

## ROLE OF ADVERTISING STANDARDS COUNCIL OF INDIA (ASCI) IN PROTECTION OF CONSUMER FROM MISLEADING ADVERTISEMENTS

**\*Mahendrakumar S. Yadav<sup>1</sup>**

**\*Dr. Bommuluri Bhavana Rao<sup>2</sup>**

### **Abstract:**

We are frequently exposed to advertisements in this digital age; thus, it is crucial to present ads that are honest and not misleading. An advertisement may be a vital tool for the businessmen to sell their products and services through influencing the buying behavior of the consumers. In this digital era, we are constantly consumed by these advertisements thus, it becomes essential to show advertisements which are genuine and not misleading.

The Advertising Standards Council of India (ASCI) is another reputable organization that monitors deceptive or false advertising. This article talks about misleading advertisements, role of Advertising Standard Council of India in curbing misleading ads alongside cases of misleading advertisement amidst Covid-19<sup>3</sup>.

### **Keywords:**

Advertisement, Advertising Standards Council of India (ASCI), Consumer, Consumer Complaint, Misleading Advertisement, Unfair Trade Practices, Drugs Controller General of India (DGCI).

### **Introduction:**

India is the one among the growing country, currently has one of the fastest-growing markets in the world, with fierce competition among retailers as they all try to differentiate their goods from the competitors in the eyes of customers. The strategy adopted by sellers to set their items apart from those of rivals in such very competitive conditions is advertising. We frequently observe that salespeople make inflated or deceptive statements, which causes the finished product to fall short of the consumer's expectations set by such marketing. To decide the purchasing power of men an advertisement play a vital role. Every time the advertisement misguides them.

A misleading advertisement under Consumer Protection Act, 2019<sup>4</sup> are often defined as- “misleading

---

<sup>1</sup> : Research Scholar, School of Law, University of Petroleum and Energy Studies, Dehradun;  
E-mail Id : mahendrayadav@rediffmail.com

<sup>2</sup> : Associate Professor & Research Supervisor, School of Law, University of Petroleum and Energy Studies, Dehradun; Email ID : bbhavana.rao@ddn.upes.ac.in

<sup>3</sup> : Corona Virus Disease (COVID-19) is an infectious disease caused by the SARS-CoV-2 virus started in December 2019.

<sup>4</sup> : Act No.35 of 2019

advertisement<sup>5</sup>” in reference to any product or service, means a billboard, which falsely describes such product or service; or gives a false guarantee to, or is probably going to mislead the consumers on the character, substance, quantity or quality of such product or service; or conveys an express or implied representation which, if made by the manufacturer or seller or service provider, thereof, would constitute an unfair trade practice; or deliberately conceals important information.” In the same way as the Consumer Protection Act, provisions related to misleading advertisements and punishment for the offence are included in various other statutes and regulations such as- Drugs and Cosmetics Act, 1940<sup>6</sup>, The Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954<sup>7</sup>, Food Safety and Standards Act, 2006<sup>8</sup> etc.

### Objectives:

- 1) To identify the misleading advertisements.
- 2) To study the method of Advertising Standards Council of India (ASCI) dealing with misleading advertisements in India.

### Research Methodology:

The Research Methodology employed is *Doctrinal Research Methodology*. The data will be collected from Books, Journals, Newspaper, Magazines etc., District Consumer Disputes Redressal Commission<sup>9</sup> of Mumbai and Mumbai Suburban Area and State Consumer Disputes Redressal Commission<sup>10</sup> of Maharashtra State.

### False and Misleading Advertisements:

Consumer protection against "unfair trade practices"<sup>11</sup> is covered by antitrust or competition legislation in India. The Making of Representations to the Public that are False or Misleading in a "Material Respect"<sup>12</sup> is against the Competition Act, 2002<sup>13</sup>. A practice that promotes the sale, use, or supply of any goods or services through an "unfair method" or "unfair deceptive practice" is known as an unfair commercial practice.

