

Misleading Advertisements: A Cautionary Tale on Advertisement of Consumer Goods and Services

Misleading advertisements in India have been a growing concern, particularly in sectors like healthcare, pharmaceuticals, food and consumer goods, where exaggerated or false claims can have serious consequences. For years, India has witnessed numerous legal battles over misleading advertisements, such as in the cases against Emami Limited, Zydus Wellness and Shaadi.com where companies making deceptive claims have often gotten away with minor penalties or injunctions. Unlike the previous cases, the case of *Indian Medical Association v. Union of India*, commonly known as the 'Patanjali case', marked a significant shift in how misleading advertising is perceived and penalized in India. The Patanjali case laid down clear directions and set the foundation for effective consumer protection by requiring the central and state governmental bodies to curb misleading advertisements in India. The Supreme Court's order dated April 23, 2024 highlighted the failure of both central and state governmental bodies in addressing deceptive advertising, the inadequacy of grievance redressal mechanisms, and the overall lack of urgency in enforcing key consumer protection laws.

PATANJALI CASE: A WAKE-UP CALL

The Patanjali case originated from concerns over misleading advertisements by Patanjali promoting its ayurvedic products as effective treatments for serious medical conditions without scientific validation. In August 2022, the Indian Medical Association (the "IMA") filed a petition against Patanjali, alleging that its advertisements were misleading and violated the legal and ethical standards prescribed under the Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954 (the "DOMA") and the Consumer Protection Act, 2019 (the "CPA"). The petition contended that Patanjali's promotional content contained exaggerated and unsubstantiated claims, falsely marketing its products as cure for serious medical conditions such as diabetes, cancer, hypertension, obesity, and asthma, potentially deterring individuals from seeking appropriate medical care. The case raises important legal and ethical questions about

the regulation of consumer product advertisements and the responsibilities of administrative bodies, manufacturers and advertisers in protecting consumers from deceptive advertisements.

SUPREME COURT'S DIRECTIONS IN THE PATANJALI CASE

The key aspects of the Supreme Court's directions in the Patanjali case include:

1. Evidence based claims: Advertisements making health-related claims must be supported by credible scientific evidence, clinical studies and verifiable research.
2. Transparency in claims: Advertisements should accurately represent the composition of products, and the health benefits associated with them in accordance with applicable laws. Manufacturers must also disclose any potential side effects or contraindications associated with the use of their products.
3. Accountability for endorsements: The case emphasizes the importance of accountability of celebrities in brand endorsements. Celebrities or public figures endorsing products must ensure that their endorsements are based on evidence backing product claims and are in compliance with the Prevention of Misleading Advertisements and Endorsements for Misleading Advertisements, 2022 (the "**2022 Guidelines**").
4. Regulatory oversight: The Supreme Court called for stricter oversight in enforcement of advertising standards. Various central and state administrative bodies, have been impleaded by the Supreme Court to file their responses highlighting the actions taken by them in combating misleading advertisements in India.
5. Directive for state governments and union territories on misleading advertisements: The legal representatives of all state governments and union territories were instructed to submit individual affidavits from the respective licensing authorities in each State and Union Territories, detailing the measures undertaken to address misleading advertisements appearing in print and electronic media.
6. Self-Declaration by advertiser / advertising agencies: In the absence of a comprehensive legal framework ensuring that advertisers fully comply with the 2022 Guidelines, the Supreme Court directed that before an advertisement is printed / aired / displayed, a self-declaration shall be submitted by the advertiser / advertising agency in accordance with the Cable Television Networks Rules, 1994 and the 2022 Guidelines and that no advertisements shall be run on the relevant

channels and / or in the print media / internet without uploading such self-declaration.

INDIA'S LAWS ON MISLEADING ADVERTISEMENTS

Extensive legislative framework governs misleading advertisements in India, encompassing a range of general and sector-specific laws. These laws are enforced by various regulatory bodies, including the Central Consumer Protection Authority (the “**CCPA**”), the Telecom Regulatory Authority of India, the Food Safety and Standards Authority of India, the Ministry of Health and Family Welfare, and the Ministry of Information and Broadcasting, among others. Additionally, the Advertising Standards Council of India (the “**ASCI**”), a self-regulatory body recognized by various government departments and the Supreme Court, has its own enforcement mechanism against non-compliant advertisements. The Supreme Court's concern, as reflected in its orders in the Patanjali case, was not the absence of a legal framework regulating misleading advertisements but rather the inadequate enforcement of such laws. The Supreme Court highlighted that complaints regarding non-compliance are not effectively pursued, leading to weak enforcement measures. Unlike the Patanjali case, where the Supreme Court adopted unprecedented measures and issued far-reaching directives, previous cases were limited to imposition of monetary penalties and / or injunctions upon defaulting companies.

The 2022 Guidelines require manufacturers, service providers, advertisers, and advertising agencies to ensure that all advertisements are substantiated and transparent. This includes backing up factual claims with verifiable evidence and clearly disclosing the source and date of any independent research used in the advertisement. Additionally, advertisements must avoid misleading consumers or exploiting their lack of experience. Any exaggeration or ambiguity in product guarantees or pricing must be avoided, and all terms and conditions related to promotions, lotteries, or prize competitions must be fully disclosed. The responsibility lies squarely on these entities to ensure their advertisements do not deceive or mislead consumers, reinforcing the need for stricter enforcement of advertising standards. Additional responsibilities of such entities may be outlined in other industry-specific regulations.

CONCLUSION

The Patanjali case demonstrated the judiciary's readiness to impose stricter accountability on brands that mislead consumers, setting a precedent for future advertising regulations in India. It reinforces the principle that commercial speech protected under Article 19(1)(a) is subject to reasonable restrictions when it affects

public health and safety. The Supreme Court's intervention in the Patanjali case has marked a critical turning point in addressing misleading advertisements in India. By holding state governments accountable for their failure to regulate deceptive advertising, the Supreme Court has reinforced the importance of stringent enforcement of consumer protection laws. The recent orders passed by the Supreme Court in the Patanjali case reflect the court's sustained effort in ensuring compliance, urging state governments and regulatory bodies to take proactive measures against misleading advertisements. In this regard, the court has been consistently reviewing submissions from various governmental bodies, such as the Ministry of Consumer Affairs, the Ministry of Food and Public Distribution, the Ministry of Information and Broadcasting, the Ministry of AYUSH and the Ministry of Electronics and Information Technology on the actions taken by them to prevent violations of advertisement laws in India.

Moving forward, advertisers must ensure that every claim, particularly those concerning health and safety of consumers, is backed by verifiable, scientific evidence and communicated with absolute transparency. They must be proactive in disclosing product compositions and potential side effects. Advertising agencies and service providers should also ensure that they comply with the requirements of applicable laws, including the 2022 Guidelines by including appropriate covenants in their advertising contracts to mitigate their risk.

Since this matter is pending before the Supreme Court, further judicial pronouncements in this case will be instrumental in determining the duties and responsibilities of regulators, manufacturers and advertisers in relation to the mechanism for consumer product advertisements.

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