shall cause to be advertised cigarettes or any other tobacco products through that medium and no person shall take part in any advertisement which directly or indirectly suggests or promotes the use or consumption of cigarettes or any other tobacco products.

(2) No person, for any direct or indirect pecuniary benefit, shall- (a) display, cause to display, or permit or authorise to display any advertisement of cigarettes or any other tobacco product; or (b) sell or cause to sell, or permit or authorise to sell a film or video tape containing advertisement of cigarettes or any other tobacco product; or (c) distribute, cause to distribute, or permit or authorise to distribute to the public any leaflet, hand-bill or document which is or which contains an advertisement of cigarettes or any other tobacco product; or (d) erect, exhibit, fix or retain upon or over any land, building, wall, hoarding, frame, post or structure or upon or in any vehicle or shall display in any manner whatsoever in any place any advertisement of cigarettes or any other tobacco product.

(3) No person, shall, under a contract or otherwise promote or agree to promote the use or consumption of- (a) cigarettes or any other tobacco product; or (b) any trade mark or brand name of cigarettes or any other tobacco product in exchange for a sponsorship, gift, prize or scholarship given or agreed to be given by another person.

CHAPTER 4

MISLEADING ADVERTISEMENTS AND REGULATORS

In addition to all the laws mentioned in the previous chapter, the regulatory agencies established under different laws have also formulated rules, regulations and advertisement codes to ensure that advertisers do not mislead consumers through their publicity material, including advertisements.

1. Insurance Regulatory Development Authority

(a) The IRDA (Insurance Advertisements and Disclosure) Regulations, 2000

The Insurance Regulatory and Development Authority's (IRDA) regulation on advertisements lays down strict guidelines not only on the content of the advertisements issued by insurers and their intermediaries, but also on their compliance. Besides stipulating that all advertisements follow the code formulated by ASCI, the regulation mandates that the advertisements related to insurance policy should not in any way be unfair or misleading. And most important, it also gives the regulator the power to direct issuance of corrective advertisement in the same manner in which the original advertisement was given.

The IRDA (Insurance Advertisements and Disclosure) Regulations, 2000 defines "unfair or misleading advertisement" as any advertisement (a) that fails to clearly identify the product as insurance; (b) makes claims beyond the ability of the policy to deliver or beyond the reasonable expectation of performance; (c) describes benefits that do not match the policy provisions; (d) uses words or phrases in a way which hides or minimizes the costs of the hazard insured against or the risks inherent in the policy; omits to disclose or discloses insufficiently, important exclusions, limitations and conditions of the contract; gives information in a misleading way; illustrates

future benefits on assumptions which are not realistic nor realisable in the light of the insurer's current performance; where the benefits are not guaranteed, does not explicitly say so as prominently as the benefits are stated or says so in a manner or form that it could remain unnoticed; implies a group or other relationship like sponsorship, affiliation or approval, that does not exist; makes unfair or incomplete comparisons with products which are not comparable or disparages competitors.

The regulations also mandate that every insurer or intermediary or insurance agent shall have a compliance officer, who shall be responsible to oversee the advertising programme and his name and official position shall be communicated to the Authority. It also stipulates that the insurer maintain an advertisement register, which can be inspected by the Authority and also file with the authority, a copy of every advertisement as soon as it is issued. If an advertisement is not in accordance with these regulations, then the Authority can direct issue of corrective advertisement ("corrected or modified advertisement shall receive the same type of publicity as the one sought to be corrected or modified"); it can direct discontinuance of the advertisement or any other action deemed fit by the Authority, keeping in view the circumstances of the case, in order to ensure that the interests of the public are protected.

(b) IRDA Guidelines on Distance Marketing of Insurance Products

In order to prevent misspelling of insurance policies through distance marketing and to protect consumer interest, the Insurance Regulatory and Development Authority (IRDA) brought into effect from October 1, 2011, its Guidelines on Distance Marketing of Insurance Products.

The guidelines, which apply to every activity of solicitation and sale of insurance products through the internet, e-mail, snail mail, newspaper inserts, SMS and the telephone, mandate that every insurer prepare a standardized script for the purpose and file this with the regulator. The script has to incorporate all key features of the product, including the benefits, features and disclosures and all solicitations and sale activities should strictly be in line with the script.

Every conversation over telephone with the customer has to be recorded and in case of a dispute, insurers cannot wriggle out of

false promises made to customers over phone. The guidelines also provide for a voice copy to be provided to the consumer, if he/she so desires, at any time during the term of the policy or until a satisfactory settlement of claim, whichever is later.

2. Telecom Regulatory Authority of India

(a) The Telecom Commercial Communications Customer Preference Regulations, 2010

In order to curb unsolicited commercial communications and also provide for an effective mechanism to do so, the regulator issued the Regulations in December 2010. Subsequently, all the provisions of the Regulations came into force in September 2011. The Regulations provide for a procedure for telecom consumers to exercise their preference on commercial communication. Or to put it differently, to say that they do not want these unwanted calls by registering their numbers on the ‘Do not Call Registry’. More important, it provides for stringent action against those telemarketers who fail to respect the wishes of the consumers that they do not want to be disturbed.

(b) TRAI Direction on Preventing Misleading Tariff Advertisement, 2012

Through this Direction, TRAI mandated that advertisements published by telecom access service providers should be transparent, non-misleading and unambiguous; disclose all material information in unambiguous manner; contain the website address and customer care number of the telecom access service provider; and the ads issued in Indian languages contain all mandatory disclosures in the same language. It also mandated that service providers report compliance to the Authority on half-yearly basis.

A tariff ad is considered misleading if in any way it’s likely to induce the consumer to a tariff plan which he would not have subscribed; contains an untrue statement; omits a material fact having bearing on the subscriber’s decision or fails to disclose attached limitations and restrictions, TRAI said.

Earlier on April 8, 1999, the Authority had, in exercise of the powers conferred upon it under sub-section 2 of Section 11 of the Telecom Regulatory Authority of India Act, 1997 read with Clauses 7 & 9 of the Telecommunications Tariff Order, 1999, issued the

Telecommunications Tariff (Publication and Reporting) Requirement. Under this, it had directed service providers to ensure the public of tariffs contained all relevant information that a subscriber may need to have. These included: (a) Registration and installation charges, security deposit, rentals, tariff for local, domestic and international long distance calls, special services, rebates and discounts. (b) Timings of peak and off-peak hours and tariffs applicable thereto. (c) Billing cycles, mode of payment, and consequences of delayed payment and non – payment. (d) The terms and conditions under which a service may be obtained, utilised and terminated. (e) Addresses and telephone numbers of the offices of the service provider and names and addresses of authorised representatives of the service provider for further information and clarification. (f) The choice of tariff packages available to a subscriber along with the details of the procedure prescribed for exercising the choice. (g) The alternative packages, if any, available to the subscriber and the manner in which they differ from the standard packages, including comparison of its financial implications to enable the subscriber to make an informed choice.

Consequently, the TRAI had hauled up operators for failing to issue tariff information in the advertisements in the manner prescribed by the Authority. The authority had also issued directions to the operators to discontinue or modify advertisements found to be misleading or false and not in the interest of the consumer. In its Press Release No. 4 of 2005, TRAI said it had issued directives to Tata Teleservices and Reliance Infocomm Ltd. to stop referring to their fixed wireless service in advertisements as “walky” and “unlimited cordless” respectively as it conveyed the impression to potential customers that the service offered was similar to mobile service. A similar directive was also issued to Mahanagar Telephone Nigam Ltd. for its reference to its fixed line service as “landline bhi-mobile bhi-jahan aap wahan”. This was in exercise of its power under Section 13 read with Section 11 (a) (b) of the TRAI Act.

3. Securities and Exchange Board of India

Chapter IX of the (Disclosure and Investor Protection) Guidelines, 2000 of the Securities and Exchange Board of India (SEBI) provides specific guidelines on advertisements. Some of them

are:

- 9.1.0 An issue advertisement shall be truthful, fair and clear and shall not contain any statement which is untrue or misleading.
- 9.1.1 Any advertisement reproducing or purporting to reproduce any information contained in an offer document shall reproduce such information in full and disclose all relevant facts and not be restricted to select extracts relating to that item.
- 9.1.2 An issue advertisement shall be considered to be misleading, if it contains - a) Statements made about the performance or activities of the company in the absence of necessary explanatory or qualifying statements, which may give an exaggerated picture of the performance or activities, than what it really is, b) An inaccurate portrayal of past performance or its portrayal in a manner which implies that past gains or income will be repeated in the future.
- 9.1.3 a) An advertisement shall be set forth in a clear, concise and understandable language.
b) Extensive use of technical, legal terminology or complex language and the inclusion of excessive details which may distract the investor shall be avoided.
- 9.1.4 An issue advertisement shall not contain statements which promise or guarantee rapid increase in profits.
- 9.1.5 An issue advertisement shall not contain any information that is not contained in the offer document.
- 9.1.6 No models, celebrities, fictional characters, landmarks or caricatures or the likes shall be displayed on or form part of the offer documents or issue advertisements.
- 9.1.8 Issue advertisements shall not appear in the form of crawlers (the advertisements which run simultaneously with the programme in a narrow strip at the bottom of the television screen) on television.

In addition to these, SEBI has also drawn up an exclusive advertising code for mutual funds (Schedule VI) under the SEBI (Mutual Funds) Regulations 1996. And as a supplement to the code, it has also published detailed guidelines for advertisements on mutual funds.

4. Reserve Bank of India

As a regulator and supervisor of the financial system, the Reserve Bank of India too exercises its power to curb false and misleading advertisements by various financial institutions. Chapter III B of the RBI Act deals with “Provisions relating to non-banking institutions receiving deposits and financial institutions”. Under this chapter 45J gives the Central Bank the power to regulate and prohibit issue of prospectus or advertisement soliciting deposits of money.

