

A study on regulation of unethical marketing practices through Consumer Protection Act

*Prof. Hemant Patil

**Prof. Sandeep Goundgawe

Abstract

Marketing ethics is viewed as an important because of marketing's interface with many diverse stakeholders. Thus it is a key functional area in the business organization that provides a visible interface with not only customers, but other stakeholders such as the media, investors, regulatory agencies, channel members, trade associations, as well as others. It is important when addressing marketing ethics to recognize that it should be examined and regulated not only from an individual, organizational, and societal perspective. Examining marketing ethics from a narrow issue perspective does not provide foundational background but it should also provide a complete understanding of the domain of marketing ethics. There are laws which are designed to prevent businesses that engage in fraud or specified unfair practices from gaining an advantage over competitors. They may also provide additional protection for those most vulnerable in society. Consumer protection laws are a form of government regulation, which aim to protect the rights of consumers as well as fair trade, competition and accurate information should be practiced in the marketplace. The present paper endeavors to study the concept of Ethics in Marketing, fair and unfair trade practices, Protection of consumers against exploitation by businessmen and Schemes for protecting consumers.

Keywords: Marketing, Ethics, Consumer Protection

Introduction

Today's consumers are affected by unethical marketing practices by the companies. Just to get surplus profits, companies are engaging in unfair trade practices and hence consumers are being affected. Government has taken some initiatives to save consumers from getting exploited by the hands of businessmen. There is need to educate consumers about their rights and duties. Government and NGOs are working towards protecting consumers. However, there was no organized and systematic movement actually safeguarding the interests of the consumers. With the advent of the 20th century due to rapid industrialization and multifaceted development in India after the Independence, there appeared a flood of consumer goods and services in the Indian Market, which almost changed the relationship between the consumer and the trader. Technological advancements in the field of media led to flooding of advertisements of goods and services further worsening the otherwise grim situation. Lack of consumer awareness, illiteracy, poverty, etc. further led to the exploitation of consumers. Awareness of consumer rights varies in different regions in the country. It is very poor especially among the population in rural and far-flung areas of the country. Compared to the developed countries, the levels of consumer awareness in such a vast country with a large population like India is much lower. This is rooted in economic inequality, low levels of literacy and ignorance. Because of this, consumers are not able to assert their rights and on many occasions are exploited by the trade and industry and service providers. Protecting and promoting the welfare of consumers has thus become one of the major concerns.

Objectives

- 1) To study the unethical business practices.
- 2) To study the need of consumer protection.
- 3) To study the regulations on consumer protection.
- 4) To find the ways for settlement of consumer grievances.

**Asst Prof Ramseth Thakur College, Kharghar, ** Prof YMT College of Management ,Kharghar, email id – Sandeep.pgreddy@gmail.com

Research methodology

This is an exploratory and descriptive research where the information relevant to the topic has been collected from different authentic sources. The secondary data and information has been furnished in chronological order to maintain the sequence of significant events which highlighted the unethical practices and consumer protection. Secondary data has been obtained from websites and other sources like books and online magazines and journals.

Business Malpractices

Consumer protection means safeguarding the interest and rights of consumers. In other words, it refers to the measures adopted for the protection of consumers from unscrupulous and unethical malpractices by the business and to provide them speedy redressal of their grievances. The most common business malpractices leading to consumer exploitation are given below.

- (a) Sale of adulterated goods i.e., adding something inferior to the product being sold.
- (b) Sale of spurious goods i.e., selling something of little value instead of the real product.
- (c) Sale of sub-standard goods i.e., sale of goods which do not confirm to prescribed quality standards.
- (d) Sale of duplicate goods.
- (e) Use of false weights and measures leading to underweight.
- (f) Hoarding and black-marketing leading to scarcity and rise in price.
- (g) Charging more than the Maximum Retail Price (MRP) fixed for the product.
- (h) Supply of defective goods.
- (i) Misleading advertisements i.e., advertisements falsely claiming a product or service to be of superior quality, grade or standard.
- (j) Supply of inferior services i.e., quality of service lower than the quality agreed upon.

The above instances show the exploitation of consumers in the context of goods and services. In a democratic nation like India, should we allow this to happen? So the measures adopted by the government or non-government organisations (NGOs) for safeguarding the interests of the consumers constitute consumer protection.

Need for consumer protection

1. Social Responsibility

The business must be guided by certain social and ethical norms. It is the moral responsibility of the business to serve the interest of consumers. Keeping in line with this principle, it is the duty of producers and traders to provide right quality and quantity of goods at fair prices to the consumers.

2. Increasing awareness

The consumers are becoming more mature and conscious of their rights against the malpractices by the business. There are many consumer organisations and associations who are making efforts to build consumer awareness, taking up their cases at various levels and helping them to enforce their rights.

