

## **ASCI and K&S Partners shine a light on brands' unfair practices of using trademarks in defence of dishonest claims**

*~ Descriptive or laudatory trademarks are not a justification for misleading marketing messages and may invite action under the ASCI Code as well as the Consumer Protection Act*

*~ A self-regulatory organisation along with legal intellectual property rights experts present a whitepaper that details the common violations committed by brands while misusing trademarks*

**Mumbai, October 13, 2022:** ASCI and K&S Partners, have recently released a whitepaper titled “**Misleading Advertisements and Trademarks - A Registration Conundrum.**” This paper identifies the practice and instances of brands making misleading claims and representations through the use of trademarks.

It has often been noted that businesses register misleading or even deceptive descriptive or laudatory terms, slogans, etc. as trademarks. These words describe the product's unsupported nature, quality, or quantity, which ends up misleading consumers. For instance, a sweater brand called "All Wool" implies that it is made of wool. However, if the actual products are not made of 100% wool, such a trademark can become deceptive. Similarly, a product with the trademark “Wholewheat Marie” which contains refined flour as the dominant ingredient, misleads consumers as to the health and nutritional values of such products. The use of such trademarks that falsely describe product attributes is in potential breach of both the Consumer Protection Act and the ASCI code.

Brands and advertisers often cite trademark registrations as a defence, these words or phrases mislead consumers. However, this paper argues that such a defence is not valid, as making misleading representations violates the ASCI code, the Consumer Protection Act, and the Trade Marks Act itself. The paper calls for greater scrutiny and restraint in permitting descriptive trademarks to brands, and to ensure that such trademarks are not a false representation of the product.

**Manisha Kapoor, CEO and Secretary General, ASCI, said:** “At ASCI we see cases where the advertiser uses a trademark registration to defend their direct or implied claims, asserting that a trademark registration means that the claim is good in law. This is not true, and we would ask brands to be cautious in using

# PRESS RELEASE

*untrue, exaggerated or misleading phrases to describe their products, whether trademarks or not."*

**Prashant Gupta, Partner, K&S Partners, said:** *"The issue concerning false, unsubstantiated, and dishonest advertisements, under the guise of descriptive or laudatory trademarks, is grave. Protecting consumers from deception is one of the principal tenets of the ASCI Code, the Trade Marks Act, and the Consumer Protection Act. The Trademark Office needs to raise the threshold for descriptive or laudatory trademarks, failing which, protecting consumers' rights from fraudulent marks and making informed choices would be severely compromised."*

## **DOWNLOAD THE DOCUMENT/WHITEPAPER HERE:**

<https://ascionline.in/images/pdf/misleading-ads-and-trademarks.pdf>

### **About The Advertising Standards Council of India (ASCI)**

ASCI, established in 1985, is committed to the cause of self-regulation in advertising, ensuring protection of consumer interests', while being fair to the advertising industry. By self-regulating advertisements to ensure that they are honest, decent, safe, and fair, ASCI supports consumers and responsible advertisers. ASCI's speedy, independent, and low-cost complaint management approach ensures that both consumers and industry have the opportunity for a fair resolution. All stakeholders can register their complaints at no cost via WhatsApp at 77100-12345 or on [www.ascionline.in](http://www.ascionline.in). ASCI is supported by the four sectors of the advertising ecosystem, viz. advertisers, advertising agencies, media, and allied professions such as PR agencies, market research companies etc. ASCI works closely with different stakeholders in the matter of consumer protection and its Code is part of The Advertising Code enshrined within the Cable TV Networks (Regulation) Act, 1994, providing it with a legal backstop. ASCI has always been a conscience keeper of the advertising industry. ASCI also supports the advertising industry to help them get their advertising right through several initiatives such as the ASCI Masterclass, and its expert led pre-production advisory services, that mitigate the risk of problematic ads being made and exposed to consumers.

### **About K&S Partners**

Founded in 1994 as a three-member firm, today K&S Partners has emerged as one of India's leading intellectual property law firms. This award-winning law firm supports several leading Indian and global brands including Fortune 500 companies in all forms of intellectual property rights such as patents, designs, trademarks, copyright, geographical indications, plant varieties, trade secrets, and related matters.