Broadly, there are two categories of misleading advertisements:

<sup>5</sup> : Defined under section 2(28) of Consumer Protection Act, 2019

<sup>6</sup> : Act No.23 of 1940

<sup>7</sup> : Act No.21 of 1954

<sup>8</sup> : Act No.34 of 2006

<sup>9</sup> : Consumer disputes redressal commission established under section 28 of CPA, 2019 in District

<sup>10</sup> : Consumer disputes redressal commission established under section 42 of CPA, 2019 for State

<sup>11</sup> : The phrase unfair trade practices defined in Section 2(47) of the Consumer Protection Act, 2019

<sup>12</sup> : Material Respect means (i) when used in connection with a representation, warranty, covenant, condition or agreement to be complied with or satisfied by the Company or Parent, as the case may be, that is qualified by materiality or by Company Material Adverse Effect or Parent Material Adverse Effect, as the case may be, any respect (taking into account such qualifications as to materiality or Company Material Adverse Effect or Parent Material Adverse Effect, as the case may be); and (ii) when used in connection with a representation, warranty, covenant, condition or agreement to be complied with or satisfied by the Company or Parent, as the case may be, which is not so qualified by materiality or by Company Material Adverse Effect or Parent Material Adverse Effect, as the case may be, any material respect.

<sup>13</sup> : Act No.12 of 2002

The first category of misleading advertisement, which violates the consumer's right to information and selection. Under this, all non- health related or non-nutrition related product advertisements are included in a manner which violates a consumer's right to information and it may cause loss or mental agony to the consumers. Few examples are: discount related offers, advertisements of vehicles making false claims of its petrol consumption, a cold cream falsely claiming to get rid of wrinkles and academic institutions making false claims of affiliation or employment in its prospectus etc.

The second category of misleading advertisements includes all health or nutrition related claims which include advertisements selling health cures and medicines of unknown values. This category of misleading advertisement violates right to safety, right to health and may have serious effects on health of the consumers. Few examples are: health gadgets of undetermined value and advertisements claiming to extend a person's height, curing of diabetics, hair growing etc.

### **Advertising Standards Council of India (ASCI):**

Under Section 25 of the Companies Act of 1956<sup>14</sup>, the Advertisement Standards Council of India (ASCI) was founded in the year 1985. It is described as a "voluntary, self-regulatory council" that has a non-profit corporate registration. The ASCI was founded with the belief that all advertising efforts in India have to be ethical, moral, and honest while also being compliant with fair business practices.

The members of the council are from reputed firms of India which include incorporates, advertisers, PR agencies<sup>15</sup>, media and advertising agencies and other institutions and professionals associated with advertising. It was established to make sure that all the advertisements to be legal, decent, honest and truthful to ensure social responsibility towards the consumers and to follow the principles of fair competition in the market. The Ministry of data and Broadcasting in August 2006, issued a notification holding it mandatory for all the Tele Casting commercial agencies in India to follow the ASCI codes. This move has made the Advertising Council simpler and considerable.

The main objectives of this self-regulatory body are:

- \* To ensure make sure the truthfulness and honesty claims made by the advertisements and to safeguard the consumers against misleading advertisements.
- \* To make sure that the advertisements aren't offensive to general public and indecent in nature.
- \* To safeguard the consumers against the promotion of products which are considered as hazardous products and which are unacceptable to society at large.
- \* To ensure fair advertisements so that the consumers be well informed on choices in

---

<sup>14</sup> : *Act No.1 of 1956*

<sup>15</sup> : *A Public Relation agency is a company that manages a brand's public image for reputation management and brand awareness.*

the market and maintain a fair competition.

The ASCI's main goals are to support candor, honesty, public decency, societal norms, and opposition to dangerous products. The ASCI aims to "monitor, manage, and promote" standards with regard to advertising practices in the nation in order to make sure that:

- Advertising claims are made honestly and truthfully; no deceptive or false claims are made.
- The commercials are not created or presented in a way that offends the Indian public generally, and the public agency requirements are upheld.
- That no promotion of goods or services is deemed risky or unacceptably. The ASCI was also created in order to adopt, codify, and change a code for fair advertising, which is periodically updated.
- Another goal is to establish a Consumer Complaints Council to hear complaints about advertisements that go outside the established standards and practices.

#### **Structure of the Advertising Standards Council of India (ASCI):**

A Board of Governors, members of the Consumer Complaints Council, and a Secretariat comprise the ASCI staff. A governor and 16 members of respected companies, including media agencies, advertisers, and other people working in the advertising industry, make up the ASCI Board. The Secretary-General is in charge of the Secretariat, which has 5 members.

The ASCI is not a government agency and is not in charge of creating laws for the general people. The ASCI has developed a self-regulatory code as part of its commitment to advancing consumer interests. Consumer Complaints Council conducts an unbiased review of any complaint made by customers over any such unfair, untruthful, or deceptive claims or marketing. The ASCI Code was mandated for all commercials and advertisements in 2016 by the Ministry of Information & Broadcasting.

