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Misleading Advertisements and the Role of the Central Consumer Protection Authority (CCPA)

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ABSTRACT

In an era where consumer decisions are heavily influenced by digital advertising, the risk of manipulation through misleading advertisements has significantly increased. This research paper delves into the regulatory framework established under the Consumer Protection Act, 2019, with a particular focus on the Central Consumer Protection Authority (CCPA) and its mandate to curb deceptive marketing practices. It begins by exploring the evolving definition and legal implications of misleading advertisements under Indian law and the specific powers accorded to the CCPA. The paper then critically examines the implementation of these laws through real-life case studies involving major corporations and celebrity endorsers, providing a humanised lens into the consumer impact of such practices. It further assesses the challenges of enforcement in a digital economy dominated by influencer marketing and jurisdictional ambiguity. Drawing from global regulatory approaches in the US, EU, and UK, the paper recommends strategic interventions for enhancing consumer awareness, digital enforcement mechanisms, and liability frameworks. The ultimate aim is to advocate for a transparent and accountable advertising ecosystem that safeguards consumer trust and dignity.

KEYWORDS

Misleading Advertisements, Central Consumer Protection Authority (CCPA), Influencer Marketing, Digital Advertising, Regulatory Enforcement, Consumer

*Rights, FTC, ASA, EU UCPD, Endorsement Guidelines,
Class Actions, Jurisdictional Challenges, Ethical
Marketing, India, Global Comparative Analysis*

I. INTRODUCTION

In a capitalist society where consumer choices are increasingly influenced by digital media, advertisements have become a powerful tool to shape public perception. While advertising plays a vital role in facilitating market access and information dissemination, it also possesses the potential for manipulation and deceit. Misleading advertisements—whether through false claims, omission of essential information, or exaggerated assertions—pose a significant threat to consumer autonomy. Recognizing this danger, the Indian legislature enacted the Consumer Protection Act, 2019 (CPA, 2019), replacing the outdated 1986 framework. One of its most consequential innovations is the establishment of the Central Consumer Protection Authority (CCPA), tasked with protecting consumer rights and curbing deceptive trade practices.

This paper examines the legal framework surrounding misleading advertisements in India, the institutional role and efficacy of the CCPA, and the practical challenges in enforcing consumer protection in an age of digital commerce and influencer marketing. Real-life case studies are used to illustrate enforcement efforts and judicial responses

II. LEGAL FRAMEWORK: MISLEADING ADVERTISEMENTS UNDER THE CPA, 2019

1. Definition and Scope

The Consumer Protection Act, 2019 defines a "misleading advertisement" under Section 2(28) as an advertisement which:

- Falsely describes a product or service;
- Gives a false guarantee likely to mislead consumers;
- Conveys an express or implied representation that is false or misleading;
- Deliberately conceals important information.

This broad and inclusive definition allows the CCPA to intervene across various sectors including pharmaceuticals, food, electronics, and digital services.

2. Role and Powers of the CCPA

Established under Section 10 of the CPA, 2019, the CCPA has

wide-ranging powers to:

- Inquire into violations of consumer rights;
- Order the discontinuation or modification of misleading advertisements (Section 21);
- Impose penalties: up to Rs. 10 lakh for first offence, and up to Rs. 50 lakh for subsequent violations;
- Prohibit endorsers from making endorsements for up to one year for the first offence.

The CCPA can act suo motu or upon complaints received from consumers, consumer organisations, or directions from the Central Government.

3. Related Rules and Guidelines

- **Guidelines for Prevention of Misleading Advertisements and Endorsements for Misleading Advertisements, 2022:** These rules define what constitutes bait advertising, surrogate advertising, and advertisements targeting children.
- **E-Commerce Rules, 2020:** Mandate platforms to ensure transparency in product descriptions and seller information.
- **Advertising Standards Council of India (ASCI):** While not a statutory body, its Code is influential and often referred to by courts.

4. Historical Context and Evolution

Consumer protection jurisprudence in India has evolved from the 1960s onward, with a gradual shift from caveat emptor (buyer beware) to caveat venditor (seller beware). The 1986 Act was a milestone, but its enforcement mechanisms were inadequate to deal with contemporary advertising strategies. Landmark cases like *Colgate Palmolive v. Hindustan Unilever*¹ and *Horlicks Ltd. v. Zydus Wellness*² laid early groundwork for defining puffery vs. misleading claims. The 2019 Act and creation of the CCPA was a decisive step in realigning the regulatory framework to modern advertising trends.

