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Analysing developments impacting business

DISCLOSURES, DISCLAIMERS AND DUE DILIGENCE FOR HEALTH AND WELLNESS ADVERTISEMENTS AND ENDORSEMENTS

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In a recent development, the Department of Consumer Affairs (DCA) has issued the 'Additional Influencer Guidelines For Health and Wellness Celebrities, Influencers and Virtual Influencers' (Health & Wellness Influencer Guidelines) on 10 August 2023, developed in collaboration with Ministry of Health, Ministry of Ayush, Food Safety and Standards Authority of India (FSSAI), Advertising Standards Council of India and other relevant stakeholders.

[Background: Regulating misleading advertisements and endorsements in India](#)

Further to provisions of the Consumer Protection Act, 2019 (as amended) (CPA), in 2022 the Central Consumer Protection Authority (CCPA) issued the 'Guidelines for Prevention of Misleading Advertisements and Endorsements for Misleading Advertisements' (Misleading Ads & Endorsement Guidelines) to regulate misleading advertisements and endorsements. Among other things, the Misleading Ads & Endorsement Guidelines set out certain requirements for endorsements including due diligence to be carried out by an endorser to avoid deceptive claims and disclosure of any 'material connection' between the endorser and trader, manufacturer or advertiser of the endorsed product.

In this regard, DCA had issued the 'Endorsements Know-hows! for celebrities, influencers and virtual influencers on social media platforms' (Endorsement Know-Hows) on 20 January 2023, aimed at curbing misleading endorsements by celebrities, influencers and virtual influencers, and explaining what kind of material connections should be disclosed, manner of disclosure, etc. Taking a step forward, the DCA has now issued the Health & Wellness Influencer Guidelines as an extension to the Misleading Ads & Endorsement Guidelines.

[Key highlights of the Health & Wellness Influencer Guidelines](#)

According to the official press release, the Health & Wellness Influencer Guidelines aim to "deal with misleading advertisements, unsubstantiated claims and ensure transparency in health and wellness endorsements". Some key highlights of the Health & Wellness Influencer Guidelines are set out below:

- Scope of the Health & Wellness Influencer Guidelines: Notably, the guidelines do not define what can be considered as 'health and wellness endorsements'. However, there are certain 'general exemptions' set out, e.g., sharing of general wellness and health advice, not associated with specific products or services or not targeting specific health conditions or outcomes. Regardless, it is mentioned that celebrities, influencers and virtual influencers presenting themselves as health experts or medical practitioners should clearly distinguish between their personal views and

professional advice and to refrain from making specific health claims without substantiated facts.

- Disclosures: According to the Health & Wellness Influencer Guidelines, verified medical practitioners and health and fitness experts holding certifications from recognised institutions must disclose that they are certified health/fitness expert and medical practitioners when sharing information, promoting products or services or making any health-related claims.
- Disclaimers: The Health & Wellness Influencer Guidelines require celebrities, influencers and virtual influencers to provide clear disclaimer when presenting themselves as health experts or medical practitioners, when sharing information, promoting products or services or making any health-related claims. Further, celebrities, influencers and virtual influencers should include disclaimers clarifying that their content should not be seen as a substitute for professional medical advice, diagnosis or treatment. Endorsers should also encourage their audience to seek advice from health and wellness centres or professionals.
- Due-diligence requirements: As an extension of the due diligence requirements under the Misleading Ads & Endorsement Guidelines, the Health & Wellness Influencer Guidelines encourage endorsers to conduct a thorough review and ensure they are in a position to substantiate the claims made in the advertisement before endorsing a product or service. It is also suggested that endorsers should use or experience the products or services, to the extent possible, and ensure that the information and advice shared is well-substantiated.
- Requirements based on subject matter of the endorsement: The Health & Wellness Influencer Guidelines set out that celebrities, influencers and virtual influencers should not endorse or distribute information or advertisements about any health and wellness product or service implying or encouraging its usage for diagnosing, curing, alleviating, treating or preventing any disease, disorder or condition which is prohibited from being advertised. This appears to be in furtherance of the restrictions relating to advertising of drugs, medical treatments and remedies under the Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954 (**DMRA**). Additionally, it will be necessary to make appropriate disclosures and/or disclaimers when talking or making claims on topics such as health advantages, including those derived from food items and nutraceuticals, disease prevention, treatment or cure, medical conditions, recovery methodologies or immunity boosting, etc.

Comment

Today, advertising and endorsement opportunities are omnipresent with the advent of influencer marketing, collaborations and paid partnerships. However, ease of accessing and sharing digital content is blurring the lines between authentic reviews and promotional activities solely for monetary gain.

As consumers are left to evaluate the genuineness and authenticity of content (especially endorsements and reviews of goods and services), DCA has been taking pro-active steps to curb misleading and false advertisements. Considering the sensitive nature of health and wellness related content and the potential impact on the minds of vulnerable consumers, it is important for advertisers and endorsers to incorporate principles of accountability and transparency. Regulatory authorities in India have also taken a stricter position with advertisements in the health and medical sector, with legislations like DMRA having been in place for several decades. CCPA has also imposed penalties for misleading claims in advertisements relating to corrective eye apparatus, recommendations of dentists for specific brand toothpastes, etc.

The Health & Wellness Influencer Guidelines can provide helpful guidance to entities while formulating their advertising and promotional activities. This is especially important now as the press release accompanying the Health & Wellness Influencer Guidelines sets out that

DCA will be actively monitoring and enforcing these guidelines, and violations may lead to penalties under the CPA and any other applicable laws (e.g., DMRA, rules and regulation by FSSAI, etc.).

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