

**ADVANCED DIPLOMA IN MEDIA LAWS -2022-2023
PERSONAL CONTACT PROGRAMME- (Second Round)**

**DAY 2- Session 4-
Regulating Harmful Advertising - Leading Cases under the
Drugs and Magic Remedies
(Objectionable Advertising) Act and Other
Laws, Phenomenon of Surrogate Advertising**

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The Drug and Magic Remedies (Objectionable Advertisements) Act, 1954

The Drug and Magic Remedies (Objectionable Advertisements) Act, 1954 is important legislation that aims to prevent misleading advertisements regarding drugs and medicines. It imposes criminal liability on those who advertise drugs deceptively and aims to prevent self-medication and aggressive marketing of drugs. Let's explore its various provisions.

Advertisement and the Act

The Act defines "advertisement" as any notice, circular, label, wrapper or other document, and any announcement made orally or by any means of producing or transmitting light, sound or smoke. The Act aims to prevent misleading advertisements of drugs & medicines. [Sec. 2(a)]

Magic remedy means a talisman, mantra, kavacha and any other charm of any kind which is alleged to possess miraculous powers for or in the diagnosis, cure, mitigation, treatment or prevention of any disease in human beings or animals or for affecting or influencing in any way.

Prohibited and Misleading Advertisements-

no person shall take any part in publication of any advertisement...

Section 3: Prohibited Advertisements

Prohibits advertisements of drugs for:

- Procurement of miscarriage or prevention of conception in women
- Maintenance or improvement of sexual pleasure
- Correction of menstrual order in women
- Diagnosis, cure, mitigation, treatment or prevention of any disease specified in the Rules

Provided that no such rule shall be made except-

- In respect of any disease, disorder or condition which requires timely treatment in consultation with a registered medical practitioner or for which there are normally no accepted remedies
- After consultation with the Drugs Technical Advisory Board constituted under the Drugs and Cosmetic Act, 1940 and, if the Central Government considers necessary, with such other persons having special knowledge or practical experience in respect of Ayurvedic or Unani system of medicines as that Government deems fit.

Section 4: Misleading Advertisements

The Act prohibits any advertisement that gives a false impression regarding the true character of a drug or makes a false claim about the effect of the drug.

Imagine a world where drug companies could say whatever they wanted in their ads, even if it wasn't true. Well, that's not the world we live in. Here, we hold drug ads to a higher standard.

- No false or misleading impressions
- No false claims
- Nothing false or misleading in any material particular

—"Taking part in the publication of any advertisement": You know those "you break it, you buy it" signs in shops? Well, in advertising, it's "you print it, you publish it". If you print or publish an ad, even outside the territories to which this Act extends by , you're taking part in the publication. [Section 2(d)]
(State of Karnataka v Sivasubramanya (1978) Cr L J 853 (Knt) DB)



▼ What are the exceptions to Sections 3 and 4?

Section 14 lists exceptions, including:

- a. books dealing with S3 topics from a scientific or social standpoint
- b. drug ads sent confidentially to medical practitioners or chemists for distribution
- c. drug ads printed or published with government sanction
- d. ads permitted under Drugs Act Rules [Section 14]

You can still publish books dealing with any of the matters specified in S 3 from a bona fide scientific or social stand point , send confidential drug ads to registered medical practitioner or to a chemist for distribution among registered medical practitioners or to a hospital or laboratory , print drug ads with the previous sanction of the Government , and advertise observing the Drugs Act and Rules. [Sec. 14]

Magic Cure and Section 5

Can someone who practices magic remedies can take any part in the publication of any advertisement referring to any magic remedy which directly or indirectly claims to be efficacious for any of the purposes specified in Section 3 a cure for all ailments? According to Section 5, they can't.

Section 7: Penalty - imprisonment with or without fine

6 months of imprisonment in case of a first conviction

1 year in case of subsequent conviction

Section 8: Gazetted officers authorized by the State Government can enter and search premises to seize any offending advertisements and examine records and seize them. Provisions of CrPC will apply in case of seizure or search etc.

