

Of Surrogate Ads, Celebrity Disclosures & Bait Advertisements



A RED LAB REPORT ON

THE NEW CENTRAL CONSUMER PROTECTION
AUTHORITY NOTIFICATION AND ITS IMPLICATIONS



Much Awaited, Much Needed



Dr. Sandeep Goyal
Managing Director,
Rediffusion

For a long, long time now, I have said that advertising in this country requires clearer (if not stricter) guidelines. Too many brands, and their ad agencies in concert, are doing stuff which is inherently unacceptable.

The Advertising Standards Council of India does exist as an industry watchdog but, to me, it has always been a diffident and toothless protector of consumer interests.

Which is why the recent intervention by the Government of India's Consumer Affairs department through notification of new guidelines as part of the Consumer Protection Act, 2019, is really good news.

The Red Lab team has spent some time over this weekend poring over the notification. We bring you here what the new guidelines have to say. The new guidelines are concise, and fairly lucid on what can be done, and what can't. Let us see how the industry reacts.



THE GUIDELINES:

Directionally Correct, Instructionally Precise

These guidelines are to be called the **Guidelines for Prevention of Misleading Advertisements and Endorsements for Misleading Advertisements, 2022**.

Application of the Guidelines

These guidelines apply to -

- a) all advertisements regardless of form, format or medium;
- b) a manufacturer, service provider or trader whose goods, product or service is the subject of an advertisement, or to an advertising agency or endorser whose service is availed for the advertisement of such goods, product or service



Conditions for non-misleading and valid advertisement

- 1) An advertisement shall be considered to be valid and not misleading, if
 - a) it contains **truthful and honest representation**;
 - b) it does not mislead consumers by exaggerating the accuracy, scientific validity or practical usefulness or capability or performance or service of the goods or product;
 - c) it does not present rights conferred on consumers by any law as a distinctive feature of advertiser's offer;
 - d) it does not suggest that the claims made in such advertisement are universally accepted if there is a significant division of informed or scientific opinion pertaining to such claims;
 - e) it does not mislead about the nature or extent of the risk to consumers' personal security, or that of their family if they fail to purchase the advertised goods, product or service;
 - f) it ensures that the claims that have not been independently substantiated but are based merely on the content of a publication do not mislead consumers;
 - g) it complies with the provisions contained in any other sector specific law and the rules and regulations made thereunder.



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It is interesting that the Notification has actually chosen to define what is a non-misleading and valid advertisement. Basically, any and every ad needs to contain truthful and honest representation. In effect, an advertisement that does not meet the characteristics/standards set out in the Guidelines, as a matter of exclusionary principle, such an advertisement may be considered to be misleading. That is a very heartening upfront definition, to say the least.

Bait Advertising: A new addition to the lexicon

In the **Definitions of the Notification, 2 (h)** defines bait advertisement. It means an advertisement in which goods, product or service is offered for sale at a low price to attract consumers.

The Notification goes on to amplify on conditions for bait advertisements: A bait advertisement shall fulfil the following conditions, namely:

- a) such advertisement shall not seek to entice consumers to purchase goods, products or services without a reasonable prospect of selling such advertised goods, products or services at the price offered;
- b) the advertiser shall ensure that there is adequate supply of goods, products or services to meet foreseeable demand generated by such advertisement;



- 
- c) such advertisement shall state the reasonable grounds which the advertiser has for believing that he might not be able to supply the advertised goods, products or services within a reasonable period and in reasonable quantities, and in particular,
 - i) if the estimated demand exceeds the supply, such advertisement shall make clear that the stock of the goods or services is limited;
 - ii) if the purpose of the advertisement is to assess potential demand, it shall be clearly stated such advertisement; and
 - iii) the advertisement shall not mislead consumers by omitting restrictions, including geographic restrictions and age limit on the availability of the goods, products or services;
 - d) such advertisement does not mislead consumers about the market conditions with respect to the goods, products or services or the lack of their availability in order to induce consumers to purchase such goods, products or services at conditions less favourable than normal market conditions.

