A STUDY ON UNFAIR TRADE PRACTICES IN INDIA

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ABSTRACT

Unfair trade practice broadly refers to the fraudulent practices like misrepresentation, deceptive practices etc. that have been prohibited by the statutes and various laws of the country and becomes actionable under the court of law. The impacts of Unfair Trade Practices on business and in addition economy lead to a circumstance where open mindfulness/seeing about the issue is low, customers are deceived, little organizations are dealt with unjustifiably, general welfare of the general public crumbles. The paper details the growth of the concept of unfair trade practice from the definitions given in the Monopolistic and Restrictive Trade Practice Act to its evolvement to the definition given in the Consumer Protection Act. The paper will further detail the acts of unfair trade practice in different sectors. The paper will finally deal with some important case l2as in this area.

Keywords: Unfair Trade Practice, Consumer Protection, Deceptive Practices, Industry
INTRODUCTION

The term Unfair Trade Practice extensively explains any deceitful, misleading or deceptive exchange practice; or business deception of the items or administrations that are constantly sold; which is disallowed by a statute or has been perceived as significant under law by a judgment of the court.\(^1\) Generally unfair trade practices may include illegally refusing any transaction, deceptively soliciting customers, disrupting business activities of the rivals unfairly, unfairly excluding competitors. In the new corporate and business world today where there is cut throat competition the business persons daringly use unfair trade practices to edge over the other. This may give them advantage for short term but in long run it affects the organization and eventually the entire industry and society. The misrepresentation of the goods can be of any kind. The unfair trade practices also invite a cluster of torts and can bring in unwanted financial losses to the sellers.\(^2\)

UNFAIR TRADE PRACTICES & INDIAN SCENARIO

In India, till 2002, the Monopolies and Restrictive Trade Practices Act (MRTP), which was enacted to prevent monopolies and restrictive trade practices, was the foremost legislation to deal with unfair trade practices in the country. The MRTP Act was repealed giving way to the Competition Act, 2002, thus transferring all the pending cases in the MRTPC to Competition Commission of India (CCI) for adjudication from the stages they were in. However, no provision to deal with unfair trade practice was incorporated in the Competition Act and thus this was, instead, given effect under Consumer Protection Act, 1986 (COPRA) which was already dealing with unfair trade practices.\(^3\)

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Section 2(r) of the Consumer Protection Act 1986 defines unfair trade practices as: 4

“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. making any statement, whether orally or in writing or by visible representation which:

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

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

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

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

   v. represents that the seller or the supplier has a sponsorship or approval or affiliation which such seller or supplier does not have;

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

   vii. 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”

   viii. Makes to the public a representation in a form that purports to be –

       (i) a warranty or guarantee of a product or of any goods or services; or (ii) a promise to replace, maintain or repair an article or any part thereof or to repeat or continue a service until it has achieved a specified result. if such purported warranty or

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4 Section 2(r), The Consumer Protection Act 1986, No.68 of 1986(India)
guarantee or promise is materially misleading or if there is no reasonable prospect that such warranty, guarantee or promise will be carried out;

ix. Materially misleading 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;

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

2. Permits the publication of any advertisement whether in any newspaper or otherwise, for the sale or supply at a bargain price, of goods or services that are not intended to be offered for sale or supply at the bargain price, or for a period that is, and in quantities that are, reasonable, having regard to the nature of the market in which the business is carried on, the nature and size of business, and the nature of the advertisement.

3. Permits – (a) the offering of gifts, prizes or other items with the intention of not providing them as offered or creating the impression that something is being given or offered free of charge when it is fully or partly covered by the amount charged in the transaction as a whole. (b) the conduct of any contest, lottery, game of chance or skill, for the purpose of promoting, directly or indirectly, the sale, use or supply of any product or any business interest

4. Permits the sale or supply of goods intended to be used, or are of a kind likely to be used by consumers, knowing or having reason to believe that the goods do not comply with the standards prescribed by competent authority relating to performance, Composition, contents, design, constructions, finishing or packaging as are necessary to prevent or reduce the risk of injury to the person using the goods;
5. Permits the hoarding or destruction of goods, or refuses to sell the goods or to make them available for sale, or to provide any service, if such hoarding or destruction or refusal raises or tends to raise or is Intended to raise, the cost of those or other similar goods or services.”

UNFAIR TRADE PRACTICES IN VARIOUS SECTORS

In the recent past, there have been many incidences of unfair trade practices coming up to light. Unfair trade practices in India have penetrated through various sectors to the Indian Scenario. Some of them are through Food Processing Industry, Pharmaceutical Industry, Insurance, Education etc.

