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Laws relating to Prosecution Service in Bangladesh: A Critical Analysis

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Manuscripts submitted for publication must be in three copies, double-spaced typescript or electronic print-out on A4 size (8.5"×11") white sheets with margins of 1" on all sides and pages consecutively numbered. The manuscript should have a title-page with the title of the article and the author's name, designation and contact address. The author's name or anything that may identify the author should not appear anywhere in the text paper. An abstract in English must be provided within 200-300 words at the beginning of the article. Submissions should be addressed to the Editor in Chief, Rajshahi University Law Journal, Faculty of Law, University of Rajshahi, Rajshahi 6205, Bangladesh.

Accountability for Deceptive Advertisement through Celebrities: Exploring Legal Scenario of Bangladesh

Sayeeda Anju*

Abstract: *Advertisement is one of the common marketing strategies to introduce a product in market. It has a noticeable impact over consumers; hence, advertisement agencies often use familiar faces to reach the greatest number of audiences and try to gain trust of the consumers. Through advertisement manufacturers tell the story of their product and also visualize them by electronic or print media. Meaningful storytelling and visualization have a great impression over individual and can easily attract potential buyers to pursue the goods or services of the advertiser. The intent of this research is to find out whether the celebrities performing the advertisements of the products, in case of infringement, have liabilities or not when influenced consumers to buy those. If yes, what types of liability it will be – civil or criminal or tortious and by which law it will be enforced and if not then why not, aren't they liable to any extent? These research questions will be answered in the write up. In addition, it is found that accountability of advertisements in Bangladesh is deficient whereas in India it is perceptible. Celebrities should be more conscious in forming an agreement with the owners of the product or with the advertising agencies for any advertisement. State should set forward a standard to be followed for ensuring accountability of advertisers and companies accordingly.*

Keywords: False Description, Product, Liability, Celebrities, Remedy, Consumers

1. Introduction

Advertisement of any product plays a vital role to attract the consumers. Commonly people are influenced by their favorite sportsmen, singers or in a word, favorite celebrities. Manufacturers and sellers allot a notable budget for advertisement for increasing sale, and tries to make advertisement of their product by the top celebrities. However, most of the time, celebrities don't testify the product of which s/he performed the advertisement. As a consequence, often consumers are being scapegoated by an untrue advertising.

Sometimes the information of advertisement is false, confusing and baseless. The consumer is being cheated due to false and unrealistic advertising copy. For example- some kinds of cosmetics are harmful

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for skin but in advertisement they (celebrities) never say or make customers conscious about this. Maximum companies and advertisement agencies aren't aware about ethical obligation towards society and violating the laws of the protection of consumer rights in the country.

In Bangladesh, there are numerous products which are consumed because of false advertisement. "Mango juice is made of pure and fresh mango" but the using of high amount of preservatives that have bacteriostatic effect on microbes and cause health hazards to consumers.¹ In this case those companies deceive their customers and sell juice by giving wrong and unethical advertisement. In fact there are companies making profits by selling pure mango juice made of sweet pumpkin, carrots, rotten mangoes, pesticides, preservatives etc.² "By taking nutrient product one will be taller, sharper and stronger" but maximum respondents experienced that nutrient product is energetic, but it cannot increase the height.³ Advertisement of energy drink is common in the television but energy drinks contain large number of caffeine and an assortment of other hazardous ingredients, which is harmful for health.⁴ Companies make prominent musical band members do these energy drink advertisements so that young generation can be influenced to buy their products.⁵

The study aims to comprehend the present scenario of accountability in advertisements relating to infringement of consumers' rights in

¹ <https://www.itfnet.org/v1/2017/10/bangladesh>, accessed on 24 November 2023

² পচা আম দিয়ে তৈরি হাফিল 'সেজান জুস' [Shezan Juice prepared using rotten mangoes], *The Daily Prothom Alo*, 21 July 2016 available at <https://shorturl.at/akFVY>, accessed on 24 November 2023

³ "Product Claims Made by Advertisers Growing Taller, *The Economic Times*, 26 May 2018. available at https://economictimes.indiatimes.com/industry/services/advertising/product-claims-made-by-advertisers-growing-taller/articleshow/6562395.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst. accessed on 25 November 2023.

