

## **Advertising Standards in India: An Introduction**

In the last few years advertising has become serious and big business. The advertising business is growing at a considerable rate. There are several legislations that control the content of advertising. Some of the principal legislations are –

- Cable Television Networks (Regulation) Act, 1955
- Press Council of India Act, 1978
- Cable Television Networks(Amendment) Rules, 2006

There are also some prominent, prohibitory legal provisions that regulate advertising.

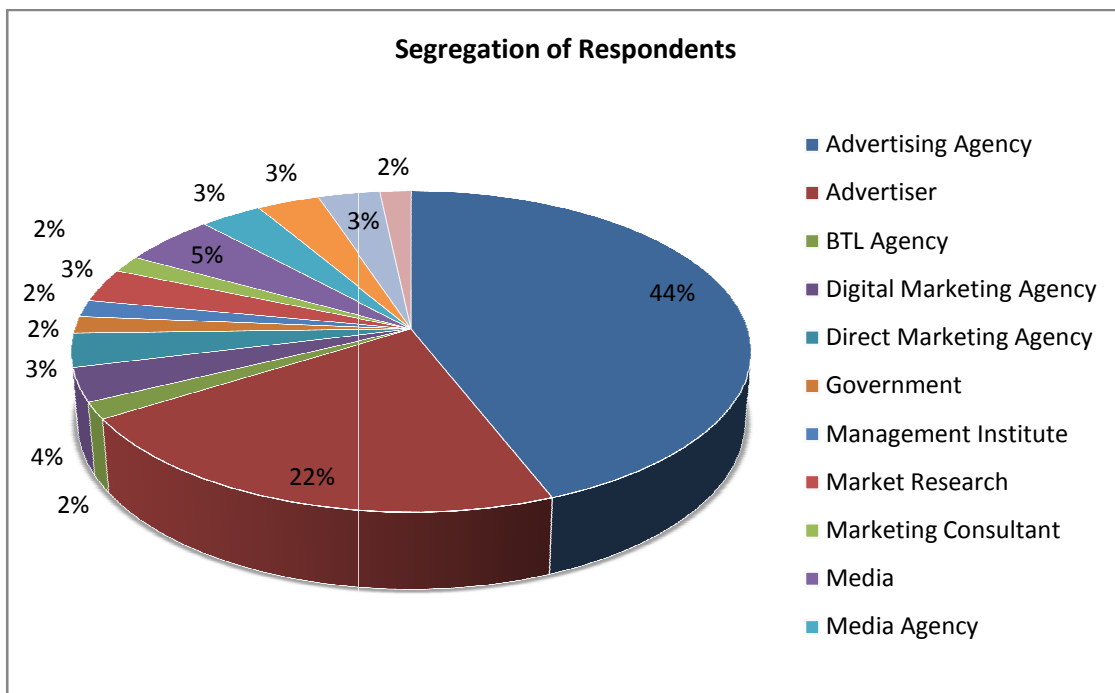
In 1985, the Advertising Standards Council of India (“ASCI”), a non statutory tribunal, was established that created a self regulatory mechanism of ensuring ethical advertising practices. ASCI is a voluntary Self-regulation council. The members comprise Advertiser’s, Media, Advertising Agencies and other Professional/Ancillary services connected with advertising practice. ASCI entertained and disposed of complaints based on its Code of Advertising Practice (“ASCI Code”).

This Code applies to advertisements read, heard or viewed in India even if they originate or are published abroad so long as they are directed to consumers in India or are exposed to significant number of consumers in India.

## FICCI Survey

In order to understand the self regulatory framework and its effectiveness in advertising in India a comprehensive survey questionnaire was prepared. Taking the same into perspective the respondents from advertising and marketing fraternity were requested to give their feedback on adequacy and functional effectiveness of the existing framework.

