

# The new rules to keep advertisements in check

What are the provisions under the freshly issued guidelines of the CCPA? How is it addressing advertisements targeting children?

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The Central Consumer Protection Authority (CCPA) recently issued guidelines to prevent false or misleading advertisements. The guidelines are pathbreaking because they fill significant consumer protection gaps while explicitly outlining advertiser duties. The guidelines also try to discourage the promotion of illogical consumerism aimed at children. The problem of misleading, bait, surrogate and children-targeted advertisement has festered without respite for far too long. The guidelines perform an essential function in bringing the Indian regulatory framework at par with international norms and standards.

## Defining a 'valid' advertisement

The guidelines lay down the conditions for non-misleading and valid advertisements. Briefly, an advertisement can be considered non-misleading if it contains true and honest representation of goods and does not exaggerate the accuracy, scientific validity or practical usefulness or capability.

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It must be noted that rather than defining what constitutes a 'misleading or invalid advertisement,' the guidelines have sought to define 'valid or non-misleading advertisement.' This take on policy drafting significantly reduces the scope for exploitation of any inadvertent loopholes.

## Surrogate advertisements

"Surrogate advertisement" refers to the advertisement of goods in the shadow of other goods. For example, the advertisement of tobacco in the garb of pan masala. Advertisement of tobacco as such is prohibited by the law. While existing laws such as the Cigarettes and other Tobacco Products (Prohibition of Advertisement and

Regulation of Trade and Commerce, Production, Supply, and Distribution) Act, 2003 already seeks to govern advertisements related to tobacco, manufacturers and advertisers have been able to circumvent the regulation through the grey area created by a surrogate advertisement. The guidelines seek to ensure that these grey areas are filled by the black letter of the law, completely disallowing any attempts to advertise products that are otherwise prohibited by law.

## Advertisements targeting children

Another important issue taken up by the new guidelines is the discouragement of "children targeted advertisements". Advertisements that condone, encourage, inspire or unreasonably emulate behaviour that could be dangerous for children or take advantage of children's inexperience, credulity or sense of loyalty etc. have been prohibited. It goes without saying that advertisements tend to influence children's buying behaviour and encourage them to consume unhealthy goods, or develop negative feelings toward healthy goods. The guidelines further require that the goods which require a health warning should not be advertised through children as well as personalities from music, sports and cinema. Advertisements that state "any health or nutritional claims or benefits without being adequately and scientifically substantiated" or any surgery which may have adverse effects on the physical and mental health of children are prohibited. Furthermore, an advertisement may be considered as children targeted if the advertisement of any goods, product or service which addresses or targets children may develop negative body image in children or give any impression that such goods, product or service is better than natural or traditional food. For example, advertisements relating to milk additive products often imply that the products have higher nutritional value for the growth of children, increase retention power of the brain during exams, strengthen bones in sports etc., even though these claims are yet to be scientifically proven.

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them young is a well-known marketing strategy. Children can be influenced through advertisements fairly easily – they are individually capable of making buying decisions, can influence the decisions of their parents and make up the future adult demographic. A marketing strategy that seeks to aggressively play on the immaturity of the younger audience can invariably impinge upon their 'right to choose' as well as their right to be informed and protected against unsafe goods and services as well as unfair trade practices.

Additionally, the guidelines also require that advertisements including "chips, carbonated beverages and such other snacks and drinks" shall not be cast on channels exclusively meant for children. However, it remains to be seen as to whether such a guideline can survive a challenge under Article 14 and Article 19(1)(g) of the Indian Constitution in as much as it impinges upon the right of the channels such as Cartoon Network to earn revenue from such advertisements.

## Other reforms

The guidelines have also introduced the need to have "disclaimers in advertisements" to "clarify a claim made in such advertisement or make qualifications or resolve ambiguities therein in order to explain such claim in further detail." Moreover, the advertiser must 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". The guidelines require that the disclaimer must be visible to normally sighted persons and prominently placed so that the consumer may read it carefully.

The guidelines also impose duties on the manufacturers, service providers and advertising agency to not claim and make comparisons in an advertisement which relate to matters of objectively ascertainable facts. Moreover, the advertisement must be framed to gain the trust of the consumers and not to "abuse the trust of consumers or exploit their lack of experience or knowledge".

The enforcement issues in existing



advertisement laws have been addressed by the guidelines in as much as it imposes severe penalties. The guidelines are momentous in empowering customers against mischievous advertisers. The advertisers, too, must take a cue from the guidelines and impose self-regulation to comply with the same. While the guidelines must be hailed as a step in the right direction, there is a definite need to ensure their implementation in the spirit they have been drafted with.

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## THE GIST

■ The Central Consumer Protection Authority (CCPA) recently issued guidelines to prevent false or misleading advertisements. The guidelines are pathbreaking because they fill significant consumer protection gaps while explicitly outlining advertiser duties.

■ An advertisement is valid if it contains true and honest representation of goods and does not exaggerate the accuracy, scientific validity or practical usefulness or capability.

■ In a prominent move, advertisements that condone, encourage, inspire or unreasonably emulate behaviour that could be dangerous for children or take advantage of 'children's inexperience, credulity or sense of loyalty etc.' have been prohibited.