

CENTRE RELEASES ADDITIONAL GUIDELINES FOR HEALTH AND WELLNESS CELEBRITIES, INFLUENCERS AND VIRTUAL INFLUENCERS

The Department of Consumer Affairs (“DoCA”) under the Ministry of Consumer Affairs, Food and Public Distribution, on 10th August, 2023 released the Additional Influencer Guidelines for health and wellness celebrities, influencers and virtual influencers (“Guidelines”). These Guidelines have been issued after consulting with various stakeholders, including the Ministry of Health, Ministry of Ayush, Food Safety and Standards Authority of India (“FSSAI”) and the Advertising Standards Council of India (“ASCI”). The press release issued by the Ministry of Consumer Affairs, Food and Public Distribution in relation to the Guidelines hails this as an important extension to the Guidelines for Prevention of Misleading Advertisements and Endorsements for Misleading Advertisements, 2022, and in lieu of the ‘Endorsement Know-hows!’ guide booklet released on 20th January, 2023.

The Guidelines aim to promote transparency in health and wellness endorsements with intention of tackling the issue of misleading advertisements and unsubstantiated claims. They introduce disclosure and disclaimer as well as due diligence requirements to be adhered to by individuals sharing information pertaining to health and wellness on topics such as health advantages, including those from food items and nutraceuticals, disease prevention, treatment or cure, medical conditions, recovery methodologies or immunity boosting or while promoting products or services in relation to the aforementioned.

KEY FEATURES:

Following are the key features of the Guidelines:

a. Disclosure and Disclaimer Requirements

The Guidelines require certified medical practitioners and health and fitness experts holding certifications from recognized institutions who either share information pertaining to health and wellness or promote any products or services or any health-related claims, to disclose that they are certified health or fitness experts at the time of sharing of such information.

Further, if any such information is being shared by persons such as celebrities, influencers and virtual influencers who present themselves as health experts or medical practitioners, they must provide clear disclaimers. These disclaimers should clarify that the content shared by them “*should not be seen as a substitute for professional medical advice, diagnosis or treatment*”. The Guidelines also put the onus on endorsers to encourage their audience during promotions, to seek advice from health and wellness centres or healthcare professionals prior to making any significant alterations to their diet, exercise or medication routines.

The Guidelines recommend a straightforward approach for the aforementioned disclaimers, and the following have been used as examples:

“*As a certified nutritionist. I recommend.....*” Or “*with my background in personal training, I find this product helpful for.....*”

b. Due Diligence and Fact-based Information

The Guidelines recommend that individuals who are engaged in dissemination of information as discussed, should thoroughly review products or services and ensure that they are able to substantiate the claims they wish to make in an endorsement. The Guidelines cast a responsibility to conduct adequate due diligence before endorsing any product. In addition, the Guidelines require celebrities,

influencers and virtual influencers to include appropriate sources and citations in support of the information that they are sharing, where necessary.

c. General Advisory

Along with the requirements for disclosure/disclaimer and due diligence, the Guidelines further extend a general advisory which suggests that celebrities, influencers and virtual influencers should not endorse or disseminate information or advertisements about any health and wellness product or service in any manner that implies or encourages its usage for diagnosing, curing, alleviating, treating or preventing any disease, disorder or condition which is prohibited from being advertised by law.

d. General Exemption

The Guidelines does not apply to celebrities, influencer and virtual influencers who share general wellness and health advice, not associated with specific products or services or not targeting specific health conditions or outcomes. However, the Guidelines clarify the reiterate the need for these celebrities, influencers and virtual influencers to clearly distinguish between their personal views and professional advice and to refrain from making unsubstantiated claims.

CONCLUSION:

The Guidelines are a step in the right direction and address the power held by new age influencers who have a significant control over the opinion of the younger generation. It is further stipulated that violators of the Guidelines may be penalised in accordance with the Consumer Protection Act, 2019 and other relevant provisions of the law for non-compliance with these Guidelines. This provision for penalties will act as a significant factor in deterring violation of these Guidelines.

DISCLAIMER

This alert has been written for general information of our clients and should not be treated as a substitute for legal advice. We recommend that you seek proper legal advice prior to taking any action pursuant to this alert. We disclaim all liability for any errors or omissions. For further clarifications, you may write to Mallika Noorani (Mallika.noorani@parinamlaw.com), Shweta Chandurkar (shweta.chandurkar@parinamlaw.com) and Aastha Sood (aastha.sood@parinamlaw.com).

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