Section 9: Section 9 holds companies responsible for any offences committed in the making and publishing of advertisements. This includes every person in charge of the business. It's a significant section, especially given the big role that advertising companies play in creating and publishing ads.

Liability

Section 9A

Section 9A makes the offences under this Act cognizable and was added in 1963.

Section 10

Any court not inferior to Magistrate Court can try offences under this Act.

Section 10A

Empowers the state to forfeit the document and its copies, article or thing containing advertisement in respect of which contravention is made.

Section 15

According to Section 15 Central Government can exempt any advertisement from the application of this Act, if public interest requires that advertisement relating to any drug or class of drugs or any specified class of advertisement relating to drugs, by a notification.

Conclusion

The Drug and Magic Remedies (Objectionable Advertisements) Act, 1954 remains a vital public interest legislation in India that protects consumers from fraudulent advertising of drugs and medicines. It helps to regulate the healthcare industry and prevents predatory marketing of drugs that could potentially be harmful. Staying aware of its provisions is critical to ensure safety, and it is equally important to report any violations of advertising norms under this Act.

**NAVIGATING THE COMPLEX
LANDSCAPE OF SURROGATE
ADVERTISING AND CONSUMER
PROTECTION IN INDIA: KEY
REGULATORY CONSIDERATIONS**



Surrogate = Substitute

Surrogate advertisement = advertisement that duplicates or tallies the brand image of one product to promote another product of the same brand.

Another product of the same brand as any other product is advertised in order to keep in mind of the general public that product of the same brand which cannot be advertised directly.





Some examples of surrogate advertisements are Bagpiper Soda, Imperial Blue Cassettes and CDs, Royal Challenge Golf Accessories and Mineral Water, etc.

Objective:

Brand-recalling

Surrogate advertising methods are used by producers to keep the brand of their goods, which are not permitted to be advertised, in the minds of consumers.

Surrogate advertising made its way to India in the mid-1990s due to the Cable Television Networks (Regulation) Act, 1995 read with Cable television Rules, 1994, which disallowed any alcohol, tobacco and cigarette ads directly.

Then, companies began to promote portable water, juices, music CDs under the same brand name to imprint the name in the customer's minds like Seagram's Music, Davidoff's Perfumes, Kingfisher's Calendars, Kamla Pasand's Stardust awards.

THE CABLE TELEVISION NETWORKS (REGULATION) ACT,1995

2008 notification amending CTNR

Rule 7(2) (viii) prohibit the direct or indirect promotion and advertisement of substances including cigarettes, wine, alcohol, tobacco products, liquor, and other toxic substances.

2009 notification amending CTNR

The proviso to this rule states:

The conditions are the following:

1. must only depict the product meant to be advertised,
2. no express or implied reference to prohibited products,
3. not contain any terms or phrases leading to the promotion of the prohibited products,
4. keep away from using the specific colors or layout

CIGARETTES AND OTHER TOBACCO PRODUCTS (PROHIBITION OF ADVERTISEMENT AND REGULATION OF TRADE AND COMMERCE, PRODUCTION, SUPPLY, AND DISTRIBUTION) ACT, 2003 (COTPA)

- Section 5 of the Act - advertisement which directly or indirectly suggests or promotes the use or consumption of cigarettes or any other tobacco products
- Sub-clauses (i), (iii) and (iv) of Rule 2 of COPTA Rules
- name/brand/trademark/colour/layout/background-circumstantial

Picture in picture



0:00 / 0:30



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SEAGRAM'S
**BLENDERS
PRIDE**
Fashion Tour

Blenders Pride Fashion Tour 2016 featuring Priyanka Chopra

engaluru, gurgaon, hyderabad,



BACARDÍ



WEE
KEN
DER



BACARDÍ



WEE
KEN
DER

Line Up

Buy Tickets

#13MeraWeekender

PUNE 25-27 NOV

— GET TICKETS ONLY ON —

paytm
insider

paytm

A  IP

ADVERTISMENT STANDARDS COUNCIL OF INDIA

2012 notification: Objective criteria to evaluate genuineness of an unrestricted product or service brand extension of a product

in-store availability of the product sold under the brand extension must be - - at least 10% of the leading brand in the product category OR
sales turn-over of the product must exceed INR 5 Crore (50 million) annually or - INR 1 Crore (10 million) in the state where the product is distributed.

