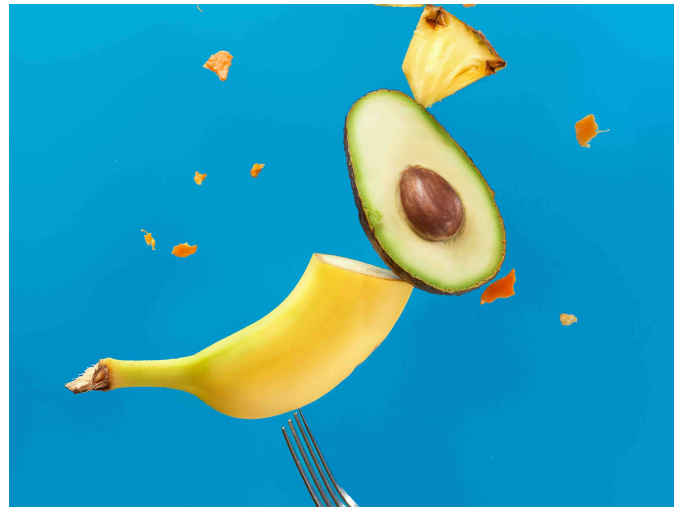


Misleading Advertisements

The Advertising Standards Council of India (ASCI) is a self-regulatory body that addresses issues related to dishonest, misleading, indecent, offensive, harmful, or unfair ads across various media. ASCI aims to balance the interests of consumers with the demands of the advertising industry and its operations are governed by 'The ASCI Code'. It has an independent jury called the Consumer Complaints Council (CCC) that is responsible for weekly review of complaints. For parties wishing to contest a CCC recommendation, appeals are heard by retired high court judges.



Recently, ASCI released its Annual Complaints Report (2023-24) revealing interesting insights into advertising campaigns run by brands in the country.

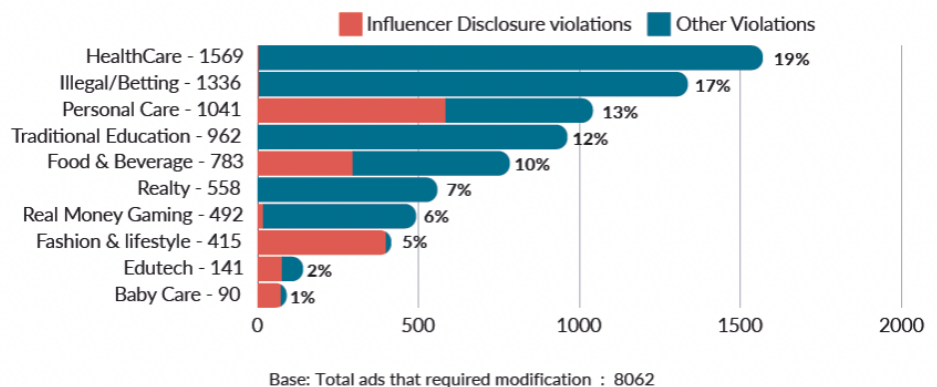
Trends

More than 8,000 advertisements aired between April 2023 - March 2024 came under scrutiny and 98% required some modification. 85% of the scrutinised advertisements appeared on digital mediums – more than half this total number came from Instagram.

Among the advertisements that required modification, maximum number (19%) pertained to the healthcare sector. Illegal offshore betting and the personal care sector took 2nd and 3rd spot respectively – see more details in Fig. 1.

Notably, in the personal care sector, influencer disclosure violations were behind 55% of the advertisements that invited scrutiny. But on a positive note, 89% of influencers complied with ASCI regulations in 2023-24 – up from 86% the previous year.

Fig. 1 TOP 10 VIOLATIVE CATEGORIES



Sector Spotlight

Health

Exaggerated and false claims made in advertisements for health products can have disastrous consequences. Patanjali Ayurved, founded in 2006 to make ayurvedic products, has grown at rapid pace to become a prominent Indian multinational that manufactures cosmetics, *ayurvedic* medicine, personal care and food products. However, it has been caught on the wrong foot for making false claims a number of times, underscoring the need for strong scrutiny in this sector.

During the COVID-19 pandemic, Patanjali had asserted that its medicine 'Coronil' was an effective cure for the

virus endorsed by the World Health Organization (WHO). The WHO refuted this claim, leading to significant criticism. Controversy escalated again in 2022 when Patanjali released a poster titled "*Misconceptions Spread by Allopathy: Save Yourself and the Country from Misconceptions Spread through the Pharma and Medical Industry.*" The advertisement suggested that Patanjali's products were scientifically proven to cure various ailments, while alleging that allopathic medicines had severe side effects. This prompted the Indian Medical Association (IMA), the largest association of medical doctors in India, to file a petition in the Supreme Court of India urging action against Patanjali for advertisements that promoted the Ayush treatment system while undermining modern, evidence-based medicine. At the first hearing in November 2023, the court cautioned Patanjali against using misleading terms such as 'permanent relief' in its advertisements. Although Patanjali initially assured the court it would cease publishing misleading advertisements, it continued to do so, leading to a contempt of court notice. When Patanjali failed to respond to the contempt notice, the court issued summons and subsequently, suspended manufacturing licenses for 14 of Patanjali's products.

Baby Care

ASCI also reported that for the first time, advertisements pertaining to baby products ranked in the top 10 violative categories. Most were on account of influencer based advertising that lacked disclosure of material connection with brands.

However, in a notable instance, in the wake of a social media influencer highlighting the high sugar content in Mondelez's Bournvita drink (and a legal notice from Mondelez India leading to withdrawal of the video), an investigation by The National Commission for Protection of Child Rights (NCPCR) found Bournvita's sugar levels excessively high and called for removal of misleading advertisements and labels. The NCPCR also urged the Food Safety and Standards Authority of India (FSSAI) to take action against companies falsely marketing such products as 'health drinks'. In response, Mondelez reduced the sugar content in Bournvita by 14.4%. The FSSAI also instructed e-commerce platforms to avoid labelling dairy or malt-based beverages as 'health drinks' since the said term lacked definition under law. Following these developments, beverages such as Bournvita and Horlicks have re-branded from 'health drinks' for children to 'functional nutritional drinks'.

Challenges

Though the number of advertisements scrutinised by ASCI is rising each year, despite heightened efforts, the issue of misleading advertisements persists. One reason is the ever-changing nature of digital advertising – advertisements have short duration and are produced by several developing direct-to-consumer (D2C) companies and elusive advertisers. Other laws such as The Drugs & Other Magical Remedies Act, 1954, the Food Safety and Standards Act, 2006, the Advertising Code under the Cable Television Network (Regulation) Act, 1995 and the Consumer Protection Act, 2019 also lay down provisions to curb misleading advertisements and penalise offenders. However, implementation is not optimal and overall, the need is apparent for more stringent regulation and enforcement.