

## **Legal and Ethical Issues in Advertising**

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### **Abstract**

*Advertising is an essential component of marketing as it informs the general public and makes them aware of the choices available in the market. But with time and with increase in the competition it has been accused of encouraging materialism as the depiction of products has gone to a next level where no one thinks before hitting below the belt. Issues have risen between brands where conflicting advertising has been depicted. Also, the depiction has put an effect on the society and hence to curb them certain rules and regulations have been framed. Ethics and morality is something we cannot do away with it. Hence, there lies the importance of legal issues and ethics in advertising strategies.*

**Keywords:** *advertising, materialism, ethics, morality, issues*

Reference to this paper  
should be made as  
follows:

**Dr. Vikrant\*  
Chauhan, Nitin  
Garg\*\***, “*Legal and  
Ethical Issues in  
Advertising*,”  
Journal Global Values,  
Vol. VIII, No.1,  
pp. 8-19  
[http://anubooks.com/  
?page\\_id=2424](http://anubooks.com/?page_id=2424)

## **Introduction**

Advertising carries several responsibilities. Advertising informs the public so that they can be aware of products and make informed choices among different products or brands. Advertising also benefits businesses in assisting them to sell their products.

But while dispensing its role as a dream merchant, advertising has also been in the vortex of controversy of the many ills that it brings to society. It is accused of encouraging materialism and consumption, of stereotyping, of causing us to purchase items for which we have no need, of taking advantage of children, of manipulating our behavior, using sex to sell, and generally contributing to the downfall of our social system. Advertising does not function in a vacuum but in a market environment where several forces like consumer needs, business interests and government regulations are at work. It is a powerful force in terms of its persuasiveness and functions a critical social role. Moreover the high visibility and pervasiveness, it generates criticism and controversy. Much of this controversy springs from the fact that advertising is used more as a persuasive communication tool thereby creating serious impact on the tastes, values and lifestyles of society.

### **What is Advertising?**

**Advertising** is a form of communication intended to persuade an audience (viewers, readers or listeners) to take some action. It includes the name of a product or service and how that product or service could benefit the consumer, to persuade potential customers to purchase or to consume that particular brand. Modern advertising developed with the rise of mass production in the late 19th and early 20th centuries.

Commercial advertisers often seek to generate increased consumption of their products or services through branding, which involves the repetition of an image or product name in an effort to associate related qualities with the brand in the minds of consumers. Different types of media can be used to deliver these messages, including traditional media such as newspapers, magazines, television, radio, outdoor or direct mail; or new media such as websites and text messages. Advertising may be placed by an advertising agency on behalf of a company or other organization.

Non-commercial advertisers that spend money to advertise items other than a consumer product or service include political parties, interest groups, religious organizations and governmental agencies. Non-profit organizations may rely on free modes of persuasion, such as a public service announcement.

The importance of advertising is “steadily on the increase in modern society. Just as the media of social communication themselves have enormous influence everywhere, so advertising, using media as its vehicle, is a pervasive, powerful force shaping attitudes and behaviour in today’s world.

**Advertising: for Good or Evil?**

Advertising Exist to solve two problems:

1. Too many goods or materials - If there was not enough of an item, there would be no need to advertise it.
2. Advertising is also a way of reaching your consumers who would otherwise be unfamiliar with your product.

Many ads work by providing information: what is the product? what are its characteristics, qualities, functions? Most of us admit that advertising industry is a „necessary evil”. In spite of certain questionable practices, advertising meets the consumer needs for information about the goods and services which are offered on the market. The essential ethical issues raised in advertising industry are that advertisements should be legal, honest and truthful.

But how fair is the business game, really? On the face of it, producers and consumers have a very different view. The marketplace is not a level playing field, and the chief culprit is advertising.

Here are three charges levelled against advertisers:

- 1. They sell us dreams, entice us into confusing dreams with reality.**
- 2. They pander to our desires for things that are bad for us.**
- 3. They manipulate us into wanting things we don’t really need.**

It was in July 23, 1995, that a Mumbai tabloid published a photograph of an ad for Tuff Shoes that had models Madhu Sapre and Milind Soman posing in the nude with a python wrapped around them, just about covering the vitals. The controversy and protests dragged on for a long time. The ad agencies defended their creative rights while the nation Pooh-poohed the couple’s audacity. Even as a section of the media and public lambasted the advertisers and the agencies for the falling scores of taste and decency in advertising, such ads raged on and became an order of the day.

Recently the AXE chocolate sprays ads were the latest addition to this list.

