

PAPER-3

ADVERTISING ETHICS & LAWS

LESSON 1- Advertising ethics, social responsibility and self regulation.

LESSON 2- Regulations, ethics, consumer organization, voluntary control

LESSON 3- Advertising agencies, Advertising Standards Council of India & case studies

LESSON 4- Advertising code of publishing advertisements in print and electronic media

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LESSON 15- Prize Competition Act, Rejections of advertisements on specified and unspecified groups

ADVERTISING ETHICS & LAWS

Course Code:
Lesson: 01

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Advertising Ethics, Social Responsibility & Self Regulation

STRUCTURE

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- 1.4 Social Criticisms & Responsibility of Advertising
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1.1 Objectives

The main objective of this lesson is to understand the ethics in Advertising. It also deals with social criticisms and responsibility of Advertising and Self Regulation.

1.2 Introduction

With the fast expansion of Integrated Marketing Communication now – a days advertising has emerged as a most demanding & challenging business industry. Advertising plays an important role by creating primary demand for the product or service and its usage rate thus increase in customers. It not only stimulates the product distribution but also builds brand preferences and loyalty. It also reduces the time between the purchases & persuades the consumers to try various new products in the market. Advertising is a persuasive promotional tool especially for companies whose products & services are targeted at mass consumer markets.

From mission to profession to industry, the world of advertising has come a long way. Some people describe it as a parasitical, untrue, misleading and obscene Advertising Industry have been facing a lot of criticism in the recent times as the advertising practices have not always been ethical. Advertisements should be socially, culturally and morally ethical Advertisements appearing on television and radio have to be approved by Doordarshan and AIR authorities. Similarly, advertisements in newspapers and magazines, and on outdoor sites are also regulated by guidelines. In today's competitive market, it is free for all, thus advertisers are sometimes following the unethical practices to fight the competition. For many years, the advertising industry has practiced, promoted voluntary self-

regulation. Most advertisers and media recognize the importance of maintaining consumer trust and confidence. The circle of self-regulation in advertising is widening day by day. Even the code of ethics drawn up by the Advertising Standards Council of India (ASCI) has not had much impact. They do not provide solutions to every ethical dilemma.

1.3 Ethics in advertising

Ethics means “Good Conduct” or “Conduct which is right in view of the society and the time period”. By common consent, various modes of behaviour and conduct are viewed as “good” or “bad”.

In other word, we can say that Ethics are moral principles and values that govern the actions and decisions of an individual group. Ethics is a choice between good and bad, between right and wrong. It is governed by a set of principles of morality at a given time and at a given place and in a given society. Ethics is related to group behaviour in ultimate analysis, thus setting norms for an individual to follow in consistence with the group norms.

A particular action may be within the law and still not be ethical; Target Marketing is a good example for this. There is no law to restrict tobacco companies from promoting their brands to Africans & American, though it is in India but for Doordarshan only. Similarly the alcoholic –

beverage companies promote their brands & target not only college students but underage drinkers as well. These advertisements have increased alcohol related problems. Advertisements exposing pornography is another serious issue in advertising industry today. Advertisements promoting permissiveness & objectifying women are heavily criticized in the society.

Therefore, even advertising has ethical value. The mixing of Art and facts in advertising communication are subservient to ethical principles. In today's competitive and buyer's market, an advertisement have to be truthful and ethical. If an advertisement is misleading, the credibility of the organization is lost. To view the truth in advertisement, it has to be seen from to consumer's point of view rather than from legal point. The advertising industry has been frequently criticized for putting out misleading or exaggerated claims in respect of product, goods and services advertised. It is also perceived as guilty of glorifying certain habits or tendencies regarded as undesirable and encouraging consume rest culture.

However, it is very difficult to demarcate a clear line of difference between what is true and what is untrue. But the advertisement as such is judged by its impact, and by its acceptance by the consumers. The product must fulfill its advertised claims. Advertisements should be decent and not be obscene. It must be truthful. Gambling is also unethical. Sometimes,

celebrities endorsing the product and spreading falsehood is also criticized. Advertising is a social process, thus it must follow the time-tested norms of social behaviour and should not affront our moral sense.

In short ethics are rules of conduct or principles of morality that point us towards the right or best way to act in a situation. Ethics vary from person to person, society-to-society point of view. Remember that the various people have different backgrounds, values and interests. You may see nothing wrong with the advertisements for cigarettes or beer or sexually suggestive ads, but other students, many oppose these actions on moral and ethical grounds. You will have to draw your own conclusions as to what is right and what is wrong!

1.4 Social criticism and responsibility of advertising

Advertising is the most visible activity of business. Advertising is the most popular mass communication channel that has made mass selling possible. Advertising made mass selling possible. Advertising is Omnipresent. Advertising creates brand for the products or services advertised. It allies, invites and involves consumers along with itself. To create images for the products advertising professionals use a variety of things like drama, music, action, romance, emotion, sex, animated & fictional characters and so on. It not only invites consumers to try their products or services but also

invite public criticism. Much of the controversy stems from the ways many companies use advertising as a selling tool and from its impact on society's tastes, value and lifestyles. **Mike Huges**, president and creative director of the Martin Agency, said that, "Ads help establish what is cool in society; their message contribute to the public dialogue. Gap ads show Black, White & Hispanic kids dancing together. Hilfiger ads showed it's cool for people to get along. "He argues that advertising professional has a social & ethical responsibility.

Advertising contributes to have both negative & positive influence on society. It is criticized for encouraging materialism, manipulating consumer to buy things they do not need; stereotyping, fraudulent & so on. Let's discuss the various criticisms concerning the influence of advertising on society.

1. PUFFERY/FRAUDULATION

Very often we hear that advertisement exaggerates about the product qualities. Now a days 'puffery' i.e. "metaphor of idea" forms to be main element in advertising. On the one hand critics accuse it, while on the other defenders i.e. advertisers and advertising professionals opined it as a helping agent to differentiate their brands from the competitors. Puffery is considered to be an 'opinion' and not a 'factual information'. Advertisers

claim that the consumers are intelligent enough to distinguish between truth and exaggeration. Moreover they are not blindly going to believe everything as such presented in an advertisement. E.g. In the advertisement of 'Force 10' shoes the copy is "I am walking on air". This metaphor that tells the lightness of the shoes, is unbelievable that one can "walk an air". But the studies reveals that often many people start believing them & buy those products that have exaggerated claims in their advertisements. With the use of special effects exaggerating the "quality" and using various "appeals" advertisers dramatized their products to such an extent that reality takes a back seat. E.g. "Hajmola Anardana" is not going to increase your retention power or drinking "Mirinda" you will not forget anything or 'VIP Franchie' would not get a girl friend for you. Like wise, the advertisements of 'Wheel' & "Vim" bars show lemons on their package & advertisement even and the products advertisers claim that it contain lemon while it is found that they only have Lemon flavor in them. These kinds of deception cases are more in India as well as in the world.

Puffery, though legal, but is not harmful to an extent. But false claim and dishonesty are unethical practices and regular deception, leads to losing costumers trust & confidence.

2. UNTRUTHFUL OR DECEPTIVE

A number of studies have shown a general mistrust of advertising among consumers. Deceptiveness is defined as not only as false and misleading statements but also as false impressions conveyed, whether intentional or not. False and subjective claims about the products, is sometimes believed but are untruthful and misleading. The problems of untruthful or fraudulent advertising exists more at the local level and in specific areas such as mail order, telemarketing and other forms of direct marketing. Advertisement should be informative and should be use puffery or embellished messages. The following acts are considered unfair or deceptive practices :

- a) False promises
- b) Incomplete Descriptive
- c) Misleading Comparisons
- d) Bait and Switch Offers
- e) Visual Distortions
- f) False Testimonials
- g) False Comparisons
- h) Partial Disclosures
- i) Small – Print Qualifications
- j) Laboratory Application

3. OFFENSIVE OR IN BAD TASTE

Another one of the major complaints against advertisements is offensive, tasteless, irritating, boring, obnoxious & so on. Taste is subjective i.e. what is good taste to one may be bad for some one else. Tastes changes with time even as what is offensive today may not be tomorrow. Consumers can be offended by advertising in a number of ways. E.g. the advertisements for products like contraceptives or personal hygiene are not acceptable to some consumers as they often use nudity in their advertisements. Condoms Ads are not acceptable by some of the people. The advertisements of women's undergarments and hemorrhoid products are found to be irritating commercials. The type of appeal or the manner of presentation often irritates consumer. E.g. Fear Appeal in Deodorants, Mouthwash & Anti-dandruff shampoo ads are criticized to create anxiety & fear to be rejected in the society; Sexual Appeal - Female as sex objects in masculine products like shaving creams, undergarments etc.

4. CREATES MATERIALISTIC DEMAND

Advertising provides a variety of alternatives to choose from people have needs. Advertising creates derives and fantasies for the consumers. Some people crave for material possessions and others for cultural and spiritual enhancement. Here Advertisers at the both end of the spectrum.

Many critics claim that the advertising encourages materialism. Few critics attribute to advertising that

- a) Seeks to create needs rather than merely showing how a product or service fulfils them;
- b) Surrounds consumers with the images of good life and convinces how the materialistic possessions leads to happiness in life.
- c) Portrays these possessions as symbol of status, success, social acceptance, popularity, sex appeal and so on.

Formerly we did not have house with garages, but now everyone wants a garage or two. Advertising differentiated between simple & formal sandals. It informs us about twin-pack razors, Leo & Barbie range of toys. Advertising keeps pace with dynamic market. It is a motivating force to exert harder to create and satisfy our new & novel needs.

5. MAKES PEOPLE BUY THE THINGS NOT NEEDED

Advertising creates artificial needs. Advertises motivates and persuades consumers to buy the things that are not needed even. According to many critics advertising should not persuade by playing with consumers emotions, anxieties, psychological needs & desires such as status, self esteem, attractiveness & others but should just provide information useful in making purchase decisions such as price, performance & other objective

criteria. Critics say persuasive advertising foster discontent among consumers & encourage them to purchase products & services to solve deeper problems.

Defenders believe that very informative ad is often very persuasive and if persuasive ad will not be permitted then there will be no ad as advertising's main objective is to persuade. People buy DVDs, Frozen Orange Juices, Cars & so on, even if they not need it. People spend and status or self-actualization to satisfy their self-esteem and status or self-actualization.

6. COMPARATIVE ADVERTISING

Comparative advertising is another unethical practice of advertising besides fraudulent and deceptory advertising. E.g.: The advertisements of Pepsi of Coca Cola: Both the brands try to compare their brands & the series try to cut the features shown in their advertisements. Severally, the ads of captain Cook Salt & Tata Salt. The new introductory brand 'Captain Cook Salt' presented the advertisements in a humorous way. In the reply, Tata Salt's ad talked about the brand loyalty & nationalism. This led to an ad-war between the two brands.

Similarly making the packaging or the names sounding similar to the major brands in the market the competitor's sells their brands like

GOLOFLAKE for GOLDFLAKE. Comparative advertising has become a major weapon though it is very risky. Likewise, claiming & playing with numbers & facts while comparing with competitors in form of testimonials sometimes can lead the advertisers to the legal authorities e.g. The Pepsodent people were asked to ban their ad of 'being 102% better than their competitor' by MRTP commission on the complaint of Colgate. Plagiarism or imitation in advertising copy is also flourishing in advertising world today. One copy says, "Believe in the best" & another better than the best. One claims for the flattest screen, other flatter than the flattest.

7. STEREOTYPE

Advertising is often criticized of creating & perpetuating stereotypes through portrayal of women, ethnic minorities & other groups. It involves presenting a group of people in a pattern or manner that lacks individuality. In our society, we have many stereotypes like South Indians are intellectuals; Punjabi's are boisterous & so on. Mother-in-law & daughter-in-law always fight, father out of house management etc.

Women: The most controversial of the stereotypes portrayed in advertisements is that of women & failing to recognize the changing role of women in our society. Critics accuse advertisers to often depict women as preoccupied with beauty, household duties and motherhood or show them as

decorative objects or sexually provocative figures. Moreover, housewives are portrayed, as they are just concerned about the cleanliness of their homes, health of family members & so on. Young girls occupied with beauty & boys. Very few ads recognize the diverse role of women in society. Males are generally shown knowledgeable, active and aggressive than females. Feminist groups such as the National Organization for Women (NOW) and Sexual Assault Prevention & Awareness Center argue against such advertisements.

While sexism and stereotyping still exists, but advertising's portrayal of women is improving in many parts of the world. Advertisers are now portraying women realistically.

8. ADVERTISING AND SEX

Critics often accuse advertising for portrayal of women as glamour props. Sex in Advertising is the most controversial aspect, which is much of social issue than an ethical issue. As discussed earlier about the stereotype in portraying women as housewives let us now discuss about objectifying women in the advertisements.

Decently portraying women in an ad for condom is acceptable as it is required. But women provoking sex in advertisements of suitcases, Shaving foams or creams, tyres, pens, shoes etc. does not make any sense at

all E.g. In the advertisement of 'Gel Pen' the exposure of women & copy saying 'sab kuchh dikhta hai' is a matter of critique. Similarly ad of **Tuff Shoes** portraying the male & female models wearing tuff shoes and a python draped around their nude bodies is not sensible. This ad was banned.

The ad of VIP Frenchie showing a male model in bathing robe is highly obscene as countered by many critics. The southern tip in the map of India, in the ad of Smirnoff was portrayed as the private parts of a lady is accused & banned. Many of the ads present even bare male models, which is not relevant even. Critics concerns about the sexual appeals in advertising that demean women or men by depicting them as sex objects.

9. IMPROPER LANGUAGE

One of the major complaints against advertising is that the advertising copy is too breezy, too casual i.e. improper. It is believed that the advertisements have destroyed the dignity of the language.

The research on advertising shows that consumer's better responds to the simple and down to earth language than to the more dignified & formal copy. A successful copy is that which is descriptive, colourful and pictures are as warm, human & personal.

10. EXCESSIVE

In today's world on an average are exposed to 1000 commercial messages per day. The advertising clutter is even worrying the advertising professional about the negative impact of advertising proliferation. With the increase in brand and the mass media options to choose from, there is a boom in advertising industry today.

CRITICISM WAD

Vance Packard, long back in the early sixties, called advertisements "the hidden persuaders". **Stephan Fox** described it as "False in Lone, tense in pace, vacant & self-heated and over sexed". Another historian, **Richard Pollay** expressed his views on advertising as "It reinforces materialism, cynicism, irritation able, selfishness, anxiety, social competitiveness, powerlessness and loss of self-respect." Some call it deceptive. The distrust for advertising is increasing day by day.

Issues For Criticism

Advertising is criticized on the three following issues of ethical concern :

a) **Advocacy**

Advertising's objective is not only to inform but also to be persuasive in nature. However, critics often say that advertisements should be objective,

informative and neutral. But the goal of advertising to create a distinctive image for the brand advertised has to be achieved for this advocacy or taking one's side in must.

b) Accuracy

Advertised products do not always fulfill their advertised clauses. The subjective claims are inaccurate deceptive & misleading is the matter of concern for critics. Can a cream make one fair? Does drinking a cold drink make anything possible? These claims are mere matter of perception.

Critics claim the people often fell prey to these kinds of claims. But infact, it is difficult to fool people now days. They are smart enough to exaggeration & false claims. But to attract the consumer's attention such believable lies are used.

c) Acquisitiveness

Critics often accuse advertising for creating and fostering materialism. Advertising corrupts consumers mind to buy the things they are not needed even. It should be informative only. Advertisers should answer the following set of questions before releasing an advertisement through media to avoid ethical controversies

- Who should, and should not, be advertised to?
- What should, and should not, be advertised?

- What should, and should not, be the content of advertising message?
- What should, and should not, be the tone of the advertising message?

However, advertising never forces anybody to buy anything. Just provide variety of options to choose from. Consumer ultimately makes the final decision.

Regulation

In the Indian context, advertising is being extensively used, not only by business & industry but also by the government and political parties. The study done by Indian Society of Advertisers on the attitude towards advertising on the members of parliament show positive results. The results showed that 39% each believed that “advertising not only informs about available products & services but also builds up the relationship between buyer & seller”. About 20% favoured it as an educative tool. On the opinion about regulation, the majority favoured it & about the agency to control the advertising the results are as :

Government	51%
Self Control	34%
Consumer Group	25%

Professional 24%

Regulation plays a major role in advertising decision-making process. In the complex environment of local, state and federal rules and regulations, most of the advertising and business sponsored associations, consumer groups and organizations and the Media produces & places honest, truthful and tasteful advertising through their own self-regulation and guidelines. The legal & regulatory aspects of advertising are very complex. Often the nature and content of advertisements and its potential to offend, exploit, mislead and / or deceive consumers is of major concern to many advertisers. Advertisements that can lead to consumer injuries are also under regulatory concerns. In many cases the courts have been willing to consider the impact of advertising on behaviour of consumer that leads to injury causing situation. Therefore the question of regulation of advertising is of the utmost importance. Most of the countries have framed laws & other forms of regulations for advertising. Laws promulgated by governments contain specifications such as the exclusion of cigarette advertising from television. In nearly sixty percent of the total major advertising countries, advertising people have to go for government clearance specially in case of health related products i.e. OTC drugs, Medicated tablets & Cosmetics E.g. In Canada & Mexico, clearance is required for food & drink advertisements.

Self regulation

In Spite of the comprehensive rules & regulations as also defined codes for checking unethical advertising, unscrupulous advertisers often take the consumers and general public for a ride. Identical problems have leaded the advertising professional all over the world to commit themselves to the idea of self regulation.

For many years, the advertising industry has practiced & promoted voluntary self – regulation. Most of advertisers, advertising agencies and the media have recognized the importance of maintaining consumer trust and confidence, hence taken the initiative to develop systems of self-regulation, Advertising professions foresee self regulation as limiting the government interference that may result in more stringent and troublesome regulations.

SELF-REGULATION IN WORLD

The Advertising Standards Authority initiated in compliance with the British Code of Advertising Practices for Print and Cinema advertising in the U.K. Similarly, later on Independent Broadcasting Authority for television & radio advertising. The ASA works independently & is financed by the advertising industry. The complaints received are examined and if needed, advertisers are instructed to amend or remove the concerned advertisement.

Special attention is paid to children ads, products such as alcohol, slimming aids & devices, cosmetics & hypnotherapy. The following are various organizations that self regulates the advertising in different countries:-

Country	Organization
1) Australia	Advertising Industry Council
2) Austria	Oesterreichische Weeberat
3) Brazil	CONAR
4) France	National Advertising Council
5) Denmark	Institute of Consumer Ombudsman

SELF-REGULATION IN INDIA

The Advertising Club, Mumbai in April 1982, organized a workshop on “Code for Self-Regulation in Indian Advertising”, in Collaboration with the International Advertising Association (IAA). Professionals from various Indian Advertisers & Advertising Agencies, the World President Emeritus of the IAA and the Director General of the Advertising Standards Authority addressed the workshop. The main objectives of the workshop were.

- a) To review the self – regulation on advertising in various countries with particular reference to the infrastructure as set up in the U.K.

- b) To evolve a code for self – regulation in advertising in India as a plan for an effective infrastructure for enforcing it.

The deliberations resulted in setting up of a committee on self-regulation code in India. This was basically set out to ensure that the consumers are protected against spurious advertising and the generally accepted norms of morality are upheld. Subsequently the Advertising Standards Council of India (ASCI) was set up to check down on misleading and unethical advertisements.

The membership of ASCI is divided into four categories: the advertisers, the press, the advertising agencies and the allied professions. In this context it should however be noted that number of members is abnormally low compared to the wide range of membership.

The Indian Newspaper Society (INS Formerly IENS) an autonomous body with members comprising newspaper and magazines, has also developed code of Advertising Ethics, which is followed by its member publications. Another body known as **Consumer Education Research Center (CERC)** is also doing commendable service in creating awareness among the consumers against unethical and misleading advertising and fighting the cases against erring advertisers.

Self-regulation and control of advertising emanate from all segments of the advertising industry, including individual advertisers and their agencies, business and advertising associations, and the media.

Self-regulation by advertisers and agencies

Self-regulation begins with the interaction of client and agency when creative ideas are generated and submitted for consideration. Most companies have specific guidelines, standards and policies to which their ads must adhere. Recognizing that their ads reflect on the company, advertisers carefully scrutinize all messages to ensure they are consistent with the image the firm wishes to project. Companies also review their ads to be sure any claims made are reasonable and verifiable and do not mislead or deceive consumers. Corporate attorneys to avoid potential legal problems and their

accompanying time, expense negative publicity, and embarrassment usually examine ads.

Internal control and regulation also come from advertising agencies. Most have standards regarding the type of advertising they either want or are willing to produce, and willing and they try to avoid ads that might be offensive or misleading. Most agencies will ask their clients to provide verification or support for claims the clients might want to make in their advertising and will make sure that adequate documentation or substantiation is available. However, agencies will also take formal steps to protect themselves from legal and ethical perils through agency – client contracts. For example: Agencies generally use information provided by clients for advertising claims, and in standard contracts the agency is protected from suits involving the accuracy of those claims.

However agencies have been held legally responsible for fraudulent or deceptive claims and in some cases have been fined when their clients were found guilty of engaging in deceptive advertising. Many agencies have a creative review board or panel composed of experienced personnel who examine ads for content and execution as well as for their potential to be perceived as offensive, misleading and / or deceptive. Most agencies also employ or retain lawyers who review the ads for potential legal problems.

Self Regulation by Trade Associations

Many industries have also developed self-regulatory programs that are particularly true in industries whose advertising is prone to controversy, such as liquor and alcoholic beverages, drugs, and various products marketed to children. Many trade and industry associations develop their own advertising guidelines or codes that member companies are expected to abide by.

The wine Institute, the U.S. Brewers Association and the Distilled Spirits Council of the United States all have guidelines that member companies are supposed to follow in advertising alcoholic beverages. Other industry trade associations with advertising guidelines and programs include the Toy manufacturer Association, the Motion Picture Association the Pharmaceutical Manufacturers Association.

Many professions also maintain advertising guidelines through local, state and national organizations. For years professional associations like the American Medical Association (AMA) and the American Bar Association (ABA) restricted advertising by their members on the basis that such promotional activities lowered member's Professional status and led to unethical and fraudulent claims.

Although industry associations are concerned with the impact and consequences of member's advertising, they have no legal way to enforce

their guidelines. They can only rely on peer pressure from members or other nonbonding sanctions to get advertisers to comply.

Self-Regulation by Business

The business community has established a number of self-regulatory mechanisms in an effort to control advertising practices. The largest and best known is the Better Business Bureau (BBB), which promotes fair advertising and selling practices across all industries. The BBB was established in 1916 to handle consumer complaints about local business practices and particularly advertising.

Local BBBs receive and investigate complaints from consumers and other companies regarding the advertising and selling tactics of business in their area.

While BBs provide effective control over advertising practices at the local level, the parent organization the Council of Better Business Bureaus, plays a major role at the national level.

The National Advertising Review Council and the NAD/ NRB

In 1971 four associations – The American Advertising Federation (AAF), the American Association of Advertising Agencies (AAAA), the Association of National Advertisers (ANA), and the Council of Better

Business Bureaus – joined forces to establish the National Advertising Review Council (NARC) The NARC's mission is to sustain high standards, of truth, accuracy and social responsibility in national advertising. The council has two operating arms, the National Advertising Division of the Council of Better Business Bureaus and the National Advertising Review Board.

The NAD acts as the investigative arm of the NARC. After initiating or receiving a complaint, it determines the issue, collects and evaluates data, and makes the initial decision on whether the advertiser's claims are substantiated. The NAD may ask the advertiser to supply substantiation for the claim in question.

The National Advertising Review Council is also involved in the self – regulation of children's advertising through the Children's Advertising Review Unit (CARU) of the Council of Better Business Bureaus.

Advertising Associations Various groups in the advertising industry also favor self-regulation. The two major national organizations, the American Association of Advertising Agencies and the American Advertising Federation, actively monitor and police industry wide advertising practices. The AAAA, which is the major trade association of the ad agency business in the United States, has established standards of practice

and its own creative code. It also issues guidelines for specific types of advertising such as comparative messages.

Self-Regulation by Media

The media are another important self-regulatory mechanism in the advertising industry. Most media maintain some form of advertising review process and, except for Political ads, may reject any they regard as objectionable. Some media exclude advertising for an entire product class; other ban individual ads they think offensive or objectionable. For example, Reader's Digest does not accept advertising for tobacco or liquor products. A number of magazines in the United States and other countries refused to run some of Benetton's shock ads on the grounds that their readers would find them offensive or disturbing.

Newspapers and magazines have their own advertising requirements and restrictions, which often vary depending on the size and nature of the publication.

Advertising on television and radio has been regulated for years through codes developed by the industry trade association.

Appraising Self – Regulation

The three major participants in the advertising process advertisers, agencies and the media work individually and collectively to encourage truthful, ethical, and responsible advertising. The advertising industry views self regulation as an effective mechanism for controlling advertising abuses and avoiding the use of offensive, misleading, or deceptive practices, and it prefers this form of regulation to government intervention, Self regulation of advertising has been effective and in many instances probably led to the development of more stringent standards and practices than those imposed by or beyond the scope of legislation.

1.5 Summary

Advertising plays an important role by creating primary demand for the product or service and its usage rate thus increase in customers. From mission to profession to industry, the world of advertising has come a long way. Ethics means “good conduct” or “conduct which is right in view of the society and the time period”.

Puffery or fraudulation, unethical or deceptive advertising, offensive or ads bad in tastes are some unethical practices in advertising. Comparative advertising is another unethical practice of advertising besides fraudulent and deceptive advertising. Sex in advertising is the most controversial aspect, which is much of social than an ethical issue. It is also believed that the advertisements have destroyed the dignity of the language.

On the opinion about regulation, the majority favored it and the important concepts related with the same are- self regulation by advertisers and agencies, self regulation by trade associations, self regulation by business and self regulation by media.

The three major participants in the advertising process advertisers, agencies and the media work individually and collectively to encourage truthful, ethical, and responsible advertising.

1.6 Key words

Unscrupulous: lacking moral principles

Promulgate: make widely known

Obnoxious: very unpleasant

Deception: deceiving; a trick

Bait: an attraction, an inducement

Contraception: the prevention of pregnancy, birth control

Endorsement: declare approval of

Pornography: writings or pictures intended to stimulate erotic feelings by portraying sexual activity

Fraudulent: criminal deception, a dishonest trick

1.7 Self Assessment Exercise

Q.1 Explain briefly the ethics in advertising

Q.2 Throw light on the Social criticism of advertising

Q.3 What do you understand by the term Regulation?

Q.4 Discuss self-regulation Elucidate.

Q.5 Discuss the ethics of untruthful & fraudulent Advertising.

1.8 Suggested readings

- a) Rayudu, C.S. (1993) – “Media & Communication Management”; Himalaya Publishing House, New Delhi
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- g) Keval J. Kumar, “Mass Communication in India’; Jaico Publishing House; 2004.

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Regulations, ethics, consumer organization, voluntary control			

Structure

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2.1 Objectives

The objectives of this lesson are to make student conversant with government regulation and ethics in advertising and various advertising organizations and voluntary control in advertising.

2.2 Introduction

Apart from Act in force to govern the advertisers, some rules and regulations are formed by Government through setting of various committees on their recommendation. These rules later on may be notified in the official gazette by the Central Government for carrying out the purpose of Act. In particular and without prejudice to the generality of the foregoing power, such rules may specify conditions imposed to which the provisions of certain section shall apply and further prescribe the manner in which advertising of articles or things referred to clauses of particular section may be sent confidentially. Every rule made under the Act shall be laid as soon as may be after it is made before each house of parliament while it is in session for a total period of 30 days, which may be comprised in one session or in two or more successive sessions and if before the expiry of the sessions aforesaid both houses agree in making any modification in the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be, so, however, that any such modification annulment shall be without prejudice to the validity of anything previously done under that rule.

2.3 Government General Rules of Conduct in Advertising

2.3.1 In India

According to Verghese Committee Report (1978), the following are the general rules of conduct in advertising:

1- Advertising should be so designed as to conform to the laws of the country and should not offend against any morality decency and religious susceptibilities of the people.

2- No advertisement should be permitted

(i) Which divides any race, caste, color, creed, nationality except wherein such usage would be for specific purpose of effective dramatization?

(ii) Which is against any of objectives, principles of provisions of the constitution of India; (iii) Which will tend to incite people to crime or to promote disorder, violence or breach of law, (iv) which presents criminality as desirable, or furnish details of crime or imitation thereof; (v) which would adversely affect friendly relations with foreign states;

(vi) Which exploits the national emblem

For Doordarshan only, (vii) No cigarettes and tobacco products; (viii)

Advertisement wholly or mainly must not be directed towards any religious or political end and have any relation to any industrial dispute

(ix) Advertisement for services concerned with following are not acceptable (a) Moneylenders; (b) Chit fund and saving schemes; (c) Unlicensed employment service; (d) Matrimonial agencies; (e) Fortune-tellers, etc. and those with claim of hypnotism

(x) Betting tips and guide books, etc., relating to horse racing or other games of chance shall not be accepted

(xi) No advertisement shall contain references which are likely to lead public to infer that the product advertised or any of its gradients has some property or quality which is incapable of being established e.g. care for baldness.

(xii) Scientific or statistical accepts from technical literature.

(xiii) Advertisers or their agents must be prepared to produce evidence to substantiate any claims or illustrations.

(xiv) Advertisement should not contain disparaging reference to another product or service.

(xv) Imitation likely to mislead viewers

(xvi) Visual and verbal representation of actual and comparative prices and costs must be accurate and should not mislead.

(xvii) Testimonials must be genuine and must not be used in a manner likely to mislead the viewers.

3. In all other respects, the DG, AIR/DD will be guided for purpose of commercial broadcasting and telecasting on AIR/DD by code of Ethics for advertising in India issued by the advertising council of India as modified from time to time.

4. Notwithstanding anything contained herein, this code is subject is such modification/direction as may be made/issued by the Government of India from time to time.

2.3.2 British regulations for advertising

There are sufficient number of laws which are very much concerned with advertising.

1. Advertisements (Hire Purchase) Act, 1967: This act regulates advertisements giving hire-purchase terms which must be correctly set out in a direct response advertisement so that the customer understands whether or not payment of installments will incur payment higher than the cash price.
2. Consumer Credit Act, 1974: This gives consumers the right to cancel a contract if oral presentations were made in the presence of debtor or hirer in discussion before the contract was undertaken.
3. Consumer Protect Act,1987: It implemented in U.K. the E.C. Product Liability Directive. Earlier acts are amended by this act. There are parts on Product Liability, consumer safety and misleading price indications. All previous legislation on prices is repealed and there are stringent controls on bogus prices. A general duty is imposed on producers and suppliers to sell safe products. Producers, importers and own labelers are liable for unlimited damages for defects, which cause injury or death. No proof of negligence or contractual relationship is needed. Retailers must be careful not to sell dubious foreign products.
4. Control of Misleading Advertisements Regulations, 1988: This piece of consumer legislation implements a Council Directive of the E.C. and is an example of the harmonizing of Common Market Legislation under the European Communities Act, 1972. The Director-General of Fair Trading gives powers to

institute a High Court action for injunction prohibiting misleading advertising, always provided that the complainant has failed to obtain satisfaction from a voluntary body such as ASA.

5. Copyright, Designs and Patents Act, 1988: The Act restates in law of copyrights as set out in the Copyright Act, 1956, makes new provisions as to the rights of performers and others in performances confirms a design right in original designs; amends the Registered Designs Act, 1949 makes provision with respect to patent agents and trademark agents, confers patents and designs jurisdiction in certain country courts, amends law of patents, makes provisions with respect of devices designed to circumvent copy protection of works in electronic form, makes new provisions penalizing the fraudulent reception of transmissions and makes the fraudulent application or use of a trade mark an offence.

6. Data Protection Act, 1986: This is an Act of some importance regarding databases and mailing lists as used for direct mail and direct response purposes. Holders of computerized data have to register with the Data Protection Register. Copies of Register are held in public libraries. Members of public are entitled to apply for print outs of data held about themselves.

7. Fair Trading Act, 1973: The Act provided for the appointment of a Director General of fair trading and staff to study the effect upon consumers' interests of trading practice and commercial activities and to advise on any necessary or desirable action. It is called consumers' charter. This act has had a

very significant effect on monopolistic practices in the advertising business. Director General may propose an order for control of practice for consideration by Consumer Protection advisory Committee and upon their recommendation; the D.G. can ask the Secretary of State to place the proposed legislation before Parliament.

8. Lotteries and Amusements Act, 1976: Advertisements relating to competitions or sale promotion schemes in the form of price contests have to comply with the Act, the chief point being that a competition must contain an element of skill otherwise it is a lottery. A lottery is a distribution of prizes by lot or chance.

9. Restrictive Trade Practices Act, 1976: This could apply if a manufacturer tried to restrict supplies of goods because they were being offered as gifts. The Act also resulted in changes in the recognition and commission system.

10. Supply of Goods (Implied Terms) Act, 1973: This act amends the Sale of Goods Act, 1893 to guarantee consumers' right under the old Act and combats unfair guarantees which claim to exclude consumer rights under the 1893 Act.

11. Trade Descriptions Act, 1968: Act provisions must be observed when writing descriptions of goods in advertisements and catalogues and on labels, packaging or other descriptive or promotional material. It replaces the unworkable Merchandise Marks Act, 1953 which required private legal action and enforcement is now made through Weights and Measures and other officials. The Consumer Protection Act has taken over much of this Act. The false or misleading

trade descriptions; indications about price of goods and statements as to services, accommodation or facilities are three main offences. This Act now applies to services as well as goods.

12. Imported Goods: The Trade Descriptions Act, 1972 concerned imported goods bearing U.K. names or marks and names or marks, which resembled U.K. ones. This Act was repealed under the Consumer Protection Act, 1989 which took over the 1972 Act's provisions.

13. Trade Marks Act 1938: A trade mark includes a device, brand, heading, label, lictet, name, signature, word, letter, numeral or combination thereof. It is a mark used or proposed to be used in relation to goods for the purpose of indicating or so as to indicate a connection in the course of trade between the goods and some person having the right either as a proprietor or registered users to use the mark, whether with or without any indication of the identity of that person.

14. Unfair Contract Terms Act, 1977: This Act is important where guarantees and hire purchase agreements are concerned. When a consumer suffers loss or damage because goods are defective, no guarantee can limit or exclude liability of the manufacturer or supplier was negligent. The Act also protects the consumers from exclusions clauses in guarantees as originally introduced in the supply of goods (Implied Terms) Act, 1973.

15. Unsolicited Goods and Services Act, 1971 and 1975: This protects the consumers from inertia selling i.e. sending of goods which were not ordered but for which the recipient feels responsible. Such goods become the property of

recipient if during six month period started with day of receipt, the sender fail to regain possession.

16. Wireless Telegraphy Act, 1984: The Act aims to combat pirate radio that is that operation of commercial radio station outside the authority of the Radio Authority and competing with the authorized independent local radio stations. British Telecom Radio Interference Service can seize offending equipments under the Act. However, it is not illegal to buy airtime on pirate radio.

2.3.4 Federal Regulations of Advertising

The government controls and regulates advertising through federal, state and local laws and regulations enforced by various government agencies. The federal government, through the Federal Trade Commission (FTC), is the most important source of external regulations.

The federal regulation of advertising originated in 1914 with the passage of the Federal trade Commission Act, which created FTC, the most active agency and has primary responsibility for controlling and regulating advertising. The FTC Act was originally intended to help enforce antitrust laws such as the Sherman and Clayton Acts by helping to restrain unfair method of competition. The main focus of the first five-member commission was to protect competitors from one another, the issue of false or misleading advertising was not even mentioned. In 1931, the Supreme Court ruled the commission could not prohibit false advertising unless there was evidence of injury to a competitor. This ruling limited the power of FTC to protect consumers from false or deceptive advertising and led to a consumer

movement that resulted in an important amendment to FTC Act. In 1938, congress passed the Wheeler-Lea Amendment by amending Section 5 of the FTC Act to read “Unfair methods of competition in commerce and unfair or deceptive acts or practices in commerce are hereby declared to be unlawful”, which empowered FTC to act if there was evidence of injury to the public, proof of injury to a competitor was not necessary. This amendment also empowered FTC to issue cease and desist orders and levy fines on violators and gave FTC access to the injunctive power of the Federal Court in 1972 for all products in event of threat to the public health and safety.

In addition to FTC, various other federal agencies are responsible for or involved in advertising regulation. The authority of these agencies is limited, however, to a particular product area or service and they often rely on FTC to assist in handling false or deceptive advertising cases. The major divisions of FTC include the bureaus of competition, economics and consumer protection. The Bureau of Competition Enforces Antitrust laws. The Bureau of Economics aids and advises the commission on the economic aspects of its activities and prepares economic reports and surveys. The Bureau of Consumer Protection investigates and litigates cases involving acts or practices alleged to be deceptive or unfair to consumers. The National Advertising Division of the Bureau of Consumer Protection enforces those provisions of FTC Act that forbid misrepresentation, unfairness and deceptive in national advertising.

Federal Communication Commission (FCC): It was founded in 1934 to regulate broadcast communication, has jurisdiction over the radio, television, telephone and telegraph industries. It has the authority to license broadcasting. The FCC required broadcasting stations to run commercials about the harmful effects of smoking before passage of the Public Health Cigarette Smoking Act of 1970 which banned broadcasting advertising of cigarettes. The Cable Television Consumer Protection and Competition Act, passed in 1992 allows FCC and local governments to regulate basic cable TC rates and forces cable operators to pay licensing fees for local broadcast programmes, they did retransmit free.

The Food and Drug Administration (FDA): Under the jurisdiction of the Department of Health and Human Services, the FDA has authority over the labeling, packaging, branding, ingredient listing and advertising of packaged food and drug products. The FDA is authorize to require caution and warning labels on potentially hazardous products and also has limited authority over nutritional claim made in food advertising.

The U.S. Postal Service: It has control over advertising involving the use of mail and advertisements that involve lotteries, obscenity or fraud.

Bureau of Alcohol, Tobacco and Firearms (BATF): It is an agency within treasury department that enforces laws, develop regulations and is responsible for tax collection for the liquor industry. It also regulates and controls the advertising of alcohol beverages.

The Lanham Act: This act was originally written in 1947 as the Lanham Trade Mark Act to protect words, names, symbols or other devices adopted to identify and distinguish a manufacturer's product. This Act was amended to encompass false advertisement by prohibiting "any false description or presentation including words or other symbols tending falsely to describe or represent the same". More and more companies are using the Lanham Act to sue competitors for their advertising claims, particularly since comparative advertising has become so common. Suing competitors for false claims was made even easier with passage of the Trademark Law Revision Act of 1988.

State Regulation: In addition to the various federal rules and regulations, advertisers must also concern themselves with numerous state and local controls. Printer Ink drew various statutes resulted in adoption in 44 states of the Printers Ink model statutes as a basis for advertising regulation. Many states have since modified the original statutes and adopted laws similar to those of FTC Act for dealing with false and misleading advertising.

Regulation of other promotional areas: Both consumers and trade-oriented promotions are subject to various regulations. FTC regulates many areas of sale promotion through the Marketing Practice Division of Bureau of Consumer Protection. Many promotional practices are also policed by state attorneys general and local regulatory agencies. Various aspects of trade promotion, such as allowances, are regulated by Robinson-Patman Act, which gives FTC broad powers to control discriminatory pricing practices.

2.4 Ethics in Advertising

Advertising and PR organizations are aware that consumer groups and the public are often critical of the manipulative and deceptive methods resorted to by advertisers. These organizations have drawn codes of Ethics with the hope of regulating and disciplining the professions. The Advertising Standards Council of India (ASCI), a body that brings together advertisers, ad agencies and the media, has drawn up a detailed and elaborate code. It has also established a Consumer Complaints Council (CCC) to examine the complaints received. Code of the Advertising Standards Council of India is listed below in four chapters.

Chapter – 1

To ensure the truthfulness and honesty of representation and claims made by advertisements and to safeguard against misleading advertisements; (i) the advertisements must be truthful. All description, claims and comparisons related to matters of objectively ascertainable fact should be capable of substantiation and they are required to produce such substantiation as and when required to produce by ASCI; (ii) The source and date of claims based on research or assessment should be indicated in advertisement. (ii) the source and date of claims based on research or assessment should be indicated in advertisement. (iii) Advertisements should not contain any reference to any person, firm or institution, picture without due permission; (iv) advertisements shall not distort facts or mislead the consumers by means of implications or omissions; (v) advertisements shall not be so framed as to abuse the trust of consumers or exploit their lack of experience or

knowledge. Advertisements shall not be permitted to contain any claim so exaggerated as to lead to grave disappointment in the minds of consumers; (vi) obvious untruths or exaggerations intended to amuse or to catch the eyes of consumer are permissible.

Chapter – II

To ensure that advertisements are not offensive to generally accepted standards of public decency, advertisements shall contain nothing indecent, vulgar or repulsive to cause grave or widespread offence.

Chapter – III

To safeguard against the indiscriminate use of advertising for promotion of products hazardous to society or individuals to such degree which is unacceptable to society at large. (i) No advertisements shall be permitted which tends to incite people to crime, disorder, violence or intolerance and divides any race, caste, color, creed or nationality and adversely affects friendly relations with a foreign state; (ii) advertisements addressed to children shall not contain anything in illustration or otherwise, which might result in their physical, mental or moral harm or which exploits their vulnerability. (iii) Advertisements should contain nothing in breach of law; (iv) advertisements shall not propagate products, the use of which is banned under the law.

