

## **MANDATORY SELF-DECLARATIONS FOR ADVERTISEMENTS**

### **INTRODUCTION**

On 3<sup>rd</sup> June 2024, the Ministry of Information & Broadcasting (“**MIB**”) issued instructions (“**Instructions**”) and a press release (“**Press Release**”) in furtherance to the order of the Hon’ble Supreme Court of India (“**Court**”) dated 7<sup>th</sup> May 2024, in the matter of *Indian Medical Association and Anr. vs Union of India and Ors.* (“**Order**”) in an attempt to regulate misleading advertisements on print/ electronic/ digital media. To ensure stricter implementation of the requirements provided for under law, the Court directed that before an advertisement is broadcasted or published, a self-declaration has to be submitted by the advertiser / advertising agency, failing which no advertisement shall be permitted to run on the relevant channels and/or in digital/ print media. In addition to casting an obligation on the advertisers and/or advertising agencies for submitting a self-declaration, an obligation is also cast on publishers and broadcasters to undertake the necessary due diligence to ensure that the appropriate self-declaration has been submitted.

### **BACKGROUND**

The Order was passed while considering the matter of the now infamous advertisements issued by Patanjali Ayurved Limited (“**Patanjali**”) raising concerns about the side effects of allopathic drugs and its claim that Patanjali’s own medicines were backed with scientific research by India’s sages like Charak, Sushrut, Dhanvantri and Patanjali himself. In the Order, the Court has recognised the absence of a robust mechanism in law to ensure that the obligations cast on advertisers to adhere to the stipulations in the Guidelines for Prevention of Misleading Advertisements, 2022 (“**Guidelines**”), and accordingly the Court in exercise of its powers under Article 141 of the Constitution of India directed that before an advertisement is printed/ aired/ displayed, a ‘self-declaration’ shall be submitted by advertisers / advertising agencies on the Broadcast Seva portal of the MIB or the Press Council of India portal, as applicable and detailed hereinbelow.

### **DIRECTIVES FOR ISSUING A SELF DECLARATION ISSUED BY THE SUPREME COURT**

The Court in the Order directed that before an advertisement is printed/ aired/ displayed, a self-declaration shall be submitted by the advertiser/ advertising agency on the lines contemplated under Rule 7 of the Cable Television Networks Rules, 1994 (“**CTN Rules**”) on the Broadcast Seva portal of the MIB or the Press Council of India portal, as applicable. Rule 7 of the CTN Rules prescribes standards for advertisements to be lawful and not “offend morality, decency and religious susceptibilities of the subscribers”. The self-declaration would be uploaded by the advertiser / advertising agency on the Broadcast Sewa Portal run by the MIB. Further, the Order states that for advertisements in the press/ print media/ internet, the MIB shall create a dedicated portal within four weeks from the date of the Order.

### **SELF DECLARATION MANDATED BY THE MIB**

The MIB in its Press Release mentions that the self-declaration is to certify that the advertisement (i) does not contain misleading claims, and (ii) complies with all relevant regulatory guidelines, including those stipulated in Rule 7 of the CTN Rules and the Norms of Journalistic Conduct of Press Council of India. An advertiser must provide proof of uploading the self-declaration certificate to the relevant broadcaster, printer, publisher, or electronic media platform for their records. The Instructions direct

broadcasters and publishers to refrain from broadcasting/ publishing any advertisements until a valid self-declaration certificate is submitted by the advertiser / advertising agency.

For television/ radio advertisements, the advertisers/ advertising agency would be required to submit the self-declaration on the 'Broadcast Seva' portal of the MIB and for print and digital media advertisements, the self-declaration shall be submitted on the 'Press Council of India' portal. The Instructions further make it the responsibility of the broadcasters/ publishers to ensure that the advertisers have submitted the requisite self-declaration certificates before the airing/publication of the advertisements. The Instructions further specify that the broadcasters/publishers may verify the authenticity of the self-declaration certificates through the aforementioned portals.

The self-declaration is required to be submitted by an authorised representative of the advertiser/ advertising agency to ensure accountability of the declaration. The following details of the advertisement must be contained in the self-declaration: i) the product/ service being advertised; ii) the advertisement title; iii) a brief description of the advertisement highlighting any claims made therein; iv) the script of the advertisement; v) the URL of the advertisement for audio/video for TV/ radio/ internet advertisement or PDF of the actual advertisement for print/static internet advertisement; and vi) the proposed date of first broadcast/ publication of the advertisement. If the advertisement is certified by the Central Board of Film Certification, a copy of the same must also be provided.

Any advertisement found to be broadcasted/ published without the self-declaration certificate may be seen to be violative of the Order and appropriate action would be taken against such violations as provided under the Cable Television Networks (Regulation) Act, 1995, or other applicable statutes including the Consumer Protection Act, 2019 ("COPRA"), the Drug and Magic Remedies (Objectionable Advertisements) Act, 1954 and the Drug and Cosmetics Act, 1940.

## **CONCLUSION**

The Court in its Order recognises the absence of a "robust mechanism" to oversee whether advertisers are fulfilling obligations stipulated under various statutes and regulations, thereby, requiring the self-declaration certificate as a means to achieve transparency in advertising, protecting consumers and promoting responsible advertising practices. The Court additionally expressed the view that advertisers/ advertising agencies and endorsers are equally responsible for issuing false and misleading advertisements and that endorsements made by public figures, influencers, celebrities go a long way in promoting a product, hence, such endorsers must act with a sense of responsibility.

While this is significant step in curbing advertisements that are outside the ambit of law, the Order, the Instructions and the Press Release fail to accurately acknowledge the marketing trends prevalent at the moment, whereby 'influencers' and 'content creators' are brought on board to amplify the visibility of a product through their respective social media platforms. A bare reading of the Instructions with relevant statutes suggest that an 'influencer' would potentially be considered to be a 'publisher' in such a case, and an obligation would then be cast on him/her to ensure a self-declaration has been duly submitted. This in turn may not be logistically feasible for small independent influencers. Further, brands operating their own social media handles may post about their products and/or services on accounts which often have a significant following and such posts may fall under

the purview of being ‘advertisements’ under the COPRA. Accordingly, they may upload any advertisement on their own handle, technically without a publisher / broadcaster, whereby the dual checks envisaged under the Instructions would fail.

Stakeholders from the industry while acknowledging the importance of the intent of the Order and the Instructions, have highlighted that once this is actually implemented there may be quite a few issues that may need to be streamlined in order to ensure that laws are complied with, while balancing the interests of the brands and advertisers.

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