

Puffery Advertising In India: Balancing Creativity And Consumer Protection

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Abstract

Puffery as a word generally means any publicity which is highly exaggerated to put forward any claims that are generally deceptive. Companies make use of advertisements to promote their products in the market. For ensuring truthfulness and honesty in the claims made by the companies regarding their products, guidelines have been issued by the Advertising Standards Council of India. As no pre-approval of the advertisements is required prior to its publication, both through on-line and off-line platforms, hence, despite these guidelines, recently it has been observed that there is a steep rise in the puffery advertisements by companies to lure their consumers. Even the regulatory set-up with complaints of such false claims received by the ASCI, they are referred to the Consumer Complaints Council (CCC). Looking to the grievous nature of the wrong impact these puffery advertisements make on the innocent and ignorant populace specifically children, this research paper focusses primarily on the need as to why these puffery advertisements should be restricted along with explaining the meaning of puffery advertisements in present context, its regulators and the judicial attitude towards these puffery advertisements.

Keywords: Puffery, Misleading, Advertising, Regulations, Competition Law, ASCI, CCC

Introduction

In an era, when the entire society is being driven by market-oriented forces, it becomes imperative for companies to explore new strategies to highlight their products in this competitive economy. One of such strategies is advertising which has been widely used across the years by companies to sell their products by attracting the consumers. Striving hard to find better alternatives to increase their sale alongside keeping the ethical marketing strategies intact, as these ethical strategies not only increase sale in the long run but also help in maintaining long-term relationships with customers. In their dilemma to increase sales in ethical blanket, most companies today resort to puffery advertising in place of false advertising,

Advertising permeates contemporary culture, influencing consumer tastes and buying behaviour. Businesses frequently utilise puffery advertising, a promotional strategy that makes exaggerated claims or subjective remarks, to draw attention and foster a favourable opinion of their goods or services. While puffery can be amusing and inventive, it creates issues with consumer protection, the ethical limits of advertising, and the possibility for consumer misinformation. The practise of puffery needs to be carefully considered in the context of India, where a broad and quickly expanding market exists, to find a balance between encouraging creativity and guaranteeing accurate customer information. Puffery advertising involves the promotion of a good or service using exaggerated language, ambiguous claims, or personal opinions without attempting to provide factual facts. Customers generally see these overstated assertions as enthusiastic statements rather than actual facts.

"Advertising is simply the identification and description of quality and location." Its sole purpose is to sell the product or services¹. Activities involving a non-personal message identified by the sponsor about a product or organisation to be presented to the audience is advertising.² According to Mason and Rath, "Advertising is salesmanship without personal salesman³." "Advertising attracts attention to the item to be sold, and the acquisition of the item to be sold is the only inducement to purchase." Advertisement adopts the same characteristics as the object it attempts to promote or bring to the public's attention to be used by it. Advertising

¹ William J. Stanton in Advertising Management by Jay Bansal, 2021, 4 Agra: SBPD Publications.

² Ruchi Gupta 2012 Advertising Principles and Practice, 5 New Delhi: S. Chand Publishing,

³ Sanjay Gupta, Pooja Nasa 2021 Advertising Management 2 Agra: SBPD Publications.

becomes puffery when it uses exaggerated, subjective, or vague claims that are not meant to be taken as factual statements.

Puffery advertising is a legalised form of advertising until the time it does not resort to making false claims and sweeps into false advertising. It is generally employed by companies to grab the attention of the consumers towards its product and aids them in making quick decisions regarding purchase of products. It is an exaggeration of the qualities of a product. For instance, phrases like "The best coffee in the world" or "Unbeatable quality" fall under the category of puffery because they are intended to promote a brand rather than to be taken literally. Under the puffery rule, it is unethical to make comparisons to defame or slander the goods of the competitor whereas claims to term one's goods better than others or are the best. Advertising in puffery has to be done with a positive bent of mind. The goods of the competitor can neither be called bad or inferior⁴.

