Guidelines for Social Media Influencers

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'First published on LEXOLOGY' By: Safir Anand Earlier during this year, consumer rights were allowed to be statutorily protected against false or misleading advertisements basis the Consumer Protection Act, 2019. The Act indicated that making false or misleading advertisements would be considered as an unfair trade practice. To this effect, the Act mandated the establishment of a Central Consumer Protection Authority (CCPA) to oversee the issue of false or misleading advertisements. As part of this, CCPA then notified detailed guidelines titled Guidelines on Prevention of Misleading Advertisements and Endorsements for Misleading Advertisements, 2022. The Guidelines, in order to keep a check on misleading or false advertising practices, allowed for levying penalties to the tune of INR 10 lakhs on manufacturers, advertisers and endorsers. In cases of subsequent violations, the penalty could go up to INR 50 lakhs. The Guidelines also indicate that an endorser can be prohibited from making advertisements for up to 1 year which can extend to 3 years if there is subsequent violation. Recently the Department of Consumer Affairs notified guidelines that detail the diligence that celebrities have to exercise while endorsing brands. Previously also, the Consumer Protection Act had included clauses which made celebrities liable for misleading claims. The new guidelines indicate that celebrities are required to now put their money where their mouth is basically implying that celebrities should endorse ads which are a reasonable reflection of their opinion. Now the Indian Government has announced that it is creating guidelines to rein in social media influencers to keep misleading advertisements in check. For e.g. in the United States of America, the Federal Trade Commission has already released guidelines for social media influencers. One of the prominent expected changes in India is that now social media influencers will have to mandatorily disclose if the promotions are sponsored. In the US, the guidelines go a step further and the influencers are also mandated to declare if over and above any monetary exchange, the influencer has any "material connection" with the brand / product, for e.g. if the brand has gifted any discounted products or other perks that may incentivise mentions or promotions. The Competition and Markets Authority (CMA) in the United Kingdom also has such guidelines in place to curb instances of misleading advertising by influencers.

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