

The Guidelines for Prevention of Misleading Advertisements and Endorsements for Misleading Advertisements, 2022

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The Guidelines for Prevention of Misleading Advertisements and Endorsements for Misleading Advertisements, 2022¹

In exercise of the powers conferred by Section 18 of the Consumer Protection Act, 2019 (35 of 2019), the Central Consumer Protection Authority hereby issues the following guidelines to provide for the prevention of false or misleading advertisements and making endorsements relating thereto, namely—

1. Short title and commencement.—(1) These guidelines may be called the Guidelines for Prevention of Misleading Advertisements and Endorsements for Misleading Advertisements, 2022.

(2) It shall come into force on the date of its publication in the Official Gazette.

2. Definitions.—(1) In these guidelines, unless the context otherwise requires,—

- (a) “Act” means the Consumer Protection Act, 2019 (35 of 2019);
- (b) “advertiser” means a person who designs, produces and publishes advertisements either by his own effort or by entrusting it to others in order to promote the sale of his goods, products or services and includes a manufacturer and service provider of such goods, products or services;
- (c) “advertising agency” means a person or an establishment providing services in designing and production of advertisements or other related services for a commission or fee;
- (d) “bait advertisement” means an advertisement in which goods, product or service is offered for sale at a low price to attract consumers;
- (e) “child” means a child as defined in clause (12) of Section 2 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (2 of 2016);
- (f) “endorser” includes an individual or a group or an institution making endorsement of any goods, product or service in an advertisement whose opinion, belief, finding or experience being the message which such advertisement appears to reflect;
- (g) “service provider” means a person who provides service of any description to a potential user;
- (h) “surrogate advertisement” means an advertisement for goods, product or service, whose advertising is otherwise prohibited or restricted by law, by circumventing such prohibition or restriction and portraying it to be an advertisement for other goods, product or service, the advertising of which is not prohibited or restricted by law.

1. Central Consumer Protection Authority, Noti. No. F. No. J-25/4/2020- CCPA (Reg), dated June 9, 2022 and published in the Gazette of India, Extra., Part III, Section 4, dated 9th June, 2022, pp. 6-11, No. 291

(2) The words and expressions used in these guidelines but not defined, and defined in the Act, shall have the same meaning as respectively assigned to them in the Act.

3. Application.—These guidelines shall apply to—

- (a) all advertisements regardless of form, format or medium;
- (b) a manufacturer, service provider or trader whose goods, product or service is the subject of an advertisement, or to an advertising agency or endorser whose service is availed for the advertisement of such goods, product or service.

4. Conditions for non-misleading and valid advertisement.—(1) An advertisement shall be considered to be valid and not misleading, if—

- (a) it contains truthful and honest representation;
- (b) it does not mislead consumers by exaggerating the accuracy, scientific validity or practical usefulness or capability or performance or service of the goods or product;
- (c) it does not present rights conferred on consumers by any law as a distinctive feature of advertiser's offer;
- (d) it does not suggest that the claims made in such advertisement are universally accepted if there is a significant division of informed or scientific opinion pertaining to such claims;
- (e) it does not mislead about the nature or extent of the risk to consumers' personal security, or that of their family if they fail to purchase the advertised goods, product or service;
- (f) it ensures that the claims that have not been independently substantiated but are based merely on the content of a publication do not mislead consumers;
- (g) it complies with the provisions contained in any other sector specific law and the rules and regulations made thereunder.

(2) Notwithstanding anything contained in sub-paragraph (1), if any occasional and unintentional lapse in the fulfilment of an advertised promise or claim occurs while carrying out mass manufacture and distribution of goods, products and services, such unintentional lapse may not invalidate the advertisement, provided—

- (a) Such promise or claim is capable of fulfilment by a typical specimen of the product advertised;
- (b) the proportion of product failures is within the generally acceptable limits;
- (c) the advertiser has taken prompt action to make good the deficiency to the consumer.

5. Conditions for bait advertisements.—A bait advertisement shall fulfil the following conditions, namely—

- (a) such advertisement shall not seek to entice consumers to purchase goods, products or services without a reasonable prospect of selling such advertised goods, products or services at the price offered;
- (b) the advertiser shall ensure that there is adequate supply of goods, products or services to meet foreseeable demand generated by such advertisement;
- (c) such advertisement shall state the reasonable grounds which the advertiser has for believing that he might not be able to supply the advertised goods, products or services within a reasonable period and in reasonable quantities, and in particular,—
 - (i) if the estimated demand exceeds the supply, such advertisement shall make clear that the stock of the goods or services is limited;
 - (ii) if the purpose of the advertisement is to assess potential demand, it shall be clearly stated such advertisement; and
 - (iii) the advertisement shall not mislead consumers by omitting restrictions, including geographic restrictions and age-limit on the availability of the goods, products or services;
- (d) such advertisement does not mislead consumers about the market conditions with respect to the goods, products or services or the lack of their availability in order to induce consumers to purchase such goods, products or services at conditions less favourable than normal market conditions.

