



**BRIEF OVERVIEW OF THE SUPREME COURT ORDER IN
WRIT PETITION (CIVIL) NO. 645/2022 - INDIAN MEDICAL
ASSOCIATION & INR VS. UNION OF INDIA & OTHERS**

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Background Note

Supreme Court Directive on Self-Declaration Certificates for Advertisements

The Hon'ble Supreme Court, in Writ Petition Civil No. 645/2022-IMA & Anr. Vs. UOI & Ors., has mandated that all advertisers and advertising agencies must submit a 'Self-Declaration Certificate' before publishing or broadcasting any advertisement. This directive was issued in the Court's Order dated 07.05.2024.

The directive aims to ensure:

- Transparency.
- Consumer protection.
- Responsible advertising practices.

Implementation Details

Following this directive, the Ministry of Information and Broadcasting (MIB) has introduced new features on relevant portals:

Broadcast Seva Portal: **For TV and Radio Advertisements**

(<https://new.broadcastseva.gov.in/digigov-portal-web-app/>)

Press Council of India's Portal: **For Print and Digital/Internet Advertisements**

(<https://www.presscouncil.nic.in/>)

Key Dates

Portal Activation: 4th June, 2024

Mandatory Certification: For all new advertisements from 18th June 2024.

Buffer Period: A two-week buffer period is provided to allow stakeholders to familiarize themselves with the new process.

Requirements

The Self-Declaration Certificate, signed by an authorized representative, must certify that the advertisement:

- Does not contain misleading claims.
- Complies with all relevant regulatory guidelines, including: Rule 7 of the Cable Television Networks Rules, 1994. Norms of Journalistic Conduct of Press Council of India.

Process

Advertisers must upload the Self-Declaration Certificate on the relevant portal and provide proof of submission to the broadcaster, printer, publisher, or electronic media platform. No advertisement will be allowed to air, publish, or broadcast without a valid Self-Declaration Certificate.

Implementation Note

The Ministry of Information & Broadcasting urges all advertisers, broadcasters, and publishers to comply with this directive diligently to promote ethical advertising standards.

Challenges for the Industry

- Supreme Court Order (WPC No. 645/2022 – IMA & Anr. Vs. UOI & Ors) will increase the administrative burden for Advertisers and Advertising Agencies as they will need to complete and submit self – self - declaration certificates for each new advertisement.
- The Supreme Court Order (WPC No. 645/2022 – IMA & Anr. Vs. UOI & Ors) may slow down the advertisement production timeline for advertisers and advertising agencies because the content will have to comply with all relevant regulations which would require thorough investigation process.
- The need for self-declaration certificates might create bottlenecks in the approval process, especially for companies in the FMCG Direct Selling Space, which manage diverse product portfolios i.e. Cosmetics and Personal Care, Wellness and Household Goods and Durables.
- Companies in the FMCG Direct Selling Distribution Channel space face distinctive challenges due to the Supreme Court's Order (WPC No. 645/2022 – IMA & Anr. Vs. UOI & Ors), which mandates that all advertisements must be accompanied by a 'Self-Declaration Certificate'.

Challenges for FMCG Direct Selling Companies Vetting

Advertisement Content

The sheer volume of advertisements created by Distributors (8.6 million Distributors) who are engaged in Grass Roots Level Micro Entrepreneurial initiatives on behalf of the Direct Selling Companies makes it nearly impossible to individually vet each one for compliance.

Diverse Media Channels

Distributors use a wide array of media channels, including print, digital, TV, and radio, which complicates the monitoring and vetting process.

Standardization

Ensuring that all advertisements adhere to a standardized format that complies with the Supreme Court order is a significant challenge.

- Any inadvertent violations of the guidelines could lead to legal consequences, affecting the reputation and financial stability of the involved parties.
- The industry may face additional costs associated with ensuring advertisement compliance with the Supreme Court Order. This could involve hiring legal counsel to vet advertisements or subscribing to advertising compliance services.
- The need for rigorous compliance checks might stifle creativity and innovation in advertising content as agencies focus more on meeting regulatory standards which severely impacts the Ease of Business.

Rule 7 of the Cable/Television Network Rules, 1994

Introduction

The Cable Television Networks (Regulation) Act, 1995 is an Act to regulate the operation of cable television networks in the country and for matters connected therewith or incidental thereto.

The 'Self-Declaration Certificate' signed by the advertisers and advertising agencies as per the mandate of the Supreme Court, in Writ Petition Civil No. 645/2022-IMA & Anr. Vs. UOI & Ors must comply with Rule 7 of the Cable Television Networks Rules, 1994, - certifying that the advertisement submitted by [Advertiser/Advertising Agency Name] does not make misleading claims and complies with all relevant regulatory guidelines.

