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**'Food' through the Lens of  
Misleading Advertisements:** a  
comparative analysis of United  
States of America and India

**"A Alimentação" sob a  
Perspectiva da Publicidade**

**Enganosa:** Uma Análise  
Comparativa entre os Estados  
Unidos da América e a Índia

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Tanya

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# **‘Food’ through the Lens of Misleading Advertisements: a comparative analysis of United States of America and India\***

## **“A Alimentação” sob a Perspectiva da Publicidade Enganosa: Uma Análise Comparativa entre os Estados Unidos da América e a Índia**

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### **Abstract**

The consumers are the king of the market. The market gets affected with the choices of consumers. However, sometimes, the choices of the consumer are influenced by the advertisements. One of the reasons is that the things are shown with perfection through media. Now-a-days the advertisements are important to make our choices for the food. Especially the kids below the age of 12 are so vulnerable as they are considered as minor in India, in USA as well as it is an international concern<sup>1</sup>. It is pertinent to note that these consumers are too young to take care of themselves. However, the choices of the kids are dependent upon not only the nutrition level but also upon the taste, looks of the food, or the complimentary toys, gifts etc. It means that the kids like to cherish the food as per their choices. The researcher got motivated to write on this topic as parent as we usually get influenced by our kids' choices and are compelled to buy the so called 'food' that is not a nutritional food. The parents as consumers also buy such food for their kids sometimes as they wish to see them happy. The question arises, how kids get the knowledge of the 'food' while sitting at home? The kids visit the market in company of the adults only; however, they recognize the choice of their 'food' with color of the wrapper, the structure etc. although they can hardly read or pronounce the product clearly sometimes at a tender age. The information reaches to kids through the misleading advertisement, sometimes it is a surrogate advertisement or deceptive advertisements. This objective of the paper is an attempt to highlight the definition of 'food' through misleading advertisement on kids in India as well as in United States of America. It particularly explains the difference between the Junk food and traditional food. Secondly, the study examines the impact of advertisement on the food choice of kids as 'consumers' from developing country like India and developed country like United States of America through surrogate advertisements. Thirdly, the paper is an attempt to explain the

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\*\*\*\* ESTELITA, Thyanne Borges. Right to Food and International Responsibility beyond state. *Brazilian Journal of International Law*, Brasília, v. 21, n. 2, p. 49-69, 2024. DOI: <https://doi.org/10.5102/rdi.v21i2.9663>. Available at: <https://www.publicacoes.uniceub.br/rdi/article/view/9663/pdf>. Access on: 31 Jan. 2025.

<sup>1</sup> ESTELITA, Thyanne Borges. Right to Food and International Responsibility beyond state. *Brazilian Journal of International Law*, Brasília, v. 21, n. 2, p. 49-69, 2024. DOI: <https://doi.org/10.5102/rdi.v21i2.9663>. Available at: <https://www.publicacoes.uniceub.br/rdi/article/view/9663/pdf>. Access on: 31 Jan. 2025.

changing narratives of ‘nutritional value of food in advertisement’ through deceptive advertisement. The paper also outlines suggestions in order to eliminate these advertisements in India, and USA. The methodology used in this paper is analytical and comparative. The comparative analysis has been made on the data base. The researchers have made a data on misleading advertisements of food through commercials telecasted in India and United States of America for the kids through their cartoon programmes. The paper explains a pertinent research question on the ‘food’. Whether the junk food can be claimed healthy by the advertising agencies? What are the legislations available against the advertisement though false claims. Secondly, the paper explains that the food claimed to have nutritional value must scientifically be proved? Thirdly, if false claims are made by the advertising agencies, then then misleading advertisements should be addressed by the legislation through stricter implementation. The paper concludes that the advertisements must make claim about the nutritional value of the ‘food product’ correctly and moreover, the claim must be proved scientifically. Otherwise, the liability should be fixed on manufacturers, or endorsers strictly.

**Keywords:** food; consumer; misleading advertisement; scientific proof.

## 1 Introduction

Advertisement plays a crucial role in every consumer’s life. Who is a consumer is a pertinent question. Consumer is a person “who buys the goods for its personal consumption”. It means if a person buys good for the reselling purposes, he/she is not a consumer. The term “consumer” means “an individual who obtains, through a transaction, products or services which are used primarily for personal, family, or household purposes, and also means the legal representative of such an individual”<sup>2</sup>. This definition of consumer in United States of America and India is same.

