

CLAIM SUBSTANTIATION
BEFORE
ADVERTISING STANDARDS
COUNCIL OF INDIA

Mohan Vegulaparanan
December 19, 2018

What is ASCI?



- Advertising Standards Council of India (ASCI) is a self regulatory voluntary body to promote responsible advertising.
- Established in in Mumbai in 1985 on the lines of Advertising Standards Authority (ASA) of UK.
- Comprises Representatives from and is supported by-
 - The Advertisers
 - Advertising Agencies
 - Media (Broadcasters, Press)
 - Others (Consumers at large, PR Agencies, Market Research Companies, Consumer Protection Groups etc)
- Members must agree to abide by the code of conduct and the order of ASCI.
- Not funded by Govt. but by membership and though complaints handling mechanism.

STRUCTURE OF ASCI

Board of Governors

- Decides overall policy and roadmap for the Council
- 16 Individuals Elected from the members of ASCI
- 4 each representing each of the four sectors-
- The elected members in turn elect Chairman.

Consumer Complaints Council

- Decides on advertisements complaints received by the Council
- 21 members – 12 members are non-advertising professionals
- Examines whether an advertisement has violated the codes of ASCI
- The CCC's decision on a complaint against an advertisement is final



The day to day affairs and the coordination with the CCC and the Board of Governors are handled by the Secretary General aided by team of officials..

ASCI CODE



- The code prohibits advertising that falls in to any one or more of the below 6 parameters. Of course harmless puffery and fact based comparative advertising is not prohibited.
- Strict conditions on advertisements targeted at children and for promoting lotteries etc.
- Advertisements having puffery/ humorous / harmless / per se unbelievable claims are permitted.

Misleading advertising

False advertising

Indecent advertising

Advertisement unfair to competition



Advertising leading to unsafe practices

Illegal advertising

National Advertising Monitoring Service (NAMS)

Tools used for monitoring advertisements and for *suo moto* action

- Monitors 75000 print ads and 1500 TV ads per month
- NAMS- To keep continuous track of Advertisements nationally
- AdEx, along with trained ASCI personnel checks the newly released TV and print advertisements;
- Suo moto complaints too are referred to the CCC



CONSUMER COMPLAINTS COUNCIL (CCC)

Role – deals with complaints from consumers / Industry / referred to Govt., against Ads which are in contravention of the ASCI Code for Self-Regulation.

- Receives about 14 complains per week
- In the recent past, majority of the complaints were in respect of advertisements by following industry sectors-

1. Education
2. Health, home and personal care
3. Consumer durables
4. Food and beverages

Political Parties, Govt. advertisements are not covered 😊



COMPLAINTS HANDLING PROCEDURE

Who can file a complaint?

- *Suo Moto*
- Individuals (Consumers)
- Consumer Protecting Agencies
- Advertisers / competing companies
- Government bodies

Complaint Lodging Process

Complaint to contain following details:

- Product / company against whom there is a complaint
- Nature of the complaint
- TV channel and program / newspaper, magazine where the Ad appeared
- Enclose copies / labels/ TV clippings and story boards (English translated)



How to lodge a complaint?

