



UNFAIR TRADE PRACTICES AND THEIR EFFECTS IN INDIA

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ABSTRACT

The phrase “Unfair Trade Practise” does not have a single, accepted meaning. However, the phrase “unfair trade practise” typically refers to any dishonest, fraudulent, or misleading business practise as well as any misrepresentation of the goods or services being supplied that is either forbidden by law or has been acknowledged as actionable by a court decision. However, the Consumer Protection Act of 1986 is the Indian law that deals with the word.

The issue of unfair trade practises has emerged as a significant concern in the context of globalisation, and India is not an exception to this trend. The aforementioned practises constitute a spectrum of deceitful, coercive, and opportunistic manoeuvres utilised by enterprises to secure an inequitable edge over their rivals or customers. The implementation of such practises in India has resulted in noteworthy ramifications on the economy, market competitiveness, and the welfare of consumers. The present article delves into the diverse manifestations of inequitable trade practises that are widespread in India and their detrimental impact on the country.

Keywords: Competition Law, Unfair Trade Practices, SEBI, CCI etc.

UNFAIR TRADE PRACTICES

The act of False Advertising involves the use of misleading claims, exaggerated statements, and false representations in advertisements, which can lead consumers to make purchases based on inaccurate information. The act of engaging in such unethical practises can erode consumer confidence and create an uneven playing field in the market.

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Price manipulation is a practise whereby unscrupulous businesses engage in activities such as price fixing, predatory pricing, and cartelization with the aim of manipulating prices and restricting fair competition. The aforementioned practise leads to a reduction in the number of options available to consumers and causes prices to be artificially manipulated, thereby creating inefficiencies in the market.

The prevalence of counterfeit merchandise and substandard commodities in India poses a threat to consumer safety and impairs the credibility of authentic manufacturers. The production and distribution of counterfeit goods not only violate intellectual property laws but also result in financial losses for lawful enterprises.

The utilisation of unbalanced contracts, concealed terms, and inequitable clauses by dominant market players to exploit their bargaining power and exert undue influence on smaller businesses or consumers is commonly referred to as unfair contractual terms. These practises curtail the capacity of smaller entities to bargain for fair conditions, thereby sustaining an inequitable business terrain.

The misapplication of Intellectual Property Rights (IPR) can result in unfair trade practises, which may involve the exploitation of patents, trademarks, and copyrights to impede competition and establish entry barriers. This hinders the progress of innovation, limits the entry of businesses into the market, and impedes the expansion of smaller enterprises.

LEGAL FRAMEWORK

Until 2002, the Monopolies and Restrictive Trade Practises Act (MRTP)¹ was the primary legislation in India aimed at preventing monopolies and restrictive trade practises, thereby addressing unfair trade practises within the country. The repeal of the MRTP Act paved the way for the enactment of the Competition Act, 2002. Consequently, all the unresolved cases that were pending before the MRTPC were transferred to the Competition Commission of India (CCI) for adjudication at the respective stages they had reached. The Competition Act did not include any measures to address unfair trade practises, and as a result, this issue was addressed under the existing Consumer Protection Act of 1986 (COPRA), which already had provisions for dealing with such practises. According to Section 2(1)(r) of the Consumer Protection Act (COPRA),² unfair trade practise refers to a trade practise that employs any unfair method or unfair or deceptive

¹ Monopolies and Restrictive Trade Practises Act 1966

² Consumer Protection Act 1986 s 2(1)(r).

practise to promote the sale, use, or supply of any goods or services. This includes practises such as making oral or written statements or using visible representations that are misleading or deceptive.

“The following are considered deceptive practises under the law: (i) misrepresenting the quality, quantity, grade, composition, style, or model of goods; (ii) misrepresenting the standard, quality, or grade of services; (iii) misrepresenting used goods as new; (iv) falsely claiming that goods or services have certain characteristics, accessories, uses, or benefits; (v) falsely claiming sponsorship, approval, or affiliation with a seller or supplier; (vi) making false or misleading claims about the need or usefulness of goods or services; and (vii) providing warranties or guarantees for a product or goods that are not based on adequate testing.”