Promotional Language that makes Advertising Puffery

Advertising is an essential component of the modern business landscape. Companies strive to promote their products and services through various means, with advertising being one of the most effective tools at their disposal. However, not all advertising is straightforward and factual. Some advertisements rely on promotional language that blurs the line between reality and exaggeration, creating what is commonly known as "puffery." Puffery is a marketing technique that employs subjective, exaggerated, or vague claims to persuade consumers without making concrete, verifiable statements. One of the hallmarks of puffery in advertising is the use of subjective claims. Subjectivity involves opinions, emotions, and personal preferences rather than verifiable facts. Advertisers often use words and phrases like "best," "tastiest," "finest," or "the ultimate" to express their subjective opinions about their products or services⁵.

Puffery frequently involves vague or non-specific claims that do not provide concrete details or evidence. Advertisers may use terms such as "fastest-growing," "ultra-effective," or "revolutionary" without defining the criteria or standards being used to make these assertions. Such language leaves consumers with a general impression of greatness but fails to offer specific information that can be verified or compared with other products or services⁶. Exaggeration and hyperbole are common elements in puffery advertising. Advertisers use these techniques to make their products or services appear more impressive or exceptional than they may actually be⁷. Phrases like "amazing results," "unbelievable performance," or "incredible savings" are often employed to create a sense of excitement and desirability⁸. However, these claims lack specific, measurable evidence and are meant to appeal to consumers' emotions rather than their rational judgment⁹. Puffery is more about expressing opinions, personal preferences, or subjective feelings rather than presenting verifiable information¹⁰. Puffery

⁴ The Calcutta High Court, in *Reckitt & Colman of India Ltd. v. M.P. Ramachandran and Ors.* 1999 (19) PTC 74 (Cal)

⁵ The coffee giant Starbucks was sued for making the claim that Starbucks coffee was "The Best Coffee for the Best"

⁶ Amul Butter is often advertised as "The Taste of India," which is a subjective statement about its flavour. It doesn't provide quantifiable evidence of being the definitive taste of the entire country.

⁷ Dettol Handwash - "Kills 99.9% of Germs". Nestlé's Maggi noodles have used the tagline "Taste Bhi, Health Bhi" in their advertising. While they promote the product as a tasty and healthy snack, the claim is subjective and doesn't provide specific evidence of its health benefits. That Harpic kills 99.99% germs, kills Sars-CoV- 2 virus

⁸ Fair & Lovely, a popular skin cream in India, has used claims like "Get Fairer, Brighter Skin in Just 4 Weeks" in their advertisements. These claims are subjective and do not guarantee specific results for every user.

⁹ Rin detergent has advertised with the tagline "Duguna Safedi," which means "double the whiteness." This is a subjective claim that may not have a precise scientific basis for measuring whiteness.

¹⁰ Pepsi's famous tagline "Yeh Dil Maange More" translates to "This heart wants more." It's a subjective and emotional appeal to consumers, rather than a factual statement about the product. Lux Soap has been promoted

avoids making concrete assertions and doesn't provide specific evidence of the product's effectiveness that can be proven true or false¹¹. Puffery often relies on opinions, emotions, or general impressions rather than concrete, measurable facts. For example, claiming a product is "the best in the world" is subjective because it's difficult to objectively determine what constitutes the best.

Puffery Advertising and False Advertising

Puffery advertising is subjective and involves exaggeration. So, does that mean puffery advertising is lying? The answer is no. By sticking with exaggerated, subjective statements that are difficult or impossible to prove, puffery advertising avoids telling lies. Making claims about products that are objectively untrue and can be proven to be incorrect is called false advertising and it is illegal¹². False advertising features lies, while puffery advertising does not. As puffery is legal, it cannot take as 100% reliable as a coin has two sides puffery has positive and more important negative sides¹³.

False Advertisements	Puffery Advertisements
While statement used are objective in nature, they are not true.	It is subjective/hyperbolic in nature, uses extreme egression.
Can be proven or disproven	Cannot be proven or disproven
It is illegal. It is wilfully concealing facts or misleading someone to popularize the product and brand name	It is legal. The vague statement may not be true or may lead to false implication
An example is Dabur Chavanprash claims that children get three times better immunity to fight against the disease.	An example is Gillette – “The best man can get

Regulations for Puffery Advertisements

Any attempt at developing a mechanism to regulate advertising has to be made with reference to the constitutional guarantee provided to the same under Article 19(1)(a) of the Constitution of India¹⁴. Initially, advertising was excluded from the ambit of the provision, with the Supreme Court holding in Hamdard Dawakhana v. Union of India¹⁵, that while advertisements were a form of speech, they were not constitutive of the concept of ‘free speech’. A shift in the constitutional position was evidenced in the case of Tata Press v. Mahanagar Telephone Nigam Ltd.¹⁶, wherein advertising was observed to be beneficial to consumers as it facilitated the free dissemination of information, leading to greater public awareness in a free market economy. The Delhi High Court in Dabur India Ltd. v. Colortek Meghalaya Pvt. Ltd. and Ors.¹⁷ ruled that an advertisement is a commercial speech¹⁸ and is

as "The Beauty Soap of Film Stars." This is a subjective claim, as the soap's benefits may vary from person to person.

