

Legal 500

Country Comparative Guides 2024

India

Advertising & Marketing

Contributor

G&W Legal



Shivalik Chandan

Associate | shivalik@gnwlegal.com

Jannavi Singha

Senior Associate | jannavi.singha@gnwlegal.com

Dhruv Singh

Partner | dhruv@gnwlegal.com

Arjun Khurana

Partner | arjun@gnwlegal.com

This country-specific Q&A provides an overview of advertising & marketing laws and regulations applicable in India.

For a full list of jurisdictional Q&As visit legal500.com/guides

India: Advertising & Marketing

1. Please provide a brief overview of the legal and regulatory framework governing advertising and marketing in your market. In particular, please explain if there is a self-regulatory system, a statutory system and/or ability for competitors or consumers to bring claims against advertisers.

The right to advertise has repeatedly been observed in judicial precedent to have been guaranteed by the Indian Constitution under the purview of the right to freedom of speech and expression- specifically as the right to commercial speech. Accordingly, only reasonable restrictions may be placed on this right by the government in the interests of the likes of sovereignty of the Indian state, public order and morality. While this freedom of commercial speech is not absolute, it can only be restricted when not in the public interest.

While there is no single specific law central law that applies to advertising, there are a host of laws that apply to ads, including but not limited to the Cable Television Network Rules 1994 ("Cable Rules") and Consumer Protection Act 2019 ("CPA") as well as a number of sector specific laws such as:

- The Drugs and Cosmetics Act 1940 which prohibits the advertising of scheduled drugs.
- The Advocates Act 1961 prohibits lawyers from advertising their services.
- Public Gambling Act 1967 regulates gambling and advertisements promoting gambling.
- The Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act 2003 prohibits the advertising of tobacco products.
- The Indian Medical Council Act 1956, which prohibits the advertising by physicians for their services.
- The Representation of People Act, which places restrictions on political advertisements.

Other more general laws that may have an impact on advertising include the Competition Act 2002 (where such advertising may be viewed as anti-competitive), violative of the intellectual property of a third party such as under the Copyright Act 1957 or the Trade Marks Act 1999, or an invasion of an individual's privacy (a constitutionally

guaranteed right under Article 21 of the Indian Constitution), the tort of defamation, or various provisions in the Bhartiya Nyaya Sanhita 2023 ("BNS") (India's primary criminal legislation) such as hurting of religious sentiment and sedition.

As a summation thus, it might prove impossible to put together a comprehensive list of all laws that have the potential to impact advertising, necessitating that each ad be analyzed in light of its specific content.

The Central Consumer Protection Authority ("CCPA") set up under the CPA is the regulator responsible for matters concerning violations of the rights of consumers, unfair trade practices, and for false or misleading advertisements. The CCPA may take up complaints it receives with regard to false and misleading advertising, while also retaining the power to act Suo-motu.

In 2022, the CCPA issued Guidelines for the Prevention of Misleading Advertisements and Endorsements for Misleading Advertisements ("Misleading Ad Guidelines"), which clarifies what will not be considered a misleading advertisement by the CCPA, while also prohibiting surrogate advertising, setting expectations and due diligence requirements for endorsements. In 2023, the CCPA issued guidelines prohibiting specified dark patterns in advertising, such as bait and switch advertising, subscription traps and confirmation shaming.

In addition to the above, the Advertising Standards Council of India ("ASCI") was established in 1985 as a 'self-regulating' organization. The ASCI came up with a Code for Self-Regulation (the "ASCI Code") which requires members to refrain from advertising in a manner that is dishonest, untruthful, or in some other manner violative of the ASCI Code. The ASCI has the power too, and often asks members to remove such advertising as it finds inconsistent with the ASCI Code from further dissemination. The ASCI also has the power to fine members. Furthermore, while the authority of ASCI has been called into question on a number of occasions, compliance with its code is a statutory requirement for anyone operating a cable television network as the ASCI Code has been incorporated by reference into the Cable Television Network Rules ('Cable Rules').

2. Please comment on how active the regulators are in your market, in practice, when it comes to regulating advertising and marketing.

The answer – extremely. The ASCI dealt with over 10000 complaints relating to misleading advertising during the 2023-24 financial year.

In a well-publicized case, the Indian Medical Association took Patanjali Ayurveda (an Indian health and wellness product manufacture with a focus on traditional Indian remedies) to court over misleading claims. This had far-reaching consequences, as it led the Supreme Court to issue directions to the government to ensure self-declaration certificates were issued by advertisers prior to publication of their advertisements in print, online and television networks (this has been elaborated upon in Question 3 below).

