

# Advertisement Law



Prof. Madabhushi Sridhar



# What is Advertisement

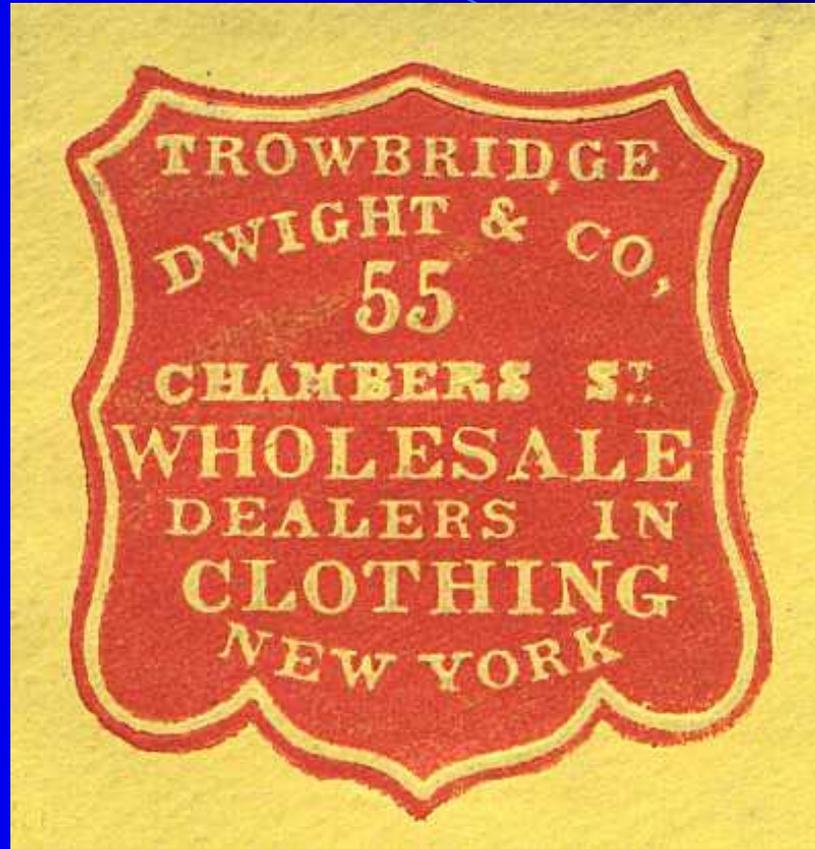
- It is commercial speech and part of concept of freedom of speech and expression, under Article 19(1)(a) Tata Press case (Yellow pages, SC AIR 1995 SC 2438)
- Its character is promotion of a product
- In US, commercial speech has to satisfy a less rigorous test compared to non commercial speech



# A Classic Advertisement image



# Another Classic Advt.



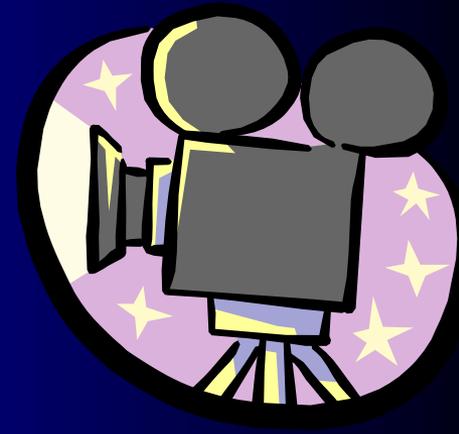
- A satisfied customer is the best advertisement-
- (American Saying)

# Brand Management



- “I have learnt that you can’t have good advertising without a good client, that you can’t keep a good client without good advertising, and no client will ever buy better advertising than he understands or has an appetite for”- *Leo Burnett*, “100 LEO’s, Chicago, IL

# Global Advertising



- There will presently be no room in the world for things; it will be filled up with the advertisements of things --William Dean Howells
- Print, Radio, TV and internet advertising... all the four exist and flourish
- TV advertising is costly but very effective



# India - Advertising

- Indian market is one-sixth of global market, with one billion population, is very attractive.
- Hindustan Lever alone spent Rs. 700 crore per year on advertisements in 1998.





# Dishonest in advertising

- “It is flagrantly dishonest for an advertising agent to urge consumers to buy a product which he would not allow his own wife to buy”
- says David Ogilvy,
- (Confessions of an advertising man)

# Boring ads

- I am one who believes that one of the greatest dangers of advertising is not that of misleading people, but that of boring them to death. – Leo Burnett.

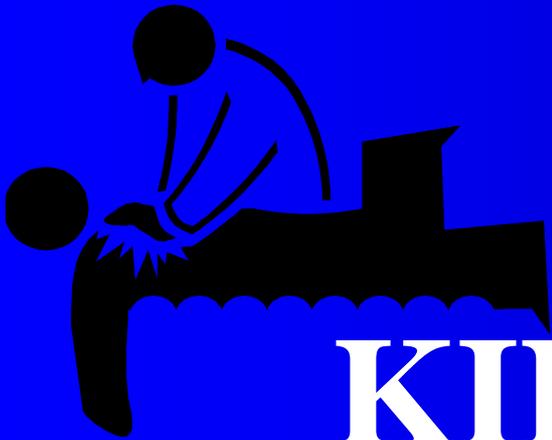
Heart  
Attack  
Did not.

But

**BILLS**

**KILLED HIM**

INSURE YOUR HEALTH



# 'Mudra' and its growth



- Started with one client VIMAL, Rs 35000 W Indies, Viv Richards “Only Vimal”
- In 2001, it reached Rs 714 Cr income
- Puli Raja ads for AIDs by Mudra
- Johnson and Johnson baby products
- I love you Rasna.
- AG Krishna Murthy, the CEO author of Invisible CEO.

