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No. 08, Arul Nagar, Seera Thoppu,

Maudhanda Kurichi, Srirangam,

Tiruchirappalli – 620102

Phone : +91 94896 71437 – info@iledu.in / Chairman@iledu.in



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CONSUMER PROTECTION: UNFAIR TRADE PRACTICES IN INDIA

AUTHOR – SINDHU SATHISH NADIG, STUDENT AT ALLIANCE SCHOOL OF LAW, ALLIANCE UNIVERSITY, BANGALORE.

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ABSTRACT

Activities that go against the principle of fair competition are generally considered to be unfair trade practices. These practices harm consumers and other market participants. The Consumer Protection Act, 2019, defines “Unfair Trade Practices” under Section 2(47). It says that practices are said to be unfair when manufacturers manufacture spurious goods or provide defective services, when they don’t issue bills or memos when a consumer purchases a product, when they refuse to take back goods or services rendered and not refunding the consideration taken for the purchase of the same. Disclosing the consumer’s personal information also falls under the bracket of unfair trade practices. These practices can have several ill effects on consumers, economically and socially. It misleads them, exploits their lack of knowledge, and exposes them to unsafe products or services. By distorting resource allocation and lowering production and distribution efficiency, unfair trade practices can cause economic inefficiency. Unfair practices are frequently linked to crime, including bribery and money laundering, and corruption. With a decline in faith in the market and the institutions in charge of regulating it, they can weaken societal trust. If we talk about unfair practices by large corporations, firstly they have an advantage over smaller businesses and firms, secondly, they hinder the growth of entrepreneurship startups and small businesses.

The Act gives the federal government the authority to announce regulations governing unfair commercial practices and offers fines and financial relief for consumers who are harmed by such conduct. The Act also offers fast and efficient remedies for consumers who have been harmed as a consequence of unfair trade practices and gives customers the ability to bring complaints before consumer commissioners at the district, state, and national levels. Overall, India’s Consumer Protection Act, 2019 offers a thorough framework for combating unfair business practices and defending consumers’ rights.

Keywords: Consumer Protection Act (2019), Unfair Trade Practices, Consumer, Economic and Social inefficiency, crime, bribery, money laundering, corruption, efficient remedies.

CHAPTER I- INTRODUCTION

1.1. Introduction

(Sulakshya, 2021) When a consumer is exposed to specific forms of advertising that presents false impressions about a product, indirect misrepresentation takes place. Several issues, particularly those related to misleading advertising. Many advertising agencies use exaggerated claims, immediate benefits, or complete assurances to get their point through, which end up costing consumers money or posing a health risk. The Consumer Protection

Act, 2019³⁰⁰, defines the term “unfair trade practice.”³⁰¹ It also defines the term “misleading

³⁰⁰ The Consumer Protection Act, 2019

³⁰¹ means a trade practice 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:—

i) making any statement, whether orally or in writing or by visible representation including by means of electronic record,
ii) permitting the publication of any advertisement, whether in any newspaper or otherwise, including by way of electronic record, 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.
iii) permitting— (a) the offering of gifts, prizes or other items with the intention of not providing them as offered or creating impression that

advertisement”³⁰², which means if an act or a service, through an advertisement, is described falsely, or provides false guarantees, the consequence, is misleading the consumer³⁰³, expressing a statement that, if stated by the product’s manufacturer, seller, or service provider, would be considered an unfair trading activity or if the manufacturer or seller deliberately conceal important and relevant information, and thus, harm the consumer in one way or the other and exploit their lack of knowledge. Now, misleading advertisements in e-commerce can have a significant impact on a consumer’s purchasing decisions, leading to dissatisfaction and loss of trust in the online platform.

