

the borrowers on the promissory notes and the cheques issued by them for better proof of the same.

Further, in these days of commercial transactions, there are mushrooming of chit

fund companies. Hence, I think it is high time for the Legislature to enact a law insisting for taking thumb impressions even from the signatories on the document for speedy disposal of the matters.

MONOPOLIES AND RESTRICTIVE TRADE PRACTICES ACT, 1969

By

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The Monopolies and Restrictive Trade Practices Act, 1969 came into force on 1st June, 1970. According to the Preamble the aim of the Act is:

“to provide that the operation of the economic system does not result in the concentration of economic power to the common detriment, for the control of monopolies, for the prohibition of monopolistic and restrictive trade practices and for matters connected therewith or; incidental thereto”.

Section 2(o) defines restrictive trade practice. According to that provision “restrictive trade practice” means a trade practice which had, or may have, the effect of preventing, distorting or restricting competition in any manner and; in particular.

The Objectives of the Act, therefore, are as follows:

- (1) To prevent the operation of the economic system which would result in the concentration of economic power to the common detriment;
- (2) To control monopolies;
- (3) To prohibit and control monopolistic and restrictive trade practices; and
- (4) To deal with the matters connected with the above said objectives or the matters incidental thereto.

Monopolies and Restrictive Trade Practices Commission
—Commission-Establishment and Constitution of the Commission (Section 5)

For the purpose of this Act, the Central Government has been empowered to establish a Commission, to be known as “Monopolies and Restrictive Trade Practices Commission”. The Central Government is to appoint the Chairman and there are to be not less than two and not more than eight other members.

The Chairman of the Commission shall be a person who is or has been or is qualified to be, a Judge of the Supreme Court or of a High Court. The members of the Commission should be persons of ability, integrity and standing. They should also have adequate knowledge or experience of, or commerce, accountancy, industry, public affairs or administration. Before appointing any person as a member of the Commission, the Government has to satisfy itself that the person so appointed does not and will not, have, any such financial or other interest as is likely to affect prejudicially his function as a member of the Commission. Under Section 6 the maximum term of office of a member shall be five years, but he shall also be eligible for re-appointment (i) A Director General of Investigation and Registration, and (ii) as many Additional, Joint, Deputy or Assistant Directors General of Investigation and registration, as it may think fit.

Such appointment is to be made for the following purposes

- (a) For making investigation for the purposes of this Act, and
- (b) For maintaining a Register of agreements subject to registration under this Act, and
- (c) For performing such other functions as are, or may be, provided by, or under, this Act.
- (d) The Director General may, by written order, authorize one of the Additional, Joint, Deputy or Assistant Director to function as the Registrar of agreements. The Registrar of agreements and every additional, Joint, Deputy or Assistant Director General shall exercise his powers and discharge his functions, subject to the general control, supervision and direction of the Director General. The Central Government may provide additional staff. The Central Government may make provision for the conditions of service of the Director General and all other members of the Staff. The conditions of service of the Director General or any Additional, Joint, Deputy or Assistant Director General or of any member of the Commission shall not be varied to his disadvantage after his appointment.

Objectives and policy : The Monopolies and Restrictive Trade Practice Commission (MRTP) have been constituted under Section 5(1) of the MRTP Act, 1989. The Commission is empowered to enquire into MRTP upon a reference from the Central Government or upon its own knowledge or information.

The MRTP Commission receives complaints from registered consumer and trade association and also from individuals. Complaints regarding Restrictive Trade

Practices or unfair Trade Practices from an association or required to be referred to the Director General of Investigation and Registration for conducting preliminary investigation. The Commission can also order a preliminary investigation by the Director General of Investigation and when a reference on a restrictive trade practice is received from the Central or State Government or when Commission's own knowledge warrants a preliminary investigation. Enquiries are instituted by the Commission after the Director General of Investigation and Registration completes preliminary investigation and submits an application to the Commission for an enquiry.