# Right to advertise



- Its truth is more easily verifiable, driven by profit motive, thus it has **less protection compared to non-commercial speech**
- It has less to do with democratic self governance or decision making process
- Every commercial organization has right to promote and for that, right to advertise



# India:

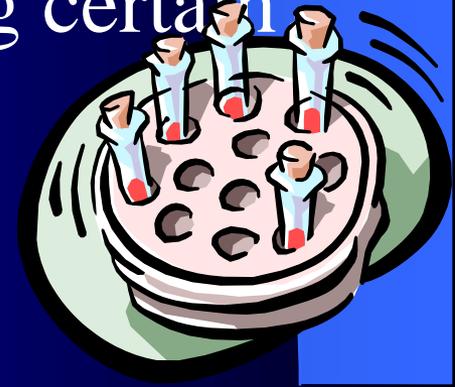
## Restrictions on Ads

- Ad involves commercial element, thus to be guided by noble restrictions, **all ads do not relate to Freedom of speech and expression of ideas. Article 19(1)(a)**
- Advertisements to promote drugs can be restricted. No propagation of magic remedies be allowed. Hamdard Dawakhana v UoI AIR 1960 SC 554



# Drugs & Magic Remedies

- The Drugs and Magical Remedies (Objectionable Advertisements) Act, 1954 prohibits
  - Ads of certain drugs S 3,
  - Misleading ads s 4,
  - Ads of magical remedies for treating certain diseases and disorders, s 5



# Yellow Pages Case



- Commercial ad is also part of FoSE.
- No exclusive right to publish telephone directory for Telecom department only
- Telecom has no copyright over its list of subscribers.
- Tata has right to publish yellow pages and secure advertisements as usual.

# Right to Ads from Govt

- There is no right to Ad from Government
- But, if Government has to advertise certain information, every newspaper has right to equitable distribution of ad revenue as per norms under Article 14 of equality
- Govt cannot deny ads on ground of adverse criticism, it affects Art 19- *Dainik Samband v State of Tripura 1989*



# Eenadu Case



- Congress Govt denied due share of ads to Eenadu, Ushodaya publications challenged such denial, High Court held that state has duty to distribute ad revenue equitably among eligible newspapers. 1981
- Denial for adverse criticism is not constitutionally valid. Mian Bashir v J K AIR 1982 JK 26

# Advertisement and Law

- Advertisement is an invitation to offer, which will not create any right until accepted, SPC Engineering Co v UoI, AIR 1966 Cal 259 (Contract Act, 1872)
- Encouraging some one to engage in a crime by advertisement is an offence, for procuring obscene object is an offence 292 imprisonment and fine, IPC



# NGOs PIL 2003

- Govt ads. carry photos of leaders
- Using public money to gain personal political mileage in government ads, it violates Articles 14, 21, arbitrary executive action that undermines liberty of the citizens. Remedy in Supreme Court, under Article 32.

# Govt of India replied

- After all 60% of the Govt. ads deal with job recruitment, public tender and notices.
- Ads are not done for personal publicity but for informing junta about sarkari schemes named after \*you know who\*
- That way, junta can make informed decisions.

# SC order in 2014

- Canada, Australia regulate Govt. ads and prevent their abuse.
- public awareness purpose vs ads have political motive.
- Committee under N.R.Madhava Menon\* studied best practices across the world and recommended guidelines for sarkari-ads, and about use of photos of leaders.

# N.R. Madhava Menon Committee on Govt. Ads-2014



**Yes**

- **Jobs & tenders**
- **Political neutrality**
- **Public safety**
- **health-disaster**
- **Ombudsman**

**No**

- **Party leader Photo**
- **Party symbol/URL**
- **Multiple ads on anniversaries**
- **Ads b4 election**
- **Bashing Oppn.**



सत्यमेव जयते



“मुझे मिला आर्थिक सहायता का हक।”

Menon says govt. ads should not include politician photos EXCEPT Prez./Governors/PM/CM/ ministers



Amount spent on birth, death anniversary ads in newspapers from 2008-13 (All figures in ₹ cr)

Mahatma Gandhi	38.3	
Rajiv Gandhi	25.4	
BR Ambedkar	17.9	
Indira Gandhi	16.9	
Pt Jawahar Lal Nehru	10.9	

- ▶ सरकारी बैंकों द्वारा अल्पसंख्यकों को 1.65 लाख करोड़ रुपये का ऋण
- ▶ अल्पसंख्यक विद्यार्थियों को करीब 63 लाख छावट्टियां



# Guidelines

- **Stop glorification of political figure or party in power- especially on the eve of elections.**
- **Donor publish photos political leaders (except President/Prime Minister or Governor/Chief Minister)**
- **Donor name of the political parties including ruling party.**
- **No political symbol/logo/flag.**
- **No website links to political parties or political leader.**
- **No attack on opposition parties.**

# What to publicize?

- Ads related to government responsibilities, public safety, awareness.
- maintain political neutrality. Display message in objective and fair manner.
- Prior to elections, display no Government ads, except following:
  - Law and order related
  - Public health, disaster precaution, safety advisories
  - Job applications, tender-contract advertisements

# Anniversaries

- During Nehru, Gandhi or xyz anniversary, multiple ministries, departments and PSUs run separate advertisements, thus wasting public money. For such anniversaries/ commemorations, issue only single advertisement.
- Additionally: setup an Ombudsman to check violation of these guidelines.



# IPC



- Young Persons (Harmful Publications) Act 1956, Advertising harmful material is an offence
- Prize Competition Act, 1955 Prohibits prize competition if exceeds Rs 1000 value. Copy of publication can be forfeited.
- S 293 prohibits sale, hire, distribution, exhibition or circulation or attempt is offence. Ranjit D Udeshi v Maharashtra, AIR 1965 SC 881, Obscenity defined.



# Tuffs Shoe

- Model Madhu Sapre faced a trial for charges of obscenity and indecent representation of women, along with Milind Soman.