⁴ Alsunni AA. Energy Drink Consumption: Beneficial and Adverse Health Effects. *Int J Health Sci (Qassim)*. 2015 Oct;9(4):468-74. PMID: 26715927; PMCID: PMC4682602, available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4682602/> accessed on 24 November 2023

⁵ Royal Tiger Energy Drinks TVC with Ayub Bachchu [YouTube video]. Royal Tiger Energy Drinks, 2023, available at <https://www.youtube.com/watch?>, accessed 25 November 2023; Black Horse Energy Drink TV ad. [YouTube video]. Black Horse Energy Drink, 2023, available at <https://www.youtube.com/watch?v=-ll0p8Qi3sk>, accessed on 25 November 2023.

Bangladesh. To identify the legal problems concerning the protection of consumer rights the study explores the prevailing laws of Bangladesh regarding consumer rights. The questions answered in the article are - is a celebrity accountable for an advertisement of a product having harmful ingredients? Are there adequate legal protections in Bangladesh for consumers who are misled by celebrity influence and have engaged in business with a brand? What is the present legal scenario to control accountability of advertisements in Bangladesh? This study is justified as it aims to find out the nexus between Government, law enforcing agencies' responsibility and prohibition of promotional fake advertisement.⁶ The study is based on qualitative information and documentary analysis. The study significantly used secondary sources such as reviews of scholarly journals and newspapers. The law of Bangladesh is reviewed in comparison of Indian legal setup.

2. Involvement and Accountability of Stakeholders in Advertisement

There are commonly three major stakeholders involved in an advertisement namely manufacturer, advertising agency and the promoters/endorsers. Advertising agencies are assigned by the manufacturers to promote their products or services, while doing so they endorse celebrities to ensure the maximum reach. It is also a very common practice that sometimes manufacturers directly communicate with the promoters without taking assistance from advertisement agencies. Same as the agencies the manufacturers also try to use the known faces to promote the product. That is why people found celebrities e.g. top cricketers like Shakib Al Hasan or top actors like Chanchal Chowdhury appearing in different TVCs. If an advertisement is misleading or untrue the manufacturers and the agencies are to be held liable under Bangladeshi legal system.⁷ Complexity arises when it tries to determine the liability of an endorser or promoter in case of a misleading advertisement as they are not

⁶ The law enforcing agencies have to deal with controversial appearance of celebrities in evay scam, also the judiciary had to faced the writ petition filed by Professor Dr. Nurul Islam, President, ADHUNIK to stop the advertisement of tobacco by referring World Health Organisations (WHO) guidelines. [*Professor Nurul Islam vs. Government of Bangladesh*, Writ Petition 1825 of 1999 (2000.02.07) (52 DLR, 413)]

⁷ Sections 407, 415, *The Penal Code*, 1860

directly involved with the products or services they are promoting. In this write-up the author aims to demonstrate if an advertise is misleading then whether the celebrity who endorse himself to promote such goods or service through the advertisement should be held liable or not. As there is no straight forward answer to this question the author will discuss both of the perspectives.

Firstly, if we accept that celebrities are also to be held liable along with the other stakeholders for misleading or untrue advertisement then the question arises regarding the nature of the liability whether it is civil or criminal liability. Here it is to be understood that to promote a product an endorser has to get into a contract with the agency. While making the contract it is the duty of the parties to ensure that no part of the consideration is unlawful according to the Contract Act, 1872. So if a celebrity promotes a product or service it will be presumed that he/she has adequate knowledge regarding the product⁸ and agrees the terms of the contract with due diligence. Based on such presumption if the advertisement is misrepresentative and have undue influence over the consumers then the celebrity endorser cannot deny the liability and he/she has to share the same civil liabilities as the manufacturer and the agency.

On the contrary, if we consider the alternative approach then the celebrity endorser can be exempted from any kind of liability in case of a misleading or untrue advertisement. The main argument behind this view is that the role of the celebrity in an advertisement is merely of a promoter. It would be unfair to presume that he has all in all knowledge about the product as it is not his field of expertise. For example, while endorsing for Magi Noodles one cannot expect that an actress like Madhuri Dixit or a superstar like Amitabh Bacchan would have prior knowledge regarding the excess presence of lead in the two minute noodles.

