

False and Misleading Advertisements and protection of the consumers: Indian scenario¹

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Abstract:

Advertising has a positive contribution on consumers thought processes and purchasing decision. But at same time one needs to recognize that advertising has immense manipulative power and capacity to harm the consumer and the public interest. Misleading and false advertisement not only leads to increased distribution costs, resulting in increased selling price, but also tends to tempt the Consumers to buy what he does not necessarily need. Advertisements mould the needs of consumers to a large extent and influence their social behavior. Misleading and false advertising has harmful effect on the vulnerable sections of the society, namely, children, youth, and the poor. Many of the advertisements are directed towards children and the youth. They do not contain any information about the product's nutritional value. In fact, many of the products advertised are habit-forming and provide little value for money. Irrespective of this entire phenomenon happening in the regime of advertisement this sector has great value in socio economic and political development of any globalised country where market is free. Keeping in view the positive and negative impact of development of business of advertisement on consumers it is high time to think and rethink the regulatory measures in this regard. This paper will highlight the relevant social legal and economic aspect of this area.

Key Words: Consumer, Advertisement, Misleading advertisement, False advertisement, Vulnerable sections, Social behavior etc.

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Full Paper

“Advertising is an instrument in the hands of the people who use it. If evil men use advertising for base purposes, then evil can result. If honest men use advertising to sell an honest product with honest enthusiasm, then positive good for our kind of capitalistic society can result.”²

India has in pursuit of globalization resolved to open up its economy, removing controls and various barriers. The Government announced a new industrial policy on the 24th July, 1991 which envisaged liberalization. With this liberalization and globalization of the Indian economy, the sphere of trade, industry and commerce has increased to a great extent. Competition among the various products and services has become fierce. Firms have been aggressively and vigorously promoting their products and services than before through advertisements. However, these firms often adopt misleading, false, and deceptive advertisements to earn huge profits by misguiding and misleading consumers. Many of these advertisements allure the people in the name of herbal medicines, ayurveda, siddha, unani, baby foods, chocolates, digestive tonics and antacids, educational institutions and different courses, real estate advertisements, astrological products, tooth paste, soap, shampoo, cholesterol free cooking oil, electrical goods, drinks(both soft and hard drinks), packaged dry foods, different dress materials, shoes and what not. On watching these attractive shows, innocent and illiterate people, people living in villages and in other remote areas, children are attracted towards such products and services. In many times, it is seen that the qualities of the products and services are far less satisfactory than what are advertised in the advertisement. In spite of different laws in India, this problem has become an epidemic today and it is eating into the vitals of our society.

This paper attempts to explore the ethical concerns in advertising. Ethical norms deal with character, norms, morals and ideals. They give an idea of what is fair or unfair or what is right and wrong. The ethical principles underlie social policies and are dictated by the society we live in. Like any other profession, the advertising field is governed by the laws and enactment governing the mass media. By citing live cases the paper discusses the nature of problems faced by the consumers through misleading advertisements and evaluates the relative efficacies of institutional mechanisms, laws and regulations available for easy redressal of consumers. Outdated laws, poor enforcement of them are some of the lacunas in order to control and regulate advertising.

² John W. Crawford, Communication Professor, Quoted in Samm Sinclair Baker, The permissible Lie: The inside truth about advertising, 1968, Cleveland, OH: World Publishing Company. Page-180

Advertisement-Definition and meaning

An advertisement is a marketing tool which is used for sales promotion and publicity. It is a paid form of non-personal presentation and promotion of ideas, goods or services by an identified sponsor. Advertising techniques are used to make the products, services or opinions familiar to the people. It is a process of communication between the owner of the products or services and consumers. The consumers become familiar to the effectiveness and utility of the existing products and future products. It helps the consumer in taking right decision and it is an art and communication technique by which the Trademark or brand of the product or service is made known to the people. According to William J. Stanton, “Advertising consists of all the activities involves in presenting to a group, a non-personal, oral or visual, openly sponsored message regarding disseminated through one or more media and is paid for by an identified sponsor”.

