

DECEPTIVE ADVERTISING IN ONLINE HOTEL BOOKING: A CONSUMER PERSPECTIVE

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Abstract

In the era of glitz and glitter, advertising is that gravitational force which attracts the consumer. Every sector has to advertise its products or services to entice the consumers, may it be food industry, cosmetic industry, travel and tourism industry, etc. So is the case with the hospitality industry, which is gaining momentum in the tertiary sector of India. In this era of globalization and digitalization, the travel and tourism industry in India is going through the phase of evolution as well as revolution. Today's consumer, due to paucity of time, and availability of more convenient medium often relies on the online means to book a hotel rather than relying on the traditional methods which were used previously. Online hotel bookings have become a necessity rather than luxury in today's time. Consumers while booking hotels online often get misled due to various deceptive offers, misleading advertisements and algorithms. This research article deals with the following problems faced by Consumers in online booking of hotels in India particularly regarding: -

1. *The authenticity and fairness in the reviews posted on various online platforms.*
2. *The reliability of pictorial representation regarding services and rooms provided by the hotels in terms of ambience, size and facilities.*
3. *The algorithms on which online platforms work in reflecting availability of rooms.*

This paper will analyze the adequacy of existing legal framework in India particularly with respect to online hotel booking with reference to Consumer Protection Act, 2019. It would further explore the implications of the recently issued guidelines to regulate online consumer reviews which will be applicable to every online platform publishing consumer reviews. The authors will focus on understanding consumer perspective through doctrinal study and suggest reforms for effective consumer protection in online hotel booking in India.

Keywords: *Hospitality, Travel & Tourism, Consumer Protection, Globalization, Misleading Advertisement, Digitalization.*

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Introduction

Internet is one such thing which has taken the entire globe by its stride from last few decades, and India certainly is not an exception. As one of the fast-developing nations, India has seen an exponential rise in the use of internet, may it be because of increase in computer literacy or because of increased number of smart phone users. With the "*Digital India*" initiative of Indian government, we are expecting massive surge in the number of wireless internet connections. The smartphone users are also expected to increase and reach 1 billion by 2026. This will certainly aid India's digital sector, which is expected to be worth \$1 trillion by 2030. This exponential increase in internet and smartphone users, combined with rising affluence of people, has certainly helped the growth of India's e-commerce industry. Even when we look at the e-commerce market from global perspective, the experts are expecting this e-commerce market to reach US\$ 350 billion by 2030, with a 21.5% increase to US\$ 74.8 billion in 2022.⁵ Further, the consequences of COVID-19 pandemic have made people explore e-commerce market like never before, altering the way of doing business within and across the nations. When COVID-19 restrictions were relaxed, that industry which spurred back to life was the travel and tourism industry. People once again started their routine life which involved travelling, may it be for work or leisure and therefore the hotel and hospitality industry once again came to life. With the increase in use of technology, as mentioned before, people started relying more and more on what they see on the internet, before making their lodging and boarding plans. Therefore, majority of hospitality organizations started dedicating an entire department to deal and boost transactions through online portal. This is because there are numerous websites that tourists can use for planning trips and business entities must be aware of all the possibilities to maximize reservations to expand their business.⁶

As e-commerce usage continues to increase across all industries, even those sectors which provide services are adopting e-commerce into their company strategy in order to remain relevant and competitive in the marketplace. This is largely due to the 24/7 availability and accessibility of goods and services which can be availed online at the buyer's convenience. People can now look for places to stay, compare the best rates, and look for other activities from the convenience of their own homes by the use of digital devices. Hence, we can see that there are several benefits for organizations in the travel, tourism and hospitality industry, at least for the ones who have adjusted their business plans to include e-commerce. But this change in the method of doing business also brought with it various challenges which the authors in this paper have tried to explore before suggesting the remedies to tackle the same.

