ABSTRACT

Unfair Trade Practice broadly refers to any fraudulent, deceptive or dishonest trade Practice or business misrepresentation of the products or services that are being sold which is prohibited by a statute or has been recognized as actionable under law by a judgment of the Court. 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 or organizations are dealt with unjustifiably, general welfare of the general public crumbles. The author focused on the institutional set-up established in India to deal with such, Unfair Trade Practices and also highlights the various institutional challenges and finally suggests efficient approaches to tackle the same.

Keywords: Unfair Trade Practices; Consumer Protection; False and Misleading; Unjustifiable Rivalry; Industry

INTRODUCTION

The term Unfair Trade Practice (UTP) extensively alludes to 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. In any case, the term does not have an all inclusive standard definition.

Misrepresentations can be about any characteristic of a goods or services, real or imagined. Consequently laws prohibiting unfair trade practices often include a general provision and more specific provisions addressing some of the more common types of misrepresentations.¹

Unfair trade practices envelop a wide cluster of torts, all of which include financial harm brought on by tricky or wrongful behavior. The legitimate hypotheses that can be affirmed incorporate claim, for example, competitive advantage misappropriation, unjustifiable rivalry, false promoting, palming-off, weakening and stigmatization.²

Unfair trade practices can arise in any line of business and also frequently appear in connection with the more traditional intellectual property claims of patent, trademark and copyright infringement.

At the international level, the World Bank and the Organization for Economic Cooperation and Development (OECD) Model Law list the following trade practices to be unfair³:

1. Distribution of false or misleading information that is capable of harming the business interests of another firm;
2. 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;
3. false or misleading comparison of goods in the process of advertising;
4. fraudulent use of another’s trade mark, firm name, or product labeling or packaging; and
5. Unauthorized receipt, use or dissemination of confidential scientific, technical, production, business or trade information.

Article 10bis of the Paris Convention prohibits the following components of unfair competition:

1. all acts of such a nature as to create confusion by any means whatever with the establishment, the goods, or the industrial or commercial activities, of a competitor;
2. false allegations in the course of trade of such a nature as to discredit the establishment, the goods, or the industrial or commercial activities, of a competitor; and
3. indications or allegations the use of which in the course of trade is liable to mislead the public as to the nature, the manufacturing process, the characteristics, the suitability for their purpose, or the quantity, of the goods.

OBJECTIVES

1. To understand practices in relation to Unfair Trade Practices
2. To know principles of law that govern deceptive acts and practices
3. To suggest remedies regarding Unfair Trade Practices

Definition of Unfair Trade Practices

India

In India, pursuant to the supersession of the Monopolies and Restrictive Trade Practices Act, 1969 (MRTP Act) by the Competition Act, 2002 (the Competition Act), placidity emerged that Unfair trade practices would perpetuate to be dealt under the Consumer Protection Act, 1986 (COPRA) which defines Unfair trade practices to mean a trade practice which, for the purpose of promoting the sale, utilize or supply of any goods or for the provision of any accommodation, adopts any inequitable method or inequitable or illusory practice, and includes, inter alia, the following:

1. Making any statement, whether orally or in writing or by visible representation which:
   - falsely represents about goods or services relating to its standard, quality, price, value, nature, guarantee/warranty, affiliation, sponsorship received, etc.;
   - gives false or misleading facts disparaging the goods, services or trade of another person;
2. permitting the publication of any advertisement 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;
3. permitting the offering of gifts, prizes or other items with the intention of not providing them as offered or creating 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 or conducting 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. withholding from the participants of any scheme offering gifts, prizes or other items free of charge, on its closure the information about final results of the scheme;
5. permitting the hoarding or destruction of goods, or refusing 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; and
6. Manufacturing spurious goods or offering such goods for sale or adoption of deceptive practices in the provision of services.