While statistics are not immediately available with regard to the number of advertising related issues being dealt with by the CCPA, this number is likely to be large too.

3. Do different rules apply to different media (e.g. television broadcast, streaming, online, cinema, print, out-of-home, email marketing, etc)?

In addition to a host of sector specific and general laws that would be applicable in each instance to the advertisement itself as covered in Question 1 above, the Cable Rules shall be applicable in instances of advertisements to be carried over the cable television network. These Rules make compliance with the ASCI Code a mandatory requirement.

No bespoke laws exist to cover email marketing or other online marketing (including on streaming media), which shall be required to comply with the Information Technology Act 2000 as well as the ASCI Code.

4. Is it necessary to have advertisements pre-cleared/pre-approved in your market by a relevant authority, regulator or other body before they are published/broadcast, either generally or in relation to particular media, sectors, products, individuals/businesses, etc? If so, please provide a high-level overview.

Generally, no requirements for pre-clearance/pre-approval exist in India before the publication or broadcasting of advertisements. However, the Cable Rules prescribe certain conditions for surrogate

advertisements relating to tobacco products and liquor products. Conditions relating to the content of these advertisements have been discussed in Question 9 below. In addition to those, such advertisements are required to be certified as suitable for unrestricted public transmission by the Central Board of Film Certification. Additionally, the application must contain a certificate from a registered chartered accountant evidencing the fact that the product being advertised (which carries the same brand name as the tobacco/liquor product) is distributed in a reasonable quantity, is available at a substantial number of outlets where other products of the same category are available, and that the proposed expenditure on such advertising is not disproportionate to the actual sales turnover of said surrogate product. Currently, these requirements are only applicable to advertisements broadcast on cable television networks.

The Indian Supreme Court, in an order issued in May 2024, directed that all advertisers are required to submit a self-declaration certificate affirming that the advertisement does not make any misleading claims and complies with all relevant statutory regulations relating to advertisements. Such certificates must be submitted for advertisements across all media, including electronic media, print media, and the internet. While the initial requirement was for all advertisers regardless of the sector, the Ministry of Information and Broadcasting later limited this requirement for advertisements relating to products/services in the Food and Health sectors.

5. Focusing on misleading claims/marketing, please explain how these are regulated in your market.

The Misleading Ad Guidelines have been notified by the CCPA with a view to prevent unfair trade practices in the form of false and misleading advertisements. They provide for the conditions an advertisement needs to meet for it to be classified as non-misleading and valid, such as containing a truthful and honest representation, and not misleading consumers by exaggerating the accuracy, practical usefulness, capability, or performance of the good or service being advertised, or about the risk to the personal security of consumers if they do not purchase the advertised products.

The Misleading Ad Guidelines also prescribe specific conditions for 'bait advertisements', 'free claims advertisements', and disclaimers included in advertisements.

6. How is advertising that is (or may be) harmful or offensive managed in your market?

The Cable Rules place several prohibitions on cable television advertisements, including those which would tend to incite criminal activity, glorify violence or obscenity, present criminality as desirable, exploit social evils, or project a derogatory image of women. Generally, advertisements are prohibited from containing any indecent, vulgar, suggestive, repulsive, or offensive themes within their content.

The BNS also prohibits the publishing of obscene content (where the term 'obscene' is defined as lascivious, appealing to the prurient interest, or tending to deprave or corrupt its viewers). The scope of this prohibition extends to all forms of advertisements, regardless of the medium.

7. Are there special rules, or is there special guidance, relating to price claims in your market, such as discounts, sales, limited offers? If so, please provide a high-level overview.

The Misleading Ad Guidelines impose certain conditions regarding price claims, referred to as 'bait advertisements.' Specifically, such advertisements must not seek to entice consumers with the price offers without a reasonable prospect of selling the goods/services offered at those prices. Advertisers must ensure that a sufficient supply of the offered goods/services is available to fulfil any foreseeable demand generated by the bait advertisement. Such advertisements must clearly declare the limited nature of the stock if applicable, and any other restrictions (such as geographical restrictions or age limits). Consumers must not be misled about the lack of availability of the goods/services in order to entice the consumers to purchase them.