6. Prohibition of surrogate advertising.—(1) No surrogate advertisement or indirect advertisement shall be made for goods or services whose advertising is otherwise prohibited or restricted by law, by circumventing such prohibition or restriction and portraying it to be an advertisement for other goods or services, the advertising of which is not prohibited or restricted by law.

(2) An advertisement shall be considered to be a surrogate advertisement or indirect advertisement, if—

- (a) such advertisement indicates or suggests directly or indirectly to consumers that it is an advertisement for the goods, product or service whose advertising is prohibited or restricted by law;
- (b) such advertisement uses any brand name, logo, colour, layout and presentation associated with such goods, product or services whose advertisement is prohibited or restricted:

Provided that mere use of a brand name or company name which may also be applied to goods, product or service whose advertising is prohibited or restricted shall not be considered to be surrogate advertisement or indirect advertisement, if such advertisement is not otherwise objectionable as per the provisions set out in these guidelines.

7. Free claims advertisements.—A free claims advertisement shall—

- (a) not describe any goods, product or service to be ‘free’, ‘without charge’ or use such other terms if the consumer has to pay anything other than the unavoidable cost of responding to such advertisement and collecting or paying for the delivery of such item;
- (b) make clear the extent of commitment that a consumer shall make to take advantage of a free offer;
- (c) not describe any goods, product or service to be free, if—
 - (i) the consumer has to pay for packing, packaging, handling or administration of such free goods, product or service;
 - (ii) the cost of response, including the price of goods, product or service which the consumer has to purchase to take advantage of such offer, has been increased, except where such increase results from factors unrelated to the cost of promotion; or
 - (iii) the quality or quantity of the goods, product or service that a consumer shall purchase to take advantage of the offer has been reduced;
- (d) not describe an element of a package as free if such element is included in the package price;
- (e) not use the term ‘free trial’ to describe a ‘satisfaction or your money back’ offer or an offer for which a non-refundable purchase is required.

8. Children targeted advertisements.—(1) An advertisement that addresses or targets or uses children shall not—

- (a) condone, encourage, inspire or unreasonably emulate behaviour that could be dangerous for children;
- (b) take advantage of children’s inexperience, credulity or sense of loyalty;
- (c) exaggerate the features of goods, product or service in such manner as to lead children to have unrealistic expectations of such goods, product or service;
- (d) condone or encourage practices that are detrimental to children’s physical health or mental wellbeing;
- (e) imply that children are likely to be ridiculed or made to feel inferior to others or become less popular or disloyal if they do not purchase or make use of such goods, product or service;
- (f) include a direct exhortation to children to purchase any goods, product or service or to persuade their parents, guardians or other persons to purchase such goods, product or service for them;
- (g) use qualifiers such as ‘just’ or ‘only’ to make the price of goods, product or service seem less expensive where such advertisement includes additional cost or charge;
- (h) feature children for advertisements prohibited by any law for the time being in force, including tobacco or alcohol-based products;

- (i) feature personalities from the field of sports, music or cinema for products which under any law requires a health warning for such advertisement or cannot be purchased by children;
 - (j) make it difficult for children to judge the size, characteristics and performance of advertised products and to distinguish between real life situations and fantasy;
 - (k) exaggerate what is attainable by an ordinary child using the product being marketed;
 - (l) exploit children's susceptibility to charitable appeals and shall explain the extent to which their participation will help in any charity-linked promotions;
 - (m) resort to promotions that require a purchase to participate and include a direct exhortation to make a purchase addressed to or targeted at children;
 - (n) claim that consumption of a product advertised shall have an effect on enhancing intelligence or physical ability or bring exceptional recognition without any valid substantiation or adequate scientific evidence;
 - (o) claim any health or nutritional claims or benefits without being adequately and scientifically substantiated by a recognized body;
 - (p) be published in any mass media, including advertisement on network games in respect of medical services, drugs, dietary supplements, medical instruments, cosmetic products, liquor or cosmetic surgery which are adverse to the physical and mental health of children.
- (2) An advertisement of any goods, product or service which addresses or targets children shall not—
- (a) be such as to develop negative body image in children;
 - (b) give any impression that such goods, product or service is better than the natural or traditional food which children may be consuming.
- (3) An advertisement for junk foods, including chips, carbonated beverages and such other snacks and drinks shall not be advertised during a program meant for children or on a channel meant exclusively for children.
- (4) Any advertisement which offers promotional gifts to persuade children to buy goods, product or service without necessity or promotes illogical consumerism shall be discouraged.

