

Central Consumer Protection Authority
Krishi Bhawan, New Delhi- 110011

Case No : CCPA-2/42/2022- CCPA

In the matter of: Exide Industries Limited

CORAM:

Mrs. Nidhi Khare, Chief Commissioner
Mr. Anupam Mishra, Commissioner

Appearances

For Exide Industries Limited

Ms. Neelina Chatterjee
(Advocate)

Date: 27.09.2024

ORDER

1. The Central Consumer Protection Authority (CCPA) is in receipt of a complaint from the Advertising Standards Council of India (ASCI) wherein it was alleged that misleading advertisement for its Exide Inva Tubular Battery had been published by Exide Industries Limited (hereinafter referred as 'opposite party') through Youtube and on company's own website that the product is "India's No. 1 Inverter Battery".
2. Accordingly, in exercise of the powers under section 18, 19 of the consumer Protection Act 2019, CCPA took cognizance of the matter and conducted a preliminary inquiry to examine veracity of the claims in the impugned advertisement made by the opposite party. On perusal of the claim made by the company, it has been observed that :
 - a. Company claim that, Exide Inva tubular battery is "India's No. 1 Inverter Battery". However basis of the claim has not been disclosed to the consumers.
 - b. It is not clear whether company has any data or marketing study report regarding the said claim
 - c. It is not clear whether the company has comparative data of the advertiser's inverter battery brand versus other similar inverter battery brands in India
 - d. It needs to be ascertained whether Company has any test report with regard to the said claim made in the advertisement.
3. A notice was issued to the opposite party on 17th May 2022 for alleged violation of Consumer Protection Act, 2019 highlighting the issue of misleading advertisement by making claims without any substantiation.

4. An opportunity to furnish the response within 15 days of issue of the notice was given to the opposite party vide the notice dated 17.05.2022.
5. In response to the notice, a reply dated 01.06.2022 was received from the opposite party, wherein, following submissions were made:
 - i. Exide Industries Limited is a public limited company and is engaged in the business of manufacturing and sales of lead acid storage batteries for automotive, industrial and submarine applications.
 - ii. For a period of 75 years since its corporation, Exide has been one of India's most reliable brands, enjoying unrivalled reputation. Its constant emphasis on innovation, extensive geographic footprint, strong relationship with marquee clients and steady technology upgradations with global partners have made it a distinct frontrunner in the market.
 - iii. The statement India's No. 1 Inverter Battery will be interpreted by consumer as largest selling batteries which is a matter of fact. As per syndicated research reported prepared by a reputed agency, Exide batteries has consistently been the No. 1 brand in inverter batteries in terms of sales volume over the last five years. This is a syndicated study that Exide subscribers to and this covers approx. 61 market across India.
6. In view of the above reply, The CCPA vide notice dated 12th October 2022 directed Exide Industries to submit the following documents
 - a. The sales figure of inverter battery vertical for the last 5 years certified by an independent CA and reputed CA firm, market share of Exide in the inverter battery industry certified by an independent and reputed CA firm.
 - b. CBFC certification for airing the advertisement.
7. Opposite party submitted its reply vide letter dated 05th December 2022 submitted the following reply-
 - a. Sales Figure of the inverter battery for the last five years (in terms of net sales value in India) duly certified by a reputed and independent CA firm.
 - b. Sales Figure of the inverter for the last five years in (terms of net sales volume) in India duly certified by a reputed and independent CA firm.
 - c. The Central Board of Film (CBFC) certificate is not applicable as the advertisement was never aired in the big screen nor was it attached to any film.
 - d. Conducted a survey through a well-known agency and as per the research report prepared by the agency by covering approx. 61% markets across India. Unfortunately the opposite party is not in the position to submit the report as they are bound by the confidentiality obligations with agency.

8. The reply of the opposite party has been carefully considered. CCPA observed that :

(a) The opposite party has not submitted the audited financials of its accounts reflecting audited sales figures. The opposite party has submitted a certificate from one CA S.K. Didwania (proprietor, memo no 056954) and Surendra Didwania &Co. It is pertinent to note that Excide Industries Ltd is a listed company in Bombay Stock Exchange (BSE) and National Stock Exchange (NSE). As a publicly listed company, the disclosure norms of SEBI require disclosure of audited financials to the general public apart from filings to Registrar of Companies (ROC) under Company law. It is unacceptable that the opposite party has merely submitted a certificate from a chartered Accountant with some figures of sales from FY 2017-18 to FY 2021-22. It is not clear- whether the Chartered Accountant was also the auditor of company accounts based on whose report the statutory filings such as Income Tax and ROC compliances were made by the company. Moreover, the certificate does not mention whether the sales figures are audited sales figure of the company.