**Australia**

The Australian Competition and Consumer Act, 2010 deals with competition and consumer related issues in Australia. As per Part 3.1 of Schedule 1 of the Act, the “Unfair Practices” include, *inter alia*, the following:

1. False or Misleading Conduct, such as:
   - false or misleading representation about goods or services relating to its standard, quality, value, nature, guarantee/warranty, affiliation, sponsorship received, etc;
   - false or misleading representation about sale etc. of land relating to its location, pricing, nature of interest, use to which such land may be put, facilities associated with land etc.;
   - misleading conduct relating to employment offered to a person;
   - offering any rebate, gift, prize or other free item with the intention of not providing it;

2. Unsolicited Supplies and assertion of right to payment for unauthorized entries or advertisements;

3. Participation in pyramid schemes;

4. Engaging in multiple pricing;

5. Referral selling; and

6. Harassment and coercion.

**United States of America**

Similarly, Section 5 of the Federal Trade Commission Act, 1914 ("FTC Act") of the United States of America (USA) prohibits “unfair and deceptive acts or practices” in or affecting commerce. Such practices broadly include:

1. an act or practice that causes or is likely to cause substantial injury to consumers, that cannot be reasonably avoided by the consumers and is not outweighed by countervailing benefits to consumers or to competition; and

2. An act or practice where a material representation, omission or practice misleads or is likely to mislead the consumer, who has reasonably interpreted such representation, omission or practice.

**South Africa**

In South Africa, the Consumer Affairs (Unfair Business Practices) Act, 1988 defines “unfair business practice” to mean any business practice which, directly or indirectly, has or is likely to have the effect of:

1. harming the relations between businesses and consumers;

2. unreasonably prejudicing any consumer;

3. deceiving any consumer; or

4. Unfairly affecting any consumer.

Consequently, it can be seen that in spite of the fact that not one uniform standard meaning of the Unfair Trade Practice has been planned all around and the term is characterized contrastingly by
distinctive nations focused around their residential laws and business sector economies, yet the quintessence of every last one of definitions is the same and every one of them appear to allude to Unfair Trade Practices as a practice of deceiving, beguiling and unlawful exchange practice embraced with the end goal of advancing deal or supply of a specific decent or procurement of a specific administration.

The USA and South Africa then again have abstained from rattling off the demonstrations or the practices and characterize the idea comprehensively including all related exercises where out of line damage is brought about to the buyer because of misleading acts or practices even where the purchaser buys specific merchandise or administrations after sensible thought.

Effects of Unfair Trade Practices on the Economy

The law of unreasonable rivalry fills five needs. To start with, it secures the financial, learned, and innovative speculations made by organizations in separating themselves and their items. Second, it protects the great will that organizations have secured with buyers. Third, it hinders organizations from appropriating the great will of their rivals. Fourth, it advances clarity and solidness by urging buyers to depend on a trader's decent will and notoriety when assessing the nature of adversary items and, ultimately, it expands rivalry by giving organizations motivations to offer preferable merchandise and administrations over others in the same field. Along these lines, the law of out of line competition covers both, the eagerness of purchasers and the business endeavors and fighting firms.

Impact on Price and Quality of Goods and Services

Pervasiveness of Unfair Trade Practices in a business part unfavorably impacts the expense and the way of stock and organizations. These ensures the creator a changed and ensured buyer base and pay and in like manner blocks competition. At the point when a producer or an organization supplier performs a strong respectable balance in the business part with the support of such Unfair Trade Practices the sureness of their position in the business and their base of clients may lead them to fabricate the expenses of the items or organizations. The affirmation of client dedication may similarly charm the producer to deal with the way of their things to get additional profits.

At the point when a producer takes part in unreasonable exchange practice to offer it great, it primarily tries to expand the offer of its item/benefit by participating in fake, tricky movement, for example, bringing about a noticeable improvement than alternate results of comparative nature in the business by distorting and deluding the customer about the nature of the item or giving deficient or false data about the deal cost of the merchandise of administrations.

Impact on Micro, Small and Medium Enterprises

It is related to note here that a large portion of the makers that participate in Unfair trade practices that consequently prompt crumbling in quality or increment in the costs of the merchandise or administrations, are the enormous business sector players who money on their brand esteem and trick shoppers with their false and fleeting guarantees. As a consequence of which, alternate makers in the business, particularly the little endeavors, which may merit their duty however are so little it is not possible battle once more on the same scale gradually get wiped out, in this way additionally wiping out rivalry from the business.

Moreover, unfair trade practices are for the most part done by the makers/venders in a sorted out way where more often than not the extensive businesses with clout and assets work in pair in circulating false or misdirecting data fit for hurting the business investments of little firms working in the same segment

The expansive businesses likewise utilize puffery, deluding explanations or set a value which is lower than expense to toss out contenders from the business and pulling in purchasers to their item or administration. The little and medium businesses because of absence of sufficient assets are not able to
meet this rival and face misfortunes, regardless of the possibility that the quality and the standard of the item is the same or better.

