

No.J-25/4/2020-CPU(CCPA)
Government of India
Ministry of Consumer Affairs, Food and Public Distribution
(Department of Consumer Affairs)

Under the Consumer Protection Act, 2019 (Act 35 of 2019), the Central Consumer Protection Authority (CCPA) is empowered to issue necessary guidelines to prevent unfair trade practices and protect consumers' interest. Accordingly, guidelines for prevention of misleading advertisements and necessary due diligence for endorsement of advertisements are proposed to be notified by the CCPA.

2. A draft of the Central Consumer Protection Authority (Prevention of Misleading Advertisements and Necessary Due Diligence for Endorsement of Advertisements) Guidelines, 2020, is available at the given [link](#). Views/comments/suggestions on the draft guidelines may be sent within 14 days (till 18th September, 2020) by email to dscpu-ca@nic.in.

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CENTRAL CONSUMER PROTECTION AUTHORITY

Notification

New Delhi, the August, 2020

F. No. 1/2/2020- CCPA (Reg). ---In exercise of the powers conferred by clauses (c) and (d) of sub-section (1) of section 18, read with clause (l) of sub-section (2) of section 18 of the Consumer Protection Act, 2019 (Act 35 of 2019), the Central Consumer Protection Authority hereby makes the following guidelines for the prevention of false or misleading advertisements as well the due diligence to be carried out for endorsements, namely--

1. Short title and commencement.—

- (1) These guidelines may be called the Central Consumer Protection Authority (Prevention of Misleading Advertisements and Necessary Due Diligence for Endorsement of Advertisements) Guidelines, 2020.
- (2) They shall come into force from their date of publication in the official Gazette.

2. Definitions. – (1) In these guidelines, unless the context otherwise requires,-

- (a) “Act” means the Consumer Protection Act, 2019 (Act 35 of 2019);
- (b) “advertisement” shall have the same meaning as under sub-section (1) of section 2 of the Act;
- (c) “child” shall have the same meaning as under sub-section (12) of section (2) of the Juvenile Justice (Care and Protection of Children) Act, 2015;
- (d) “Complainant” shall have the same meaning as defined under sub-section (5) of section (2) of the Act. It also includes any person who buys or intends to buy any product or service;
- (e) “Central Authority” means the Central Consumer Protection Authority established under section 10 of the Act;
- (f) “consumer” shall have the same meaning as under sub-section (7) of section 2 of the Act;
- (g) “endorsement” shall have the same meaning as under sub-section (18) of section 2 of the Act;
- (h) “goods” shall have the same meaning as under sub-section (21) of section 2 of the Act;
- (i) "misleading advertisement" shall have the same meaning as under sub-section (28) of section 2 of the Act ;
- (j) “product” shall have the same meaning as under sub-section (33) of section 2 of the Act;
- (k) “puffery” refers to an exaggeration or statement that no reasonable person would take as factual;
- (k) “service” shall have the same meaning as under sub-section (42) of section 2 of the Act; and
- (l) “unfair trade practice” shall have the same meaning as under sub-section (47) of section 2 of the Act.

(2) All other words and expressions used herein and not defined, but defined the Act shall have the same meaning as respectively assigned to them under the Act.

3. Scope & Applicability.—

- (1) These guidelines cover all advertising/ marketing communications regardless of form, format or medium.
- (2) These guidelines are applicable to the manufacturer/service provider whose products/services are the subject of the advertising/marketing communications, as well as to advertisement agency and endorser (wherever applicable) of the product/service.

4. Conditions for a valid advertisement. – In order to be considered valid, an advertisement shall-

- (1) contain truthful and honest representations;
- (2) not mislead consumers by exaggerating the capability or performance or service of the product;
- (3) not present rights given to consumers by virtue of law as a distinctive feature of the advertiser's offer;
- (4) not suggest that the claims made in it are universally accepted of there is a significant division of informed or scientific opinion pertaining to such claims;
- (5) not mislead about the nature or extent of the risk to consumers' personal security, or that of their families if they fail to purchase the advertised product or service;
- (6) notwithstanding the above, while carrying out mass manufacture and distribution of goods and services, if an occasional, unintentional lapse in the fulfilment of an advertised promise or claim occurs, then such unintentional lapse may not invalidate the advertisement in terms of these guidelines:

Provided that-

- (a) the claim or promise is capable of fulfilment by a typical specimen of the product advertised;
 - (b) the proportion of product failures is within generally acceptable limits;
 - (c) the advertiser has taken prompt action to make good the deficiency to the consumer.
- (7) Advertisements should not be offensive to generally accepted standards of public decency in India and should not contain material which is likely to cause grave and widespread offence to the public.

