

## BRIEF NOTE

# THE SUPREME COURT MANDATES SELF-DECLARATION FOR ETHICAL MARKETING

India has implemented a multi-pronged approach to ensure truthful advertising and empower consumers holding advertisers accountable beyond mere disclaimers, requiring advertisers to proactively confirm adherence to advertising regulations. This comprehensive strategy aims to foster a more transparent and ethical advertising landscape in India, building trust with consumers and fostering a media environment where they can navigate with confidence.

In a recent Order<sup>[1]</sup>, the Hon'ble Supreme Court invoking its powers under Article 32 passed directions ensuring obligations of advertisers under Guidelines for Prevention of Misleading Advertisements and Endorsements of Misleading Advertisements, 2022, are followed in totality to prevent misleading advertisements.

In view of the above the court believes that advertisers, advertising agencies and endorsers are all responsible for misleading advertisements. Advertisers should ensure the trust of consumers is not abused and endorsements should be done responsibly. The court observed that there is no robust mechanism to enforce the guidelines.

### The direction

- Advertisers must now submit a self-declaration before publishing their ads.

### What's in the declaration?

- Confirmation that the ad adheres to existing advertising regulations.
- Compliance with existing advertising regulations and all relevant regulatory guidelines including:
  - a. Rule 7 of Cable Television Networks Rules, 1994
  - b. Norms of Journalistic Conduct of Press Council of India
- Avoidance of false or misleading information.

### Exceptions from the requirement

- All declarations are covered under the ambit of the self-declaration certificate except classifieds, personals and statutory advertisements, public information notices, tenders and advertisements related to public functions.

### How will this work?

- Two separate government portals will be used:
  - a. Broadcast Seva Portal (Existing): For TV channel /Radio Station/print/ digital media and electronic media ads.<sup>[2]</sup>
  - b. Press Council of India (PCI) (New portal): For print, internet, and press media ads (created within 4 weeks by Ministry of Information & Broadcasting).<sup>[3]</sup>
- Advertisers upload the self-declaration on the relevant portal.
- Proof of upload must be provided to the media outlet (broadcaster, printer, publisher) for their records.

### What if I don't comply?

- Ads cannot be run on any channel or media platform without the self-declaration from 18 June 2024.
- This is a legally binding requirement as declared by Ministry of Information and Broadcasting in its notification.

**Goal:**

- Combat misleading advertisements and promote transparent advertising practices.

**Possible Difficulties:**

While the new self-declaration process aims to improve transparency, it also comes with potential drawbacks, which are as follows:

- The extra step may burden advertisers, especially smaller businesses.
- There's a chance of inaccurate declarations due to misinterpretations or intentional manipulation. Effectively verifying them and managing disputes could create bureaucratic hurdles.
- Additionally, the focus on advertisers might not address misleading content by influencers or on social media.
- Finally, there could be initial confusion during implementation as both advertisers and media outlets adjust to the new requirements.

**Conclusion:**

The Supreme Court's mandate represents a significant stride towards fostering a more transparent and ethical advertising landscape. This new regulation aims to empower consumers by equipping them with accurate information and safeguard them from the perils of deceptive marketing tactics. This proactive approach holds all stakeholders accountable i.e. advertisers, broadcasters, and publishers alike in upholding responsible advertising practices.

**Note:** This update is only for information sharing and in no sense constitutes any legal advice. For any specific advice, please contact at: [business@kanalysis.com](mailto:business@kanalysis.com)

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[1] IMA & Anr. v. UOI & Ors, WP(Civil) No. 645/2022.

[2] <https://new.broadcastseva.gov.in/digigov-portal-web-app/index.jsp>

[3] <https://presscouncil.nic.in/>