Chapter – IV

(i) Advertisements containing comparisons with other manufacturers or supplier or with the products, including those where a competitor is named are permissible in the interests of vigorous competition and public enlightenment with aspect, subject matter of products and no consumers shall be misled due to such comparison. (ii) Advertisements shall not make unjustifiable use of the name or initials of any other firm, company or institution, nor take symbol of another firm and its products; (iii) Advertisements shall not be so similar to other advertisements in general layout, copy, slogans, visual presentation, music or sound effects as to be likely to mislead or confuse consumers.

The following are excerpts from code of ethics for advertising issued by the Advertising Council of India.

- 1- Advertisement should be so designed as to conform not only to the laws but also to the morals, aesthetic and religious sentiments of the country.
- 2- No advertisement likely to bring advertising into contempt or disrepute should be permitted.
- 3- No advertisement of talismans, charms and character reading from photographs.
- 4- Advertisement should be truthful avoid distorting facts and misleading the public by means of implications and omission.
- 5- No advertisement should be permitted to contain any claim so exaggerator as to lead inevitably to disappoint in the mind of public. Special care is called for

in the advertisements related with illness, investment of money, invitation to lotteries, publication of employment notices requiring fees for application forms, prospects, etc.

6- Methods of advertising designed to create confusion in the mind of consumers as between goods of one make and another.

7- Advertising should endeavor to gain the goodwill of public on the basis of merits of good, or services advertised.

8- Indeed, vulgar, suggestive, repulsive or offensive theme or treatment should be avoided in all advertisements.

9- No advertisement should offer to refund money paid.

10- the use of national emblem is prohibited by law in advertisements, trade marks, etc.

2.5 Type of Consumer Organizations in Advertising

Consumer Organizations

Consumers themselves are motivated to act as regulatory agents based on a variety of interests, including product safety, reasonable choice and the right to information. The action of individual consumers or group of consumers designed to exert power in the market place, is by no means a recent phenomena, consumers want a greater voice in the whole process of product development, distribution and information dissemination. Consumers commonly try to create pressures on firms by withholding patronage through boycotts and some boycotts have been

effective. The other major consumer effort to bring about regulation is through established consumer organizations.

The following three consumer organizations are the most prominent and the most active groups. The prime activities of these organizations are as under:

1- Consumer Federation of America (CFA): This organization was founded in 1968 and now includes over 200 national, state and local consumer groups and labor unions as affiliate members. The goals of CFA are to encourage the creation of consumer organization, provide services to consumer groups and act as a clearing house for information exchange between consumer groups.

2- Consumers Union: This non-profitable consumer organization is best known for its publication of consumer reports. Established in 1936, it provide consumers with information and advice on goods, services, health and personal finance and to initiate and cooperate with individual and group efforts to maintain and enhance the quality of life for consumers. This organization supports itself through the sale of publications and accepts no funding including advertising revenues from any commercial organization.

3- Action for Children Television (ACT): it has active in conjunction with the national Parent Teacher Association to initiate boycotts against the products of advertisers who sponsor programmes that are violent in nature. On its own, Act has lobbied government bodies to enact legislation restricting the use of premium in advertising to children and the use of popular cartoon character sink promoting products.

There are literally hundreds of such groups organized by geographic location or product category. Consumers have proved that with an organized effort, corporations can and will change their practice.

Various other consumer organizations are listed below with their details of area of operation:

The Coordinating Committee for Primary Health Care of Thai NGOs or CCPN, a non governmental and non profit organization, was founded in 1983 and which coordinate health groups in the country. CCPN has since then campaigning on and for better health care policies and has been instrumental in several successful health policy advocacies. Such policy advocacy and campaign in Thailand done are derailing and blocking of amendments to patent law on pharmaceutical, anti-smoking campaign; generic names on labeling and advertising of pharmaceuticals, banning of caffeine in analgesic drugs; rights of people with HIV/AIDS; regulation on dirty dozen chemicals, etc, but very few changes in the consumer behavior has resulted. The constraints and very limited number of NGOs working directly on consumer issues had led CCPN to outstandingly take the initiative to start incorporating consumer protection into all its campaigns in 1990.

1. CCPN

And in 1994, CCPN set up the Foundation for Consumers or FFC, which is also a non-governmental and non-profit organization to work directly with

consumers and consumer protection policy advocacy. And now FFC is the main leading consumer organization in Thailand.

Objectives

1. To coordinate consumers and consumers organizations;
2. To promote, empower and strengthen consumers and consumer organizations to participate in consumer protection;
3. To research and study on consumer issues for policy advocacy; and
4. To coordinate and collaborate with national and international organizations for consumer protection

Activities and success

Strengthening consumers and consumer organizations project. It has increased the number and consumer organizations to working the fields and continues their works on consumer protection.

Show Your Bad Products and Services, the first Consumer Assembly, which introduced consumers to do social action through bringing their own substandard/below standard products or bad experiences in services, this in exchange for a pack of healthy brown rice. More than 600 consumers voluntarily joined this two-day event.

Set up a consumer network to work very closely and actively on campaigning for the establishment of the “Independent Agency for Consumer Protection” which is mandate from the Constitution – Article 57.

2. CCOT

Confederation for Consumer Organization, Thailand (CCOT), a non-governmental and non-profit organization established to network 17 consumer organizations and groups around the country which comprises of NGOs and POs working on issues on health, women, farmer, labor and civil society groups.

3. Complaints and Legal Assistance Center

The center was established in 1994 together with the Smart Buyer Magazine as a parallel work for consumer protection. It runs with uncertainty on still bad consumer behavior, with belief that “does nothing when nothing happens”. Started with the slogan “Complaint for one time is better than complain for one thousand times”, that made our center prove that consumers would like to use their own rights but facing with bureaucratic system that delay in helping consumers and has big impact and problems for consumers to use their rights.

The center, not only working with one individual consumer but also tries very hard to work at the policy level and protection scheme, such as improvement of legal system in rapidly solving consumer problems and decrease burden of proof. The interesting complaint cases are disseminated in Smart Buyer Magazine and to the mass media.

4. CFA

Call for Action, Inc (CFA) is an international, non-profit network of consumer hotlines founded in 1963. Volunteer professionals in offices around the world are trained to assist consumers through mediation and education to resolve

problems with business, government agencies and other organizations. CFA's services are free, confidential and available to individuals and small businesses.

5. CDT

The Center for Democracy and Technology (CDT) works to promote democratic values and constitutional liberties in the digital age. With expertise in law, technology and policy, CDT seeks practical solutions to enhance free expression and privacy in global communications technologies. CDT is dedicated to building consensus among all parties interested in the future of the Internet and other new communications media.

6. Common cause organization

Common cause is a nationwide citizen's lobbying organization working for open, honest and accountable government at the federal, state and local levels. Common cause leads the fight for passage of campaign finance reforms and strong ethics laws, serves as a government watchdog and promotes citizen participation in government.

7. Consumer action

Consumer action is a non-profit, membership-based organization that was founded in San Francisco in 1971. Since then, Consumer Action has served consumers nationwide by advancing consumer and privacy rights; referring consumers to complaint handling agencies through its free multilingual hotline; distributing educational materials in Chinese, English, Korean, Tagalog, Russian, Vietnamese and other language through a national network of more than 65, 00

community based organizations; and advocating on behalf of consumers in the media and before lawmakers and regulators.

8. The National Consumers League

The National Consumers League, the nation's oldest consumer organization, is a private, non-profit advocacy group representing consumers on market place and work place issues. NCL provides government, business and other organizations with the consumer's perspective on concerns including child labor, food safety, medication information and privacy. NCL's mission is to identify, protect, represent and advance the economic and social interests of consumers and workers, using education, science, investigation, publications, and the public and private sector to accomplish that mission.

9. The Privacy Rights Clearinghouse

The Privacy Rights Clearinghouse (PRC) is a non-profit consumer education, research and advocacy programme established in 1992. It is based in San Diego, California. The purposes of the PRC include raising consumers' awareness of how technology affects personal privacy; empowering consumers to take action to control their own personal information; responding to specific privacy-related complaints from consumers, communicating consumers' concerns about privacy to policy makers, industry representatives and consumer advocates; and advocating for consumers' privacy rights before state, local and federal government.

2.6 Voluntary Control in Advertising

The voluntary control in advertising is form of advertising self-regulation. It is wholly voluntary, not the result of group pressure, reflecting the policy of top management, its sense of public responsibility and its enthusiasm to survive and grow in a competitive arena in which consumer confidence is vital. Almost all sizeable advertisers maintain a careful system of legal review and appraisal backed by factual data to substantiate claims. Many industries and trade associations have developed some type of advertising self-regulation; self regulation is good for advertising community as a whole and promoter the credibility and effectiveness of those industries adopting it. Self-regulation of advertising often can forestall government regulation, being more effective in settling disputes compared to the cumbersome and expensive legal process. In addition, there are public relations and goodwill advantages for those industries that hear complaints about members' advertising practices. In spite of the best intentions of these voluntary trade codes, they often prove ineffective due to lack of enforcement power with the associations because of antitrust laws, which preclude any action that might be regarded as interfering with open competition.

There are various selected business organizations and industry associations with advertising self-regulation programmes. American Advertising Federation (AAF) came into existence in 1905 when various local advertising clubs formed this national association. In 1911, this association launched a national campaign for truth in advertising for which purpose various vigilance committees were established which were named as the Better Business Bureaus in 1916. The

Advertising Associations include American Advertising Federation established code in 1965, while American Association of Advertising Agencies established code in 1924. The Association of National Advertisers and Business/Professional Advertising Association have established their code in 1972 and 1975, respectively. There is some media associations viz. American Business Press established code in 1910 while Direct Mail Marketing Association and National Association of Broadcasters; radio and television had established their code in 1937 and 1952, respectively. The Outdoor Advertising Association of America has established his code in 1950.

One important self-regulation organization is National Advertising Review Board (NARB) of the Council of Better Business Bureau. The Council of Better Business Bureaus implemented a major collaborative programme with the American Advertising Federation for broadening local advertising self-regulation. It also has established a programme for the resolution of manufacture-related automobile complains, including mediation and arbitration of unresolved disputes. The council has also defined acceptance guidelines for media for the advertising of work at home promotion in cooperation with the food and drug administration, offered assistance to media in evaluating health and medical claims, established in cooperation with the North American Securities Administrators Association, a quarterly “Invest Alert” warning consumers about investment schemes, continued the development of advertising and selling standards for specific industries and promulgated standards for charitable solicitations that include sections of an

advertising and promotion. 'Do's and Don'ts in Advertising Copy' is a standard reference work on the subject in its published service. Both the council, through its National Advertising Division and the local bureaus, have a major influence on truth and accuracy by advertisers. They have no legal powers to enforce their findings but their influence is an effective force to the public.

The chief advertising organizations formed the most comprehensive self-regulating apparatus ever established in advertising called the National Advertising Review Council (NARC) with the chief purpose to develop a structure which would effectively apply the persuasive capacities of peers to seek the voluntary elimination of national advertising which professionals would consider deceptive. Its objective is to sustain high standards of truth and accuracy in national advertising. It consists of the Council of Better Business Bureaus and the three leading advertising groups viz., the American Advertising Federation, the American Association of Advertising Agencies (the 4 A's) and the Association of National Advertisers. The national Advertising Division (NAD) of the Council of Better Business Bureaus and the National Advertising Review Board (NARB) are two operating arms of the Council.

NAD is the investigative arm which initiates inquiries as well as taking referrals from other groups, determines issues, collects and evaluates data and makes the initial decision where the claims are substantiated. When NAD is not satisfied with substantiation, it negotiates with the advertiser to secure modification or permanent discontinuance of the advertising. In the event of an

impasse, the case is passed to NARB for appeal and if the action is found justified and advertiser still does not wish to correct the deceptive element, the rules provide for the whole matter to be referred to the appropriate government agency. NAD/NARB system cannot order an advertiser to stop running an advertisement. It cannot impose a fine nor bar anyone from advertising. It cannot boycott an advertiser or a product but it can bring to bear the judgment of the advertiser's peers that what is being done is harmful to advertising to the public and to the offender. It has great moral weight during 13 years, the NAD has investigated over 1800 national advertising case, out of which only 38 were appealed to NARB and NDRB upheld NAD decision in 26 of 38 cases. In 1974, the CBBB established the Children's Advertising Review Unit (CARU), which operates much like NAD, and its findings are reported in NAD case report. The CARU publishes the children's advertising guidelines as a model for advertising directed to children.

National Vigilance Committee becomes autonomous in 1926 to regulate advertising voluntarily. There are more than 100 statutes and regulation, which are in some way relevant to advertising, and now a day there are E.C. directives which concern advertising. Both the controls can be effective for different reasons and both are valuable.

British Voluntary Controls

There are several codes dealing with advertising except radio and T.V., which are covered by codes of practice of the Independent Television commission and the Radio Authority and certain specialized fields such as sole promotion,

direct mail and transportation advertising. In the beginning in 1926, the National Vigilance Committee was created and in 1930, the Advertising Association was established and later on first joint industry code of 1948 known as the British code of Standards in relation to the advertising of medicines and treatment came in existence and the latest comprehensive British Code of Advertising Practice was first introduced in 1962. These codes of practice were constantly under review and revised from time to time with changing conditions. The British Code of Sales Promotion Practice published its fifth edition in July 1990 and eighth edition in December, 1988 while an important amendment to the 'payment by results' clause 9, was made to the IPR code of Professional Conduct in April 1990.

British Code of Advertising Practice (BCAP): The basis of BCAP is that all print advertisements should be legal, decent, honest and truthful, all advertisements should be prepared with a sense of responsibility both to the consumer and to the society and should conform to the principles of fair competition as generally accepted in business, however, it does not cover TV and radio advertisements and overseas advertisements, advertisements related to ethical medicines and contents of catalogues issues by major national mail order warehouses. It is a self-regulating system of control and its strength lies in its preventive influence, although complaints do rise and the Advertising Standards Authority adjudicates them on. As far as contents of the BCAP are concerned, it is very extensive and covers many areas which are not covered by statute law. These include knocking copy and comparative advertising and misleading testimonials. It

also covers unacceptable practices connected with advertising and health claims. In particular, the code deals with products or services for which misleading claims may be made such as collectables, slimming products, advertisements relating to children, credit and investment advertising, mail-order advertising and advertising for cigarettes, alcoholic drinks and vitamins. The public can submit complaints against those advertisements, which they believe offend against the code. The Advertising Standards Authority (ASA) investigates complaints received on various issues.

There are written recommendations, which the advertisers should obey in the public interest for which the complaint to made to advertising standards authority (ASA). ASA has no power to impose fine on complaint but the offending advertising agent may lose his recognition status and right to commission.

Voluntary controls are self-regulatory and likely to prevent unethical advertising from appearing. The media act as censors and advertising agents act as bulwarks.

If there is a written complaint from any member of public and it is upheld by ASA, action can be swift the advertisement can be modified or withdrawn. The advertisement should not hurt the feeling of any religion. Generally, voluntary self-regulatory control can be more effective than legislation. There is one exception where a code of practice is written into law and this is the ITC code of Practice which was part of the Independent Broadcasting Authority Act 1973 and again forms part of the Broadcasting Act 1990. The ITC does have the power of

law in that certain categories of advertising are banned from commercial television and radio altogether. The ITC code is more for reaching in its restrictions. Television commercials are vetted by the ITVA before transmission. Even so, the ITC may receive complaints after a commercial has appeared and its rulings are given publicity in the press. There are certain aspects of advertising, which are bad practice rather than anti-social or criminal and the law cannot deal with them.

2.7 Summary

The general government rule and regulations for advertising have been framed by various governments. These rules made under the act legally passed by the house of parliament and subjected to modification as and when required by the competent authorities. Advertising standards council of India has also issued code of ethics for advertising which are listed in four chapters and under schedule V. Various consumer organizations in advertising have also been described with the objectives and area of operation. In this chapter, self-regulations working voluntarily in advertisings are described in this chapter with their operation objectivity and power vested in for effective settlement of disputes along with their historical background operative in India and other countries of the world, however, these controls become ineffective due to lack of enforcement power even then these have inbuilt process of sense of public responsibility by having a legal review system and thereby with consumer confidence.

2.8 Key words

Intensive: achieving a great deal in a short time, concentrated

Enforced: compel obedience to

Therapeutic: contributing to the relief of a disease

Seduce: tempt into wrong or unwise action

2.9 Self-Assessment Exercise

1. What are the general rules and regulations governing advertising in India.
2. Describe federal regulation of advertising.
3. Describe in detail the British regulation of advertising.
4. Describe the ethics in advertisements and their role in advertising.
5. Write down various consumer organizations in advertising with their modus operandi in their operation area.
6. Describe voluntary controls in advertising. How these differ from act in their function?

2.10 Suggested Readings

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Course Code: 03

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Lesson: 03

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Advertising Agencies, Advertising Standards Council of India & Case Studies

STRUCTURE

- 3.1 Objectives
- 3.2 Introduction-Standards for Practice for Advertising Agencies
- 3.3 Advertising Standards Council of India, Cases
- 3.4 Summary
- 3.5 Key words
- 3.6 Self Assessment Exercise
- 3.7 Suggested Readings

3.1 OBJECTIVES

The objective of this lesson is to acquaint the students with the advertising agencies & the code of conduct for them. The lesson also deals with Code of Advertising by ASCI & the case studies of national & corporate sector.

3.2 INTRODUCTION

Advertising is an integral part of our social & economic systems. It has become a vital communication system both for the consumers and business houses. The main objective of advertising to prepare, promote and

place messages to target audiences has given it a major role in the complex society today. From retailers to big business houses, rely on advertising to promote their goods & services.

ADVERTISING is a multi-dimensional discipline. It performs various functions and involves a wide variety of sub-disciplines that require specialized talents. Advertising communicate an idea, a message or a belief. The message could be commercial or social. In the advertising communication process there are five key players:

- a) The Advertisers
- b) The Advertising Agencies
- c) The Support Organizations
- d) The Media
- e) The Consumers

The advertisers almost always use advertising agencies who assisted by support organizations plan, produce and place the advertisements in the various mass media to persuade potential consumers.

Advertising agency, an outside firm that specializes in the creation, production and/or placement of the communication message and that may provide other services to facilitate the marketing & promotion process. Advertising agencies work for the client.

**STANDARDS OF PRACTICE FOR ADVERTISING
AGENCIES**

The advertising agencies plan, prepare and place advertisement in the media. While preparing the advertising agencies have to keep in mind the ethics & rules of conduct for advertising.

STANDARDS OF PRACTICE FOR ADVERTISING AGENCIES

(As approved by the Advertising Agencies Association of India, Bombay)

1. Every member of the Association shall carry on his profession and business in such a manner as to uphold the dignity and interests of the Association.
2. Every member shall refrain from canvassing Advertisers or prospective Advertisers in such a way as to reflect detrimentally upon Advertising Agents as a whole or this Association or any advertising Agent in particular.
3. Canvassing is permitted subject to the condition that a member may make known to the client of another member its own capabilities as an Advertising Agency but may not submit a specific report or detailed recommendations concerning the clients' advertising unless so requested by him in writing.
4. No member shall pay or undertake to pay or allow to an advertiser or his agent or representative, the whole or any portion of the standard rate of commission resulting or to result to such member from any advertising medium nor promise or procure or undertake to procure advertising space or facilities free of charge, in any advertising, or at a reduced rate, nor supply fee or partly free to any advertiser, any advertising material, including finished drawings, or other art work, photographs, blocks stereos, matrices or the like, typesetting or printing nor defray in whole or in part the

salary of any employee of an advertiser, nor grant any allowances, discount or the like nor render any service having the effect of rebating the commission allowed by an advertising medium. The sharing of commission with member or overseas agency or with agent by this Association shall, however, be permitted.

5. The practice of submitting speculative campaigns is unhealthy to the growth of the advertising services and any member of the Advertising Agencies Association of India shall submit no speculative campaign.

By speculative campaign, it is meant, producing a campaign unsolicited by an advertiser and equally producing a campaign where the advertiser had requested one or more advertising agencies to do so, unaccompanied by a firm offer of business. That member shall notify the Secretary of the Association if prospective advertiser made any such queries, and that the Secretary to all members shall circulate such information.

6. Any member relinquishing an Account on the ground of slow payment, doubtful credit or incurring a bad debt, shall immediately notify the Secretary of the Association and such information shall be circulate din strictest confidence for information and protection of the members.
7. No business shall be accepted which is conditional upon the payment of commission fee or reward to a third party not a full time employee of the members either for introducing the business or for services in connection with the account thereafter. This rule, however, shall not preclude a member from employing copywriters

or production men at fees commensurate with the values of their work.

Obligation to Clients

1. Member Agencies must continue to render full Agency Service in reasonable conformity to the Association Agency Service Standards.
2. Members shall retain either commission granted by media owners or charge the clients a service fee, which shall never be less than 15 per cent of the Client's gross expenditure.
3. Nor shall they supply material for advertising on any basis that can be considered as direct or indirect or secret, rebating. Where the Media Owner allows no commission, the member will charge his clients minimum of 15 per cent on the gross cost.
4. Members will not accept discounts or commission, other than the regular agency commission allowed by the publishers without the client's knowledge and consent.
5. Members shall at all times use their best efforts to obtain for their clients the lowest rates to which such clients are entitled.

Obligation to Suppliers

Members shall take all steps to assure themselves as to the financial soundness of their clients.

Obligation of Fellow Agencies

1. Members are required to use fair methods of competition; not to offer services enumerated above or services in addition to them without adequate remuneration or extension of credit facilities or banking services.
2. Members shall neither prepare nor place any advertisement in any medium, which
 - (a) is knowingly a copy or a plagiarism of any other advertisement of any kind whatsoever;
 - (b) makes attacks of a personal character, or makes uncalled for reflections on competitors or competitive goods;
 - (c) is indecent, vulgar, suggestive, repulsive or offensive either in them or treatment;
 - (d) is objectionable medical advertising and an offer of free medical treatment, advertising that makes remedial or curative claims, either directly or by inference, not justified by the facts of common experience;
 - (e) concerns a product known to the members to contain habit forming or danger drugs; or any advertisement which may cause money loss to the reader, or injury in health or morals or loss of confidence in reputable advertising and honorable business or which is regarded by the Executive Committee of the Advertising Agencies Association of India, as unworthy.

In the event of a member providing to the satisfaction of the Executive Committee that a client has withdrawn his Account on the grounds of the Member's refusal to undertake unethical Advertising (as described above) no other member shall accept any business whatever from the said clients.

3.3 ADVERTISING STANDARDS COUNCIL OF INDIA

Adventures, Advertising Agencies & the Media are well aware that the consumer groups and the public are often critical of the 'manipulative' and 'deceptive' methods. Thus the advertising organizations have drawn up codes of ethics with the hope of regulating and disciplining the profession. The Advertising Standards Council of India (ASCI), a body, which brings together advertisers, advertising agencies and the media, has drawn up detailed and elaborate codes. ASCI is a non profit organization set up by 43 founder members who are involved with advertising in one way or the other. ASCI decision is binding on its members. It proposes to adjudicate on whether an advertisement is offensive. It deals with government if there are any disputes.

ASCI inspired by codes drawn by the Advertising Standards Authority (ASA), U.K. It seeks to achieve the acceptance of fair advertising practice in the best interest of the ultimate consumer.

CODE OF THE ADVERTISING STANDARDS COUNCIL OF INDIA

CHAPTER – I

To Ensure the Truthfulness and Honesty of representations and claims made by Advertisements and to safeguard against misleading Advertisements.

1. Advertisements must be truthful. All descriptions, claims and comparisons, which related to matters of objectively ascertainable fact, should be capable of substantiation as and when called upon to do so by the Advertising Standards Council of India.
2. Where advertising claims are expressly stated to be based on or supported by independent research or assessment, the source and date of this should be indicated in the advertisement.
3. Advertisements should not contain any reference to any person, firm or institution without due permission; nor should a picture of any generally identifiable person be used in advertising without due permission.
4. Advertisements shall not distort facts nor mislead the consumer by means of implications or omissions. Advertisement shall not contain statements or visual presentations, which directly or by implication or by omission or by ambiguity or by exaggeration are likely to mislead the consumer about the product advertised or the advertiser or about any other product or advertiser.
5. Advertisements shall not be so framed as to abuse the trust of consumers or exploit their lack of experience or knowledge. No advertisement shall be permitted to contain any claim so exaggerated as to lead to grave or widespread disappointment in the minds of consumers. For example :

- (i) Products shall not be described as 'free' where there is any direct cost to the consumer other than the actual cost of any delivery, freight or postage. Where such costs are payable by the consumer, a clear statement that this is the case shall be made in the advertisement.
- (ii) Where a claim is made that if one product is purchased another product will be provided 'free', the advertiser is required to show as and when called upon by 'The Advertising Standards Council of India that the price paid by the consumer for the product which is offered for purchase with the advertised incentive.
- (iii) Claims that use expressions such as "Upto five years guarantee" or "Prices from as low as Y" are not acceptable if there is a likelihood of the consumer being misled either as to the extent of the availability or as to the applicability of the benefits offered.
- (iv) Special care and restraint has to be exercised in advertisements addressed to those suffering from weakness, any real or perceived inadequacy of any physical attributes such as height or bust development, obesity, illness, impotence, infertility, baldness and the like to ensure that claims or representations, directly or by implication, do not exceed what is considered prudent by generally accepted standards or medical practice and the actual efficacy of the product.
- (v) Advertisements inviting the public to invest money shall not contain statements which may mislead the consumer in

respect of the security offered, rates, of return or terms of amortization; where any of the foregoing elements are contingent upon the continuance of or change in existing conditions, or any other assumptions, such conditions or assumptions must be clearly indicated in the advertisements.

- (vi) Advertisements inviting the public to take part in lotteries or price competitions permitted under the law or which hold out the prospects of gifts shall state clearly all-material conditions so as to enable the consumers to obtain a true and fair view of their prospects in such activity. Further, such advertisers shall make adequate provision for the judging of such competitions, announcement of the results and the fair distribution of prizes or gifts according to the advertised terms and conditions within a reasonable period of time. With regard to the announcement of results, it is clarified that the advertiser's responsibility under this, section of the Code is discharged adequately if the advertiser publicizes the main results in the media used to announce the competition as far as is practicable, and advises the individual winner by post.

- 6. Obvious untruths or exaggerations intended to amuse or to catch the eye of the consumer are permissible. Provided that they are clearly to be seen as humorous or hyperbolic and not likely to be understood as making literal or misleading claims for the advertised product.

CHAPTER II

To ensure that Advertisements are not offensive to generally accepted standards of Public Decency. Advertisements should contain nothing indecent, vulgar or repulsive, which is likely, in the light of generally prevailing standards of decency and propriety, to cause grave or widespread offence.

CHAPTER III

To safeguard against the indiscriminate use of Advertising in situations or for the promotion of products which are regarded as Hazardous to society or to Individuals to a degree or of a kind which is unacceptable to society at large.

- (i) No advertisement shall be permitted which:
 - (a) Tends to incite people to crime or to promote disorder and violence or intolerance.
 - (b) Derides any race, caste, color, creed or nationality.
 - (c) Presents criminality as desirable or directly or indirectly encourages people-particularly children to emulate it or conveys the modus operandi of any time.
 - (d) Adversely affects friendly relations with a foreign state.
- (ii) Advertisements addressed to children shall not contain anything, whether in illustration or otherwise, which might result in their physical, mental or moral harm or which exploits their vulnerability. For example, no advertisement

- (a) Shall encourage children to enter strange places or to converse with strangers in an effort to collect coupons, wrappers, labels or the like.
 - (b) Should depict children leaning dangerously outside windows, over bridges or climbing dangerous cliffs and the like.
 - (c) Should show children climbing or reaching dangerously to reach products or for any other purpose.
 - (d) Should show children using or playing with matches or any inflammable or explosive substance; or playing with or using sharp knives, guns or mechanical or electrical appliances, the careless use of which could lead to their suffering cuts, burns, shocks or other injury.
 - (e) Advertisements shall not, without justifiable reason, show or refer to dangerous practices or manifest a disregard for safety or encourage negligence.
- (iii) Advertisements should contain nothing, which is in breach of the law, or omit anything, which the law requires.
 - (iv) Advertisements shall not propagate products, the use of which is banned under the law.

CHAPTER IV

To ensure that advertisements observe Fairness in Competition such that the Consumer's need to be informed on choices in the market place and the canons of generally accepted competitive behaviour in Business is both served.

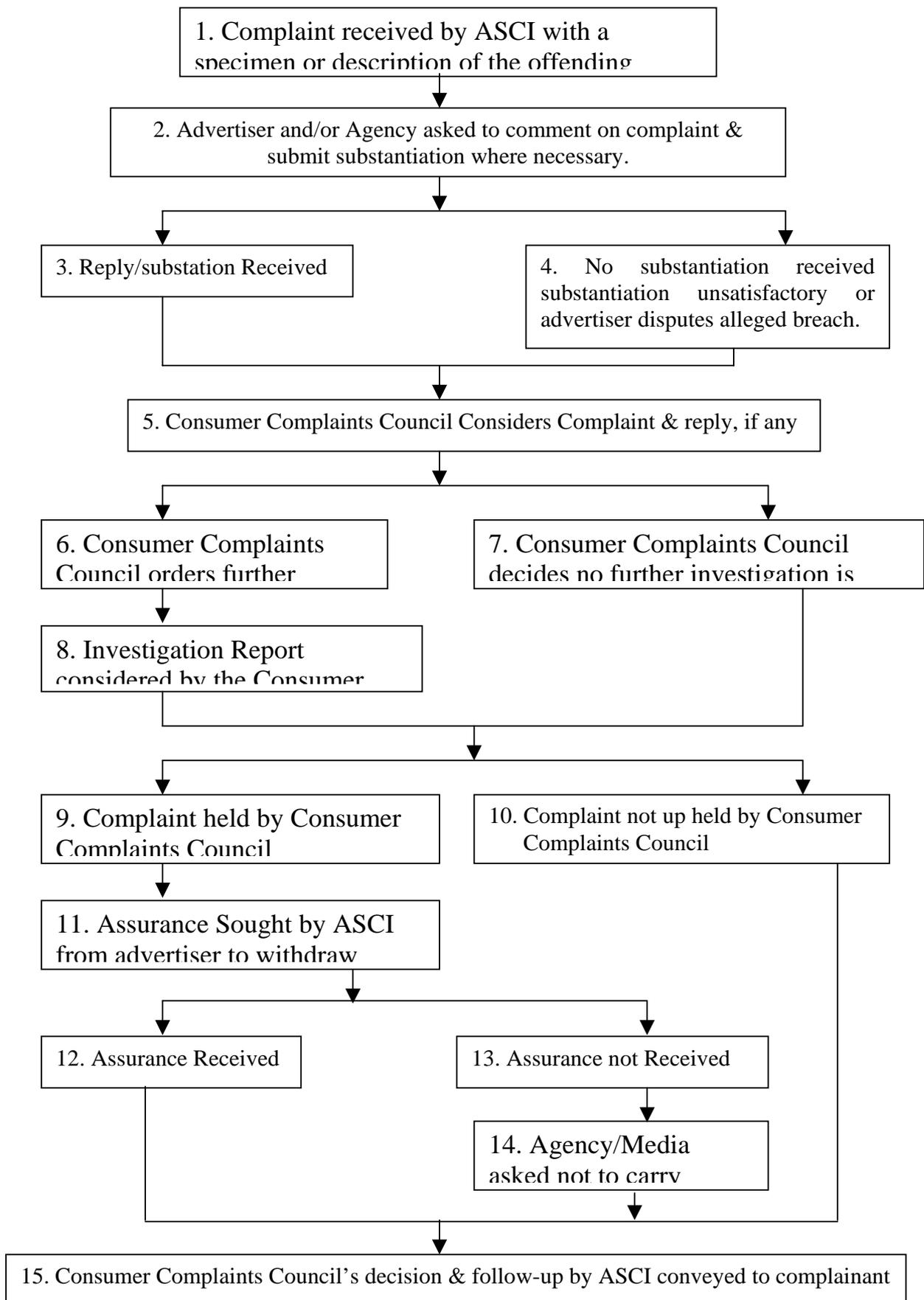
- (i) Advertisements containing comparisons with other manufacturers or suppliers or with other products, including those where a competitor is named are permissible in the interests of vigorous competition and public enlightenment, provided:
 - (a) It is clear that aspects of the advertiser's product are being compared with what aspects of the competitor's product.
 - (b) The subject matter of comparison is not chosen in such a way as to confer an artificial advantage upon the advertiser or so as to suggest that a better bargain is offered than is truly the case.
 - (c) The comparisons are factual, accurate and capable of substantiation.
 - (d) There is no likelihood of the consumer being misled as a result of the comparison, whether about the product advertiser or that with which it is compared.
 - (e) The advertisement does not unfairly denigrate attack or discredit other products, advertisers of advertisements directly or by implication.
- (ii) Advertisements shall not make unjustifiable use of the name or initials of any other firm, company or institution, nor take unfair advantage of the goodwill attached to the trademark or symbol of another firm or its product or the goodwill acquired by its advertising campaign.
- (iii) Advertisements shall not be so similar to other advertisements in general layout, copy, slogans, visual presentations, music or sound effects as to be likely to mislead or confuse consumers.

ASCI have also established a Consumer Complaints Council (CCC) to examine complaints received 14-member sub-committee of ASCI consisting of people from various walks of life – Medicine, low media. The committee

hears a complaint from a member of the public and examines it on the basis of the code. Comments from the advertisers or the ad agency are asked & to submit a substantiation. If the complaint is with ASCI, the advertiser has to withdraw the ad. The full process takes two months.

The following figure presents the method of processing a consumer complaint in ASCI.

PROCESSING A CONSUMER COMPLAINT



CASES

Some typical recent Indian Advertisements can be noted which created flutter among the consumers and few offenders have been hauled up also. Macro has given a long list of such complaints handled by ASSCIU, which have been upheld.

1. **Obscene:** the complaints felt that either the visual or copy or both were obscene or in bad taste. The erring advertisers were Mannequins-visual for Vitamin E Sin Oil; Cholaiyal Pharmaceuticals ad for Medimix Ayurvedic Soap using obscene visual of Krishna and Gopi ; Maxwell industries – both visual and copy for VIP Brand Underwear ; Apache Jean (P) Ltd., both visual and copy.
2. **Objectionable :** Bharat Beedi – showing child to present the brand. Some liquor manufacturing companies have been hauled up by MRTP Commission for by passing the legal provision restricting spirituous product. The concerned rule states. “No person shall print or publish in any newspaper, booklet or any other publication, or otherwise display or distribute any advertisement or other matter soliciting the use of or offering any liquor or intoxicating drug”.

The word king of the law, however, differs from state to state though the content is the same.

3. **Misleading:** Misleading advertisements usually make claims which can be generally categorized as puffery claims, data based claims and testimonial claims. While puffery claims are made without implying scientific bases for it, data based claims are simply that a test / study/ count or some kind of scientific effort has been made to produce the basis for the claim. Using name, signature, photograph etc makes false testimonial claims.

Let us quote a few examples of these types of misleading claims
Complaints were lodged against Kelvinator India who claimed the performance of Avanti 150 cc two wheeler, Racold Appliances claiming their washing machine as the only automatic one, Glindia claimed “Drinking Complain helps one to emerge as top-ranker”. TTK & Co. claimed only new prestige was 100 per cent safe and it was safest.

4. **Sexy:** Advertising is often put on the docks for exploiting and projecting sexist themes. Guidelines on this era are “woefully sketchy” no doubt, yet the changing value system and the contemporary norms of the society are overlooked very often by

the traditional approach towards sex, creates embarrassment to a particular segment who are quick to react to such advertising negatively. Many of these have been found to be objectionable by the law enforcing authorities had to be withdrawn. But many others have been allowed considering the logic and reasonableness behind the creative strategies. The most controversial in this category are the advertising on condoms. On the question of Kamasutra campaign raising a storm, Alyque Padamsee of the campaign was straight –forward and honest in his answer. He said, “The kamasutra campaign is not hypocrisy. It is a plain speaking. A condom is usedfor sex. And this ad says if you are using a condom for sex, this is something that instead of turning you off will turn you on. This is not sermonizing

Advertising is a very powerful institution and has been the target of considerable criticism regarding its social impact. The criticism of advertising concerns the specific techniques and methods used as well as its effect on societal values, tastes, lifestyles and behavior. Critics argue that advertising is deceptive and untruthful. Many people believe that it should be informative only & the advertisers should not use subjective claims, puffery, embellishment or persuasive techniques.

MR Filter Coffee

MR Filter Coffee's new ad with a visual of a young couple in an intimate embrace and a head-line 'real pleasure can't come in an instant' stirred up controversy. Some find it irrelevant and some unethical.

The concept is meaningful. Anything good in life does not come in an instant. It has to mature. But the concept has been executed badly. It projects a brand personality of reckless youth rather than that of a mature and traditional product. It sensationalizes to generate sales.

In this age of satellite channels of TV dishing out MTV-fare, The Bold and The Beautiful and the Santa Barbara-like soaps; Hindi films with numbers like Dhoom and awareness magazines like Fantasy, is it not puritanical to fault one ad and call it unethical. Besides the ad is meant for a target audience of youth.

Malaika Arora was the MR Coffee girl. For her it is just another assignment.

Storyline of the commercial:

A young upwardly mobile lawyer entering the house.

A woman in shirt perched on a stool.

There is a cut to lid of coffee.

The woman gets imbalanced to lock her legs around the man's hips.

They twirl around; and move to a bed.

There are shots of a gas burner, coffee beans and the rest as cutouts.

The action accentuates. The woman pulls off the men's specs, loosens his tie and begins to pull off his shirt.

Few steamy shots as the coffee brews. They do too.

They enjoy a cup of coffee post-coital.

The VO: real pleasure can't come in an instant. MR Filter Coffee.

Longer to brew, but unforgettable.

Alayque Padamsee called this the tastiest campaign in bad taste.

LIP SERVICE: LIP-STICKS AND LIP-GLOSS

Lip-sticks and lip-gloss are glamorous products being marketed in India by three companies: Lakme, Max Factor and Gala. Lip-stick is a fragrant combination of waxes, vegetable oils, fatty emollients – lanolin (obtained from sheep's wool) and pigments (or permissible dyes). All these are ground at a particular temperature and poured into respective moulds and frozen.

Lip-stick has fat as its base. It is a shiny stick. It is mounted on a propeller. It moves up and down the groove in a plastic sleeve. Lip-gloss has oily base. The additives of it form a thin film on the lips. It is creamy or in liquid form. It has a small percentage of wax, pigments, and dyes.

Roll-on lip-gloss has colors mixed in oil.

The retail price is high on account of heavy excise duty (105%).

Cheap brands of lip-sticks make use of cheap wax like paraffin wax, instead of bee wax. They also use lead carbonate, instead of pear, for a shine. They do not use specified colors. They use poor lubricants (which give rise to bacteria) that shorten its life. However good, a lip-stick has a life-span of not more than 2-3 years.

Demerits of these Products

Even quality brands turn hard, become rancid because of perfume and taste bitter due to oxidation. All lipsticks are prone to oxidation. You may feel a burning sensation on application, which might darken your lips considerably. Toxic cosmetic colors are immediately transferred to blood. Data regarding toxicity of colors is always getting dated. In USA, they discard two colors every year. We have 70 odd chemical color compositions as against 20 in the USA. Lip-sticks with permitted colors can also damage the lips since the stains are tetra-bromo-fluorosine. When rubbed against the palm, darkness of the stain will indicate the quantity of stain present.

Darkening of lip color also depends upon the bio-chemistry of individual's lips.

COMPLAN

- Formulated by Glaxo, UK as 'complete planned food.'
- Found its way into emergency rations for British soldiers during the Second World War.
- First positioning 'meal in a tea cup' for famished men in the army. 'Complete meal for soldiers.'

- Glaxo India's largest brand. Sales touching Rs.60Crore. Launched in 1967 in India.
- Milk beverages market currently estimated at Rs. 300crore. 70 % of the markets of white beverage. Complian's share is a third of this market.
- Market has stagnated in the last four years. Complian has however managed a 10 percent annual growth rate.
- First positing in India.
- Ideal food supplement for aged and recuperating promotion; ethical.
- Complete food aspects of the brand, 23 vital foods as against 9 contained in milk.
- Positioning fuzzy.
- Targeting a too narrow segment.
- Larger targeting; growing children. Make it tastier and appeal to kids.
- Chocolate variant made its entry.
- Tasty nutrition drink.
- Flavour cardamom saffron.
- Mass media campaign while continuing ethical promotion through chemists and doctors.
- Communication strategy ;
- To create a personality for the brand :
- "I am the Complian boy; I am the Complian Girl."
- SP schemes to keep excitement alive.
- Plain Complian: lower priced chocolate Complian: high growth segment Cardamom Saffron.

- Started pushing one of its new flavors –mango – and promoting a new usage habit for it (mix with cold milk- milk shake). Best selling flavor for complan after chocolate.

Competition

Active 25	Complete	GRD	Instanto
1987	Jagjit Industries	Cadilla	Warner
Dalmias			
Enriche	Nutriplan		

Cadbury

Most faded away. Active 25 and Nutriplan have less than 1 p.c share.

Horlicks and Bournvita are “food substitutes’ and another category altogether.

TATA FINANCE-'Peace of Mind'

In the early 1980s the Indian economy was still to wake up to the liberalization era. Laws and regulations tied numerous projects into inextricable knots. Taxation laws were tougher still. Indian business groups suddenly discovered the advantages of having their own finance companies. These subsidiaries gave them an option of borrowing money from the market; dabble in the stock market and in the process save a lot of money on taxation. A whole new breed of companies was born! Almost every company got into the act and set up a finance company. How many would

survive? How many would grow? How many would become institutions?