1.2. Research Problem

A good advertisement consists of entertainment, grabs the attention of the viewers, targets the set of viewers in an effective manner, has good design and simplicity, and makes the advertisement memorable. (Gunaseelan D. S., 2016) Now, a misleading advertisement, on the other hand, has all the characteristics, but on an exaggerated level. These types of advertisements are more likely to

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, except such contest, lottery, game of chance or skill as may be prescribed; (c) 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.

iv) permitting 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 the 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;

v) permitting the hoarding or destruction of goods, or refusal 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;

vi) manufacturing of spurious goods or offering such goods for sale or adopting deceptive practices in the provision of services;

vii) not issuing bill or cash memo or receipt for the goods sold or services rendered in such manner as may be prescribed;

viii) refusing, after selling goods or rendering services, to take back or withdraw defective goods or to withdraw or discontinue deficient services and to refund the consideration thereof, if paid, within the period stipulated in the bill or cash memo or receipt or in the absence of such stipulation, within a period of thirty days; (ix) disclosing to other person any personal information given in confidence by the consumer unless such disclosure is made in accordance with the provisions of any law for the time being in force.

³⁰² The Consumer Protection Act, 2019

³⁰³ As to the nature, substance, quantity or quality of such product or service.

deceive the consumers and will make them attracted to it, in return for nothing. Here are some examples of how an advertisement can lead to misrepresentation: colouring, changing the standards and measurement units, misuse of terms, fillers, inconsistent comparison, etc. (Gunaseelan D. S., 2016) It has a lot of legal issues, particularly given the widespread use of these adverts and the sharp rise in e-commerce at the same time. Businesses that engage in misleading advertising may face legal consequences, including fines, lawsuits, and damage to their reputation. These advertisements lead to the consumer’s lack of trust in buying products that do not meet their expectations or that are even harmful to their health or safety. For example, a weight loss product that promises rapid weight loss without exercise or dietary changes may be ineffective or even dangerous.³⁰⁴ They can lead to ethical concerns, as they may be seen as dishonest or manipulative. This can damage the reputation of the stakeholders, shareholders, employees, and consumers. False advertising is deceptive when it makes claims that aren’t supported by facts. In order to limit exposure to deceptive or unfair advertising, the Federal Trade Commission establishes guidelines for advertising. In addition to facing financial and legal ramifications, a marketer who intentionally makes false claims or otherwise falsifies advertising risks losing the trust of past clients.³⁰⁵

1.3. Existing Legal Solutions

- 1) The Consumer Protection Act, 1986
- 2) The Consumer Protection Act, 2019
- 3) Monopolies and Restrictive Trade Practices Act, 1969
- 4) Drugs and Cosmetics Act, 1940
- 5) The Consumer Goods (Mandatory Printing of Cost of Production and Maximum Retail Price) Act 2006
- 6) Central Consumer Protection Authority (CCPA)

³⁰⁴ Misleading Advertisements and Issues- www.researchgate.in

³⁰⁵ Misleading Advertisements and Issues- www.researchgate.in

- 7) The Emblems and Names (Prevention of Improper Use) Act, 1950
- 8) Trade and Merchandise Marks Act, 1958
- 9) Cable Television Networks (Regulation) Act, 1995
- 10) Indecent Representation of Women (Prohibition) Act, 1986
- 11) Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954
- 12) Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994
- 13) Prevention of Food Adulteration Act, 1954/ Food Safety and Standards Act, 2005
- 14) Prize Chits and Money Circulation Schemes (Banning) Act, 1978
- 15) Prize Competition Act, 1955
- 16) The Infant Milk Substitute, Feeding Bottles, and Infant Foods (Regulation of Production, Supply, and Distribution) Act 1992, 2002

1.4. Scope and Objectives

- 1) To analyse the legal effects of an exaggerated misrepresentation advertisement.
- 2) To analyse the negative effects of misleading advertisements in the field of e-commerce and daily communication.

1.5. Research Questions

- 1) How do consumers face the problem of false advertisement and how to approach the consumer court?
- 2) What are the benefits for a business which falsely misrepresents a product or a service?

