

Jatin Bansal vs M/S Amazon Reseller Services Pvt. Ltd. on 12 March, 2024

Daily Order

STATE CONSUMER DISPUTES REDRESSAL COMMISSION,

U.T., CHANDIGARH

Complaint No.

:

71 of 2023

Date of Institution

:

08.08.2023

Date of Decision

:

12.03.2024

Jatin Bansal son of Sh.Krishan Kumar,r/o H.No.320-A, Sector 9, Chandigarh-160019

....Complainant

Versus

M/s Amazon Reseller Services Pvt. Ltd. 8th Floor, Brigade Gateway 26/1 Dr.RajKu
V.K. Knitting Industries, 902,290, Street No.1, Shalamar, Shalimar Village, Sh

....Opposite parties

BEFORE :

JUSTICE RAJ SHEKHAR ATTRI, PRESIDENT

MR.RAJESH K. ARYA, MEMBER

Present:- Sh.Harshit Kakani, Advocate for the complainant. Sh.Atul Goyal, Advocate for opposite party no.1.

Ms.Archana, Advocate proxy for Sh.Mayank Aggarwal, Advocate for opposite party no.2 JUSTICE RAJ SHEKHAR ATTRI, PRESIDENT Prologue:-

Engaging in dark patterns and phishing emails, applying frauds, deceptive/unfair practices on the online shopping are writ large. Besides this, the disguised advertisement, displayed by the opposite parties on their e-commerce portal is deceptive and innocent viewers fell prey to that.

Factual scenario:-

E-Commerce has grown immensely in India. Online shopping has become very convenient due to various reasons and especially because of wide range of products and services provided thereon. However, due to some unfair, restrictive and deceptive practices adopted by the manufacturers and service providers, many customers are deceived.

In the instant complaint, the above named complainant visited online shopping website/portal launched by opposite party no.1-M/s Amazon Reseller Private Limited (in short the Amazon) on its e-commerce website, wherein one pair of socks under the brand "Marc Jacobs" was offered for Rs.279.30 ps. after hefty discount.

Therefore, on 22.02.2023 the complainant ordered one pair of said product branded as "Marc Jacobs" for a total consideration of Rs.279.30 ps. which was delivered to him on 25.02.2023. However, the complainant was taken aback on seeing the socks with brand named "MARC" instead of "Marc Jacobs". The delivered product was manufactured by opposite party no.2 i.e. V.K. Knitting Industries, Delhi.

It is the definite case of the complainant that the pair of socks with brand name "MARC" was never offered on the website of Amazon nor he intended to purchase the same. Rather, it was only the socks with brand named "Marc Jacobs" that he intended to purchase. According to the complainant, the pair of socks provided to him is a different item as displayed on the website and offered for sale. It has been specifically stated in the complaint that the entire episode makes it clear that he has been deceived by misleading and fake products being sold as original luxury product on the website of Amazon, which contravenes the Indian law qua online shopping platform.

The complainant tried his level best to return the said product but there was no option to return or replace it. The complainant thereafter made regular calls to the customer care department of Amazon explaining them that he has been mislead by fake product/different product and requested for immediate refund of the amount paid but his grievance was not redressed.

The complainant has categorically stated in para no.9 of the complaint that he suffered monetary loss, mental agony and harassment from the unfair and deceitful practices adopted by the opposite parties because the said product has been delivered to him under the disguise of being manufactured by "Marc Jacobs" original luxury brand, but on the other hand, it was infact manufactured by one V.K. Knitting Industries/opposite party no.2, who is using the brand name "MARC" for its products instead of "Marc Jacobs".

It is further added in the complaint that both the opposite parties in connivance with each other are deceiving the consumers and selling fake and low quality products under the name of global luxury brands. It has been stated that the transaction between the parties is clearly a one-sided contract, wherein the complainant has been made to suffer because of unfair contract, which had no scope of indemnity for the losses suffered by him. As such, the present complaint has been filed under Section 47 (1) (a) (ii) read with Section 49 (2) of CPA 2019 seeking following relief:-

".....i. Set aside the Unfair Trade Policy/Contract (Exhibit C-3) of the OP. No.1 and make OP. No.1 vicariously liable for the fake products being manufactured and sold by the OP. No.2.

ii. Direct the OPs to refund the amount of Rs. 279.30/- paid by the complainant along with the 12% p.a interest from 22.02.2023 till the date of realization.

iii. Direct the OPs to make a payment of sum of Rs. 2,00,000/- as lump sum for the compensation for causing undue harassment to the complainant.

iv. Direct the OPs to make a payment of Rs. 1,00,000/- as exemplary costs for selling fake products.

v. Direct the OPs to make payment of a sum of Rs. 51,000/- as cost of litigation...."

