

## DISCLAIMER UNDER GUIDELINES ON MISLEADING ADVERTISEMENTS IN INDIA<sup>1</sup>

### 1. INTRODUCTION:

Advertisements are one of the most significant source for businesses of attempting to create awareness about various products and services. The number of advertisements hammered on the consumers have significantly increased over a period of years.

With increased advertising the need for establishment of a consolidated legal framework was felt so that consumers are not misled through flashy and misleading advertisements. There were few legislations in existence viz., Consumer Protection Act, 2019, The Drugs and Magic Remedies (Objectionable Advertisement) Act, 1954, Food and Safety And Standards (Advertising And Claims) Regulations, 2018, to restrict inaccurate and deceptive advertising. Ministry of Health and Family welfare had notified the sets of warning images to be specified on tobacco product packs along with specified warning or risk associated with the consumption of the tobacco or related products.

To tighten the norms on advertisements, the Central Consumer Protection Authority ("**CCPA**") notified the guidelines for prevention of false or misleading advertisements and endorsement of misleading advertisement, 2022 ("**Guidelines**")<sup>2</sup> on 9<sup>th</sup> June, 2022.

These Guidelines are applicable to all advertisements irrespective of their form, medium and to all the manufacturer's, service providers of goods and services including advertising agencies or endorser (who provide services to promote such products or services). These Guidelines also highlight the criteria or conditions to be fulfilled by the service providers or manufacturers to consider the advertisement as valid and non-misleading, *bait advertisement, surrogate advertising, free claim advertising and children targeted advertising*. In addition, the Guidelines also cover the aspect of 'disclaimer' under advertisements.

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<sup>1</sup> The Article reflects the general work of the authors and the views expressed are personal. No reader should act on any statement contained herein without seeking detailed professional advice.

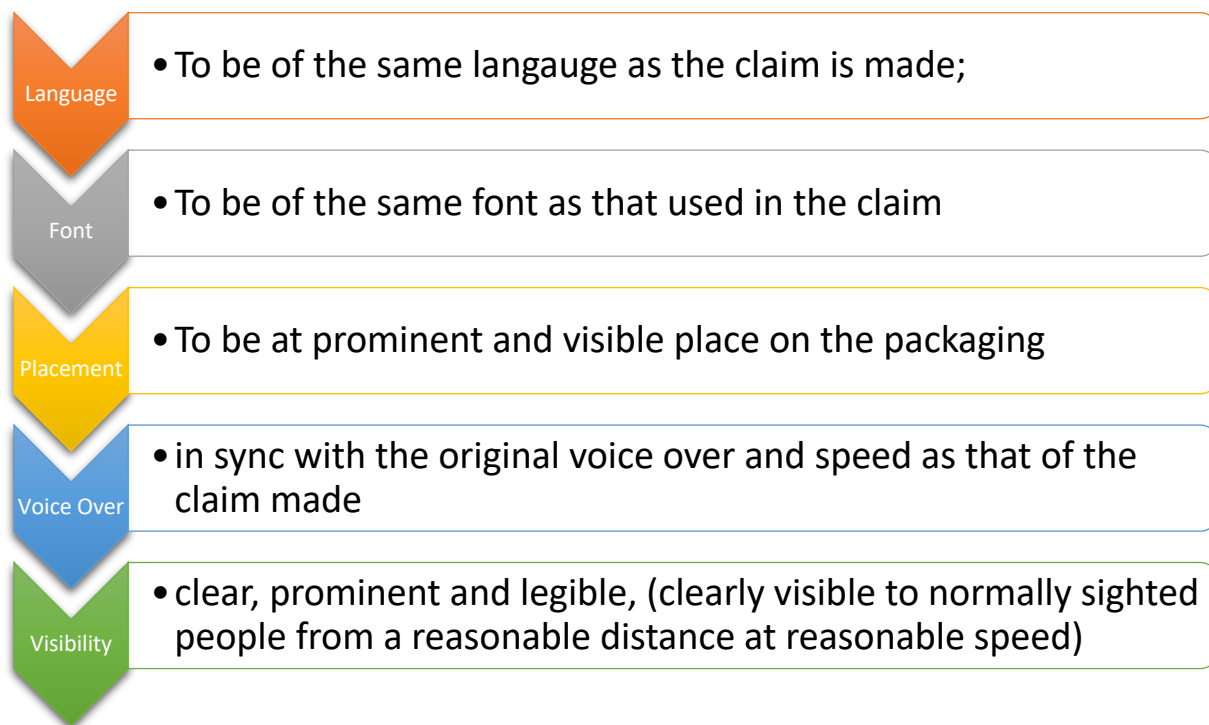
<sup>2</sup> <https://consumeraffairs.nic.in/sites/default/files/file-uploads/latestnews/CCPA%20Notification.pdf>