A photograph of the Tuff shoes advertisement, in which Sapre had posed nude with Soman, had appeared with a news item in a newspaper on July 23, 1995, sparking off protests.

# Obscenity



- Indecent Representation of women (prohibition) Act, 1986, prohibits indecent or obscene representation of ads and material or photos. IPC also punishes.
- Transplantation of Human Organs Act, 1994 prohibits ads inviting persons to supply human organs for payment or offering to supply etc.

# Kamasutra



- Kamasutra Ads. Is it promotion of condoms or sex itself? Asked PCI
- Symbolizing women as sex objects. Sunday Magazine, Statesman, Debonair etc published the series of Ads.
- Obscene, vulgar, or offensive to public taste Advertising Standards Council of India, also found it to be so. Ad withdrawn.

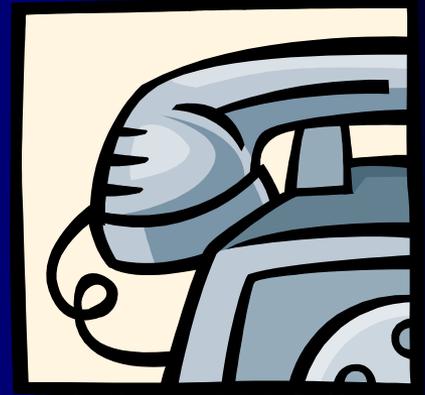


# Women as canvas

- 90 % Ads are painted on the canvass of woman's body. Fact is only 6% like them
- 2 young ladies take part in an ad for a male underwear.
- Sexual overtones in Ads may not sell- Headlight vision survey revealed it.



## Dial a friend.....



- PCI found ads inviting usage of a particular phone number for ‘dial a friend and enjoy suggesting obscene conversation, as objectionable and wrote to Telecommunication department to stop such number connections.
- Can it stop Private Telephone connections for that reason?



# Emblems and Names

- Emblems and Names (Prevention of Improper Use) Act, 1950- prohibits use of a list of names and symbols reflecting state or nation in promotion of private business
- If business symbols reflect State symbol, they have to alter the symbols
- Trade Marks Act 1999, False trade description to any goods is offence, s 78 of 1958 Act.



# MRTTP Act

- Advertising to promote monopolistic, restrictive or unfair trade practice affecting interest of any trader or consumer, the Commission may restrain such activity or advertisement.
- A trade advertisement with recommendation of quality of goods to the seller is not unfair SC held in Colgate case.

# Colgate Case



- Colgate Palmolive India Ltd complained to MRTP Commission that Hindustan Lever advertised their product “new Pepsodent” claiming 102 per cent more germ fighting capability than the ‘leading toothpaste’.
- Alleged that such a campaign would disparage the Colgate Dental Cream. HL also made a similar complaint.

# Decision

- *SC refused* to interfere with
- interim order of MRTP Commission
- staying reference to *anti-bacterial* superiority by appellant in
- Advertisements in print, visual and hoarding media,
- without *scientific proof*



# ASCI Consumer Complaint Council Directed

- Reliance Communications' unsubstantiated claims of unlimited talk time.
- Offers were subject to certain conditions which were not mentioned in the ads.
- TV commercials had to be withdrawn.
- Ad of LMN Juice by Parle Agro was also discontinued as hinted at racism by portraying an African national in a bad light.

# Volkswagen

- Volkswagen also had to discontinue the commercial for its car-Polo as it portrayed violence against animals.

# Mocking Suicide

- Mental health charities, including the Suicide Prevention Action Network, the American Psychiatric Association and Mental Health America, complained against Volkswagen withdrawn advert for mocking and exploiting the serious subject of suicide.  
<http://www.10ad.org/volkswagen-banned-commercial/>

# Educational - misleading

- Ads by TIME Institute had to be withdrawn by the institute as the ads did not substantiate the claim of being 'No. 1 institute for GMAT at the time'.
- A claim by Education Matters on its website about its association with the British Deputy High Commission was unsubstantiated and hence it was directed to withdraw the claim from its website. Nov 24, 2010

# Career Launcher

- ASCI (CCC) upheld complaints against three advertisements of Career Launcher India for not substantiating claims such as 'highest success rate', 'number of students taking tests' and 'being the most successful trainer in Mumbai'. The company could not substantiate any of the claims with data and hence the CCC asked for the ads to be withdrawn or modify. Nov 24, 2010



# False Representation

- That goods/services are of a particular standard, quality, quantity, grade, composition, style or model
- That rebuilt or second hand as new
- That goods have uses or benefits, without
- The need of and usefulness of
- That give warranty, guarantee of performance, efficacy of life without adequate test or proof



# Misleading

- A warranty or guarantee or promise to replace, if it is materially misleading
- Misleading the public concerning price
- Misleading facts disparaging the goods
- In wrapper, accompanying article or ad in newspaper
- Gift: but fully or partly covered by price



# MRTTP Amendment 1991

- Widened the scope of definition of unfair trade practice. It is general and inclusive
- Emphasis is on method or deceptive practices, which are inserted in 1991
- Intentional delay in supply of goods causing discomfort to consumer is unfair (Om Prakash v Asst Engineer, Haryana Agro Indu Corpn (1994)II CPR 9 SC
- Loss or injury to consumer is no more essential to make provider liable. (excluded in 1991)



# Some misleading ads

- Ravi Foundation's claim that it's diet for pregnant woman leads to baby of choice
- New Height: tall claim about increasing height
- Universal Luggage's unfounded growth projections, unrealistic, over optimistic
- Kareer College: pass directly under the coaching and guidance of most reputed professors... failed to furnish their names.

# Unfair claims



- Acupressure Therapy Health Center's claim that use eight minutes twice the acupressure sandals and walk away one's ill-health
- Balmer Lawrie & Co: invited tenders for sale of seven cars within 15 days, but closed two days earlier saying 'holidays'.
- Loose weight within specific period, without proper test.



