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ETHICS IN ADVERTISING *

INTRODUCTION TO ETHICS IN ADVERTISING

Today, advertising is becoming a way of life and with the fast expanding Integrated Marketing Communication, it has emerged as a powerful tool for imparting information and receiving the same but like lot of other things in life, it also has some positive as well as some negative points. As a concept, definitely, it is useful and desirable. In the absence of advertising activity, it would not be possible for anybody to know about any new product or service appearing in the market nor would it be possible for any business organisation to create demand. Advertising can also be used to generate awareness among public that which product they use and to which product they can say no. It can also be used to educate people about certain diseases or danger (example: - AIDS, TB, viral diseases, etc.). Even the backward people are now aware of many diseases and their problems. And all these credits goes to proper advertising. Diseases like Polio could never been controlled if the timings for polio drops aren't advertised regularly.

Thus, we can see, there does not seem to be anything wrong with the concept as such, the problem arises when this concept i.e. advertising is put in practice. It has gone far beyond the limits of persuasive promotional tool and has not only become inviting and alluring but it has also started assuming shades of half-truth, unfair and at a time deceptive mean. With the powerful audio-visual impact of electronic and digital form of advertising, the ordinary public is hardly left with any space of their own to think and decide rationally. The concern is more important and intense as most of the Indian population lacks basic education and awareness level to differentiate between the information 'content' from the 'deceptive content'. Not only that, it seems, there is a competition in using the sexual undertones in the advertising-neither the female models nor the advertising agencies has any kind of remorse in this respect. The focus is more on this aspect rather than product and product value. This degradation in advertising brings in focus on cultural and social impact of advertising on society and the need for ethical restrictions on the same.

NEED FOR ETHICS IN ADVERTISING

Ethics means moral principles that govern a person's behaviour or the conducting of an activity. Ethics means "Good Conduct" or "Conduct which is right in view of the society and

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the time period”. It is basically a set of moral principles governing an individual or a group at a given time and at a given place and in a given society.

Restrictions on advertising may be ethical or legal. A particular action may be within the law and still not be ethical. Let's take example of Target Marketing; the alcoholic beverages companies promote their brands and target not only college students but also underage drinkers. Also, advertisement objectifying women are highly criticized but there is no law to restrict the same. Therefore, even advertisement has ethical value. In present scenario, the advertisements are misleading and exaggerated thereby, sometimes, glorifying certain habits which are considered undesirable in consumer culture. If an advertisement is misleading, the credibility of the organization is lost. Therefore, in today's competitive and buyer's market, what is advertised by the companies must be truthful and ethical. Being a social process, it must follow the time-tested norms of social behaviour and should not affront our moral sense.

However, it is not possible to make a clear distinction between what is true and what is untrue. But, the advertisement as such can be judged by its impact and acceptance by the consumers. The problem here is, that ethics may vary from person to person, society-to-society point of view. Certain contents may be useful for adults but if the children are exposed to the same in the equal measure, it may be harmful. For example advertisement showing excessive use of sex, nudity and violence in it, leaves a harmful impact on children.

UNETHICAL PRACTICES IN ADVERTISING

There is strong temptation on the part of the organizations to breach the 'need' and cross over to misuse thereby leading to various unethical practices. Such practices and the criticism concerning their influence on consumers are discussed below¹.

Puffery in Advertising

It forms the main part of advertisement. In this products are shown to have a lot of qualities which it does not possess in real. On the other hand advertisers and advertising personnel defend the use of puffery. The defenders of puffery opine that it helps in differentiating products from their competitors. Legally, puffery is not banned because puffery is considered as an opinion and people (advertisers) are free to give their opinions. They say people are not supposed to believe puffery literally. This is the reason that puffery in advertisement is increasing day by day. But research has been consistently revealing that many people do believe the tall and exaggerated claims made in the ads and fall prey to them. We have many cases of deception, for example, both Wheel (washing bar) and Vim (utensil washing bar) show lemons prominently on the package. The ads of these two products also claim their products contain the power of lemon. However, it has been found that these products only use lemon flavour. Puffery up to a certain extent is not harmful but false claim and dishonesty is unethical practices and regular deception, leads to losing customers trust & confidence.

