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Advertisement and Its Misleading

RICHA JHANWAR¹ AND DISHITA KHANDDIA²

ABSTRACT

The influence of advertisements on consumer choice is undeniable, and that is why advertisements should be fair and truthful. Advertising is a must for economic growth but should not be allowed to mislead. Misleading advertisement distort completion and also consumer choice. The Consumer Protection Act, 1986 (now Consumer Protection Act, 2019) does not have any provisions which specifically deal with misleading advertisements. However, they do prohibit “unfair trade practices” and provide for remedies for such cases. Advertisements may be brought under these provisions; however, they are not sufficient to deal with all the aspects of advertisements, which might require regulation. As opposed to India, a number of foreign legislations have specific laws dealing with advertisements.

Therefore, this paper aims to make a thorough and comparative study of ethical and unethical advertisements, unethical advertisements which leads to misleading advertisement and identify the hurdles to achieving the basic objects of the consumer welfare legislations to control misleading advertisements, and find out the solutions for the same.

I. INTRODUCTION

Advertising is one of the most important tool for promoting a product or service and is a non-personal presentation of an idea or a product. Advertising has also acquired great importance in the modern era characterized by tough competition in the market and fast changes in technology, and fashion and taste customers.

Advertising are used for communicating business information to the present and prospective customers. It usually provides information about the advertising firm, its product qualities, place of availability of its products, etc. Advertisement is indispensable for both the sellers and the buyers. However, it is more important for the sellers as in the modern age of large scale production, producers cannot think of pushing sale of their products without advertising them.

¹ Author is a student at Manipal University, Jaipur, India.

² Author is a student at Manipal University, Jaipur, India.

II. ADVERTISEMENT AND ITS OBJECTIVES

Advertisement is a means of communication with the users of a product or service. The promotional messages are called advertisements, or ads for short.³ The goal of advertising is to reach people most likely to be willing to pay for a company's products or services and the company entice the customers to buy the product or avail the services. There are three main objectives of Advertising which are:

Informative Advertising: objective is to create awareness about the brands, products, services, and ideas. It also helps in announcements of new products and programs and can educate people about the attributes and benefits of new or established products.

Persuasive Advertising: objective is to convince the consumers about a company's services or products that it is the best. It works to reform and enhance the perceptions of an image of a company or product or service. Its goal is to influence consumers to take action, switch brands, try a new product, or remain loyal to a current brand.

Reminder Advertising: objective is to remind people about the need for a product or service and also the features and benefits of the product or service.

Advertisements can be based on ethical and unethical ways. Ethical advertisements are value and moral based advertisements whereas unethical advertisements mean not sticking to all rules and regulations, these advertisements are of untrue and manipulative nature. Ethics should be followed by all individuals but still everything has a positive and negative aspect likewise there are people who choose unethical form of advertisements for the sole motive to earn profit ignoring the moral values. Unethical advertisements lead to misleading advertisements. In this article we will be discussing about misleading advertisements and how unethical it is.

What Is Unethical & Ethical Advertising?

Whether an advertising is ethical or unethical has always been a debatable topic. The most common reasons for inviting a debate over this topic is there is no particular definition of ethical behaviour as it is driven by internal beliefs. One can say that an advertisement is ethical as long as it is created with the intention that consumers will grasp it and be persuaded to act on it to derive positive results. Whereas, an ad becomes unethical if it is made with the intention to fool customers to only fetch money out of their pockets.

³ <https://economictimes.indiatimes.com/definition/advertising>

Ethical Advertising

Ethical advertising is all about knowing the truth about the product and respecting that truth. In advertising ethics is defined as a set of well stated principals that regulates the ways of communication between the buyer and the seller. The U.S. Federal Trade Commission defines ethical advertising as truthful which is backed by evidence and fair. It is also required for the advertisers to follow certain requirements like: social consciousness, environmental consciousness and promotion of product's distinction to promote truth in advertising ethically.