Rule 7 of the Cable/Television Network Rules, 1994

Advertising Code. - (1) Advertising carried in the cable service shall be so designed as to conform to the laws of the country and should not offend the morality, decency, and religious susceptibilities of the subscribers.

(2) No advertisement shall be permitted which-

(i) derides any race, caste, colour, creed and nationality;

(ii) is against any provision of the Constitution of India.

(iii) tends to incite people to crime, cause disorder or violence, or breach of law or glorifies violence or obscenity in any way ;

(iv) presents criminality as desirable;

(v) exploits the national emblem, or any part of the Constitution or the person or personality of a national leader or a State dignitary;

(vi) in its depiction of women violates the constitutional guarantees to all citizens. In particular, no advertisement shall be permitted which projects a derogatory image of women. Women must not be portrayed in a manner that emphasises passive, submissive qualities and encourages them to play a subordinate, secondary role in the family and society. The cable operator shall ensure that the portrayal of the female form, in the programmes carried in his cable service, is tasteful and aesthetic, and is within the well-established norms of good taste and decency;

(vii) exploits social evils like dowry, child marriage.

(viii) promotes directly or indirectly production, sale or consumption of-

(A) cigarettes, tobacco products, wine, alcohol, liquor or other intoxicants;

[Provided that a product that uses a brand name or logo, which is also used for cigarettes, tobacco products, wine, alcohol, liquor, or other intoxicants, may be advertised on cable services subject to

the following conditions that-

- (i) the story board or visual of the advertisement must depict only the product being advertised and not the prohibited products in any form or manner;
- (ii) the advertisement must not make any direct or indirect reference to prohibited products;
- (iii) the advertisement must not contain any nuances or phrases promoting prohibited products;
- (iv) the advertisement must not use particular colours and layout or presentations associated with prohibited products;
- (v) the advertisement must not use situations typical for promotion of prohibited products when advertising the other products:

Provided further that –

(i) The advertiser shall submit an application with a copy of the proposed advertisement along with a certificate by a registered Chartered Accountant that the product carrying the same name as cigarettes, tobacco products, wine, alcohol, liquor or other intoxicants is distributed in reasonable quantity and is available in a substantial number of outlets where other products of the same category are available and the proposed expenditure on such advertising thereon shall not be disproportionate to the actual sales turnover of the

(ii) all such advertisements found to be genuine brand extensions by the Ministry of Information and Broadcasting shall be previewed and certified by the Central Board of Film Certification as suitable for unrestricted public exhibition and are by the provisions contained in sub-clause (i) to (v) of the first proviso, prior to their telecast or transmission or retransmission.] product:

(B) infant milk substitutes, feeding bottle or infant food.

(3) No advertisement shall be permitted, the objects whereof, are wholly or mainly of a religious or political nature; advertisements must not be directed towards any religious or political end.

(3A) No advertisement shall contain references which hurt religious sentiments.

(4) The goods or services advertised shall not suffer from any defect or deficiency as mentioned in Consumer Protection Act, 1986.

(5) No advertisement shall contain references which are likely to lead the public to infer that the product advertised or any of its ingredients has some special or miraculous or super-natural property or quality, which is difficult of being proved.

(6) The picture and the audible matter of the advertisement shall not be excessively 'loud';

(7) No advertisement which endangers the safety of children or creates in them any interest in unhealthy practices or shows them begging or in an undignified or indecent manner shall not be

carried in the cable service.

(8) Indecent, vulgar, suggestive, repulsive or offensive themes or treatment shall be avoided in all advertisements.

(9) No advertisement which violates the Code for self regulation in advertising, as adopted by the Advertising Standards Council of India (ASCI), Mumbai for public exhibition in India, from time to time shall be carried in the cable service.

(10) All advertisements should be clearly distinguishable from the programme and should not in any manner interfere with the programme viz., use of the lower part of the screen to carry captions, static or moving alongside the programme.

(11) No programme shall carry advertisements exceeding 12 minutes per hour, which may include up to 10 minutes per hour of commercial advertisements and up to 2 minutes per hour of a channel's self- promotional programmes.

Reference:

Please find below the weblinks of the following for your reference:

1. Supreme Court of India – Record of Proceedings (Writ Petition (Civil) No. 645/2022
https://main.sci.gov.in/supremecourt/2022/24832/24832_2022_11_1_51589_Order_19-Mar-2024.pdf
2. The Cable Television Network Rules, 1994
<https://tra.gov.in/sites/default/files/CableTelevisionNetworksRules1994.pdf>
3. Broadcast Seva Portal: For TV and Radio Advertisements
<https://new.broadcastseva.gov.in/digigov-portal-web-app/>
4. Press Council of India's Portal: **For Print and Digital/Internet Advertisements**
(<https://www.presscouncil.nic.in/>)