3. Consumer satisfaction

Father of the Nation Mahatma Gandhi had once given a call to manufactures and traders to “*treat your consumers as god*”. Consumers’ satisfaction is the key to success of business.

Hence, the businessmen should take every step to serve the interests of consumers by providing them quality goods and services at reasonable price.

4. Principle of social justice

Exploitation of consumers is against the directive principles of state policy as laid down in the Constitution of India. Keeping in line with this principle, it is expected from the manufacturers, traders and service providers to refrain from malpractices and take care of consumers' interest.

5. Principle of trusteeship

According to Gandhian philosophy, manufactures and producers are not the real owners of the business. Resources are supplied by the society. They are merely the trustees of the resources and, therefore, they should use such resources effectively for the benefit of the society, which includes the consumers.

6. Survival and growth of business

The business has to serve consumer interests for their own survival and growth. On account of globalization and increased competition, any business organization which indulges in malpractices or fails to provide improved services to their ultimate consumer shall find it difficult to continue. Hence, they must in their own long run interest, become Consumer oriented.

Government initiatives for consumer protection

Consumer movement is a socio-economic movement which seeks to protect the rights of consumers in relation to the goods purchased and services availed. Government has been according high priority to better protect consumer interests. The Department of Consumer Affairs, has initiated a number of steps to promote a responsible and responsive consumer movement in the country. Such measures include the use of multi-media campaign for promoting consumer awareness and encouraging consumers' involvement through efforts of Government and Non-Governmental Organizations and others.

Regulations for consumer protection

We have enumerated several instances of exploitations and malpractices on the part of manufacturers, traders, dealers and services providers. Now the question arises as to how can these be eliminated. Actually it is very difficult to stop such exploitation by any consumer single handedly. The consumers have to collectively act against such malpractices and take the help of consumer organisations and the government agencies. Infact, consumer protection essentially needs consumer awareness, education and guidance, and it cannot be assured by voluntary business conduct or self-regulation. The following are the various ways and means of consumer protection followed in India.

a. Lok Adalat.

Lok Adalats are the effective and economical system for quick redressal of the public grievances. The aggrieved party can directly approach the adalats with his grievance, and his issues are discussed on the spot and decisions are taken immediately. The consumers may take the advantage of this system to solve their problems. Cases of electricity billing, telephone billings, road accidents etc. can be taken up in Lok Adalat for spot settlement. Infact, Indian Railways, Mahanagar Telephone Nigam Limited and Delhi Vidyut Board hold Lok Adalat regularly to settle user's grievances on the spot.

b. Public Interest Litigation

Public Interest Litigation (PIL) is a scheme under which any person can move to the court of law in the interest of the society. It involves efforts to provide legal remedy to un-represented groups and interests. Such groups may consist of consumers, minorities, poor persons, environmentalists and others. Any person or organisation, though not a party to the grievances, can approach the court for remedial action in case of any social atrocities.

c. Redressal Forums and Consumer Protection Councils.

Under the Consumer Protection Act 1986, a judicial system has been set up to deal with the consumer grievances and disputes at district level, state level and national level. These are known as District Forum, State Consumer Disputes Redressal Commission (State Commission) and National Consumer Disputes Redressal Commission (National Commission). Any individual consumer or association of consumers can lodge a complaint with the District, State or National level forum, depending on the value goods and claim for compensation. The main objective of these forums is to provide for a simple, speedy and inexpensive redressal of consumers' grievances. The Act as amended in 2002 also provides for setting up of Consumer Protection Council at district, state and national level for promotion and protection of the rights of the consumers as laid down in Section 6 of the Act. The councils are required to give wide publicity to the rights of consumers, the procedures for filling complaints by them and provide inputs to consumer movement in the country.

d. Awareness Programme

To increase the level of awareness among the consumers the Government of India has initiated various publicity measures. It regularly brings out journals, brochures, booklets and various posters depicting the rights and responsibilities of consumers, redressal machineries etc. It observes World Consumer Rights Day on 15 March and National Consumer Day on 24 December. Several video programmes on consumer awareness are broadcasted through different television channels. Similarly, audio programmes are also broadcasted through All India Radio and FM channels. The poster and slogan competition on consumer protection are also organised at various level. To encourage the participation of public in the field of consumer protection the Government has also instituted National Awards to the persons who have done outstanding work in this field.

e. Consumer Organizations

Consumer organizations have been active all over the world to promote and protect consumer interests. A number of such organisations have also been set up in recent years in different parts of India. It is felt that neither it is possible to discipline all members of the business community through moral sanctions and a code of fair business practices nor can administrative orders and legislative provisions to ensure consumer protection without the active involvement of consumer associations. Now with an increasing number of consumer organisations involved in consumer protection, the consumer movement is getting a foothold in India and helping individuals to seek quick and adequate redressal of their grievances. Look at the box for some of such consumer organizations.

