

A Study on Unfair Trade Practices and Consumer Awareness

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Abstract

Unfair trade practice refers to the use of various deceptive, fraudulent or unethical methods to obtain business. Unfair trade practices include misrepresentation, false advertising or representation of a good or service, false free prize or gift offers, deceptive pricing and non-compliance with manufacturing standards. And Consumer is a person who buys any goods or services for a consideration which has been paid or promised or partly paid and partly promised. Consumer, expect a certain value for money, that is, right quality, right quantity, right prices, information about the product, etc. Due to Globalization large number of Multinational Corporations has entered India. Some of them may adopt some/all sorts of unfair trade practices and try to exploit the Indian consumer. This Research paper talks about Unfair Trade Practices and Rights of the Consumers, consumer awareness and remedies available

under the Consumer Protection Act, 1986 against unfair trade practices.

Synopsis

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3. Consumer rights in India
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1.Introduction:

Every person in India is consumer. He shall entertain human rights; the constitution also guarantees certain fundamental rights to every Indian. Consumerism is part and parcel of the guideline given by constitution. In day to day life every consumer is cheated by the well organized and trained seller/trader or manufacturer of goods and services. Exploitation of

the consumer by the seller is a white collar crime. There is no ill intention in the minds of the sellers. The sole motto is achieving abundant profits and profits only ten rupees for one rupee investment. For this purpose, they adopt certain restrictive and unfair trade practices. Adulteration of food, selling goods injurious to the public health, selling narcotic drugs, liquor, cigarettes, obscene literature, etc. Are some of white collar crimes done by some one of the seller. Adopting restrictive and unfair trade practices, adulteration of food, selling the expired drugs, etc. are socio-economic crimes. These are not violent acts. They are committed by illegal acts by means of concealment and the purpose being to get the huge profit. "Consumerism" prevents such illegal and unfair practices. Though the Consumer Protection Act 1986 passed for protecting interest of consumer at large and for that purpose several redressal agency established but still all this efforts fail to protect consumer in full satisfaction. Because the problem of unfair trade practice researcher want to curb the problem from society. This research work creates and awareness among the consumer about their rights and try to solve the problem of unfair trade practice.

2. Concept of Unfair trade practice:

Unfair trade practice encompass a broad array of torts, all of which involve economic injury brought on by deceptive or wrongful conduct.

The legal theories that can be asserted include claims such as trade secret misappropriation, unfair competition, false advertising, palming-off, dilution and disparagement.

- distribution of false or misleading information that is capable of harming the business interests of another firm;

- distribution of false or misleading information to consumers, including the distribution of information lacking a reasonable basis, related to the price, character, method or place of production, properties, and suitability for use, or quality of goods; false or misleading comparison of goods in the process of advertising;

- fraudulent use of another's trade mark, firm name, or product labelling or packaging;

- unauthorized receipt, use or dissemination of confidential scientific, technical, production, business or trade information.

The dictionary meaning of 'unfair trade practice' is: 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.

Definition of Unfair Trade Practice Under Consumer Protection

Act, 1986

Section 2(1) (r) of Consumer Protection Act, 1986 also defines the term 'unfair trade practice'. It reads:

"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;—

(1) the practice of making any statement, whether orally or in writing or by visible representation which,—

falsely represents that the goods are of a particular standard, quality, quantity, grade, composition, style or model;

falsely represents that the services are of a particular standard, quality or grade;

falsely represents any re-built, second-hand, renovated, reconditioned or old goods as new goods;

represents that the goods or services have sponsorship, approval, performance, characteristics, accessories, uses or benefits which such goods or services do not have;

makes a false or misleading representation concerning the need for, or the usefulness of, any goods or services;

gives to the public any warranty or guarantee of the performance, efficacy or length of life of a product

or of any goods that is not based on an adequate or proper test thereof;

materially misleads the public concerning the price at which a product or like products or goods or services, have been or are, ordinarily sold or provided, and, for this purpose, a representation as to price shall be deemed to refer to the price at which the product or goods or services has or have been sold by sellers or provided by suppliers generally in the relevant market unless it is clearly specified to be the price at which the product has been sold or services have been provided by the person by whom or on whose behalf the representation is made;

gives false or misleading facts disparaging the goods, services or trade of another person.

Monopolies And Restrictive Trade Practices Act, 1969

The MRTP Act, 1969, was enacted to prevent monopolies and restrictive trade practices in the economy. In 1984, it was amended to add chapter V introducing the concept of unfair trade practices on the basis of high powered Sachar Committee. It also created a body called the Director General of Investigation and Registration (DGIR). On a complaint, or on its own, the DGIR could investigate into a claim of a restrictive or an unfair trade practice. The MRTP created a judicial body called the MRTP Commission and the DGIR was to take cases before the benches of the Commission.