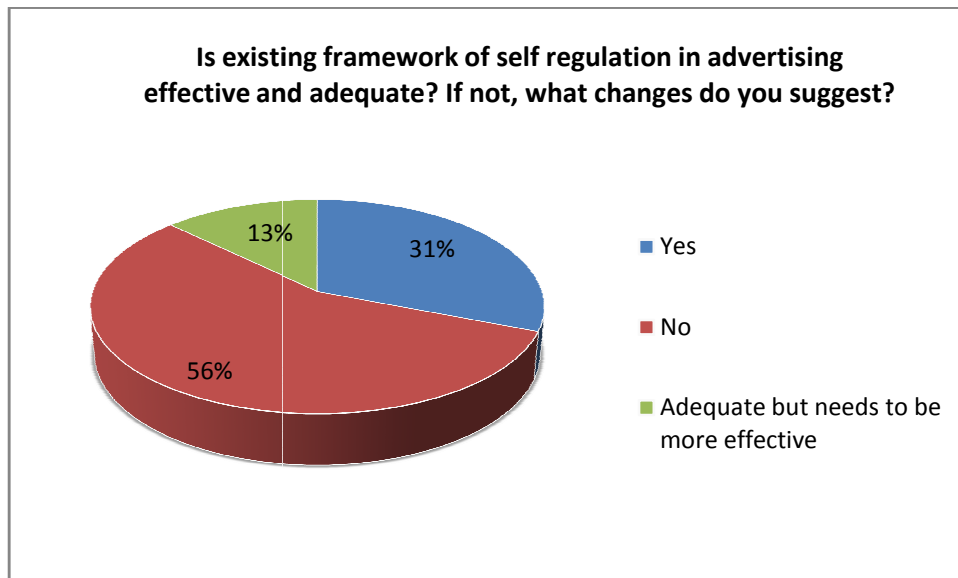
The questionnaire was sent to all top tier professionals working in the advertising & marketing space including advertisers across sectors, agencies (media, digital marketing, PR, BTL, OOH, Direct Marketing), media (print, TV & radio), market research companies, premier B schools of the country and independent marketing consultants.



## SURVEY FINDINGS

### Effectiveness and Adequacy of existing Self Regulatory Framework

FICCI solicited inputs from professionals in the field of advertising and marketing space about the effectiveness and adequacy of the existing self regulatory framework.



- 31 % of the respondents were in the agreement that the existing framework is adequate and effective. They felt that -
  - The self regulatory body is effective and better for industry vis a vis Government regulation.
  - Public awareness should be created about the effective work done by ASCI.
  - There are limited instances when the functioning of the body has found to be ineffective.
- 13% of the respondents opined that it is adequate but needs to be more effective. The existing framework can be made more effective by following ways
  - The implementation mechanism needs a thorough relook. The body should have enough monitoring punitive power.
  - The body needs to be enlarged and regional centers should be set up for speedy decisions and monitoring compliance.
  - It should become more nimble and metamorphose with the changing nature of media.

- 56 % of the respondents were of the opinion that the existing self regulatory framework is inadequate as well as ineffective. The primary reasons given for the same are as follows ;
  - There is not enough knowledge among various stakeholders regarding the scope of the regulatory mechanism and the process of making complaints.
  - Advertising standards are governed by code which is dated and not able to keep pace with the changing trends.
  - The CCC (Consumer Complaints Council) meets physically to decide on complaints. It usually takes around 12-15 weeks for the council to take a final call against a complaint. In today's highly competitive arena most advertising campaigns are short term in nature and by the time the committee meets to decide on an issue, it is late to arrest the damage done. Action delayed is virtually equal to action not taken. The result is that the ethics in advertising are not met. The entire mechanism is reactive in its approach.
  - There are ads which making false claims and there is no medical research to substantiate the claim. The message is not conveyed in the right spirit and the present framework is not addressing this.
  - The consumer awareness is very limited about the complain mechanism. As a result there are very limited complaints from the consumers.
  - The deep pocketed big advertisers are dictating their own terms.