(b) In view of the observations made in para 1 read with para 8(a) above, and examination of the reply of the opposite party dated 01.06.2022 and 05.12.2022 CCPA is satisfied that there exist prima facie case within the provisions of the Consumer Protection Act, 2019.

9. As per Section 19 (1), The Central Authority may after receiving any information or complaint or directions from the Central Government or of its own motion, conduct or cause to be conducted a preliminary inquiry as to whether there exists a prima facie case of violation of consumer rights or any unfair trade practice or any false or misleading advertisement, by any person, which is prejudicial to the public interest or to the interest of consumers and if it is satisfied that there exists a prima facie case, it shall cause investigation to be made by the Director General (DG) or by the District Collector (DC).

10. Thereafter, in light of the findings at para 8 above, the matter was referred to DG Investigation vide letter dated 12.09.2023 as mandated under section 19(1) of the Consumer Protection Act, 2019 for the purpose of further investigation.

11. Thereafter, Director General (Investigation) submitted its investigation report dated 19.02.2024 with the following findings:-

- a. The opposite party was directed to submit a Comparative Consumer Feedback by an independent agency to support their claim but no documentary evidence has been received from the company.
 - b. Exide Industries has published new advertisements with a disclaimer stating that the claim "India's No. 1 Battery" is based on All-India Market Share as per research conducted by an Independent Research Agency. However, the company is still running old advertisements without any disclaimer or the substantiation basis of their claim.
 - c. Exide Industries asserts its position as "India's No. 1 Inverter Battery" primarily based on high sales figures in terms of value and volume. However, DG Report stated that sales volume alone does not justify such a claim as the volume of sales of a product mainly relies on the company's marketing strategy.
 - d. Exide Industries was instructed to furnish Comparative Consumer Feedback from an independent agency, encompassing various crucial parameters such as after-sales service, warranty policies, market analysis, customer surveys, competitor evaluations, product testing, pricing strategy development, brand positioning and industry reports.
 - e. Company claimed to have conducted a market survey through the reputed independent agency GFK Mode Pvt. Ltd. However, the Company has refused to disclose the report.
 - f. The list of awards received by Exide Industries have been listed, but no additional relevant documents or material have been provide to support their claim.
12. The investigation report dated 19.02.2024 was shared with the opposite party via letter dated 05.06.2024 for comments. However, CCPA did not received any comments on the investigation report from the Exide Industries despite it seeking additional time from the Central Authority via mail dated 04.07.2024.
13. Thereafter, an opportunity of hearing was provided to the opposite party on 07.08. 2024. Opposite party appeared in the hearing, represented by Mrs. Neelina Chatterjee , Advocate, wherein, following submissions were made:-
- i. Claimed to be India's No. 1 battery brand based on the sales figures of competitors obtained from their respective annual reports, which are available in the public domain.

- ii. The act do not specify how the disclaimers should be presented. While they believe the disclaimer is clear in their impugned advertisement and the term is "hard to miss".
- iii. Subject to the undertaking to address this in the future, as their claims were accurate based on their sales figure.
- iv. Received multiple awards and has been accredited by various institutions.
- v. The counsel of the opposite party apprised the Central Authority that they are ready to correct the advertisement and if necessary, ready to take it down.
- vi. The opposite party had conducted a survey internally by third party but cannot share the report with any other party due to a confidentiality clause. On consent being sought by opposite party from the third party research agency seeking consent to share the report, the agency refused. It was submitted by the counsel that the company has signed the NDA (Non-Disclosure Agreement) with the agency.
- vii. On being enquired during the course of hearing conducted by CCPA, the opposite party shared revenue from operations for the Financial Year 2020-2021 and 2021-2022, along with the revenue of well-known brands such as Amara Raja Energy & Mobility Limited, Luminous Power Technology Private Limited and V Guard. It is reproduced as under:-

(Amount in INR Crs)

Name	Revenue from Operations F.Y. 2021022	Revenue from Operations F.Y. 2020-21
Amara Raja Energy & Mobility Limited	8,696	7,150
Luminous Power Technology Private Limited	3,692	3,214
Exide Industries Limited	12,382	10,041
V-Guard	3,475	2,699

14. The CCPA examined the details submitted by the opposite party and found that there is no valid basis for its claim of being "India's No. 1 Battery". However, the disclaimer which has been provided by the company in the

new advertisement is also not backed by any valid substantiation through any third-party survey or substantial material which can support the claim.

15. It may be mentioned that, Section- 2 (28) of the Act defines “misleading advertisement” in relation to any product or service means an advertisement, which-

- i. falsely describes such product or service; or
- ii. gives a false guarantee to, or is likely to mislead the consumers as to the nature, substance, quantity or quality of such product or service; or
- iii. conveys an express or implied representation which, if made by the manufacturer or seller or service provider thereof, would constitute an unfair trade practice; or
- iv. deliberately conceals important information;

16. From the aforementioned provisions, it is clear that an advertisement should contain truthful and honest representation of facts, and disclose important information in such a manner that they are clear, prominent and extremely hard to miss for viewers/ consumers.

