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Victoriam Legalis - Advocates & Solicitors | Newsletter



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We here, at Victoriam Legalis, believe in continuous learning and growth, and agree that one way to do the same is to keep up with the developments and changes taking place around us.

We live in an Information Age, and while there is no dearth of knowledge and information, we, through this newsletter, hope to give you a consolidated account of relevant updates and developments.

In light of the same, we present to you the first issue of our newsletter, which we hope, you find beneficial!

Happy Reading!



Media and Entertainment

1. Sardar Chanderpal Singh v. Union of India: Censorship of Kangana Ranaut's social media posts refused by the Hon'ble Supreme Court

In a PIL filed before the Hon'ble Apex Court, censorship was sought over the posts to be made in future by actress Kangana Ranaut in a bid to maintain law and order in the country. While the court has allowed police to continue with its probe, censorship of her social media posts has been refused by the Hon'ble Apex Court.

2. Telangana Government launches IP mascot, named IP Buddy Rachit

Telangana government launches intellectual property mascot, IP Buddy-Rachit. This platform will focus on getting IPR solutions and building connections. This will help start-ups, MSMEs and students. The platform has been set up by Resolute4ip in partnership with the Delhi Public School-Nacharam, Federation of Telangana Chambers of Commerce and Industry (FTCCI) and animation studio Rocksalt.

3. NRDC transfers technology to M/s Ambtu Life Science

According to the press release dated 07th January 2022, National Research Development Corporation transferred innovative and indigenous patented technology "Recombinant Ectoine from Deep Sea Bacteria for Skin Care and Cosmetic Application" for commercialisation to M/s Ambtu Life Science. This was done under the aegis of Make in India Mission.

4. BARC to release news ratings to revise protocols and mechanisms

The Broadcasters Audience and Research Council (BARC) was notified by the Ministry of Information and Broadcasting (MIB) to release news ratings with immediate effect. Following the much reported infamous TRP scam in October 2020, initiatives to revise the protocols and mechanisms concerned in this process are sought to be taken.

5. Deal Closed – Sony and Zee execute agreements to merge

Media and entertainment giants, Sony Pictures Networks India and Zee Entertainment Enterprises Ltd. execute definite agreements to merge. This deal is aimed at combining linear networks, digital assets, program libraries as well as production operations. This development is speculated to enhance the resultant combined company's ability to deliver premium content with a robust consumer experience across platforms.





Technology and E-Commerce Updates

1. China issues draft rules for fakes in cyberspace

As on 28th January, 2022, the Cyberspace Administration of China drafted rules for content providers that alter facial and voice data. According to the regulator, it is being done to protect people from being impersonated without their consent by deepfakes - images that are virtually indistinguishable from the original, and easily used for manipulation or misinformation. The fine is 10,000 Yuan for the first time offenders but if it is repeated, then, the fine would be 100,000 Yuan which can also lead to civil & criminal prosecution.

2. India-Central Asia Summit Clash; key outcomes and expectations for trade & investment

As on 27th of January, 2022, a virtual summit was hosted by Prime Minister Narendra Modi with the leaders Kassym-Jomart Tokayev of Kazakhstan, Sadyr Japarov of Kyrgyzstan, Emomali Rahmon of Tajikistan, Gurbanguly Berdimuhamedov of Turkmenistan and Shavkat Mirziyoyev of Uzbekistan so as to establish ground for future institutionalized cooperation. The outcome was that the Central Asian leaders had agreed for regular meetings with Foreign Ministers, Trade Ministers, Culture Ministers, and Secretaries of the Security Council while India decided to set up Joint Working Groups at the senior official level on Afghanistan and regarding the use of Chabahar Port.

3. Facebook Owner Meta to Lift Veil off Its Metaverse Business Reality Labs

Meta articulated a vision of the internet where people can digitally connect through virtual-reality avatars or teleport to see places like ancient Rome, and helped trigger the metaverse investment craze. Meta plans to break out the results of its augmented and virtual-reality hardware unit, Reality Labs, for the first time, an investment the company previously warned would cause a \$10 billion (roughly Rs. 74,680 crore) hit to 2021 profit. The company is hiring engineers and buying up multiple virtual reality gaming studios to build toward the metaverse, which is a broad futuristic idea of shared virtual realms that can be accessed via different devices and which Zuckerberg is betting will be the successor to the mobile internet.

