

ASCI & ACCOUNTABILITY: LEGAL PERSPECTIVES ON INDIAN ADVERTISING STANDARDS

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Abstract

This research examines the Advertising Standards Council of India (ASCI) as a pivotal self-regulatory body through comprehensive case law analysis. The study analyses significant ASCI rulings across misleading health claims, comparative advertising, celebrity endorsements, and digital marketing challenges. The research demonstrates how ASCI's precedents complement statutory regulations under the Consumer Protection Act, 2019. The analysis reveals ASCI's approach to balancing commercial expression with consumer protection, particularly in vulnerable audience protection and influencer marketing disclosure. The research highlights the emergence of a "co-regulation" model where ASCI findings inform statutory enforcement by the Consumer Protection Authority. Despite lacking direct statutory authority, ASCI rulings have gained precedential value with courts referencing ASCI principles in commercial disputes. The study concludes that ASCI's jurisprudence represents a flexible framework addressing evolving marketing practices while maintaining ethical standards, making understanding of ASCI precedents essential for compliance and legal risk mitigation in India's advertising regulatory environment.

Key-words:

Case laws, Case study, Consumer law, ASCI (Advertising Standards Council of India), Advertising standards in India and Legal Advertising accountability in India

Introduction

The Advertising Standards Council of India (ASCI), established in 1985, has emerged as a pivotal self-regulatory body shaping the boundaries of acceptable advertising in India. Through its Consumer Complaints Council (CCC), ASCI has adjudicated thousands of cases that collectively form a rich jurisprudence on advertising standards, consumer protection, and marketing ethics. This article examines significant ASCI rulings across various categories of advertising infractions, analysing their legal implications, precedential value, and impact on India's marketing landscape.

The ASCI is a private, non-statutory body, formed with the purpose of self-regulating advertising content to protect consumers from misleading or unethical advertisementsⁱ. It operates through a code of self-regulation that outlines rules and guidelines for advertisers to followⁱⁱ. ASCI handles complaints from consumers and competitors and also takes up cases on its own, adjudicating on whether an advertisement violates its code.

Objectives:

- i. To provide comprehensive case law analysis;
- ii. To establish ASCI's legal significance;
- iii. To provide practical guidance for stakeholders

Misleading Advertisements: Substantiation and Evidence Standards

Unsubstantiated Claims in Health Products

ASCI has consistently taken a firm stance against unsubstantiated health claims in advertisements. The Council's approach demonstrates a high evidentiary standard for scientific claims, particularly those related to health benefits. ASCI's Code for Self-Regulation in Advertising specifically prohibits advertisements from making claims that are misleading, exaggerated, or not backed by scientific evidence.

In recent years, ASCI has flagged numerous ads for health supplements, ayurvedic products, and weight-loss solutions that promised "instant results" or "permanent cures" without clinical validation.

Additionally, under the Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954, and the Consumer Protection Act, 2019, such misleading claims are legally punishable. Despite these frameworks, the proliferation of digital influencers and loosely monitored e-commerce platforms has made enforcement challenging, underscoring the need for stronger regulatory coordination between ASCI, the Ministry of AYUSH, and the Central Consumer Protection Authority (CCPA) to curb deceptive health marketing practices.

Misleading Statistics and Surveys

ASCI has scrutinized advertisements that present statistics without proper context or methodology disclosure. In 2019, the Council upheld a complaint against Hindustan Unilever Ltd. for its advertisement claiming "9 out of 10 doctors recommend Lifebuoy." ASCI found that the survey methodology was inadequately disclosed, potentially misleading consumers about the breadth and significance of the endorsementⁱⁱⁱ.

Misleading Visuals and Demonstrations

ASCI has addressed numerous cases where visual elements of advertisements were deemed misleading. In 2019, it upheld complaints against a major electronics manufacturer for depicting a mobile phone's camera capabilities through professional photography equipment, creating unrealistic expectations about the phone's actual performance.

These rulings highlight that demonstrations in advertisements must accurately represent typical product performance under normal usage conditions.