Human beings are world creators. One of the worlds that human beings have created is the world of money, commodities, trade; exchange a world full of

beauty and ugliness in equal proportions, messy, flashy, exotic, scary. No-one who has made their home in this world would see this the way an outsider can see. The world of business -the world of buyers and sellers, bosses and workers, producers and consumers, the world of money is nothing less than an ontological category, a way of Being. It is not accidental to who we are. It defines the way we relate to each other and to the world around us. But it is not the only way of being. There are other ways, and the most fundamental of these is ethics.

Hence, such issues bring forth the importance of certain ethics and legal regulations in advertising. Considering some more examples which we have currently seen:

**I) Rin v. Tide: Taking Indian Advertisement to a Different Level... (below the belt?)**

Gone are the days of harmless understated advertisements (Oh I am not complaining at all, maybe I will after a few decades, but not now). If Deepika Chikhalia was the epitome of the “Bharateeya Naari” (thanks to Ramanand Sagar’s “Ramayan”) for “Nirma Super” for what seems like ages ages ago, the new set of female characters in advertisements for detergent powders appear to be scheming conniving “saas-bahu” types straight out of a “K” serial (or “soap”). What’s more, their on-screen children too seem to have inherited their impish traits.

It appears that Rin, that respectable Indian brand, has taken the initiative to alter the rules of the game; if the new Rin advertisement is anything to go by, it certainly seems like Rin or Hindustan Unilever Limited, probably has taken upon itself the responsibility of changing the hitherto “comparatively” demure face of Indian ads. The ad runs something like this:

There are two women, the first one (let’s call her Woman 1 like they do for extras in movie credits) praises Tide, with a Tide packet featuring prominently. A bus, presumably school bus, arrives with their children. Woman 1’s son steps out of the bus first and his shirt is a dull shade of white. A second boy alights and his shirt is an immaculate white. He moves towards Woman 2 who uses Rin, of course. Woman 2’s son asks Woman 1 “*Aunty Kyun Chaunk Gai ?*” with the obvious reference to Tide’s caption “*Chaunk Gaye !*”

Would this ad attract claims of disparagement?

## **II) Pepsi Vs Coke:**



The battles between Pepsi and Coke have been on and off, as one tries to gain at the expense of the other. In some ways, it might seem like pushing the limits of branding and advertising – after all, how much could a can of carbonated soft drink be hyped up in the consumers’ minds? Competition is fine, but hitting below the belt is what would seem a bit over-board.

The operations of Coca-Cola and Pepsi in India in the last three decades represent an example of how India’s industrial policy and regulations have been dodged, flouted and bent by these companies. The controversy over the presence of traces of pesticides in their soft drinks is only the latest in a series of controversies that have

studded Coca-Cola and Pepsi’s history in India during the last three decades.

**III) Complan Vs Horlicks:** The two prominent health drinks in India , Complan and Horlicks, have been trading blows to each other for quite a while. Glaxo Simthkline’s Horlicks has been, to be sure, quite moderate of late in promoting its brand. Complan, however, was not a force that would keep shut and stick to the task. Complan’s Ads deliberately bring Horlicks into the picture to smear the brand with derogatory advertising and indulge in mudslinging. Ultimately, both the companies have found each others’ comparative advertising denigrating and demeaning and have moved the courts of justice.

**IV)** The aggressive promotional strategies adopted by fast food multinational giants like Coke, Pepsi, Lay’s Chips, **Mc Donald’s**, Dominos, Pizza Hut have contributed to the growing concern towards public health. In India, McDonald’s has positioned itself as a family restaurant. Family has become the cornerstone of its strategy. Its outlets are called “McDonald’s Family Restaurants,” as opposed to simply McDonald’s as in other parts of the world. Like its other worldwide locations, McDonald’s targets children as their main clientele in India. Children are an enormously powerful medium for marketing consumer goods in India. They not only

influence markets in terms of the parental decision-making to buy certain kinds of products, they are also future consumers. After all, brand impressions, once formed, can stay for a lifetime.

Thus, McDonald's has done everything possible to attract children. It's "Happy Meals" and the accompanying Lego toys are a great attraction for children. McDonald's play places—called Fun Zones— have been made to attract children and their parents. During their visits, kids are showered with knickknacks. McDonald's also promotes birthday parties complete with cake, candles, and toys in television advertising aimed directly at kids.

### **Effects on the Society**

#### **1. Value formation**

Advertisements responsible for moulding society, material wants. The ads displaying scantily clad female models commoditize women. And the deluge of ads that increase one's propensity of consumption makes one feel that possessing a certain commodity is essential to show that one belongs to the higher echelon of the society.

#### **2. Media content**

Information content of ads; the ads that suggest the use of preserved food items without a slightest mention of the fact that many of these preservatives have been proved to have carcinogenic effect.