TATA FINANCE

Tata Finance Ltd. was set up in the early 1980s with the objective of becoming a financial institution, offering a wide range of services to investors, group companies and associates. Tata Finance, built on the strong foundation of the Tata Group, grew slowly and steadily. While many other finance companies took the adventurous route, the risky route, Tata Finance played it by the rules, building its brand equity in the retail and the institutional markets.

Fund Based And Non-Fund Based Activities.

A Non-Banking Financial Company (NBFC) basically 'buys' and 'sells' money and arranges for the 'purchase' and 'sale' of money.

'Fund based activities' are activities whereby the NBFC borrows money from the market by taking fixed deposits or cumulative deposits from retail investors and giving them an extra 4-5 per cent that is offered as opposed to the interest offered by banks. The NBFC then uses this money for fund-based activities like hire purchase and lease of assets. Non –Fund based activities' involve areas like loan syndication, merchant banking etc. wherein the NBFC is not funding the activity but is arranging for the fund, by acting as an intermediary, and earn their income through a commission system.

Tata Finance Positioning

In this overheated market, Tata Finance decided to position itself as "the finance company from India's largest business house" -the Tata Group. The Tata Finance brand was to stand for stability and integrity. The focus was on providing steady, yet adequate returns and complete safety and security.

Tata finance decided to strengthen certain areas of its operations to take on its aggressive rivals:

- Never compromise the Tata Finance name.
- Set up front offices across the country – 28 branches were set up each reflecting the Tata Finance brand equity.
- Provide the best possible service to the retail customer.

Issuing Facing Tata Finance

Tata Finance stood for stability and reliability. However, in the NBFC market, it was not seen as a 'big' name. In fact, NBFCs like Sundaram Finance had a much bigger 'halo' in the market.

Tata Finance was perceived as a 'truck' finance company, or, at best, a company with a primary focuses on financing 'Tata' products only. The range covered the entire spectrum from a retired schoolmaster in a small town (who is the FD target customer) to the Managing Director of a medium sized company in a metro city (who wanted Tata Finance to arrange for a

bridge loan).

Tata Finance came out with a three ad (press) image-building campaign. The three ads spoke of three specific areas of activities of Tata Finance: hire purchase, fixed deposits and loan syndication. The ads were released in color and in large size in leading dailies and magazines, given the objective that Tata Finance had to be seen as:

- a large company
- a multi-dimensional company
- a progressive company

Tata Finance FDs: Not just a deposit

Tata Finance FDs had to be positioned differently, not just on dimensions of safety or returns. From this insight was born the tag line:

'Tata Finance Fixed Deposits. Not just an investment. A friend'.

It was felt that Tata Finance, with its strong track record of being a safe trust worthy investment option, spelt 'worry-free' investments for the investor.

From here was born the theme: "Peace of Mind!"

The press copy went on to say that Tata Finance fixed deposits have one key benefit (not offered by many others): Peace of Mind!

Tata Finance FDs: The Growth

The concerted brand building campaign in media, the front-office strategy, the well motivated selling team and a strong focus helped Tata Finance to overtake well established brands and become the number one in FDs in the late 1990s.

Tata Finance is now poised to make strong, but careful moves into newer territories like auto loans, as the middle class customer expands his basket of needs.)

3.4 Summary

Advertising is an integral part of our social and economic systems. Advertisers, advertising agencies and the media are well aware that the consumer groups and the public are often critical of the manipulative and deceptive methods. Some important points from the code of the Advertising Standards Council of India are:

Advertising must be truthful. Advertisements shall not distort facts nor mislead the consumer by means of implications or omissions. Advertising shall not be so framed as to abuse the trust of consumers or exploit their lack of experience or knowledge.

3.5 Key words

Ethic: moral principle or framework

Defray: provide money to pay (costs)

Unsolicited: not requested

Commensurate: proportionate or corresponding

Plagiarism: take and use (another's writings etc.) as one's own

Exaggeration: represent as greater than in the case

Amortize: pay off gradually

Denigrate: criticize unfairly

Puffery: over complimentary review

Inextricable: impossible to escape from

3.6 SELF ASSESSMENT EXERCISE

Q.1 Discuss the various codes for advertising to be practiced by the advertising agencies in India.

Q.2 Give a brief account of codes setup by the Advertising Standards Council of India.

Q.3 Discuss any three cases of unethical Advertising in detail.

3.7 SUGGESTED READINGS

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Course Code:

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Lesson: 04

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Advertising Codes of Publishing Advertisements in Print & Electronic Media

STRUCTURE

- 4.1 Objectives
- 4.2 Introduction
- 4.3 Contents: General Rules of Conduct in Advertising
- 4.4 Print Media and Electronic media
- 4.5 Summary
- 4.6 Key words
- 4.7 Self Assessment Questions
- 4.8 Suggested Readings

4.1 OBJECTIVES

After going through this lesson, you will be able to come to know the Advertising Codes of publishing advertisement in various mass media viz. Print & Electronic Media

4.2 INTRODUCTION

Various media of mass communication are not only important but very powerful and essential system in today's world. Media has the power to

change the future of the society to a certain level. It can even make or unmake governments. In India, being a democratic form of government media enjoys lots of power & less of restrictions. But it is regulated & controlled by various laws & rules enacted from time to time.

Advertising has become an important social and economic force in the world today. The advertising people have responsibility to clientele of social, cultural and moral values of the community in which they function to promote commercial prosperity by selling their products or services or ideas to win customers and influence people. Advertisements should be truthful & should not distort facts or mislead the consumers. Therefore, it is essential that the advertisement that may alienate public confidence should be eliminated. Hence various laws to regulate the unfair advertising practices were made for various media. Besides some Acts, the Government has formed certain rules & regulations on the recommendation of various committees set up. Later on these rules may be notified in the official gazette for the purpose of Act. Further in this lesson we will discuss the general rules of conduct and the code of conduct in various media.

4.3 GOVERNMENT'S GENERAL RULES OF CONDUCT IN ADVERTISING

Certain general rules of conduct were laid by the government on the recommendation of “**Vergheese Committee Report**” in 1978 as follows:

1. Advertising should be so designed as to confirm, not only to the laws but also the moral, aesthetic & religious sentiments of the country.
2. No advertisement should be permitted

- a) Which divides any race, caste, colour, creed, nationality except where in such usage would be for specific purpose of effective dramatization; such as combating prejudice;
 - b) Which is against any of objectives, principles of provisions of the Constitution of India;
 - c) Which presents criminality as desirable, or furnish details of crime or imitation thereof;
 - d) Which tends to incite people to crime or to promote disorder, violence or breach of law;
 - e) Which would adversely effect friendly relations with foreign states;
 - f) Which exploits national emblem; or any part of the constitution, or the person or personality or national leader or state dignitary;
3. Advertisements for the following services are not acceptable
- a) Money tenders
 - b) Chit funds & saving schemes other than those conducted by nationalized or recognized banks.
 - c) Unlicensed employment service
 - d) Matrimonial agencies
 - e) Fortunetellers or sooth-sayers etc.
 - f) Who claims of hypnotism
4. Advertisement wholly or mainly must not be directed towards any religious or political end and have any relation to any industrial dispute.
5. Betting tips & guide books etc., relating to have racing or other games of shall not be accepted.

6. No advertisement shall contain references which are likely to lead public to infer that the product advertised or any of its gradients has some property or quality which is incapable of being established e.g. care for baldness
7. Scientific or statistical experts from technical literature etc.
8. Advertisers or their agents must be prepared to produce evidence to substantiate any claims or illustrations.
9. Advertisement should not contain disparaging reference to another product or service
10. Advertisement designed to confuse the consumer mind as
 - a) The imitation of the trademark or name of a competitor or the packaging or labeling of goods, or
 - b) The imitation of advertising devices, copy, layouts or slogans.
11. No advertisements of talismans, charms & character reading from photographs or such other matter as will trade on the superstition of general public shall be permitted.
12. No cigarettes and Tobacco products advertisements (for DD only)
13. In all other respects, the DG, AIR/DD will be guided for purpose of commercial broadcasting & telecasting on AIR/DD by code of ethics for advertising in India issued by the Advertising council of India as modified from time to time.

4.4 PRINT MEDIA

The Press Council of India was formed to protect the freedom of the press & the right to information. The Press Council of India has recommended certain guidelines for advertisement publishing in India.

ACCURACY & FAIRNESS

1. The press shall eschew publication of inaccurate, baseless, graceless, misleading or distorted material. All sides of the core issue or subject should be reported unjustified rumors and surmises should not be set forth as facts **obscenity and vulgarity to be eschewed.**

- a) Newspapers / Journalists shall not publish anything which is obscene, vulgar or offensive to public good taste.
- b) Newspapers shall not display advertisements which are vulgar or which, through depiction of a woman in nude or lewd posture, provoke lecherous attention of males as if she herself was a commercial commodity for sale.
- c) Whether a picture is obscene or not, is to be judged in relation to three tests; namely;
 - i) Is it vulgar and indecent?
 - ii) Is it a piece of mere pornography?
 - iii) Is its publication meant merely to make money by titillating the sex feelings of adolescents and among whom it is intended to circulate? In other words, does it constitute an unwholesome exploitation for commercial gain?

Other relevant considerations are whether the picture is relevant to the subject matter of the magazine. That is to say, whether its publication serves any preponderating social or public purpose, in relation to art, painting, medicine, research or reform of sex.

ADVERTISEMENTS

- a) Commercial advertisements are information as much as social, economic or political information. What is more, advertisements shape attitude and ways of life at least as much as other kinds of information and comment. Journalistic propriety demands that advertisements must be clearly distinguishable from editorial matters carried in the newspaper.
- b) Newspaper shall not publish anything, which has a tendency to malign wholesale or hurt the religious sentiments of any community or section of society.
- c) Advertisements, which offend the provisions of the Drugs and Magical Remedies (Objectionable Advertisement) Act, 1954, should be rejected.
- d) Newspaper should not publish an advertisement containing anything, which is unlawful or illegal, or is contrary to good taste or to journalistic ethics or properties.
- e) Newspapers while publishing advertisements shall specify the amount received by them. The rationale behind this is that advertisements should be charged at rates usually chargeable by a newspaper since payment or more than the normal rates would amount to a subsidy to the paper.

- f) Publications of dummy advertisements that have neither been paid for, nor authorized by the advertisers, constitute breach of journalistic ethics.
- g) Deliberate failure to publish an advertisement in all the copies of a newspaper offends against the standards of journalistic ethics and constitutes gross professional misconduct.
- h) There should be no lack of vigilance or a communication gap between the advertisement department and the editorial department of a newspaper in the matter of considering the propriety or otherwise of an advertisement received for publication.
- i) The editors should insist on their right to have the final say in the acceptance or rejection of advertisements, especially those which border on or cross the line between decency and obscenity.
- j) An editor shall be responsible for all matters, including advertisements published in the newspaper. If responsibility is disclaimed, this shall be explicitly stated beforehand.

ELECTRONIC MEDIA

(A) CODE FOR COMMERCIAL ADVERTISING OVER ALL INDIA RADIO

DEFINITION

In this code, unless the context otherwise requires:

- i) 'Government' means Government of India.
- ii) 'Director General' means the Director General, All India Radio, or any officer duly authorized by him on his behalf.

- iii) 'Advertiser' means any individual or organization including a commercial concern which has offered an advertisement for broadcast over the radio.
- iv) 'Advertising Agency' means any organization which is accredited to, registered with AIR as such.
- v) 'Advertisement' includes any item of publicity for goods or services inserted in the programmes broadcast by the competent authority in consideration of payment to All India Radio.
- vi) 'Spot Advertisement' means any direct advertisement mentioning product/services, their merit and other related details.
- vii) The term 'Sponsored Programme' means any programme material which is planned, produced and/or paid for by an organization or individual, including a commercial concern to be called 'the Sponsor' for the purpose of being broadcast over the Radio.

SCOPE

- a) The Director General, All India Radio, shall be the sole judge of the suitability or otherwise of an advertisement or a sponsored programme for broadcast and his decision in this regard shall be final.
- b) Broadcast time shall be sold to the Advertiser/Advertising Agencies at the sole discretion of the director General, All India Radio, according to the prescribed rates.
- c) The Advertisement must be clearly distinguishable from the programme.
- d) A sponsored programme shall constitute a substantive broadcast/programme, as distinct from material which

directly advertises any specific wares or goods/products/service. The name of the sponsor shall be broadcast immediately before and after the sponsored programme.

The sponsor shall, however, undertake to indemnify All India Radio against any legal claim that may be brought against it as a result of the broadcast of a Sponsored programme or any portion thereof.

INTRODUCTION

Advertising is an important and legitimate means for the seller to awaken interest goods and services. The success of advertising depends on public confidence; hence no practice should be permitted which tends to impair this confidence. The standards laid down here should be taken as minimum standards of acceptability which would be to be reviewed from time to time in relation to the prevailing norm of listeners' susceptibilities.

The following standards of conduct are laid down in order to develop and promote healthy advertising practices in All India Radio. Responsibility for the observance of these rules rests equally upon the Advertiser and the Advertising Agency.

All those engaged in advertising are strongly recommended to familiarize themselves with the legislation affecting advertising in this country, particularly the following and the Rules framed under them:

1. Drugs and Cosmetics Act, 1940.
2. Drugs Control Act, 1950.
3. Drugs and Magic Remedies (Objectionable Advertisement) Act, 1954.
4. Copyright Act, 1957.

5. Trade and Merchandise Marks Act, 1958.
6. Prevention of Food Adulteration Act, 1954.
7. Pharmacy Act, 1948.
8. Prize Competition Act, 1955.
9. Emblems and Names (Prevention of Improper Use) Act, 1950.
10. Consumer Protection Act, 1986.
11. Indecent Representation of Women (Prohibition) Act, 1986.
12. AIR/Doordarshan Code.
13. Code of Ethics for advertising in India issued by the Advertising Council of India (see Annexure I).
14. Code of Standards in relation to the advertising of medicines and treatments (see Annexure II).
15. Standards of Practice for Advertising Agencies (see Annexure III)
(The list is illustrative and not exhaustive).

THE CODE

II GENERAL RULES OF CONDUCT IN ADVERTISING

1. Advertising shall be so designed as to conform to the laws of the country and shall not offend against morality, decency and religious susceptibilities of the people.
2. No advertisement shall be permitted which :
 - i) derides any race, caste, colour, creed and nationality;
 - ii) is against any of the directive principles, or any other provision of the Constitution of India;
 - iii) tends to incite people to crime, cause disorder or violence, or breach of law or glorifies violence or obscenity in any way;

- iv) presents criminality as desirable;
 - v) adversely affects friendly relations with foreign States;
 - vi) exploits the national emblem, or any part of the Constitution or the person or personality of a national leader or State Dignitary;
 - vii) relates to or promotes cigarettes and tobacco products, liquor, wines and other intoxicants;
3. No advertisement message shall in any way be presented as News.
4. No advertisement shall be permitted the objects whereof are wholly or mainly of a religious, or political nature; advertisements must not be directed towards any religious or political end or have any relation to any industrial dispute.
5. Advertisements for services concerned with the following shall not be accepted :
- i) Money lenders;
 - ii) Chit Funds;
 - iii) Saving schemes and lotteries other than those conduct by Central and State Government Organizations, Nationalized or recognized banks and Public Sector Undertakings;
 - iv) Matrimonial agencies;
 - v) Unlicensed employment services;
 - vi) Fortune tellers of sooth-sayers etc. and those with claims of hypnotism;
 - vii) Foreign goods and foreign banks;
 - viii) Betting tips and guide books etc. relating to horseracing or other games of chance.

6. The items advertised shall not suffer from any defect or deficiency as mentioned in Consumer Protection Act, 1986.
7. No advertisement shall contain references which are likely to lead the public to infer that the product advertised or any of its ingredients has some special or miraculous or supernatural property or quality, which is difficult of being proved, e.g. cure for baldness, skin whitener, etc.
8. No advertisement shall contain the words 'Guarantee' or 'Guaranteed' etc. unless the full terms of the guarantee are available for inspection by the Director-General. All India Radio, and are clearly set out in the advertisement and are made available to the purchaser in writing at the point of sale or with the goods; in all cases, terms must include details of the remedial action available to the purchaser. No advertisement shall contain a direct or implied reference to any guarantee which purports to take away or diminish the legal rights of a purchaser.
9. Advertisers or their agents must be prepared to produce evidence to substantiate any claims or illustrations. The Director General reserves the right to ask for proofs and get them examined to his full satisfaction. In case of goods covered by mandatory quality control orders, the advertiser shall produce quality control certificates from the institutions recognized by the Government for this purpose.
10. Advertisements shall not contain disparaging or derogatory references to another product or service.

11. Testimonials must be genuine and used in a manner not to mislead the listeners. Advertisers or Advertising Agencies must be prepared to produce evidence in support of their claims.
12. No advertisement of any kind of jewellery (except artificial jewellery) or precious tones shall be accepted.
13. Information to consumers on matters of weight, quality or prices of products given shall be accurate.
14. Advertisements indicating price comparisons or reductions must comply with relevant laws.
15. No advertisement shall be accepted which violates AIR Broadcast Code reproduced below:
 - i) General AIR Code
 - ii) Criticism of friendly countries;
 - iii) Attack on religions or communities;
 - iv) Anything obscene or defamatory;
 - v) Incitement to violence or anything against maintenance of law and order;
 - vi) Anything amounting to contempt of court;
 - vii) Aspersion against the integrity of the President and Judiciary;
 - viii) Anything affecting the integrity of the Nation; and
 - ix) Criticism by name of any person.
16. Any such effects which might startle the listening public must not be incorporated in advertisements. For example, and without limiting the scope, the use of the following sound effects will not be permitted:

Rapid gunfire or rifle shots;

Sirens;

Bombardments;

Screams;

Raucous laughter and the like.

17. Any pretence in advertising copy must be avoided and such copy shall not be accepted by All India Radio. The 'simulation' of voices of a personality in connection with advertisements for commercial products is also prohibited unless bona-fide evidence is available that such personality has given permission for the simulation and it is clearly understood that stations broadcasting such announcements are indemnified by the advertiser or advertising agency against any possible legal action.

“Note: Advertisements concerning jewellery, foreign goods and foreign banks, besides that Indian Equity/Debenture issued for NRIs will, however, be accepted as far as the external service of All India Radio are concerned.”

ADVERTISING AND CHILDREN

18. No advertisement for a product or service shall be accepted if it suggests in any way that unless the children themselves buy or encourage other people to buy the products or services, they will be failing in their duty or lacking in loyalty to any person or organization.

19. No advertisement shall be accepted which leads children to believe that if they do not own or use the product advertised they will be inferior in some way to other children or that they are liable to be condemned or ridiculed for not owning or using it.
20. No advertisement likely to bring advertising into contempt or disrepute shall be permitted. Advertising shall not take advantage of the superstition of the general public.
21. No advertisements of talismans, charms and character-reading from photographs or such other matter as well as those which trade on the superstition of general public shall be permitted.
22. Advertising shall be truthful, avoid distorting facts and misleading the public by means of implications by false statements, as to:
 - (i) Character of the merchandise, i.e. its utility, materials, ingredients, origin, etc.
 - (ii)
 - (iii) Price of the merchandise, its value, its suitability or terms of purchase.
 - (iv) The services accompanying purchase, including delivery, exchange, return, repair, upkeep etc.
 - (v) Personal recommendations of the article or service;
 - (vi) The quality or the value of competing goods or the trustworthiness of statements made by others.
23. Testimonials of any kind from experts etc. other than Government recognized standardization agencies shall not be permitted.
24. No advertisement shall be permitted to contain any claim so exaggerated as to lead inevitably to disappointment in the minds of the public.

25. Methods of advertising designed to create confusion in the mind of the consumer as between goods by one maker and another maker are unfair and shall not be used. Such methods may consist in:
- (i) the imitation of the trademark of the name of competition or the packaging or labeling of goods; or
 - (ii) the imitation of advertising devices, copy, layout or slogans.
26. Indecent, vulgar, suggestive, repulsive or offensive themes or treatment shall be avoided in all advertisements. This also applies to such advertisements which in themselves are not objectionable as defined above, but which advertise objectionable books, photographs or other matter and thereby lead to their sale and circulation.
27. No advertisement in respect of medicines and treatments shall be accepted which is in contravention of the Code relating to standards for advertising of medicines and treatments as per Annexure II.

Note I: In all other respects, the Director General will be guided for purposes of commercial broadcasting in All India Radio by the Code of Ethics for Advertising in India as modified from time to time (relevant excerpts appended at Annexure I).

Note II: Notwithstanding anything contained herein, this Code is subject to such modification/directions as may be made/issued by the Director General from time to time.

Note III: All advertising agencies shall adhere to the standards of practice as prescribed by Advertising Agencies Association of India, Bombay, as given in Annexure III.

Procedure for the Enforcement of the Code

1. Complaints or reports on contraventions of the Code, received by All India Radio may in the first instance be referred by the Director General to the Advertisers' Association(s) concerned with request for suitable action.
2. If complaints under the Code cannot be satisfactorily resolved at Association(s)'s level, they shall be reported to the Director General who will then consider suitable action.
3. For any complaints under the Code received by All India Radio concerning a party outside the purview of the various member Association(s), the Director General will draw attention of such party to the complaint and where necessary, take suitable action on his own.

**(B) THE CODE FOR COMMERCIAL ADVERTISING OF
DOORDARSHAN**

Definitions

In this Code, unless the context otherwise requires:

- (i) Government' means, Government of India.
- (ii) 'Director General' means, the Director General, Doordarshan or any officer duly authorized by him on his behalf and includes the Director, Doordarshan Kendra.

- (iii) 'Advertiser' means any individual or organization including a commercial concern which has offered an advertisement for telecast over television.
- (iv) 'Advertising Agency' means any organization which is accredited to, recognized by or registered with Doordarshan as such.
- (v) 'Advertisement' includes any item of publicity for goods or services inserted in the programmes telecast by Doordarshan with a view to increasing sales.
- (vi) 'Spot Advertisement' means any direct advertisement mentioning product/services, their merits and other related details.
- (vii) 'Advertising Association' means an Association or Society or any other body of whose constituent members are Advertising Agencies registered/recognized or accredited to Doordarshan.

Scope

- (a) The Director General, Doordarshan, shall be the sole judge of the suitability or otherwise of an advertisement for telecast and his decision in this regard shall be final.
- (b) Doordarshan time shall be sold to the Advertisers/Advertising Agencies at the sole discretion of the Director General, Doordarshan, according to the prescribed rates.
- (c) The Advertisement should be clearly distinguishable from the programme by using suitable

wipes/blank, in order to avoid the message of the programme getting mixed up with the content and images of the advertisement.

Introduction

Advertising is an important and legitimate means for the seller to awaken interest in goods and services. The success of advertising depends on public confidence. Hence no practice should be permitted which tends to impair this confidence. The standards laid down here should be taken as minimum standards of acceptability which would be liable to be reviewed from time to time in relation to the prevailing norm of viewers' susceptibilities.

The following standards of conduct are laid down in order to develop and promote healthy advertising practices in Doordarshan. Responsibility for the observance of these rules rests equally upon the Advertiser and the Advertising Agency.

- (i) Drugs and Cosmetics Act, 1940.
- (ii) Drugs Control Act, 1950.
- (iii) Drugs and Magic Remedies (Objectionable Advertisement) Act, 1954.
- (iv) Copyright Act, 1957.
- (v) Trade and Merchandise Marks Act, 1958.
- (vi) Prevention of Food Adulteration Act, 1954.
- (vii) Pharmacy Act, 1948
- (viii) Prize Competition Act, 1955.
- (ix) Emblems and Names (Prevention of Improper Use) Act, 1950.
- (x) Consumer Protection Act, 1986.

- (xi) Indecent Representation of Women (Prohibition) Act, 1986.
 - (xii) AIR/Doordarshan Code.
 - (xiii) Code of Ethics for Advertising in India issued by the Advertising council of India.
 - (xiv) Code of Standards in relaxation to Advertising of Medicine and Treatments.
 - (xv) Standards of Practice for Advertising Agencies.
- (The list is illustrative and not exhaustive).

The Code

General Rules of Conduct in Advertising:

1. Advertising should be so designed as to conform to the laws of the country and should not offend against morality, decency and religious susceptibilities of the people.
2. No advertisement should be permitted which:
 - (i) derides any race, caste, colour, creed, nationality;
 - (ii) Is against any of the directive principles, or any other provision of the Constitution of India.
 - (iii) tends to incite people to crime, cause disorder or violence, or breach of law or glorifies violence or obscenity in any way;
 - (iv) presents criminality as desirable;
 - (v) adversely affects friendly relations with foreign States;
 - (vi) exploits the national emblem, or any part of the Constitution or the person or personality of a national leader or State Dignitary;

- (vii) related to or promotes cigarettes and tobacco products, liquor, wines and other intoxicants;
 - (viii) in its depiction of women violates the constitutional guarantees to all citizens such as equality of status and opportunity and dignity of the individual. In particular, no advertisement shall be permitted which projects a derogatory image of women. Women must not be portrayed in a manner that emphasized passive, submissive qualities and encourages them to play a subordinate, secondary role in the family and society. The portrayal of men and women should not encourage mutual disrespect between the sexes. Advertisers shall ensure that the portrayal of the female form is tasteful and aesthetic, and is within the established norms of good taste and decency.
3. No advertisement message shall in any way be presented as News.
 4. No advertisement shall be permitted the objects whereof are wholly or mainly of a religious, or political nature; advertisements must not be directed towards any religious or political and or have any relation to any industrial dispute.
 5. Advertisements for services concerned with the following shall not be accepted:
 - (i) Money lenders;
 - (ii) Chit funds;
 - (iii) Saving schemes and lotteries other than those conducted by Central and State Government Organizations, Nationalized or recognized banks and Public Sector Undertakings;
 - (iv) Matrimonial agencies;

- (v) Unlicensed employment services;
 - (vi) Fortune tellers or soothsayers etc., and those with claims of hypnotism;
 - (vii) Foreign goods and foreign banks;
 - (viii) Betting tips and guide books etc., relating to horseracing, or other games of chance.
6. The items advertised shall not suffer from any defect of deficiency as mentioned in Consumer Protection Act, 1986.
 7. No advertisement shall contain references which are likely to lead the public to infer that the product advertised or any of its ingredients has some special or miraculous or supernatural property or quality, which is difficult to prove, e.g. cure for baldness, skin whitener, etc.
 8. No advertisement shall contain the words 'Guarantee' or 'Guaranteed', etc., unless the full terms of the guarantee are available for inspection by the Director General, Doordarshan, and are clearly set out in the advertisement and are made available to the purchaser in writing at the point of sale or with the goods. In all cases, terms must include details of the remedial action available to the purchaser. No advertiser shall contain a direct or implied reference to any guarantee, which purports to take away or diminish the legal rights of a purchaser.
 9. Scientific or statistical excerpts from technical literature etc. may be used only with a proper sense of responsibility to the ordinary viewer. Irrelevant data and scientific jargon shall not be used to make claims appear to have a scientific basis they do not possess.

Statistics of limited validity should not be presented in a way as to make it appear that they are universally true.

10. Advertisers or their agents must be prepared to produce evidence to substantiate any claims or illustrations. The Director General reserves the right to ask for such proofs and get them examined to his full satisfaction. In case of goods covered by mandatory quality control orders, the advertiser shall produce a quality control certificate from the institutions recognized by the Government for this purpose.
11. Advertisements shall not contain disparaging or derogatory references to another product or service.
12. Imitation likely to mislead viewers shall be avoided.
13. Visual and verbal representation of actual and comparative prices and costs shall be accurate and shall not mislead on account of undue emphasis or distortion.
14. Testimonials must be genuine and used in a manner not to mislead the viewers. Advertisers or Advertising Agencies must be prepared to produce evidence in support of their claims.
15. The picture and the audible matter of the advertisement shall not be excessively 'loud'. This is to ensure that between the programme and the advertisement there is a smooth changeover avoiding jerkiness or shock to the viewers.
16. No advertisement of any kind of jewellery or precious stones shall be accepted.
17. Information to consumers in matters of weight, quality or prices of products where given shall be accurate.

18. Advertisements indicating price comparisons or reductions must comply with relevant laws.
19. No advertisement shall be accepted which violates AIR and TV Broadcast Code which is reproduced below :

GENERAL AIR/TV CODE

- (i) criticism of friendly countries;
 - (ii) attack on religions of communities;
 - (iii) anything obscene or defamatory;
 - (iv) incitement to violence or anything against maintenance of law and order;
 - (v) anything amounting to contempt of court;
 - (vi) aspersions against the integrity of the President and Judiciary;
 - (vii) anything affecting the integrity of the Nation; and
 - (viii) Criticism by name of any person.
20. Any such effects, which might startle the viewing public, must not be incorporated in advertisements. For example, and without limiting the scope, the use of the following sound effects will not be permitted:
Rapid gunfire or rifle shots;
Sirens
Bombardments
Screams
Raucous laughter and the like.
 21. Any pretence in advertising copy must be avoided and such copy shall not be accepted by Doordarshan Kendras. The 'simulation' of appearance or video of a personality in connection with

advertisements for commercial products is also prohibited unless bonafide evidence is available that such personality has given permission for the simulation and it is clearly understood that stations telecasting such announcements are indemnified by the advertiser or advertising agency against any possible legal action.

Advertising and Children

22. No advertisement for a product or service shall be accepted if it suggests in any way that unless the children themselves buy or encourage other people to buy the products or services, they will be failing in their duty or lacking in loyalty to any person or organization.
23. No advertisement shall be accepted which leads children to believe that if they do not own or use the product advertised they will be inferior in some way to other children or that they are liable to be condemned or ridiculed for not owing or using it.
24. Any advertisement which endangers the safety of the children or creates in them any interest in unhealthy practices, shall not be accepted, e.g. playing in the middle of the road, leaning dangerously out of a window, playing with match boxes and other goods which can cause accidents.
25. Children shall not be shown begging or in an undignified or indecent manner.
26. No advertisement likely to bring advertising into contempt or disrepute shall be permitted. Advertising shall not take advantage of the superstition or ignorance of the general public.

27. No advertisements of talismans, charms and character reading from photographs or such matters as well as those, which trade on the superstition of general public, shall be permitted.
28. Advertising shall be truthful, avoid distorting facts and misleading the public by means of implications and omissions. For instance, it shall not mislead the consumer by false statements, as to:
 - (i) the character of the merchandise, i.e. its utility, materials, ingredients, origin, etc.
 - (ii) the price of the merchandise, its value, its suitability or terms of purchase.
 - (iii) the services accompanying purchase, including delivery exchange, return, repair, upkeep etc.
 - (iv) personal recommendations of the article or service. The quality or the value of competing goods or the trustworthiness of statements made by others.
29. Testimonials of any kind from experts etc. other than Government recognized standardization agencies shall not be permitted.
30. No advertisement shall be permitted to contain any claim so exaggerated as to lead inevitably to disappointment in the minds of the public.
31. Methods of advertising designed to create confusion in the mind of the consumer as between goods by one maker and another maker are unfair and shall not be used. Such methods may consist in:
 - (i) the imitation of the trademark or name of competition or the packaging or labeling of goods; or
 - (ii) the imitation of advertising devices, copy, layout or slogans.

32. Indecent, vulgar, suggestive, repulsive or offensive themes or treatment shall be avoided in all advertisements. This also applies to such advertisements which in themselves are not objectionable books, photographs or other matter and thereby lead to their sale and circulation.
33. No advertisement in respect of medicines and treatments shall be accepted which is in contravention of the Code relating to Standards for advertising of medicines and treatments as per Annexure II.

Note I: In all other respects, the Director General will be guided for purposes of commercial telecasting in Doordarshan by the Code of Ethics for Advertising in India as modified from time to time.

Note II: Notwithstanding anything contained herein, this Code is subject to such modifications/directions as may be made/issued by the Director General from time to time.

Note III: All advertising agencies shall adhere to the standards of practice as prescribed by Advertising Agencies Association of India, Bombay.

Procedure for the Enforcement of the Code

1. Complaints or reports on contraventions of the Code, received by Doordarshan may in the first instance be referred by the Director General to the Advertisers' Association(s) concerned with request for suitable action.
2. If complaints under the Code cannot be satisfactorily resolved at association(s)'s level, they shall be reported to the Director General who they will consider suitable action.

3. For any complaints under the Code received by Doordarshan concerning a party outside the purview of the various member association(s), the Director General will draw attention of such party to the complaint and where necessary, take suitable action on his own.

(c) INTERNET

There is a boom in the advertising on Internet which is a matter of concern for regulators these days. Internet advertising is currently regulated by Government only. Many consumer and industry groups are concerned that some advertisers will use the new medium to get around regulations and restrictions on other promotional areas. In 1996, the Federal Trade Commission's Chairman Mr. Pitofsky issued a plea for voluntary industry codes rather than FTC rules & regulations, as many of the potential abuses of the internet may not fall into the area of deceptive or unfair advertising & promotional practices controlled by FTC's legal authority.

With regard to privacy, several consumer & industry groups have proposed significant restrictions in the way markets use the World Wide Web to get information from consumers, the types of information they can get, and what they do with this information. The restrictions that have been proposed include

- (i) Banning unsolicited e-mail that cannot be automatically screened out. The Direct Marketing Association and the Interactive Services Association propose requiring marketers who send unsolicited e-mail messages to use coding that will allow mail systems to automatically remove such messages.

- (ii) Disclosing fully & prominently both the marketer's identity and the use for which information is being gathered in every communication.
- (iii) Giving consumers the right to bar marketers from selling or sharing any information collected from them as well as to review the personal information collected.

In response to the privacy issue, Network Advertising Initiative (NAI, Group of Internet Usage Data & Information Companies) developed a self-regulatory code i.e. a set of principles in conjunction with FTC that provides consumers with explanations of internet advertising practices and how the practices affect both consumers & the internet itself. It has also launched a website to provide information about online advertising practice to the consumers.

Similarly Childrens' Online Privacy Protection Act of 1998 (COPPA) places tight restrictions on collecting information from children via the Internet and requires that websites directed at children and young teens have a privacy policy posted on their home page and areas of the site where information is collected.

The regulation is also being put on the use of spam or unsolicited e-mail laws are being made that would outlaw sending unsolicited e-mail after a consumer has sent on unsubscribe message.

As the use of internet advertising is increasing, the need for ethical standards & guidelines is also becoming greater.

4.5 Summary

Various media of mass communication are not only important but very powerful and essential system in today's world.

The Press Council of India was formed to protect the freedom of the press and the right to information. The Press Council of India has recommended certain guidelines for advertisement publishing in India. The code for commercial advertising over All India Radio and Doordarshan has also been given.

4.6 Key words

Eschewed: abstain from; avoid

Obscenity: offensive in its treatment of sexual matters; offending against moral principles

Lecherous: excessive sexual desire

Indemnify: protect and insure against penalties that he or she might incur

Derogatory: disparaging

Defamatory: attacking the good reputation of

Raucous: loud and harsh

Legitimate: in accordance with a law or rule; justifiable

Imitation: try to act or be like; copy

Simulation: imitate; pretend to feel

4.7 SELF ASSESSMENT QUESTIONS

- Q.1 Discuss the various Government General Rules of conduct in Advertising.
- Q.2 Throw light on the guidelines of Press council of India for the publishing of advertisements in India.
- Q.3 What the various code of Ethics for advertising in AIR.
- Q.4 Discuss the code of ethics for advertising in Doordarshan.
- Q.5 Write briefly on the regulations on Internet advertising.

4.8 SUGGESTED READINGS

- o) Rayudu, C.S. (1993) – “Media & Communication Management”; Himalaya Publishing House, New Delhi
- p) George E. Belch, Michael A. Belch; “Advertising & Promotion - An Integrated Marketing Communication Perspective;” Irwin McGraw Hill; 1999.
- q) Russel, Thomas & Verill, Glenn-Otto kleppners; “Advertising Procedure;” Prentice Hall; 1986
- r) Aren & Bovee; “Contemporary Advertising;” Tata McGraw Hill.
- s) Jethwaney, Jaishri N. – “Advertising”; 1999
- t) Communication Today – PRSI, Jaipur Chapter; July to Dec; 1998
- u) Keval J. Kumar, “Mass Communication in India’; Jaico Publishing House; 2004.

Course Code: Lesson: 05	Author: Mrs. Nupur Vetter: Dr. Bandana Pandey
Produce Code, Alcohol, Ammunitions, Drugs	

Structure

- 5.1 Objectives
- 5.2 Introduction
- 5.3 Product code of tobacco of U.K.
- 5.4 Product code of alcohol of U.K.
- 5.5 Product code of arms, and ammunition of U.K.
- 5.6 Product code of drugs of U.K.
- 5.7 Product code of tobacco of U.S.A.
- 5.8 Product code of alcohol of U.S.A.
- 5.9 Product code of arms and ammunition of U.S.A.
- 5.10 Product code of drugs of U.S.A.
- 5.11 Summary
- 5.12 Key words
- 5.13 Self assessment exercise
- 5.14 Suggested readings

5.1 Objectives

The objective of this lesson is to acquaint the students with advertising product codes of tobacco, alcohol, arms, ammunitions and drugs of U.K. and U.S.A.

5.2 Introduction

The consumers have no perfect knowledge of market place and must be protected by legal guarantees as to the authenticity of adversity claims. Numerous laws and codes have been passed and are enforced from time to time to protect the public from false and misleading advertising. Rules and product codes specially for consumer products viz., tobacco, alcohol, drugs and other products arms and ammunitions, which are in operation in U.K. and U.S.A. are described so that provision of codes can be strictly adhered to by both the consumers and advertisers in the best interest of company with the codes/provisions regarding these products

5.3 Product code of tobacco of U.K.

Law suits brought against U.S. cigarette manufacturers by smokers on various grounds are being awarded heavily with damages and costs as compared to that of U.K. Any suit against a manufacturer would almost have to be based on alleged negligence by the manufacturer (as long as the manufacturer's advertising was from free expressing a warrantee), would most likely be heard before a judge and not a jury and would have to be finest by the plaintiff with the risk of costs being awarded against him if he lost. It would therefore, be very much more difficult for a plaintiff to win

against a manufacturer in Britain and of course TRC's research programme takes into account the need for manufacture not being negligent in research.

The U.K. self regulation and its 1988 control of misleading advertisements regulation requires that advertiser develop substantiation prior to dissemination. Apart from these acts, Advertisement (higher purchase) Act, 1967, fair trading act, 1973 and trade description act, 1968 are some of the acts concerning with the protection of consumer's interest in advertising of tobacco product to observe the various provisions and guidelines while promoting their products. The prime need in the U.K. is for objectives and effective research and the most important factor external to TRC's research policy that conditions their action in smoking and health matters, is the necessity of avoiding clashes with the medical establishment.

5.4 Product code of alcohol of U.K.

In the U.K. as in other countries, alcoholic drinks are among the most heavily advertised products as 227.3 million pounds was spent on alcohol advertising in U.K. during the year 2000. Moreover, total value on indirect promotional activities for alcohol is in the range of 600-800 million pounds per annum. The advertising industries argue that bans on alcohol advertising would have adverse effects on the alcohol market and on the media and thus justified the advertising for promoting sales of individual brands.

Advertising is also concerned with recruiting new drinks and increasing sales among existing and especially heavy consumers. Intensive advertising and promotion of alcohol appears to sanction and legitimate use of a product, which causes high levels of damage to individuals and society. The advertising codes prohibit the specific targeting of minor. The possibility that alcohol advertising can have socially adverse effects is already recognized in the special rules drawn up in relation to how, where and when alcoholic drinks can be advertised.

Since 1996, the alcohol industry's Portman Group has operated a voluntary code of practice regulating the market of alcoholic drinks with particular reference to young people, covering the naming, packaging and promotion of alcohol drinks but not advertising.

On November 1, 2004, the Advertising Standards Authority assumes responsibility for all advertising standards and consumer complaints both broadcast and non-broadcast. Spirits were not advertised on commercial television due to voluntary agreement made between the manufacturers and T.V. companies' in 1965 and this agreement was abandoned with effect from June 1995.

5.4.1 British Codes of Advertising Practices

Advertisements must not suggest that alcohol can contribute to an individual's popularity or confidence or that refusal is a sign of weakness. Nor may they suggest that alcohol can enhance personal qualities.

Advertising must not suggest that the success of a social occasion depends on the presence of consumption of alcohol.

Advertising must not link alcohol with daring, toughness, aggression or social behaviour, sexual activity or success, enhancing attractiveness, overcoming of problems, use of potentially dangerous machinery and with behaviour, which would be dangerous after consuming alcohol.

Advertisements must not suggest that alcohol has therapeutic qualities nor offer it as a stimulant, sedative, mood changer to boost confidence. There must be no suggestion that physical or other performance may be improved by alcohol or that it might be indispensable. It must not suggest that a drink is to be preferred because of its alcohol content or place undue emphasis on alcohol strength. Advertisements must not show, imply or encourage immoderate drinking with regard to amount of drink and to the way drinking is portrayed. References to or suggestions of buying repeat rounds of drinks are not acceptable.

Additional rules for alcohol advertisements

A. (i) Advertisements for alcoholic drinks must not be likely to appear strongly to people under age of 18, in particular by reflecting or being associated with young culture.

(ii) Children must not see or hear and no one who is or appears to be under age of 25 years may play a significant role in advertisements for alcohol drinks. No one may behave in an adolescent or juvenile way.

(iii) It must be explicitly clear that anyone who appears to be under the age of 18 is not drinking alcohol and anyone who is or appears to be under 25 must only have an incidental role.