Comparative Advertising

¹M. R. PATRA- Ethics in Advertising; available at-
<https://www.google.co.in/url?sa=t&rct=j&q=&esrc=s&source=web&cd=2&cad=rja&uact=8&ved=0CCQQFjAB&url=http%3A%2F%2Fwww.ddegjust.ac.in%2Fstudymaterial%2Fmmc-2%2Fmmc-204.pdf&ei=UW0xVPedFYueuQSg7YHQBQ&usg=AFQjCNF1ta-CjDf6h0sQIGKgFT8J3eydpw&bvm=bv.76802529,d.c2E>

It is another form of unethical practice of advertising besides practice of deception through puffery. For example, the advertisements of Pepsi or Coca Cola: Both the brands try to compare their brands & the series try to cut the features shown in their advertisements. Similar making the packaging or the names sounding similar to the major brands like *Adibas* for *Adidas* is also a form of comparative advertising. Advertisers use comparative advertising even at the risk of getting exposed. And in today's highly competitive market, comparative advertising has become a major weapon. Also people do not mind doctoring or manufacturing data. False and misleading information are fed through advertising.

Negative Advertising

Advertising is done in two ways, one is positive and another is negative. In former the best features of a brand are advertised while in latter, many ads try to show their competitors in a bad light. It is mostly practised in political advertising. The ads created for US Presidential campaigns are mostly negative where opposing candidates are ruthlessly dissected. In the brutal and highly competitive atmosphere of US politics, Presidential candidates hurt defamatory accusations at one another. However, it is not used in commercial advertising.

Advertising for Children

Advertising directed at children is another problem area. Children are a very important part of most markets. Children initiate and influence purchase decisions of many products to a great extent. This is the reason why children are targeted not only in case of children's products but also for a wide range of other products. Children are an impressionable age. The critical faculties of thinking are not developed in children. Thus they are vulnerable to advertising - particularly TV advertisements. The glamour and hype on TV attracts the immature minds and children cannot make rational buying decisions as they cannot distinguish between the boundaries of reality and fantasy in the make believe world of television advertising. Children are mesmerized by the attractive moving images and buy (or force their parents to buy) the products advertised on TV.

Advertorials and Infomercials

Another type of advertising that often comes under criticism is the use of advertorials. An advertorial is half advertisement and half editorial. It is advertisement written in the form of a news story or an article - using the format and language of newspapers. Advertorials are used to promote goods, services and also institutions. Advertorials are highly controversial. These aim to win public opinion rather than sell products. Another form of advertorials is the infomercial. It is the audio-visual media counterpart of advertorials. When an advertisement is disguised as a piece of information on radio or television, it is called an infomercial. An infomercial is half information and half commercial or advertisement.

Good Taste and Advertising

What is good taste in advertising may vary from person to person, society-to-society point of view. Different people have different opinion about what constitutes good taste. India is country of cultures and religions. What is offending for one culture or religion may not be offensive for other. For example, many people object to social ads promoting use of condoms and other contraceptives being shown during prime time on Doordarshan. Also many people object to advertisements of products like sanitary napkins. And the excessive use of sex, nudity and violence is considered to be not in good taste. Therefore, advertisers must keep in mind different cultural and societal practices while making an advertisement.

Stereotypes in Advertising

Stereotyping involves presenting a group of people in a pattern or manner that lacks individuality. This involves generalization. We have many stereotypes in our society like people consider that Punjabis are boisterous, Bengalis and Keralites are intellectuals, mothers in law and daughters in law always fight etc. The most controversial of the stereotypes portrayed in advertisements is that of women. Women are usually shown as preoccupied with beauty, household chores and mother hood. Also young girls are shown as too much occupied with beauty and winning boys. These types of advertisements leave a bad impact on the mind of teenagers. The challenge before advertisers is to portray the different segments of people realistically, in diverse roles and without hurting any segments.

Advertising of Controversial or Harmful Products

Three main products, which fall under this category, are condoms, alcohol, and tobacco products. Alcohol and tobacco advertising have been banned in many countries including India (on DD and AIR) and the USA television networks. While alcohol and tobacco product manufacturers say that truthful and non-deceptive advertising of legal products is constitutional. Supporters of the ban say that advertising of such products might result in sickness, or even death of users. But where there is a ban on advertising of such products, advertisers use surrogate advertising like promoting other products of the same name. So we have matchboxes, playing cards, cut glasses, pet bottles, diaries and annual planners being advertised which clearly promote alcohol or tobacco products. Many media do not accept condoms ads, although there is no ban on it. Newspapers rarely accept condom ads. Television has only recently started telecasting condom ads. Only magazines publish condom ads regularly. However, many people feel with the menace of AIDS and the increased cases of sexually transmitted diseases, all media should accept condom ads.

