

# DISCLOSE OR DISAPPEAR: THE NEW MANDATE FOR THE ENDORSER

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## 1. Introduction

Social media has fundamentally revolutionised how businesses connect with consumers, making influencer marketing one of the most powerful and valuable tools for brands in India. At the core of this revolution is the social media influencer. A social media influencer is generally understood as a content creator who has built a dedicated following on social media platforms and can sway their audience's opinions, behaviours, or purchasing decisions. These individuals often focus on a specific niche area, such as beauty, fitness, gaming etc. and collaborate with brands to promote products or services to their followers. [1]

Influencers are no longer operating in an unregulated space and are required to follow these laws religiously. To protect the consumer, Indian law now mandates clear, prominent, and unambiguous disclosure of all 'material connections'.

This article will throw a light on the specific legal framework, the essential obligations and guidelines, the severe penalties for non-compliance, and recent case studies that highlight India's evolving regulatory environment for social media influencers.

## 2. The Laws Controlling Influencer Promotions:

The principal legislation that governs social media influencer advertising in India is the Consumer Protection Act, 2019 (“CPA [2]”), which provides a comprehensive mechanism for the protection of consumer rights and prohibits misleading advertisements.

[1] 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.

[2] [https://consumeraffairs.gov.in/public/upload/files/CP%20Act%202019\\_1732700731.pdf](https://consumeraffairs.gov.in/public/upload/files/CP%20Act%202019_1732700731.pdf)



Section 2(18) of the CPA defines "endorsement", in relation to an advertisement as:

- i) any message, verbal statement, demonstration; or*
- ii) depiction of the name, signature, likeness or other identifiable personal characteristics of an individual; or*
- iii) depiction of the name or seal of any institution or organisation, which makes the consumer to believe that it reflects the opinion, finding or experience of the person making such endorsement”*

The recent guidelines of Guidelines for Prevention of Misleading Advertisements and Endorsements for Misleading Advertisements, 2022 [3] also define endorser as:

*“endorser” includes an individual or a group or an institution making endorsement of any goods, product or service in an advertisement whose opinion, belief, finding or experience being the message which such advertisement appears to reflect;*

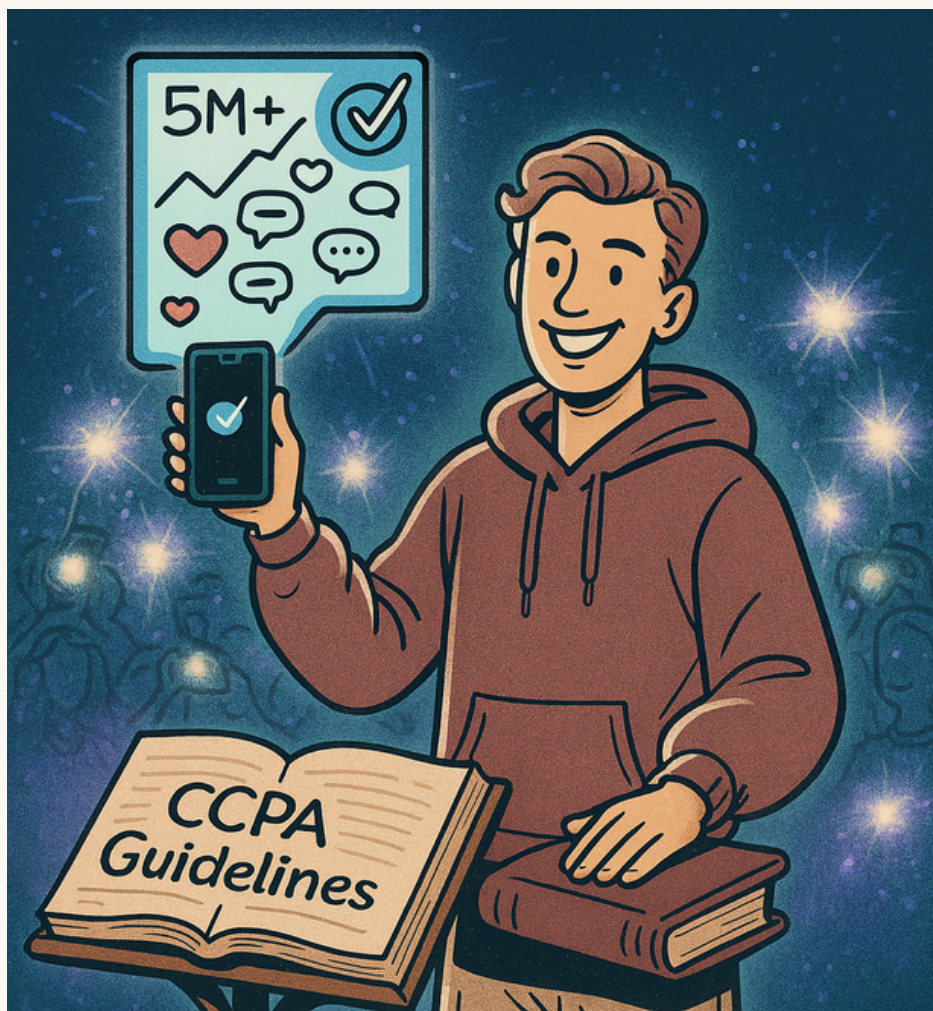
CPA 2019 throws a wider reach on Influencers, celebrities, bloggers, and any other social media user endorsing products or services are now explicitly included in the Act's definition of "endorsers", which is defined in Section 2(17) as an "electronic service provider."