B. Advertisements for alcoholic drinks must not show, imply or refer to daring, toughness, aggression or unruly, irresponsible or social behaviour.

C. Advertisements for alcoholic drinks must not appear to encourage irresponsible consumption.

D. Advertisements must not show normally alcohol being drunk in a working environment.

E. Alcoholic drinks must not advertise in a context of sexual activity or seduction but may include romance and flirtation subject to rule 11.8.2 (a) (youth appeal).

In U.K. during 1990, much debate was concerning 'alcopops', alcoholic 'soft drinks' such as lemonade and cola containing up to 5 per cent alcohol as marketing of such drinks in the name of lemonade, cola and orangeade etc. normally associated with children and encouraged under age drinking and that the products were being specifically targeted at children and young teenagers. On 17th April 1996, the Portman Group announced its new guidelines, which do not ban the use of the words 'lemonade and cola'. The new guidelines ban the use of characters and imagery that would appeal to under 18, also ban containers in anti-social shapes and names that suggest aggression, violence, danger or sexual success. It requires retailers to display the drinks on shelves in alcohol sections, and not mix them in chillers with soft drinks. As the Portman Group code is entirely voluntary and there is no means of forcing manufacturers or retailers to comply with it that are unwilling to do so.

After the first edition of the code was adopted in April 1996, there was introduction of third edition of the Code of Practice on the naming, packaging and promotion of alcoholic drinks in March 2003. The text of this code supersedes all previous editions and complaints received on or after March 1, 2003 will be considered under this code in context to its framed general principles, provisions or rules of the current code of practice keeping in view of various suggestions given.

As per national regulation in Ireland, a legal ban on spirits advertising on T.V. and radio and alcohol advertisements may not be shown before sports programmes. The same advertisement may not appear more than twice per night on any one channel. On other media, a voluntary code is in operation.

5.5 Product code of arms and Ammunitions of U.K.

There is no special or specific advertising product codes concerning to arms and ammunitions of U.K. available in the literature, however, various product code, regulations, statutes and acts are in force in U.K. which protects the interest of consumers by prohibiting false and deceptive advertising while promoting products by the manufacturer /producers. Consumer Protection Act, 1987 made stringent control on bogus prices while control of misleading advertisements regulation 1988 prohibiting misleading advertisements. The Trade Description Act, 1968 provide provision of writing descriptions of goods in advertisements and catalogues and on labels, packaging or other descriptive or promotional material. The trade mark act, 1938 includes a device, brand, heading, label, ticket, name,

signature, word, litre, numeral or combination thereof used or proposed to be used in relation to goods for the purpose of indicating a connection in the course of trade between the goods and some persons having the right either as a proprietor or registered users to use the mark, whether with or without any indication of the identity of that person. If a consumer suffer loss or damage due to supply of defective good, no guarantee can exclude liability of supplier under the provision of unfair contract terms act, 1977.

5.6 Product code of drugs of U.K.

The advertising and labeling of food and drugs are affected by the Food and Drugs Act, 1955, particularly section 1 and 6 and the labeling of Food Order, 1953, as amended by subsequent orders. This legislation, which aims to protect the public against interalia, the advertising adutlerable food or drugs and false or misleading labeling. More specific rules about advertising medicines are contained in the pharmacy and medicine Act, 1941 which prohibits advertising of remedies for Brights disease, cataract, diabetes, epilepsy or fits, paralysis, tuberculosis and other conditions as well as advertisements of substances liable to procure miscarriages. These prohibitions reinforce the Cancer Act, 1939 and the Venerable Diseases Act, 1917. All three Acts exempt advertisements confined to specified categories such as doctors and hospitals.

The British Code of Advertising Practices was first published in January 1962 and applies to all forms of advertising. All advertisements should conform to the British Code of Standards relating to the advertising of medicines and treatments. British Code of Standards relating to the advertising of medicines and treatments was first published in 1948 and amended in its 5th edition published in December, 1961.

The general principles of this is that no advertisement should contain any claim to cure any ailment or symptoms of ill health and should not contain any matter which directly or by implication misleads. All advertisements should avoid disparaging references, money back offers, vague references to colleges, clinics, doctors, hospitals, etc. Restrictions are also laid down on the use of testimonials and about advertising of products offered particularly to women or for sexual weakness, premature ageing, and loss of virility, baldness or about special claims or natural remedies. Advertisements should not offer any medicinal products for the purpose of slimming, weight reduction or limitation or figure control if likely to be harmful nor offered to diagnose or treat complaints or conditions by hypnosis. No advertisement should offer products for the treatment of haemorrhoids unless carrying the warning: "Persons who suffer from hemorrhoids are advised to consult a doctor".

Under the Cancer Act, 1939, Pharmacy and Medicine act, 1941 and the Venerable Diseases Act, 1917, it is illegal to refer these listed diseases in advertisements to the general public. Examples of diseases, illnesses or conditions for which medicines, treatments, products or appliances may not be advertised. Over 50 conditions were listed including complaints of eyes, ears, teeth, blood, heart, skin and glands. Prohibition also extends to indigestion, insomnia and rheumatism where the reference is chronic or persistent conditions. This code is supported by the advertising association, the incorporated Society of British Advertisers, the Institute of Practitioners in Advertising, the Proprietary Association of Great Britain as well as the national organizations covering medias.

The censorship committee of the British Poster Advertising Association and the London Poster Advertising Association was formed in 1890. The Solus Outdoor Advertising Associations with these other two associations forms the censorship committee which support the British Code on medical advertising summarized above advertising of medicines and treatments must conform to the British Code of Standards which is included as principles of Television Advertising. There is further prohibition against visual presentations which give the impression of professional advice or

recommendation whether by doctors or any person represented as being qualified to give such advice.

Medicines Act, 1968 prohibits the adding of substance to and the abstraction of substances from medicinal products so as to affect injuriously the composition of the product and also prohibits the sale or supply of medicinal products whose composition has been so injuriously affected. This act imposes considerable restrictions on the advertising of medicinal products. Under section 86(3) of the Act stipulates that no one may supply with a medicinal product a leaflet which falsely describes the product or which is likely to be mislead as to the nature and quality of the product. Section 91(2) sets out a maximum fine of one thousand pounds as increased by the criminal Law Act, 1977 on summary conviction, conviction on indictment may produce a fine, or a maximum sentence of two years or both. The medicinal (leaflets) Regulation, 1977, SI 1977 No. 1055, implements certain EEC requirements as imposed by Directive 75/319. Misuse of Drug Act, 1971 prohibits any offer to supply a controlled drug. An advertisement should constitute such an offer.

5.7 Product Code of Tobacco Advertising Code of U.S.A.

Warning on packets and in advertisements

On January 18, 1964, the Federal Trade Commission issued a proposed set of Trade Regulations as follow:

Rule 1: Every cigarette advertisement and pack, box, carton or other container to carry a warning such as 'Caution' : "cigarette smoking is dangerous to health". It may cause death from cancer and other diseases".

Rule 2: Ban on use of certain themes in advertisements.

Rule 3: Statements as to quality of any cigarette smoke ingredients prohibited if not verified in accordance with a procedure by the F.T.C.

On June 22, 1964, the F.T.C. directed that warning on packets, etc., should become effective on January 1, 1965 (later changed to July 1, 1965) and the warning in advertisements on July 1, 1965. The F.T.C. dropped Rule 2 and 3 in view of the industry's announced intentions to draw up its own Cigarette Advertising Code but stated that they would watch to see if the code operated effectively. The dangers to the industry in the present situation are not only the damage that the workings will do to trade and the advertising warning is likely to make spot T.V. advertisements impossible but also the danger that states and even municipalities will start prescribing their own warnings. About 20 states are expected to pass their own laws on the subject, if free to do so, and the Commissioner of Health for New York State (Mr. James) has already been agitating for New York to require all cigarette packets marked in the state to have a skull and cross bones printed on them. About 10 or 11 bills dealing with aspects of the tobacco problems have been introduced into the house. Several bills deal with labeling, too would give the F.T.C. authority to do what it wished to do. Others deal with other aspects of the problems such as antismoking education. The ISFC Committee started to consider those bills, however, F.T.C. was persuaded to

postpone the effective date of the packet-labeling rule to July 1, 1965 in order to give confers time to consider the subject, but stay of court was granted to stay the effective date of the F.T.C. rule. If, however, the rule should come into operation before an Act is passed, the manufacturers will have for an injunction.

Voluntary agreement by the industry on packet warning would not solve the problem, firstly, it would be an admission by the industry that cigarette were harmful. Secondly, if the warning was specific enough to give the industry protection in law suits, its wording would be most damaging to future trade. Thirdly, of course, a voluntary warming would not prevent separate legislation by states. An Act of Congress is essential to the industry.

The Federal Communication Commission (FCC) founded in 1934 to regulate broadcast communication has jurisdiction over television and telegraph industries. Under Fairness Doctrine, the FCC required station to run commercial about the harmful effects of smoking before passage of the Public Health Cigarette Smoking Act of 1970, which banned broadcast advertising of cigarettes.

5.8 Product Code of Alcohol of U.S.A.

The alcohol and advertising industries argue that as alcoholic drink is a legal product, it should be legally possible for it to be advertised and that bans on alcohol advertising would have adverse effects on the alcohol market and on the media. They also argue that bans are not justified as advertising is concerned with promoting sales of individual brands and there is no evidence of a casual link between advertising and the overall level of alcohol consumption or the amount of alcohol-related harm. The main

counter arguments are that as well as promoting brands; advertising is also concerned with recruiting new drinkers and increasing sale among existing, and especially heavy consumers. Intensive advertising and promotion of alcohol appears to sanction and legitimate use of a product, which causes high level of damages to the individuals and society. By definition, alcohol advertising is one-sided, avoiding any reference to the vegetative aspects of alcohol consumption. In modern circumstances, it is also necessary to enable alcohol to compete against other alternative drugs as well as soft drinks. There is in fact some evidence that bans on alcohol advertising can have beneficial effect on the level of harm at least in the longer term. Some of the product codes of alcohol in U.S.A. are discussed as under.

Indeed, the evidence is that even young children are aware of alcohol advertisements and tend to remember them. There is also evidence that underage drinking and likelihood of alcohol problems in later life are closely related to positive expectations of benefit for alcohol use, precisely the expectancies advertising is designed to encourage. An American study found that heavy advertising by alcohol industry in the U.S. has such considerable influence on adolescents that its removal would lower underage drinking in general and binge drinking in particular.

Bureau of Alcohol, Tobacco and Firearms, a government agency has most direct influence on regulation of advertising for alcohol beverages. This agency was responsible for putting working labels on alcoholic beverage advertising and banning activity athletes as celebrities in beer advertisements. It has the power to determine what constitutes misleading advertising in these product areas.

Alcohol Tax Unit of the United States Treasury Department

The federal laws are under the jurisdiction of the treasury department. The first American excise tax was the one levied under Alexander Hamilton, Secretary of the Treasury on alcohol beverages. The department is interested in their labeling, standards of size of bottles for tax purposes and advertising. Each state also has its own liquor-advertising laws.

5.9 Product code of arms and ammunition of U.S.A.

Bureau of Alcohol, Tobacco and Fire arms (BATF) is an agency within Treasury Department that enforces laws, develops regulations and is responsible for tax collection for liquor industry. It also regulates and controls the advertising of alcohol beverages and firearms. Apart from this, food and drug administration (FDA) under the Department of Health and Human Services has authority over the labeling, packaging, branding, ingredient listing and advertising of packaged food and drug products and authorized to require caution and warning labels on potentially hazardous products.

Federal Trade Commission Act, Trademark law Revision Act, 1988 are some of the main acts dealing with advertising of firearms. In addition to this, various federal agencies viz., the Bureau of Completion, the Bureau of Economics, and Bureau of Consumer Protection are responsible for advertising regulations to particular product area or service to limited extent; however, they often rely on FTC to assist in handling false and deceptive advertising cases. The Association of National Advertisers and Business/Professionals Advertising Associations have established their code while direct mail marketing association, direct selling association, national associations of

broadcasters, outdoor advertising association of America and Action for children's Television are some of the main media associations, which have established their codes and guidelines regarding advertising in the various media. These codes are voluntary and self-regulated.

5.10 Product Code of drugs of USA

Federal Food, Drugs and Cosmetic Act

The Food and Drug Act was passed in 1906 in U.S.A. The drug indirectly was the first group to recommend that the FTC should retain sole responsibility for eliminating questionable advertising claims. The Federal Pure Food and Drug Act was finally passed in 1906. In 1938, the Wheeler Lea Amendments to the federal trade commission act and the federal food, drug and cosmetic act were passed which does not provide jurisdiction over advertising with exception of prescription-legend drugs. The section 12 of the Act specified that false advertising of food, drugs, cosmetics and devices was an unfair or deceptive act or practice within the meaning of Section 5. The Federal Hazardous Substances Labeling Act was passed in 1960 to require labeling on hazardous household, chemicals to contain warning against potential dangers. In 1962, the Kefauver-Hornis drug amendments were passed to assure a greater degree of safety, effectiveness and reliability in prescription drugs and to strengthen new drug clearance procedures. This amendment places severe restrictions on certain aspects of drug advertising.

The regulations forbid employment of fanciful proprietary names for drugs or its ingredients or featuring inert or inactive ingredients. The Fair Packaging and Labeling Act of 1966 require that all consumers' product in inter-state commerce be honestly and informatively labeled. The above act was passed in 1938, giving the food and drug administration broad power over the labeling and branding as contrasted with the advertising of food, drugs, therapeutic devices and cosmetics in which manufacturers must put the ingredients of products on the labels. The drug manufacturer will be in trouble with the food and drug administration for false labeling and false advertising. Food and Drug Administration (FDA), a government agency regulates the advertising of food, drug, cosmetic and medical products such as household cleaners. Consumer protection legislation seeks to increase the ability of consumers to make more informed product comparisons includes the fair Packaging and Labeling Act (1966). The law also provides the Federal Trade Commission (FTC) and other agencies with various means of recourse when advertising practices are judged to be deceptive or misleading. The spirit of all these acts relates to the maintenance of an equitable competitive environment and the protection of consumers from misleading information. It is interesting to note, however, the direct involvement of the FTC in advertising practices more often comes about

from its regulatory programmes and remedies than from the application of legal mandate. Some of the most important controls on advertising are voluntary that is, they are a matter of self-regulation by advertising and marketing professionals. The American Association of Advertising Agencies has issued guidelines for promoting fairness and accuracy when using comparative advertisements. Many other organizations such as the Better Business Bureau, the National Association of Broadcasters and Action for Children's Television participate in the process to help ensure fairness and assess consumer complaints about advertising. FAD and FTC also intend to extend their jurisdiction to the Internet, they clearly have a tiger by the tail. Until a regulatory agency steps up to the challenges of the Internet, it will be up to the consumer to separate the quacks from the qualified.

The Federal Food, Drug and Cosmetic Act of 1938 provides for the principal control over manufacturing, branding and labeling of these commodities. The act created the food and drug administration, whose control in the areas of branding and labeling indirectly affects advertising. Both the food and drug administration and FTC are concerned with preventing deception of the public through misrepresentation of food, drugs and cosmetics. Under the enabling act, the party guilty of misbranding or

false labeling guilty of a misdemeanor and subject to fine, imprisonment or both. The products involved are subject to confiscation.

5.11 Summary

Various product codes in advertisings related with tobacco, alcohol, arms and ammunitions and drugs operative and in force in U.K. and U.S.A. have been described. These codes have been framed to protect the consumers from deceptive advertising of these various products in these two countries so that the consumer's interest can be safeguarded. Further, there are certain provisions in these advertising codes for sanction and legitimate use of these products prohibiting the specific targeting of minor so that adverse effect on society can be eliminated in relation to advertising how, where and when to promote their sale as all these products are directly related with the health of consumers and environments in which consumer dwell. Thus, enforcement of the codes in-question is prime of importance to betterment of the society in general and consumers in particular.

5.12 key words

Prejudice: harm to someone's right

Incapable: unable to do something

Disparage: belittle, criticize

5.13 Self Assessment Exercise

- 1 Describe various advertising product codes for tobacco and alcohol, which are in-force in U.K. and U.S.A.
- 2 Describe in detail the advertising product codes for arms and ammunition operative in U.K. and U.S.A.
- 3 State various advertising product codes related with drugs in U.K. and U.S.A. and how they protect the consumers in solving their health problems.

5.14 Suggested Readings

- 1 Alcohol and Advertising – as Fact Sheet. Institute of Alcohol Studies – (The Quay St. Ives Cambr PE 27 5AR U.K.): 1-15.
- 2 Advertising and Promotion – An Integrated Market Communications Perspective by George E. Belch and Michael A. Belch (Published by Irwin/McGraw Hill) 4th Ed., 1989.
- 3 Advertising by Thomas C. O’Guinn; Charis T.Allen and Richard J.Semenik (Published by South-Western College Publishing – an International Thomson Publishing Company), 2nd Ed., 2000
- 4 Dorothy Cohen – Advertising. Published by John Wiley & Sons, Inc, NY (USA), 1972.
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- 6 Ralph Harris and Arthur Seldon – Advertising and the Public. Polished by Andre Deutsch Ltd., 105, Great Russel Street, London, WC 1,1962..
- 7 Maurice, I. Mandelle, D.B.A. – Advertising (Published by Prentice-Hall Inc., Englewood Cliffs, N.J. 1988.

**Course Code :
Lesson 6**

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Advertisements laws, F.T.C., Ethics, Regulations Restrictions and constitution

Structure :

- 6.1 Objectives
- 6.2 Introduction
- 6.3 Need for advertising laws
- 6.4 Types of advertising laws in India
- 6.5 Types of advertising laws in abroad
- 6.6 Constitutionality of restrictions in advertisements
- 6.7 Summary
- 6.8 Key words
- 6.9 Self-assessment exercise
- 6.10 Suggested readings

6.1 Objectives:

The objectives of this lesson is to make students acquaint with various laws related with advertisements enforced in India and abroad and to make them conversant with the need and constitutional restrictions of advertisement laws.

6.2 Introduction

Due to tremendous and fast expansion of international market now-a-days advertising has become an important and challenging business industry. Advertising helps in increasing customers for various products through increasing the primary demand and its usage rate. Moreover, it reduces the time between purchases and induces consumers to try new products. It also stimulates the distribution of products and build brand preferences and loyalty, thereby, presenting the product with the objective to promote it. Generally speaking, advertisement is a powerful communication force and vital market tool to help to sell goods, services, images, and ideas through channels of information and persuasion, published or broadcasted on payment basis by the benefited organization. Advertisements are made with the use of various categories of print and electronic media to large section of people and when the consumer's attention is drawn to these, he is seeking information to help him decide for or against that particular product. Thus advertising is a buyers' guide for both consumers and industrial purchasers, add value to products and encourages competitions, fosters quality and also reduces distribution costs. In this era of globalization, it enables both print and broadcasting communication to maintain independence from government and political policies and stimulates thoughts on national and local problems. To make the business remunerative, in-depth studies and knowledge about various laws which are in force, amendments from time to time in this law, constitutional restrictions impositions are very necessary.

6.3 Need for Advertisement Laws

With the ever increasing growth and turn over of the advertising industry in the current century due to industrial revolution, there is urgent need and necessity to frame legal rules, regulations and specific legislative enactment that directed specifically at this industry, which determine both the broad framework within which the industry is allowed to operate and content of its outputs. The advertisement people have responsibility to clientele of social, cultural and moral values of the community in which they function to promote commercial prosperity by selling their products or services or ideas to win customers and influence people. Therefore, it is necessary to ensure truthfulness and honesty of representations and claims made by the advertisers and also to safeguard against mislead advertisements. Advertisements should not distort facts and mislead the consumers by any means of implications or omissions. Hence, there was necessity to frame legal law and act for smooth working of the business and also to protect the consumer's interest by providing legal provisions.

Various laws related with advertisements which are in operation in India are discussed as under:

- 1. the India Penal Code, 1860**, prohibits the dissemination of any obscene matter under section 292 and 293 and this act also prohibits the publication of matter connected with unauthorized lotteries and publication of appeals using national symbols for furthering the prospects of any candidate at an election. Further it prohibits the offences which incite enmity between

different classes of citizens and spreading of any rumors or reports likely to incite members of the armed forces to mutiny or failure of duty and which cause alarm to any section of public whereby there is an inducement to commit an offence against the state or against public peace and which incite one class or community against another and which utter words to make visible representations which intend toward religious feelings or beliefs of another persons, or of any class of citizens.

2. **the India Post Office Act, 1898** imposes prohibition on the transmission of any indecent or obscene matter through the post.
3. **The Police (Incitement to Disaffection) Act, 1922**, which provides for a penalty for spreading disaffection among the police and for related offences.
4. **Official Secrets Act, 1923** which prohibits obtaining, collecting, recording or publishing of secret government documents or photographs or sketches or models. It is this Act, which prevents Indian journalists from publishing inside information about the government.
5. **The Emblems and Names (Prevention of Improper Use) Act, 1950** forbids the use by any private party of certain names, emblems etc.
6. **The Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954 (Act 21 of 1954)** has been enacted which is an act to control the advertisements of drugs in certain cases, to prohibits the advertisements for certain purposes of remedies alleged to possess magic qualities and to

provide for matters connected therewith. 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 are considered as Advertisement. If any person contravenes any of the provisions of the Act, shall be liable to be punished upto six months imprisonment with fine or both in case of first conviction and upto one year imprisonment with fine or with both under section 7 of the Act in subsequent convictions.

7. **the Prize Competitions Act, 1955 (Act 42 of 1955)** prohibits the publication of matter with unauthorized prize competition.
8. **The Young Person (Harmful Publications) Act, 1956 (Act 93 of 1956)** prohibits the dissemination and publication likely to encourage antisocial tendencies and deemed to be harmful to persons under the age of twenty years. This act came into force on 1st January, 1957. Section 3 of the Act imposes penalty for certain act of harmful publication and punishment is given on contravening up to six month imprisonment or with fine or with both. The court may order the destruction of all copies of harmful publication on a conviction.
9. **The Copy Right Act, 1957 (as amended upto August, 1984)**, which protects the original work of writers, artists, musicians, dramatists, film and video producer and other creative persons from being pirated.
10. **The children Act, 1960** prohibits the disclosure of names, address and any other particulars of any child involved in any proceedings.

11. **Section 11 of the Custom Act, 1962**, which gives government the power to ban import and export of goods in the interest of security, public order and decent and morality.
12. **Monopolies and Restrictive Trade Practices Act, 1969** defines unfair trade practice to cover several acts aimed at promoting the sale, use of supply of any good, or the provision of any services which cause loss or injury to the consumers of those goods and services. Disobedience to Act has made punishable with imprisonment for a term which may extend to ten thousand rupees or with both.
13. **The Prevention to Insults to the National Honor Act, 1971** forbids the bringing into contempt of the national flag or the constitution of India in any manner.
14. **Contempt of Court Act, 1971** relates to the willful disobedience of judicial orders and the like and to any publication which interferes with or undermines the administration of justice. For example, a journalist is guilty of contempt of court if he or she publishes a report on a case held in camera (in the private chamber of judge).
15. **The Criminal Procedure Code, 1973** empowers the government to declare certain copies of publications forfeited and to issue search warrants for such publications that offends Indian Penal Code provisions relating to public order or security of the state.

- 16. The Prize Chits and Money Circulation Schemes (Banning) Act, 1978** imposes a prohibition in respect of chit and money circulation schemes.
- 17. The Indecent Representation of Women (Prohibition) Act, 1986** forbids the depiction of women in an indecent or derogatory manner in mass media. Such offences are punishable with imprisonment extending up to two years and with a fine extending up to two thousand rupees on first conviction and for second and subsequent convictions, a minimum term of six months extendable to five years together with a minimum fine of ten thousand rupees extendable to one lakh rupees is prescribed.
- 18.** The provisions of the laws imposing limitations on message/contents in the print media apply mutatis mutandis to advertising. In fact, most of the provisions governing the print media are applicable to advertising as well with such modifications as the context may require.
- 19.** The All India Radio Code for commercial advertising originally cover advertising on television also. It lays down standards of conduct for advertisers. The code of commercial advertising on Doordarshan published in 1986 now lays down standards conduct for readvertisers on Indian television.

6.5 Various types of advertising laws in abroad

Different countries following common or civil laws have different ways of dealing with misleading advertisements. These advertisements are examined through conceptual framework consisting of five stages viz. initiation,

interpretation, deceptive, verification and remediation based on comparative legal system of the International Journal of Advertising. The USA common law country entertains advertising challenging from three sources viz. by competitor, consumers or consumer organizations. Some individual television stations and magazines also review advertising before accepting them. Civil law tends to rely less on government regulation and more on private law suits and/or industry self regulations.

Italy and Japan rely mostly on self regulation. Advertising law of Italy is enforced by competitor law suits and consumer organizations are specifically barred from bringing advertising fewer suits. Japan followed a civil code in 1898 based on the German Civil Code relies heavily on self-regulation. Germany bases its regulation of misleading advertisements on competitor's law suits and those brought by consumer organizations. They can request the Director of Fair Trading to seek a court injunction. The U.K. Trade Descriptions Act of 1968 authorizes local weights and measures authorities to seek either summary criminal conviction, punishable by a maximum fine of 1000 pounds or criminal indictment punishable by an unlimited fine and upto two years in jail for false trade descriptions given in advertising or by other means. In Germany, a Civil Law country, consumer research is required to determine the implied meaning of the particular advertisement. In all other countries, it is the judge or the regulator, who views the advertisement and interprets it based on his personal opinion based on standard for deception.

U.S. Lanham Act follows the old FTC practice of condemning advertising that has tendency or capacity to mislead 25 per cent or more consumers. In U.S., Federal Trade Commission (FTC) Act was passed in 1914. Traditionally the advertisers are not required to prove the truthfulness of their claims. The onus of proving the falsity of the claim rests on the challengers, while common law country, New Zealand recently followed the U.S. FTC under which advertisers are required to prove their claim when challenged. The European Community Directive on misleading advertisement calls for advertisers to bear the burnt of proving the truthfulness of their claims. The UK self regulation and its 1988 Control of Misleading Advertisements Regulation requires that advertiser develop substantiation prior to dissemination. In Germany and U.K. damages are ordered, when complainant prove intention or negligent misconduct. In New Zealand and Canada, injunctions are very rare, however, heavy penalties serve as deterrents. Truly speaking, advertising is unfortunately not taken that seriously by the governments and regulatory bodies at large. Study the impact of advertising on the social, psychological, cultural and economic behavior of various segments of society and evolve a set of laws to regulate it more closely is the need of hour.

Consumer protection (distance selling) Regulations 2000

The Webspaces Contract and any Advertisement Contracts will allow for any rights you may have under the Consumer Protection (Distance Selling) Regulations 2000 including a cooling-off period.

Targeting users

Unless expressly permitted by TLC, Advertiser shall not display or send any user communication where such user communication is sent or displayed to recipients due wholly or partly to the fact that such recipients are users.

No user communication shall contain any reference to TLC, its Affiliates or any of their trade marks unless such reference is editorial or is expressly permitted by TLC.

Representations and warranties

- (a) Notwithstanding that advertiser may be acting through an advertising agency or media buyer or other representative whatsoever Advertiser represents and warrants that it contracts with TLC as principal.
- (b) Each party represents and warrants that (i) it has the full corporate right, power and authority to enter into the agreement and to perform the acts required of it hereunder; and (ii) the execution of the Agreement by it and the performance of its obligations and duties hereunder, do not and will not breach any agreement to which it is a party or by which it is otherwise bound.

Termination, suspension and delays

Cancellations and construction. The Advertiser can not cancel the insertion Order saves as expressly provided for within these terms and conditions. No conditions other than those set forth in the Insertion Order or these Advertising Terms and Conditions will be binding on TLC unless expressly agreed to in writing by an authorized representative of TLC. In the event of any inconsistency

between the Insertion Order and these Advertising Terms and Conditions, these Advertising Terms and Conditions will prevail.

In addition to any rights under the terms of the Insertion Order, the following shall apply:

- Termination for Certain Breaches TLC may terminate this Agreement immediately and without notice if Advertiser fails to pay any sum by any Payment Due Date, or breaches clause 4.6 or 4.13.
- Additional Rights of Termination and Suspension. TLC is entitled to (a) terminate this Agreement on 30 days notice to Advertiser without cause whereupon Advertiser shall be responsible for payment of the pro-rata portion of payments due from the commencement of the insertion Order to the date of termination; (b) immediately suspend any promotions, where the display of such Promotions is (i) likely, in TLC's reasonable judgment to adversely affect any operation of the TLC Network, or (ii) expose TLC or its Affiliates to liability or other adverse consequences.
- Effect of termination. See where otherwise expressly stated, or where termination is as a result of TLC's uncured material breach, Advertiser shall remain liable for all sums due and payable during the full Term of the Agreement (which shall become payable within 14 days of the date of termination) and, Advertiser shall lose the entitlement to any remaining impressions or other performance due by TLC under the Agreement.

- Survival clauses 4.2, 4.3, 4.5, 4.6, 4.8, 4.11 shall survive the expiry or termination of this Agreement. Any termination of this Agreement shall be without prejudice to any rights and payment obligations accrued in favor of either party prior to or upon the date of such termination.

Classified Advertisements

With respect to Classified Advertisements specifically, all the aforementioned Terms and Conditions apply. In addition TLC draws advertisers' attention to the following:

- It is illegal for businesses and sole traders to pretend to be making a private offer and you risk prosecution under the Business Advertisement Disclosure Order 1977.

Property Advertisements

It is illegal for businesses and sole traders to pretend to be making a private offer and you risk prosecution under the Business Advertisement Disclosure Order 1977.

Property advertisements are governed by strict criteria and you should be careful about how you describe your property. The Local Channel advise you to refer to the Property Misdescriptions Act.

Recruitment Advertisements

It is illegal for businesses and sole traders to pretend to be making a private offer and you risk prosecution under the Business Advertisement Disclosure Order 1977.

Applicants for jobs advertised by third parties on TLC should ensure that they have the relevant residential and domicile qualifications to work in the U.K. Potential employers (or their agents) should satisfy themselves that applicants are entitled to seek employment within the UK.

Rules about your content

You must not include in any Listing, Webpace, Link or Advertisement any Content that is prohibited under The Local Channel General Terms and Conditions not may you use any Listing, Webpace, Link or Advertisement for any purpose prohibited under The Local Channel General Terms and Conditions.

In particular, you must only create and use Your Listings, Webpace, Links or Advertisements for lawful purposes, and you must comply with all applicable laws, statutes, regulations and rights of others. You must not create or use any Listing, Webpace, Links or Advertisement to :

- (a) commit fraud, any other criminal offence or any other unlawful act;
- (b) post, unload or otherwise transmit on direct others to, information or pictures that are obscene, indecent or promo graphic, menacing or threatening, menacing, racist, offensive, abusive, defamatory or otherwise unlawful.
- (c) upload or download any files that contain software or other materials in breach of any intellectual property rights or in breach of confidence,
- (d) harass, stalk, threaten, cause annoyance or needless anxiety or otherwise violate the rights of others,

- (e) hold Yourself out, or hold out any goods or services offered for sale by You, as being endorsed by, associated with or part of, The Local Channel Group, or impersonate anyone else or otherwise misrepresent Your identity or status,
- (f) hack into a Local Channel Site or any other related computer system, make excessive traffic demands, deliver viruses or forward chain letters, surveys, contests, pyramid schemes or otherwise engage in any other behavior that may reasonably be expected to inhibit other users from using and enjoying The Local Channel Services or any other web site or damage or destroy the reputation of The Local Channel or any third party.
- (g) except in accordance with The Data Protection Act 1998 and all other applicable data protection laws, collect and process others' personal data.

Legal, decent, honest and truthful

All Your Content (including text and photographs) must be legal, decent, honest and truthful and comply with the British Code of Advertising Standards Authority and all other applicable regulations and codes of practice. You agree that all classified advertisements placed by you are done so at your sole risk and you are responsible for their content.

Right to reuse content

We reserve the right in our absolute discretion to refuse to accept any Listings, Webpage, Links or Advertisements, whether to be hosted under a Webpage Contract or Advertisement Contract, including any that relate to any of the following :

- (a) Weapons including cross bows, knives, air guns, shotguns, handguns, rifles, ammunition, de-activated weapons or replica guns, antique guns or knives,
- (b) Endangered or protected species of Animals and animal product,
- (c) Copied software or modified access cards, any software not accompanied with a valid license or authentication, any modified smart cards, play stations@, D2Mac@ cards, sat top boxes, or other modified satellite or cable access cards,
- (d) Home work schemes or any opportunity that implies a guarantee to make a large income; or
- (e) Adult services and products including escort Agencies, adult videos, and adult toys.

Conditions for acceptance

We may in Our absolute discretion require proof that certain conditions are met before we can accept some Listings, Webpace, Links or Advertisements. For example but not limited to :

- (a) We may require that tickets are only advertised at face value or below, such face value to be stated;
- (b) We may require that persons holding themselves out as having certain professional qualifications produce proof of such qualifications; or
- (c) We may require proof that applicable duties have been paid on goods advertised, such as alcohol or tobacco products.

6.6 Constitutionality of Restrictions in Advertisements in India

The constitution of India permits to impose reasonable restrictions on the right of freedom of speech and expression. Article 19(1) (a) gives right to freedom of speech and expression and under Article 19 (2) of the constitution has been added to impose reason restrictions on the exercise of the right to freedom of

speech and expression given in Article 19(1) (a). The Article 19(2) reads that “Nothing in sub-clause (a) of Clause (1) shall affect the operation of any existing law or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interest of the sovereignty and integrity of India, the security of the state, friendly relations with foreign states, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence. The President of India is empowered under Article 352 (1) of the constitution of India towards proclamation of emergency in the country. If the President is satisfied that a grave emergency exists whereby the security of India or of any part of the territory thereof is threatened, whatever by war or external aggression or internal disturbance, he may by proclamation make a declaration for emergency. There is a provision in the constitution under Article 358 for suspension of provisions of Article 19 during emergencies. Under Article 359 (1) of Constitution of India there is provision of suspension of all proceedings pending in any court of the enforcement of rights during the period of proclamation period in force.

Power to impose censorship : Central Govt. is empowered by the Defense and Internal Security of India, Act 1971 (Act 42 of 1971) by notification in the Official Gazette to make rules as appear to it necessary or expedient for security defense of India and civil defence. The internal security, public safety, the maintenance of public order are the efficient conduct of military operations or for maintaining supplies and services essential to the life of community. Further, under rule 48 of this Act, there is provision to impose censorship addressed to a

printer, publisher or editor or to printers, publishers and editors require that all matter published in any document be submitted for scrutiny to an authority specified in the order. It also prohibit or regulate publishing of any document or circulating copies of any document published, or any extract or translation in contravention of order. If any person contravenes any order made, the government can make order for its forfeit and defaulter shall be punishable with imprisonment for a term, which may extent to five years or with fine or with both.

General guidelines have been issued for press on 26th June, 1975 during third proclamation of emergency in 1975 under which no unauthorized news or advertisement or illustration to be published in regard to vital means of communication is one of sixteen guidelines issued.

Legal restrictions on advertisements in other countries

The consumers have not perfect knowledge of market place and must be protected by legal guarantees as to the authenticity of advertising claims. Numerous laws have been passed to protect the public from false and misleading advertising. The most important among these laws is the Federal Trade Commission (FTC) and there are some state and federal laws affecting advertising along with other steps to protect the consumers from mis-representation in advertising.

The Federal Trade Commission Act was passed in 1914. Congress held that “Unfair methods of competitions are hereby declared unlawful”. Thus, the law was designed to protect one business from another. This act protects consumers from deceptive advertising and false advertising was treated as an unfair trade

practice. F.T.C. has a wide sweep of power over advertising of products in the field of food, drugs, therapeutic devices and cosmetics advertised across stateliness.

Some basic FTC rules and legal findings: Ground rules have been emerged for applying FTC law to advertising over the years on the basis of regulations of FTC and on court decisions. These rules includes following important points.

FTC guidelines: The FTC compiled and published official trade practices after consulting with members of over 175 industries, which called attention to illegal practices in such industry. The rules were offered as guidelines for legal operation.

(i) Total impression: The court has held that the overall impression advertisement gives is the key to whether it is false or misleading. In one case of advertisement, relief was used but net impression from entire context was product promised a cure from an ailment. If an advertisement has even a “tendency to deceive”, the FTC may find it illegal.

(ii) Clarity: The statement should not be confusing and must be so clear that even a person of low intelligence would understand it clearly. If an advertisement can have two meanings, it is illegal if one of them is false or misleading.

(iii) Facts versus puffery: The courts have held that an advertiser’s opinion of product is tolerated as the legitimate expression of biased opinion and not a material statement of fact. All factual claims must be supportable.

(iv) The question of taste: In general, the precedents of advertising law indicate that bad taste is not itself deceptive or unfair.

(v) **Demonstrations:** The demonstration of product or its performance on T.V. must not mislead viewers. It should not upgrade the consumer's perception of the product.

(vi) **Warranties:** Magnuson Moss Warranty Act is the major warranty legislation became effective in July, 1975. Apart from product warranty, it requires that following information must be provided to consumers at time of purchase viz. the nature and extent of guarantee, the manner of guarantee performance, the identity of guarantor.

(vii) **Free:** Sometime to promote the sale, some free items are provided by advertisers. If there are any terms or conditions for getting something free, they must be stated clearly and conspicuously with the word 'free'. A free offer for a single size may not be advertised those more than six months in the market in any twelve months period.

(viii) **Lotteries :** Lotteries are schemes for distribution of prizes won by chance. If a person has to pay to enter a lottery conducted by an advertiser, the United States Postal Service calls it illegal and bans the use of mail for it. If a lottery is advertised in interstate commerce, the FTC also holds it illegal and will proceed to stop it. Prizes in many sweepstakes are allowable if money need not be paid to enter the sweepstakes.

Advertising Terms and Conditions on Local Channel/Webspace in U.K.

These are the terms and conditions of The Local Channel Limited governing Listings, Webspace, Links and Advertisements provided by you for display on the Local Channel web site via. The Local Channel Search Engine.

These Terms and Conditions constitute a legally binding agreement between you and The Local Channel Limited. They include certain promises by you about the content you provide. Failure to comply with these Terms and Conditions could lead to removal of your content and possibly legal action against you. You should read them carefully before you provide any content and you should seek legal advice if you are in doubt about their meaning or effect.

Your use of The Local Channel Webpace is governed by The Local Channel General Terms and Conditions. These terms and conditions are in addition to those, which continue to apply. In the event of any inconsistency between The Local Channel General Terms and Conditions and these, these shall prevail.

We will carry Your Content on The Local Channel Web site in Listings, Webpace and/or Advertisements subject to these Terms and Conditions. Some of these are provided nil charge and some you must pay for. In order to protect us and our other users there are a number of rules and restrictions relating to what you can include in Your Content. These terms and conditions shall be governed and interpreted in accordance with English law.

These Terms and Conditions are structured as follows:

Approval of contributors

When you register with us, or at any time after that, we retain the right to perform reasonable checks on the information you provide and by registering with us you consent to us doing so. We reserve the right to refuse to register any person or to allow any person a listing, a Webpace, or an Advertisement. In addition to

the above, usage of your personal information is governed by The Local Channel Privacy Policy. To place advertising (particularly classifieds) you must be aged over 16. People under 16 who wish to place advertising must have the permission their parent or guardian. It is your duty as a Registered User of The Local Channel web site to alert the webmaster@thelocalchannel.ltd.uk if you find any material on the site which breaches these terms and conditions.

Webspace

All Registered Users shall be entitled to use The Local Channel Webspace Builder to build a webspace. The following content, provided by the Registered User, shall be included in a webspace. From between one and ten sub section which can include an image on each section webspace (the above is referred to as a 'Web space'). A Webspace shall only be available via a link from the Registered Users Listing (which shall appear on The Local Channel Webspace in accordance with section 2). When the link is activated by a user, the Webspace shall appear covering the entire browser window in which The Local Channel Web Site is open but shall be framed by The Local Channel Frame. A Registered User who has built a Webspace shall be entitled to change the Content included in the Webspace using The Local Channel Webspace facilities. All Content included at any time shall remain subject to these terms and conditions. We shall have no obligations regarding content, positioning, size or appearance of any Webspace except as expressly set out in these terms and conditions.

Advertising terms and conditions

The following terms and conditions (“Advertising Terms and Conditions”) are deemed to be incorporated into each advertising insertion order (“Insertion Order”) accepted by The Local Channel ltd.

No Assignment or Resale of Ad space. The parties may not resell, assign or transfer any of its rights hereunder. Any attempt to resell, assign or transfer such rights will entitle the other party to terminate this contract immediately without liability on the part of the terminating party.

(i) License

The Advertiser hereby grants to TLC a worldwide, non-exclusive, fully paid license to reproduce and display the advertisement (including all contents, trademarks and brand features contained therein) in accordance with the insertion order and these advertising terms and conditions.

Except as otherwise expressly provided in the insertion order, positioning of advertisements within the TLC properties or on any page is at the sole discretion of TLC.

TLC will not be prohibited from also carrying advertisements for any product or business competitive to the product or business of the Advertiser.

TLC does not warrant the date or dates of insertion of the advertisement(s) and does not warrant that the advertisement(s) will not be displayed after the end date specified. However, TLC will use reasonable efforts to comply with the Advertisers wishes in these regards.

The advertiser grants to TLC the express right to reproduce throughout the world screen shots of all or part of any TLC property containing all or part of any

of the advertising materials supplied by the Advertiser to TLC on or in any promotional or advertising material or campaign promoting or advertising.

