

Advertising & Sales Promotion Management

Chapter 10

Legal & Ethical Aspects of Advertising

Learning Objectives

- Have an overview of advertising ethics and how important they are in a country like India
- Understand the major legal provisions concerning advertising
- Know how this legal provisions helped certain companies to fight communication
- Understand the self-regulatory framework and its effectiveness in advertising
- Understand how to deal with misleading advertising

10.1 Introduction

- Indian E&M industry's revenue of Rs. 80,500 crore in 2011 is set to touch 176400 crore by 2016.
- The advertising spend was estimated at 27,900 crore in 2011 (35%) and likely to touch 52500 crore in 2016.
- TV & Print will account for 85% of the share.
- AS the business of advertising is to inform and persuade customers to buy their product they need to be under scrutiny for possible deception, misrepresentation and making misleading claims to meet their objectives.

10.1 Introduction

- Companies may knowingly or un-knowingly breach ethical / moral standards.
- However, such issues are more subjective and tricky in nature and open to self-interpretations.
- Thus every country has its own code of ethics and legislations determined by their culture and value system – In US health related ads are regulated, in Sweden targeting children not allowed.
- Advertisers sometimes overstep social and legal norms – obscenity, sexual overtone, ads influencing children, surrogate, subliminal ads.

10.1 Introduction

- To tackle such ethical concerns in advertising besides legal provisions, India has established self-regulatory bodies like Advertising Standards Council of India (ASCI).

10.2 Ethical Issues Concerning Advertising & Marketing Communications

- Ethics mean a 'conduct which is right in view of the society and the time period'.
- Ethics are moral principles and values.
- It is set of principles of morality at a given time and at a given place and in a given society.
- Other way, there could be a scenario where particular action may be within the law and still not be ethical.
- To view the truth, advertisement must be seen from consumer perspective.

10.2 Ethical Issues Concerning A&M Commn.

- Advertising is persuasion, creativity personified and very impactful thus affects society. Therefore such weapon needs to be used with caution.
- In India, the advertising industry has evolved their own code of ethics to govern the profession, keeping in view the culture and ethos of Indian society – misleading ads, untruthful ads, child persuasion, harmful products ads, biased ads, surrogate ads, unfair claims and more.

10.3 Regulatory Authorities in India

- Number of institutions are involved in regulating advertising;

1. Self-regulation by the industry
2. Regulation by the Government

1. Self-regulation by the industry
 - 1985, the Advertising Standards Council of India (ASCI) was established
 - An independent body under Advertising Agencies Association of India (AAAI)

10.3 Regulatory Authorities in India

1. Self-regulation by the industry

- ASCI created a 'Code of Advertising Practises', known as ASCI Code
- All advertising agencies and all media channels are expected to follow this code

10.3.1 ASCI Guidelines

- Synopsis of ASCI Guidelines
 - Truthfulness and honesty
 - Not offensive
 - Safeguards against promotion of hazardous products / services
 - Fairness in competition
- Complaints can be made by any person / gen public / govt / groups against the advertiser for false, misleading, offensive or unfair ads.
- Independent Consumers Complaints Council (CCC) evaluates the complaints.

10.3 Regulatory Authorities in India

1. Self-regulation by the industry
 - Public Pressure Groups and Consumer Protection Groups also exist
 - Consumer boycott is the best form of self-regulation

10.3.2 Regulatory Laws in India

- Competition Commission of India (CCI) looks after the issues of unfair competition and trade practices.
- IPC's provisions govern obscenity and sexual overtones.
- The Young Persons (Harmful Publications) Act 1956
- The Emblems and Names (Prevention of Improper Use) Act, 1950
- The Indecent Representation of Women act 1986

10.3.2 Regulatory Laws in India

- Several other laws cover aspects like magic remedies, sex determination, human organ transplant, motor vehicles, Chit Funds, Cigarettes and tobacco products, Cable TV network and more govern advertisement representations.
- Various laws were enacted to govern changes – Like Radio, Televisions, Cable Network etc.
- Monopolies and Restrictive Trade Practices act 1969 came in to force to fight against unlawful business practices

10.3.2 Regulatory Laws in India

- We need to note that there is a slight difference in the degree to which the constitutional guarantee of freedom of speech and expression can be enjoyed by the advertising industry as compared to other branches of mass media.

10.3.3 Case Studies

- Case 1: P&G v/s HUL – Sunsilk Ceramide Shampoo
 - Claim ‘Rebuild damaged hair back to life’ ‘the breakthrough in the hair repair...’
- Case 2: Maggi Ketchup v/s MRTP – 400gms packaging – unfair trade practices and contravention of weights & measures act
- Case 3: KMP Oils v/s Research Academy – Volumetric packaging in liters was unfair trade practice against prevalent packaging in kgs.

10.4 Legal Actions Against Certain Practices

- Ridicule
- Against any provision of the Indian Constitution
- Inciting
- Breach laws, obscenity or violence
- Glorify terrorism, communal massacres
- Depict women in a vulgar manner
- Promoting prohibited goods, services
- Indecency
- Exploit social evils

10.5 Insightful Case Studies from ASCI

- Case study 1 – Rasna Pvt. Ltd.
- ‘Rasna – Ghar ka Swad’ and respective products has like ‘Rasna – Ghar Ka Nimboo Paani’ showing respective photos.
- However, product is synthetic in nature and falsely exaggerated the fruit content in the product.
- Ad was subsequently withdrawn.

10.5 Insightful Case Studies from ASCI

- Case study 2 – Indian Oil Servo Lubricant
- Man, although animated character shown jumping onto a moving train – very dangerous feat.
- Endangering morality and encouraging public to risk their life, while Railway is fighting to discipline the public.
- The ad was later withdrawn.

10.5 Insightful Case Studies from ASCI

- Case study 3 – Fena Ltd.
- Delhi based detergent manufacturer
- Took famous comedian Johny Lever to play a spoof on HUL.
- Their TVC featured Johny Lever saying – “Aab Lever bhai ka bhi hai kahana, Fena hi lena’
- Spoof using surname Lever over Hindustan Lever (at that time)
- Post litigation, ad was withdrawn

10.5 Insightful Case Studies from ASCI

- Case study 4 – J K Tyres V/s MRF Ltd.
- False claim by MRF was challenged by J K Tyres.
- MRF ad declared itself to be the ‘only supplier of truck tyres to Volvo, Ashok Leyland and TELCO’.
- J K Tyres established that they have supplied truck tyres to all these companies since so many years
- The ad was later withdrawn.

THANK YOU