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The Guidelines do not in any way prohibit issuance of bait ads. However, the Guidelines do set out conditions which must be complied with, in respect of bait ads to run. While issuing bait advertisements, it should be ensured that the good/product/service would be made available to the consumer at the price offered in the advertisement and should not be mere enticement. Further, it should also be ensured that there is adequate supply for the foreseeable demand that may be generated because of the advertising. In case there is likely to be limited availability of the good/product/service advertised, it needs to be clearly flagged in the offer. Similarly, any conditions associated with the supply/availability of such good/product/service, for instance, geographical restrictions or age restrictions need to be clearly stated without ambiguity. There should, interestingly, also be no inducement to purchase the good/product/service in market conditions less favourable than normal market conditions.

Tightening noose around “surrogate advertising”

2 (h) in the Definitions says “surrogate advertisement” means an advertisement for goods, product or service, whose advertising is otherwise prohibited or restricted by law, by circumventing such prohibition or restriction and portraying it to be an advertisement for other goods, product or service, the advertising of which is not prohibited or restricted by law.

The notification is very candid about prohibition of surrogate advertising.

- 1) No surrogate advertisement or indirect advertisement shall be made for goods or services whose advertising is otherwise prohibited or restricted by law, by circumventing such prohibition or restriction and portraying it to be an advertisement for other goods or services, the advertising of which is not prohibited or restricted by law.
- 2) An advertisement shall be considered to be a surrogate advertisement or indirect advertisement, if
 - a) such advertisement indicates or suggests directly or indirectly to consumers that it is an advertisement for the goods, product or service whose advertising is prohibited or restricted by law;
 - b) such advertisement uses any brand name, logo, colour, layout and presentation associated with such goods, product or services whose advertisement is prohibited or restricted: Provided that mere use of a brand name or company name which may also be applied to goods, product or service whose advertising is prohibited or restricted shall not be considered to be surrogate advertisement or indirect advertisement, if such advertisement is not otherwise objectionable as per the provisions set out in these guidelines.



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Surrogate advertising or indirect advertising or camouflaged advertising has been clearly prohibited by the Guidelines. The Guidelines definitively state that no advertisements can be made suggesting directly or indirectly that it is for products or services whose advertising is otherwise prohibited/restricted by law. Circumvention of such prohibition or restriction by portraying an advertisement to be an advertisement for other goods or services, the advertisement of which is not prohibited/restricted by law has been specifically called out in the definition of "surrogate advertisement".

For a more detailed understanding of our **PoV** on surrogate advertising, please read **Dr. Goyal's blog** in **Campaign**, reproduced in this report. Nothing could be more exhaustive.

**Free claims advertisements curtailing
any efforts to cheat**

A free claims advertisement shall, by the Notification

- a) not describe any goods, product or service to be 'free' 'without charge' or use such other terms if the consumer has to pay anything other than the unavoidable cost of responding to such advertisement and collecting or paying for the delivery of such item;
- b) make clear the extent of commitment that a consumer shall make to take advantage of a free offer;

**SALE**



- c) not describe any goods, product or service to be free, if
 - i) the consumer has to pay for packing, packaging, handling or administration of such free goods, product or service;
 - ii) the cost of response, including the price of goods, product or service which the consumer has to purchase to take advantage of such offer, has been increased, except where such increase results from factors unrelated to the cost of promotion; or
 - iii) the quality or quantity of the goods, product or service that a consumer shall purchase to take advantage of the offer has been reduced;
- d) not describe an element of a package as free if such element is included in the package price;
- e) not use the term free trial to describe a satisfaction or your money back offer or an offer for which a non-refundable purchase is required.

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This one's pretty straightforward. If it is not absolutely free and unencumbered, just don't say so. If the consumer has to pay anything other than the unavoidable cost of responding to such advertisement and collecting or paying for the delivery of such item, the offer will not be deemed to be free. Also if the consumer has to pay for packing, packaging, handling or administration of such free goods, product or service, the free will be invalidated.

Advertising targeted to children

Children targeted advertisements have really come under the microscope in the Notification.

