

# DISCLAIMER PROVISION: A TOOL OF CAUTION!



**Wednesday Wisdom**  
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Good to see and hold, but if broken considered sold.

Picture does not represent the product inside the pack

Investments may be subject to market risk

Cigarette smoking is injurious to health

This movie has no connection with real-life, or with any person living or dead and any connection is a coincidence.

What are the first thoughts which come to our mind when we look at these statements? These statements may appear cautionary in nature which warn the readers about certain consequences. Making users aware of the essential nature of certain things is the main objective of disclaimers [1].

Many activities pose significant risks to public safety and necessitate government/ regulatory authority intervention. For example: drinking, smoking, riding bike without wearing helmet. When addressing such issues, the government typically opts for one of two approaches: regulating through policies/ restrictions or complete prohibition.

Considering that some people will always engage in risky behaviour and that the government/ regulatory authority has little control over how people conduct themselves, Government/ regulatory authority often aim to mitigate the harm by regulating the use through some restrictions/ policies and guidelines. For example, instead of banning motorcycles entirely, governments mandate usage of helmets to reduce injury severity in accidents. Similarly, product and service providers in high-risk sectors are required to provide clear disclaimers. These government/ regulatory authorities measures aim to inform consumers about potential dangers, empowering them to make informed choices.

Are these statements always enforceable? Why are these statements made, when some of them may actually be harmful to the person selling the products? Is it mandatory to put such disclaimers? Lets find out and understand with some specific examples:

[1] The article reflects the general work of the authors and the views expressed are personal. No reader should act on any statement contained herein without seeking detailed professional advice.



## 1. Statutory Warnings on Cigarettes

Statutory warnings are provided on cigarettes since many years, specifically when India joined the WHO Framework Convention on Tobacco Control in 2004. However, recently the Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2004, was again amended in 2023[2] to make this obligation clearer.

One must remember that in spite of being harmful, tobacco products are not banned in the country completely, but any consumption, production, supply and distribution of the tobacco products are strictly regulated by various means. One method generally adopted is imposing strict restrictions on advertisement, promotion and sponsorship of tobacco products.

Under these rules, the publishers of online content have also been brought under many restrictions while displaying any scenes of consumption of tobacco products, like displaying health spots, anti tobacco health warnings etc. It is also prescribed that the anti-tobacco health warning message, health spot and audio-visual disclaimer, shall be in the same language as used in the online curated content. The warning needs to be a prominent static message at the bottom of the screen during the period of display of the tobacco products or their use in the programme along with a disclaimer requiring display of an audio-visual disclaimer on the ill-effects of tobacco use, of minimum twenty seconds duration each, in the beginning and middle of the programme. The disclaimers for tobacco products also generally provide a clarification that the actor does not promote usage of tobacco.

[2] Cigarettes and other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Amendment Rules, 2023 [Cigarettes and other Tobacco Products \(Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution\) Amendment Rules, 2023.pdf \(mohfw.gov.in\)](#)



## 2. Stock Markets

Stock markets are sometimes considered the easy road to make money, and investors run the risk of being deceived by the scrupulous players in markets. Sometimes inherent greed may also be a cause of loss. SEBI has issued various codes from time to time to ensure that mandatory disclaimers are included in advertisements. A code of advertisement for stock brokers was brought way back in 2001. The stock brokers are advised to specifically include the disclaimer: Investments in security market are subject to market risks, read all the related documents carefully before investing[3].

Further, such disclaimers are also mandatory in advertisements through audio-visual media like television. The disclaimer is required to be displayed on the screen and the parameters of display like amount of time, font, screen space etc. are also emphasized[4].

Earlier the disclaimer was pronounced in superfast voice which was difficult to understand but now it is mandated to be heard very clearly and hence played in a slow manner.

[3] Code of Advertisement for Stock Brokers  
[Code of Advertisement for Stock Brokers.pdf \(bseindia.com\)](#)

[4] SEBI/MFD/CIR No. 6 / 12357 /03 June 26, 2003



### 3. Movies

Most movies begin with various kinds of disclaimers, which may have been inserted either by the producers or sometimes are directed by authorities. A common disclaimer one sees is when the production house disclaims any kind of relationship or connect that the movie has with any living or dead person. Sometimes, the content of the movie may be such that a particular community finds it offensive and thus approaches the Court for a stay on such movie.



The Court may direct the producers for the movie to be released with appropriate disclaimers as deemed fit[5]. Recently, the movie Hamare Barah was permitted release on 18th June 2024 by the Bombay High Court[6], after deletion of certain dialogues and inclusion of specific disclaimers in the movie.

It is also pertinent to note that Rule 12(5)(c) of the Information Technology (Digital Media and Ethics Code) Rules, 2021 ("Digital Media Rules"), the Self-Regulatory Bodies also have the power to guide and advise a publisher to incorporate disclaimers or warning cards while they are dealing with grievances/complaints, in order to allay any concerns raised therein.

[5] More information can be found here

[6] Azhar Basha Tamboli Versus Ravi S. Gupta and Ors. (CIVIL APPELLATE JURISDICTION WRIT PETITION NO.8071 OF 2024) : Bombay High Court

An important case in this regard pertains to release of the movie Nyay- which was supposedly linked to the story of the late actor Sushant Singh Rajput (SSR).

