

CENTRAL CONSUMER PROTECTION AUTHORITY
Room No 567-A, Krishi Bhawan, New Delhi - 110001

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

In the Suo-moto matter: Case against Mercury Health 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 Mercury Health

Shri Sharad B Mavani, Proprietor

Date: 02.11.2023

ORDER

This is a suo-moto case taken up by the Central Consumer Protection Authority (CCPA) on the issue of a misleading advertisement and unfair trade practice by Mercury Health (opposite party) through sale of impugned products i.e **“Whitening Body lotion + Skin lightening and Brightening body lotion cream”** on Meesho (Fashnear Technologies Pvt. Ltd.) by making claim of Skin Whitening and brightening in the name itself of the impugned product coupled with representing transformation in skin tone from dark (black) to white without any scientific validation and disclosure of ingredients.

2. Accordingly, CCPA conducted a preliminary inquiry to examine the above claims made by the opposite party which were detrimental to the rights of consumers as a class. As per preliminary inquiry report it was found that the advertisement was available e-commerce platform Meesho at URL (<https://www.meesho.com/body-lotion-sensational-nourshing-lotion-creams/p/1ox05g>) as on 02.03.2023. It displayed 1081 ratings, 354 reviews but did not disclose the ingredients or scientific validation based on which the alleged claim of Skin Whitening/Brightening was made in the advertisement through visual representation of the product.

3. It is to accentuate that Consumer Protection (E-Commerce) Rules, 2020, clearly stipulates that it is the duty of the seller offering goods through marketplace e-commerce entity to mandatorily provide all relevant details about the goods offered for sale. This enables the consumers to make an informed decision before purchasing a product. Thus, by deliberately concealing important information from the consumers, the opposite party has mislead consumers and therefore, in the preliminary inquiry it was found to be prima-facie a fit case of misleading advertisement and unfair trade practice that adversely impacted consumers as a class.

4. In view of the findings of the preliminary inquiry report, a Notice dated 02.03.2023 was issued to Mercury Health to substantiate veracity of claims through scientific study with comparative data and ingredients used in the product "Whitening Body lotion + Skin lightening and Brightening body lotion cream.

5. In response to the Notice, a reply dated 18.03.2023 was received from Mercury Health (the opposite party) submitting that:-

- i. Many companies are promoting their products on e-commerce platform with various USPs [unique selling points] and there existed too much competition to promote products.
- ii. Opposite party has not claimed anything but has tried to promote the product with USP to just come up on the E Commerce platform. It is a startup and a very tiny unit who tried to sell its products on e-commerce platform and is not aware about restrictions which are prejudicial to the interest of consumers.
- iii. However, all objectionable material and advertisement has been discontinued from all e-commerce platforms.
- iv. It was undertaken by the opposite party that it will submit the information with regard to para 8 of the Notice wherein they were directed to substantiate claim of the impugned product through scientific justification, verifiable comparative data or third-party validation along with the ingredients used in the product.

6. However, when no substantiation for the alleged misleading claim about the product was received, the Central Authority provided an opportunity of hearing to the opposite party on 18.05.2023. However, opposite party failed to appear for a hearing before the Central Authority without any intimation. Thus, an Order dated 18.05.2023 was issued to Mercury Health wherein a final opportunity of hearing was given to appear on 25.05.2023 to substantiate their claim. Despite that, the opposite party again failed to appear for a hearing without any intimation to the Central Authority for its non-appearance.

7. Subsequently, the DG (Investigation) CCPA and Drug Controller General of India, Central Drugs Standards Control Organization vide letters dated 26.05.2023 were requested to investigate the present matter in detail and submit their report to the Central Authority.

8. The DG (Investigation) CCPA, in its investigation report dated 07.08.2023 highlighted that:

- i. Mercury Health has not removed the product, instead it is selling their product with some other name.
- ii. M/s Mercury Health has not submitted any other document on the submission made by them to validate their claims.
- iii. It is therefore clear that M/s Mercury Health has mislead common consumers by using the catchy phrases.

- iv. Therefore, based on above inquiry, it is clear that M/s Mercury Health is involved in violation of consumer rights, misleading advertisement and unfair trade practice. Thus, action may be initiated as per Section 21 of the Consumer protection Act, 2019.
9. The investigation report from CDSCO dated 22.09.2023 underlined that:
- i. O/o. Deputy Drug Controller (I), CDSCO, East Zone, Kolkata was requested to conduct the investigation, based on which investigation was carried out jointly by Drug Inspector of CDSCO, East Zone, Kolkata and officials from State Licensing Authority, West Bengal on 04.07.2023, wherein following are the findings of investigation:
 - a) M/s. Mercury Health is involved in sale/supply of cosmetics to the customers through online channels like Flipkart and Meesho etc. as M/s. Mercury Health is registered with said online platforms.
 - b) The retailer was enquired about the availability of complaint sample, whitening Body Lotion sPF15+. The person informed that only 04 bottles (Each 10ml) were available at the time of investigation as on 03.07.2023.
 - c) The officers from Directorate of Drug Control, Government of West Bengal has drawn the complaint samples as per the provisions of the Drug and Cosmetic Act, 1940 and Cosmetic Rules, 2020.
 - d) In the joint investigation, it is reported that said product was manufactured and supplied by M/s Old Stone Enterprises, Plot No. 160/161, Shiv industries, Surat, having Manufacturing License No. GC/1752 and supplied to M/s Mercury Health, Flat No. A1, Sarthak Building Premises, Kolkata. It was also recommended that further joint investigation may be carried out at the manufacturing site to draw conclusive remarks.
10. Taking into consideration the above facts, the Central Authority before passing any final Order, gave one more opportunity to the opposite party to appear for hearing on 25.10.2023, wherein Shri Sharad B Mavani, Proprietor of Mercury Health made following submissions that:
- i. The entities namely M/s Old Stone Enterprises (manufacturer) and M/s Mercury Health (Seller) of the product Skin Whitening Cream and Body lotion are owned by him only.
 - ii. It is a startup due to which as a proprietor they are not aware about the consumer protection law and the product is sold only through e-commerce platform.
 - iii. It has been further submitted that since the receipt of the Notice of CCPA, the sale and advertisement of the impugned product is discontinued.

