

WHAT IS ADVERTISEMENT

- Commercial speech
- Protection under Article 19(1)(a)
- Right to Information
- Dissemination of information about the sellers and their products
- A paid-for communication
- Addressed to the Public or a section of it
- To influence the opinions or behaviour of those to whom it is addressed.

WHY ADVERTISING STANDARDS?

For tracking and stopping the malpractices carriedout by advertisers in order to lure the consumers

Legal provisions

- I Obscene publication or advertisement of a lottery under the Indian Penal Code.
- 2. Harmful publication under the Young Persons (Harmful Publications) Act, 1956.
- 3. The indecent representation of women under the Indecent Representation of Women (Prohibition) Act, 1986.
- 4. Use of report of test or analysis for advertising any drug or cosmetic under the Drugs and Cosmetics Act, 1940.
- 5. Inviting transplantation of organs under the Transplantation of Human Organs Act, 1994.

Advertisement of magical remedies of diseases and disorders under Drugs and Magical Remedies (Objectionable Advertisements) Act, 1954.

Advertisements relating to prenatal determination of sex under the Prenatal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994.

Advertisements of cigarettes and other tobacco products under the Cigarettes and other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003.

Any political advertisement forty hours prior to polling time under the Representation of People Act, 1951.

ADVERTISING STANDARDS COUNCIL OF INDIA

Non statutory Tribunal

Not-for-profit company: Section 25

Advertising industry: advertisers, advertising agencies, media owners and allied professionals like consumer researchers, processors, film makers.

Purpose: Regulating content of advertising Protecting consumer interest

Ensuring fairness in competition

DUTIES•

- . Entertains Complaints received from Consumers
- Lacked the force of legal recognition.
- 2006 Notification: TV Commercials should abide by the ASCI Code was made compulsory for TV ads.
- "No advertisement which violates the Code for Self- Regulation in Advertising, as adopted by the Advertising Standards Council of India (ASCI), Mumbai for public exhibition in India, from time to time, shall be carried in the cable service

contd

Section 6 the Cable Television Networks (Regulation) Act, 1955: Prohibits the transmission or retransmission of any adsThrough a cable service unless they are in conformity with the ASCI Code. Rule 7:Prohibits any advertisement which derides any race, caste andtends to incite people to crime, cause disorder or are indecentOr vulgar

ASCI CODE - OBJECTIVES

- Control the content of advertisements, not to hamper the sale of products
- Make truthful and honest representations and claims which is essential to prohibit misleading advertisements;
- Not be offensive to public decency or morality;
- Not promote products which are hazardous or harmful to society or to individuals, particularly minors; and
- Observe fairness in competition keeping in mind consumer's interests.

APPLICABILITY/RESPONSIBILITY•

- Applies to advertisers, advertising agencies and media• All who commission create, place or publish any advertisement or assist in the creation or publication of any advertisement.• Complaints against the advertisements can be made by - any person consumers and the general public, and ad. Agencies - Government officials, consumer groups - Suo Moto Complaints
- COMPLAINTS• Registering a complaint is free of cost• Decides within a period of 4 to 6 weeks•
 Opportunity of presenting the case.•
 Withdraw/Modify

PRINCIPLES

- I To ensure the truthfulness and honesty of Ads. and to safeguard against misleading advertisements.
- II. To ensure that advertisements are not offensive to generally accepted standards of public decency.
- III. To safeguard against the indiscriminate use of Ads.
- IV. To ensure that advertisements observe fairness in competition

