

Consumer Protection Act of 2019 and CCPA

- A Quick Survey

The new Consumer Protection Act of 2019 (hereafter CPA 2019) was passed by the Indian Parliament on August 2019 and came into effect (a few provisions) vide Govt. Notification on July 15, 2020. However, regardless of the other provisions coming into effect, the contents of the new law is definitely worth a glance.

Speaking in commoners' terms, one might ask "*Isme mere lie kya hai !*". While the answer may not be a "*Sab kuch hai*", it definitely is "*Bahut kuch hai !*". The CPA 2019 has proved to be a paradigm shift from the regimes of 'Buyers be aware' to 'Sellers be aware'. The Preamble of the Act makes it clear that this law is for the protection of interests of the consumers, and establishes authorities for timely administration and/or settlement of disputes. On the other hand, it has silently created a plurality of mandates for the sellers/manufactures/service providers to comply.

Attributing the product liability

It does not appear that an aggrieved consumer is obligated to find out: whether the product/service fault is to be attributed to a seller or a manufacture or a service provider. Thus, in a supply-chain dependent environment, sellers, manufacturers and service providers in vertical and horizontal market segments, will have to secure the corners of their contract when it comes to product liability. An OEM may have to re-consider its contracting strategies with other OEMs and create a compliance-matrix built on well-thought legal and technical considerations and protect its interest and also the interest of her consumers. Thus in a cross-licensing market, an OEM which manufactures simple nuts and bolts may be answerable to its bigger OEMs (which manufactures cars) and hence to the aggrieved Consumer, should its nuts-and-bolts be the reason for the damaged suffered by the consumer.

However, in this Survey we will mostly focus on the salient features of the CPA 2019, which has been drafted keeping the consumer as his deity.

Salient Features of the Consumer Protection Act, 2019

The buzz-words of the CPA 2019 are:

- Central Consumer Protection Authority (CCPA)
- Consumer Protection Councils (at District, State and National levels)
- Mediation
- Product Liability
- Rules on E-commerce
- Penalty for adulteration and spurious goods
- Complaint can now be filed where Consumer resides
- Simplified Dispute Resolution

In this part we will only deal with provisions surrounding the CCPA and other discussions shall be published in parts.

Central Consumer Protection Authority (CCPA)

If you have always despised the *Fair-and-not-so-lovely* advertisements, then you may draw the attention of the CCPA. The CCPA shall be established to regulate matters relating to violation of the rights of the consumers, unfair trade practices and false and misleading advertisements, which are detrimental to not only to the consumers, but also towards the general public. However, apparently the primary reason for the hype around the CCPA is to reign in the unruly horse, i.e. false and misleading advertisements regarding the baseless claims made by the manufacturers through their celebrity-endorsed advertisements.

Chapter III of the CPA 2019 establishes the CCPA. As per Section 17 of the CPA 2019, a complaint relating to false and misleading advertisements, violation of consumer rights or unfair trade practices may be 'forwarded' to the CCPA, or the District Collector or the Commissioner of a regional office.

However it does not state as who has the *locus standi* to forward a complaint; whether any person interested or an interested (aggrieved) person. **It may be noted that the word used in this Section is that a complaint may be 'forwarded' and not 'filed'.** This means that an aggrieved Consumer shall knock the doors of the appropriate Consumer Redress District/State/National Commission to institute his/her case. Moreover, a bare perusal of Section 17 makes it clear that the complaint on false or misleading advertisements/ unfair trade practices, should appear to affect the public at large and the consumers as a 'class'; which means that a complaint warrants a class-action-suit. It is immaterial whether the complainant is an aggrieved Consumer and he/she can also be a member of the general public. Thus the CCPA may not entertain individual cases for redressal. It appears that it is a watchdog which has been empowered to *suo motu* initiate proceedings against instances of:

- False and misleading advertisements;
- Unfair trade practices; and
- Violation of Consumer rights.