# Paracetamol

- Burroughs Welcome (India) Ltd claimed that its “Ridake Paracetamol” as safest way to clear headaches without side effects, supported by article in British Medical Journal, which approved it. But its view that it adversely affects liver was suppressed. Held unfair.
- Exaggerated claims of Ayurvedic drugs.

# False representations



- Old as ‘new’. ‘New’ means not old, not second hand, not used. But the old models though unused passed off like latest models
- Bargain Bonanza in Fashion Footwear
- Falsity about sponsorship like electric machine approved by State Electricity Board, fire extinguisher sponsored by Fire Commissioner etc.

# 50% rebate

- Goods worth of Rs 100 now for Rs 50 is prohibited. Is it his earlier price or current price, fifty percent of which price is offered? It is ambiguous.





# Lotteries and Contest

- Unfair, prejudicial to public interest
- Tends to induce to buy on consideration other than quality and price, prizes help miniscule number of consumers benefited and others suffer (Avon Cycles case)
- Encourages gambling instinct
- Free gift: terms must be clear etc. may not be regarded as unfair, if stocks of gift are available in sufficient quantity. Fair disclosure is must.
- Withholding final results is unfair



## Medium not liable

- Explanation under 2(1)(r) clause (1), statement would be deemed to be statement made public by, and only by, the person who caused the statement to be so expressed, made or contained.
- Thus owners, or managers of medium such as newspaper, radio TV or owner of house where hoarding is fixed, not liable.

# Alcohol Advertisements

**unleash**  
a whole new  
**Wicked™**

Pete's Wicked  
is celebrated as  
America's Original  
Brown Ale. Its  
inviting ruby-brown  
color, distinctive  
malts and aromatic  
Brewer's Gold hops  
will stir up a  
devilish urge to  
let loose.  
Seize the moment...

get  
wicked.™

**PETE'S**  
THE ORIGINAL AMERICAN BROWN ALE  
**Wicked Ale**

**RED RUBY**

**Helles**

**peteswicked.com**

Ask for Pete's Wicked New Beers at a store near you.

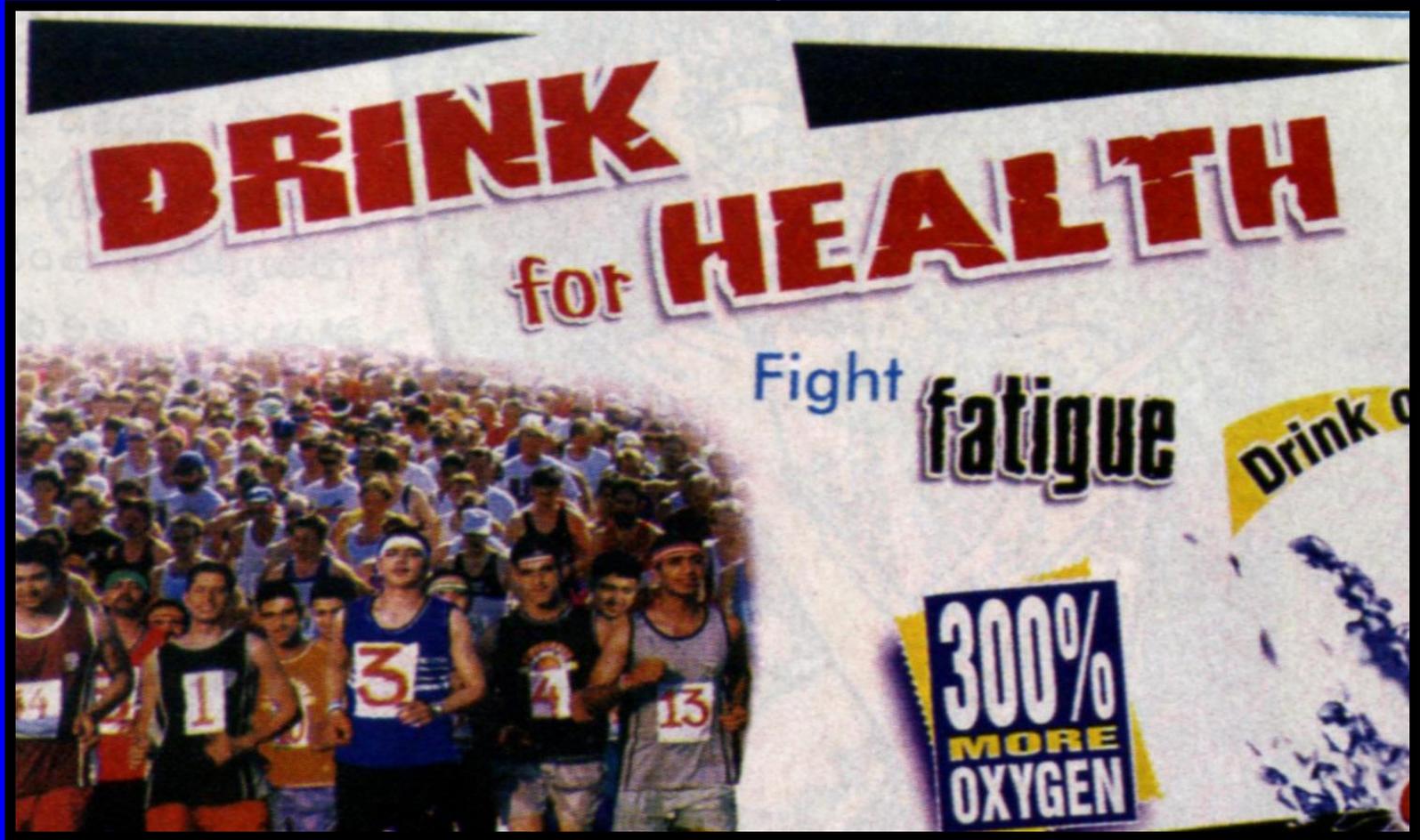
© 2001 Pete's Brewing Company, San Antonio, TX 78232

# Criminal Sanctions

- Against cigarette and wines advertisements
- But they indulge in surrogate advertisements, they sell tea shirts with popular cigarette brand names, wines companies sell bottled water.



