

## **ADVERTISING AND THE LAW**

ADVERTISING IS an important tool for a marketer to generate buyers' interest in his products and services. It is also immensely useful to consumers as it helps them in choosing the right products and services. However, with growing competition and in an attempt to increase their sales and market share, manufacturers and service-providers may be tempted to engage in deceptive and misleading advertising. This impairs public confidence in advertising. Thus, there is a need to put a check on unscrupulous advertisements to protect consumers against deceptive and misleading advertising and, at the same time, ensuring that advertisements are in the public interest. To achieve this objective, the government has enacted a number of laws. This paper seeks to analyse the major statutory provisions governing advertising in India.

### **Statutory provisions governing advertising**

The laws regulating advertisements apply to all advertisements irrespective of the media used, including the Internet. The major provisions of these laws are briefly discussed below.

#### **Regulation of advertising under Consumer Protection Act**

The Consumer Protection Act, 1986 (CPA), is basically intended to protect and promote the interest of consumers. It provides effective safeguards to consumers against supply of defective goods, provision of deficient services, unfair trade practices, restrictive trade practices and other forms of their exploitation.

The two major categories of regulatory provisions of the CPA pertaining to advertising are: (a) unfair trade practice (UTP) and, (b) restrictive trade practice (RTP). The CPA contains comprehensive definitions of the two terms.

#### *Unfair trade practice*

An unfair trade practice, insofar as it relates to advertising, refers to any unfair method or deceptive practice adopted for promoting the sale, use or supply of any goods, or the provision of any service. Moreover, the following three advertising practices are particularly specified as unfair trade practice:



- (a) Making false claims and misleading advertisements
- (b) Offering bargain prices or pseudo-discounts
- (c) Conducting of pseudo-sale promotion contests

False claims and misleading advertising:

As provided under CPA, the following statements, whether made orally or in writing or by visible representation, would amount to an unfair trade practice:<sup>1</sup>

1. It falsely represents that the goods are of a particular standard, quality, quantity, grade, composition, style or model.
2. It falsely represents that the services are of a particular standard, quality or grade.
3. It falsely represents any re-built, second-hand, renovated, reconditioned or old goods as new goods.
4. It falsely represents that the goods or services have sponsorship, approval, performance, characteristics, accessories, uses or benefits.
5. It falsely represents that the seller or the supplier has a sponsorship or approval or affiliation.
6. It makes a false or misleading representation concerning the need or usefulness of any goods or services.
7. It gives to the public any warranty or guarantee of the performance, efficacy or length of life of a product or of any service that is not based on an adequate or proper test thereof.
8. It makes to the public any warranty or guarantee of the performance, efficacy or length of life of a product or of any service that is not based on an adequate or proper test thereof.
9. It materially misleads the public about the price of any product or service.
10. It gives false or misleading facts disparaging the goods, services or trade of another person.

It has been clarified that for the purpose of determining whether any statement amounts to a false representation or a misleading advertisement, each of the following types of statements shall be deemed to be a statement made to public.

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1. Consumer Protection Act, s. 2(1)(r).



- Any statement expressed on an article offered for sale or on its wrapper or container.
- Any statement expressed on anything attached to, inserted in, or accompanying an article offered for sale, or on anything on which the article is mounted for display or sale.
- Any statement contained in anything that is sold or in any other manner made available to a member of the public.

Thus, the representation to the public includes every communication, whether expressed on the wrapper, container or the package of an article, in a point-of-purchase display or window display or through the mass media – newspaper, magazine, radio, television, posters, hand bills, direct mail, hoardings, product demonstration, and gift articles. Thus, public representation encompasses all forms of promotion and marketing communication – advertising, personal selling, sales promotion, packaging, and labeling.

Bait advertising:

The publication of any advertisement for the sale of a product or service on a bargain price is also not permitted under the CPA.<sup>2</sup> It would be an unfair trade practice if a person gives any advertisement, whether in the newspaper or otherwise, for the sale, at a bargain price, of goods or services that are not intended to be offered for sale at the advertised price or for a reasonable period or in a reasonable quantity.

Sales promotion contests:

Under the garb of promotional contests, sellers lure the unsuspecting and gullible consumers to buy unnecessary products. As provided under the CPA,<sup>3</sup> an advertisement shall amount to an unfair trade practice if the advertiser offers any pseudo gift or prize to those participating in the sale contest or creating an impression that something is being given free of charge when it is fully or partly covered by the amount charged in the transaction as a whole. Moreover, conducting of any contest, lottery or game of chance or skill, for the purpose of promoting the sale of any product or any business interest, will also amount to an unfair trade practice.