9. Advertisements prohibited by law.—In addition to the prohibited advertisements as set out in these guidelines, no advertisement shall be permitted which is designed, produced and published in respect of goods, products or services which are prohibited from being produced, sold or provided or which are prohibited from being advertised under any law for the time being in force or under any rules or regulations made thereunder.

10. Guidelines not in derogation of other laws.—Where an advertisement is regulated under any other law for the time being in force, including the Press Council Act, 1978 (37 of 1978) and the Cable Television Networks (Regulation) Act, 1995 (7 of 1995) or the rules or regulations made thereunder, the provisions contained in these guidelines shall be in addition to and not in derogation of, such regulation in other laws.

11. Disclaimers in Advertisements.—(1) A Disclaimer in advertisement—

- (a) may expand or clarify a claim made in such advertisement or make qualifications or resolve ambiguities therein in order to explain such claim in further detail, but such disclaimer shall not contradict the material claim made in the advertisement or contradict the main message conveyed by the advertiser or change the dictionary meaning of the words used in the claims received or perceived by a consumer;
- (b) shall not attempt to hide material information with respect to any claim made in such advertisement, the omission or absence of which is likely to make the advertisement deceptive or conceal its commercial intent;
- (c) shall not attempt to correct a misleading claim made in an advertisement.

(2) A Disclaimer in advertisement shall fulfil the following requirements, namely—

- (a) a disclaimer shall be in the same language as the claim made in the advertisement;
- (b) the font used in a disclaimer shall be the same as that used in the claim;
- (c) the placement of the disclaimer shall be at a prominent and visible place on the packaging and ideally be on the same panel of the packaging as that of the claim;
- (d) if the claim is presented as voice over, the disclaimer shall be displayed in sync with the voice over and at the same speed as that of original claim made in the advertisement;
- (e) a disclaimer shall be so clear, prominent and legible as to make it clearly visible to a normally-sighted person reading the marketing communication once, from a reasonable distance and at a reasonable speed.

12. Duties of manufacturer, service provider, advertiser and advertising agency.—Every manufacturer, service provider, advertiser or advertising agency to whom these guidelines apply shall ensure that—

- (a) all descriptions, claims and comparisons in an advertisement which relate to matters of objectively ascertainable facts shall be capable of substantiation and produce such substantiation if required by the Central Authority;
- (b) the advertisement indicates the source and date of independent research or assessment in cases where claims in the advertisement are expressly stated to be based on or supported by such research or assessments;

- (c) advertisement shall not contain any reference to a person, firm or institution in a manner which confers an unjustified advantage on the product so advertised or tends to bring such person, firm or institution to ridicule or disrepute, unless requisite permission from such person, firm or institution has been obtained by the advertiser;
 - (d) advertisement shall not contain statements or visual presentations which directly, or by implication, or by omission, or by ambiguity, or by exaggeration are likely to mislead consumers about the product advertised, or the advertiser, or about any other product or advertiser;
 - (e) advertisement is so framed as not to abuse the trust of consumers or exploit their lack of experience or knowledge and for this purpose,—
 - (i) such advertisement may not make claims which use expressions such as “upto five years guarantee” or “Prices from as low as Rs. Y”, instead shall clearly indicate a fixed period of guarantee of the product or a fixed price at which the product is being offered; and in case, the product has different periods of guarantee for different parts or components, it shall clearly indicate the minimum and maximum of such periods of guarantee applicable to the relevant part or components;
 - (ii) if such advertisements invite the public to take part in lotteries or prize competitions permitted under any law for the time being in force or hold out the prospect of gifts, it shall clearly set out all pertinent material terms and conditions so as to enable consumers to obtain a true and fair view of their prospects in such activities;
- Provided that such obvious untruths or exaggerations as are intended to amuse or catch the eye of consumers are permissible subject to the condition they are clearly seen as humorous or hyperbolic and not likely to be understood as making literal or misleading claims for the advertised product.

13. Due diligence required for endorsement of advertisements.—(1) Any endorsement in an advertisement must reflect the genuine, reasonably current opinion of the individual, group or organisation making such representation and must be based on adequate information about, or experience with, the identified goods, product or service and must not otherwise be deceptive.

(2) Where, Indian professionals, whether resident in India or otherwise, are barred under any law for the time being in force from making endorsement in any advertisement pertaining to any profession, then, foreigner professionals of such profession shall also be not permitted to make endorsement in such advertisement.

Explanation.—For the purposes of this paragraph, “foreigner professional” means a person who is not a citizen of India.

14. Disclosure of material connection.—Where there exists a connection between the endorser and the trader, manufacturer or advertiser of the endorsed

product that might materially affect the value or credibility of the endorsement and the connection is not reasonably expected by the audience, such connection shall be fully disclosed in making the endorsement.

15. Interpretation.—In case of any ambiguity or dispute in interpretation of these guidelines, the decision of the Central Authority shall be final.
