

ERGO

Analysing developments impacting business

ASCI COLLABORATES WITH CCPA TO STRENGTHEN ADVERTISING REGULATION IN INDIA - PRESS RELEASE ON ASCI WEBSITE

3 April 2024

On 26 March 2024, a [press release](#) (Press Release) has been made available on the website of Advertising Standards Council of India (ASCI), which indicates that it has forged a strategic alliance with Department of Consumer Affairs (DoCA) to combat the issue of misleading advertisements in India. The move is expected to create greater deterrence and support enforcement, the Press Release stated. This collaboration gains significance against the backdrop of the evolving landscape of advertising in India including digital advertising, which presents unique challenges especially due to the borderless nature of the online space, and issues such as disguised advertising, deepfakes and various other advertising scams coming to the fore. Under this partnership, DoCA and ASCI, driven by a shared commitment to safeguarding consumer interests, are likely to work jointly to combat misleading advertisements. Some of the recent guidelines notified by ASCI align closely with guidelines issued by the Central Consumer Protection Authority (CCPA), particularly those concerning misleading advertisements, [Influencer Guidelines](#), [Greenwashing](#), [Dark Patterns](#) and [coaching institutes](#). As per the Press Release, CCPA has requested ASCI to forward to CCPA, any advertisement found to be noncompliant with the Code For Self-Regulation Of Advertising Content In India (ASCI Code) and which could potentially violate the Consumer Protection Act, 2019, and guidelines issued thereunder, for appropriate action. Any case escalated by ASCI concerning misleading advertisements will be promptly addressed and handled in strict accordance with the Consumer Protection Act, 2019 by the CCPA, according to the Press Release. Advertisers may need to be more careful to ensure compliance and adherence with the ASCI Code which until now has mostly been a self-regulatory code.

Comments

This collaboration seems to be in line with the global trend of regulators and self-regulatory bodies working together to address the complexities of modern advertising, particularly in the digital realm. This move would potentially strengthen ASCI's ability to enforce the ASCI Code and guidelines released by it from time to time, which otherwise was mostly considered recommendatory in nature apart from the limited statutory recognition and enforceability it had under the Cable Television Networks (Regulation) Act, 1995. Though the role of ASCI has received some judicial recognition, there have also been several cases where the recommendations of the self-regulatory body as also the jurisdiction of the body to regulate advertisements of non-members have been questioned. Whilst the industry practice has generally been to comply with the exhaustive guidelines laid down by ASCI, this move would ensure greater and better compliance of the ASCI Code since any violation could now be subject of scrutiny by a government regulator and would open up advertisements (irrespective of format or medium of publication) in violation of the ASCI Code, to penalties under the CCPA. The Press Release does not indicate the exact modalities of the process that would be followed by CCPA in

scrutinizing an advertisement referred to it by ASCI. It remains to be seen whether the CCPA would independently evaluate an advertisement once ASCI has issued its recommendation against the advertisement or whether the CCPA would simply proceed to implement an ASCI recommendation. Also, given that the ASCI Code provides for a review mechanism against its recommendations (including one which is considered by a panel comprising of a retired High Court Judge), at what stage would ASCI pass a recommendation to the CCPA, and would it then hold it hands once the matter is taken up by the CCPA. The exact mechanism that would be adopted to implement this collaborative process remains to be seen. Given that ASCI is largely a self-regulated body, sufficient checks may also be required to protect the interests of advertisers and balance their freedom of creative expression with that of consumer interest.

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

For any queries please contact: editors@khaitanco.com