In many cases, the gift or prize offered free of charge along with the product is not really free – its cost is already included in the price of the

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2. *Ibid.*

3. *Ibid.*



product. Offering of any such gift or prize would amount to an unfair trade practice in two cases:

- When the intention of the seller is not to provide the gift or prize, i.e., the gift offer is not intended to be honoured.
- When an impression is created that something will be given free while its cost is fully or partly included in the price of the product offered for sale.

Consequences of misleading and unfair advertising:

An advertiser who violates the legal requirements of the CPA regarding advertising shall face one or more of the following consequences.

1. Temporary injunction against the advertising campaign.
2. Cease-and-desist order against the advertising campaign.
3. Direction for issuing of corrective advertising at the cost of the erring party.
4. Payment of compensation to the aggrieved person for any loss or injury caused to him.
5. Payment of punitive damages to serve as a deterrent for the advertiser.
6. Payment of cost of litigation to be made to the aggrieved person by the advertiser.
7. Imposition of imprisonment, or fine, or both on the erring party in case of non-compliance of the direction given by the consumer court.

Moreover, since the cases decided by consumer courts are often reported in newspapers and law magazines, the company concerned gets adverse media reporting, which eventually lowers corporate image. Furthermore, the legal action against the company lowers employees' morale.

#### *Advertising as restrictive trade practice*

Advertising can also attract regulatory action under the CPA if it results in the imposition of unjustified costs or restriction on consumers. Where a firm incurs heavy advertising expenditure on advertising and thereby leads to unreasonably high prices of the product advertised the advertising practice shall amount to a restrictive trade practice (RTP). In that case, the advertiser can be proceeded against on a complaint



from any consumer, registered consumer association or the Government. The consequences of indulging in a RTP are similar to those in the case of an UTP.

Thus, the CPA provides adequate safeguards against misleading and unfair advertising.

### **Advertising and the Competition Act**

Earlier, under the Monopolies and Restrictive Trade Practices (MRTP) Act, 1969, if any advertisement was considered prejudicial to the public interest, then the Monopolies and Restrictive Trade Commission was empowered to pass a cease-and-desist order, in addition to awarding compensation for any loss or injury caused to any person. Now, the Competition Act, 2002, has repealed and replaced the MRTP Act, 1969.<sup>4</sup>

The Competition Act, 2002, is intended to prevent practices having adverse effect on competition, to promote and sustain competition in markets, to protect the interests of consumers, and to ensure freedom of trade carried on by other firms in the market, in India. Under the Act, any excessive expenditure made by a firm on advertising may amount to an anti-competitive practice. The Act also prohibits the abuse of dominant position by an enterprise.<sup>5</sup> Thus, an enterprise should not take advantage of its dominant position, so as to create entry barriers for small companies, through its large-scale and heavy advertising expenditure.

In case the advertisements of a firm encourage an anti-competitive practice or take undue advantage of its dominant position, so as to create entry barriers for small companies, the Competition Commission of India (CCI) can conduct an inquiry and can pass appropriate order. Thus, any anti-competitive practice can have severe consequences, including the imposition of a fine, or imprisonment, or both.<sup>6</sup>

Nonetheless, India has a rich body of decided cases under the Monopolies and Restrictive Trade Practices Act, 1969. The MRTP Act lays down that any statement, oral or written or by visible representation, which gives false or misleading facts about goods or services or disparaging the goods, services or trade of another person shall amount to unfair trade practice.<sup>7</sup>

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4. The Competition Act came into force on the 31st March, 2003.

5. MRTP Act, s. 4.

6. However, the CCI that was formally set up on 14th October, 2003, has not yet (2005) been able to function due to certain legal lacunae and technical snags pointed out before the Supreme Court of India.

7. *Supra* note 5, s. 36A.



In *Reckitt and Coleman Ltd. v. Jyothi Laboratories Ltd.*,<sup>8</sup> in an advertisement for Kiwi liquid wax polish it was shown that the product does not drip as opposed to a product in another bottle marked as 'X' from which the liquid shoe polish was dripping. From the design of the bottle marked as 'X', it could be inferred that it was an indirect attack on Cherry Blossom liquid shoe polish as Cherry Blossom had a design registration for the bottle. The MRTP Commission held that it was a case of disparaging advertising.