5. Non-imitation of advertisements. --

- (1) An advertisement shall not be so similar in general layout, copy, slogans, visual presentation, music or sound effects to other advertisements or promotions so as to be likely to mislead or confuse the consumer.

- (2) An advertisement shall not be similar to previous advertisements published by any other advertiser in general layout, copy, slogans, visual presentation, music or sound effect so as to mislead or confuse the consumer.
- (3) Advertisements should not be misleading to the consumers about who the manufacturer of the product is.

6. **Comparative advertising.**— (1) In order for a comparative advertisement to be considered permissible, it--

- (a) shall be factual, accurate and capable of substantiation;
 - (b) shall not present a good or service as an imitation or replica of a good or service with a protected trademark or trade name; and
- (2) Advertisements containing comparisons with other manufacturers, suppliers, producers or with other products, including where a competitor is named, shall be permitted in the interest of promoting competition, where--
- (a) the features of the competitor's product being compared to the features of the advertiser's products are specified clearly within the advertisement;
 - (b) the subject matter of the comparison is not of such nature so as to confer an artificial or unjustifiable advantage upon the advertiser;
 - (c) the nature of comparisons is such that they are factual, accurate and capable of being substantiated; and

7. **Bait advertising.**—

- (1) an advertisement shall not seek to entice consumers to purchase a good or service without a reasonable prospect of selling the advertised good or service at the price offered.
- (2) an advertiser shall ensure that there is adequate supply of goods or services to meet foreseeable demand generated by such advertisement.
- (3) an advertisement shall state any reasonable grounds that the advertiser has for believing they might not be able to supply the advertised good or service within a reasonable period and in reasonable quantities, in particular:
 - (a) if the estimated demand exceeds supply, advertisements shall make clear that the stock of the good or service is limited;
 - (b) if the purpose of the advertisement is to assess potential demand, it shall be clearly stated in the advertisement; and
 - (c) an advertisement shall not mislead consumers by omitting restrictions on the availability of the good or service, for example, geographic restrictions or age limits.
- (4) an advertisement shall not mislead consumers about market conditions or the possibility of finding the good or service elsewhere to induce consumers to

purchase the good or service at conditions less favourable than normal market conditions.

8. Surrogate advertising.—

- (1) Advertisements for goods or services whose advertising is otherwise prohibited or restricted by law shall not circumvent such restrictions by purporting to be advertisements for other goods or services, the advertising of which is not prohibited or restricted by law.
- (2) In judging whether or not a particular advertisement is an indirect advertisement for a product whose advertising is restricted or prohibited, due attention shall be paid to the following:
 - (a) whether the unrestricted good or service which is purportedly sought to be promoted through the advertisement, is produced and distributed in reasonable quantities, having regard to the scale of the advertising in question, the media used, and the markets targeted;
 - (b) whether there exists in the advertisement in question, any direct or indirect indications, which could suggest to consumers that it is a direct or indirect advertisement for the good or service whose advertising is restricted or prohibited by law; and
 - (c) the mere use of a brand name or company name that may also be applied to a good or service whose advertising is restricted or prohibited is not a reason to find the advertisement in question objectionable, provided that the advertisement is not otherwise objectionable as per the provisions set out in these guidelines.

9. Puffery.— An advertisement may, subject to the provisions of these guidelines, make a claim in the nature of obvious exaggeration, in the nature of a claim that a reasonable consumer is unlikely to take literally:

Provided that any objective claim made in an advertisement shall be supported by evidence and be capable of substantiation and shall make clear the aspect of the good or service that is claimed to be superior to another good or service.

10. Free claims. –

- (1) An advertisement shall not describe a good or service as 'free', 'without charge' or other similar terms if a consumer has to pay anything other than the unavoidable cost of responding to the advertisement and collecting or paying for the delivery of the item.
- (2) An advertisement shall make clear the extent of the commitment that a consumer shall make to take advantage of a free offer.
- (3) An advertisement shall not describe a good or service as free if:

- (a) consumers have to pay for packing, packaging, handling or administration of the free good or service;
 - (b) the cost of response, including the price of a good or service that a consumer shall purchase to take advantage of the offer, has been increased, except where the increase results from factors that are unrelated to the cost of the promotion; or
 - (c) the quality or quantity of the good or service that a consumer shall purchase to take advantage of the offer has been reduced.
- (4) An advertisement shall not describe an element of a package as free if that element is included in the package price, unless consumers are likely to regard it as an additional benefit because it has recently been added to the package without increasing its price.
- (5) Advertisements shall 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.