Notice of this complaint was served upon opposite party no.1 (Amazon) on 24.08.2023 through registered post. In pursuance of the notice, Sh.Atul Goyal, Advocate, appeared on behalf of opposite party no.1 on 25.09.2023 and sought time to file reply and evidence and he was directed to do so on the next date of hearing i.e. 06.10.2023. However, thereafter, neither on 06.10.2023 nor on the adjourned date i.e. 09.10.2023, opposite party no.1 filed its written reply and evidence. Under those circumstances, when the stipulated period of 45 days in filing reply and evidence stood expired, the defence of opposite party no.1 was struck off, vide order dated 09.10.2023.

Version of opposite party no.2:-

However, opposite party no.2 i.e. the manufacturer, filed its written reply, wherein, it took various objections, inter alia, as under:-

that the complaint is misconceived and erroneous and as such is not maintainable.

that the complainant has concealed material facts from this Commission and has approached with unclean hands.

that this Commission is not vested with pecuniary jurisdiction to decide this complaint.

On merits, it has been averred that opposite party no.2 is the manufacturer of the product (socks) with registered brand name "marc" being purchased by the complainant through online shopping portal of OP No.1-Amazon by whom this portal is being managed. In order to shun away from its responsibility, it has been specifically added in the reply that the opposite party no.1 being host of site/portal itself uploads the details of the product showing Marc Jacobs. Thus, the error/misguiding of the product has been made by Amazon and the seller/manufacturer has no authority to rectify the same. It has been further stated that opposite party no.2 sent various emails to opposite party no.1 to correct the information provided on its portal qua sale of socks under the brand name "Marc Jacobs" instead of "marc", yet, the later failed to do so, for which opposite party no.2 cannot be held liable or negligent. The product of opposite party no.2 clearly depicts that it was manufactured by "V.K. Knitting Industries" alongwith its price.

Opposite party no.2 claimed that it has never used the word "Marc Jacobs" for its product nor provided any such description to opposite party no.1, thus, it cannot be made liable for the wrong information provided by Amazon on its website or mobile application. It is the sheer negligence of Amazon that the product of opposite party no.2 is shown under the brand "Marc Jacobs". Rest of the averments of the complaint has been denied.

In the rejoinder filed, the complainant reiterated all the averments contained in his complaint and controverted those of opposite party no.2.

The contesting parties led evidence, in support of their case and all the parties have filed written arguments.

We have heard the contesting parties and have gone through the material available on record, including written arguments.

Submissions of the parties:-

Counsel for the complainant submitted that the socks of brand "Marc Jacobs" was offered/shown on the website/online shopping platform by the opposite parties, yet, when the same was ordered/booked, different stocks with different brand named "MARC" instead of "Marc Jacobs" was delivered to him and there was no option either to get it replaced or to seek refund of the amount paid being a different

product. He further submitted that the complainant also made various complaints to customer care department of the opposite parties but to no avail. He further submitted that both the opposite parties in connivance with each other are deceiving the consumers and selling fake products and have in fact defrauded the complainant.

On the other hand, counsel for opposite party no.1 submitted that this Commission lacks pecuniary jurisdiction; while relying upon its refund/return policy, it has been contended that innerwear garments are not returnable. He further submitted that opposite party no.1 is only the supplier of goods, and if there is any defect in the said goods, it has no role and is not liable for the same.

Counsel for opposite party no.2 submitted that opposite party no.1 has falsely, wrongly and illegally depicted and displayed the brand "Marc Jacobs" without its instructions; that even opposite party no.1 was asked by way of sending various emails to correct the website by showing correct brand as "marc" instead of "Marc Jacobs" but it continued till date and as such there is no fault of opposite party no.2 in the matter.

