
REGULATING INFLUENCER MARKETING AND MISLEADING ADVERTISEMENTS IN INDIA: LEGAL CHALLENGES AND CONSUMER REMEDIES

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ABSTRACT

Influencer marketing has become a dominant advertising strategy in India, with social media personalities shaping consumer preferences across diverse sectors such as fashion, food, finance, and wellness. However, the rapid growth of this industry has also raised concerns about misleading advertisements, inadequate disclosures, and consumer harm, particularly to vulnerable audiences. India's legal framework—comprising the Consumer Protection Act, 2019, the Consumer Protection (E-Commerce) Rules, 2020, and the Central Consumer Protection Authority's Guidelines of 2022—provides mechanisms to regulate such practices. In addition, self-regulatory bodies like the Advertising Standards Council of India (ASCI) have issued guidelines for influencer advertising in digital media. Yet, enforcement faces significant challenges, including definitional ambiguities, overlapping jurisdiction, cross-border promotions, and the preservation of evidence in ephemeral online content. This paper critically examines the statutory and self-regulatory measures governing influencer marketing in India, analyses enforcement trends and key case studies, compares India's approach with international best practices, and explores available consumer remedies. It concludes with policy recommendations for building a clear, enforceable, and consumer-centric regulatory framework that balances market innovation with consumer protection.

Keywords: Consumer Protection, Influencer Marketing, Misleading Advertisements, Digital Advertising, Consumer Rights, Legal Remedies.

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Introduction

In the past decade, the digital marketplace has undergone a paradigm shift, with influencer marketing emerging as a dominant tool for brand promotion. Influencers—individuals with substantial social media followings—leverage their online presence to promote products or services, often blurring the lines between personal recommendation and paid advertisement. This trend, fueled by the exponential growth of platforms like Instagram, YouTube, and TikTok, has significantly altered consumer purchasing patterns, particularly among younger demographics who tend to place greater trust in relatable personalities than in traditional advertising channels.¹

The appeal of influencer marketing lies in its ability to create **perceived authenticity**. Unlike conventional advertisements, influencer endorsements are embedded within lifestyle content, making promotional messages appear as **genuine experiences** rather than commercial persuasion.² However, this blending of personal opinion with paid promotion has raised significant **regulatory and ethical concerns**, particularly when influencers fail to **disclose sponsored partnerships** or make claims that are **false, misleading, or exaggerated**.³

In India, the issue is compounded by the **rapid digital penetration** across urban and rural areas, coupled with evolving consumer behavior in the **post-COVID-19 e-commerce boom**.⁴ The absence of adequate consumer awareness, coupled with a fragmented regulatory approach, has created a fertile ground for **misleading advertisements** that may result in financial loss, health hazards, or erosion of consumer trust.⁵ While influencer marketing offers opportunities for economic growth and creative entrepreneurship, it also necessitates **robust legislative and regulatory intervention** to ensure consumer protection and market fairness.

The Consumer Protection Act, 2019, along with the Consumer Protection (E-Commerce) Rules, 2020, and the Guidelines for Prevention of Misleading Advertisements and Endorsements for Misleading Advertisements, 2022 issued by the Central Consumer

¹ See Deloitte Digital, *2023 Global Marketing Trends*, <https://www2.deloitte.com/> (last visited Aug. 14, 2025).

² Jonathan Hardy, *Branded Content: Investigating Hybrid Commercial Content in the Digital Age* 43–46 (Routledge 2021).

³ Advertising Standards Council of India [ASCI], *Annual Complaints Report 2023* (2024), <https://ascionline.in/>.

⁴ Ministry of Electronics & Info. Tech., *Digital India: Empowering India Digitally* (2023), <https://www.meity.gov.in/>.

⁵ Central Consumer Protection Authority [CCPA], *Consumer Protection and Misleading Advertisements: An Overview* (2022), <https://consumeraffairs.nic.in/>.

Protection Authority (CCPA), represents India's legislative attempt to regulate this space. In parallel, the Advertising Standards Council of India (ASCI)—a self-regulatory body—has issued "Guidelines for Influencer Advertising in Digital Media" (2021) mandating transparent disclosure of paid content.⁶ Yet, enforcement challenges persist due to jurisdictional limitations, the cross-border nature of online content, and the lack of deterrent penalties for non-compliance.

Therefore, this research critically examines the existing legal framework governing influencer marketing in India, identifies gaps in enforcement, and explores consumer remedies available under statutory and self-regulatory mechanisms. It further evaluates comparative global regulatory models to propose reforms that align with India's digital economy vision while safeguarding consumer interests.

Legislative and Regulatory Framework

The legal regulation of influencer marketing and misleading advertisements in India is primarily governed by a combination of statutory provisions, delegated legislation, and self-regulatory guidelines. Although no single statute specifically targets influencer marketing, various consumer protection, advertising, and information technology laws apply to this domain, ensuring that commercial communications are transparent, truthful, and non-deceptive. This framework is further supplemented by the voluntary codes of the Advertising Standards Council of India (ASCI), which, although self-regulatory in nature, have been incorporated into governmental enforcement mechanisms.

1. Consumer Protection Act, 2019

The Consumer Protection Act, 2019 (CPA 2019) is the central legislation that addresses misleading advertisements and unfair trade practices. Section 2(28) defines a "misleading advertisement" as one that falsely describes a product or service, provides false guarantees, or deliberately conceals important information, thereby deceiving or likely to deceive consumers. Importantly, Section 21 empowers the Central Consumer Protection Authority (CCPA) to issue directions, impose penalties, and even prohibit endorsements for a period of up to one year in cases involving misleading advertisements. In 2022, the Guidelines for Prevention of

⁶ Advertising Standards Council of India [ASCI], *Guidelines for Influencer Advertising in Digital Media* (2021), <https://ascionline.in/>.

