

# Healthcare Ethics and Promotional Advertising: A Difficult Relationship

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## Abstract

Participation of health-care professionals in the advertising business has been subject to a raging debate since days beyond recall. It has gained more acceptance but was despised in the past. The Code of Ethics of many National Medical Councils around the world has maintained that for a medical professional to engage in commercial advertising of himself or some other product is unethical-owing to the influence and the cultural authority that a health-care professional holds. This paper reviews instances where medical professionals and bodies have been reported to have explicitly or tacitly lent their support to brand endorsements. Malpractices within the advertising industry in relation to medical fraternity-such as untrue/conjectural claims, distortion of words of a reliable medical body etcetera have also been discussed.

**Keywords:** Advertising; claims; Distortion; Endorsements; ethics; zohnerism.

## Introduction

Being an advertiser/endorser in such a big consumer oriented economy is an attraction strong enough to encourage people to circumvent the attendant rules, regulations and ethics. Due to heavy competition, advertisements have become imperative for brands to secure market shares. There is a cut throat battle for consumer satisfaction and for reaching out to the masses.

One of the most successful advertising strategies includes hiring an endorser that the public trusts. Various sub-populations come under this niche; the public trusts.

## Celebrities

Celebrities are loved and idolized in every corner

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of the world. People place celebrities at proverbial pedestals and by virtue of their acceptance by the masses, celebrities have a huge influence upon even the most aware of all. They hold the power to convince, condition and coerce even the brightest of minds. People want to be them, live their lives vicariously through them, do the things that these influencers do, and by extension, end up patronizing the brands that celebrities may or may not use, but endorse.

## The Common People

Apart from the high end denizens of the glamour world, the public trusts the people who they relate to the most. This is by virtue of them having similar needs and a similar pocket size. These type of endorsers will have a typical "neighbor"-like image and the common public tends to go for the products that they have seen their friends, neighbors and people of the same strata use. The viewers feel that if people like them feel satisfied by the product, they would too. Unlike celebrity endorsements-which may leave a scope for disappointment on actual product use.

## Medical Experts

Aside from the two subpopulations at the total

extremes of a spectrum (that have been discussed above), the most trusted source for most people is a medical opinion. Doctors/medical professionals are, in a sense, "local celebrities" to most people. They hold a position of high regard by virtue of their academic knowledge and social status. Doctors are not very commonly associated with the money-making industry, hence whatever they endorse, is taken to be genuine advice by the masses, rather than a money making stunt.

In this research paper, we will focus on the last subset of the population of endorsers usually preferred by advertising companies, and the ethical and legal consequences of the same- as laid out by the MCI in its 'code of ethics'.<sup>1</sup>

### *Legal history*

It is important to understand the legal nuances and the history of it in the field of advertising- especially where it concerns medical professionals. For a long time, endorsements by medical professionals were considered to be unethical as well as unprofessional.

In the U.S, it was not until 1977<sup>2</sup> that the gates of this industry were opened to the healthcare professionals. Before that, advertisements by doctors were looked down upon and considered to be rather distasteful. In 1977, the U.S Supreme Court decision on *Bates vs the State of Arizona*<sup>2</sup> created a milestone. This permitted attorneys to advertise their services-which they were prohibited from doing previously. Shortly afterwards, the same path was paved for the medical field as well.

Early on, in 1957, The American Medical Association-via its 'Principle of Medical Ethics' maintained-"Solicitation of patients, directly or indirectly, by a physician, by groups of physicians, or by institutions or organizations is unethical. This principle protects the public from the advertiser and salesman of medical care by establishing an easily discernible and generally recognized distinction between him and the ethical physician. Among unethical practices are included the not always obvious devices of furnishing or inspiring newspaper or magazine comments concerning cases in which the physician or group or institution has been, or is concerned.

Self-laudations defy the traditions and lower the moral standard of the medical profession; they are an infraction of good taste and are disapproved"<sup>3</sup> and later in 1984, revised guidelines were published that declared that advertising was an acceptable marketing strategy as long as the claims made were authentic and verifiable. Comparative ads soon became permissible.<sup>3</sup>

Nevertheless, there have still been reservations with respect to advertisements by medical associations, doctors and dentists. Apparently, it is a concept easily embraced by the upcoming generations of doctors while the older, established ones-the veterans-still seem to be finding it rather objectionable.