1. Online Hotel Booking: Problems and Concerns

There is no doubt that e-commerce has significantly changed the services and client outreach of hospitality enterprises. A web presence is expected to boost the business through website, social networking page, or Google My Business listing. To truly have a competitive advantage, however, restaurants, bars, hotels, and other businesses in the hospitality industry must also try different ways to explore the possibility of expanding their business.⁷ These ways can be:-

1. Increased exposure
2. Availability to a wider audience
3. Marketing - minimal promotional costs/use of online and email marketing- visitor contact data/retargeting
4. Sales & Gift vouchers
5. Facilitated online reservations and payment processing
6. Flexibility in regard to discounting and advertising
7. Convenience of shopping around-the-clock

⁵E-Commerce Industry Report, <https://www.ibef.org/industry/ecommerce>

⁶Samoszuk S, "<https://Study.Com/Academy/Lesson/e-Commerce-in-the-Hospitality-Industry.Html>" (December 2021) <<https://study.com/academy/lesson/e-commerce-in-the-hospitality-industry.html>> accessed October 1, 2022

⁷ "Advantages of e Commerce in Hospitality Industry - Enjovia" (Enjovia, February 25, 2021) <<https://enjovia.com/advantages-of-e-commerce-in-hospitality-industry/>> accessed September 2022



8. Individualized experiences

9. Virtual tour guides etc.

These are just few ways which are employed by the E-commerce platforms and businesses which have a virtual presence to expand their consumer base. The objective of marketing is to sell a product, service, image, or concept. But if the advertisement is misleading and not honest, it loses its effectiveness and significance. Marketing techniques are unethical if, through their advertisements, the enterprises make their customers/clients believe that they will receive greater value from a product or service that they are paying for in contrast to what they actually receive. Any tool of the marketing gimmick can be used to engage in deceptive activities. Unethical marketing techniques can result in unsatisfied customers, negative publicity, lack of trust, and business loss. Advertising has evolved into a crucial strategic instrument for promoting businesses and services. Unethical advertising or misleading information also has a negative correlation with customer purchasing behavior or purchase intent, as well as customer satisfaction.⁸ Sadly, in an effort to gain a competitive advantage, some businesses seek to exaggerate the reality. This reality can get exaggerated in following manner: -

- a. False promises are utilized in advertising which are impossible to fulfil. For example, some accommodations do not have a view of the sea despite the hotel's claim that they do.
- b. Bait-and-switch offers: advertising a lower-priced item that is 'out of stock,' so transferring the buyer to a more expensive one.
- c. Visual distortions: making the advertised goods appear larger, more colorful, and more appealing than it actually is.
- d. Partial disclosures: revealing only a portion of a product's quality while excluding the worst aspects.
- e. Small-print qualifications: displaying an attractive aspect of a product in a large-print statement rather than other relevant information that may prevent a buyer from making a purchase.

Apart from being mindful towards legal repercussions, the E-commerce platforms should also adhere to certain ethical standards while dealing with promotion and sale of their products and services. As has been correctly opined, "Ethical responsibility goes beyond legal duties by considering standards, norms, and expectations that express a concern for doing what is right, reasonable and fair."⁹

One such example to illustrate the above-mentioned fact can be seen when the Australian court gave its order in the Trivago's case where the Australian Competition and Consumer Commission fined the hotel aggregator with \$45m for misleading its consumers. Trivago promoted itself as a platform which provides cheapest rates with best deals to consumers by comparing the prices of the hotels and making them choose amongst those hotels which levy cheapest prices. But in actuality, Trivago modified its search by using an algorithm in such a manner that those websites which gave Trivago highest price per click were the ones which were shown prominently on its website due to the use of that algorithm. This classic way of misleading the consumers did not go well with the competition and consumer authority, which rightly took the suo-moto cognizance of the matter and fined the defaulter. Even though Trivago appealed against the order, the full Federal Court dismissed Trivago's appeal.¹⁰

On the similar course towards consumer protection, The Punjab Consumer Dispute Redressal Commission ordered Make My Trip, a third party service provider to pay a hefty amount of compensation as the graphic user interface furnished fake online booking details to a consumer. The consumer acting in furtherance of the deceptive information received from MMT was detained by the

⁸PushpaGirimaji, Misleading Advertisements and Consumer, Consumer Education Monograph Series-2, https://consumeraffairs.nic.in/sites/default/files/file-uploads/misleading-advertisements/misleading_advertisment_and_consumer%20%281%29_0.pdf