#### **Procedure for Filing a Complaint:**

Any of the three sorts of complaints may be submitted to the ASCI.

- The first category includes complaints from the general public, which may also include complaints from the government.
- The second category is suo-moto complaints made by ASCI Board of Governors or Consumer Complaints Council members.
- The final category comprises grievances from the advertisers.

One can contact the ASCI using any of the following methods:

- A letter addressed to ASCI's Secretary General.
- ASCI's official email<sup>16</sup>.

---

<sup>16</sup> : [contact@ascionline.org](mailto:contact@ascionline.org)

- Online complaint registration on the ASCI website<sup>17</sup>.
- A phone call<sup>18</sup>.

The Consumer Complaints Committee is ultimately responsible for handling all received complaints. When a complaint is submitted, the Secretary-General must acknowledge it and request additional information from the advertiser. A decision must be made within 4-6 weeks after all parties can present their arguments. The Committee must notify the parties within 5 days if it determines that the advertisement violates the rules. If the advertiser fails to make the required modifications within the allotted two weeks, the ASCI will print the advertisement in its quarterly release, which is distributed throughout India. The Advertising Standards Council of India is located at 717/B, AURUS Chambers, S.S. Amrutwar Marg, Worli, Mumbai 400018.

In accordance with Rule 7(9) of the Cable Television Network Rules, 1994 *"No advertisement which violates the standards of practice for advertising agencies as approved by the Advertising Agencies Association of India, Bombay, from time to time, shall be carried in the cable service."*

There have been a number of recent incidents during the coronavirus pandemic epidemic where advertisers have come under fire for deceptive advertisements offering to provide better protection against the coronavirus.

### **Complaining System under ASCI and Procedure of Hearing:**

If an advertisement contravenes any codes mentioned above, the consumer or even an industry can complain the ASCI. The Council actually, urges the consumers to report advertisements which are allegedly unfair or misleading in nature. ASCI, on receiving a complaint notifies the advertiser and provides him fortnight to reply. Further, The Advertising Standards Council of India (ASCI) place the complaint and the response given by the advertiser before the Consumer Complaint Council<sup>19</sup> for the decision. If the ASCI receive no response from the advertiser the Consumer Complaint Council can give an ex-parte decision.

If the advertisement is found to be misleading, the Complaint Council can ask the advertiser to switch it or remove an equivalent. The Economic Times reported that ASCI has investigated complaints against 415 advertisements from December 2018 to January 2019. The Consumer Complaint Council took action against the advertisers after evaluating these advertisements. These impugned commercial advertise includes education sector, healthcare sectors, food and beverages sectors, care and other categories.

Recently, ASCI during the continued Indian Premier League (IPL) had put a diligent surveillance on the liquor brand extensions appearing during the match and registered complaints against eight such

---

<sup>17</sup> : [www.ascionline.org](http://www.ascionline.org)

<sup>18</sup> : +91-22-24955071/77

<sup>19</sup> : *The ASCI Consumer Complaints Council is an independent panel that reviews complaints and advertiser's responses, providing its recommendation on whether an ad needs to change.*

advertisements over the past one month, which supposedly were in violation of the ASCI codes. These advertisements were of whisky, beer, and white liquor brands. In all the given cases, ASCI notified the advertisers within 24-48 hours<sup>20</sup> of an equivalent and seek a response.

### **ASCI's Codes and Guidelines<sup>21</sup>:**

ASCI's Codes and Guidelines regarding the brand extensions are:

1. The brand extension of products like liquor, tobacco, etc. be considered genuine, it must be registered under an appropriate government authority like the Food Safety and Standards Authority of India.
2. The in-store availability must be a minimum of 10% of that of the leading brand within the category that the merchandise competes, or sales turnover must exceed Rs 5 Crore Per Annum or Rs 1 Crore once a year in each state where it's distributed.
3. It must have a proper certificate from an independent organization for such turnover and distribution data.

If the advertisement doesn't suit the standards or the info provided isn't certified by an independent body, the advertisement is discontinued. Further, it's to be noted that advertisers can not show advertisements or maybe hint within the advertisements at products which are prohibited or banned by law.