11. Advertisements targeted at children.—Advertisements that are of interest to children shall not:

- (a) condone, encourage or unreasonably emulate behaviour that could be dangerous for children to emulate;
- (b) take advantage of children's inexperience, credulity or sense of loyalty, or exaggerate the features of a good or service in a way that could lead to children having unrealistic expectations of such good or service;
- (c) condone or encourage practices that are detrimental to children's physical health or mental wellbeing;
- (d) imply that children are likely to be ridiculed, inferior to others, less popular, disloyal, if they do not purchase or make use of a good or service;
- (e) condone or encourage bullying;
- (f) include a direct exhortation to children to purchase a good or service or to persuade their parents, guardians or other persons to purchase a good or service for them;
- (g) use qualifiers such as 'just' or 'only' to make the price of a good or service seem less expensive, where such advertisements of interest to children include a price;
- (h) feature children for tobacco or alcohol-based products;
- (i) 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 children;
- (j) encourage to copy practices that might be unsafe for a child;
- (k) make it difficult for children to judge the size, characteristics and performance of advertised products and to distinguish between real life situations and fantasy;
- (l) exaggerate what is attainable by an ordinary child using the product being marketed;
- (m) exploit children's susceptibility to charitable appeals and shall explain the extent to which their participation will help in any charity-linked promotions;
- (n) resort to promotions that require a purchase to participate and include a direct exhortation to make a purchase addressed to or targeted at children.

12. Prohibited advertisements.— In addition to the prohibited activities as set out above, no advertisement shall be permitted, which--

- (a) is likely to incite persons to commit crime and promotes disorder, violence or intolerance;
- (b) derides or depicts in an unfavorable manner, persons of any race, caste, creed, sex, gender or nationality;
- (c) affects foreign relations with any other country in an adverse manner;
- (d) encourages or propagates the use of products which are banned under any law for the time being in force; or
- (e) shows, glorifies, or refers to a dangerous practice, or manifests a disregard for safety or encourages negligent behaviour.

13. Disclaimers made in supporting, limiting or explaining claims made in Advertisements. –

- a) a Disclaimer can expand or clarify a claim, make qualifications, or resolve ambiguities, to explain the claim in further detail, but should not contradict the material claim made or contradict the main message conveyed by the advertiser or change the dictionary meaning of the words used in the claims received or perceived by a consumer.
- b) a disclaimer should not attempt to hide material information with respect to the claim, the omission/ absence of which is likely to make the advertisement deceptive or conceal its commercial intent.
- c) a disclaimer should not attempt to correct a misleading claim made in an advertisement.
- d) requirements for the disclaimers also covers the following:
 - i. A disclaimer shall be in the same language as the claim of the Advertisement.
 - ii. The font should be in the same font as the claim.
 - iii. Placement position of disclaimers of a claim on packaging should be in a prominent and visible space and could be ideally on the same panel of the packaging as the claim made.
 - iv. If the claim is presented as voice over (VO), then the disclaimer should be displayed in sync with the VO.
 - v. A disclaimer should be clear, prominent enough and legible. Disclaimer should be clearly visible to a normally-sighted person reading the marketing communication once, from a reasonable distance and at a reasonable speed.

14. Duties of manufacturer, service provider and advertising agency. -- Notwithstanding what is contained in the provisions of these guidelines, a manufacturer, service provider or advertising agency shall--

- (1) ensure the truthfulness of and honesty of representations and claims made by advertisements and to safeguard against misleading advertisements;
- (2) ensure that all descriptions, claims and comparisons which relate to matters of objectively ascertainable fact should be capable of substantiation, and produce such substantiation if required by the Central Authority;