8. How are misleading environmental claims regulated in your market? Are there special rules or is there special guidance relating to environmental claims in your market? If so, please provide a high-level overview.

No specific regulation or guidance is applicable on misleading environmental claims in India. The general requirements under the Misleading Ad Guidelines would be relevant for all environmental claims as well.

Environmental claims such as "environment friendly", "eco-friendly", "sustainable", "planet friendly", that imply

that the entire product advertised has no impact or only a positive impact or reduces adverse impact on the environment, must be capable of being substantiated by robust data and/ or well-recognised and credible accreditations. Such absolute claims cannot be diluted by means of a disclaimer or any other clarificatory mechanism such as a QR code or website link.

9. What are the main sectors or product types where advertisements are either prohibited or tightly restricted (e.g. alcohol, tobacco/smoking, gambling, crypto, unhealthy food and drink). Please provide a high-level overview.

The Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act 2003 prohibits the advertising of cigarettes and tobacco products, and also places a prohibition on any person taking part in advertisements which suggest or promote the use of cigarettes or any other tobacco products, irrespective of the medium. This however does not apply to the packaging of cigarettes/tobacco products (for which a different set of requirements is in place) and advertisements for such products at the entrance or inside a warehouse or shop where they are offered for distribution or sale, subject to certain prescribed conditions. Contravention of this restriction is punishable with imprisonment of up to two years or a fine of up to INR 1000 or both for the first offence, and imprisonment of up to five years and a fine of up to INR 5000 for subsequent offences.

Direct advertising of alcohol products on cable television is restricted under the Cable Rules. However, as discussed in the response to Question 4, surrogate advertising of such products is permitted subject to the discussed conditions and pre-approval requirements. The Indian government has however announced that it will put in place regulations which bar such surrogate advertising of alcohol products as well. It remains to be seen what the scope and applicability of these rules will be, as the provisions have not yet been made publicly available.

10. Are there special protections for children? If so, please provide a high-level overview.

The Misleading Ad Guidelines prescribe various conditions which advertisements directed at children must comply with. Such advertisements must, among other things, not condone or encourage behaviour and

practices that could be dangerous for children and detrimental to their physical and mental wellbeing, take advantage of children's inexperience or credulity, exaggerate the features of the advertised goods/services in a manner which would lead children to have unrealistic expectations, make it difficult for children to judge the characteristics of the goods/services and to distinguish between real-life and fantasy situations, and exaggerate what is attainable by an ordinary child using the advertised good/service. Additionally, advertisements for junk food (such as chips, carbonated beverages and such other snacks and drinks) shall not be advertised on programs meant for children or on channels meant exclusively for children.

11. Are there particular rules or restrictions relating to unhealthy food and drink, such as 'junk food'? If so, please provide a high-level overview.

The Food Safety and Standards (Advertising and Claims) Regulations 2018 ("Food Ad Regulations") have been implemented by the Food Safety and Standards Authority of India to govern advertisements of food products in the country.

Specific requirements have been put in place by the Food Ad Regulations in relations to claims regarding the non-addition of sugars and sodium salts. Such claims may only be made when no such sugars or sodium salts have been added to the food, the food does not contain any ingredients containing added sugars or sodium salts that substitute for added sugars, the sugar content of the food has not been increased above the amount contributed by the ingredients by some other means (such as using enzymes to release sugars), and the food does not contain ingredients that contain added sodium salts. There are however no specific requirements conditions requiring any advertisements for unhealthy food and drink to make any declarations – these requirements are generally covered under packaging and labelling regulations for food products. As mentioned above in the response to Question 10, ads for junk food cannot be advertised during programming aimed at children.

12. Are there particular rules or restrictions relating to influencer marketing? If so, please provide a high-level overview.

The Misleading Ad Guidelines also contain provisions regarding the regulation of influencer marketing. Specifically, they mandate that endorsements made by

any individual, group, or organization (which would also include influencers) must reflect their genuine and reasonably correct opinion and must be based on adequate information or reasonable experience with the advertised good or service. Such endorsements must also not in any way be deceptive.

Additionally, when there is a material connection between the person or entity making the endorsement and the trader/manufacturer/advertiser of the advertised good or service which may affect the credibility of the endorsement and which would not be reasonably known to the audience, the material connection must be disclosed in the endorsement.