In the present era, consumer is a king; however, it still needs some guidance before purchasing the goods. The consumer needs to get updated with the variety of goods available in market related to the nutritional

and health benefit in food. However, consumer knows that advertisement is made with some percentage of puffing the products, still the argument put forward in this paper is that the claims attached to any misleading advertisement by the companies on ‘food’ must have a scientific proof so that the trust between the manufacturer and the consumer may exist<sup>3</sup>.

It is also pertinent to explain what is a misleading advertisement. “Misleading or deceptive conduct is when a business makes claims or representations that are likely to create a false impression in consumers as to the price, value or quality of goods or services on offer.” For example, labelling a “Pure Cotton Shirt” and selling at higher price although the shirt is not made up of pure cotton. This is a cheating to consumers.

There are various legislations available in India and USA to deal with misleading advertisements however, the need is to implement it strictly. Since the era is of digitalization, it plays a very big role in the life of consumers to choose a product. Moreover, when it is a question to buy a healthy food for a kid it is important that the information disseminated by the advertising agencies and the information received by the consumer must have common intention and object. Let us explain the laws, rules, regulations available in India to deal with Misleading advertisements and how misleading advertisement can affect the choice of the consumers in detail as under:

## 2 Legislation in India for Consumer Rights in India

The Consumer Protection Act, 1986, was passed in India in order to protect the consumers from being cheated. However, in 2019 the need was felt to add more rights related to the consumer-oriented issues. There were many lacunas in the 1986 Act which were needed to be amended. That’s why the Consumer Protection Act, 2019 (hereinafter New Act, 2019) was no-

<sup>2</sup> Section 15 USC § 7006(1) defines the Consumer.

<sup>3</sup> RAY, Ipsita; SHUKLA, Anshuman. Fragile pillars of food security: exploring the challenges of availability, accessibility, and quality for global food regime. *Brazilian Journal of International Law*, Brasília, v. 21, n. 2, p. 114-128, 2024. DOI: <https://doi.org/10.5102/rdi.v21i2.9700>. Available at: <https://www.publicacoesacademicas.uniceub.br/rdi/article/view/9700/pdf#>. Access on: 01 Feb. 2025.

tified on 9th August, 2019, however, it came into effect from 20th July, 2020<sup>4</sup>.

In India the products are sold with tag lines like ‘orthopedic mattress’, beauty cream that claims to lighten skin color in 14 days, the hair growing oil, ‘junk food’ that is equivalent to three *chappati* or breads etc.<sup>5</sup> As per the laws of India, for deceptive advertisement the Central Consumer Protection Authority (CCPA) had issued show cause notices to more than fourteen companies which were selling goods through misleading advertisements.<sup>6</sup> Still, this is less harmful than the advertisements that are creating the distorted image of ‘food’ in young minds through misleading advertisement. Some misleading advertisements target only children, for example, selling of kinder joy, free toy with MC Donald etc. Similarly, the laws related to misleading advertisement are available in India as well as in USA both. These can be explained through surrogate advertisement.

## 2.1 Surrogate Advertisement in India

The “surrogate advertisement” means the advertisement of goods which are advertised in the shadow of some other goods. For example, the advertisement of alcohol in the indirect form of the advertisement of soda etc. are advertised, which are otherwise prohibited by the law to be advertised in India and USA both<sup>7</sup>.

The example of surrogate advertisement in India can be explained through table 1. Surrogate advertisement uses a product that is ethical in its category, for example, selling club soda, mineral water, music CDs and gold accessories etc. and take benefit indirectly by adverti-

sing the brand name which is of alcohol products or other banned products. This type of advertising helps the company to hammer the brand name in to the heads of consumers. For example, see the following table 1.

**Table 1** - The chart is prepared by authors through the data collected from the advertisements in India

Sr. No.	Brand	Communicating Product	Main Product Category
1	Bagpiper	Water and Soda, Cassettes, CDs	Whisky
2	Kingfisher	Mineral Water	Beer
3	Pan Parag	Pan Masala	Gutkha
4	Royal Challenge	Golf accessories and mineral water	Whisky
5	Johny walker	Soda	Whisky
6	Mc Dowells	Water and Soda	Whisky

In the table we can see easily, that the brands in their advertisements communicate the message to sell the water bottle, soda etc., however they are intending to sell the main product i.e Beer, Whisky, Gutkha etc. These kinds of advertisements beat the purpose of ban on advertisement as they promote harmful products. It harms the society a lot because children cannot distinguish between the banned products and the advertised goods.

