

Supreme Court Delivers Blow To Deceptive Advertising

In the case of *Indian Medical Association & Anr. v. Union of India & Ors.* the Supreme Court of India issued a landmark ruling on May 7, 2024, cracking down on deceptive advertisements, especially in the food and health sectors. The court imposed equal responsibility on advertisers and endorsers to ensure authenticity and mandated a self-declaration process for advertisers. It also called for existing legal rules and regulations on the subject to be enforced with more vigour and intensity.



Directives of the Court:

1. **Equal Responsibility for Brand Ambassadors and Advertisers:** Recognising the significant influence of celebrities, influencers, and public figures, the ruling emphasises the endorser's duty to conduct due diligence before promoting a product as per the 'Guidelines for Prevention of Misleading Advertisements and Endorsements, 2022'.
2. **Mandatory Self-Declaration for Advertisers:** Given that the right to health is a Fundamental Right under the Constitution, the Court mandated a self-declaration for all advertisers, certifying compliance with advertising regulations before broadcast or publication. However, subsequent advisories, including the latest one in July 2024, have clarified that only advertisers in the food and beverages industry and the health sectors need fill a self-declaration form, that too on an annual basis.
3. **Better Protection for Consumers:** The Court recognised that there exists a wide legislative framework governing misleading advertisements involving regulators such as the Central Consumer Protection Authority, Telecom Regulatory Authority of India, Food Safety and Standards Authority of India (FSSAI), Ministry for Health and Family Welfare etc. However, complaints under existing laws were not being adequately taken forward, resulting in poor enforcement actions. Critiquing the existing system, the Court asked various government entities to file affidavits detailing the actions taken with regard to misleading advertisements from the year 2018 onwards and underscored the need for a robust system to address consumer complaints.
4. **Specific Procedures for Consumer Complaints:** The Court mandated the government to establish a clear process for consumers to file complaints against misleading advertisements. This system must guarantee timely resolution and inform consumers of progress and outcomes. Emphasising consumer rights, the Court declared that consumers deserve accessible and effective redress.

Background and Implications

The ruling emerged from a contempt case against Patanjali Ayurved – an ayurvedic product manufacturer founded in 2006 that has turned into a prominent Indian multinational, manufacturing cosmetics, ayurvedic medicine and personal care and food products. During the Covid-19 pandemic, Patanjali asserted that its medicine Coronil was an effective cure for the virus and that it was endorsed by the World Health Organisation (WHO). The WHO refuted this claim, which led to significant criticism of Patanjali.

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 – the largest

association of medical doctors in India – to file a petition before the Supreme Court, urging action against Patanjali for advertisements that promoted the Ayush treatment system while undermining modern evidence-based medicine. The government's failure to implement Rule 170 of the Drugs and Cosmetics Rules also exacerbated the problem - this provision seeks to prevent the advertisement of ayurvedic drugs without clearance from the relevant licensing authority of the state government. At the first hearing in November 2023, the court cautioned Patanjali against using misleading terms (e.g., 'permanent relief') in its advertisements. While Patanjali initially assured the court that it would cease publishing misleading material, it continued to do so. This led to a contempt-of-court notice, to which Patanjali failed to respond. The court then issued a summons, suspended manufacturing licences for 14 of Patanjali's products and issued the directives detailed above.

Conclusion

The Advertising Standards Council of India (ASCI) – a self-regulatory body that addresses issues related to dishonest, misleading, indecent, offensive, harmful or unfair ads across various media – has stated in its 2023-24 Annual Complaints Report that of the 8000+ advertisements scrutinised between April 2023 and March 2024, 98% required modification. Further, among the advertisements that required modification, 19% pertained to the healthcare sector. These facts amplify the significance of the Supreme Court's ruling for consumer protection in an era dominated by pervasive marketing.