In connection with the abovementioned requirements, the Indian Department of Consumer Affairs has also released guidelines providing clarity on the applicability of these provisions. As per these guidelines, any individuals or groups who have access to an audience and the power to affect their purchasing decisions would be required to disclose material connections in endorsements – this includes celebrities, online influencers, and virtual influencers (defined as fictional computer-generated characters or 'avatars' who have realistic features and personalities and behave as influencers). Material connections which are to be disclosed include compensation (monetary or otherwise), free products, trips or hotel stays, media barter, coverage and awards, or any family, personal, or employment relationships.

On a practical note, while such disclosures are made by influencers in some instances (often through tools for this purpose offered by social media platforms), there are a large number of cases when disclosures are not made.

13. Do influencers require a licence, permit or other official permission before they can operate in your market as advertisers/marketers/brand ambassadors or similar?

No such requirements for licenses or permits exist in India.

14. What are the main or most common IP considerations advertisers should keep in mind in your market?

Advertisers must keep the following IP considerations in mind in the context of advertising in the Indian market:

- a. Confidentiality of Content / Information – A mixed bag of several IP can be involved when creating an

advertisement. There can be different IP rights that may be involved at different stages and in the process of creating and finalizing advertisement content or executing an advertising campaign. For instance, specific components of an advertisement may be safeguarded under trademark law, while the advertisement as a whole may fall under the protection of copyright law. As such, in most cases, the two primary IPs that are relevant in advertisements are Trademarks and Copyrights.

i. Trademark – This could be a word, tagline, logo, label, etc. which acts as a unique identifier for the brand and makes it distinct from others in the market. Therefore, the trademark is bound to be highlighted in any given advertisement as it plays a crucial role in protecting a brand from being imitated by competitors or causing confusion among consumers in the marketplace, and thereby, ought to be protected. As such, registering a trademark is crucial, as it allows the brand to be used freely without legal consequences. Without registration, others may use the brand, but once officially registered, strict penalties may be imposed for any unauthorized usage.

ii. Copyright – It is essential to ensure that any copyright-protected material within an advertising campaign, such as scripts, images, or music, is registered. A copyright holder may be able to sue for a range of relief including damages and/or an injunction to prevent further infringement. As such, advertisers should take steps to inform the public that their advertising content is legally protected under copyright law, reinforcing the exclusivity and safeguarding their rights.

Additionally, advertisers should ensure that any agreements with agencies or creators for using their copyrighted material include a full assignment of rights, guaranteeing that ownership/right to use of all such materials in the advertisement is granted to the advertiser. Without this, disputes may arise, potentially restricting the advertiser's ability to use the advertisement in the intended manner across various platforms.

Generally, advertisers must also ensure that they do not infringe upon any pre-existing IP in their advertisements.

In order to ensure that such IP which insofar concerns confidential information is protected, advertisers may consider preparing documents such as non-disclosure agreements; filing of appropriate applications under relevant IP laws in India, such as trademarks and copyrights; conducting due diligence, etc.

b. Representation of trademarks and prevention of

trademark dilution – Trademarks in the form of words, logos, taglines, etc. of a certain brand often find a place in advertisements. It is thus important that the advertisement in no way dilutes, diminishes, or causes confusion regarding the mark. This would entail the representation of the product's trademark being done in a clear and distinctive manner, and not being depicted in a way which would potentially cause confusion with another product in the minds of consumers, thereby ensuring that the mark is associated with the advertised product alone.

c. Protection against advertising and marketing techniques – Certain advertising techniques (such as those listed below) can present unique challenges under Indian IP laws.

i. Comparative Advertisement – Comparative advertising refers to the practice where a business compares its product or service with that of a competitor to highlight its own advantages and superiority. However, the Indian legal framework provides that such comparisons are to remain fair and truthful (which has been elaborated upon in Question 15 below).

ii. Keyword advertising – This form of advertising enables a company's products to appear in search results when consumers enter specific phrases into search engines. Search engines facilitate this through keyword advertising programs, allowing advertisers to purchase particular words or phrases that trigger their products to show up in relevant search results. This practice has significant implications for trademark law, particularly when competitors bid on branded keywords.

iii. Surrogate advertising – This technique is used by companies whose primary products are banned or prohibited from being advertised, and wherein they promote a substitute product under the same brand name. The goal is to create brand recall for the original product by advertising the substitute. This tactic, often referred to as "brand extension," often raises legal concerns in India, particularly regarding deceptive advertising and compliance with regulatory frameworks, as has been discussed above.

iv. Meta Tagging – Meta-tagging involves embedding specific words or phrases within a website's code to convey essential information to search engines. Although these meta tags are not visible to users when navigating the site, they play a crucial role in helping search engines understand and categorize the content. By analysing the meta tags, search engines determine the website's relevance and can more accurately index and rank it in search results. Thus, meta tags serve as a vital tool in

enhancing a site's searchability and ensuring it reaches the right audience. For advertisers, it is very important to have these words protected under trademark and copyright laws so as to ensure that no unauthorized use takes place.