Observations/findings of this Commission:-

After hearing the rival contentions of the parties, following questions emerge for determination before this Commission:-

Whether the opposite parties had depicted/offered "Marc Jacobs" brand of socks but delivered a different product?

Whether, the product in question falls within the refund policy of the opposite parties or not?

Whether this Commission has pecuniary jurisdiction to decide this complaint?

If points no. (i) to (iii) are proved in favour of the complainant, how much compensation to be awarded?

This Commission would like to discuss all the points in seriatim.

Point (i):- Whether the opposite parties had depicted/offered "Marc Jacobs" brand of socks but delivered a different product?

Admittedly, the manufacturer i.e. opposite party no.2 has got registered its product/socks under Trade Marks Registry, Trade Marks Act, 1999 (Annexure OP-2/2) as under:-

Undisputedly, the socks delivered to the complainant was of the brand named "MARC", whereas, registered product of opposite party no.2 is in small letters as "marc" but on the email portal brand "Marc Jacobs" was depicted which allured the complainant to purchase the said product. It is undisputed fact that "Marc Jacobs" is a product of an American Company, whereas pair of socks delivered to the complainant with brand "marc" is manufactured by opposite party no.2.

Both the opposite parties have raised paradoxical pleas. Infact, they indulged in blame game. It is the case of opposite party no.2 that Amazon without its instructions has displayed on its portal brand name "Marc Jacobs" instead of "marc". It has placed on record various emails having been sent to opposite party no.1 vide which it apprised Amazon to correct the name of the product/socks on its website from "Marc Jacobs" to "MARC" only. It is apposite to reproduce one email dated 06.06.2019 sent by opposite party no.2 to opposite party no.1 as under:-

"As per our telephonic conversation regarding correction of brand name on your portal that on your portal MARC JACOBS is displaying in our page instead of MARC as brand name. Our brand name is MARC as per our listed products and listings but we don't know why its displays MARC JACOBS. We are attaching desired documents and ASIN list for your reference...."

Apart from it, similar emails dated 12.06.2019 and , 29.06.2019 to that effect have also been sent to Amazon making requests to correct the brand name from "Marc Jacobs" to "MARC" only but inspite of that it has been continued till date.

Even during the course of arguments, counsel for the complainant through his mobile phone displayed before us the web-portal of opposite party no.1/Amazon wherein the similar socks are still being sold under the brand name "Marc Jacobs". Even at the time of writing this order, the position is the same. If we see for the product Marc Jacobs the same is displayed by Amazon on its portal but when we go further for ordering/purchasing the same, it shows as "BRAND MARC JACOB-MARC COTTON ANKLE UNISEX SOCKS". But a different brand of socks i.e. only "MARC", manufactured by opposite party no.2 has been delivered to the

complainant. Which means that opposite party no.1 is still engaged in the practice of "Dark Patterns" followed by deceptive, unfair and restrictive trade practices.

From the above facts and evidence on record, it is well established that opposite party no.1 (Amazon) is selling the products with brand name "MARC" manufactured by opposite party no.2 under the garb of luxurious brand "Marc Jacobs". It is disheartening to note that even after receiving the emails from opposite party no.2 for making correction of brand name for the last more than four years, Amazon is still displaying the same on its web-portal, which act also amounts to deliberately adoption of Dark Patterns, unfair trade and restrictive trade practice.

Thus, it is well established that the opposite parties had offered "Marc Jacobs" brand of socks but delivered a different product i.e. "marc" to the complainant which amounts to delivery of a fake product which is different from "Marc Jacobs" and was never intended to be purchased by the complainant.

Point (ii):- Whether, the product in question falls within the refund policy of the opposite parties or not?

Now coming to the return policy of Amazon, counsel for opposite party no.1 has strongly relied upon the same and contended that the product in question cannot be returned being inner garments. We have perused this policy. It starts with the caption "CATEGORIES WITH ASSOCIATED RETURN WINDOW AND EXCEPTIONS" giving different categories of different products- some are shown as returnable and others non-returnable.