Certificate from independent organization such as AC Nielsen or category specific industry association (for distribution and sales turnover) would be required to prove the concerned criteria

CONSUMER PROTECTION ACT, 2019

CONSUMER PROTECTION ACT, 2019

The Act sought to protect the following rights of the consumer.

1. Against marketing of goods which are hazardous to life and property.
2. Right to be informed about the quality, quantity, potency, purity, standard and price of goods to protect the consumer against unfair trade practices.
3. Right to seek redressal
4. Right to consumer education.

MISLEADING ADVERTISEMENTS AND CONSUMER PROTECTION ACT, 2019

S. 2(28) "misleading advertisement" in relation to any product or service, means an advertisement, which—

- (i) falsely describes such product or service; or
- (ii) gives a false guarantee to, or is likely to mislead the consumers as to the nature, substance, quantity or quality of such product or service; or
- (iii) conveys an express or implied representation which, if made by the manufacturer or seller or service provider thereof, would constitute an unfair trade practice; or
- (iv) deliberately conceals important information;

(47) "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:—

(i) making any statement, whether orally or in writing or by visible representation including by means of electronic record, which—

(a) falsely represents that the goods are of a particular standard, quality, quantity, grade, composition, style or model;

(b) falsely represents that the services are of a particular standard, quality or grade;

(c) falsely represents any re-built, second-hand, renovated, reconditioned or old goods as new goods;

(d) represents that the goods or services have sponsorship, approval, performance, characteristics, accessories, uses or benefits which such goods or services do not have;

(e) represents that the seller or the supplier has a sponsorship or approval or affiliation which such seller or supplier does not have;

(f) makes a false or misleading representation concerning the need for, or the usefulness of, any goods or services;

(g) gives to the public any warranty or guarantee of the performance, efficacy or length of life of a product or of any goods that is not based on an adequate or proper test thereof:

Provided that where a defence is raised to the effect that such warranty or guarantee is based on adequate or proper test, the burden of proof of such defence shall lie on the person raising such defence;

(47) "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:—

(i) making any statement, whether orally or in writing or by visible representation including by means of electronic record, which—

(a) falsely represents that the goods are of a particular standard, quality, quantity, grade, composition, style or model;

(b) falsely represents that the services are of a particular standard, quality or grade;

(c) falsely represents any re-built, second-hand, renovated, reconditioned or old goods as new goods;

(d) represents that the goods or services have sponsorship, approval, performance, characteristics, accessories, uses or benefits which such goods or services do not have;

(e) represents that the seller or the supplier has a sponsorship or approval or affiliation which such seller or supplier does not have;

(f) makes a false or misleading representation concerning the need for, or the usefulness of, any goods or services;

(g) gives to the public any warranty or guarantee of the performance, efficacy or length of life of a product or of any goods that is not based on an adequate or proper test thereof:

Provided that where a defence is raised to the effect that such warranty or guarantee is based on adequate or proper test, the burden of proof of such defence shall lie on the person raising such defence;

MISLEADING ADVERTISEMENTS AND CONSUMER PROTECTION ACT, 2019

S. 10. Establishment of Central Consumer Protection Authority.—

- By the Central Government - to regulate matters relating to violation of rights of consumers, unfair trade practices and false or misleading advertisements
- The Central Authority shall consist of a Chief Commissioner and such number of other Commissioners as may be prescribed, to be appointed by the Central Government to exercise the powers and discharge the functions under this Act.