These methods can potentially lead to issues related to trademark infringement, misrepresentation, and unfair competition, requiring advertisers to carefully navigate legal boundaries to avoid liability and ensure compliance with intellectual property regulations.

d. Infringing of personality rights – One of the most common authorizations that are sought when advertising is that of personality rights. In India, the use of a celebrity's image, voice, or likeness requires explicit consent and therefore, it is important to secure written consent for any such endorsements or use of any aspect of a celebrity. The Indian legal framework on this has been discussed in detail in Question 16 below.

15. Is comparative advertising permitted in your market? If so, please provide a high-level overview.

Under the Misleading Ad Guidelines, advertisers are required to ensure that their advertisements do not refer to any other persons or entities in a manner which confers an unjustified advantage on the advertised product or brings such person or entity to ridicule or disrepute, unless requisite permission has been sought for the same.

While comparative advertising or marketing is permitted in India, advertisers are required to adhere to strict guidelines to avoid legal issues. To elaborate, while the law permits comparative advertising under Article 19(1)(a) of the Indian Constitution, which guarantees the right to freedom of speech and expression, such freedom is subject to reasonable restrictions guaranteed under 19(2) to protect the rights of others, including the competitors in the market. As such, the primary laws governing comparative advertising are in India are:

a. The Trade Marks Act 1999 (Section 29): This prohibits the use of a competitor's trademark in a misleading or disparaging way. Any comparison should not cause confusion or mislead consumers. The Trade Marks Act provides for conditions for infringement of a trademark and includes a specific provision for infringement in advertising. Use of a registered trademark in advertising would be considered as infringement if such use is contrary to honest industry and commercial practices, is detrimental to the mark's

distinctive character, or is against the marks' reputation. Indian courts through various judgements have provided additional guidance for making the determination of whether the use of a mark in advertising constitutes infringement under the Trade Marks Act. Generally, advertisers are allowed to engage in 'puffery' (making claims of their product being superior to competitors), provided that no assertion is made as to the inferiority of the competitor's product, and the competitor's product is not disparaged.

- b. Competition Act 2002: It ensures fair competition and prevents anti-competitive behaviour, including misleading or untrue claims made in comparative advertising.
- c. ASCI Code: The ASCI Code provides detailed standards for fairness in advertising in comparative ads, wherein such ads should not distort facts, mislead the public, or unfairly denigrate a competitor's product.

Legal Challenges to be considered under Comparative Advertising:

Although allowed, comparative advertising can lead to disputes if the following conditions are not met:

1. False or Misleading Claims: Advertisements must be based on factual comparisons and must not exaggerate the benefits of one's product while presenting false or misleading information about the competitor's product.
2. Denigration or Disparagement: Comparative advertising is permissible only if it does not belittle or denigrate a competitor's product. Making negative, unsubstantiated claims about a competitor can lead to legal actions for defamation or passing off.
3. Use of Competitor's Trademark: If the advertiser uses a competitor's trademark in a way that creates confusion or misleads consumers, it may amount to trademark infringement. This can also lead to accusations of passing off.
4. Comparisons that result in unfair trade practices, such as making claims that cannot be substantiated, can invite action under the CPA.

Comparative marketing in India presents both opportunities and risks for advertisers. It allows businesses to directly highlight their competitive advantages but demands careful adherence to legal and ethical standards. While comparative advertising is an effective tool to increase consumer choice and promote fair competition, it must be approached with a high level of caution. Advertisers need to base their claims on verified facts and avoid denigrating competitors to steer

clear of legal repercussions. When done ethically, comparative marketing can be a powerful strategy for both businesses and consumers, as long as it fosters informed decision-making without misleading or harming market competition.