In *Dabur India Ltd. v. Colgate Palmolive India Ltd.*,<sup>9</sup> Dabur India Ltd. filed a suit against Colgate Palmolive India Ltd for their advertisement that showed a celebrity telling them the ill-effects of toothpowder in a red container which resembled Dabur Lal Dant Manjan Powder. It was argued that the impugned advertisement represented Dabur Lal Dant Manjan Powder as severely detrimental to dental health and in particular damaging tooth enamel. Delhi High Court granted an interim injunction on the ground that the advertisement was disparaging.

In *Colgate Palmolive India Ltd. v. Hindustan Lever Ltd.*,<sup>10</sup> HLL in its television advertisement for New Pepsodent showed samples of saliva being taken from two children, hours after brushing. According to the advertisement, one of them had brushed his teeth with New Pepsodent and the other with 'a leading brand of toothpaste'. Also, while taking their samples, they were asked the name of the toothpaste that they had brushed their teeth with in the morning. One of them replied Pepsodent and the other boy's response was muted. However, the lip movement of the boy indicated that he said Colgate. Moreover, at the time of muting, the sound of the jingle used in Colgate's advertisement was used. The advertisement then showed that the saliva of the 'leading brand of toothpaste' contained more germs. Held, it was a case of disparaging advertisement.

Similarly, in *Pepsi Co. Inc. and Ors. v. Hindustan Coca Cola Ltd. And Anr.*,<sup>11</sup> it was argued that by calling the cola drink of the appellants "Wrong Choice Baby" and by indicating that their drink is sweet in taste and is for kids disparaged the appellant's product. It was held that tradesman can say that his goods are best or better. However, by comparison, the tradesman cannot slander nor say that the competitor's product is bad or inferior.<sup>12</sup>

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8. 1999 (34) CLA 46.

9. 5445/2004 CS(OS) 914.

10. 1998 (92) CC 54.

11. 2003 (27) PTC 305.

12. It has also been held so in *Hindustan Lever v. Colgate Palmolive India Ltd.*, 1998 (1) SCC 720; *Reckitt and Coleman v. M.P. Ramachandran and Anr.*, 1999 PTC (19) 741; *Reckitt and Coleman v. Kiwi TTK Ltd.*, 1996 PTC (16) 393.



### Drugs and Magic Remedies (Objectionable Advertising) Act, 1954

In recent years, there has been a great increase in the number of objectionable advertisements published in newspapers and magazines, promoting the sale of drugs and remedies which claim to cure various incurable diseases and sexual stimulants. These advertisements cause the ignorant and the unwary to resort to self-medication which is harmful.

In order to curb such unscrupulous practices, the Drugs and Magic Remedies (Objectionable Advertisements) Act (DMR Act) was passed in the year 1954. The Act seeks to control advertisements of drugs in certain cases and to prohibit the advertisement of remedies claiming magical effect.

The Act defines “drugs” as medicines for the internal or external use of human beings or animals, or any substance intended to be used for or in the diagnosis, cure, mitigation, treatment or prevention of disease in human beings or animals. Under the Act, the term “magic remedy” includes a talisman, *mantra*, *kavacha*, and any other charm of any kind, which is alleged to possess miraculous powers for or in diagnosis, cure, mitigation, treatment or prevention of any disease in human beings or animals, or for affecting or influencing in any way the structure or any organic function of the body of human beings or animals.

The DMR Act prohibits the advertisement of drugs for the treatment of certain diseases and disorders, including the following:<sup>13</sup>

1. the procurement of miscarriage in women or prevention of conception in women;
2. the maintenance or improvements of the capacity of human beings for sexual pleasure;
3. the correction of menstrual disorder in women; and
4. the diagnosis, cure, mitigation, treatment or prevention of any disease, disorder or condition specified in the Act, which includes blindness, cancer, cataract, deafness, diabetes, fits, goitre, heart diseases, hysteria, insanity, leprosy, obesity, paralysis, plague, sexual impotence and tuberculosis.

Moreover, the publication of any advertisement referring to any magic remedy, which claims to be efficacious for any of the purposes specified above, is also prohibited by the Act.<sup>14</sup>

Furthermore, no person shall take part in the publication of any advertisement relating to a drug in such a manner which would lead to creating a false impression or claim regarding the drug.<sup>15</sup> This stipulation

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13. DMR Act, s. 3.