## 2.2 Examples of Misleading Advertisements related to “Food” of children in India

Children can be targeted through various goods, like a dry powder that are dissolved in the milk that changes the flavor, taste, color like ‘Horlicks’<sup>8</sup>, Bourn Vita<sup>9</sup>, Power Vita<sup>10</sup>, Boost<sup>11</sup>, etc. which claim that the nutritional value of milk increases with the addition of this powder. On the other hand, ‘complan’ claims to make children

<sup>4</sup> TAAK, Sangeeta; GANDHI, Rajiv. ‘Mediation’ as an Alternative Dispute Settlement Mechanism under the Consumer Protection Act 2019: an analysis. *R. Bras. AL. Dis. Res. RBADR*, Belo Horizonte, ano 04, n. 08, p. 211-226, jul./dez. 2022. DOI: 10.52028/rbadr.v4i8.10. Available at: <https://rbadr.emnuvens.com.br/rbadr/article/view/162/126>. Access on: 13 May 2024.

<sup>5</sup> For example, the sale of anti -covid mattresses, anti -covid paint, anti-covid hand wash etc.

<sup>6</sup> CCPA issues notices to 14 companies for misleading ads during COVID-19. *The Economic Times*, 02 Feb. 2021. Available at: <https://economictimes.indiatimes.com/industry/services/advertising/ccpa-issues-notices-to-14-companies-for-misleading-ads-during-covid-19/articleshow/80653828.cms>. Access on: 10 June 2024.

<sup>7</sup> CENTRE Brings New Advertising Rules, Bans All Surrogate Ads Across Media: The new advertising guidelines will be applicable to advertisements published on all platforms like print, television and online. *NDTV*, 11 Jun. 2022. Available at: <https://www.ndtv.com/india-news/centre-brings-new-advertising-rules-bans-all-surrogate-ads-across-media-3056429>. Access on: 10 Jun. 2024.

<sup>8</sup> HORLICKS. Right nutrition for right growth. Available at: [https://www.horlicks.in/pages/junior#:~:text=Horlicks%20contains%209%20nutrients%20\(Vit,scientifically%20proven%20to%20support%20immunity](https://www.horlicks.in/pages/junior#:~:text=Horlicks%20contains%209%20nutrients%20(Vit,scientifically%20proven%20to%20support%20immunity). Access on: 15 Mar. 2024.

<sup>9</sup> CADBURY Bournvita Presents Sirf Taakat Nahi, #VitaminDKiTaat. [S. l.: s. n.], 2023. 1 vídeo (0 min 43 s). Publicado pelo canal Valleywood. Available at: [https://www.youtube.com/watch?v=5\\_0yJ\\_nHc0c](https://www.youtube.com/watch?v=5_0yJ_nHc0c). Access on: 15 Mar. 2024.

<sup>10</sup> AYURMED INFO. Patanjali Power Vita Granules: uses, dose, ingredients, side effects. Available at: <https://www.ayurvedinfo.com/2020/01/01/patanjali-power-vita-granules/>. Access on: 15 Mar. 2024.

<sup>11</sup> BOOST: Secret of my energy. [S. l.: s. n.], 2021. 1 vídeo (1 min). Publicado pelo canal Boost Energy IN. Available at: [https://www.youtube.com/watch?v=s1R\\_6lJklAM](https://www.youtube.com/watch?v=s1R_6lJklAM). Access on: 15 Mar. 2024.

smarter and taller. These products are also shown during the exam time and depicts that those children will be winner in exams if they drink those nutritional powder. Some products claim more success of students if they consume their product. Children are convinced to consume those goods just to enhance their brain power or to reduce exam pressure. Now these are recognized as misleading advertisement after the guidelines have been issued by ministry in India, if manufacturer claim any health or nutritional benefits without any scientific proof<sup>12</sup>. Further the milk companies claiming the higher nutritional value for growth of a kid, in sports, during exams etc., they must have reason to prove otherwise the misleading tag shall be applicable upon them.

### 2.3 Survey report of Nielsen in India

As per the survey report of Nielsen it had proved that “Children in India constitute 18.7 percent of the world’s kid’s population and one-third of India’s population is under 15 years of age<sup>13</sup>. A survey by Nielsen showed that an average child watches TV for about three hours on week days and 3.7 hours on weekends. About half of this time is spent watching the advertisements that show the junk food is tastier, which also affects the behavior of the child.” That means the children can be influenced to have ‘food’ that is unhealthy and tasty, through advertisement in their favorite show, very easily. They are lured to buy the goods and it affects the consumer like children who do not have ability to choose the right and wrong in the food, the “right to choose” and “right to be informed and protected against unsafe goods and services as well unfair trade practices” under the consumer protection laws are getting abridged.<sup>14</sup>

<sup>12</sup> CENTRAL Consumer Protection Authority: Notification. *The Gazette of India*: Extraordinary, New Delhi, part III, section 4, n. 291, 9 June 2022. Available at: <https://consumeraffairs.nic.in/sites/default/files/file-uploads/latestnews/CCPA%20Notification.pdf>. Access on: 5 June 2024.