Warrants

The Advertiser warrants and represents to TLC that it has the right to publish all of the contents of the advertisements, and can grant to TLC such right, and that such publication will not (a) infringe any rights of any third party including, without limitation, intellectual property rights and rights of privacy; and (b) violate any applicable law or regulation. The advertisements do not contain anything that is defamatory, obscene, false or misleading.

The Advertiser warrants and represents to TLC that it has the right to publish all of the contents of the advertisements, and can grant to TLC such right, and that such publication will not (a) infringe any rights of any third party including, without limitation, intellectual property rights and rights of privacy; and (b) violate any applicable law or regulation. The advertisements do not contain anything that is defamatory, obscene, false or misleading.

Neither the products, the promotions, the advertiser site nor any data processing in relation thereto shall breach any applicable law, regulation, code of conduct or any third-party right (including without limitation by being obscene, defamatory or infringing any copyright, trade mark or other proprietary right). Advertiser shall ensure that the promotions and the Advertiser Site shall not (i) disparage TLC or its Affiliates or (ii) state or imply that TLC or its Affiliates endorse the Products. It does not collect or use personal information through its Advertisements on any TLC property without permission from the user. The

Advertiser may not combine, co-mingle, compare or match any information that they legally collect via its Advertisements on any TLC property with any personal information, click stream or cookie information that they may have.

The Advertiser agrees to indemnify and keep indemnified TLC and hold TLC harmless against any and all expenses, damages costs (including reasonable legal fees and costs) and losses of any kind incurred by TLC in connection with any claims actual or threatened, of any kind (including, without limitation, any claim or trademark or copyright infringement, libel, defamation, breach of confidentiality, breach of any statutory or regulatory duty, false or misleading advertising or breach of any industry advertising codes or sales practices) arising from the advertisement and/or any material (of the Advertiser or otherwise) to which users can link through the advertisement.

Right to reject Advertisement

All contents of advertisements are subject to TLCs approval. TLC does not undertake to review the contents of any advertisements and any such review of and/or approval by TLC will not be deemed to constitute an acceptance by TLC that such advertisement is provided in accordance with these Advertising Terms and Conditions not will it constitute a waiver of TLC's rights hereunder. TLC reserves the right at any time in its absolute discretion to reject or cancel any advertisement, webspace, insertion order, URL link, space reservation or position commitment, and/or remove any advertisement, webspace, or link from any of the TLC properties or any page.

Licence

Advertiser grants to TLC the right to link to the Advertiser Site and the right to display, reproduce, distribute, transmit and otherwise howsoever use the promotions and any content on the Advertiser Site on or through the TLC Network and in TLC marketing materials.

6.7 Summary

Due to vast and fast rapid growth of advertising industry need for various legal checks are required for its smooth functioning both for consumers and advertisers so that truthfulness and honesty of representations and claims made can be ensured and also to provide protection to the consumers against mislead advertisements. Various laws are enforcing from time to time in India and abroad to safeguard the interest of consumers and advertisers as well. It is, thus, necessary to make conversant the students with all such proviso, laws and regulations with their amendments dealing with advertisements and also acquaint with constitutional restrictions along with general guidelines issued by government in India and abroad from time to time.

6.8 Key words

Omit: leave out

Obscene: offensive in its treatment of sexual matters

Enacted: made in a law

Insert: put into something else, include

6.9 Self-assessment exercise

- What are the needs for advertising laws? State the role of advertising laws for protecting the consumer right?
- Which are the various types of advertising laws which are in force in India?
- Which are the advertising laws dealing with mislead advertisement in abroad?
- What are the constitutional restrictions on advertising in India?
- Describe the constitutional restrictions on advertising in abroad.
- What are the term and conditions of advertising on local channel and web space?
- Describe the Consumer Protection (Distance Selling) Regulation 2000?

6.10 Suggested readings

- Jethwaney, Jaishri, N. - Advertising (Phoenix Publishing House Pvt. Ltd., New Delhi-110 002), 1st Ed. 1999.
- Keval J. Kumar - Mass Communication in India. (Jaico Publishing House, Mumbai-400023) 3rd ed. 2004.
- Rayude, C.S. and Rao, S.B. Nageswara - Mass Media Laws and Regulations (Himalaya Publishing House, Mumbai-400004). 3rd Ed. 2005.
- Russel, Thomas and Verrill, Glenn - Otto Kleppner's Advertising Procedures (Printice-Hall, Inc. Englewood, Cliffs, NJ07632). 9th Ed. 1986.

Author: Mrs. Nupur

Course
Code:
Lesson: 07

Vetter: Dr.
Bandana Pandey

Structure

- 7.1 Objectives
- 7.2 Introduction
- 7.3 Laws relating to advertising in India
- 7.4 Advertising and article 19 (1 & 2) of Indian constitution
- 7.5 Indian Penal Code 1860 and its sections relating to advertising
- 7.6 Indian Contract Act, 1872 and its sections relating to advertising
- 7.7 Summary
- 7.8 Key words
- 7.9 Self-assessment exercise
- 7.10 Suggested readings

7.1 Objectives

The objective of this lesson is to make the student more aware about different legal system related with advertising and constitutional restrictions. Also to make conversant regarding different sections of IPC and Indian Contract Act, 1872 related with advertising.

7.2 Introduction

A country's political system, national laws, regulatory bodies and interest groups, all have a great impact on international advertising. Hence, it is very necessary to be conversant with the enforcing laws relating to advertising in any country for successfully promoting the products of advertisers. On the other hand, the consumers should also be aware of the operative rules, regulations and laws regarding advertising so that deceptive or false advertising may be legally checked so that their interests may be safeguarded and make them able to have wider choice in selection of location and appropriate products in remunerative sale price. Different laws relating to advertising in India with their amendments and article 19 (1 & 2) of Indian constitution including IPC 1860 and Indian Contract Act. 1872 along with their sections relating to advertising are thoroughly discussed in foregoing paras to acquaint with readers about their inbuilt ruling and legal provision so that common consumer in general and advertising professionals in particular can be benefited at large by truthfulness and honesty of representations. Further claims made can be assured and can be protected against misleading advertisements.

7.3 Laws relating to advertising in India

According to Verghese Committee Report (1978), the following are the general rules of conduct in advertising:

1- Advertising should be so designed as to conform to the laws of the country and should not offend against any morality decency and religious susceptibilities of the people.

2- No advertisement should be permitted

(i) Which divides any race, caste, color, creed, nationality except wherein such usage would be for specific purpose of effective dramatization.

(ii) Which is against any of objectives, principles of provisions of the constitution of India; (iii) Which will tend to incite people to crime or to promote disorder, violence or breach of law, (iv) which presents criminality as desirable, or furnish details of crime or imitation thereof; (v) which would adversely affect friendly relations with foreign states;

(vii) Which exploits the national emblem

For Doordarshan only, (vii) No cigarettes and tobacco products; (viii)

Advertisement wholly or mainly must not be directed towards any religious or political end and have any relation to any industrial dispute

(ix) Advertisement for services concerned with following are not acceptable (a) Moneylenders; (b) Chit fund and saving schemes; (c) Unlicensed employment service; (d) Matrimonial agencies; (e) Fortune-tellers, etc. and those with claim of hypnosis

(x) Betting tips and guide books, etc., relating to horse racing or other games of chance shall not be accepted

(xi) No advertisement shall contain references which are likely to lead public to infer that the product advertised or any of its gradients has some property or quality which is incapable of being established e.g. care for boldness.

(xii) Scientific or statistical accepts from technical literature.

(xiii) Advertisers or their agents must be prepared to produce evidence to substantiate any claims or illustrations.

(xiv) Advertisement should not contain disparaging reference to another product or service.

(xv) Imitation likely to mislead viewers

(xvi) Visual and verbal representation of actual and comparative prices and costs must be accurate and should not mislead.

(xvii) Testimonials must be genuine and must not be used in a manner likely to mislead the viewers.

3. In all other respects, the DG, AIR/DD will be guided for purpose of commercial broadcasting and telecasting on AIR/DD by code of Ethics for advertising in India issued by the advertising council of India as modified from time to time.

4. Notwithstanding anything contained herein, this code is subject is such modification/direction as may be made/issued by the Government of India from time to time.

Various laws related with advertisements which are in operation in India are discussed as under:

1. The India Penal Code, 1860, prohibits the dissemination of any obscene matter under section 292 and 293 and this act also prohibits the publication of matter connected with unauthorized lotteries and publication of appeals using national symbols for furthering the prospects of any candidate at an election. Further it prohibits the offences which incite enmity between different classes of citizens and spreading of any rumors or reports likely to incite members of the armed forces to mutiny or failure of duty and which cause alarm to any section of public whereby there is an inducement to commit an offence against the state or against public peace and which incite one class or community against another and which alter words to make visible representations which intend toward religious feelings or beliefs of another persons, or of any class of citizens.
2. The 1867 Press and Registration of Books Act, which mandates that every copy of a paper or book printed in the country, must contain the name of the owner, editor, publisher, and place of printing date and price of publication.
3. Indian Telegraph Act 1885: Control of Government over broadcasting rests in Article 246 of the Indian Constitution and in several other laws including the ITA 1885 and the Indian Wireless Act 1933. The current broadcasting policy is base

don Article 19(2) of the Indian Const and the AIR code of 1970. These provisions mandates that broadcasts should not indulge in the criticism of friendly countries, attach religion or communities, air obscene or defamatory material, incite violence and the like

4. The India Post Office Act, 1898 imposes prohibition on the transmission of any indecent or obscene matter through the post and allows for inception in the interest of public safety. Under this act, it is prohibited to transmit by post of tickets, proposals, etc., relating to unauthorized lotteries. A person should not send by post the proposal or advertisement relating to a lottery or any indecent or obscene printing, painting, photograph, lithograph, engraving, book or card or any other indecent or obscene article or any postal article having thereon or on the cover thereof, any word, marks or designs of an indecent obscene, seditious, scurrilous, threatening or grossly offensive character under section 20 of the Act. Section 23 of the Act provides any postal articles sent by post in contravention of the provisions may be detained. Section 19A and 20 provides to allow opening and destroying or may be disposed of in such a manner as the Central Government may direct by rule, respectively. According to section 20 of the Act, contravening the provisions is punishable with imprisonment for a term, which may extend to one year or fine or with both.
5. Official Secrets Act, 1923, which prohibits obtaining, collecting, recording or publishing of secret government documents or photographs or sketches,

plans or notes or models that enemy of state could use. It is this Act, which prevents Indian journalists from publishing inside information about the government.

6. The Emblems and Names (Prevention of Improper Use) Act, 1950 forbids the use by any private party of certain names, emblems etc.
7. The Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954 (Act 21 of 1954) has been enacted which is an act to control the advertisements of drugs in certain cases, to prohibit the advertisements for certain purposes of remedies alleged to possess magic qualities and to provide for matters connected therewith. 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 are considered as Advertisement. If any person contravenes any of the provisions of the Act, shall be liable to be punished upto six months imprisonment with fine or both in case of first conviction and upto one year imprisonment with fine or with both under section 7 of the Act in subsequent convictions.
8. The Prize Competitions Act, 1955 (Act 42 of 1955) prohibits the publication of matter with unauthorized prize competition.
9. The Young Person (Harmful Publications) Act, 1956 (Act 93 of 1956) prohibits the dissemination and publication likely to encourage antisocial tendencies and deemed to be harmful to persons under the age of twenty years. This act came into force on 1st January 1957. Section 3 of the Act

imposes penalty for certain act of harmful publication and punishment is given on contravening upto six-month imprisonment or with fine or with both. The court may order the destruction of all copies of harmful publication on a conviction.

10. The Copy Right Act, 1957 (as amended upto August, 1984), which protects the original work of writers, artists, musicians, dramatists, film and video producer and other creative persons from being pirated. Infringement of copyright or other rights conferred by Copyright Act is an offence. It shall be punishable with imprisonment, which may extend to one year or with fine or with both.
11. The children Act, 1960 prohibits the disclosure of names, address and any other particulars of any child involved in any proceedings.
12. Section 11 of the Custom Act, 1962, which gives government the power to ban import and export of goods in the interest of security, public order and decent and morality.
13. The Press Council Act of 1965: It established the first press council of India in 1966 which was dissolved in 1975 during the emergency but was re-established under the Press Council Act of 1978. The Council comprises 28 members and a chair. The council has the power to initiate, hear and adjudicate complaints against the press as well as against the authorities.
14. Monopolies and Restrictive Trade Practices Act, 1969 defines unfair trade practice to cover several acts aimed at promoting the sale, use of supply of

any good, or the provision of any services which cause loss or injury to the consumers of those goods and services. Disobedience to Act has made punishable with imprisonment for a term which may extend to ten thousand rupees or with both.

15. The Prevention to Insults to the National Honor Act, 1971 forbids the bringing into contempt of the national flag or the constitution of India in any manner.
16. Contempt of Courts Act, 1971 relates to the willful disobedience of judicial orders and the like and to any publication, which interferes with or undermines the administration of justice. For example, a journalist is guilty of contempt of court if he or she publishes a report on a case held in camera (in the private chamber of judge).
17. The Criminal Procedure Code, 1973 empowers the government to declare certain copies of publications forfeited and to issue search warrants for such publications that offends Indian Penal Code provisions relating to public order or security of the state.
18. The Prize Chits and Money Circulation Schemes (Banning) Act, 1978 imposes a prohibition in respect of chit and money circulation schemes.
19. The Indecent Representation of Women (Prohibition) Act, 1986 forbids the depiction of women in an indecent or derogatory manner in mass media. Such offences are punishable with imprisonment extending upto two years and with a fine extending upto two thousand rupees on first conviction and

for second and subsequent convictions, a minimum term of six months extendable to five years together with a minimum fine of ten thousand rupees extendable to one lakh rupees is prescribed.

20. 1990 Prasar Bharti Act envisaged the setting up of 22 member parliamentary committee to oversee the autonomous corporation as well as a Broadcasting Council to hear complaints.

21. 1994 Cable Television Networks (Regulation) Act which mandates the registration of cable network before starting operations, specifies the use of standard equipment, require a programme code and prohibits the transmission of certain programmes. The regulation legalizes the seizure and confiscation of equipment and imposition of penalties for non-compliance.

22. The provisions of the laws imposing limitations on message/contents in the print media apply mutatis mutandis to advertising. In fact, most of the provisions governing the print media are applicable to advertising as well with such modifications as the context may require.

23 The All India Radio Code for commercial advertising originally covers advertising on television also. It lays down standards of conduct for advertisers. The code of commercial advertising on Doordarshan published in 1986 now lays down standards conduct for readvertisers on Indian television.

7.4 Advertising and Article 19 (1 & 2) of Indian Constitution

The constitution of India permits to impose reasonable restrictions on the right of freedom of speech and expression. Article 19(1) (a) gives right to freedom of speech and expression and under Article 19 (2) of the constitution has been added to impose reason restrictions on the exercise of the right to freedom of speech and expression given in Article 19(1) (a). The Article 19(2) reads that "Nothing in sub-clause (a) of Clause (1) shall affect the operation of any existing law or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interest of the sovereignty and integrity of India, the security of the state, friendly relations with foreign states, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence. The President of India is empowered under Article 352 (1) of the constitution of India towards proclamation of emergency in the country. If the President is satisfied that a grave emergency exists whereby the security of India or of any part of the territory thereof is threatened, whatever by war or external aggression or internal disturbance, he may by proclamation make a declaration for emergency. There is a provision in the constitution under Article 358 for suspension of provisions of Article 19 during emergencies. Under Article 359 (1) of Constitution of India there is provision of suspension of all proceedings pending in any court of the enforcement of rights during the period of proclamation period in force.

Power to impose censorship : Central Govt. is empowered by the Defense and Internal Security of India, Act 1971 (Act 42 of 1971) by notification in the Official Gazette to make rules as appear to it necessary or expedient for security

defense of India and civil defense. The internal security, public safety, the maintenance of public order are the efficient conduct of military operations or for maintaining supplies and services essential to the life of community. Further, under rule 48 of this Act, there is provision to impose censorship addressed to a printer, publisher or editor or to printers, publishers and editors require that all matter published in any document be submitted for scrutiny to an authority specified in the order. It also prohibit or regulate publishing of any document or circulating copies of any document published, or any extract or translation in contravention of order. If any person contravenes any order made, the government can make order for its forfeit and defaulter shall be punishable with imprisonment for a term, which may extent to five years or with fine or with both.

General guidelines have been issued for press on 26th June, 1975 during third proclamation of emergency in 1975 under which no unauthorized news or advertisement or illustration to be published in regard to vital means of communication is one of sixteen guidelines issued.

7.5 Indian Penal Code 1860 and its sections relating to advertising

In 1860, a comprehensive law, the Indian Penal Code was enacted. It contained offences like defamation and obscenity which writers, editors, publishers and printers must avoid sedition was added to it in 1870, promoting enmity between classes in 1898,outraging religious feelings in 1927 and assertions against national integration in 1927.

Various sections of this law that potentially effect the operations of the press areas under.

Section 144 of IPC intended to maintain public order Penal Code provisions on sedition (124A). Section 124-A was a simple version of the law of sedition passed in 1870. It prohibited the promotion of hatredness or contempt or disaffection with the Government using words, spoken or written or by signs or unable representation. Contravention of law is punishable with imprisonment for life, to which fine may be added or with imprisonment which may extend to three years, which fine may be added, or with fine, promotion of class hatred (153-A), Section 153-A prohibited promotion or attempts at promotion of feelings of enmity or hatred between different classes, obscenity (292 and 293), prohibits the dissemination of any obscene matter under section 292 or 293 or Section 295(A) and also prohibits the publication of matter connected with unauthorized lotteries and publication of appeals using national symbols for furthering the prospects of any candidate at an election. Under these sections every copy of such issue of the newspaper containing such matter, such document or such book can be forfeited to Government, defamation (499) and public mischief (505) apply to the press. Certain provisions of the Criminal Procedure Code and the Indian Penal Code are relevant to clauses (3) and (4) of Article 19, which

contains the expression “Public Order”. Section 124A on sedition included public disorder as a gist of offence, it would be protected by clause (2) of article 19. Thus, a limit was put on the width of the ambit and scope of the section. The validity of section 505 which makes the spread of rumors or reports with intent to any officer of the army, navy or air force to mutiny or an offence similarly against public tranquility, etc. was also upheld by the Supreme Court. Section 295A of the IPC provides for punishment for deliberately and maliciously outraging the religious feelings of any class of citizens. While Section 505 of IPC makes publication or circulation of any statement, rumor or report punishable, if it is made with the intent to cause any officer of the army, navy or air force to mutiny or other disregard or fail in his duty as such. The penalties for offences ranged from life imprisonment down to short imprisonment or fines or both. Indian Penal Code does not define what is obscene through the courts of India have taken upon themselves the delicate task of distinguishing between what is artistic and what is obscene. In the process, they have accepted the well known definition of the term by Cochburn C.J. in what is known by the Hicklin test. Clearly, it is not the courts that can sit in judgment over what are considered generally to be infractions of ethical norms nor are they really equipped to handle such cases. In such circumstances Justice Rajadhyakha recommended

that task of criticism of press behavior should be left to a court of honor such as Press Council, which would not hesitate to help in enforcing a code of conduct, laying down of healthy norms of professional ethics and thus enhance the prestige of the profession with the belief that properly representative body of the journalists would by their own conduct both by example and precept, bring back the prodigal to its own fold in course of time. In 1969, criminal and election laws, amendment act was passed to amend certain sections of the IPC and the Criminal Penal Code as also to introduce certain new provisions. All these affected the press.

7.6 Indian Contract Act 1872 and its Sections relating to Advertising

However, it is mentioned that there is no specific section of this Act directly related to advertising but the communication of proposals under various sections have been described under this act. The Indian Contract Act 1872 (Act No. 9 of 1872) under section 3 of the Act, the communication of the proposals, the acceptance of proposals and revocation of proposals and acceptances, respectively are deemed to be made by any act or omission of the party proposing, accepting or revoking by which intends to communicate such proposal, acceptance or revocation or which has the effect of communicating it.

Once after proposal made by a party is accepted, an agreement comes into being and the party making the offer cannot resale from the offer and would remain bound by the contract which has comes into being by the acceptance of the offer by the other party. Section 5 of the act provides that a proposal may be revoked at any time before the communication of its acceptance is complete as against the proposer, but no afterwards. Section 10 of the act provides that all agreements are contracts, if they are made by the free consent of parties competent to contract for a lawful consideration and with a lawful object and are not hereby expressly declared to be void. The fraud and misrepresentation under section 17 and 18 of the Act, respectively to deceive another party with the connivance or by his agent with intent to deceive or misrepresentation by making false information to gain an advantage or any claim by misleading another to his prejudice.

Section 46, 47, 48, 49 and 50 of the Act relate to time of performance of promise, place for performance of promise, application for performance on certain day to be at proper time and place, place for performance of promise, where no application to be made and no place fixed for performance and performance in manner or at time prescribed or sanctioned by promisee, respectively.

Section 73 of the act provides compensation for loss or damage caused by breach of contract, the party who suffers by such breach is entitled to receive from the party, who has broken the contract, compensation for any loss or damages caused to him, however, such compensation is not to be given for any remote and indirect loss or damage sustained by reason of breach. It is also mentioned that various sections of this Act has been amended by various state governments from time to time.

7.7 Summary

No one can afford to ignore government policies and legal systems in the advertising business. Various laws, rules, regulations and constitutional restrictions have been operative by Government concerned designed to address advertising issues for smooth and proper running of Government system and encourage the promotion of products sale in national and international market for sound economy of the country. These acts are amended from time to time as per need of government and society and these can have a major impact on firm's opportunities both locally and abroad. Thorough analysis of the political and legal forces in the country is must before entrance of any firm in the marketing. Therefore, the proviso of existing laws and constitutional restrictions relating to advertising are discussed with their amendments and sections provisions.

7.8 Key words

Incident: a trouble causing event

Forbid: order not to do something, refuse to allow

Infringe: break, encroach

7.9 Self assessment exercise

1. What are different laws regarding advertising in India and discuss their provisions briefly?
2. How the provisions made in Article 19 (1 & 2) of constitution of India affect the advertising, describe in detail?
3. Describe the Indian Penal Code 1860 and its sections in reference to advertising?
4. How the Indian Contract Act 1872 and its sections affect the advertising?

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7.10 Suggested readings

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New Delhi-110 002), 1st Edn, 1999.

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Regulations (Published by Himalaya Publishing House, Mumbai-400
004), 3rd Ed. 2005.

Shelton, A. Gunaratne – Handbook of the Media in Asia (Published
by Sage Publications, New Delhi) 1st Ed. 2000.

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Lesson – 8

Drugs and Magic Remedies Act, 1984 & Drugs and Cosmetics Act, 1940

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Dayal

STRUCTURE

8.1 Objectives

8.2 Introduction

8.3 Drugs and Magic Remedies Act, 1984

8.4 Drugs and Cosmetics Act, 1940

8.5 Summary

8.6 Key words

8.7 Self Assessment Exercise

8.8 Suggested Readings

8.1 Objectives

The objective of this lesson is to make the students aware about the acts relating to the drugs and magic remedies and cosmetics.

8.2 Introduction

It is believed that advertising is, after all, a powerful persuasive tool for creating a demand for a product, service or idea. It

attracts people to buy their products. In order to achieve its goal it is often criticized as untruthful, misleading, obscene, and irrelevant and so on. It not only crosses the limits of business codes and norms of the society but hurts the sensitivity of the consumers too. To protect the consumers against misleading advertisements a number of laws have been passed all over the world. In India it started in 1868, when commercial activities were included under the preview of the Indian Penal Code. Many laws were made to control these kinds of advertising practices. The laws for drugs, magic remedies and cosmetics were also made. Let us discuss them one by one.

8.3 DRUGS AND MAGIC REMEDIES ACT, 1954

This Act may be called the Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954. It extends to the whole of India except the State of Jammu and Kashmir, and applies also to persons domiciled in the territories to which this Act extends who are outside the said territories. It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

Scope of the Act

This Act deals not merely with matters, which relate to 'indecent' or 'morality', but primarily its object is to prevent self-medication or treatments, which advocate that evil, and to save innocent people from being duped to purchase medicines by advertisements in eloquent terms.

In this Act, unless the context otherwise requires,-

- (a) 'advertisement' includes 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;
- (b) 'drug' includes –
 - (i) a medicine for the internal or external use of human beings or animals;
 - (ii) any substance intended to be used for or in the diagnosis, cure, mitigation, treatment or prevention of disease in human beings or animals;
 - (iii) any article, other than food, intended to affect or influence in any way the structure or any organic function of the body of human beings or animals;
 - (iv) any article intended for use as a component of any medicine, substance or article, referred to in sub-clauses (i), (ii) and (iii)
- (c) 'Magic remedy' includes a talisman, mantra, kavacha, and any other charm of any kind which is alleged to possess miraculous powers disease in human beings or animals or for affecting or influencing in nay way the structure or any organic function of the body of human beings or animals.
- (d) 'taking any part in the publication of any advertisement' includes-
 - (i) the printing of the advertisement;
 - (ii) the publication of any advertisement outside the territories to which this Act extends by or at the instance of a person residing within the said territories;
- (e) omitted

Article

By reason of the definition in section 2 (b) (iii), a machine or apparatus for electric treatment of nervous diseases is an 'article', and, therefore, a 'drug' within the meaning of this Act.

1. Subject to the provisions of this Act, no person shall, take any part in the publication of any advertisement referring to any drug in terms which suggest or are calculated to lead to the use of that drug for –
 - (a) the procurement of miscarriage in women or prevention of conception in women; or
 - (b) the maintenance or improvement of the capacity of human beings for sexual pleasure; or
 - (c) the correction of menstrual disorder in women; or
 - (d) the diagnosis, cure, mitigation, treatment or prevention of any disease, disorder or condition specified in the Schedule, or any

other disease, disorder or condition by whatsoever name called which may be specified in the rules made under this Act :

Provided that no such rule shall be made except –

- (i) 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, and
- (ii) after consultation with the Drugs Technical Advisory Board constituted under the Drugs and Cosmetic Act, 1940 (23 of 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.

Subject to the provisions of this Act, no person shall take any part in the publication of any advertisement relating to a drug if the advertisement contains any matter which -

- (a) directly or indirectly gives a false impression regarding the true character of the drug; or
- (b) makes a false claim for the drug; or
- (c) is otherwise false or misleading in any material particular.

8.4 DRUGS AND COSMETICS ACT, 1940

[23 of 1940, Dated 10-04-1940]

An act to regulate the import, manufacture, distribution and sale of drugs and cosmetics whereas it is expedient to regulate the import, manufacture, distribution and sale of drugs and cosmetics;

And Whereas the Legislatures of all the Provinces have passed resolutions in terms of section 103 of the Government of India, Act, 1935, in relation to such of the above-mentioned matters and matters ancillary thereto as are enumerated in List II of the Seventh Schedule to the said Act:

It is hereby enacted as follows:-

1. This Act may be called the Drugs and Cosmetics Act, 1940
2. It extends to the whole of India.
3. It shall come into force at once, but Chapter III shall take effect only from such date as the Central Government may, by notification in the Official Gazette, appoint in this behalf, and chapter IV shall take effect in a particular State only from such date as the State Government may, by like notification, appoint in this behalf.

The provisions of this Act shall be in addition to, and not in derogation of, the Dangerous Drugs act, 1930 and any other law for the time being in force.

Definitions

In this Act, unless there is anything repugnant in the subject or context, -

- (a) “Ayurvedic, Siddha or Unani drug” includes all medicines intended for internal or external use for or in the diagnosis, treatment, mitigation or prevention of disease or disorder in human beings or animals, and manufactured exclusively in accordance with the formulae described in, the authoritative books of Ayurvedic, Siddha and Unani Tibb system of medicine, specified in the first Schedule;
- (aa) “The Board” means –

- i) In relation to Ayurvedic, Siddha or Unani drug, the Ayurvedic, Siddha and Unani Drugs Technical Advisory Board constituted under section 33C; and
- ii) In relation to any other drug or cosmetic, the Drugs Technical Advisory Board constituted under section 5;

(aaa) “cosmetic” means any article intended to be rubbed, poured, sprinkled or sprayed on, or introduced into, or otherwise applied to, the human body or any part thereof for cleansing, beautifying, promoting attractiveness, or altering the appearance, and includes any article intended for use as a component of cosmetic;

(b) “drug” includes –

- (i) all medicines for internal or external use of human beings or animals and all substances intended to be used for or in the diagnosis, treatment, mitigation or prevention of any disease or disorder in human beings or animals, including preparations applied on human body for the purpose of repelling insects like mosquitoes;
- (ii) Such substances (other than food) intended to affect the structure or any function of the human body or intended to

be used for the destruction of vermin or insects which cause disease in human beings or animals, as may be specified from time to time by the Central Government by notification in the Official gazette;

(iii) All substances intended for use as components of drug including empty gelatin capsules; and

(iv) Such devices intended for internal or external use in the diagnosis, treatment, mitigation or prevention of disease or disorder in human being or animals as may be specified from time to time by the Central Government by notification in the Official Gazette, after consultation with the Board;

(c) “Government Analyst” means –

(i) in relation to Ayurvedic, Siddha or Unani drug, a Government Analyst appointed by the Central Government or a State Government under section 33F; and

(ii) in relation to any other drug or cosmetic, a Government Analyst appointed by the Central Government or a State government under section 20;

(d) [Omitted]

(e) “Inspector” means –

- (i) in relation to Ayurvedic, Siddha or Unani drug, an Inspector appointed by the Central Government or a State Government under section 33G; and
 - (ii) in relation to any other drug or cosmetic, and Inspector appointed by the Central Government or a State Government under section 21;
- (f) “manufacture” in relation to any other drug or cosmetic includes any process or part of a process for making, altering, ornamenting, finishing, packing, labeling, breaking up or other wise treating or adopting any drug or cosmetic with a view to its sale or distribution but does not include the compounding or dispensing of any drug, or the packing of any drug or cosmetic, in ordinary course of retail business; and “to manufacture” shall be construed accordingly;
- (g) “to import” with its grammatical variations and cognate expressions means to bring into India;
- (h) “patent or proprietary medicine” means, -
 - (i) in relation to Ayurvedic, Siddha or Unani Tibb systems of medicine of all formulations containing only such ingredients mentioned in the formulae described in the authoritative books

of ayurvedic, Siddha or Unani Tibb systems of medicine specified in the First Schedule, but does not include a medicine which is administered by potential route and also a formulation included in the authoritative books as specified in clause (a);

(ii) in relation to any other system of medicine, a drug which is a remedy or prescription presented in a form ready for internal or external administration of human beings or animals and which is included in the edition of the Indian Pharmacopoeia for the time being or any other pharmacopoeia authorized in this behalf by the Central Government after consultation with the Drugs Technical advisory Board constituted under section 5; “prescribed” means prescribed by rules made under this Act.

Prohibition of manufacture and sale of certain drugs and cosmetics

From such date as may be fixed by the State Government by notification in the Official Gazette in this behalf, no person shall himself or by any other person on his behalf –

(a) manufacture for sale or for distribution, or sell or stock or exhibit or offer for sale, or distribute –

(i) any drug which is not of a standard quality, or is misbranded, adulterated or spurious;

(ii) any cosmetic which is not of a standard quality or is misbranded or spurious;

- (iii) any patent or proprietary medicine, unless displayed in the prescribed manner on the label or container thereof the true formula or list of active ingredients contained in to together with the quantities, thereof;
 - (iv) any drug which by means of any statement, design or device accompanying it or by any other means, purports or claims to prevent, cure or mitigate any such disease or ailment, or to have any such other effect as may be prescribed;
 - (v) any cosmetic containing any ingredient which may render it unsafe or harmful for use under the directions indicated or recommended;
 - (vi) any drug or cosmetic in contravention of any of the provisions of this Chapter or any rule made there under;
- (b) sell or stock or exhibit or offer for sale, or distribute any drug or cosmetic which has been imported or manufactured in contravention of any of the provisions of this Act or any rule made there under;
- (c) manufacture for sale or for distribution, or sell, or stock or exhibit or offer for sale, or distribute any drug or cosmetic,

except under, and in accordance with the conditions of, a license issued for such purpose under this Chapter :

Provided that nothing in this section shall apply to the manufacture, subject to prescribed conditions, of small quantities of any drug for the purpose of examination, test or analysis.

Provided further that the Central Government may, after consultation with the Board, by notification in the Official Gazette, permit, subject to any conditions specified in the notification, the manufacture for sale or for distribution, sale, stocking, or drugs not beings of standard quality.

18.A. Disclosure of the name of the manufacture, etc.

Every person, not beings the manufacture of a drugs or cosmetic or his agent for the distribution therefore, shall, if so required, disclose to the Inspector the name, address and other particulars of the person from whom he acquired the drugs or cosmetic.

Standards to be complied with by imported drugs and by manufactured for sale, stocked or exhibited for sale or distributed

Class of Drugs	Standard to be Complied with
Patent of proprietary medicines other than Homeopathic medicines.	The formula or list of ingredients displayed in the prescribed manner on the label or container and such standards as may be prescribed.
1. Substances commonly known as vaccines, sera, toxins, toxoids,	The standards maintained at the International Laboratory for Biological Standards, Standards

<p>anti toxins, and antigens and biological products of like nature, for veterinary use</p>	<p>Serum institute, Copenhagen, and at the Central Veterinary Laboratory, Weybridge, Surrey, U. K., and such other laboratories recognized by the World Health Organization from time to time, and such further standards of strength, quality and purity as may be prescribed.</p>
<p>[Omitted]</p>	
<p>Substances (other than food) intended to affect the structure or any function of the human body or intended to be used for the destruction of vermin for insects which causes disease in human beings or animals.</p>	<p>Such standards as many be prescribed</p>
<p>4A. Homeopathic medicines: (a) Drugs included in the Homeopathic Pharmacopoeia of India.</p>	<p>Standards of identity, purity and strength prescribed for the drugs in the edition of such pharmacopoeia for the time being in which they are given and such other standards as may be prescribed.</p>
<p>(b) Drugs not included in the</p>	<p>Standards of identify, purity and strength</p>

<p>Homoeopathic Pharmacopoeia of India but which are included in the Homoeopathic Pharmacopoeia of United states of America or the United Kingdom or the German Homoeopathic Pharmacopoeia.</p>	<p>specified in the edition of the Indian Pharmacopoeia for the time being in force and such other standards as may be prescribed.</p>
<p>(c) Drugs not included in the Homoeopathic Pharmacopoeia of India or the United States of America or the Kingdom or the German Homoeopathic Pharmacopoeia.</p>	<p>The formula or list of ingredients displayed in the prescribed manner on the label of the container and Center Government may prescribe such other standards as.</p>
<p>5. Other drugs: (a) Drugs included in the Indian Pharmacopoeia.</p>	<p>In case the standards of identity purity and strength for drugs are not specified in the edition of the Indian pharmacopoeia immediately proceeding, the standards of identity, purity and strength shall be those occurring in such immediately preceding edition of the Indian</p>

	<p>pharmacopoeia and such other standards as may be prescribed.</p> <p>Standards of identity, purity and strength specified for drugs in the edition of such official pharmacopoeia of any other country for the time being in force and such other standards as may be prescribed.</p>
<p>(b) Drugs not included in the Indian Pharmacopoeia but which are included in the official pharmacopoeia of any other country</p>	<p>In cases the standards of identity, purity and strength for drugs are not specified in the edition of such official pharmacopoeia for the time being in force but are specified in the edition immediately preceding the standards of identity, purity and strength shall be those occurring in such immediately preceding edition of such official and such other standards s may be prescribed.</p>

8.5 Summary

Advertising attracts people to buy their products. In order to achieve its goal it is often criticized as untruthful, misleading, obscene, and irrelevant and so on. To protect the consumers against misleading advertisements a number of laws have been passed. Drugs and magic remedies act, 1984 deals not merely with matters, which relate to 'indecent' or 'morality', but primarily its object is to prevent self medication or treatments, which advocate that evil, and to save innocent people from being duped to purchase medicines by advertisements in eloquent terms.

Drugs and cosmetics Act, 1940- to regulate the import, manufacture, distribution and sale of drugs and cosmetics whereas it is expedient to regulate the import, manufacture, distribution and sale of drugs and cosmetics.

8.6 Key words

Sprinkle: scatter small pieces of a substance over a surface

Vermin: an animal or insect regarded as a pest

Mitigation: make less intense or serious; make (an offence) less serious.

Altering: make or become different

Contravention: break (a rule etc.)

8.7 Self Assessment Exercise

Q1 Discuss the law relating to drugs and magic remedies.

Q2 Throw light on the drug and cosmetics act.

8.8 Suggested Readings

- (1) **Rayudu, C.S; Rao Nageswar S.B; Mass Media Laws & Regulations; Himalaya Publishing House.**
- (2) Ramakrishna S; Criminal Minor Acts; Capital Law House
- (3) Datta Sarojit; Advertising Today.
- (4) Frank Jeffkins; Advertising

Lesson – 9
The Punjab Act, 1914

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Vetter: Prof Manoj Dayal

STRUCTURE

9.1 Objective

9.2 Introduction

9.3 The Punjab Act, 1914

9.4 Summary

9.5 Key words

9.6 Self Assessment Exercise

9.7 Suggested Readings

9.1 OBJECTIVE

The objective of this lesson is to make the students aware about the Punjab Act.

9.2 Introduction

The Punjab Excise Act, 1914 prohibits advertising offering or soliciting the use of liquor in any form in the area of Punjab. An extension of this act also prohibits such advertisements in the Union Territory of Delhi.

9.3 Punjab Act, 1914

Punjab Act No. 1 of 1914 as amended up to date with latest notifications. Where it is expedient to consolidate and amend the law in Punjab and Haryana relating to the import, export, transport, manufacture, sale and possession of intoxicating liquor and of intoxicating drugs : It is hereby enacted as follows :-

Preliminary and Definitions

This Act may be called these Punjab Excise Act, 1914 and

- (II) IT extends to the whole of Punjab and Haryana
- (III) It comes into force on such date as the State Government may by notification direct.

Definition:

In this Act and the rules made under it unless there is something repugnant in the subject or context:

- (1) “Beer” includes ale, porter, stout, and all other fermented liquors made form malt.
- (2) “to bottle” means to transfer liquor from a cask or other vessel to a bottle, jar, flask or similar receptacle whether any process of manufacture be employed or not, and bottling includes re-bottling.

- (3) “Collector” includes any revenue officer in independent charge of district and any official appointed by the State Government to discharge throughout any specified local area, the functions of a Collector under this Act.
- (4) “Commissioner” means the chief officer incharge of the revenue administration of a division.
- (5) “denatured” means effectually and permanently rendered unfit for human consumption.
- (6) “Excise-able article” means: - (a) any alcoholic liquor for human consumption; or (b) any intoxicating.
- (7) ‘Country liquor’ and ‘Foreign liquor’:- The State Government may by notification declare what, for the purposes of this act or any portion thereof shall be deemed to be “country liquor” and “foreign liquor”.

Power of State Government to declare limit of sale by retail and by

Wholesale:-

The State Government may by notification declare with respect either to the whole of Punjab and Haryana or to any local area comprised therein, and as regards purchasers generally or any specified class of purchasers and generally or for any specified occasions the maximum or minimum quantity

or both of any intoxicant which for the purpose of this Act may be sold by retail and by whole sale.

Power to limit application of notifications, permits etc. made under this Act. Where under this Act any notification is made and any power the conferred, any appointment made or any license, pass or permit granted, it shall be lawful to direct :-

- (a) that it shall apply to the whole of Punjab and Haryana or to any specified local area or areas;
- (b) that it shall apply to all or any specified intoxicant or intoxicants or classes thereof
- (c) That it shall apply to all or any class or classes of persons or officers;
- (d) That it shall be in force only for some special period or occasion.

Superintendence and control of excise administration and excise officers:-

- (a) Subject to the control of the State Government and unless the State Government shall by notification otherwise direct, the general superintendence and administration of all matters relating to excise shall vest in the Financial Commissioner.
- (b) Subject to the general superintendence and control of the Financial Commissioner and unless the State Government shall by

notification otherwise direct, the Commissioner shall control all other excise officers in his division.

- (c) Subject as aforesaid and to the control of the commissioner and unless the State Government shall by notification otherwise direct the Collector shall control all other excise officers in his district.

Excise Commissioner:-

The State Government may by notification appoint an Excise Commissioner and subject to such conditions and restrictions as it may invest him with all or any of the powers conferred on the Financial Commissioner by the Act.

- (a) ***Other classes of excise officers:*** - There shall be such other classes of excise officers as the State Government may by notification declare and the State Government may appoint as many persons as it deems fit to be excise officers of these classes.
- (b) ***Their Powers:*** - The State Government by notification declare what powers under this Act shall be exercised by excise officers of each class.
- (c) ***Mode of conferring Powers:*** - In conferring powers under this act the State Government may empower person by name or in virtue of their office or classes of officials generally by their official titles.

Powers to invest persons with special powers under this Act:

The State Government may by notification invest any person, not being an excise officer, the power to perform all or any of the functions an excise officer under this Act, and such persons shall in the exercise of these functions be an excise officer.

Local limits of jurisdiction:

The jurisdiction of the Financial Commissioner and of the excise Commissioner shall extend to Punjab and Haryana the jurisdiction of Commissioners shall extend to their divisions and the Jurisdiction of collectors and other excise officers shall unless, the State Government shall otherwise direct, extend to the districts in which they are for the time being employed.

Delegation :- (a) The State Government may by notification delegate to the Financial Commissioner all or Commissioner all or any of its power under this Act, except the powers conferred by sections 14,21,22,31,56 and 58 of this Act.