TRUTHFULNESS•

All descriptions, claims and comparisons should be capable of substantiation

- Produce substantiation as and when called upon to do so.
- Advertisements shall not, contain any reference to person, firm or institution, without permission.
- Should not distort facts and mislead the consumer
- Should not abuse the trust of consumers or exploit their lack of experience — Claims should not be exaggerated.
- Obvious untruths or exaggerations are permissible

contd

Should not: -Contain nothing indecent, vulgar or repulsive-Incite people to crime or to promote disorder and violence-Deride any race, caste, colour, creed or-Convey the modus operandi of any crime -Adversely affects friendly relations with a foreign State-Cause physical, mental or moral harm to minors-Encourage to enter strange places or to converse with strangers-Feature dangerous or hazardous acts which they imitate to do-Show minors using or playing with hazardous instruments-Feature minors for tobacco or alcohol-based products-Propagate banned products

Chapter-I

- A) To ensure the Truthfulness and Honesty of Representations and Claims made by Advertisements and to Safeguard against misleading Advertisements. . Advertisements must be truthful. All descriptions, claims and comparisons which relate to matters of objectively ascertainable fact should be capable of substantiation. Advertisers and advertising agencies are required to produce such substantiation as and when called upon to do so by The Advertising Standards Council of India.
- II. Where advertising claims are expressly stated to be based on or supported by independent research or assessment, the source and date of this should be indicated in the advertisement.

III. Advertisements shall not, without permission from the person, firm or institution under reference, contain any reference to such person, firm or institution which confers an unjustified advantage on the product advertised or tends to bring the person, firm or institution into ridicule or disrepute. If and when required to do so by the Advertising Standards Council of India, the advertiser and the advertising agency shall produce explicit permission from the person, firm or institution to which reference is made in the advertisement.

 IV.Advertisements shall neither distort facts nor mislead the consumer by means of implications or omissions. Advertisements shall not contain statements or visual presentation which directly or by implication or by omission or by ambiguity or by exaggeration are likely to mislead the consumer about the product advertised or the advertiser or about any other product or advertiser.

V. Advertisements shall not be so framed as to abuse the trust of consumers or exploit their lack of experience or knowledge. No advertisement shall be permitted to contain any claim so exaggerated as to lead to grave or widespread disappointment in the minds of consumers.

- Examples Products shall not be described as 'free' where there is any direct cost to the consumer other than the actual cost of any delivery, freight, or postage. Where such costs are payable by the consumer, a clear statement that this is the case shall be made in the advertisement.
- Claims which use expressions such as "Upto five years' guarantee" or "Prices from as low as Rs.Y" are not acceptable if there is a likelihood of the consumer being misled either as to the extent of the availability or as to the applicability of the benefits offered.

 Where a claim is made that if one product is purchased another product will be provided `free', the advertiser is required to show, as and when called upon by the ASCI, that the price paid by the consumer for the product which is offered for purchase with the advertised incentive is no more than the prevalent price of the product without the advertised incentive. Advertisements inviting the public to take part in lotteries or prize competitions permitted under law or which hold out the prospect of gifts shall state clearly all material conditions and advertisers shall make adequate provisions for the judging of such competitions, announcement of the results and the fair distribution of prizes or gifts according to the advertised terms and conditions within a reasonable period of time.

Obvious untruths or exaggerations intended to amuse or to catch the eye of the consumer are permissible provided that they are clearly to be seen as humorous or hyperbolic and not likely to be understood as making literal or misleading claims for the advertised product.

Chapter II

 B) To ensure that Advertisements are not offensive to generally accepted standards of Public Decency. Advertisements should contain nothing indecent, vulgar or repulsive which is likely, in the light of generally prevailing standards of decency and propriety, to cause grave or widespread offence.

Chapter III

• To safeguard against the indiscriminate use of Advertising in situations or of the Promotion of Products which are regarded as Hazardous or Harmful to society or to individuals, particularly minors, to a degree or of a type which is Unacceptable to Society at Large.

Ch III

- I. No advertisement shall be permitted which:
- a. Tends to incite people to crime or to promote disorder and violence or intoleranceb. Derides any race, caste, color, creed or nationality.
- c. Presents criminality as desirable or directly or indirectly encourages people particularly minors - to emulate it or conveys the modus operandi of any crime.
- d. Adversely affects friendly relations with a foreign State.