17. It is important to disclose the basis on which the opposite party, is claiming itself as Number 1 Inverter Battery, so that consumers can make informed decisions while purchasing the product. CCPA observed that the company is deliberately concealing important information, such as the procedure adopted in the study, data used and findings of the report which supports its No. 1 claim. It seems company used consolidated revenue without breakup from operations as the proxy of sales figure.

18. The tagline of No. 1 Inverter Battery could be based on different types of parameters such as sales figures, market share, and life of the battery, duration of battery or any other criteria. Therefore, the company should have clarified and substantiated this claim, which they failed to do so even after various opportunities. As evident from the DG (Investigation) report, even during the course of Investigation by DG (Investigation), the opposite party was given numerous opportunities via email dated 11.01.2024 and subsequent reminders on 19.01.2024 and 23.01.2024 to submit documentary evidence such as comparative consumer feedback by an independent agency, to support their claim. However, the documents were not provided. Instead the list of awards they have received had been submitted which are as follows

- a. *CII- Excellence in Energy Management*
- b. *CII Quality Awards (Jury award)*
- c. *Platinum Award Winner at CII National Kaizen Competition*
- d. *Manufacturing Today Award- Quality Category*

- e. *JIPM Award for Excellence in consistent TPM commitment*
- f. *Cyber Security Excellence Award by QUANTIC*
- g. *SAP ACE Award*
- h. *India Green Manufacturing Challenge*
- i. *Golden Peacock Award*

19. (a) The contention that the opposite party is prevented by some Non-Disclosure agreement is untenable. The opposite party has caused the study to be conducted by the third party, paid for the services to the third party, and hence owner of the report. The opposite party has absolute right on the manner of use of the study report without any encumbrance. "Section 2(46) of Consumer Protection Act, 2019 defines "Unfair Contract" as imposing on the consumer any unreasonable charge, obligation or condition which puts such consumer to disadvantage." Section 24 of Contract Act 1872, states that agreement is void- if consideration and objects unlawful in part-if any part of a single consideration for one or more objects, or any part of any one of several consideration for a single object, IS UNLAWFUL, the agreement is void.

(b) Now, in the instant case the opposite party is a receiver of service from the third party (GFK) in the form of study report, the opposite party itself comes within the purview of definition of consumer under Consumer Protection Act, 2019. The said restrictive clause in the agreement is within the purview from "unfair contract" mentioned in clause (iv) of Section 2 (46) of Consumer Protection Act, 2019. To that extent the non-disclosure clause in the agreement cited by opposite party is an unfair contract in light of the restrictive condition impairing the right of the opposite party to use the report in any manner in the capacity of owner. The aforementioned non-disclosure clause in the agreement is therefore hit by Section 24 of Contract Act 1872 as the condition is unlawful (under Consumer Protection Act 2019- Section 2 (46) (iv).

(c) In a nutshell, Section 2(46) (iv) read with Section 24 of Contract Act 1872 make the said restrictive clause in the agreement void, being unlawful, thereby removing the impediment (to sharing report with Central Authority); a stand the opposite party has been citing all along the proceedings. The contention of the opposite party is therefore diversionary and lacks merit.

20. Using "Number 1" cannot be considered misleading, as the company may have various grounds for its claim. In this case, the company's new advertisement asserts that India's No. 1 Battery is based on All-India Market Share according to research conducted by an independent agency. However, the opposite party is unwilling to share the report that supports the public claim. The justification of not sharing the report with CCPA, that too when required under lawful proceedings of CCPA is not tenable (as

discussed in para 19), more so the opposite party has paid for the survey and is the owner of the report. The conduct of the opposite party suggests that there is no credible basis for the claim.

