

# **The Impact of Advertisements on Consumers: A Comparative Analysis of Consumer Laws in Sri Lanka**

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## **Introduction**

Consumer rights law in this age of globalization has generated new challenges for policy makers to ensure a stable and sustainable community. At the same time, the familiar doctrine ‘let the buyer beware’ is no longer the case with the introduction of consumer rights law. Most manufacturers or marketers introduce a product through television channels, newspapers, world wide websites, notices, exhibitions, and brochures. Advertisements are considered to be the most popular tool for introducing a new product as well as promoting an existing product. Thus, advertisements are expected to bring a positive aspect in the way a consumer would make his decision about the product. At this point, it provides an opportunity to the manufacturers/marketers to divulge prodigiously about the products they produce or market. It should be noted that according to the law of contract, advertisements are considered as mere trade puffing or exaggeration. However, if the advertisements mislead or had induced viewers to purchase a product or engage a service the misrepresentation law will apply. Further, advertising a product should ensure fairness and the free flow of truthful information which depend on credibility and trustworthiness on the part of the advertiser exponent of advertising law. As per Belch and Belch and Ohanian, credibility refers to the extent to which the source is perceived as possessing the expertise required for the communication of the topic and can be trusted to give an objective opinion on the subject. Expertise is derived from knowledge of the subject, and trustworthiness refers to the honesty and believability of the source (McGinnies and Ward 1980). Those dimensions of source expertise and trustworthiness are important to conceptualizing credibility that has been shown to be influential in persuading consumers<sup>1</sup>. Consumers vary in size and knowledge and it is human psychology that influences decision making. Advertisements can target a group of children, teenagers, women or the public at large. However, it is noteworthy what Franki J’s stated in *Annand and Thompson v Trade Practices Commission*<sup>2</sup> that “*the question is to be tested by the effect on a person not particularly intelligent or well informed but perhaps of less than average intelligence and background knowledge [...]. The question is not whether the purchaser was deceived but whether the conduct was misleading or deceptive*”.

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<sup>1</sup> Ronald E. Goldmith, Barbara A. Iafferty and Stephen J. Newell ( 2000 ) *The Impact of Corporate Credibility and Celebrity Credibility on Consumer Reaction to Advertisements and Brands*, , available at <http://www.jstor.org/stable/10.2307/4189151> (visited on 15/5/2012)

<sup>2</sup> (1979) 25 ALR 91

The Consumer Affairs Authority Act No. 9 of 2003<sup>3</sup> has provisions that protect consumers from misleading/deceptive trade practices by traders. However, the relevant provisions of the above Act needed proper implementation with regard to the advertisements. Many countries including USA, Singapore and India have regulations and laws to protect consumers from false/deceptive advertisements by establishing regulatory bodies to assess the standard of an advertisement.

### **Objectives**

This research tries to identify how false or deceptive advertisements can have an impact on consumers and their rights and suggests the most suitable mechanism to be adopted to overcome these situations.

### **Methodology**

The necessary data and information for this research study is mainly based on secondary sources. A number of published articles, books, journals and decided cases have been used and analyzed to conduct this research. In addition, many internet articles and web sites have also been referred to for this work. The major analytical method of the study is descriptive and qualitative.

### **Findings**

Communicational and technological advancements have led consumers to easily access information on many products and services. Further, telemarketing and telesales services also promote products and services between business to business and businesses to consumers. These advancements have both positive and negative impacts on consumers. The influence of advertisements in consumers' choice is indubitable. In many occasions, advertisements have deluded the consumers by using various unethical tactics, inaccuracy, ambiguity or excessive information by omitting important and necessary information. Even though, consumer protection laws are wide enough to protect consumers from various market behaviors, it is observed that advertisements have an immense impact on consumer behavior. False or deceptive advertisements negatively impact consumers in various ways. Further, advertisements have induced buyers to consume the required goods and services more and have prevented consumers from buying a product/service of good quality. The manufacturers/marketers also have opportunity to raise the actual price of products. In addition, advertisements also have led to health issues. As these are considered to be unfair trade practices regulation is necessary to assess the credibility and trustworthiness of advertisements. The current statutes in Sri Lanka do very little in this regard and it is said that there is no specific advertising laws in Sri Lanka.

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<sup>3</sup> There is no specific legislation deal with advertisements in Sri Lanka, some other statutes will be applicable, such as Intellectual Property Act 2003 which prohibit advertisement infringing Copyright, Trade Marks and 'Passing Off' products of others; National Authority on Tobacco and Alcohol Act No 27 of 2006 ban advertising Tobacco and Alcohol; the Cosmetics, Devices and Drugs Act No. 27 of 1980, and Regulation framed there under forbid Obscene and pornographic advertisement: for more details Weerasooriya, W., (2010) *A Textbook of Commercial Law (Business Law)*, Postgraduate Institute of Management, University of Sri Jayewardenepura.

However, this situation varies in other countries. For instance, the USA, National Advertising Division (NAD) and the Children Advertising Review Unit (CARU)<sup>4</sup> review national advertisements for the truthfulness and accuracy and foster public confidence in the credibility of advertising. Similarly, in Singapore Consumer Association of Singapore (CASE) and the Advertising Standards Authority of Singapore (ASAS)<sup>5</sup> are functioning to review advertisements. Likewise, Advertising Standards Council of India (ASCI) tries to inculcate self-regulation among its members and it has drawn up a comprehensive advertising code for self-regulation. In India, during the financial year 2003-2004, ASCI received 182 complaints, out of which 123 were upheld; in 94 cases of these the advertisements were withdrawn or modified. Similarly, in 2010 ASAS has received 34 complaints in the beauty industry and of those 7 firms were asked to withdraw their ads. It is the policy maker to consider what mechanism should be adopted to assess the credibility and trustworthiness of the representation put forward by the marketer/manufacturer.

### **Recommendations**

One of the ultimate objectives of advertisements is to increase sales turnover and to make maximum profit. Consumers needs vary and can focus on products or services. Thus, advertisements are considered to be the best method to reach the consumer, while well they can hugely impact on consumer rights. For instance, an increase in false advertisement in the beauty industry and the health product is worrisome. The challenge for policy makers is to determine how best to regulate advertisements as they are interconnected with the interest of the consumers. Credibility and trustworthiness should be assessed before advertising a product. For this purpose some kind of mechanism or authority should be adopted to avoid misleading or unacceptable advertisements. It also noted that the policy is towards safeguarding consumer rights; the advertiser will not be encouraged. On the other hand, the focus should not be on the advertiser suppressing consumer rights. A via media to balance the interest of both consumer and advertiser is necessarily in the long term interest of economic development. The Consumer Affairs Authority has the legal authority to initiate legal actions against traders who mislead consumers. It is productive if there is a separate authority with the inclusion of members from many organizations such as government agencies, advertising agencies, media owners and other supporting agencies to evaluate and assess advertisements and constantly instruct advertisers to self-regulate their advertisements. This would mean 'regulate yourself or someone else will' as prevalent in some countries.

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<sup>4</sup> Jeffrey S. Edelstein 2007 and 2008, Advertising Compliance Services NOTEWORTHY DEVELOPMENTS IN NAD AND CARU FALSE ADVERTISING CASES, available at <http://www.lawpublish.com/s4.html>

<sup>5</sup> SengChoon, S., Role of CASE and ASAS in Consumer Protection, Consumer Association of Singapore, available at <http://www.aseanconsumer.org/misc/downloads/usftc-s5-ssc.pdf>