¹¹ Himalaya Herbals uses the claim "Natural, Safe, and Effective" in their advertising, which is subjective.

¹² Class action lawsuit against Burger King claims its ads overstate the amount of meat in its Whopper burger and other sandwiches. Lawsuits against food ads rise sharply amid allegations of false advertising, The Hindu Business Line, September 01, 2013, Washington. Available at <https://www.thehindubusinessline.com/news/world/lawsuits-against-food-ads-rise-sharply-amid-allegations-of-false-advertising/article67258630.ece> assessed on September 3, 2013.

¹³ Dr. Shabnam Gurung, Puffery Advertisement in India and Its Impact on Children, International Journal of Education, Modern Management, Applied Science & Social Science, 19 Volume 03, No. 03(II), July - September, 2021.

¹⁴ The Constitution of India, 1950, Art.19(1) (a), (1) All citizens shall have the right (a) to freedom of speech and expression”.

¹⁵ AIR 1960 SC 554

¹⁶ (1995) 5 SCC 139

¹⁷ 2010 (44) PTC 254 (Del)

¹⁸ In Tata Press Ltd. v. MTNL, (1995) 5 SCC 139 the Supreme Court held that "commercial speech" is a part of freedom of speech and expression guaranteed under Article 19(1)(a) of the Constitution. However, what is

protected under the Constitution of India. However, it must not be false, misleading, unfair or deceptive. It also ruled that, while glorifying its product, an advertiser must not denigrate or disparage a rival product. At the international level, the World Bank and the Organisation for Economic Cooperation and Development¹⁹ (OECD) Model Law list the following trade practices to be unfair²⁰

- distribution of false or misleading information that is capable of harming the business interests of another firm;
- false or misleading comparison of goods in the process of advertising

Section 2 (28) of the Consumer Protection Act, 2019 describes "misleading advertisement" in relation to any product or service, means an advertisement, which—

(i) falsely describes such product or service; or

(ii) gives a false guarantee to, or is likely to mislead the consumers as to the nature, substance, quantity or quality of such product or service; or

(iii) conveys an express or implied representation if made by the manufacturer or seller or service provider thereof, would constitute an unfair trade practice; or

(iv) deliberately conceals important information;

Section 2 (47) of the Consumer Protection Act, 2019 "unfair trade practice" means a trade practice which, for the purpose of promoting the sale, use or supply of any goods or for the provision of any service, adopts any unfair method or unfair or deceptive practice including any of the following practices, namely:— (i) making any statement, whether orally or in writing or by visible representation including by means of electronic record, which— (a) falsely represents that the goods are of a particular standard, quality, quantity, grade, composition, style or mode...The Department of Consumer Affairs (DoCA) had partnered with ASCI to address all complaints pertaining to misleading advertisements received on Grievances Against Misleading Advertisements (GAMA) portal²¹.

Under the Competition Act, unfair or discriminatory trade practices fall under the category of:

- Anti-Competitive Agreements
- Abuse of Dominant Position and
- Regulating Combinations.

Therefore, unfair trade practice will fall within purview of Competition Act only when the enterprise is in dominant position or have indulged in making anticompetitive agreements and combinations. Under the Competition Act, unfair or discriminatory trade practices fall under first category of abuse of dominant position²².

The Advertising Standards Council of India (ASCI), established in 1985, is committed to the cause of self-regulation in advertising, ensuring the protection of the interests of consumers. ASCI seeks to ensure that advertisements conform to its Code for Self-Regulation²³, which requires advertisements to be legal, decent, honest and truthful, and not hazardous or harmful, while observing fairness in competition²⁴. Chapter – I ensure



"commercial speech" was not defined or explained. An advertisement is commercial speech and is protected by Article 19(1)(a) of the Constitution.