### **Misleading Advertisements Amidst Covid-19:**

During Covid-19 an advertisement plays a crucial role to spread awareness and knowledge about the pandemic. However, the advertisers, with a motive to earn more profits are directly or indirectly associating their products to Covid-19 and spending off misleading and false claims within the advertisements.

Some instances of misleading advertisements during Covid-19 are:

### **The Dettol Advertisement<sup>22</sup>:**

In the present case, Hindustan Unilever, one among the main hand wash selling company move the court over a DETTOL advertisement by Reckitt Benckiser which was trying to mock the effectiveness of Hindustan Unilever's product LIFEBOUY soap. With a view to market washing hands and to stop the spread of coronavirus, the plaintiff had advertised their LIFEBOUY soap. Subsequently, the defendant company aired a billboard about its DETTOL hand wash which was simpler than a daily soap, which was shown as a red soap. Hindustan Unilever contended that the defendant tried to degrade its product (LIFEBOUY) as its red color and shape was recognizable within the advertisement. The Bombay High Court within the impugned advertisement viewed that the advertisement showed false claims and subsequently, Reckitt Benckiser removed the

---

<sup>20</sup> : *Timeline to inform advertisers*

<sup>21</sup> : *The code for self-regulation of advertising content in India designed by ASCI*

<sup>22</sup> : <http://lexforti.com/legal-news/advertising-standards-council-of-india-asci>

advertisement in question.

### **Arihant's Corona-Resistant Mattress<sup>23</sup>:**

Recently, an FIR was logged against the Arihant Mattress, a private company for its advertisement during a Gujarati newspaper for 'anti-corona mattress'. The owner was booked under Section 505(2) of Indian Penal Code<sup>24</sup> which covers- Statement conducing to public mischief and under various other sections of Drug Remedies Objectional Act and Disaster Management Act. The said advertisement was totally false and misguiding the people while the country goes through an epidemic.

### **Hindustan Unilever Hand Sanitizer Advertisement<sup>25</sup>:**

Under the Drugs and Cosmetics Act, 1940 and medicines and Cosmetics Rules, 1945; the Drug Controller General of India (DCGI)<sup>26</sup> issued a show cause notice to Hindustan Unilever on its product which claims to boast the immunity and also claiming to stop Covid-19.

It asserts to enhance the immunity by using its hand sanitizer which successively prevents the virus. According to DCGL, Section 3(b) of medicine and Cosmetics Act 1940 says, "immunity may be a condition of having the ability to resist a specific disease especially through preventing the event of a pathogenic microorganism or by counteracting the consequences of its products, adding that HUL's claim attracts the given definition."

Also, Hand sanitizer was licensed under 'cosmetic' under the Drug and Cosmetics Act, 1940 but now advertised as a 'drug' which was a transparent breach of law. Thus, DCGL contended that Lifebuoy's ad of hand sanitizer was false and misleading in nature because the product cannot boost immunity against virus.

### **ASCI Jurisdiction:**

Although there are no statutory rules on the matter, the judiciary has talked extensively about the ASCI's authority. In the Procter & Gamble Home Products v. Hindustan Unilever Ltd. case<sup>27</sup>, for instance, the High Court of Delhi ruled that while the ASCI is a self-regulatory body, it is unable to resolve disputes or grant damages. The ASCI's complaint committee only deals with self-regulation. If the ASCI determines that a complaint has substance, it can only suggest actions or modifications that the

<sup>23</sup> : <http://lexforti.com/legal-news/advertising-standards-council-of-india-asci>

<sup>24</sup> : 505(2) of IPC 1860: Statements creating or promoting enmity, hatred or ill-will between classes. —Whoever makes, publishes or circulates any statement or report containing rumour or alarming news with intent to create or promote, or which is likely to create or promote, on grounds of religion, race, place of birth, residence, language, caste or community or any other ground whatsoever, feelings of enmity, hatred or ill will between different religious, racial, language or regional groups or castes or communities, shall be punished with imprisonment which may extend to three years, or with fine, or with both.

<sup>25</sup> : <http://lexforti.com/legal-news/advertising-standards-council-of-india-asci>

<sup>26</sup> : Authority under Drugs and Cosmetics Act, 1940

<sup>27</sup> : In the High Court of Delhi at New Delhi RFA(OS) 21/2017

advertiser should do; it cannot provide the complainant with any additional redress. In other words, the ASCI is not on an equal footing with a civil lawsuit.