III. REAL-LIFE CASE STUDIES: ENFORCEMENT IN ACTION

1. *Kwality Walls Ice Cream (HUL) Case (2022): Artificial Flavour Misrepresentation*

¹ *Colgate Palmolive (India) Ltd. v. Hindustan Lever Ltd.* (1999) AIR 1999 SC 3105

² *Horlicks Ltd. v. Zydus Wellness CS(COMM)* 298/2019 (Delhi High Court)

- **Background:** HUL ran an ad campaign for Kwality Walls ice creams claiming them to be made from real milk. The CCPA received complaints that the product used vegetable oil instead of milk.
- **Action:** The CCPA issued a show-cause notice and ordered HUL to withdraw the advertisement.
- **Analysis:**
 1. **Legal Finding:** The ad was found to be misleading under Section 2(28) of CPA.
 2. **Human Impact:** Parents reported buying the product assuming it was a healthy milk-based dessert for children. The trust deficit grew when the reality emerged.
 3. **Outcome:** HUL modified the advertisement to include accurate descriptions.

2. Dettol Handwash Advertisement (Reckitt Benckiser) – Comparative Superiority Claim

- **Background:** Dettol claimed its product killed "100% germs better than ordinary handwashes".
- **Complaint:** Competitors and consumer rights groups filed complaints about the misleading nature of this absolute claim.
- **CCPA Action:** An advisory was issued to Dettol and an investigation launched.
- **Legal Issues:**
 1. Use of comparative advertising requires substantiation under the ASCI Code and CPA.
 2. "100%" claim was deemed hyperbolic and unscientific.
- **Social Impact:** The ad targeted pandemic-era anxiety, misrepresenting efficacy and manipulating fear.

3. Fairness Cream Endorsements by Celebrities

- **Background:** A series of ads promoted skin fairness as a precondition for success, endorsed by prominent celebrities.
- **Legal Development:** The CCPA cracked down on fairness cream ads and issued notices to endorsers like Shah Rukh Khan and Priyanka Chopra.
- **Outcome:** Endorsers were required to provide due diligence and disclaimers. Some withdrew endorsements.
- **Critical Takeaway:** The guidelines mandate that celebrity endorsers are equally liable, which is a significant shift from pre-2019 norms.

4. Patanjali Coronil Case

- **Background:** In 2020, Patanjali Ayurved launched 'Coronil', claiming it could cure COVID-19. The claims were heavily promoted in national media.
- **Legal Response:** Multiple state and central agencies questioned the claims. The Ministry of AYUSH eventually mandated disclaimers, and CCPA issued advisories.

At a time of panic and uncertainty, many poor and illiterate consumers bought the medicine in desperation. The lack of clear disclaimers risked lives.

IV. CHALLENGES IN IMPLEMENTATION

Despite the robust framework created under the Consumer Protection Act, 2019, and the proactive role of the CCPA, the implementation of laws against misleading advertisements faces several structural and contextual challenges. These hurdles span jurisdictional, technological, evidentiary, and socio-economic domains, reflecting the complex interplay between regulation and market dynamics.

1. Jurisdictional Overlaps and Voluntary Codes

India's advertising regulatory environment operates in a dual mode—statutory and voluntary. While the CCPA is empowered by legislation, the Advertising Standards Council of India (ASCI), a self-regulatory body, also adjudicates on advertising ethics. This leads to overlaps and occasional conflicts. For instance, an advertiser penalised by ASCI may not always face action from the CCPA, and vice versa. The lack of a harmonised enforcement mechanism undermines the efficacy of both institutions. Additionally, many digital influencers, small-scale sellers, and content creators remain unaware of legal obligations, often citing reliance on ASCI's non-binding guidelines.

2. Proving Intent and Misleading Nature

Under the CPA, 2019, an advertisement is deemed misleading if it falsely describes a product or omits crucial information. However, proving that a statement was not merely puffery but a deliberate attempt to mislead requires a high threshold of evidence. This often necessitates expert opinions, laboratory tests, and market surveys, which can be time-consuming and costly. Furthermore, subjective interpretations by adjudicators can result in inconsistent outcomes, affecting legal predictability.