Unfair Trade Practices have been defined as Trade Practice which for the purpose of promoting the sale, use or supply of any goods or for provision of any services, adopt one or more of the practices mentioned therein and thereby cause loss or; injury to the consumers of such goods or services, whether by eliminating or restricting competition or otherwise one of such unfair trade practices is misrepresentation or fraud. Misrepresenting a fact is called fraud.

1: *Derry v. Peek*, (1889) 14 A.C. 337 : The defendant company was authorized by a special Act of Parliament to run trams by steam or mechanical power. The company issued prospectus contained a representation that it was authorized by the Act of Parliament, the plaintiff purchased some shares. But the authority to use steam was subject to the approval of the Board of Trade, which the company did not mention it. As a result the company was wound up. The plaintiff sued the company stating that it did fraud. The House of Lords held that the company was not guilty of fraud as they honestly believed that once the Parliament had authorized the use of steam, the consent of the Board was practically concluded.

It is expedient to provide for measures against such concentration, growth and

practices and for matters committed therewith or incidental thereto.

Powers of the Commission (Section 12) : For the purpose of any inquiry under this Act, the Commission shall have the same Powers as are vested in a Civil Court under the Code of Civil Procedure, while trying a case, in respect of the following matters.

1. the summoning and enforcing the attendance of any witness and examining him on a oath;
2. the discovery and production of any document or other material object producible as evidence.
3. the reception of evidence on affidavits.
4. the requisitioning of any public record from any Court or office and
5. the issuing of any Commission for the examination of witnesses.

Power of the Commission to grant temporary injunctions (Section 12A) :—

By adding Section 12-A to the Act of 1984, the Commission has been empowered to grant a temporary injunction restrain in an undertaking or a person from carrying on any monopolistic or restrictive, or unfair, trade practice until the conclusion of an inquiry or until further orders.

2: In *Achal Kumar Galbotra v. Byford Motors Ltd.*, (1991) 72 Comp. Cas. 702, the respondent issued an advertisement stating that PREMIER PADMINI CAR was being offered at Rs.28,000/- less than the Maruti Standard Car, and the market price of the latter was mentioned as Rs.1.66 lakhs. The respondent also offered a free car stereo system. They further offered prizes to lucky purchasers, who could exchange the car they had purchased for a new one every year for a certain number of years.

It was held that the ex-showroom price of Maruti Standard was Rs.1.33 lakhs and

not Rs.1.66 lakhs as stated by the respondent, and therefore, the claim that Premier Padmini could be obtained at a saving of Rs.28,000/- was false.

That the respondent was charging Rs.1,850/- instead of Rs.1,550/- for registration and road tax, to v cover are of the price of the stereo system, and therefore the claim of the respondent was false and amounted to unfair trade practice under Section 36A(3)(a)(ix)

That the prizes announced for lucky purchasers amounted to a lottery within the meaning of Section 36A(3)(b)

The interim injunction which was issued by the Commission restraining the respondent from publication of the impugned advertisement immediately and directing them not to repeat the same till further orders was confirmed.

By an amendment in the Act in 1964, the Commission has been empowered to grant compensation for any loss or damage caused to the Central Government, any State Government, any trader or class of traders, or any consumer or consumers by any monopolistic, or restrictive, or unfair, trade practice

An order of the Commission granting temporary injunction under Section 12-A or an order granting compensation under Section 132B, may be enforced by the Commission in the same manner as if it were a decree of a civil Court. The Commission may make such provision as it may think necessary or desirable for the proper execution of the order. Any person who fails to comply with any order or commits a breach of the same he shall be deemed to be guilty of an offence under this Act. When the Commission has any reasonable cause to believe that any person has committed or failed to comply with its orders, the Commission may authorize the Director General or any officer of the Commission to make an investigation into the matter. On

receiving report of investigation the Commission may take such acting in the manner as it may think fit and the Commission may sit wherever and whenever it is convenient. The powers or functions of the Commission may be exercised or discharged by Benches formed by the Chairman from among the members.