Comparative Advertising and Disparagement

Direct Competitor Comparisons

Comparative advertising cases form a significant portion of ASCI's jurisprudence, balancing the right to make truthful comparisons against unfair disparagement of competitors. The Delhi High Court, in the case *Colgate Palmolive (India) Ltd. vs. Hindustan Unilever Ltd.*, observed that while comparative advertising is permissible, it should not be misleading or disparaging. The court found that the claim of "130% better" was not adequately substantiated and could mislead consumers. Consequently, the court restrained HUL from publishing the impugned print advertisement or any similar advertisement that disparages Colgate's product^{iv}. This case illustrates ASCI's application of Clause 4 of its Code, which permits comparative advertising but prohibits unfair denigration of other products.

The legal significance of this approach was reinforced in the Delhi High Court case *Reckitt Benckiser v. Hindustan Unilever Ltd.* (2014)^v. In 2013, manufacturer of Dettol, filed a complaint against Hindustan Unilever Ltd. (HUL) regarding a Lifebuoy advertisement. The advertisement implied that bathing with Lifebuoy soap was more effective in germ protection than using antiseptic liquids like Dettol.

Reckitt Benckiser argued that the advertisement was misleading and disparaging, as it suggested that antiseptic liquids were less effective, it was held that the advertisement was disparaging to Dettol's product and restrained HUL from airing the commercial. ASCI's rulings have consistently aligned with this judicial precedent, creating a coherent framework for evaluating comparative advertisements.

White Coat Endorsements

ASCI has taken a strict stance on advertisements featuring healthcare professionals, particularly in comparative contexts. In 2020, it upheld complaints against Colgate-Palmolive for advertisements featuring dentists comparing Colgate to unnamed competitor products. ASCI found this violated both its guidelines on comparative advertising and its prohibition on healthcare professionals endorsing commercial products^{vi}.

This approach is consistent with the Medical Council of India (Ethics) Regulations, 2002^{vii}, which prohibit physicians from endorsing healthcare products. ASCI's rulings in this area complement statutory regulations, creating a comprehensive prohibition on the exploitation of professional credibility for commercial purposes.

Copypat Advertisements

Copypat advertisements are those that closely imitate the distinctive features of a competitor's campaign—such as the visual style, colour palette, music, tagline, or overall messaging. While the

advertised product itself may be different and properly identified, the replication of creative elements can mislead consumers into associating the copycat advertisement with the original, more established brand.

Such practices are discouraged under advertising self-regulation frameworks, as they may cause consumer confusion and unfairly capitalize on the goodwill and brand equity built by another advertiser. Even without directly violating intellectual property rights, these advertisements can be considered misleading or deceptive, especially when they blur brand identities or imply a false association. Guidelines typically call for originality in advertising and prohibit tactics that misappropriate the distinctive identity of competing brands.

These relate to both ASCI's Code and provisions of the Trademarks Act, 1999, which protect against passing off and unfair competition. Although ASCI does not directly enforce trademark law, its rulings on copycat advertisements often align with broader legal principles regarding unfair competition and distinctive trade dress.

Children's Advertising

Targeting Vulnerable Audiences

ASCI has developed extensive guidelines for advertisements, recognizing their particular vulnerability to marketing influence. ASCI's Code for Self-Regulation^{viii} includes provisions to protect children from misleading advertisements, particularly in the context of food and beverages. Key guidelines include:

- **Avoiding Misleading Nutritional Claims:** Advertisements should not mislead as to the nutritive value of the food or beverage.
- **Portrayal of Healthy Lifestyles:** Advertisements should not undermine the importance of healthy lifestyles or mislead as to the nutritive value of the food or beverage.
- **Role of Parental Guidance:** Advertisements should not undermine the role of parental care and guidance in ensuring proper food choices are made by children.

Similarly, ASCI upheld complaints against advertisements for online games that targeted children with unrealistic promises of monetary rewards, establishing that advertisements must not feature minors placing bets or participating in gambling-adjacent activities. These rulings demonstrate ASCI's application of special scrutiny to advertisements that could potentially harm or exploit vulnerable audiences.

School-Targeted Marketing

ASCI has addressed the growing phenomenon of marketing in educational settings. This approach aligns with growing international concerns about commercial influences in educational settings. The Food Safety and Standards Authority of India (FSSAI) subsequently issued guidelines restricting the marketing of HFSS^{ix} (high fat, salt, and sugar) foods in and around schools, demonstrating how ASCI's self-regulatory approach can influence statutory regulations.