### **Suggestions**

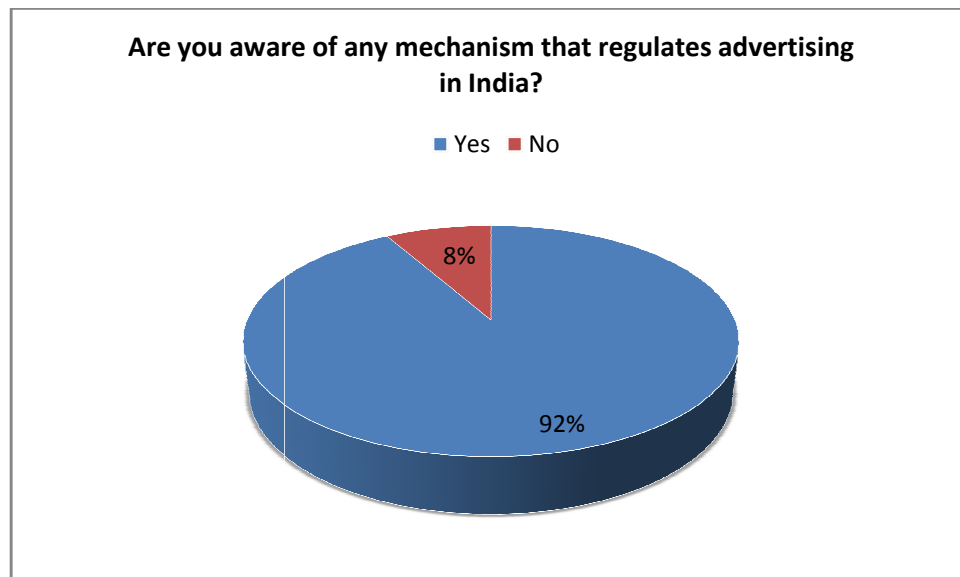
It is of prime importance that the unsuspecting consumers should be protected from misleading advertising and fraudulent claims. Following are some suggestions towards making the existing regulatory framework more effective.

- The existing self regulatory body should function like a professional organization comprising full time employees and dedicated industry representatives.
- Strict implementation of the regulatory code. The mechanism should be such that it acts as a deterrent for those who misuse advertising.
- Greater transparency in its functioning.
- It is essential to have new guidelines that would bring the unregulated sectors into the purview of the code. E.g. Real Estate Sector.
- It should be more adaptive to the fast changing trends and media landscape.
- More emphasis should be given on educating the stakeholders about the framework.
- Speeding up the process of addressing complaints would be one simple but big step.
- There should be a greater involvement of media companies in making regulation more effective

- It is important to have common code of conduct for the industry. Industry bodies like Advertising Agencies Association of India, advertising clubs could work in tandem with ASCI for better implementation and compliance.
- Accreditation of Advertising Agency by regulatory body.

### **Government backed Regulatory Body: Is there a need?**

FICCI solicited inputs from the survey participants on the need for a government backed regulatory body for the Indian advertising sector in lines with TRAI for Telecom sector and IRDA for Insurance sector. The response was almost evenly divided as 51 % of the respondents were in the opinion that the sector needs a statutory regulatory body and 49 % said that there is no need of a Government regulation.



## Compliance of the ASCI Code

Feedback was solicited from respondents about their opinion on compliance of ASCI code by non members and what steps should be taken to bring the non-members within the purview of the code.

### Suggestions

Following are the suggestions given by the respondents on how to bring the non members within the purview of the code –

- ASCI membership and compliance of the code should be made mandatory for advertisers, agencies and media. Mandatory compliance would ensure stricter implementation of the code. There should be public blacklisting and imposition of heavy fine for non-compliance of the code. The corpus accumulated from the financial penalty can be used to support Public Service advertising or not for profit business advertising.
- The body should conduct extensive awareness programmes and educate the members on compliance of codes. E.g. BEE for energy sector.
- The body can work along with different sector specific associations to ensure compliance of codes. E.g. Automobile Association ensuring that their members are also the member of the regulatory body.
- ASCI logo can be used by members in all their ads to gain credibility in the industry. But firstly, it is important to create public awareness about the regulatory body.
- Preview of advertisements by the regulatory body much like the censor board for films before declaring them fit for local screenings.
- Transparent Govt. backed regulatory body would bring every stakeholder under the ambit of the law. The question of being a member and non-member would be out of proportion.
- Information given in advertisements should be without conditions apply. This would see a great improvement in advertisements by ensuring correct representation of the facts.