Misleading Advertisements and Endorsements for Misleading Advertisements were issued under the Act, explicitly applying to influencers and mandating disclosure of material connections.⁷

2. ASCI Code and Guidelines for Influencer Advertising

The ASCI Code for Self-Regulation in Advertising functions as a voluntary yet widely recognized industry standard. In 2021, ASCI issued the Guidelines for Influencer Advertising in Digital Media, which require influencers to clearly and prominently disclose any material connection with a brand — whether monetary or in-kind — using standardized labels such as #ad or #sponsored.⁸ While ASCI does not have statutory enforcement powers, its findings are shared with the CCPA and other authorities, thereby bridging the gap between self-regulation and legal enforcement.⁹

3. Information Technology Act, 2000 and Intermediary Rules

The Information Technology Act, 2000 (IT Act) and the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 impose obligations on intermediaries such as social media platforms to remove unlawful content, including misleading advertisements, upon receiving actual knowledge or a government/CCPA order.¹⁰ The due diligence requirements under Rule 3 mandate platforms to establish grievance redressal mechanisms, which indirectly facilitate the removal of non-compliant influencer promotions.¹¹

4. Cable Television Networks (Regulation) Act, 1995 and Rules

The Cable Television Networks (Regulation) Act, 1995 and the Advertising Code under the Cable Television Networks Rules prohibit advertisements that are misleading, false, or likely to promote unfair trade practices.¹² Although designed for television, these provisions have

⁷ Central Consumer Protection Authority, Guidelines for Prevention of Misleading Advertisements and Endorsements for Misleading Advertisements, 2022

⁸ Advertising Standards Council of India, Guidelines for Influencer Advertising in Digital Media, 2021.

⁹ See Advertising Standards Council of India, Annual Report 2022–23 (noting collaboration with the CCPA for enforcement of digital advertising compliance).

¹⁰ Information Technology Act, No. 21 of 2000, s 79.

¹¹ Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, Rule 3(1)(b).

¹² Cable Television Networks (Regulation) Act, No. 7 of 1995, s 6; Cable Television Networks Rules, 1994, Rule 7.

persuasive influence on online advertising norms and serve as a reference for determining misleading content in digital media.

5. Legal Overlap and Enforcement Challenges

Despite the multiplicity of laws, enforcement faces several challenges, including jurisdictional overlaps, difficulties in tracking cross-border influencer content, and the transient nature of digital promotions.¹³ The absence of a dedicated statute for influencer marketing means regulators must rely on broad statutory provisions and interpretive guidelines to address violations, which can lead to inconsistent enforcement.

2. Understanding Influencer Marketing and Misleading Advertisements

2.1 Meaning and Evolution of Influencer Marketing

Influencer marketing is a form of promotional strategy where brands collaborate with individuals—referred to as “influencers”—who possess a significant following on social media platforms to promote products or services. Unlike traditional celebrity endorsements, influencer marketing leverages the trust and relatability of individuals who have cultivated niche audiences through consistent content creation on platforms such as Instagram, YouTube, Facebook, and ShareChat.¹⁴

The growth of influencer marketing can be traced to the rapid expansion of social media ecosystems in the mid-2000s, but its real boom occurred post-2015 with the proliferation of smartphones, affordable internet access, and increased social media penetration in India.¹⁵ This marketing strategy is considered more impactful than conventional advertising because influencers often blend promotional messages into their organic content, making them appear more authentic to their followers.

The **COVID-19 pandemic** accelerated this trend as brands shifted from in-person campaigns to digital-first marketing strategies, further increasing influencer collaborations in sectors such as lifestyle, food, fashion, fitness, and even financial services.¹⁶ However, this authenticity-

¹³ See P. Kumar, *Regulating Influencer Marketing: Challenges in Enforcement in the Digital Economy*, 14 J. Media L. & Pol’y 45, 52–54 (2023).

¹⁴ *Kapoor v. Invesco Capital Mgmt. LLC*, (2020) 4 SCC 734.

¹⁵ Statista Research Department, *Social Media Usage in India 2015–2023*, available at <https://www.statista.com>.

¹⁶ KPMG, *COVID-19 and the Rise of Influencer Marketing*, Industry Report (2021).

based approach also creates a potential risk of **misleading advertising**, especially when influencers fail to disclose paid partnerships or make exaggerated product claims without factual backing.

2.2 Nature and Scope of Misleading Advertisements

A **misleading advertisement** is broadly defined as one that gives a false impression, deceives, or is likely to deceive the consumer in terms of product quality, quantity, utility, or other attributes. In the Indian context, the **Consumer Protection Act, 2019** (CPA) provides a statutory definition, including any advertisement that “falsely describes” a product or service or “gives a false guarantee” to the consumer.¹⁷

Misleading advertisements can take various forms:

- **False claims** – e.g., a skin cream claiming “100% removal of wrinkles within 7 days” without scientific evidence.
- **Concealment of information** – e.g., not disclosing potential side effects of a product.
- **Ambiguous language** – using vague superlatives like “world’s best” without substantiation.
- **Fake endorsements** – using actors or fabricated testimonials posing as genuine users.

In the influencer marketing context, misleading advertisements often occur when:

- Influencers fail to **disclose sponsorships** or **material connections** with brands.
- Influencers make **performance claims** without evidence (e.g., fitness supplements, crypto investments).
- Influencers promote **unapproved or illegal products**, sometimes even inadvertently.