<sup>13</sup> CHANDRAKANT, Shastri Priyavadan. Child in India. *Indian Journal Psychiatry*, v. 50, n. 2, p. 85-86, Apr./June 2008. DOI 10.4103/0019-5545.42393. Available at: <https://pmc.ncbi.nlm.nih.gov/articles/PMC2738347/>. Access on: 20 Mar. 2024.

<sup>14</sup> GREBMER, Klaus von *et al.* Global hunger index: the power of youth in shaping food systems: 2023. Bonn: WHH, 2023. Available at: <https://www.globalhungerindex.org/pdf/en/2023.pdf>. Access on: 01 Feb. 2025.

### 2.4 Junk Food v. Tradition Food

The advertisements have depicted the analogy that ‘junk food’ is better than the natural and traditional food. The advertisements of ‘maggi noodle’ are shown to the kids in which the traditional food is shown as being boring while the product having more calories and fat. At the same time, junk food is also shown very popular and tasty among the kids<sup>15</sup>. The kids develop the liking of these foods while watching on screen, whereas, the nutritional value is lesser in these foods. They may harm the growth of a child and may cause problems like obesity.<sup>16</sup>

Whereas when the samples were taken from different states and tested it was found that maggi noodles contains monosodium glutamate (MSG) and lead was found in excess quantity which is harmful for the children. Nestle co. was taken to the consumer forum and the FIR was lodged against endorsers even if they had acted for free in these advertisements. These advertisements are misleading advertisements where the claim is made without any support of evidence or scientific authenticity. It is a fraud to display the wrong message that Junk food is tastier and healthier than the traditional food. In India, any such food claim shall be recognized as a misleading advertisement, if “food” is shown with wrong narratives to kids.

### 3 Surrogate Advertisement in USA

The Freedom of Expression has always been placed on a higher pedestal in America, but at the same time, it has certain limitations i.e. commercial speech. Commercial speech is defined as a message which is proposed during a commercial advertisement. The commercial advertising is regulated through several means e.g. in 1938, FTC (Federal Trade Commission) was given the power to control the ‘unfair or deceptive’ advertisement

<sup>15</sup> MAGGI #HealthIsEnjoyable ad with Madhuri Dixit. [S. l.: s. n.], 2014. 1 vídeo (0 min 52 s). Publicado pelo canal MERI MAGGI. Available at: [https://www.youtube.com/watch?v=xqVPO\\_cO-3w](https://www.youtube.com/watch?v=xqVPO_cO-3w). Access on: 23 Feb. 2024.

<sup>16</sup> RAY, Ipsita; SHUKLA, Anshuman. Fragile pillars of food security: exploring the challenges of availability, accessibility, and quality for global food regime. *Brazilian Journal of International Law*, Brasília, v. 21, n. 2, p. 114-128, 2024. DOI: <https://doi.org/10.5102/rdi.v21i2.9700>. Available at: <https://www.publicacoesacademicas.uniceub.br/rdi/article/view/9700/pdf#>. Access on: 01 Feb. 2025.



in the USA. In 1939 and 1971, congressional hearings were held, which proposed to ban the radio and television advertisements of alcohol and cigarettes respectively. A bill namely 'Just Say No' was also introduced by Joseph Kennedy to give effect to the ban of alcohol advertisement in USA.<sup>17</sup> Deceptive advertising is completely banned in USA. FTC (Federal Trade Commission) has affirmed that it is illegal for the advertising industries to create ads with hidden messages, which could negatively affect the consumer behavior.

Regardless of legislations enacted to ban alcohol, cigarettes, tobacco etc, many of the advertising industries are still advertising the banned products under the garb of non- banned products.<sup>18</sup> For example; a tobacco company (Brown and Williamson) launched a campaign called 'Kool Mixx', which featured hip-hop artists, CDs and limited edition cigarette packs with additional gifts and purchases.<sup>19</sup> The alcohol advertisements use the taglines like 'Keep Walking', 'Feel the velvet', 'Its just water' to fulfill their agenda of promoting alcohol.