## 2. A WIDER CANVAS FOR DISCLAIMER:

The concept of disclaimers was also clarified earlier by the Advertising Standards Council of India (“**ASCI**”) in their guidelines passed in 2016<sup>3</sup> and under chapter I (4) of the ASCI Code<sup>4</sup>. The current Guidelines also cover the topic on similar lines but with cogent specifications under section 11. While the Guidelines do not define the term ‘disclaimer’, section 11 (1) emphasizes the nature of a disclaimer to be:

- Expanding or clarifying the claim made in advertisement; or
- Qualifying or resolving ambiguities in the advertisements

### Specifications



<sup>3</sup> [https://ascionline.in/images/pdf/asci\\_guidelines\\_for\\_disclaimers.pdf](https://ascionline.in/images/pdf/asci_guidelines_for_disclaimers.pdf)

<sup>4</sup> [https://ascionline.in/images/pdf/code\\_book.pdf](https://ascionline.in/images/pdf/code_book.pdf)

It is also provided that the disclaimer shall,

- ☒ NOT Contradict the material claims/main message made/conveyed in the advertisements; or
- ☒ NOT Change the dictionary meaning of the words used in the claims received or generally perceived by the consumer;
- ☒ NOT attempt to hide material information, the omission/absence of which may make the advertisement deceptive or conceal its commercial interest;
- ☒ NOT attempt to correct a misleading claim made in the advertisement.

#### **Illustration:**

1. If A sells a shirt to B with the claim that the shirt is made of 100% pure cotton, A cannot include a disclaimer in the bill to disclaim the quality of the material used.
2. If A advertises certain gold jewelry for a special festival sale at 24 carat , he cannot include a disclaimer to avoid responsibility in the terms and conditions.

### **3. VIEWS OF COURTS SO FAR**

The issue of validity of disclaimers have also been a part of discussion under various cases:

#### **Horlicks Limited & Anr. Vs Zydus Wellness Products Limited<sup>5</sup> .**

In mid-July of 2019, Zydus aired an advertisement in different languages, which stated that *“One cup of COMPLAN provides the same amount of proteins as two cups of Horlicks”*. Horlicks filed a suit against Zydus and single judge of the Delhi High Court had granted an ex-parte temporary request restricting Zydus from publishing the advertisement. The same advertisement was modified by Zydus along with a disclaimer which stated that **as per on pack recommended serve size** (this was challenged in appeal and the same is pending). Thereafter, the Defendant Zydus issued the same advertisement as a television commercial without the disclaimer. Aggrieved by this advertisement, Plaintiff (Horlicks) filed a suit before the Delhi High Court claiming that the advertisement was misleading and prayed for an

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<sup>5</sup> CS (COMM) 464/2019

injunction. After analyzing a plethora of cases and considering the previous litigation the Delhi High Court granted an injunction in favour of the plaintiff and held that:

***This Court finds that on playing the TVC, there is neither voiceover with regard to the disclaimer stating that “as per on pack recommended serve size” nor is the time sufficient to read the said disclaimer.***

#### **VLCC Health Care Ltd vs. Sh. Vijay Aggarwal<sup>6</sup>.**

In this case Complainant paid advance money for program in the month of March, 2015 amounting of Rs. 50,000/- to VLCC. VLCC had mentioned in their brochure and in advertisement that customer can reduce their weight within one month, but Complainant neither saw any progress nor the result as claimed by VLCC. VLCC contended that Complainant signed an undertaking to acknowledge that no assurance could be given about the result of the Programme and that VLCC shall not be liable for any situation which is beyond the control of the VLCC or any employee or staff of VLCC. Complainant contended that VLCC specifically mentioned in their disclaimer that ***“lose 4 kg in one month or your money will be refunded”***. While dismissing VLCC’s contention and granting a complete refund of the fees paid with 9% interest per annum along with awarding litigation costs and compensation, the State Consumer Commission rejected the contention that there was a disclaimer and stated that:

*“The appellants specifically mentioned that lose 4 kgs in a month or your money will be refunded, which clearly shows that the appellants are misguiding the consumer by a misleading advertisement and if they don’t lose weight, puzzle them in disclaimer clause which is a clear cut case of deficiency in service.”*

#### **4. CONCLUSION:**

The scope of the Guidelines is wide and universally covers all advertisements irrespective of their form etc. Now, with passing of these specific Guidelines on the disclaimer the advertisers, manufacturers, endorser or service providers would need to be more cautious

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<sup>6</sup> State Consumer Dispute Redressal Commission - Appeal No. 14 of 2022.

about all aspects related to disclaimers like the font, visibility of the advertisement including synchronization of the advertisement with voice over, placement etc. It should be noted that the stringent penalties mentioned in the Consumer Protection Act, 2019 under Chapter VII would be attracted for any false or misleading advertisement:

- imprisonment which may extend to 2 years and fine which may extend to INR 10 Lakhs;
- for the subsequent offence the imprisonment may extend to 5 years and fine which may extend to 50 Lakh rupees.<sup>7</sup>

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<sup>7</sup> <https://egazette.nic.in/WriteReadData/2019/210422.pdf>