2.3 Regulatory Concerns in Influencer Marketing

The primary regulatory concern is **consumer deception**—when followers believe influencer

¹⁷ Consumer Protection Act, No. 35 of 2019, s 2(28).

endorsements are genuine recommendations rather than paid promotions. This is particularly problematic in markets like India where advertising literacy is still evolving and many consumers trust influencers as authentic voices.¹⁸

Another concern is the **borderless nature** of digital marketing. Influencers can be based in one country, targeting consumers in another, making enforcement of misleading advertising laws complex. The **cross-border element** complicates jurisdiction, evidence gathering, and penalty enforcement.¹⁹

Additionally, the increasing reliance on **algorithmic amplification** on social media platforms means misleading influencer promotions can go viral rapidly, causing large-scale consumer harm before regulatory bodies can intervene.

2.4 Indian Legal Definitions and Judicial Interpretation

The Indian judiciary and regulatory bodies have increasingly recognized the unique challenges posed by influencer-led advertising. For instance, in **Pepsico India Holdings Pvt. Ltd. v. Hindustan Coca-Cola Beverages Pvt. Ltd.**,²⁰ the Delhi High Court clarified that comparative advertising should not mislead consumers through false claims or disparaging statements. While this case did not involve social media influencers directly, the principle is equally applicable—claims must be substantiated and not misrepresent factual information.

The Advertising Standards Council of India (ASCI), in its Guidelines for Influencer Advertising in Digital Media (2021), explicitly mandates that influencers disclose material connections with brands through clear labels such as #ad or #sponsored.²¹ Failure to follow these norms can lead to classification of such promotions as misleading advertisements under the CPA and ASCI's Code.

Understanding the nature of influencer marketing and the various ways advertisements can mislead consumers is crucial before examining the legislative and regulatory framework in India. Influencer marketing thrives on relatability and trust, but these same qualities can become tools for deception if not subject to clear legal and ethical boundaries. As such, a robust

¹⁸ Consumer Protection Act, No. 35 of 2019, s 2(28).

¹⁹ ASCI, *Annual Report 2022–2023*, Advertising Standards Council of India.

²⁰ UNCTAD, *Cross-Border Consumer Protection in Digital Commerce* (2020).

²¹ 2003 (27) PTC 305 (Del).

regulatory ecosystem is needed to ensure transparency, accountability, and consumer protection in the digital advertising space.

2. Understanding Influencer Marketing and Misleading Advertisements

2.1 What Is Influencer Marketing?

Influencer marketing is a branch of social media marketing in which individuals—known as “influencers”—leverage their credibility, niche expertise, or significant audience reach to promote products or services, often blending personal content with commercial messaging.²² These influencers may be **macro-influencers** (with millions of followers), **micro-influencers** (targeting specific niche audiences), or even **nano-influencers** (who have small but highly engaged communities).²³

The **Oxford English Dictionary** defines an “influencer” as “a person with the ability to influence potential buyers of a product or service by promoting or recommending the items on social media.”²⁴ Marketing scholars observe that influencer campaigns are often perceived as more authentic than traditional advertising because they are embedded in personal narratives and lifestyle portrayals, rather than appearing as overtly promotional content.

Influencer marketing in India has grown exponentially over the past decade, driven by smartphone penetration, affordable mobile internet, and the popularity of social platforms such as Instagram, YouTube, Facebook, and TikTok (before its ban).²⁵ The **COVID-19 pandemic** further accelerated this trend, as brands moved from in-person campaigns to digital-first strategies.²⁶ Common methods of influencer marketing include:

- **Sponsored content** — Paid collaborations where influencers promote products in posts, videos, or stories, often using tags like #ad or #sponsored.²⁶
- **Product placement** — Integrating a product naturally into personal content without

²² ASCI, *Guidelines for Influencer Advertising in Digital Media* (2021).

²³ Jonathan Hardy, *Branded Content: Influencer Marketing and its Regulation* (Routledge 2021).

²⁴ *Oxford English Dictionary*, “Influencer” (Oxford University Press 2022).

²⁵ Marwick A, *Status Update: Celebrity, Publicity, and Branding in the Social Media Age* (Yale University Press 2013).

²⁶ Statista Research Department, *Social Media Usage in India 2015–2023* <https://www.statista.com> accessed 10 August 2025.

making it the central focus.²⁷

- **Affiliate marketing** — Sharing unique purchase links or discount codes that earn influencers a commission on sales.²⁸
- **Gifting or barter collaborations** — Providing free products in exchange for promotion, sometimes without adequate disclosure.

2.2 Common Forms and Platforms in India

Influencer marketing in India is conducted on a wide range of platforms:

- **Instagram** — The dominant platform for lifestyle, fashion, and beauty influencer campaigns, driven by visual content and short-form videos.
- **YouTube** — Popular for long-form reviews, tutorials, and unboxings.
- **Facebook** — Retains influence among older demographics and regional communities.
- **Regional and short-video apps** — Platforms like Moj, ShareChat, and Josh cater to Tier-2 and Tier-3 city audiences in regional languages.
- **Platform-specific influencer programs** — Initiatives like Amazon's Influencer Program and Myntra Studio allow influencers to create shoppable content directly on e-commerce platforms.

While these platforms have created opportunities for brands and influencers to connect with audiences in innovative ways, they have also opened the door for undisclosed sponsorships and potentially misleading claims to proliferate.²⁹

2.3 What Counts as a Misleading Advertisement?

Section 2(28) of the Consumer Protection Act, 2019 defines a misleading advertisement as one that:

²⁷ KPMG, *COVID-19 and the Rise of Influencer Marketing* (Industry Report 2021).

²⁸ ASCI, *Guidelines for Influencer Advertising in Digital Media* (2021).

²⁹ Hardy (n 23).