The main object of advertising is to sell a product, a service or an idea. It performs an effective communication between producers and prospective or existing consumers. However, following are some of the objectives of advertising:

- It helps a new product to be identified in the market;
- It helps to increase sale and demand of the products;
- It helps to create a brand image and loyalty in the market;
- It creates a goodwill of the product;
- It informs the customers the necessary changes with regard to prices, qualities and packaging of the products;

So, advertising broadens the knowledge of the consumers. It helps consumers to find and buy necessary products without much wastage of time. It increases sales volume by creating attraction towards the product. It helps to create an image and reputation not only of the products but also of the producer or advertiser. In this way, it creates goodwill for the manufacturers. It helps to establish a direct contract between manufacturers and consumers. It is necessary to meet the competition in the market and to survive. Advertising prepares necessary ground for the salesman to begin his work effectively. It leads to large scale production creating more employment opportunities to the public in various jobs directly or indirectly.

False and deceptive advertisement:

An advertisement is called deceptive when it misleads people, alters the reality and affects buying behavior. According to U.S. Federal Trade Commission Act, 1914, an unfair method of competition in or affecting commerce, and unfair or deceptive acts or practices in or affecting commerce, are unlawful³. An act or practice is unfair where it⁴-

- a. causes or likely to cause substantial injury to consumers,
- b. cannot be reasonably avoided by consumers, and
- c. is not outweighed by countervailing benefits to consumers or to competition.

Again an act or practice is deceptive where⁵-

- a. a representation, omission, or practice misleads or is likely to mislead the consumer;
- b. a consumer's interpretation of the representation, omission, or practice is considered reasonable under the circumstances; and
- c. the misleading representation, omission, or practice is material.

The World Bank and the Organization for Economic Cooperation and Development(OECD) Model Law mentions the following trade practices as unfair⁶:

- ❖ distribution of false or misleading information that is capable of harming the business interests of another firm;
- ❖ distribution of false or misleading information to consumers, including the distribution of information lacking a reasonable basis, related to the price, character, method or place of production, properties, and stability for use, or quality of goods;
- ❖ false or misleading comparison of goods in the process of advertising;
- ❖ fraudulent use of another's trade mark, firm name, or product labelling or packaging; and
- ❖ unauthorized receipt, use or dissemination of confidential scientific, technical, production, business or trade information.

Again, Article 10 of the Paris Convention prohibits the following as unfair competition⁷:

- ❖ all acts of such anature as to create confusion by any means whatever with the establishment, the goods, or the industrial or commercial activities, of a competitors.
- ❖ false allegations in the course of trade of such a nature as to discredit the establishment, the goods, or the industrial or commercial activities, of a competitor; and

³.Section 5 of the Federal Trade Commission Act 1914, USA.

⁴.<http://www.federalreserve.gov/boarddocs/sopmanual/cch/ftca.pdf>.(Accessed on 09/03/2014)

⁵. Ibid.

⁶.World Bank & OECD, (1999), "A framework for the Design and Implementation of Competition Law and Policy", http://www.cuts-ccier.org/UTP/pdf/Unfair_Trade_Practices_and_Institutional_Challenges_in_Inddia-An_Analysis-pdf.(Accessed on 15-02-2014).

⁷.Ibid.

- ❖ indications or allegations the use of which in the course of trade is liable to mislead the public as to the nature, the manufacturing process, the characteristics, the suitability for their purpose, or the quantity, of the goods.

Deception exists when an advertisement is introduced to the people in such a way that the output of that advertisement differs from the reality of the situation. It may be of different forms and types. However, false and deceptive advertisement may:

- violates consumers right to information;
- consumers right to safety;
- violates consumers right to choice;
- be harmful to the children;
- be harmful to the health of the common people;
- mislead people by puffery;
- mislead people by use of sex appeals;
- destroy the lives of students through false advertisement [Generally in the form of prospectus containing misleading, false and exaggerated informations].