¹⁹ On 14 December 1960, 20 countries originally signed the Convention on the Organisation for Economic Co-operation and Development. Since then, 18 countries have become members of the Organisation.

²⁰ OECD, Recommendation of the Council concerning Guidelines for Protecting Consumers from Fraudulent and Deceptive Commercial Practices across Borders, OECD/LEGAL/0317, OECD 2013, p 6.

²¹ At gama.gov.in

²² As per Section 4(2) of the Competition Act, 2002, there shall be an abuse of dominant position 4 [under sub-section (1), if an enterprise or a group]. (a) directly or indirectly, imposes unfair or discriminatory— (i) condition in purchase or sale of goods or service...

²³ The Code for Self-Regulation in Advertising Content in India by the Advertising Standard Council of India (ASCI)

²⁴ This Code for Self-Regulation has been drawn up by people in professions and industries in, or connected with, advertising, in consultation with representatives of people affected by advertising. This code ensures the

truthfulness and honesty of representations and claims made by advertisements, and to safeguard against misleading advertisements²⁵.when talking about puffery the said regulations said that “Advertisements shall neither distort facts nor mislead the consumer by means of implications or omissions. Advertisements shall not contain statements or visual presentation, which directly, or by implication or by omission or by ambiguity or by exaggeration, are likely to mislead the consumer about the product advertised or the advertiser, or about any other product or advertiser²⁶.” Chapter I (4) of the ASCI code states that “Advertisements shall neither distort facts nor mislead the consumer by means of implications or omissions²⁷.” Any misleading or fraudulent advertisements are upheld by Customer Complaints Council of ASCI. Section 24 in The Food Safety and Standards Act, 2006 lays down restrictions of advertisement and prohibition as to unfair trade practices.

(1) No advertisement shall be made of any food which is misleading or deceiving or contravenes the provisions of this Act, the rules and regulations made thereunder.

(2) No person shall engage himself in any unfair trade practice for purpose of promoting the sale, supply, use and consumption of articles of food or adopt any unfair or deceptive practice including the practice of making any statement, whether orally or in writing or by visible representation which-

(a) falsely represents that the foods are of a particular standard, quality, quantity or grade-composition... Food Safety and Standards (Advertising and Claims) Regulations, 2018 mentions that the meaning of a trade mark, brand name or fancy name containing adjectives such as “natural”, “fresh”, “pure”, “original”, “traditional”, “authentic”, “genuine”, “real”, appearing in the labelling, presentation or advertising of a food is such that it is likely to mislead the consumer as to the nature of the food²⁸. The Food Safety and Standards Authority of India, through an MoU, had partnered with ASCI to address misleading advertisements in the Food & Beverages sector, April 2016²⁹. Ministry of AYUSH, through an MoU, has partnered with ASCI to co-regulate misleading advertisements in the AYUSH sector, January 2017³⁰.

The Guidelines for Prevention of Misleading Advertisements and Endorsements for Misleading Advertisements, 2022³¹, list the duties of manufacturers, service providers, advertisers, and advertising agencies (collectively “Entities”).³² It is significant to note that marketplaces, platforms and other intermediaries have been kept out from the clutches of this provision. As a part of their duties, the Guidelines mandate the Entities to make sure that the advertisements:

- indicate the source and date of independent research³³;

truthfulness and honesty of representations and claims made by advertisements, and to safeguard against misleading advertisements.

²⁵ Advertisements must be truthful. All descriptions, claims and comparisons, which relate to matters of objectively ascertainable fact, should be capable of substantiation. Advertisers and advertising agencies are required to produce such substantiation as and when called upon to do so by the Advertising Standards Council of India. p 9 of said regulations. Available at <https://www.ascionline.in/the-asci-code/> assessed on September 01, 2013

²⁶ Obvious untruths or exaggerations intended to amuse or to catch the eye of the consumer are permissible, provided that they are clearly to be seen as humorous or hyperbolic, and not likely to be understood as making literal or misleading claims for the advertised product. p 11 of said regulations.

²⁷ ASCI Guidelines for Disclaimers Made in Supporting, Limiting or Explaining Claims Made in Advertisements

²⁸ General principles of the Food Safety and Standards (Advertising and Claims) Regulations, 2018.