Powers of the CCPA

Section 18-22 of the Chapter III lays down the responsibilities, and powers of the CCPA. In a nutshell, the CCPA is empowered to:

- ✓ Enquire or **investigate**, *suo motu*, or on a complaint received or on the directions from the Central Government, into the matters concerning violation of Consumer rights or unfair trade practices.
 - This includes the power of **search and seizures** of the goods on suspect radar.
- ✓ **File complaints** before the District/State/National Redressal Commissions and also intervene during proceedings.
- ✓ Mandate use of **identifiers** in goods to prevent unfair trade practices.
- ✓ Issue **safety notices** to the public on hazardous goods.
- ✓ Refer matters to other Regulators as and when necessary.
- ✓ **Order Recall of goods** or services when it is satisfied upon investigation that the goods/services are detrimental to the consumers.
 - Order reimbursement of the prices of goods/services so recalled to the purchasers.
 - Order discontinuation of practices which are unfair and prejudicial to consumers' interest.
- ✓ Issue other guidelines as and when necessary.

Advisory Role of the CCPA includes:

- ✓ Recommend adoption of international best-practices on consumer rights implementation.
- ✓ Undertake and spreading promotion of research on consumer rights.
- ✓ Encourage NGOs and spirited institutions in the field to collaborate and work with consumer protection agencies.
- ✓ Advise Central and State Governments on consumer welfare measures.

Penal Provisions due to false or misleading advertisements

Since this wide power of the CCPA has been the talk of the town, it has been explained here as a separate provision to throw more light, in the interest of the Consumers.

- ✓ This power to issue directions and impose penalties for false and misleading advertisements originate from Section 21 of the Act. After an investigation, the CCPA may issue directions to the concerned **Trader, Manufacturer, Endorser, Advertiser or Publisher**. The order may come as a discontinuation of the advertisement or its modification in such a manner prescribed by the CCPA.
- ✓ Independent of issuing the above order, the CCPA may directly proceed to impose a penalty on the **Manufacturer** and the **Endorser**, which may extend to **ten lakh Rupees**. And for every subsequent contravention, the **penalty imposed may extend to fifty lakh Rupees**.
- ✓ Further, from the quiver of penal measures, the CCPA may **specifically prohibit the Endorser from making any endorsement for any products or service for a period which may extend to one year or to three years** for any subsequent contravention.

✓ A penalty upto ten lakh Rupees may be imposed upon a party found to publish false and misleading advertisements or is a party accomplice to such publishing.

✎ However, vide this section, the endorser shall not be liable to a penalty if she/he has exercised due diligence to verify the veracity of the claims made in the advertisements. This proviso per se may be worrisome as no standards has been laid down on the level of diligence expected. Hence each case shall be judged on its merits.

✎ An accused may escape liability if he proves that the publication of such advertisement was done in the ordinary course of his business. Now, what does 'ordinary course of business' mean in the consumer context, seems to have created the lawyers' paradise.

Conclusion

The new law has sweeping provisions, featuring the consumer as his deity. But just like any other new legislations, the CPA 2019 will be a subject of discussion amongst the legal community on the haves and have-nots. It will also be traced as to how future consumer-dispute litigations span out due to the newly introduced provisions on false advertisements, product liability and spurious goods and on e-commerce players. However, regardless of everything, the legislative intent and wisdom behind enacting laws on the above provisions is a welcome. Gone are the days where your stars from the B-Town could casually walk into the screens during the commercial breaks and brazenly endorse products on fairness creams which in reality may be false and misleading, and regardless of the deep scar it may leave on the people indigenous to this land (or the sub-continent). There is joy in writing about this new law, which if correctly applied by spirited citizens, can break the back of the colonial legacy inherent in these fairness-advertisements. From recent developments, it is apparent that the 'Levers' have been properly placed as many fairness-advertisements are being taken down. It is for the Consumers to rise up to the occasion and be aware of the rights endowed to them through this Act.