#### **3. Use of deception**

The ads of brands that conceal their negative aspects. The ads of cosmetics that say nothing about the long-term effects of regular usage of their products; the ads of the educational institution that wrongly claim to give 100 percent placement to its students are examples of this type.

#### **4. Advertising targeting children and adolescents**

The ads that target the vulnerability of the children and adolescents create role models whom the kids are expected to emulate and, thus, shape their dreams and aspirations in an unbecoming way

### **Advertisers View Point**

Thus advertisers and admen are increasingly under fire for upsetting the socio-cultural- religious sensitivities and sensibilities of consumers. And, unfortunately, things are looking only worse day by day. With slashing down of the ad budget and with the Business slumping, everyone is even more desperate to stand out in a hurry. To boost short-term sales or to win ad awards. Their slogan is 'Love it. Or hate it. Or think it is offensive. But you have to notice it. Advertising is criticized because

selling carries a stigma.

Centuries ago, Anacharis, had said, “the market is the place set aside where men may deceive each other’. Even to this date despite the rise in consumerism and efforts to counter market deception, buyers are still gullible and are not particularly on guard against deception. To create an impact, the advertisers pit creative message-makers against blasé sophisticates, hardened by thousands of commercials. The objective is to cut through the clutter, to grip ones attention and to create an impression that lingers on in the memory of the prospective buyers. And, while doing so, they create desires, shape attitudes, mould temperaments, alter social values and raise many an ethical question. To which there is no easy answer. The measure of advertising’s success is the extent to which it increases demand. Competition or declining profits can blow good intention out of the boardroom. Under such circumstances, the perspective shifts from what is best in the long run for the society to what is best in the short-run for the company. Ethics, the advertisers say, is fine for the secure, but a greater market share is all the slipping company needs!

#### **Ethical Principles Needed**

- Truthfulness in advertising
- Dignity of human person
- Advertising and social Responsibility.

#### **Legal issues in advertising**

Certain legal issues in advertising can be stated as follows:

**1. Truth in Advertising:** According to the Federal Trade Commission (FTC), “advertising must be truthful and non-deceptive... advertisers must have evidence to back up their claims... and advertisements cannot be unfair.”

**2. Deceptive Advertising:** According to advertising law, an advertisement is considered deceptive if it contains a statement or omits information that “is likely to mislead consumers acting reasonably under the circumstances; and is, ‘material’ - that is, important to a consumer’s decision to buy or use the product.”

**3. Unfair Advertising and Business Practices :** According to the FTC, an advertisement is unfair if “it causes or is likely to cause substantial consumer injury which a consumer could not reasonably avoid; and it is not outweighed by the benefit to consumers.”

**4. Bait and Switch Tactics:** It’s illegal to advertise a product when you have no intention of selling that product at the advertised price. Bait and switch tactics are

illegal, period. If you advertise a product, the law says that you have to intend to sell it as advertised.

**5. Advertising Law: Catalog Sales:** As a catalog retailer, you are not obligated to substantiate the claims made by suppliers about their products. However, caution and common sense should dictate your ad copy. Stick to the claims made by the supplier, and do not expand or improve on them. Do not print anything that is not reasonable.

**6. Advertising to Children:** The FTC pays particular attention to advertisements aimed at children. These ads are evaluated from a child's point of view, not an adult's. If you advertise to children, be very careful about following all of the guidelines. No company wants the publicity that comes from accusations about possibly misleading children.

**7. Comparative Advertising:** If the comparison you make is true, then it is legal to print it. If you are better than your competitors, the law says that you can tell the whole world about it.

**8. Contests and Sweepstakes:** There are many different advertising laws governing contests and sweepstakes. Check with your state's Attorney General's Office and with the FTC. And you might want to check with your lawyer.

**9. Disclosure and Disclaimer Statements:** These statements are required if an advertisement's express or implied claims could be misleading. A disclosure statement gives qualifying information so that a claim is not misunderstood. The disclaimer must be "clear and conspicuous" so that consumers can notice and understand it. The disclaimer needs proximity and prominence in relationship to the claim, with little other distraction. And the disclaimer cannot correct a false claim – that would be deceptive advertising.

**10. Endorsements and Testimonials:** Advertising law says that endorsements and testimonials must show the honest opinion or experience of the endorser. Claims must be truthful and substantiated. If a celebrity claims to use a product, that claim must be true. Consumer endorsements must reflect the typical consumers experience with the product. Stating, "your results may vary" doesn't help if the typical consumer cannot expect similar results.

