
UNIT 19 LEGAL AND ETHICAL ISSUES IN ADVERTISING

Objective

After reading this unit, you should be able to:

- discuss some of the major legal provisions concerning advertising
- explain how these legal provisions helped certain companies to fight communication warfares, not only in India but in other parts of the world.
- define and explain the advertising ethics and suggest how important they are in a country like India.

Structures

- 19.1 Introduction
- 19.2 Laws and Acts Concerning Advertising
- 19.3 Case Studies
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 - Case II : Maggi Ketchup
 - Case III : KMP Oils
 - Case IV : Novino
 - Case V : Pepsodent
 - Case V : Diplomat
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19.1 INTRODUCTION

The advertising industry although a few centuries old, has grown by leaps and bounds since the industrial revolution, but more specifically in the current century. In India from a mere 14 agencies in 1940, the number of accredited agencies has now increased to 695 in 1997. The turnover has also increased many hundred fold. According to industry estimates, the turnover in 1996 stood at a whopping Rs. 4727 crores. There has been roughly an increase of 20 per cent in the year 1997 (about Rs.5, 500 crores).

Like any other profession, the advertising field is also governed by the laws and enactment governing the mass media. There are, however, certain laws and specific legislative enactment, that are directed specifically at the industry which "determine both the broad framework within which the industry is allowed to operate and the content of its output," Some of these are:

19.2 LAWS AND ACTS CONCERNING ADVERTISING

Some of the major legal provisions are as follows:

1. Section 292 and 293 of the Indian Penal Code, 1860, prohibit the dissemination of any obscene matter. *The Indian Post Office Act*, 1898, imposes a similar



prohibition on the transmission of obscene matter through the post. The Customs Act, 1962, allows the detention and seizure of any obscene matter sought to be imported into the country.

2. *The Young Persons (Harmful Publications) Act, 1956*, prohibits the dissemination of publications deemed to be harmful to persons under the age of twenty years.
3. *The Indecent Representation of Women (Prohibition) Act, 1986*, forbids the depiction of women in an indecent or derogatory manner in the mass media.
4. *The Children Act, 1960*, prohibits the disclosure of the name and address and other particulars of any child involved in certain proceedings.
5. *The Emblems and Names (prevention of Improper Use) Act, 1950*, forbids the use by any private party of certain names, emblems, etc.
6. *The Prevention of Insults to the National Honour Act, 1971*, forbids the bringing into contempt of the national flag or the Constitution of India in any manner.
7. *The Indian Penal Code, 1860*, prohibits the publication of matters connected unauthorized lotteries, while the Indian Post Office Act, 1898, imposes a similar prohibition on the transmission by the post of such matter. *The Indian Penal Code, 1860*, also prohibits the publication of appeals using national symbols for furthering the prospects of any candidate at an election.
8. *The Drugs and Magic Remedies (objectionable Advertisement) Act, 1954*, prohibits advertisements for products and services claiming to cure certain medical conditions.
9. *The Prize Competitions Act, 1955*, prohibits the publication of matter with unauthorized prize competitions, while the Prize Chits and Money Circulation Schemes (Banning) Act, 1978, imposes a similar prohibition in respect of chits and money circulation schemes.

The provisions of the law imposing limitations on message/content in the print media apply *mutatis mutandis* to advertising. In fact, most of the provisions governing the print media are applicable to advertising as well, with such modifications as the context may require.

The All India Radio Code for Commercial Advertising originally covered advertising on television also. It lays down standards of conduct for advertisers.

The Code of Commercial Advertising on Doordarshan, published in 1986, now lays down standards of conduct for advertisers on Indian television.

Both All India Radio and Doordarshan had the monopoly in advertising till the advent of satellite channels and FM radio in the early 1990s. Critics feel that the contractual terms governing the relationship of the official media, viz. AIR and Doordarshan offered examples of bias. Both the organisations, they allege "run their commercial operations largely on standard form contracts prepared by themselves, and impose some iniquitous and onerous conditions on advertisers and advertising agencies".

The advertising industry has also evolved a Code of Ethics to govern the profession, keeping in view the culture and ethos of Indian society.

It is interesting 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 the mass media. Article 19 (1) [a] states simply "All citizens shall have the right to freedom of speech and expression". The companion Article 19(2) qualifies this right by providing that the State can impose reasonable restrictions on its exercise "in the interest of the sovereignty and integrity of India, friendly ties with foreign states, public order, decency and morality or in relation to contempt of court, defamation or incitement to an offence". As far back as 1960, the Supreme Court, in the case *Hamdard Dawakhshana vs. Union of India*, ruled that a distinction needed to be made between commercial advertising and advertising aimed at expression and propagation of ideas. It was only the latter form of advertising, opined the apex court, that could legitimately claim the full protection of Article 19 (1) [a]. The effect of the Supreme Court judgement thus is that although an advertisement is a form of speech, its true character is reflected in the object for the promotion of which it was employed. The right to



publish and distribute a commercial advertisement, promoting an individual's personal business is not a part of the freedom of speech guaranteed by our Constitution. The apex Court in another case, *Tata Press vs. Mahanagar Telephone Limited and Others*, commenting on the role of advertising observed that low prices for consumers were dependent upon mass production, mass production was dependent upon volume sales and volumes sales were dependent upon advertising. The Supreme Court, in that case in 1995, concluded that 'commercial speech' cannot be denied as a right to a person because that person was a businessman. While setting aside the judgement of the Bombay High Court in the matter, the three judge bench of Justices Kuldip Singh, B L Hansalia and S B Majumdar said "...the public at large has the right to receive the 'commercial speech. Article 19(1) [a] not only guarantees freedom of speech and expression, it also protects the rights of an individual to listen, read and receive the said speech". The bench further said. "The protection of Article 19 (1) [a] is available to the speaker as well as to the recipient of the speech. The recipient of 'commercial speech' may be having a much deeper interest in the advertisement than the business man who is behind the publication". The apex court further observed that advertising as a commercial speech had two facets. "Advertising which is no more than a commercial transaction is nonetheless a commercial dissemination of information regarding the product advertised. The public at large benefited by the information made available through the advertisement".

Another Act which affects the Industry is the *Drugs and Magic Remedies (Objectionable Advertisements) Act, 1986*, which has also sought to impose wide ranging restrictions on the contents of advertisements published or broadcast in the media. The Act, came into effect thanks to the untiring efforts put in by various women groups and other special interest groups. The Act aims at legislative action to curb the increasing "commoditisation" of women in the media, making it an offence any publication, writing, painting, figure or other media to depict a women, or her body in an indecent or derogatory manner. Such offences are punishable with imprisonment up to two years and with a fine extending to two thousand rupees on first conviction. For second and subsequent convictions, a minimum term of imprisonment of six months, extendible to one lakh rupees is prescribed. Misleading advertisements are prohibited under the "*Monopolies and Restrictive Trade Practices*" provision of the MRTP Act, 1969, appendix 31. The Act defines unfair trade practice to cover several acts aimed at promoting the sale, use or supply of any goods, or the provision of any services, which cause loss or injury to the consumers of those goods and services (section 36). The MRTP Commission, established under the Act has powers to adjudicate upon complaints of such practices and issue injunctive orders, Disobedience to such orders has been made "punishable with imprisonment for a term which may extend to three years or with a fine which may extend to ten thousand rupees, or with both (section 48).