So the principle of 'good faith' should be considered as the matrix to determine his liability. If the celebrity promotes the product in good faith then he or she should be exempted from any kinds of liability whether it is civil or criminal. In such case, the author believes that though the endorser does not have any liability but has some responsibility. To prove his good faith, he should provide full

⁸ Here the author means the consciousness of celebrities about the quality of or pros and cons of the product.

assistance in the legal proceedings to prove the liability of the manufacturer and agencies for misleading or untrue advertisement. Hence, the complexity to determine the liability of a celebrity endorser in case of a misleading advertisement exists mainly because of the ambiguity in the existing laws of Bangladesh. The laws are not up to date and has no express provisions to determine the liability of the celebrities.

3. Legal Protections in Bangladesh for Consumers Deceived by Celebrity Influence

There is no obligation of a celebrity to become user who speaks for a commodity. In some countries it is mandatory (e.g. India).⁹ But in Bangladesh there is no sufficient legal mechanism to address the accountability associated with brand promotion. Absence of adequate legal protections requires to investigate existing laws such as the Sale of Goods Act 1930 which indirectly may be used to get remedy. Consumers who have been wronged by celebrity influence and have engaged in business with a brand may ask remedy through the Act. Advertisement is a demonstration [as a part of contract one kind of offer] made by the manufacturers for the consumers as to sale the exact product which has been described or sampled in the advertisement. The sale of Goods Act, 1930 provides adequate safeguards in case of such clear offer in a contract. According to this Act there is an implied condition that the goods or products are to match with the product in the description and the good must be as of the description. Also if a product is sampled in an advertisement along with product description then the seller is bound to provide the exactly same product as to the sample and description.¹⁰ Moreover, if the product is of such nature that the buyer has to rely upon the judgment and the skill of the seller then it also contractually binds the seller to provide him the product as promised in the advertisement.¹¹ If any product is mismatched with the one depicted in the advertisement then both the manufacturer and advertisement agencies are to be held liable under this Act. Also, as the

⁹ India recently enacted the Consumer Protection Authority (Prevention of Misleading Advertisements and Necessary Due Diligence for Endorsement of Advertisements) Guidelines 2022 under the Consumer Protection Act, 2019, available at https://consumeraffairs.nic.in/sites/default/files/CCPA_Notification.pdf, accessed on 12 December 2023

¹⁰ Section 15, *The Sales of Goods Act*, 1930

¹¹ Section 16, *Ibid*

celebrities are helping the manufacturers or advertisement agencies to promote their product so eventually, they also become an integral part of this seller-buyer contract and cannot deny liability.

Furthermore, deceptive advertisement is termed as an offence under the Consumers' Right Protection Act, 2009 (hereinafter CRPA) but hardly implemented in the country. The celebrity endorser can also be held liable under the section 2(20)(d) of the Act deceiving consumers with untrue or misleading advertisement as it is an anti-consumer right practice. Any dissatisfied consumer can file a written complaint against such anti-consumer right practice to the Director General of the Directorate of the National Consumers Right Protection.¹² The defaulters who deceive the buyers by false advertisement may be punished with one year imprisonment or with a fine not exceeding two lacs Taka or with both and from the realized fine the complainant is to be given 25% of it immediately.¹³

Apart from the civil liabilities the endorser may also have criminal liabilities. Cheating or inducing other by deceiving means is a criminal offence under The Penal Code, 1860.¹⁴ As a misleading advertisement deceive consumers so it can be framed as a fraudulent act and the endorser can be held criminally liable and shall be punished with imprisonment not exceeding seven years¹⁵ and shall also be liable for fine. Moreover a deceiving advertisement is also a kind of criminal breach of trust.¹⁶ Through advertisement manufactures depict a product in front of consumers and by using good words make them believe that the advertised products are of good qualities and will be beneficial for the consumers. It creates trust among the consumers. Eventually if the consumers are deceived by untrue or misleading advertisements then it is a clear breach of trust and for such breach the manufacturer shall be punished with imprisonment which may extent to three years or with fine or with both.¹⁷ By appearing in such misleading advertisements celebrity endorsers are eventually abetting this offence and shall also be liable in same manner as the manufacturer. The question raised in mind are Penal Code adequate

