

## Misleading online advertising in the new business era in India

P. Viswanathan <sup>a,\*</sup> and K. Pongiannan <sup>b</sup>,

<sup>a</sup>Department of Commerce, Sri Ramakrishna Mission Vidyalaya College of Arts and Science Coimbatore-641020 Tamilnadu, India

<sup>b</sup>Government Arts and Science College, Sathyamangalam-638401 Tamilnadu, India

\*Corresponding Author Email: [srkvcasviswa@gmail.com](mailto:srkvcasviswa@gmail.com)

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**Abstract** One of the most substantive developments in the delivery of marketing activities over the last few years has definitely been the coming into view and growth of Internet shopping. This compared to other things new form of communication has totally changed and improved the buying and selling of products and services, enabling customers to select and import items - many of which are not available through local shop fronts - directly from vendors around the world with the click of a button, and often at a reduced price. Although online shopping has given a new international landscape to conduct business and the use of this medium and the absence of face-to-face interactions have presented the law with many challenges in terms of the scope of consumer protection. This article examines the nature and extent of sneaky and false and dishonest online advertising and looks at the degree to which common law and laws and law making have changed to deal with false, dishonest or sneaky and false advertising on the Internet.

### Key words:

Online advertising, Consumer Protection, Misleading, Deceptive Advertising

### 1. Introduction

Increasing popularity of buying things online websites like Amazon, Flipkart, Shopclues and e-bay, e-commerce business in India has brought a big change in way of living and shopping habits of Consumer. Use of social network of websites, TV shows, and magazines and smart devices has in a surprising and interesting way improved the flow of online instances of buying things for money [1-4].

With the increasing popularity of buying things, online websites like Amazon, Flipkart, Shopclues and e-bay, E-Commerce

business in India has brought a big change in lifestyle and shopping habits of people Consumer. Use of social network of websites, TV shows, and magazines and smart devices has in a surprising and interesting way improved the flow of online purchase. This online shopping raised, flat supporting surfaces backwards-movingly use advertising and employ promotional marketing success plans to advertise their products and attract people Consumer. E-commerce websites in India are using (for only a short time) sale promotions to attract people Consumer,

relying heavily on advertisements- online and offline.

When people Consumer decides to buy a product, they mostly depend on the information given by companies in their product advertisements. Television, radio, events, print media like newspapers and magazines, and now emails and social media marketing are different means of promotion, companies use to advertise their products.

Advertising is an important tool used by E-Commerce websites to show their products, discounts and exclusive prices offered to people, which are sometimes even less than the winning (or most common) MRP of the products to gain an edge over their competing E-Commerce websites. However, this race to be on top has led to an increase in malpractice of false claims and advertisements with regards to quality, amount, services, prices and discounts on products [5-8].

## 2. Ethics in advertising

In advertising honest and right issues are broadly divided into two categories, ie, ethical-dilemma and ethical lapse. The first is a dilemma two-headed problem that comes up when the pros and cons of a particular issue are even, where related to the rules and beliefs of doing the right thing are concerned - for example, the use of combination advertisements/opinion statements to help increase/show in a good way a company's products or services. The combination advertisement/opinion statement attracts readers' attention and the ad copy has a bigger hit/effect on the minds of the reader than an ordinary advertisement. The appearance or layout of an advertorial is just like that of magazine or newspaper wrote opinions and readers are confused/tricked into thinking that they are reading an article.

An honest and right lapse happens when there is a violation or moving away from standards in a way that hints or shows that something is known, for example, bringing across an incorrect message while being well aware that it is wrong. For example, Energy Ultra dishwasher powder claimed that it contained total/totally/with nothing else mixed in lemon juice, but the laboratory test proved that the claim was false.

There are three limits/guidelines that help in deciding whether an advertisement is honest and right or not:

- Fighting for something: It refers to what an advertisement is trying to say and whether this is influenced only by facts and not opinions or neutral.
- Quality of being very close to the truth or true number: It refers to whether the claim made by the company is true and (able to be proven true).
- The desire to buy many things: It refers to whether the advertisement is (helping increase/showing in a good way) (wanting, more than anything else, to buy and own lots of nice things).