*"electronic service provider means a person who provides technologies or processes to enable a product seller to engage in advertising or selling goods or services to a consumer and includes any online market place or online auction sites”*

[3] [https://doqa.gov.in/ccpa/files/CCPA\\_Notification.pdf](https://doqa.gov.in/ccpa/files/CCPA_Notification.pdf)

The provisions under the CPA fundamentally mandate due diligence from all endorsers and influencers. They are required to actively verify the authenticity of claims before promoting any product or service and non-compliance can result in monetary fines up to Rs. 50 lakhs [4] and even prohibition from making future endorsements.

In addition, if an influencer is found guilty of knowingly endorsing misleading or harmful products, they may face criminal prosecution, which may span up to five years in case of repeat offenders [5].



[4] Section 89 of chapter VII of THE CONSUMER PROTECTION ACT, 2019

[5] Section 89 of chapter VII of THE CONSUMER PROTECTION ACT, 2019



### 3. Guidelines

CCPA has issued the following guidelines to provide for the prevention of false or misleading advertisements.

#### 3.1 Criteria to determine Valid and Non-Misleading Advertisements [6]

| Requirement                 | Description/Key Restriction   |
|-----------------------------|---|
| <b>Truthfulness</b>         | Must contain truthful and honest representations.   |
| <b>No Exaggeration</b>      | Must not mislead by exaggerating accuracy, scientific validity, performance, or usefulness of the product/service.  |
| <b>Rights Disclosure</b>    | Must not present statutory consumer rights as a distinctive feature of the advertiser's offer.                      |
| <b>Scientific Consensus</b> | Must not suggest claims are universally accepted if there is a significant division of informed/scientific opinion. |
| <b>Avoid Fear Tactics</b>   | Must not mislead about the risk to consumers or their family if the product is not purchased.                       |
| <b>Substantiation Basis</b> | Claims based on a publication must not mislead consumers if independently unsubstantiated.                          |
| <b>Sector Compliance</b>    | Must comply with all provisions of any other sector-specific law, rules, and regulations.                           |

#### 3.2 Disclaimers in Advertisements [7]:

Disclaimers serve to clarify or qualify claims but are strictly limited in their ability to alter the main message or correct misleading content.

[6] Rule 4

[7] Rule 11 of the guidelines



A disclaimer in advertisement shall fulfil the following requirements:

- a disclaimer shall be in the same language as the claim made in the advertisement;
- the font used in a disclaimer shall be the same as that used in the claim;
- the placement of the disclaimer shall be at a prominent and visible place on the packaging and ideally be on the same panel of the packaging as that of the claim;
- if the claim is presented as voice over, the disclaimer shall be displayed in sync with the voice over and at the same speed as that of original claim made in the advertisement;
- a disclaimer shall be so clear, prominent and legible as to make it clearly visible to a normally-sighted person reading the marketing communication once, from a reasonable distance and at a reasonable speed.

### 3.3 Mandatory Duties of Advertising Stakeholders [8]

Every manufacturer, service provider, advertiser, and advertising agency subject to these guidelines must rigorously adhere to the following duties:

#### 3.3.1 Factual and Scientific Integrity

- **Substantiation Mandate:** All claims, descriptions, and comparisons relating to objectively ascertainable facts must be demonstrably capable of substantiation. This evidence must be produced to the Central Authority upon request.
- **Source Transparency:** Where claims are explicitly based on or supported by independent research or assessments, the advertisement must clearly indicate the source and date of the supporting evidence.

[8] Rule 12 of the Guidelines



### 3.3.2 Professional and Ethical Conduct:

- **Third-Party Consent:** Advertisements must not refer to any person, firm, or institution in a manner that confers an unjustified advantage or could lead to ridicule or disrepute, unless explicit written permission from that entity has been secured.
- **Prohibition of Deception:** Advertisements are strictly forbidden from containing statements or visual representations that are likely to mislead consumers whether directly, by implication, through omission, ambiguity, or exaggeration concerning the product, the advertiser, or competing products/advertisers.