The MRTPC has passed some landmark Orders covering various aspects of advertising.

Let us have a look at a some of the cases to understand the scope and ambit of such issues.

19.3 CASE STUDIES

Case I : P & G v/s HLL: Procter and Gamble and Hindustan Lever Limited, both multi-national companies manufacturing consumer products have often locked horns, each criticizing the other for exaggerating claims in advertising. They had their in famous fights over Surf and Ariel, rival products of both the companies. More recently, the Procter & Gamble, (P&G), complained against. The Hindustan Lever Company, (HLL) to the MTRPC against an advertisement by the HLL by the brand name "Ceramide Sunsil". According to the complainant, "such an ad. would amount to adoption on the part of the respondent (in this case the HLL) of unfair trade practice within the meaning of section 36A of the MRTP Act, 1969.

The advertisement captioned "rebuilds damaged hair back to life" was followed by the phrase "New Ceramide Sunsil Extra Treatment Shampoo", which continued "the breakthrough in the hair repair for Elide Hair Institute".



The MRTC while analysing the case commented that the "New Cermaide Sunsilk ExtraTreatment Shampoo" claimed to be the first shampoo that not only repaired but also rebuilt damaged hair, which followed the picture of the package containing the label [inter alia followed by the opinion one Coleen stated to be a hair expert". According to the complainant (P&G), the hair can be repaired if damaged but cannot be rebuilt. The respondent argued that the phrase "*rebuilds damaged hair back to life*" has to be understood in the context of the dull and lifeless hair to be made in a proper form so as to look natural and bouncy". The HLL brought a number of advertisements from foreign magazines making practically similar claims with respect to similar products.

After hearing arguments from both the sides, checking the claims/data presented in support or against the contention, the MRTPC went into the literal and metaphorical meaning of the words "repair" and "rebuild". As the respondents themselves chose to answer: "Rebuilding damaged hair back to life is in the sense of revitalizing and making the hair healthy and revitalizing them is aptly described as bringing back to life". The Commission, hence, contended that "the phrase 'back to life' as understood by the respondent is different from what it is understood in common parlance". Giving their opinion about how the common man perceives advertisements, the Bench commented thus: "Most people read ads in the language they commonly use. They would not try to read something which is not there. Most people unlike critics, are not used to reading between the lines; they would read in a plain manner. For them the words they use convey the literal meaning and not the metaphorical meaning". Hence, the bench ordered: "In that view of the matter, the phrase 'back to life' would convey the meaning to the effect that the product in question would be able to bring back to life the dead hair. To that extent, we are *prima facie* of the opinion that the claim in that regard is not only tall but also highly exaggerated and can be styled as misleading". An interim injunction was ordered on M/s HLL "restraining it from campaigning in any manner through any media with respect to its product by the brand name of ceramide Sunsilk to the effect that "*it can rebuild the damaged hair by bringing the same back to life*". It further clarified that "the objection is against the use of the expression 'back to life', and not against the whole or any other part of the advertisement in question". The company was directed to "implement this order as expeditiously as possible but in any case not later than 15 days from today" (31 March 1997)."

Case II: Maggi Ketchup: A question has always been asked about the role and scope of the MRTP Commission's jurisdiction. Observers feel that in some cases the Commission has passed orders on some trade practices expressly authorized by some law" in force for the time being". In a couple of cases, the commission passed orders with respect to trade practices concerning the Weights and Measures Act, 1976. Maggie Ketchup, a product of Nestle, was being sold by the company in packages of 400 gm, which the MRTP Commission alleged was in contravention of the provisions of the Weights and Measures (packaged Commodities) Rules, 1977. hence, the company had indulged in an unfair trade practice. The logic was that uniform packaging with other brands would permit a reasonable comparison of price by the consumer. The proceedings were, however, dropped after hearing the arguments as there was no financial loss or injury to the consumers involved. The packaging of the ketchup could not be equated with that of medicine where an incorrect size of dosage could lead to injury. The member, therefore, held that the company had not indulged in an unfair trade practice and dropped the proceedings.

Case III: KMP Oils: In yet another case, the Ahmedabad-based Public Interest Issues Research Academy complained to the Commission against KMP Oils, engaged in the manufacture and marketing of coconut oil. It was alleged by the complainant that the company's volumetric packaging constituted an unfair trade practice as one litre of oil was 10 per cent less than one kilogram by weight, resulting in a wrongful loss of 10 per cent in quantity to the unwary customer. The company had to comply with the law. Sanjeev Sachar a specialist in MRTC law, thus analysed that although Food Specialties (now Nestle) had violated the packaging rules, the practice was held to be fair since there was no financial loss to the consumer. On the other hand, KMP Oil was "rapped on the knuckles" because there was a loss involved. Companies, hence, would have to bear in mind that "what is contemplated in law is not only the actual loss or injury but the capacity and tendency of the trade practice to cause loss and injury to the

consumer".

Case IV: Novino: In another interesting case, the Supreme Court reversed the order of the MRTP Commission. The case related to the controversy surrounding the use of foreign brand names in advertising. In the case of *Lakhanpal national Ltd.* makers of Novino batteries, the apex court held that no representation was involved in using a foreign brand name in their advertising campaign thus overruling an order of the MRTP Commission dated November 13, 1987.

The company in an advertisement in 1987 had claimed that the Novino brand of battery was in collaboration with the National Panasonic of Japan, employing National Panasonic techniques, In another advertisement, the company had used the logo on National batteries along with the brand names National, Panasonic, and Technics, next to the Novino name.

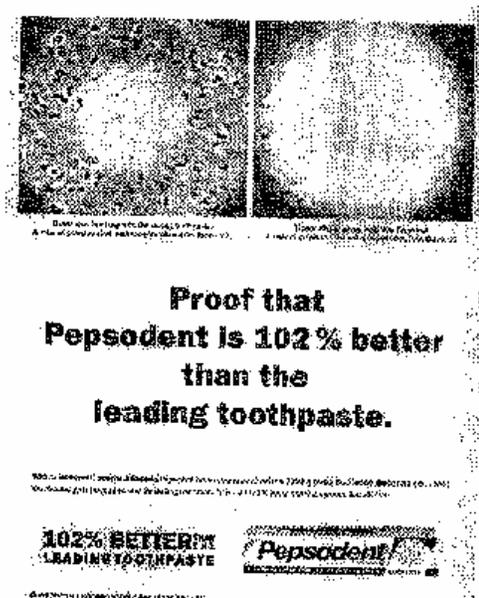
The Commission's contention was that there was no company by the name National, Panasonic or Technics of Japan. The advertisement also said that the Novino battery was a product similar or equivalent to the National and Panasonic batteries produced by Matsushita. hence, the Indian public was being misled and therefore, the advertisement is question were prejudicial to the interest of the consumer and an unfair trade practice, The company argued that its Japanese collaboration was known in India through its brand name rather by its company name. They also pointed out that the raw material and products were periodically sent to Japan to ensure that the dry cell batteries were manufactured as per Matsushita's specifications. hence, their claim could not be dubbed as false or misleading.