Section 45J- Bank to regulate or prohibit issue of prospectus or advertisement soliciting deposits of money The bank may, if it considers necessary in the public interest to do so, by general or special order (a) regulate or prohibit the issue by any non banking institution of any prospectus or advertisement soliciting deposits of money from the public; and (b) specify the conditions subject to which any such prospectus or advertisement, if not prohibited, may be issued.

In exercise of the powers vested in the Bank under Sections 45J, 45K, 45L and 45MA of the Reserve Bank of India Act, 1934, it has notified detailed directions on advertisements issued by non-banking financial companies, miscellaneous non-banking companies and residuary non-banking companies. As per these guidelines, besides complying with the Non-banking Financial Companies and Miscellaneous Non-banking Companies (Advertisement) Rules, 1977, they also have to give certain information specified by the RBI, when they issue advertisements calling for deposits. For example, they have to specify the mode of payment, actual rate of return by way of interest, premium, bonus or other advantage to the depositor, the terms and conditions subject to which a deposit will be returned, etc. And the advertisements have to state that the deposits being solicited are not insured.

5. Medical Council of India

Chapter 6 of the Code of Ethics Regulations, 2002 formulated under the Indian Medical Council Act also deals with advertisements. Some extracts: Chapter 6: unethical acts: “6.1 advertising. 6.1.1 Soliciting of patients directly or indirectly, by a physician, by a group of physicians or by institutions or organisations is unethical. A physician shall not make use of him / her (or his / her name) as

subject of any form or manner of advertising or publicity through any mode either alone or in conjunction with others which is of such a character as to invite attention to him or to his professional position, skill, qualification, achievements, attainments, specialties, appointments, associations, affiliations or honours and/or of such character as would ordinarily result in his self aggrandizement. A physician shall not give to any person, whether for compensation or otherwise, any approval, recommendation, endorsement, certificate, report or statement with respect of any drug, medicine, nostrum remedy, surgical, or therapeutic article, apparatus or appliance or any commercial product or article with respect of any property, quality or use thereof or any test, demonstration or trial thereof, for use in connection with his name, signature, or photograph in any form or manner of advertising through any mode nor shall he boast of cases, operations, cures or remedies or permit the publication of report thereof through any mode.

CHAPTER 5

CONSUMER PROTECTION ACT TO CONSUMERS' RESCUE

While all these laws, meant to curb false and misleading advertisements are enforced by different enforcement agencies/regulators, the Consumer Protection Act is the only law that gives the consumer, the right to seek redress against such advertisements, including compensation for any loss or injury caused as a result of such advertisements. The law provides for redress against unfair trade practices and a false or misleading advertisement becomes an unfair trade practice under the provisions of the law.

Section 2 (1) (r) of the Consumer Protection Act gives a comprehensive definition of unfair trade practice (see annexure I for the definition at p.52) and Section 14 deals with the directions that the court can give to deal with such practices and this includes directions to the advertiser to discontinue such advertisements and not to repeat it. They can also award compensation for any loss or suffering caused on account of such unfair trade practice. They can also award punitive damages and costs of litigation. But most important, they can direct the advertiser to issue corrective advertisement.

Section 14 h (c) of the Act, describing the powers of the court, says that the court can order “corrective advertisement to neutralize the effect of misleading advertisement at the cost of the opposite party responsible for issuing such misleading advertisement”. In so far as misleading advertisements are concerned, this is the most important provision and can really prove to be a deterrent. Unfortunately, this provision is not being used to effectively curb misleading advertisements.

NCDRC and Misleading Advertisements

1. NCDRC cracks down on advertisements that mislead consumers about fuel consumption of vehicle

(a) Hiding crucial information in small print is unfair trade practice: NCDRC

In its order in the case of M.R. Ramesh VS M/S Prakash Moped House and Others¹, the apex consumer court (National Consumer Disputes Redressal Commission) warned against advertisements that use fine print to hide crucial information pertaining to products and services, thereby misleading the consumer. And by awarding substantial compensation to the consumer, who was misled by such an advertisement, the National Commission made it clear that it would not take such violations of consumers' right to information lightly. Its advice to manufacturers and service providers: "advertisements should not mislead and should give a clear picture of the quality of the goods sold".

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 km on a litre of petrol. However, the bike gave 22 km 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. 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.

¹ RP No 831 of 2001

The Commission said: “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 km 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 40 kms 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 ₹ 25,000.

(b) More cases of misleading mileage/fuel claim

Subsequently, in the case of Bajaj Auto Ltd vs Pankaj Kumar² too, the National Commission reiterated the need for truth in advertisements.

According to the complainant in this case, the advertisement had claimed that the vehicle –Kawasaki Bajaj Boxer CT Motorcycle – gave mileage of 87 KMPL, but when he bought it in 2001 on the basis of the claim, he found to his disappointment that it gave only 65 KMPL. Holding the manufacturer guilty of unfair trade practice for having misled the consumer about the mileage through its advertisement, the District Forum directed that the advertisement be stopped forthwith and gave the consumer, a compensation of ₹ 10,000 and costs of ₹ 1000. The Delhi State Commission dismissed the appeal of the manufacturer as frivolous, vexatious and misconceived and awarded costs of ₹ 5000 to the consumer.

² IV 2006 CPJ 267 NC

The manufacturer in this case argued that the mileage claim is always based on 'Ideal conditions'. The foremost condition is that of a 'Single Rider'. There were, however, other conditions as well such as ideal speeds, recommended tyre pressure, lubricants, constant running, the number of starts and stops to the vehicle, the road condition, the driving habits of the driver, etc. and 30 percent variation, was possible.

Dismissing these contentions, the National Commission observed: "We have perused the advertisements which are produced before us including the advertisement which is in Hindi translated in English. The advertisement proclaims that "if its your dream to Secure 87 km/pl on an average then buy Boxer CT Motorcycle. There are other advertisements where it is written '87 km/pl, 0 percent interest, last two days, scheme closes, hurry up, etc.' The District Forum discussed this case in great detail. It is stated that the vehicle in question gave mileage of 75 kmpl when it was driven by staff of the dealer while it gave an average of 65 kmpl when the same was driven by the respondent. Even assuming that the vehicle gave 75 km/pl, 87 KMPL is still an exaggerated claim made by the petitioners through various advertisements alluring and inviting the gullible consumer to buy the vehicle emanating to an unfair trade practice. Only in one of the advertisements it is mentioned that the vehicle has to be driven in ideal condition, but this is in small print. It is nowhere clarified as to what is 'ideal condition'. This Commission's Order dated 14.12.2001 in O.P. No. 66 of 1992 - Tata Chemicals Ltd. v. Skypak Couriers Pvt. Ltd.³, has discussed in great detail the validity or otherwise of small and fine prints." The Commission concluded that it saw no factual or legal infirmity in the order passed by the lower forums.

(c) Again in the case of Kinetic Engineering and Another vs Rahul Ray⁴ the apex consumer court came down heavily on false claims made through advertisements. Here, on complaints of false representation about the mileage and also some manufacturing defects, the District Forum directed that the cost of the vehicle be refunded along with interest. When this was upheld by the State

³ II (2002) CPJ 24 (NC)

⁴ IV (2006) CPJ 100(NC)

Commission, the manufacturer filed a revision petition before the National Commission challenging the order for refund on the ground that the complainants/consumers were using the vehicle for over four years. Rejecting this, the National Commission pointed out that given the fact that the motor cycle gave per litre mileage less than one half of what was represented, the refund order was just and proper. “Particularly in view of unfair trade practice adopted by the petitioners in misleading that motor cycles would run 82 kms per litre, the order for refund of price is just and appropriate”, the Commission observed.

2 Making false claims about affiliation/recognition Constitutes unfair trade practice

Misleading advertisements issued by educational institutions can cause havoc in so far as the academic careers of students are concerned. The Order of the Supreme Court in *Buddhist Mission Dental College and Hospital Vs Bhupesh Khurana and Ors** is a pointer.

The order has its origin in the advertisement issued by the Buddhist Mission Dental College and Hospital, in 1993, inviting applications for admission to the Degree Course of Bachelor of Dental Surgery. This is what the advertisement said: “The Buddhist Mission Dental college and Hospital (under Magadh University, Bodh Gaya, and Dental Council of India, New Delhi, Siddharth Nagar, New Bailey Road, Patna-801305). A premier Dental College of Bihar established and managed by Vishwa Buddha Parishad under Article 30(1) of the Constitution of India, fulfilling all the criterion and conditions of Dental Council of India”.

Clearly, the impression created by the advertisement was that it was affiliated to Magadh University and was recognized by the Dental Council of India. Both were however false. Since the college was not recognized, no examination was held at the end of the academic year, forcing eleven students to file a class action suit before the consumer court. The National Consumer Disputes Redressal Commission, in its order delivered in 2000, directed the college to refund the fees paid by the students at the time of admission along with 12 percent interest and also pay ₹ 20,000 as compensation to

* Civil appeal No 1135 of 2001.

each of the students to defray their academic expenses and loss of two valuable academic years.

Both filed appeals before the Supreme Court. While the institute opposed the Order of the National Commission holding it guilty of unfair trade practice, the students wanted the amount of compensation to be increased to ₹ 1.25 lakhs and also refund of ₹1 lakh paid as capitation fee. The Supreme Court, after hearing both the parties, concluded that the National Commission had rightly held that this was a case of total misrepresentation on behalf of the institute and was, therefore, an unfair trade practice. Since the course offered by the college was neither affiliated nor recognized for imparting that education, it was also a case of deficiency in service.

Observing that the Institute had played with the career of the students and virtually ruined it, resulting in the loss of two academic years, the Supreme Court directed the institute to pay an additional compensation of ₹ 1 lakh to each of the students (complainants) and also pay cost of litigation quantified at ₹ 1 lakh to each of them. As far as refunding the capitation fee was concerned, the Supreme Court held that in the absence of any receipt or proof, (the students had alleged that the amount had been received in cash and the institute had refused to give them any receipt despite repeated requests) it would be difficult to order its refund.