Top Hollywood actor like Ryan Reynolds while advertising for the alcoholic beverage 'Aviation Gin' states that 'to ensure the heavenly taste, every bottle of aviation is ordained by the Unitarian Church of Fresno California' which portrays that legitimacy and validity to the alcohol is being given by the Church itself. The surrogate advertisements take the advantage of the authorized products to advertise for the non-authorized products.<sup>20</sup> The following table 2 elucidates the tactics

played by advertising companies in order to promote the banned products:

**Table 2** - The chart is prepared by authors through the data collected from the advertisements in USA

Brands	Communicating Products	Product Actually Advertised
Bacardi	CDs	Rum
Smirnoff	Apple Juice	Vodka
Red and White	Award	Cigarette
Hennessey	Checkers	Brandy
Captain Morgan	Knife	Whiskey

In the table 2, we can see easily, that the brands in their advertisements communicate the message to sell the CDs, Apple juice, Knife etc., however they are intending to sell the main product i.e Bacardi, Smirnoff, red and White etc. These kinds of advertisements are called as surrogate advertisements and their way of communication to the audience is more harmful.

### 3.1 Legislative Framework in United States of America (USA)

The statements made in advertisements should be truthful and must be coupled with the qualifying information before they are aired on any communication device. There are various agencies and authorities which are involved in the regulation and enforcement of advertisements in USA. Some of the major laws which overlook the advertisements in the USA are FTC Act (Federal Trade Commission Act), FCC (Federal Communications Commission), UDAP (Unfair and Deceptive Acts and Practices), FD&C Act (Food, Drug and Cosmetic Act)<sup>21</sup> and Lanham Trademark Act etc.<sup>22</sup>

The legislators have introduced the Federal Trade Commission Act, to protect the consumers from fraud and deception in the ever-changing marketplace. It is the chief federal consumer protection agency.<sup>23</sup> The

<sup>17</sup> NELSON, Jon P. Advertising Bans in the United States. *Economic History Association Encyclopedia*, 20 May 2004. Available at: <https://eh.net/encyclopedia/nelson-adbans/>. Access on: 10 mar. 2024.

<sup>18</sup> IN BRIEF: prohibited and controlled advertising in USA. *Lexology*, 25 Mar. 2022. Available at: <https://www.lexology.com/library/detail.aspx?g=be04fd64-b899-49a0-987e-41231c842c61#:~:text=For%20example%2C%20alcohol%20advertising%20cannot,on%20tobacco%20ads%20also%20apply.> Access on: 12 Jan. 2024.

<sup>19</sup> SANTIAGO, Mariana Ribeiro; ALVES, Danilo Scramin. A Legal Analysis of Surrogate Advertising and its accountability in Brazil in the Consumer Society Paradigm. *Revista Jurídica*, Curitiba, v. 2, n. 55, p. 106-132, 2019. DOI 10.26668/revistajur.2316-753X.v2i55.3386. Available at: <https://revista.unicuritiba.edu.br/index.php/RevJur/article/view/3386/371371822>. Access on: 15 Apr. 2024.

<sup>20</sup> BHATIA, Gayatri; SARKAR, Siddharth. Tobacco industry and surrogate advertising in South East Asia Region: moves and counter-moves. *Indian Journal of Psychological Medicine*, v. 45, n. 2, 2022. DOI 10.1177/025371762211232. Available at: <https://journals.sagepub.com/doi/10.1177/0253717622112321?icid=int.sj-full-text-similar-articles.3>. Access on: 10 Mar. 2024.

<sup>21</sup> ADVERTISING and marketing standards. *Kelley Drye*. Available at: <https://www.kelleydrye.com/advertising-and-privacy-law/advertising-and-marketing-standards>. Access on: 12 Apr. 2024.

<sup>22</sup> FALSE Advertising. *Cornell Law School*, Jan. 2023. Available at: [https://www.law.cornell.edu/wex/false\\_advertising](https://www.law.cornell.edu/wex/false_advertising). Access on: 12 Apr. 2024.

<sup>23</sup> AZCUENAGA, Mary L. The Role of Advertising and Advertising Regulation in the Free Market. *Federal Trade Commission*, 8 Apr. 1997. Available at: <https://www.ftc.gov/news-events/news/speeches/role-advertising-advertising-regulation-free-market>. Access on: 12 Apr. 2024.

act uses a wide range of initiatives, law enforcement agencies; issue reports and provide guidelines for the protection of the consumers from misleading advertisements.<sup>24</sup> The act allows the FTC (Federal Trade Commission) to conduct investigations and initiate lawsuits, if there is any infringement of the act.