S. 18. Powers and functions of Central Authority.

19. Power of Central Authority to refer matter for investigation or to other Regulator.—(1) The Central Authority may, after receiving any information or complaint or directions from the Central Government or of its own motion, conduct or cause to be conducted a preliminary inquiry as to whether there exists a *prima facie* case of violation of consumer rights or any unfair trade practice or any false or misleading advertisement, by any person, which is prejudicial to the public interest or to the interests of consumers and if it is satisfied that there exists a *prima facie* case, it shall cause investigation to be made by the Director-General or by the District Collector.

(2) Where, after preliminary inquiry, the Central Authority is of the opinion that the matter is to be dealt with by a Regulator established under any other law for the time being in force, it may refer such matter to the concerned Regulator along with its report.

(3) For the purposes of investigation under sub-section (1), the Central Authority, the Director-General or the District Collector may call upon a person referred to in sub-section (1) and also direct him to produce any document or record in his possession.

MISLEADING ADVERTISEMENTS AND CONSUMER PROTECTION ACT, 2019

S. 16. Power of District Collector.—The District Collector (by whatever name called) may, on a complaint or on a reference made to him by the Central Authority or the Commissioner of a regional office, inquire into or investigate complaints regarding violation of rights of consumers as a class, on matters relating to violations of consumer rights, unfair trade practices and false or misleading advertisements, within his jurisdiction and submit his report to the Central Authority or to the Commissioner of a regional office, as the case may be.

S. 21. Power of Central Authority to issue directions and penalties against false or misleading advertisements:

- to discontinue such advertisement or to modify the same
- impose on manufacturer or endorser a penalty which may extend to ten lakh rupees (15 lakh for subsequent)
- prohibit from making endorsement of any product or service for a period which may extend to one year:

Exceptions: due diligence to verify the veracity of the claims/ published or arranged for the publication of such advertisement in the ordinary course of his business:

- (7) While determining the penalty under this section, regard shall be had to the following, namely: —
- (a) the population and the area impacted or affected by such offence;
 - (b) the frequency and duration of such offence;
 - (c) the vulnerability of the class of persons likely to be adversely affected by such offence; and
 - (d) the gross revenue from the sales effected by virtue of such offence.

24. Appeal.—A person aggrieved by any order passed by the Central Authority under sections 20 and 21 may file an appeal to the National Commission within a period of thirty days from the date of receipt of such order.

The District Collector can make an order under Section 39 (1)(I), of the Act, 2019, to rectify any false or deceptive advertisement and to nullify its effects/ provide appropriate costs to the parties involved/ order to stop any false or misleading advertisement from being circulated.

89. Punishment for false or misleading advertisement.—Any manufacturer or service provider who causes a false or misleading advertisement to be made which is prejudicial to the interest of consumers shall be punished with imprisonment for a term which may extend to two years and with fine which may extend to ten lakh rupees; and for every subsequent offence, be punished with imprisonment for a term which may extend to five years and with fine which may extend to fifty lakh rupees.

Relevant Case Laws

- *Proctor and Gamble Home Products Ltd., Hindustan Lever Ltd.* - claims about New Ceramides Sunsilk Extra Treatment Shampoo - highly exaggerated and misleading - the company was restrained by an injunction.
- *Kunnath Pharmaceuticals v. State of Kerala* - “Muslin Power Extra”, a herbal aphrodisiac- - cure infertility by enhancing the fertility and sexual capacity - Sec. 3(b)- convicted
- *Bharat Prasad Gupta v. State of West Bengal* - Sec. 2, 18 and 27 - septic abortion- practitioner of Aryurveda and had no license for storage, sale or exhibition of allopathic medicines
- *Dinesh B. Patel and Ors.v. State of Gujarat and Anr* - S. 34- Directors of the company liable
- *Bhanwar Kumar v. R.K. Gupta & Anr*
- Other case laws in the Consumer Protection Act

THANKS