**11. Free Products:** You can give away anything you want, unless there is a catch. If your "free" item is tied to a second purchase, then the second item's price has to be the regular price. If there are any conditions on the "free" item, advertising law says you must disclose all of the information in a "clear and conspicuous" manner.



**12. Guarantees and Warrantees:** If you want to mention your guarantee in your ad, you must tell consumers how to get all of the details on that guarantee. Any conditions or limits must also be disclosed in the ad. A complete copy of the guarantee must be made available to consumers before any sale. This also covers phone, catalog, mail, and online sales transactions.

**13. Advertising on the Internet:** All of the other truth in advertising laws apply to the Internet. The FTC is particularly concerned with disclosure statements and false advertising claims. All ads must be truthful and substantiated. Contact the FTC for more information.

**14. Telemarketing:** All claims must be true and substantiated, and all of other advertising laws apply. Additional restrictions apply to certain categories of services, including legal services. Check with your state's Attorney General's office.

**15. Copyright in Advertising:** The creation of art [advertisements, illustrations, photos, logos, etc.] carries with it automatic copyright protection. The creator of the art owns it, until 50 years after death, unless specific contractual terms transfer that ownership. In addition, each artist has copyright protection for his or her component of a given piece of work – the photographer, the illustrator, the graphic designer, etc. Each artist must sign a release. With artwork, it is important to understand the terms.

But the above quoted examples say some different story and there are many more on board.

### **Self-regulation in India for advertising**

#### **Purpose**

The purpose of the Code is to control the content of advertisements, not to hamper the sale of products which may be found offensive, for whatever reason, by some people. Provided, therefore, that advertisements for such products are not themselves offensive, there will normally be no ground for objection to them in terms of this Code.

#### **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 in particular.

3. Convassing is permitted subject to the condition that a member may 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 client's 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, or at a reduced rate nor supply free or partly free to any advertiser, any advertising material, including finished drawings, or other art work, photographs, blocks, stereos, matrice 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 no speculative campaign shall be submitted by any member of the Advertising Agencies Association of India. 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 any such queries were made by prospective advertiser, and that such information shall be circulated by the Secretary to all members.

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 circulated in strictness 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 copy-writers or production men at fees commensurate with the values of their work.

Most countries have advertising guidelines which address issues such as unfair business practices, false associations, unauthorised use of products, parody and surrogate advertising. In many countries, advertising guidelines are issued as

specific trade practice guidelines. However, when assessing advertisements for their content and value, it is important not only to look at the guidelines that may be prescribed by the relevant authority but also to examine those in other countries where the advertisement could appear thanks to the effect of advertising using the Internet, mobile networks or satellite television.

Hence, all those engaged in advertising are strongly recommended to familiarise themselves with the legislation affecting advertising in this country, particularly the following Acts and the Rules framed under them: --

- (1) Drugs and Cosmetics Act, 1940.
- (2) Drugs Control Act, 1950.
- (3) Drugs and Magic Remedies (Objectionable Advertisements) 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,
- (12) AIR/Doordarshan Code.
- (13) Code of Ethics for advertising in India issued by the Advertising Standard Council of India.
- (14) Code of 'Standards in relation to the advertising of medicine and treatments.
- (15) Standards of practice for Advertising Agencies.

In light of the concerns discussed above, it is important that:

1. advertisements do not violate any applicable laws;
2. the advertiser carries out due diligence to check what can be protected and to protect what is "intended for commercial exploitation"; and
3. the advertisement enhances the brand value.

Advertising as a business strategy is a powerful tool for enhancing, maintaining and developing brand equity. Therefore, it is imperative for companies to protect the content of an advertisement and to ensure that it is in line with the applicable laws.

**Conclusion:**

Many women and men professionally engaged in advertising do have sensitive

consciences, high ethical standards and a strong sense of responsibility. But even for them external pressures — from the clients who commission their work as well as from the competitive internal dynamics of their profession — can create powerful inducements to unethical behavior. That underlines the need for external structures and systems to support and encourage responsible practice in advertising and to discourage the irresponsible. The media of news and information should make it a point to keep the public informed about the world of advertising. Considering advertising's social impact, it is appropriate that media regularly review and critique the performance of advertisers, just as they do other groups whose activities have a significant influence on society.

However, where freedom of speech and communication exists, it is largely up to advertisers themselves to ensure ethically responsible practices in their profession. Besides avoiding abuses, advertisers should also undertake to repair the harm sometimes done by advertising, insofar as that is possible: for example, by publishing corrective notices, compensating injured parties, increasing the quantity of public service advertising, and the like. This question of reparations' is a matter of legitimate involvement not only by industry self-regulatory bodies and public interest groups, but also by public authorities.

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