²⁹ At fssai.gov.in

³⁰ At ayush.gov.in

³¹ Guidelines” exercising its powers under Section 18 of the Consumer Protection Act, 2019 issued on 9th June 2022, the Central Consumer Protection Authority. Section 18 of the CPA grants CCPA the power to issue necessary guidelines to prevent unfair trade practices and protect consumers’ interest.

³² Section 12 of the Guidelines

³³ Section 12(b) of the Guidelines

- any reference is made of a person, institution or firm to provide an unjustified advantage to the advertised product.³⁴;
- do not ridicule or disrepute such person, firm or institution³⁵;
- do not contain statements or visual representations that are likely to mislead the consumer about the goods or services advertised³⁶;
- do not abuse the trust of consumers or exploit their lack of experience or knowledge.³⁷

However, the section includes a proviso that allows puffery stating that any obvious untruths or exaggerations intended to merely amuse or catch the attention of consumers as long as they are clearly perceived as humorous or hyperbolic and do not implicate any literal or misleading claims for the advertised goods or services³⁸.

Judicial Attitude for Puffery Advertisement

However, as long as the advertisement is limited only to puffing, there can be no actionable claim against the same³⁹. However, if the defendants published what was alleged to be a 'scientific study' falsely denigrating the claimant's products in order to boost sales of their own products. They were liable under the tort⁴⁰. The court in Colgate Palmolive v. Hindustan Lever Limited⁴¹ held that as per the Monopolistic and Restrictive Trade Practice (MRTP Act), 1969 puffery of goods was still maintainable but not a misrepresentation of data. Reckitt & Colman of India Ltd. v M.P Ramachandran & Anr⁴² was the first case which dealt with puffery. The court held that for an advertisement to be misleading two elements has to be satisfied. First, misleading advertising must be deceiving to person seeing such advertisements. Secondly, as a consequence of its deceptive nature, misleading advertising must be likely to affect the economic behaviour of the public to whom it is addressed, or harm a competitor of the advertiser⁴³. Puffery and exaggerated opinions are merely intended to attract the attention of customers, and not as representations or warranties, nor was such puffery to be accepted as serious representations of facts. As such, puffery and hyperbole are not to be tested on the anvil of accuracy or truth⁴⁴. The distinction between permissible puffery and impermissible puffery was held to be accurately captured in the following passage from De Beers⁴⁵:

"Obviously the statement: 'My goods are better than X's' is only a more dramatic presentation of what is implicit in the statement: 'My goods are the best in the world'. Accordingly, I do not think such a statement would be actionable. At the other end of the scale, if what is said is: 'My goods are better than X's, because X's are absolute rubbish', then it is

³⁴ Section 12(c) of the Guidelines

³⁵ Ibid

³⁶ Section 12(d) of the Guidelines

³⁷ Section 12(e) of the Guidelines

³⁸ While Section 12 allows some degree of puffery, as stated above, section 8 dealing with children targeted advertisements prohibits any advertisements that exaggerates the features of goods, product or service in such manner as to lead children to have unrealistic expectations of such goods, product or service. Thus, it appears that when children are involved, no puffery may be allowed, or at least advertisers will have to be more careful to ensure compliance with Section 8.

³⁹ Colgate Palmolive (India) Ltd. v. Hindustan Unilever Ltd., 2013 (55) PTC 499. Untruth in puffery is permissible only because puffery is inherently not taken seriously by the average consumer. In the kind of situation where one expects, as a matter of ordinary common experience, a person to use a certain amount of hyperbole in the description of goods, property or services, the courts will do what any ordinary reasonable man would do, namely, take it with a large pinch of salt. In Reckitt Benckiser India Private vs Hindustan Unilever Limited on 30 July, 2021 High Court of Delhi states that if an advertisement extends beyond the grey areas and becomes a false, misleading, unfair or deceptive advertisement, it would certainly not have the benefit of any protection.

⁴⁰ De Beers Abrasive Products Ltd v International General Electric Co of New York [1975] 2 All ER 599

⁴¹ (1998) 1 Comp LJ 171 MRTPC

⁴² 1999 PTC (19) 741

⁴³ Havells India Ltd. & Anr. v. Amritanshu Khaitan & Ors. CS(OS) 107/2015 (High Court of Delhi)

⁴⁴ Supra note 42.

