

# New Law for Advts

Food Standards & Security Act

# Food Safety & Standards Act

- Food Safety and Standards Act of 2006 came into force from Aug 5, 2011 making it at par with the international standards.
- It will ensure improved quality of food for the consumers and **censure misleading claims and advertisement by those in food business.**

# FSSA “Misbranded food”

- S 2 (zf) " misbranded food" means an article of food-(A) if it is purported, or is represented to be, or is being-(i) offered or promoted for sale with false, misleading or deceptive claims either; (a) upon the label of the package, or
- (b) through advertisement, or

# Penalty for misbranded food

- [52.](#) Penalty for misbranded food.-[\(1\)](#) Any person who whether by himself or by any other person on his behalf manufactures for sale or stores or sells or distributes or imports any article of food for human consumption which is misbranded, shall be liable to a penalty which may extend to three lakh rupees.

# Misbranded food

- [52 \(2\)](#) The Adjudicating Officer may issue a direction to the person found guilty of an offence under this section, for taking corrective action to rectify the mistake or such article of food shall be destroyed.

# S 24, FSSA

- 24. Restrictions of advertisement and prohibition as to unfair trade practices.-[\(1\)](#) No advertisement shall be made of any food which is misleading or deceiving or contravenes the provisions of this Act, the rules and regulations made thereunder.

## 24. No unfair trade practice

- [\(2\)](#) No person shall engage himself in any unfair trade practice for purpose of promoting the sale, supply, use and consumption of articles of food or adopt any unfair or deceptive practice including the practice of making any statement, whether orally or in writing or by visible representation which-

## 24. No false representation

- [\(a\)](#) falsely represents that the foods are of a particular standard, quality, quantity or grade-composition;
- [\(b\)](#) makes a false or misleading representation concerning the need for, or the usefulness;

# S 24 Baseless guarantee

- [\(c\)](#) gives to the public any guarantee of the efficacy that is not based on an adequate or scientific justification thereof: Provided that where a defence is raised to the effect that such guarantee is based on adequate or scientific justification, the burden of proof of such defence shall lie on the person raising such defence.

# S 24 Offence under FSSA

- Food Safety Officer shall be liable to a penalty which may extend up to one lakh rupee if he / she is found to be guilty of an offence under section 39 of the Act. Provided that in case the complaint made against the Food Safety Officer is false the complainant shall be punished with fine which shall not be less than fifty thousand rupees and may extend to one lakh rupees.

# Penalty for misleading ad

- 53. Penalty for misleading advertisement.-
  - (1) Any person who publishes, or is a party to the publication of an advertisement, which-
    - (a) falsely describes any food; or
    - (b) is likely to mislead as to the nature or substance or quality of any food or gives false guarantee, shall be liable to a penalty which may extend to ten lakh rupees.

# Redefine misleading

- At present, misleading advertisements are treated as unfair business practices. It requires a sharper definition in Consumer Protection Act.
- M.R.Ramesh VS M/S Prakash Moped House and Others,( RPNo 831 of 2001) the apex consumer court warned against advertisements that use fine print to hide crucial information pertaining to products and services, thereby misleading the consumer

# Free Gift

- If “free gift” is promised, it should really be so. If the manufacturer is recovering either fully or even partly, the cost of free gift, it becomes a false or a misleading claim, coming under the definition of ‘unfair trade practice’.

# S 53

- [53 \(2\)](#) In any proceeding the fact that a label or advertisement relating to any article of food in respect of which the contravention is alleged to have been committed contained an accurate statement of the composition of the food shall not preclude the court from finding that the contravention was committed.

## S. 29 Drugs and Cosmetics Act, 1940

- Penalty for use of Government Analyst's Report for advertising: Whoever uses any report of a test or analysis made by the Central Drugs Laboratory or by a Government Analyst, or any extract from such report, for the purpose of advertising any drug shall be punishable with fine which may extend to five hundred rupees.

# S 9. Misbranded Drugs

- 9. Misbranded drugs. ---For the purposes of this Chapter a drug shall be deemed to be
- misbranded---
- (a) if it is so coloured, coated, powdered or polished that damage is concealed or if
- it is made to appear of better or greater therapeutic value than it really is; or

# Misleading

- (b) if it is not labelled in the prescribed manner; or
- (c) if its label or container or anything accompanying the drug bears any statement, design or device which makes any false claim for the drug or which is false or misleading in any particular. (S 17)

## 9C. Misbranded cosmetics

- For the purposes of this Chapter, a cosmetic shall be deemed to be misbranded, --
- (a) if it contains a colour which is not prescribed; or (b) if it is not labelled in the prescribed manner; or (c) the label or any container or anything accompanying the cosmetic bears any statement which is false or misleading in any particular. S 17C

# Problem and Law

- The problem of misleading ads continues to be serious in the country despite several legislations like Food Safety and Standards Act, Consumer Protection Act and the Drugs and Cosmetic Act.
- In India, advertisements for cigarettes, liquor, pan masala, products that are harmful to the public continue to find a place on television channels despite the ban imposed by the government, minister said.

# New Law to Regulate Ads

- The Consumer Affairs Ministry, which is framing a new law to curb of misleading advertisements, has started country-wide consultation with all stakeholders.
- The new law would allow consumers to seek legal action against false claims made by companies in their advertisement.

# NCPA to penalise

- “The government is setting up National Consumer Protection Agency (NCPA) to monitor and penalise companies that make misleading claims in their advertisements. The NCPA, under the consumer affairs ministry, would be empowered to take severe action, including recall of the product and slapping cases against the firms.

# Investigating Agency

- Flooded with growing consumer complaints over misleading advertisements, especially relating to health and nutritional benefits and the get-rich schemes, the government is planning an investigating agency to curb the practice.
- Consumer Protection Act allows the Govt. to order probe into specific complaints and take to courts. Probe agency help as the consumer courts cannot collect evidence. Govt can be complainant.

# Nutraceutical Market

- Misleading advertisements related to nutrition in food supplements, cosmetics and herbal products promising immediate health benefits.
- Indian nutraceutical — products that combine the benefits of nutrition with pharmaceuticals — market is worth \$1 billion. Globally, the market for nutraceuticals is pegged at around \$124 billion.

# Violate rights

- Misleading ads will violate consumer's right to information about the product or services, influence his choice leading to financial loss and mental agony.
- Wrong claims about health cures and drugs will be more dangerous.