In this case *Buddhist Mission Dental College and Hospital vs Bhupesh Khurana and Ors.*⁵ only 11 students had filed the case, but there could be many more victims who did not. Even those eleven students, who won their case, did so after 15 years and they can never get back the academic years lost. If only the advertisement had been stopped right at the beginning and corrective advertisements issued, it could well have saved many students and parents from falling prey to the advertisement.

3. Guaranteeing jobs to attract students to educational courses and then backing out is an unfair trade practice

“Get certified in 120 Hours” said an advertisement of an educational institution. Since that alone would not have got many students interested, it added for good measure, a promise of a job abroad. “Overseas jobs guaranteed” it said and re-emphasised this

⁵ Civil Appeal No 1135 of 2001

yet again: “Job 100 percent guaranteed”. By the time the students realised that this was only an advertisement gimmick and the college had no intention of keeping up its promise, it was too late.

In their complaints, six students of the college alleged that at the time of admission, they were told that the college was part of the Global Tesol College, Canada, which promised guaranteed jobs and a fee refund if they failed to secure jobs. However, after the completion of the course when they demanded jobs, the college said its policies had nothing to do with the Global Tesol College. The District Consumer Disputes Redressal Forum which first heard the case, held the college guilty of unfair trade practice and directed it to refund the fee along with interest. It also awarded varying amounts of compensation ranging from ₹7500 to 20,000 and costs of litigation.

The college, however, was unwilling to accept this verdict and argued before the State Commission and later the National Commission that it had only promised to ‘help’ students procure jobs and had never made any commitment to get them jobs abroad!. Dismissing these contentions at the admission stage itself, the National Commission pointed out that the advertisements were not only misleading in nature, but also totally false as the college had failed to provide assured jobs. This clearly amounted to unfair trade practice.⁶

4. Making false claims about professional qualification and misleading patients is an unfair trade practice

On noticing that his eight year old son was getting two new teeth behind the existing teeth in the lower jaw, Mr. Vijay Kumar Srivastava took the child to Kumar Dental Health Care Centre in Goplaganj, Bihar, in the belief that “Dr Kumar, BDS” was a dentist with a BDS degree and registered with the Dental Council. Kumar’s letterhead for example, said: Dr. M. Kumar, BDS. Below it, “Registration No: 145/99. Kumar examined the child and advised extraction of the two old teeth. However, after the extraction was complete, the father noticed to his utter shock and dismay that all the four teeth had been removed. On his complaint, Kumar apparently admitted that it was a mistake, but assured the parent that two new

⁶Tesol India vs Shri Govind Singh Patwal, RP NO 2501 of 2010

teeth would come up within three weeks. However, that did not happen and the child had lost two teeth permanently.

Highly aggrieved, Mr Srivastava filed a case before the District Consumer Disputes Redressal Forum in Gopalganj. While the Forum dismissed it saying that the complainant had not produced adequate evidence to prove his allegation in the form of X-rays or expert witnesses, the State Commission held Kumar guilty of misrepresentation and thereby unfair trade practice. The doctor, the Commission found, had misrepresented his qualification and given an impression that he had a degree in allopathic system of medicine, while what he had was a degree in alternative system. The Commission, therefore, asked him to pay the complainant ₹ 50,000 as compensation and ₹ 5000 as costs.

In reply to a revision petition filed by Kumar, the National Commission upheld the view of the State Commission. It pointed out that Kumar had told the Commission that he did not have a BDS degree from a college imparting allopathic system of medicine, but a BDS in alternative system. Said the Commission: "According to this Certificate, having passed the relevant examination in 1998, the Revision Petitioner is entitled to use the designation "B.D.S. (Alt.)" for the development of alternative medical system. Thus, going by his own admission and record of the case, the revision petitioner can call himself "B.D.S (Alt.)" only and not "B.D.S." The State Commission has, therefore, rightly concluded that this is a case of the revision petitioner being liable for false and misleading representation and unfair trade practice....."⁷

5. Misleading ads by tour operators cannot be condoned and should be stopped: NCDRC

This pertained to a cruise from Bangalore to Singapore and Malaysia and back undertaken by a couple in 2003. The couple's allegation was that the travel agency –Cox & Kings Pvt. Ltd. had misled them about the total number of days of the cruise. While the advertisements described the cruise as "Two nights /three days cruise", the trip was only for two nights and one and a half days. The District Forum before which the couple filed a case, ordered

⁷Dr. M. Kumar Vs Vijay Kumar Srivastava, RP No 2772 of 2010

the tour operator to pay a compensation of ₹ 50,000/-. The appeal by the travel agency was dismissed by the Karnataka State Commission which, however, reduced the compensation to ₹25, 000.

In its revision petition before the National Commission, the travel agency representative conceded that the cruise lasted only for two nights and 1½ days. He, however, argued that they had at no time told the couple that the cruise would be for two nights and three days. In fact, they were clearly told that it was only for two nights and one and a half days. However, the travel agency admitted that the Star Cruise services were called “Two nights/Three days Cruise”. It was argued that this nomenclature was used by the Star Cruise Company and was in vogue throughout. After carefully considering all facts of the case, the National Commission held that there was a deliberate attempt at misleading consumers in the advertisement that the cruise was for two nights/three days. The departure of the cruise was deliberately timed at 11.59 p.m., that is, one minute short of midnight so that this one minute could be counted as *one full day*. This was nothing short of outright cheating by the Cruise Company and the travel agency, the National Commission held.

Holding that the practice followed by them fell squarely under the definition of unfair trade practice in the Consumer Protection Act, the Apex Consumer Court asked the agency to stop issuing such advertisements. It also criticized the State Consumer Commission for taking a lenient view of the matter and reducing the compensation.

Observed the Commission: In our view, this practice by the Petitioner is not only a case of misrepresentation through misleading advertisement but also an unfair trade practice under the Consumer Protection Act.⁸

6. Need to control Misleading Advertisements promising Weight Reduction: NC

In response to a case filed by a consumer against a Body Care programme alleging that even after paying ₹ 10,500 and undergoing the treatment, she did not lose weight, the District Forum in Bangalore had directed that the money be refunded to the consumer and also a compensation of ₹ 25,000 be paid.

⁸ M/S Cox & Kings Pvt Ltd vs Mr Joseph A. Fernandes and another, RP no 366 of 2005

When this was confirmed by the State Commission, the opposite party filed a revision petition before the National Consumer Disputes Redressal Commission. Dismissing it, the apex consumer court said: "We entirely agree with the findings recorded by the State Commission below. Such tempting advertisements, giving misleading statements 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. The amount awarded by the State Commission below is also on the lower side."⁹

7. National Commission comes down on Surrogate Advertisements

This is one of those rare cases where the consumer courts used the provision for issuing corrective advertisements, provided under Section 14 of the CP Act. The order has its origin in a complaint filed by Mumbai-based consumer group Mumbai Grahak Panchayat against surrogate liquor advertisements on Western Railway coaches. In response, the Maharashtra State Commission directed United Breweries to issue corrective advertisements for one week and the Railways to display them prominently on coaches of Western Railway. The corrective advertisements were to say: "*Keep liquor away from young generation*" and "*India's number 1-only natural fruit drink*" and "*Nimbu paani, nariyal paani, yehi hai apna alag andaz*".

While examining the appeal filed by United Breweries against this, the National Commission referred to the fact that the Advertising Standards Council of India (ASCI) had also asked for the withdrawal of two of these advertisements. These advertisements appeared to be surrogate advertisements for an alcohol product brand and hence contravened Chapter 1.4 of the ASCI's code. The ASCI had commented that 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 hence contravened the code.

Criticising the advertisements, the apex consumer court observed that the advertisement had referred to London Pilsner

⁹ Smt Divya Sood Vs Ms Gurdeep Kaur Bhuhi, RP No 3467 of 2006

soda, and proclaimed “*ab cold drink out*”. Enquiries by the complainants had, however, shown that the company had come out with 250 ml bottle of London Pilsner beer and there was no soda available in the market.

The Commission observed that: “This was an attempt to induce the young generation to switch over from cold drinks to beer. There was a third advertisement of Derby Special soda. On inquiry, it was found that there was no Derby Special soda anywhere in the market and Derby Special whisky was available with wine dealers. These attempts were highly objectionable, deplorable and also patently illegal”. Pointing out that the State Commission had not asked for corrective advertisements on TV nor had it asked for such advertisements on railway coaches for three months, but only for a week, the apex consumer court said what has been asked for, in terms of corrective advertisements, was not appropriately commensurate with the harmful effect of the earlier advertisement.

In this entire episode, the Railways come out in very poor light. As the State Commission pointed out, the advertisements contravened the Railways own guidelines for commercial advertising, which prohibited not just liquor advertisements but also surrogate advertisements. Yet, when the consumer group first approached the Railways to remove the advertisements, the response of the Railways was certainly not that of a law-abiding, responsible, public sector undertaking. Apparently, the Railways refused to discontinue the advertisement on the ground that the agreement had already been executed (for carrying the ad). This forced Mumbai Grahak Panchayat to file the case before the State Commission.¹⁰

8. Making false promises to sell a product is clearly an unfair trade practice and compensation in such cases should be exemplary: NCDRC

In his complaint before the consumer court, the consumer/complainant pointed out that in order to promote a brand of bread called ‘Bonn’, the manufacturer had announced, through advertisements, that each packet of bread would contain a ‘Scratch and win’ coupon. The advertisement, the consumer complained, implied that every person purchasing a packet of

¹⁰ United Breweries Limited vs Mumbai Grahak Panchayat, FA no 491 of 2005

bread would win one of the prizes mentioned in the advertisement. Allured by it, he bought the bread, priced at ₹10, but every time he scratched the coupon, he found the words "Please try again". This, he argued, was clearly an unfair trade practice. In response, the manufacturer argued that the scheme was launched without charging any extra amount and it had not given any guarantee that every purchaser of bread will win a prize as alleged. By its order dated 4.1.2001, the District Forum held the manufacturer guilty of unfair trade practice and awarded ₹ 5,000 as compensation. Unhappy with this verdict, the consumer filed an appeal for enhancement of the compensation and in response; the Punjab State Commission increased the compensation to ₹50,000, through its order delivered in July 2002.

