

Food Safety & Standards Authority of India

FDA Bhawan, Kotla Road

New Delhi – 110 002

Date : Oct 6, 2009

Concept Note

“Guidelines - Code of Self Regulation in Food Advertisement”

Background:

- I. The Food Safety & Standards Act, 2006 seeks to regulate the law relating to advertising and unfair trade practices in the food sector. Section 3(1)(b) The Act defines ‘advertising’ as *‘any audio or visual publicity, representation or pronouncement made by means of any light, sound, smoke, gas, print, electronic media, internet or website and includes through any notice, circular, label, wrapper, invoice or other documents.*
- II. Section 24 of the Act places restrictions of advertisement and prohibits unfair trade practices. It lays down the following general principles:-
 - a) No advertisement can be made of any food which is misleading or deceiving or contravenes the provisions of the Act, the rules and regulations made there under;
 - b) No person can engage himself in any unfair trade practice for purpose of promoting the sale, supply, use and consumption of articles of food or adopt any unfair or deceptive practice including the practice of making any statement, whether orally or in writing or by visible representation which:-
 - falsely represents that the foods are of a particular standard, quality, quantity or grade-composition;
 - makes a false or misleading representation concerning the need for, or the usefulness;
 - gives to the public any guarantee of the efficacy that is not based on an adequate or scientific justification thereof;

- c) In any case where a defence is raised to the effect that such guarantee as described above is based on adequate or scientific justification, the burden of proof of such defence shall lie on the person who raises defence.
- III. Section 52 and 53 of the Act prescribe the punishment for selling misbranded food¹ and also for misleading advertisements.
- Section (52) lays down that any person who whether by himself or by any other person on his behalf manufactures for sale or stores or sells or distributes or imports any article of food for human consumption which is misbranded, shall be liable to a penalty which may extend to three lakh rupees.
 - Section (53) prescribes that any person who publishes, or is a party to the publication of an advertisement, which falsely describes any food or is likely to mislead as to the nature or substance or quality of any food or gives false guarantee shall be liable to a penalty which may extend to ten lakh rupees.
- IV. Various jurisdictions around the world have specific guidelines/codes laying down minimum standards for food advertisements. Although most of these codes are self-regulatory in nature, they can act as an effective deterrent to prevent misleading advertisement from being disseminated to the general public.

Present scenario of Standards of Advertising in India:

- i. Commercial Advertisement comes within the domain of freedom of speech and expression guaranteed under Article 19 (1) (a) of the Constitution of India. The Supreme Court of India has held that commercial advertisement is a fundamental right available to every citizen under Article 19 (1) (a) of the Constitution of India subject to the requirements of Article 19 (2) of the Constitution.
- ii. Currently there is no legal framework regulating advertising standards in India. However, the Advertising Standards Council of India (**ASCI**) has drafted and

¹ The definition of misbranded food includes an article of food purported or represented or being offered or promoted for sale with false, misleading or deceptive claims through advertisement. *See*, Section 3 (1) (zf) of the Act.

implemented a Code for Self-Regulation in Advertising (**ASCI Code**) in India.² The purpose of the ASCI Code is to control the content of advertisements and not to hamper the sale of products which may be found offensive. The ASCI Code has been drawn up after wide industry consultation, and has been accepted by individuals, corporate bodies and associations engaged in or otherwise concerned with the practice of advertising, as basic guidelines with a view to achieve the acceptance of fair advertising practices in the best interest of the ultimate consumer.

- iii. The ASCI Code applies to advertisers, advertising agencies and media. The ASCI Code makes it clear that it does not seek to usurp or replace the other legal provisions that might affect advertising. Its purpose is only to complement such laws.

International Best Practices:

- a) Most countries around the world have sought to monitor and/or regulate the content of food and beverage advertisements to ensure that commercial communication is conducted responsibly, physical well being of its citizens is maintained and not affected by wrong or misleading claims and also to enable consumers to make informed decisions.
- b) The systems followed in few major countries of the World and the international best practices laid down by ICC Framework for Responsible Food and Beverage Communication should provide the critical context for evolving the framework for food and beverage advertising in India.

² The ASCI is a voluntary self-regulatory council, registered as a not-for-profit Company under section 25 of the Companies Act, 1956. The Role and Functioning of the ASCI & its Consumer Complaints Council (CCC) in dealing with Complaints received from Consumers and Industry, against Ads which are considered as False, Misleading, Indecent, Illegal, leading to Unsafe practices, or Unfair to competition, and consequently in contravention of the ASCI Code for Self-Regulation in Advertising. The ASCI is not a Government body, nor does it formulate rules for the public or for the relevant industries.