4. BoAt airdopes 111 with 28 hours battery life, Siri, Google Assistant unveiled in India

The Airdopes 111 from boAt, one of India's wearable and audio brands, is now the latest entry-level TWS earbuds. With four different colours like ocean blue, sand pearl, carbon black and snow white, the earbuds have a 13mm driver, Bluetooth 5.1, IWP technology which connects the earbuds to the smartphone immediately when removed from the case. The earbuds can be purchased from Amazon and Flipkart. Boat Airdopes 111 also supports Google Assistant and Siri.





Fashion & Sports Law Updates

1. Aditya Birla Fashion to acquire 51% stake in brand Masaba

Aditya Birla Fashion and Retail Ltd will acquire a 51 per cent majority shareholding in popular and contemporary brand 'Masaba' promoted by the leading designer Masaba Gupta for a cash consideration of Rs 90 crore. The Aditya Birla Group has entered into a 'binding term sheet' agreement to acquire a 51 per cent stake in 'House of Masaba Lifestyle Pvt Ltd' to will strengthen its play into fashion for young and digitally native consumers. Additionally, this will help Aditya Birla Fashion and Retail to foray into branded beauty and personal care segment.

2. Indian Boxing Council to launch NFTs in partnership with TIAR

The Indian Boxing Council, which is a regulatory body for professional boxing has partnered with The Indian Art Revolution (TIAR) to launch NFTs which would include artwork, player profiles and key moments of the sports. The TIAR Metaverse will have a Decentralized Autonomous Organization governance system in place, which will allow the community to decide on the Venue, ticket price and the boxers they would like to see in professional events. The agreement reached between IBC and TIAR is a multi-year revenue sharing model aimed at generating monetary value for boxers, promoters and other stakeholders involved in the professional boxing ecosystem.

3. Manyavar owner Vedant Fashions IPO to open on 4th February, 2022

The initial public offering (IPO) of Vedant Fashions Ltd, which owns ethnic wear brand Manyavar, will open on 4th February, 2022. The public issue is purely an offer-for-sale of 3,63,64,838 equity shares by the promoter and existing shareholders. The OFS comprises sale of up to 1.74 crore shares by Rhine Holdings Ltd; up to 7.23 lakh shares by Kedaara Capital Alternative Investment Fund-Kedaara Capital AIF I, and up to 1.81 crore shares by Ravi Modi Family trust.

4. Rooter, a gaming & esports platform, raises \$25M to scale its user base

Rooter has raised \$25 million in a Series A funding round primarily for scaling its user base and game-streaming community to drive more growth in the organization. Rooter, through its streamers and esports events, covers top online games like BGMI, Valorant, Call of Duty, Free Fire, to name a few, on its platform. March Gaming, Lightbox, Duane Park Ventures, 9Unicorns, ADvantage, Capital-A, and Goal Ventures led the new Series A round. Existing investors, including IeAD Sports and Health Tech Partners, also participated.

5. Spartan Poker launch India's first-ever gaming NFTs

Spartan group have launched India's first ever gaming non-fungible tokens (NFTs) in the digital edition of Indian Poker Championship called the India Online Poker Championship (IOPC). IOPC, first came in 2015 to empower players from across the country to play and compete with each other digitally at the highest levels. Spartan group is the first to announce NFTs, web 3.0 and blockchain technology in the gaming industry and give participants a chance to monetize a virtual asset. Online gaming in India is slated to become an INR 290 billion industry with 657 million users by the year 2025.