The High Court of Bombay adopted a similar view in *Century Plyboards v. Advertising Standards Council of India*<sup>28</sup>, holding that the ASCI cannot use the authority granted to a civil court. In this instance, it was emphasized once more that the ASCI's apparatus was only intended to "complement the legal controls," not replace them.

In contrast, the Delhi High Court took a different stance in the case of *Metro Tyres Ltd v. The Advertising Standards Council of India*<sup>29</sup>, where the court had to decide whether the ASCI was qualified to hear complaints of copyright infringement given that courts above a District Court now have the authority to hear infringement and passing-off cases. The High Court provided an affirmative response to the query and instead promoted the function of self-regulatory organizations in reducing litigation and offering an alternative conflict resolution process.

There is now ambiguity in the legislation surrounding the ASCI's authority to handle complaints. While it is established that the ASCI is qualified to offer recommendations, it is still unclear whether the ASCI has the authority to resolve disagreements and award damages to the complainant. The author argues that the statute must be more narrowly focused in order to offer more clarity to the role of the ASCI and enable it to handle complaints more effectively.

### Measures taken by ASCI:

A number of complaints against advertisers, including Hindustan Unilever (HUL), Airtel, and Lucky-Goldstar (LG)<sup>30</sup>, have been upheld by ASCI in recent years. According to the Consumer Complaints Council, the *"Pureit Ultima" water purifier was falsely and misleadingly advertised by HUL. "Sirf is mein hai Purity Indicator jo saaf saaf dikhata hai ki paani kitna pure hai," the marketing for this product claimed, "jo saaf saaf dikhata hai ki paani kitna pure hai."* This assertion was inaccurate, misleading, and false.

Similar to this, LG Electronics received flak for a water purifier advertising that touted it as *"India's only true water purifier."* This assertion was completely unsupported, and LG was forced to explain to the ASCI. Additionally, ASCI ordered Airtel to withdraw or change its commercial which claimed that its networks were the quickest in India. Reliance Jio<sup>31</sup>, a competitor, has complained about this commercial, claiming it was "false, misleading, and incorrect." Jio's case was upheld by the complaints

<sup>28</sup> : *The Guwahati High Court (High Court of Assam, Nagaland, Mizoram and Arunachal Pradesh)*  
Case No.: FAO 60/2022

<sup>29</sup> : LAWS(DLH)-2017-3-143

<sup>30</sup> : *ASCI pulls up HUL, Dabur, Airtel, others for misleading advertisements - Industry News-The Financial Express*

<sup>31</sup> : *Airtel ads with 'Fastest Network in India' claim, ruled misleading by ASCI | Technology News - The Indian Express*



committee, which came to the conclusion that Airtel's commercial was deceptive due to "ambiguity and implication."

The ASCI recently kept a close eye on the spirits brand extensions that appeared during the Indian Premier League (IPL) and lodged complaints against eight of these advertisements over the course, which were allegedly in breach of the ASCI guidelines. These commercials were for brands of beer, white spirits and whisky. Within 24 to 48 hours, ASCI notified the advertisers in each of the incidents and requested a response.

### **Conclusion:**

A non-profit, non-governmental, and self-regulatory organization, the Advertisement Standards Council of India. Its function as a self-regulatory body has lately been acknowledged by India's highest court. With regard to limiting inflated and unfair claims made by various advertising firms, the ASCI has achieved significant progress. The creation of ASCI and the enforcement of its code is a positive development in our society that advances the interests of the end consumer, given that brands frequently tend to deceive the public through false and unfair advertising, motivated by financial and capital motivations.

The big brands, to extend their capital tries to mislead the consumers through ambiguous, false, and unfair advertisements without satisfactory evidence to prove their claims and which manages to offer an exaggerated positive view but later seems to be a negative experience for the consumers. Misleading advertisements affects a consumer financially, mentally and even physically. This negative experience can spread fear among the buyer, especially during the time like this present pandemic. As advertisements are effective in marketing a product and features a strong impact on people, advertisers acquire an ethical duty to practice the code of ethical advertising and will abide by it and for this ASCI plays a serious role for consumers to guard them against misleading advertisements.

### **References:**

- 1) *Bare Act of the Consumer Protection Act, 2019*
- 2) *Bare Act of the Drugs and Cosmetics Act, 1940*
- 3) *Bare Act of the Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954*
- 4) *Bare Act of the Food Safety and Standards Act, 2006*
- 5) *Bare Act of the Competition Act, 2002*
- 6) *[www.ascionline.org](http://www.ascionline.org)*