Some Examples of false and deceptive advertisements:

- In one massive advertising campaign, GlaxoSmithKline tried to promote Rota virus vaccine by creating a fake fear psychosis among parents and attempting to make it one of the mandatory vaccines for children. In that particular case, it was a doctor who complained.⁸
- Parle's mango drink "Maaza" gave the advertisement of Maaza Mango. The advertisement implied that the soft drink was prepared from original mango while actually preservatives were added to it.⁹
- Hill's Clinic All Clear Dandruff shampoo claimed that it had ZPTO, the special ingredient in Clinic Act clear shampoo that stops dandruff. This claim was found to be untrue since ZPTO is a micro biocide, when in reality, dandruff is known to be caused by several other factors besides microbes.¹⁰
- Novartis India claimed that in their disposable contact lenses, there is no protein build up. This claim was found to be totally false. The truth is that build up is a natural biological phenomenon with all contact lenses.¹¹

Legislative developments:

⁸ <http://www.moneylife.in/article/false-advertising-corporate-governance> (Accessed on 09/03/2014)

⁹ ibid

¹⁰ ibid

¹¹ ibid

Legislations:

Under the Indian legal regime, the prominent, prohibitory legal provisions that regulate advertising are:

- i. Obscene publication or advertisement of a lottery under the Indian Penal Code 1860,
- ii. Drugs and Cosmetics Act, 1940
- iii. The Emblems and Names(Prevention of Improper Use) Act, 1950;
- iv. The Representation of People Act, 1951
- v. Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954.
- vi. Prevention of Food Adulteration Act, 1954/ Food Safety and Standards Act, 2005
- vii. Prize Competition Act, 1955
- viii. Cable Television Networks (Regulation) Act, 1955.
- ix. Companies Act, 1956[Section 58]
- x. The Young Persons (Harmful Publications) Act, 1956
- xi. Monopoly Restrictive Trade Practices Act, 1969.
- xii. Prize Chits and Money Circulation Schemes (Banning) Act, 1978.
- xiii. The Consumer Protection Act, 1986
- xiv. Indecent Representation of Women(Prohibition) Act, 1986;
- xv. Motor Vehicles Act, 1988
- xvi. The Infant Milk Substitute, Feeding Bottles and Infant Foods (Regulation of Production, Supply and Distribution) Act, 1992 and Amendment Act, 2002.
- xvii. Transplantation of Human Organs Act, 1994
- xviii. Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994.
- xix. Cable Television Networks(Regulation) Act, 1995;
- xx. Trade Mark Act 1999;
- xxi. Tobacco Products (Prohibition of Advertisement & Regulation of Trade & Commerce, Production, Supply and Distribution) Act, 2003.

The relevant provisions of the *Consumer Protection Act, 1986* in this context are explained as herein under-

The Consumer Protection Act, 1986, applies to advertisements for all products in the market place. A consumer may file a complaint related to false and misleading advertisements, which

are included under the definition of unfair trade practice¹². The Consumer Protection Act, 1986 mentions seven classes of unfair trade practices which are as below:

"Unfair trade practice" means a trade practices 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, renovated, reconditioned or old goods as new goods;

(iv) represents that the goods or services have sponsorship, approval, performance, characteristics, accessories, uses or benefits which such goods or services do not have;

(v) represents that the seller or the supplier has a sponsorship or approval or affiliation which such seller or supplier does not have;

(vi) makes a false or misleading representation concerning 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 defense is raised to the effect that such warranty or guarantee is based on adequate or proper test, the burden of proof of such defense shall lie on the person raising such defense;

(viii) makes to the public a representation in a form that purports to be-

(a) a warranty or guarantee of a product or of any goods or services; or

(b) 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

¹² . Section 2(r) of the Consumer Protection Act, 1986

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 newspaper 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;

(3-A) 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 purpose 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 newspaper 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 adopting deceptive practices in the provision of services.