Corporate & Commercial Law Updates

1. SBI suspends new recruitment rules relating to pregnant woman amid criticism from AIDWA, AISBIEA, CPI leaders:

According to Om Prakash Mishra, the Deputy Managing Director- Human Resources and Corporate Development Officer, if the woman is pregnant more than 3 months, then the candidate is declared temporarily unfit. Earlier, pregnant candidates were appointed in bank up to 6 months of pregnancy when they furnished a certificate from a specialist gynaecologist. The All India Democratic Women's Association (AIDWA) and All India State Bank of India Employees Association (AISBIEA) termed the new rules as "anti-women" and "hostilely discriminatory". Not only that FM Nirmala Sitharaman was urged to intervene in the matter and withdraw the circular. Amid criticism, the largest state-owned lender suspended the new recruitment rules, in view of the public sentiments.

2. NCLAT: Timely liquidation should be preferred over fruitless, endless resolution proceedings

The National Company Law Appellate Tribunal has upheld an order to liquidate the debt-ridden Siva Industries and Holdings Ltd, observing that "timely liquidation is preferred over fruitless and endless resolution proceeding". NCLAT specified If the time period for Corporate Insolvency Resolution Period was extended but the Resolution Plan was not accepted by NCLT then liquidation of the company can be ordered under Section 33 of the I & B Code. Timely liquidation is preferred over fruitless and endless Resolution proceeding.

3. HSBC appoints first Head of Sustainable Finance for Europe Commercial Banking:

HSBC while appointing current Ireland CEO and Head of Banking Alan Duffy as its first Head of Sustainable Finance for Europe Commercial Banking had a key strategy to be the leading international corporate bank in Europe. According to Alan, Europe is the gravitational centre for global sustainable finance, both in terms of setting policy and overall market activities.

4. Accommodative policy has served us well; RBI deputy governor:

According to RBI Deputy Governor Michael D Patra, India was among the few countries that have retained an accommodative monetary policy. According to him, Reserve Bank of India (RBI) remains committed to revive and sustain growth on a durable basis and continue to mitigate the impact of Covid-19 on the economy, while ensuring that inflation remains within the target going forward. The restoration of livelihoods and revival of MSMEs remains a formidable task.





Hospitality & Real Estate

1. Reliance Industrial Investments and Holdings Ltd. gets equity worth USD 98.15 million in a luxury hotel in New York

Reliance Industrial Investments and Holdings Ltd. has acquired the entire issued capital of Columbus Centre Corporation (Cayman) in Mandarin Oriental New York. The said deal has an equity consideration of approximately \$98.15 million and a 73.37% stake in the hotel. Reportedly, the two companies have entered into an agreement to formalize the above understanding and are keen to enter into a contractually binding relationship soon. The transaction is anticipated to be closed by the end of March 2022 subject to customary regulatory and other approvals.

2. Hetero Group's recent transaction to be one of the largest land deals in the city of Hyderabad in recent times

Hetero Group, a Hyderabad-based pharmaceutical company bought around 600 acres of land for over INR 350 crores in Hyderabad. The said land is located ahead of Shamshabad airport. The deal includes the entire stake in two subsidiaries from a US-based fund and is being reported to be one of the largest and most significant land real estate deals in Hyderabad in contemporary times.

3. Kashmir witnesses the worst tourist footfall of the decade

Hailed as the 'heaven on earth', one of India's valued tourist destination, Kashmir has recorded the worst downfall in the number of tourists. Due to another surge of the Covid-19 pandemic, the number of tourists travelling to Kashmir has fallen drastically. Several roadshows, campaigns, and other measures are being taken to attract tourists to the valley.

4. Phoenix Mills approves allotment of INR 62.70 Lakhs to shareholders of Phoenix Hospitality Company Pvt. Ltd.

The National Law Tribunal (NCLT), Mumbai has approved the scheme of merger by absorption of Phoenix Hospitality Company with Phoenix Mills. For this deal, the share exchange ratio approved by the NCLT as a part of the scheme of amalgamation, shall be complied with.

5. IATO requests relaxation in travelling norms and financial for revival of tourism and hospitality industry in wake of COVID crisis

Indian Association of Tour Operators (IATO) has placed a request before the Prime Minister seeking, inter alia, financial aid and relaxation in travelling norms to enable revival of tourism and hospitality industry in wake of the crisis caused by the pandemic in recent times.