The commission in its order remarked that "a sizable segment of populace of this country was not only illiterate but at the same time craze for foreign made goods because of foreign dominance for generations", which inevitably may lead guillible consumers to believe in the superiority of the said product .No research was available to suggest that Novino batteries were similar to Panasonic batteries and also no re Japanese brand name in confusing the consumer, yet given the Indian conditions the use of National Panasonic to signify collaboration on the minds of the common consumer..

The company appealed to the apex court against the MRTP judgement. Justices L M Sharma and SR Pandian held that the erroneous description of the manufacturing company in the advertisement was not an unfair trade practice. They opined that Matsushita was not well known in the country, while its products National and Panasonic were. There could be no confusion in the minds of consumers as there was no company by the name National or Panasonic, the judges asserted. They, however, advised the company to give the full facts by referring to Matsushita Ltd. by its correct name and also to state that their products were known by the name National Panasonic.

Case V: Pepsodent: "MRTP orders halt to 102% ad. campaign to protect consumers interest. *Prima facie case established*", was the headline of an advertisement by the leading toothpaste Colgate in some of the leading newspapers on 11 November, 1997. The ad. obviously was a celebration by the company of winning a case against rival

The ad earned the ire of competitor Colgate, who took Pepsodent to MRTP





Pepsodent toothpaste, whose long campaign in various mass media, "proof that Pepsodent is 102 per cent better than the leading toothpaste" had led Colgate to complain against Pepsodent to the MRTP. The advertisement says it all.

Hindustan Lever was restrained from "referring to any Colgate toothpaste in any manner, either directly or indirectly, by means of any allusion or hint in its TV commercials or newspaper advertisement or hoardings, by comparison of its New Pepsodent with any product of Colgate in general, and Colgate Dental Cream in particular". The company was given a week's time to comply with the order. The Colgate ad. appeared on the front page of the Times of India. On the page three one could see the same Pepsodent ad. against which the injunctions were issued. The ad. continued to appear for some more days that is before the expiry of the deadline of a week.

Industry insiders feel that as competition hots up, brand wars are spilling over from the market place into the courtroom. The marketers resort to "hit-and run" tactics to pre-empt MRTP action. The trick is to run sales promotion for short durations. Even if it's hauled up by the Commission, which according to experience is "usually after the scheme has run its course", the marketers get away by saying they could not have helped.

Activity 1

Collect these advertisements in which you think that either facts are presented in a distorted manner or the copy is misleading. Identify some of the legal provision the advertiser can be sued.

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19.4 INTERNATIONAL MISLEADING ADS AND REDRESSALS

Various countries following Common or Civil Law have different ways of dealing with misleading advertisements. Ross D Petty, while examining cases, provides an interesting perspective on the comparative legal systems in this respect in the International Journal of Advertising. Petty provides a new conceptual framework consisting of five stages known as the "... tions" of an advertising challenge, viz., *initiations, interpretation, deception, verification and remediation.*

Initiation connotes that challenges to advertisements being misleading or deceptive can be initiated through one or more fours sets of procedures; industry self-regulation, government regulation, criminal prosecution and private law suits, most commonly by competitor, but sometimes by consumers or consumer organization. The USA, a Common Law country, entertains advertising challenges from all the three sources. According to Richard L Gordon, each year the US TV network reviews about 50,000 advertisements and receives challenges to less than 100 of those advertisements.

In the USA, some individual television stations and magazines also review advertising before accepting them.

Civil Law countries according to Petty, tend to rely less on government regulation and more on private law suits and/or industry self-regualtions. Italy and Japan rely mostly on self-regulation. Italy's advertising law is enforced by competitor law suits and consumer organization are specifically barred from bringing advertising law suits. According to the author, this is because the courts there are "typically skeptical" and



“Seldom find advertising to be misleading”.

Japan which followed a civil code in 1898 based on the German Civil Code, relies heavily on self-regulation. According to Hotchkiss, this is so because, according to him Confucian philosophy and Asian culture emphasize the importance of “fitting into society”. For this reason, feels the author, formal litigation is viewed with shame in Japan.

Germany, on the other hand, bases its regulation of misleading advertisements on competitor law suits and those brought by consumer organizations. They can request the Director of Fair Trading to seek a court injunction.

The UK Trade Descriptions Act of 1968 authorizes local weights and measures authorities to seek either summary criminal conviction, punishable by a maximum fine of 1000 pounds or criminal conviction, punishable by a maximum fine of 1000 pounds or criminal indictment punishable by an unlimited fine and upto two years in jail for false trade descriptions given in advertising or by other means.

Interpretation: According to Petty, in order to prove that an advertisement is misleading, it must first be interpreted to determine the message it communicates to consumers. In Common Law countries, like the US, implied deceptive claims can be condemned even if the literal statements in the related advertisement are true. In Germany, a Civil Law country, consumer research is required to determine the implied meaning of the particular advertisement. In all other countries, according to Petty, it is judge or the regulator who views the advertisement and interprets it based on his personal opinion. Vaughn Black, analyzing some Common Law countries which tend to pursue omissions of fact, cites the example of Canada, where an advertiser was held liable for the literally true claim that it was selling new houses for \$ 24,900 because the advertisement in question misleadingly omitted that the purchasers also had to buy the land the houses were built on for a substantial additional amount. Similarly France challenged the advertisement of Tang drink mix that showed an empty orange peel, a glass of Tang surrounded by green leaves. The slogan was “the taste of fresh squeezed oranges”. The advertisement was found to falsely claim that Tang contained orange juice, despite the fine print listing Tang’s artificial ingredients.

Deception: The question whether a particular advertisement is deceptive, in other words, it is likely to deceive consumers, involves two separate issues, according to Petty, i.e. what probability of deception is required and what proportion or type of consumers must be misled before an advertisement can be condemned as deceptive. Germany condemns advertising that communicates a deceptive message to as few as only 10 per cent of the advertisement’s audience. Similarly, the US Lanham Act follows the old FTC practice of condemning advertising that has the tendency or capacity to mislead 25 per cent or more consumers. Countries other than the USA and Germany have the judges or regulators view the advertisement and decide if it is likely to mislead consumers. In other words, individual judges or regulators set the standard for deception. We saw above, however, that MRTP Commission’s judgement in the case of Novino batteries, however, was reversed.

