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Consumer Protection Bill 2018: Should celebrities be held responsible for misleading ads?

BusinessToday.in January 9, 2018

In a recent development, the National Consumer Disputes Redressal Commission sought an explanation from Supertech Ltd for not refunding the money to homebuyers despite "inordinate delay in giving possession" of its ORB project in Noida. Besides, the commission also issued a notice to actor and interior designer Twinkle Khanna for promoting the project.

The real estate developer was in breach of the promise of delivering the residential units within a stipulated time. According to the plaintiffs, Khanna, through her endorsement of the brand, allegedly was a party to the "false" claims.

The Consumer Protection Bill, 2018, introduced on the last day of the Winter Session by Consumer Affairs minister Ram Vilas Paswan, is expected to put an end to such misleading and false claims by manufacturers and service providers.

However, sections of the bill have sparked a debate across the legal, advertising and talent management industry, especially over the clause that could lead to punitive measures and ban on celebrities for endorsing such misleading advertisements.

The Bill

- The Bill aims to protect consumers' interests through a redressal mechanism that would ensure timely and effective settlement of disputes
- It proposes a Central Consumer Protection Authority to look into the issues related to false or misleading ads
- It provides for fines up to Rs 10 lakh and a one-year ban on celebrities for any endorsement
- If the offense is repeated, it could lead to a fine of Rs 50 lakh and a three-year ban

What are misleading ads?

Misleading advertisements have been debated for years. Legal experts say any ad that falsely describes a product or service or gives a false guarantee could be treated as one. However, the Consumer Protection Act, 1986, does not specify the exact definition of a misleading ad.

"Misleading advertisements covers many points. It includes ads that are likely to mislead consumers regarding the nature, substance, quantity or quality of the product; it includes deliberate concealment of important information; and it also include sellers intent of adopting unfair trade practices for promoting sales," says Indrani Lahiri, Principal Associate, Kochhar & Co, adding that even medicines and drugs, promising a cure or fairness cream would be under the purview of the Act.

Sample this: A Calcutta High Court bench, hearing the GlaxoSmithKline Consumer Health Care Ltd vs Heinz India Pvt. Ltd and Ors, had observed that the Complian ad by Heinz was wrong and offending as it sought to project GlaxoSmithKline's Horlicks as an inferior health drink.

The matter highlighted how the television ad showed that the Heinz product helped in significant body growth, whereas Horlicks failed to provide basic health nutrients for growth.

A few years ago, Bollywood stars Amitabh Bachchan, Preity Zinta and Madhuri Dixit, too,

were in the dock for endorsing Maggi, immediately after a controversy erupted around the product's high lead content.

Ideas mismatch

The advertising world, too, has a different take on the new bill. While a section of adfilm makers have questioned the relevance of imposing fines and punishing the celebrities, others have questioned the real intent of the bill.

"I think the very definition of the word 'advertisement' is misleading. Ads are meant to create a larger-than-life image for a brand. Therefore, I think ads that portray deception are the ones that are harmful rather than misleading," says Samir Sarkar, Managing Director, Magic Hour Films, which has produced TV commercials for several reputed international and local brands.

"There are a few questions around this bill. Define misleading, define a celebrity, define the clause due diligence and, lastly, how is a celebrity supposed to check or evaluate the quality of the product he or she is endorsing. Is the government going to create a mechanism to verify quality of products or services," said Anirban Das Blah, managing director of Kwan Entertainment.

Who's the offender?

The provision in the new Bill, which recommend product liability action if it harms the consumer due to its quality or flawed services, has also been severely criticised. Experts say it is "unjustified" to hold a celebrity liable for merely appearing or lending his or voice or face.

"Before holding the celebrities responsible, I feel the company, the executives involved, the regulatory authorities who pass the products before they are launched and the ad agencies, should be held responsible," says Blah of Kwan Entertainment, which specialises in talent management.

Those supporting the bill say that celebrities are influencers and can help form opinions or influence consumer sentiments and markets. This apart, they get a huge pay cheque for their appearances and, therefore, should take it seriously and do enough research before endorsing a product.

"I think being a celebrity or wanting to be one has a certain responsibility attached with it. A celebrity, if not himself, should consult a knowledgeable source to verify the veracity of the claims made by the brand and the product. A celebrity must engage a consultant or a lawyer to protect his interests. I would add that every person involved in creating the ad needs to shoulder the responsibility and not the celebrity alone," adds Sarkar.

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