Litigation & Dispute Resolution

1. Supreme Court Turns Down Plea To Extend Lapsed FCRA Licenses Of NGOs

The Supreme Court Bench of Justice AM Khanwilkar, Justice CT Ravikumar and Justice Dinesh Maheshwari passed an order rejecting the interim relief as prayed by the Petitioner seeking to allow continuation of FCRA licenses of organizations, which were valid as of 30.09.2021, till further orders. The Petitioner further contended that arbitrary and sudden cancellation of FCRA by the Central Government has resulted in the violation of rights of the NGOs and its workers and the people benefitting from such NGOs. Solicitor General Tushar Mehta on the instruction of the Home Ministry submitted that the FCRA license of 11,594 NGO applied for renewal before the cut of dated haven extended.

2. Political Parties Promising 'Freebies' Before Elections A 'Serious Issue': Supreme Court Issues Notice to Centre, ECI

In a plea filed for seeking direction against political parties promising freebies before the Election from the public funds, the Supreme Court has issued notice to the union of India and the Election Commission of India directing them to file the replies. The Petitioner contended that the political parties are promising freebies to common masses to lure them into voting them thereby by burdening the debt repayment of the State. It is further submitted that such arbitrary promises by the parties violates free and fair election as envisaged in the Constitution and offends Art 14 as there is no reasonable classification of the people.

3. Avoid needless appeals on arbitration awards: Govt

The Indian Government has directed its state-run firm not to indulge in filing an unnecessary appeal against arbitral award without looking into the merit of the appeal in order to avoid project delay as often such appeals are lost cause and the Government ends up paying more in terms of penalty and interest. In light of the Bilateral Investment Treaty (BITs) India success rate under BITs arbitrations is abysmal and since 2011, 20 arbitrations proceeding are begin initiated and as per public data available India has won in 3 while losing in 6. The Government officials stated that as per new guidelines suggesting the companies to set up a board-level committee to assess and make an informed decision in such cases.

4. SC dismissal of Devas plea to help India in global arbitration

The Supreme Court dismissed the appeal filed by the former director of Devas against the order of NCLAT and NCLT order of liquidation. The deal between the Devas and Antrix commercial private arm of ISRO was to provide high-speed data service with the help of S-band satellite spectrum to Antrix and as per the record, the Space Commission of India was not consulted before signing the agreement. In 2011, the UPA Government terminated the agreement which led to commercial arbitration before ICC, investment arbitration under the India-Mauritius and India-Germany bilateral investment treaty. The Supreme Court Judgment has bolstered its case against the arbitration award under consideration with the Judiciary in Netherland.



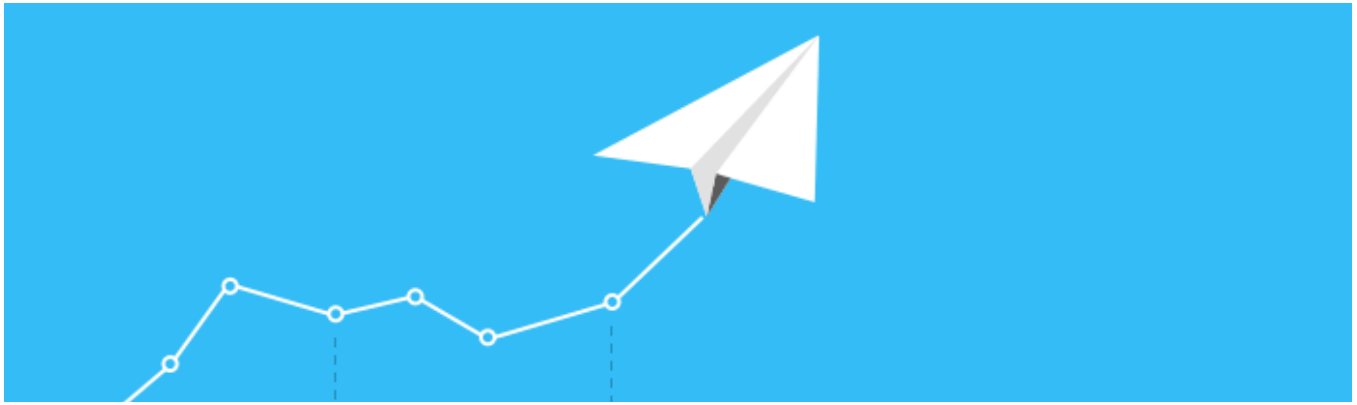
5. Amazon Challenges Hold on Arbitration with Future In Supreme Court