The consumer courts can however, take the various measures and actions in case of unfair and restrictive trade practice¹³. The court can issue interim orders stopping such advertisements, may award compensation for loss or suffering, the court can also direct the advertiser to issue corrective advertisement etc¹⁴. The aim behind incorporating these provisions are to prevent practices which are deceptive or otherwise unfair to consumer¹⁵. Trade and commerce is expanding day by day. Nature of competition among various products, goods and services has become fierce today. In this context, one of the objects of these provisions is to give high priority on those matters which relate to the basic necessities of life and which have a serious impact upon helpless, poor, elderly people and children of our society¹⁶. The purpose of the provisions is to extend protection to the ultimate consumers goods and users of services and also to protect them from undesirable practices of the business community¹⁷. The consumers must get what is promised by the seller or service providers. Where, by any method whatsoever, a belief is created in the minds of the consumers as to some quality or usefulness of goods or services, but in fact the goods and services do not have that standard, this will be unfair to consumers and will certainly amount to unfair trade practice.

Other regulatory agencies:

I. Advertising Standards Council of India (ASCI);

A sense of a single comprehensive legislation had created a lot of confusion in the advertising industry in globalization of their business. In 1985, a self regulatory mechanism of ensuring ethical advertising practices was established in the form of the Advertising Standard Council of India (ASCI), a non statutory tribunal. ASCI entertained and disposed of complaints based on its code of Advertising Practice (ASCI Code). Gradually, ASCI code received huge recognition

¹³ . Section 14 of the Consumer Protection Act, 1986.

¹⁴ . Ibid.

¹⁵ .Dr. Avtar Singh, Law of Consumer Protection, Principles and Practice, Eastern Book Company, Lucknow, Edn.2005, P-154.

¹⁶ . Ibid.

¹⁷ .Ibid, P-157.

from the advertising industry. In August 2006, the ASCI Code was made compulsory for TV advertisements by amending the Cable Television Networks (Amendment) Rules, 2006. According to Rule 7 of ASCI, advertisement should be non-discriminatory on the ground of race, caste, etc. If any advertisement tends to incite people to crime, cause disorder or one incident or vulgar then it should be stopped immediately and for resolving the disputes relating to these matter Consumer Complaints Council (CCC) was established.

II *Advertising Association of India (AAAI)*: The Advertising Agencies Association of India (AAAI) is the official, national organization of advertising agencies, formed to promote their interests so that they continue to make an essential and ever-increasing contribution to the nation, by working towards the following objectives:

- To benefit Indian consumers and to protect their interests by helping ensure that advertising is honest and in good taste.
- To benefit Indian advertisers by promoting their sales, increasing their sales and increasing productivity & profitability, to stimulate business and industrial activity.
- To benefit media by establishing sound business practices between advertisers and advertising agencies and each of the various media owners.
- To benefit the nation by harnessing advertising for the good of the country, its institutions, its citizens to co-operate with the Government in promoting its social objectives and in the task of nation-building.
- To question advertising that is wasteful and extravagant to make it possible for the small entrepreneur to grow through advertising and to compete with the biggest to encourage market and media research to serve society by meeting its social responsibilities etc.

The AAAI today is truly representative, with a very large number of small, medium and large-sized agencies as its members, who together account for almost 80% of the advertising business placed in the country. It is thus recognised at all forums - advertisers, media owners and associations, and even Government - as the spokesperson for the advertising india

III. *Press Council of India (PCI)*;

The Press Council of India was first set up in the year 1966 by the Parliament on the recommendations of the First Press Commission with the object of preserving the freedom of the press and of maintaining and improving the standards of press in India. The present Council functions under the Press Council Act 1978. It is a statutory, quasi judicial body which acts as a watchdog of the press. It adjudicates the complaints against and by the press for violation of ethics and for violation of the freedom of the press respectively.