Verification: Traditionally the advertisers are not required to prove the truthfulness of their claims. The onus of proving the falsity of the claim rests on the challengers. This is, however, changing. A Common law country, New Zealand, recently followed the US FTC and now requires advertisers to prove their claim when challenged. The European Community Directive on misleading advertising calls for advertisers to bear the brunt of proving the truthfulness of their claims. The UK self-regulation and its 1988 Control Misleading Advertisements Regulation requires that advertisers develop substantiation prior to dissemination.

Remediation: According to Petty, once the other advertising challenges have found liability, a remedy is imposed. Self-regulation according to the author throughout the world has no legal authority to impose remedy, but many such system are “buttressed by the threat of formal legal action if recommendations are not followed”. The typical remedy, according to analysts, is to stop or modify the advertising to prevent dissemination of the misleading claims.

In the Indian context, one can refer to a couple of instances to illustrate the point.



Thums Up, an aerated drink, in a TV commercial had the feat of Bungee jumping, an act which was imitated by a child of about five years, leading to his death. There was a public furore and the company, while not withdrawing the advertisement altogether, had a few second-long warnings informing the viewers that the act was performed by a professional and should not be imitated.

Another advertisement which led to police action and a subsequent legal case related to the super models Madhu Sapre and Milind Soman posing in the nude, only wrapped by a python, for the Phoenix shoes ad. The advertisement was withdrawn after the Mumbai police arrested both Sapre and Soman on charges of portraying indecency.

Damages according to observers are rarely available to consumers. In the United States, the FTC has recently begun to obtain consumer refunds in advertisement cases involving clearly false claims. To obtain damages, competitors have the difficult challenge of proving lost sales under the Lanham Act. Germany allows consumer groups to sue for damages, but any complainant seeking damages must prove intentional or negligent misconduct. In the UK, damages are ordered and possible imprisonment. The 1988 regulation can only obtain an injunction. In New Zealand and Canada, injunctions are very rare, heavy penalties, however, serve as deterrents.

Advertising is here to stay. Whether we need advertising is no more an academic issue, but there is no gain, saying the fact that with a large potential to impact the minds of the people advertising is unfortunately not taken that seriously by the governments and regulatory bodies at large. The need of the hour is to evaluate and study the impact of advertising on the social, psychological, cultural and economic behaviour of various segments of society and evolve a set of laws to regulate it more closely.

19.5 ADVERTISING AND ETHICS

Ethics in any profession is governed by two parameters -- the professional code of ethics and the personal grooming and value system for the practitioners. The advertising industry has always been in sharp focus and more often for wrong reasons. One of the commonly held criticisms against advertising is that it affects sales by leading consumers to change their minds or to think a certain way about a product. "Advertising", according to Michael Schudson, "associates a given brand or product with a prestigious person or a romanticized lifestyle and suggests that the use of the product will transform the consumer into a more beautiful, more desirable, or more energetic human being. The consumer believing or half believing this, and consciously or sub-consciously coaxed by the ads' suggestion, buys the product.

Advertising is also considered a waste of money that could be better spent in price-reductions or product improvements. The profession is also criticized for using appeals such as envy and snobbery as virtues worth emulating, thus creating attitude problems in the society. Simialy, the vigorous use of "Life style" advertising is believed by many to create chasms among the haves" and the "have-nets", thus further widening the gaps.

While advertising's informational role is generally accepted, many analysts note that competitive advertising merely shifts demand from one good to another and raises prices in the bargain. Although, advertising widens the range of consumer choice; it is criticized for stimulating a desire for material acquisitions and excessive consumption.

Coming to ASCI's Code of Advertising Practice, it is quite wide ranging and since the time it has come into force the Council has received thousands of complaints. Although the decisions of the Council in dealing with cases do not have a legal bearing, experience has shown that the concerned advertising agencies have followed the Council's advice, by and large. Some of the highlights of ASCI's Code include the following.

- a) Advertising should be so designed as to conform not only to the laws but also to the moral, aesthetic and religious sentiments of the country in which it is published.
- b) Advertisements likely to bring contempt or disrepute to the profession should not be permitted.



- c) Advertising should be truthful, avoid distorting facts and misleading the public by means of implications and omissions.
- d) Advertising should not be permitted to contain exaggerated claims so as to inevitably disappoint the public.
- e) Direct comparison with competing brands or firms and disparaging references are in no circumstances permitted.
- f) Indecent, vulgar, suggestive, repulsive or offensive themes or treatment should be avoided.
- g) No advertisement should offer to refund money paid.
- h) Advertisement must not carry claim of drugs to prevent or cure any diseases or ailment specified in Schedule "J".

Besides the above, the members are prevented from placing any advertisements in any medium which is knowingly a copy or a plagiarism of any other advertisement of any kind, makes attacks of a personal nature, is indecent, vulgar, suggestive, repulsive or offensive in theme or treatment, concerns objectionable medical treatment, and concerns a product known to contain habit forming or dangerous drugs.

In the event of a member proving to the satisfaction of the Executive Committee that a client has withdrawn his account on the grounds of the member's refusal to undertake unethical advertising (as described above no other member shall accept any business) whatever from the said client. Detailed code of ethics may be referred at the end of the book.

Thanks to the loopholes in law and the non-punitive nature of industry codes some advertisers get away with the so called "vulgar", "sexist" and "surrogate" advertising. Sometimes the interpretation is also given in letter and not in spirit. A couple of interesting cases of surrogate advertising will illustrate the case in point.

Case VI: Diplomat: A question which has become an important concern of society and consumers at large is whether advertisements published by and on behalf of the companies and advertising agencies need to be restricted or censored? If yes, to what extent? The concern is in the belief that advertisements have the capacity to influence the minds of gullible consumers in believing what may not be a statement of truth. This may be with possible pernicious consequences of loss and damage to them. The MRTP Commission, feeling concerned about the issue, took the responsibility of testing the "allegedly pernicious advertisement in terms of its capacity to mislead the consumers". The company in question was M/s McDowell & Company Ltd. and the brand "Diplomat", whisky.

The inquiry commenced with an advertisement that appeared on page 66 of the Illustrated Weekly of India on 23 November, 1986. M/s McDowell was said to have inserted and published the said advertisement to promote the sale of whisky manufactured by it though it apparently related to cologne. The advertisement had the visual of a bottle on which was engraved "McDowell's Diplomat Cologne". The advertisement in question also had the picture of cine artist Ms Dimple Kapadia with the caption "What makes him my choice is his choice... Diplomat". The Commission came to the *prima facie* view that the said advertisement though apparently referred to the cologne, left a misleading impression on the readers about the good quality and usefulness of whisky manufactured by the brand name "Diplomat" and the caption gave the impression that Ms Kapadia liked "those people who chose to drink 'Diplomat Whisky' and it also gave a misleading impression about the quality and usefulness of 'Diplomat Whisky'.