ASCI is a voluntary self-legal/law-based organization, registered as a not-for-profit company under Section 25 of the Indian Companies Act. The sponsors of the ASCI, who are its principal members, are firms of (large/relatively large) reputation within the industry in India and contain/ makeup advertisers, media, advertising (services businesses/government units) and other professional/ancillary services connected with advertising practice. So, while ASCI is not a government body, it is represented in all (groups that decide or promote things) working on advertising content in every ministry of the Government of India [4-6].

## 2.1 What We Can Do

- Read ads carefully to find out what is really being offered. Read everything.
- When shopping, take ads with you in case you have questions about the (told to people) price, brand, or quality. Display items often show attachments or (added or extra things/people or things that help) that are not included in the sale price. Ask exactly what is included before you buy.
- If you see an ad stating that merchandise is 50 per cent off, don't assume that it's necessarily a (deal with a good price/agreement between people). Stores may raise their prices only to make sale prices seem more appealing.
- Be cautious about 'free' offers. An ad must inform you if something else must be (bought something for money) in order to get the 'free' item, as well as how much it will cost you. Some companies raise their regular prices to cover the cost of free offers. The ad should clearly tell (people) the terms of 'free' offers.
- The final/biggest responsibility to resist false/misleading advertising is yours. Try to be calm about statements like 'fantastic savings', 'lowest prices in town', etc.
- If you come across a sneaky and false ad, submit an online complaint at [www.ascionline.org](http://www.ascionline.org).

## 3. Two categories of false and misleading advertisements

- ✓ Broadly, one can classify false and sneaky and false advertisements into two groups: In the first, I would put all those advertisements that sell health cures and drugs of (possibly not true, good, or honest) effectiveness and health gadgets of unknown values. I would also include in this group, nutrition-related false

claims, especially those targeting children, older people and those with certain health problems such as (a disease where blood sugar swings wildly). This group of advertisements is the most dangerous, as they can have an extreme result on the health of the consumer. I would include in the second category, all other kinds of false and sneaky and false advertisements (non-health, nutrition-related), that violate the people Consumer' right to information and choice and in that way have the possible ability to cause the (related to people who use a product or service), (loss of money) and even mental extreme pain.

- ✓ The best example of the first category of advertisements would be that of Neeraj Clinic, Rishikesh. (even though there is the existence of) the Drugs and Magic Fixes (for diseases) (Disgusting/obnoxious Advertisements) Act, which specifically prohibits advertisements having to do with (more than two, but not a lot of) sicknesses including epilepsy, R.K. Gupta (told people about a business)/(told to people) without being punished, his clinic and claimed that he was offering a sure cure for epilepsy. (in an unexpected yet interesting way (where something happened that's the opposite of what is expected)), way back in 2000, the Indian Medical Association had declared him a quack after a (group that decides or promotes something) had found that he was giving his patients poisonous drugs in high doses. Yet, he continued to advertise. Again in May 2003, on a complaint from a person consumer, the Advertising Standards Council of India (ASCI), a self-legal/law-based body of the advertising industry, had held that the advertisement was in violation of the Drugs and Magic

Fixes (for diseases) (Disgusting/obnoxious Advertisements) Act and the Rajasthan Patrika (in which/during which/in what way/in what) the advertisement had appeared had informed ASCI that the advertisement department had been (gave opinions about what could or should be done about a situation) to withhold further advertisements of the clinic. Yet, R.K. Gupta continued to advertise in other newspapers- in fact on the front pages of major English dailies and also on television channels, (in which/during which/in what way/in what) they produced "testimonials" from people who, the advertisements claimed, had been cured of epilepsy. In the end, on a complaint from a non-resident Indian, who visited the clinic for the treatment of his son and got suspicious about the medicines that the enforcement (services businesses/government units) finally acted. Following a complaint filed by Mr Anjon Chowdhury, through the Indian High Commission in Canada, the Drug Controller got the medicines prescribed by the clinic tested and found that it contained drugs which were either blocked/forbidden or controlled under Narcotic Drugs and Brain-changing Substances Act. His clinic was then broke into and R.K. Gupta was (after that) arrested under the NDPS Act. He was also reserved under the Drugs and Magic Fixes (for diseases) (Disgusting/obnoxious Advertisements) Act.