The US retail giant Amazon has challenged the Delhi High Court order staying the Singapore arbitration proceeding against the future group and has preferred an appeal against the Competition Commission of India suspension order of approval granted by the NCLAT to deal with Future Group. The Suspension Order by CCI has affected the strategy of Amazon to interfere with Future Retail Group and Reliance Industries. Amazon long argued that the Future Retail and Reliance deal is in violation of the 2019 deal with Future Retail for Rs 1430 Crore.

6. Arbitration Can Be Set Aside Only if Award is Against Public Policy of India: SC

The Supreme Court bench of Justice M.R. Shah and B.V. Nagarathan in an appeal observed that the award under the arbitration act can only be set aside if the award is against the fundamental policy of Indian law, the interest of the country, justice or morality or if it is patently illegal. In the present case, Kandhari Beverages Ltd preferred an appeal under section 37 before Haryana High Court against the objection petition under section 34 against the award of the arbitrator. The High Court allowed the appeal after entering into the merit and setting aside the order of the Additional District Judge and the Arbitrator. The Supreme Court observed that the High Court has exercised the jurisdiction not vest in it under section 37 of the Act.





Start-Up Advisory & Consultancy

1. Indian space tech startup Skyroot has raised over \$4 million in a round led by one of Google's earliest backers

The Space startup started by former ISRO scientists Pawan Kumar Chandana and Naga Bharath Daka in 2018 has raised \$4.5 million in a bridge funding round. The bridge round was led by one of the earlier backers of Google, Ram Shriram, through his venture capital (VC) firm Sherpalo Ventures. The Space Tech Company is involved in making cryogenic engines and cost-effective space launch capabilities for disrupting the status quo in the global launch market. The Company has previously announced that it is in talks to raise \$40 Million to fund its commercial launch operations which are scheduled next year.

2. Budget 2022: GST Cut, Incentives Likely for Startups and MSMEs? What Analysts Say

The Central Government has announced a dedicated startup day to celebrate the growth of startups in the past few years which has led India to a new height. That startup conducive environment is flourishing in India due to Central Government various policies for the sector. Finance Minister Nirmala Sitaraman shall be revealing the financial budget on the 1st of February 2022 and several leaders in the startup and MSME sector are anticipating major reforms in the industry. The Government shall be reducing the interest rate and making available higher capital for MSME growth. Further, it is anticipated that GST shall be reduced to 12 % from 18% on manufacturing for MSME and further reduction of GST rate on readymade cloth costing above Rs 1000 to 5% from 12%. Also, relaxation on GST for educational tech, online classes etc will encourage more enrolment of students.

3. 'Indian startups raised \$24 billion; 42 unicorns last year'

Indian startup has raised 24.1 billion in the previous year through investors thereby creating 42 new unicorns as reported by Industry body National Association of Software and Service Companies (Nasscom). Currently, India has 70 start-ups that have crossed \$ 1 Billion valuations or more and globally India ranks 3rd after USA and China ranks 1st and 2nd place respectively which had 444 and 301 start-ups that had a valuation of \$1 billion or more. Both USA and China has added 260 and 146 start-ups with a \$ 1 Billion valuation or more respectively in 2021. As per the reports, 11 start-ups in India took the initial public offering route to raise investment from the market and 16 start-ups are expected to take IPO route in 2022.

