

INDIA

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Is there case law or any statutory regulation governing advertising and promotion incentives? Are there any special consumer protection laws? What role do free gifts, tie-in offers, sweepstakes, rebates and other benefits, play in this context?

Advertising communication is a mix of arts and facts subservient to ethical principles. In order to be consumer-oriented, advertising must be truthful and ethical. It should not mislead the consumer. If it so happens, the credibility is lost.

Monopolies and Restrictive Trade Practices Act, 1969 - Section 36 A of the Act deals with:

All business promotion schemes announcing 'free gifts', 'contests', etc. where any element of deception is involved is considered ***Unfair Trade Practices under the Act***, Parle's mango drink 'Maaza' gave the advertisement of Maaza mango and the MRTP issued a notice against Parle Exports Pvt. Ltd. The advertisement implied that the soft drink was prepared from fresh mango while actually preservatives were added to it. The company had to suspend production pending enquiry.

The Consumer Protection Act, 1986 deals with pricing issues and states that it is a criminal offence to give misleading indication of price of any goods, service, accommodation, or facility to consumers. A breach of this Act is a criminal offence not only does a company risk being fined on a corporate level, but also any consenting or conniving directors or managers, or any other persons in positions of responsibility involved, risk personal fines and/or imprisonment.

As regards free gifts, tie-in offers, sweepstakes rebates and other benefits are permissible subject to certain limitations. Broadly the following statutes in India deal with such matters:

1. Consumer Protection Act, 1986
2. The Lotteries (Regulation) Act, 1998
3. Copyright Act, 1957
4. Indian Penal Code, 1860.

In your jurisdiction, are there any industry sectors which are subject to special regulations for advertising and promotion incentives (for instance the health products and pharmaceutical industries in some countries)? Please name applicable statutes and self-regulatory codes.

Drug and Magic Remedies (Objectionable Advertisement) Act, 1954 – This Act has been enacted to control the advertisements of drugs in certain cases and to prohibit the advertisement for certain purposes of remedies alleged to possess magic qualities and to provide for matters connected therewith.

In **Hamdard Dawakhana v. Union of India** the Supreme Court was faced with the question as to whether the *Drug and Magic Remedies Act*, which put restrictions on the advertisements of drugs in certain cases and prohibited advertisements of drugs having magic qualities for curing diseases, was valid as it curbed the freedom of speech and expression of a person by imposing restrictions on advertisements. The Supreme Court held that, an advertisement is no doubt a form of speech and expression but every advertisement is not a matter dealing with the expression of ideas and hence advertisement of a commercial nature cannot fall within the concept of Article 19(1) (a).

Does industry self-regulation replace or supplement government and legislative regulation of advertising and promotion incentives? Is self-regulation an effective tool?

In India the advertising agencies have formed an association called the Advertising Agencies' Association of India (AAAI) which also has a governing board called the Advertising Standard Council of India this council has adopted a code for Self-Regulation which has been drawn up by people in professions and industries in or connected with advertising, in consultation with representatives of people affected by advertising, and has

been accepted by individuals, corporate bodies and associations engaged in or otherwise concerned with the practice of advertising, with a view to achieve the acceptance of fair advertising practices in the best interest of the ultimate consumer. It is definitely to a great extent an effective tool.

To what extent do promotional incentives extended to staff in public institutions pose legal issues in your jurisdiction (i.e., paying for travel and accommodation costs on the occasion of conferences, personal entertainment, hidden education sponsoring, sponsoring of school snacks for promotional purposes)?

In India promotional incentives i.e. paying for travel and accommodation costs on the occasion of conferences, personal entertainment, hidden education, sponsoring, sponsoring of school snacks for promotional purposes extended to staff in public institutions are regulated by the code of conduct rules formed by the institutions themselves. Industries have their own standards and regulations, especially the financial services field. Some states outright forbid the use of incentives in certain industries or in certain circumstances.

Are there any formal disclosure requirements for promotional incentives (i.e., rule of separation of procurement from personal dealings, rules of employer consent requirements, written form requirements, adequacy of consideration granted for a service)?

There are no such requirements in India.