Section 5 of the act laid down the definition of deceptive and unfair. It also prohibits the medium through which the deceptive and unfair advertisement is being channeled. It is the responsibility of the advertisers to state the truth and do not mislead the costumers. FTC is also empowered with legal remedies like imposing civil penalties, disclosures, cease and desist orders etc.<sup>25</sup> At the same time, the FTC can also revise its regulation in order to adapt with the emerging technological advancements e.g. the agency places additional conditions on the ads which are targeting the children and environment.<sup>26</sup>

There are certain legislation which operate in combination with the FTC, which are as follows;

- FDA (U.S. Food and Drug Administration) deals with the misleading food and drug labeling practices.
- TTB (Alcohol and Tobacco Tax and Trade Bureau) regulates the ad which primarily deals with alcohol, and tobacco.
- FCC (Federal Communications Commission) overlooks the deceptive advertisement of products such as wireless communication devices.
- FINRA (Financial Industry Regulatory Authority) is concerned with the advertisement enforced by the brokers.<sup>27</sup>

<sup>24</sup> FEDERAL TRADE COMMISSION. Protecting Consumers from Fraud and Deception. Available at: <https://www.ftc.gov/news-events/topics/truth-advertising/protecting-consumers>. Access on: 12 Apr. 2024.

<sup>25</sup> LEXOLOGY. Advertising Law in the United States. Available at: <https://www.lexology.com/library/detail.aspx?g=5d8ec854-12c9-453c-90a4-53f9971d804c#:~:text=Some%20of%20the%20main%20laws,of%20the%20Lanham%20Trademark%20Act>. Access on: 12 Apr. 2024.

<sup>26</sup> FEDERAL TRADE COMMISSION. Advertising and marketing on the internet: Rules of the Road. Available at: <https://www.ftc.gov/business-guidance/resources/advertising-marketing-internet-rules-road>. Access on: 12 Apr. 2024.

<sup>27</sup> GARCIA, Shelly. Avoid Unlawful Advertising: Seven Rules for Your Business: Learn what you can and cannot say when advertising your product or service. *Nolo*, 27 Mar. 2024. Available at: <https://www.nolo.com/legal-encyclopedia/avoid-unlawful-advertising-seven-rules-29801.html>. Access on: 10 May 2024.

The issue arises that why the children targeted advertisements especially on food are more of a concern than adult. In order to answer some of the reasons are mentioned as under:

### 3.2 Understanding Children Targeted Advertisement in the Digital Era

Children targeted advertisement raises exceptional concerns because a child has difficulty in understanding the meaning, nature and impact of the advertisements, therefore the seller should take special care to not misrepresent the products, when children are the audience. Special guidelines have also been issued by the Children's Advertising Review Unit (CARU) of the Council of Better Business Bureaus. The FTC has also introduced the Children's Online Privacy Protection Act (COPRA) to prohibit the advertisers to collect the personal information of the children without the consent of parents.

In 2023, the FTC conducted a workshop namely 'Protecting Kids from Stealth Advertising in Digital Media', which highlighted that many children do not have the necessary skills to identify or derive the implied meaning of the blurred content in the advertisement, which negatively impacts their psychological, financial, physical, mental and emotional well-being.<sup>28</sup>

### 3.3 Misleading Advertisement related to 'Food' in United States of America

The food industry considers the young consumers as a major driving force in the market. As a result of which, children became the target of the vicious and specialized web combed by the food marketing and advertising agencies.<sup>29</sup> Advertisers are interested in the young audience because of their influencing and spen-

<sup>28</sup> LEVINE, Samuel. Protecting Kids from Stealth Advertising in Digital Media. *FTC Bureau Of Consumer Protection*, Sept. 2023. Available at: [https://www.ftc.gov/system/files/ftc\\_gov/pdf/p214505kidsadvertisingstaffperspective092023.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/p214505kidsadvertisingstaffperspective092023.pdf). Access on: 12 Apr. 2024.

<sup>29</sup> ESTELITA, Thayanne Borges. Right to Food and International Responsibility beyond state. *Brazilian Journal of International Law*, Brasília, v. 21, n. 2, p. 49-69, 2024. DOI: <https://doi.org/10.5102/rdi.v21i2.9663>. Available at: <https://www.publicacoes.uniceub.br/rdi/article/view/9663/pdf>. Access on: 31 Jan. 2025.

ding power. The food advertising channels use a lot of tools to attract the children like premiums, promotions, partnership with other studios, tie-ins, cross-selling, internet, influencers etc.<sup>30</sup>

To counter these ill-practices, the FTC played an important role in protecting the children from the deceptive and unfair market practices. In this process, they have identified the special character of the children. Most of the young children are deceived by the advertisements which will not deceive the adults. At the same time, the young audience is also not able to derive the implied meaning of the advertisements.<sup>31</sup>

A study namely 'Children's Recall of Fast-Food Television Advertising- Testing the Adequacy of Food Marketing Regulation' was conducted, in which 100 children of age 3-7 years were exhibited McDonald's and Burger King advertisements of children and adult meals, then immediately they were asked to share the summary of the ads. The researchers deduced that the children identified the kid's meal premium toys more often than the food itself in the commercials, which was the primary focus and not the food.<sup>32</sup>

There are various ads which claim the scientific proof of nutritional value of the foods, but, it was found to be otherwise.