¹² Section 76 (1), *The Consumers Right Protection Act, 2009*

¹³ Section 44, *Ibid*

¹⁴ Section 420, *The Penal Code, 1860*

¹⁵ *Ibid*

¹⁶ Section 405, *Ibid*

¹⁷ Section 406, *Ibid*

for providing quick and speedy justice in this regard, as a general law the proceeding are time consuming. There is a special law in Bangladesh namely, the Indecent Advertisements Prohibition Act, 1963. The Act prescribes punishment for preparing or allowing indecent advertisement as a punishable offence, and the punishment are 6 month or fine or both and for any subsequent conviction that may extend to one year or with fine or with both. Person and company both are liable separately and punished accordingly.

The celebrity endorser has both civil and criminal liability. To detect the sector of liability India recently enacted the Consumer Protection Authority (Prevention of Misleading Advertisements and Necessary Due Diligence for Endorsement of Advertisements) Guidelines 2022¹⁸ under the Consumer Protection Act, 2019.¹⁹ According to this guideline celebrity endorsers can be held liable for appearing in misleading promotion. It is high time Bangladesh needs to take similar type of approach like India to remove the complexity regarding the celebrity's liability in deceptive advertisements.

4. Accountability of Brand Endorsers or Celebrities' Involvement in Deceitful Marketing

On the basis of how much a celebrity can influence a consumer's perception of a brand, the legal questions that emerge are, whether brand endorsers or celebrities are responsible for their involvement in deceitful marketing. In a recent incident, Tahsan Khan, a well-known Bangladeshi musician turned actor, and two other well-known figures, Rafiath Rashid Mithila and Shabnam Faria, were sued along with six other people, on December 4, 2021, by a 'Evaly'²⁰ customer. At the time, Tahsan Khan served as the goodwill ambassador, the 'Face of Evaly'²¹. Rafiath Rashid Mithila served as the brand ambassador for Evaly's lifestyle products²², while actress Shabnam Faria was named the

¹⁸ See https://consumeraffairs.nic.in/sites/default/files/CCPA_Notification.pdf

¹⁹ *Ibid*,

²⁰ Evaly is an e-commerce platform that is currently embroiled in controversy, and said to be a ponzi scheme.

²¹ 'Tahsan-The 'Face of Evaly'', *The Daily Star*, 12 March 2021, available at www.thedailystar.net/pr/news/tahsan-the-face-evaly-2059401, accessed on 17 October 2022.

²² *Ibid*, 'Evaly fraud case: Mithila gets permanent bail', 03 February 2022, available at www.thedailystar.net/news/bangladesh/crime-justice/news/evaly-fraud-case-mithila-gets-permanent-bail-2953586, accessed on 17 October 2022.

company's Head of Public Relation, Media, and Communication.²³ According to numerous press reports, the client put 3.18 Lakh Taka down for a motorcycle ordered in Evaly. However, neither the product nor the money was delivered to him. In a nutshell, the accusation was that the client was convinced to do business with Evaly because of the celebrities' affiliation with the company. The involvement of the well-known figures gave him the assurance to invest.²⁴ The question raised is there sufficient legal mechanism in Bangladesh to address the accountability associated with this type of brand promotion? The present case was filed through an FIR in Dhanmondi Police Station under section 406, 420 and 109 of the Penal Code, 1860.²⁵

Similar to this scenario, there are numerous instances where a celebrity endorses a brand to promote the company, while the campaign being questionable due to the company's deceiving marketing and misleading advertisements.²⁶ For instance, Cricketer Shakib Al Hasan appeared in an advert of 'Boost Nutritional Drink' which claimed that it will raise oxygen levels in the body and will triple the stamina of the consumer. Unfortunately this product is found neither certified by Bangladesh Standards and Testing Institution (BSTI) nor enlisted under BSTI Standards Catalogue till date.²⁷

²³ *Ibid*, 'Sabnam Faria becomes Evaly's Head of PR, Media & Communication', 02 June 2021, available at www.thedailystar.net/pr/news/sabnam-faria-becomes-evalys-chief-public-relations-officer-2103625, accessed on 17 October 2022.