Celebrity Endorsements and Influencer Marketing

Celebrity Responsibility

Following amendments to the Consumer Protection Act, 2019, which introduced potential liability for endorsers of misleading advertisements, ASCI has closely scrutinized celebrity endorsements. ASCI guidelines place a significant responsibility on celebrities to ensure the accuracy and truthfulness of claims made in advertisements they endorse^x.

This approach complements Section 21 of the Consumer Protection Act, 2019, which empowers the Central Consumer Protection Authority to prohibit misleading advertisements and impose penalties on manufacturers, advertisers, publishers, and endorsers. ASCI's rulings on celebrity endorsements thus operate within a broader statutory framework that increasingly recognizes endorser responsibility.

Influencer Marketing Disclosure

In 2021, ASCI introduced guidelines for influencer advertising, requiring clear disclosure of material connections between influencers and advertised brands. Following these guidelines, ASCI has addressed numerous cases of non-disclosure in digital marketing. In 2022, it flagged over 400 social

media posts across fashion, beauty, and food categories for failing to properly disclose paid partnerships^{xi}.

In a notable case, ASCI directed several fashion influencers to modify posts promoting a clothing brand without proper disclosure tags. The Council mandated that paid partnerships must be disclosed through appropriate labels like #advertisement, #ad, #sponsored, or #collaboration. These rulings establish clear standards for transparency in the rapidly evolving domain of influencer marketing^{xii}.

Surrogate Advertising

Alcohol and Tobacco Surrogate Advertisements

Surrogate advertising—where prohibited products like alcohol or tobacco are promoted under the guise of legally admissible products—has been a persistent focus of ASCI scrutiny. In 2021, ASCI upheld complaints against surrogate advertisements by several alcohol brands during sports broadcasts. These advertisements ostensibly promoted products like music CDs, sparkling water, and sports merchandise that shared branding with alcohol products.

In evaluating these advertisements, ASCI applies a "proportionality test" examining whether the surrogate product has genuine market presence, independent business value, and proportionate marketing expenditure compared to the primary (restricted) product. This approach complements statutory restrictions under the Cable Television Networks (Regulation) Act, 1995, which prohibits direct or indirect promotion of cigarettes, tobacco products, wine, alcohol, and other intoxicants.

Extensions of Prohibited Products

ASCI has distinguished between legitimate brand extensions and surrogate advertising. ASCI has established clear guidelines to differentiate genuine brand extensions from surrogate advertising, particularly concerning products like alcohol and tobacco, whose direct advertising is restricted. These guidelines assess factors such as the independent market presence, sales turnover, and distribution reach of the brand extension^{xiii}

Environmental Claims

Greenwashing Cases

As environmental consciousness has grown among consumers, ASCI has increased scrutiny of "green" marketing claims. Following the introduction of its Guidelines for Environmental Claims^{xiv}, require advertisements to make specific claims limited to the part of the product or service that actually has the environmental benefit. All seals and certifications must be from accredited organizations, and future promises of being green cannot be made unless there are specific plans to achieve those claims

Carbon Offset Claims

ASCI demonstrates heightened scrutiny to sophisticated environmental claims, requiring not just technical accuracy but also sufficient context to prevent consumer misunderstanding—an approach that complements emerging international standards on environmental marketing.

Digital Marketing and New Media

In-app Advertising

ASCI has addressed unique challenges posed by digital advertising formats. ASCI has upheld complaints against misleading in-app advertisements for mobile games that depicted gameplay and rewards significantly different from actual user experience. The Council found that such advertisements violated its core principles of truthfulness and honesty, regardless of the novel delivery medium.

ASCI's establish fundamental principles apply across all advertising channels, including emerging digital formats. This approach helps prevent regulatory gaps as advertising increasingly shifts to digital platforms.

Dark Patterns

In 2022, ASCI began addressing "dark patterns"—user interface designs that trick users into making unintended choices. It directed an e-commerce platform to modify a checkout process that automatically added product insurance without clear opt-in consent. The Council found this violated its principles of honesty and transparency in marketing communications^{xv}.

Financial Service Advertising

Cryptocurrency Marketing

As cryptocurrency investments gained popularity, ASCI introduced guidelines for virtual digital asset (VDA) advertising in 2022. Following these guidelines, it flagged numerous cryptocurrency advertisements for failing to include mandated disclaimers about risks and regulatory status. In one case, ASCI directed a cryptocurrency exchange to modify advertisements featuring celebrities that understated investment risks^{xvi}.