11. Under the Consumer Protection Act, 2019, 'misleading advertisement' inter-alia means falsely describing a product by giving a false guarantee to mislead the consumers as to the nature or quality of such product and conveys an express or implied representation by deliberately concealing important information which, if made by the manufacturer thereof, would constitute an unfair trade practice. Besides, 'unfair trade practice' refers to the practice when for the objective of promoting the sale of any goods, any person, adopts unfair or deceptive practice inter-alia any statement, whether orally or in writing or by visible representation including by means of electronic record which falsely represents the need or the usefulness of any goods.

12. Since, the new Consumer Protection Act, 2019 came into force, the doctrine of Caveat Emptor has been evolved to Caveat Venditor. An advertisement is considered to be valid and not misleading when it contains honest and truthful representation by way of statements or visual presentations and not mislead consumers by exaggerating the practical usefulness or making false claims about the benefit of the product. Also, an advertisement should not attempt to hide material information from the consumer which may make the advertisement deceptive.

13. It may be accentuated here that a valid advertisement shall contain truthful and honest representation by making disclosures in such a manner that they are clear, prominent and extremely hard to miss for viewers to notice. But the representation made by the opposite party as showcased in the pictures neither honestly conveyed disclaimer stating that skin whitening as showcased in the picture and in the name of the product does not guarantee any whitening of skin, nor it is based on any scientific validation or proven result.

14. The opposite party vide letter dated 26.10.2023 was given an opportunity to furnish comments on the contents of investigation report based on which the opposite party submitted its comments vide email dated 30.10.2023 that since receipt of the Notice of CCPA, it had discontinued the impugned product but as highlighted in the investigation report and even during the hearing on 25.10.2023, it was noted that the product was still available negating the claim of opposite party that it had completely stopped the sale of impugned product.

15. Further, as per the investigation report of DG (Investigation) the product was still listed on the platform of Meesho until 07.08.2023, and the same was found existing by the CCPA as on 19.10.2023 (<https://www.meesho.com/whitening-body-lotion-on-spf15-skin-lighten-brightening-body-lotion-cream-100-ml-pack-of-1/p/1vhch6>) (copy enclosed). Thus, it is clear that impugned product along with the misleading claim was not delisted until 19.10.2023 and opposite party has continued to mislead the Central Authority.

16. It is evident that in this age of technology where purchase of products through e-commerce platform is becoming the most preferred option by a large number of consumers, the opposite party holding 1081 ratings, 354 reviews for the said product clearly reiterates about the reach and impact of impugned product which has falsely represented transformation in skin tone from dark (black) to white without any substantiation to simply deceive the consumers at large for undue promotion of their sales. Thus, it is a fit case of misleading advertisement and unfair trade practice.

17. The Central Authority is empowered 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;*

18. In view of the above, the Central Authority hereby issues the following directions:-

- i. To discontinue & delist the advertisement from all platforms where the opposite party is listed as a seller with immediate effect.
- ii. The opposite parties shall pay a penalty of ₹ 1,00,000/- for publishing a misleading advertisement with false & unsubstantiated representation of Skin Whitening & Brightening showing transformation of skin tone from dark (black) to white and deliberately concealing important information.
- iii. It 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.


(Nidhi Khare)
Chief Commissioner


(Anupam Mishra)
Commissioner

mercury health ×

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Whitening Body Lotion On SPF15+ Skin Lighten & Brightening Body Lotion Cream (100 ml) Pack Of 1

₹131 ⓘ

3.8 ★ 2191 Ratings, 494 Reviews

Free Delivery

Select Size

Free Size

Product Details

Name : Whitening Body Lotion On SPF15+ Skin Lighten & Brightening Body Lotion Cream (100 ml) Pack Of 1

Product Name : Whitening Body Lotion On SPF15+ Skin Lighten & Brightening Body



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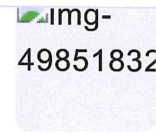


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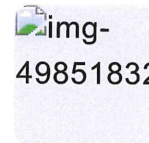
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Jesmina parvin

4.0 ★ • Posted on 30 Sep 2023

Jo order Kiya tha who nahi aya uske badle yeh product aye..par yeh accha hai



Helpful (0)

Meesho User

5.0 ★ • Posted on 6 Aug 2023

This Product is so good. After use of this product my skin intensely nourishes and heals the skin from within to make it healthy and restore its natural glow. I recommended you to purchase this product.



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3.7 ★ 76

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00h : 10m : 00s More

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₹115 ₹143 2..

Free Delivery

3.8 ★ 232

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Sunscreens Lot...

₹154 onwards

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3.8 ★

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4.2 ★ 10

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Whitening body lotion



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दाव दराद एविजमा अब जड से खल





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3.8 ★ 5933

Reviews



s-224726624

Everyday Bod...

₹130 onwards

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₹111 onwards

Delivery ₹75

4.3 ★ 64

Reviews



s-166945786

Creams & Moi...

₹353 onwards

Free Delivery

Professional ...

₹236 onwards

Free Delivery

4.0 ★ 413

Reviews



s-306254802

Modern Skin T...

₹373 onwards

Free Delivery

New Body Cre...

₹671 onwards

Free Delivery

4.0 ★ 35

Reviews



s-43340472

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Everyday Bod...

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