If one has complaint against a newspaper, for any publication which he/she finds objectionable and effects him/her personally, or non-publication of a material, he should first take it up with the editor or other representative of the publication concerned .If the complaint is not resolved to his/her satisfaction, he/she may refer it to the Press Council of India. The complaint must be specific and in writing and

should be filed/lodged within two months of the publication of impugned news item in case of dailies and weeklies and four months in all other cases, along with the original/Photostat copy of the impugned clipping (English translation if the matter is in vernacular). He/she must state in what manner the publication/non publication of the matter is objectionable within the meaning of the Press Council Act, 1978 and enclose a copy of his/her letter to the editor, pointing out why he/she considers the matter objectionable. His reply thereto or published rejoinder, if any, may also be attached to it. Declaration stating that the matter is not pending in any court of law is also required to be filed.

On receipt of a complaint made to it or otherwise, if the Council is prima facie satisfied that the matter discloses sufficient ground for inquiry, it issues show cause notice to the respondents and then considers the matter through its Inquiry Committee on the basis of written and oral evidence tendered before it.

IV. Prasar Bharati-

Prasar Bharati is a statutory autonomous body established under the Prasar Bharati Act and came into existence on 23.11.1997. It is the Public Service Broadcaster of the country. The objectives of public service broadcasting are achieved in terms of Prasar Bharati Act through All India Radio and Doordarshan, which earlier were working as media units under the Ministry of I&B and since the above said date became constituents of Prasar Bharati. The Prasar Bharati Act provides for establishment of a Broadcasting Corporation, to be known as Prasar Bharati, to define its composition, functions and powers. In the above stated context few objectives for which corporation works are:

1. Upholding the unity and integrity of the country and the values enshrined in the Constitution.
2. Safeguarding the citizen's right to be informed freely, truthfully and objectively on all matters of public interest, national or international, and presenting a fair and balanced flow of information including contrasting views without advocating any opinion or ideology of its own.
3. Promoting social justice and combating exploitation, inequality and such evils as untouchability and advancing the welfare of the weaker sections of the society.
4. Providing suitable programmes keeping in view the special needs of the minorities and tribal communities.
5. Taking special steps to protect the interests of children, the blind, the aged, the handicapped and other vulnerable sections of the people.

V. Code for commercial advertising on Doordarshan;

1. Advertising shall be so designed as to conform to the laws of the country and should not offend morality, decency and religious susceptibilities of the people.
2. No Advertisement shall be permitted which -
 - (i) derides any race, caste, colour, creed and nationality;
 - (ii) is against any of the directive principles, or any other 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) adversely affects friendly relations with foreign States;
 - (vi) exploits the national emblem, or any part of the Constitution or the person or personality of a national leader or State Dignitary;
 - (vii) relates to or promotes cigarettes and tobacco products, liquor, wines and other intoxicants;
 - (viii) in its depiction of women violates the constitutional guarantees to all citizens such as equality of status and opportunity and dignity of the individual. 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 portrayal of men and women should not encourage mutual disrespect. Advertiser shall ensure that the portrayal of the female form is tasteful and aesthetic, and is within the well established norms of good taste and decency.
3. No advertisement message shall in any way be presented as News.
4. 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 or have any relation to any industrial dispute.
5. Advertisement for services concerned with the following shall not be accepted.
 - (i) Unlicensed employment services;
 - (ii) Sooth-Sayers etc, and those with claims of hypnotism;
 - (iii) Betting tips and guide books etc, relating to horse racing or other games of chance.
6. Doordarshan accepts the advertisements of educational institutions/colleges. However, it must be ensured that the institutions/colleges are genuine so as to ensure that students do not get misled.
7. Doordarshan will also accept advertisements relating to holiday resorts and hotels.
8. The items advertised shall not suffer from any defect or deficiency as mentioned in Consumer Protection Act 1986.

9. 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, e.g. cure for baldness, skin whitener, etc.