These interventions demonstrate ASCI's ability to address regulatory gaps in emerging sectors, providing interim standards while statutory regulations develop. The Reserve Bank of India and SEBI have subsequently introduced their own guidelines on cryptocurrency marketing, often incorporating elements from ASCI's approach.

Gender Stereotyping and Cultural Sensitivity

Gender Stereotyping in Advertisements

ASCI has increasingly addressed gender representation in advertisements^{xvii}.

- **Reinforcement of Traditional Roles:** Advertisements frequently depict women in conventional roles, such as caregivers or homemakers, often showing them engaged in domestic tasks while men are portrayed in professional or leisurely settings.
- **Objectification and Hierarchical Positioning:** In categories like beauty and technology, women are often objectified or shown in subordinate positions, reinforcing a hierarchy that places men in dominant roles.

Cultural and Religious Sensitivity

ASCI has addressed advertisements that caused offense to cultural or religious sensibilities. In 2020, a complaint against a Tanishq advertisement in 2020. The advertisement depicted an interfaith couple—a Hindu woman and her Muslim in-laws—celebrating a traditional Hindu baby shower. While the ad aimed to showcase communal harmony, it faced backlash on social media, with accusations of promoting "love jihad."

ASCI reviewed the complaint and concluded that the advertisement did not violate its codes of honesty, truthfulness, and decency. The Consumer Complaints Council (CCC), ASCI's independent panel, unanimously agreed that the ad was not indecent or offensive and did not cause grave or widespread offense in light of prevailing standards of decency and propriety^{xviii}. Therefore, ASCI stated it had no objection to the airing of the advertisement, should the advertiser choose to do so.

Despite ASCI's stance, Tanishq decided to withdraw the advertisement, citing the well-being of its employees, partners, and store staff amid the severe reactions and social media outrage.

These cases illustrate ASCI's complex role in balancing creative expression against potential societal response—an approach that considers not just the content of advertisements but also their potential impact in specific social contexts.

ASCI's Evolving Relationship with Statutory Regulations

Complementary Enforcement

ASCI's self-regulatory mechanism increasingly operates in conjunction with statutory enforcement. In 2022, the Central Consumer Protection Authority (CCPA) took action against misleading advertisements flagged by ASCI, imposing penalties under the Consumer Protection Act, 2019. This coordination demonstrates the evolving "co-regulation^{xix}" model, where self-regulatory findings inform statutory enforcement.

This approach was formalized in a Memorandum of Understanding between ASCI and the Department of Consumer Affairs in 2016, establishing ASCI as the first point of complaint for misleading advertisements, with escalation to statutory authorities in cases of non-compliance with ASCI decisions.

Precedential Value of ASCI Rulings

While ASCI rulings lack direct statutory authority, they have gained substantial precedential value within India's advertising regulation ecosystem. Courts have increasingly referred to ASCI principles in adjudicating advertising disputes. In *Havells India Ltd v. Amritanshu Khaitan* (2015), the Delhi

High Court specifically referenced ASCI guidelines while evaluating comparative advertising claims^{xx}. This judicial recognition enhances the legal significance of ASCI rulings, positioning them as persuasive interpretations of broader legal principles regarding fair advertising practices. As a result, ASCI cases often establish de facto standards that influence both industry practices and subsequent judicial interpretations.

Conclusion

ASCI case rulings collectively form a comprehensive body of precedents that define the boundaries of acceptable advertising in India. From traditional concerns like misleading claims and comparative advertising to emerging challenges in digital marketing, influencer disclosure, and environmental claims, ASCI's adjudications provide nuanced guidance. However, it's important to note that though ASCI guidelines act as a roadmap for advertisers advertising agencies as well as nonsupervisory bodies, they warrant the element of enforceability and have conclusive value only.

The legal significance of ASCI rulings has grown as courts and regulatory authorities increasingly reference and enforce them. This evolution represents a distinctive Indian approach to advertising regulation that blends self-regulation with statutory oversight, creating a flexible system capable of addressing rapidly changing marketing practices.

For advertisers operating in India, ASCI cases provide essential guidance on compliance that goes beyond strict legal requirements to encompass broader ethical considerations and evolving social expectations. Understanding ASCI's precedents is increasingly crucial not just for avoiding reputation damage but also for mitigating legal risks in India's complex advertising regulatory landscape.

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