### **Discussion**

Within the boundaries of the code of ethics laid down by the MCI-the legislative body responsible for the control and governance of all medical education in the country-a doctor can not advertise or solicit his own practice and/or achievements and neither can he advertise any commercial product.<sup>1</sup>

The exact clause states;" . Soliciting of patients directly or indirectly, by a physician, by a group of physicians or by institutions or organizations is unethical. A physician shall not make use of him/her (or his/her name) as subject of any form or manner of advertising or publicity through any mode either alone or in conjunction with others which is of such a character as to invite attention to him or to his professional position, skill, qualification, achievements, attainments, specialties, appointments, associations, affiliations or honours and/or of such character as would ordinarily result in his self aggrandizement.

A physician shall not give to any person, whether for compensation or otherwise, any approval, recommendation, endorsement, certificate, report or statement with respect of any drug, medicine, nostrum remedy, surgical, or therapeutic article, apparatus or appliance or any commercial product or article with respect of any property, quality or use thereof or any test, demonstration or trial thereof, for use in connection with his name, signature, or photograph in any form or manner of advertising through any mode nor shall he boast of cases, operations, cures or remedies or permit the publication of report thereof through any mode."<sup>1</sup>

A doctor is, however permitted to use his/her own name/signature where it concerns public health-such as sanitation and hygiene related matters.<sup>1</sup>

All other forms of endorsements are deemed unethical. Hence, doctors are not supposed to participate in advertising cosmetics and/or other 'fast moving consumer goods'

As a medical professional of premium academic knowledge, doctors are free to comment on, say Aspirin as a drug (of-course with necessary

grounds/facts/figures) but not on any particular brand of Aspirin.

This is so because they hold the position of dignity and respect in the eyes of the public hence, whatever they use or recommend is supposed to deeply impact a large population. Medics earn such a position of repute; of-course by virtue of their own hard work but also via the infra-structure and other resources funded out of public money. This increases their responsibility and accountability towards the public by several folds. Accordingly, the 'White Coat' needs to be projected as a symbol of protecting public interest and not at all as that of exploitation for any kind of commercial gains. It is condemnable if any advertising company uses white coat professionals to capitalize on the consumer's lack of knowledge or the faith posed in the goodwill of the White Coat.

Some other problematic practices designed to increase market shares, adopted by corporate sharks (and advertising agencies) include making ambiguous and false claims-such as unsubstantiated 'medical facts', dishing out promotional claims under the garb of 'medical opinions' or declaring something to be "recommended" by a majority of "doctors" and so on and so forth. Such testimonials are more often than not likely to be doctored by picking and choosing of particular phrases-sans prefixes and suffixes-from the original statement by the issuer, wherein disclaimers may have levied heavy conditions on the veracity of the claims made.

Making claims of such nature, or distortion of wordings from an original statement to suit one's own purposes-is not only unethical but may also be deemed as fraudulent.

Among these practices is one popularly referred to as "Zohnerism"<sup>4</sup>. Zohnerism means "the use of a true fact to lead a scientifically and mathematically ignorant population to a false conclusion". This term came into use after a 14-year old Nathan Zohner managed to convince 43 out of 50 people<sup>4</sup> that the chemical-DHMO (Dihydrogen Monoxide) should be banned. He provided logical arguments in his paper as to how it is corrosive in gaseous form, rusts metal and so on. Only a few people were able to catch on the fact that DHMO is essentially water.

Nathan did this project not with the intent of actually getting this 'harmful chemical' banned but to see how gullible the population can be. This practice is rather common in the advertising business-and sometimes in politics as well.

Let us look at a few popular cases and highlight the role of the Advertising Standards Council of India (ASCI) in handling some such violations-some via direct complaints and some suo moto.