Advertising and Sex

This is perhaps the most controversial aspect of advertising. It is not much of an ethical issue. It is more of a social issue. There is portrayal of women as glamour props. Scantly clad women might be okay for an ad for a condom. But such a lady featured in ads for tyres, pens or suitcases or shoes and coffee does not make any sense. Like the now banned Tuff shoe ad featured two models (Madhu Sapre and Millind Soman) almost nude. They were wearing only Tuff shoes and had a huge python draped around their bodies. When we talk about advertisement leaving bad influence on children, these types of advertisements are the major concern in this regard.

Violation of Consumer's Right to Choice:

When material facts which are likely to influence buying decisions are not disclosed the advertisement becomes deceptive. In several advertisements it is stated that 'conditions apply' but these conditions are not stated. For example, in Pizza Hut Discount Offers, the scheme on their pamphlets provide Buy 1 and Get 1 free offer without stating conditions for the same which leads to deception. Such ads not only mislead consumers by concealing important information from them. Advertisements for general medicines available over the counter, never talk of the side effects that may result from their frequent use.

Bait Advertising

It means taking advantage of consumer psychology and depriving consumers of a choice. For example, a consumer is lured into a retail outlet by an advertisement for a low cost item and then is sold a higher priced version or to be defective. Once the consumer enters the store, he or she is pressured to purchase another more expensive item. On visiting such stores, one finds a handful of outdated products on the discount announced and other better products as 'fresh stock'.²

MAJOR ISSUES OF ADVERTISING CRITICISM

Advertising is more criticized than other professions because of its high volume, high visibility and very high impact value. Advertising is criticized as a one-sided communication, with the inherent potential of deception, as there is maximum retention in audio-visual mode of communication. It is criticized in three issues of ethical concern-

o **Advocacy**

Critics often say that advertisements should give only information. Ads should be objective and neutral. But the goal of advertising is to persuade people by creating a distinct image for the brand advertised. For this advocacy or taking sides is a must.

o **Accuracy**

Does buying a particular TV set (ONIDA) make you proud and makes your neighbours envious? Does drinking a cold drink make anything possible? Are the products of particular home appliance company the best (Believe in the Best, BPL). This kind of subjective treatment and also inaccurate, deceptive and misleading claims are a matter of big concern for critics.

o **Acquisitiveness**

Critics say that advertising leads us to accumulate material objects and that we are 'corrupted', coerced' or influenced to buy many things that we do not need. To avoid this, advertisers should weigh the pros and cons, the good and the bad, the healthy and harmful effects or advertisements before they are released through the media. Answers to the following questions provide a guideline to avoid ethical controversies

o Who should, and should not, be advertised to?

o What should, and should not, be advertised?

o What should, and should not, be the content of advertising messages?

o What should, and should not be the tone of the advertising message?³

Unfortunately, answers to these questions are not only not always straightforward but, in fact, intentionally avoided.

²Legal and Ethical Aspects of Advertising- Dr. Sheetal Kapoor, available at-
http://www.exchange4media.com/e4m/media_matter/omnibus.asp

³M. R. PATRA- Ethics in Advertising; available at-
<https://www.google.co.in/url?sa=t&rct=j&q=&esrc=s&source=web&cd=2&cad=rja&uact=8&ved=0CCQQFjAB&url=http%3A%2F%2Fwww.ddegjust.ac.in%2Fstudymaterial%2Fmmc-2%2Fmmc-204.pdf&ei=UW0xVPedFYueuQSg7YHQBQ&usg=AFQjCNF1ta-CjDf6h0sQIGKgFT8J3eydpw&bvm=bv.76802529,d.c2E>

RESTRICTION ON ADVERTISING

Such unethical practices call for restrictions on advertisements. Restrictions may be legal or ethical. There are basically two modes for imposing restrictions-

By Government

By self Regulation

In India the restrictions imposed by the Government are in the form of laws, regulations and codes. It can be further divided into two, one is, laws having horizontal implication on advertisement and the other are regulating authorities having power to regulate their respective domains. Since, the main focus of this project is ethical therefore, only a quick view of laws pertaining to advertisement is taken below. It is found to be relevant because even at the base of legal restrictions, somewhere, morale, ethical or social concern is always there. Following are some important Acts concerning advertisements-

The Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954 prohibits advertisements for products and services claiming to cure certain medical conditions. As per the law, no advertisement should promise magical cure for any ailments or disease and the rules specify the diseases and ailments that cannot be advertised promising cure or remedies. However, the enforcement of the Act by the state authorities is poor because one finds a number of advertisements in the print media. The Act also does not cover advertisements that appear in various media pertaining to health gadgets of unproven efficacy, like tummy trimmers, bands for blood pressure control, and gadgets to increase height. This Act does not provide for issuing corrective advertisements.