The garments including socks fall within the "CLOTHING AND ACCESSORIES" subcategory which further provides that Men's and Women inner ware, Men's Vests, Women's' lingerie, Swimwear, Socks & Hosiery are non-Returnable. However, it has been mentioned therein that in the unlikely event of a damaged, defective or different items delivered then full refund or replacement is available. Relevant part of the said document is reproduced hereunder:-

"...Non-Returnable (Bras are returnable) Non-Returnable Items like lingerie/socks/inner-wear are non- returnable due to hygiene conditions. However, in the unlikely event of a damaged, defective or different item delivered to you, we will provide full refund or replacement if available....."

From the above extracted portion of refund policy created by the opposite parties, it is specifically mentioned that socks are non-returnable items, however, in the event of delivery of different item/damaged/defective delivered goods to a consumer, full refund or replacement will be made. Thus, even under the policy aforesaid, if a product is different or defective, there is a clear policy that opposite party no.1 will refund or replace the same. In this view of the matter, in the case in hand, the pair of socks with brand "Marc Jacobs" was offered for sale and also booked but infact different item under the brand "MARC" was delivered. Therefore, opposite party no.1 was bound to refund full payment or replace the different goods but it failed to do so and even thereafter argued before us that opposite party no.1 is not liable to refund nor there is policy of refund. Apart from it, the refund policy is directly in conflict with the law of India. The Govt. of India is pleased to enact Consumer Protection (E-Commerce) Rules, 2020 in exercise of the powers conferred by sub-clause (zg) of subsection (1) of section 101 of the Consumer Protection Act, 2019 (35 of 2019). The definition e-Commerce entity under the Rule 3 (1) (b) is defined as under:-

"..."e-commerce entity" means any person who owns, operates or manages digital or electronic facility or platform for electronic commerce, but does not include a seller offering his goods or services for sale on a marketplace e-commerce entity..."

Further, Rule (6) sub Rules (1) (2) and (3) provides as under:-

".....Duties of sellers on marketplace. - (1) No seller offering goods or services through a marketplace e-commerce entity shall adopt any unfair trade practice whether in the course of the offer on the e-commerce entity's platform or otherwise.

(2) No such seller shall falsely represent itself as a consumer and post reviews about goods or services or misrepresent the quality or the features of any goods or services.

(3) No seller offering goods or services through a marketplace e-commerce entity shall refuse to take back goods, or withdraw or discontinue services purchased or agreed to be purchased, or refuse to refund consideration, if paid, if such goods or services are defective, deficient or spurious, or if the goods or services are not of the characteristics or features as advertised or as agreed to, or if such goods or services are delivered late from the stated delivery schedule:

Provided that in the case of late delivery, this sub-rule shall not be applied if such late delivery was due to force majeure..."

A bare perusal of sub Rule (1) of Rule 6 provides that no seller offering goods or services through a marketplace e-commerce entity shall adopt any unfair trade practice whether in the course of the offer on the e-commerce entity's platform or otherwise. Subsequently, sub-Rule (3) of Rule 6 categorically provides that no seller offering goods or services through a marketplace e-commerce entity shall refuse to take back goods, or withdraw or discontinue services purchased or agreed to be purchased, or refuse to refund consideration, if paid, if such goods or services are defective, deficient or spurious, or if the goods or services are not of the characteristics or features as advertised or as agreed to, or if such goods or services are delivered late from the stated delivery schedule. The case of the complainant is squarely covered by the Rule (6) (1) and partly under Sub Rule (3) thereof. Here, the goods i.e. pair of socks were not of the characteristics or features/brand as advertised/offered and also as agreed to be provided by the opposite parties, and as such the product delivered to the complainant was with different characteristics and features.

Even section 17 of Sale of Goods Act, 1930 provides express or implied, condition that the bulk shall correspond with the sample. Further, section 31 thereof lays down a duty on the seller to deliver goods and of the buyers to accept the goods in accordance with the terms of contract of sale. Section 43 of this Act provides that unless otherwise agreed, where goods are delivered to the buyer and he refuses to accept them, having the right so to do, he is not bound to return them to the seller, but it is sufficient if he intimates to the seller that he refuses to accept them.

