



FACULTY OF JURIDICAL SCIENCES

COURSE: LL.M. 1st Semester

GROUP: Constitutional Law

SUBJECT: Media Law

SUBJECT CODE: LL.M. 110

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Lecture-15



LECTURE 15: Advertisement & Ethics: Misleading Advertisement vis-à-vis Consumers rights

Advertising is omnipresent, it is alluring, it is inviting and it involves people. Advertising creates images or personalities for the products advertised. To create images advertising uses a variety of things like drama, action, romance, emotions, music, a lot of characters etc. It also uses what is called the 'metaphor of ideas'. In simple terms 'metaphor of ideas' is nothing but puffery or exaggeration. Advertising also uses many other means that are controversial. Many of these practices are considered unethical. These include: Comparative Advertising, Negative Advertising, Advertising for Children, Advertorials and Infomercials, Good Taste and Advertising, Stereotypes in Advertising, Advertising of Controversial Products, and Advertising and Sex, etc. In this lesson, we shall discuss about all these issues in detail.

PUFFERY IN ADVERTISING:

Critics claim that puffery forms the main element of most advertisements. Products are shown to have a lot of qualities, which they do not possess in reality. On the other hand advertisers and advertising personnel defend the use of puffery. The defenders of puffery opine that it helps in differentiating products from their competitors. They say that people are not expected to believe puffery literally. Like no one believes that they can 'walk on air' when they listen to the 'Force 10' shoes model saying I am waling on air. This line is a metaphor used to talk about the lightness of the shoes. Also puffery is being increasingly used, as there is no legal ban on it. Puffery is considered to be 'opinion' and not 'factual information'. And people (advertisers) are free to give their opinions. However, many times it becomes difficult to distinguish between truth and puffery. Advertising people claim that customers are reasonable and thinking persons, and thus do not believe every thing that is being said in the ads. But research has been consistently revealing that many people do believe the tall and exaggerated claims made in the ads and fall prey to them. Some advertisers also try to venture into the gray area between truth and deception. For example food and toy advertisers often use special effects to exaggerate the quality and other features of their products. Similarly many advertisers dramatize their brands to such an extent that reality takes a back seat. Like if you are not wearing 'VIP Frenchie' underwear, you would not get a girl friend. Chewing 'Chick lets' attracts girls to you. If you drink 'Fanta' then anything is possible. Suzuki Shogun motorcycle, when riding past, lights up houses and leaves many to wonder. One major controversy in the international advertising field was

created by one ad of Volvo cars. This car is considered to be safe and durable. To highlight these qualities of the car, the advertisement showed only Volvo survives a crash. Subsequent inquiries showed that the car used in the ad had additional reinforcement and support. Also they had removed the support structures from other cars shown in the ad. We have many cases of deception in India also. Both Wheel (washing bar) and Vim (utensil washing bar) show lemons prominently on the package. The ads of these two products also claim their products contain the power of lemon. However, it has been found that these products only use lemon flavour. Such cases, where fraud and deception are exposed, make advertisers more cautious about crossing the line between puffery and deception. Puffery, to the extent it is not harmful, is okay. But deception and dishonesty are unethical practices.

COMPARATIVE ADVERTISING:

Puffery, deception and fraud are, however, a small part of unethical practices in the field of advertising. One major area of concern is comparative advertising. One classic example of this is the Captain Cook salt ad. Tata salt was the undisputed leader in the salt market when Captain Cook entered the field. The new comer dared to compare its features with the established market leader. The comparison was done in an imaginative and humorous way. The model in the ad (Sushmita Mukherji) made fun of all the good features of Captain Cook salt. Its whiteness, no moisture content and free flowing nature were mocked. However, the ad was actually making fun of the lack of these characteristics in Tata salt. And the audience got the message. This ad led to an ad-war between Tata and Captain Cook. While many ads claim that the brands advertised are superior to their competitors, some others try to make the packaging look like major brands. Some other people use similar sounding brand name like GOLOFLAKE for GOLD FLAKE or LIFEBUY for LIFEBOUY. Advertisers use comparative advertising even at the risk of getting exposed. And in today's highly competitive market, comparative advertising has become a major weapon. Also people do not mind doctoring or manufacturing data. False and misleading information are fed through advertising. One example is the Pepsodent ad that was banned. This ad claimed that Pepsodent was 102% better than its competitor. (Yeh Toothpaste hai ya Tendulkar). The competitor was Colgate and it complained to the MRTP Commission. An inquiry followed and the Pepsodent ad was banned. Many newspapers and magazines use the circulation figures and the readership figures to claim they are the number one.