### Measures to curb the phenomenon of misleading advertisement

*What steps and actions are taken by the self regulatory body to prevent the phenomenon of misleading advertisements? If not, what additional measures would you suggest to curb misleading advertisements?*

20 % of the respondents were of the opinion that the steps and actions taken by the body are adequate. The reasons given were -

- More freedom to complain can lead to frivolous complaints.

- The opinion and rulings of Consumer Complaint Council are respected and rarely disputed.
- It would be best if the self-regulation is properly adhered to.

80% of the respondents were of the view that the steps and actions taken by the body to prevent the phenomenon of misleading advertisement are not adequate. The following are the key issues –

- The scope of misleading advertisement needs to be well defined.
- There is no proactive monitoring of the misleading advertisements. Unless a complaint is registered, it is impossible to identify misleading advertisements. At best the self regulatory body does is stopping a certain type of advertising well after the campaign is over. The violator gets away by issuing an apology letter in most of the cases.
- Only larger campaigns are monitored.
- The bulk of the misleading advertising happens in rural India where consumers are mostly uneducated and unaware. It is common to see quacks sitting in every small haat market in rural India selling potions for various diseases. Teleshopping channels routinely sell products based on superstition and actually promote it on air. Many self-proclaimed God men continue to perform "miracles" and many fly-by-night financial companies continue to swindle money from the public by making tall promises of huge interest rates. The actions of ASCI are not visible in these areas that matter to the common populace.
- ASCI is seen as focusing only on inter-corporate disputes and Cable TV as a medium, it is not addressing the larger issues that Indian consumers face.
- Misleading advertisement is a two handed clap. Media space sellers are equally responsible along with advertising agency directly in many cases.

### **Suggestions**

- ASCI need to take up the issue of misleading advertising happening in rural India.
- A certification clearance before the release would be a preventive measure rather than existing reactive one.
- The regulatory body needs to adopt stringent measures with robust implementation mechanism such as –
  - Prompt action on the complaint and power to pull out advertisement immediately from screening.
  - Regular tracking of the communication mediums carrying misleading advertisements.
  - It should have the power to assess and evaluate each claim by the advertisers and penalize the errant.
  - ASCI must initiate suo motto action in case there is no complaint registered.

- Filing of public interest litigation.
  - Hefty financial punishment in order to make the cost of non compliance very heavy.
  - Blacklisting/ Ban for a specific period of the Ad makers
  - More interactive and accessible system for lodging a complaint. E.g. Online Forums, Facebook page etc.
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- The issue of misleading advertisement should be raised on Blogs & twitter as every advertiser is very sensitive and cautious about its brand image. Online database of all ads with social commenting features can also be considered.
  - Consumers have to be educated on what can be construed as misleading, what are their rights and about the complaint mechanism. A public awareness campaign on the ill-effects of misleading ads funded by the ad industry will establish responsibility and credibility.
  - TELA, Hong Kong (official government agency issues ratings for any movie that is shown in Hong Kong movie theatres) or Ofcom, U.K. (Office of Communication – Govt. approved regulatory authority for the telecommunication industry in U.K) can be referred for developing effective mechanisms.
  - Have an ASCI certification of practice for all advertising agencies and it can be made mandatory to use this eligibility to create or release advertisements. Such a step would bring in better moral and enforceable code of conduct.
  - It is important to have Govt. Regulation as self regulation can never be effective. A statutory regulatory body armed with the teeth to punish the guilty is required. The body should have a major representation from private members.

### **Damage control measures for advertisements flouting the code**

#### **Suggestions**

- Have a Tatkal scheme whereby complaints can be fast-tracked in a few days.
- There should be a combination of monetary penalty along with an apology letter. Heavy Fines were suggested such as -
  - An apology campaign, equal in reach frequency to the original offensive advertisement.
  - Immediate correction of Ad in double the space of time of original ad with 100 facts in prominent space of time.
- Create more media coverage on such violations.
- The body can have a website or a webpage of “flouter” agencies, so that Advertisers are aware about the offenders.
- The punitive action should be a ban on using the media for a certain period of time.
- Media members can come forward and put an embargo on offending advertisements.