Consumer Organizations'

Some of the important Consumer Organisations that have been playing an active role in taking up consumer cause are:

- CERC (Consumer Education and Research Centre), Ahmedabad
- VOICE (Voluntary Organisation in the Interest of Consumer Education), New Delhi
- CGSI (Consumer Guidance Society of India), Mumbai
- CAG (Consumer Action Group), Chennai
- CUTS (Consumer Unity and Trust Society), Jaipur
- Common Cause, New Delhi
- Consumer Education Centre, Hyderabad
- Karnataka Consumer Service Society, Bangalore
- Kerala State Consumers Coordination Committee, Cochin

These organisations are collecting data on different products and testing them, investigating into the problems of consumers, publishing and distributing brochures and journals, organising consumer awareness programmes, filing complaints, suits and writ petitions on behalf of the consumers, etc.

f. Consumer Welfare Fund

The government has created a consumer welfare fund for providing financial assistance to strengthen the voluntary consumer movement in the country particularly in rural areas. This fund is mainly used for setting up facilities for training and research in consumer education, complaint handling, counseling and guidance mechanisms, product testing labs, and so on.

g. Legislative Measures

A number of laws have been enacted in India to safeguard the interest of consumers and protect them from unscrupulous and unethical practices of the businessmen. Some of these Acts are as follows:

- Drug Control Act, 1950
- Agricultural Products (Grading and Marketing) Act, 1937
- Industries (Development and Regulation) Act, 1951
- Prevention of Food Adulteration Act, 1954
- Essential Commodities Act, 1955
- The Standards of Weights and Measures Act, 1956
- Monopolies and Restrictive Trade Practices Act, 1969
- Prevention of Black-marketing and Maintenance of Essential Supplies Act, 1980
- Bureau of Indian Standards Act, 1986

The object and interest of almost all these enactments are mainly punitive, though some of these are also preventive in nature. However, none of these laws provide any direct relief to the consumers. Hence, amendments have been made in some of these laws by which individual consumers and consumer organisations have been conferred the right to take initiative and launch legal proceedings in civil and criminal courts against the violators. Another legal enactment that made a dent in this situation was the Monopolies and Restrictive Trade Practices Act, 1969. It gained the status of a specific consumer protection law with amendments made in 1984. In spite of the changes made in 1984, a need was felt to have a more elaborate legislation. So the Consumer Protection Act was passed in 1986 to offer the necessary protection to consumers and provide an elaborate

mechanism to deal with consumer grievances and disputes. A broad idea about its main provisions is being given in the next section.

Machinery for settlement of grievances

The judicial machinery set up under the Consumer Protection Act, 1986 consists of consumer courts (forums) at the district, state and national levels. These are known as District forum, State Consumer Disputes Redressal Commission (State Commission) and National Consumer Disputes Redressal Commission (National Commission) separately. Let us have a brief idea about their composition and roles.

1. District Forum

This is established by the state governments in each of its districts.

- (a) **Composition:** The district forums consist of a Chairman and two other members' one of whom shall be a woman. The district forums are headed by the person of the rank of a District Judge.
- (b) **Jurisdiction:** A written complaint can be filed before the District Consumer forum where the value of goods or services and the compensation claimed does not exceed Rs. 20 lakh.
- (c) **Appeal:** If a consumer is not satisfied by the decision of the District forum, he can challenge the same before the State Commission, within 30 days of the order.

2. State Commission: This is established by the state governments in their respective states.

- (a) **Composition:** The State Commission consists of a President and not less than two and not more than such number of members as may be prescribed, one of whom shall be a woman. The Commission is headed by a person of the level of High Court judge.
- (b) **Jurisdiction:** A written complaint can be filed before the State Commission where the value of goods or services and the compensation claimed exceeds Rs. 20 lakh but does not exceed Rs. One crore.
- (c) **Appeal:** In case the aggrieved party is not satisfied with the order of the State Commission he can appeal to the National Commission within 30 days of passing of the order.

3. National Commission

The National commission was constituted in 1988 by the central government. It is the apex body in the three tier judicial machinery set up by the government for redressal of consumer grievances. Its office is situated at Janpath Bhawan (Old Indian Oil Bhawan), A Wing, 5 Floor, Janpath, New Delhi.