In addition to playing with numbers and information (facts), advertisers also play with subjective material. Someone calls on the customers to Believe in the Best. Someone else comes and claims to be Better than the best. One television company claims to have the flattest screen. Another TV manufacturer claims to have a screen, which is flatter than the flattest. These kind of comparative claims are difficult to either prove or disprove. Advertising practitioners feel that there is no stopping comparative advertising as long as there is competition. However, on the plus side for the consumers, competition not only leads to comparative advertising, it also leads to better and much improved products. Some times advertisers try to copy other's advertisements. Plagiarism or imitation is on the rise even in the field of advertising. Competing advertising often prepare strikingly similar advertisements. Some say that this is mere coincidence. Some say it is plagiarism. In the 1980's a television ad of American Honda Company showed a Honda car blasting off sideways like a spaceship. About five years later another car company Oldsmobile showed a similar ad comparing the car with a spaceship using visuals similar to the old Honda ad. This ad created a lot of controversies. One recent example from India is about the same model (Ruby Bhatia) being used by these competing toothpastes - Colgate and Closeup. Opinions are divided about this particular case. Some people say imitating ads remind consumers about the original product. Some others feel that the copied ad does lot of damage to the original product. Also copying a lifting of ideas is practiced a lot in the advertising world. Creative Black Books, which feature award winning ads from all over the world, have become the sources of ideas instead of the copywriter's own imagination. Copywriters and visualizers refer these Black Books and shamelessly lift ideas. Some call it inspiration. Some say that they change the context and are not exactly copying. Some others call it creative adoption. However, to many lifting ideas is plain plagiarism or copying. We have already discussed how established brand names are copied.

NEGATIVE ADVERTISING

While most ads try to highlight the best features of the brands advertised and use a positive approach, many ads try to show their competitors in a bad light using a negative approach. This kind of approach is mostly used for political advertising and especially in the USA. The ads created for US Presidential campaigns are mostly negative where opposing candidates are ruthlessly dissected. In the brutal and highly competitive atmosphere of US politics, Presidential

candidates hurl defamatory accusations at one another. Research has shown that negative approach (which often amounts to character assassination) works well in case of political advertising. It destroys the opponents. However, negative approach does not work in case of general commercial advertising.

ADVERTISING FOR CHILDREN:

Advertising directed at children is another problem area. Children are a very important part of most markets. Children spend a lot of money on their own doing their own shopping. Children also initiate and influence purchase decisions of many products to a great extent. This is the reason why children are targeted not only in case of children's products but also for a wide range of other products. Children are an impressionable age. The critical faculties of thinking are not developed in children. Thus they are vulnerable to advertising - particularly TV advertisements. The glamour and hype on TV attracts the immature minds and children can not make rational buying decisions as they can not distinguish between the boundaries of reality and fantasy in the make believe world of television advertising. Children are mesmerized by the attractive moving images and buy (or force their parents to buy) the products advertised on TV.

ADVERTORIALS:

Another type of advertising that often comes under criticism is the use of advertorials. An advertorial is half advertisement and half editorial. It is advertisement written in the form of a news story or an article - using the format and language of newspapers. These are mostly placed as part of the editorial content of a newspaper or magazine. Although the word advertorial is used, it is usually put in an obscure corner and set in very small type size making it almost invisible. Advertorials are used to promote goods, services and also institutions. Advertorials are highly controversial. These aim to win public opinion rather than sell products. Another form of advertorials is the infomercial. It is the audio-visual media counterpart of advertorials. When an advertisement is disguised as a piece of information on radio or television, it is called an infomercial. An infomercial is half information and half commercial or advertisement.