Subsequently the manufacturer filed a revision petition before the apex consumer court. The National Commission held that there was no illegality in the order of the State Commission warranting its interference. What it said about the compensation is highly relevant. It said: "In our view, in case of unfair trade practice like the present one, the compensation to be awarded has to be exemplary. Compensation as enhanced by the State Commission, thus, by no stretch of imagination is excessive". It thus dismissed the petition with costs of ₹ 3000 to the consumer.¹¹

¹¹Bonn Nutrients Pvt. Ltd. Vs Jagpal Singh Dara, IV (2005) CPJ108 (NC)

CHAPTER 6

MISLEADING ADVERTISEMENTS: REGULATORY REGIME IN NORTH AMERICA

The United States of America

In the United States, the Federal Trade Commission's Bureau of Competition promotes and protects free and vigorous competition, while Bureau of Consumer Protection works to prevent fraud, deceptive and unfair business practices including false and misleading advertisements. In fact one of the seven divisions of the Bureau of Consumer Protection deals exclusively with false and misleading advertisements and enforces various laws aimed at ensuring truth in advertising.

The Bureau conducts investigations, sues companies and individuals who violate the law and also develops rules to protect consumers. An example of how FTC works to protect consumer interest can be seen in a press release issued by FTC on May 16, 2012, wherein it announced that all those consumers who bought Sketcher's toning shoes would be eligible for refund, as it was found that the company had made deceptive advertising claims and had even false represented that clinical studies backed up the claims. The company was barred from making any such claim unless it was true and backed by scientific data.

Here's what the press release said: Sketchers USA Inc has agreed to pay \$40 million to settle charges that the company deceived consumers by making unfounded claims that Shape-ups would help people lose weight and strengthen and tone their buttocks, legs and abdominal muscles. Besides Shape-ups, Skechers also made deceptive claims about its Resistance Runner, Toners, and Tone-up shoes. Consumers who bought these 'toning' shoes will be eligible for refunds either directly from the FTC or through a court-approved class action lawsuit. The shoes cost consumers \$ 60 to 100 a pair.

In another press release, dated September 27, 2012, FTC said it was mailing refund checks to 138,737 consumers who had been misled by a group of telemarketers who had falsely promised them free goods and services. In all, the FTC is returning more than \$978,000 to consumers who lost money as part of the scheme, FTC said in its release. I quote the press release for more details: “The refunds stem from settlements with the operators of telemarketing schemes that did business as Sure Touch Long Distance and DigiTouch Long Distance (collectively Sure Touch). According to the complaint filed by the FTC, Sure Touch billed consumers for goods and services they never agreed to buy after bombarding them with confusing sales pitches over the telephone. Sure Touch contacted consumers with promises of “free” goods and services, including gift cards, gas cards, and resort vacations. Sure Touch telemarketers often read their pitch so fast that consumers did not understand or realize they were being asked to pay for additional goods or services that were being offered”.

“Consumers who did understand the pitch were told that they would not be billed, since they did not provide their billing information. However, unbeknownst to consumers, Sure Touch already had their billing information and charged their credit cards or debited their bank accounts for the additional goods or services, and without providing the “free” goods or the services they promised. The FTC filed suit against Sure Touch as part of the 2008 law enforcement sweep “Operation TELE-PHONEY,” which included more than 180 telemarketing cases brought by civil and criminal attorneys throughout the United States and Canada”.

Canada

The Competition Bureau, Canada, enforces the false or misleading representations and deceptive marketing practices provisions of the Competition Act and ensures truth in advertising.

The false or misleading representations and deceptive marketing practices provisions of the Competition Act in Canada contain a general prohibition against materially false or misleading representations. They also prohibit performance representations which are not based on adequate and proper tests, misleading warranties and guarantees, false or misleading selling price

representations, untrue, misleading or unauthorized use of tests and testimonials, bait and switch selling, double ticketing and the sale of a product above its advertised price. In addition, the promotional contest provisions prohibit contests that do not disclose required information.¹

The Competition Act provides for two adjudicative regimes to address such practices: criminal and civil. Under the criminal regime, on summary conviction, the offender is liable to pay fine of up to \$200,000 and/or imprisonment for up to one year. If convicted on indictment, the fine could go up (depending on the court) and so also imprisonment, which could go up to 14 years.

Under the civil regime, for first offence, individuals are liable to penalties of up to \$750,000 and corporations, up to \$10,000,000. For subsequent offences, the penalties go up to a maximum of \$1,000,000 for individuals and \$15,000,000 for corporations. Where false and misleading representations have been made about a product to the public, the court may also make an order for restitution, requiring the offender to compensate consumers who bought such products, and an interim injunction to freeze assets in certain cases.

As an example of how the Competition Bureau of Canada works to protect consumer interest vis-à-vis misleading advertisement, I reproduce below, a press release issued by the Bureau on September 14, 2012:

“Following a five-month investigation, the Competition Bureau has begun legal proceedings against Bell Canada (Bell), Rogers Communications, Inc. (Rogers), TELUS Corporation (Telus) and the Canadian Wireless Telecommunications Association (CWTA), requiring them to stop misleading advertising that promotes costly “premium texting services”, and to compensate consumers. The Bureau is seeking full customer refunds and administrative monetary penalties — \$10 million each from Bell, Rogers and Telus, and \$1 million from the CWTA.

“The Bureau’s investigation concluded that Bell, Rogers and Telus, in conjunction with the CWTA, facilitated the sale to their own customers of premium-rate digital content (such as trivia questions and ringtones) for fees that had not been adequately

¹ Source: Competition Bureau, Canada

disclosed. Customers were misled into believing this content was free, when it was not. In fact, in the case of Bell, Rogers and Telus, they pocketed a share of the revenues collected. Aggravating the situation, Bell, Rogers, Telus and the CWTA led customers to believe that measures were in place to prevent these unauthorized charges.”

“Our investigation revealed that consumers were under the false impression that certain texts and apps were free,” said Melanie Aitken, Commissioner of Competition. “Unfortunately, in far too many cases, consumers only became aware of unexpected and unauthorized charges on their mobile phone bills.” The premium-rate digital content in question can cost up to \$10 per transaction, and up to \$40 for a monthly subscription, rates over and above standard text messaging plans.

The legal proceedings are before the Ontario Superior Court of Justice under the misleading advertising provisions of the *Competition Act*. The Bureau is seeking full refunds for customers, administrative monetary penalties -\$10 million each from Bell, Rogers and Telus, and \$1 million from the CWTA, a stop to any representations that do not clearly disclose the price and other terms and conditions applicable to premium-rate digital content; and a corrective notice from each of Bell, Rogers, Telus, and the CWTA, to inform the general public about the terms and conditions of any order issued against them.

CHAPTER 7

CONCLUSION

As explained in the earlier chapters, despite a number of laws to curb false and misleading advertisements and protect consumer interest, consumers continue to be victims of such advertisements because of (a) the poor enforcement of the laws and (b) lacunae or inadequacies in the existing laws. The dissolution of the Monopolies and Restrictive Trade Practices (MRTP) Commission to make way for the Competition Commission of India, has also left a huge void in so far as consumer protection in the area of false and misleading advertisements is concerned. More so because the government excluded unfair trade practices from the purview of the Competition Commission, on the ground that consumer courts could deal with unfair trade practices.

It is true that the MRTP Act and the Consumer Protection Act shared the same definition of ‘unfair trade practice’, but the similarity ends there. For one, the consumer courts neither have the power nor the infrastructure to investigate *suo motu* into misleading advertisements nor take up such cases on their own, as was being done by the MRTP Commission. They also do not have an investigative wing like the office of the Director General (Investigation and Registration) that existed under the MRTP Act. The consumer courts can only adjudicate over complaints filed before them. So this void needs to be filled- either by bringing UTP too under the Competition Commission or by creating a separate Commission for unfair trade practices or creating the necessary infrastructure under the Consumer Protection Act to deal effectively (as is being done in North America, for example) with unfair trade practices.

Section 14 h (c) of the Consumer Protection Act, describing the powers of the consumer court, says that the court can order “corrective advertisement to neutralize the effect of misleading advertisement at the cost of the opposite party responsible for issuing

such misleading advertisement”. In so far as misleading advertisements are caused, this is the most important provision and can really have a deterrent effect, if used effectively.

But here again, such a direction will have some meaning only if the complaints against such advertisements are filed quickly and the consumer courts can hear them expeditiously and issue suitable directions. Under the MRTP Act, the MRTP Commission, on an application from the Office of the Director General (Investigation and Registration) used to issue an interim order for withdrawal of the advertisement. The consumer courts have the power to issue interim orders, but they do not have, as I said before, a Director General (Investigation and Registration) who would have an investigation team to probe quickly into such advertisements and file, on behalf of consumers as a class, an application for an interim injunction against such advertisements. In fact the DG had a battery of lawyers who would argue the case on his behalf and seek to put stop to such advertisements that adversely affected consumer interest.

Under the Consumer Protection Act, even governments (state governments as well as the central government) can file complaints on behalf of consumers, but here again, the Departments of Consumer Affairs hardly have the required infrastructure for such work. So complaints of false and misleading advertisements filed before the consumer courts today are mostly filed by those who are directly affected by such advertisements and have suffered financial loss. Consumer groups too have filed such cases, but the number of such groups who have fought such cases is very small, so also the number of cases filed by them. In fact, if you look at the cases pertaining to misleading advertisements decided by the consumer courts –whether against educational institutions or vehicle manufacturers-what is apparent is that only those who filed the cases got relief, even though the advertisement would have affected a large number of people.

The case of Buddhist Mission Dental College and Hospital Vs Bhupesh Khurana and Ors.¹ is a good example, here, only eleven students had filed the case, but there could be many more victims who did not. Even those eleven students, who won their case, did so after 15 years and they can never get back the academic years lost. If only the advertisement had been stopped right at the beginning

and corrective advertisements issued, it could well have saved many students and parents from falling prey to the advertisement. At the cost of repeating myself, I must say that we urgently need a regulatory mechanism that would, like the Federal Trade Commission in the United States, act on behalf of consumers, file class action suits and ensure that all affected consumers get compensation.

