

CENTRAL CONSUMER PROTECTION AUTHORITY
Room No 365, Krishi Bhawan, New Delhi - 110001

Ref: F.No. J-25/97/2022-CCPA [33121]

In the Suo-moto matter: Case against Foxy Beauty with regard to misleading advertisement and unfair trade practice.

CORAM:

Smt. Nidhi Khare, Chief Commissioner, CCPA
Shri Anupam Mishra, Commissioner, CCPA

Appearance on behalf of Foxy Beauty

Shri Sharad B Mavani, Proprietor

Date: 20.02.2025

ORDER

This is a suo-moto case taken up by the Central Consumer Protection Authority (hereinafter referred as CCPA) established under section 10 of the Consumer Protection Act 2019. The issue involves misleading advertisement and unfair trade practice by Foxy Beauty (opposite party) through sale of "**Latibule SPF PA 50 Whitening UVA/UVB Protect Body Lotion**" on Flipkart Internet Pvt. Ltd. claiming **transformation of before and after effect in 3 months on the use of Latibule SPF PA 50 Whitening UVA/UVB Protect Body Lotion (impugned advertisement).**

2. Accordingly, CCPA took cognizance of the matter and conducted a preliminary inquiry to examine the genuineness of above claims and assertions made in the impugned advertisement by the opposite party. The preliminary inquiry report indicated that the impugned advertisement was available on the website of Flipkart Internet Pvt. Ltd. by its seller Foxy Beauty as of 02.03.2023 with the following link: https://www.flipkart.com/latibule-whitening-body-lotion-spf-pa-50-moisturiser-fairness-all-skin-type/p/itm42d47d2a8ccbf?pid=MSCGGP8NX5AP72YM&lid=LSTMSCGGP8NX5AP72YMVOTQUD&marketplace=FLIPKART&q=whitening+body+lotion&store=g9b%2Fema%2F5la&srno=s_1_5&otracker=search&otracker1=search&fm=Search&iid=4070b7e3-a360-484c-b90d-751245d127e9.MSCGGP8NX5AP72YM.SEARCH&ppt=sp&ppn=sp&ssid=jalchznpu80000001669971200633&qH=e0f1c24bfd347e3c. Additionally, it has come to light that the claim, "before and after effect in 3 months on the use of Latibule SPF PA 50 Whitening UVA/UVB Protect Body Lotion," having 56 & 97 ratings and 33 & 30 reviews was published without any scientific validation, proper disclosure of the ingredients utilized in the product, or proven results to substantiate the superlative claims made.

3. It was further noted in the preliminary inquiry report that the impugned advertisement was published without any disclosure of the details in the description section regarding ingredients used in the product and proven results to substantiate such superlative claims. Such deceptive conduct constitutes a violation under Sections 2(28) and 2(47) of the Consumer Protection Act, 2019, pertaining to misleading advertisements.

4. It is pertinent to mention here that seller offering goods for sale on the platform of marketplace e-commerce entity is obliged to provide all relevant details as stipulated in the Consumer Protection (E-Commerce) Rules, 2020, so that consumers are empowered to make informed decision at pre-purchase stage. Further, the publication of this false and misleading claim, in the absence of adequate substantiation in the present matter, indicates a deliberate and deceptive intent to convey both express and implied representations that are designed to entice and mislead consumers by omitting truthful and honest information. Such conduct constitutes a violation under Sections 2(28) and 2(47) of the Consumer Protection Act, 2019, pertaining to misleading advertisements. Thus, the information as required to be displayed under the various provisions of law is absent in the present matter. Therefore, in the preliminary inquiry report prima facie it construed as a fit case of misleading advertisement and unfair trade practice under the Consumer Protection Act, 2019 to impact the consumers as a class.

5. In view of the findings of the preliminary inquiry report, a Notice dated 02.03.2023 was issued to Foxy Beauty (Opposite Party), requiring a written response within a period of 15 days from the date of issuance. Response was sought on the scientific justification, verifiable comparative data, third-party validation, and comprehensive details regarding the ingredients used in the product, in order to substantiate the claims made regarding the product "Latibule SPF PA 50 Whitening UVA/UVB Protect Body Lotion" (Impugned Product) and its purported efficacy in whitening the skin and reducing skin darkness, dark spots, and rashes on all skin types.

6. In response to the Notice, a reply dated 18.03.2023 was received from Foxy Beauty (opposite party) submitted that:-

- i. In the era of E Commerce, many companies are promoting their products which lead to extreme competition to promote products with various USPs [unique selling points].
- ii. The opposite party has not claimed anything rather asserted that it tried to promote the product with USP to just come up on the E Commerce platform. It further submitted that it is just a startup and tiny unit who tried to sell products on E Commerce Platform without any awareness of the restrictions mentioned to protect the interest of the consumer.
- iii. However, all objectionable material and advertisement has been discontinued from all e-commerce platforms.
- iv. In reference to para 8 of the Notice of CCPA wherein they were directed to substantiate claim of the impugned product through scientific justification, verifiable comparative data along with the ingredients used in the product, opposite party will submit the information in due course of time.