Case in point, it was accounted for that in Korea, Lotte Group, which possesses nourishment producing organizations and retail organizations, attempted to victimize little scale retailers by supplying their items at lower costs to their retail locations, for example, Lotte Department Stores and Lotte Mart. Since Lotte is at present the biggest retail establishment administrator, and the third biggest markdown store and market administrator, its endeavors to victimize little retailers may expand the centralization of nourishment retailing and therefore reinforce Lotte's unrivaled business sector position.

Unfair Trade Practices and Indian Scenario

The extraordinary development of the Indian economy, the becoming association of the world economy and the wide scattering of new correspondence and data process advances have gotten huge monetary and social changes that have upset the way markets serve purchasers. They have likewise helped the improvement of general stress on customer rights insurance and advancement. Customers around the globe are requesting quality for cash as quality products and better administrations.

In the meantime because of globalization and such innovative developments, the issues confronted by the purchasers have likewise expanded, the shoppers are abused by method for various manifestations of deceptive and out of line practices, for example, faulty products, insufficient administrations, questionable contract buy plans, high cost of items, spurious medications, defilement of sustenance, low quality, inadequate administrations, misleading ads, risky items, dark advertising among others. Sharp businesspeople through brilliant charismatic skill and reflexive deluding notice about their items, cheat shoppers and make them pay for something they didn't expect to purchase.

In the era of open markets, buyer and seller came face to face, seller exhibited his goods, and buyer thoroughly examined them and then purchased them. It was assumed that the buyer would use all care and skill while entering into a transaction. However, with growth of trade and globalization the principle of ‘caveat emptor’, which meant ‘buyer-beware’ is no longer effective in governing the relationship between seller and the buyer. It has now gotten to be about outlandish for the purchaser to look at and have complete information about the merchandise and administrations already and to aggravate the matter; a large portion of the exchanges are closed by correspondence. Besides, because of the complex structure of current merchandise and administrations, it is by and large just the maker or the dealer who can guarantee the purchaser about the nature of the products and administrations being sold.

It has now gotten to be about unthinkable for the purchaser to analyze and have complete information about the merchandise and administrations previously and to exacerbate the matter; the majority of the exchanges are finished up by correspondence. Also, because of the complex structure of present day merchandise and administrations, it is for the most part just the maker or the vender who can guarantee the purchaser about the nature of the products and administrations being sold.

Further, with the coming of the time of upset data engineering and with the rise of e-trade, the purchasers are further denied of complete data, as it were, and need to depend on the data gave on the site. Changes in innovation are making worldwide exchanges less expensive, faster and more open, actually for low pay groups. Messages, telephones, sms and sites can make it simpler to work together over the world than around the bend, even in economies experiencing significant change like India.

The unrest in data innovation has likewise given the shoppers more current sorts of difficulties like digital wrongdoings, encroachment of licensed innovation and so on, which influence the purchasers in significantly greater way. 'Purchaser is sovereign' and 'client is the ruler' would appear to be a myth in the present situation especially in the creating social orders.

Some of the time, the way that a luring offer is, no doubt made by a created economy makes the offer more dependable and alluring. Therefore the Indian purchaser is constantly deceived, tricked and
hoodwinked consistently in the business and the occurrences of Unfair Trade Practices are expanding for quite a while.

**Unfair Trade Practices in Various Sectors**

It is clear that Unfair Trade Practices are perpetrated in a manner as varied as the number of products and services in a market place. Unfair Trade Practices have been observed in the pharmaceutical sector, food processing industry, finance sector, education, etc. The Unfair trade practices are given effect through packaging and labeling, misleading advertising, testimonials by trusted or influential people, for example celebrities, experts, ‘satisfied consumers’, etc. Herein below, certain incidences of Unfair Trade Practices in select sectors in India are analyzed.

**Pharmaceutical Sector-** Competition amongst generic drugs is a desirable objective as it typically brings substantial savings to consumers. However, it is required that the same remain balanced against the incentives brand manufacturers need to invest in developing innovative new products. Yet, it is often noted that the required degree of competition is often missing from these markets. For instance, fewer new medicines are being brought to market, and the entry of generic medicines is at times restricted through anticompetitive practices.