- (a) **Composition:** It consists of a President and not less than four and not more than such members as may be prescribed, one of whom shall be a woman. The National Commission is headed by a sitting or retired judge of the Supreme Court.
- (b) **Jurisdiction:** All complaints pertaining to those goods or services and compensation whose value is more than Rs. one crore can be filed directly before the National Commission.
- (c) **Appeal:** An appeal can be filed against the order of the National Commission to the Supreme Court within 30 days from the date of order passed. It may be noted that in order to attain the objects of the Consumers Protection Act, the National Commission has also been conferred with the powers of administrative control over all the State Commissions by calling for periodical returns regarding the institution, disposal and pending of cases and issuing instructions for adoption of uniform procedures, etc.

Cases on unethical practices by various industries

1. Coca-Cola's misleading juice label: Coca-Cola could face a trial over allegations of false advertising, after the US supreme court said that the company sought to "mislead and trick consumers" by labelling as pomegranate-blueberry juice a product that contains just 0.5 per cent pomegranates and blueberries combined.

2. Toyota Ignored Safety Concerns to Save Money

Toyota made a huge and unethical failure in 2010 when they basically betrayed their promise as a company by ignoring safety concerns and delaying recall investigations just so they could save a little money.

3. Apple - Child slavery

Apple manufacturer Foxconn is as beautiful as their products are, but the production side of their business is a dark, horrific and unethical one. Apple manufacturer Foxconn is like hell on earth. Conditions at this plant are so miserable that "anti-suicide nets" had to be installed beneath the windows after a whopping 17 employees leapt to their deaths in protests of the horrific things they had to endure on a daily basis. Living quarters are like tiny college dorms in a gigantic beehive type factory, each crammed with crappy bunk beds. Exhausting hours, humiliating discipline, unreasonable workloads, and pressure to reduce overtime resulting in lower pay checks are just some of the crappy conditions faced by thousands of Foxconn employees on a daily basis. The controversy began in 2006 and is still happening today. And while Apple has made efforts to branch out and use some different manufacturers to produce their products, unethical Foxconn is still their go-to company.

Findings

Case No 1.

Supreme Court justices voted unanimously to allow pomegranate growers POM Wonderful to proceed with a lawsuit against Coca-Cola Co, which claims that the latter firm sought unfairly to harm its competitors with its deceptive juice labelling. In fact, the Minute Maid juice consists almost entirely of apple and grape juices. POM sued Coca-Cola for damages and is seeking a ban on such labelling, which it says misleads customers about the contents of the juice. In the Supreme Court's decision on Thursday, Justice Anthony Kennedy wrote that Coca-Cola's product is made up of "99.4 per cent apple and grape juices, 0.3 per cent pomegranate juice, 0.2 per cent blueberry juice and 0.1 per cent raspberry juice."

Case No 2.

After confronted with safety concerns regarding faulty breaks and sticking pedals in 2009, Toyota said that phasing in side airbags saved US\$124 million and 50,000 man hours, the cost of what it would have taken to recall and fix vehicles. They also stated that delaying a rule for tougher door locks saved them US\$11 million. Their failure to be honest got so bad that they were even accused of hiding evidence in hundreds of rollover and death cases.

Case No 3.

Tiny child slaves who are forced to work in dangerous conditions, inhaling cancerous vapors, for 10 hours a day, seven days a week. Apple was engaging in unethical tax practices by utilizing an Irish tax loophole to avoid paying billions in taxes on international sales.

Conclusion

The government and many private organizations have been making an effort to save consumers against exploitation and allow ethical business practices. Indian consumers are not aware about their rights so government are taking so many initiatives like campaigns, seminars, etc. The awareness level is increasing and consumers are becoming more particular about products and services. With the rise in internet and technology everyone can access the real facts about products and services. Consumer can easily cross check the MRP, quantity, and brand of the product. Government is very strict about the unfair trade practices and penalizing the one who is found guilty. Consumer protection act, 1986 has helped consumer get the justice and feel safe.

Bibliography

Books

- *Business Ethics: An Indian Perspective* By A. C. Fernando
- *Ethics in Marketing: International Cases and Perspectives* By Patrick E. Murphy, Gene R. Laczniak, Andrea Prothero
- “Consumer Protection in India”, Himachalan, D. (2006) Ambala: the Associated Publishers, First Edition.
- *Commentary on the Consumer Protection Act, 1986*, Barowalia J.N., (2002) : “Universl Law, Publishing Co. Pvt. Ltd.
- “Consumer Protection Act, 1986”, Das B.K., (1999) (Second Revised).

Webliography

- www.ncdr.nic.in/1_1.html
- en.wikipedia.org/wiki/Consumer_Protection_Act,_1986
- chdconsumercourt.gov.in/consumerprotectionact.pdf
- en.wikipedia.org/wiki/Business_ethics
- www.businesspundit.com/10-most-unethical-business-practices/
- alizu2.blogspot.com/2013/.../10-most-unethical-business-practices-in.ht...