7. The reply submitted by the opposite party has been examined by CCPA. It was observed that the opposite party failed to provide any scientific justification, third-party validation, or any supporting documents to substantiate the claims made in their impugned advertisement. Additionally, no evidential documentation was submitted to verify the accuracy of the false and deceptive claims made in relation to the use of their product. It is,

therefore, evident that a person of ordinary prudence could easily be misled by the opposite party's deceptive and misleading advertisement, which presents itself under the garb of unique selling points. The following factors are particularly noteworthy:-

- i. Firstly, the name of the product itself inherently conveys an implied representation regarding its effects, which has not been substantiated by the Opposite Party.
- ii. Secondly, the description and pictorial representation of the impugned advertisement explicitly claims that Latibule SPF PA 50 Whitening UVA/UVB Protect Body Lotion before and after effect in 3 months on the use of their product."
- iii. Thirdly, the pictorial representation prominently highlights the claim of skin whitening and exaggerates the transformation of the skin through visual means. Moreover the impugned advertisement does not clarify that the whitening is not permanent, therefore the reply of the opposite party is itself misleading.

In light of the foregoing, CCPA finds a prima facie case of misleading advertisement and unfair trade practice. The submissions made by the Opposite Party cannot be regarded as a valid defense in this matter.

8. Subsequently, vide letters dated 08.11.2023, CCPA requested the DG (Investigation), CCPA to investigate the matter in detail and submit its response to the Central Authority.

9. In the investigation report dated 05.09.2024 received from the DG (Investigation), CCPA the following findings has been submitted:-

- i. An opportunity was given to the opposite party to substantiate the veracity of their claim made through the impugned advertisement. However, no response was submitted by the opposite party.
- ii. The opposite party in its response to CCPA vide letter dated 18.03.2023 submitted that it has removed all misleading advertisements and assured not to repeat such type of activities for sale of products in future.
- iii. It failed to provide any supporting documents for their claim of the product as skin lightening and brightening body cream.
- iv. Opposite party did not have any scientific justification and proven result to support their impugned claim.
- v. Thus, the opposite party is in violation of section 2(28) that deals with misleading advertisement under the Consumer Protection Act, 2019.

9. Considering the above, the Central Authority (CCPA) vide letter dated 26.12.2024 shared the investigation report to the opposite party to furnish their comments on the investigation report at the earliest and a hearing was scheduled on 08.01.2025. However, the opposite party neither submitted any comments for substantiation of their alleged misleading claims and representation of the product.

10. During the hearing scheduled on 08.01.2025, Shri Sharad B. Mawani appeared on behalf of opposite party and submitted the following:
- i. The claim made in the advertisement was due to ignorance of law w.r.t. provisions of misleading advertisement under the Consumer Protection Act, 2019.
 - ii. The product was sold on the e-commerce platform by displaying benefits of products in a way through unique selling points which could help in promoting the sale.
 - iii. The image used in the impugned advertisement was copied from Internet.
 - iv. It has discontinued the sale of the product showcased in the impugned advertisement.
11. Based on the above submission, the Central Authority has directed the Opposite Party to submit, within a period of one week, the undertaking along with the details of the number of units of the products sold. Further, the matter has been scheduled for hearing on 17.01.2025.
12. The Opposite Party, by way of an email dated 17.01.2025, submitted an undertaking wherein it stated the following:
- i. It has stopped selling the product with the claim in the impugned advertisement since April 2023.
 - ii. In the course of its operations on the e-commerce platform, it has sold approximately 90-100 units of the said product.
 - iii. The opposite party has discontinued engaging in this profession and expresses its apologies for the actions that led to the present proceedings, respectfully requesting relief from these proceedings.
 - iv. The opposite party has also requested a postponement of the hearing due to a family wedding function.
13. The Central Authority while considering the above, listed the matter for hearing on 24.01.2025. During the hearing held on 24.01.2025, Shri Sharad B. Mawani made the following submissions:
- i. The cost of the product displayed in the impugned advertisement was approximately between ₹90-100/-. It was further stated that the product in question was manufactured by Old Stone Enterprises, a Surat-based company.
 - ii. The opposite party has stated that the act was committed out of ignorance of the law and stated that a fine of ₹ 1 lakh each was imposed on him in two of the earlier matters of similar nature and compliance has been made of the same.
 - iii. Further, it has expressed sincere apologies and requested for relief in the instant matter.

14. The CCPA carefully considered the findings in the investigation report, the written and oral submissions made by the opposing party. The CCPA notes the following facts and issues in the case:

(a) The written replies and oral submissions made by the opposing party during the hearing have been reviewed and considered. The CCPA observes that the opposing party contends that it was unaware of the provisions of consumer protection law. However, the claims made in the impugned advertisement grossly exaggerated the product's attributes in an attempt to promote its sale, which is a critical aspect of this matter.