A Notice of Inquiry (NOI) was served on M/s McDowell on 2 February, 1988. M/s McDowell (Respondent) filed a detailed reply to the objections raised in the NOI and gave the defence in merits as under:

1. The product advertised was "Diplomat Cologne" a perfume and not "Diplomat Whisky". The respondent claimed not to have advertised the latter, hence, the NOI was bad in law.
2. It alleged that "certain baseless inferences were drawn from the caption in the impugned advertisement. The humour or hyperbole in the advertisement was not to be disregarded or misunderstood".



3. Name of the alleged practices in the NOI had not in any way caused loss or injury to any consumer, claimed the respondent.
4. That the cologne advertised was neither a drug within the meaning of Section 2(b) nor a magic remedy within the meaning of Section 2(c) of the Drugs and Magic Remedies (Objectionable Advertisements) Act, 1959 Nor was it an article or substance capable of being used for maintaining or improving the capacity of human beings for sexual pleasures as mentioned in Section 3 (b) of the said Act.
5. That it was not open to the Commission to treat the contravention or supposed contravention of the other statutes as unfair trade practices under the MRTP Act, when specific remedies and punishments were provided in those enactments.

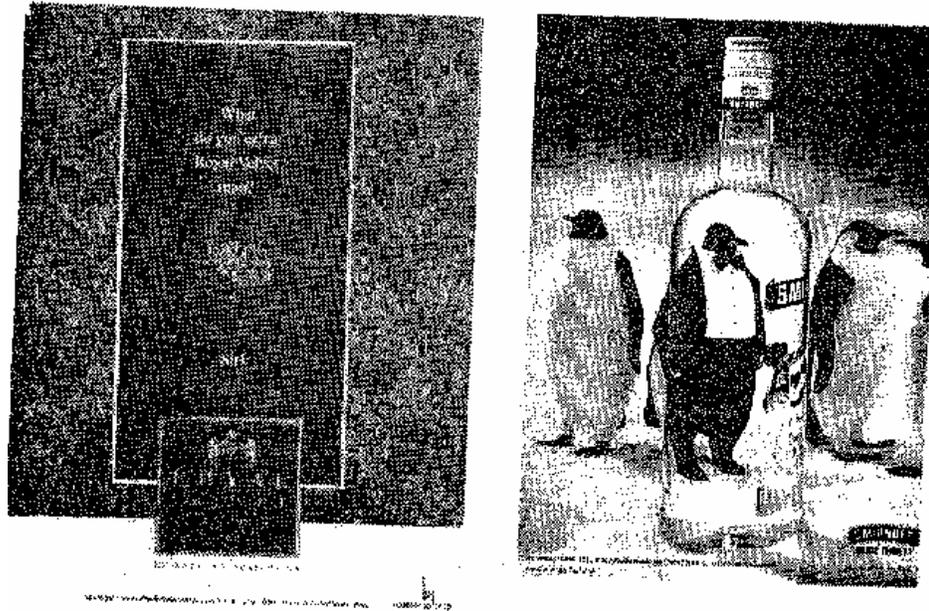
Defences on Merit

6. The allegation that the message in the advertisement left a misleading impression on the readers on the quality and usefulness of whisky under the brand name "Diplomat" was "incorrect and baseless".
7. The word "cologne" was written conspicuously in the impugned advertisement. The size of the cologne bottle was much smaller than the size of the "Diplomat Whisky" bottle. The respondent argued that it was "inconceivable that any consumer or reader of the advertisement would be so naive as to misconstrue the advertised product". Even the outlets for selling the two products were different, argued the respondent.
8. It was also argued by the respondent that the consumers were not so bereft of commonsense and intelligence that they would expect Ms. Kapadia or any other film star to be attracted to them only because of the preference for a particular product of her alleged liking, as advertised.
9. The respondent defended the action arguing that in the present business scenario, advertisements were becoming indispensable for gaining a foot-hold and popularity among consumers and in this context " film stars are a popular medium of advertisement for sale of products". Catchy expressions, defended the respondent, were not forbidden by law, if they could be seen as "humorous or hyperbolic".
10. The respondent argued that it had not "transgressed any limits laid down by law or ethics or indulged in any unfair trade practice".
11. The product "Diplomat cologne" was not manufactured by the respondent but by M/s Carews Pharmaceuticals Pvt. Ltd. and only marketed by the respondent.

Counsel on behalf of the MRTP, referring the matter as "surrogate advertisement" observed that the cologne bottle shown in the impugned advertisement resembled an actual bottle of the Diplomat brand of whisky. The Counsel also argued whether McDowell was justified in incurring an expenditure of about Rs. 25 lakhs for selling cologne bottles worth only one lakh rupees. This, he said, gave rise to the inference that the advertisement was only to promote the sale of whisky bottles through the stratagem of surrogate advertising. Counsel after cross-examinining some witnesses felt their disposition could not be relies upon, which was turned down by the bench, after cross--examining them.

Apparently, the respondent was able to convince the bench that the expenditure incurred by the company was for the promotion of the cologne and not whisky. They also argued that "surrogate" advertising was not banned by law.

After taking into account the evidence on record and the pleadings, the bench was "inclined to agree with the respondent that a reader of the advertisement is unlikely to be misled with the expression 'cologne' staring in the face of the bottle". In a manner of speaking, noted the bench, "the allegation belittles the modicum of intelligence in the readers and consumers". The Bench hence concluded that "the respondent is held not to have indulged in the alleged unfair trade practice". In fact, the order of the Commission was in line with a similar case before it in the late 1980s. The inquiry was the outcome of a letter addressed to the Commission by the Hyderabad based *Akhil Bhartiya Grahak Panchayat*. The complainant said that two liquor manufacturing companies, namely, Phipson and Co. Ltd, and Herbertson Ltd. were issuing advertisements ostensibly in the name of products other than liquor in order to



Two examples of surrogate advertising

circumvent the legal ban on liquor advertising. Describing the practice as unethical, the commission was urged to order an inquiry and prevent.

- liquor manufacturers from issuing advertisements;
- newspapers and magazines from publishing them;
- advertising agents from displaying such advertisements on hoardings and in public places by any other means.

Case VII: Herbertson: The Phipson advertisement was apparently for a "collector's Royal Reserve cassette" (also brand name of their liquor). In another advertisement for "Splendor Deluxe cassette", the visual showed a couple in a restaurant. *"Splendid! That's the spirit,"* said the copy at one place and at another: *"Rich. Mature, Mellow. To blend smoothly with your style"*

The Herbertson advertisements under scrutiny showed film stars including veteran actors Ashok Kumar, Sanjeev Kumar and Pran, holding empty glasses in hand. Each had a bagpiper perched somewhere around. The copy read: *"A bagpiper on ice-sounds cool!"* The advertisements ostensibly were for a club soda, manufactured under the name of Bagpiper, which is also the brand name for a whisky from Herbertson.