As a general rule the hearing of the proceeding before the Commission shall be in public. However, when the Commission is satisfied that it is desirable to do so but reason of the confidential nature of any offence or matter or for any other reason, the Commission:

- (a) hear the proceeding or any part thereof in private;
- (b) give necessary directions as to the person who may be present thereat.
- (c) prohibit or restrict the publication of evidence given before the Commission of matters contained in documents filed before the Commission.

Section 19 requires that the Commission shall cause an authenticated copy of every order made by it in respect of a restrictive trade practice or an unfair trade practice, as the case may be, to be forwarded to the Director General who shall have it recorded in such manner as may be prescribed.

The Monopolies and Restrictive Trade Practices Act, 1969 aims at preventing and controlling Monopolistic, Restrictive and Unfair Trade Practices.

Section 2(o) defines restrictive trade practice. According to that provision "restrictive trade practice" means a trade practice which has, or may have, the effect of preventing, distorting or restricting competition in any manner and in particular.

In re United Finance Corporation the respondent advertised that loans of Rs.50,000/-

or more were available on reasonable interest for long term on easy instalments. The applicants were made to pay Rs.15,000/- or more as membership charges, inspection charges and legal fees, and that the loans were not granted to them. They were then made to compromise for a refund of 50% of the amount spent by them. It was held that the respondent had indulged in unfair trade practices within the meaning of Section 36A(i)(ii)(vi) and (vii) of the MRTP Act. The Commission passed an order under Section 38D(1) directing the respondent not to indulge in the above said unfair trade practice and also not to repeat the practice in future

- (i) which tends to obstruct the flow of capital or resources into the stream of production, or
- (ii) which tends to bring about manipulation of prices, or conditions of delivery or to effect the flow of supplies in the market relating to goods or services in such manner as to impose on the consumers unjustified costs or restrictions.

Unfair trade practice means a trade practice which, for the purpose of promoting the sale, use or supply of any goods or for the provision of any services, adopts one or more of the following practices and thereby causes loss or injury to the consumers of such goods or services, whether by crminating or restricting competition or otherwise, namely:—

- (1) The practice of making any statement, whether orally or in writing or by visible representation.
- (2) Advertising for any sale or supply at a bargain price, goods that are not intended to be offered for sale or supply at the bargain price, or for a period that is, and in quantities that are reasonable, having regard to the nature of the market in which the business is carried on, the nature and size of business, and the nature of the advertisement.

3: *RePolar Industries Ltd. and others*, (1991) Comp. Cas 205

The respondent who was the manufacturer of fans under the trade name “polor” issued advertisement offering off-season discount on the sale of fans. In an enquiry by the Director-General under Section 38B of the MRTP Act it was found that the discount was measured not on the current prices of fans but with reference to prices which were expected to rule in future. It was held that the concept of discount had been twisted in a manner that could not attract the attention of the consumers, and therefore, it amounted to unfair trade practice. The respondent gave an undertaking that he will not publish or issue in future any advertisement as regards off-season discount relatable to future prices of its fans.

Efficiency:

905 enquiries under Sections 10(a)(i), 10(a)(ii), 10(a)(iii) and 10(a)(iv) were pending before the Commission as on 31st March, 1996. During the period 1.4.1996 to 31.12.1996, the Commission instituted 166 fresh enquiries. Out of 1071 enquiries under this Head, the Commission disposed off 81 enquiries leaving a pendency of 990 enquiries at the end of December, 1996.

700 Unfair Trade Practices enquiries under Sections 36B(a), 36B(c) and 36B(d) were pending before the Commission for disposal as on 31.3.1996. During the period from 1.4.1996 to 31.12.1996, 225 fresh enquiries were instituted raising the total to 925. Of these, 44 enquiries were disposed off leaving 881 enquiries pending before the Commission as on 31.12.1996.

408 applications for grant of temporary injunction under Section 12A were pending with the Commission on 31st March, 1996. During the period ending on 31st December, 1996, the Commission received 328 fresh applications raising the total number of

applications to 736. 54 applications were disposed off during this period leaving 682 applications pending as on 31.12.1996.