1.6. Hypothesis

Many consumers are subjected to these types of advertisements, which exploit their lack of knowledge and take advantage of them. According to Grievances Against Misleading Advertisements³⁰⁶, which is run by the Department of Consumer Affairs³⁰⁷, over 6000 complaints of misleading advertisements were received from 2019 to 2021. Many manufacturers and advertisers even assume that the consumer will not sue them in the consumer court because

they do not have the time and cannot afford the money.

1.7. Methodology

This research paper uses Primary and Secondary sources. Primary sources are Laws, Acts, Judgements and Case laws. Secondary sources are Articles, Journals, and Newspapers.

Chapter 2- The negative effects of misleading advertisements in the field of e-commerce and daily communication

The onset of globalization has significantly altered trade and business across the world. The flow of information and technology has increased as a result. E-introduction Commerce is one such change that occurred. E-commerce is essentially the purchasing and selling of products through the internet. (hence short for electronic commerce) These days, we can complete tasks with a single click while seated in our comfort thanks to e-commerce. It includes all forms of transactions and exchanges, including those involving money, data, and services. It also caused digitization, which reduced the prices of all other intermediaries while also retaining the integrity of information transfer, making it simple, rapid, and affordable.

Print and digital advertisements are effective tools for promoting a company's goods and services. The primary goal of an advertisement is to inform the target audience of the goods and services being provided, persuade them that the facilities are superior to others, and keep their goods and services in the thoughts of potential clients. A person should be able to make educated buying selections as a result of the marketing. The worst part of unethical advertising, in my opinion, is the consequences it has on customers³⁰⁸. Decisions are ultimately made by the customer in faith and belief. Customers will make bad judgments regarding your products and services if you don't give them the truth or if you use your advertising to construct a picture for them that obscures or

³⁰⁶ <https://gama.gov.in>

³⁰⁷ www.consumeraffairs.nic.in

³⁰⁸ <https://thinkbizarre.com/deceptive-marketing-in-food-industry/>

contradicts the facts about your product or service.³⁰⁹ The consumers will waste money on a product that eventually won't satisfy their demands or provide a solution to their issues; moreover, they could use the product without being aware of its unfavourable side effects. Companies and producers use advertising to get customers to buy their goods. The Federal Trade Commission³¹⁰ states that ads must be fair, and accurate, and provide proof to back up their promises. False advertising that leads people to buy based on false claims is forbidden by law. False advertising components include assertions that are not supported by facts and assertions that the majority of customers are unable to independently check.

The Advertising Standards Council of India (ASCI)³¹¹ has established the ASCI Consumer Complaints Council to deal with false advertisements.³¹²

Assuring that commercials adhere to the Code for Self-Regulation, which mandates that advertisements be honest and fair to customers and rivals, is one of ASCI's key goals in maintaining and enhancing the public's faith in advertising. The ASCI has the authority to forbid deceptive ads that are repugnant to morals or public decency and that promote goods that are risky or damaging to society, especially children. The main goal of the code is to safeguard consumers' legitimate interests by prohibiting marketers, media outlets, and advertising agencies from airing demonstrably false, deceptive, and disagreeable commercials on television, radio, and online. According to the regulation, any advertising broadcast or published in India must adhere to the following standards:

i) When requested by ASCI, the advertising firms and clients must provide supporting documentation.

³⁰⁹ <https://www.studocu.com/in/document/lovely-professional-university/industry-ethics-and-legal-issues/mgn-ca-1-it-is-about-ethics/33406378>

³¹⁰ <https://www.ftc.gov/>

³¹¹ The Advertising Standards Council of India (ASCI)

³¹² <https://www.myadvo.in/blog/e-commerce-frauds-online-false-advertisements-in-india/>

ii) Marketers must have documentation proof of all claims—direct or implied—before they may run advertisements.

iii) Advertisements must adhere to the law and cannot encourage someone to break it.

iv) Customers shouldn't be pushed to utilize things excessively.