After hearing the arguments and counter arguments, the Commission bench observed that the advertisements relating to cassettes under the name of Royal Reserve and Splendor Deluxe were not in any way misleading with regard to the cassette itself. They, therefore, did not see any loss or injury to a cassette buyer. Although the logos resembled, the bench felt this did not amount to misrepresentation in the matter of quality, standard, composition or their use and benefits. As for Bagpiper, too, they said that there was no misrepresentation making for any unfair trade practice so as to cause loss or injury to the consumer, As regards the words and phrases, these they felt were apt even for soda.

Commenting on the order of the Commission, analyst Sanjiv Sachar commented, It seems the members have arrived at their decision by merely an examination whether the representation was correct or not in the literal sense. They seem to have overlooked the main object of Section 36A of the MRTP Act, which is to bring honesty and truth in the relationship between the manufacturer and the consumer". Herbertsons Ltd. came out with surrogate print ads headlined "What do you call a Royal ,Velvet man? Sir! As rare as perfection" Simran offset print campaign claims to sell shirts which ironically are "Pure Thrill".

Advertising, let us face it has come to be recognized as an important element in the



marketing mix. At this moment one cannot perceive a time when there would be no advertising. Advertising, feel many ad. analysts shapes the values of society. Insensitive and crude communication can have wider ramifications.

Advertising is all about people, then how can it be insensitive to them? An advertiser may win an argument or a case in a court, but there is a court of public opinion he cannot turn a Nelson eye to. If he does, it will only be at his cost and risk. Business in a society runs only by public approval. Advertising, according to some analysts, needs a change of image. Creative writer K T Sandeep feels that the problem in India is that advertising is viewed as an unprofessional and in disciplined but necessary function. According to him, the perception of the advertising type is that of a "shallow, overpaid, smooth talking brat. The kind of professional respect a doctor, lawyer or architect enjoys is in stark contrast to the condescension and barely concealed contempt an ad. person continuously comes up against". The reasons, according to him, are not far to seek. "Advertising agencies", according to Sandeep, "all too often show a sad lack of ethics and professional discipline in the desperate rush to gain (and retain) business". This may be true of a minority, but as advertising professionals, they all know how "one batch of soggy chips can well ruin a successful brand".

Case VIII: Cadillac: In some societies like the US, thanks to the consumer movement, it is very difficult for "irresponsible" advertisers to get away with exaggerated claims, un-ethical connotations, etc. National consumer groups got together once again in 1997 to hand out "Lemon" awards to misleading advertisements. The companies included Cadillac, VISA and Anheuser Busch for "misleading, unfair and irresponsible" ads, The American Egg Board, Nutri-system Weight Loss Clinics and Abbot Laboratories were among the other companies highlighted in the 13th Annual Harlan Page Hubbard Lemon Awards.

Cadillac's ad. seemed to show its Catera crossing a double yellow line to pass a BMW and Lexus, getting ahead of the pack. The Center for Auto Safety objected to the ad. because according to them "This manoeuvre is flagrantly illegal and dangerous". Similarly the American Egg Board claimed that cholesterol will not go up if people ate two eggs a day. The Center for Science in the Public Interest opined that it "contradicted the advise of every major health authority in the US". The ad. cited studies, sponsored by the egg industry, which did show that eating eggs raised blood cholesterol. VISA check card advertised its ease of using without needing identification. The US Public Interest Research Group (USPIRG) said that it meant a thief could drain your card without identification. VISA defended saying that as a matter of policy, customer's liability was zero if the losses were reported within two business days of discovery. Those dishonoured were not there to receive the "Lemon" awards. Instead, consumer groups stood in at ceremonies represented by consumer activists. This reflects the power of public opinion which surely works as the determining factor in bringing about sensitivity to the discipline.

Case IX: Cadbury: Analysts feel that public opinion remains the sole determining factor about whether a brand will survive in the market place or not especially due to the increasing awareness amongst them about consumer movements are within their rights. Take for instance-when Dr MC Saxena, a scientist from the Lucknow based Environmental Research laboratory, alleged that the nickel content in Indian chocolate brands was two to four times more than in US chocolate brands, He also warned that higher consumption could be harmful to health. A small write-up in some newspapers became the talking points all over. The sale of chocolates suddenly dropped, sending shock waves in the chocolate industry. The manufacturers joined forces to counter the allegation, but it was Cadbury which was in the vanguard of this battle. The reason was obvious. Chocolates contributed 65 per cent of its 143 crore turn over, when the problem surfaced in 1992.

The company first issued an ad. to counter Saxena's claim. "How could we do anything to harm you? read the headline of the front page ad. in newspapers. "Generations of Indians have grown with the Cadbury's... "went the body copy, The visual had the picture of a young couple with a small daughter. The punchline was "For goodness sake". Secondly, the company requested the parent company Cadbury Schweppes to test the entire range of its brands-along with some foreign brands for



human endeavour.

- Overtly seek to encourage increased consumption and buying large stocks of liquor products.
- Resort to surrogate advertising to contravene the existing law, rules and code.
- Be aired between 6.00 a.m. and 9.00 p.m. for spirits.

Curbs on contents

- Content should not target youth below 18, and models should be in the above 21 age group.
- Ads should not suggest that liquor consumption is safe, healthy and natural.
- No link to be established with manliness, virility, courage or daring or a sign of female emancipation or be associated with success in sports or academic or sexual performance.
- Celebrity endorsements to be avoided.
- Avoid suggestions that liquor is a stimulant or a sedative or that it enhances mental or physical performance.

Media exposure

- No liquor as on programmes directed wholly/mainly at minors under 18s.
- No liquor ads between 6.00 a.m. and 9 p.m. display of logo or mention of brand name to be permitted, provided product/container/likeness not shown.

Surrogate code

- No advertising for non-liquor products bearing the same name as a liquor product, which are not made available in reasonable quantities with regard to the scale of the advertising, media used, markets targetted.

The brighter side of all this is that as consumer awareness grows, marketers are fast learning that in these days when the consumer is king, nothing but the best would do.

19.6 SUMMARY

The three things; Law, code of conduct and Ethics are the "Trimurti" of advertising standards which help in creating a healthy advertising environment. The laws are the legal provisions, the 'code' are set up by the professional bodies and ethics are of individuals. However, they should work in harmony.

19.7 SELF-ASSESSMENT QUESTIONS

1. Discuss the major regulations influencing advertising in India.
2. What inferences do you draw from HLL v/s P&G care?
3. Why ethics are important in a developing society like India?

19.8 FURTHER READINGS

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THE CODE FOR SELF-REGULATION IN ADVERTISING

(The Advertising Standards Council of India)*

Adopted by the Advertising Standards Council of India under Article 2(ii) of its Articles of Association at the first meeting of the Board of Governors held on November 20, 1985.

The purpose of the Code is to control the content of advertisements, not to hamper the sale of products which may be found offensive, for whatever reason, by some people. Provided, therefore, that advertisements for such products are not themselves offensive, there will normally be no ground for objection to them in terms of this section of the Code.