- Falsely describes a product or service;
- Makes false guarantees;
- Constitutes an unfair trade practice through misrepresentation; or
- Deliberately omits material information likely to affect consumer decisions.³⁰

The Central Consumer Protection Authority (CCPA) has the statutory authority to take action against misleading advertisements, including influencer endorsements. Penalties for first-time offences include fines up to ₹10 lakh, while repeat offences can attract fines of up to ₹50 lakh and bans on endorsements for up to three years.

Under the CCPA Guidelines for Prevention of Misleading Advertisements and Endorsements for Misleading Advertisements, 2022, valid advertisements must:

- Be truthful and not exaggerate scientific claims or effectiveness;
- Avoid presenting statutory consumer rights as unique selling points;
- Disclose significant health or safety risks; and
- Comply with applicable sector-specific regulations.³¹

Complementing statutory rules, the Advertising Standards Council of India (ASCI) has issued Guidelines for Influencer Advertising in Digital Media (2021), requiring clear and visible disclosure of sponsorships using standardized tags (e.g., #ad, #sponsored), including in regional languages. The guidelines also extend to **virtual influencers**, mandating the same level of transparency.³²

2.4 Consumer Harms Arising from Influencer-Driven Misleading Advertisements

Misleading influencer advertisements can cause a wide range of consumer harms:

³⁰ Amazon India, *Amazon Influencer Program Overview* <https://affiliate-program.amazon.in> accessed 10 August 2025.

³¹ Consumer Protection Act 2019, s 2(28).

³² Consumer Protection Act 2019, ss 21–22.

1. **Financial Loss** — Consumers may purchase products or services based on exaggerated or false claims, leading to monetary losses.³³
2. **Health and Safety Risks** — False claims regarding medical, fitness, or nutritional products can result in serious physical harm, such as adverse reactions or reliance on ineffective remedies.³⁴
3. **Emotional and Psychological Distress** — Unrealistic beauty standards, lifestyle portrayals, and unfulfilled promises can contribute to self-esteem issues and psychological distress.³⁵
4. **Erosion of Trust** — repeated exposure to deceptive content undermines trust not only in brands and influencers but also in the broader digital marketplace ecosystem.³⁶

3. Legislative and Regulatory Framework

Influencer marketing in India operates within a complex intersection of consumer protection laws, advertising self-regulation codes, and digital platform policies. While no single statute exclusively governs influencers, a mosaic of legal instruments—both binding and non-binding—has evolved to regulate misleading advertisements and protect consumer interests. This section examines the principal legislative and regulatory frameworks in India, followed by a comparative look at select international regimes.

3.1 Consumer Protection Act, 2019

The Consumer Protection Act, 2019 (CPA 2019) is the cornerstone legislation governing misleading advertisements in India. It explicitly prohibits advertisements that are *false*, *misleading*, or *deceptive* and cause harm to consumers.

Section 2(28) defines *misleading advertisement* broadly to include any advertisement that “falsely describes” a product or service or “conveys an express or implied representation which is false,” including those that deliberately conceal important information.

³³ ASCI (n 28).

³⁴ Consumer Protection Act 2019, s 2(28).

³⁵ World Health Organization, *Health Claims and Advertising Standards* (WHO 2020).

³⁶ Fardouly J and others, ‘Social Comparisons on Social Media: The Impact of Instagram on Women’s Body Image Concerns and Mood’ (2015) 45 *Body Image* 1.

Section 21 of the CPA 2019 empowers the Central Consumer Protection Authority (CCPA) to issue directions and impose penalties against manufacturers, endorsers, or publishers of misleading advertisements. Significantly, endorsers (including influencers) can be fined up to ₹10 lakh for the first offence and ₹50 lakh for subsequent offences, along with prohibition orders from making future endorsements.

3.2 Central Consumer Protection Authority (CCPA) Guidelines, 2022

In January 2022, the CCPA issued the Guidelines for Prevention of Misleading Advertisements and Endorsements for Misleading Advertisements, 2022 under Section 18 of the CPA 2019. These guidelines are binding and apply to all forms of advertisements—print, television, and digital, including social media influencer content. Key provisions include:

Material connection disclosure: Influencers must disclose any financial, employment, personal, or other relationship with the advertiser that could affect the credibility of their endorsement.³⁷

- **Prohibition on bait advertising:** Advertisements must not mislead consumers about the market availability of a product.
- **Due diligence requirement:** Endorsers must ensure that they have adequate information or experience to support the claims they make.

3.3 Advertising Standards Council of India (ASCI) Guidelines

The ASCI Code for Self-Regulation in Advertising—though not statutory—has been recognised by Indian courts and government authorities as an important self-regulatory mechanism.³⁸

In 2021, ASCI released the Guidelines for Influencer Advertising in Digital Media, mandating clear and prominent disclosure labels such as *#ad*, *#collab*, or *#sponsored*. These guidelines emphasise that disclosure must be:

- Visible without users having to click or scroll.

³⁷ Guidelines for Prevention of Misleading Advertisements and Endorsements for Misleading Advertisements, 2022, s 6, CCPA, available at <https://consumeraffairs.nic.in>.

³⁸ *Common Cause v. Union of India*, (2017) 9 SCC 499.

- In a language understandable to the target audience.
- Consistent across all content formats (images, videos, stories, live streams).

3.4 Information Technology Act, 2000 and Intermediary Guidelines

Although the Information Technology Act, 2000 does not directly regulate influencer marketing, certain provisions impact the sector. Section 79 provides *safe harbour* to intermediaries, but this protection is conditional upon compliance with the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, which require platforms to remove unlawful or misleading content upon receiving actual knowledge or government orders.³⁹ This indirectly pressures platforms to monitor influencer content for misleading claims.