⁹ A.Elrahem S, Mohamed AM and Ali MA, "The Impact of Misleading Marketing Practices on Behavioral Intention of Hotel Customers" (May 2017) <<https://www.researchgate.net/publication/320035778>> accessed on September 2022

¹⁰ <https://www.acc.gov.au/media-release/trivago-to-pay-447-million-in-penalties-for-misleading-consumers-over-hotel-room-rates> accessed on December 2022

immigration authorities at the 'detention center' of the Bangkok Airport. The commission labelled this incident as a clear case of negligence on the part of the service providers for which the consumer was not only subjected to detention but had to face the consequences of deportation which came to be reflected on the consumer's international travel history.¹¹

The National Consumer Dispute Redressal Commission in one of its orders in the matter of *GangadharShamandasManglani& 4 Ors. v. Hotel Lucky India &Anr*¹² stated that, in a hotel which was promoted as 'Disaster Resilient', the outbreak of fire, the absence of smoke detectors and staff being unskilled in using the fire extinguishers clearly amounts to deceptive representation by the hotel. This unfortunate event proved fatal for the deceased consumer further evidencing the grave negligence on the part of the hotel. NCDRC laid heavy cost of INR 55,37,000 as penalty upon the Hotel by resorting to the maxim of '*res ipsa loquitur*'.¹³

In another such incident the Advertising Standards Council of India (ASCI) held Ease My Trip (EMT) liable on two counts when on one count ASCI alleged that EMT indulged into misleading advertising by projecting that there were no convenience charges to be paid by the customers who made the booking online, without adding any terms and conditions to it which is a mandate as per ASCI. Further ASCI also claimed that Ease My Trip was also illegally using IBIBO Group Pvt.Ltd's. trademark which was also a consumer rights violation along with Trademark infringement. On the other count, they advertised themselves as being the second largest online travel aggregators in India, which was not the case. Ease My Trip is defending these allegations in the civil court by claiming that ASCI has no jurisdiction in this case as EMT is not a member of this association.

In another recent incident of deficiency in services that took place was in Jalna, Aurangabad, where the District Consumer Disputes Redressal Commission fined an online hotel booking website with Rs. 10,000/- as they had accepted the hotel booking from one Mr. Raghunandan Rathi, who had visited Jalna for business purpose with his father on 16th January, 2020. He had booked a hotel on 14th January, 2020 through online website for which he was going to pay on arrival. But when he reached the hotel he was informed that the hotel was overbooked and therefore there was no place for them to stay. The Commission rightfully took the cognizance of the gross deficiency in services by the website owner and appropriately levied a fine on it.

Therefore, it can be seen that the competent authorities have started taking appropriate measures under the law to curb the menace of misleading advertising, unfair trade practices and deficiency in services of online hotel booking websites, though we recognize that there is still a long way to go.

2. Role of Central Consumer Protection Authority (CCPA) in protecting Consumer Rights

The Central Consumer Protection Authority which came to be established under Section 10 (1) of the Consumer Protection Act, 2019 is an authority established with an aim to protect the interest of consumers and to save them from unfair trade practices and misleading advertisements. To promote this objective, CCPA, issues the guidelines in this regard, as and when the circumstances demand. One such guideline issued by CCPA is the guideline on *Prevention of Misleading Advertisements and Endorsements for Misleading Advertisements, 2022*. This guideline was notified with an intention to curb misleading advertisements and also to protect the consumers from being exploited by such misleading advertisements. It has to be understood that misleading commercials infringe numerous consumer rights, including the right to choose, right to be informed and the right to be protected from potentially hazardous products and services. The recommendations further attempt to prevent consumers from being duped by unfounded claims, inflated promises, misleading information, and false claims. Enacting these guidelines was a welcome and decisive move from the CCPA as it was one

¹¹Shubham v. Make My Trip India Pvt. Ltd. May 20, 2021.

¹²Consumer Case No. 373 of 2014 (NCDRC)

¹³Mehak Dhiman, Hotel Did Not Have Smoke Detector And Staffs Were Not Acquainted To Operate Fire Extinguishers; Deficiency in Service of Hotel; NCDRC Imposes Costs, https://www.livelaw.in/news-updates/ncdrc-negligence-deficiency-in-service-national-commission-consumer-case-204523?infinite_scroll=1

more step taken by the authority towards protecting consumers from the violation of consumer rights through unfair trade practices, and false or misleading advertisements.