v) Items should be risk-free and effect-free.³¹³

Although e-commerce offers advantages of its own, it also has a number of disadvantages. Nowadays, e-consumers are increasingly vulnerable to fraud, phishing, false information, and other frauds; as a result, the owners of e-commerce businesses are now most concerned with protecting their safety and privacy. Despite the fact that there was previously no regulation in place to address such matters, with the rapid growth of e-commerce, the venerable Consumer Protection Act of 1986 was updated, and its purview was widened to cover even e-commerce transactions.³¹⁴ Misleading advertisements on online platforms occur through discounts, sales, fake/exaggerated descriptions, fake reviews, etc.

A) Fake or exaggerated product descriptions: To attract customers, online sellers may employ misleading or overstated product descriptions. When a product is truly used or refurbished, a seller could falsely claim that it is "brand new" in their advertising.

B) False reviews: Some vendors may publish falsely good evaluations of their items to make them seem more appealing. This is accomplished by setting up several fictitious accounts and posting favourable evaluations of their own goods.

C) E-commerce platforms may promote items at a discount but then tack on hidden costs, including transaction, shipping, or handling fees, at the point of checkout. Customers may believe they are receiving a better value as a result of this deception.

³¹³ <https://www.myadvo.in/blog/e-commerce-frauds-online-false-advertisements-in-india/>

³¹⁴ E-commerce Fraud & its Remedies

D) Unavailable products: Some retailers may advertise products that are out of stock or no longer available. This can lead to frustration for customers who may have already made a purchase based on the advertisement.

E) False advertising of discounts and sales: Retailers may falsely advertise to make it seem like their products are on sale when they are not. This misleads the customers into thinking that they are getting a better deal but in fact, are being deceived.³¹⁵

How to approach the consumer court?

STEP 1: Notice-based Intimation

A letter must be delivered by the party that is unhappy to the company that supplied the goods or the services. The notification informs the recipient of the complainant's plan to file a lawsuit as well as any unfair practices or flaws in the products or services. If the service provider is prepared to give compensation or any other remedy, the notification is also an effort to resolve the issue outside of the Forum.

STEP 2: Get the Consumer Complaint Drafted

Submit a formal complaint under the Consumer Protection Act of 1986 if the service provider is unwilling to give compensation or any other remedy. There is no need for legal representation in order to file the complaint. The party that feels wronged can submit a complaint.

STEP 3- Attach Relevant Documents

It is crucial to have copies of the appropriate paperwork and supporting documentation for your case in consumer court. These records consist of: A copy of the invoice, delivery receipt, product packing, and a record of the online purchase of the purchased items/ certificates of warranty or guarantee/ a replica of the letter of complaint and notification addressed to the seller/manufacturer.

STEP 4: Appropriate forum

Choose the proper court to file the complaint in line with the pecuniary jurisdiction, which is calculated based on the total cost of the products and services purchased or used and the requested amount of compensation.

STEP 5: Pay court fees.

STEP 6: Submit an affidavit.³¹⁶

Case Laws and Legal Relief:

1) Bhupesh Khurana And Ors. vs Vishwa Buddha Parishad And Ors. on 29 September 2000³¹⁷

Twelve BDS students who had enrolled in the programme at the Buddhist Mission Dental College, which is sponsored by the Vishwa Buddha Parishad, filed a class action lawsuit. The college had given the impression that it was affiliated with Magadh University, Bodh Gaya, recognized by the Dental Council of India, and was fully equipped to award the degree of Bachelor of Dental Science, according to the student's complaint, which was made in the college's advertisement and prospectus inviting applications for the course. The students were shocked to learn, however, that the college was neither associated with Magadh University, Bodh Gaya, nor was it recognized by the Dental Council of India, hence the yearly examinations were not being held after they enrolled and began attending lessons. The students not only missed two valuable academic years as a result, but they also had to pay tuition, hostel costs, etc. The National Commission ordered the institution to reimburse the entrance costs of all twelve students, plus interest of 12 percent, after finding the college to be defective.³¹⁸