Appeal:

An appeal shall lie from any original or appellate order of an excise officer in such cases or classes of cases and to such authority as the State Government shall by notification declare.

Provided that the application shall be made within a period of one hundred and eighty days of the date of taking of the proceedings or of passing of the order, as the case may be.

- (1) To be exercised subject to such condition and in respect of such areas, as may be specified in the notification.
- (2) The State government may by notification also confer upon any excise officer the powers of the Excise Commissioner under subsection (1) to be exercised subject to such condition and in respect to such areas, as may be specified in the notification.
- (3) The Excise Commissioner or the excise officer or whom powers of the excise Commission have been conferred under section (2) may review his own order.
- (4) The Financial Commissioner may suo moto, into any time or on an application made to him, call for the record of any case decided under the preceding subsections and if in his opinion the final order contains an erroneous decision or any question of law, he may pass such order on the case as he may deem fit.

- (5) No order shall be made under this section which adversely affect the rights of any person upon whom an obligation is imposed by or under this Act, without giving such person a reasonable opportunity of being heard.

IMPORTANT, EXPORT AND TRANSPORTATION OF INTOXICANT:

No such intoxicant shall be imported, exported or transported except: - No such intoxicant shall be imported, exported or transported except:-

- (a) after payment of any duty to which it may be liable under this act or execution of a bond for such payment, and
- (b) in compliance with such conditions as the state Government may impose.

Power of State Government to prohibit import, export and transport of intoxicants:-

- (a) prohibit the import or export of any intoxicant into or from Punjab, Haryana or any part thereof; or
- (b) prohibit the transport of any intoxicant.

Manufacture of intoxicants prohibited except under the provisions of this Act:-

- (1) (a) No intoxicant shall be manufactured or collected;
- (c) no hemp plant shall be cultivated;

(d) no tari shall be drawn from any tree, and

(e) no person shall use, keep or have in possession, any materials, stills utensil, implement or apparatus what so ever for the purpose of manufacturing any intoxicant other than tari, except under the authority and subject to the terms and conditions of a licence granted in that behalf by the Collector.

(2) No distillery or brewery shall be constructed or worked except under the authority and subject to the terms and conditions of licence granted in behalf of the Financial Commissioner under Section 21.

Establishment or licensing of distilleries and breweries: - The Commissioner subject to such restriction or condition as the State Government may,

(b) discontinue any distillery so established.

(c) License the construction and working of a distillery or brewery.

(d) Make rule regarding :-

(1) the granting of licences for distilleries, stills or breweries;

(2) the security to be deposited by the license of a distillery or brewery;

(3) the inspection and examination of such distillery or brewery;

- (4) the inspection and examination of such distillery or brewery and the warehouse connected therewith and of the spirit or fermented liquor made and stored therein :
- (5) the management and working of the distillery or brewery;
- (6) the form of accounts to be maintained and the returns to be submitted by the licensee;
- (7) the upkeep of buildings and plant;
- (8) the size and description of stills and other plants;
- (9) the manufacture storing and passing out of spirit and contents of passes;
- (10) the prices to be charged by the licensee;
- (11) any other matters connected with the working of distilleries or breweries.

Establishment or licensing of warehouses :- The Financial Commissioner subject to such restrictions or conditions as the State Government may impose, may impose, may :-

- (a) establish or license a warehouse wherein any intoxicant may be deposited and kept without payment of duty-
- (b) discontinue any warehouse so established

Removal of intoxicants from the distillery: - No intoxicant shall be removed from any distillery, brewery, warehouse or other place of storage established or licensed under this Act, unless the duty (if any) (payable under Chapter V) has been paid or a bond has been executed for the payment thereof.

Possession of intoxicants :- (1) No person shall have in his possession any quantity of any (intoxicants) in excess of quantity as the State Government has under section 5, declared to be the limit of retail sale, except under the authority and in accordance with the terms and conditions of –

- (a) a license for the manufacture, sale or supply of such article; or
- (b) in the case of intoxicating drugs, a license for the cultivation or collection of the plants from which such drugs were produced.
- (c) A permit granted by the Collector in that behalf;

(2) Exceptions: Sub-section (1) shall not apply to-

(a) any intoxicant in the possession of any Excise officer, concern carrier of warehouse man as such; or

(3) A licensed vendor shall not have in his possession at any place other than that authorized by his licence, any quantity of any intoxicant in excess of such quantity as the State Government has under section 5 declared to be the limit of sale by retail except under a permit granted by the Collector in that behalf.

(4) Prohibitions and restriction of possession of intoxicant in certain cases: Notwithstanding any thing contained in the foregoing sub-sections the Government may by notification prohibit the possession of any intoxicant or restrict such possession by such conditions as it may prescribe.

Penalty for unlawful import, export, transport, manufacture, possession etc.-

(1) Whoever, in contravention of any section of this Act, or of any rule notification issued or given thereunder or order made, or of any license, permit or pass granted under this Act:

- (a) Imports, exports, transports, manufactures, collects or possesses any intoxicant; or
- (b) Constructs or works any distillery or brewery.
- (c) Uses, keeps or has in his possession any materials, stills, utensils, implements or shall be punishable for every such offence with imprisonment for terms which may extend to three years and with fine upto two thousand rupees, Provided that in the case of an offence of possession of :

- (i) A working still for the manufacture of any intoxicant, such imprisonment shall not be less than one year and such fine shall not be less than five thousand rupees.
- (ii) Lahan, such imprisonment shall not be less than six months and such fine shall not be less than one thousand rupees.
- (iii) Country liquor manufactured otherwise than in a licensed distillery in Pb. In a quantity not exceeding ten bottles, each bottle containing 750 milliliters, such imprisonment shall not be less than three months and such fine shall not be less than five hundred rupees and in a quantity exceeding ten bottles of the aforesaid capacity such imprisonment shall not be less than six months and such fine shall not be less than one thousand rupees.
- (iv) Foreign liquor other than –
 - (a) Manufactured in a licensed distillery or brewery in India;
 - (b) Imported into India on which custom duty is leviable under the Indian Tariff Act 1934 or the Custom Act, 1962.

Such imprisonment shall not be less than six months and such fine shall not be less than two thousand rupees.

(2) Whoever in contravention of any section other (Act No. 31 of 1976), than Section 29* and 30 of the Act or of any rule notification issued or given

thereunder or order made or of any license, permit or pass granted under this Act, or

- (a) Sells any intoxicant; or
- (b) Cultivates the hemp plants; or
- (c) Removes any intoxicant from distillery, brewery or warehouse established or licensed under this Act; or
- (d) Bottles any liquor for the purpose of sale; or
- (e) Taps or draws tar from any tar producing tree.

Shall be punishable with imprisonment for a term which may extend to two years and fine which may extend to two thousand rupees.

9.4 Summary

The Punjab Act, 1914 prohibits advertising offering or soliciting the use of liquor in any form in the area of Punjab. An extension of this act also prohibits such advertisements in the Union Territory of Delhi.

9.5 Key words

Repugnant: distasteful and objectionable

Intoxicant: causing intoxication (make drunk, make greatly excited)

9.6 Self Assessment Exercise

Q1 Discuss the Punjab Act of 1914.

9.7 Suggested Readings

- (5) Rayudu, C.S; Rao Nageswar S.B; Mass Media Laws & Regulations; Himalaya Publishing House.
- (6) Ramakrishna S; Criminal Minor Acts; Capital Law House
- (7) Datta Sarojit; Advertising Today.
- (8) Frank Jeffkins; Advertising

Lesson – 10
**MRTP ACT, INDIAN FOOD ACT & NON-BANKING FINANCIAL
COMPANIES AND MISCELLANEOUS NON-BANKING
COMPANIES
(ADVERTISEMENT) RULES, 1977.**

***Author:* Dr. Bandana Pandey**

***Vetter:* Prof. Manoj Dayal**

STRUCTURE

10.1 Objective

10.2 Introduction: MRTP Act.

10.3 Indian Food Act

10.4 Non-Banking Financial Companies and Miscellaneous Non-Banking

Companies (Advertisement) Rules

10.5 Summary

10.6 Key words

10.7 Self Assessment Exercise

10.8 Suggested Readings

10.1 OBJECTIVES

The objective of this lesson is to make the students aware about the acts relating to the MRTP, Indian Food adulteration & Non-Banking

Financial Companies And Miscellaneous Non-Banking Companies
(Advertisement) Rules.

**10.2 Introduction: MONOPOLIES AND RESTRICTIVE TRADE
PRACTICES ACT 30, 1984:**

Popularly known as MRTP Act, the Act and its amendment have made special provisions for regulating misleading advertisements and unfair trade practices etc. Defining the concept of Unfair Trade Practice, the section states, “unless the context otherwise required, 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 services, adopts one or more of the following”:

1. The practice of making any statement, whether orally or in writing or by visible representation which
 - a) Falsely represents that the goods are of a particular standard, quality, 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 supplier or the seller 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,
- h) Makes to the public a representation in a form that purports to be –
 - i) a warranty or guarantee of a product or of any goods or services, or
 - ii) a promise to replace, maintain or repair an article or any part thereof or to repeat or continue a service until it has achieved a specific result if there is no reasonable prospect that such warranty, guarantee or promise will be carried out;
- i) materially misleads the public concerning the price at which a product or like products or goods or services, have been, or are, ordinarily sold or provided, and, for this purpose, a

representation as to price shall be deemed to refer to the price at which the product or goods or services has or have been sold by sellers or provided by suppliers generally in the relevant market unless it is clearly specified to be the price at which the product has been sold or services have been provided by the person by whom or on whose behalf the representation is made,

j) gives false or misleading facts disparaging the goods, services or trade of another person;

2. permits the publication of any advertisement whether in any newspaper or otherwise, for the sale or supply at a bargain price, of goods or services that are not intended to be offered for sale or supply at the bargain price, or for a period that is, and in quantities that are, reasonable, having regard to the nature of the market in which the business is carried on, the nature and size of business, and the nature of the advertisement;

3. permits the offering of gifts, prizes or other items with the intention of not providing them as offered or creating the impression that something is being given or offered free of charge when it is fully or partly covered by the amount charged in the transaction as a whole. And permits the conduct of any contest, lottery, game of chance or skill, for the purpose of promoting directly or

indirectly, the sale, use or supply of any product or any business interest;

4. permits the sale or supply of goods intended to be used or are of a kind likely to be used, by consumers, knowing or having reason to believe that the goods do not comply with the standards prescribed by competent authority relating to performance, composition, contents, design, constructions, finishing or packaging as are necessary to prevent or reduce the risk of injury to the person using the goods.

10.3 The Prevention of Food Adulteration Rules 1955

Short title, extent and commencement: (1) These Rules may be called the prevention of Food Adulteration Rules, 1955. They extend to the whole of India. The words “except the State of J & K”.

Definition:

In these rules, unless the context otherwise requires –

- (a) “Act” means the Prevention of Food Adulteration act, 1954 (37 of 1954);
- (b) “Director” means the Director of the Laboratory;
- (c) “Laboratory” means a Central Food Laboratory;
- (d) “Form” means a Form set forth in Appendix A to these rules.
- (e) “Local Authority” means-

- (i) In the case of sea ports, the Health Officer as defined in the Indian Port Health Rules, 1955, in respect of that portion of local area falling within the jurisdiction of the ports;
- (ii) In the case of airports, the Health Officer as defined in the Indian Aircraft (Public Health) Rules, 1954, in respect of that portion of the local area falling within the jurisdiction of the airport;
- (iii) In the case of all railway stations or groups of railway stations (including any railway colony, office yard, goods-shed transshipment Railway Administration for the purpose or in connection with Railways) the Medical Superintendent/ Divisional Medical officer of the railways in respect of that portion of the local area falling within the jurisdiction of the said railway station or group of railway Stations.
- (iv) In the case of an ordnance factory or equipment factory, the General Manager of such factory or equipment factory or both.

10.4 Non-Banking Financial Companies And Miscellaneous Non-Banking Companies (Advertisement) Rules, 1977

These rules may be called The Non-Banking Financial Companies and Miscellaneous Non-Banking Companies (Advertisement) Rules, 1977. They came into force on the IST day July 1977. They shall apply to all non-banking financial companies and miscellaneous non-banking companies.

Definitions

In these rules, unless the context otherwise requires:

- (a) "Deposits" has the meaning assigned to it in the directions;
- (b) "Directions" means the Non-Banking Financial Companies (Reserve Bank) Directions, 1977, or, as the case may be, the miscellaneous Non-Banking Companies (Reserve Bank) Directions, 1977;
- (c) "Miscellaneous Non-banking Company" has the meaning assigned to it in Clause (1) of Sub-paragraph (1) of paragraph 2 of the Non-Banking Financial Companies (Reserve Bank) Directions, 1977, and includes any other company, which is a financial institution, to which the aforesaid directions apply under paragraph 19 thereto.

Form and Particulars of Advertisement

1. Every company intending to invite or allowing or causing any other person to invite or cause to be invited on its behalf, any deposits from the public, other than its directors, shareholders or employees shall issue an

advertisement for the purpose in a leading English newspaper and one vernacular newspaper circulating in the state in which the registered office of the company is situate.

2. No such company shall issue or allow any other person to issue or cause to be issued on its behalf any advertisement inviting deposits unless such advertisement is issued on the authority and in the name of the Board of Directors of the company and contains a reference to the conditions subject to which deposits shall be accepted by the company, the date on which the said Board of Directors has approved the text of the advertisement and the following information, namely:

- (a) the name of the company;
- (b) the date of incorporation of the company;
- (c) the business carried on by the company and its subsidiaries with details of branches or units, if any;
- (d) brief particulars of the management of the company;
- (e) names, addresses and occupations of the directors;
- (f) profits of the company before and after making provisions for tax for the three financial years immediately preceding the date of advertisement;
- (g) dividends declared by the company in respect of the said years;

- (h) a summarized financial position of the company as in the two audited balance-sheets immediately preceding the date of advertisement in following form, namely:

Summarized financial position of the company as appearing in the two latest audit balance-sheets.

	Figures for the latest financial year for which audited accounts	Figures for the financial year previous referred to in Col.	Assets	Figures for the latest financial year for which audited account are available	Figures for financial year previous to the year referred in Col. 5
Liabilities					

1	2	3	4	5	6
Share capital, Reserve and Surplus, secured loans, unsecured loans, current liabilities and provisions			Fixed assets, investments, current assets, loans, and advances, Miscellaneous, expenditure, profit and loss account		
Total :					

Note: Brief particulars of contingent liabilities may be added by way of footnote:

- (i) the amount which the company can raise by way of deposits under the directions and the aggregate deposits actually held on the last day of the immediately preceding financial year;
- (j) a statement to the effect that on the day of the advertisement, the company has no overdue deposits other than unclaimed deposits or a statement showing the amount of such overdue deposits, as the case may be;
- (k) a declaration to the effect:
 - (i) that the company has complied with the provisions of the directions applicable to it;

- (ii) that the compliance with the directions does not imply that repayment of deposits is guaranteed by the Reserve Bank of India; and
- (iii) that the deposits accepted by the company (other than secured deposits, if any, accepted under the provisions of the directions the aggregate amount of which may be indicated) are secured and ranking *pari passu* with other unsecured liabilities.

Validity of the Advertisement

An advertisement issued in accordance with the results shall be valid until the expiry of the six months from the date of closure of the financial year in which it is issued or until the date on which the balance-sheets laid before the company in general meeting or where the annual general meeting for any year has not been held, the latest day on which that meeting should have been held in accordance with the provisions of the Companies Act, 1996 (1 of 1956) whichever is earlier, and a fresh advertisement shall be made in each succeeding financial year for invitation of deposits during that financial year.

Copy of the Advertisement to be filed with the Reserve Bank

No advertisement shall be issued by or on behalf of company unless on or before the date of its issue, there has been delivered to the Regional Office of the (Department of Non-Banking Companies) of the Reserve Bank of India within whose jurisdiction the registered office of such company is situate, a copy thereof signed by a majority of the directors constituting the Board of Directors which approved the advertisement or by their agents authorizing in writing.

Explanation

For the purpose of this sub-rule, the date of the issue of the newspaper in which the advertisement appears shall be taken as the date of issue of the advertisement.

10.5 Summary

MRTP Act, 1984 deals with the provisions for regulating misleading advertisements and unfair trade practices etc. which confuse the consumers and presents an ambiguous picture of the product or service.

Non-Banking Financial Companies and Miscellaneous Non-Banking Companies (Advertisement) Rules, 1977 deals with the advertisement of aforesaid companies in newspapers and provisions relating the same.

10.6 Key words

Ordinance: a decree (an order given by a government or other authority)

10.7 Self Assessment Exercise

Q1 Discuss the laws relating to Monopolies and Restrictive Trade Practices Act 30, 1984.

Q2 Throw light on the Indian Food act.

Q3 Explain the Non-Banking Financial Companies And Miscellaneous Non-Banking Companies (Advertisement) Rules.

1.8 Suggested Readings

- (9) Rayudu, C.S; Rao Nageswar S.B; Mass Media Laws & Regulations; Himalaya Publishing House.
- (10) Ramakrishna S; Criminal Minor Acts; Capital Law House
- (11) Datta Sarojit; Advertising Today.
- (12) Frank Jeffkins; Advertising

Lesson : 11

Young Person Harmful Publication Act 1956.

Censorship and Advertising

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STRUCTURE

11.1 Objectives

11.2 Introduction: The Young Persons (Harmful Publications) Act, 1956 (Act 93 Of 1956)

11.3 Censorship

11.4 Summary

11.5 Key words

11.6 Self Assessment Exercise

11.7 Suggested Readings

11.1 OBJECTIVES

The objective of this lesson is to make students acquaint with the laws pertaining to publications that can have harmful effects on the masses. It also deals with the censorship in advertising.

11.2 THE YOUNG PERSONS (HARMFUL PUBLICATIONS) ACT, 1956 (ACT 93 OF 1956)

Statement of Objects and Reasons

"Pictorial and other publications containing stories of the glorification of crime, violence and vice, known as "horror 2 comics" are being circulated in India in large quantities. The dissemination of such stories is likely to encourage antisocial tendencies among children and exert a harmful influence on young persons. So far as the import into India of pictorial publications is concerned the Government of India has imposed a ban under the Sea Customs Act, 1878 (VIII of 1878). The object of this bill is to prohibit the production in India of such literature or of a variant and its circulation within India".

The Young Persons (Harmful Publications) Act, 1956 has been passed in India to prevent the disaffection of certain publications harmful to young persons. The Act came into force on 1st February 1957.

Definition (Section 2)

- (a) Harmful Publication: "Harmful publication" means any book, magazine pamphlet, leaflet, newspaper or other like publication which consists of stories told with the aid of picture or without the aid of pictures or wholly in pictures, being stories portraying wholly or mainly
- (i) the commission of offences; or
 - (ii) acts of violence or cruelty; or
 - (iii) incidents of repulsive or horrible nature; in such a way that the publication as a whole tend to corrupt a young person into whose hands it might fall, whether by inciting or encouraging him to commit offences or acts of violence or cruelty or in any other manner whatsoever.
- (b) State Government: "State Government" in relation to Union Territory, means the administrator thereof.

- (c) Young Person: "Young Persons" mean persons under the age of twenty years.

Penalty for Harmful Publications

Section 3 of the Act imposes Penalty for certain acts of harmful publications. The punishment is with imprisonment, which may extend to six months, or with fine or with both. The punishment is imposed if a persons.

- (a) sells, lets to hire, distributes, publicity exhibits or in any manner puts into circulation, any harmful publication or
- (b) for purposes of sale hire, distribution, public exhibition or circulation, prints, makes or produces or has in his possession any harmful publication, or
- (c) advertises or makes known by any means whatsoever that any harmful publication can be procured from or through any person.

The court may order the destruction of all copies of harmful publication on a conviction and copies which are in the custody of the Court of remain in the possession or power of the person convicted.

Power of the Government

The State Government has power to declare harmful publications to be forfeited. The Government is of the opinion that any publication is a harmful publication may declare by order that every copy of harmful publication shall be forfeited to the Government. Every notification notified in the Official Gazette shall state the ground for passing such order. Before passing order the State Government consult with the principal law officer of the state whether called as the Advocate General or by any other name. The Sub-section(2) states that it shall be lawful for any police officer to seize the same wherever found in the provision of sub-section (1) where there is an order of forfeiture in respect of any publication. (Section 4).

Appeal against Forfeiture Order

Section 5 of the Act permits to go on appeal to High court against the order of the State Government to forfeit harmful publications to the Government. Any person aggrieved by the order of the Government may apply to the High court within sixty day from the date of the order to set a side such order. The High Court may on such application may pass such order as it may deems fit.

Seizure and Destruction

Section 6 gives power to seize and destroy harmful publications. The

State Government may empower any police officer or any other officer to seize any harmful publication. Any Magistrate of the first class may by warrant authorize any police officer not below the rank of Sub-Inspector. The police officer may enter and search any place where any stock of harmful publications may be there or may be reasonably suspected to be there. The police officer may seize any publication found in such place if in his opinion it is a harmful publication. Any publication seized by any police officer empowered by the state government shall be produced before a Magistrate of first class. Similarly, any publication seized by any police officer authorized by warrant by any Magistrate shall be produced before the court if the publication is a harmful publication he or it may cause it to be destroyed. If in the opinion of the Magistrate of Court the publication is not a harmful publication the Magistrate or Court shall dispose of it in the manner provided in Section 523, 524 and 525 of the code of Criminal Procedure.

11.3 CENSORSHIP

An advertisement makes its impact by simultaneously arousing the visual and aural senses. The written word is understood by only a small fraction of the people, the spoken word reaches even fewer persons, but the advertisement contains a complete and immediate appeal for everyone, and,

if post publication penal action against objectionable advertisements is to be taken, the remedy may be too long delayed, for before the advertisement can be punished and the advertisement withdrawn, it already have done a great deal of irreparable damages. Therefore, in the case of advertisement censorship or pre-publication control can be deemed to be a reasonable restriction on the right of freedom of expression.

Nature and Extent of Restriction

No rules framed by the Censor Board, which go beyond the provisions of the constitution, can be legal. Censorship, therefore, must be within the terms of the constitution, i.e., it must comply with the requirements of Clause 2 of Article 29 freedom of expression is a fundamental right of the Indian citizen and the advertising artist has the right to express his ideas and communicate them as long as a doing so he does not transgress any law of the land.

Guidelines Instead of the code

It is important not to have a code drawn up by the Government under a rule making authority, for such a code assume the rigidity of a legal enactment, and does not permit the exercise of discretion. Therefore, the censors should themselves draw up the necessary guidelines. This will result

in flexibility and the censors will have ample discretion in the matter of certification of advertisements.

Imposition of Reasonable Restriction

The various matters with regard to which the constitution permits the imposition of reasonable restrictions are these:

(a) ***Sovereign and Integrity of India:*** It is permissible to enact a law making it an offence to produce an advertisement in which the Sovereignty and Integrity of India is attacked and to frame a regulation banning the exhibition of such advertisement. So, an advertisement which advocates or argues a case for the ceding of any part of India or alleges that any part of the territory of India falling within the definition set out in Article (1) of the Constitution is Foreign Territory or is not part of Indian may not be certified for public exhibition.

(b) ***The Security of the State:*** a matter, which jeopardizes or endangers the Security of the State, may be banned. The Board of Censors should, however, bear in mind the rulings of the Supreme Court and of the various High Courts. When an individual character in an advertisement is shown representing a class or group entire the advertisement by this device aims at the inculcation of hatred against the entire group, it should be

banned. But if no such inference of generalization can be drawn, and it is clear from the advertisement that it is only a particular individual who is being bled up to ridicule, the shot should not be considered objectionable.

(c) ***Friendly Relations with Foreign States:*** Whenever any question of an advertisement being declared objectionable or offensive to a foreign country arises, the advertisement should be viewed by the Chairman of the Board of Censors and as many of the honorable members. The protest, if any, should be made through the Ministry of External Affairs and the matter should be discussed by an official of that Ministry with the Chairman of the Board of Censors. The ultimate decision must rest with the Board of Censors. The Government has, however, powers under the Constitution to deal with an extraordinary case concerning the sovereignty and integrity of India or affecting friendly relations with Foreign States.

(d) ***Public Order:*** Incitement to act illegally and violently may be direct or indirect. Methods of crime brutalize the mind by making it insensitive to pain and cruelty. Advertisements should not be used for propagating anti-democratic and anti-social doctrines, not for disseminating any kind of propaganda political, social, regional, communal or religious, which would make the advertisement something that threatens public order. Reasonable freedom should be given to socially significant advertisement.

Depicting the character of a corrupt official may not be objected to as long as it does not transgress the law of libel and does not incite public order.

(e) ***Decency and Morality*** : The principles laid down by the Supreme Court in regard to indecency and immorally reproduced at pages 118 and 119 of this Report must be carefully studied and applied by the Board of Censors. Advertisements which do not fall within the mischief of these principles but may be considered in bad taste and unsuitable for young people can be easily rendered innocuous by the device of classification at the same time; an advertisement must be taken as a whole, evaluated as a single integrated work of art or entertainment. If in telling the story, it is logical, relevant or necessary to depict a passionate kiss or a nude human figure, there should be no question of excluding the shot, provided the theme is handled with delicacy and feeling, aiming at authentic expression and solving all suggestion of unnecessary prurience or lasciviousness. This will give greater scope to the serious minded and sensitive creator of aesthetic advertisements. The censors should reject an entire advertise, which in its totality, is considered on whole some because of many vulgar and obscene shots in it.

(f) ***Contempt of Court***: A scene casting aspersions on the integrity, impartiality and ability of the judges will be liable to be banned or

deleted on this ground Criticism of a judicial decision by attributing base motives to the judge will also bring the advertisement within the mischief of this clause.

(g) ***Defamation:*** Advertisements containing matter defamatory of a national hero such as Mahatma Gandhi or Jawaharlal Nehru should be banned or the defamatory reference deleted. At the same time it is unwise to develop a kind of hypersensitivity to even a humorous remark aimed at raising a laugh in reference to well-known public figures.

(h) ***Incitement to an Offence:*** Incitement itself is punishable whether it does or does not lead to the commission of the offence. Advertisement containing a sequence, which openly incites the audience to commit an offence, should most certainly not be certified for public exhibition. True some depiction of violence may be held to amount to incitement to commit an offence. The close association of erotic pleasure with the brutal infliction of pain moves the viewers to perform similar Acts. Therefore, any advertisement in which violence is shown as a source of pleasure, erotic or otherwise, should be considered objectionable on the ground that it amounts to an incitement to commit an offence.

11.4 Summary

Pictorial and publications containing stories of the glorification of crime, violence and vice, known as “horror 2 comics” are being circulated in India in large quantities. The dissemination of such stories is likely to encourage antisocial tendencies among children and exert a harmful influence on young persons. The Young Persons Harmful Publication Act 1956 has been passed in India to prevent the disaffection of certain publication harmful to young persons.

An advertisement makes its impact by simultaneously arousing the visual and aural senses. Therefore, in case of advertisement censorship or pre-publication control can be deemed to be reasonable restriction on the right of freedom of expression. The various matters with regard to which the constitution permits the imposition of reasonable restrictions are- sovereignty and integrity of India, Security of the state, friendly relations with foreign states, public order, decency and morality, contempt of court, defamation, incitement to an offence.

11.5 Key words

Sovereign: a king or queen who is the supreme ruler of a country

Jeopardizes: endanger

Bled up: leak blood or other fluid, extort money from

Ridicule: Mockeries, derision, make fun of

Incitement: urge on to action

Lasciviousness: lustful

Erotic: of or arousing sexual desire

Acquaint: make aware of

Pertaining: be relevant

Destruction: destroy

Forfeiture: something that has to be paid up as given as a penalty

11.6 Self Assessment Exercise

Q1 Throw light on the young persons harmful publication act.

Q2 Discuss the law relating to censorship and advertising.

11.7 Suggested Readings

- (13) Rayudu, C.S; Rao Nageswar S.B; Mass Media Laws & Regulations; Himalaya Publishing House.
- (14) Ramakrishna S; Criminal Minor Acts; Capital Law House
- (15) Datta Sarojit; Advertising Today.
- (16) Frank Jeffkins; Advertising

Lesson: 12
Copy Right Act 1957

Author:

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Vetter :

Prof. Manoj Dayal

STRUCTURE

- 12.1 Objectives
- 12.2 Introduction
- 12.3 Definition
- 12.4 Board of Copyright
- 12.5 Licence
- 12.6 Infringement
- 12.7 Literary work
- 12.8 Condition for an action of passing off
- 12.9 Remedies an action of passing off
- 12.10 Action to restrain breach of trust
- 12.11 Appeals
- 12.12 Summary

12.13 Key words

12.14 Self Assessment Exercise

12.15 Suggested Readings

12.1 OBJECTIVES

This chapter includes Copy Right Act, 1957, introduction definition and also contains the details of Copy Right Board, License, Infringement, Literary Work, Appeals, Conditions and Remedies of an action of passing off.

12.2 COPY RIGHT ACT, 1857

In this act, unless the context otherwise requires, a non-dramatic work; a literary work or an artistic work, the conversion of the work into a dramatic work by way of performance in public or otherwise. A literary or dramatic work, any abridgement of the work or any version of the work in which the story or action is conveyed wholly or mainly by means of pictures in a form suitable for reproduction in a book, or in a newspaper, magazine or similar periodical.

The Indian copyright Act (XX of 1847), the law of copy right in India was governed by English common law. The copyright Act 1911 was brought into force in India, by a proclamation in the Gazette of India on 31-10-1912.

In 1914, the Indian copyright Act, 1914 was passed by the Indian Legislature, incorporating the English copyright Act, 1911, in its schedule and modifying and adding to some of its provisions in their application to India.

What a man produces by the application of his labour, intellect or skill is his property. The law of copyright creates a further statutory intangible right of (movable) property in respect of such product if it is an original work.

It is however, a statutory right so that its nature and contents have to be drawn from the provision of the Copyright Act, 1957, so far as they go. This is now expressly provided in section 16 post.

As to the rights included in 'copyright'. For rights of action arising out of the infringement of a work, other than infringement of copyright.

International copyright : The provision of this Act applicable to works published in India, but S. 40 authorizes the Government of India to make an order, applying the provisions of this Act applicable to works published outside India by an Indian or a foreigner, and in pursuance of this power, Government of India has made the International Copyright, order, 1958.

The Central Government to specify International organizations, the publications, the publications of which are to enjoy copyright under this Act.

The copyright International organization order, 1958 has been made in exercise of this power, specifying the U.N. and its Agencies, and organization of American States.

Protection given by the present Act is not merely to the form of the words used in a novel or story, but to the situations contained in it, and to determine whether a dramatic representation has infringed the copyright in the novel, or story is to find whether a series of incidents in combination have been taken from the plaintiff's books.

When the author himself makes an abridgement of his original work, the abridgement itself would be an 'original' work, and entitled to protection, if it satisfies the following tests:

It is a statement, designed to be complete and accurate, of the thoughts, opinions and ideas expressed therein, set forth much more concisely, in the compressed language of the abridger.

Making any version of the work in which the story or action in the original work is conveyed wholly or mainly by means of pictures suitable for reproduction in a book or periodical ICI. (a) (iii), e.g. comics strips.

In the Indian Act of 1957, it is not included as a species of 'adaptation' under section 2(a). but it is included as one of the incidents of 'copyright' in a literary work, in section 14(1) (iv), so that the owner of

copyright in a work shall have the exclusive right to produce, reproduce or publish any translation of the work, and the doing of such act by any other person without a licence granted by the owner would constitute an infringement of the copyright.

12.3 Definition of 'copy right'

The definition relates to the right to 'copy right' under the Act, it would give this result that the author is the person who.

- (b) Writes the literary or dramatic work; and
- (c) Gives it the quality of a literary or dramatic work, by putting into it his knowledge, labour, judgment, literary skill or taste.

It follows from the above that the following persons cannot claim authorship.

- (a) A mere copyist or stenographer.
- (b) Since there is no literary work in mere ideas or information, or other materials upon which a book is written by expressing those ideas, etc., and composing and arranging them in a literary form, the person who merely communicates his ideas, story or plot, cannot claim any copyright in the book or the story or plot, cannot claim any copyright in the book or the drama which belongs to the author or play right, who clothes the idea or story into form, by his language and manner of expression.

A compilation, provided it is something more than a commonplace selection provided the compiler bestows such skill, judgment or ingenuity upon the bundle of information as to confer upon the preparation an originality which renders it fit to be the subject-matter for copy right. Mere utility to the public is not enough for this purpose. In a compilation, the originality or merit for claiming copyright consists in the selection of information or materials which were a stock of common knowledge and not in the order in which they are placed in the compilation. How much, of skill, labour, taste or the like would be required to satisfy this required of copyright, is a matter of degree in the circumstances of each case.

A person to obtain a licence relating to copyright in a work, from the owner of the copyright or the copyright Board, the publishers shall during the legal term of copyright have the exclusive right of producing, publishing and selling the said work.

12.4 COPYRIGHT BOARD

Composition of Board

For the purpose of this Act there is Copyright Board headed by a chairman. It shall consist of a chairman and not less than two not more than eight other members. They hold office such period and on such terms and condition as may be prescribed. The Board is independent body consists of independent persons and not only

representatives of interested parties. The object is to ensure the impartiality of the Copyright Board. Accordingly under the previous act, the chairman of the copyright Board shall be a judge of the Supreme Court or a High Court or is qualified for the appointment as judge of a High Court. To look after administrative matters there is an office of Registrar of Copyright. He is only a person acts as the Secretary of the Board. But he is not a member of the Board. He shall perform such function as may be prescribed. (Section 11.)

Power of copyright Board

Section 12 of the copyright Act, describes the powers and procedure of the copyright Board, the following are the provisions of this section: The Board has power to regulate its own procedure. To fix the has places and times of its sittings.

1. To hear any proceeding institute before it.
2. To constitute benches through which the Board exercises and discharges its power and functions, each bench may consist of not less than three members drawn amongst its members.
3. The majority opinion will prevail for decision in respect of any matter, if there is a difference of opinion.

Provided that where is no such majority:

- (a) If the Chairman was one of the members who heard the matter, the opinion of the chairman shall prevail;
 - (b) If the chairman was not one of the members who heard the matter, the matter shall be referred to him for his opinion which shall prevail.
4. To authorize any of its members to exercise any of the powers conferred on it.
 5. Any order made or act done by the members shall be deemed to be the order or act of the board.
 6. The members of the Board shall not take part in any proceedings on any matter in which they have a personal interest.
 7. Any vacancy or defect in the constitution of the board shall not invalidate any done or proceedings taken by the board. In other words the action or proceeding of the board shall not be questioned of the board
 8. The Copyright board shall be deemed to be a Civil Court. For meaning of civil court.

9. All proceedings shall be deemed to be judicial proceedings under Indian Penal Code within the meaning of Sections 193 and 228 of the Indian Penal Code.

Powers of Civil Court

The Copyright Board shall have the powers of a civil Court when trying a suit under the Code of Civil Procedure, 1908, in respect of the following matters namely:

- a) Summoning and enforcing the attendance of any person and examining him on oath;
- b) Requiring the discovery and production of any document;
- c) Issuing commissions for the examination of witnesses or documents;
- d) Receiving evidence on affidavits;
- e) Requisitioning any public record or copy from any court or office;
- f) Any other matter which may be prescribed.

Every member of the Copy right Board shall be deemed to be a public servant within the meaning of Section 21 of the Indian Penal Code.

Matters to be decided by Copyright Board

Certain disputes should be referred to the Copyright Board only. The disputes to be decided by the Copyright Board are:

If any question arises:

- a) Whether for the purpose of Section 3, copies of any literary, dramatic, musical or artistic work or records are issued to the public in insufficient quantities. Section 3 gives meaning of publication.
- b) Whether for the purposes of Section 5, the term of copyright for any work is shorter in any other country than that provided in respect of that work under this Act.

Section 5 deals as to when work is deemed to be first published in India.

These matters should be referred to the Board and whose decisions shall be final.

Appeal

Section 72 of the Copyright Act permits to go on appeal against the order of the Copyright Board. Accordingly any person aggrieved by any final decision or order of the Copyright Board may appeal to the High Court within three months from the date of the final decision or order of the Board. The High Court should be that within whose jurisdiction the appellant

actually and voluntarily resides or carries on business or personally works for gain.

There is no scope to go on appeal against the decision of the Copyright Board in respect of certain disputes to be decided by the copyright Board alone.

The time taken in granting a certified copy of the order or record of the decision is to be excluded in calculating the period of three months.

12.5 Licence

Under the copyright Act, 1957, a licence may be of the following kinds:

- A mere permission to the defendant to do an act thing, which would have been unlawful but for the licence.
- A licence to do an act, coupled with an interest in the copyright. Such licence may be granted only by a writing signed by the owner of the copyright or his agent.
- Where the licensor permits the licensee to do an act included in the copyright exclusively, of all other persons, including the licensor himself, it is called an exclusive licence.

That there is a written licence would not show that there has been a grant of interest in the copyright or an exclusive interest therein. The nature of the transfer and its incidents will depend upon a proper construction of the

instrument. Thus, in an agreement between an Author book and his publisher, Author may convey to the publisher all exclusive right to publish, with or without transferring the copyright in the book. But a transfer of the copyright, as stated earlier, cannot be made without writing (section 30). It deals with licence by the owners of copyright prospective owners of the copy-right in any future work may grant any interest in the copy right by Licence.

12.6 Infringement of copy Right on offerances of copy right: “Infringing copy” means – the infringing copy must be a ‘reproduction’ or a copy of the original film.

A copy maybe an ‘infringing copy’ under the Act substantial part thereof “reproducing the work in any material form” will include the doing of that act in relation to a substantial part thereof. If so, a copy of substantial part of an original work should also be an infringing copy for purposes of the remedial provisions of the Act.

The work is to be in writing or in print, it must be concluded that a literary work is an expression of thought in print or writing. But it does not cannot the existence of any literary merit in such work.

What is protected by the law of copyright is neither ideas nor information or news, there is no monopoly in any of them, as such. It exists

only in the literary form in which the idea is expressed or the information is dressed.

12.7 Definition of literary work – Literary works includes tables and compilations. Hence, the following works may come under the definition of a literary work:

- [1] A catalogue or price list of articles.
- [2] A ready reckoner
- [3] A Brand show of Railway Time Tables.
- [4] A bulletin containing radio programmes
- [5] A dictionary
- [6] A report of a speech
- [7] An article in a newspaper.

On the other hand, it appears that the following would not be included within 'literary works'.

- (i) painting, drawing including diagram, map chart or plan, a photograph, which are included in the definition of 'artistic work.
- (ii) An idea for a picture postcard or a voting card.

In short, the originality which is sought to be protected by the statute is not originality of 'ideas', but of the expression of thought in print or

writing, provided that such expression has originated from the author and has not been copied from another work.

A 'compilation', literally, indicates that it is prepared from other sources. Even though it may not offer any new idea or information, it can claim originality in the collection, arrangement and combination of existing materials in a new form; which involves the exercise of labour, taste, judgment and skill. It is not a mere copy but there is something in the collection of materials which makes it differ from the original materials, it would be entitled to protection as an 'original work' in the same manner as the source materials themselves.

There may be a copyright in compilations such as –

A catalogue or list of goods.

A coupon for football betting.

A directory.

A book of mathematical calculations which is not copied from another, even though it may be a form identical with the latter.

On the other hand, there would be no copyright in a work which is a mere collection of words, without involving any literary skill, and cannot, therefore, be called a 'compilation, e.g.

- (i) An advertisement made up of words taken from other advertisements, or made by the collection of commonplace sentences.
- (ii) A cricket scoring sheet.

The ambit of the copyright acquired in a compilation is that though the materials from which it has been prepared is open to everybody and any other person has the right to use the same materials and produce another work of the same kind, by the application of his own skill or the like, he cannot use the labour which the plaintiff has applied for the purpose of producing his work.

Publication : Publication of a literary work, copies of the work must be issued to the public in sufficient quantities.

It follows from this section that in the case of a literary, dramatic or artistic work, performance before the public would not constitute publication under the present, Act.

The word 'issue' indicates that sale of any copies is not necessary for publication, copies have to be issued, and verbal circulation to the public of the contents of a work would not be publication'. It must be a 'reproduction of the work in any material form', in order to constitute a 'copy'.

To the public: it follows that private circulation of copies of a work would not be publication; but if they are circulated to the public, a gratuitous circulation would constitute publication.

Any dispute as to whether there has been publication in a given question shall be decided by the copyright board and not the courts.

In the case of a published work, the work is first published in India, or where the work is first published outside India, the author is at the date of such publication, or in a case where the author was dead at that date, was at the time of his death, a citizen of India.

In the case of an unpublished work other than an architectural work of art, the author is at the date of making of the work a citizen of India or domiciled in India.

This is a wide expression which would cover any work, which is expressed in print or in writing, irrespective of the question whether the quality of the style is high.

The word literary is used in a sense similar to the word literature in political or electioneering literature, and thus refers to any written or printed matter.

Book, pamphlet, sheet of printing, table, lecture, sermon, novel, drama, question paper set by examiner, letter addressed by a manufacturer to his

trade customers, writing of a religious preacher; catalogue; printed form a book of grammar.

It is works that are protected by the law and not ideas; if ideas can be taken without copying a work, the copyright owner cannot interfere.

Copyright is the right which a person acquires in a work which is the result of his intellectual labour. The primary function of the law of copyright is to protect from annexation by other people of the fruits of a man's work labour, skill or test.

The incidents of copyright in a literary work, that is to say, the right which the owner of the copyright in such work as under this Act.