3. Challenges in the Digital Economy and Influencer Marketing

The surge in digital advertising and influencer-driven product promotions has outpaced traditional monitoring mechanisms. Influencers, especially on Instagram, YouTube, and TikTok, frequently endorse products without adequate disclosures. Though CCPA guidelines and ASCI codes mandate that such endorsements be tagged clearly (e.g., #ad, #sponsored), disclosures are often hidden or omitted. Moreover, the global nature of digital platforms makes jurisdictional enforcement difficult. Ads created overseas but targeting Indian consumers may fall through the regulatory cracks. This raises the need for cross-border digital cooperation and data-sharing agreements.

4. Lack of Awareness Among Consumers

Perhaps the most significant barrier is the low level of consumer awareness regarding rights and remedies. While the CCPA conducts outreach campaigns, their urban-centric and English-language focus limits their impact. In rural regions, where literacy rates are lower and access to digital media is restricted, consumers are especially vulnerable to exploitation. Language barriers, lack of access to legal counsel, and cultural acceptance of aggressive marketing further compound the problem.

5. Inadequate Penalty Enforcement and Compliance Monitoring

Although the CPA allows for heavy penalties and bans on endorsers, enforcement remains inconsistent. Many orders from the CCPA go unchallenged or unimplemented due to bureaucratic delays, lack of follow-up, or pushback from powerful corporate lobbies. The absence of a dedicated monitoring cell within the CCPA for real-time ad tracking limits proactive intervention.

6. Insufficient Coordination with Sectoral Regulators

Advertising related to drugs, food, and health products falls under multiple jurisdictions, including FSSAI, AYUSH, and the Ministry of Health. The lack of inter-agency coordination often delays action. Harmonised protocols and joint task forces are necessary to ensure seamless enforcement.

These challenges highlight the gap between legal empowerment and ground-level effectiveness. Addressing them requires not just legal reform, but also strategic institutional coordination, public-private partnerships, digital innovations in ad surveillance, and aggressive consumer rights education.

V. GLOBAL COMPARATIVE PERSPECTIVE

In an era of borderless commerce and pervasive digital marketing, regulating misleading advertisements necessitates a transnational approach. While India's Consumer Protection Act, 2019, empowers the Central Consumer Protection Authority (CCPA) to address deceptive advertising, examining mature regulatory frameworks globally offers valuable insights into enforcement efficacy, legal innovations, and consumer rights advocacy.

1. United States: Federal Trade Commission (FTC)

The United States employs a robust mechanism to monitor advertising through the Federal Trade Commission (FTC), established under the Federal Trade Commission Act of 1914. The FTC is authorized to investigate unfair or deceptive business practices, including misleading advertisements.

- **Disclosure Requirements:** The FTC mandates "clear and conspicuous" disclosures in advertising, particularly concerning endorsements and testimonials. Updated endorsement guides encompass influencers and online creators, requiring them to disclose material relationships with brands.
- **Enforcement Actions:** The FTC has prosecuted companies like Kubota North America Corporation, imposing a \$2 million penalty for false "Made in USA" claims, marking the largest ever penalty in such a case. Civil penalties can reach up to \$53,088 per violation, adjusted for inflation.
- **Consumer Engagement:** The FTC actively involves consumers through complaint portals and education initiatives, fostering early awareness and empowering consumers to identify and report deceptive advertising.

Implications for India: The FTC's integration of digital surveillance, substantial penalties, and public education offers a multi-pronged strategy that India can emulate, particularly in the burgeoning influencer economy.

2. European Union: Unfair Commercial Practices Directive (UCPD)

The European Union regulates misleading advertisements through Directive 2005/29/EC, known as the Unfair Commercial Practices Directive (UCPD). This directive provides a harmonized set of rules applicable across all member states.

- **Key Provisions:** The UCPD prohibits misleading actions and omissions, including providing false information or presenting information in a way that deceives or is likely to deceive the average consumer. Bait advertising—luring consumers with deals that are not actually available—is also banned .
- **Digital Adaptability:** The EU adopted the "Omnibus Directive" in 2019, updating the UCPD to tackle digital challenges like fake online reviews and influencer marketing.
- **National Enforcement Bodies:** Each EU country has designated enforcement agencies. For example, the Italian Competition Authority (AGCM) imposed fines on Amazon and Apple for non-transparent advertising of Apple products on the Amazon marketplace.