### 3.3.3 Protecting Consumer Trust and Clarity

The advertisement must be framed to avoid abusing the trust of consumers or exploiting their lack of experience or knowledge by ensuring:

- **Clear Guarantees and Pricing:** Ambiguous expressions like "up to five years guarantee" or "Prices from as low as ₹Y" are prohibited. The advertisement must state a fixed period of guarantee or a fixed price. If guarantee periods vary for different components, both the minimum and maximum periods must be clearly indicated.
- **Contest and Lottery Transparency:** Any invitation to participate in permitted lotteries, prize competitions, or promotions offering gifts must clearly and fully set out all pertinent material terms and conditions. This enables consumers to obtain a true and fair view of their prospects and obligations.



### 3.3.4 Exception: Humorous Hyperbole

- **Permissible Untruths:** Obvious untruths or exaggerations intended for amusement or to catch the eye are permissible, provided they are clearly perceived as humorous or hyperbolic and are not likely to be misinterpreted as literal or misleading claims regarding the advertised product.

## 4.ASCI CODE:

In addition to the above, the Advertising Standards Council of India (“ASCI” [9]), a self-regulatory entity, introduced “Guidelines for Influencer Advertising in Digital Media” (“ASCI Guidelines”) in 2023. These guidelines were noteworthy for formally defining key digital players, including "influencer," "virtual influencer," and "digital media," for the first time in India. Though non-statutory, the ASCI Guidelines establish a clear mandate for influencers to disclose any "material connection" to a brand they promote.

As specifically mentioned in the Chapter 1 of the ASCI Guidelines, Social media advertisements posted on the handles of media companies must be clearly identifiable and distinguishable from editorial or any other content. All such advertisements should add adequate disclosures upfront and prominently at the beginning of the post, such that audiences know they are interacting with an advertisement/promoted content.

[9] <https://www.ascionline.in/the-asci-code/>



The following is the list of disclosure labels permitted. Any one or more can be used:

- Advertisement
- Partnership
- Ad
- Free Gift
- Sponsored
- Platform disclosure tags
- Collaboration

### 5. Caselaw:

**Amandeep Singh @ Aman Vs. State of Punjab [10]:** In this case the High Court of Punjab and Haryana dismissed the anticipatory bail plea of social media influencer Amandeep Singh. He was accused under the Bharatiya Nagarik Suraksha Sanhita, 2023 “BNSS” and Section 7 of the Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954 after his homemade hair oil caused severe contact dermatitis in 71 consumers at a promotional camp. The Court condemned the petitioner as an "internet-famous, unqualified quack" exploiting public insecurity with "tall, misleading claims" that lacked scientific validation, emphasizing that product safety must be ensured prior to market introduction, and that the maintenance of general public health is a duty of the State outweighing the petitioner's claim for pre-arrest protection.

[10] CRM-M-21045-2025 : Punjab and Haryana High Court



**Zyodus Wellness Products Ltd V. Mr Prashant Desai [11]:** This verdict arose when Zyodus, the owner of COMPLAN, sued prominent health influencer Mr. Prashant Desai for disparagement and trademark infringement. Desai's viral video falsely claimed COMPLAN contained grossly high, unhealthy levels of sugar.

### **Key Legal Precedents Set:**

1. The Court decisively held that the constitutional right to Free Speech (Article 19(1)(a)) is not unrestricted and is subject to reasonable restrictions, and definitely does not permit individuals to defame others.
2. The Court emphasized that balance of convenience was in favor of Zyodus, since the impugned video uploaded is without any basis and/or substance and the contents thereof were/ are unverified and since the defendant is neither a Doctor nor a Nutritionist nor a Dietician and certainly not connected with the Health Industry in any manner whatsoever.
3. **Infringement:** The Court held that unauthorised and dishonest use of the plaintiff's registered mark 'COMPLAN' in the impugned video, is/ are detrimental to, the distinctive reputation/ goodwill/ character of the plaintiff's trademark 'COMPLAN' and 'COMPLAN family marks', amounting to infringement as per Section 29 (8) the Trade Marks Act, 1999.

The influencer was told to take down the video within a span of 2 weeks and the Court has held clearly that the influencer did not have necessary qualifications to make such claims.

The judgment serves as a strong deterrent against misleading the public for engagement.

[11] CS(COMM) 684/2024



## 6. Conclusion:

For market health, careful compliance with endorsement laws is essential. We must shift our societal focus, value real authenticity over manufactured influence, and true knowledge over being easily fooled.

Maintaining public trust and consumer safety requires everyone in the market to be completely honest and transparent. Advertising innovation should never sacrifice this collective well-being. Ultimately, ensuring the market's integrity demands nothing less than sincerity from all participants, making trust the ultimate standard of business.

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