EFFECTS OF UNFAIR TRADE PRACTICES IN INDIA

Unfair trade practises can lead to economic distortions that impede the principles of equitable competition, thereby hindering market efficiency and growth. The distortion of prices and the suppression of competition through such practises engender contrived market asymmetries that impede economic progress and deter investment.

Unfair trade practises in the realm of consumerism can lead to consumer exploitation, whereby consumers are deprived of access to accurate information, quality products, and competitive prices, ultimately causing harm to them. The dissemination of deceptive promotional material, the production of fraudulent merchandise, and the creation of inferior goods can undermine the confidence of consumers, jeopardise their safety, and detract from their general welfare.

Unfair trade practises have the potential to cause harm to competitors and small businesses, resulting in a notable disadvantage for the latter. The prevalence of dominant market players who engage in price manipulation or impose unfair contractual terms can impede competition, restrict market entry, and impede innovation.³ The hindrance of small enterprise growth exacerbates income inequality and the concentration of economic power.

Unethical trade practises have the potential to negatively impact the reputation of businesses and the general perception of the market. The existence of misleading promotional practises,

³ United Nations Conference on Trade and Development, The effects of anti-competitive business practices on developing countries and their development prospects (2008) United Nations
<https://unctad.org/system/files/official-document/ditcclp20082_en.pdf> accessed 19 May 2023.

fraudulent merchandise, and inequitable contractual provisions undermines confidence in the economic system, impeding both local and global financial ventures.

The effective mitigation of unfair trade practises necessitates the establishment of strong legal and regulatory structures. Nonetheless, the effectiveness of taking action against offenders is hindered by insufficient enforcement mechanisms and sluggish judicial processes. Enhancing the legal and regulatory frameworks is imperative in mitigating inequitable trade practises and protecting the welfare of both consumers and enterprises.

RECENT DEVELOPMENTS

In recent times, there has been an increase in the incidence of Unfair Trade Practises, with several instances coming to light and prompting discussions on the matter. In a recent incident, Big Bazar, a retail establishment, designated Republic Day as a Mega Savings Day, resulting in an overwhelming influx of consumers. In order to regulate access exclusively to authorised buyers, the store devised a system whereby a voucher of Rs 50 is distributed for entry. The district forum received a complaint from the government of Gujarat, accusing Big Bazar of engaging in unfair and restrictive trade practises. “The complaint pertained to the collection of Rs 1,95,000 from the sale of 3,900 coupons. The matter at hand pertained to the determination of whether the imposition of an entry fee constitutes an unfair or restrictive trade practise. The Forum upheld the Government's argument, stating that in situations where the crowd cannot be managed, the store should have contacted the police. However, the store did not possess the authority to deny entry or demand an entry fee. The Forum has directed Big Bazar to remit the collected amount along with the accrued interest.”⁴ The order issued against Big Bazar was contested by the company in the State Consumer Disputes Redressal Commission, but the appeal was ultimately denied. Subsequently, Big Bazar initiated a revision process by approaching the National Consumer Redressal Commission. The establishment asserted its entitlement to limit customer access to its premises.⁵ The argument put forth was that the coupons were intended to manage the influx of customers and that there was no employment of any unjust trade practises. As per the findings of the National Commission, it was determined that Big Bazar did not engage in any form of unfair or restrictive trade practise. The proposition posited that the imposition of an entrance fee does

⁴ Bhumika Indulia, ‘Discontinue unfair trade practice of arbitrarily imposing additional cost of carry bags at payment counter’ (SCC Online Blog, 24 December 2020) <<https://www.sconline.com/blog/post/2020/12/24/ncdrc-discontinue-unfair-trade-practice-of-arbitrarily-imposing-additional-cost-of-carry-bags-at-payment-counter-read-ncdrcs-full-discussion-on-consumer-rights-in-big-bazaar-matter/>> accessed 19 May 2023.

⁵ *Ibid.*

not engender price manipulation of a given product or service, but rather serves to regulate customer influx. This practise is widely observed across the globe and is considered permissible.

Unitech Ltd., a prominent real estate company, has been found to have engaged in "unfair trade practise" by a consumer forum. As a result, the company has been ordered to compensate a customer with a sum of Six Hundred Sixty Thousand Indian Rupees. This compensation is for the "illegal demands" made by the company after the customer had booked a flat and paid the booking amount. As per the ruling of the District Consumer Disputes Redressal Forum, it was noted that the company and its representative had made unwarranted requests from the consumer and had also issued a warning to confiscate the amount deposited by the latter.