Approach:

- I. A perusal of the practices followed by other countries would show that the cornerstone for each of them is self-regulation guided by some handholding in terms of prescription of basic criterion by the governments/legislatures/consultative bodies respectively.
- II. This is especially true for food products, owing to the vast nature, array of products and the distinct requirements for each of such products, requiring use of large number of ingredients, additives and chemicals, effect of which are varied, far reaching and dependent on number of criteria. Thus framing of specific guidelines under the Rules/Regulations would neither be practicable or efficacious for achievement of the end purpose of the legislation.
- III. It is imperative that the Authority enacts broad-based guidelines on the requirements of Section 24, taking into consideration Sections 52 & 53.
- IV. The FSSAI could adopt the suggested framework as a guideline and allow an independent body like ASCI to formulate the industry Code as applicable to food and beverage communications/advertisements and treat the same as benchmark for compliance with the provisions of the Act.
- V. Such an approach would also allow the industry and the regulations to adapt themselves to ever-changing standards and operational/business processes.

The Guidelines

The following guidelines are proposed to be adopted to promote high standards in food and beverage communications and advertising:

A. *Preamble:*

Whereas:-

1. The Food Safety and Standards Authority of India (FSSAI) - a statutory regulatory Authority of Govt. of India {Ministry of Health & Family Welfare} has been set up under the Food Safety and Standards Act, 2006 for laying down science based standards for articles of food and to regulate their manufacture, storage, distribution, sale and import, to ensure availability of safe and wholesome food for human consumption and for matters connected therewith or incidental thereto.
2. Communications and advertisements related to food and beverages can have a significant impact on the lives of the public in general and their physical and material well being in particular,
3. It is imperative that food and beverage communications and advertisements fulfill their intended roles and Food Business operators adopt strict principles of Self Regulation and not mislead the general public in any manner detrimental to their well being,
4. The issue of labeling would be governed by explicit provisions under the Act and the rules on labeling being developed.

and recognizing the need to-

- i.* promote high standards of business ethics to ensure that commercial communications to consumers are responsible
- ii.* provide honest and truthful information about food and beverage products

B. Definition of Advertising for the purpose of the Guidelines:

Advertising means any commercial communication by a Food Business Operator to the public other than through a label which is published or broadcast or disseminated using any medium in India for payment or other valuable consideration to promote directly or indirectly the sale and intake of food and beverages in any manner.

C. General Principles:

- i. Advertising and communication for food and beverages should not be misleading or deceptive. This means that claims about particular ingredients in a food and beverage product or the underlying health benefits thereto should have a sound, authentic scientific basis and supported by evidence whenever required.
- ii. Advertising and/or marketing communications for food and/or food & beverage products that include what an average consumer, acting reasonably, might interpret as health or nutrition claims shall be supportable by appropriate scientific evidence and should meet the requirements of the basic Food standards laid down under the Food Safety Standards Act , 2006 and rules, wherever applicable.
- iii. Advertisements should not disparage good dietary practice or the selection of options, such as fresh fruit and vegetables that accepted dietary opinion recommends should form part of the average diet.
- iv. Advertisements should not encourage excessive consumption or inappropriately large portions of any particular food. They should not undermine the importance of healthy lifestyles. Advertisements should rather try to promote moderation in consumption and the need to consume in suggested portion sizes.
- v. Care should be taken to ensure advertisements do not mislead as to the nutritive value of any food. Foods high in sugar, fat, TFA and/or salt should not be portrayed in any way that suggests they are beneficial to health.
- vi. The nature of the audience should be taken into account particularly when selling products in rural areas, to urban poor or to children. Advertisements and communications should not exploit their lack of experience or knowledge and always provide truthful information. In such cases, nutritional or health-related

comparisons should be based on an objectively supportable and clearly understandable basis.

- vii. Communications for Food and/or Beverage Products including claims relating to material characteristics such as taste, size, suggested portions of use, content, nutrition and health benefits shall be specific to the promoted product/s and accurate in all such representation.
- viii. Advertisements should not mislead consumers especially children to believe that consumption of product advertised will result directly in personal changes in intelligence, physical ability or exceptional recognition unless supported with adequate scientific evidence.
- ix. Advertisements containing nutrient, nutrition or health claims and advertisements directed at children should observe a high standard of social responsibility.
- x. Communications for Food and/or Beverage Products not intended or suitable as substitutes for meals shall not portray them as such.
- xi. Claims in an advertisement should not be inconsistent with information on the label or packaging of the food.
- xii. Advertisements for food and beverages should not claim or imply endorsement by any government agency, professional body, independent agency or individual in particular profession in India unless there is prior consent, the claim is current and the endorsement verifiable and the agency or body named.
- xiii. Celebrities or prominent people who promote food should recognize their responsibility towards society and not promote food in such a way so as to undermine a healthy diet.
- xiv. Advertisements should not undermine the role of parental care and guidance in ensuring proper food choices are made by Children
- xv. Advertisers and communicators must recognize their social and professional responsibility towards promoting a healthy lifestyle and strive to achieve high standards of public health. All advertisements and communications should be thus truthful, legal, decent and honest reflecting their social and professional responsibility.