Consumers, in the meanwhile, would do well to demand better laws to deal with false and misleading advertisements, and also demand better enforcement of the existing laws. It is equally important to bring to the notice of the Advertising Standards Council of India (ASCI), questionable advertisements. This can be done online through their website.(www.ascionline.org).

ANNEXURE I

I List of Enforcement Agencies/ Organizations where one can complain against misleading ads:

1. If you see an advertisement that you think is false or misleading, complain to the Advertising Standards Council of India. You can do it online (ascionline.org)
2. For false or misleading advertisements on television, complain to the nodal officer or the authorized offer or the monitoring committee at the district/state level constituted under the Cable Television Networks (Regulation) Act, 1955 You can also complain to the Ministry of Information and Broadcasting/ Inter-Ministerial Committee (IMC) about violations of the Advertisement Codes by the satellite channels at the national level.
3. If the advertisement pertains to drugs, magic remedies or health gadgets or treatments for various ailments, you can also complain to the Drug Control Authority in your state. They can take action under the Drugs and Magic Remedies (Objectionable Advertisements) Act..
4. If the advertisements pertain to food, write to the Food Safety and Standards Authority (fssai.gov.in) or the enforcement agency at the state level .
5. If the advertisements pertain to insurance, complain to the Insurance Regulatory and Development Authority (irda.gov.in)
6. If they refer to telecommunication services, you can complain to TRAI (traigov.in).
7. Complaints pertaining to false and misleading advertisements of banking and non-banking financial companies can be made to the Reserve Bank of India (rbi.org.in)

II The Advertising Code prescribed under the Cable Television Network Rules, 1994¹ (Rule 7)

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; [.....]²

[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 services 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 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 a 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.]³

(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 Standards 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 alongside the programme.
- (11) No programme shall carry advertisements exceeding 12 minutes per hour, which may include up to 10 minutes per hour of commercial advertisements, and up to 2 minutes per hour of a channel's self-promotional programmes.

III Press Information Bureau (PIB) Press Release of Feb 20, 2008

I&B Ministry issues guidelines for State & District level Monitoring Committees for TV Channels

The Ministry of Information & Broadcasting has issued guidelines to define the role of the State and District Monitoring Committees for private television channels. As per the Government of India Order of September, 2005, District and State Level Monitoring Committees were to be set up to enforce Cable Television Networks (Regulation) Act, 1995. The new guidelines have been issued to ensure effective functioning of the Committees. The main provisions of the guidelines are as under: -

Scope of the District Level Committee

- To provide a forum where the public may lodge a complaint regarding content aired over cable television and take action on the same as per procedure prescribed herein.

- To review the action taken by Authorized Officers for enforcement of Cable Television Networks (Regulation) Act, 1995.
- To immediately bring to the notice of State and Central Government if any programme is affecting public order or wide spread resentment in any community.
- To keep a watch on content carried by cable television channels at local level and to ensure, through Authorized Officers, that no unauthorized or pirated channels are carried and local news if aired by the cable television operator is restricted to information about local events and is presented in a manner which is balanced impartial and not likely to offend or incite any community.
- To monitor the availability of free to air channels and channels notified for mandatory carriage on the cable network.

Procedure Suggested

- A complaint Cell headed by a nodal Officer at District level should be established and wide publicity be given regarding the constitution of Monitoring Committee and procedure followed by it, including putting it on website of the State/UT.
- In case the complaint concerns content carried locally by Cable TV Network at its own level, the Committee may call for footage/VCD of the programme /advertisement against which complaint is considered and the common pool of wisdom available within the Committee may form a view about whether a violation has taken place. In case the Committee is of the view that violation has taken place, the Authorized Officer may take action as per the Act.
- In case the complaint pertains to national/regional satellite channels, the Committee may forward its recommendations through the State-level Monitoring Committee to the Government of India for dealing with the issue.

In case it is found that a cable network operator is not carrying channels prescribed for mandatory carriage or is carrying them in such a manner that the signal is too poor to be properly visible or audible, the Committee, through Authorized Officer, may direct the cable network to ensure proper carriage of the same and take any other action it may consider necessary under Section 11.

State-level Monitoring Committee

The constitution of both State and District-level Committees to enforce the Cable TV Networks Rules was envisaged but the constitution of the State-level Committee was not specified. The constitution of the State-level Committee is hereby specified as follows:

- | | | |
|-------|---|--------------------|
| (i) | Secretary, Information & Public Relations of the State | - Chairman |
| (ii) | Representative of the DG of State Police | - Member |
| (iii) | Secretary, Social Welfare Department of the State | - Member |
| (iv) | Secretary, Women & Child Development of the State | - Member |
| (v) | Representative of a leading NGO of the State working for women (to be nominated by Chief Secretary) | - Member |
| (vi) | Academicians /Psychologists /Sociologists (one each to be nominated by Chief Secretary) | - Member |
| (vii) | Director (Information) of the State | - Member Secretary |

Functions

The functions of the State Level Monitoring Committee will be:

- To see whether District/Local Committees have been formed and are meeting regularly.
- To see whether the authorized officers are effectively performing their duties.
- To give suggestion/guidance to District/Local Level Committee.
- To take decision on the matters referred to it by District/Local level Committee.
- To recommend action and forward complaints against satellite channels (National Channels) to the Ministry of Information & Broadcasting through the Chief Secretary of the State in cases of violation of Government of India's orders on the Programme and Advertising Codes.

It had been noticed that the enforcement of the said Act in many parts of the country was not satisfactory either due to lack of clear understanding of the role of the District Monitoring Committees or a suitable mechanism to enforce the provisions of the Act. No State except J&K, has reported the constitution of a State level committee. Also, an increasing number of petitions are being received in the Ministry of Information & Broadcasting, Government of India, from viewers regarding malpractices by Cable Operators and undesirable content being shown at the local level by the cable operators.

RS/AS (Release ID :35496)

IV Inter-Ministerial Committee to Monitor Violation of Advertisement and Programme Code:

Rajya Sabha

With the objective of providing healthy entertainment devoid of risk to public order, etc., the Government has constituted an Inter-Ministerial Committee (IMC) to look into the specific violations of Programme and Advertisement Codes by the satellite channels at national level and to recommend action against them for such violation. Orders for constitution of the State and District Level Monitoring Committees have been issued in order to keep a close watch on content carried by the local cable TV channels at district or State level.

As per the Cable Television Networks (Regulation) Act, 1995 and rules framed thereunder, District Magistrate, Sub Divisional Magistrate or Police Commissioner has been designated as authorized officers who can immediately take action against the local cable TV channels in case of violation. As separate committees/authorities take cognizance of complaints against National or local TV channels as the case may be, complaints do not have to be routed from District to State to National level before action is taken and therefore, there is no additional time factor involved.

This information was given by Minister of State for External Affairs and Information & Broadcasting, Shri Anand Sharma in written reply to a question in Rajya Sabha today.

SP/AS Release ID :45858; PIB press release, December 18,2008

V Consumer Protection Act and Misleading Advertisements

Definition of 'unfair trade practice' (false and misleading advertisements come under this definition) under the Consumer Protection Act.

The Consumer Protection Act, 1986

2. Definitions. - (1) In this Act, unless the context otherwise requires,—

(r) "unfair trade practice" means a trade practice which, for the purpose of promoting the sale, use or supply of any goods or for the provision of any service, adopts any unfair method or unfair or deceptive practice including any of the following practices, namely;—

(1) the practice of making any statement, whether orally or in writing or by visible representation which,—

- (i) falsely represents that the goods are of a particular standard, quality, quantity, grade, composition, style or model;
- (ii) falsely represents that the services are of a particular standard, quality or grade;
- (iii) falsely represents any re-built, second-hand, reno-vated, reconditioned or old goods as new goods;
- (iv) represents that the goods or services have sponsor-ship, approval, performance, characteristics, accesso-ries, uses or benefits which such goods or services do not have;
- (v) represents that the seller or the supplier has a spon-sorship or approval or affiliation which such seller or supplier does not have;
- (vi) makes a false or misleading representation concern-ing the need for, or the usefulness of, any goods or services;
- (vii) gives to the public any warranty or guarantee of the performance, efficacy or length of life of a product or of any goods that is not based on an adequate or proper test thereof;

Provided that where a defence is raised to the effect that such warranty or guarantee is based on adequate or proper test, the burden of proof of such defence shall lie on the person raising such defence; (viii) makes to the public a representation in a form that purports to be—

- (i) a warranty or guarantee of a product or of any goods or

- services; or
- (ii) a promise to replace, maintain or repair an article or any part thereof or to repeat or continue a service until it has achieved a specified result, if such purported warranty or guarantee or promise is materially misleading or if there is no reasonable prospect that such warranty, guarantee or promise will be carried out;
- (ix) materially misleads the public concerning the price at which a product or like products or goods or services, have been or are, ordinarily sold or provided, and, for this purpose, a representation as to price shall be deemed to refer to the price at which the product or goods or services has or have been sold by sellers or provided by suppliers generally in the relevant market unless it is clearly specified to be the price at which the product has been sold or services have been provided by the person by whom or on whose behalf the representation is made;
- (x) gives false or misleading facts disparaging the goods, services or trade of another person.

Explanation. - For the purposes of clause (1), a statement that is—

- (a) expressed on an article offered or displayed for sale, or on its wrapper or container; or
- (b) expressed on anything attached to, inserted in, or accompanying, an article offered or displayed for sale, or on anything on which the article is mounted for display or sale; or
- (c) contained in or on anything that is sold, sent, delivered, transmitted or in any other manner whatsoever made available to a member of the public, shall be deemed to be a statement made to the public by, and only by, the person who had caused the statement to be so expressed, made or contained;
- (2) permits the publication of any advertisement whether in any news-paper or otherwise, for the sale or supply at a bargain price, of goods or services that are not intended to be offered for sale or supply at the bargain price, or for a period that is, and in quantities that are, reasonable, having regard to the nature of the market in which the business is carried on, the nature and size of

business, and the nature of the advertisement.

