Role of Endorsers in Advertisements

What is the issue?

Although monetary penalty is provided for misleading advertisements, there are grey areas that need to be addressed.

What provisions are available against misleading advertisements?

- **Consumer Protection Act (CPA) 2019-** The Act defines misleading advertisements as any advertisement in relation to any product or service which
  - Falsely describes such product or services or
  - Gives a false guarantee to or likely to mislead the consumers
  - Conveys an express or implied representation which would constitute an unfair trade practices
  - Deliberately conceals important information
- The Central Consumer Protection authority (CCPA) has been established under CPA, 2019 for regulating matters relating to violation of consumer rights, unfair trade practices and false or misleading advertisements.
- The District Collector has the power to investigate the complaint or a reference made to him by the Central Authority or the Commissioner of a regional office regarding misleading advertisement.
- **Guidelines for Prevention of Misleading Advertisements and Endorsements for Misleading Advertisements, 2022-** The present guidelines define “bait advertisement”, “surrogate advertisement” and clearly provides what constitutes as “free claim advertisements”.
- The advertisement targeting children shall not feature any personalities from the field of sports, music or cinema for products which under any law requires a health warning.
- A disclaimer shall be in the same language as the claim made in the advertisement and the font used in a disclaimer shall be the same as that used in the claim.
- Clear guidelines are laid for duties of manufacturer, service provider, advertiser and advertising agency, due diligence to be carried out before endorsing and others.
- The CCPA can impose a penalty of up to Rs. 10 lakh on manufacturers, advertisers and endorsers for misleading advertisements and up to Rs. 50 lakh for subsequent contraventions.
- The Authority can prohibit the endorser of a misleading advertisement from making any endorsement for upto 1 year and for subsequent contravention, prohibition can extend upto 3 years.

Why do companies hire brand ambassadors for a product or a service?

According to data released by AdEx India in 2022, celebrity endorsements saw a 44% rise in 2021 over 2020.

- **Credibility-** It adds to the credibility of the brand.
- **Trust-** It's the trust which people repose in some of the celebrities pass on to the image of the brand.
- **Relationship with the audience**- Having brand endorsers impacts the buyers' purchasing decisions because of the celebrity's authority and/or relationship with the audience.
- **Lazy marketing**- Sometimes it's lazy marketing where a face does the job rather than ideas.

What onus do brand ambassadors/endorsers have?

In 2021, between 2017 and 2020, more than 12,000 complaints were received by the Grievances against Misleading Advertisements, which was launched by the Department of Consumer Affairs.

- **ASCI's due diligence**- The ASCI guidelines provide something similar in terms of the due diligence exercise to be carried out by the celebrities.
- ASCI provide a team of dedicated technical experts to verify whether the endorsements are substantiated or not.
- **Genuine opinion**- The present guidelines require the celebrities to reflect their genuine or current opinion, to disclose any connection which they have with the brand.
- **Liability perspective-** There is a liability perspective where the brands would require the endorsers to give an undertaking that they have utilised the products and they affirm what they are endorsing.
- **Penalty**- The penalty on the brand ambassadors is so little that it doesn't really matter to them.
- **Intangible nature**- A lot of things are intangibles in advertising, so, it's very difficult for a celebrity to verify claims because sometimes even the clients can't verify those claims.

References

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