- 1) An advertisement that addresses or targets or uses children shall not
 - a) condone, encourage, inspire or unreasonably emulate behaviour that could be dangerous for children;
 - b) take advantage of children's inexperience, credulity or sense of loyalty;
 - c) exaggerate the features of goods, product or service in such manner as to lead children to have unrealistic expectations of such goods, product or service;
 - d) condone or encourage practices that are detrimental to children's physical health or mental wellbeing;
 - e) imply that children are likely to be ridiculed or made to feel inferior to others or become less popular or disloyal if they do not purchase or make use of such goods, product or service;
 - f) include a direct exhortation to children to purchase any goods, product or service or to persuade their parents, guardians or other persons to purchase such goods, product or service for them;
 - g) use qualifiers such as just or only to make the price of goods, product or service seem less expensive where such





advertisement includes additional cost or charge;

- h) feature children for advertisements prohibited by any law for the time being in force, including tobacco or alcohol based products;
- i) feature personalities from the field of sports music or cinema for products which under any law requires a health warning for such advertisement or cannot be purchased by children;
- j) make it difficult for children to judge the size, characteristics and performance of advertised products and to distinguish between real life situations and fantasy;
- k) exaggerate what is attainable by an ordinary child using the product being marketed;
- l) exploit children's susceptibility to charitable appeals and shall explain the extent to which their participation will help in any charity linked promotions;
- m) resort to promotions that require a purchase to participate and include a direct exhortation to make a purchase addressed to or targeted at children;
- n) claim that consumption of a product advertised shall have an effect on enhancing intelligence or physical ability or bring exceptional recognition without any valid substantiation or adequate scientific evidence;



- o) claim any health or nutritional claims or benefits without being adequately and scientifically substantiated by a recognized body;
 - p) be published in any mass media, including advertisement on network games in respect of medical services, drugs, dietary supplements, medical instruments, cosmetic products, liquor or cosmetic surgery which are adverse to the physical and mental health of children.
- 2) An advertisement of any goods, product or service which addresses or targets children shall not
 - a) be such as to develop negative body image in children;
 - b) give any impression that such goods, product or service is better than the natural or traditional food which children may be consuming.
 - 3) An advertisement for junk foods, including chips, carbonated beverages and such other snacks and drinks shall not be advertised during a program meant for children or on a channel meant exclusively for children.
 - 4) Any advertisement which offers promotional gifts to persuade children to buy goods, product or service without necessity or promotes illogical consumerism shall be discouraged.

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This section of the Notification is the most comprehensive and detailed. Children directed advertising will henceforth not feature personalities from the field of sports, music or cinema for goods/products/services, which under any law, requires a health warning or cannot be purchased by children. Most relevant for advertisers is the specific provision that any advertising for junk foods, including chips, carbonated beverages and such other snacks and drinks shall not be allowed during a program meant for children or on a channel meant exclusively for children.

Celebrities have lots to comply

The Notification has defined who or what is an endorser. An "endorser" includes an individual or a group or an institution making endorsement of any goods, product or service in an advertisement whose opinion, belief, finding or experience being the message which such advertisement appears to reflect.

The first material provision in the Notification is on 'due diligence' required for endorsement of advertisements.

Any endorsement in an advertisement must reflect the genuine, reasonably current opinion of the individual, group or organisation making such representation and must be based on adequate information about, or experience with, the identified goods, product or service and must not otherwise be deceptive.



The text of the new regulation also states that celebrities (endorsers as above) will need to make a clean disclosure of material connection.

Where there exists a connection between the endorser and the trader, manufacturer or advertiser of the endorsed product that might materially affect the value or credibility of the endorsement and the connection is not reasonably expected by the audience, such connection shall be fully disclosed in making the endorsement.



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This one is the biggest twister in the pack. **'Due diligence'** and the extent of it has not been defined – and that is where the grey area comes in. The jury is also still out on what **'fully disclosed'** will actually mean. Will it require, for example, a disclosure super to run in a celebrity ad that **"The celebrity endorser has been paid to endorse this product"** or will it have to be even more specific like **"Ranveer Singh has been paid Rs. 5 crores to endorse this product"**. There is going to be interesting activity in this space. Watch out!