One incidence of such fight between the generic and branded drugs is the case filed by the Swiss pharmaceutical company Novartis. Novartis wants an Indian patent for its leukaemia drug, imatinib mesylate, which has been patented as Glivec in nearly 40 countries including China, Russia, Mexico, Taiwan, Germany and the UK, and Gleevec in the USA. However, the critics of Novartis’ move state that doing so could ultimately undercut the making of generic drugs that has given India a reputation as a mecca for making affordable medicine and could result in the deaths of thousands of people who will no longer be able to afford the drugs they need.

It is a well-documented fact that pharmaceutical companies spend vast sums of money on drug promotion. They use various tools and methods such as sales representatives, samples, advertisements in broadcast and print media and sponsorships for promoting drugs. It is also known that drug promotion is closely linked to unfair trade practices. An analysis of the drug promotion matrix in India reveals that there are various unfair trade practices prevailing in the industry.

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.

Many instances of unfair trade practices are witnessed in the country almost every day. A case for violation of Drugs & Cosmetics Act, 1940 was imposed on the manufacturing unit of the Thrissur-based manufacturer of ‘Ayur Kizhi’ (an external heat therapy kit), Institute of Indian Therapy (Ayur Care) for manufacturing and selling the product, Ayur Kizhi, as a branded item without licence. According to the Kerala Ayurveda Drugs Control Department, it had given separate licences for ‘Ayur Kizhi Oil’ and ‘Ayur Kizhi Powder’, but no licence had been given exclusively for the single product ‘Ayur Kizhi Kit’. Since the company had been giving wide publicity to their products involving cricket players, hence a case of violation of Drugs and Magical Remedies (Objectionable Advertisement) Act was also registered.

Similarly, in the case of 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.

Many such incidences are sighted frequently in the newspaper, claiming that a particular drug will help someone lose weight quickly or help balding people grow hair and gain confidence. The
Advertisements, most of the time, are very convincing and the producers cash on the human emotions to sell their products by making people more conscious and negative about themselves so that they consider taking the medicine.

A similar instance was seen when 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 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.15

**Food Processing Industry-** 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 and/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. Non-permissible food colours are used for providing visual effects. Also, there have been various instances of adulteration of various food items by addition of harmful substances like poisonous chemicals and copper in milk, alcohol, mawa, rice, etc. to increase the quantity of the food items and increase profit for the seller, which has caused health hazards at mass levels in recent past.

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.16

**Insurance-** Consumers become a part of insurance policies either by virtue of buying insurance themselves or by being covered under insurance bought by either the Government or their employers or by being part of any other group that is insured.17 Insurance is an important financial services sub-sector catering to individuals and the number of insurance consumers is steadily increasing. Insurance is an intangible product and the only document that the policyholder receives is a piece of paper for the premium paid and does not obtain any immediate benefit for the consideration paid.18

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-fulfillment 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.

Most of the times, the insurance contracts also contain unfair terms tilting the contract heavily in favour of the company. Apart from the fact that the abstract legal theory of a contract as an agreement arrived at through discussion and negotiation is completely given the go-by, these contracts turn out to be a case of the big business enterprises legislating in a substantially authoritarian manner. Such large scale business concerns get expert advice and introduce terms, in the printed form, which are most
favorable to themselves. They contain many wide exclusion and exemption clauses favorable to large enterprise. The favorable 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.\textsuperscript{19}

CONCLUSION

Taking everything into account, as said above, there is no single uniform meaning of Unfair Trade Practices all around and it has been characterized by different nations focused around the way of businesses existing in a specific nation. Notwithstanding, all the diverse definition appear to highlight Unfair Trade Practices as a practice of deceiving, misleading and unlawful exchange practice received with the end goal of advancing deal or supply of a specific decent or procurement of a specific administration. On the other hand, each demonstration of taking ceaselessly the demographic of a business may not sum to an Unfair Trade Practices on the grounds that such customers might likewise be taken away by goodness of legit and legitimate rivalry, for example, a circumstance in which a contender takes away a decent parcel of his rival's customer base by offering an item or administration of better quality. Yet, there are other exchange hones that go for taking without end a contender's customers and subsequently chopped down the goodwill, which are ventured to be out of line and shameful, and, thusly, are restricted by law.

Also, 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, while financial additions focus on a couple. In this setting it is related to note that rival is major to purchaser arrangement. There may be different profits as far as upgrades in costs as well as in administrations offered and decisions accessible to customers, era of more data for shopper choices and opening up of new markets for focused firms. Rivalry is thusly seen as an essential component for shopper welfare.

REFERENCES


18. Ibid