10. No advertisement shall contain the words 'Guarantee' or 'Guaranteed', etc. unless the full terms of the guarantee are available for inspection by the Director General, Doordarshan, and are clearly set out in the advertisement and are made available to the purchaser in writing at the point of sale or with the goods. In all cases terms must include details of the remedial action available to the purchaser. No advertisement shall contain a direct or implied reference to any guarantee which purports to take away or diminish the legal rights of a purchaser.

11. Scientific or statistical excerpts from technical literature etc., may be used only with a proper sense of responsibility to the ordinary viewer. Irrelevant data and scientific jargon shall not be used to make claims appear to have a scientific basis they do not possess. Statistics of limited validity should not be presented in a way as to make it appear that they are universally true.

12. Advertisers or their agents must be prepared to produce evidence to substantiate any claims or illustrations. The Director General reserves the right to ask for such proofs and get them examined to his full satisfaction. In case of goods covered by mandatory quality control orders, the advertiser shall produce quality certificate from the institutions recognised by the Government for this purpose.

13. Advertisements shall not contain disparaging or derogatory references to another product or service.

14. Imitation likely to mislead viewers shall be avoided.

15. Visual and verbal representation of actual and comparative prices and costs shall be accurate and shall not mislead on account of undue emphasis or distortion.

16. Testimonials must be genuine and used in a manner not to mislead the viewers. Advertisers or advertising Agencies must be prepared to produce evidence in support of their claims.

17. The picture and the audible matter of the advertisement shall not be excessively 'loud'. This is to ensure that between the programme and the advertisement there is a smooth change-over avoiding jerkiness or shock to the viewers.

18. Information to consumer in matters of weight, quality or prices of products where given shall be accurate.

19. Advertisements indicating price comparisons or reductions must comply with relevant laws.

20. No advertisement shall be accepted which violates AIR and TV Broadcast Code which is prohibitory under the code.

In spite of these prohibitory legislations and existing regulatory mechanism false and misleading advertisement are now a days a big issue in the market for the consumers. Our judicial system is also keeping its eyes on such issues. Lets have a look on few judicial decision in these regard.

Judicial decision:

In **Bhanwar Kanwar Vs. R.K.Gupta and Anr**¹⁸. Hon'ble Supreme Court held that the appellant suffered physical and medical injury due to the misleading advertisement, unfair trade practice and negligence of the respondents. Hon'ble court enhanced the amount of compensation at Rs. 15 lakhs for payment in favour of the Appellant with a direction to the Respondents to pay the amount to the Appellant within three months.

In **Buddhist Mission Dental College and Hospital vs. Bhupesh Khurana and Ors.**¹⁹ The appellant published An advertisement in the Hindustan Times inviting applications for admission in the Degree Course of Bachelor of Dental Surgery(BDS).In the said advertisement it was specifically highlighted that the appellant college is a premier dental college of Bihar established and managed by the Vishwa Buddha Parishad. It was also mentioned in the advertisement that the said institution is the Buddhist Mission Dental College and Hospital under Magadh University, Bodh Gaya and Dental Council of India, New Delhi.But, latter on it was found that the institute was neither recognized nor affiliated and the complainant student lost two valuable years. Hon'ble court supported the view of the National Consumer Redressal Commission that this was a case of total misrepresentation on behalf of the institute which tantamount to unfair trade practice. Hon'ble Court also directed the institute to pay an additional compensation of Rs One lakh to each of the respondents along with cost of litigation and the amount of compensation imposed by National Commission within two months of the direction.

In Reckitt & Colman of India Ltd. Vs. Kiwi T.T. K. Ltd.²⁰ Hon'ble Delhi High Court (S.K.Mahajan, J.) held that - "a manufacturer is entitled to make a statement that his goods are the best and also make some statements for puffing of his goods and the same will not give a cause of action to other traders or manufacturers of similar goods to institute proceedings as there is no disparagement or defamation to the goods of the manufacturer so doing. However, a manufacturer is not entitled to say that his competitors goods are bad so as to puff and promote his goods."