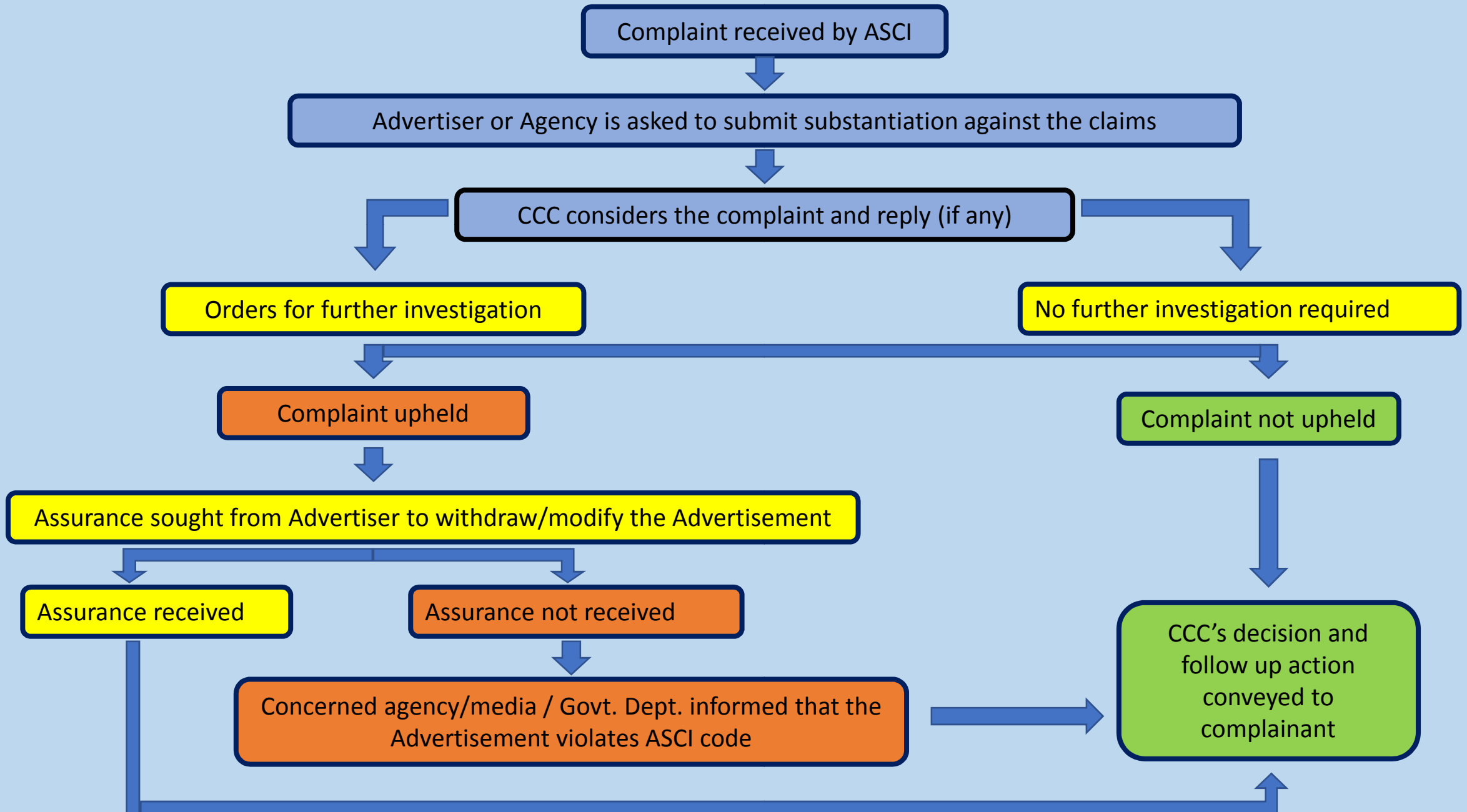
- ❑ Two types of complaint filing- Normal and FAST TRACK
- ❑ Complaint can be lodged even on phone or through www.ascionline.org, by letter or fax or email at asci@vsnl.com
- ❑ No filing fee to lodge a normal complaint; but an upfront fee of Rs. 75,000 (+ GST) for fast-track procedure.
- ❑ The details of the complainant is not revealed to the Advertisers;
- ❑ Advertiser given an opportunity to respond / remove the ad.



