Advertisements Misrepresentation and Remedies

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Advertisements, with their effective designs and statements, influence people in their decision-making. With the exaggerated information, advertisements mislead and dissatisfy the consumer, who in turn becomes a bad advertiser. Due to this, the advertisers face embarrassing situations and pay a heavy price for their mistake. So it is essential to formulate a policy for advertising and make sure they work within the legal framework and in accordance with the codes created for the purpose of maintaining advertisement standards.

Advertisements are the best tools for effective communication. They provide perception to the needy and information to the public at large and leave a multi-dimensional impact upon society. The techniques and the media used for advertisements may vary, but the ultimate result will be the same. It is a living testimony of the ‘freedom of speech and expression’. It is the essence of democracy, particularly in the fields of trade and business, politics, service and socio-economic activities. A dvertisements play a pivotal role and drive the economy of a country and its people to predefined destination. It is further effective only when the markets are more competitive and target group makes analytical decisions. In the present globalized markets, advertisement is the core component of the business. Success of a business depends upon the quality of the advertisements. ‘A dvertisement is the first, second and third element of success’. It is the life of trade and business activities.

Advertising may be described as “The science of arresting human intelligence, long enough, to get money from it.” A dvertisement is the greatest philosophical technique of the modern world. It is a tool of marketing, which reaches the target group even before they approach. It influences the minds of people through communication and awakens the zeal, cultivates the instincts and metamorphoses the thinking process. Properly designed advertisements communicate better than a few well-trained salesforce. It influences the individual to possess the goods or services even without having the real need or use of it. The purpose of the advertisement is to communicate the information about the goods or services. It establishes the brand image of the product in the minds of the consumers and reduces the distance between the user and the supplier. The two sides of marketing—the sellers and the purchasers, are associated with advertisements. It is not out of place to say that the commercial organizations are dependent on these advertisements for their subsistence and expansion. A dvertisement, like electrical power, not only provides illumination and energy, but also electrocutes the user if handled negligently.

So, advertisement, no doubt, is a mass media communication and provides information about products and services required for activities of life such as home products, financial products, lifestyle


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requirements, social events, employment markets and entertainment resources. The eventual objective of advertisement is profit-making. It is one of the most lucrative industries with handsome investments.

It is very difficult to define bad and good advertisements. While honesty and good faith are the virtues of good advertisements, malice and fraudulent intentions are the signs of bad ones. A good advertisement is a beautiful thing for society and satisfies and protects the consumer's interests. On the contrary, if they are bad, it not only ruins the advertisers but also the consumers. If this were to happen, sanctity of advertisements would be lost, business would crumble and ethics would fade. It is easy to fool the consumer with false advertisements once or twice, but it is very difficult to fool them at all times. The dissatisfaction of a consumer is the beginning of the fall of a business empire. As an advertisement communicates the information about the products or services to the people, it should hold truth and nothing else. It should communicate the entire information within the time slot or the space provided for it. If a wrong message is communicated and damage has already been done, it would be difficult to repair it and reclaim the lost image. The advertisers have a moral responsibility to communicate the truth in the interest of the consumer, advertiser and advertising agency, but not falsities, which may mislead the consumers. Any negligence on the part of the advertiser may lead to litigations and loss of money, time and name. Laws and regulations relating to advertisements, Codes of the Advertising Standards Council of India and other Codes plunge into operation.

Salient features of some of the Codes relating to advertising are as follows:

- The Advertisement Standards Council of India Code states that the objective of the code is “To ensure the truthfulness and honesty of representations and claims made by advertisements and to safeguard against misleading advertisements.”
  - Advertisements must be truthful and should have ascertainable facts and evidences. (Code 1)
  - Advertisements shall not distort facts nor misled the consumer by implications or omissions and should not create any ambiguity, exaggeration or reference to another product or person. (Code 3 and 4)
  - Advertisements should not abuse the trust and exploit the lack of experience or knowledge. (Code 5)
  - Advertisements should not be indecent, vulgar or repulsive (Chapter II)
  - Advertisements should not use the name or initials of other firms or institutions in order to take unfair advantages.

- Code 3 of ‘Standards in Relation to The Advertising of Medicines and Treatments’ states that “No advertisement should contain any matter which directly or by implication misleads or departs from the truth as to the composition, character or action of medicine or treatment advertised or as to it suitability for the purpose for which it is recommended.”
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- Code 28 of ‘Commercial Advertising on Doordarshan’ states that “Advertising shall be truthful, avoid distorting facts and misleading the public by means of implications and omissions” and it should not mislead the consumer by false statements relating to the character of merchandise, price of the merchandise and services accompanying the purchase.


Similar provisions are also present in the Advertisement Codes formulated by other countries like Canada, the US, Australia, the UK, Ireland, etc.

It is crystal clear from the code and natural justice that the advertisements should reflect the truth and reality of the product and the service promoted by it. Any ambiguity in the usage of the words, marks, signs or others may lead to the misrepresentation and bring an action against the advertiser.

Misrepresentation as defined under section 18 of the ‘Indian Contract Act 1872’: ‘Misrepresentation’ means and includes:

1. The positive assertion, in a manner not warranted by the information of the person making it, of that which is not true, though he believes it to be true;

2. Any breach of duty which, without an intent to deceive, gives an advantage to the person committing it, or anyone claiming under him, by misleading another to his prejudice or to the prejudice of anyone claiming under him;

3. Causing, however innocently, a party to an agreement to make a mistake as to the substance of the thing, which is the subject of the agreement.