Implications for India: The harmonized yet locally enforceable model of the UCPD can serve as a template for balancing central oversight by the CCPA with localized enforcement at the state level.

3. United Kingdom: ASA and CMA Synergy

In the UK, advertising regulation is handled by two key bodies: the Advertising Standards Authority (ASA), a self-regulatory organization, and the Competition and Markets Authority (CMA), a statutory authority.

- **ASA's Code (CAP Code):** This self-regulatory code prohibits misleading advertising and mandates substantiation for all claims, especially those related to health, beauty, and technology. Section 3 of the CAP Code contains rules intended to prevent ads from misleading their audience, including requirements for substantiating objective claims and providing necessary information .
- **Influencer Guidelines:** Influencers must use #ad or similar tags to indicate paid partnerships. ASA regularly names and shames violators through public notices and maintains a searchable database of rulings.
- **CMA's Investigative Powers:** The CMA can launch formal investigations, impose fines, and seek criminal prosecution under the Consumer Protection from Unfair Trading Regulations, 2008.

Recent Action: In 2022, the CMA investigated influencer Molly-Mae Hague for not declaring sponsored content, leading to an industry-wide crackdown.

Implications for India: The dual system of self-regulation (ASA) and statutory enforcement (CMA) offers a complementary model that India can consider by integrating the Advertising Standards Council of India (ASCI) more formally with the CCPA.

Synthesis and Broader Learnings

A global overview reveals three common pillars in the regulation of misleading advertisements:

- **Strong Disclosure Norms:** Whether it's the FTC's conspicuous disclosures, the EU's anti-omission rules, or the UK's #ad tagging, transparency is non-negotiable.
- **Real-Time Enforcement Mechanisms:** Digital surveillance tools and public databases of offenders create deterrents.
- **Consumer-Centric Education:** Campaigns tailored for different demographics—from schoolchildren to rural consumers—empower people to identify and report deceptive advertising.

Implications for India:

India stands at a crucial juncture in building a resilient consumer protection framework. By learning from the FTC's punitive approach, the EU's harmonization strategy, and the UK's hybrid model, the CCPA can evolve into a globally competitive institution. Policy innovations such as mandatory digital labeling, AI-assisted ad tracking, and co-regulation with industry bodies like ASCI are the need of the hour. Such global benchmarking will not only enhance accountability but also restore faith in India's digital marketplace.

VI. POLICY RECOMMENDATIONS FOR STRENGTHENING CONSUMER PROTECTION IN INDIA

Based on the challenges and global comparisons discussed, the following recommendations aim to bridge the gap between regulatory intent and enforcement reality:

1. Institutional Strengthening of the CCPA

- Establish a dedicated Digital Surveillance Wing under the CCPA to monitor e-commerce platforms and social media ads.
- Require advertisers to submit ad content for review prior to publication in certain high-risk sectors like healthcare and financial products.

2. Enhance Legal Remedies and Judicial Access

- Introduce Collective Redress Mechanisms, enabling groups of consumers to bring class-action style claims.
- Create Fast-Track Redressal Tribunals for advertising disputes to ensure timely justice.

3. Expand Awareness and Literacy Campaigns

- Translate all CCPA advisories and rights guides into regional languages and disseminate via local media and schools.
- Partner with NGOs and local self-help groups for rural outreach on consumer rights.

4. Clear Guidelines on Influencer and Digital Marketing

- Implement a mandatory disclosure certificate for influencers and content creators.
- Penalize non-compliant platforms that allow misleading content to be monetized.

5. Inter-agency and International Collaboration

- Develop inter-agency task forces between CCPA, FSSAI, Ministry of AYUSH, and Ministry of Electronics and Information Technology.
- Sign MoUs with global regulators (like the FTC and ASA) to share best practices and cross-border complaints.

VII. CONCLUSION

Misleading advertisements not only compromise consumer choice but also erode public trust in commercial institutions. The establishment of the CCPA under the Consumer Protection Act, 2019 marks a significant step in combating deceptive practices. However, enforcement is still catching up with the realities of digital commerce and influencer marketing. By drawing lessons from global jurisdictions and streamlining inter-agency efforts, India can create a more robust consumer protection regime. The goal must be a marketplace where transparency is not optional but essential, and consumer dignity is at the core of commercial transactions.

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