14. *Id.*, s. 5.

15. *Id.*, s. 4.



has very wide implications for advertising of drugs.

Thus, the DMR Act puts severe restrictions on advertising of drugs. In effect, advertising of drugs in mass media is not allowed. However, drugs can be advertised confidentially to registered medical practitioners by way of catalogues, circulars, etc., or in any other manner prescribed by the Central Government. Also, a registered medical practitioner is allowed to display a signboard or notice on his premises indicating that the treatment for any disease, disorder or condition, specified in the DMR Act, is undertaken there. The Act also permits an advertisement of a drug which is brought out by the government.<sup>16</sup>

The Act empowers gazetted officers authorized by the state government to seize any advertisement which, in their opinion, contravenes any of the provisions of the Act.<sup>17</sup> The contravention of any of the provisions of the Act is punishable with imprisonment, or fine, or both.

In *Hamdard Dawakhana v. Union of India*<sup>18</sup>, the Supreme Court was faced with the question as to whether the DMR Act, which puts restrictions on advertisement of drugs in certain specified cases and also prohibits the advertising of drugs that claim to have magic remedies, curtails the freedom of speech and expression granted to a person under article 19 (1)(a). The Supreme Court held that advertisement is no doubt a form of speech and expression but an advertisement of a commercial nature cannot fall within the purview of article 19(1)(a). However, in *Tata Press Ltd. v. Mahanagar Telephone Nigam Ltd.*<sup>19</sup> the court made it clear that the government had the power to regulate deceptive, unfair and misleading advertisements.

### **Advertising of trade marks**

Advertising of trade marks is regulated by the Trade Marks Act, 1999, which has repealed and replaced the Trade and Merchandise Marks Act, 1958. The Act defines a “trade mark” as a mark capable of being represented graphically and which is capable of distinguishing the goods or services of one person from those of others. It may include the shape of goods, as well as their packaging and colours. The object of registering the trade mark is to enable the public to know whose goods it is buying and with whom the particular goods are associated.

The Act seeks to provide for the registration and better protection of trademarks and to prevent the use of fraudulent marks on products

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16. *Id.*, s. 14.

17. *Id.*, s. 8.

18. AIR 1960 SC 554.

19. 1995 5 SCC 139.





and services. Thus, any method of advertising designed to create confusion in the minds of the public, as between the products and services of one firm and another, shall not be permitted.

As provided under the Trade Marks Act<sup>20</sup>, a registered trade mark is infringed by any advertising of that trade mark, if such advertising:

1. takes unfair advantage of, and is contrary to, honest practices in industrial or commercial matters; or
2. is detrimental to its distinctive character;
3. is against the reputation of the trade mark.

Moreover, where the distinctive elements of a registered trade mark consist of or include words, the trade mark may be infringed by the spoken use of those words as well as by their visual representation.<sup>21</sup>

Any person who falsely applies a trade mark or trade description, or causes its infringement, shall be punishable with imprisonment, or fine, or both. Pepsi Co., owner of the trade mark 'Aquafina', was granted a permanent injunction by the Delhi High Court, restraining a Delhi based company, Rashmi Sales Corporation, from using the trademark 'Aquafina' for their water purifiers.

In a case filed with the World Intellectual Property Organization (WIPO), a US company, Infospace.com which offers various commercial services to on-line customers, complained against a resident of Bhopal for registering the domain name "Indiainfospace.com". It was held that the addition of the word 'India' would only induce the users to believe that the website was an Indian affiliate of the US company. Therefore, it was considered to be a registration in bad faith and the claim of the US company was upheld.

### **Advertising on cable television**

There has been a mushrooming growth of cable television networks all over the recent years as a result of the availability of signals of foreign television networks *via* satellites. In order to regulate unscrupulous and undesirable cable television programmes and advertisements, the Cable Television Networks (Regulation) Act was passed in 1995. It was subsequently revised in 2000 and 2002.

The Act prohibits the transmission or re-transmission of advertisements through a cable service code of advertisements which is not in conformity with the advertising code prescribed by the Central Government.<sup>22</sup> A comprehensive advertising code has been prescribed

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20. Trade Marks Act, s.29(8).

21. *Id.*, s. 29(9).