In **Reckitt & Colman of India Ltd. vs. M.P. Ramachandran & Anr**²¹ Hon'ble Calcutta High Court (Barin Ghosh, J.) laid down five principles for granting an injunction in case of comparative advertising:

- i. A tradesman is entitled to declare his goods to be best in the world even though the declaration is untrue;
- ii. He can also say that his goods are better than his competitors, even though such statement is untrue;

¹⁸ . MANU/SC/0305/2013

¹⁹ . MANU/SC/0204/2009; (2009)4SCC484.

²⁰ 1996 PTC(16) 393

²¹ 1999 PTC xix 741

- iii. For the purpose of saying that his goods are the best in the world or his goods are better than his competitors he can even compare the advantages of his goods over the goods of others;
- iv. He however, cannot, while saying that his goods are better than his competitors, say that his competitor's goods are bad. If he says so, he really slanders the goods of his competitors and their goods, which is not permissible.
- v. If there is no defamation to the goods or to the manufacturer of such goods no action lies, but if there is such defamation an action lies and if an action lies for recovery of damages for defamation, then the court is also competent to grant an order of injunction restraining repetition of such defamation.

The Hon'ble court also observed in this case that "...One can boast about technological superiority of his product and while doing so can also compare the advantages of his product with those which are available in the market. He can also say that the technology of the products available in the market has become old or obsolete. He can further add that the new technology available to him is far more superior to the known technology, but he cannot say that the known technology is bad and harmful or that the product made with the known technology is bad and harmful. What he can claim is only that his product and his technology is superior. While comparing the technology and the products manufactured on the basis thereof, he can say that by reason of the new superior technology available to him, his product is much superior to others. He cannot, however while so comparing say that the available technology and the products made in accordance therewith are bad and harmful...."

In Pepsico Inc. and ors. Vs. Hindusthan Coca Cola Ltd. and Anr²². it was held by the Hon'ble Delhi High Court that- comparative advertising is permissible subject to the rider that it does not denigrate the product of the appellant.....If a trader compares his goods with the goods of rival without in any way advertising that the trade mark is used in relation to his goods, there is prima facie no infringement.

In Dabur India Ltd. vs. Colgate Palmolive India Ltd.²³ Hon'ble Delhi High Court held that ..."generic disparagement of a rival product without specifically identifying or pinpointing the rival product is equally objectionable. Clever advertising can indeed hit a rival product without specifically referring to it .No one can disparage a class or genre of a product within which a complaining plaintiff falls and raise a defense that the plaintiff has not been specifically identified....."

²² 2003 (27) PTC 305(Delhi).

²³ 2004(29) PTC 401 (Delhi)

In Dabur India Limited vs.Emami Limited²⁴ Honorable Delhi High Court held that a manufacturer is entitled to make a statement that his goods are the best and also make some statements for puffing of his goods but the same would not give a cause of action to other traders a cause of action to other traders or manufacturers of similar goods to institute proceedings as there is no disparagement or defamation to the goods of the manufacturer so doing. However, a manufacturer is not entitled to say that his competitor's goods are bad so as to puff and promote his goods.

In Karamchand Appliances Pvt. Ltd. Vs. Adhikary Brothers & Ors.²⁵, Hon'ble Delhi High Court held that a manufacturer or a tradesman is entitled to boast that his goods are the best in the world, even if such a claim is factually incorrect, and while a claim that the goods of a manufacturer or the tradesman are the best may not provide a cause of action to any other trader or manufacturer of similar goods, the moment the rival manufacturer or trader disparages or defames the goods of another manufacturer or trader, the aggrieved trader would be entitled to seek relieves including redress by way of a prohibitory injunction.