 Advertisements addressed to minors shall not contain anything, whether in illustration or otherwise, which might result in their physical, mental or moral harm or which exploits their vulnerability. For example, Advertisements: Should not encourage minors to enter strange places or to converse with strangers in an effort to collect coupons, wrappers, labels

 Should not feature hazardous acts which are likely to encourage minors to emulate such acts in a manner which could cause harm or injury. Should not show minors using explosive substance; or playing with or using sharp knives, guns or mechanical or electrical appliances, the careless use of which could lead to their suffering burns, shocks or other injury. Should not feature minors for tobacco or alcohol-based products. Should not feature personalities from the field of sports, music and cinema for products which, by law, either require a health warning in their advertising or cannot be purchased by minors.

Ch.III

Advertisements shall not, without justifiable reason, show or refer to dangerous practices or manifest a disregard for safety or encourage negligence.

Advertisements shall not propagate products, the use of which is banned under the law.

Advertisements should contain nothing which is in breach of the law nor omit anything which the law requires.

Chapter IV

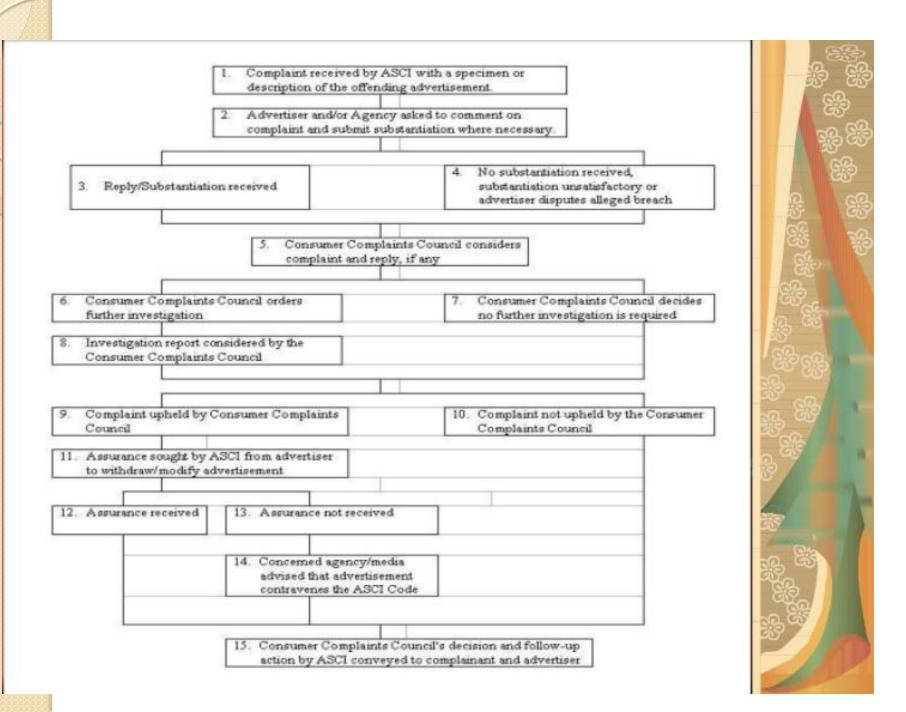
• (D) To ensure that Advertisements observe fairness in competition such that the Consumer's need to be informed on choice in the Market-Place and the Canons of generally accepted competitive behaviour in Business are both served.

- Advertisements containing comparisons with other manufacturers or suppliers or with other products including those where a competitor is named, are permissible in the interests of vigorous competition and public enlightenment, provided:
- It is clear what aspects of the advertiser's product are being compared with what aspects of the competitor's product .The advertisement does not unfairly denigrate, attack or discredit other products, advertisers or advertisements directly or by implication. The comparisons are factual, accurate and capable of substantiation .