3. Misleading Advertisement and Consumer Protection

Section 2(28) of the Consumer Protection Act, 2019 defines misleading advertisement as "an advertisement, which—

(i) falsely describes such product or service; or (ii) gives a false guarantee to, or is likely to mislead the consumers as to the nature, substance, quantity or quality of such product or service; or (iii) conveys an express or implied representation which, if made by the manufacturer or seller or service provider thereof, would constitute an unfair trade practice; or (iv) deliberately conceals important information;¹⁴

The Guidelines for Misleading Advertisements and Endorsements for Misleading Advertisements, 2022 (the "Guidelines") also define words like "surrogate advertisement" and "bait advertisement". The words like "bait advertisement" is defined as "an advertisement in which products, product, or service are offered for sale at a low price in order to entice consumers."¹⁵ Section 5 of the abovementioned Guidelines state that for an advertisement to qualify as bait, it must meet the following criterion:

- a. An attempt to lure people to buy products, or services at the advertised price, without a realistic intent of actually selling those advertised products or services;
- b. The advertiser not taking responsibility for ensuring that there is sufficient supply of the advertised items, products, or services to meet the anticipated demand generated by the advertisement;
- c. Not indicating the advertiser's apprehension of not being able to provide the advertised items, products, or services within a reasonable time frame and in reasonable quantities.
- d. When the advertisement deceives the consumers regarding the market conditions pertaining to advertised items, products, or services, or the lack of their availability, in order to urge consumers to purchase under less advantageous market conditions.¹⁶

For instance, advertising the product as "sales....till stocks last" is a trick which induces a prospective consumer to buy that product within a particular period so that the seller can portray a product as if it is the last piece and thereby making the consumer buy the same regardless of its affordability and necessity. One such case to illustrate on this point is the case of *Aero Club v. Rakesh Sharma*¹⁷, where Aero Club was involved in the business of supplying Woodland footwear and clothes. In the advertisement, it was promised that a flat 40% discount will be available. In order to compensate this loss which the company was going to sustain after giving its customers this discount, Aero Club imposed Value Added Tax on the discounted price. This was considered to be the classic example of bait advertisement. The court therefore rightfully opined that this commercial was deceptive and constituted unfair business practices.

Further, the Guidelines define Surrogate advertisement as "an advertisement for goods, product, or service whose advertising is otherwise prohibited or restricted by law, which circumvents such prohibition or restriction by portraying itself as an advertisement for other goods, product, or service whose advertising is not prohibited or restricted by law."¹⁸

Having this definition of surrogate advertisement was a necessity to further reiterate that what cannot be done directly should also not be done indirectly. The Indian Constitution provides the right of freedom of speech and expression. But this right is certainly not an absolute right. Hence, with regard

¹⁴ Consumer Protection Act, 2019

¹⁵The Guidelines for Misleading Advertisements and Endorsements for Misleading Advertisements, 2022

¹⁶*Id.*

¹⁷2017 SCC OnLine NCDRC 44

¹⁸Vaddehra S, "India: Guidelines For Prevention Of Misleading Advertisements And Endorsements For Misleading Advertisements, 2022 – Part 1" (June 2022) <<https://www.mondaq.com/india/advertising-marketing-branding/1203982/guidelines-for-prevention-of-misleading-advertisements-and-endorsements-for-misleading-advertisements-2022-part>

1#:~:text=While%20%22misleading%20advertisements%22%20are%20already,quality%20of%20such%20product%20or> accessed September 2022



to commercial communication, especially advertising, particular restraint is required. When an advertisement misleads consumers, distorts the truth, and influences their purchasing decisions, it is deemed to be deceptive. Therefore, such deceptive practices cannot continue under the garb of freedom of speech and expression, and reasonable restrictions on them should be levied. The current standards not only describe "bait advertisement" and "surrogate advertisement" but also provide a precise definition of "free claim advertisements". From the consumer's point of view, disclaimers in advertisements are crucial since they limit the company's liability. Therefore, the guidelines on misleading advertisements focusses on the disclaimer to ensure that no attempt has been made to conceal material information regarding any claim made in an advertisement, the omission of which is likely to cause the advertisement deceptive or conceal its commercial intent. Equally important is to see to it that no attempt is made in a disclaimer to correct a misleading claim made in an advertisement. In addition, the guidelines stipulate that a disclaimer must be written in the same language as the advertisement's claim and that its typeface must be identical to that of the claim.