A recent incident involved SpiceJet being instructed by a consumer forum to remunerate a passenger with a sum of One Hundred Thousand Indian Rupees. The airline was found to have denied boarding to certain members of the passenger's family, despite their possession of confirmed tickets. As a result, the family was compelled to undertake separate flights while returning from Goa to Delhi. The East District Consumer Disputes Redressal Forum has determined that SpiceJet engaged in unfair trade practise by separating a family with children into two groups, which was deemed as "cruelty."

In recent times, there has been an increase in the incidence of Unfair Trade Practises, with several instances coming to light and prompting discussions on the matter. In a recent incident, Big Bazar, a retail establishment, designated Republic Day as Mega Savings Day, resulting in an overwhelming influx of consumers. In order to regulate access exclusively to authorised buyers, the store devised a system whereby a voucher worth Rs 50 is dispensed to gain entry. "The district forum received a complaint from the government of Gujarat, which claimed that Big Bazar had engaged in unfair and restrictive trade practises by collecting a sum of Rs 1,95,000 through the sale of 3,900 coupons. The matter at hand pertained to the determination of whether the imposition of an entry fee constitutes an unfair or restrictive trade practise. The Forum upheld the Government's argument that in the event of an uncontrollable crowd, the store should have contacted law enforcement authorities. However, the store did not possess the authority to deny entry or levy an entrance fee. The Forum has instructed Big Bazar to remit the collected amount along with the accrued interest. The State Consumer Disputes Redressal Commission dismissed the appeal made by Big Bazar subsequent to an order issued against them. Subsequently, Big Bazar initiated a revision process by approaching the National Consumer Redressal Commission."⁶ The establishment asserted its

⁶ *Big Bazaar vs Government Of Gujarat* [2013] Rev. P. 1674 of 2007.

entitlement to limit customer access to its premises. The argument put forth was that the coupons served the purpose of crowd regulation among customers, and that no instances of unfair trade practises had been employed. As per the findings of the National Commission, it was determined that Big Bazar did not engage in any form of unfair or restrictive trade practise. The assertion posited that the imposition of an entrance fee does not engender price manipulation of a commodity or amenity, but rather serves to regulate the influx of customers. This practise is widely prevalent across the globe and is considered permissible.

The consumer forum has found Unitech Ltd., a prominent real estate company, guilty of engaging in "unfair trade practise" and has ordered the company to compensate a customer with an amount of Six Hundred Sixty Thousand Indian Rupees. The customer had booked a flat with the company and had paid the booking amount, but was subjected to "illegal demands" by the company. As per the ruling of the District Consumer Disputes Redressal Forum, it was noted that the aforementioned company and its representative had made unwarranted requests from the consumer and had also issued a warning to confiscate the amount deposited by the latter.

“A consumer forum directed SpiceJet to pay a sum of One Hundred Thousand Indian Rupees to a passenger in a case where the airline did not permit the passenger's entire family to board the plane, despite having confirmed tickets. As a result, the family members had to travel on two different flights while returning from Goa to Delhi. The East District Consumer Disputes Redressal Forum has determined that SpiceJet's decision to separate a family into two groups, particularly when they were accompanied by children, constitutes an act of cruelty and is therefore considered an unfair trade practise.”⁷

CONCLUSION

India's economy, market competition, and consumer welfare are significantly challenged by unfair trade practises. Addressing these practises necessitates a multifaceted strategy that encompasses comprehensive legislative measures, efficient enforcement mechanisms, and campaigns aimed at enhancing consumer awareness. Collaboration among businesses, policymakers, and consumers is imperative in tackling inequitable trade practises, thereby promoting a just and competitive market atmosphere that is advantageous to all parties involved. India has the potential to foster a sustainable and inclusive economy that adheres to the principles of fairness and transparency by mitigating unjust trade practises.

⁷ PII, 'SpiceJet to pay Rs one lakh for unfair trade practice' The Economic Times (India, 9 August 2013) 8.