Explanation.—For the purpose of clause (2), “bargaining price” means—

- (a) a price that is stated in any advertisement to be a bargain price, by reference to an ordinary price or otherwise, or
 - (b) a price that a person who reads, hears or sees the advertisement, would reasonably understand to be a bargain price having regard to the prices at which the product advertised or like products are ordinarily sold;
- (3) permits—
- (a) the offering of gifts, prizes or other items with the intention of not providing them as offered or creating impression that something is being given or offered free of charge when it is fully or partly covered by the amount charged in the transaction as a whole;
 - (b) the conduct of any contest, lottery, game of chance or skill, for the purpose of promoting, directly or indirectly, the sale, use or supply of any product or any business interest;
- (3A) withholding from the participants of any scheme offering gifts, prizes or other items free of charge, on its closure the information about final results of the scheme.

Explanation. — For the purposes of this sub-clause, the participants of a scheme shall be deemed to have been informed of the final results of the scheme where such results are within a reasonable time, published, prominently in the same newspapers in which the scheme was originally advertised;

- (4) permits the sale or supply of goods intended to be used, or are of a kind likely to be used, by consumers, knowing or having reason to believe that the goods do not comply with the standards prescribed by competent authority relating to performance, composition, contents, design, constructions, finishing or packaging as are necessary to prevent or reduce the risk of injury to the person using the goods;
- (5) permits the hoarding or destruction of goods, or refuses to sell the goods or to make them available for sale or to provide any service, if such hoarding or destruction or refusal raises or tends

to raise or is intended to raise, the cost of those or other similar goods or services.

- (6) manufacture of spurious goods or offering such goods for sale or adopts deceptive practices in the provision of services.

The relief that the consumer courts can give is given under Section 14 of the Act:

14. Finding of the District Forum. — (1) If, after the proceeding conducted under section 13, the District Forum is satisfied that the goods complained against suffer from any of the defects specified in the complaint or that any of the allegations contained in the complaint about the services are proved, it shall issue an order to the opposite party directing him to do one or more of the following things, namely:—

- (a) to remove the defect pointed out by the appropriate laboratory from the goods in question;
- (b) to replace the goods with new goods of similar description which shall be free from any defect;
- (c) to return to the complainant the price, or, as the case may be, the charges paid by the complainant;
- (d) to pay such amount as may be awarded by it as compensation to the consumer for any loss or injury suffered by the consumer due to the negligence of the opposite party.

Provided that the District Forum shall have the power to grant punitive damages in such circumstances as it deems fit;

- (e) to remove the defects in goods or deficiencies in the services in question;
- (f) to discontinue the unfair trade practice or the restrictive trade practice or not to repeat it;
- (g) not to offer the hazardous goods for sale;
- (h) to withdraw the hazardous goods from being offered for sale;
- (ha) to cease manufacture of hazardous goods and to desist from offering services which are hazardous in nature;
- (hb) to pay such sum as may be determined by it if it is of the opinion that loss or injury has been suffered by a large number of consumers who are not identifiable conveniently:

Provided that the minimum amount of sum so payable shall not be less than five per cent. of the value of such defective goods sold or service provided, as the case may be, to such consumers:

Provided further that the amount so obtained shall be credited in favour of such person and utilized in such manner as may be prescribed;

(hc) to issue corrective advertisement to neutralize the effect of misleading advertisement at the cost of the opposite party responsible for issuing such misleading advertisement;

(i) to provide for adequate costs to parties.

VI Advertising Standards Council of India (ASCI) Code

THE CODE FOR SELF-REGULATION IN ADVERTISING PERTINENT EXTRACTS Adopted by THE ADVERTISING STANDARDS COUNCIL OF INDIA under Article 2(ii)f of its Articles of Association at the first meeting of the Board of Governors held on November 20, 1985 and amended in February 1995 and in June 1999.

Declaration of Fundamental Principles

This Code for Self-Regulation has been drawn up by people in professions and industries in or connected with advertising, in consultation with representatives of people affected by advertising and has been accepted by individuals, corporate bodies and associations engaged in or otherwise concerned with the practice of advertising with the following as basic guidelines with a view to achieve the acceptance of fair advertising practices in the best interests of the ultimate consumer:

- To ensure the truthfulness and honesty of representations and claims made by advertisements and to safeguard against misleading advertisements.
- To ensure that advertisements are not offensive to generally accepted standards of public decency. Advertisements should contain nothing indecent, vulgar or repulsive which is likely, in the light of generally prevailing standards of decency and propriety, to cause grave or widespread offence
- To safeguard against the indiscriminate use of Advertising in situations or of the promotion of products which are regarded as

hazardous or harmful to society or to individuals, particularly minors, to a degree or of a type which is unacceptable to society at large.

- To ensure that advertisements observe fairness in competition so that the consumer's need to be informed on choices in the market-place and the canons of generally accepted competitive behaviour in business are both served. Both the general public and an advertiser's competitors have an equal right to expect the content of advertisements to be presented fairly, intelligibly and responsibly. The Code applies to advertisers, advertising agencies and media.

Responsibility for the Observance of this Code

The responsibility for the observance of this Code for Self-Regulation in Advertising lies with all who commission, create, place or publish any advertisement or assist in the creation or publishing of any advertisement. All advertisers, advertising agencies and media are expected not to commission, create, place or publish any advertisement which is in contravention of this Code. This is a self-imposed discipline required under this Code for Self-Regulation in Advertising from all involved in the commissioning, creation, placement or publishing of advertisements. This Code applies to advertisements read, heard or viewed in India even if they originate or are published abroad so long as they are directed to consumers in India or are exposed to significant number of consumers in India.

Definitions

An advertisement is defined as a paid-for communication, addressed to the public or a section of it, the purpose of which is to influence the opinions or behaviour of those to whom it is addressed. Any written or graphic matter on packaging, or contained in it, is subject to this Code.

Standards of Conduct

Advertising is an important and legitimate means for the seller to awaken interest in his products. The success of advertising depends on public confidence. Hence no practice should be permitted which tends to impair this confidence.

VII. IRDA Regulations on Insurance Advertising

INSURANCE REGULATORY AND DEVELOPMENT AUTHORITY (INSURANCE ADVERTISEMENTS AND DISCLOSURE) REGULATIONS, 2000

14th July, 2000

In exercise of the powers conferred by section 26 of the Insurance Regulatory and Development Authority Act, 1999 (41 of 1999), the Authority in consultation with the Insurance Advisory Committee, hereby makes the following regulations, namely:-

1. Short title and commencement — (1) These regulations may be called the Insurance Regulatory and Development Authority (Insurance Advertisements and Disclosure) Regulations, 2000.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. Definitions — Unless the context otherwise requires, —

(a) “Authority” means the Insurance Regulatory and Development Authority established under sub-section (1) of section 3 of The Insurance Regulatory and Development Authority Act, 1999 (41 of 1999);

(b) “insurance advertisement” means and includes any communication directly or indirectly related to a policy and intended to result in the eventual sale or solicitation of a policy from the members of the public, and shall include all forms of printed and published materials or any material using the print and or electronic medium for public communication such as:

- i) newspapers, magazines and sales talks;
- ii) billboards, hoardings, panels;
- iii) radio, television, website, e-mail, portals;
- iv) representations by intermediaries;
- v) leaflets;
- vi) descriptive literature/ circulars;
- vii) sales aids flyers;
- viii) illustrations form letters;
- ix) telephone solicitations;
- x) business cards;
- xi) videos;

- xii) faxes; or
- xiii) any other communication with a prospect or a policyholder that urges him to purchase, renew, increase, retain, or modify a policy of insurance.

Explanation: The following materials shall not be considered to be an advertisement provided they are not used to induce the purchase, increase, modification, or retention of a policy of insurance:— (i) materials used by an insurance company within its own organization and not meant for distribution to the public;

- communications with policyholders other than materials urging them to purchase, increase, modify surrender or retain a policy;
 - materials used solely for the training, recruitment, and education of an insurer’s personnel, intermediaries, counselors, and solicitors, provided they are not used to induce the public to purchase, increase, modify, or retain a policy of insurance.
- xiv) any general announcement sent by a group policyholder to members of the eligible group that a policy has been written or arranged.

(c) [.....]4

(d) “unfair or misleading advertisement” will mean and include any advertisement:

- (i) that fails to clearly identify the product as insurance;
- (ii) makes claims beyond the ability of the policy to deliver or beyond the reasonable expectation of performance;
- (iii) describes benefits that do not match the policy provisions;
- (iv) uses words or phrases in a way which hides or minimizes the costs of the hazard insured against or the risks inherent in the policy;
- (v) omits to disclose or discloses insufficiently, important exclusions, limitations and conditions of the contract;
- (vi) gives information in a misleading way;
- (vii) illustrates future benefits on assumptions which are not realistic nor realisable in the light of the insurer’s current performance;
- (viii) where the benefits are not guaranteed, does not explicitly say

so as prominently as the benefits are stated or says so in a manner or form that it could remain unnoticed;

- (ix) implies a group or other relationship like sponsorship, affiliation or approval, that does not exist;
- (x) makes unfair or incomplete comparisons with products which are not comparable or disparages competitors.
 - (e) “prospect” means any party that enters or proposes to enter into an insurance contract directly, or through an insurance intermediary.

Words and expressions used and not defined in these regulations but defined in the Insurance Act, 1938 (4 of 1938), or the Life Insurance Corporation Act, 1956 (31 of 1956) or the General Insurance Business Nationalisation) Act, 1972 (57 of 1972), or Insurance Regulatory and Development Authority Act, 1999 (41 of 1999) shall have the meanings respectively assigned to them in those Acts or the rules as the case may be.