Declaration of Fundamental Principles

This Code for Self-Regulation has been drawn by people in professions and industries in or connected with advertising, in consultation with representatives of people affected by advertising, and had been accepted by individuals, corporate bodies and associations engaged in or otherwise concerned with the practice of advertising with the following as basic guidelines with a view to achieve the acceptance of fair advertising practices in the best interests of the ultimate consumer:

- I. To ensure the truthfulness and honesty of representations and claims made by advertisements and to safeguard against misleading advertisements.
- II. To ensure that advertisements are not offensive to generally accepted standards of public decency.
- III. To safeguard against the indiscriminate use of advertising for the promotion of products which are regarded as hazardous to society or to individuals to a degree or of a type which is unacceptable to society at large.
- IV. To ensure that advertisements observe fairness in competition so that the consumers need to be informed on choices in the market place and the canons of generally accepted competitive behaviour in business are both served.

The Code's rules form the basis for judgement whenever there may be conflicting views about the acceptability of an advertisement, whether it is challenged from within or outside the advertising business. Both the general public and an advertiser's competitors have an equal right to expect the content of advertisements to be presented fairly, intelligibly and responsibly.

The Code binds the advertisers, the advertising agency and the media owner.

Responsibility for the Observance of this Code

As the advertiser originates the advertising brief and sanctions its placement, the advertiser carries full responsibility for the observance of this Code. This responsibility embraces the advertisement in its entire content and form (including testimonials and statements or visual presentation originating from other sources). The fact that the content or form, wholly or in part, originates from other sources is not an excuse for non-observances of this Code.

As creators and expert advisors, the advertising agency has full responsibility to ensure the observance of this Code in as much as the facts are known to them: to advise their clients in accordance with this Code; and if clients are not amenable to their advice, to refer the matter to the Advertising Standards Council of India. If the agency view is upheld by the Advertising Standards Council of India and the client is determined to persist with the unacceptable advertisement, under this Code it is the agency's responsibility to refuse to release or in any way assist the release of such advertisement, and the requirement of such refusal is applicable to all other agencies and to media. Any media owner must view each advertisement offered for publication to them from

* Reproduction

the point of view of the Code. If any advertisement is considered by the media owner to be in contravention of the Code, the media owner should refer the matter to the Advertising Standards Council of India. All advertisements found by the Advertising Standards Council of India to be in violation of this Code shall be refused publication by all media owners.

This Code applies to advertisements read or viewed in India by a significant number even if carried by media that are published or originate abroad.

The Code and the Law

The Code's rules are not the only ones to affect advertising.

There are many provisions, both in the common law and in the statutes, which can determine the form or the content of an advertisement.

The Code is not in competition with law. Its rules, and the machinery, through which they are enforced, are designed to complement legal controls, not to usurp or replace them.

Definitions

For the purpose of this Code:

- an *advertisement* is defined as paid-for-communication, addressed to the public or a section of it, the purpose of which is to influence the opinions or behaviour of those to whom it is addressed. Any communication which in the normal course would be recognised as an advertisement by the general public would be included in this definition even if it is carried free-of-charge for any reason.
- a *product* is anything which forms the subject of an advertisement, and includes goods, services and facilities.
- a *consumer* is any person or corporate body who is likely to be reached by an advertisement whether as an ultimate consumer, in the way of trade or otherwise.
- an *advertiser* is an individual or partnership or corporate body or association on whose brief the advertisement is designed and on whose account the advertisement is released,
- *advertising agency* includes all individuals, partnerships, corporate bodies or associations who or which work for planning, research, creation or placement of advertisements or the creation of material for advertisements for advertisers or for other advertising agencies.
- *media owners* include individuals in effective control of the management of media or their agents; media are any means used for the propagation of advertisements and include the press, cinema, radio, television, hoardings, hand bills, direct mail, posters and the like;
- any *written, graphic or audio visual* matter on packaging, whether unitary or bulk, or contained in it, is subject to this Code in the same manner as any advertisement in any other medium.
- to *publish* is to carry the advertisement, in any media whether it be by printing, exhibiting, broadcasting, displaying, distributing, etc.

Standards of Conduct

"Advertising is an important and legitimate means for the seller to awaken interest in his products. The success of advertising depends on public confidence. Hence no practice should be permitted which tends to impair this confidence". The standards laid down here should be taken as minimum standards of acceptability which would be liable to be reviewed from time to time in relation to the prevailing norm of consumers' susceptibilities.

The Code of Advertising Practice
CHAPTER - I



To ensure the Truthfulness and Honesty of Representations and claims made by Advertisements and to Safeguard against misleading Advertisements.

1. Advertisements must be truthful. All descriptions, claims and comparisons which relate to matters of objectivity ascertainable fact should be capable of substantiation. Advertisers and advertising agencies are required to produce such substantiation as and when called upon to do so by the Advertising Standards Council of India.
2. Where advertising claims are expressly stated to be based on or supported by independent research or assessment, the source and date of this should be indicated in the Advertisement.
3. Advertisements shall not, without permission from the person, firm or institution under reference, contain any reference to such person, firm or institution which confers an unjustified advantage on the product advertised or tends to bring the person, firm or institution into ridicule or disrepute. If and when required to do so by the Advertising Standards Council of India, advertisers and advertising agencies shall produce explicit permission from the person, firm or institution to *which* reference is made in the advertisement.
4. Advertisements shall not distort facts nor mislead the consumer by means of implications or omissions. Advertisements shall not contain statements or visual presentations which directly or by implication or by omission or by ambiguity or by exaggeration are likely to mislead the consumer about the product advertised or the advertiser or about any other product or advertiser.
5. Advertisements shall not be so framed as to abuse the trust of consumers or exploit their lack of experience or knowledge. No advertisement shall be permitted to contain any claim so exaggerated as to lead to grave or widespread disappointment in the minds of consumers. For example:
 - a) Products shall not be described as "free" where there is any direct cost to the consumer other than the actual cost of any delivery, freight, or postage. Where such costs are payable by the consumer, a clear statement that this is the case shall be made in the advertisement.
 - b) Where a claim is made that if one product is purchased another product will be provided "free", the advertiser is required to show as and when called upon by the Advertising Standards Council of India that the price paid by the consumer for the product which is offered for purchase with the advertised incentive is no more than the prevalent price of the product without the advertised incentive.
 - c) Claims which use expressions such as "Up to five years, guarantee" or "Prices from as low as Y" are not acceptable if there is a likelihood of the consumer being misled either as to the extent of the availability or as to, the applicability of the benefits offered.
 - d) Special care and restraint has to be exercised in advertisements addressed to those suffering from weakness, any real or perceived inadequacy of any physical attributes such as height or bust development, obesity, illness, impotence, infertility, baldness and the like to ensure that claims or representations directly or by implication, do not exceed what is considered prudent by generally accepted standard or medical practice and the actual efficacy of the product.
 - e) Advertisements inviting the public to invest money shall not contain statements which may mislead the consumer in respect of the security offered, rates of return or terms of amortisation; where any of the foregoing elements are contingent upon the continuance of or change in existing conditions, or any other assumptions, such conditions or assumptions must be clearly indicated in the advertisement;
 - f) Advertisements inviting the public to take part in lotteries or prize competitions permitted under law or which hold out the prospect of gifts shall state clearly



all material conditions as to enable the consumer to obtain a true and fair view of their prospects in such activity. Further, such advertisers shall make adequate provisions for the judging of such competitions, announcement of the results and the fair distribution of prizes or gifts according to the advertised terms and conditions within a reasonable period of time. With regard to the announcement of results, it is clarified that the advertiser's responsibility under this section of the Code is discharged adequately if the advertiser publicizes the main results in the media used to announce the competition as far as is practicable, and advises the individual winners by post.