22. Cable TV Networks Act, s. 4.



by the Central Government for this purpose under rule 7 of the Cable Television Networks Rules. The code provides that advertisements carried in the cable service must be so designed as to conform to the laws of the country and should not offend morality, decency, and religious susceptibilities of the viewers. The code also prohibits any advertisement of goods and services which suffer from any defect or deficiency as mentioned in the Consumer Protection Act. As per the amendment made in 2000, the code bans advertisements which directly or indirectly promote the production, sale or consumption of

- a) cigarettes, tobacco products, wine, alcohol, liquor, or any other intoxicant; and
- b) infant milk substitutes, feeding bottles, or infant foods.

### **Advertising of tobacco products**

The Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003, briefly referred to as the 'Tobacco Act', is an important enactment to prohibit the advertising and sales promotion products. Under the Act, tobacco products include cigarettes, cigars, cheroots, *beedis*, cigarette tobacco, pipe tobacco, *hookah* tobacco, snuff, *pan* masala or any chewing material having tobacco as one of its ingredients (by whatever name called), *gutka*, and toothpowder containing tobacco.

The Act prohibits advertising of cigarettes and other tobacco products. Moreover, no person, for any direct or indirect pecuniary benefit, is allowed to engage in any of the following activities:<sup>23</sup>

1. displaying, or permitting the display of any advertisement of cigarettes or any other tobacco product;
2. selling, or permitting the sale of a film or video tape containing advertisement of cigarettes or any other tobacco product;
3. distributing, or permitting the distribution of any leaflet, handbill or document which contain an advertisement of cigarettes or any other tobacco product; or
4. erecting, exhibiting, or fixing over any land, building, wall, hoarding, frame, post, structure or any vehicle or displaying in any manner whatsoever any advertisement of cigarettes or any other tobacco product.

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23. Cigarettes and Other Tobacco Products Act, s. 4.



However, the above restrictions do not apply to an advertisement of tobacco products on a package containing such products, or the display of the advertisement at the entrance or inside a warehouse or a shop where such products are offered for distribution or sale.

The Act also prohibits the sponsorship of sports and cultural events either directly or indirectly. It prohibits all sorts of advertisements and promotion activities for the use or consumption of any tobacco product or any trade mark or brand name of such products in exchange for a sponsorship, gift, prize, or scholarship. Thus, even the surrogate advertisements are prohibited under this legislation.

Moreover, a specified warning shall have to be displayed about the harmful consequences of smoking, as also the quantities of nicotine and tar contents of the cigarette and other tobacco products.

Anyone who contravenes the provisions regarding advertisements of tobacco products as provided under the Tobacco Act shall be punishable with imprisonment, or fine, or both.<sup>24</sup> Moreover, such a contravention may lead to the forfeiture of the advertisement and the advertisement material to the Central Government.

### **Indecent representation of women in advertisements**

The Indecent Representation of Women (Prohibition) Act, 1986, seeks to prohibit indecent portrayal of women through advertisements, or in publications, writings, paintings, figures, or in any other manner.

The Act defines “indecent representation of women” as “the depiction in any manner of the figure of a woman; her form or body, or any part thereof in such way as to have the effect of being indecent, or derogatory to, or denigrating women, or is likely to deprave, corrupt or injure the public morality or morals.”<sup>25</sup>

The Act prohibits the publication or exhibition of any advertisement which contains indecent representation of women.<sup>26</sup> The Act also prohibits the production, selling, hiring, distributing, circulating and sending by post any book, pamphlet, paper, slide, film, writing, drawing, painting, photograph, representation or figure which contains indecent representation of women.<sup>27</sup>

However, such a publication shall not be prohibited if such a representation has been made in any ancient monument within the meaning of the Ancient Monuments and Archaeological Sites and Remains Act, 1958; or if such a representation is proved to be justified

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24. *Id.*, s. 22.

25. Indecent Representation of Women Act, s.2.

26. *Id.*, s. 3.

27. *Id.*, s. 4.



as being for public good on the ground that it is in the interest of science, literature, art, learning or other objects of general concern.

A gazetted officer authorized by the State Government can seize any advertisement which, in his opinion, contravenes any of the provisions of the Act.<sup>28</sup> Any contravention of the provisions of the Act shall amount to an offence punishable with imprisonment, or fine, or both.