Advertisements shall not be similar to any other advertiser' earlier run advertisements in general layout, copy, slogans, visual presentations, music or sound effects, so as to suggest plagiarism. 4. As regards matters covered by sections 2 and 3 above, complaints of plagiarism of advertisements released earlier abroad will lie outside the scope of this Code except in the under-mentioned circumstances: The complaint is lodged within 12 months of the first general circulation of the advertisements/campaign complained against - The complainant provides substantiation regarding the claim of prior invention/usage abroad 2. Advertisements shall not make unjustifiable use of the name or initials of any other firm, company or institution, nor take unfair advantage of the goodwill attached to the trade mark or symbol of another firm or its product or the goodwill acquired by its advertising campaign.

FAIRNESS

Advertisements containing comparisons are permitted if:-The aspects of comparisons are clear-Is not chosen in such a way as to confer an artificial advantage-Are factual, accurate and capable of substantiation-No likelihood of the consumer being misled-Does not unfairly denigrate, attack or discredit other products-Should not make unjustifiable use of the name or initials of any-Other firm and its goodwill attached to the trade mark/symbol-Shall not be similar to any other advertiser's earlier run ads



Advertising of Foods & Beverages

- Ads should not mislead consumers to believe that consumption of product advertised will result directly in personal changes in intelligence, physical ability or exceptional recognition. Such claims if made in advertisements should be supported and substantiated with evidence and with adequate scientific basis.
- Advertisements should not criticize or undermine the good dietary practice and healthy lifestyles.
- Advertisements should not encourage over or excessive consumption of any food or beverage.
- Advertisement should not undermine the role of parental care and guidance in ensuring proper food choices are made by Children.
- Claims in advertisements should not be inconsistent with information on the label or packaging of the food or beverage.

Advertising of Educational Institutions and Programs

- ASCI Guidelines for Advertising of Educational Institutions and Programs
- The Advertisement shall not state or lead the public to believe that an institution or course or program is recognized unless the advertiser is able to substantiate with evidence.
- Advertisement offering a Degree or Diploma or Certificate shall have the name of that Authority specified for that particular field.
- In case the advertised Institution or Program is not recognized by any mandatory Authority, but is affiliated to another recognized Institution, then that should be mentioned in proper font size.

- Advertisement shall not state or lead the public to believe that enrollment in the institution or preparation course will provide guaranteed job.
- Any claims of placement must be of latest completed academic year and substantiated with evidence.
- Advertisement stating competitive rank of the institution shall also provide reference of the publication which released the rankings.
- Visual of Infrastructure of the Institution shown in Advertisement shall be real and existing at the time of ad's release.
- Testimonial of toppers in an Advertisement shall be from students who have participated in program or exams only from the advertising institute.
- Advertisement stating number of passing out students placed for jobs shall also state total number of students passing out from the placed class.

Self – Regulation Guidelines for Ads of Automotive vehicles

- Advertisements should not
- I.Portray violation of the Traffic Rules
- 2.Show speed maneuverability in a manner which encourages unsafe or reckless driving, which could harm the driver, passengers and/or general public.
- Show Stunts or actions, which require professional driving skills, in normal traffic conditions which in any case should carry a readable cautionary message drawing viewer attention to the depiction of stunts.

for Disclaimers in an Advertisement

• A minimum prescribed standard size of lettering of "Supers" and its holding time should be long enough for the full message to be read by an average viewer on screen on a standard domestic TV set for TV advertisements is required.