- ✓ Similarly, in the year 2003, Person consumer Education and Research (community of people/all good people in the world), Ahmedabad, had to bring to the written statement/attention of the legal/law-based authority in Gujarat, the sale and promotion of certain health

gadgets by Conybio Health Care, in violation of the Drugs and Magic Fixes (for diseases) (Disgusting/obnoxious Advertisements) Act. The company was (helping increase/showing in a good way) and distributing sunshade to cure a very, very bad headache and sunstroke, socks for (how much acid something has), pillow covers for (swelling of the backbones) , palm guards for Parkinson's disease, eye-shade for stuffy, runny nose, T-shirts for high, low blood pressure, short pants that cure gas, (how much acid something has), (male reproductive gland), piles, urinary system problems, ladies briefs for menstrual problems, bed sheets for curing (state of being unable to move)/ strokes and brassieres for breast cancer!!. When the (device that controls something/group of people that ensures rules are followed) asked the company to produce scientific (event(s) or object(s) that prove something) to support the effect of infrared rays which it claimed was present in the products, the company said it had never begun/tried such studies by any recognized Indian institute. (after that), the (a device that controls something/group of people that ensures rules are followed) prohibited the sale and promotion of the products. ?In the second category, I would put advertisements having to do with 'discount sales', advertisements on vehicles making sneaky and false or false claims about their petrol consumption, false claims about the purity of gold / jewellery, shampoos that claim to 'stop hair fall', face creams that promise 'wrinkle removal', toothpastes that claim to prevent tooth rotting and (hollowed-out area) and advertisements of educational institutions that make false claims about their recognition or

association or about the employment prospects.

#### 4. Cases of online false advertisement in India

- There have been many reported cases of false advertisement by E-Commerce websites filed with the Advertising Standards Council of India, some of which are:
- Flipkart's ads that claimed '100% original products' and 'Flipkart matlab bilkul pakka' were held to be not (proven as true) and being dishonest to buy (a statement that says that something is much bigger, worse, etc., than it really is). Amazon Set on fire/start's ad for 'Unlimited Reading' was held to be not (proven as true) as a limit of 10 books was (told to people) as an 'unlimited offer'.
- OLA Cab's claim for 'OLA Micro @ Rs6/km' was found to be being dishonest to by mistake (where something was left out) and not supported.
- Askmebazaar's ad for 'Asus Zenfone 2 at Rs 1435' was found to be extremely sneaky and false.
- Simplilearn Solutions ad where the company claimed to be the 'world's largest professional certifications company' was held to be extremely sneaky and false.

#### 5. What are the laws that deal with false advertisements in India?

This is no clearly stated/particular laws (and lawmaking) to deal with false advertisements in India, however, the Person consumer Protection Act, 1986 and the (related to one company having too much power) and (serving to severely limit or control) Trade Practices (MRTP) Act, 1969 provide fixes (for diseases) against companies

who start/work at false advertisements of their products. The Advertising Standards Council of India (ASCI) has established the ASCI Person consumer Complaints council to deal with false advertisements. The goal of ASCI is to maintain and improve the public's confidence in advertising and secure/make sure of that advertisements go along with the Code for Self-Regulation which needs/demands advertisements to be truthful and fair to people and competitors. The ASCI has the power to prohibit sneaky and false advertisements which are offensive to public decency or sense of right and wrong and (help increase/show in a good way) products which are dangerous or harmful to (community of people/all good people in the world), especially minors. The first (or most important) purpose of the code is to protect the legal/real and true interests of the people Consumer by controlling clearly false, be dishonest to/lie thing, and disgusting/obnoxious advertisements broadcasted on television, radio, and internet by advertisers, media, and advertising (services businesses/government units). Under the code, the following needed things have to be satisfied with regards to every advertisement transmitted/brought out or published in India:

1. The advertising services businesses and advertisers are required to produce proving when called upon by ASCI.
2. Before advertising, marketers must hold documentary about an event or person/event(s) or object(s) that prove something to prove all claims, whether direct or suggested.
3. Advertisements must obey the law and must not start (trouble) anyone to break it.
4. Consumers must not be encouraged to use products to excess.

5. Products should be safe and without side effects.

## 6. Misleading advertising on the internet

Advertising on the internet raises multiple legal questions, ranging from keyword advertising<sup>4</sup> and other questions of copyright violations to data protection and to the question of related law and legal control/area of legal control. This paper, however, deals only with sneaky and false advertising on the internet.