3. Compliance and control — (1) Every insurer or intermediary or insurance agent shall —

- (i) have a compliance officer, whose name and official position in the organisation shall be communicated to the Authority, and he shall be responsible to oversee the advertising programme;
- (ii) establish and maintain a system of control over the content, form, and method of dissemination of all advertisements concerning its policies.
- (iii) maintain an advertising register at its corporate office which must include:
 - (a) a specimen of every advertisement disseminated, or issued or a record of any broadcast or telecast, etc.;
 - (b) a notation attached to each advertisement indicating the manner, extent of distribution and form number of any policy advertised, and
- (iv) maintain a specimen of all advertisements for a minimum period of three years.
- (v) file a copy of each advertisement with the Authority as soon as it is first issued, together with information:
 - (a) an identifying number for the advertisement;

- (b) the form number(s) of the policy(ies) advertised and when the product/s were approved by the Authority;
 - (c) a description of the advertisement and how it is used.
 - (d) the method or media used for dissemination of the advertisement.
- (vi) file a certificate of compliance with their annual statement stating that, to the best of its knowledge, advertisements disseminated by the insurer or by its intermediaries during the preceding year have complied with the provisions of these regulations and the advertisement code as stated in regulation 12.

(2) The advertisement register shall be subject to inspection and review by the Authority for content, context, prominence and position of required disclosures, omissions of required information, etc.

4. Changes in advertisement — (1) Any change in an advertisement would be considered a new advertisement.

(2) All the provisions of regulation 3 shall apply *mutatis mutandis* to an advertisement referred to in sub regulation (i).

(3) The Authority shall be informed at the time of filing the advertisement the extent of change the original advertisement.

1. Insurance company advertisements — (1) Every insurance company shall be required to prominently disclose in the advertisement and that part of the advertisement that is required to be returned to the company or insurance intermediary or insurance agent by a prospect or an insured the full particulars of the insurance company, and not merely any trade name or monogram or logo.

(2) Where benefits are more than briefly described, the form number of the policy and the type of coverage shall be disclosed fully.

2. Advertisements by insurance agents — (1) Every advertisement by an insurance agent that affects an insurer must be approved by the insurer in writing prior to its issue;

(2) It shall be the responsibility of the insurer while granting such approval to ensure that all advertisements that pertain to the company or its products or performance comply with these regulations and are not deceptive or misleading.

Explanation: An agent shall not be required to obtain written approval of the company prior to issue for: —

- (i) those advertisements developed by the insurer and provided to the agents;
- (ii) generic advertisements limited to information like the agent's name, logo, address, and phone number; and
- (iii) advertisements that consist only of simple and correct statements describing the availability of lines of insurance, references to experience, service and qualifications of agents; but making no reference to specific policies, benefits, costs or insurers.

7. Advertisements by insurance intermediaries— Only properly licensed intermediaries may advertise or solicit insurance through advertisements.

8. Advertising on the Internet — (1) Every insurer or intermediary's web site or portal shall —

- (i) include disclosure statements which outline the site's specific policies vis-à-vis the privacy of personal information for the protection of both their own businesses and the consumers they serve.
- (ii) display their registration/ license numbers on their web sites.

(2) For the purposes of these regulations, except where otherwise specifically excluded or restricted, no form or policy otherwise permissible for use shall be deemed invalid or impermissible if such form or policy accurately reflects the intentions of the parties in such form or policy as published electronically or transmitted electronically between parties.

9. Identity of advertiser — Every advertisement for insurance shall -

- (i) state clearly and unequivocally that insurance is the subject matter of the solicitation; and
- (ii) state the full registered name of the insurer/ intermediary/ insurance agent.

10. Endorsements and other third-party involvement ^¾

(1) A third party, group or association shall not: —

- (i) distribute information about an insurance policy, intermediary or insurer on its letterhead.
- (ii) allow an insurance intermediary or insurer to distribute

information about an insurance policy, insurance or insurance company on its letterhead.

- (iii) distribute information about an individual insurance policy, or about an intermediary or insurer in its envelopes, unless—
 - a) the third party is providing only a distribution service for the insurance advertisement and is not itself soliciting the coverage, and
 - b) the insurance information is a piece separate from any other information distributed by the third party and clearly indicates its origin.
- (iv) recommend that it's members purchase specific insurance products.
- (v) imply that a person must become a member of it's organization in order to purchase the policy.
- (vi) imply that a purchaser of a policy by becoming a member of a limited group of persons shall receive special advantages from the insurer not provided for in the policy.

Provided that a third party, group or association may:—

- (i) endorse an insurance company or insurance intermediary's product and provide truthful statements, quotes, and testimonials endorsing the insurance products to the insurance company for use in the company's advertisements, so long as the language does not convey directly or indirectly a recommendation that members of the organisation purchase the products.
- (ii) [.....]5

11. Procedure for action in case of complaint — (1) If an advertisement is not in accordance with these regulations the Authority may take action in one or more of the following ways:

- (i) issue a letter to the advertiser seeking information within a specific time, not being more than ten days from the date of issue of the letter;
- (ii) direct the advertiser to correct or modify the advertisement already issued in a manner suggested by the Authority with a stipulation that the corrected or modified advertisement shall receive the same type of publicity as the one sought to be corrected or modified;

- (iii) direct the advertiser to discontinue the advertisement forthwith;
- (iv) any other action deemed fit by the Authority, keeping in view the circumstances of the case, to ensure that the interests of the public are protected.

The advertiser may seek additional time from the Authority to comply with the directions justifying the reasons therefor. The Authority, may, however, refuse to grant extension of time if it feels that the advertiser is seeking time only to delay the matters.

Any failure on the part of the advertiser to comply with the directions of the Authority may entail the Authority to take such action as deemed necessary including levy of penalty.

12. Adherence to advertisement code — Every insurer or intermediary shall follow recognised standards of professional conduct as prescribed by the Advertisement Standards Council of India (ASCI) and discharge its functions in the interest of the policyholders.

13. Statutory warning — (1) Every proposal for an insurance product shall carry the following stipulation, as prescribed in section 41 of the Insurance Act, 1938 (4 of 1938):— “No person shall allow or offer to allow, either directly or indirectly, as an inducement to any person to take out or renew or continue an insurance in respect of any kind of risk relating to lives or property in India, any rebate of the whole or part of the commission payable or any rebate of the premium shown on the policy, nor shall any person taking out or renewing or continuing a policy accept any rebate, except such rebate as may be allowed in accordance with the published prospectus or tables of the insurer.”

(2) If any person fails to comply with sub regulation (1) above, he shall be liable to payment of a fine which may extend to rupees five hundred.

ANNEXURE II

MODEL FORM OF NOTICE, COMPLAINT, AFFIDAVIT AND REPLY MODEL FORM-1 NOTICE BEFORE FILING THE COMPLAINT

Name and address

.....
(of the trader, dealer, firm, company, etc.)

.....
.....
(Complete address)

IN RE: (Mention the goods/services complained of giving details)

.....
Dear Sir,

This is to bring to your kind notice that I had purchased.....from your for a consideration of Rs..... paid in cash vide your cash memo/Receipt/Invoice No..... (or through cheque No dated drawn onbank for a sum of Rs

The said goods are suffering from the following defects:

- (i)
- (ii) etc

I have reported the above matter to you several times (give reference of earlier letters, if any) but despite all my pleadings you have not made good the defect in the goods (or deficiency in services) which is indeed regrettable and highly unbusiness like. On account of your aforesaid dereliction of duty and failure and neglect to rectify the same I have suffered losses/incurred expenses

.....

.....
.....
.....

(give details)

which you are liable to compensate to me.

You are hereby finally called upon to

(i) remove the said defects in the goods
and/or

(ii) replace the goods with new goods
and/or

(iii) return the price/ charges paid

(iv) pay compensation for financial loss/injury/interest
suffered due to your negligence
.....

(give details)

in the sum of Rs with interest
@ % per annum
within days of the receipt of this
notice failing which I shall be constrained to initiate against
you for redressal of my aforesaid grievances and recovery
of the aforesaid amount such proceedings, both civil and
criminal as are warranted by law, besides filing a complaint
under the statutory provisions of The Consumer Protection
Act, 1986 exclusively at your own risk, cost, responsibility
and consequences which please note.

Place.....

Dated.....

Sd/-

.....

Model Form -2 -The complaint

BEFORE THE HON'BLE DISTRICT CONSUMER DISPUTES
REDRESSAL FORUM AT

OR

BEFORE THE HON'BLE STATE CONSUMER DISPUTES
REDRESSAL COMMISSION AT

.....

OR

BEFORE THE HON'BLE NATIONAL CONSUMER
DISPUTES REDRESSAL
COMMISSION AT NEW DELHI

IN RE: COMPLAINT NO OF 20 IN THE MATTER
OF:

(FULL NAME) (DESCRIPTION) (COMPLETE ADDRESS)

..... Complainant

VERSUS

(FULL NAME) (DESCRIPTION) (COMPLETE ADDRESS)

..... Opposite Party/ Parties

**COMPLAINT UNDER SECTION 12/ SECTION 17/
SECTION 21 OF THE CONSUMER PROTECTION
ACT, 1986.**

RESPECTFULLY SHOWETH

INTRODUCTION

(In this opening paragraph the complainant should give his introduction as well as that of the opposite party/parties.

TRANSACTION

(In this paragraph complainant should describe the transaction complained of, *i.e.*, particulars and details of goods/ services availed; items of goods/kind and nature of service; date of purchase of goods/

availing of service; amount paid as price/consideration, full or in part towards the goods/service; Photocopies of the bill/cash memo/ voucher or receipt should be attached and properly marked as Annexure – A,B,C and so forth or 1,2,3 and so forth.)

DEFECT DEFICIENCY

(In this paragraph complainant should explain the grievance, *i.e.*, whether the loss or damage has been caused by some unfair trade practice or restrictive trade practice adopted by any trader or there is some defect in the goods or there has been deficiency in service or the trader has charged excessive price for the goods. One should elucidate the nature of unfair trade practice adopted by the trader, *i.e.*, relating to the quality of goods/services; sponsorship; warranty or guarantee for such period promised. The nature and extent of defects in goods should be explained and so should the deficiency in service. In case of excessive price one should specify the details of actual price fixed by or under any law for the time being in force or as set out on goods and their packing vis-a-vis the price charged by the trader. Complaint can also be filed against offer for sale of goods hazardous to life and safety when used. You should narrate your grievance and rest assured it is being read /heard by compassionate and pragmatic judges. Photocopies of relevant documents must be attached.)

