

## **ASCI & Its Self-Regulation Code for Advertisers**

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### **Abstract**

*Prevailing malpractices in advertising has resulted into disbelief in advertisements. This has also given rise to unhealthy competition, market disaster and increasing number of court cases. ASCI has developed a self-regulatory code for advertising which is mandatory to be followed by all of its members. ASCI code contains all such contents, following which an advertisement becomes ideal. ASCI and its code is now becoming more and more popular and being adopted to scan advertising activities. ASCI in spite of being a non-statutory tribunal, has been single handedly trying to remove or rectify deceptive advertising. The need of the hour is to make ASCI a legal body so that it can penalize those who assault on consumers' interest through deceptive advertising. The duty of each of us is; wherever we see an advertisement which is wrong, dishonest, untruthful, offensive, indecent, vulgar and illegal –lodge a complain to ASCI.*

### **Key Words**

*ASCI, deception, malpractices, CCC, advertisers, advertising*

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Now a days ‘Direct Production’ has been replaced by ‘Indirect Production’. It means that goods and services planned or produced by producers/suppliers are being thrust towards the consumers and consumers have no option but to consume these standardized goods or services. Advertising is one of the strongest tactics of marketing helping the producers/suppliers to do the same. But in the modern age of marketing, high degree of advertising sophisticated with all pomp and show, has been creating an illusionary image of goods & services in the mind of consumers. Consumers take buying decision keeping in view this illusionary image and neglect their knowledge experience and discretion.

Consumers become prey of these malpractices in advertising- first a misrepresentation, omission or misleading practice; secondly a puffery statement such as describing a product as the best product and; third untruth contents in the advertisements affecting buyer’s decision to a great extent.

#### **Remedy Against Malpractices in Advertising**

The malpractices in advertising can be stopped through the following—

**(A) Legislative Control**—This type of control is felt to be very necessary to check deceptive, highly competitive and immoral advertising. Hereby mentioned are the names of some legislations which have a check on malpractices in advertising-

- § Sales of Goods Act 1930,
- § Consumer Protection Act 1986,
- § Indian Contract Act 1872,
- § Drugs and Medical Remedies (objectionable advertisements) Act 1954,
- § Drugs and Cosmetics Act 1940,
- § Cigarettes & Other Tobacco Products(prohibition of advertisement and regulation of trade, commerce, production supply and distribution)Act 2003,
- § Indecent Representation of Woman(prohibition)Act 1986,
- § Indian Penal Code 1860,
- § Medical Council Code of Ethics,
- § Press Council of India Act, 1978
- § Standards of Weights & Measures (packed commodities)Rules 1977 etc.

**(B) Self-control**— As there is not a comprehensive act to have a proper check on malpractices in advertising and the Government of India has not set up a regulatory body in India to regulate advertisements & its malpractices, so there is no way left other than ‘SELF REGULATION’ to stop malpractices in advertising.

Advertisers now a days have been thinking the idea of ‘Self-regulation’ as nothing can be better than self-discipline. They are realizing that instead of being controlled by others they should have a control on themselves. This concept of ‘Self-regulation’ has really worked to create true and proper advertising messages. Self-

control i.e. self-regulation in Advertising means to abide by some predetermined rules and policies in the advertising practices so that advertisements may present a true and fair picture of the firm, its products & services and its policies.

When we talk about self-regulation in advertising, there comes a single name in front of us and that is **Advertising Standards Council of India i.e. ASCI**. Many firms have become the members of it and adopted its code of 'Self-regulation' to guide their advertising activities.

#### **Objectives of the Paper**

The main objective of this research paper is to analyse the Self-regulation Code developed for Advertising Activities. Brief idea of ASCI, its formation, its organization structure and its functions will also be taken. Some suggestions will also be given regarding the functioning of ASCI for making it more successful towards completion of its objectives. Modus Operandi of ASCI will also be discussed.

#### **Advertising Standards Council of India**

Advertising Standards Council of India i.e. ASCI is a self-regulatory authority formed basically as a non-profit making company u/s 25 of Indian Companies Act 1956. It has no legal power to take action against the defaulters. ASCI is trying, by issuing a 'Self-regulation code' to its members, to provide true, moral and impartial knowledge about goods and services through their advertisements.

The logo of ASCI is '**Regulate Yourself or Someone Else Will**'. It entertains complaints regarding malpractices in advertising and gives its advisory decisions to the defaulter party/parties.

ASCI was established in October 1985 having registered office in Mumbai. It was formed by a group of advertisers, advertising agencies, media owners and allied professionals like researchers, technologists, film makers etc. Its membership is open to firms related with production of goods and services, advertising agencies, media owners and other ancillary services related with advertising practices.

#### **Main Functions of ASCI**

§ Codify, adopt and from time to time modify the code of advertising practices in India and implement, administer and promote, propagate and make publicity of such a code.

§ Provide facilities and machinery in the form of one or more Consumer Complaints Councils having such composition and with such powers as may be prescribed from time to time to examine complaints against advertisements in terms of the Code of Advertising practices and report thereon.