²⁴ 'Tahsan, Faria, Mithila among sued by Evaly customer', *The New Age*, 10 December 2021, available at www.newagebd.net/article/156980/tahsan-faria-mithila-among-sued-by-evaly-customer, accessed on 17 October 2022; 'Tahsan, Mithila, Faria sued for Evaly link', *Bangladesh Post*, 10 December 2021, available at bangladeshpost.net/posts/tahsan-mithila-faria-sued-for-evaly-link-74933 accessed on 17 October 2022; 'Tahsan, Mithila, Faria sued over Evaly fraud', *The Daily Observer*, 10 December 2021, available at www.observerbd.com/news.php?id=343650 accessed on 17 October 2022; 'Campaign for Evaly: 3 actors sued', *The Daily Star*, 11 December 2021 available at www.thedailystar.net/news/bangladesh/crime-justice/news/campaign-evaly-3-actors-sued-2914481 accessed on 17 October 2022

²⁵ 'Another case against Evaly, its celebrity ambassadors', *The Business Standard*, 10 December 2021, available at www.tbsnews.net/bangladesh/crime/another-case-against-evaly-its-celebrity-ambassadors-341722 accessed on 17 October 2022

²⁶ 'Boost Sakib Al Hasan BD Commercial, *Desh Bidesher Biggapon*, available at youtu.be/lAmLqMPHMfg, accessed on 19 October 2022

²⁷ Bangladesh Standards and Testing Institution (BSTI), 'BSTI Standards Catalogue 2021(Till August 2021)', Ministry of Industries, Government of the People's Republic of Bangladesh.

Tamim Iqbal Marking 'Fresh Mejanda' as the world's first anger management drink²⁸ without any scientific proof or Actress Bidya Sinha Saha Mim starred in a 'Keya Lemon Soap' commercial promoting the tagline 'You are brave, you are beautiful', suggesting that this product has something to do with a person's courage and beauty²⁹ are some of the examples of misleading advertisements which casted the celebrities.

The point is that, the issue of being promoted by a well-known figure while making false, misleading, exaggerated, or deceptive claims in a commercial or in a promotion-campaign, is not uncommon in the marketing and advertising sector in Bangladesh rather to work for advertising has become a major source of income for celebrities.

As they are not making responsible by any legislation in the country most of the cases, they are not carefully examining the commodity's quality before signing their names on contracts. If there is any mistake, consumers might suffer and they might risk of losing money and sometimes might face the law enforcing agencies therefore it will be too late for regrets. Hence an effective restrictive law is necessary for the consumers and also for the celebrities.

6. Findings and Observation

In Bangladesh there is no clear guidelines or laws available to hold a celebrity liable for any deceptive advertisement. Though the Indecent Advertisement Prohibition Act, 1963 barred individuals from taking part in any indecent advertisement but this Act does not extend to hold individuals liable for false or misleading advertisements. The periphery and applicability of this Act is very limited. Besides other statutory laws such as the Consumer Rights Protection Act, 2009 or the Penal Code, 1860 also have their own limitations to justify the criminal liability of the celebrities for taking part in misleading or false advertisements. For instance, Penal Code, 1860 provides penal provision for cheating and criminal breach of trust. However, determining whether misleading advertisements fall within the purview of these provisions is subject to interpretation. Moreover, discerning the liability of celebrities in such advertisements is

²⁸ Aida Motion, 'Fresh Mejanda (Tamim Iqbal)', available at youtu.be/GqG_graFjFs, accessed on 19 October 2022

²⁹ 'Keya Lemon Soap TVC Mim, *Desh Bidesher Biggapon*', available at youtu.be/4fKptOKos_o, accessed on 19 October 2022

challenging. It remains unclear whether they should be considered offenders or abettor.

So that, even though consumers are often deceived by advertisements where celebrities misrepresent any product in an exaggerated way to convince the consumers, the victims cannot take any legal action against them. Even if they file complaints against those celebrity individuals it becomes hard for the law enforcement agencies and the judiciary to bring formal charges against the celebrities.