Is This The End Of Surrogate Advertising, Finally?



by **Dr Sandeep Goyal**



My email inbox and my WhatsApp have been flooded with congratulatory messages all weekend as friends, clients and associates wrote in to say that my 'crusade' against surrogate advertising had finally succeeded. The Govt. of India's **Central Consumer Protection Authority**, on **9th June, 2022**, promulgated Notification **F. No. J-25/4/2020- CCPA (Reg)** under **section 18** of the **Consumer Protection Act, 2019 (35 of 2019)** and put out guidelines for the prevention of false or misleading advertisements. Specifically, in Definitions, 2.(h) focuses on "**surrogate advertisement**" which 'means an advertisement for goods, product or service, whose advertising is otherwise prohibited or restricted by law, by circumventing such prohibition or restriction and portraying it to be an advertisement for other goods, product or service, the advertising of which is not prohibited or restricted by law.'

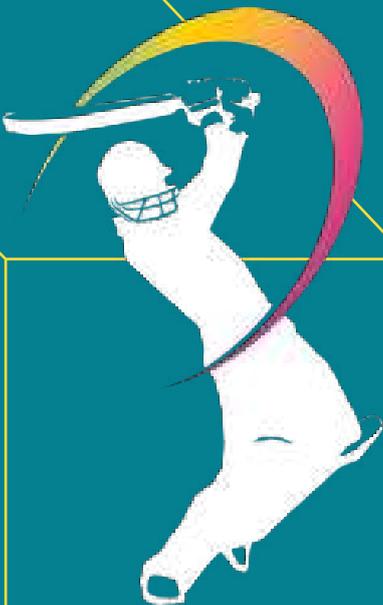


In the Notification, point 6 specifically has this to say on prohibition of surrogate advertising:

No surrogate advertisement or indirect advertisement shall be made for goods or services whose advertising is otherwise prohibited or restricted by law, by circumventing such prohibition or restriction and portraying it to be an advertisement for other goods or services, the advertising of which is not prohibited or restricted by law.

An advertisement shall be considered to be a surrogate advertisement or indirect advertisement, if – (a) such advertisement indicates or suggests directly or indirectly to consumers that it is an advertisement for the goods, product or service whose advertising is prohibited or restricted by law; (b) such advertisement uses any brand name, logo, colour, layout and presentation associated with such goods, product or services whose advertising is prohibited or restricted: Provided that mere use of a brand name or company name which may also be applied to goods, product or service whose advertising is prohibited or restricted shall not be considered to be surrogate advertisement or indirect advertisement, if such advertisement is not otherwise objectionable as per the provisions set out in these guidelines.





My war on surrogate advertising started way back in **2018** when I wrote an open letter in **Campaign** to the then **Chairman, Advertising Standards Council of India (ASCI), Ms. Abanti Sankaranarayan** asking if she was sleeping?! I wrote to her saying, "The ongoing **Indian Premier League (IPL)** tournament has more liquor ads than I can count. There are ads for **Seagram's Royal Stag, Royal Challenge, Signature, Black & White and Chivas**. I may have missed out some. **Abanti-ji**, why are you and **ASCI** turning a blind eye to this charade of surrogate ads that are openly selling liquor, and nothing else? **Black & White** is advertising something called '**Gettogethers**'. Abanti-ji, what exactly do you think **Black & White** is selling? **Royal Challenge** has **India's cricket captain Virat Kohli** peddling a '**sports drink**'. I tried buying the drink at my local grocer's. It wasn't available. I tried the local supermarket. It wasn't available. I tried the internet. It wasn't available. **Abanti-ji, can you help me buy a bottle of Royal Challenge 'sports drink' please?** **Signature** is '**selling**' (or just promoting) the spirit (pun intended) of '**Start-ups**'. Wonder why? Abanti-ji, would you have any idea on whether **Signature** is now the newest venture capitalist in town? **Royal Stag** is simply selling **music CDs**. So is **Chivas Regal**. Must be a really lucrative business for them to afford **IPL TV spots** at **Rs. 9.5 lakhs** per **10 seconds**. Abanti-ji, would you have any idea on how many **music CDs** are sold by **Royal Stag** or **Chivas**?



My open letter created quite a stir. **In fact, an uproar.**

My daughter, **Carol Goyal, a lawyer by training**, then tried to register complaints against various **surrogate ads with ASCI**. She was just given the run-around and nothing really came off all her efforts. Her tryst with ASCI is detailed in a longish article in Campaign dated 11 July, 2018 **[You can read it here.]** All e-mail exchanges with ASCI were reproduced and documented in the article, but an inert and obstinate ASCI refused to act.