Besides this, the Return Policy of Amazon does not cover the deficient goods or the goods or services are not of the characteristics or features as advertised as required under sub Rule (3) of Rule 6 of Consumer Protection Rules 2020. Due to this, unreasonable charge, obligation and conditions have been imposed upon the complainant which puts to disadvantage. Thus, the policy is unfair contract and enhances the unfair trade practices.

The complainant has already moved an application bearing no.600 of 2023 to surrender/return the said pair of socks to the opposite parties but the opposite parties refused to take back the same on the ground that there is no return policy. But we are of the view that because a different brand was delivered to the complainant by Amazon therefore they are bound to take it back. The complainant shall therefore return the socks in question to Opposite party no.1.

Point (iii): Pecuniary jurisdiction:-

It may be stated here that the provisions of Section 47 of Consumer Protection Act, 2019 (in short the Act) speaks about two modes of jurisdiction by the State Commission on the basis of pecuniary limits i.e. first on the total value of the goods or services paid as consideration from Rs.50 lacs to Rs.2 crores and secondly where complaints pertain to unfair contracts, then it will be upto ten crore rupees. It is necessary to reproduce relevant provisions of Section 47 of CPA 2019 as under:-

".....47. (1) Subject to the other provisions of this Act, the State Commission shall have jurisdiction--

to entertain--

complaints where the value of the goods or services paid as consideration, exceeds rupees one crore, but does not exceed rupees ten crore: Provided that where the Central Government deems it necessary so to do, it may prescribe such other value, as it deems fit;

complaints against unfair contracts, where the value of goods or services paid as consideration does not exceed ten crore rupees;

xxxxx....."

Here is the case where jurisdiction has been exercised by pleading unfair contract. A bare perusal of Section 47 (1) (a) (ii) provides that the State Commission shall also have the jurisdiction to entertain and decide the complaints against unfair contracts, where the value of goods or services paid as consideration does not exceed ten crore rupees.

Further, the legal term "unfair contract" has been defined under Section 2 (46) of CPA 2019 as under:-

(46) "unfair contract" means a contract between a manufacturer or trader or service provider on one hand, and a consumer on the other, having such terms which cause significant change in the rights of such consumer, including the following, namely:--

- (i) requiring manifestly excessive security deposits to be given by a consumer for the performance of contractual obligations; or
- (ii) imposing any penalty on the consumer, for the breach of contract thereof which is wholly disproportionate to the loss occurred due to such breach to the other party to the contract; or
- (iii) refusing to accept early repayment of debts on payment of applicable penalty; or
- (iv) entitling a party to the contract to terminate such contract unilaterally, without reasonable cause; or
- (v) permitting or has the effect of permitting one party to assign the contract to the detriment of the other party who is a consumer, without his consent; or
- (vi) imposing on the consumer any unreasonable charge, obligation or condition which puts such consumer to disadvantage...."

In the present case, the complainant has specifically challenged various terms and conditions contained in the refund policy/conditions (at pages 9 to 38 of the paper book) of Amazon. It has been specifically pleaded that by supply of pair of socks of different brand (MARC) through e-commerce platform/web-portal by the opposite parties, amounts to unfair trade practice and also the terms and conditions for non return of the product certainly amounts to unfair contract. According to the complainant, he has been imposed upon unreasonable charges, obligations and conditions which has put him to disadvantage. It has already been found above that the refund policy of the Amazon is an unfair contract. Thus, we are of the view that the lis fully falls within the ambit of provisions of Section 2 (46) and Section 47 (1) (a) (ii) *ibid* and the complainant has rightly invoked the jurisdiction of this Commission. Consequently, objection regarding pecuniary jurisdiction taken by opposite parties stands rejected.

Point (iv):- Determination of damages and compensation:-

Now question arises, in what manner the damages caused by the above said acts of the opposite parties to the complainant and other customers be quantified. It

is an admitted fact that since 06.06.2019, opposite party no.2 by sending email, Annexure OP-2/3 has apprised and cautioned Amazon not to display at their portal "Marc Jacobs" on the page of "marc" brand of opposite party no.2. Even more similar emails have been sent as discussed above but inspite of that Amazon in an illegal way is utilizing the same brand "Marc Jacobs" without any acceptable reason. By doing so, Amazon has earned undue enrichment and also opposite party no.2 has been benefited therewith. The actual enrichment/collecting of money by their illegal means from gullible customers/purchasers cannot be properly determined as we have no data how much products have been sold by both the opposite parties, till date.