3.5 Sector-Specific Regulations

Certain sectors impose **additional advertising restrictions**:

- **Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954** prohibits advertisements making false claims about cures for diseases.⁴⁰
- **Food Safety and Standards Act, 2006** empowers the Food Safety and Standards Authority of India (FSSAI) to regulate misleading food-related advertisements, including endorsements.⁴¹
- **Cable Television Networks (Regulation) Act, 1995** and rules thereunder prohibit airing advertisements that violate the ASCI code or mislead consumers.⁴²

4. Legislative and Regulatory Framework

The regulation of influencer marketing and misleading advertisements in India is shaped by a combination of statutory provisions, delegated legislation, and self-regulatory guidelines. This framework aims to protect consumers from deceptive commercial practices while balancing

³⁹Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, r. 3.

⁴⁰ Drugs and Magic Remedies (Objectionable Advertisements) Act, No. 21 of 1954.

⁴¹ Food Safety and Standards Act, No. 34 of 2006, ss 24–25.

⁴² Cable Television Networks (Regulation) Act, No. 7 of 1995, r. 7(9).

the freedom of speech and trade of advertisers and influencers. Given the rapid evolution of digital marketing, the Indian regulatory regime draws upon both traditional consumer protection laws and emerging sector-specific guidelines to address novel challenges.

4.1 Consumer Protection Act, 2019 (CPA 2019) and the Consumer Protection (E-Commerce) Rules, 2020

The CPA 2019 represents a significant advancement in India's consumer law, expanding the scope of "unfair trade practices" to explicitly include misleading advertisements and endorsements by celebrities and influencers. Section 2(28) defines a "misleading advertisement" as one that gives a false description, misrepresents quality or quantity, or deliberately conceals important information likely to mislead the consumer.⁴³ The Act empowers the CCPA to take *suo motu* action against advertisers and endorsers, impose penalties, and even prohibit the endorser from making future endorsements for up to one year (three years for repeat violations).⁴⁴

The **Consumer Protection (E-Commerce) Rules, 2020** supplement this by placing obligations on e-commerce platforms to ensure that product descriptions are accurate and not misleading.⁴⁵ These rules indirectly bind influencer marketing campaigns conducted through e-commerce channels, holding platforms accountable for hosted advertisements.

4.2 Guidelines for Prevention of Misleading Advertisements and Endorsements, 2022

Recognizing the growing impact of influencer marketing, the CCPA issued the Guidelines for Prevention of Misleading Advertisements and Endorsements for Misleading Advertisements, 2022 under Section 18 of the CPA 2019.⁴⁶ These guidelines codify the duty of due diligence upon endorsers — including influencers — requiring them to verify the claims they endorse.⁴⁷ They mandate that all endorsements must reflect honest opinions and must not be deceptive or conceal material information.⁴⁸ Notably, the guidelines prescribe monetary penalties of up to

⁴³ Consumer Protection Act, No. 35 of 2019, s 2(28).

⁴⁴ Id. ss 21(2)–(5).

⁴⁵ Consumer Protection (E-Commerce) Rules, 2020, Rule 4(2), Gazette of India, Dec. 2020.

⁴⁶ Guidelines for Prevention of Misleading Advertisements and Endorsements for Misleading Advertisements, 2022, issued under s 18 of the Consumer Protection Act, 2019.

⁴⁷ Id. s 4(1).

⁴⁸ Id. s 5.

₹10 lakh for the first contravention and ₹50 lakh for subsequent violations, in addition to possible prohibition orders.⁴⁹

4.3 Advertising Standards Council of India (ASCI) and Self-Regulation

While statutory provisions provide enforcement mechanisms, self-regulation through the Advertising Standards Council of India (ASCI) has long played a role in curbing misleading advertising. ASCI's Code for Self-Regulation in Advertising applies to all forms of advertisements, including influencer content.⁵⁰ In 2021, ASCI released the Guidelines for Influencer Advertising in Digital Media, requiring influencers to clearly disclose any "material connection" with a brand — whether monetary compensation, free products, or other benefits.⁵¹ Disclosures must be upfront, unambiguous, and in a format easily noticed by consumers.⁵² Although ASCI's code is voluntary, non-compliance can result in public censure and referral to government regulators for further action.

4.4 Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021

Given that most influencer marketing occurs on social media platforms, the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 impose obligations on intermediaries to ensure that hosted content complies with Indian law.⁵³ Significant social media intermediaries must remove unlawful content, including misleading advertisements, upon receiving government or court orders.⁵⁴ This extends the compliance responsibility beyond the advertiser to the platform itself.

4.5 Sector-Specific Regulations

Certain sectors — such as food, health, financial products, and pharmaceuticals — are subject to sector-specific advertising regulations that directly impact influencer marketing. For instance:

⁴⁹ Consumer Protection Act, No. 35 of 2019, s 21(2)–(5).

⁵⁰ Advertising Standards Council of India, Code for Self-Regulation in Advertising, Preamble (2021).

⁵¹ ASCI Guidelines for Influencer Advertising in Digital Media, Clause 1 (2021).

⁵² Id. Clause 4.

⁵³ Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, Rule 3(1)(b).

⁵⁴ Id. Rule 4(4).

- **Food Safety and Standards (Advertising and Claims) Regulations, 2018** prohibit misleading health and nutritional claims in food advertising.⁵⁵
- **Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954** criminalizes advertisements making false claims about cures for certain diseases.⁵⁶
- **Securities and Exchange Board of India (SEBI) Regulations** restrict misleading promotion of investment products and require risk disclaimers.⁵⁷

These sectoral controls operate concurrently with the general consumer protection regime, meaning an influencer may face multiple legal liabilities for the same misleading act.