Unethical Advertising and Practices

Many people feel perplexed by unethical way of advertising. It seeks to misrepresent the product in some way or distort the message that is being transmitted to fit certain agenda and will often look for a secret or subversive ways to convince and manipulate the customers into buying the products. It includes coaxing buyers into buying any product or service by making outrageous claims. For example, "We are invincible," "100% customer satisfaction," etc.

Further, one can always find some grey areas in unethical advertisements like misleading through advertisements which can include factors like: not disclosing all terms and conditions, false claims, emotional exploitation and so forth. However, unethical advertisements are done in such way that the terms are not law breaking and hence cannot be considered illegal. Unethical advertising means lesser of moral values or ethical codes.

III. MISLEADING OF ADVERTISEMENT

Misleading of advertisements or false advertisements generally refers to deceptive or untrue marketing. Companies usually make misrepresentations about their products to induce customers to pay more or even purchase a product that they would not have considered otherwise. There is no proper definition to define misleading of advertisement but it can be said that the false and misleading advertising by companies of any product may result in consumer suffering, a financial loss or another form of damage to the consumer. Misleading of advertisement can also refer to any fraudulent, deceptive or dishonest trade practice or business misrepresentation of the products that are being sold. For lack of established terminology, examples are cited for clarity. In the process of attempting to understand the misleading advertisements all the aspects along with examples are mentioned in this article.

When does an Advertisement become "Misleading"?

To understand the term properly we should know as to when does an advertisement becomes misleading. False and misleading of advertisements may include factors like:

- a false or misleading representation that goods are of a particular kind, standard, quality, quantity, style, or model, or that they have had a particular history or particular previous use (for example, if a bag is advertised as being made of leather when it is actually vinyl)
- a false or misleading representation that services are of a particular kind, standard, quality, or quantity, or that they are supplied by any particular person or by a person of a particular trade, qualification, or skill or with other particular characteristics
- a false or misleading representation that a particular person has agreed to acquire goods or services (for example, that Lydia Kim owns a particular brand of golf clubs)
- a false or misleading representation about the place of origin of goods or services (for example, if goods made overseas are labelled as “made in New Zealand”)

Forms of misleading advertisement

We by now know what misleading actually mean and how can an advertisement mislead but to understand further we must know the types of misleading. Misleading can be showcased in different forms that many time consumers fails to recognise. There are many ways through which misleading can be done but here are some of the most common types:

1. Bait and Switch

It occurs when an item is advertised at a sale price but the seller does not have sufficient stock to last until the end of the sale which often leads the consumers to purchase other more expensive items from the store instead. It is an unethical advertising technique that involves luring the customer in with a promise of a sale or an inexpensive item they may be interested in, and once their attention is captured, the advertiser changes the scheme by making the product unavailable and then directing the consumer to a like product that is more expensive. For example, Coats, advertised for sale at a specified price with an accompanying illustration showing the coats to have fur collars, but in fact supplying the coats with fur collars at a higher price. Some warning signs a bait-and-switch may include:

- Too Good to Be True; companies offer deals with rock-bottom prices for high end products and services. Unbelievably low prices can also signify a different scam, where the seller wants to take your money without actually providing you with the product or service.
- Fine Print Is Confusing; Advertisements may contain a lot of small details embedded at the bottom or sides. Some scam artists offer disclaimers in advertising, stating that only a limited quantity of items is available.

- Deals are final Bait-and-switch deals are non-refundable, and customers will likely never have the opportunity to contact the seller again. Do your homework ahead of time before buying from a company with this policy.