⁴⁵ Supra Note 40

established by dicta of Lord Shand in the House of Lords in *White v. Mellin*⁴⁶, which were accepted by counsel for the Defendants as stating the law, the statement would be actionable. In *Zydus Wellness Products Ltd. v. Dabur India Ltd.*⁴⁷ the Delhi High Court refused to grant interim injunction to restrain a television commercial (“TVC”) aired by Dabur India Ltd. for lack of a direct reference to the product of the plaintiff, Zydus Wellness Products Ltd. and states the Dabur product under the garb of puffery.

Although the rival can make false statements that his goods are superior (puffery), he cannot show the quality of other products in the negative light⁴⁸. In *Hindustan Unilever Ltd. v. Reckitt Benckiser India Pvt. Ltd.*⁴⁹ it was stated that an advertiser can indulge in puffery and hyperbole to reflect its product in a good light. However, it is not open for an advertiser to claim that the product of its competitor is bad, substandard or its use would be detrimental to the interest or well-being of the customers. Puffery and claiming of superiority vis-à-vis the goods of a rival manufacturer is permissible. However, what was not permissible was false or incorrect representation regarding the quality and character of rival goods. Puffery is expected to be exaggerated and extravagant. The Customer Complaints Council (CCC) of Advertising Standards Council of India (ASCI) found that the claims of Hindustan Unilever Ltd (HUL) for its lever ayush soap saying 'based on 5,000-year-old ayurved scriptures with 15 ayurvedic herbs' besides other claims were inadequately substantiated and are misleading⁵⁰. In *Reckitt Benckiser (India) Pvt Limited & Anr v Wipro Enterprises (P) Limited* Delhi High Court The case revolved around an advertisement by Santoor, which depicted a young girl longing to play with her mother. During the advertisement, a voiceover proclaimed, “haath itne soft ki chhodne ka mann na kare” (the hands are so soft that you do not feel like leaving them) is puffing. However, puffing one's product by comparing others' goods and saying his goods are better is not an actionable claim but when puffing or poking fun amount to denigrate the goods of the competitor, it is actionable⁵¹.

Conclusion

Puffery is generally not taken very seriously by informed consumers as it has features of untruth and hyperbole inherent in it. To save the ignorant, innocent and immature consumers, puffery should be discouraged or regulated so as to:

- Puffery can mislead consumers by making them believe exaggerated claims about a product or service. This can lead to false expectations and disappointment when the product or service does not live up to the hype. Protecting consumers from deceptive advertising is a primary reason for discouraging puffery.
- Excessive puffery can erode trust between businesses and consumers. When consumers encounter too many exaggerated claims, they may become skeptical of all advertising, making it difficult for them to distinguish between legitimate product benefits and empty marketing rhetoric.
- While puffery is generally not illegal, there are legal limits to what advertisers can claim. Many countries have laws and regulations in place to prevent false or deceptive advertising. Excessive puffery that crosses these legal boundaries can result in fines and penalties for businesses.
- Develop clear guidelines on what constitutes puffery and what crosses the line into deceptive advertising. These guidelines can be used as a reference by advertisers, regulatory bodies, and consumers alike.
- Promote media literacy and consumer education programs to help individuals recognize

⁴⁶ [1895] A.C. 154 (1895)

⁴⁷ CS (COMM) 304/2022, Judgment dated December 22, 2022

⁴⁸ *Dabur India Ltd. v. Colgate Palmolive India Limited*. AIR 2005 Del 102

⁴⁹ 2022: DHC:3418 on 18 May, 2013

⁵⁰ ASCI pulls up HUL, Dabur, Uber, others for misleading ads, *The Economic Times*, Dec 28, 2017

⁵¹ *Pepsi Co. vs. Hindustan Coca Cola Ltd.* 2003 (27) PTC 305 Del.

and critically evaluate advertising claims.

- Encourage advertisers and marketers to undergo ethics training to understand the boundaries of ethical advertising practices and the potential consequences of puffery.

Responsible advertising practices that prioritize honesty, transparency, and meeting consumer expectations are generally more sustainable and beneficial for both businesses and consumer. By promoting transparency, accountability, and ethical advertising practices, it is possible to reduce the prevalence of puffery and protect consumers from deceptive advertising claims.



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