# Unscientific



# Pepsi Campaign



**“... all these (soft drinks) are well within the safety limits...”**  
Smt. Sushma Swaraj, Hon'ble Minister of Health & Family Welfare (Lok Sabha, 21 Aug. 2003)

Refresh your faith.  
Now, refresh your thirst.



ED FLAVOURS. CONTAINS NO FRUIT.

LEHAR PEPSI 300

# Publicity Through Apology

Pepsi  
withdraws the advertisement  
dated 22nd August, 2003

quoting

Hon'ble Minister for  
Health & Family Welfare  
Mrs. Sushma Swaraj.

**We sincerely apologise  
for the same.**

 **PEPSI FOODS PRIVATE LIMITED**

3B, DLF CORPORATE PARK, 'S' BLOCK, QUTAB ENCLAVE, PHASE - III, GURGAON - 122 002 ( HARYANA ) INDIA.  
Tel. : 91 - 124 - 2355880 / 863. FAX 91-124-2356270. **REGD. OFFICE:** VILLAGE CHANNO, PATIALA SANGRUR ROAD,  
P.O. BHAVANIGARH, DISTRICT SANGRUR - 148026 (PUNJAB) INDIA. **CORP. OFFICE:** 13TH FLOOR, MOHAN DEV BUILDING,  
13TH TOLSTOY MARG, NEW DELHI - 110 001. TEL.: 23322823. FAX: 23323021.

# Thums Up controversy



# Liability of brand ambassadors

- Popular brand ambassadors endorsing the safety of products, such as Chiranjeevi.
- Former director of Institute of Preventive Medicine also endorsed Thums up.
- It received a political opposition and criticism from Jana Vignana Vedika.
- If something goes wrong they should be liable.



# Adulteration Act

- Prevention of Food Adulteration Act, 1954, A signboard or advertisement indicating a commodity of a particular nature, substance or quality, the seller would be guilty even though no standard of purity is prescribed, if it is adulterated.





# Prize Chits Act

- Prize Chits and Money Circulation Schemes (Banning) Act, 1978, S 5 penalises advertisement of any prize chit or money circulation scheme in contravention with provisions of this Act.
- Drugs and Cosmetics Act, 1940 prohibits use of report made by Central Drugs Lab or Govt analyst for ads, fine of Rs 500



# Consumer Protection Act 1986

- It protects consumers from unfair trade practices. Deficiency in advertisement can be a cause of action under this Act. Complainant wanted publication of ad for sale of property on Sunday. It came on Tuesday. His allegation that property sold under value because of Ad, was rejected by Forum, *A MohanReddy v Venkataramanareddy*, 1986-96 Consumer 1961 (NS) (Udayam Newspaper case)



# Representation of People Act 1951

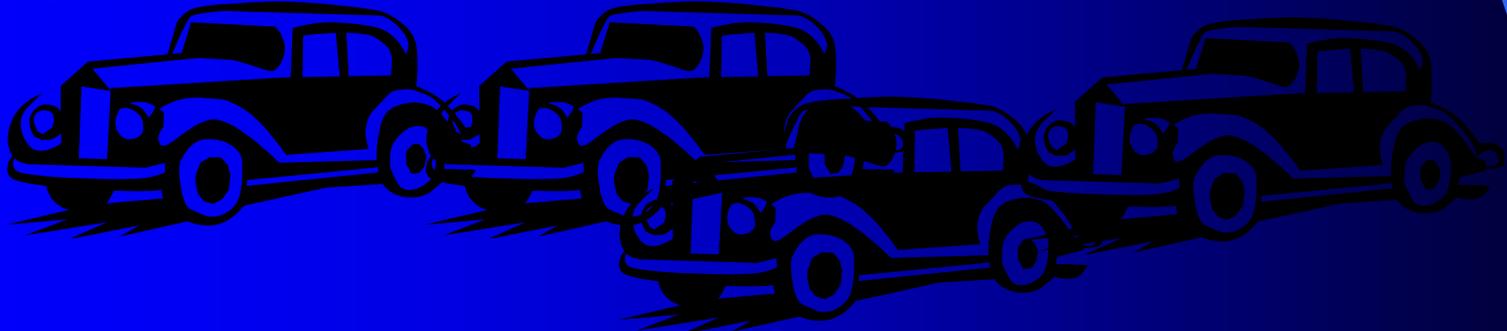
- Campaign during a prescribed duration before polling is prohibited by Act. It also prevents the display or propagation of any election matter, s 126:
- It imposed a condition that name and address of publisher and printers to be printed on the face of pamphlet, s 127A.
- Ads in newspaper are not banned.





# Motor Vehicle Act

- Any ad similar in appearance to a traffic sign as to be misleading or likely to distract the attention or concentration of the driver can be removed by a police officer(SP) if empowered by notification in official gazette by State Government.





# National Housing Bank Act 1987

- S 35 prohibits soliciting of deposits by unauthorized persons
- Prenatal Diagnostic Techniques (Regulation and Prevention of Misuse Act, section 22 prohibits ads relating to such tests, punishable with 3 yrs imp and fine up to Rs 10,000.
- DP Act prohibits dowry soliciting ads.





# Companies Act

- S 58A mandates that companies cannot invite deposits from public unless ad contains a statement of financial position
- SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating Securities Market) Regulations, 1995 prohibits misleading ads to induce sale or purchase of securities, prohibits misleading statements/information

# Advocates Act

- S 35 prohibits ads soliciting work by advocates. Similarly Medical Council of India Act prohibits such ads.
- With globalization of services GATS, norms of advertising is changing.