GOOD TASTE IN ADVERTISING:

Different people have different opinion about what constitutes good taste. What is good taste to some people is objectionable to others. Different things offend different people. For example some people like the Kamasutra ads and consider these to be sensual. Many others find these ads obscene. Even the ads of Deluxe Nirodh that shows a couple under an umbrella (Pyaar hua ekraar hua) are considered to be obscene. Many people object to social ads promoting use of condoms and other contraceptives being shown during prime time on Doordarshan. Also many people object to advertisements of products like sanitary napkins. And the excessive use of sex, nudity and violence is considered to be not in good taste. Maintaining good taste in advertisements in a country like India is very difficult. Advertisers have to keep in mind the different religious, regional, and linguistic variations as also the different cultural & societal practices.

STEREOTYPES IN ADVERTISING

Stereotyping involves presenting a group of people in a pattern or manner that lacks individuality. This involves generalization. We have many stereotypes in our society like people consider that Punjabis are boisterous, Bengalis and Keralites are intellectuals etc. Also all South Indians eat only dosa, idli and sambar. Mothers in law and daughters in law always fight. Fathers never take any interest in house management. Advertising uses many stereotypes as in case of the 'Papa to Buddhu hai' ad; Chipkti rahti hai, meri saas jaisi. The most controversial of the stereotypes portrayed in advertisements is that of women. Women are usually shown as preoccupied with beauty, household chores and mother hood. Earlier housewives were portrayed as being too much concerned about the cleanliness of their homes, health of family members etc. She was portrayed as the 'super women' as in the ads of Trupti atta. Also young girls are shown as too much occupied with beauty and winning boys. Not many advertisements recognize the diversity of women's roles. Also sometimes ads show such qualities of women that it becomes difficult to identify with them. While there is not much of change in the portrayal of women in ads, some changes are taking place as far as men are concerned. The Ariel washing powder ad shows the husband washing clothes at home. Even Kapil Dev is shown washing clothes in one ad. In another ad a child claims 'my daddy strongest'. While these changes are highly welcome, the challenge before advertisers is to portray the different segments of people realistically, in diverse roles and without hurting any segments.

ADVERTISING OF CONTROVERSIAL PRODUCTS

Three main products, which fall under this category, are condoms, alcohol, and tobacco products. Alcohol and tobacco advertising have been banned in many countries including India (on DD and AIR) and the USA television networks. While alcohol and tobacco product manufacturers say that truthful and non-deceptive advertising of legal products is constitutional. Supporters of the ban say that advertising of such products might result in sickness, or even death of users. However, alcohol advertisers try and convey messages about moderate drinking like Baccardi ad 'Baccardi mixes with every thing but it does not mix with driving'. But where there is a ban on advertising of such products, advertisers use surrogate advertising like promoting other products of the same name. So we have matchboxes, playing cards, cut glasses, pet bottles, diaries and annual planners being advertised which clearly promote alcohol or tobacco products. Many media do not accept condoms ads, although there is no ban on it. Newspapers rarely accept condom ads. Television has only recently started telecasting condom ads. Only magazines publish condom ads regularly. However, many people feel with the menace of AIDS and the increased cases of sexually transmitted diseases, all media should accept condom ads.

SELF-TEST QUESTIONS

S.NO	Question	Option (a)	Option (b)
1.	Advertising is omnipresent, it is alluring, it is inviting and it involves people. Advertising creates images or personalities for the products advertised.	True	False
2.	"Freedom" implies the absence of restraint, particularly of legal penalties.	True	False
3.	"freedom of information" means a citizen is free to receive and impart information without fear of punishment.	True	False
4.	The right to information is indispensable for free flow of information	True	False
5.	The Press Commission opined that secrecy in bureaucracy, which arose out of functional necessity, as a means to achieving organizational efficiency-has become an end in itself from effective outside control.	True	False

Answers: 1-(b),2-(a), 3-(a),4-(a),5-(a)