2. The Characteristics of the Product

While it's generally deceptive for an advertisement to mislead consumers about price or availability, deceptive advertisements are also those that make statements about quality or origin of a product which cannot be substantiated. Many of the false advertisements is concerned with the qualities of the product-its identity, its contents, its capacity or performance, its source or foreign origin, its label which may have the capacity to deceive because it does not fully disclose the nature of the product, the product's packaging and appearance and resembles with other products. Another thing to watch out for is photography and illustrations of a product. Illustrations in advertisements often lead consumers to believe that the product depicted in the form of photo or illustrations is what they will receive, it commonly appears more tempting than reality especially the food products. Pictures on the food packaging often include ingredients or items that are not included in the package. Also, False colouring is another form of false advertising through misleading illustrations. Photo manipulation software is often used to enhance the colouring of fruits and vegetables to make them look riper and more appealing and enticing to consumers usually in printed or web advertisements form, it can also be found in the stores when the product is packaged in coloured packages that hide the true colour of the items. Misleading illustrations also come in the form of making food items look larger than they really are. For example, an image of a double-thick, juicy burger looks very tempting in a photo or illustrations than on the customer's plate, it looks very different in reality. When advertising a product, it is illegal for a company to make claims about the quality or origin of the product if the claims cannot be substantiated. It is also illegal for a company to withhold information about known defects.

For example:

Bob's Bait Shop advertises its newest line of fishing poles. In the bait shop's weekly advertisement, the fishing pole is described as the best on the market, and the ad features a "Made in the USA" graphic, which is known to attract many buyers. In fact, the fishing poles are manufactured in China, making the bait shop's advertisement false.

3. Deceptive Pricing

Price deception occurs when a company uses advertisements to give false or incorrect information in relation to the price of a product. Price deception may include many factors like:

a. Hidden fees and surcharges

Fictitious and deceptive pricing is probably the most prevalent form of false advertising. It is perhaps the most presently serious threat to public confidence in advertising. Service providers often take the fees and surcharges that are not disclosed to the customer in the advertised price. Manufacturers disadvantage and mislead the customers through various methods such as

- Unfair contract terms, notably with respect to consumer compensation.
- Use customer data for purposes other than they were obtained for.
- Apply unfair fees, charges and penalties on transactions.
- Place artificial restrictions on the time period during which customers can submit claims.

b. Misuse of the word ‘free’

While talking about deceptive pricing the retailers often lure the customers through Misusing of the word "free" The usual meaning of "free" is "devoid of cost or obligation". However, retailers often use the word for something which is merely included in the overall price. One common example is a "buy one, get one free" sale. The second item is not "free" under the normal definition, since, to obtain it, the buyer is obliged to pay the full cost of the first item. Additionally, even the advertising costs in most cases actually are paid by the consumer. Similarly, for the conscious consumer whenever there is a gift on purchase of a product, it ought to be a genuine gift and not something that equivalent amount for which has already been included while purchasing the product or service. For example, we often come across free calls in mobile phone Tariff Plans which are very attractive till the consumer realise that in order to get a “free” service of a call or an SMS, it is required to actually pay for all the so called free services.

c. Price Reduction deception

This often occurs when a company advertises a product claiming it to be on sale or has been marked down whereas the advertised item was never sold out or being sold at a higher price May’s Market advertises a 2-liter bottle of Purple Pop for \$1.00. The ad claims that the \$1.00 price is a 50% discount off the soda’s regular price, but in reality, regular price of the pop is \$1.00 this brings customers in to purchase the advertised pop.

4. Warranty & Guarantees

When any representation of a product claims to be a warranty or guarantee of the product, or

promises to replace, maintain or repair the product, or any part of the product, when there is no such intention of the producer to carry out the warranty, guarantee or promise is misleading. Any guarantee or warranty must clearly disclose the identity of the guarantor and warrantor, the nature and extent of the guarantee and warranty, and the manner in which the guarantee and warranty will be fulfilled. For example, if a guarantee proportionately adjusts the unexpired term of the guarantee of a product, there must be an explanation of how the adjustment will be calculated. A "lifetime" guarantee must also identify the "life" that forms the basis for the warranty, and if any conditions are attached, such as a service charge, it must be clearly disclosed. An advertiser should not represent a product to be guaranteed unless he is both able and willing to perform as per the guarantee. A guarantee must not be used to misrepresent material facts about the product guaranteed like: "guaranteed for 30 months" should not be used in promoting a battery that is normally expected to, last for only 18 months.