Whether the restrictions on advertisement violates fundamental freedom of right to speech or not was the question before the Supreme Court in *Hamdard Dawakahana v. Union of India*⁴, if there is restriction on advertisement to promote the drugs, it was held to be valid restrictions and such an order would not violate the freedom of expression. A commercial advertisement has an element of trade and commerce and not in any way connected with the advertisement of noble thoughts or literature. All advertisement does not relate to freedom of the speech and expression of ideas as contained in article 19(1) (a) of Indian Constitution.

The Monopolies and Restrictive Trade Practice Act, 1969: It had been the most effective Act in the eighties and nineties to regulate undesirable advertising. In the year 1984, the government brought, through an amendment, "unfair trade practices" under the purview of the Commission and the Office of the Director General (Investigation and Registration). However, this Act is being replaced by the Competition Act, 2002 but the cases pending under the MRTP Commission are still being heard. Moreover, a Competition Commission has been set up under the Competition Act to deal with monopolies and restrictive trade practices. The complaints pertaining to unfair trade practices are still being handled by the MRTP Commission or the consumer courts. The MRTP Act has been very effective in hauling a number of advertisers to stop advertisements which are prejudicial to consumer interest through its 'cease and desist orders'.

The Consumer Protection Act, 1986: The Consumer Protection Act, 1986, applies to advertisements for all products in the market place. A consumer may file a complaint related to false and misleading advertisements, which are included under the definition of unfair trade

⁴AIR 1960 SC 554

practice (Section 2 (r)). The law mentions seven classes of unfair trade practices in six subsections of this section of the law. The consumer courts can however, take the following actions under section 14 of the Consumer Protection Act, 1986:

Issue interim orders stopping such advertisements pending disposal

To pass cease and desist orders.

Award compensation for loss or suffering, punitive damages and cost of litigation to the affected party.

Direct the advertiser to issue corrective advertisement

Cable Television Networks (Regulation) Act, 1995: This law lays down the procedure for registration of a cable television network and also regulates the programmes and advertisements transmitted on cable network in India. The registering authority is the Head Post Master of a Head Post Office of the area within whose territorial jurisdiction the office of the cable operator is situated.

*Court on its Own Motion v. State*⁵, it was held that giving inducement to a person to commit offence, which he is otherwise not likely and inclined to commit, so as to make the same part of the sting operation is deplorable and must be deprecated by all concerned including media.

Drugs and Cosmetics Act, 1940

This law regulates the production, manufacture and sale of all drugs and cosmetics in the country. The Act prescribes a fine of up to Rs. 500 for any person using any report or extract of report of atest or analysis made by the Central Drugs Laboratory or a government analyst for advertising of a drug or cosmetic.

Section 292 and Section 293 of the Indian Penal Code, 1860, prohibits the dissemination of any obscene matter. The Indian Post Office Act, 1898, imposes a similar prohibition on the transmission of obscene matter through the post. The Customs Act, 1962, allows the detention and seizure of any obscene matter sought to be imported into the country.

*S. Khushboo v. Kanniammal*⁶ context and purpose for which the reference to sex was made in any given setting must be taken into consideration. Moreover, obscenity has to be determined in accordance with contemporary community standards reflecting sensibilities as well as tolerance level of average reasonable person.

The Children's Act, 1960, prohibits the disclosure of names and address and other particulars of any child involved in any proceedings.

The Indecent Representation of Women (Prohibition) Act, 1986 forbids the depiction of women in an indecent or derogatory manner in the mass media. No person shall publish, or cause to be published, or arrange or take part in the publication or exhibition of, any advertisement which contains indecent representation of women in any form.

The Emblems and Names (Prevention of Improper Use) Act, 1950, prohibits the use by any private party of certain names, emblems, etc.

⁵ILR (2008) 2 Del 44

⁶(2010) 5 SCC 600

Motor Vehicles Act, 1988: This law affects outdoor advertisements, like bill boards, posters, neon signs, etc. The Act, grants powers to remove such advertisements which may distract drivers and have the potential of causing road accidents.