16. Are there particular rules relating to 'image rights' in your market that advertisers should be aware of?

In India, the concept of image or personality rights, particularly related to commercial exploitation, is evolving through judicial decisions rather than a specific statutory framework. Over the years, courts have increasingly recognized the right of individuals, particularly public figures, to control the commercial use of their persona. This development, however, has been gradual and intertwined with existing intellectual property laws. That said, the following judgements of Indian courts provide a high-level understanding of the same:

a. Rajagopal v. State of Tamil Nadu (1994)

This case marked one of the earliest recognitions of the right to privacy, laying the foundation for personality rights in India. The Supreme Court acknowledged that every individual, including public figures, has the right to protect their private life from unauthorized public exposure. This case did not specifically address commercial exploitation but provided a significant platform for future claims relating to personality rights, intertwining it with the right to privacy (which has now been held to be a fundamental right under the Indian Constitution).

b. ICC Development (International) v. Arvee Enterprises (2003)

The Delhi High Court in this case was among the first to consider personality rights explicitly in a commercial context. The International Cricket Council (ICC) had objected to the unauthorized use of its trademarks and other indicia related to the Cricket World Cup. While the court did not directly address individual personality rights, it laid the groundwork by affirming that unauthorized commercial use of trademarks or indicia associated with events or personalities was actionable under intellectual property law, thus opening the door for personality-based claims in later years.

c. DM Entertainment Ltd. v. Baby Gift House (2010)

This case represented a significant step forward in recognizing the commercial aspects of personality rights.

Daler Mehndi, a famous Indian singer, sued Baby Gift House (a toy maker) for selling dolls resembling him without his consent. The court ruled that the unauthorized commercial use of Mehndi's persona, including his likeness, voice, and image, amounted to a violation of his personality rights. This decision established that individuals, especially celebrities, have an inherent right to control the commercial exploitation of their persona. The court also linked personality rights to trademark law, addressing issues of passing off and false endorsement.

d. Titan Industries v. Ramkumar Jewellers (2012)

In this case, Titan Industries (a fashion accessory manufacturer) sued Ramkumar Jewellers for using images of Amitabh Bachchan and Jaya Bachchan (two renowned Indian actors) without their consent in advertisements. Titan Industries had published advertisements for its products using images of the actors, which were then passed off by Ramkumar Jewellers for its products. The Delhi High Court ruled that such unauthorized use violated the right of publicity of the celebrities. Additionally, the court linked the case to copyright law, determining that Titan Industries held the copyright over the advertisement images. The court's judgment reinforced the idea that personality rights can be protected under existing intellectual property frameworks, including both copyright and trademark laws. This case further clarified that individuals have the right to control how their likeness is commercially used.

e. Gautam Gambhir v. D.A.P. & Co. (2017)

Cricketer Gautam Gambhir sued a restaurant using the tagline "by Gautam Gambhir" to prevent unauthorized commercial use of his name. However, the Delhi High Court dismissed the claim, ruling that the restaurant had not caused any harm to Gambhir's professional reputation as a cricketer. The court's decision in this case showed the limits of personality rights, especially when there is no clear commercial harm or consumer confusion. This case highlighted that personality rights claims must demonstrate a tangible link between the use of a persona and commercial exploitation.

f. Krishna Kishore Singh v. Sarla A. Saraogi (2021)

This case brought the issue of posthumous personality rights to the forefront. The father of late actor Sushant Singh Rajput (SSR) filed a suit to prevent filmmakers from using SSR's name, image, and likeness without permission. The Delhi High Court initially recognized that personality rights are tied to the right to privacy, which extinguishes upon death. However, the court left the

question of posthumous commercial rights open, noting that further evidence was needed to determine whether SSR's persona had ongoing commercial value. This case signals an evolving judicial attitude towards posthumous personality rights, an area that remains legally ambiguous in India.

The Indian judiciary has progressively recognized the importance of imaging rights, particularly in the context of commercial exploitation. However, the reliance on existing intellectual property laws, such as trademark and copyright, has led to inconsistent outcomes. While cases like DM Entertainment and Titan Industries have provided significant protection for celebrities, gaps remain, particularly concerning lesser-known individuals and posthumous rights.

17. Are there rules relating to perpetuating potentially harmful stereotypes, such as gender stereotypes, racial stereotypes, religious stereotypes, and so on in your market? If so, please provide a high-level overview.

While no one specific legislation provides for rules against perpetuating harmful stereotypes, such restrictions may be found across a number of legislations.

As mentioned above, the Cable Rules prohibit advertisements which are derogatory towards women. Specifically, advertisements may not portray women as having passive or submissive qualities and must not encourage them to play a secondary role in society. The portrayal of the female form must also be ensured to be tasteful and within the norms of decency.