Law regarding disparagement:

A trader can puff up his goods in Comparison cannot denigrate or disparage the competitor's goods-The two advertisements in the first suits as disparaging and beyond ther ealm of permissible Puffing - word 'cheap' & 'compromise' would harmthe reputation of Horlicks.-The advertisements in the second suit were held to be in the realm ofpuffing as they seem to be based on some scientific report-decisioncan be based on trial.-The advertisements in the third suit were held to be in the realm ofpuffing.-Advertisers should be more carefully when creating comparative adsfor TV

Others

- For six different advertisements of the following Jewellery brands, the claim, "India's Most Preferred Jeweller", was not substantiated with verifiable comparative data / market survey data of the advertiser's product and other competitor diamond jewellers or through a third party validation. The source and date of the claim was not mentioned and the claim is misleading by ambiguity and omission.
- I. Nirvana Diamond Jewellery
- 2.Asmi Diamond Jewellery
- 3. Nakshatra Diamonds
- 4. Gitanjali Jewels
- <u>5. Gili</u>
- 6. Sangini Diamond Jewellers

ARG Outlier Media Asianet News P. Ltd (Republic TV): In the advertisement's claim, the disclaimer put by the advertiser for the claim "India's No. I Channel" is based on one day data (Period: Week 21 - 2018) and not four consecutive weeks of data and also the data was for week days excluding weekend (Day: Week days) and not for entire week as per Broadcast Audience Research Council (BARC). Therefore, it violates BARC Principles. The subject matter of comparison is chosen in such a way so as to confer an artificial advantage upon the advertiser so as to suggest that a better bargain is offered than is truly the case. Hence, the claim "India's No. I Channel" disclaimers in the ad were too small which contravened ASCI's Guidelines on disclaimers

- Doms Industries Pvt Ltd: The advertisement's claim, "India's No. I Brand - 2017", and "India's No. I Stationery Brand", were inadequately substantiated and are misleading by exaggeration.
- Action Footwear (Action Plus): The advertisement's claim, "Awarded as leading power brand of India", was not substantiated with copy of the award certificate, details of the criteria for granting the award, references of the awards received such as the year, source and category. The claim is misleading by omission of disclaimer to qualify this claim.

PERSONAL CARE

• I. Lotus Herbals Pvt. Ltd (Lotus Professional PhytoRx Sun Protection Range): The advertisement's claim, "Nature's most effective shield against the sun", was a superlative claim which not substantiated with evidence of product efficacy and with technical tests/trial reports and is misleading by gross exaggeration. The product packaging claims in the advertisement - "SPF 70 PA+++ PhytoRx Ultra Protect Sunblock", "SPF 50 PA+++ PhytoRx Sunblock Mist", and "SPF 30 PA++ PhytoRx UV Screen Gel", were not substantiated with evidence of the claimed SPF/ PA values. The claims are misleading by exaggeration and likely to lead to grave or widespread disappointment in the minds of consumers.

FOOD & BEVERAGE:-

ambiguity and implication.

lack of knowledge.

• I. Organic India Pvt Ltd (Organic Honey and Organic Ghee): The advertisement's claim, "Organic Ghee", was not substantiated for its organic claim for marketing status and is misleading by ambiguity and implication. The claim, "Organic Honey Wild Forest - Boosts immunity and is a source of good bacteria", was not substantiated and is misleading by

• 2. Jhandewalas Food Limited (Polki Refined Groundnut Oil): The advertisement's claim, "Improves memory", "Lowers cholesterol", "Fights depression", was not substantiated with any data; as the advertiser did not respond to the request for substantiation in terms of technical data, scientific rationale or clinical evidence of product efficacy, to prove the product's ability to provide the health benefits claimed in the advertisement. The advertisement promoting a food product claiming benefits of therapeutic nature, was misleading and exploit's consumers'