An advertisement of 'Wonder Bread' claims that the bread is a very good source of calcium and helps in improving the mental ability of young children. This claim was challenged and it was found that there is no connection between the calcium and mental ability of the children.

Like-wise, there was an advertisement of Klondike Lite Ice Cream Bar which claims that it was low in fat

and 93% fat-free. This was challenged and it was held that each and every bar contains 10 grams of fat, an amount which is excess to the reasonable level of low-fat claim.<sup>33</sup>

Kellong Co, a well-known breakfast cereal, faced federal charges for falsely advertising Frosted Mini-Wheats Cereals. In the ads, they claimed that by eating Frosted Mini-Wheats cereals, a child's attentiveness can improve by 20% as compared to those who skipped breakfast. However, it was found that only 11% of the children showed any signs of attentiveness.<sup>34</sup>

Brand-promotions, tie-ins, premiums, cross-selling are some of the commonly used methods for attracting the children towards the products. Fast food companies use premiums in children's meals i.e. giving off some toys. It increases the sales for a short-term, but it can have a long-term impact on the children in respect to the brand's image.<sup>35</sup> A study was conducted namely 'Observation of parent-child interaction in supermarket decision-making' in which pre-school, parents and school-age children were observed and it was found that almost half of the children while grocery shopping request for the cereal, with the premium offer, because of the advertisements.<sup>36</sup>

### 3.4 Deceptive Food

In USA, the food industry has started to collaborate with Hollywood and other networking sites, studios, toy companies, sports leagues, etc. in order to influence the children eating behavior. Burger King has established promotional links with the Nickelodeon and started advertising chicken nuggets shaped like Teletubbies.

<sup>30</sup> STORY, Mary; FRENCH, Simone. Food Advertising and Marketing Directed at Children and Adolescents in the US. *International Journal of Behavioral Nutrition and Physical Activity*, n. 3, 2004. Available at: <https://ijbnpa.biomedcentral.com/articles/10.1186/1479-5868-1-3>. Access on: 7 Apr. 2024.

<sup>31</sup> BERRA, Yogi. Advertising to Kids and the FTC: A Regulatory Retrospective That Advises the Present. In: GEORGE MASON LAW REVIEW, 25., 2004. *Symposium* [...], Bureau, 2 mar. 2004. Available at: [https://www.ftc.gov/sites/default/files/documents/public\\_statements/advertising-kids-and-ftc-regulatory-retrospective-advises-present/040802adstokids.pdf](https://www.ftc.gov/sites/default/files/documents/public_statements/advertising-kids-and-ftc-regulatory-retrospective-advises-present/040802adstokids.pdf). Access on: 16 Apr. 2024.

<sup>32</sup> NORRIS COTTON CANCER CENTER DARTMOUTH-HITCHCOCK MEDICAL CENTER. Fast food commercials to kids 'deceptive' by industry self-regulation standards. *Science Daily*, 5 Mar. 2015. Available at: <https://www.sciencedaily.com/releases/2015/03/150305151840.htm>. Access on: 12 May 2024.

<sup>33</sup> NORRIS COTTON CANCER CENTER DARTMOUTH-HITCHCOCK MEDICAL CENTER. Fast food commercials to kids 'deceptive' by industry self-regulation standards. *Science Daily*, 5 Mar. 2015. Available at: <https://www.sciencedaily.com/releases/2015/03/150305151840.htm>. Access on: 12 May 2024.

<sup>34</sup> MUNRO, Brock. 5 misleading advertising examples. *Publift*, 15 Nov. 2024. Available at: <https://www.publift.com/blog/misleading-advertising-examples>. Access on: 19 Apr. 2024.

<sup>35</sup> MUNRO, Brock. 5 misleading advertising examples. *Publift*, 15 Nov. 2024. Available at: <https://www.publift.com/blog/misleading-advertising-examples>. Access on: 19 Apr. 2024.

<sup>36</sup> ATKIN, Charles K. Observation of Parent-Child Interaction in Supermarket Decision-Making. *Journal of Marketing*, v. 42, n. 4, p. 41-45, Oct. 1978. DOI 10.1177/002224297804200406. Available at: <https://journals.sagepub.com/doi/10.1177/002224297804200406>. Access on: 19 Apr. 2024.