4. Delhivery may delay planned IPO amid volatile market conditions: Report

Merchant Banker has advised the start-up to wait for 2 -3 months considering the market volatility and also want to avoid LIC IPO which is scheduled to open in the 1st week of March. Considering the position of the market, the start-up is expected to list before the end of this financial year 2022. In the light of the failure of Paytm IPO which listed downside on its 1st day of listing, the start-up is taking a cautious step to minimise loss. The start-up has received the approval of market regulating authority SEBI to raise \$ 1 Billion in the public offering thereby taking the total valuation of the company to \$ 6 Billion.





Metaverse and Law

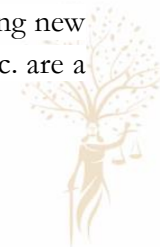
- Tanya Mehta

Metaverse is the new buzzword that everyone is obsessing over for the past few months. Only recently Mark Zuckerberg announced Facebook's new corporate name "Meta". This public announcement also included the creation of a "metaverse". But what is metaverse?

Metaverse in simple words is a parallel digital universe. It is a 3D rendered virtual reality. Metaverse is an immersive user experience that will enable one to do activities in this parallel universe just by sitting at home. One can create digital versions of themselves in this universe. The past two years, though, a bane for most industries, have been a boon to the tech industry. Work from home and remote working culture has become the new normal due to the COVID-19 pandemic. However, the world was not prepared for it. It took months for people to be able to work normally without sharing a workspace with their colleagues and subordinates. Tech companies all over the world have taken advantage of this fact. They are trying to build virtual worlds so that people do not miss out on the experience of being physically present. Tech companies are visualizing parallel universes or "metaverses" where people will be able to experience being with each other in form of avatars but physically they will be sitting on their couches. The metaverse is conceived to be "Web 3.0". It's going to be a whole new world of endless possibilities.

It is important to know that Facebook or Meta isn't the first tech company to come up with the concept of the metaverse. Metaverses already exist. Video games like Minecraft, Fortnite, and Roblox are a few online game universes that give the users an immersive experience. In these games, people can build their avatars, build different destinations, and make friends all over the world without actually meeting them. Even though these are just the inklings of a full-fledged metaverse, the essence remains the same. Apart from these games, there is another version of a metaverse called "Decentraland". Decentraland is a virtual universe where people can buy and sell digital assets like land, estates, avatars, etc. These assets can be bought by an exclusive crypto-currency called "Ethereum". People can play games, create their mini-worlds and own environments in this universe.

Even though metaverse has already been there in the picture for quite some time now, is the real world even prepared for it? While we are still figuring out the legal complexities of Web 2.0; Web 3.0 awaits to bring new legal challenges. Data privacy, cybersecurity, intellectual property issues, the legality of digital issues, etc. are a few over-the-top issues that can cause problems.



With Facebook's recent controversies about user data handling, privacy concerns, election misinformation, hate crimes, and many others, are the netizens ready to give out more personal information to these tech giants? With Web 2.0, people gave out only some sensitive information, but with the metaverse, many more virtual reality, and augmented reality technologies are going to be used. A lot more sensitive information will be gathered. To create this immersive experience, VR goggles, high-end speakers, cameras, and other gear and equipment will be required. These gears will demand biometric information and other data and statistics. This tech will help create a more humanized version of oneself in the metaverse. It is highly possible that these gears will collect and record information from our everyday lives, even normal conversations from our real world! This information will be handled and stored in the servers of the particular metaverse that you are a part of. There are a lot of questions regarding this. How will this information be used? Since the metaverse has no territorial boundaries, what laws will be applicable? How will cybersecurity be managed in the metaverse? How will impersonation and trolling be taken care of? Will your avatars have personality rights? We do not have answers to most of these questions in the current Web Version. Answering these questions in the context of Web 3.0 is certainly going to be complicated.

Intellectual property laws will certainly have to change and become stricter. With inventions within the metaverses, several piracy issues will emerge. Licensing laws will have to be revamped coherently with the rise in new digital intellectual property. Avatars in the metaverse will have a personality, and how will these personality rights be managed is a huge issue. The validity, maintenance, and record-keeping of digital assets and digital currency will require a whole new system in place which governs it.