5. Cosmetics, Apparels and Accessories

Often, we see that if any rejection in marriage, jobs or any other social sphere takes place it is repeatedly attributed to fair complexion, height, weight etc. Such kind of things usually cause havoc on the minds of many. Beauty creams, weight loss miracles are constantly playing on the minds and pockets of the consumer which very often leads to low self-esteem, and detrimental impact on them and on their health which can take a hazardous turn. The use of age miracle creams claims to arrest a fact and that is TIME which if scientifically thought is impossible. Also, very frequently we come across myths like consumption of a certain kind of tea or wearing a belt would ensure weight losses without any exercise and we know that such kinds of things aren't possible yet the very fact is that they are being advertised and that there is a section of consumers who fall into such a trap. Advertisements assure consumers that goods can make them more attractive to the opposite sex, give them power, lift their spirits and bring them instant self-gratification. A girl facing rejection in relationships or marriage due to her having dark complexion, adolescents being called names for being short in height are factors that destructs a personal. The desire to attain fair complexion, gain height, weight loss and other such physical attributes often compel the consumer in a psychosomatic manner that even as experimentation and desperation leads to wasteful expenditure that consumers undertake.

However, recently the minister of health and family welfare with an aim to fight misleading advertisements, drafted a Drugs and Magic Remedies (Objectionable Advertisements) (Amendment) Bill, 2020. The health ministry in this bill presented that promoting hair loss, fair skin and sexual performance, among other conditions will lead to punishment if first-time convicted than the penalty is to spend up to two years in jail and a fine up to Rs10 lakh as

opposed to the existing provisions of six months' jail time and an unspecified fine and for second conviction five years' jail time and a fine of up to Rs50, which currently carries penalties of a one-year jail term and an unspecified fine.

6. Health & Safety

There is abundance of advertisements that deals with the growth of children through health drinks which almost impel guardians and parents especially mothers to facilitate in having sharper, taller and stronger children from conceiving a child, to infancy, to childhood, to adolescence. Misrepresentation of facts usually changes the whole phenomena of a particular product or service it gives a whole new and false representations of the facts like when an edible oil advertisement gives the impression that one is free of heart problems so long as he uses that particular oil, is a false statement. Various types of advertisements depict false colouring, food items or food being fresher which impacts the health adversely in more than one way. Claims that health drinks having ingredients that will increase the memory of students and their ability to recall during examinations often have no scientific research or data to back them

7. Other deceptive methods

Other than the above mentioned types there are many other types through which misleading can be done like:

1. Trade infringement
2. Flawed Research
3. False environmental claims
4. Online deceptive advertisements
5. Advertisements directed at children
6. Use of sex appeals
7. Gender portrayal in a wrong way

Impact and negative effects of misleading

The impact and effects of unethical advertising leaves a negative influence on consumers it is perhaps the worst kind of advertising as the advertisement business is growing globally day by day with all the awareness and details of the product it also brings certain kinds of discrimination to our society. Discrimination like sexism, racism, inequality etc. is prevailing and now it's been indirectly shown to us in form of advertisements and often leaves negative

impact.

It exploits the feelings of personal entities through over emphasizing on the material side of life by manipulating human ethical values. Researches have been shown that advertisement has been affecting people psychologically that under the pressure of advertising an individual is convinced to buy the advertised product. There is no doubt that in today's competitive world it gets very difficult for an individual to fit in especially when the competition leads to discrimination. Advertisements are often based on stereotype belief of people.