There were 857 applications pending before the Commission for award of compensation under Section 12B on 31st March, 1996. During the period from 1st April, 1996 to 31st December, 1996, the Commission received 438 more applications making the total number of applications to 1295. The Commission disposed off 60 applications during the period under report. Therefore, 1235 applications were pending as on 31.12.1996.

4: *Regaul v. Ujala Case.*

M. Balasundram v. Jyothi Laboratories, judgment of the MRTP Commission, 10/10/1994. Citation: 1995 (82) CC 830.

A television advertisement promoting Ujala liquid blue showed that 2-3 drops were adequate to bring striking whiteness of clothes while several spoons of other brands were required. The manufacturers of Regaul, a competing brand, approached the Commission that the advertisement was disparaging its goods. The bottle did not have any label.

The Commission elaborated the meaning of the provision: The Commission was of the view that ‘a mere claim to superiority in the quality of one’s product’ by itself is not sufficient to attract clause (x). In the advertisement, the bottle did not carry any label. Further, the bottle did not have similarity with bottle of any brand. The Commission, thus, was of the opinion that it could not be a case of disparagement of goods.

5: *Novino Batteries Case.*

Lakhanpal National Limited v. M.R.T.P. Commission, judgment of the Supreme Court, dated 2/5/1989. Citation: 1989 AIR (SC) 1692.

The judgment of the Supreme Court in the *Novino Batteries* case has had an important influence on all cases raising questions about advertisements. Lakhanpal Industries Ltd. had a collaboration with Mitsubishi Corporation of Japan for manufacturing Novino Batteries. Mitsubishi Corporation were the owners of the well-known trade name, National Panasonic. Lakhanpal Industries, in its advertisements, was claiming that Novino Batteries were made in collaboration with National Panasonic. This was technically incorrect as National Panasonic was only a trade name. Lakhanpal Industries could not have collaborated with a trade name.

The Supreme Court ruled: A representation containing a statement apparently correct in the technical sense may have the effect of misleading the buyer by using tricky language. Similarly, a statement, which may be inaccurate in the technical literal sense can convey the truth and sometimes more effectively too than a literally correct statement.

The Court, following this, held that even though, literally, the representation made by Lakhanpal Industries was inaccurate, it could not be held to be an unfair trade practice.

6: *Colgate v. Vicco Case:*

Palmolive (India) Limited v Vicco Laboratories, judgment of the MRTP Commission, dated 20-3-1997. Citation: 1997 (5) CTJ 488.

In a television advertisement promoting Vicco Tooth Powder, another tin, of oval shape and without any label is shown. White powder coming out from the can was described as useless. Colgate claimed before the Commission that this was disparaging its product Colgate Tooth Powder. The Commission found that the shape and colour combination of the can shown in the television commercial resembled Colgate's Tooth Powder can.

The MRTPC noted that the advertisement did not explicitly mention Colgate. In fact, there may even have been no intention of

depicting the can to be of Colgate. But since the advertisement created an impression in the viewers that the can was of Colgate, it would be a case of disparagement. The Commission took into account the nature of the Indian audience. Judgment went in favour of Colgate.

7: *New Pepsodent v/s Colgate Case:*

Hindustan Lever Limited advertised its toothpaste, 'New Pepsodent' in print, visual and hoarding media, claiming that its toothpaste 'New Pepsodent' was '102% better than the leading toothpaste'.

The market share for toothpaste for Colgate and Hindustan Lever was 59% and 27% respectively. The Commission, thus, was of the view that a reference to 'leading brand' and 'famous brand' was to Colgate. A doubt, however, arises that the statistics on market share are produced by market research agencies. The consumers do not know these. Thus, a viewer need not necessarily interpret 'leading brand' to mean Colgate.

8: *Cherry Blossom Case :*

Reviewed in Reckitt and Coleman India Limited v Jyothi Laboratories Limited, a judgment of the MRTP Commission, dated, 18-11-1998. Citation: 1999 (34) CLA 46.