### **Advertising of share issues**

The Securities and Exchange Board of India (SEBI) has issued comprehensive guidelines on advertisements to ensure investor protection from unscrupulous practices of companies offering shares and debentures to the public. These guidelines on issue advertisements are contained in chapter IX of SEBI (Disclosure and Investor Protection) Guidelines, 2000. Under the SEBI Guidelines, the term 'advertisement' has been assigned a very broad meaning. As defined under the guidelines advertisement includes notices, brochures, pamphlets, circulars, show cards, catalogues, hoardings, placards, posters, insertions in newspapers, pictures, films, cover page of offer documents as well as radio, television etc. The major guidelines on issue advertisements are the following:

1. The advertisement should be truthful and should not contain any untrue or misleading statement.
2. If the advertisement contains statements about the performance or activities of the company, in the absence of any qualifying statements, in a way which gives an exaggerated picture of the performance or activities of the company, it shall be considered to be misleading.
3. If the advertisement contains an inaccurate portrayal of past performance of the company or its portrayal in a manner, which implies that past gains or income will be repeated in future, it shall be considered to be misleading.
4. Any statement promising or guaranteeing rapid increase in profits should not be contained in the advertisement.
5. The language used in the advertisement should be clear and understandable, avoiding extensive use of technical and legal terminology.
6. Celebrities, models, fictional characters, landmarks or caricatures should not form part of the advertisement.

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28. *Id.*, s. 5.



### Code of advertising laid down by ASCI

In addition to the various regulations discussed above, the code of advertising laid down by the *Advertising Standards Council of India (ASCI)* also regulates advertising. The code of ASCI is similar to the Advertising Standards Authority (ASA) Code of the UK and seeks to achieve the acceptance of fair advertising practices in the best interests of the consumer.

The ASCI is concerned with safeguarding the interests of the consumers while monitoring and guiding the commercial communications. The council's code for self-regulation in advertising specifies that all advertising shall be truthful, honest, decent, legal, and safe for consumers, particularly minors, and fair to the competitors.

With a view to achieving "the acceptance of fair advertising practices in the best interest of the ultimate consumer", the council prescribes the following basic guidelines:

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, this is unacceptable to society at large.
4. To ensure that advertisement 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.

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. The code's rules form the basis for judgment whenever there may be conflicting views about the acceptability of an advertisement. The ASCI's decisions are assumed to be binding on its members. ASCI's complaint cell, Consumer Complaints Council (CCC), in its latest quarterly report on its decisions (1998) listed 30 objectionable advertisements including the following:

*Sunsilk Fruitamin Shampoo*: HLL could not substantiate the implied claim that the fruit vitamins in the shampoo contribute to hair growth. The advertisement was discontinued.



*Rotomac Pens:* The use of the words ‘Sab Kuch dikhta hai’ in the advertisement was found to be vulgar and the advertisement had to be withdrawn.

*Lifebuoy Gold:* The advertisement claimed that the product was certified by the Medical Technologists Association. The claim could not be substantiated and ASCI ordered for the modification of the advertisement.

*Gaspoint Marketing India Pvt. Ltd.:* The advertisement showed a torn Rs. 500 note, a crack on Mahatma Gandhi’s forehead and a torn Ashok Stambh. It was held that the advertisement had a derogatory effect on the national emblem, national currency and a national leader. The ASCI thus ordered for the advertisement to be withdrawn.

*Colgate :* The claim in the advertisement ‘no germs no cavities’ was considered as an exaggerated and misleading claim and the advertisement had to be withdrawn.

### Conclusion

The measures provided under various laws envisage that the marketers take due care in designing their advertisements and in ensuring that the advertisements are truthful, honest, decent and fair. Misleading advertisements are bound to have negative consequences, ranging from adverse publicity to diminished corporate reputation, to consumer boycotts, payment of compensation and punitive damages, and other legal sanctions. Conversely, a truthful advertisement can contribute to a good corporate reputation and, thus, increase repeat business. An understanding of the various legal provisions governing advertisements would also make the Indian consumers more enlightened as regards their rights and the protection available to them under various laws.

In view of the foregoing analysis and discussion, it appears that India has a rich body of decided cases pertaining to advertisements. However, many provisions of the law are not being enforced effectively. Also, some loopholes in various regulations are being used to serve the selfish interests of manufacturers and marketers thus exploiting the consumers. Thus, there is an urgent need for setting up an Advertising Regulating Authority in India to curb unfair and unscrupulous advertising and to protect consumers. For that, a separate comprehensive advertising law is needed.

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