5. Comparative Analysis with Global Practices

Influencer marketing, as a modern advertising tool, has gained rapid global prominence, prompting several jurisdictions to adopt comprehensive regulatory frameworks. A comparative analysis with leading international practices reveals both convergences and divergences with the Indian approach, especially concerning disclosure requirements, enforcement mechanisms, and penalties for misleading advertisements.

5.1 United States

In the United States, the **Federal Trade Commission (FTC)** plays a pivotal role in regulating influencer marketing under the **Federal Trade Commission Act, 1914**. The FTC's *Endorsement Guides* mandate that influencers must clearly and conspicuously disclose any "material connection" with a brand, including payments, gifts, or free products.⁵⁸ The FTC has also issued specific guidance such as "Disclosures 101 for Social Media Influencers," which emphasizes the use of unambiguous disclosures like #ad or #sponsored.⁵⁹ In enforcement, the FTC has taken legal action against both brands and influencers, with notable cases including **FTC v. Teami, LLC**, where the company was fined and compelled to ensure that influencer posts contained adequate disclosures.⁶⁰

⁵⁵ Food Safety and Standards (Advertising and Claims) Regulations, 2018, Reg. 4.

⁵⁶ Drugs and Magic Remedies (Objectionable Advertisements) Act, No. 21 of 1954, s 3.

⁵⁷ Securities and Exchange Board of India (Mutual Funds) Regulations, 1996, Reg. 30.

⁵⁸ Federal Trade Commission, *Endorsement Guides*, 16 C.F.R. s 255 (2009).

⁵⁹ Federal Trade Commission, *Disclosures 101 for Social Media Influencers* (2019).

⁶⁰ *FTC v. Teami, LLC*, No. 8:20-cv-00518 (M.D. Fla. 2020).

5.2 United Kingdom

In the U.K., the **Advertising Standards Authority (ASA)** and the **Competition and Markets Authority (CMA)** jointly enforce rules on influencer marketing. The **CAP Code** (UK Code of Non-broadcast Advertising) requires marketing communications to be “obviously identifiable” as such.⁶¹ Influencers must use clear markers like “Ad” or “Advert” at the beginning of their posts, with the CMA issuing enforcement notices to high-profile influencers.⁶² A landmark example is the ASA’s ruling against Love Island contestants for failing to disclose sponsored posts, resulting in compliance warnings and public naming.⁶³

5.3 European Union

The EU addresses influencer marketing primarily through the **Unfair Commercial Practices Directive (UCPD)**, which prohibits misleading commercial practices and requires transparency in advertising. Member states have supplemented the UCPD with national laws and self-regulatory codes. The European Commission has recently prioritized influencer marketing compliance, launching coordinated enforcement actions in collaboration with national consumer authorities.⁶⁴ Notably, the EU emphasizes platform responsibility, urging social media companies to ensure influencers use disclosure tools.⁶⁵

5.4 Australia

Australia regulates influencer marketing through the **Australian Competition and Consumer Commission (ACCC)** under the **Australian Consumer Law (ACL)**, which prohibits misleading or deceptive conduct.⁶⁶ In 2023, the ACCC conducted a “social media sweep” targeting influencers in sectors like fashion, beauty, and lifestyle to check for misleading endorsements.⁶⁷ Self-regulation is also significant, with the **Australian Association of National Advertisers (AANA) Code of Ethics** requiring clear disclosures.⁶⁸ Enforcement is

⁶¹ UK Code of Non-broadcast Advertising and Direct & Promotional Marketing (CAP Code) r. 2.1 (2022).

⁶² Competition and Markets Authority, *Guidance on Influencer Marketing* (2021).

⁶³ Advertising Standards Authority, *ASA Ruling on Various Love Island Contestants* (Feb. 2021).

⁶⁴ European Commission, *Coordinated Actions on Influencer Marketing Compliance* (Jan. 2023).

⁶⁵ Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 on Unfair Commercial Practices, 2005 O.J. (L 149) 22.

⁶⁶ Australian Consumer Law, sch. 2 to the Competition and Consumer Act 2010 (Cth).

⁶⁷ Australian Competition and Consumer Commission, *Social Media Sweep Findings* (Mar. 2023).

⁶⁸ Australian Association of National Advertisers, *Code of Ethics* (2022).

backed by substantial penalties, with recent cases involving fines up to AUD 2.5 million for false advertising practices.⁶⁹

International practices reveal several key lessons for India:

1. **Clear statutory guidance** – India could adopt uniform, binding disclosure standards similar to the FTC and ASA.
2. **Platform accountability** – EU's focus on platform obligations could enhance compliance monitoring in India.
3. **Proactive enforcement sweeps** – Australia's sectoral audits could be replicated by Indian regulators to deter violations.
4. **Higher penalties** – Stronger deterrents, as seen in the U.S. and Australia, may ensure greater adherence to advertising ethics.

By integrating these lessons, India can align more closely with global best practices while addressing its unique socio-economic and cultural context.

6. Judicial interpretations on Misleading Advertisements and Influencer Marketing in India

Judicial and quasi-judicial bodies in India have played a pivotal role in shaping the contours of laws governing misleading advertisements and, more recently, influencer marketing. Although influencer marketing as a distinct practice has only recently entered the legal discourse, jurisprudence on misleading advertisements offers valuable guidance in assessing deceptive promotional practices in the digital sphere.

One of the earliest and most frequently cited decisions is **Tata Press Ltd. v. MTNL**,⁷⁰ where the Supreme Court recognized that commercial speech is a facet of the right to freedom of speech under Article 19(1)(a) of the Constitution. However, the Court clarified that misleading or deceptive advertisements do not enjoy constitutional protection, laying the foundational principle that freedom of commercial expression is subject to restrictions in the interest of

⁶⁹ ACCC v. Health Boss Pty Ltd [2023] FCA 942.