§ Give wide publicity to the Code and seek adherence to it of as many as possible of those engaged in advertising. To print and publish pamphlets, leaflets, circulars or other literature or material, that may be considered desirable for the

promotion of or carrying out of the objects of the Company and disseminate it through any medium of communication.

### **Organisational Structure of ASCI**

ASCI team comprises of Board of Governors and Consumer Complaints Council. From the nominated members, ASCI elects a Board of Governors of 16 members which has representation of four members from each category of membership, i.e. Advertisers, Agencies, Media and other advertising services. The Board of Governors is a body which makes policies. The handling of complaints is taken care of by a Consumer Complaints Council (CCC) which has 21 members. Out of which, 12 are non-advertising professionals representing civil society who are prominent citizens and recognized opinion leaders like lawyers, technologists, professors, doctors, educationist, consumer-activists, scientists etc. Nine members are from within industries. The CCC is completely independent and lays down its own rules to deliberate and decide on complaints.

The Board of Governors meets once a month. The CCC also meets once a month and more often if required.

### **Powers of ASCI**

The major problem of ASCI is that it lacks the force of legal recognition. To abide by its codes, is mandatory only to its members and not by outsiders. ASCI can't punish the defaulters. It can only advise them to avoid malpractices in advertising. Besides it ASCI throws moral pressure whether direct or indirect, on the firms involved in malpractices. For this moral pressure ASCI uses its Quarterly Compliance Report and takes help of advertising organizations such as ISA, AAAI, INS, IBF, RAPA etc.

### **ASCI Code of Self-Regulation**

ASCI has developed a self-regulatory code which is mandatory to be followed by all of its members. ASCI code contains all such contents, following which an advertisement becomes ideal. The ASCI code has the following objects:

1. To watch the element of truth and honesty in facts presented & claims made and to safeguard misleading advertisements.
2. To check whether generally accepted standards of public decency are not violated by advertisements.
3. To ensure restrictive use of advertising for promotion of the products which are hazardous to the whole society or a group of society or individuals.
4. To develop a fair competition in the market keeping in views the consumers' interest.

Code for Self-Regulation has been drawn up by ASCI with consent of the people in professions and industries in or connected with advertising, in consultation with representatives of people affected by advertising and has been accepted by

individuals, corporate bodies and associations engaged in or otherwise concerned with the practice of advertising.

Keeping in view the above objects, ASCI General Code of self-regulation has elaborated some guidelines for an ideal practice of advertising. Besides this general code, ASCI has also issued specific codes for advertisements in some specific sectors.

#### **Self Regulation Code—General**

ASCI has divided this general code in four parts. This code has been called general in our study as the rules of this code are universally applicable to the advertising practices of all type of industries.

**Part-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 relate to matters of objectively ascertainable fact should be capable of substantiation.

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 shall not, without permission from the person, firm or institution under reference, contain any reference to such person, firm or institution which confers an unjustified advantage on the product advertised.

4. Advertisements shall neither distort facts nor mislead the consumer by means of implications or omissions or by ambiguity or by exaggeration.

5. Advertisements shall not be so framed as to abuse the trust of consumers or exploit their lack of experience or knowledge.

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.

7. In mass manufacturing and distribution of goods and services; occasional & unintentional lapse in the fulfillment of an advertised promise or claim may not invalidate the advertisement in terms of this Code.

**Part -II** To ensure that Advertisements are not offensive to generally accepted standards of Public Decency; Advertisements should contain nothing indecent, vulgar or repulsive.

**Part -III** To safeguard against the indiscriminate use of Advertising in case of Hazardous or Harmful products —

1. No advertisement shall be permitted which tends to incite people to crime or to promote disorder and violence or intolerance; derides any race, caste, color, creed

or nationality; presents criminality as desirable or directly or indirectly encourages people particularly minors to emulate it or conveys the modus operandi of any crime; adversely affects friendly relations with a foreign State.

2. Advertisements addressed to minors shall not contain anything which results in their physical, mental or moral harm or which exploits their vulnerability.

3. Advertisements shall not, without justifiable reason, show or refer to dangerous practices or manifest a disregard for safety or encourage negligence.

4. Advertisements should contain nothing which is in breach of the law nor omit anything which the law requires.

5. Advertisements shall not propagate banned products.

6. Advertisements for products whose advertising is prohibited or restricted by law or by this code must not circumvent such restrictions.

**Part -IV** To ensure that Advertisements observe fairness in competition and to serve Canons of generally accepted competitive behaviour in Business—

1. 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 under specified restrictions.

2. 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 trade mark or symbol of another firm or its product or the goodwill.

3. Advertisements shall not be similar to any other advertiser's earlier run advertisements in general layout, copy, slogans, visual presentations, music or sound effects etc.

#### **Responsibility for the Observance of this Code**

The responsibility for the observance of this Code for Self-Regulation in Advertising lies with all who commission, create, place or publish any advertisement or assist in the creation or publishing of any advertisement. This is a self-imposed discipline required in the commissioning, creation, placement or publishing of advertisements.