- Legal system to penalize the offender could be effective in bringing more discipline.
- Industry bodies such as Indian Newspaper Society (INS), Advertising Clubs across various cities, Advertising Agencies Association of India (AAAI) & Indian Broadcasting Foundation (IBF) representing advertising agencies & media can jointly develop mechanisms to control the violations.

### Parity with International standards of Advertising Regulations

The survey respondents were requested to share their views on how does Indian advertising regulation compare with global best practices in as much as it ensures honesty, fairness and decency in advertising.



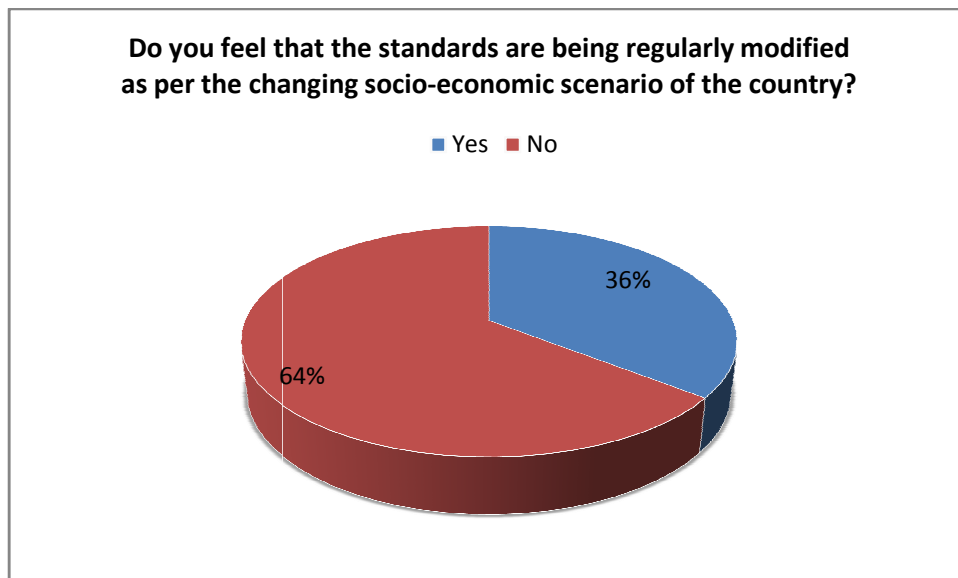
- 64 % of the respondents were in the view that the Indian advertising regulations cannot be compared with global standards due to following reasons -
  - Globally the consumer awareness is far better about the standards and the complaint mechanism. The consumers are proactively involved in reporting the violation of codes.
  - There is lack of awareness among the stakeholders about the functioning of the body which creates an atmosphere of “why should I comply”.
  - There is a lack of honesty especially when it comes to marketing of products aimed at Tier 2 & 3 cities.
  - The execution of code is not up to the mark.
  - Though regulations are somewhat similar, the cost of non adherence and non compliance is very expensive in many of the advanced countries which work as a great deterrent for the violators. In India, due to the sub optimal legal system

and lack of enforcement of the code many advertisers are encouraged to take chance.

- 36% of the respondents felt that the Indian advertising regulations are at par with global best practices. The reasons being -
  - Indian Ads are conceived for the Indian mentality and aspirations, on the contrary, Global ads are designed keeping the western cultural ethos. Apples cannot be compared with oranges.

### **Adaptability to the fast changing socio-economic scenario**

Taking into the consideration the rapidly changing socio-economic scenario of our country, the respondents were requested to give their opinion on whether the standards are being regularly modified or not.



### Legal endorsement of the code in existing and future regulations

The respondents were requested to express their view on whether the level of legal endorsement that the code has received under the Cable TV Act could be also extended to similar pieces of current and future legislations that regulate other media. 81% were in favour of extending this to other media whereas, 19% did not think it was necessary to do so.