My battle with ASCI simmered over the next couple of years when I again took up cudgels with the coming in of **ad-man Subhash Kamath** as their new **Chairman** and wrote to him in Campaign on 12 October, 2020, saying I had pointed out to **Abanti Sankaranarayan** that, "**The Cable Television Networks (Regulation) Act, 1995, Rule 7(2)(viii) clearly prohibits the direct or indirect promotion and advertisement of & cigarettes, tobacco products, wine, alcohol, liquor or other intoxicants** & where in the advertisement are not to use particular colors and layout or presentations associated with the prohibited products. In all of the ads referred above (already mentioned in that article), exact logos and styles of the alcohol brands are being used as is. There is no attempt to hide. Or pretend. Or even '**pass off**'. Brand graphics of the liquor brands are being used in toto by them in the so called surrogates. But the reality is that the surrogates actually do not exist."



I further elaborated to Chairman Kamath, "In the ongoing IPL too there are liquor ads aplenty... **Royal Stag (selling Mark of Purity), Sterling Reserve (packaged water), Chivas (music CDs), Blenders Pride (music CDs) and more...** there are also **SNJ 10000 (beer) and British Empire (beer) logos** on team jerseys. I won't go into the claims of each of the brands but I did check for **Chivas music CDs in stores in Chandigarh, Delhi, Jaipur, Bangalore and Mumbai but found none on sale.** I went on-line to check availability. **Flipkart's website** did have a listing for **Chivas music CDs** but said they were **sold-out.** **Amazon** had two sets in stock but when I tried to place an order, the site declined the transaction citing a '**technical error**'."

To be fair, **Subhash Kamath** responded to my open letter. But while he was polite, his reply was expectedly vague and evasive. But somewhere, all of my jousting was beginning to have some effect. There were debates in media and some stirrings in Govt. **ASCI finally moved**, and show-caused about a dozen liquor brands. I responded in Campaign through my piece, '**ASCI on liquor surrogate – too little, too late**'.

To read the Campaign India article,

[CLICK HERE](#)



The **Secretary, Department of Consumer Affairs, Rohit Kumar Singh, IAS**, has done a stellar job by bringing in this **new CCPA Notification**. He could have done well to doubly reiterate the existing norms that: In-store availability must be at least **10%** of that of the leading brand in the category that the product competes, or sales turnover must exceed **Rs 5 crore** per annum or **Rs 1 crore** per annum in each state it is distributed in. It must have a valid certificate from an independent organisation for such turnover and distribution data. Advertising for such brand



CENTRAL BOARD OF FILM CERTIFICATION
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extensions cannot feature what is prohibited by law or banned products. And, all advertising must carry a valid **CBFC certificate**.

A brief clarification has, you may have noticed, been incorporated in the provision whereby a brand used for '**prohibited**' goods/services could be used for other goods so long as it does not otherwise violate the Guidelines. This, in our view, is slightly vague and may have to be read with the **rule 7(2)(viii) of the Cable Television Network Rules, 1994**, which indicates in what circumstances use of the same brand as used on 'prohibited' goods could be advertised in the context of other permissible goods/services. **That I think is fair.**





All in all, my '**crusade**' over the past four years on surrogate advertising has been pretty lonely – **I presume all crusades, by definition, are lonely.** But I have had friends, associates and colleagues from advertising itself accuse me of moralistic bias against liquor because I am myself a teetotaler. But that is not true. I have no religious, philosophical or ideological barriers in my mind. I have, without fear or prejudice, just always said that the **Law of the land should not be ignored or by-passed.** For the last many years liquor surrogates have done that – and blatantly. **ASCI has been but a mute bystander.**

Finally, it is good that the Law has been restated and reiterated so that there is no ambiguity. **Well done, Rohit Kumar Singh! You are the true epitome of a good bureaucrat.**

(This blog first appeared in **Campaign** magazine.)

Legally Speaking

Red Lab sought opinions by leading lawyers on the Notification and the Guidelines. Here's what they had to say.