The principle, thus, emerged that a case of disparagement arises only if the product in question is identifiable. Identification could be explicit or from the facts and circumstances. Thus, in the advertisement of 'Kiwi Liquid Wax Polish', a bottle is described as X from which liquid is dripping while from a bottle marked Kiwi liquid does not drip. From the shape of the bottle marked X, it could be identified as that of Cherry Blossom. Also, Cherry Blossom had a design registration for the shape of the bottle. Thus, the bottle could be identified with Cherry Blossom and the advertisement became a case of disparagement.

9: *Colgate Dental Cream- Double Protection Case:*

Hindustan Lever Limited and another v Colgate Palmolive (India) Limited, judgment of the MRTP Commission, 18-11-1998. Citation: 1999(2) CPJ 7.

In June, 1998, Colgate introduced its toothpaste as Colgate Dental Cream-Double Protection. (CDC-DP). It gave wide publicity through print and television that the toothpaste was 2.5 times superior to any ordinary toothpaste in fighting germs. Hindustan Lever Ltd. moved the Commission alleging that the advertisements disparaged toothpastes manufactured by it under various brand names.

Thus, the Commission took the position that the claim of 2.5 times superiority of CDC-DP over any ordinary toothpaste did not refer to any identifiable product or any identifiable manufacturer. As a result, it could not be a case of disparagement of goods.

10: *Ujala v. Robin Blue Case* :

Reckitt and Coleman India Limited v. Jyothi Laboratories Limited, a judgment of the MRTP Commission, dated, 18-11-1998. Citation: 1999 (34) CLA 46.

Ujala whitener was advertised as insta violet concentrate, a post wash for white clothes. The advertisement disparaged 'neel'. The makers of Robin Blue contended that this was a case of disparagement under Section 36A(1)(x), as their product was also 'neel'. The makers of Robin Blue claimed that they were the market leaders in India, with a market share of 56.4% in the blue powder category. Thus, disparagement of 'neel' would definitely mean disparagement of their product. The Commission was not in agreement. It noted: Simply because Robin Blue is stated to be commanding the market share to the tune of 56.4 per cent is no ground *prima facie* to come to the conclusion that in common parlance it is known as neel.

11: *Godrej v. Vasmo Case*:

Godrej Soaps Limited v Hygienic Research Institute, judgment of the MRTP Commission,

dated 30-5-2001. Citation: 2001 (43) CLA 300.

The television commercial of Vasmo Hair Dye opened with a lady dyeing her hair with instant hair dye, made by mixing hair dye and developer contained in two cylindrical bottles. The bottles were labelled as 'Sadharan' (ordinary). The picture then widened to show the anguish of the lady with falling hair. The commentary stated this to be the result of use of inferior dye containing harmful chemicals. The advertisement ended with the picture of "Vasmol 33 Hair Dye" which is stated to contain Ayurprash, a natural way of blackening the hair and strengthening the roots of the hair. Godrej Ltd. was aggrieved with the advertisement. It had products like 'Godrej Hair Dye' and 'Godrej Kesh Kala' used for dyeing hair. Godrej's contention was that the pictorial depiction of two cylindrical bottles would identify it as its product. Godrej claimed its products were disparaged not only by insinuating that these contained harmful chemicals but also by calling these as 'Sadharan' (ordinary).

The Commission, however, in relation to the case noted:

Under the provisions of Section 36A(1)(x) of the Act, the product of another manufacturer has to be identified before it can be said that the same has been disparaged by way of making false and misleading statements. To summarise the interpretation of the Commission, an advertisement could disparage other products and yet, it would not be a case of 'disparagement' so long as the disparaged product is not identifiable.

From the above analysis it is proved that due to the large number of cases many cases are pending before the Commission even though the Consumer Protection Act 1986 came into existence.

To improve its efficiency some more amendments should be made for enlargement of body, to speed up the work and for better performance.