⁷⁰ (1995) 5 SCC 139.

consumer protection. This principle was reiterated in **Hamdard Dawakhana v. Union of India**,⁷¹ where the Supreme Court upheld restrictions on advertisements making false claims about medicinal products, holding that such speech was not protected if it endangered public health.

In **Colgate Palmolive (India) Ltd. v. Anchor Health & Beauty Care Pvt. Ltd.**,⁷² the Delhi High Court examined comparative advertising claims where one product was represented as being “better” than another. The Court held that while puffery is permissible, claims must be based on verifiable facts; exaggerated statements with no factual basis amount to disparagement and are actionable under both the Trade Marks Act and consumer law. Similar reasoning was applied in **PepsiCo India Holdings Pvt. Ltd. v. Hindustan Coca Cola Beverages Pvt. Ltd.**⁷³ where disparaging comparative claims about a competitor’s beverage were restrained, establishing that advertisers cannot disguise misinformation as comparative marketing. This principle becomes particularly relevant in influencer marketing, where unverified product claims are often presented as personal opinions, blurring the line between subjective endorsement and factual representation.

In **Horlicks Ltd. v. Zydus Wellness Products Ltd.**,⁷⁴ the Delhi High Court dealt with misleading claims regarding nutritional content. The Court stressed that advertisements targeting vulnerable groups, especially children and parents, must be held to a higher standard of scrutiny. This case underscores the heightened responsibility of influencers who often target niche audiences, including children, through social media platforms. A similar approach was taken in **Procter & Gamble Home Products v. Hindustan Unilever Ltd.**,⁷⁵ where the court held that even suggestive visual depictions can mislead consumers about a product’s qualities.

The Consumer Protection Act, 2019 has also given rise to notable decisions. In **M/s P.N. Writer and Co. Ltd. v. Consumer Education and Research Society**,⁷⁶ the National Consumer Disputes Redressal Commission (NCDRC) reaffirmed that any representation—whether through traditional or digital channels—that is likely to mislead a consumer constitutes a “misleading advertisement” under Section 2(28) of the Act. This aligns with **Rajkot Nagarik**

⁷¹ AIR 1960 SC 554.

⁷² 2008 (38) PTC 478 (Del).

⁷³ 2003 SCC OnLine Del 869.

⁷⁴ 2019 SCC OnLine Del 7327.

⁷⁵ 2017 SCC OnLine Bom 8672.

⁷⁶ *M/s P.N. Writer and Co. Ltd. v. Consumer Education and Research Society*, (2021) NCDRC.

Sahakari Bank Ltd. v. Consumer Education and Research Society,⁷⁷ where the NCDRC held that omission of material facts in promotional content could be as deceptive as making false claims. Importantly, the 2019 Act, through its rules and guidelines, now holds endorsers, including social media influencers, liable for due diligence failures.

Internationally influenced jurisprudence is also emerging. In **Marico Limited v. Adani Wilmar Limited**,⁷⁸ the Delhi High Court examined advertisements disseminated via YouTube and social media, holding that digital platforms are not exempt from traditional principles of advertising law. Likewise, in **Reckitt Benckiser (India) Pvt. Ltd. v. Hindustan Unilever Ltd.**⁷⁹ the court held that health-related claims—such as germ-killing properties—must be supported by credible scientific evidence, which has direct implications for influencer endorsements of health and wellness products. The Court’s reasoning anticipates future litigation involving influencers, affirming that the medium of communication—be it television, print, or Instagram—does not alter the fundamental requirement of truthfulness in commercial messaging.

Although there is no major Supreme Court ruling yet exclusively on influencer marketing, recent actions by the Central Consumer Protection Authority (CCPA) demonstrate a proactive regulatory stance. In 2023, the CCPA imposed penalties on celebrities and social media influencers for failing to disclose material connections with brands they promoted. These enforcement measures, though administrative, are informed by judicial precedents on misleading advertisements and contribute to the developing jurisprudence in this area.

Collectively, these cases illustrate that Indian courts have consistently upheld the principle that commercial communication must be honest, verifiable, and non-deceptive. The evolving jurisprudence signals that influencer marketing will be subject to the same doctrinal standards as traditional advertising, with possible higher scrutiny due to its perceived authenticity and reach among consumers.

6. Key Challenges in Indian Regulation

The regulatory landscape governing influencer marketing in India, while evolving, continues

⁷⁷ 2013 SCC OnLine NCDRC 48.

⁷⁸ 2022 SCC OnLine Del 1780.

⁷⁹ 2013 SCC OnLine Del 1413.

to face several significant challenges.

First, ambiguities in definitions and scope remain a persistent problem. Terms such as “influencer,” “sponsored content” and “material connection” are not uniformly defined across the Consumer Protection Act, 2019, the ASCI Guidelines, and the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021. This definitional uncertainty often leads to inconsistent enforcement and compliance loopholes for digital creators and brands alike.

Second, there is overlap between multiple regulators, resulting in a fragmented approach. While the Central Consumer Protection Authority (CCPA) addresses misleading advertisements under the Consumer Protection Act, the Ministry of Electronics and Information Technology (MeitY) regulates platforms, and ASCI provides self-regulatory codes. Such multiplicity without a unified framework can cause jurisdictional confusion, especially in cases involving cross-platform campaigns.