The defendant is indeed entitled to boast that its product is the latest in the market and even the best but it cannot describe either the technology or the concept used by any other manufacturer or trader in the manufacture or sale of his products as obsolete or worthless. Comparative advertisement is permissible, so long as such comparison does not disparage or denigrate the trademark or the products of a competitor. Comparison of different features of two products showing the advantages, which one product enjoy over the other is also permissible provided such comparison stops short of discrediting or denigrating the other product.”

In Eureka Forbes Ltd., Kolkata and its local office at Bangalore Vs Pentair Water India Pvt. Ltd.,Goa²⁶, Hon'ble Karnataka High Court at Bangalore, held that ...”an advertiser can say that his goods are better than his competitors but he cannot say that his competitors goods are bad because that would amount to slandering or **defaming competitor and its goods, which is not permissible.**”.....

For such kind of advertisements the badly suffered class is consumer class in general and society in particular.

Impacts of false advertisements and misleading advertisements on consumers vis-à-vis challenges-

²⁴ 2004(29) PTC 1 (Del).

²⁵ 2005 (31) PTC 1 (Delhi)

²⁶ MIPR 2007(1)) 0241

Advertising has many hidden signs and meanings within brand names, logos, package designs, print advertisement and television advertisements. Since television is a audio visual medium of public communication so it contributes corruptions in following ways:

Creative Destruction – In spite of regulatory measures generally misleading and false advertisements regulate corruption by non performance of its promises.

Cultural Destruction – In our Indian Society we have certain specific norms and places for women, children, young generation etc. These advertisements have a negative impact on those classes. Some time through an advertisement one can't assess that whether it is an advertisement for any **product** or **sex**. Few advertisements in its hidden form try to expose sexual activities in society irrespective of the fact that our society is based on family system having different age group of the members. Advertisement of bed sheets, saving cream, room fresheners, mouthwash, product used by kids, children, everywhere the advertising agencies are adopting this trend to make their fouled money.

Economic Corruption: Trends are:

- i. Copyright Violation.
- ii. Cost of manufacture of any product and its advertisement is sometimes lesser than the price imposed as MRP. For example verities of chips processed by using potatoes, sometime go with a price of Rs.100/kg though the cost of packaging and potatoes used in and cost on advertisement for the same pack is say Rs.30/kg.

One major explanation for structural change in the world economy is globalization which floods poor countries with goods that are marked by media's seductive and superficial but nonetheless successtising. In spite of all these prohibitory law corruption has made a particular space in the name of advertisement for globalization of entertainment business in India.

What to do:

So, at a cursory glance to the above discussion it can be said that false and misleading advertisement has posed a serious threat to the consumer in general and to the society at large. However, we should take the following precautionary measures in order to check and stop this evil practice:

- 1) Before purchasing any product asking by ourselves : Whether, why, when, where, how, how much, how often, how long, etc.,
- 2) Consumer Oriented advertisement will have to be truthful and ethical,
- 3) It should not mislead the consumer,
- 4) Make truthful honest representations and claims which is essential to prohibit misleading advertisements,
- 5) Not to be offensive to public decency or morality,

- 6) Not to promote products which are hazardous or harmful to the society or individuals, particularly minors and observe fairness in competition keeping in mind consumer's interests,
- 7) Primary demand, buying motives, hidden qualities, differential advantage and money in every marketing situation, must be analyzed carefully to determine the advertise ability of a product.

Advertising is an important thing for making communication strategy, in marketing mix. It is an external stimulus that arouses dormant needs. It results in "inner tension" among buyers and it is very easy to encourage corruption through that advertisement in entertainment business in a country like India, if not checked properly. If false advertisements are not properly checked and prevented these may endanger and mislead our right to choice and freedom of buying commodities. However, steps should be taken to make aware the common consumers by the government as well as NGOs. Law enforcing agencies should not be apathetic and insensitive to implement the existing legal provisions for the protection of consumers. Special care should be taken to protect the children, young communities and patients from the evil of false and misleading advertisements.