A 'heavy responsibility' on celebrities

— **Dr. Balram K Gupta**

Senior Advocate and Professor Emeritus &
Former Director, National Judicial Academy, India



CCPA Guidelines issued under Section 18 of CP Act, 2019 came into force w.e.f. June 9, 2022. '

Guideline 13 provides:

"Any endorsement in an advertisement must reflect the genuine, reasonable current opinion of the individual, group or organization making such representation and must be based on adequate information about or experience with, the identified goods, product or service and must not otherwise be deceptive."



Guideline 14 requires:

“Where there exists a connection between the endorser and the trader, manufacturer or advertiser of the endorsed product that might materially affect the value or credibility of the endorsement and the connection is not reasonably expected by the audience, such connection shall be fully disclosed in making the endorsement.”

In my considered opinion, the two Guidelines (with emphasis added) leave nothing to doubt. The Endorser and the Endorsement must ensure that the advertisement regarding identified goods, product or service must not be deceptive. The two Guidelines read together provide complete protection from misleading advertisements to the consumers. The celebrities (endorser) are often part of different advertisements. Therefore, the guidelines cast a **'heavy responsibility'** on them, otherwise it would damage their own reputation. The advertisements would no more be churning money for endorsers of repute. In case of violation, it would lead to a penalty in accordance with **Sections 88 & 89 of CP Act.**

An evolving piece of jurisprudence

— **Rishabh Gupta**, Partner, J Sagar & Co.



“**Endorser**” includes an individual or a group or an institution making endorsement of any goods, product or service in an advertisement whose **opinion, belief, finding or experience** being the message which such advertisement appears to reflect.

Any endorsement in an advertisement must reflect the genuine, reasonably current opinion of the individual, group or organisation making such representation and must be based on adequate information about, or experience with, the identified goods, product or service and must not otherwise be deceptive.

Disclosure of material connection: Where there exists a connection between the endorser and the trader, manufacturer or advertiser of the endorsed product that might materially affect the value or credibility of the endorsement and the connection is not reasonably expected by the audience, such connection shall be fully disclosed in making the endorsement.

So **Guideline 14** is the slightly more straight-forward one. It clearly sets a standard on “**materially affect the value or credibility**” and not reasonably expected.

While the law is new and everyone has varying takes, mere payment does not meet either test of materially affecting value or reasonably expected. This is more likely aimed at covering equity holding, profit sharing, unusually large fees etc.

It can easily be argued that payment for endorsement is reasonably expected. Also one has to look at what endorsement is. Merely being featured in an ad can be argued to be different from opinion, belief, finding or experience.

We're more likely to be adding clear disclaimers stating persons featured in these ads do not endorse the products within the meaning of the guidelines.

On diligence, it will depend on claims in ads - reasonable standards should prevail. We see this more as an exceptional tool to go after sin products - this is going to be an evolving piece of jurisprudence. Also, frankly, the overall constitutionality and enforceability would need to be examined.

Will supers be needed to be put on ads saying the celebrity has been paid to endorse the product?

I feel most people will end up doing it as best practice. However, that is not my reading of Guideline 14. Payment for endorsement doesn't materially affect its quality and it is reasonably expected that payment is being made for endorsement. Like I said that would be more for profit share or equity position.

Due diligence is necessary for celebrities

— **Munish Sharma**

Senior Partner, Dua & Associates



Guideline 14 refers to any connection between endorser with trader, manufacturer or advertiser that is not really expected by the audience. Such connection needs to be disclosed. A celebrity charging money for endorsement is reasonably expected by the audience, so I don't think that is an issue. But if he holds significant shares in the company or is a director of that company or is paid any other consideration, etc, then that would seem to be covered for disclosure.

The due diligence would seem to imply the adequate information about the product or service or having personally experienced the same. On the face of it, the information provided must not be deceptive. The celebrity should reasonably believe in the product or service based on the information provided. He must ask for data on nature or type of product or service, and make reasonable enquiries before agreeing to endorse the product or service. It may be better to get the certification from a reliable source for information received.