# Cable TV Act



- No person shall transmit or retransmit through a cable service any ad unless such ad is in conformity with the prescribed advertisement code, s 6
- It will not apply to foreign satellite channels which can be received without the use of any specialized gadgets or decoder.
- S 67 of ITAct, 200 prohibits obscene publication on internet.

# Defamation



- Ordinary liability for Defamation if the material affects of reputation of others, will be there for commercial speech also.
- Criminal liability for defamatory advertisement is there under Section 499 and 500 of IPC
- Claim for damages can be made in civil court for defamatory advertisement.



# Contempt of Court

- The contents of an advertisement should not lead to contempt of court.
- Courts have power to either take action suo motu or on complaint for advertisements if they result in contempt of court.
- Contempt of Court Act, 1973 is applicable to commercial speech also.



# Privacy

- The advertisement cannot contain any invasion of privacy of any individual
- Advertisements endorsing the products will amount to consent for use of name, signature or photographs of that person based on contract
- Modeling is also governed by ordinary principles of contract law.

# Life made miserable for Ansari

## Gujarat riot victim to be rehabilitated in Bengal

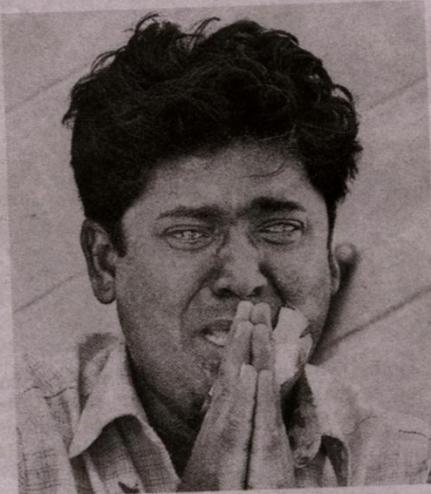
**KOLKATA, AUG. 6.** Qutubuddin Ansari, whose grief stricken face published in newspapers across the country came to symbolise the agony of the victims of Gujarat riots, will be rehabilitated in West Bengal this month.

A secular group in West Bengal had made the offer to the middle-aged tailor some time back and Ansari had now accepted it, the State Minorities Development Minister, Md. Salim, told PTI here today. "We really appreciate this humane move," he added.

Ansari and his family had been facing social harassment and were virtually ostracised by their peers in Ahmedabad for "portraying Gujarat in a bad light", Mr. Salim said.

"A single photograph that depicted the miseries of those at the receiving end of the riots made him the favourite punching bag of his neighbours, who made snide remarks and taunted him, forcing him to leave Ahmedabad," Mr. Salim said.

Ansari fled to Mumbai along with his family and had been staying there for a while when the West Bengal group made the offer. "He has agreed to it. However, since there are a lot of security concerns, we did not want to publicise the matter till

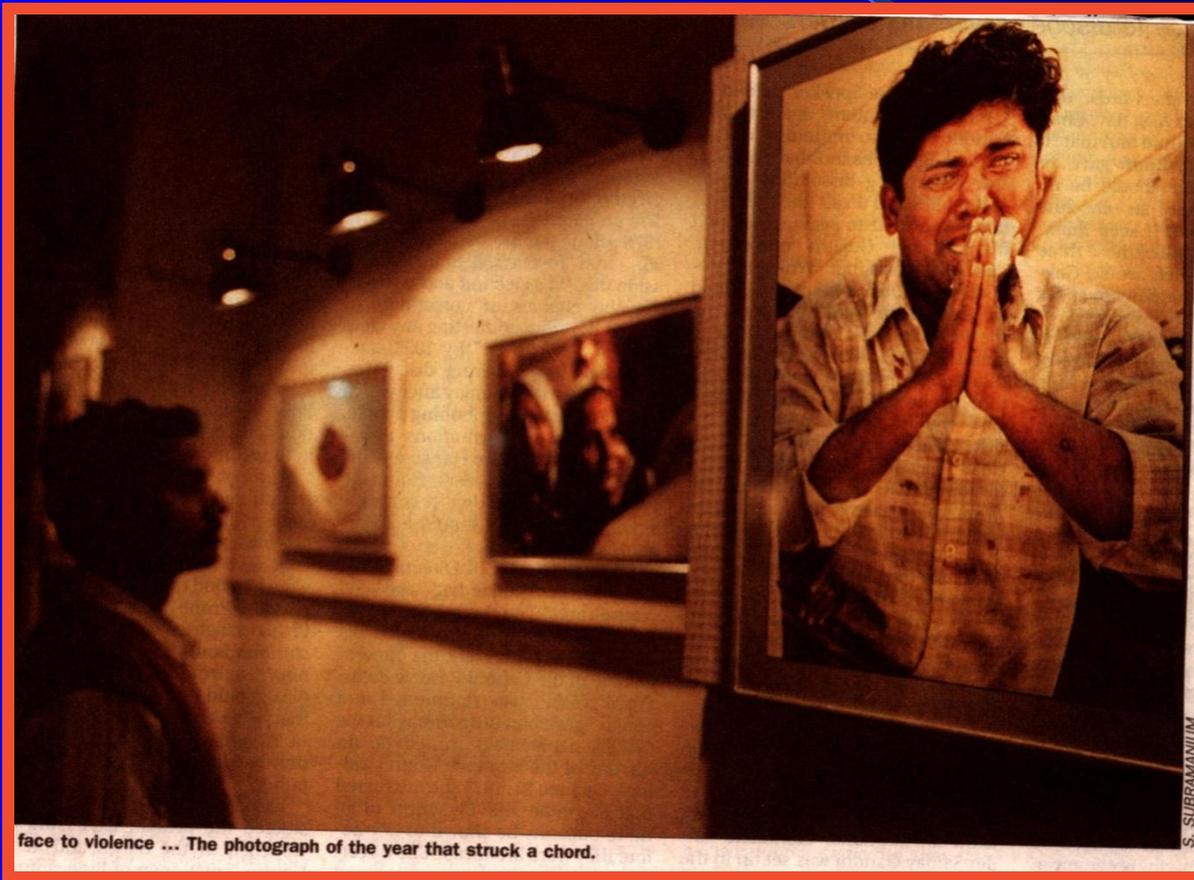


**Qutubuddin Ansari, who pleaded with police to save him from the rioters in Ahmedabad on March 1, 2002**

— Reuters (file photo)

Ansari is comfortably settled here," he added. — PTI

# Subject matter of exhibition



face to violence ... The photograph of the year that struck a chord.

