



Review of Advertising Claims

June 2024

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A. The Ministry of Information and Broadcasting's recent directive on advertising claims

On 3 June 2024, the Ministry of Information and Broadcasting had issued a notification¹ in compliance with an order of the Supreme Court of India² stating that all advertisers/advertising agencies are required to submit a self-declaration certificate before publishing or broadcasting any advertisements starting 18 June 2024.



What should the self-declaration certificate adhere to?

1. Rule 7 of the Cable Television Networks Rules, 1994
2. Norms of the Journalistic Code of Conduct of the Press Council of India.

Where will the certificate be submitted?

1. Broadcast Seva Portal of the Ministry of Information and Broadcasting for television and radio advertisements.
2. Press Council of India's portal for print and digital/internet advertisements.

Illustrative checklist for the self-declaration certificate as per the Cable Television Network Rules and Journalistic Code of Conduct³

- ✓ Legal and ethical compliance
- ✓ Prohibition of harmful content
- ✓ Respect for national symbols and figures
- ✓ Prohibited products
- ✓ Non-discriminatory content
- ✓ Protection of vulnerable groups
- ✓ Adherence to ASCI guidelines
- ✓ Portrayal of women

1. Supreme Court mandates self-declaration by advertisers/advertising agencies before releasing advertisements, Ministry of Information & Broadcasting, 03 June 2024

2. Supreme Court directive order in Writ Petition Civil No. 645/2022-IMA & Anr. Vs. UOI & Ors. dated 07.05.2024

3. Rule 7 of the Cable Television Networks Rules, 1994 and norms of the Journalistic Code of Conduct of the Press Council of India

B. Other regulatory provisions governing advertising claims

What is an advertisement?

As per Advertising Standards Council of India ('ASCI'), an advertisement is a paid-for communication, addressed to the public or a section of it, the purpose of which is to promote, directly or indirectly, the sale or use of goods and services to whom it is addressed.

What is an advertisement claim?

As per Advertising Standards Council of India, advertisement claims are defined as statements, representations, or assertions made in advertisements about the characteristics, quality, performance, or benefits of a product or service.

Details of regulations pertaining to advertisements in India are as follows:

| Name of regulation | Objective of regulation | Impact of non-compliance |
|---|---|--|
| Advertising Standards Council of India Code | ASCI enforces a self-regulation code to ensure advertisements are legal, decent, honest, and truthful | Non-compliance may lead to public censure and referral to regulatory authorities |
| Consumers Protection Act, 2019 | Introduces the concept of "product liability" making manufacturers, sellers, and service providers liable for harm caused by defective products or services | Violations can result in compensation orders, punitive damages, and injunctions to stop the sale or distribution of harmful products |
| Food Safety and Standards (Advertising and Claims) Regulations, 2018 | Requires the accuracy and reliability of nutritional claims in food advertisements | Non-compliance can result in fines up to INR 10 lakhs as per the Food Safety and Standards Act, 2006 |
| Cable Television Networks (Regulation) Act, 1995 | Advertisements transmitted through cable services must conform to the advertisement code, ensuring they do not offend public morality, decency, or religious sentiments | Violations can lead to fines and suspension or revocation of licenses |
| Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954 | Prohibits misleading advertisements related to drugs and magical remedies claiming to cure certain diseases | Offenders can face fines and imprisonment up to six months for the first offense, with increased penalties for subsequent offenses |
| Cigarettes and Other Tobacco Products (Prohibition of Advertisement) | Bans both direct and indirect advertising of tobacco products | Non-compliance can lead to fines and imprisonment |
| E-commerce Rules, 2020 | Requires essential information disclosure, prohibits misleading advertisements, and establish grievance redressal mechanisms | Non-compliance can lead to penalties, fines, or suspension |

C. Integrity vulnerabilities and threats in advertising claim



Potential integrity risks in advertising claims across product lifecycle with illustrative examples of misleading claims



D. Threats to effective advertising claim review and its impact



Threats to effective advertising claim review

1. Lack of transparency in information sharing
2. Complexity of supply chains and third-party involvement
3. Limited resources and workload constraints
4. Pressure to meet business objectives
5. Ambiguity in regulations or guidelines
6. Evolving customer expectations
7. Internal biases and conflict of interest.

Impacts of misleading advertising claims due to ineffective claim review

1. Legal actions and fines

- Government agencies may investigate and penalize organisations for deceptive advertisement practices
- Misleading claims can attract lawsuits from consumers, leading to significant legal costs and settlements
- Businesses may face additional costs for implementing corrective advertising and compliance programs to meet regulatory requirements.

2. Loss of brand reputation and consumer trust

- Exposure of deceptive practices often leads to widespread negative media coverage, damaging a brand's public image
- Consumers tend to lose trust in brands that mislead them, which can lead to boycotts and decline in brand loyalty
- Rebuilding trust takes significant time and effort, as consumers remember negative experiences longer than positive ones.

3. Competitive disadvantage and loss of market share

- Persistent issues with misleading claims can lead to a devaluation of the brand, making the business less attractive in the eyes of the investors
- Loss of consumer trust directly impacts the revenue and can lead to a significant impact as consumers turn to more reliable alternatives.

4. Lawsuits from competitors

- False advertising can also attract lawsuits from a brands' competitors
- Comparative advertising is permissible only in cases where the features of the products compared are clear, factual, and can be substantiated as distinct.

E. How can organisations mitigate risks?



Advertising claim review (prior to publishing/broadcasting):

- Pre-publication/broadcast review of proposed advertisements across all media (television, radio, print, digital, etc.)
- Detailed analysis of claims, statements, visual elements, etc. to identify potential issues, if any
- Ensure claims are truthful, not misleading and substantiated with evidence
- Verify compliance with relevant applicable laws and regulations
- Recommend revisions or additional disclosures required to mitigate the non-compliance and risks.



Proactive vulnerability assessment of the process:

- Conduct end-to-end vulnerability risk assessment for processes of selection, review, and approval of advertisements to be published/broadcasted
- Review and assess the data and supporting documents available for the advertisements published/broadcasted
- Identify vulnerabilities in the process that could allow non-compliant advertisements to be published/broadcasted either due to intentional malpractices or unintentional errors
- Provide recommendations to mitigate the identified vulnerabilities.



Training and awareness

- Provide training and create awareness among key process owners and stakeholders involved in the process relating to selection and approval of advertisements to be published/broadcasted
- During the training and awareness sessions, provide information on regulations, risks of non-compliance with case studies of non-compliance and enforcement actions that could be taken for the same
- Other initiatives such as newsletters, alerts, etc. to create an awareness of impact on the organisations for any intentional malpractices or unintentional errors.



Investigation of internal/external concerns and allegations:

- Undertake fact finding reviews of any non-compliant advertising published/broadcasted, identified based on internal and external reported concerns/allegations
- Conduct detailed review of advertising materials, claims and supporting documentation for the said advertisement
- Perform document and data collection, data preservation, field intelligence and discussions with the persons connected to the issues identified
- Provide a written report of the facts identified and support through any subsequent regulatory inquiries or litigations.



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