1. *Zydus Wellness Ltd (Nycil)*: When translated, the advertisement claimed "Not just any other powder, you need Nycil to kill all the germs instantly. Shows results just within three days." This was found to be misleading. Moreover, when viewed in its entirety, the advertisement was observed to be leading its audience to believe that the product is recognized and recommended by doctors for its effectiveness. In light of the Medical Code of Ethics that embargoes advertisements by medical professionals, and in the absence of satisfactory market research data indicating that medical professionals actually recommend the use of the product, the advertisement was found to be ambiguous and misleading.<sup>5</sup>
2. *Kokilaben Dhirubhai Ambani Hospital and Medical Research Institute*: In an advertisement (print), it was claimed; "Pioneers in overcoming Parkinsons" but this claim was not verified or supported by any statistical evidence.<sup>5</sup>
3. A commercial for a renowned pain relief gel claimed "#1 Doctor recommended active for acute pain relief" but the wordings were later found evasive, especially with reference to the terminology "#1 Doctor recommended active" The advertisement lacked a key word "ingredient" which would have made sense to general consumers.<sup>6</sup>
4. *Asian Paints*: In the advertisement for Asian Paints featuring celebrities Deepika Padukone and Ranbir Kapoor, several inaccurate claims were made, such as "Its anti-bacterial technology kills bacteria that enter the house", "Kills all bacteria" "Asian Paints - The Anti-Bacterial Paint. Recommended by the Indian Medical Association". This was later found to be deceptive as the IMA had only permitted the use of their logo for a specific technology namely the "Asian paints silver ion technology" rather than the whole product and had not "recommended" the product. Further probing revealed that the celebrity endorsers had been negligent in checking for the authenticity of the claims with respect to the nature of germ kill action and the time of contact required.<sup>7</sup>

Some more such advertisements that have made unsubstantiated claims from the health-care community include certain Fertility Clinics, notably-Dr. Kavitha IVF Centre, Mothers Lap IVF Centre, GBR Fertility Centres and Hospitals etcetera.<sup>8</sup>

Furthermore, there are abundant instances of erroneous claims made by advertisements regarding Covid-19. Multani Pharmaceuticals Ltd.'s Kuka Cough Syrup can purportedly "stop corona", Alchem Pharmaceuticals' PhytoRelief-CC can "kill the virus in your mouth" and so on<sup>9</sup>. This may also be in violation with the "Drugs and Magic Remedies (Objectional Advertisements) Act" of 1954, section 3(d) which states "no person shall take part in the publication of any advertisement referring to any drug in terms which suggest or are calculated to lead to the use of that drug for the diagnosis, cure, mitigation, treatment or prevention of any disease, disorder or condition specified in the Schedule, or any other disease, disorder or condition (by whatsoever name called) which maybe specified in the rules made under this Act."<sup>10</sup>

To put things into perspective, the ASCI upheld 221 complaints against advertisements in May 2020, 162 of which were related to healthcare.<sup>11</sup>

A significant quantum of such instances sans ASCI involvement include commercial advertisements done by the Indian Medical Association (IMA). A variety of commercial products have been approved and endorsed by the IMA and other such scientific organizations over the years-including Eureka products and Lifebuoy soap.<sup>12</sup> According to a report, the deal between the two parties was worth INR 30 million.<sup>12</sup> Similarly, endorsement of the Tropicana juice brand has reported to have generated INR 5 million.<sup>12</sup> Currently, the agency is understood to be in negotiations with Dabur.<sup>12</sup> The agency maintains that the money earned by such type of endorsements/advertising will be used for seminars, scientific research and conferences.<sup>13</sup>

In 2008, Dr. KV Babu<sup>14</sup>, a whistleblower and an IMA Committee Member complained to the MCI about the endorsement of Pepsico by advertising Tropicana and also by use of the IMA logo on Quaker oats cereal claiming that it is in violation with the code of ethics. It was reported to be a contract involving INR 2.25crore.<sup>14</sup> The IMA later argued that it was not endorsing Pepsico, but rather just promoting a 'nutritional program'.

Quite interestingly, the IMA became one of the first such organizations to endorse a food product. Whereas, it is understood to have endorsed several

brands such as Lizol, Pampers, Aquaguard, Odomos, Dettol<sup>13</sup> etc.