S. SUBRAMANIAM

# Request unheeded

## Leave me alone, says Ansari

By Kalpana Sharma

MUMBAI, AUG. 7. The photograph of a terrified and tearful man, pleading with people to save him from a mob, became the defining image of the Gujarat carnage of last year. But today, the man behind the face, the 29-year-old Qutubuddin Ansari, pleads with the media to "let me live as an ordinary man".

Mr. Ansari's experiences since the end of the violence in Gujarat last year were published in the April 2003 issue of *Communalism Combat*. This prompted responses of help from several individuals and from the West Bengal Government, which has offered him a home, work and schooling for his children. The editors of the journal conveyed this offer to Mr. Ansari. After consultations with his larger family, Mr. Ansari said he had decided to accept the offer for the sake of the future of his children — a seven-year-old daughter and a seven-month-old son.

Mr. Ansari's photograph, which was flashed across newspapers and television channels in India and around the world last March, has come back to haunt him even after the violence died down in Gujarat. He said that a couple of months after the violence, he moved to Malegaon in Maharashtra where his elder sister lives. Initially, he was welcomed by the community and found work as a tailor in a company. But within a fortnight, his photograph



Qutubuddin Ansari talking to the press in Mumbai on Thursday. — AFP

appeared in a Marathi paper. His worried employer requested Mr. Ansari to leave the job as he was afraid of unnecessary media attention.

Back in Ahmedabad, Mr. Ansari said that he had a difficult time conducting his daily life. People recognised him wherever he went. His

daughter heard taunts from people who said they had seen her father crying and begging. Even if he went to the cinema, a slide with his face appeared as part of an advertisement and people turned around and pointed to him.

"I don't know whether

people are looking at me with sympathy or with something else in their minds," he said. Recalling the days in early March, when his locality was set on fire, he said, "Such a thing should never happen in India again. Gujarat was like a 'guldasta' (bouquet) but within two days they turned it black into ashes. I want to forget this, that's why I am leaving Gujarat."

The uninvited attention, he said, has also affected his earnings. Earlier, he would go into the market and find work or sell his tailored clothes. Now he is afraid to go and sells only within his own 'mohalla'. "Ahmedabad is normal today," he said. "But not for me. You tell me when it will be normal for me, and I will go back."

Although Mr. Ansari had accepted the West Bengal Government's offer to rehabilitate him, he said in the long run he would like to be in Gujarat.

"It is my 'desh', I was born there, and God willing, I will be able to go back there to celebrate Id with my family and friends later this year," he said.

Asked whether there was a danger that he would become a pawn in a political game, he acknowledged that sometimes he suspected that this was happening.

"But I will not allow myself to be used," he said. "I want to stay away from politics. I am going to Kolkata on condition that I can live as an ordinary man."

# Press Council of India

- PCI has authority to censure newspapers for unreasonable and obscene ads and writings
- Two photos: Roman Catholic Priest kissing a nun, 2) two children embrace wherein the white child is depicted as angel and black as devil. Ad for Benetton garment maker in Illustrated Weekly of India, 1991. Censured for insulting, defamatory and racist ad.



# Ahaar: Not in good taste

- Lord Krishna folding a Dosa in his hands like a flute and saying “Come Radhika come for the largest Dosas in town”
- Lord Shiva with hot cup of beverage saying: “Bom...Kulcha Garam..”, Lord Vishnu with idly in one hand, vada in another, pudding in third, and hot cup of beverage on fourth and saying: Vada, Kachori, Uttappam...my favorite prasadam.
- Telegraph, Sanmarg, English and Hindi dailies published series of ads in Dec 1988. Regretted.

# US CAN-SPAM Act of 2003

- The CAN-SPAM Act of 2003 (Controlling the Assault of Non-Solicited Pornography and Marketing Act) establishes requirements for those who send commercial email, spells out penalties for spammers and companies whose products are advertised in spam if they violate the law, and gives consumers the right to ask emailers to stop spamming them



# FTC Act US



- The Federal Trade Commission Act allows the FTC to act in the interest of all consumers to prevent deceptive and unfair acts or practices. In interpreting Section 5 of the Act, the Commission has determined that a representation, omission or practice is *deceptive* if it is likely to:
  - A) mislead consumers and
  - B) affect consumers' behavior or decisions about the product or service.



# Bait advertising

- Alluring but insincere offer to sell a product which the advertiser in truth does not intend to sell, an unfair trade practice (FTC)
- **Misrepresenting** nature of product: to publish ‘unabridged’ and complete and unabridged’ books and ‘full length’ novels but substantial portions from original texts have been deleted.