The film makers had not obtained the consent of the family and stated that the movie intended to portray the struggle of upcoming actors and did not touch any personal or private life of the actor. While the Court examined various issues related to celebrity rights, privacy rights and specifically posthumous exercise of personality rights, one of the factors also pertained to a disclaimer. Disclaimer included in the movie was:

**Disclaimer: all characters, names, locations, buildings, properties, assigned are all fictitious, if there is any resemblance to any location, person, property, etc. it is purely coincidental and not intentional. Any mention of a community, language or region in this film is not intended to inflict contempt at any point. The film must therefore be viewed as purely a non-commenting source of harmless entertainment not designed to hurt or disdain any individual or a community.**

The Court specifically observed that the film is neither portrayed as a biopic, nor a factual narration of what transpired in the life of the SSR, and are depicted to be complete fictional and inspired from certain events which have occurred in the past and have been widely discussed and are available in public domain and permitted release, while keeping the scope open for enquiry on the truthfulness of the disclaimer.



## 4. FOOD

When it comes to food, the governing body is FSSAI. FSSAI recently brought in Food Safety and Standards (Advertising and Claims) Regulations, 2018[7] which lays down general principals related to claims on Food. It is specified that any Claims must be truthful, unambiguous, meaningful, not misleading and help consumers to comprehend the information provided.

It is further provided that where the meaning of a trade mark, brand name or fancy name contains adjectives such as “**natural**”, “**fresh**”, “**pure**”, “**original**”, “**traditional**”, “**authentic**”, “**genuine**”, “**real**”, etc., and such adjectives appear in the labelling, presentation or advertising of a food, is such that it is likely to mislead consumer as to the nature of the food.

It is mandated that in such cases:

- a disclaimer in not less than 3mm size shall be given at appropriate place on the label stating that – “**This is only a brand name or trade mark and does not represent its true nature**”.
- All disclaimers related to a claim shall be conspicuous and legible.
- The additional conditions or disclaimer statements may be used with non-addition claims to assist consumer understanding of the claims provided that the disclaimer statements shall be conspicuous and legible.



[7] [Gazette\\_Notification\\_Advertising\\_Claims\\_27\\_11\\_2018.pdf \(fssai.gov.in\)](#)





## 5. Private Transactions

In private transactions, it is common for vendors to disclaim their liability with respect to certain risk associated. For example, software service providers generally disclaim liability in case of a virus attack or manufacturers of equipment, may disclaim liability with respect to raw materials provided by the customers. In an interesting case before the Supreme Court- Taj Mahal Hotel Versus United India Insurance Company Ltd[8], the liability of 5-star hotels with respect to the loss of vehicles parked through valet parking was examined. On 1st August 1998, a visitor to Taj handed over his Maruti Zen car to the valet parking and the tag read:

**IMPORTANT CONDITION: This vehicle is being parked at the request of the guest at his own risk and responsibility in or outside the Hotel premises. In the event of any loss, theft or damage, the management shall not be held responsible for the same and the guest shall have no claim whatsoever against the management.**

When this visitor came out of the hotel at about 1 a.m., he was informed that his vehicle had been driven away by another person. Upon enquiry with the security officer, he found that three young boys had come to the hotel in their separate car, parked it, and gone inside the hotel. Later, they came out and asked the valet to bring their car to the porch. During this process, one of the boys, picked up the keys of the car of the owner from the desk, went to the car parking and stole the Maruti Zen car. Though the security guard tried to stop him, he sped away. A complaint was lodged with the police, but the car remained untraced.

After multiple rounds of litigation for 20 years, before the District Consumer Commission, State Consumer Commission and National Consumer Commission, the matter reached the Apex Court and the Apex Court applied various principles of law and after referring to a plethora of judgement specifically applied the rule of negligence on the hotel and stated that,

[8] CIVIL APPELLATE JURISDICTION CIVIL APPEAL NO. 8611 OF 2019: Supreme Court

The hotel-owner cannot contract out of liability for its negligence or that of its servants in respect of a vehicle of its guest in any circumstance. Once possession of the vehicle is handed to the hotel staff or valet, there is an implied contractual obligation to return the vehicle in a safe condition upon the direction of the owner.

The case was decided in favor of the vehicle owner and compensation was awarded to the owner, disregarding the printed disclaimer or notice on parking tag.

## CONCLUSION:

Apart from the aforesaid disclaimers, there are various codes that provide for disclaimers. Advertising Standards Council of India (ASCI) Code also details various disclaimers to be adopted in specific advertisements while promoting content that could influence youth or individuals. For example, advertisements for soft drinks featuring adventure activities performed by celebrities like Akshay Kumar, Hrithik Roshan, and Salman Khan include disclaimers stating, "The stunts are performed by professionals. Do not attempt any stunts at home." These disclaimers are crucial to mitigate liability related to injuries that could occur from attempting similar stunts.

Disclaimers may work as a powerful legal shield in certain cases. To ensure that the common public is not deceived by attractive appearances of certain products, government makes it mandatory to include disclaimers on certain products so that an informed choice is made by the consumer. However, one must remember that Courts may well disregard the entire disclaimer if it is found that the maker of such disclaimer has breached any of its fundamental duties.

For any feedback or response on this article, the authors can be reached on [aarti.banerjee@ynzgroup.co.in](mailto:aarti.banerjee@ynzgroup.co.in) and [priya.shahdeo@ynzgroup.co.in](mailto:priya.shahdeo@ynzgroup.co.in)

A circular portrait of Aarti Banerjee, a woman with dark hair, glasses, and a bindi, wearing a white and orange sari.

**Author: Aarti Banerjee**

Aarti is a Partner - Corporate Legal Advisory:

Aarti is experienced in corporate legal matters having specialization in drafting, vetting and negotiation of agreements. By qualification she is an advocate and a solicitor.

**Co- author : Priya Shahdeo**

Priya is a Manager-Corporate Legal at YNZ Legal. By qualification she has completed her Bachelor of Arts and Bachelor of Law from Bharati Vidyapeeth Deemed University.