- 3. Aishwarya Tea Industries (Aishwarya Tea Range): The advertisement's claim, "A product by Karnataka's Most Adorable No I Brand", was not substantiated with any verifiable comparative data of the advertiser's brand and other leading tea brands in Karnataka, to prove that it is in leadership position (No.I) brand than the rest or through a third party validation. The source for the claim was not indicated in the advertisement. The claim is misleading by exaggeration and implication.
- 4. <u>Premium Foods India (Premium Foods Range)</u>: The advertisement's claim, "No.1 brand of Kerala", was not substantiated with any verifiable comparative data of the advertiser's product and other brands of instant food products, to prove that it is in leadership position, (No.1 Brand) in Kerala, or through a third party validation. The claim is misleading by exaggeration and implication.
- 5. MBS Beverage Pvt Ltd (MBS Cola): The advertisement's claim, "Odisha's No. I Beverage Company", was not substantiated with any verifiable comparative data of the advertiser's firm and other beverage companies, to prove that it is in leadership position (No. I) in Odisha or through a third party validation. The claim is misleading by exaggeration and implication.

- 3. Aishwarya Tea Industries (Aishwarya Tea Range): The advertisement's claim, "A product by Karnataka's Most Adorable No I Brand", was not substantiated with any verifiable comparative data of the advertiser's brand and other leading tea brands in Karnataka, to prove that it is in leadership position (No.I) brand than the rest or through a third party validation. The source for the claim was not indicated in the advertisement. The claim is misleading by exaggeration and implication.
- 4. <u>Premium Foods India (Premium Foods Range)</u>: The advertisement's claim, "No.1 brand of Kerala", was not substantiated with any verifiable comparative data of the advertiser's product and other brands of instant food products, to prove that it is in leadership position, (No.1 Brand) in Kerala, or through a third party validation. The claim is misleading by exaggeration and implication.
- 5. MBS Beverage Pvt Ltd (MBS Cola): The advertisement's claim, "Odisha's No. I Beverage Company", was not substantiated with any verifiable comparative data of the advertiser's firm and other beverage companies, to prove that it is in leadership position (No. I) in Odisha or through a third party validation. The claim is misleading by exaggeration and implication.

EDUCATION:-

 The CCC found claims in the advertisements by 16 advertisers that were not substantiated and thus, in violation of ASCI Guidelines for Advertising for Educational Institutions.

The Evolving Minds – The Evolving Minds Preschool: The advertisement's claim, "The biggest, safest and most advanced Pre School in Marathwada", was not substantiated. The superlative claim is misleading by exaggeration and implication that other preschools in Marathwada are inferior.

Lovely Professional University: The advertisement's claim, "University with unbeatable placements", was not substantiated with verifiable comparative data of the advertiser's institute and other similar institutes, and is misleading by exaggeration. The claim, "Packages of over Rs one crore", was not substantiated with evidence to prove that students immediately after passing out from the Lovely Professional University were offered the claimed package. The claims are misleading by exaggeration and exploit the consumers' lack of knowledge and are likely to lead to grave or widespread disappointment in the minds of consumers.

Lovely Professional University: The advertisement's claim, "University with unbeatable placements", was not substantiated with verifiable comparative data of the advertiser's institute and other similar institutes, and is misleading by exaggeration. The claim, "Packages of over Rs one crore", was not substantiated with evidence to prove that students immediately after passing out from the Lovely Professional University were offered the claimed package. The claims are misleading by exaggeration and exploit the consumers' lack of knowledge and are likely to lead to grave or widespread disappointment in the minds of consumers.

 .Vidyamandir Classes: The advertisement's claim, "Delhi's best for IIT JEE Preparation since 1986", was not substantiated with any market survey data or with verifiable comparative data of the advertiser's institute and similar institutes in Delhi to prove that it is better than the rest, or through an independent third party validation. The claim is misleading by exaggeration and implication. Claim, "Best Selection Ratio in IIT JEE for Last 30 years", was not substantiated with verifiable comparative data or any independent audit or verification certificate, and is misleading by exaggeration.

• <u>8</u>

 New Gurukul Science Coaching: The advertisement's claim, "100% scholarship", was not substantiated with supporting evidence of 100% scholarships availed by any of their students, financial provision made by the institute to grant such scholarship and was misleading by ambiguity and omission of information regarding the amount of scholarship and the total number of scholarships being offered and the criteria used for the same. The claim is likely to lead to grave or widespread disappointment in the minds of consumers.

