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Analysing developments impacting business

CCPA ADVISORY ON PROHIBITION OF ADVERTISING, PROMOTION, AND ENDORSEMENT OF UNLAWFUL ACTIVITIES PROHIBITED UNDER VARIOUS LAWS

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The regulatory landscape for betting and gambling in India varies across states, with some imposing an outright ban while others adopting a regulated approach. The widespread proliferation of online betting and gambling platform related advertisements, which are often endorsed by celebrities and influencers across various media channels, and more recently through digital media, has profoundly impacted consumer access to such platforms, leading to an increase in their use. This surge in advertising has also raised significant concerns about its impact, especially on the more vulnerable demographics such as the youth. This increase is in spite of advertisements / promotion regulation / prohibition under various laws including the Consumer Protection Act, 2019, the Press Council Act, 1978, Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, Advertising code under the Cable Television Network (Amendment) Rules, 2021, etc. With a view to draw attention to the existing prohibitions / regulations relating to such advertisements and to warn all concerned, the Central Consumer Protection Authority (CCPA) has issued an advisory dated 6 March 2024, in furtherance of the Consumer Protection Act, 2019, on "*Prohibition of Advertising, Promotion, and Endorsement of unlawful activities prohibited under various laws*" (Advisory).

The Ministry of Information and Broadcasting ("MIB") has in the past, periodically issued various advisories to newspapers, private satellite television channels, publishers of news and current affairs content on digital media, online advertisements intermediaries and other entities or platforms publishing / advertising through electronic / social / online media to refrain from publishing advertisements pertaining to activities including betting or gambling. Despite these, betting / gambling platforms, especially those operating online, have persisted in promoting these activities and often an attempt is made to find creative means to do so. This has prompted regulatory intervention to safeguard consumer interests (with a special focus on the youth), and to uphold public welfare.

Accordingly, the Central Consumer Protection Authority (CCPA) has issued an advisory dated 6 March 2024 under the Consumer Protection Act, 2019 titled "*Prohibition of Advertising, Promotion, and Endorsement of unlawful activities prohibited under various laws*" (hereinafter, the "Advisory"). Some noteworthy points from the latest Advisory include:

- The Advisory aligns with the existing *Guidelines on Prevention of Misleading Advertisements and Endorsements for Misleading Advertisements 2022* (2022 Guidelines), particularly Clause 9 thereof, which expressly prohibits advertisement in respect of goods, products or services which are prohibited from being produced, sold or provided, or prohibited from being advertised under prevalent laws. Considering that betting and gambling are prohibited under the Public Gambling

Act, 1867, the Advisory provides that this would make such advertisements (regardless of the medium of publication) illegal under the 2022 Guidelines.

- The Advisory takes note of the fact that when a celebrity / influencer endorses or promotes something, consumers often perceive it as an acceptable activity. In view thereof, the Advisory specifically provides that celebrities and influencers should refrain from endorsing and promoting illegal betting and gambling activities, as they can be held equally liable for participating in an illegal activity.
- The Advisory specifies and cautions that such advertisements in respect of activities / products prohibited by law, whether direct or indirect, shall be rigorously scrutinised and in cases of a violation, stringent measures as per the provisions of Consumer Protection Act, 2019 shall be initiated against all concerned including manufacturers, advertisers, publishers, intermediaries, social media platforms, celebrities, influencers, endorsers, and any other relevant stakeholders.

Comments

The Advisory seems to place special reliance on the 2022 Guidelines, given that the said guidelines, contrary to the other specific statutes that are typically dated or limited in their application, applies to all advertisements regardless of medium. Whilst the Advisory is generally intended to caution against advertisements in respect of all activities or products that are prohibited under prevalent laws, it seems to focus predominantly on advertisements pertaining to gambling and betting, presumably and rightly so, in view of the recent sharp increase in such advertisements. Often, such advertisements for betting or gambling platforms may be dressed as promotions for gaming applications or applications involving requirement of some skill. The Advisory also takes note of surrogate advertising in this sphere and reiterates the prohibition on them as well. Given that an activity like gambling is permitted in certain states of the country like Goa, it would be important to take care that an advertisement in respect of gambling, originating from such a state, should not be accessible in another state, either through the internet or any other medium.

In the event of any violation, the CCPA intends to initiate stringent measures as stipulated under the Consumer Protection Act, 2019 for misleading advertisements and/or unfair trade practices which would include imposition of fines ranging from INR 10 - 50 Lakhs on any stakeholder involved in any manner, in such advertisements / promotions / endorsements. As the 2022 Guidelines on misleading advertisements are in addition to and not in derogation of any other law, penalties / fines as stipulated in any other act / code for, including in respect of illegal betting and gambling, would also apply.

A copy of the advisory dated 6 March 2024 titled "*Prohibition of Advertising, Promotion, and Endorsement of unlawful activities prohibited under various laws*" as available on the Ministry of Consumer Affairs website can be accessed from: [Advisory](#)

A copy of *Guidelines on Prevention of Misleading Advertisements and Endorsements for Misleading Advertisements 2022* as available on the Ministry of Consumer Affairs website can be accessed from: [Guidelines](#).

- Nishad Nadkarni (Partner), Khushboo Jhunjhunwala (Associate) and Rakshita Singh (Associate)

For any queries please contact: editors@khaitanco.com

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