It might be tempting to deceive in advertisements as the business could attract new customers who might buy the products and subscribe to the services. However, this strategy is bad for the future of the company, and it might possibly hinder the business success. Especially for companies whose only goal is to earn profits, may tend to use advertisements that might hide some costs, omit important facts, or use misleading images, to get customers to buy a service or product. This kind of marketing isn't helpful and it will deprive consumers of the accurate information they need, to make good and well-informed decisions, plus if they aren't informed about the truth, they will end up wasting valuable money on something, which ultimately won't meet their needs or solve their problems and the customers might use the product without knowing the negative side effects of the product. Misleading advertisements also have an effect on the business. If the consumers find out about the misleading they would become angry on the fact that they were tricked, and would spread negative stories about the company, via word of mouth or through social media. The consumer might also sue the company for damages, which may cause the business to incur hefty litigation costs and also the goodwill will be harmed later on.

A real life incident happened regarding the negative impact of misleading 'A boy named Ravi reading in Class V in Delhi committed suicide because he was influenced by the advertisement of a health drink and he wanted to gain height in a short time. While this might be an extreme situation there is no doubt that misleading advertisements do have a negative impact, through any form. Also, certain ads come with a statutory warning that such acts shouldn't be initiated at home but in such small writing that it is merely given any view.

IV. EXISTING MECHANISMS AND LAWS DEALING WITH MISLEADING ADVERTISEMENTS

Laws and Acts related to misleading advertisements are there to both protect and punish offenders which are not only mentioned in the Constitution of India, but also through various

other provisions or bodies that prevent and punish offenders. Some of which are mentioned below:

1. Laws having horizontal application on advertising

- The Consumer Protection Act, 1986

Consumer protection act is the only law that provides the consumers the right to seek redress against unethical and misleading advertisements including compensations for any loss or injury caused by such advertisements.

- Trade and Merchandise Marks Act, 1958.
- Cable Television Networks (Regulation) Act, 1995

2. Laws having vertical application on advertising

- Drugs and Cosmetics Act, 1940
- Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954

3. The following Regulatory authorities have power to regulate advertising in their respective domain.

- Insurance Regulatory Development Authority
- Telecom Regulatory Authority of India
- Securities and Exchange Board of India
- Reserve Bank of India
- Medical Council of India

4. Standards and Self-Regulation

Advertising Standards Council of India (ASCI), The News Broadcasters Association (NBA).

As by now we have gained knowledge about the forms of misleading, its impacts and its negative effects on the consumers and also the laws that are there to prevent such misleading. This raises a vital question to me that if misleading advertisements affect both consumers and business then why do the business persons or advertisers make such kind of ads? Also, so many rights and legal measures are taken to stop such misleading but still its continuing day by day and such kind of advertisements are being made, misleading are being done, people are getting exploited through physical, psychological and monetary norms. Why so? It's because of the right to freedom and speech mentioned in article 19(1) of the constitution of India, many people feel that these rights give them immense liberty and power to act on certain things like a person

may believe that he or she has the right to freedom and speech so they can say whatever they feel like but it's not true. As, there is freedom no doubt that people have right to portray their views but it's not the absolute right. These rights come with certain restrictions and one should adhere to such restrictions and act accordingly.

V. IS ADVERTISING A FUNDAMENTAL RIGHT TO EXPRESS?

Regarding this the Supreme Court of India has held that advertisements are regarded as commercial speech and form part of the fundamental right to freedom of speech and expression recognised under Article 19(1)(a) of the Constitution of India. As advertising is one of the elements of the right to information, it facilitates the circulation of information about sellers and their products.

Also, The Delhi High Court, in an interim order (subject to the final outcome of the case) in *Horlicks and Anr v Heinz India*,⁵ held that advertisements are protected under article 19(1) (a) of the Constitution as facets of commercial speech and can only be restricted in accordance with the provisions of article 19(2). The protection given to an advertisement is a necessary concomitant of the right of the public to receive the information. It also clarified that right to privacy cannot be asserted against information that is already in the public domain and that in a democratic country. The free flow of commercial information is indispensable and the public has a right to receive commercial speech.

