

## ERGO

*Analysing developments impacting business*

### ASCI RELEASES CRYPTO AND NFT ADVERTISING GUIDELINES EFFECTIVE 1 APRIL '22 ONWARD

25 February 2022

On 23 February 2022, the Advertising Standards Council of India (ASCI) released its '[Guidelines for advertising of Virtual Digital Assets and linked services](#)' (Guidelines) to ensure that advertisements pertaining to 'crypto products' or Non-Fungible Tokens (NFTs) are not misleading and that consumers who deal in Virtual Digital Assets (VDA) are fully aware of the risks involved. The Guidelines would be applicable to all advertisements released or published on or after 1 April 2022. As regards all earlier advertisements which are already in circulation, the Guidelines state that the same must not appear in public domain unless they comply with the Guidelines, post 15 April 2022.

#### ***Background and Overview of Guidelines***

The preamble to the Guidelines recognizes that crypto products and NFTs are a new and evolving form of investment, presently unregulated and extremely volatile, and therefore the need to protect consumers/investors from risks arising therefrom. [ASCI's press release dated 23 February 2022](#) accompanying the said Guidelines also notes that even though the Indian Government is working on a framework for VDAs, advertisements for such products/services have been aggressively growing in the recent past and that such advertisements often do not adequately disclose the associated risks.

The Guidelines mandate that the following disclaimer must be prominently featured, in an unmissable manner, on all advertisements for VDA products and VDA exchanges:

**"Crypto products and NFTs are unregulated and can be highly risky. There may be no regulatory recourse for any loss from such transactions."**

For advertisement formats where there is a limit on characters, a shortened disclaimer followed by a link to the full disclaimer has been mandated.

The ASCI Guidelines adopt an identical definition for VDAs as proposed in the Finance Bill, 2022 and exclude Indian or foreign currency from its ambit. The Guidelines prohibit usage of words such as currency, securities, custodian, or depositories in VDA advertisements since consumers commonly associate such terms with regulated products. Further, the disclaimer would have to be made in the dominant language of the advertisement and must meet the minimum requirements per the previously published general [ASCI Guidelines for Disclaimers](#) in advertisements.

The Guidelines also contemplate a comprehensive set of rules as regards the manner in which the aforesaid disclaimer(s) ought to appear with respect to each advertisement format. The same are summarised below:

Sr No.	Advertisement Format	Manner of disclaimer appearance
a)	Print or static	Equal to at least 1/5 <sup>th</sup> of the advertising space at the bottom of the advertisement in an easy-to-read font, against a plain background, and to the maximum font size afforded by the space.
b)	Video	Disclaimer should be placed at the end of the advertisement against a plain background. A voice over must accompany the disclaimer in text. The voiceover should be at a normal speaking pace and must not be hurried. In the case of long format video of over two minutes, the said disclaimer should be repeated at the beginning and at the end of the video. The disclaimer must remain on screen for a minimum of five seconds.
c)	Audio	The disclaimer must be spoken at the end of the advertisement. The voiceover should be at a normal speaking pace and must not be hurried. In the case of long format audio of over 90 seconds, the aid disclaimer should be repeated at the beginning and at the end of the audio.
d)	Social media posts	Disclaimer must be carried in both the caption as well as any picture or video attachments. The disclaimer within the caption must be placed upfront at the beginning of the post. Where social media posts, or advertisements have restrictions on text in the static picture, the disclaimer must be carried upfront in the caption before the fold.
e)	Disappearing stories or posts unaccompanied by text	Disclaimer will need to be voiced at the end of the story in the manner laid out in points (a) or (b) above. If the video is 15 seconds' long or lesser, then the disclaimer may be carried in a prominent and visible manner as an overlay.

In addition to the above, further guidelines have been laid down with respect to i) content of VDA advertisements and information on profitability/costs; ii) prohibition on comparison with other regulated asset classes; iii) prohibition on downplaying the risks involved; iv) prohibition on promises or a guarantee of future increase in profits; v) prohibition on providing information on past performance in a biased manner; vi) prohibition on depiction of minors in such ads; and vii) prohibition on portrayal of VDA products as a solution to money problems/ personality problems etc. Further, the Guidelines mandate that every VDA advertisement must contain the name and the contact details of the advertiser so as to provide an easy way to contact them, in a manner easily understood by an average consumer.

Celebrities or prominent personalities have also been directed to take special care to ensure that prior due diligence in respect of statements or claims made in the VDA advertisements featuring them, has been carried out.

### Comment

The Guidelines may have come in light of the recent developments in India in this space including- i) the Prime Minister chairing a high level internal committee meeting in or about November 2021 to address issues related to crypto products advertisements misleading the youth; ii) the Delhi High Court taking cognizance and issuing notice to the Centre and certain crypto trading platforms in a plea that sought guidelines to be framed against VDA advertising on televisions without adequate standardized disclaimers<sup>1</sup>; and iii) the announcement of India's Union Budget 2022-23 and the recent Finance Bill, 2022 which brought about the long awaited clarification on taxation of VDAs (taxable @30% of income from VDAs, effective 1 April 2022). As it appears, the Indian Government has recently come around to acknowledge the existence of this virtual asset class, after previously and briefly contemplating a complete ban on it. Though presently, there is no law in place to regulate trading in VDAs, it appears that a regulatory framework is in the pipeline and '*The Cryptocurrency and Regulation of Official Digital Currency Bill, 2021*' may soon be tabled in the Lok Sabha.

The ASCI Guidelines, therefore, would act as an assistance arm in India's attempt at self-regulating and monitoring VDAs and an attempt at bringing about certain level of discipline in this presently untapped space. This is especially so given the exponential increase in platforms offering VDA products and services as well as growing celebrity endorsements in this sector. A parallel may be drawn with ASCI's guidelines released for online gaming and fantasy sports advertisements (effective 15 December 2020) wherein, in a similar situation, ASCI sought to monitor misrepresentation or misleading advertisements and protect consumers in the gaming sector as well, since they also entailed an element of financial risk and were growing in popularity, especially amongst the youth. It is pertinent to mention that ASCI is a self-regulatory and voluntary governing organization without the force of a statute, hence the Guidelines may not be statutorily enforceable. However, the ASCI Code has received judicial recognition from courts in India from time to time and is generally followed as an industry practice.

- Nishad Nadkarni (Partner) and Khushboo Jhunjhunwala (Associate)

For any queries please contact: [editors@khaitanco.com](mailto:editors@khaitanco.com)

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<sup>1</sup> Aayush Shukla & Anr. vs Ms Wazir X & Ors (W.P.(C)6496/2021)