21. If the company has used the tagline based on sales figure, they should be able to substantiate the claim with the relevant supporting data without any inhibition. But they failed to provide these evidences in support.
22. Initially the opposite party had just shared the consolidated revenue figure from operations which is forwarded to CCPA as a proxy for sales figure. The claim in the advertisement is completely vague and not backed by any valid support. A valid basis of claim is an important information which has been deliberately concealed in the advertisement by the company to create deception in favour of the product. However, after repeated request the opposite party has shared an excel sheet of sales figures of different brands from GFK data vide email dated 06.09.2024. The data provided in excel sheet is perused. Following inadequacies in the excel sheet data is noticed-
 - (i) The opposite party has not shared audited sales figures of the own company (Exide Industries) and instead forwarded the data from a third party and that too not certified by the third party. The data (GFK) provided lacks authenticity as it is not clear whether it is the audit report figures of the certified auditor of the respective companies.
 - (ii) The entire report of third party has not been shared despite requests. Instead an excel sheet has been shared which neither have signature nor seal of the authorized signatory of the third party which conducted the study. It is just an excel sheet without authentication.
 - (iii) It is not clear whether the third party has utilized audited sales figures of the other brands as well. It is the duty of opposite party to base its claim on authentic (example audited) sales figures of the competitors in order to come to a conclusion that it is the "Number 1 Inverter Battery". Use of unaudited sales data not subjected to statutory audit by a certified auditor under Income Tax law leave scope for manipulation and hence lacks credibility. Audited financials have statutory backing under SEBI regulations and Income Tax law and therefore credible.
 - (iv) It was the duty of opposite party to have disclosed to consumers the source of data along with the claim.
 - (v) Failure to do so amounts to "deliberately concealing important information [(Section 2(27)(iv))]
 - (vi) If sum, opposite party has not shared the complete study report for perusal by the CCPA which CCPA is competent to do so. Unverified excel sheet is shared is just an evasive tactic employed by opposite party to avoid sharing report with an intent to conceal information.

23. Such misleading and deceptive advertisements affect consumers adversely as a class. The company has not disclosed the basis of their claim in the advertisement, thereby concealing important information. Therefore, the opposite party claim "India's No. 1 Inverter Battery" is found to be misleading under Section 2(28) of The Consumer Protection Act, 2019 to the extent of false description, unfair trade practices (section 2 (47) (1) (a) and concealing important information.

24. It is pertinent to mention that as of 16.08.2024, the misleading claim are still visible on the official website, <https://www.exideindustries.com/products/inverter-batteries.aspx>. It clearly indicates that the company refuses to disclose the report with the consumers or to the Central Authority to validate their claim. Even in the corrected advertisement the disclaimer is inadequate, thereby rendering it misleading under the provisions of Consumer Protection Act, 2019.

25. The CCPA has after carefully considering the written submissions as well as submissions made by the company during hearing and investigation report submitted by Director General (Investigation) finds that:

a) The advertisement is false and misleading as it deliberately conceals important information with respect to the claim made in the advertisement as "India's NO.1 is Misleading. The claim is not supported by valid documents/ material or any substantial report which can substantiate the claim. The company only provided the consolidated revenues from operations rather than breakup of sales figures of the inverter batteries. On being further requested, opposite party submitted an excel sheet with unverified data in support of the claim made in the advertisement. It is likely to misled the consumers and attract consumer into believing and buying the product- Exide inverter battery.

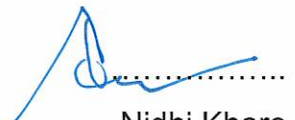
Thus, as it emerged from the facts of the case during hearings and investigation by DG (Investigation), the CCPA is satisfied that the instant case is a fit case of misleading advertisement under following provisions of the Consumer Protection Act 2019 –

Section 2(28)(i) – Falsely describing the product


Section 2(28)(iv) – Deliberately concealing important information

26. The CCPA is empowered under Section- 21 of the Consumer Protection Act, 2019 to issue directions to the advertiser of false or misleading advertisement to discontinue or modify the advertisement and if necessary, it may, by order, impose a penalty which may extend to ten lakh rupees and for every subsequent contravention may extend to fifty lakh rupees. Further, Section 21 (7) of the above Act prescribes that following aspects may be considered while determining the penalty against false or misleading advertisement:-

- a. the population and the area impacted or affected by such offence
 - b. the frequency and duration of such offence
 - c. the vulnerability of the class of persons likely to be adversely affected by such offence.
27. The product (Exide Inverter Battery) has deep market penetration capable of reaching every corner and impacting a large population. Exide industries also has an international presence, affecting consumers worldwide. Consequently, the potential vulnerability of individuals likely to be misled by such advertisements is significant.
28. In view of the above, the CCPA on being satisfied that the advertisement is misleading and under section- 21 of the Consumer Protection Act, 2019, hereby issues the following direction to the Company-
- a. To discontinue the impugned advertisement from all electronic and print media whatsoever with immediate effect.
 - b. CCPA finds it necessary to impose the penalty for publishing false and misleading advertisement claims i.e. "India's No. 1 Inverter Battery" which affected the consumers as a class and conduct of the opposite party of refusing to share the report claimed to be the basis by using deceptive device of a self-serving clause agreement. Opposite Party shall pay a penalty of Rs 2 lakhs which will meet the ends of the necessity.
 - c. The company shall submit the amount of penalty and a compliance report to CCPA on the above directions within 15 days from the date of this Order.
29. The above order of directions are passed in exercise of the powers conferred upon CCPA under section 10, 20, and 21 of the Consumer Protection Act 2019.



Nidhi Khare
Chief Commissioner



Anupam Mishra
Commissioner