This redundancy in legal framework also creates confusion regarding the nature of the liability of the celebrities in case of any false or misleading advertisements. Should they have civil liabilities for breach of implied contract with the consumers or they should be criminally liable for fraud or cheating is still an unsolved question.

The key findings of this article are

- (i) Absence of well-developed legal framework to determine celebrity's liability in deceptive advertisements: No existing law has express provision to determine the liability of a celebrity for his/her presence in any misleading or untrue advertisement. This lacuna in legal framework creates complexity while entertaining any complain from the consumers against such celebrities. Besides, the applicability of the implied provisions regarding this issue in several Acts e.g. The Penal Code, 1860 or the Consumer Rights Protection Act, 2009 are subject to interpretation and cannot ensure complete justice. That is why it is still not clear if a celebrity can be held liable for appearing in a deceptive advertisement or not. The particular law Indecent Advertisement Prohibition Act, 1963 deals with individual responsibility regarding any indecent advertisement but individuals are not liable for false or misleading advertisements under the enactment.
- (ii) Absence of guidelines: India recently provides a guideline of 2022 under the Consumer protection Act, 2019 to prevent misleading advertisement which also laid down provisions regarding the necessary due diligence while endorsing for an advertisement. By the virtue of this guideline of 2022 India also brings an end to surrogated advertisement. But in this country no such guideline is introduced to prevent misleading advertisement and to make celebrities liable for their endorsement in such advertisement.
- (iii) Ambiguity regarding the nature of the liability: Whether the involvement of a celebrity in an inappropriate and a misleading

advertisement is a civil wrong or a criminal act is still unclear. Such ambiguity creates problem for the defrauded consumers while choosing a forum to take legal action against such celebrity. It also create hurdles to determine which law to be applicable to determine the celebrity's liability.

- (iv) Absence of fix parameters to distinguish the role of manufacturer, advertisement agency and promoter/endorser in an advertisement: In an advertisement manufacturer of the product, advertisement agency (if any) and a promoter does not have same role neither have same amount of knowledge. To hold someone criminally liable it is important to determine their intention and knowledge about the act. Without determining the level of involvement of a celebrity in an advertisement it is hard to get a clear picture about his liability. Unfortunately, none of the existing law neither define nor distinguish among the several stakeholders involved in an advertisement which ultimately creates ambiguity while determining their individual liability.

7. Conclusion

The participation of celebrities in advertisement to promote goods or service by untrue words or in a misleading way is a legal wrong as well as an offence. Meaning it creates tortious liability also punishable under penal laws. Such promotion even if done in good faith by the celebrities has an adverse effect over the consumers and can deceive them quite easily. But due to lack of proper statutory provisions often the liability of the celebrities for promoting products by using untrue words gets overlooked. As of consequence the celebrities don't feel the urges or responsibility to scrutinize the product or good more thoroughly before finally get into a contract with the manufacturer or the advertisement agency to promote the product.

A proper legal framework is to be introduce to deal with this issue. It can be done in various ways. Amendment can be brought in the Indecent Advertisement Prohibition Act, 1963 to expand its margin to cover deceptive advertisement along with indecent advertisement. The liability of the manufacturers, advertisement agencies and the celebrities need to be distinguished. The liability of the celebrities should to be specified and proper penal provision is required to be included in the Act to protect the consumers from misleading advertisements. Like India, Bangladesh can also make guidelines under Consumer Rights Protection Act, 2009 to prevent misleading advertisement with express provisions regarding the liability of

celebrities for endorsing such advertisements. Such guideline should also draw a clear distinction among manufacturer, advertisement agency, promoter and endorsers to understand their role in an advertisement which will eventually help to determine their liability in case of any deceptive advertisement. Alternatively a new Act may be introduced to deal with this matter. In the context of Bangladesh a new enactment specifically deals with the celebrity endorsement to promote any product may have better outcome and effectiveness to protect the consumers from misleading advertisements. The ultimate goal is to prevent misleading advertisement and to make the celebrities cautious before endorsing for any advertisement. Whether it is a new guideline or an amendment in existing law or a completely new Act, the instrument must have the clarity to make the celebrities feel responsible for their doing and force them to take all possible measures to ensure that they are not involved in any misleading or deceptive advertisement.