(b) In furtherance of the above, the description of the cream as "Latibule SPF PA 50 Whitening UVA/UVB Protect Body Lotion," without any disclosure of ingredients or scientific validation, or proven results to support the advertised claims, is inherently misleading. Such representations create a false and deceptive impression in the minds of consumers, leading them to believe that the product will cause skin whitening upon use. Consequently, the Opposing Party cannot absolve itself of liability by merely claiming ignorance of the Consumer Protection Laws.

(c) The opposite party submitted that the impugned advertisement has been discontinued. It is material to note that had the CCPA not taken cognizance of the misleading advertisement, the opposite party would have continued to gain commercial benefit from its so called ignorance of law. Moreover consumer rights defined under section 2(9) (v) of the Consumer protection Act 2019 codifies the inherent right of consumer to seek redressal against "*unscrupulous exploitation of consumer.*" This codified right is an enforceable right of consumers. CCPA is mandated to operationalize the right to seek redressal of a class of consumers by exercising its powers under section 20 of the Consumer Protection Act 2019.

15. Section- 2(28) of the Consumer protection Act, 2019 defines "misleading advertisement" in relation to any product or service to mean an advertisement, which-

- a) falsely describes such product or service; or
- b) 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
- c) 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
- d) deliberately conceals important information;

16. From a bare reading of the above provisions of the Act, it is clear that advertisement should-

- i. contain truthful & honest representation of facts,
- ii. have assertions, guarantees only when backed by underlying credible and authentic material, study etc.
- iii. Not indulge in unfair trade practice as defined in Section 2(47) of the Act. It should be free from false representation that the goods/services are of particular standard, quality [(section 2(47)(a))] and should not make false or misleading representation concerning the need for or usefulness of any goods or services (section 2(47)(f) of Consumer Protection Act with respect to unfair trade practice.

iv. Disclose important information in such a manner that they are clear, prominent and extremely hard to miss for viewers and does not conceal material information as has also been stated in the Guidelines for prevention of misleading advertisement and endorsements 2022.

17. In light of the above findings CCPA draws the following conclusions that:

- i. The opposing party asserted that it was unaware of the provisions of consumer protection law. It is a established legal principle that ignorance of law is not a valid defence. The impugned advertisement significantly exaggerated the product's attributes to promote its sale, without any basis. The opposite party specifically did not disclose that "skin whitening" is merely a descriptive term and that the pictorial representations of the product do not guarantee the whitening of skin as depicted.
- ii. Additionally, it has not taken adequate care to understand the potency of the product to deliver the advertised result through any scientific study report. Therefore reply of the opposite party regarding ignorance of law is not acceptable as the party has not acted in good faith and did not carry out the due diligence qua the claims in the advertisement. The action of the opposite party is of aggravated nature as it not just a mere violation of some laws, but violation of consumer trust, which is the key underpinnings of consumer rights. Therefore, the opposite party has clearly violated section 2(28)(a); Section 2(28)(b); 2(28)(c); 2(28)(d) of the Consumer protection Act 2019 and it adversely affects the consumers' right to be informed before purchasing a product.

18. The Central Authority (CCPA) is empowered-

- (a) u/s 21 of the Consumer Protection Act, 2019 to issue directions to the manufacturer 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, 2019 prescribes that following may be regarded 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;*
- (b) u/s Section 20 of Consumer protection Act, 2019- Power to recall goods etc-
"Where the central authority is satisfied on the basis of investigation that there is sufficient evidence to show violation of consumer rights or unfair trade practice by a person, it may pass necessary orders, as may be necessary.."

19. The violations by the opposite party are of serious nature as has already been highlighted in the foregoing paras. However, it was noted that opposite party was engaged in same offence of misleading advertisement of skin whitening cream by selling different products through multiple I.Ds as seller namely Western Edge and Mercury Health. Accordingly, it was directed to discontinue the advertisement and a fine of ₹ 1 lakh each was

also imposed in 2 (two) of the matters where the opposite party was a violator. The opposite party has discontinued the impugned advertisement from all platforms along with depositing of penalty.

21. Further, in the instant matter the issue is same as mentioned in para 21 above but the product is different and the opposite party has already discontinued the advertisement and sale of product. Thus, considering the penalties levied in other instances and compliances, due diligence taken by the opposite party, the necessity of penalty does not exist in this case anymore. However, Central Authority directs that:

- a. The opposite party shall prevent itself from publishing and false or misleading advertisement and
- b. If necessary the Central Authority may for every subsequent contravention prohibit such endorser which may extend to three years and may impose a penalty upto ₹ 50 lakhs.
- c. The instant matter is dispose off and the case is closed.


(Nidhi Khare)
Chief Commissioner


(Anupam Mishra)
Commissioner