2) Horlicks v. Zydus Wellness Products³¹⁹

A permanent injunction prohibiting Zydus Wellness Products ("Zydus") from airing its advertising, which claimed that one glass of Complian (a Zydus Product) is comparable to two glasses of Horlicks, was sought by Horlicks

³¹⁵ <https://topclassactions.com>

³¹⁶ <https://www.myadvo.in/blog/how-to-file-a-case-in-consumer-court>

³¹⁷ Bhupesh Khurana And Ors. vs Vishwa Buddha Parishad And Ors

³¹⁸ <https://indiankanoon.org/doc/427110/>

³¹⁹ CS (Comm) 464 of 2019- Horlicks v. Zydus Wellness Products

Ltd ("Horlicks") in an application to the Delhi High Court. The disputed advertising was being shown in Bengali, Tamil, and English on several networks. Horlicks filed a complaint with the High Court after becoming enraged by the commercial, claiming that it was defamatory and deceptive. On the other side, Zydus argued that the advertising was not deceptive because the data was correct and subject to the suggested serving sizes for both beverages. Horlicks sued Zydus for an advertising it placed in print media on identical legal grounds. When Zydus voluntarily changed the commercial by adding the serving size disclaimer and agreed to exclusively print the new advertisement, the High Court's interim order preventing Zydus from distributing the advertisement was lifted.

3) Francis Vadakkan v. The Proprietor and Ors.³²⁰

In this case, which was taken before a consumer court in the state of Kerala, the complainant noticed an advertising for a hair treatment "Dhatri Hair cream" that promised luscious hair growth after using it for six weeks. The complainant claimed "deficiency in service" against the cream's producers, after not attaining the expected results, against the actor who marketed it, and the pharmacy where it was purchased from, because the promise was not kept despite using the cream for the appropriate amount of time. The actor was also ordered to advertise a product only after confirming its legitimacy and efficacy, and the court ordered all defendants to make restitution to the client for making "false claims."

4) Mr. Supriyo Ranjan Mahapatra v. M/s. Amazon Development Centre India Pvt.³²¹

The complainant, Supriyo Ranjan Mahapatra, a law student, discovered an offer on the Amazon India website for a laptop made by a certain firm for Rs. 190/- as opposed to the item's original price of Rs. 23,499/-. He placed the order for it and got an email confirmation in return. He did, however, get a call from Amazon

customer service indicating that his order had been cancelled because of "price difficulties." He attempted to get in touch with the Respondent Company's customer care services, but nothing happened. The Respondent's firm did not react to a legal notification he then sent. After that, he went to the District Commission in Odisha and complained. His suit was upheld, and he was given a Rs. 10,000 compensation payment.

Chapter 3- The legal effects of an exaggerated misrepresentation advertisement.

The legal effects of an exaggerated misrepresentation advertisement can be significant and can vary depending on the specific circumstances of the case. It is important for advertisers and companies to ensure that their advertising claims are truthful and accurate to avoid legal liability. False and misleading advertisements are prohibited by a number of laws and regulations. They have been put into place to safeguard customers from different types of exploitation.³²² (Girimaji, 2013)

- Consumer Protection Laws: Consumer Protection Act (2019). Most countries have consumer protection laws that prohibit false or misleading advertising. If an advertisement makes an exaggerated or false claim that is likely to deceive or mislead consumers, it may be in violation of these laws. The consequences may include fines, sanctions, or even criminal charges for the advertiser or the company that produced the advertisement.³²³ Also, Section 468 of The Indian Penal Code³²⁴ deals with the forgery of documents or electronic records for the purpose of cheating. An offender is punished with 7 years of imprisonment or a fine.
- Contract Law: If the exaggerated claim is included in a contract between the advertiser and the consumer, it may be considered a breach of contract. The consumer may be entitled to damages or other remedies,

³²⁰ CC/345/2012- Francis Vadakkan v. The Proprietor and Ors

³²¹ CC/42/2015- Mr. Supriyo Ranjan Mahapatra v. M/s. Amazon Development Centre India Pvt

³²² Misleading advertisements and consumer- Pushpa Girimaji

³²³ www.legalserviceindia.com

³²⁴ The Indian Penal Code, 1860

depending on the terms of the contract and the extent of the misrepresentation.