The Constitution of India provides the fundamental right to freedom of speech and expression which allows an individual to speak or share through various media, their thoughts and ideas. However, these rights come with certain restrictions. Advertising is well within the confinement of fundamental rights, considering that it is a way to express and reach out to the public at large, be it print, electronic or visual media. Apart from the advertiser's right to express, the freedom of expression is also linked to people's right to know. Therefore, advertising is not a privilege for the brands to reach out to the audience at large but also encompasses the right of the people to listen, read or receive the information conveyed.

Right to Advertisement as a Part of Freedom of Speech And Expression

Advertising which is no more than a commercial transaction and can also be used for circulating information regarding the product advertised. Public at large is benefitted by the

⁴ **Article 19(1)(a)** of the Constitution of India guarantees to all its citizens the right to freedom of speech and expression. The law states that, "all citizens shall have the right to freedom of speech and expression".

⁵ CS(COMM) 808/2017

information made available through the advertisement. In a democratic economy free flow of commercial information is absolutely necessary.

An advertisement is no doubt a form of speech but its true character is reflected by the object for the promotion of which it is employed. It assumes the attributes and elements of the activity under Article 19(1) which it seeks to aid by bringing it to the notice of the public. But when an advertisement takes the form of a commercial advertisement and has an element of trade or commerce in it than it no longer falls within the concept of freedom of speech as the object of propagation of ideas ' social, political or economic or furtherance of literature or human thought get diverted and is not fulfilled.

Some advertisements in particular were considered derogatory and were banned by the government, such as:

1. A deodorant advertisement that showed a man accompanied by scantily clad women was banned by the government after several complaints were received from viewers about the advertisement being offensive to family viewers.
2. A soft drink advertisement that showed a child bringing the drink for the Indian cricket players was banned after complaints from child labour activists.
3. Advertisements of two underwear ads were banned due to vulgarity and indecency. Objectionable content in ad is usually a reason for taking it off channels.

Advertisements allows us to freely express our ideas and thoughts through any medium such as print, visual, and voice and it is necessary to maintain and preserve freedom of speech and expression in a democracy but also it is necessary to place certain restrictions on this freedom for the maintenance of social order, because no freedom can be absolute or completely unrestricted.

VI. CONCLUSION

There are many advertisements in all platforms that consumers can access. Plentiful misleading and false advertisements have had an impact on consumer behaviour. They have been exposed to many false or misleading claims for products and services advertised. Consumers are likely to abandon the brands to which they are loyal if they discover that businesses are not truthful or are misleading in their advertising. Thus, our study suggests that misleading and false advertising changes consumers' behaviour by causing them not to trust any kind of advertising. They are forced to go through a long consumer purchasing process during which they need to

verify information before making a decision about whether to buy the service or product. This study proposes the importance of buyer vigilance when buying products and services.

We have stated the necessary details of what, when and how misleading is done and what are the legal measures through which the consumers can address if any misleading takes place and also the regulatory bodies like consumer protection act which provides redress against unfair trade practices regarding a false or misleading advertisement. Apart from the legal measures there are certain other remedies through which a consumer can be aware are injunctive relief, correcting advertisements and collecting damages. Also, on February 03, 2020. The ministry of health had released a draft of Drugs and Magic Remedies (Objectionable Advertisements) (Amendment) Bill, 2020, regarding the concerns about misleading advertisements and the need for the law to keep pace with changes in technology. Unfortunately, these provisions aren't being effectively used to curb misleading advertisements.

Thus, to further conclude a consumer should be aware of all facts and shouldn't be carried away with any information that has provided they should have the knowledge of all the facts regarding the product or service to avoid misleading. Also, through the whole article one thing has really cleared my mind is that misleading often happen because of consumers behaviour and emotions towards things. Nowadays every human being wants to look perfect and looks for the easiest way to escape very few people focus on self-love and accept themselves. So, to avoid the misleading one should be aware of its emotions and should learn to accept themselves.