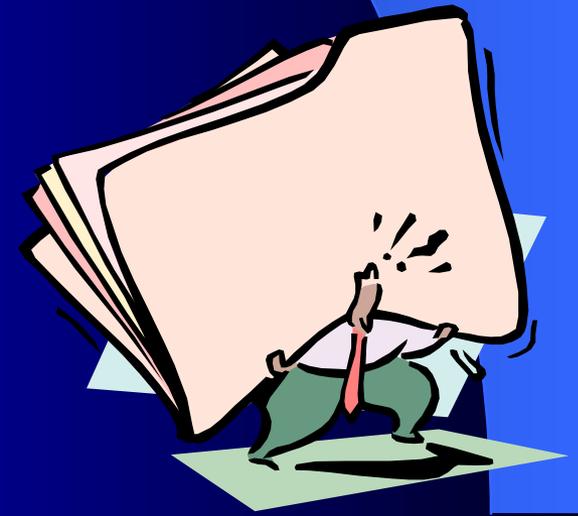
# Bargain Price

- Offers attractive ‘bargain price’ and invites people to spend their time at their premises with a mood to purchase, and then switch focus to a different and usually more expensive product. Sale resistance of such customer is weakened under high pressure salesmanship leading to imprudent purchase.
- Diversion of customer’s fund in detriment to his interests.



# FTC Act

- In addition, an act or practice is *unfair* if the injury it causes, or is likely to cause, is:
  - substantial
  - not outweighed by other benefits and
  - not reasonably avoidable.





## Agencies, web designers also liable

- Sellers are responsible for claims they make about their products and services. Third parties - such as advertising agencies or website designers and catalog marketers - also may be liable for making or disseminating deceptive representations if they participate in the preparation or distribution of the advertising, or know about the deceptive claims.

# Advertising directed to children

- Children may have greater difficulty evaluating advertising claims and understanding the nature of the information you provide.
- Sellers should take special care not to misrepresent a product or its performance when advertising to children.
- The Children's Advertising Review Unit (CARU) of the Council of Better Business Bureaus has published specific guidelines for children's advertising that may be helpful





# Illegal Ads, UK

- Lotteries, inciting persons to bet, inviting a person under eighteen through an ad to make a bet or wager or to borrow money
- Issuing ads without authority of election agent, Offence of printing pamphlet without names and address of printer or publisher in elections.
- Indecent or obscene ads in contravention of Sex Determination Act, 1975, or Race Relations Act, 1976

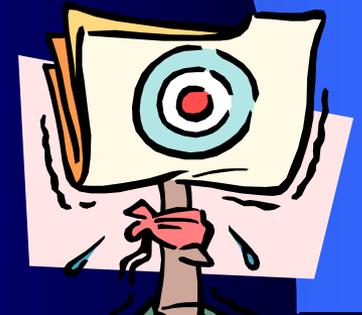


# Prohibited Ads in UK

- Indecent Advertisement Act, 1889, Unsolicited Goods and Services Act, 1971
- False description of food, drugs, medical treatment
- Medicinal products procuring miscarriage of women, or for treating diseases like TB, Cancer etc without doctor's instructions, etc.
- Restricted ads relating to adoption, maintenance of children

# 28 b dollars Punitive Damages

- Los Angeles county superior court granted Betty Bullock with lung cancer (64), \$ 28b
- She started smoking at 17, under the influence of Phillips Morris Ad campaign 'improperly influencing' her to smoke. Conspiracy of 1950s campaign of lies concealing dangers of smoking.
- 33,000 times more than compensatory damages.
- 750,000 \$ for economic damage and 100,000 \$ for pain and agony, etc.



# \$28 b. damages in tobacco case

**LOS ANGELES, OCT. 5.** A Los Angeles County Superior Court jury awarded a staggering \$28 billions in punitive damages on Friday to a smoker with lung cancer who had accused Philip Morris Inc. of luring her into a life-long tobacco habit with fraudulent advertising and marketing.

The award, to Betty Bullock (64), of Newport Beach, was by far the largest punitive damage amount ever granted an individual plaintiff in a smoking case.

The previous record, \$3 billions, was won in a California court last year by the same lawyer, Michael Piuze, who represented Ms Bullock. In September, the jury awarded Ms Bullock \$750,000 in economic damages and \$100,000 for pain and suffering.

At a news conference after the jury's decision, Mr. Piuze said the jury had seen company documents that he said proved that Philip Morris had engaged in a 50-year conspiracy to hide the harmful effects



**Betty Bullock with her grandchild. — AP**

of its products. "Having seen those documents," Mr. Piuze said, "the jury was properly horrified and did exactly the right thing." He said he expected that Ms Bullock, who is in the final stages of cancer, would "never see a penny" of the damage award. But he said he was gratified to have defeated Philip Morris, which, along with other cigarette makers, has suffered a string of court losses. "They're

starting to lose, and they're starting to lose big time," he said.

Philip Morris quickly announced that it would ask the court to reverse the jury's verdict and order a new trial. If the request for a new trial is denied, the company said, it will appeal the verdict to the California Court of Appeals.

"The jury should have focused on what the plaintiff knew about the health risks of smoking," said William S. Ohlemeyer, vice-president and associate general counsel at Philip Morris.

"And whether anything the company ever said or did improperly influenced her decision to smoke or not to quit. Instead, it appears that this decision speaks to more general policy issues regarding smoking that can't fairly be decided in lawsuits like this."

The tobacco industry has been hit with a number of huge damage awards in the past several years, but most have been reduced on appeal.

The \$3 billions won by Mr. Piuze's other client, Richard Boeken, a former heroin addict with cancer who died earlier this year, was reduced to \$100 millions.

Philip Morris complained in a statement that the jury's punitive damage award was 33,000 times greater than its compensatory damage award, far in excess of previous awards in similar cases.

The U.S. Supreme Court has suggested that punitive damages should be a much smaller multiple of compensatory damages, perhaps 4-to-1, but it has not issued strict guidelines.

Ms Bullock started smoking when she was 17, and continued despite repeated requests by members of her family that she quit.

Mr. Piuze argued at trial that Philip Morris had concealed the dangers of cigarette smoking with a campaign of lies that began in the 1950s. — *New York Times*

