

Legal Extranet

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India



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General Legal Overview:

Advertisements in India are mostly governed by self-regulation. For the above purpose Advertisement Standards Council of India (ASCI) has laid down comprehensive code. Apart from the above self-regulatory code, there are a number of legislations which govern the advertisements in various fields.

Advertisement of alcoholic beverages, tobacco products, pharmaceuticals & drugs etc., are specifically regulated.

Basic Guide to Intellectual Property rights in the Territory:

In India, like most of the other countries Intellectual Property Protection is available for Copyrights, Trademarks, Patents, Designs, Geographical Indications etc. Further India being a signatory to the TRIPS agreement of WTO, most of the legislations have been brought in line with the standards prescribed in the TRIPS. Further India being a common law country passing off protection is available in respect of Trademarks and Copyrights. In the context of advertising the principal areas of intellectual property right protection in India are Copyrights, Trademarks and Passing off.

Copyrights

Copyright exists in original artistic, literary, dramatic and musical works. Copyright in that original work belongs to the Author of the work. The said right subsists for the life-time of the author and sixty years thereafter. Infringement actions can be taken by the author/owner of the Copyright against the alleged infringer who resorts to substantial copying of the subject matter of copyright.

Trade Marks

A Trade Mark is a visual mark in the form of a word, device, letter, picture, logo, color, shape etc, so that the consumer can identify the item with the manufacturer of the said items. Trade Mark law is governed in India by the Trademarks Act, 1999. Now even service marks are eligible for protection under the new Act.

To protect the registered trade mark from infringement, the following remedies can be resorted to:- (a) Civil remedies, (b) Criminal remedies, and (c) Administrative remedies.

Passing Off

Being a common law country, passing off remedy is also available for protecting the intellectual property rights in India like, Trademark and Copyright. The philosophy behind the Passing-Off remedy is that no other person should be allowed to pass off his goods or services as originating from some other source (which is normally more acclaimed). In other words without the express permission of the proprietor of the said right no person can use his intellectual property. A claim for damages lies against the defendant in case of passing off actions.

1. Advertisement Standards Council of India ("ASCI"), (2) Advertisement Agencies Association of India

The ASCI Code is inspired by the similar Code in UK. It provides basic guideline for fair advertisement, in the interest of consumers. ASCI has a complaints handling system in place and a number of complaints have been handled by ASCI and written decisions have been rendered.

Web link: [The ASCI Code is inspired by the similar Code in UK. It provides basic guideline for fair advertisement, in the interest of consumers. The main features of these guideline are as follows:](#)

-Prasar Bharti

-Ministry of Information and Broadcasting (Doordarshan (DD) Code for Advertisement on Doordarshan including all regional channels of DD & Broadcasting Code for Advertisement on AIR) Web links: <http://mib.nic.in>

<http://www.ddindia.com> <http://www.allindiaradio.org> -Monopolistic & Restrictive Trade Practices Commission

Web link: <http://mib.nic.in>

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The information set out above is only intended to provide a general overview of the subject matter covered. It is not a substitute for legal advice, which should be obtained for each individual situation, from a suitably qualified and experienced local lawyer.

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