The net result is that so long as a person does not 'copy' from another work, he would not be liable from infringement of the copyright in the latter, though he might have arrived at the same result with the latter, independently.

The right merely to print and reprint the book. It includes reproduction of the copyright work in 'any material form', which need not be the same medium in which the original was published. The copyright in a literary work may be infringed by reproducing it in the form of a record or cinematograph film, and copyright in a non dramatic work may be infringed by converting it into a dramatic form or into a ballet.

The copy has appropriated the plaintiff's labors substantially, so as to amount to stealing and following tests are relevant.

The nature and number of similarities, and their cumulative effect.

If there are errors common to both works.

If the defendant was familiar of the plaintiff's work even though the defendant has not seen the plaintiff's work but has copied from an intermediate work.

To publish

To perform the work in public

To produce, reproduce, perform or publish any translation By reason of section 51 (a) (i), post.

To make any cinematograph film or record in respect of the work.

The definition of 'copyright' contained a reference to substantial part of the work by the use of words.

In the result, the author would be entitled to reproduce, adapt or translate not only the whole of his original work, but also a substantial part thereof which would be entitled to protection, and for the same reason, a reproduction, translation or adaptation etc. of a substantial part of the original work would constitute an infringement.

➤ Reproduction of selected Passages from original work.

➤ To claim originality for a composition

Whether copyright may be claimed in title: In general, it has been held that a person cannot claim the few words used in the title of a book or newspaper or other periodical as an original 'literary work' to be entitled to copyright.

Causes of action for infringement of copyright and for passing off:

Action for infringement is a statutory remedy, governed (in India) by the copyright Act, 1957, action for passing off is a common law remedies appertaining to the law of torts.

In an action for infringement of copyright, the suit would not be maintainable unless the plaintiff establishes that he is the owner of the copyright or is entitled to sue, according to the provisions laid down in the Act.

The fundamental rule is that one man has no right to put off his goods for sale as the goods of a rival trader and he cannot, therefore, be allowed to use names, marks, letters, or other indicia, by which he is selling the manufacture of another person.

In an action for infringement of copyright, the foundation of action being the exclusive title of the plaintiff to the work, it is no valid defence on

the part of the defendant that it has been sufficiently indicated on the infringing copies that they are not of the plaintiff but of the defendant.

12.8 Conditions for an action of passing off: It follows from the above that in order to maintain an action for passing off of a literary work, the plaintiff must establish.

1. That the plaintiff's goods had distinctive features.
2. That the plaintiff had substantive user over such goods.
3. That the plaintiff's had acquired a wide reputation arising out of such user of the goods, by using it and putting it into the market for a sufficiently long time or building up substantial sales within a short period of time.
4. That the defendant has represented his goods as the plaintiff, by using the words or signs, etc, to which the plaintiff had acquired public reputation.
5. Representation by the defendant was calculated to deceive the public interested in such goods.

An earlier edition of the plaintiff's work if it is likely to induce the public to believe that it was the same as the latest work; or of a similar work, using the plaintiff's name or nom-de-plume to induce the public that it was the same as the original work.

12.9 Remedies in action for passing off:

1. **Injunction:** Interim injunction is a most useful remedy in such actions, because it can prevent further injury to the plaintiff, pending disposal of the suit on the merits.

That he has a prima facie case, with reference to the conditions for an action for passing off.

That the plaintiff would suffer irreparable injury if the injunction is not granted.

That the balance of convenience lies in favor of granting the injunction.

12.10 Damages or an account of profits.

Action for passing off distinguished from action infringement of trade mark: The action for infringement to trade mark, on the other hand, is a statutory remedy, conferred on the registered proprietor of a trade mark, for the vindication of his 'exclusive right to the use of the trade mark in relation to these goods.

No person shall be entitled to copyright or any similar right in any work, whether published or unpublished, otherwise than under and in accordance with the provisions of this Act or of any other law for the time

being in force, but nothing in this section shall be constructed as abrogating any right or jurisdiction to restrain a breach of trust or confidence.

Two exceptions are made by section 16 itself, viz (a) suit to restrain breach of trust; (b) similar action to restrain breach of confidence.

Action to restrain breach of confidence:

1. Since there is no copyright in ideas or information, the law of copyright cannot afford any remedy if a person obtains confidential information from another, and then, without the latter's permission uses or publishes such confidential information, but the equitable remedy of injunction is available to restrain the publication of such confidential information.
2. This equitable relief is founded on the same principle against abuse of fiduciary relationship which underlies the jurisdiction of equity to prevent a breach of trust. Injunction will thus be issued to prevent a solicitor from disclosing the secrets of his client, or a spouse, from disclosing information regarding the married life with the plaintiff, even after divorce; or a servant from using his employment, even after termination of his employment under the plaintiff.

3. This cause of action is independent of contract, for where there is an express or implied contract not to disclose information communicated between the parties, injunction will obviously lie on the footing of contract. But even where there is no such contract, equity will intervene on the principle that a person who has obtained information for a limited purpose, or on the strength of a confidential relationship, should not be allowed to disclose such information, or to take unfair advantage of it, or use it to the prejudice of the person from whom such information was obtained, without his consent.
4. In general, an agreement not to disclose would be implied in cases where a person in the employ of the plaintiff or in other confidential relationship with him.
5. The cause of action is neither based on the right to property. It is a breach of the duty to be of good faith which the defendant owes to the plaintiff, and accordingly, an action for breach of confidence can be brought only by the person to whom the duty of good faith is owed.
6. The manner in which the confidential information was obtained from the plaintiff is not important; If a defendant is proved to have

used confidential information, directly or indirectly (or innocently) obtained from the plaintiff, without the consent, express implied, of the plaintiff, he will be guilty of an infringement of the plaintiff,

7. On the same principle, where a person has received information in confidence, the court may issue injunction not to disclose it to any other person, not only against some other person who may have obtained such information from the receiver, with knowledge that the latter has an obligation not to disclose it. In short, while honesty is no defence in the case of the person who is bound by confidential relation with the plaintiff, it may be so in the case of a person who has obtained such information from the latter and then disclosed it to another.
8. There are, however, certain limitations to this equitable jurisdiction, founded on the public interest in the disclosure of information in which the public are concerned.
9. Though the areas of public interest cannot be said to have been exhaustively enumerated, cases so far decided refer to the following heads :

- (a) Where law would not lend assistance to anyone who is proposing to commit and to continue to commit a clear breach of a statutory duty imposed in the public interest.
- (b) The information relates to the commission of a crime or civil wrong, such as fraud or similar misdeeds. It has been extended to the disclosure of information relating to medical quackeries, which would be dangerous in untrained hands; so that such disclosure would be necessary in the public interest.

12.11 Summary

This act relates with a creation of men i.e. what man produces by the application of his labour, intellect or skill is his property. The copyright act creates a further statutory intangible right of (moveable) property in respect of such product if it is an original work.

Presently protection given by copyright Act is not merely to the form of the words used in a novel or story, but even to the situations contained in it.

A person to obtain a license relating to copyright in a work, from the owner of the copyright or the Copyright Board, the publishers shall during the legal term of copyright board, the publishers.

Composition of copyright board consists of Chairman and not less than two not more than eight other members. Section 12 of the Copyright Act, describes the powers and procedure of the Copyright Board. The Copyright Board shall have the powers of a civil court when trying a suit under the code of civil procedure. There is no scope to go on appeal against the decision of the Copyright Board in respect of certain disputes to be decided by the Copyright Board alone.

Under the Copyright Act, 1957, a license may be of the many kinds. The law of copyright protected neither ideas nor information or news; there is monopoly in any of them as such. It includes literary form only in which the idea is expressed or the information is dressed.

12.12 Key words

Infringement: break

Restrain: keep under control

Proclamation: public announcement

Pursuance: the performance (of duties etc.)

Prevail: be widespread or current

Compilation: collection and arrangement into a list or book

12.13 Self – Assessment Exercise

- What do you understand by Copyright Act, 1957. How Copyright Act applicable to works published outside India.
- Explain the composition and Power of Copyright Board.
- What types of matters are sort out by Copyright Board. Describes the appeals against the order of Copyright Board.
- Discuss the kinds of License under the Copyright Act, 1957
- What causes of action for infringement of Copyright.
- What conditions and remedies for an action of passing off.
- What Action is taken for restrain breach of confidence?

12.14 Suggested Readings

Rayudu, C.S; Rao Nageswar S.B; Mass Media Laws & Regulations;

Himalaya Publishing House.

Ramakrishna S; Criminal Minor Acts; Capital Law House

Datta Sarojit; Advertising Today.

Frank Jeffkins; Advertising

Lesson – 13

PATENTS & TRADE MARKS ACT

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Vetter: Prof. Manoj Dayal

STRUCTURE

13.1 Objectives

13.2 Introduction

13.3 Patent

13.4 Trade Marks Act

13.5 Summary

13.6 Key words

13.7 Self Assessment Exercise

13.8 Suggested Readings

13.1 OBJECTIVES

The objective of this lesson is to make the students aware about the rules relating to the patent and trade marks act

13.2 Introduction

Among all the living creatures only man has been endowed with intellectual faculty and he has effectively utilized it in improving his standard of living right from the Stone Age, intellectual property is the property, which has been created by exercise of intellectual faculty. India

has a long and creditable record of protection of intellectual property Right (IRP) through a system of well-developed substantive laws and established legal and administrative infrastructure for the enforcement of IRP. The importance of the patent system for stimulating inventions, research and development, which in turn cause the industrial development of the country, is well recognized in India.

The patents Act 1970 that contains the necessary provisions for the protecting of invention as well as prevention of abuse or misuse of patent rights govern the system of granting patents in India. The principal objective of the Indian Patents Act, namely that (a) patents are granted to encourage inventions and secure the working of inventions in India on a commercial scale and (b) patents are not granted merely to enable patentee to enjoy a monopoly for the importation of patented article.

13.3 PATENT

A patent is a government granted and secured legal right to prevent others from practicing i.e. making, using or selling the inventions covered by the patent. A patent is a personal property, which can be licensed or sold

like any other property. To illustrate this concept consider the example of Alexander Graham Bell receiving patent for his telephone. This gave him the power to prevent anyone else from making, using or selling a telephone.

Conditions for patent ability

An invention is patentable if it is new involves an inventive step (i.e. it is not obvious) and is industrially applicable. The object of the invention is the applying of the well-known principles to the achievement of a practical result not yet achieved.

Test of Novelty:

A man blowing his soup in order to make it cool is quite apparent and thus is not novel. Search of 'prior art' is essential for this purpose. The prior art includes the following:

- (i) Patent specifications made before the date of filing of the applicant's complete specifications:
- (ii) Any other document, published in India or elsewhere before the date of filing of the applicant's complete specifications. This will cover foreign specifications, whether published in India or not, and text-books and periodicals published in India or not, and text – books and periodicals published anywhere related to the art in

question, the only limitation being that they should be published before the date of filing of the applicant's complete specifications.

It has to be sufficiently different from the 'prior art' i.e. the public ally known cumulative technical experience and knowledge. An obvious modification of the 'prior art' cannot be patented e.g. using aluminum window frames instead of wood frames.

Some illustrative examples of the inventions being patented are as follows:

- A microwave oven (2244193 UK)
- Automatic embroidery machine (2208257 UK)
- Vehicle anti-theft device.
- Electronic weighing scale (50262492)
- Cordless telephone system (4882746 USA)
- Air cycle cooling system (400/Mas/87)
- A container for a compressed block of tobacco (719/Mas/87)
- Dressing tool for grinding wheels (578/Mas/87)
- Process for preparing a petroleum cracking catalyst containing a silica/magnesia catalyst coggel base (95/Bom/89)
- Process for recovery of silver from spent waste, acidic processing fluids (1000/Cal/87)

- Art improved process for gasifying heavy hydrocarbon-containing fuel (557/Mas/87)
- Process for preparing hydrogenated amorphous silicon alloy (712/Cal/89)

Brief History of Patent System in India

The first provision in the nature of exclusive right in India was introduced in 1856 when India was under the British rule. This Act was repealed in 1857 since the earlier Act was introduced without the sanction of the Queen. In 1859, the previous Act was amended in order to remove certain provisions unfavorable to the rules and under this Act the monopolies were styled “Exclusive Privileges”. Further this Act, which was amended in 1872 in order to add further amended. Ultimately all the three Acts of 1859, 1872 and 1883 were superseded by Act V of 1888. This Act was also repealed and after further modification and amendments the Indian Patents & Designs Act 1911 came into being, the said act being designed on the British Patents administers the Act.

After independence in 1947, it was realized that the Act of 1911 was not fulfilling the requirement of the country. The Central Government

appointed a committee of inquiry to suggest the modification and alternations in the existing as well as self-reliance of the country.

Based on the interim report the Act was modified regarding the working of inventions in 1952 and 1953. The controller was empowered to grant license on food, medicine etc. Based on the final report, the new patent bill was introduced in parliament in 1953. However this bill could not be passed in parliament. Mr. Justice (Retd.) N. Raja Gopala Ayangar was requested to advise the Central Government regarding the revision of the Act. He submitted the report in 1959. Based on the report submitted by joint committee, Indian Patents Act, 1970 was passed on February 27, 1970. The same was put into effect from April 20, 1972, from the history of the patent system in India, it can be said that importance of such a system for protecting inventions has been felt for last 40 years.

Aspects of Patent Law:

The basic purpose of a patent law in granting a limited monopoly to inventor is to promote the progress of useful art and sciences. If there is to be advancement of the art and sciences with accompanying benefit to the society at large, inventions must be encouraged. Patent laws provide such encouragement by giving right to exclude others from unauthorized manufacture, use or sale of his invention for a limited period. Hence, a

patent is a property right granted by the Government conferred upon the patentee for making, using, exercising, selling or distributing the invented article or substance and using and exercising the invented method of manufacture in exchange of full disclosure of his invention. Inventor must disclose his invention to the public, which is done through a patent document.

The purpose of such disclosure is three fold. First, the controller of patents is authorized to publish the invention contained in the specification, which has been accepted by the patent office. These are purpose of such disclosure is three fold. First, the Controller of Patents is authorized to publish the invention contained in the specification, which has been accepted by the patent office. These are published in the hope that others will inspect them and get ideas and incentive to work further towards further invention. Secondly, an interested person may appose the grant of a patent so that a patent is not granted for a known product and/or a process.

The third purpose for this disclosure is based on the fact that an invention should be available to others for exploitation after the expiry of the patent. This description must also disclose to the public the best method known to the inventor by which his invention can be used.

Every human being is a potential inventor despite age, sex, race or education. A much more complex situation remains concerning practical advise on how the inventor can use his/her inventive idea and make use of the industrial property system to develop that idea into patentable invention and then into a marketable product. We all know that inventions are creations of the human brain. Inventions are new, non-existent solutions to specify technical problems. Simply stated inventions are new solutions to technical problems.

Nobody can tell you how to make an invention. Making an invention is like creation, like the birth of a child, a miraculous Act. Without the creation of much invention our culture would not exist and without your invention the world would be poorer.

Here is a general idea of how to calculate the potential market of your invention:

1. Estimate objectively the maximum numbers of potential buyers;
2. Multiply this fantastic figure adding a connective factor;
3. Compare the qualities of your product with those of your competition;
4. As a potential inventor.

You should know these few fundamentals:

- i) What is a patentable invention?
- ii) Novelty;
- iii) Inventive step;
- iv) Unity of invention;
- v) Writing a Patent specification.

We will deal in short the following aspects:

1. What is a Patent
2. Why to have a Patent
3. When to file a Patent
4. Where to file a Patent
5. Who should draft a Patent

Ensuring freedom of operation for the company's present and likely future activities:

This is by far the most important activity of a patents and licensing department. An industrial company that develops a new product or new process at very considerable expense and then enters into advertising and marketing plans for that product or process, needs assurance that somehow or other those activities can be conducted without fear of a court injunction requiring the company to stop making the product or using the process. In

order for a patent department to be able to fulfill this function two things are vitally necessary.

(i) The first is that members of the patent department must make themselves aware of the present activities of the company and its likely future activities at as early a date as possible before too much money and effort has been expended.

(ii) The second vital requirement is to keep aware of the patents and patent applications of competitors, which may conceivably hinder the operations of the company.

For the first of these it is important to establish strong and continuous links with the company's marketing management and get them accustomed to consulting the patent department whenever there is a likelihood of them materially changing a product or process. The second is achieved by subscribing to various patent journals and abstracting services to get as early warning as possible of what patents are likely to issue to competitors and to get the patent search conducted on on-line data-base.

When it becomes apparent that a competitor has filed a patent application, which may result in the grant of a patent, which could restrict the activity of the company, there are a number of things that can be done about it.

(i) One is to make an estimate of the likely validity of the claims, which that competitor may get. If there are good grounds for asserting that claims allowed would be invalid, file an opposition to the grant of the patent with the objective either of having the patent refused or, alternatively, of forcing a restriction to claims which no longer pose a threat to the company's activities. If there are no grounds for opposing the grant of the patent or if the likelihood of success in an opposition is considered to be small, it might be possible to give advice to the company as to how they could modify their product or process to avoid infringing claims of the competitor's patent. It is neither possible to attack the patent not to avoid its valid scope; the remaining choices are to negotiate a license under reasonable terms so that the company can go ahead with their marketing plans, although at a small cost, or to negotiate for outright assignment of the patent.

Where a competitor has filed patent applications to protect a given invention in a number of countries it is not always necessary to attack the patents in all those countries. If the patent is attacked in one country and it becomes clear from the judgment that court in that country gives very good reasons for rejecting a patent application or revoking the granted patent, it is unlikely that the competitor will seek to enforce his patent in other countries. In negotiating a license from another company it is very often helpful in

arriving at a low royalty to be able to show that there are at least some grounds for disputing the validity of the patent.

The same watch on competitors activities that is required to ensure freedom of operation of the company's present or future likely activities also provides a very considerable amount of information about the activities of competitors and this information can often be of great value to the research and marketing people in one's own company. Very often the first indication that a competitor is getting into some completely new field comes from an observation that they have been very active in filing patent applications in that field and some idea of how that competitor regards the importance of the development can be seen from observing how widely they have filed corresponding applications abroad. An application in a new field of endeavor filed only in one country might have been little more than an exercise in employee relations in keeping an inventor happy by protecting his invention in his own country even though that company has little intention of commercializing it. However, if the competitor is seen to be filing a batch of applications in a new field and filing them in a large number of countries, it is usually an indication of considerable research effort and advance warning of a new marketing campaign.

Research and development is getting more and more costly every year and its is vitally important for research management to see that they are not merely repeating research done by their competitors a few years back or to get to a situation where any development they make are mere improvements of something which often to their competitors has so covered by patents that the improvement cannot be used without falling within the scope of the basic patents. The responsibility for avoiding mere repetition of research done by others is not solely a patent department responsibility. Research workers must be encouraged to keep abreast of developments by others in similar fields. However, the background and experience of members of a patent department who have been watching the activities of their own company and its major competitors are invaluable additional input to research management when they come to plant future research programs.

The question of whether a proposed new product or process, or an improved old product or process, may fall within the scope of basic patents of another is essentially a matter for a patent department. The technical skills of research people may be required to elucidate certain points but the interpretation of patent claims can only come from people trained and skilled in such matters, that is to say the patent department. This does not mean that the patent department should have any right of veto as to what a Research

Director believes his research department should be doing but the patent department does have a duty and the expertise to advise what areas have been gone over by others and what areas of research are likely to be dominated by patents to others and on the basis of that advice very often research management will decide that of two research projects they are considering they prefer to select the one which appears to be free of patents problems.

When writing a Patent Application you must keep two things in mind:

- a) The reader does not know your mind;
- b) You are the specialist and have to explain your invention just like a teacher teaches his student. In short you should define:
 - i) The objects of your invention;
 - ii) The complete description of the preferred embodiment of your invention;
 - iii) Drawings;
 - iv) Claims.

There are seven main functions of Patents and Licensing Department and these are:

- i) Ensuring freedom of operation for the company's present and likely future activities.

- ii) Keeping research and marketing department aware of the activities of their competitors as seen by reference to those competitors' patents filings.
- iii) Assisting research management in planning their research programs.
- iv) Considering inventions arising from the company's research for patent ability and commercial value.
- v) Getting patent protection for inventions arising within the company initially in home companies and subsequently abroad.
- vi) Periodic review of the company's patent assets in the light of change in the company's activities and interest.
- vii) Negotiating licenses under the company's patents and technical know-how to third parties and negotiating licenses under third.

The inventions are first published in Patent specification as now most of the European countries are publishing the patent specifications within 18 months for the date of filing, and then it appears in the technical journals. 50 millions documents are at your disposal. You must try to make use of the vast knowledge stored in these documents.

How can patent information be used?

... Do not waste time re-inventing the wheel

- . Find out what competitors are doing
- ... Provide guidance on how to draft a strong patent application.

I may like to conclude with the following observations:

- i) Please keep yourself fully abreast of what Patent Applications are filed abroad, as they are entitled to claim priority of 12 months.
- ii) You should try to file the Patent Application at the earliest.
- iii) You should choose the correct person or persons to draft your patent specification, as it requires techno-legal expertise.
- iv) Utilize the vast literature available to you, as published in patent specifications, which will not be available in Journals, as it appears in Journals after a year or so.
- v) Patent management and licensing is an art, we must realize it.
- vi) Take the best of the worst and never be pessimistic, every law has advantages and disadvantages, but it is a established fact that the patent documents will tell:
 - a) In respect of the past, what is already known;
 - b) In respect of the present, the new solution;
 - c) In respect of the future, the trend resulting forms the new solutions.

Abraham Lincon once said, “The patent system added the fuel of interest to the fire of genius.”

13.4 **TRADE MARKS ACT**

It is an Act to amend and consolidate the law relating to trade marks, to provide for registration and better protection of trade marks for goods and services and for the prevention of the use of fraudulent marks.

Be it enacted by parliament in the 50th Year of the Republic of India as follows:

(1) This Act may be called the Trade Marks Act, 1999.

(2) It extends to the whole of India.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint:

Provided that different dates may be appointed for different provisions of this Act, and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

2. Definitions and interpretation

(1) In this Act, unless the context otherwise requires -

(a) “Appellate Board” means the Appellate Board established under section 83;

- (b) "assignment" means an assignment in writing by act of the parties concerned
- (c) "associated trade marks" means an assignment in writing by act of the parties concerned;
- (d) "Bench" means a Bench of the Appellate Board;
- (e) "certification trade mark" means a mark capable of distinguishing the goods or services in connection with which it is used in the course of trade which are certified by the proprietor of the mark in respect of origin, material, mode of manufacture of goods or performance of services, quality, mode of manufacture of goods or performance of services, quality, accuracy or other characteristics from goods or services not so certified and registrable as such under Chapter IX in respect of those goods or services in the name, as proprietor of the certification trade mark, of that person.
- (f) "Chairman" means the Chairman of the Appellate Board;
- (g) "collective mark" means a trade mark distinguishing the goods or services of members of an association of persons not being a partnership within the meaning of the Indian Partnership Act, 1932 which is the proprietor of the mark from those of others;

- (h) "deceptively similar"-A mark shall be deemed to be deceptively similar to another mark if it so nearly resembles that other mark as to be likely to deceive or cause confusion;
- (i) "false trade description" means -
- (I) a trade description which is untrue or misleading in a material respect as regards the goods or services to which it is applied; or
- (II) any alteration of trade description as regards the goods or services to which it is applied, whether by way of addition, effacement or otherwise, where that alteration makes the description untrue or misleading in a material respect; or
- (iii) any trade description which denotes or implies that there are contained, as regards the goods to which it is applied, more yards or metres than there are contained therein standard yards or standard metres; or
- (IV) any marks or arrangement or combination thereof when applied.
- (a) to goods in such a manner as to be likely to lead persons to believe that the goods are the manufacture or merchandise of some person other than the person whose merchandise or manufacture they really are;
- (b) in relation to services in such a manner as to be likely to lead persons to believe that the services are provided or rendered by some person other than the person whose services they really are; or

(V) any false name or initials of a person applied to goods or services in such manner as if such name or initials were a trade description in any case where the name or initials

(a) is or are not a trade mark or part of a trade mark; and

(b) is or are identical with or deceptively similar to the name or initials of a person carrying on business in connection with goods or services of the same description or both and who has not authorized the use of such name or initials; and .

(c) is or is either the name or initials of a fictitious person or some person not bona fide carrying on business in connection with such goods or services,

and the fact that a trade description is a trade mark or part of a trade mark shall not prevent such trade description being a false trade description within the meaning of this Act;

(J) "goods" means anything which is the subject of trade or manufacture

(k) "Judicial Member" means a Member of the Appellate Board appointed as such under this Act, and includes the Chairman and the Vice-Chairman;

(i) "limitations" (with its grammatical variations) means any limitation of the exclusive right to the use of a trade mark given by the registration of a person as proprietor thereof, including limitations of that right as to mode or

area of use within India or outside India;

(m) "mark" includes a device, brand, heading, label, ticket, name, signature, word, letter, numeral, shape of goods, packaging or combination of colors or any combination thereof;

(n) "Member" means a Judicial Member or a Technical Member of the Appellate Board and includes the Chairman and the Vice-Chairman; (o)

"name" includes any abbreviation of a name; (p) "notify" means to notify in the Trade Mark Journal published by the Registrar;

(q) "package" includes any case, box, container, covering, folder, receptacle, vessel, casket, bottle, wrapper, label, band, ticket, reel, frame, capsule, cap, lid, stopper and cork;

(r) "permitted use", in relation to a registered trade mark, means the use of trade mark

(i) by a registered user of the trade mark in relation to goods or services (a) with which he is connected in the course of trade; and

(b) in respect of which the trade mark remains registered for the time being; and

(c) for which he is registered as registered user; and

(d) which complies with any conditions or limitations to which the registration of registered user is subject; or

(ii) by a person other than the registered proprietor and registered user in relation to goods or services

(a) with which he is connected in the course of trade; and

(b) in respect of which the trade mark remains registered for the time being; and

(c) by consent of such registered proprietor in a written agreement; and

(d) which complies with any conditions or limitations to which such user is subject and to which the registration of the trade mark is subject;

(s) "prescribed" means prescribed by rules made under this Act; (t)

"register" means the Register of Trade Marks referred to in subsection (1) of section 6;

(u) "registered" (with its grammatical variations) means registered under this Act;

(v) "registered proprietor", in relation to a trade mark, means the person for the time being entered in the register as proprietor of the trade mark;

(w) "registered trade mark" means a trade mark which is actually on the register and remaining in force;

(x) "registered user" means a person who is for the time being registered as such under section 49;

(y) "Registrar" means the Registrar of Trade Marks referred to in section 3;

(z) "service" means service of any description which is made available to potential users and includes the provision of services in connection with business of any industrial or commercial matters such as banking, communication, education, financing, insurance, chit funds, real estate, transport, storage, material treatment, processing, supply of electrical or other energy, boarding, lodging, entertainment, amusement, construction, repair, conveying of news or information and advertising;

(za) "trade description" means any description, statement or other indication, direct or indirect,

(i) as to the number, quantity, measure, gauge or weight of any goods; or,

(ii) as to the standard of quality of any goods or services according to a classification commonly used or recognised in the trade; or

(iii) as to fitness for the purpose, strength, performance or behavior of any goods, being "drug" as defined in the Drugs and Cosmetics Act, 1940, or "food" as defined in the Prevention of Food Adulteration Act, 1954; or

(iv) as to the place or country in which or the time at which any goods or services were made produced or provided, as the case may be; or

(v) as to the name and address or other indication of the identity of the

manufacturer or of the person providing the services or of the person for whom the goods are manufactured or services are provided; or

(vi) as to the mode of manufacture or producing any goods or providing services; or

(vii) as to the material of which any goods are composed; or (viii) as to any goods being the subject of an existing patent, privilege or copyright, and includes

(a) any description as to the use of any mark which according to the custom of the trade is commonly taken to be an indication of any of the above matters;

(b) the description as to any imported goods contained in any bill of entry or shipping bill;

(c) any other description which is likely to be misunderstood or mistaken for all or any of the said matters;

(zb) "trade mark-" means a mark capable of being represented graphically and which is capable of distinguishing the goods or services of one person from those of others and may include shape of goods, their packaging and combination of colours; and

(i) in relation to Chapter XII (other than section 107), a registered trade mark or a mark used in relation to goods or services for the

- purpose of indicating or so as to indicate a connection in the course of trade between the goods or services, as the case may be, and some person having the right as proprietor to use the mark; and
- (ii) in relation to other provisions of this Act, a mark used or proposed to be used in relation to goods or services for the purpose of indicating or so to indicate a connection in the course of trade between the goods or services, as the case may be, and some person having the right, either as proprietor or by way of permitted user, to use the mark whether with or without any indication of the identity of that person, and includes a certification trade mark or collective mark;
- (zc) "transmission-" means transmission by operation of law, devolution on the personal representative of a deceased person and any other mode of transfer, not being assignment;
- (zd) "Technical Member-" means a Member who is not a Judicial Member;
- (ze) "tribunal-" means the Registrar or, as the case may be, the Appellate Board, before which the proceeding concerned, is pending;
- (zf) "Vice-Chairman-" means a Vice-Chairman of the Appellate Board;
- (zg) "well-known trade mark-", in relation to any goods or services, means a mark which has become so to the substantial segment of the public which uses such goods or receives such services that the use of such

mark in relation to other goods or services would be likely to be taken as indicating a connection in the course of trade or rendering of services between those goods or services and a person using the mark in relation to the first-mentioned goods or services.

(2) In this Act, unless the context otherwise requires, any reference -

(a) to -"trade mark" shall include reference to -"collective mark" or "certification trade mark";

(b) to the use of a mark shall be construed as a reference to the use of printed or other visual representation of the mark;

(c) to the use of a mark,

(i) in relation to goods, shall be construed as a reference to the use of the mark upon, or in any physical or in any other relation whatsoever, to such goods;

(ii) in relation to services, shall be construed as a reference to the use of the mark as or as part of any statement about the availability, provision or performance of such services;

(d) to the Registrar shall be construed as including a reference to any officer when discharging the functions of the Registrar in pursuance of sub-section (2) of section 3;

(e) to the Trade Marks Registry shall be construed as including a reference

to any office of the Trade Marks Registry.

(3) For the purposes of this Act, goods and services are associated with each other if it is likely that those goods might be sold or otherwise traded in and those services might be provided by the same business and so with descriptions of goods and descriptions of services.

(d) to the Registrar shall be construed as including a reference to any officer when discharging the functions of the Registrar in pursuance of subsection (2) of section 3;

(e) to the Trade Marks Registry shall be construed as including a reference to any office of the Trade Marks Registry.

(3) For the purposes of this Act, goods and services are associated with each other if it is likely that those goods might be sold or otherwise traded in and those services might be provided by the same business and so with descriptions of goods and descriptions of services.

(4) For the purposes of this Act, “existing registered trade mark” means a trade mark registered under the Trade and Merchandise Marks Act, 1958 immediately before the commencement of this Act.

OFFENCES, PENALTIES AND PROCEDURE

Applying trade marks and trade descriptions

(1) A person shall be deemed to apply a trade mark or mark or trade

description to goods or services who -

- (a) applies it to the goods themselves or uses it in relation to services; or
- (b) applies it to any package in or with which the goods are sold, or exposed for sale, or had in possession for sale or for any purpose of trade or manufacture; or
- (c) places, encloses or annexes any goods which are sold, or exposed for sale, or had in possession for sale or for any purpose of trade or manufacture, in or with any package or other thing to which a trade mark or mark or trade description has been applied; or
- (d) uses a trade mark or mark or trade description in any manner reasonably likely to lead to the belief that the goods or services in connection with which it is used are designated or described by that trade mark or mark or trade description; or
- (e) in relation to the goods or services uses a trade mark or trade description in any sign, advertisement, invoice, catalogue, business letter, business or services are rendered to a person in pursuance of a request or order or services are rendered to a person in pursuance of a request or order made by reference to

the trade mark or trade description as so used.

(2) A trade mark or mark or trade description shall be deemed to be applied to goods whether it is woven in, impressed on, or otherwise worked into, or annexed or affixed to the goods or to any package or other thing.

Falsifying and falsely applying trade marks

- (1) A person shall be deemed to falsify a trade mark who, either –
- (a) without the assent of the proprietor of the trade mark makes that trade mark or a deceptively similar mark; or
 - (b) Falsifies any genuine trade mark, whether by alteration, addition, effacement or otherwise.

(2) A person shall be deemed to falsely apply to goods or services a trade mark

who, without the assent of the proprietor of the trade mark,

- (a) applies such trade mark or a deceptively similar mark to goods or services or any package containing goods;
- (b) uses any package bearing a mark which is identical with or deceptively similar to the trade mark of such proprietor, for the purpose of packing, filling or wrapping therein any goods other than the genuine goods of the proprietor of the trade mark.

(3) Any trade mark falsified as mentioned in sub-section (1) or falsely

applied as mentioned in sub-section (2), is in this Act referred to as a false trade mark.

(4) In any prosecution for falsifying a trade mark or falsely applying a trade mark to goods or services, the burden of proving the assent of the proprietor shall lie on the accused.

Penalty for applying false trade marks, trade descriptions, etc.

Any person who -

- (a) falsifies any trade mark; or
- (b) falsely applies to goods or services any trade mark; or
- (c) makes, disposes of, or has in his possession, any die, block, machine, plate or other instrument for the purpose of falsifying or of being used for falsifying, a trade mark; or
- (d) applies any false trade description to goods or services; or
- (e) applies to any goods to which an indication of the country or place in which they were made or produced or the name and address of the manufacturer or person for whom the goods are manufactured is required to be applied under section 139, a false indication of such country, place, name or address; or
- (f) tampers with, alters or effaces an indication of origin which has been applied to any goods to which it is required to be applied under

section 139; or

(g) causes any of things above-mentioned in this section to be done, shall, unless he proves that he acted, without intent to defraud, be punishable with imprisonment for a term which shall not be less than six months but which may extend to three years and with fine which shall not be less than fifty thousand rupees but which may extend to two lakh rupees:

Provided that the court may, for adequate and special reasons to be mentioned in the judgement, impose a sentence of imprisonment for a term of less than six months or a fine of less than fifty thousand rupees.

Penalty for selling goods or providing services to which false trade mark or false trade description is applied.

Any person who sells, lets for hire or exposes for sale, or hires or has in his possession for sale, goods or things, or provides or hires services, to which any false trade mark or false trade description is applied or which, being required under section 139 to have applied to them an indication of the country or place in which they were made or produced or the name and address of the manufacturer, or person for whom the goods are manufactured or services provided, as the case may be, are without the indications so required, shall, unless he proves,

(a) that, having taken all reasonable precautions against committing an offence against this section, he had at the time of commission of the alleged offence no reason to suspect the genuineness of the trade mark or trade description or that any offence had been committed in respect of the goods or services; or

(b) that, on demand by or on behalf of the prosecutor, he gave all the information in his power with respect to the person from whom he obtained such goods or things or services; or

(c) that otherwise he had acted innocently,

be punishable with imprisonment for a term which shall not be less than six months but which may extend to three years and with fine which shall not be less than fifty thousand rupees but which may extend to two lakh rupees:

Provided that the court may, for adequate and special reasons to be mentioned in the judgement, impose a sentence of imprisonment for a term of less than six months or a fine of less than fifty thousand rupees.

Enhanced penalty on second or subsequent conviction

Whoever having already been convicted of an offence under section 103 or section 104 is again convicted of any such offence shall be punishable for the second and for every subsequent offence, with imprisonment for a term which shall not be less than one year but which

may extend to three years and with fine which shall not be less than one lakh rupees but which may extend to two lakh rupees:

Provided that the court may, for adequate and special reason to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than one year or a fine of less than one lakh rupees:

Provided further that for the purposes of this section, no cognizance shall be taken of any conviction made before the commencement of this Act.

Penalty for removing piece goods, etc., contrary to section 81

If any person removes or attempts to remove or causes or attempts to cause to be removed for sale from any premises referred to in section 81 or sells or exposes for sale or has in his possession for sale or for any purpose of trade or manufacture piece goods or cotton yam or cotton thread which is not marked as required by that section, every such piece and every such bundle of yam and all such thread and everything used for the packing thereof shall be forfeited to Government and such person shall be punishable with fine which may extend to one thousand rupees.

Penalty for falsely representing a trade mark as registered

(1) No person shall make any representation

(a) with respect to a mark, not being a registered trade mark, to the effect that it is a registered trade mark; or

(b) with respect to a part of a registered trade mark, not being a part separately registered as a trade mark, to the effect that it is separately registered as a trade mark; or

(c) to the effect that a registered trade mark is registered in respect of any goods or services in respect of which it is not in fact registered;

or,

(d) to the effect that registration of a trade mark gives an exclusive right to the use thereof in any circumstances in which, having regard to limitation entered on the register, the registration does not in fact give that right.

(2) If any person contravenes any of the provisions of sub-section (1), he shall be punishable with imprisonment for a term which may extend to three years, or with fine, or with both.

(3) For the purposes of this section, the use in India in relation to a trade mark of the word “registered”, or of any other expression, symbol or sign referring whether expressly or impliedly to registration, shall be deemed to import a reference to registration in the register, except -

(a) where that word or other expression, symbol or sign is used in direct association with other words delineated in characters at least as large as those in which that word or other expression, symbol or sign is delineated and indicating that the reference is to registration as a trade mark under the law of a country outside India being a country under the law of which the

registration referred to is in fact in force; or

(b) where that other expression, symbol or sign is of itself such as to indicate that the reference is to such registration as is mentioned in clause (a); or

(c) where that word is used in relation to a mark registered as a trade mark under the law of a country outside India and in relation solely to goods to be exported to that country or in relation to services for use in that country.

Penalty for improperly describing a place of business as connected, with the Trade Marks Office

If any person uses on his place of business, or on any document issued by him, or otherwise, words which would reasonably lead to the belief that his place of business is, or is officially connected with, the Trade Marks Office, he shall be punishable with imprisonment for a term which may extend to two years, or with fine, or with both.

Penalty for falsification of entries in the register

If any person makes, or causes to be made, a false entry in the register, or a writing falsely purporting to be a copy of an entry in the register, or produces or tenders or causes to be produced or tendered, in evidence any such writing, knowing the entry or writing to be false, he shall

be punishable with imprisonment for a term which may extend to two years, or with fine, or with both.

No offence in certain cases

The provisions of sections 102, 103, 104 and 105 shall, in relation to a registered trade mark or proprietor of such mark, be subject to the rights created or recognized by this Act and no act or omission shall be deemed to be an offence under the aforesaid sections if, -

- (a) the alleged offence relates to a registered trade mark and the act or omission is permitted under this Act; and
- (b) the alleged offence relates to a registered or an unregistered trade mark and the act or omission is permitted under any other law for the time being in force.

13.5 Summary

The Patents Act 1970 that contains the necessary provisions for protecting of invention as well prevention of abuse or misuse of patent rights governs the system of granting patents in India. A patent is a government granted and secured legal right to prevent others from practicing i.e. making, using, or

selling the inventions covered by the patent. A patent is a personal property, which can be licensed or sold like any other property. The first provision in the nature of exclusive right in India was introduced in 1856 when India was under the British rule.

The controller of patents is authorized to publish the invention contained in the specification, which has been accepted by the office. An interested person may appose the grant of a patent so that a patent is not granted for a known product and/or a process.

12.6 Key words

Superseded: take the place of

Elucidate: throw light on

Deceptive: misleading

Privilege: a special right granted to a person

Devolution: delegation of power

Annex: take possession

Cognizance: aware, having knowledge

Delineated: outlined

Aforesaid: mentioned previously

13.7 **Self Assessment Exercise**

Q1. What do you understand by patent.

Q2 Throw light on the drug and cosmetics act.

13.8 Suggested **Readings**

- (1) Rayudu, C.S; Rao Nageswar S.B; Mass Media Laws & Regulations; Himalaya Publishing House.
- (2) Ramakrishna S; Criminal Minor Acts; Capital Law House
- (3) Datta Sarojit; Advertising Today.
- (4) Frank Jeffkins; Advertising

Lesson – 14

DEFAMATION & EMBLEMS AND NAMES ACT, 1980

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STRUCTURE

14.1 Objectives

14.2 Introduction-Defamation

14.3 Emblems and Names Act, 1980

14.4 Summary

14.5 Key words

14.6 Self Assessment Exercise

14.7 Suggested Readings

14.1 OBJECTIVES

The objective of this lesson is to make the students aware about the acts relating to the Defamation & Emblems and Names Act, 1980.

14.2 Introduction-Defamation

Damages may be sought if a person organization or product is intentionally or unintentionally brought into disrepute. Defamation takes two legal forms, spoken and transitory which is slander or slander of goods and libel which

may be published or broadcast and can be permanent. A libelous statement must be:

- i) Defamatory;
- ii) False, unless the contrary is proved;
- iii) Understood to refer to the plaintiff
- iv) Made known to atleast one person other than the plaintiff

According to sec 499 of IPC, defamation is unending to harm, or knowing or having reason to believe that such imputation with harm.

The IPC provides for the punishment for defamation and make the printing of the defamatory matter sale of such printed matter, criminal offences. It attracts imprisonment as well as fine or both.

Defamation

1. Defamation is an injury to a man's reputation. The right to reputation is an absolute right and anybody who touches the reputation of another is said to do so 'at his peril'.

2. The wrong of defamation consists in the publication of a false and defamatory statement respecting another person without lawful justification or excuse. A statement is said to be 'defamatory' when it has a tendency to injure the reputation of the person to whom it refers. Such a statement is one 'which exposes him to hatred, ridicule, or contempt, are which causes him be

shunned or avoided, or which has a tendency to injure him in his office, profession or calling'.