Every consumer has a right to extra information about the product which is advertised or that he wants to purchase for value consideration. Right to information of a product or service is the privilege of a consumer. The vendor or the advertiser has an obligation to provide information, which is sought by the consumer unless it is restricted by the provisions of any existing law. Every advertisement issued should provide information regarding the product or the service rendered by it with good faith and without any mala fide intention. Whatever be the media of advertisement, it should state unambiguous details required for taking a decision. The label pasted to the goods should contain the details of the product. Any untrue description of the nature of a product, its uses, performance, method of manufacturing, composition, origin, research and development, tests and surveys, on the labels amounts to misrepresentation through advertisements. The label should not be misleading the customer about the product with its imitative or identically similar design, and color pattern. The label of a product is also an advertisement. Selling of old and expired products in the newly designed boxes and packages also amounts to misleading the consumer and is considered as misrepresentation. Publishing the advertisements related to the products, which have been banned or advertising the banned products with deceptive names; or inducing the consumer to purchase goods possessed illegally; or encouraging the unlawful purchases also amounts to misrepresentation and are against the provisions of the code.
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A ccording to the Consumer Protection A ct, 1986, the consumer has a right to know the quality, quantity, potency and purity of the product. Any act of the advertiser, curtailing the rights of the consumer or providing false information, is liable for punitive action. The advertisers are also liable for the unfair trade practices adopted by them at any stage of advertising their services. The Consumer Protection Act, 1986, clearly defines an unfair trade practice. According to it ‘Unfair trade practice’ 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—the practice of making any statement whether orally or in writing or by visible representation which (i) falsely represents that the goods are of a particular standard, quality, quantity, grade, composition, style or model, (ii) falsely represents that the services are of a particular standard, quality or grade, (iii) falsely represents any re-built, secondhand, renovated, reconditioned or old goods as new goods ... (iv) represents that the goods or services have sponsorship, approval, performance, characteristics, accessories, uses or benefits which such goods or services do not have...

The definition stated above is the replica of the definition stated in the M RTP A ct, 1969. It also includes the false representation or misrepresentation of the facts relating to any product or service. In the following instances, courts and consumer redressal forums have stated certain statements published in advertisements as false representations.

- In Director General (I&R) vs. Universal Luggage Mfg Co. Ltd., the Commission stated that stating of unrealistic and over-optimistic projection of growth of turnover and stating of inflated figures of gross fixed assets and net worth amounts to misleading statement and is an unfair trade practice of the company.
- The advertisement containing a statement that “Passes directly under the coaching and guidance of most reputed professors, experienced and renowned paper setters, examiners and moderators” is identified as false when the college fails to furnish the names of the teaching staff.
- In Hindustan Lever Ltd. vs. Colgate Palmolive (I) Ltd., the Supreme Court upheld the decision of MRTP Commission that the advertisement published by the Hindustan Lever Ltd. relating to ‘New Pepsodent’ toothpaste prima facie amounted to disparagement as defined under Section of 36A (1)(X).
- Hiding a known fact while advertising amounts to false statement. It is treated as an unfair trade practice as defined under the provisions of the Consumer Protection A ct, 1986.
- In Director General (I&R) vs. Prakash Clinic, the MRTP Commission has stated that the statements of advertisements, containing exaggeration, amounts to false statements and are against the code of advertisements.

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4 Director General (I&R) vs. R M P of India, 1988 (MRTPC).
5 1988, 63 CC 171, MRTPC.
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The consumer has the following remedies against the advertisers for their misrepresentation and influencing them.

- A petition against the supplier of illegal or harmful publications can be filed under 'The Young Persons (Harmful Publications) Act, 1956' and a penalty may be imposed upon the advertiser.

- The government has the right to forfeit the copies of publications wherein the illegal advertisements are published for prize competitions under the provisions of the Prize Competition Act, 1955.

- For imitation or copying of the trademarks and packages, designs and color combinations, a suit can be filed under the Trade and Merchandise Marks Act, 1958, and the goods may be confiscated by the police.

- For pirated musical discs or software being advertised with the deceptive look of original one, a suit can be filed under the Copyright Act, 1957 and the police may confiscate goods.

- Under the provisions of Food Adulteration Act, 1954, a complaint can be lodged and a suit can be filed against the vendors and the advertisers for influencing the purchasers with misleading information.

- Complaint can also be lodged with the police under the provisions of the Indian Penal Code 1860.

- A petition can be filed with the consumer councils for the faster mode of justice under the provisions of the Consumer Protection Act, 1986 for 'unfair trade practices'.

The consumers influenced by the advertisements containing the false statements are protected under the provisions of various legislations and codes. The advertisers have to pay for their unfair practices of misrepresentation. Advertisements not only pay rich dividends but also ruin if handled with negligence and malice. As the saying goes "Prevention is better than cure" they should handle the advertisement portfolio with caution. Internally, they should formulate a policy of 'self-regulation' of the advertisements to avoid payment of heavy penalties during litigations and damage to their brand image. The advertisers should work within the legal framework and with social consciousness.

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