

Government's new guidelines on surrogate ads

June 17, 2022

In news– The Central Consumer Protection Authority (CCPA) under the Consumer Affairs Ministry has notified 'Guidelines for Prevention of Misleading Advertisements and Endorsements for Misleading Advertisements, 2022.

What do the new guidelines say?

- A new set of guidelines also prohibit surrogate advertising and make it compulsory for celebrities to disclose any stake in the companies and brands they endorse.
- These guidelines focus on misleading ads and ads shown during programming for children.
- On advertisements aimed at children, detailed criteria has been spelt out to disqualify certain ads, such as:
 - Ads that encourage practices detrimental to children's physical health or mental well-being, imply children are "likely to be ridiculed or become less popular" if they do not purchase the goods, and
 - Ads that use qualifiers such as 'just' or 'only' to make the price of goods seem less expensive even when additional charges are present.
- As per the new guidelines, a surrogate ad will refer to an ad which indicates directly or indirectly to consumers that it is an advertisement for the goods whose advertising is prohibited.
- Using any brand name, logo, colour, etc. associated with goods whose advertisement is banned is also not allowed.

What is surrogate advertising?

- It is **the strategy of advertising a product that cannot be advertised openly.**
- Advertisers instead create ads that help in building a brand, and often **involve popular celebrities** – all without naming the actual product that is being indirectly advertised.
- **In India, tobacco products and alcohol cannot be advertised openly under laws like the Cigarette and Other Tobacco Products Act, 2003,** which bans all kinds of direct and indirect advertisements of tobacco products.
- To circumvent them, surrogate advertising is done.
- A few years ago, the **Delhi government pulled up actor Pierce Brosnan for endorsing an Indian pan masala brand.**
- **Brosnan claimed he was “cheated” by the brand and unaware of the fact that the “breath freshener” ad was a surrogate ad** used to disguise the actual product – areca nut or supari, which the Delhi government argued was a cancer-causing agent.

More about new guidelines-

- **The Guidelines have been released to “protect the consumers” and “to ensure that consumers are not being fooled with unsubstantiated claims,** exaggerated promises, misinformation and false claims”.
- **Such advertisements violates various rights of consumers such as right to be informed,** right to choose and right to be safeguarded against potentially unsafe products and services.
- **The CCPA has been established under section 10 of the Consumer Protection Act, 2019 for regulating matters relating to violation of the rights of the consumers,** unfair trade practices and false or misleading advertisements which are prejudicial to the interests of

public and consumers and to promote, protect and enforce the rights of consumers as a class.

- Misleading advertisement has already been defined under section 2(28) of the Consumer Protection Act, 2019.
- **The present guidelines define “bait advertisement”, “surrogate advertisement” and clearly provides what constitutes as “free claim advertisements”.**
- Guidelines forbid advertisements from exaggerating the features of product or service in such a manner as to lead children to have unrealistic expectations of such product or service and claim any health or nutritional claims or benefits without being adequately and scientifically substantiated by a recognized body.
- Guidelines says that advertisement targeting children shall not feature any personalities from the field of sports, music or cinema for products which under any law requires a health warning for such advertisement or cannot be purchased by children.
- Disclaimers in advertisements play a pivotal role from consumer perspective since, in a way it limits the responsibility of the company.
- Therefore, **guidelines stipulate that disclaimer shall not attempt to hide material information with respect to any claim made in such advertisement**, the omission or absence of which is likely to make the advertisement deceptive or conceal its commercial intent.
- Further, **it provides that, a disclaimer shall be in the same language as the claim made** in the advertisement and the font used in a disclaimer shall be the same as that used in the claim.
- Similarly, **clear Guidelines are laid for duties of manufacturer, service provider, advertiser** and advertising agency, due diligence to be carried out before endorsing and others.
- **CCPA can impose a penalty of upto 10 lakh rupees on**

manufacturers, advertisers and endorsers for any misleading advertisements and for subsequent contraventions, CCPA may impose a penalty of upto 50 lakh rupees.

- **The Authority can prohibit the endorser of a misleading advertisement** from making any endorsement for **upto 1 year** and **for subsequent contravention, prohibition can extend upto 3 years.**