3. In a civil action for defamation, intention of the defendant is, in general, immaterial. "A person charged with libel cannot defend himself by showing that he intended in his own breast not to defame, or that he intended not to defame the plaintiff, if in fact he did both."

4. A defamatory statement differs from mere insult or abuse or any other form of injurious falsehood. The test of the defamatory nature of a statement is its tendency to excite against the plaintiff the adverse opinions or feelings of other persons. While insult is an injury to one's dignity or self-respect, defamation is an injury to the esteem or regard in which one is held by others. The essence of defamation, -to anticipate a term, -is publication. Insult Per se constitutes no wrong, unless it provokes a breach of the peace, when it becomes a criminal offence (s. 502, I.P.C., p. 278, ante).

- I The statement must be defamatory.
- II The statement must refer to the plaintiff.
- III The statement must be published by the defendant.
- IV The statement must be false.

I The statement must be defamatory

1. It has already been stated a statement is defamatory when it has a tendency to injure a person's reputation. It is not essential that there must be some disparagement of the moral or intellectual character of the plaintiff in the ordinary sense. The test of the defamatory nature of a statement is its tendency to excite against the plaintiff the adverse opinions or feelings of others, such as hatred, ridicule, contempt. It may thus consist of an imputation against the honesty or competence of the plaintiff in business.

2 The following are some instances of defamation:

- (i) Imputation of illegitimacy;
- (ii) Imputation of unchastity to a married woman or a widow.
- (iii) A false statement that a woman was raped even though it meant that she was innocent.
- (iv) A statement that a person has been 'acquitted' of a crime with which in fact he was never charged.

3. The form or mode in which the disparagement of the plaintiff's moral character, honesty or competence in business or the like is made is immaterial, if it has the tendency of rousing the adverse opinion of others against the plaintiff. Thus an action for defamation may lie for

- (i) representing through a humorous story or caricature the plaintiff in

a ridiculous light;

- (ii) publishing an edition of the plaintiff's established book on law, with many errors and mistakes, without stating that it had not been edited by the plaintiff;
- (iii) calling a man a 'Jew' to suggest that he was unscrupulous and unpatriotic;
- (iv) representing an actress to be much older than she is.

4. In determining whether a statement is defamatory or not. The motive or intention with which it was used by the defendant is immaterial Good faith or ignorance of the defamatory nature of the statement is no defence, for "a man utters defamatory statements at his peril" The statement is defamatory if, under the circumstances in which the writing was published "reasonable men to whom the publication was made would be likely to understand it in libellous sense. The expression 'reasonable men' has, again, been interpreted to mean-"The right thinking members of society generally", i.e., not the cynical or hasty but the right-minded persons, who are neither extremely suspicious nor extremely naive.

5. The test of the defamatory character of a statement being that of a reasonable man, the meaning to be given to the words by the Court may not be the meaning with which the defendant published it, but that which may

be reasonably given by the person or persons to whom it is published. The task of interpretation, therefore, may not be easy in all cases, -but the following rules have been evolved by the courts for the interpretation of a statement alleged to be defamatory:

- (a) The statement must be read as whole, and with reference to its context.
- (b) The statement must primarily be understood in its ordinary and natural meaning.

. Held, by the Privy Council, action for defamation lay against the defendant.

II. THE STATEMENT MUST REFER TO THE PLAINTIFF

1. In every action for defamation the plaintiff must prove that the statement refers to him. It is however, not necessary to show that the defendant intended it to refer to the plaintiff. The question in each case is not whether the defendant intended any such reference. But whether any person to whom the statement was published reasonably thought that the plaintiff was the person referred to. This rule is an extension of the doctrine that 'a man publishes defamatory statements at his peril'.

2. It is not necessary that the defamatory article must name the plaintiff or contain within itself some pointer indicating that it referred to him: extrinsic evidence is admissible to import a defamatory meaning to words otherwise

innocent and that it referred to the plaintiff. Minor discrepancies may be immaterial because readers of a newspaper article may not ordinarily read it with any critical care: it is enough if the witnesses examined by the plaintiff could not have been regarded as having acted unreasonably in assuming that the article referred to the plaintiff.

3. When the plaintiff establishes that those acquainted with him reasonably believed the statement to refer to the plaintiff, it is no defense that there was, in fact, another person answering the description given in the statement to which the defendant intended to refer and of whom the allegation or imputation made was true.

4. It is not necessary that the plaintiff should be referred to by name. It may be made under a fictitious name or in the name of a class. "There is, however, a rule that if a libel is made in the name of a class, a particular individual can bring an action only if he can show that it applies to himself. Thus, "if a man wrote that all lawyers were thieves, no particular lawyer could sue him unless there is something to point to the particular individual".

5. In short, in such cases where the plaintiff is not named in the offending matter, the test is whether the words are such as would lead ordinary reasonable or sensible persons acquainted with the plaintiff to be of opinion that the article referred to him.

III. THE STATEMENT MUST BE PUBLISHED BY THE DEFENDANT

1. Publication is the gist of the wrong of defamation. No civil action lies if the defamatory words are communicated only to the person spoken of; because that cannot injure his reputation, though it may injure his self-esteem. 'A man's reputation is the estimate in which others hold him, not the good opinion which he has of himself. There must be communication at least to one third person. Where therefore a libelous statement is sent straight to the person to whom it is written, e.g., in a sealed or registered letter addressed to the plaintiff, there is no publication sufficient to found civil proceedings.

2. Publication, however, does not necessarily mean, as a common parlance, making the contents known to the public. publication of a defamatory statement means the making known of the statement to any person other than the object of it. Communication to a single individual may therefore constitute publication. provided such person is capable of understanding the defamatory significance of the statement. Thus, if a libel be transmitted in a telegram or written on a post-card addressed to the person defamed. that is a publication: because the telegram must be read, and the post-card will in all probability be read by some person in the course of transmission unless the

statement is of such a nature that it would not be understood as defamatory by persons reading it casually. If, however, the defamatory statement is communicated by a closed cover (though not sealed) addressed to the plaintiff the defendant has no reason to believe that it would be opened or read by any person other than the plaintiff to whom it is addressed. Hence, if in such a case the letter is, in fact, opened and read by a servant or other person who had no right to do so, there is no publication and defendant is not liable.

3. There has been some difference of opinion on the question whether the dictation of a letter to the writer's own typist, for typing it in the ordinary course of business, before sending it to the addressee, would constitute a publication for purposes of an action for defamation by the addressee.

4. Except in the cases recognized by law to be privileged', e.g., reports of parliamentary or judicial proceedings, a newspaper or other organ of the press does not enjoy any special privilege in the law of defamation, merely because it publishes matters in which the public are interested. A journalist, like everyone else, is subject to the ordinary law, in the absence of statutory exceptions.

Innocent publication by vendor of defamatory matter :- It has how ever been established that where a person is a mere unconscious instrument in

circulating libellous matter, he is free from liability if he can prove that (a) he did not know, and (b) could not with reasonable diligence have known. that the document he circulates contains any such matter. Such is the case of a news-vendor, as distinguished from the publisher, printer or proprietor of the newspaper.

IV Absence of lawful justification.-

'The defamatory statement must be false. No civil action lies for the publication of a defamatory statement which is true. It is customary to allege therefore that the statement is false. But the plaintiff need not prove that it is false; falsity of a defamatory statement is presumed in favor of the plaintiff, and the burden is thrown on the defendant to prove that it is true.

Defences to an action for Defamation

1. Besides the general defences applicable to all torts, there are three special defences available in an action for defamation-(1) Justification, (2) Fair Comment, (3) Privilege. These are the conditions which form exceptions to the rule that a man utters defamation at his peril.
2. In addition to these common law defences, there is in England a statutory defence (under the Libel Act, 1843) known as apology, which is available where the libel is contained in a public newspaper or other periodical publication.

There is no legislation in India, so that apology cannot be pleaded to defeat a suit, though it may be pleaded to mitigate damage.

3. The following is a list of possible defences to an action for defamation in India:

- (i) That the alleged statement was not published.
- (ii) That the statement did not refer to the plaintiff
- (iii) That the words complained of did not bear any defamatory meaning.
- (iv) That the statement was true in substance and in fact.
- (v) That the statement was absolutely privileged"
- (vi) That the statement was published in good faith and without malice towards the plaintiff on an occasion of qualified privilege.
- (vii) That the statement was a fair and bona fide colD1Jk:nt without malice towards the plaintiff on a matter of public interest.
- (viii) That the publication was made by the authority or with the consent of the plaintiff.
- (ix) That the plaintiff has agreed to forgo the claim or has given a written release from liability.
- (x) That the person defamed has died.
- (xi) That the suit is barred by limitation.
- (xii) That the suit is barred by judicator.

MALICE IN AN ACTION OF DEFAMATION

1. It has been traditional to allege in the plaint in an action of defamation that the defendant made the defamatory statement “falsely” and “maliciously”. But in fact, the plaintiff is not bound to prove either falsely or malice. Firstly, all defamatory words are presumed to be false, and it is for the defendant to prove that they are true (unless he raises any other defence). Similarly, malice is also presumed and the plaintiff is not bound to prove it except when the defendant rebuts the presumption by the plea of qualified ‘privilege’. The reason is that defamation is prima facie unjustifiable, so that the plaintiff need not in the first instance prove any malice.

2. But when the defendant pleads that there was a lawful excuse in that the occasion in which the statement was made was privileged, the plaintiff, in order to succeed, must prove that the defendant has abused that privilege, actuated by express malice or a wrong motive.

3. But so long as the defendant honestly believed what he said was true, he was not guilty of malice merely because the honest belief was induced by ‘gross and unreasoning prejudice’, unless there are other circumstances from which it could be inferred that he was indifferent to the truth or falsity of what he had said.

4. In some cases, a statement is privileged only if made under certain limits; if such limits are disregarded there is an 'excess of privilege' which will be an evidence of malice and destroy the privilege. Thus, a confidential communication which would be privileged if made in a sealed letter, would not be so if made in a post-card or in a telegram.

5. Malice, in this context, need not be 'express malice' or ill-will. It would include any indirect or improper motive, i.e. a motive other than a sense of duty or interest. It may be proved by showing that defendant was reckless as to whether the statement made by him was true or false; but he may rebut it by showing that he honestly believed it to be true.

6. A finding on the question of malice in an action of defamation is a question of fact.

7. A person, including a corporation, will be liable for malice on the part of its servants or agents, but not for mechanical agents for publication, in the usual course of business, e.g., a typist. The proprietor of a newspaper will be liable for the malice of the editor or correspondent.

WHO MAY SUE

1. The person defamed

1. Any person who has been defamed is entitled to sue, unless he is disqualified or incapacitated to sue, e.g. an alien enemy, who cannot sue

except with the permission of the Government of India (s. 83, CP Code)

2. Because a suit for defamation is a personal action, an heir or other legal representative cannot sue after the person defamed has died, except where the libel against the dead man also defames the heir, e.g., where the allegation was that the dead man was living in adultery with X, the children of the dead man and X can use for defamation because that allegation implied that they were bastards.

II Corporation

1. Generally speaking, a corporation being a fictitious person, it cannot in the nature of things be brought into hatred, ridicule or contempt by any manner of falsehood. When a libel has been made against a corporation, it is in fact the individuals, composing it and not the corporation, therefore, cannot sue for defamation affecting personal reputation only. It is the individual members only who have a cause of action.

2. But a corporation can sue for defamation when it affects its business and property, and that even though the charge is leveled against individual members. In order that a corporation may sue for a defamation two conditions must exist: (a) The statement must be of such a nature that it would be defamatory if directed against an individual. (b) It must also be of such a nature that its tendency is to cause actual damage to the corporation

in respect of its property and business. Thus, a libel charging a trading corporation with insolvency or with dishonest or incompetent management is actionable at the suit of the corporation.

3. If it is shown that the libel has a tendency to damage the trading reputation of the plaintiff corporation, it is not required further to prove actual loss. In other words, it is entitled to be compensated for injury to its 'goodwill' though there may not have been any actual loss of income.

III Unincorporated association

1. An unincorporated body, not being a separate juristic entity like a statutory corporation, only its members can sue for defamation, in their individual capacity.

2. To this an exception has been recognized in the case of a trade union so that it can sue and be sued as a corporation. Hence, it may sue for libel if there is a defamatory attack upon the manner in which its business is conducted.

WHO MAY BE SUED

I. Author - The journalist employed by a newspaper who contributes an article or a person who supplies materials on the basis of which an article or editorial is written~ may be held liable by the person defamed. But an editor of a newspaper who has been liable for defamatory matter published in his

newspaper cannot. in the absence of any contract to that effect, hold the informant liable in damages for supplying false information.

II. Corporation - A corporation is liable for libel published by its servants or agents within the scope of their employment, according to the general principles of agency.

III. Editor - 1. The editor of a newspaper, book or any other printed matter is presumed to know what is being published by him and would be liable though the libel was written by another.

2. He may even be burdened with the malice which might have actuated the author of the article published in his journal.

IV. Printer - Since printing is required for a publication of a printed matter, a printer of a newspaper or book would be jointly and severally liable for defamatory matter published in the book or newspaper. It is presumed that he was aware of what was being printed.

V. Proprietor - The proprietor of a newspaper is liable, vicariously, for whatever is published in his newspaper, including editorials.

VI. Publisher.-The actual publisher of a newspaper or other defamatory matter is personally liable for defamation. He cannot exonerate himself by saying that he was merely acting as the agent of some other person. The publisher of a newspaper is not allowed to plead ignorance of the matter

published.

Libel by false attribution

1. A journalist or other person may be liable for defamation if he attributes to an author, artist, musician or the like a work which is of a lower standard than the work of such author, etc., so that by such attribution the plaintiff has lost his or her reputation.
2. The wrong may be committed if a journalist, after having an interview with an author or artist, writes an article and falsely represents therein that article has been written or contributed by such author or artist.

Slander of title and of goods:

1. These two actionable wrongs are compendiously described as injurious false hood. An action for damages lies against a person who publishes aspersions regarding the plaintiffs title to his property or disparages the quality thereof which causes damage to the plaintiff. The ingredients of this wrong are -

- a) the statements must be untrue :
 - b) they must have been made maliciously;
 - c) the plaintiff must have suffered 'special damage' thereby
2. It is, therefore, actionable to publish in a newspaper, falsely and maliciously, that the plaintiff has ceased to carry on business, or that

plaintiff's house is 'haunted', provided the plaintiff is able to prove that he has suffered special damage.

3. Where the injurious falsehood is published in a newspaper advertisement, it is the advertiser and not the newspaper who would be liable, because in such a case, it would be difficult to prove malice against the newspaper. But where the falsehood is published in a news report or editorial, the newspaper itself may be held liable as the maker of the injurious falsehood.

4. While in an action for defamation, damage is presumed and the plaintiff is not required to prove actual damage (in India, whether the defamation is by writing or by words of mouth), actual damage must be proved by the plaintiff in an action for injurious falsehood. Again, in an action for defamation, falsehood need not be proved by the plaintiff, imputes dishonesty and malice must be proved by the plaintiff. It is to be noted that where the disparagement of the plaintiff's goods also imputes dishonesty in which case, the publisher's liability also arises.

Passing off. :

1. Another civil wrong of which a writer or journalist should take care is the tort of 'passing off', which is a variety of injurious falsehood'.

2. A person commits this wrong if he passes off selling one's goods so as to represent it as being the goods of the plaintiff constitutes the wrong, irrespective of knowledge or intent to deceive.

3. It is a species of 'injurious falsehood' since it consists of a false representation made to others, causing damage to the plaintiff. It differs from slander of goods in that in the latter there is a disparagement of the plaintiff's goods, while in passing off, the defendant represents that his goods are those of the plaintiff.

4. In an action for passing off, plaintiff may obtain an injunction without proving either an intent to deceive or actual damage. If, however, the defendant has acted with the intention to deceive the purchasers, plaintiff may obtain nominal damages where no special damage has been caused: or substantial damage if the plaintiff has suffered actual damage, such as fall in business and income.

5. The commonest form of the wrong is where the defendant imitates the get-up or appearance of the plaintiff's goods or sells them under the same or a similar name. Of course, no action would lie for use of the name used by the plaintiff if the name is merely descriptive of the goods and does not refer to the particular manufacture by the plaintiff. Where goods are sold under a name by which they have become known as the goods of the particular trader, no other person has the right to use that name so as to represent that he is selling the goods of that trader.

6. Thus, a person would be liable in damages for passing off:

(i) If he sells a publication by falsely putting the name of a well-known author on the book.

Such name of the well-known author, artist or writer may be a pseudo name, for it he has acquired publicity or popularity under a particular name that name becomes a part of his stock-in-trade, so that if any other person uses that name, he inflicts on the former an injury to his property in his profession or business, by misleading the public who deal with the plaintiff.

7. The essence of the offence being a false representation to the public, causing damage to the plaintiff's goodwill, the wrong may be committed by a mere offer to sale though no actual sale has taken place.

14.3 EMBLEMS & NAMES ACT

It is an Act to prevent the improper use of certain emblems and names for professional and commercial purposes.

It is enacted by Parliament as

This Act may be called the Emblems and Names (Prevention of Improper Use) Act, 1950. It extends to the whole of India, and also applies to citizens of India outside India.

Definitions

In this Act, unless the context otherwise requires –

- (a) “emblem” means any emblem, seal, flag, insignia, coat-of-arms or pictorial representation, specified in the Schedule;
- (b) “competent authority” means any authority competent under any law for the time being in force to register any company, firm or

other body of persons or any trade-mark or design or to grant a patent;

(c) “name” includes any abbreviation of a name.

3. Prohibition of improper use of certain emblems and names

Notwithstanding anything contained in any law for the time being in force, no person shall, except in such cases and under such conditions as may be prescribed by the Central Government, use or continue to use, for the purpose of any trade, business, calling or profession, or in the title of any patent, or in any trade-mark or design, any name or emblem specified in the Schedule or any colorable imitation thereof without the previous permission of the Central Government or of such officer of government as may be authorized in this behalf by the Central Government.

Prohibition of registration of certain companies etc.

(1) Notwithstanding anything contained in any law for the time being in force, no competent authority shall -

(a) Register any company, firm or other body of persons which bears any name, or

(b) Register a trade-mark or design which bears any emblem or name, or

- (c) Grant a patent in respect of an invention which bears a title containing any emblem or name,

If the use of such name or emblem is in contravention of section 3.

(2) If any question arises before a competent authority whether any emblem is an emblem specified in the Schedule or a colorable imitation thereof, the competent authority may refer the question to the Central Government, and the decision of the Central Government thereon shall be final.

Penalty

Any person who contravenes the provisions of section 3 shall be punishable with fine which may extend to five hundred rupees.

Previous sanction for prosecution

No prosecution for any offence punishable under this Act shall be instituted, except with the previous sanction of the Central Government or of any officer except with the previous sanction of the Central Government or of any officer authorized in this behalf by general or special order of the Central Government.

Saving

Nothing in this Act shall exempt any person from any suit or other proceeding which might apart from this Act be brought against him.

Power of the Central Government

The Central Government may, by motivation in the Official Gazette, add to or alter the Schedule and any such addition or alteration shall have effect as if it had been made by this Act.

Power to make rules

(1) The Central Government may, by notification in the Official Gazette, make rules to carry out the purpose of this Act.

(2) Every rule made under this Act, shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under the rule.

1. The name, emblem or official seal of the United Nations Organisation.

2. The name, emblem or official seal of the World Health Organisation.
3. The Indian National Flag.
4. The name, emblem or official seal of the government of India or of any State, or any other insignia or coat-of-arms used by any such government or by a department of any such government.
5. The emblems of the St. John's Ambulance Association (India) and the St. John's Ambulance Brigade (India) consisting of the device of a white eight-pointed cross embellished in the four principal angles, whether or not the device is surrounded or accompanied by concentric circles or other decoration or by lettering.
6. The name, emblem or official seal of the President, Governor, Sadar-I-Riyasat or Republic or Union of India.
7. Any name which may suggest or be calculated to suggest –
 - (i) the patronage of the Government of India or the government of a State; or

(ii) connection with any local authority or any corporation or body constituted by the government under any law for the time being in force.

8. The name, emblem or official seal of the United Nations Educational, Scientific and Cultural Organisations.

9. The name or pictorial representation of Chhatrapati Shivaji Maharaj or Mahatma Gandhi or Pandit Jawaharlal Nehru or Shrimati Indira Gandhi or the Prime Minister of India, except the pictorial use thereof on calendars where only the name of the manufacturers and printers of the calendars are given and the calendars are not used for advertising goods.

10. The medals, badges or decorations instituted by the government from time to time or the miniatures or replicas of such medals, badges or decorations or the names of such medals, badges or decorations or of the International Civil Aviation Organization.

11. The name, emblem or official seal of the International Criminal Police Organization.

12. The word "Interpol" which is an integral part of the International Criminal Police Organization.

13. The name, emblem or official seal of the World Meteorological Organization.

14. The name and emblem of the Tuberculosis Association of India.
15. The name, emblem and official seal of the International Atomic Energy Agency.
16. The names “Ashoka Chakra” and “Dharma Chakra” or the pictorial representation of Ashoka Chakra as used in the Indian National Flag or in the official seal or emblem of the Government of India or of any State Government or of a department of any such government.
17. The name of the Parliament or the legislature of any State, or the Supreme Court, or the High Court of any State, or the Central Secretariat, or the Secretariat official seal or emblem of the Government of India or of any State Government or of a department of any such government.
18. The name and emblem of the Rama Krishna Math and Mission consisting of a swan floating on water, with a lotus in the foreground and the rising sun in the background, the whole being encircled by a wild serpent, with words superimposed on the bottom portion.
19. The name and emblems of the Sri Sarada Math and Ramkrishna Sarda Mission consisting of a swan (facing right) floating on water, with a lotus in the foreground and the rising sun in the background, the whole being encircled by a wild serpent (facing right) with the words superimposed on the bottom portion.

20. The name of “The Bharat Scouts and Guides” with its emblem.
21. The name and emblem of the International Olympic Committee consisting of five inter-laced rings.
22. The name and emblem of the National Youth Emblem which is in black and white and carries the profiles of the faces of two onward looking young persons-male and female-inscribed with a circle. Both faces are turning towards the right and the profile of the male face is in black and is situated behind that of the female face. The back of profile of the female face forms the tail and wing of a dove flying in the opposite direction with its beak extending outside the circle and carrying a twig with leaf. The profile of the dove is in white and the balance space of the profile of the female face is covered with horizontal lines in black. Horizontal lines in black also cover the space between the black profile of the male face and the circle. The space in between the profile of the dove and the circle to the left of the dove is also in black. The leaf and twig is in black. One eye of the dove is shown in the form of a dot.

14.4 Summary

Defamation is an injury to a man’s reputation. A statement is said to be ‘defamatory’ when it has a tendency to injure the

reputation of the person to whom it refers. Conditions for defamation-statement must be defamatory, it must refer to the plaintiff, it must be published, and it must be false.

Emblems and Names Act is an act to prevent the improper use of certain emblems and names for professional and commercial purposes. Any person who contravenes the provisions of the act shall be punishable with fine which may extend to five hundred rupees. The Central Government may, by motivation in the official gazette, add to or alter the schedule and any such addition or alteration shall have effect as if it had been made by this Act.

14.5 Key words

Plaintiff: a person bringing an action in a court of law

Disparagement: belittle

Impute: attribute

Ridicule: mockery, derision

Unscrupulous: lacking moral principles

Cynic: a person who believes people are usually bad or selfish

Peril: serious danger

Apology: a statement of regret for having done wrong or hurt someone

Malice: desire to harm others

Vicarious: felt through sharing imaginatively in the feelings or activities etc. of another person, acting or done etc. for another

Exonerate: show to be blameless

Aspersions: a derogatory remark

Emblem: a symbol, a design used as a badge

Contravene: break (a rule etc.)

14.6 Self Assessment Exercise

1 What do you understand by Defamation? Give a brief account of various instances of defamation.

2 Discuss the kinds of defenses and malice under Defamation.

3 Throw light on the persons who can be sued and can sue under the Defamation Act.

4 Explain the Emblem and Names (prevention of improper use) Act of 1980.

14.7 Suggested Readings

Rayudu, C.S; Rao Nageswar S.B; Mass Media Laws & Regulations;
Himalaya Publishing House.

Ramakrishna S; Criminal Minor Acts; Capital Law House

Datta Sarojit; Advertising Today.

Frank Jeffkins; Advertising

Lesson – 15

The Prize Competitions Act, Rejections of Advertisement on Specified Unspecified Grounds

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STRUCTURE

15.1 Objectives

15.2 Introduction-The Prize Competitions Act, 1955

15.3 Rejections of Advertisement on Specified Unspecified Grounds

15.4 Summary

15.5 Key words

15.6 Self Assessment Exercise

15.7 Suggested Readings

15.1 OBJECTIVES

The objective of this lesson is to make the students aware about the acts relating to the prize competitions, and rejections of advertisement on specified unspecified grounds.

15.2 Introduction-THE PRIZE COMPETITIONS ACT, 1955 (ACT 42 OF 1955)

In this Act, unless the context otherwise requires:

- a) "Licensing authority" means any officer or authority appointed by the State Government, by notification in the Official Gazette, for the purpose of granting licenses under this Act;
- b) "Money" includes a cheque, postal-order or money-order;
- c) "Prescribed" means prescribed by rules made under this Act;
- d) "Prize competition" means any competition (whether called a cross word prize competition, a missing-word prize competition, a picture prize competition or by any other name) in which prizes are offered for the solution of any puzzle based upon the building up, arrangement, combination or permutation of letters, words or figures.

Interpretation

For the purposes of this Act:

- (a) References to printing shall be construed as including references to writing and other modes of representing or reproducing letters, words of figures in a visible form; and
- (b) Documents or other matters shall be deemed to be distributed if they are distributed to persons or places within or outside the territories to which this Act extends and the word 'distribution' shall be constructed accordingly.

Prohibition of Prize Competition where the Prize Offered Exceeds One Thousand Rupees a Month

No person shall promote or conduct any prize competition or competitions in which the total value of the prize or prizes (whether in cash or otherwise) to be offered in any month exceeds one thousand rupees; and in every prize competition, the number of entries shall not exceed two thousand.

Licensing of Prize Competitions where the Prize Offered does not Exceed One Thousand Rupees of Month

Subject to the provisions of Section 4, no person shall promote or conduct any prize competition or competitions in which the total value of the prize or prizes (whether in cash or otherwise) to be offered in any month does not exceed one thousand rupees unless he has obtained in this behalf a licence granted in accordance with the provisions of this Act and the rules made there under.

Licenses for Prize Competitions

1. Every person desiring to obtain a licence referred to in Section 5 shall make application in writing to the licensing authority in such form and manner as may be prescribed.
2. On the receipt of such application, the licensing authority, after making such inquiry as it considers necessary, shall, by order in writing, either grant the licence or refuse to grant the licence.

3. Where the licensing authority refuses to grant a licence it shall record a brief statement of the reasons for such refusal and furnish a copy thereof to the applicant.
4. The fees on payment of which, the period for which, the conditions subject to which, and the form in which, a license may be granted shall be such as may be prescribed.

Promoters of Prize Competitions to Keep Accounts and submit the same to the Licensing authority

Every person who promotes or conducts a prize competition in accordance with the provisions of this act and the rules made thereunder shall keep accounts relating to such competition and submit to the licensing authority a statement of accounts in such form and at such intervals as may be prescribed.

Power to Cancel or Suspend Licences :

1. The licensing authority may, after giving the holder of any licence under this Act, a reasonable opportunity of being heard, cancel or suspend the licence on any one or more of the following grounds, namely :
 - a. That there has been a breach of any of the conditions subject to which the licence was granted.

- b. That the holder of the licence has contravened any of the provisions of Section 7.
2. Whenever a licence is cancelled or suspended the licensing authority shall record a brief statement of the reasons for such cancellation or suspension and furnish a copy thereof to the person whose licence has been cancelled or suspended.

Penalty for Promoting or Conducting any Prize Competition in Contravention of the Provision of Section 4 and 5.

If any person promotes or conducts any prize competition in contravention of the provisions of Section 4 or Section 5, he shall be punishable with imprisonment for a term, which may extend to three months, or with fine, which may extend to one thousand rupees, or with both.

Penalty for Failure to Keep and Submit Accounts

If any person liable under Section 7 to keep accounts or to submit statements of accounts fails to keep accounts or to submit statements of accounts as required by that section or keeps accounts or submits statements of accounts which are false and which he either knows or believes to be false or does not believe to be true, he shall be punishable with imprisonment for a term which may extend to one month, or with fine which may extend to

five hundred rupees or with both, but nothing contained in this section shall affect the provisions contained in Section 8.

Penalty for Other Offences in Connection with Prize Competitions

If any person with a view to the promotion or conduct of any prize competition except in accordance with the provisions of a licence under this act or contravention of the promoted or conducted except in accordance with such provisions.

- (a) prints or publishes any ticket, coupon or other document for use in the prize competition; or
- (b) Sells or distribution or offers or advertises for sale or distribution, or has in his possession for the purpose of sale or distribution any ticket coupon or other document for use in the prize competition; or
- (c) prints, publishes or distributes or has in his possession for the purpose of publication or distribution:
 - (i) any advertisement of the prize competition, or
 - (ii) any list (whether complete or not) or prize winners in the prize competition, or
 - (iii) any such matter descriptive of, or otherwise relating to, the prize competition or any other prize competition, or

- (d) brings, or invites any person to send, into the territories to which this Act extends, for the purpose of sale or distribution, any ticket, coupon or other document for use in, or any advertisement of, the prize competition; or
- (e) sends, or attempts to send, out of the territories to which this Act extends any money or valuable thing received in respect or the sale or distribution of any ticket, coupon or other document for use in the prize competition, or
- (f) uses any premises, or causes or knowingly permits any premise to be used for purposes connected with the promotion or conduct of the prize competition; or
- (g) causes or procures or attempts to procure any person to do any of the above mentioned acts, he shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

Offences by Corporations.

1. If any person guilty of an offence under this act is a company, every person who at the time the offence was committed was in charge of,

and was responsible to the company, as well as the company, shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly: Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act if he proves that the offence was committed without his knowledge or that he exercised all due diligence or prevent the commission of such offence.

2. Notwithstanding anything contained in Sub-Section (1), where an offence under this Act has been committed with the consent or connivance of, or is attributable to gross neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall be deemed against and punished accordingly.

Explanation : For the purposes of this Section:

- (a) "company" means a body corporate and includes a firm or other association of individuals; and
- (b) "director" in relation to a firm means a partner in the firm.

Power to Licensing Authority to Call for and Inspect Accounts and Documents

The licensing authority may :

- (a) require any person promoting or conducting a prize competition

to produce before it the accounts and other documents kept by such other information relating to the prize competition as it may require.

- (b) inspect at all reasonable times the accounts and other documents kept by such person

Power of Entry and Search

1. It shall be lawful for any police officer not below the rank of Sub-Inspector authorized by the State Government in this behalf by general or special order in writing.

- (a) to enter if necessary by force, whether by day or night, with such assistants as he considers necessary, any premises which he has reason to suspect, are being used for purposes connected with the promotion or conduct of any prize competition in contravention of the provisions of the Act.
- (b) to search the premises and the persons whom he may find therein;
- (c) to take into custody and produce before a Magistrate all such persons as are concerned or against whom a reasonable complaint has been made or credible information has been received or a reasonable suspicion exists of their having been

concerned with the user of such premises for purposes connected with, or with the promotion or conduct of, any prize competition in contravention of the provisions of this Act and

- (d) to seize all things found therein which are intended to be used or reasonably suspected to have been used in connection with such prize competition.
2. All searches under this section shall be made in accordance with the provisions of the Code of Criminal Procedure Procedure, 1898.

Forfeiture of Newspapers and Publications Containing Prize Competitions.

Where any newspaper or other publication contains any prize competition promoted or conducted in contravention of the provisions of this Act or except in accordance with the provisions of a licence under this Act or any advertisement in relation thereto, the State Government may, by notification in the official Gazette, declare every copy of the newspaper and every copy of the publication containing the prize competition or the advertisement, to be forfeited to Government.

Appeals

Any person aggrieved by the decision of the licensing authority refusing to grant a licence or canceling or suspending a licence may, within

such time as may be prescribed, prefer an appeal to the State Government and the decision of the State Government on such appeal shall be final.

Licensing Authority and other Officers to be Public Servants

The licensing authority and any other officer acting under this Act shall be deemed to be public servants within the meaning of Section 21 of the Indian Penal Code.

Jurisdiction to Try Offences

No court inferior to that of a Presidency Magistrate or a Magistrate of the first class shall try any offence under this Act.

15.3 REJECTIONS OF ADVERTISEMENT ON SPECIFIED UNSPECIFIED GROUNDS

Advertising is omnipresent, it is alluring, it is inviting and it involves people. Advertising is the most activity of any business. By trying to attract people to use their products, companies also invite public criticism and attacks if their products do not measure up. The critics that lies, sex and misleading claims are used in advertising to manipulate the decisions of the people often accuse it. It not only crosses the limits of business codes and norms of the society but heats the sensitivity of the consumers too.

Numerous guidelines, rules, regulation and laws constrain and restrict advertising. These regulations primarily influence individual advertisers but they can also affect advertising for an entire industry. Lets take an example that cigarette advertising was banned in 1970 for the broadcast media only and many groups are now pushing for a total ban on the tobacco advertising.

Advertising is often occurred as unethical. The critics feel that it is a profoundly subversive force. It is intellectual and moral pollutant. It trivializes, is insincere and vulgarizes. It is very difficult to define ethics. It is an intangible as the concepts of morality or idea of right or wrong e.g. the process of artificial birth control may be a taboo to a catholic Christian, it is mandatory to a Chinese and highly preferable to an Indian or many other people living in overpopulated countries. The concept of morality vis-à-vis sexual habits, special pre-marital and extra marital sex, vary widely over the globe while advertisements of condoms like Kamasutra, Moods or Kohinoor have created flutter in Indian society, a national daily of Singapore claimed that, Singapore love life will soon be seen in a new light – invite the help of luminous condoms which glow in the dark. In fact, the idea of morality is highly subjective and vague varying from culture to culture.

The broad concept of ethics, however, accepts that any advertising that is not true or uses questionable means would be considered unethical. To protect the consumer against misleading advertisements a number of laws have been passed all over the world.

With growing competitiveness in the market & growth of consumer awareness, additions & amendments are being introduced in the legal system to control the erring advertisers. Some of the major laws are listed here:

- 1. *Indian Penal Code, 1968 :*** It provides that a book, pamphlet, paper writing, drawing, painting, representations, figures or any other object

shall be deemed to be obscene if it is lascivious or appeals to prurient interests or if its effect is such as to tend to deprave and corrupt persons who are likely, having regard to all relevant circumstances, to read seem, or hear the message contained or embodied in it. The code, though does not refer to advertising in particular, covers advertising as part of the activities listed above.

2. ***Indian Contract Act, 1872*** : This Act governs the rights and duties of advertising agencies.

3. ***The Punjab Excise Act, 1914*** : This Act prohibits advertising offering or soliciting the use of liquor in any form in the area of Punjab. An extension of this Act also prohibits such advertisements in the Union Territory of Delhi.

4. ***The Drugs and Cosmetics Act, 1940*** : This Act enables the Government to regulate the import, manufacture, distribution and sale of drugs and cosmetics.

5. ***Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954*** : This Act prohibits publication of objectionable advertisements in newspapers and magazines or otherwise relating to alleged cures for venereal diseases, sexual stimulants and alleged cures for diseases and conditions peculiar to women. In this case an advertisement includes any

notice, circular, label, wrapper or other documents and announcement made by any means or producing or transmitting light, sound or smoke.

6. *Young Persons (Harmful Publication) Act, 1956 :* This Act provides penalty for a person who sells, lets to hire, distributes, publicly exhibits or in any manner puts into circulation any harmful publication or for purpose of sale, hire distribution, public exhibition or circulation, prints, makes known by any means whatsoever, that any publication harmful for young people.

7. *Copyright Act, 1957 :* This Act, which protects the copyright, also protects the right of the copywriter and other creators of advertisements.

8. *Monopolies and Restrictive Trade Practices Act, 1984 :* Popularly known as the MRTP Act, this Act and its amendments have made special provisions for regulating misleading advertisements regarding unfair trade practices etc.

In addition to the major laws mentioned above, there are regulations like *Emblems & Names (Prevention of improper use) Act, 1950, Standards of Weights & Measures Act, 1976, The Bombay Lotteries (Control) Tax Act, 1950, Foreign Exchange Regulation Act (FERA)* regarding use of foreign brand names; *Indecent Representation of Women (Prohibition) Act, 1986 & so on.*

While many laws & regulations determine what advertisers can and cannot do, not every issue is covered by a rule. Advertisers must often make decisions regarding appropriate and responsible actions on the basis of ethical considerations rather than on what is legal or within industry guidelines. A particular action may be within the law and still not be ethical E.g. Tobacco advertising, alcoholic beverages advertising, Objectifying Women in advertising or children in advertising & so on. Controversies arise when the advertisers use advertising as a selling tool and when it affects the society's tastes, values and lifestyles. Advertisements though legal best may be regulated on some specified unspecified grounds as.

a) *Advertising as untruthful or Deceptive:*

A number of studies have shown a general mistrust of advertising among consumers as they are often misleading or untruthful and deceive customers. Advertising often makes overtly false or misleading claims.

Advertising should be informative in nature and should not be permitted to use puffery or embellished message.

b) *Affecting the Life-style and Value System:*

A large section of the intellectuals and social scientists hold advertising as a hidden persuader affecting the life-style and value system of the society. It is argued that due to the strong impact of advertising "the values of our world are not only dominated but even debased by advertising. It is held that advertising of large group of products from kitchenware to toiletry; from TV sets to toothpastes, from different varieties of health, soft and hard drinks to fashionwears are adversely affecting life-style and value

system. Advertising is often held responsible for sponsoring the values of consumer society.

c) Sponsoring Materialism:

Materialism has been associated with the desire to acquire and possess tangible goods. Advertising is accused of promoting this attitude by attaching undue importance to the material aspects of life. The degree of desire to be branded as materialism differs between nations, societies and subgroups. Possession of a personal mode of transport- a car, motorbike or scooter is a must in the developed countries but is a luxury item in India. Even within the same country, local or regional norms are deciding factors in this respect. For example, pressure cooker for an urban housewife in India has practically been bracketed as necessity, while in the suburban and rural areas these and many other kitchenware are considered unwanted infiltrations. It is believed that by disregarding the finer aspects of life and by sponsoring 'revolution of rising expectations' among the sections from the ghetto dwellers of the USA to the slum dwellers and rural poor of India and the people belonging to the "consumer society" all over the world, advertising is creating a kind of social tension. It is also alleged by the finer aspects of life are sacrificed at the altar of advertising generating demand for product. This is possibly going little too far.

d) *Promoting Stereotypes:*

It is often held that to promote universal acceptance of product the advertisers tend to sponsor conformity in human behaviour pattern and thereby promote stereotypes. Certain groups of individuals are portrait in fixed rolls in advertising, which also psychologically leads to loss of identity and depersonalization. The best example of portraying group in fixed rows may be noted in cases of portrayal of women in housewives, mothers and companions to men. From Cigarette advertisements to motorbike ads they are used for exclusive affairs. They are hardly shown in any decision-making roles except in cases of selection of detergents, fast foods, colour shades of walls and draperies.

Some economic and ethnic groups are also featured in advertising which often tend to demean one group and glamourise the other. The Indian advertisements showing a special group or a class handling only coolie's jobs and nawab's and neo-nawab's in their exclusive regency are yet to evoke any negative reaction. While appreciating or analyzing this aspect, one has to ponder whether advertisements should portry the society as it really exists or in some idealist view of what it should be.

e) *Impact on Children:*

It is believed that as the children lack the perceptual defence possessed by the adults and cannot objectively evaluate advertisements; they are more susceptible to deception. Some critics also hold that television advertising “corrupts children by instilling values that are not acceptable to the society and helps in the development of conflicting relationship between the children and their parents.

f) Bad Taste:

There are again a lot of allegations involving ethical, moral and aesthetic considerations. Advertising is also treated as annoying and irritating. The questionable areas have been identified as or morale concern over the products advertised. Inappropriate timing causes these, contents of the messages and their contexts, objectionable appeals and techniques. The critics question the morality of advertising products like liquor, cigarettes, contraceptives, items related to personal hygiene or private convenience of the ladies like sanitary napkins etc. Moreover, the question of timing the exposure of such advertisement should be very critically decided to avoid embarrassment or repulsion.

The question of offensive appeal including that of sex is widely known. In this context it may be noted that the appeals are and should be formulated

to match the need of the target audience of the product. However, if advertising crosses the limits of ethics and aesthetics of its target audience, it will fail itself and its sponsors.

15.4 Summary

The Prize Competition Act. plays an important role in the field of advertisement

15.5 Key words

Possession: owning

Alluring: attract

Trivializes: of only small value and importance

Peculiar: strange

Dweller: who live as an inhabitant

15.6 Self Assessment Exercise

Q1 Discuss the law relating to prize competition Act.

Q2 Throw light on the various laws to control the erring advertisements.

Q3 Explain the unspecified grounds on the basis of which the advertisements can be rejected.

15.7 Suggested Readings

Rayudu, C.S; Rao Nageswar S.B; Mass Media Laws & Regulations; Himalaya Publishing House.

Ramakrishna S; Criminal Minor Acts; Capital Law House

Datta Sarojit; Advertising Today.

Frank Jeffkins; Advertising