This 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 significant number of consumers in India.

#### **Modus Operandi of ASCI**

1. If any individual, firm or association thinks that an advertisement is containing false claims, misleading facts, offensive depiction or objectionable contents, then a complaint is made to ASCI in written or on a phone call. Complaints on phone calls are being verified by ASCI by making correspondence with complainants.

Normally there are three types of complaints-(a) Intra industries complaints where advertisers and advertising agencies lodge complaints against their competitors. (b) Suo-moto complaints which are made itself by ASCI staff, CCC members etc.

(c) General public like consumers, Govt. officials etc. may also lodge a complaint to ASCI.

2. ASCI entertains complaints even on a plain paper but it should be studied with all details like contents of advertisement, advertisement copy if possible, advertising media, advertising agency, reasons of objections, name and addresses of complainants etc. Complaints should be specific. The names and addresses of the complainants are not disclosed to anyone except members of CCC. ASCI never charges anything for processing, considering and deciding on a complaint.

3. The complaint is then put before CCC for further processing. Letters are being sent within 5 days to the concerned parties. The defaulter party is called upon to present its view. Complainants can also be asked to give physical presence before CCC but his identity is not disclosed to anyone except the members of CCC. CCC may also have an opinion of its experts comprising of doctors, lawyers, technologists, academicians, consumer activist etc.

4. CCC can uphold a complaint or reject it. In case of rejection, a letter with reasons of rejection is sent to complainant.

If a complaint is upheld, advice letters to the defaulter party/parties is sent. They are advised to remove or modify their advertisements within 2 weeks.

5. Normally compliance is done by defaulters as per the directions of CCC within 2 weeks. But when there is no compliance, ASCI adopts the tactics of moral pressure by writing to media channels, Govt. officials, advertising organizations like ISA, AAAI, INS, IBF, RAPA etc. Besides it ASCI publishes the name of serial defaulters in its journal to build a moral pressure on them.

6. There is a provision for advertisers or ad-agencies to appeal in ASCI against the decisions of CCC, but some conditions are to be satisfied for the purpose.

#### **Criticism of Self Regulation of ASCI**

1. Self-regulation theme to check malpractices in advertising is not so efficacious as everybody interprets self regulation in its own way. Self regulation doesn't give prompt results. It gives soothing results only in long term.

2. ASCI itself does not warn or caution public against false and misleading advertisements. ASCI has binding only on its members but not on non-members.

3. Big-shot companies, irrespective of the fact they are member of ASCI or not, influence the decisions of ASCI.

4. ASCI code has not gained full-fledge legal recognition. So ASCI's influence is not satisfactory.

5. There aren't any specific ASCI's codes for various fields of business activities (Except automotive vehicles and food-beverages for young children and educational institutions & programs).

6. ASCI does not have any regional office or zonal office. ASCI control all its activities from Mumbai only.

### **Suggestions**

1. ASCI and its code of self regulation should be given full fledged legal recognition so that ASCI can exercise its power on defaulters in a strict manner. ASCI codes should be declared mandatory by the Govt. for all firms whether members of ASCI or not.

2. ASCI should propagate its provisions and codes in an intense manner to make ASCI popular in the field of consumer welfare. Now ASCI has started propagating its vision and codes on print and electronic media. ASCI has also started giving cautions to the public for deceptive advertising.

3. Like Automotive Vehicles, Food-Beverages for Young Children and Educational Institutions & Programs, ASCI should issue specific codes for more sectors.

4. There shouldn't be any loop-hole in ASCI's code so that it can never be misinterpreted by users. Its language should be made more simple and specific.

5. ASCI should spread its branches throughout India to expand its activities. ASCI should also take the support of NGOs in its activities.

### **Conclusion**

Prevailing malpractices in advertising has resulted into disbelief in advertisements. This has also given rise to unhealthy competition, market disaster and increasing number of court cases. 'Self-regulation' theme to control malpractices in advertising till date is not so much efficacious but it is just a start. ASCI and its code is now becoming more and more popular and being adopted to scan advertising activities. ASCI in spite of being a non-statutory tribunal, has been single handedly trying to remove or rectify deceptive advertising. The need of the hour is to make ASCI a legal body so that it can penalize those who assault on consumers' interest through deceptive advertising. The duty of each of us is; wherever we see an advertisement which is wrong, dishonest, untruthful, offensive, indecent, vulgar and illegal –lodge a complaint to ASCI. This is the only way we can co-operate ASCI in its pious task of promoting healthy practices in advertising. Every advertiser should take a vow to 'Self-regulate' its advertising activities in order to get desired economic results along with maximum consumer welfare.

### **References & Bibliography**

1. Advertising Management' by C.L.Tyagi & Arun Kumar, Atlantic Publishers & Distributors 2004
2. Sales Promotion and Advertising Management' by M.N.Mishra, Himalaya Publishing House 1996
3. Financial Express
4. India Today
5. [www.legalserviceindia.com](http://www.legalserviceindia.com)
6. [www.ascionline.org](http://www.ascionline.org)