A number of regulatory agencies have also formulated advertising codes to ensure that advertisers do not mislead consumers.

Self regulation by the advertising industry

The legal restrictions have their own value and relevance but to deal with ethical aspect of advertising, the best course would be the self regulations. With the increasing criticism of advertising, advertisers have devised self regulation to ensure true and accurate messages. Following are some agencies involved in self regulation-

Advertising trade associations

Advertising Standards Council of India (ASCI)

Advertising Association of India (AAAI)

Press Council of India

Prasar Bharti

Individual media and media groups

Code for commercial advertising on Doordarshan

All India Radio Code for commercial advertising

THE ADVERTISING STANDARDS COUNCIL OF INDIA⁷

Laws are necessary but for better results self regulation has always been an effective tool as compared to law. Therefore, Indian marketing and Advertising Professionals took an initiative and formed Advertising Standards Council of India (ASCI). It is the most active body working for regulating advertisements. It is a voluntary self-regulatory council established in 1985 to promote responsible advertising and to enhance public confidence in advertisements. The council's objectives are:

To ensure the truthfulness and honesty of representations and claims made by advertisements

To ensure that advertisements are not offensive to generally accepted standards of public decency

To safeguard against the indiscriminate use of advertising for the promotion of products regarded as hazardous to society or to individuals.

To ensure that advertisements observe fairness in competition so as to inform the consumer on choices in the marketplace while observing the canons of generally accepted competitive behaviour in business.

Composition

⁷The Advertising standards council of India; available at- <http://www.ascionline.org/index.php/asci-goals.html>

ASCI consist of a Board of Governors and a Consumer Complaints Council. The Board of Governors comprises four members from each of the four sections connected with the advertising industry:

Advertisers

Advertising Agencies

Media (owners of press, television, radio etc.)

Related sectors (e.g. outdoor agencies, market researchers, ad producers, business schools)

Self Regulation of Advertising: Code of ASCI

To regulate advertisement in India, **ASCI** has adopted a **Code for Self-Regulation in Advertising** ("**ASCI Code**"), which applies to all involved in the commissioning, creation, placement, or publishing of advertisements. This **ASCI Code** applies to advertisements read, heard, or viewed in India even if they originate or are published abroad so long as they are directed to consumers in India or are exposed to a significant number of consumers in India.

Unfortunately despite several laws and regulating authorities meant to protect consumers against such unfair trade practices, false and misleading advertisements continue to exploit the consumer. Outdated laws, poor enforcement of them are some of the lacunas in order to control advertising. The need of the hour is better laws in keeping with the times, better enforcement, corrective advertisements, better self-regulation by industry independent regulator to regulate health and children -related advertisements.

CONCLUSIONS AND SUGGESTIONS

Whatever said and done, the matter of good or bad, right or wrong, in this respect, is more of a matter of opinion than hard facts and opinions always vary from person to person, depending upon their respective perceptions. There always will be view points, arguments and debates but there will never be an opinion which will found to be acceptable to everybody and therefore, any effort in that direction would be a futile exercise. The best course would be, probably, to try and arrive at some common ground, based on the concept of reasonableness like everybody would agree that 'Advertising' as a concept has its own merits and cannot said to be wrong or wished away. It is a fact of life and the only objection remains is certain 'excesses' when it is put to practice and that's where some form of restrictions or code of conduct are required so that it does not breach the ethical boundary. No single measure would be adequate or effective. In order to deal with this issue effectively, in fact, combination of all the measures available would be required i.e. legal, regulations by regulatory bodies and self-regulation. Not only that, even consumers would be required to be careful and alert in this respect and then only we can expect some desirable results. Therefore, here are some specific suggestions in this regard- first and foremost is, a need of a comprehensive law which cover all the aspects relating to unethical advertising. At present we have laws but there is no particular law to combat such practice. Secondly, power of *suomotu* cognizance must be given to ASCI and under Consumer Protection Act. Thirdly, educational institutions must promote consumer clubs where discussions on unethical advertisements are carried out, for e.g. Kamla Nehru College. Fourthly, the organizations making code of ethics in their respective domains must be empowered to take complaints directly from the customers, for e.g., complaint regarding insurance must be made to IRDA. Lastly, consumer must be aware and make others aware about the effects of unethical advertising. Therefore, an all rounded approach is required.

As JWT agency quotes, "Advertising is a non-moral force, like electricity, which not only illuminates but electrocutes. Its worth to civilization depends upon how it is used."



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