1. **Pharmaceutical Sector:** The competition among the generic drugs and brand name drug dealers has been never ending. These competitions can sometime turn ugly leading to many incidents of unfair trade practices in the sector of medicines. It is widely observed that in case of prescription of a drug, where the doctor is decision maker for the ultimate user, i.e., the patient, the pharmaceutical industry has a powerful influence on prescribing habits of doctors. There is an essential difference between promotion and information. A medical representative while delivering information to the doctors about new drugs, including its usefulness and efficacy may have precompetitive effects. The marketing strategies adopted by firms such as giving the doctors gifts like mobile, cars or even sponsored nursing home, may downplay the demand side and hence raise prices for consumers.\(^6\) in the year 2003, Consumer Education and Research Society, Ahmedabad, brought to the notice of the regulatory authority in Gujarat, the sale and promotion of certain health gadgets by Conybio Health Care, in violation of the Drugs and Magic Remedies (Objectionable Advertisements) Act. The company was found promoting and distributing sun shades to cure migraines and sun strokes, socks for acidity, pillow covers for spondylitis, palm guards for Parkinson’s disease, eye-shade for sinusitis, T-shirts for high, low blood pressure, short pants that cure gas, acidity, prostate, piles, urinary system problems, ladies briefs for menstrual problems, bed sheets for paralysis strokes and brassieres for breast

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\(^5\) *Ibid* P.4

cancer. When the regulator asked the company to produce scientific evidence to support the effect of infrared rays which it claimed was present in the products, the company said it had never undertaken such studies by any recognized Indian institute. Subsequently, the regulator prohibited the sale and promotion of the products.⁷

2. **Food Processing Sector:** There has been a global concern about food safety and unfair trade practices in quality and quantity of the food products. Almost everyone has come across cases of deliberate addition of chemicals like additives and adulterants, for the purpose of disguising inferior commodities, contaminating or earning undue profits or food contamination during production, processing, packaging and storage. Such unethical and unfair trade practices are of very serious nature since they pose grave threat to consumer’s health directly. In May, the Food and Drugs Administration (FDA) officials seized 500 kg mangoes worth Rs. 25,000 that were being ripened with the use of a chemical called calcium carbide during a raid at a shop of a mango trader in Pune. Artificial ripening by using carbide is banned under the Prevention of Food Adulteration Act. The chemical, if consumed in large quantities, damages internal organs. The FDA officials destroyed the mangoes at a dumping ground, while the chemical samples were sent to a city based public health laboratory for further investigations.⁸ The most recent controversial case dealing with the unfair trade practices is the Nestle Maggi case. The government of India had filed suit of unfair trade practice against the company under Sec12 (1)(d) in the National Consumer Dispute Redressal Commission. The issue was regarding the misleading advertisements of the product. Prior to that the Food Safety and Standards of India have asked the company to withdraw from the market the newly introduced varieties of Maggi Noodles alleging it not fit for consumption due to non-maintenance of prescribed standard of quality in them, the excess presence of lead and misleading labelling regarding the presence of MSG.⁹

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⁷ Ibid. P.1  
3. **Insurance:** Insurance is an important financial services subsector catering to individuals and the number of insurance consumers is steadily increasing. With the increase in the consumers comes the issue of unfair trade practices in this sector. Insurance offers a promise that, upon a contingent event at a later date, the policyholder will get a particular benefit or reimbursement for a loss or damage. A deficiency in service would mean either a delay or a non-fulfilment of that promise. Thus, it is seen that in insurance heavy reliance is placed on the public’s trust that the promises made will be delivered. Companies often lure consumers with attractive schemes, but later try to renge on their commitment. They contain many wide exclusion and exemption clauses favourable to large enterprise. The favourable terms are often in small prints which the individual never reads since it is a laborious and profitless task to discover what these terms are.

**CASE LAWS**

1. **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.

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10 Ibid. P. 1
12 Godfrey Philips v Ajay Kumar AIR 2008 SC 1828
2. N. Ravindranath Kamath v. Spice Communications Ltd\textsuperscript{13}

Kamath was approached by Spice Communications Ltd. who supplied form and booklet wherein a map of Karnataka was printed indicating that the tower would be erected at a place called Virajpet. On that assurance Kamath filled up an application for the connection by paying Rs. 3,100/- to them. Sim card was supplied at a cost of Rs. 6,800/-. Spice Communications could not erect the tower and thus Kamath could not use the cell phone from Virajpet despite a sum of Rs. 22/- being charged per day. On the map of Karnataka which was printed in the brochure it was assured by mid-99. Spice Communications did not construct the tower because it was not viable. A consolidated amount of Rs. 30,000/- along with Rs. 10,000/- was paid to Kamath and the Commission held that this was an unfair trade practice.

3. Pooja Roy v. Krishnango Bhattacharya\textsuperscript{14}

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 an unfair trade practice in the pharmaceutical sector.

4. Consumer Guidance Society v. Amway India Enterprises\textsuperscript{15}

The Amway Enterprises who offers a variety of consumer product and food supplements. It was found that some products of Amway were misbranded and also adulterer. The products like Nutrilite Protein, Amway Madrid Safad Musli contained different quality of ingredients than mentioned in the label. On the findings it was held that Amway have restores to unfair means of business and were charged compensation charges and directed to remove their misbranded products and renew their advertisements.

CONCLUSION

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 modernized 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 by the monopolists. 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.