Moreover, McDonald's has also partnered with the Fox Kids Network and National Basketball Association.<sup>37</sup>

A study was conducted by Dartmouth College 'Promotion of Meal Premiums in Child-Directed TV Advertising for Children's Fast-food Meals' in which it was concluded that the children targeted advertisements are focusing more on the premium toys, giveaways instead of the primary product which is being sold i.e. food.<sup>38</sup> This unreasonable use of the premium by the child-targeted advertisements for fast food is of deceptive and misleading nature. At the same time, this practice also contributes to the children obesity concerns.<sup>39</sup>

## 4 Conclusion

After the research it can be concluded that misleading advertisements affects the developed and developing nations almost the same. The kids under and their parents as consumer are often exploited due to the deceptive advertisements, however, there are various legislations are prevalent in India as well as in the United States of America, however, the need is to implement the laws. The advertisements provide the wrong information under the garb of puffing advertisements however, as per the legislations, the advertising companies need to make the claim for kids related advertisements only if they have scientific proof to prove it. The advertising agencies should be cautious in case of making commercials on 'junk food' as a 'food' through advertisement for the younger generation because it can create a health-related problems in kids as they are too innocent to understand the true spirit of the advertise-

ment. The stricter application as well as transparency is required on the part of the advertising companies while making misleading advertisements because the kids are not in the position to understand what is beneficial and what is not beneficial for them.<sup>40</sup> They get into the traps and it becomes easier for the companies to cheat these consumers. The 'Branded product' must convey the same message as 'communicating product' in the 'main product category'.

In the arena of advertisements, honesty and transparency are two components which are of non-negotiable nature. It is the duty of the marketers to certify that the claims made in an advertisement are clear, truthful and not subject to misrepresentation. The health concerns and fast-food consumption by the children are proportional to each other, therefore the marketing practices adopted by the food industry needs to be scrutinized at the local, state and federal level on the established principles of honesty and fair marketing.<sup>41</sup>

The industries should also adopt certain self-regulation measures like periodic evaluation in order to ensure the accountability of the advertisement. However, the monitoring need to be initiated by a federal agency i.e. FTC. If the problems continue to persist even-after adopting the self-regulation measures, then the governmental action should be taken to ensure the protection of the children especially in the targeted advertisement of "food".<sup>42</sup>

Since India is a developing nation and the need is to implement the laws related to misleading advertisement through the CCPA. The advertising agencies must act ethically so that the kids as a future of any nation must not suffer harm due to misleading advertisements.

<sup>37</sup> ATKIN, Charles K. Observation of Parent-Child Interaction in Supermarket Decision-Making. *Journal of Marketing*, v. 42, n. 4, p. 41-45, Oct. 1978. DOI 10.1177/002224297804200406. Available at: <https://journals.sagepub.com/doi/10.1177/002224297804200406>. Access on: 19 Apr. 2024.

<sup>38</sup> EMOND, Jennifer A. *et al.* Promotion of Meal Premiums in Child-Directed TV Advertising for Children's Fast-food Meals. *Pediatrics*, v. 147, n. 6, e2020042994, 2021. DOI 10.1542/peds.2020-042994. Available at: <https://publications.aap.org/pediatrics/article/147/6/e2020042994/180285/Promotion-of-Meal-Premiums-in-Child-Directed-TV>. Access on: 12 Apr. 2024.

<sup>39</sup> DEAN, Timothy. Dartmouth-led Study Finds Overemphasis on Toy Giveaways in TV Ads Unfairly Promotes Fast-Food to Children. *Dartmouth Geisel School of Medicine*, 10 May 2021. Available at: <https://geiselmed.dartmouth.edu/news/2021/dartmouth-led-study-finds-overemphasis-on-toy-giveaways-in-tv-ads-unfairly-promotes-fast-food-to-children/>. Access on: 12 Apr. 2024.

<sup>40</sup> CHEN, Yuanyuan; LU, Changhe. A comparative analysis on food security in Bangladesh, India and Myanmar. *Sustainability*, v. 10, n. 2, p. 1-13, 2018. Available at: <https://www.mdpi.com/2071-1050/10/2/405>. Access on: 01 Feb. 2025.

<sup>41</sup> GRACE, D. *Food safety in developing countries: an overview*. 2015.

<sup>42</sup> BERNHARDT, Amy M *et al.* How Television Fast Food Marketing Aimed at Children Compares with Adult Advertisements. *PLoS One*, v. 8, n. 8, e72479, Aug. 2013. DOI 10.1371/journal.pone.0072479. Available at: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3756061/>. Access on: 12 Apr. 2024.



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