Additionally, the Indecent Representation of Women (Prohibition) Act 1986 ("Indecent Representation Act") places a blanket restriction on the depiction of a woman in an indecent, derogatory or denigrating manner, or in a manner which is likely to deprave or corrupt public morality. Offences under the Indecent Representation Act are punishable with imprisonment of up to two years and a fine of up to INR 2000 for the first offence, and imprisonment of up to five years and a fine ranging from INR 10,000 to INR 100,000 for subsequent offences. It is important to note that while the scope of the Cable Rules is restricted to advertisements on cable television, the Indecent Representation Act may be interpreted to include advertisements on any medium within its scope.

The Cable Rules also prohibit advertisements which deride any race, caste, colour, creed, or nationality, or those which hurt religious sentiments – this restriction

would also extend to depicting any such harmful stereotypes.

These restrictions must also be interpreted keeping in mind India's cultural sensitivities which tend to be more on the conservative side.

18. What has been the main impact AI has had on the advertising and marketing content and regulation in your market so far, and what impact is it likely to have in the coming year or two?

AI technology has not had a major impact on advertising and marketing content and regulation in India yet. Some businesses have begun using AI-generated content in their advertisements, but such advertisements seem to be few and limited to social media/online ads. It is possible that with the evolution of AI technology, more advertisers will begin to incorporate AI-generated content in their ads (likely due to the time and cost benefits it offers). There has also not been any real impact of AI technology on regulation of advertisements in India.

The Indian government has expressed its intention to regulate AI technology and content on multiple occasions. While currently, there is no specific legislation governing AI, officials have stated that such legislations can be expected in the near future. The extent of this regulation and any specific applicability to advertisements and their regulation remain to be seen.

19. Are regulators in your market currently utilising AI or new technologies in their regulatory activities in your market?

While possible, it is unlikely that regulators in India are utilising AI or other new technologies in their regulatory activities. Regulators in India are generally quite opaque in the specifics of their operations, and no public statements relating to the adoption of such new technologies have been made by officials.

20. What are the main hot topics, challenges and opportunities facing advertisers in your market (now or in the near future) from a legal/regulatory point of view? Also, there any significant updates or changes to the law, rules, sanctions, regulators or anything else due in your market in the near future that readers should keep in mind?

In 2023, the Indian Government published the draft

Broadcasting Services (Regulation) Bill 2023 ("2023 Broadcasting Bill"), which was followed by another draft version of the Bill published in 2024 ("2024 Broadcasting Bill") for public consultations and feedback. These Bills were intended to replace the Cable Rules, and to consolidate the regulatory guidelines applicable on the Indian broadcasting industry. The 2023 Broadcasting Bill extended its applicability to over-the-top service operators, digital media platforms, and direct-to-home operators, in addition to cable television, and the 2024 Broadcasting Bill further extended its scope to include social media accounts and creators. The Bills put in place an Advertising Code (similar to the one currently in place under the Cable Rules) and introduce a self-regulatory mechanism through the establishment of a 'content evaluation committee'. The Bills were however withdrawn due to industry backlash over concerns of increased governmental oversight over the industry. It remains to be seen whether these provisions are reworked and reintroduced in the future, but one can expect some form

of regulation over newer broadcasting mediums to be put in place at some point in the near future.

As discussed above, the government has expressed its intent to regulate the AI industry, possibly through the upcoming 'Digital India Act' which is intended to replace the currently applicable Information Technology Act. No public version of the Digital India Act has however been made available and it is unclear as to how, if at all, it will impact the advertising industry.

India's upcoming data privacy law, the Digital Personal Data Protection Act 2023, also prohibits targeted advertising directed at children. The specifics of how this prohibition will be implemented are currently unclear, as they will likely be provided in delegated legislation which has not been made publicly available yet. Contraventions of provisions relating to the safeguarding of children under the DPDP Act are punishable with significant monetary penalties of up to INR 2,000,000,000.

Contributors

Shivalik Chandan
Associate

shivalik@gnwlegal.com



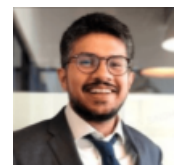
Jannavi Singha
Senior Associate

jannavi.singha@gnwlegal.com



Dhruv Singh
Partner

dhruv@gnwlegal.com



Arjun Khurana
Partner

arjun@gnwlegal.com