The disclosures will have to be euphemistic

— **Sunil Phatarphekar**

Senior Corporate Lawyer, Mumbai



A few disclaimers. These CCPA [Misleading Ads] Guidelines have to be read along with the parent law and its offshoots. That is a pretty herculean task. There are problems, which I shall point out, in divergences between definitions in Parent and subsidiary laws. This is going to be problematic.

Secondly, my impression is that these CCPA [Misleading Ads] Guidelines replace the ASCI celebrity guidelines. If that is the case, according to me, a fundamental problem arises. Where do the CCPA [Misleading Ads] Guidelines state that they apply to celebrities or additional provisions apply to celebrities? In my view, on a plain reading these CCPA [Misleading Ads] Guidelines apply to all ads. Hence would a John Doe model also be subject to say 2(f), 13 or 14?

2F. This is a problem. Please also see the definition of "endorsement" in the Consumer Protection Act which refers to any person who can be identified. In 2F an endorser is simply any person. So as I wrote earlier, would this apply to John Doe models?

13 & 14. Subject to comments in 2F above, I believe that the disclosures will have to be euphemistic. Meaning that simple statements should be made such as "Ranveer Singh has received fees for this endorsement" or words to that effect. Actual numbers would I believe be subject matter of confidentiality. As far as connections are concerned you would have to disclose them. For example "A corporation controlled by Ranveer Singh has a shareholding in the " Or that Ranveer Singh's family has Or even that Ranveer Singh has a minimal or non controlling interest.

This would also have to be non detailed but definitive. I would take guidance from disclosures made by share analysts on TV.

There are many many aspects to this, many permutations and combinations. Difficult to pen everything.

A good first step



Meet Malhotra

Senior Advocate, Supreme Court of India



1. The guidelines issued by CCPA appear to be a good first step in the direction of providing a broad framework for different kinds of advertisements.
2. The provision of requirements for what would constitute due diligence and disclosure of material connection by endorsers of goods, products or services is a good effort in that direction; whether it has the desired result, time alone will tell.

3. My opinion is that provisions contained in the guideline/the CPA will required to be tweaked and modified at some later stage. The reasons I believe so, are:
 - (i) These are guidelines, and no more;
 - (ii) Violation of these guidelines must necessarily be followed, by and large, by an inquiry depending on the outcome of which, a fine of Rs. 10,00,000 in the first instance and Rs. 50,00, 000 in a subsequent contravention is provided for.
4. I feel that the financial penalty provided for is not adequate enough to be dissuasive to a potential violator of the guidelines. Further, the procedure provided for before infliction of penalty i.e. an investigation, issuance of direction, violation of direction and then imposition of penalty is cumbersome and works to the advantage of the advertiser and the endorser.
5. Further, given the huge amount of money involved in advertising, a penalty of Rs. 10 /50 lakh is, as said before, not dissuasive.
6. In my opinion, the guidelines will have some regulatory effect on advertisement; only time will tell the effectiveness of such.
7. In my opinion, the advertiser and endorser would take insurance of the amounts as provided as penalty and carry on with just a little more care than at present.

The Rediffusion PoV in Media and Social Media

The Economic Times | 14th June, 2022

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The clarity on surrogate definitions will come as and when the **Central Consumer Protection Authority (CCPA)** starts giving judgements on specific cases, based on complaints. These judgements will then become precedents for the industry.

Exchange4Media | 14th June, 2022

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The government notification legalizes the ban on surrogate advertising. There are no two ways about it. Liquor brands, going forward will find it very hard to justify CDs and glasses as genuine lines of business. The brand extension part can be misused but this is only the start of the process. We need to just watch the space. Soon there will be consumer complaints and the CCPA judgments will help amplify what is allowed and what is not.

Financial Express | 18th June, 2022

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The regulation is a good start and I completely support the process. But if liquor is not allowed to be sold through surrogate ads, then why have it on the IPL (referring to the RCB team) too?

Business Standard | 13th June, 2022

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Surrogate advertising has flourished despite regulation in place. The Cable Television Networks (Regulation) Act, 1995, clearly prohibits direct or indirect promotion and advertising of cigarettes, tobacco products, wine, alcohol, liquor and other intoxicants. Yet, surrogate advertising by alcohol and tobacco product companies are visible to this day on television and digital media. The rules have to be strictly enforced in my view.

A REPORT BY



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