Claim Substantiation

- The advertiser has to respond to the complaint with specific details within the prescribed time.
- The response has to be accompanied by copy of the advertisement, story board in English, label of the product as the case may be.
- Claims have to be substantiated with independent, well researched / well accepted data- scientific or otherwise.
- The Advertiser can seek personal hearing.
- Only company representatives / executives are allowed to be represented

COMPLAINT HANDLING PROCESS IN THE ASCI



FAST TRACK MECHANISM

- Fast Track Complaint redressal process – normally availed by intra-industry and inter-member matters only.
- To avail Fast Track Mechanism:-
 - Complainant and the complained should be members of ASCI
 - The complainant should not have subscription dues pending
 - No pending litigation against the complained in respect of the subject matter.
 - If the complainant has not complied with any recent CCC orders, he is not eligible to complain.
 - The filing fees payable by the complainant shall be Rs.75,000+ GST.
- Fast track – decision is delivered by the Fast Track Complaint Council (FTCP) within 7 working days of filing the complaint with all the relevant materials.



Complainant to notify ASCI that he has opted for Fast Track procedure

Must Deposit a Non-refundable fee of Rs. 75,000 + GST along with details of complaint

Within 1 business day of lodging,, ASCI Designated officer to inform the advertiser(defendant) to provide written response

If response is technical in nature, Technical expert is appointed by ASCI

The defendant advertiser has to respond in writing within 4 days

FTC Panel shall examine written submissions (Both parties should be available to answer queries)

Panel Meeting is held on the next business day after the 4th day

Advertiser must suspend advertisement if he wants more time to respond

If Advertiser doesn't respond FTC Panel is free to arrive at a decision

POST REVIEW ACTION

FTC Panel notifies its recommendation to the designated officer of ASCI within 1 day of panel meeting

The Designated Officer intimates the recommendation to the Advertiser within 1 day, and to the complainant within 2 days

Complaint Upheld

Complaint Not Upheld

Panel's recommendation will lay down the precise breach of ASCI codes concerning the content of the Advertisements

Advertiser to inform agency / media within 2 business days to withdraw / remove the offending portion / advertisement

Ensure its implementation within 7 business days

Non Compliance of the recommendation

Within 5 days, the media / govt. dept will be informed that the subject advertisement violated ASCI code

Advertiser is aggrieved by the order

Review can be sought through the IRP process

INDEPENDENT REVIEW PROCESS

- ASCI provides both parties with the option to seek a review of the recommendations made by the CCC and the FTCC.
- Review is undertaken by the chairman – retired judge of the SC/HC, and assisted by Secretary General/Chief Complaints Officer/Chief Administrative Officer of ASCI who is familiar with the proceedings.
- Shall not be applicable in ex-parte recommendations by the CCC. Ex-parte recommendations shall be re-examined by the CCC itself.



PROCESS OF REVIEW

Written Application in prescribed form to be submitted within 10 business day from the receipt of the CCC / FTCC recommendations

Application accompanied by prescribed fee which may be waived if review is sought by an NGO

Review sought by Complainant

Parties can submit additional information which was not furnished in original complaint, which must be shared with the Advertiser as well

The advertiser shall send his response to ASCI within 5 working days

Review sought by Advertiser

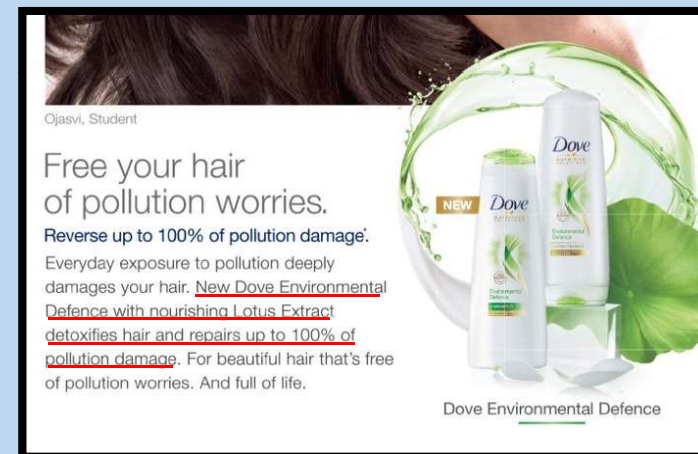
Advertiser seeking review must give assurance for the suspension of the advertisement pending review