- Complaints against advertisements of eight educational institutes listed below are UPHELD mainly because of unsubstantiated claims AND/OR misleading claims that they provide 100% placement/ placement assistance AND/OR they claim to be the No.1 in their respective fields.
- Koneru Lakshmaiah Education Foundation, Samrat College, Sojatia Classes, Shree Dev Bhoomi Institute of Education Science & Technology, The Vision Education Group

 – Vision PU College, ITM Group of Institutions- ITM Institute of Hotel Management, Little Wonders International, Haryana College of Fire & Safety Management

V HEALTHCARE:

• Fortis Healthcare Ltd: The advertisement's claim, "The most trusted destination for Cancer treatment", was not substantiated with any market survey data or any verifiable comparative data of the advertiser's hospital and other similar hospitals for cancer treatment, or through a third party validation. The claim is misleading by exaggeration and implication. The claim, "Successful cancer treatment with 10000+ successful cases", was not substantiated with supporting evidence of the cancer patients treated by the advertiser's hospital, or through a third party validation. The claim is misleading by exaggeration and exploits consumers' lack of knowledge.

• v 3.VLCC Healthcare Pvt Ltd (VLCC Sun Care Range): The advertisement's claims, "SPF 30" and "SPF 40", were not substantiated with technical report showing that the product is having the SPF values of 30 and 40 as claimed. The claim, "Complete Sun Protection and not just tanning", was not substantiated with product efficacy data. The claim is misleading by exaggeration and is likely to lead to grave or widespread disappointment in the minds of consumers.

4.VLCC Health Care Pvt Ltd (VLCC Fitness): The advertisements' claim, "Drop one size in one session only", was not substantiated with supporting evidence and with treatment efficacy data and is misleading by exaggeration. The visual in the advertisement implies a significant weight loss around waist, which is also grossly misleading and is likely to lead to grave or widespread disappointment in the minds of consumers.

 Samson Slim Care: The advertisement's claims, "Ultimate treatment for obesity", "Reduce 10 kilograms within 30 days", "No need for exercise, medicine, supplements", and "No side effects", were not substantiated with supporting clinical evidence and with treatment efficacy data. The claims are misleading by exaggeration and are likely to lead to grave or widespread disappointment in the minds of consumers.

- Apple Hospital & Test Tube Baby Centre: The advertisement's claim, "Institution giving best results for impotency and childlessness", was not substantiated with any verifiable comparative data of the advertiser's hospital and other similar hospitals, to prove that their treatment gives better results than all the rest. The claim is misleading by exaggeration and implication.
- Perfect Point: The advertisement's claims, "No side effects" and "Lose five centimetres & half kilograms in one hour, were neither substantiated with supporting evidence nor with treatment efficacy data and are misleading. The visual in the advertisement implies a significant weight loss which is grossly misleading and is likely to lead to grave or widespread disappointment in the minds of consumers.

SUO MOTO Surveillance by ASCI

• The advertisements given below were picked up through ASCI's Suo Moto surveillance of Print and TV media via the National Advertisement Monitoring Services (NAMS) project. Out of 102 advertisements that were picked up, 49 advertisements were considered to be misleading. Of the total of 49 advertisements, 16 advertisements belonged to the Healthcare category, 16 belonged to the Education category, six belonged to the Food & Beverages category, one to Personal care category, and ten belonged to the 'Others' category.

violated

- Celebrities in Advertising:
- I. Rasna Private Limited (Rasna): The advertisements claim, "Natural Fruit Energy", was inadequately substantiated and is misleading by ambiguity and implication about the fruit content in the product. The visual of celebrity Kareena Kapoor when seen in conjunction with the claim is likely to mislead consumers regarding the nature of product benefit and contravened the Guidelines for Celebrities in Advertising