While more and more companies like Microsoft, Apple, Facebook, etc. plan on building metaverses and creating a whole new world. We need to figure out laws that protect humankind from the disadvantages of these virtual worlds. Building a digital future is a huge step and a pathway to a new and exciting future however, it should have a civic-minded and real-life approach to it.

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1. <https://www.natlawreview.com/article/coming-metaverse-there-may-be-excitement-there-certainly-will-be-legal-issues>
 2. <https://www.thomsonreuters.com/en-us/posts/legal/legal-metaverse/>
 3. <https://www.stephenson.law/what-is-the-metaverse-and-why-does-a-law-firm-care/>
 4. <https://en.wikipedia.org/wiki/Decentraland>





Shill Marketing of Cryptocurrency on social media- A legal limbo

- Ananya Gupta

It's the day and age of social media. Social media has seen a growth from a mere social site for people to connect to becoming the most accessible, trending marketing platforms having a global reach. Brands have been using social media platforms left, right and centre to promote their products and services. The most popular strategy opted by brands for promotion is endorsement via celebrities and social media influencers. Celebrities and influencers are being approached by brands to promote their product/services and help them reach the target customers. We often see celebrities and influencers, very enthusiastically, sharing their experiences with their followers about a certain product/service of a brand. This is what is known as 'Shill Marketing', where an individual or group of people promote a particular product, services to generate curiosity and excitement among their followers (being the ultimate end consumers) and influence them to use that product/service. It is mostly done in collaboration with social media influencers for a quicker and wider reach.

The most recent advertisements that have hit the social media market with a storm are the 'Cryptocurrency Advertisements' by celebrities and influencers. Cryptocurrency has become a part of trend and we see a lot number of platforms providing cryptocurrency investment or exchange services. We often spot shilling on social media wherein influencers promote unknown cryptocurrencies and or exchange platforms. Many celebrities and influencers have been promoting such platforms and influencing people to invest in cryptocurrency. While advertising on social media is not an issue per say, but promoting cryptocurrency can have repercussions on the influencers and celebrities if proper due diligence is not done. In the recent turn of events, boxing legend Floyd Mayweather and reality show star Kim Kardashian among other were sued by investors for misleading them into investing in a little-known cryptocurrency. Reports allege that the brand collaborated with these celebrities to misleadingly promote and sell cryptocurrency. These developments bring us to the challenges that are associated with cryptocurrency which is highly unregulated in several countries including India. Despite high volatility and absence of government regulation, the cryptocurrency exchanges and platforms are flourishing. These start-ups with massive funding are investing money in its marketing and advertising. The other shilling technique used for cryptocurrency is where certain individuals invest money into specific cryptocurrency. This stratum of endorsers themselves invest in a cryptocurrency and go to great lengths to lure potential investors into investing into that specific cryptocurrency. At times, founders or team members try to covertly endorse their tokens without backing it up with legitimate

whitepaper and such shilling technique can be problematic and is mostly bogus. Shill marketing is banned in traditional financial markets to protect the investors, but unfortunately, the laws for digital markets are embroiled and uncertain.

Advertisement Laws in India

India does not have a specific act or regulation that governs advertising. There is an advertising code¹ created under Cable Television Networks (Regulation) Act, 1955 which specifies the kind of advertisements that cannot be shown in cable services. On the other hand, there are acts that prohibit advertising of products such as cigarettes, tobaccos. One of the most important regulations are The Code for Self-Regulation of Advertising Content in India² by the Advertising Standard Council of India (“ASCI”). The ASCI code provides for restrictions for the kind of content to be opted for while advertising. ASCI code states about the usage of products/services that are banned under law, such products and services that omit something that is required as per any laws, rules and regulations should not be advertised.

Apart from the above, the advertising council came up with guidelines for social media influencers³ that imposes an obligation on influencers to disclose regarding partnership with brand and verify the claims made by the product/services before promoting them. It is mandatory for social media influencers to comply with these guidelines and disclose about the material connection with the brand.