RECTIFICATION

(In this paragraph complainant should highlight what attempts were made by him to set things right, *i.e.*, personal visits or negotiations; communication in writing if any; whether any legal notice was got served and / or whether he has approached any other agency for redressal like, Civil or Criminal Court of competent jurisdiction; the stage of its proceedings, its outcome, if any, alongwith copies (certified preferably) of such proceedings. The nature of response got from the trader when irregularities were brought to his notice, should also be disclosed here).

OTHER PROVISIONS

(In this paragraph reference may be made to any other law or rules or regulations of particular procedure which is applicable to the case and/or which has been violated by the trader and consumer's rights under the same. There are incidental statutory obligations, which traders must fulfil and in case of their failure to do so the case in *prima facie* made out and Forum would take cognizance).

EVIDENCE

(In this paragraph complainant should give details of documents and/or witnesses he will rely upon to substantiate his case. The documents attached as Annexures as stated above may be incorporated in a proper list and a list of witnesses (if any) may be filed similarly). The annexures should be attested as "True Copy".

JURISDICTION

(In this paragraph complainant should liquidate the claim in the complaint, *i.e.*, upto 20 lakh; 20 lakh to one crore; or above and set out the pecuniary jurisdiction of the Forum/ State Commission/ National Commission, as the case may be. The territorial Jurisdiction should be highlighted to obviate any formal objection).

LIMITATION

That the present complaint is being filed within the period prescribed under section 24A of the Act.

RELIEF CLAIMED

(In this paragraph complainant should describe the nature of relief he wants to claim. *i.e.*, for removal of defects in goods or deficiency in service; replacement with new goods; return of the price or charges, etc., paid and/or compensation on account of financial loss or injury or detriment to his interest occasioned by negligence of the opposite party and elucidate how you have calculated the amount of compensation claimed).

PRAYER CLAUSE

It is, therefore, most respectfully prayed that this Hon'ble Forum/ Commission may kindly be pleased to (Details of reliefs which complainant wants the Court to grant)

Place: Dated:

Complainant Through
(Advocate or Consumer Association, etc.)

Verification.

I, the complainant above named, do hereby solemnly verify that the contents of my above complaint are true and correct to my knowledge, no part of it is false and nothing material has been concealed therein. Verified this day of 20 at Complainant.

Note: Although it is not compulsory, complainant may file an affidavit in support of the complaint which adds to the truth and veracity of allegations and gives credibility to the cause. It need not be on a Stamp paper but one should get it attested from an Oath Commissioner appointed by a High Court. The format is just as simple.

Model Form –3- Affidavit in support of the complaint

BEFORE THE HON’BLE.....IN RE: COMPLAINT
NO.....OF 20.....IN THE MATTER
OF:.....

Complainant

Opposite party

AFFIDAVIT

Affidavit of Shri.....
S/o. Shri.....
aged.....years, resident of

- (1) That I am complainant in the above case, thoroughly conversant with the facts and circumstances of the present case and am competent to swear this affidavit.
- (2) That the facts contained in my accompanying complaint, the contents of which have not been repeated herein for the sake of brevity may be read as an integral part of this affidavit and are true and correct to my knowledge.

Deponent

Verification:

I, the above named deponent do hereby solemnly verify that the contents of my above affidavit are true and correct to my knowledge, no part of it is false and nothing material has been concealed therein. Verified this.....day of..... 20..... at.....

Deponent

Model Form –4- Reply by the trader to the complaint

BEFORE THE HON'BLE
THE CONSUMER DISPUTES REDRESSAL FORUM/
COMMISSION AT.....

IN RE: COMPLAINT NO.....OF
20.....

IN THE MATTER OF:

.....Complainant

VERSUS

.....Opposite Party

DATE OF HEARING.....

WRITTEN STATEMENT ON BEHALF OF RESPONDENTS TO THE COMPLAINT OF THE COMPLAINANT

RESPECTFULLY SHOWETH:

Preliminary Objections

1. That the present complaint is wholly misconceived, groundless and unsustainable in law and is liable to be dismissed as such. The transaction question was without any consideration and free of charge.
2. That this Hon'ble Forum/ Commission has no jurisdiction to entertain and adjudicate upon the dispute involved in the complaint in as much as it is not a consumer dispute and does not fall within the ambit of the provisions of the Consumer Protection Act, 1986, hereinafter called the said Act and is exclusively triable by a Civil Court and as such the complaint is liable to be dismissed summarily on this score alone.
3. That the dispute raised by the complainant in the present complaint is manifestly outside the purview of the said Act and in any event, the Act is in addition to and not in derogation of the provisions of the..... Act. The proceedings initiated by the complainant under the Act are honest, null and void and without jurisdiction.
4. That the definitions of 'Complainant', 'Complaint' 'Consumer Dispute' and 'Service', as defined in Section 2(1) of the said Act do not cover the claims arising under the present dispute and that from the aforesaid definitions, the complainant is not 'consumer' and the controversy involved in the complaint is not a 'consumer dispute'.
5. That the present complaint is baseless and flagrant abuse of process of law to harass and blackmail the answering respondent.
6. That the complainant has no *locus standi* to initiate the present proceedings.
7. That the complaint is bad for non-joinder of necessary and proper party and is liable to be dismissed on this score alone.
8. That the complainant has already filed a Civil Suit for

in a court of competent jurisdiction which is pending disposal in the Court of and the present complaint has become infructuous.

- 9. That the present complaint is hopelessly barred by limitation.
- 10. That this Hon’ble Forum/Commission has no territorial or pecuniary jurisdiction in as much as the amount involved in the subject-matter exceeds/is less than the limit prescribed by Section 11(1) Section 17(1)(a)(i)/Section 21(a)(i) of the Act.
- 11. That the present complaint is frivolous and vexatious and liable to be dismissed under Section 26 of the Act.
- 12. That the present complaint has not been verified in accordance with law.

On Merits:

In these paragraphs respondent must reply each and every allegation made and contention raised by the complainant, factual and legal as well. In case one has already made good the defect or deficiency, elucidate steps taken. One may have, *inter alia*, following goods defences as well.

- 1. That the transaction entered between the parties to the above dispute is a commercial one and the complainant cannot claim any relief from this authority in as much as
(give details)
- 2. That the complainant had purchased the goods as a seller/retailer/distributor, etc., for consideration of resale and as such is barred from moving this Hon’ble Forum/Commission for the alleged defect/deficiency etc. in as much as
(give details)
- 3. That the complainant has already availed the warranty period during which the answering respondent has repaired/replaced the goods in question. The complainant is thus legally stopped from enforcing this complaint or to take benefit of his own wrong.
- 4. That the present complaint is an exaggeration beyond proportion despite the fact that the complainant is himself responsible for delay and laches in as much as he has on several occasions changed his option for class of goods/type of allotment scheme

of flats/model of vehicle, etc
(give details)

5. That the answering respondent is well within his rights to charge extra price for the subject-matter of the above dispute in as much as time was not the essence of delivery thereof. The complainant is liable to pay the increased price w.e.f on account of escalation due to excise duty/budgetary provisions etc. in as much as.....(give details)
6. That the complainant has accepted the goods and/or service towards repair/replacement etc. without protest and the present complaint is merely an after thought.
7. That without prejudice the answering respondent as a gesture of goodwill is prepared to.....
(give details of rectification, if any, which can be done in case of minor or tolerable problems to avoid harassment to consumer and litigation problems)

The allegations of defect/default/negligence and/or deficiency in service are wholly misconceived, groundless, false, untenable in law besides being extraneous and irrelevant having regard to the facts and circumstances of the matter under reference. Prayer clause with all the submissions made therein is absolutely wrong and is emphatically denied. Complainant is not entitled to any relief whatsoever and is not entitled Model Form costs.

Sd/-
(Opposite Party)

Place:

Dated:

through

(Advocate)

Verification

I, the above named respondent do hereby verify that the contents of paras to of the written statement on merits are true and correct to my knowledge. While paras to of preliminary objections and to of reply on merits are true to my information, belief and legal advice received by me and believed to be true while the last para is prayer to this Hon'ble Court. Verified at thisday of..... 20

Sd/-
(Opposite party)

INDIAN INSTITUTE OF PUBLIC ADMINISTRATION

The Indian Institute of Public Administration, established as an autonomous body under the Registration of Societies Act, was inaugurated on March 29, 1954 by Shri Jawaharlal Nehru who was the first President of the Society. The basic purpose of establishing this Institute was to undertake such academic activities as would enhance the leadership qualities and managerial capabilities of the executives in the government and other public service organizations. The activities of the Institute are organized in four inter-related areas of Research, Training, Advisory and Consultancy Services and Dissemination of Information.

CENTRE FOR CONSUMER STUDIES

CCS is dedicated to consumer studies and is sponsored by DCA, GoI. The objective of the CCS is to perform, facilitate and promote better protection of consumer's rights and interests with special reference to rural India. The broad areas of focus of the Centre comprise capacity building, advocacy, policy analysis, research, advisory and consultative services, and networking.

The Centre seeks to network with national and International agencies and interface with other stakeholders by serving as a bridging “think tank” with an intensive advocacy role. The Centre provides a forum for creating dialogue among policy makers, service providers, representatives of various business establishments and their associations, professional bodies/associations, civil society organizations, educational/research institutions, economic and social development organizations as well as leading NGO's.

Centre for Consumer Studies

Room No. 11A

Indian Institute of Public Administration

I.P. Estate, Ring Road

New Delhi-110002

Tel: 011-23468347, 23705928 (Fax)

Email: ccs.iipa@gmail.com

Website: www.consumereducation.in