If impugned Ad appears in any media before IRP review is concluded ASCI can stop the review and blacklist / refuse complaints if any from the advertiser for 3 months

RECENT ASCI DECISIONS

Hindustan Unilever

- New Dove Environmental Defence Shampoo
 - Claimed “with Lotus extracts that detoxifies hair and repairs 100% of pollution damage”
 - The CCC found that the advertisement was inadequately substantiated
 - Held that the advertisement **was misleading by implication and exaggeration**



Lifebuoy Soap

- Ad when seen in totality creates an impression that Lifebuoy is recommended by doctors
- Medical Ethics Code prohibits doctors from endorsing any product in absence of market research data
- Visual representation considered to be **misleading by ambiguity**



ADVERTISEMENTS WITH UNSAFE PRACTICES

- Parle - Kaccha Mango Bite

- Amitabh Bacchan throws stones at a tree, and the stone breaks a window
- ASCI decides that such behavior will encourage unsafe practices among children
- Termed as **an unsafe and dangerous practice that manifests a disregard for safety**



- Pepsi

- Visual showing the protagonist running on the train platform
- Held to have **shown a dangerous practice that may influence minors to emulate such acts**



- Coca-Cola – Limca

- Visual of the protagonist along with his friends falling from a human pyramid from the second floor of the building and falling onto the ground which turns into a pool
- Actions show a manifest disregard for safety and encourage negligence
- **Termed as unsafe and dangerous**



ASCI AND COMPARATIVE ADVERTISEMENTS

Comparative Advertisements are dealt with under Chapter IV of the ASCI code. Ads containing comparisons with competing manufacturers and sellers are permissible if the following are satisfied:-

- Advertiser's product is being compared with similar aspects of competitor's product.
- The comparison should not suggest falsely that advertiser's product is better.
- A Consumer should not mislead due to the comparison.
- The advertising does not unfairly denigrate attack or discredit other products, advertisers or advertisements directly or by implication.



In the above advertisement, the comparison was permitted because it fulfilled all the conditions under the ASCI Code

JURISDICTION OF THE ASCI

- Procter and Gamble Home Products Pvt. Ltd. Vs Hindustan Unilever Ltd.
 - Delhi High Court discussed the jurisdiction of ASCI
 - Court held that ASCI has been established as a self-regulatory body in the field of advertising
 - Therefore, it can only recommend the advertiser to remove the advertisement but has no mechanism to compel removal of the advertisement
 - **Can grant relief and award damages**



- Metro Tyres Ltd. Vs The Advertising Standards Council of India and Anr.
 - Argument – Sec. 62 of the Copyright Act and Sec. 134 of the Trademark Act exclusively empower District Courts to adjudicate claims of infringement and passing off and ASCI is not competent to adjudicate such proceedings.
 - Delhi High Court observed that the district courts' power to adjudicate infringement cases within advertisements does not operate as an embargo to ASCI adjudicating upon claims of infringement.
 - The court grounded its judgment in the desirability of vesting self-regulatory bodies with greater powers in order to enable them to function as efficacious alternative dispute resolution mechanisms.



Conclusion

- a. ASCI is playing an important role in ensuring responsible advertising
- b. It has not only gained the respect of the advertisers but also that of many Government Depts. (Ministry of Consumer Affairs, Information and Broadcasting etc)
- c. Despite lack of legal enforcement authority, it has been able to enforce its authority through self regulation / voluntary compliance.
- d. The complaints are resolved in an efficient and expeditious manner and with limited cost compared to lengthy costly legal proceedings;

Short comings:

- **still unable to control deceptive, surrogate advertisements - liquor adds are still being aired as if promoting glasses / playing cards / events / airlines.**



Unable to hold Builders and Developers making tall /misleading false claims with inadequate details.



Thank
You