Issues with advertising of cryptocurrency

There are no acts or guidelines with respect to advertising of cryptocurrency in India. It is critical to note that mechanism of cryptocurrency in itself is evolving. There is absence of proper laws to govern the workings of cryptocurrencies in India. The cryptocurrency space is still a grey area as the legality, merits, demerits are still being analysed by the government. Time and again authorities have specified that present cryptocurrencies are not government led and does not constitute a legal tender⁴. No license or authorization has been given to platforms operating cryptocurrency and such platforms do not have any regulatory permission or have been provided any protection in India. However, at present, there is no ban on cryptocurrencies in India. Initially, RBI had banned the virtual currencies in the year 2018 but in 2020, Supreme Court nullified such ban as RBI failed to show any damage being done by dealing in cryptocurrencies⁵. In 2021, government came up with the ‘Cryptocurrency and Regulation of Official Digital Currency Bill, 2021. This bill specifies that all private cryptocurrencies shall be prohibited with certain exceptions to promote the underlying technology of cryptocurrency and its uses. The concern is, that the bill, does not provide any clarity as to what constitutes private cryptocurrency. This bill is yet to be passed by the parliament and therefore, poses ambiguity regarding cryptocurrency. To this date, there is no clarity on working of cryptocurrencies in India.

The important question to be considered is, that is it fine to advertise cryptocurrency with such uncertain legality? Any misleading information provided by way of these advertisements can be troublesome for the endorsers. The Consumer protection Act, 2019 regulates misleading and unfair practices opted by brands that violates the rights of consumers. It also imposes penalties up to Rs 10 lakhs on the endorser of a false or misleading advertisement for the first offence. In case of second offence, the endorser may be liable for a further penalty of up to Rs 50 lakh. Additionally, consumer protection authorities may prohibit the endorser from endorsing any other products or services for up to one year at first instance. On subsequent offence by the endorser, this period of prohibition may be extended up to three years.

¹ Programme and Advertising code under Cable Network Rules, 1994- <https://mib.gov.in/sites/default/files/pac1.pdf>

² https://ascionline.in/images/pdf/code_book.pdf

³ Guidelines for influencer advertng in digital media- <https://asci.social/guidelines>

⁴ Government cautions people against risks in investing in Virtual Currencies; Says VCs are like Ponzi Schemes <https://pib.gov.in/PressReleaseDetail.aspx?PRID=1514568>

⁵ *Internet and Mobile Association of India v. Reserve Bank of India Writ Petition (Civil) No.528 and 373 of 2018*



Conclusion

At present, it can be understood that there is no ban on cryptocurrency and therefore, there is no prohibition on marketing or advertising of cryptocurrency through cable services or on social media platforms per say. There are no express laws or regulations that prohibits advertising of such cryptocurrency; however, cryptocurrency advertisements should be in accordance with the standards provided for advertising in India. Celebrities and social media influencers can continue to promote cryptocurrency; however, proper due diligence is necessary before opting for such promotions. Celebrities and social media influencers cannot be held responsible for the claims on any products or services but it is important for them to understand the mechanism and have adequate knowledge of the service before the same is being promoted. These cryptocurrency entities tend to make number of exciting claims about their services but such claims should be thoroughly scrutinised and the claims that cannot be substantiated with proper evidence by way scientific data should be avoided. Celebrities and social media influencers may not own such services but if it is established that they failed at doing the due diligence or verification of the service and were misleading the consumers, there could be serious repercussions such as penalty under consumer protection laws. It could also tarnish their intangibles i.e., the reputation they have built over the course of time and it may affect their career if proven otherwise. It is important for them to be aware about cryptocurrency before advertising it. It has been specified in the advertising code that advertisements that invite consumers to invest money, should not have any content that may mislead the consumer regarding investment returns, security being offered and factors that are unforeseeable and are conditional upon the market workings and applicable laws. It should be ensured that any misleading information is not provided regarding investments or the returns. Terms and conditions should be clearly conveyed to the public. The ambiguity can only be removed after implementation of proper regulatory mechanism for cryptocurrency in India.



Get in Touch

We hope you enjoyed reading the newsletter, and we would love to hear your thoughts on what you want to be covered in our next edition!

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