6. Obvious untruths or exaggerations intended to amuse or to catch the eye of the consumer are permissible provided that they are clearly to be seen as humorous or hyperbolic and not likely to be understood as making literal or misleading claims for the advertised product.
7. In mass manufacturing and distribution of goods and services it is possible that there may be an occasional, unintentional lapses in the fulfilment of an advertised promise or claim. Such occasional, unintentional lapses may not invalidate the advertisement in terms of this Code.

In judging such issues, due regard shall be given to the following:

- a) Whether the claim or promise is capable of fulfilment by a typical specimen of the product advertised.
- b) Whether the proportion of product failures is within generally acceptable limits.
- c) Whether the advertiser has taken prompt action to make good the deficiency to the consumer.

CHAPTER II

To ensure that Advertisements are not offensive to generally accepted standards of Public Decency.

Advertisements should contain nothing indecent, vulgar or repulsive which is likely in the light of generally prevailing standards of decency and propriety, to cause grave or widespread offence.

CHAPTER III

To safeguard against the indiscriminate use of Advertising in situations or for the Promotion of Products which are regarded as Hazardous to society or to individuals to a degree or of a type which is Unacceptable to Society at Large.

1. No advertisement shall be permitted which:
 - a) Tends to incite people to crime or to promote disorder and violence or intolerance.
 - b) Derides any race, caste, colour, creed or nationality.
 - c) Presents criminality as desirable or directly or indirectly encourages people, particularly children, to emulate it or conveys the modus operandi of any crime.
 - d) Adversely affects friendly relations with a foreign state.
2. Advertisements addressed to children shall not contain anything, whether in illustration or otherwise, which might result in their physical, mental or moral harm or which exploits their vulnerability. For example, no advertisement:
 - a) Shall encourage children to enter strange places or to converse with strangers in an effort to collect coupons, wrappers, labels or the like.
 - b) Should depict children leaning dangerously outside windows, overbridges or climbing dangerous cliffs and the like.
 - c) Should show children climbing or reaching dangerously to reach products for any other purpose.
 - d) Should show children using or playing with matches or any inflammable or



- explosive substance, or playing with or using sharp knives, guns or mechanical or electrical appliances, the careless use of which could lead to their suffering cuts, burns, shocks or other injury.
- e) Shall feature minors for tobacco or alcohol-based products.
3. Advertisement shall not, without justifiable reason show or refer to dangerous practice or manifest a disregard for safety or encourage negligence.
 4. Advertisements should contain nothing which is in breach of the law nor omit anything which the law requires.
 5. Advertisements shall not propagate products the use of which is banned under the law.
 6. Advertisements for products whose advertising is banned or restricted by law must not circumvent legal restrictions by purporting to be advertisements for other products the advertising of which is not banned or restricted by law. In judging whether or not any particular advertisement is an indirect advertisement for a product whose advertising is restricted or prohibited, due attention shall be paid to the following:
 - a) Whether the unrestricted product which is purportedly sought to be promoted through the advertisement under complaint is produced and distributed in reasonable quantities having regard to the scale of the advertising in question, the media used and markets targeted.
 - b) Whether there exist in the advertisement under complaint any direct or indirect clues or cues which could suggest to consumers that it is a direct or indirect advertisement for the produce whose advertising is restricted or prohibited.
 - (c) Where advertising is necessary the mere use of a brand name or company name that may also be applied to a product whose Advertising is restricted or prohibited, is not reason to find the advertisement objectionable provided the advertisement is not objectionable in terms of (a) and (b) above.

CHAPTER IV

To ensure that Advertisements observe fairness in competition such that the Consumer's need to be informed on choice in the Market Place and the Canons of generally accepted competitive behaviour in Business are both served.

1. Advertisements containing comparisons with other manufacturers or suppliers or with other products including those where a competitor is named, are permissible in the interest of vigorous competition and public enlightenment, provided:
 - a) It is clear what aspects of the advertiser's product are being compared with what aspects of the competitor's product.
 - b) The subject matter of comparison is not chosen in such a way as to confer an artificial advantage, upon the advertiser or so as to suggest that a better bargain is offered than is truly the case.
 - c) The comparisons are factual, accurate and capable of substantiation.
 - d) There is no likelihood of the consumer being misled as a result of the comparison, whether about the produce advertise or that with which it is compared.
 - e) The advertisement does not unfairly denigrate, attach or discredit other products, advertisers or advertisements directly or by implication.
2. Advertisements shall not make unjustifiable use of the name or initials of any other firm, company or institution, nor take unfair advantage of the goodwill attached to the trade mark or symbol of another firm or its product or the goodwill acquired by its advertising campaign.
3. Advertisements shall not be so similar to other advertisements in general layout, copy, slogans, visual presentations, music or sound effects as to be likely to mislead or confuse consumers.
4. As regards matters covered by sections 2 and 3 above, complaints of plagiarism from advertisements predominantly viewed abroad will lie outside the scope of this Code except in the undermentioned circumstances;



- (a) The complaint is lodged within six months of the first general circulation of the advertisements/campaign complained against.
- (b) The complainant provides substantiation regarding the claim of prior invention/ usage abroad.

ASCI's Mission

ASCI has one overarching goal: to maintain and enhance the public's confidence in advertising.

ASCI seeks to ensure that advertisements conform to its Code for Self-Regulation which requires advertisements to be:

- truthful and fair to consumers and competitors.
- within the bounds of generally accepted standards of public decency, and
- not used indiscriminately for the promotion of hazardous products to a degree unacceptable to society at large.

ASCI propagates its Code and a sense of responsibility for its observance amongst advertisers, advertising agencies and others connected with the creation of advertising, and the media.

ASCI encourages the public to complain against advertisements with which they may be unhappy for any reason and ensures that each complaint receives a prompt and objective consideration by an impartial committee which takes into account the view point of the advertiser and an appropriate decision is communicated to all concerned.

ASCI endeavours to achieve compliance with its decisions through reasoned persuasion and the power of public opinion.