To understand the working of the law on unfair trade practices, one would need to examine specific provisions of the MRTP Act. Section 36 A of the Act lists unfair trade practices.

36 A (1): False representation of products or services, including false description, guarantee, warranty or performance of a product or service.

36 A (2): Advertisement of false bargain price.

36 A (3): Contest, lotteries, game of chance or skill for promotion of sale.

36 A (4): Sale of goods not in conformity with safety standards provided by the law.

36 A (5): Hoarding or destruction of goods or refusal to sell goods.

3. Consumer rights in India:

Consumer right is 'the right to have information about the quality, potency, quantity, purity, price and standard of goods or services'. There are strong and clear laws in India to defend consumer rights. Out of the various laws that have been enforced to protect the consumer rights in India, the most important is the Consumer Protection Act, 1986. It is significant that, as consumer, one knows the basic rights as well as about the courts and procedures that follow with the infringement of one's rights.

In general, the consumer rights in India are listed below:

The right to be protected from all kind of hazardous goods and services

The right to be fully informed about the performance and quality of all goods and services

The right to free choice of goods and services

The right to be heard in all decision-making processes related to consumer interests

The right to seek redressal, whenever consumer rights have been infringed

The right to complete consumer education

Forms of Consumer Exploitation In Indian Market:

In a commercial society, the customer should be king. No matter what types of goods you buy, you need to be on the guard for consumer exploitation. Some types of exploitation are small and somewhat unimportant, but other types of exploitation can be quite costly. Goods that are sold by weight or volume are subject to short-changing and consumers are left to pay the price when businesses short-change their consumers. In some cases the short-changing is unintentional, the result of a mechanical failure or an improperly rectified scale. In other cases, the short-changing may be a deliberate repetition, intended to bring the company more business. Underweight and under measurements, Selling at a higher price, Product risk, Duplication, Substandard goods and services, Artificial scarcity, False claims etc.

4. Causes of consumer exploitation and remedies available under the consumer protection act, 1986 against unfair trade practices: There are some rights of consumers and consumer awareness is essential to protect consumers from exploitation. By consumer education, consumers would be able to understand the rights of consumers and duties of consumers. The main causes of consumers' exploitation are:

1. Lack of knowledge: The main reason for exploitation of consumers is lack of knowledge. Several consumers do not have the knowledge about the price, quality, services related commodities. Therefore, consumers simply trust the facts told to them by the sellers and purchase goods, thus become trapped and are exploited.

2. Consumer's indifference towards the market: There is a large group of such consumers who behave indifferently regarding purchasing. There are some consumers who think as what to do, everything is alright, leave it, why to take cash memo, whatever goods the shopkeeper gives is good, things should be cheap, good and durable, What is the need of the standardization marks like ISI and AGMARK etc. The producers take full advantage of this indifferent behavior of consumers and succeed in exploiting them.

3. Tele Marketing: Today in the age of computers, tele-marketing and e-commerce have become very popu-

lar. You also must have seen the advertisement on T.V. The information about the goods and the prices is also given in the advertisement. The consumer can send the required money and get the commodity through parcel. But very often the consumers feel cheated by this deal. One orders for costly products on being influenced, but he does not get the due benefit from that good.

4. Limited Information: In this age of globalization there are several types of products in the market. Producer is free to produce. There is no fixed law for quality and rate. There is lack of knowledge about several aspects of goods like rate, quality, rules for usage, rules for selling etc. Therefore a consumer makes wrong choice and suffers financial loss.

5. Monopoly: Monopoly means the right on the production and distribution of a commodity of a producer or a group of producers. In the state of monopoly producers have arbitrary behavior regarding the prices and the quality and availability of the goods. As a result, producers succeeded in exploiting consumers.

6. Illiteracy: When the consumers are uneducated, the sellers cheat them very easily. The shopkeeper tells the resembling words as of branded and sells the goods of poor quality. Sometimes consumers are easy going. Consumers think it was a loss, let it be or it was their fate, now who will fight etc. This thinking also makes consumers prey of exploita-

tion. The sellers know consumer's mentality and seller exploit consumer freely.

Remedies Available Under The Consumer Protection Act, 1986

Against Unfair Trade Practices:

To remove the defect pointed out by the appropriate laboratory from the goods.

To replace the goods with the new goods of similar description, which are free from similar defects.

To return the price or the charges paid by the complainant

To pay such amount as compensation to the consumer for any loss or injury suffered by the consumer due to the negligence of the opposite party.