However, IMA is not the only medical association found to endorse commercial products. Colgate toothpaste and Listerine mouthwash by Pfizer have been endorsed by the Indian Dental Association.<sup>12</sup> It is seen that this practice is rather common on a global scale.

An article by Anupama Sukhlecha<sup>12</sup> reports that in 1988, the American Medical Association had to settle with the Sunbeam Corporation by paying US \$9.9 million for their withdrawal from a 5-year endorsement contract. It was regarding the advertisement of medical equipment such as blood pressure monitors and humidifiers.<sup>15</sup> The British Heart Association logo can be seen on Tetley tea<sup>12</sup> and the World Heart Federation logo can be found to have made its way onto the Kellogg's bran flakes packaging.<sup>12</sup>

Another problem is disingenuous advertising which employs medical professional look-alikes (a non-doctor donning a white coat and maybe a stethoscope; referred by the authors of this article as 'White Coat Effect') and advertising some benefits of a product while quoting feedback from clients (and not patients).

While this cleverly exploits the loophole by not engaging a real doctor in the endorsement, it still represents a blatant exploitation of the lack of consumer awareness or, to say the least-unduly cashing from the misuse of the public symbol of medical/health fraternity, whether this un-healthy practice warrants some action by the regulatory bodies is anyone's guess.

A pertinent example of soliciting medical professionals comes from early 20th century- more precisely, from the 1940s. RJ Reynold's Tobacco Company's Camel cigarettes<sup>16</sup> were very popular in a rather competitive niche- thus controlling a market which saw a cut-throat competition. RJ Reynold's claimed "more doctors smoke Camels than any other cigarette"; maintaining that this data was brought forth and verified by "three leading independent research organizations" and asserted to have surveyed 113597 doctors "nationwide" and "from every branch of medicine".<sup>16</sup>

In actuality, the "independent" research organization was RJ Reynold's own advertising service-William Etsy Company.<sup>16</sup> It's employees would conduct their "surveys" in conferences and offices by questioning doctors about their smoking habits and as it later turned out, the subjects of the research were the doctors who were supplied with

complimentary boxes of Camel just prior to the data collection surveys.

All this was happening at a time when no evidenced links were found between cigarettes and the risks they posed to health, but certain inhibitions were emerging regarding the same. This was a new challenge for the tobacco industry; even a potential threat to the otherwise roaring business. While there was a rise in the number of studies that established and affirmed the links between tobacco use and consumer health, the physician-smoker image was reassuring to the consumers, thus ensuring demand and sustaining the business.

Moreover, RJ Reynolds formed a Medical Relations Divisions- the MRD<sup>16</sup>; the sole purpose of which was to work upon attending to researchers willing to reaffirm and reestablish the health claims made by the company.

Afterwards, when speculations arose that cigarette smoke “irritated” the lung tissues, another rookie businessman in the tobacco market- Philip Morris- claimed that his product was “proven” to be “less irritating”- again, a dubious claim at best.<sup>16</sup>

## Conclusion

Article 19 of the Indian Constitution protects the citizens’ fundamental right of freedom of speech and expression which includes the right to advertise as well. This appears to be going in direct conflict with the medical code of ethics, as per point 6.1, chapter 6 of the Indian Medical Council (Professional Conduct, Ethics and Etiquette) Regulations 2002, which defines advertisement under Unethical Acts.<sup>1</sup> However, it is vital to accord due importance to the MCI Medical code of ethics because the consumers are subjected to a huge amount of ads every day; thereby exposing them to misleading beliefs that a particular brand/product might be of high standards, the medical fraternity is by default associated with, by the public at large. All age groups are profoundly influenced by such commercials but at the same time, children and youth are likely to be more vulnerable, due to their impressionable age.

The viewers are impacted by not only the product that is being advertised but also by the choice of the individual doing it. A responsible advertisement does not promote any sort of negligence and the endorser himself should first verify the authenticity of the claims made by the advertisement, more so by the medical/health professional or anyone who dons a ‘White Coat’

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