- (3) indicate the source and date of independent research or assessment where claims in advertising are expressly stated to be based on or supported by such research or assessments;
- (4) ensure that advertisements shall not contain any reference to a person, firm or institution which in a manner that confers an unjustified advantage on the product advertised, or tends to bring the person, firm or institution into ridicule or disrepute unless the advertiser obtains requisite permission from such person, firm or institution under reference;
- (5) ensure that advertisements shall not contain statements or visual presentations 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;
- (6) ensure that advertisements shall not be so framed as to abuse the trust of consumers or exploit their lack of experience or knowledge.
- (7) For the purpose of sub-section (6) above,
 - (a) 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.
 - (b) where a claim is made that if one product is purchased, another product will be provided “free”, the advertiser may be required to show, as and when called upon by the Central Authority, that the price paid by the consumer for the product which is offered for purchase with the advertised incentive is no more than the prevailing price of the product without the advertised incentive.
 - (c) Advertisers may not make claims which use expressions such as “up to five years” guarantee” or “Prices from as low as Rs. Y” if there is a likelihood of the consumer being misled either as to the extent of the availability of the product or as to the applicability of the benefits offered.
 - (d) Advertisers shall exercise special care and restraint while publishing advertisements directed at health issues or any real or perceived inadequacy of any physical attributes such as height, body weight, impotence, infertility, baldness and the like, to ensure that claims or representations made directly or by implication, do not exceed what is considered prudent by generally accepted standards of medical practice and the actual efficacy of the product.
 - (e) Advertisements inviting the public to take part in lotteries or prize competitions as may be permitted under the law or which hold out the prospect of gifts shall clearly set out all pertinent material terms and conditions as to enable the consumer to obtain a true and fair view of their prospects in such activities. Further, such 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. With regard to the announcement of results, the advertiser’s responsibility under these guidelines will be considered to be discharged adequately if the advertiser publicises the main results in the media used to announce the competition as far as is practicable and advises the individual winners by post or email.

- (8) Ensure that 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.

15. Honesty of statements and due diligence to be made by an endorser in relation to advertisements.--

- (1) Every endorser endorsing a product or service shall take due care to ensure that all descriptions, claims and comparisons that they endorse or that are made in advertisements they appear in are capable of being objectively ascertained and are capable of substantiation.
- (2) Every endorser endorsing a product or service shall take due care to ensure that their endorsement does not convey any express or implied representations that would be false, misleading or deceptive if made by the trader or manufacturer or advertiser of the relevant product or service.
- (3) Any endorser who obtains advertising advice from an advertising self-regulatory organisation or a legal opinion from an independent legal practitioner regarding the honesty of statements in their endorsement and its compliance with these guidelines and the Act may be considered to have carried out due diligence for the purposes of his liability under the Act:

Provided that no such advice or opinion may be considered adequate if it is otherwise found that the endorser had knowledge that the endorsement would be false, misleading or deceptive, or that its falsity or misleading or deceptive nature was apparent given the circumstances.

- (4) Where any trader, manufacturer or advertiser uses an endorsement of a fictitious character, such endorsement shall not be framed so as to give the impression that real persons are making the endorsement:

Provided that where any endorsement is represented as being made by a real person, the trader, manufacturer or advertiser using the endorsement shall retain documentary evidence of the endorsement and contact details of the endorser.

16. Personal use of products and consumer endorsements. --

- (1) Where any endorsement of a product or service is made through a testimonial or representation of opinion or preference of the endorser, the endorsement shall reflect the genuine, reasonably current opinion of the endorser, and shall be based on either adequate information about or experience with the product or service being endorsed:

Provided that any trader or manufacturer or advertiser may not reword an endorsement or use it out of context so as to distort its effect on consumers and may use an endorsement of an expert or celebrity only so long as it has good reason to believe that the endorser continues to subscribe to the views presented.

- (2) Where any endorsement of a product or service represents that the endorser uses the endorsed product, the endorser shall have been a bona fide user of it at the time the endorsement was given:

Provided that any trader or manufacturer or advertiser may continue to use such endorsement only so long as it has good reason to believe that the endorser remains a bona fide user of the product.

- (3) Any trader, manufacturer or advertiser using an endorsement conveying the experience of one or more consumers on a central or key attribute of the product or service may only do so if the endorser's experience is not an exceptional one and is representative of what consumers will generally achieve with the endorsed product or service.

17. Expert endorsements.--

- (1) Where an advertisement represents, directly or by implication, that the endorser is an expert with respect to the endorsement message, then the endorser's qualifications shall in fact give the endorser the expertise that he is represented as possessing with respect to the endorsement.
- (2) Any expert endorsement shall be supported by an actual exercise of that expertise in evaluating product features or characteristics with respect to which he is an expert and which are relevant to an ordinary consumer's use of or experience with the product:

Provided that an expert may, in endorsing a product, take into account other factors not within his expertise, particularly subjective factors such as taste or price.

18. 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 weight 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.

19. Removal of difficulties. — In matters relating to the interpretation of these guidelines, if any doubt or difficulty arises, the same shall be placed before the Central Authority and the decision of the Central Authority in such matter shall be final.

20. Contravention of guidelines.-- The provisions of the Consumer Protection Act, 2019 (35 of 2019) shall apply for any violation of the provisions of these guidelines.

Nidhi Khare, Chief Commissioner