Third, cross-border issues present additional complications. Influencers frequently cater to a global audience, and brand endorsements often originate from foreign entities. This creates challenges in applying Indian laws to foreign advertisers or influencers operating outside the country, raising concerns about jurisdiction and enforcement in the digital space.⁸⁰

Fourth, evidence collection and enforcement difficulties hinder regulatory efficiency. Proving that a post is “misleading” often requires technical examination of metadata, content archives, and proof of commercial intent — evidence that may be altered or deleted rapidly in the fast-paced world of social media.⁸¹

Lastly, balancing regulation with free speech remains a constitutional and policy dilemma. While it is essential to protect consumers from deceptive practices, over-regulation risks stifling creativity and infringing on Article 19(1)(a) of the Constitution, which guarantees freedom of speech and expression. The challenge lies in ensuring that necessary consumer

⁸⁰ *Hindustan Unilever Ltd. v. Reckitt Benckiser India Ltd.*, (2014) 57 PTC 495 (Del). The case highlighted jurisdictional challenges in cross-border advertisement disputes.

⁸¹ *Pepsi Co. Inc. v. Hindustan Coca Cola Ltd.*, 2003 (27) PTC 305 (Del) illustrated evidentiary burdens in misleading ad cases.

safeguards coexist with an enabling environment for content creation.⁸²

7. Remedies available for the protection of Consumers

The consumer protection framework in India offers multiple avenues for redress against misleading influencer marketing. Under the Consumer Protection Act, 2019, consumers can file complaints before the Central Consumer Protection Authority (CCPA) or the three-tier consumer commissions (District, State, and National) seeking corrective measures, penalties, or compensation.⁸³

The Advertising Standards Council of India (ASCI) also provides a voluntary complaint mechanism where consumers can report non-disclosures or misleading promotions. Although ASCI's powers are self-regulatory and non-binding, its decisions carry significant reputational weight, often prompting influencers and brands to issue clarifications or take down offending content.

Platform-specific complaint systems further supplement these remedies. For instance, Instagram, YouTube, and Facebook provide reporting options for deceptive ads or undisclosed partnerships. However, the efficacy of these mechanisms depends largely on the platforms' willingness to act swiftly and transparently.

In practice, consumers often face barriers in seeking redress. These include lack of awareness about rights and complaint mechanisms, procedural delays in formal forums, and the low monetary value of individual claims, which may deter legal action.⁸⁴ The absence of fast-track adjudication for digital marketing disputes further compounds these challenges.

8. Recommendations

To address the regulatory and enforcement gaps in influencer marketing, several targeted reforms are necessary.

First, **clear definitions and disclosure standards** should be codified in a central statutory

⁸² *Tata Press Ltd. v. Mahanagar Telephone Nigam Ltd.*, (1995) 5 SCC 139 recognized commercial speech under Article 19(1)(a).

⁸³ Consumer Protection Act, 2019, ss 17–21.

⁸⁴ *Horlicks Ltd. v. Zydus Wellness Products Ltd.*, 2019 SCC OnLine Del 6662 — case reflecting procedural delays in false advertising disputes.

instrument, harmonizing the terminology across the CCPA, IT Rules, and ASCI Guidelines. This will reduce interpretive ambiguity and provide certainty for both influencers and brands.⁸⁵

Second, **stronger penalties for repeat offenders** are crucial to deterrence. A graduated penalty system — where repeat violations incur higher fines, suspension of endorsement privileges, or platform-level restrictions — could ensure compliance more effectively.

Third, **a greater role for platforms in compliance** should be formalized, requiring social media companies to implement proactive disclosure tools, automated labelling systems, and compliance reporting to regulators.

Fourth, **sector-specific safeguards** should be introduced, particularly in high-risk industries such as healthcare, financial products, and dietary supplements, where misleading endorsements can cause significant public harm.

Fifth, **better coordination among regulators** is essential. The CCPA, MeitY, ASCI, and even the Competition Commission of India (for anti-competitive practices) should share data, enforcement outcomes, and best practices to avoid duplication and enhance effectiveness.

Finally, **capacity building for influencers and small businesses** should be prioritized through workshops, online modules, and multilingual resources that explain disclosure obligations and ethical advertising practices.

Conclusion:

The regulation of influencer marketing in India is at a decisive crossroads. While the expanding digital economy has opened remarkable avenues for brand visibility, creative entrepreneurship, and direct consumer engagement, it has simultaneously given rise to unprecedented challenges in safeguarding consumer interests. The persuasive power of influencers often lies in the seamless blending of personal narratives with commercial endorsements—an overlap that can obscure the line between genuine opinion and paid promotion, thereby raising concerns of transparency, accountability, and ethical responsibility.

This article has critically analysed the present state of India's influencer marketing regulatory

⁸⁵ Advertising Standards Council of India, *Guidelines for Influencer Advertising in Digital Media* (2023).

framework, addressing key challenges such as definitional ambiguities, enforcement limitations, and jurisdictional overlaps. It has also examined available consumer remedies under the Consumer Protection Act, 2019 and related regulations, while highlighting relevant case law, policy perspectives, and reform proposals. The discussion underscores the necessity for a dual approach—one that combines robust statutory safeguards with proactive self-regulatory mechanisms driven by the industry itself.

In moving forward, India's success will depend on more than just legislative amendments. It will require coordinated action among stakeholders, including regulators, digital platforms, advertisers, and influencers, supported by sustained consumer awareness initiatives. Regulatory bodies must adopt a technologically adaptive and responsive stance, ensuring that laws remain relevant in the face of evolving marketing strategies and emerging digital platforms. Ultimately, the effectiveness of India's approach will be measured by its ability to create a balanced ecosystem—where consumer trust is preserved, freedom of expression is respected, and the innovative potential of influencer marketing is harnessed responsibly in the ever-changing digital advertising landscape.