To remove the defects or deficiencies in the services in question;

To discontinue the unfair trade practice or the restrictive trade practice or not to repeat.

Not to offer the hazardous goods for sale.

To withdraw the hazardous goods from being offered for sale and

To provide for adequate costs to parties.

Consumer Disputes Redressal

Adjudicatory Bodies: The Consumer Protection Act, 1986 envisages a 3-tier quasi-judicial system. There are Consumer Disputes Redressal adjudicatory bodies established at three levels i.e. District, State and National. They are known

as District Forums, State Commission and National Commission. These decentralized infrastructures help the consumers who are aggrieved to approach the appropriate forum. The District Forum is presided by a District Judge. The State Commission is presided by a Retired High Court Judge. The National Commission is presided by a retired Supreme Court Judge. The District Forum can adjudicate on the matter up to Rs.20 lakhs, State Commission up to one crore and National Commission above Rs.1.00 crore. The proceedings before these adjudicatory bodies are regulated in accordance with the principles of natural justice. New complaints filed are required to be accompanied with court fee.

Consumer Related Agencies:

The following major Agencies are involved in Consumer Protection

- State Consumer Protection Council, Government of Tamil Nadu
- Civil Supplies and Consumer Protection department
- District Administration and District Consumer Protection Council
- Consumer Courts
- Department of Consumer Affairs, Government of India

Types of Grievances:

The consumer can seek redressal for various kinds of grievances and can launch a complaint in the appropriate Consumer Forum if

- A trader adopts unfair or restrictive trade practice

- Goods bought are defective
- Services of any kind suffer from deficiency
- The trader collects price in excess than the fixed price, or the price displayed on goods or package, or the price displayed on the price list.
- Goods which are hazardous to life and safety are being offered for sale.
- Services hazardous to life are being offered for sale.

5. Judicial Contribution on Unfair Trade Practice:

- Godfrey Philips India Ltd v Ajay Kumar

The suit was filed against the impugned advertisement by the cigarette company. The product was sold in the name of “red & White, along with the sentences stating, “ Red & White smokers are one of kind” the packet also had a picture of actor Akshay Kumar, and also contained a line stating the harmful effects of smoking. The complainant contented that, the picture of a famous actor promoting the tag lined cigarette gives impression of the ability to do stunts like that of the actor. And this would draw away the customer’s attention from the warning. The complaint was rejected in district forum as it was filed in civil court as well. The case reached the National Commission, where the appellants stated that there is no evidence of any harm or misfortune due to the advertisement. It was held by the National Commission that complainant couldn’t file as it was not on behalf of any

volunteer organisation. The appeal was allowed with no costs.

- Devyani Beverages Ltd. vs. Coca-Cola Ltd

The judgements of the Supreme Court are binding on all other courts. But, this would be only to the extent the Supreme Court categorically sets out a binding principle. The Commission, in its judgement, felt obliged to simply follow the judgement of the Supreme Court in the HMM case. Coca-Cola Ltd.⁸ had introduced a Promotional scheme for Coke. A lucky winner could get a flat in Mumbai, a Honda City car, mobile phones, and walkmans. The case was brought before the Commission by its rival Pepsi that it was a lottery under Section 36 A (3b). The Commission had taken it up as an unfair trade practice before the Supreme Court gave its HMM case judgement. Later, the Commission said the case was very much like the HMM case, and thus, not a lottery.

-Pooja Roy v. Krishnango Bhattacharya M/s Kasko India, a wholesale license drug dealer was charged for engaging in altering the original labels of the manufacturer and pasting fresh printed labels extending the expiry date and selling spurious drugs. This was considered as a unfair trade practice in the pharmaceutical sector.

- Government files 'unfair trade practice' case against Nestle Maggi, seeks Rs 640 crore in damages

6. Conclusion:

The government should take measures to educate people about the various redressal forms that they can approach on breach of their rights as a consumer. Involvement of trade and industry, civil society organizations and above all consumer themselves is vital to keep a check on the practice of unfair trade in the years to come. Consumers are frequently being subjected to unfair trade practices by the giant sellers and consumers are becoming a prey to their cut throat business competition. The awareness among consumers in today's modern world is giving way to consumers ascertaining the rights provided to them under Consumer Protection Act and seeking redressal against the unfair trade practice. The prospect of the consumer justice system in our country appears to be bright in view of the provisions available in the Indian statutes and legislation and various proactive policies, schemes being adopted by the Government. The illiterate group of consumers should be made aware of their rights that they can use to safeguard themselves from such unfair practices.

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