After analysis of the evidence and material available on the record, we are of the considered view that opposite party no.1 has deliberately and wrongly displayed the luxurious brand name of "Marc Jacobs" but was selling local brand "marc" under the garb of the said luxurious brand. Apart from it, opposite party no.1 has not corrected the same for the last more than four years, from its e-commerce portal, inspite of various emails having been sent by opposite party no.2 in the matter.

Opposite party no.2 was also well aware of the fact that the socks manufactured by it are being sold by opposite party no.1 under the luxurious brand name "Marc Jacobs" but it never made any attempt to stop selling its goods through the web portal of opposite party no.1 inspite of the fact that it was in its knowledge. None of the opposite parties has placed on record any information as to the extent of sales made to innocent and hapless customers by selling fake products and the products with different brands i.e. local brands under the garb of luxurious brands. Apart from it, as stated above, Amazon is deliberately and fearlessly engaged in Dark Patterns, because still it is displaying on its e-commerce website portal brand "Marc Jacobs" and delivering a product under the local brand "MARC" manufactured by opposite party no.2, which is highly unfair and illegal.

Furthermore, in this case, damages and compensation cannot be determined as the practice adopted by opposite party no.1 is going on for the last more than 4 years. But we are of the considered view that exemplary compensation must be awarded.

In our considered opinion, ends of justice would be adequately meted out, if we award compensation to the complainant to the tune of Rs.2 lacs for causing him mental agony and harassment and refund of Rs.279.30 ps. alongwith interest @9% p.a. from the date of advancement till realization. Apart from it, the enrichment of the opposite parties by adopting unfair and restrictive trade practice in the manner stated above, also made them liable to deposit Rs.25 lacs (Twenty five Lacs) as damages in the Legal Aid Account of this Commission i.e. Account No.32892854721, State Bank of India, Sector 7-C, Chandigarh, payable to SEC STATE CDRC UT CHD: CONSUMER LEGAL AID ACCOUNT. Thus, we order accordingly.

For the reason recorded above, this complaint stands partly allowed against opposite parties no.1 and 2 and they are jointly and severally directed as under:-

To refund the amount of Rs.279.30 ps. received from the complainant against the said socks alongwith interest @9% p.a. from the date of receipt thereof.

To pay lumpsum compensation to the tune of Rs.2 lacs (in words rupees two lacs) to the complainant for causing him agony and harassment and also for deficient services as well as adoption of unfair and restrictive trade practice To deposit Rs.25 lacs (in words rupees twenty five Lacs) as damages in the Legal Aid Account of this Commission i.e. Account No.32892854721, SEC STATE CDRC UT CHD: CONSUMER LEGAL AID ACCOUNT, State Bank of India, IFSC-SBIN0003246, Sector 7-C, Chandigarh, To pay cost of litigation to the tune of Rs.20,000/- to the complainant.

To stop forthwith displaying brand name "Marc Jacobs" on the products manufactured by opposite party no.2.

This order qua reliefs given under heads (i) to (iv) be complied with, within a period of 45 days from the date of receipt of a certified copy thereof, failing which the awarded amounts shall entail interest @12% p.a. from the date of default till realization, apart from compliance of direction given under head (v) above.

Before parting with this order, we are of the view that a copy of the order be sent to The Secretary to Government of India, Ministry of Consumer Affairs, Department of Food and Public Distribution, New Delhi, with a request to take appropriate steps/action against opposite party no.1 (Amazon) for wrongly advertising/displaying on its e-commerce portal the luxurious brand name "Marc Jacobs" for the goods manufactured by opposite party no.2 under the brand "MARC".

Certified copies of this order be sent to the parties and also to The Secretary to Government of India, Ministry of Consumer Affairs, Department of Food and Public Distribution, New Delhi, free of charge, forthwith.

The file be consigned to Record Room, after completion.

Pronounced.

12.03.2024 Sd/-

[JUSTICE RAJ SHEKHAR ATTRI] PRESIDENT Sd/-

(RAJESH K. ARYA) MEMBER Rg.