## 7. Remedies available in case of online false advertisements

In case of false advertising by an online E-Commerce doorway, a person consumer can hire a lawyer and file a complaint with the Advertising Standards Council of India. There are three categories of complaints against false advertising that are accepted by the ASCI:

- Complaints from people Consumer, government (people in charge of something) and (related to people who use a product or service) groups.
- Complaints from one advertiser against another.
- Suo Motu complaints from ASCI Board members, (office of secretaries), members of Person consumer Complaints council, etc.

The Person consumer Complaints council of ASCI redresses all false advertisement complaints in India. The ASCI's Person consumer Complaints council follows the following complaint Redressal procedure:

- i. Upon receiving a complaint, the (office of secretaries) requests the advertiser or (service

business/government unit/power/functioning) to provide comments on claims of false advertising.

- i. The advertiser or (service business/government unit/power/functioning) is given with an opportunity to present their side.
- ii. The council takes a decision (related to/looking at/thinking about) the complaint within 4 to 6 weeks.
- iv. If the council finds the advertisement to be false, sneaky and false or not supported, then it informs the advertiser within 5 days.
- v. The advertiser s given 2 weeks period to obey the council's decision.

## 8. Other reliefs against online false advertisement

Legal orders can be granted by courts when the misleading advertisement causes deception. Compensation can be awarded by courts when the consumer proves that they suffered some injury or damages due to such false advertisement. A Consumer Complaint can be filed with the District Consumer Disputes Redressal Forum, State Consumer Disputes Redressal Commission or National Consumer Disputes Redressal Commission.

## 9. Six top tips to avoid misleading advertising

### 9.1 Don't leave out key information

All related information, including significant conditions to an offer, should be made clear in the ad itself. These should be stated close, or clearly linked, to the main

claim. Significant conditions will change/differ depending on the facts or conditions that surround someone, and we have further guidance on promotional Marketing if you're looking for more detail.

### 9.2 Make sure your pricing is clear

Pricing should relate to the product advertised, and include all non-optional charges (such as VAT and reserving fees). There has been recent guidance produced for secondary ticket providers and updated guidance for the travel part/area, but the ways of thinking/basic truths/rules apply across all parts/areas. We've also updated our guidance on delivery charges and VAT.

### 9.3 Don't exaggerate the capability or performance of a product

Advertising is all about presenting a product in the best possible light, but don't over-claim in a way that's likely to be dishonest to/lie to. But don't worry obvious exaggeration that the average consumer is unlikely to take literally and that is unlikely to be dishonest to /lie to be allowed.

### 9.4 Make sure any qualifications are clear

Qualifying text (small print or little endnotes) can be used to clear up a claim in an ad, but don't use it to hide important information or in a way that goes against the headline claim. An ad which claimed "yearly boiler service" was found to fail/break into the Code because it could be up to 23 months between services, but this wasn't talked about/said in the ad.

### 9.5 Have the (event(s) or object(s) that prove something) to back up your claims

Remember that before you run an ad, you should hold good enough events or objects that prove something to support all unemotional and factual claims or those that are capable of unemotional and factual

proving, remembering the impression people Consumer are likely to take from the ad. The level of evidence that is demanded will depend on the type of claim being made and the product in question. For example, for some health, beauty or slimming claims strong and healthy scientific fact-finding experiments may be needed.

### 9.6 Be careful of claims in product names

Remember that all ad content, including your company or product names, can count as possible claims. If your product name hints an unproven effect or benefit, this could be filled with problems - even if it appears in a pack shot.

## 10. Conclusion

As a final thought, it's worth remembering that these rules apply to all marketing parts/areas, but some parts/areas have their own particular rules that you might also need to think about, such as environmental claims, weight control and slimming and food adds to/helpful additions and connected health or nutrition claims.

Consumers, in the meanwhile, would do well to demand better laws to deal with false and sneaky and false advertisements, and also demand better enforcement of the existing laws. It is equally important to bring to the written statement/attention of the Advertising Standards Council of India (ASCI), questionable advertisements. This can be done online through their website. ([www.ascionline.org](http://www.ascionline.org)).

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