In a similar manner, clear guidelines have been established for the responsibilities of the manufacturer, service provider, advertiser, and advertising agency in this regard. A conduct of due diligence prior to endorsing a product or service is also a necessity which these manufacturers or service providers cannot do away with. The purpose of the guidelines is to defend the consumer's interest by providing more openness and clarity to the publication of advertising, so that customers may make educated judgments based on facts rather than misleading narratives and exaggerations.

The penalty for violating the Guidelines is also specified in detail. The CCPA can fine manufacturers, advertisers, and promoters up to 10 lakh rupees for false advertisements. For repeated violations, the CCPA may levy a fine of up to 50 lakh rupees. The Authority may bar an endorser of a deceptive advertisement from endorsing any product or service for up to a year; for repeated violations, the ban may be extended to three years.¹⁹ For example, Sure Vision India, an eyewear manufacturer, has been fined Rs 10 lakh by the Central Consumer Protection Authority for a deceptive advertisement claiming that its products improve eyesight naturally and eliminate eye strain, and has been ordered to stop airing the commercial by March, 2022.

Further, the Consumer Protection (e-commerce) Rules, 2020 mandate all the marketplace e-commerce entities to prominently display all relevant information provided by the seller under Rule 6 (5), including the seller's grievance officer's contact information, name and designation.

4. Ethical Advertisement and ASCI

Advertising is a type of communication used to attract the interest of consumers. It has become a crucial and vital component of company operations nowadays. Since globalization, both advertisements and advertising agencies have flourished. Advertising in and of itself is not an issue; rather, it is a vital tool for expanding business and reaching a bigger consumer base. However, it is against the consumer's best interests when advertising uses unsubstantiated claims to entice them. Currently, manufacturers and service providers devote a substantial portion of their budgets to advertise, and the advertising sector is booming. In India, we have the Advertising Council of India (ASCI), a self-regulatory organisation which adhere to ethical standards. Any published claim that gives the consumer a false impression of the goods is deceptive advertising. "Truth" refers to the fundamental principle that buyers have the right to know what they are purchasing, and that all necessary information should be included on the label and in the advertising copy.²⁰ Fees and surcharges that are not stated in the advertised price are frequently added by service providers. Numerous disadvantageous practices employed by manufacturers further includes:-

1. Unfair contract conditions, particularly with consumer compensation.

¹⁹ Delhi P, "Centre Issues 'Guidelines on Prevention of Misleading Advertisements and Endorsements for Misleading Advertisements, 2022'" (June 2022) <<https://pib.gov.in/PressReleasePage.aspx?PRID=1832906>> accessed October 1, 2022

²⁰ "Study on the Status of Law Enforcement for Misleading Advertisements in India and Its Impact on Consumers" (CUTS International, March 2012) <https://cuts-cart.org/pdf/Study_on_the_Status_of_Law_Enforcement_for_Misleading_Advertisements_in_India.pdf> accessed October 2022

2. Use consumer data for reasons other than those for which they were collected.
3. Implement unjustifiable fees, fines, and penalties for transactions.
4. Restrict the amount of time clients have to file claims.

To illustrate upon the ill effects of unethical advertisement, one such case which the authors would like to cite is the case of *BhupeshKhurana v. Vishwa Buddha Parishad*²¹ where a class action complaint came to be filed by 12 students against Vishwa Buddha Parishad. BhupeshKhurana along with eleven other students enrolled in the BDS programme at the Buddhist Mission Dental College sponsored by Vishwa Buddha Parishad because in its advertisement and prospectus inviting applications for the course, the college had given the impression that it was affiliated with Magadh University, Bodh Gaya, and was recognized by the Dental Council of India, and fully equipped to grant the Bachelor of Dental Science degree. Students came to know after taking the admission to this college that the annual examinations would not be held because the college was neither affiliated with Magadh University, Bodh Gaya nor recognized by the Dental Council of India. In consequence, not only did the students missed two academic years, but they also had to pay for tuition, housing, etc. As a result of concluding that the college was not accredited, the National Commission mandated the refund of admissions costs with 12% interest of all the twelve students.