- Tort Law: Advertisement may give rise to a claim for “false advertising” under tort law. This means that the consumer may be able to sue the advertiser for damages based on the harm caused by misrepresentation. When one party purposefully deceives another party, it is called a fraudulent misrepresentation tort, which usually results in legal action from the aggrieved party. If a court finds that a defendant has engaged in some form of fraud, contract law mandates that plaintiffs may recover damages from the defendant. When six conditions are satisfied, a court will typically decide whether the defendant has in fact engaged in fraud or misrepresented an issue:

i) is a presentation of the representation.

ii) The in-question presentation turned out to be false.

iii) A defendant recklessly made a statement while ignorant or knew the statement to be false at the time the presentation was made.

iv) The presentation was made fraudulently with the idea that the plaintiff would accept the claim.

v) The plaintiff did in fact accept the deceptive presentation.

vi) The plaintiff was harmed by the erroneous presentation.³²⁵

- Competition Law: In some cases, an exaggerated misrepresentation advertisement may also be considered an unfair or deceptive business under competition law. This may result in fines or other sanctions from regulatory bodies, as well as possible civil actions from competitors who were harmed by the unfair practices.

Unfortunately, India lacks a comprehensive legislative organization to control ads. The Consumer Protection Act, 2019³²⁶, established the Central Consumer Protection Authority (CCPA)³²⁷ to regulate matters relating to consumer rights violations, unfair trade

practices, and false or misleading advertisements that are detrimental to the interests of the public and consumers, as well as to promote, protect, and enforce the rights of consumers as a group, is one of the main laws pertaining to advertisements in India at the moment. This Central Authority has the authority to require the concerned trader, manufacturer, endorser, advertiser, or publisher to either amend the advertisement if it is determined after an inquiry that it is untrue, deceptive or violates consumers’ rights. When this Central Authority concludes after an inquiry that an advertising is deceptive or violates consumer rights, it has the authority to order the involved trader, manufacturer, endorser, advertiser, or publisher to change the advertisement or stop running it entirely. Furthermore possible is the imposition of a fine of up to ten lakh rupees (about USD 13,182) on the negligent maker or endorser. As a result, the Act also holds the endorser, even well-known celebrities, accountable for unethical business activities. The Central Authority also has the authority to forbid an advertiser of fraudulent or deceptive advertising from endorsing any item or service for a period that may last from one to three years for every subsequent contravention.

³²⁸ (Vadehra, 2022)

Conclusion & Suggestions

To avoid falling victim to misleading advertisements in e-commerce, consumers should carefully read product descriptions, check reviews from multiple sources, and be wary of deals that seem too good to be true. E-commerce platforms should also take steps to ensure that their sellers are not engaging in misleading advertising practices, such as by implementing strict review and verification processes. It is important for businesses to engage in honest and transparent advertising practices. This means being truthful about the benefits and limitations of products, avoiding deceptive or exaggerated claims, and ensuring

³²⁵ www.upcounsel.com: Fraudulent misrepresentation tort

³²⁶ The Consumer Protection Act, 2019

³²⁷ Central Consumer Protection Authority

³²⁸ <https://www.lexology.com/library/detail.aspx?g=55951606-036e-4f42-b0dd-156a32cd53b4>

that advertisements are based on sound scientific evidence. Additionally, regulatory bodies can play a role in monitoring and enforcing advertising standards to protect consumers from misleading or harmful advertising practices.

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