5. The Menace of Fake Online Reviews

Apart from traditional method of advertising, in this digital era, online advertising is also done through paid or unpaid promotions and through online reviews. Fake and deceptive online reviews have been proven to be detrimental for concerned goods & service providers and potential consumers who wish to connect with each other through E-Commerce platforms. The decision-making of consumer is largely influenced by online reviews with respect to the authenticity of goods and services which they wish to avail. In this era where social media has the potential to mould public opinion, it is an abundantly blatant fact that there are self-proclaimed experts who post reviews online thereby knowingly or unknowingly causing an impact on consumer behavior and sale pattern of business enterprises. Though it is understood that every person has a right to dislike certain things and also has an equivalent right to express his displeasure towards it, this expression becomes problematic when it is done without authenticity and genuineness. If these reviews go unregulated, the goods and service providers would be either wrongly influencing people by paying customers to write fake reviews appreciating their goods and services and their competitors might end up paying the consumer's to do exactly the opposite. Hence, enforcing regulations to keep such deceptive propaganda in check is extremely necessary. Unless these online reviewers are made accountable for their actions, a consumer will not be able to rely on these online reviews and will not be able to make an educated choice. It is here that the Consumer Protection Act, 2019 plays an important role. In furtherance of this objective, the Government recently mandated that social media influencers must disclose all their material interest in simple and clear language while they decide to endorse a product or service. The department of Consumer Affairs issued 'Endorsement Know Hows - for celebrities, influencers and virtual media influencers (Avatar or computer generated character) on social media platforms'. If the influencers fail to adhere to these guidelines, they would be liable to pay the penalty for this breach which can get imposed by CCPA. These guidelines will ensure that the consumers are protected from misleading advertisement and are made aptly aware about the intention of the influencers when they decide to promote or endorse any product/service.

Conclusion and Suggestions

In this digital age, our lives are predominantly virtual, and our identity is built and designed by our browser history, with online transactions concealed by intricate algorithms. Consumers value certainty, particularly when interacting with transactional equations in cyberspace, such as those involved in online hotel booking. Taking into account the multidimensional nature of algorithms, policy approaches should be developed in collaboration with competition law enforcers, data protection

²¹ (2001) 2 CPJ 74 (NC)



agencies, relevant sectorial regulators, consumer protection authorities, and computer science organisations with expertise in deep learning. This will facilitate the proper enforcement of consumer protection laws with a promise to protect the consumers availing online services as well. Applying effective algorithms to detect phoney online reviews additionally helps to safeguard individuals from spam and disinformation in relation to fraudulent online reviews. Further steps are also required to be taken to make ASCI bolstered in its approach, and its tasks and function must be publicized to make more and more people aware about its existence. Considering the volume of advertising in such a huge country, it is preferable to establish regional divisions. ASCI should have a system for compiling information about repeated offenders and sharing this information about advertisers and ad-agencies with the Central Consumer Protection Authority established under Consumer Protection Act, 2019 so that they can take appropriate measures to protect the rights of the consumers.

India's numerous statutes and rules have stringent measures for combating deceptive advertising and unfair trade practices. The absence is the execution of these provisions. In addition, it is necessary to reinforce the existing grievance redressal mechanism, particularly in accordance with the Consumer Protection Act of 2019. The burden of proof should fall on the respondent, not the complainant, and complainants should be provided with financial and legal support whenever required. Increasing Ministry of Tourism's oversight of hotel marketing has to be considered on an urgent basis. In India where travel and tourism industry contribute majorly towards economic growth of our country, such hindrances of fake reviews can have devastating effect on the industry. Therefore, government intervention in this arena through strict enforcement of laws, amendments in outdated laws and serious campaigns on consumer awareness has been the need of an hour.