

**CENTRAL CONSUMER PROTECTION AUTHORITY**

**Ref: F.No. J-25/46/2022-CCPA**

In the matter of: Case against Cosmo Skin Centre, Ranchi 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 Cosmo Skin Centre, Ranchi**

Dr. Shri Sanjay Kumar

**Date: 23.11.2023**

**ORDER**

This is a case taken up by the Central Consumer Protection Authority (CCPA) based on the complaint received from the Advertising Standards Council of India (ASCI) which alleged that a misleading advertisement was published by Cosmo Skin Centre, Ranchi (opposite party) in the newspaper Prabhat Khabar, (Ranchi edition, in the Hindi language on 09.07.2021) by making the claim of “**Assure Cure and Care**”, wherein, the opposite party had neither provided any details of treatment procedure, medicines used for the treatment, approval status of the medicines by the regulatory authorities nor the claim was substantiated with robust clinical evidence of patients who were successfully treated and cured of skin problems. Thus, as per the information of ASCI, the claim was misleading by exaggeration and was likely to lead to widespread disappointment in the minds of consumers.

2. Based on the above information, CCPA conducted a preliminary inquiry to examine the above claim made by the opposite party. As per preliminary inquiry report, it was found that the advertisement with the said claim was available on the website of Cosmo Skin Centre as of 09.06.2022 and had visual representation regarding use of a medical equipment as well as “Before” and “After” effect on the skin post treatment. Further, the advertisement on the website of the opposite party showcased that Dr. Sanjay Kumar is “BAMS (B.U)” i.e. Bachelor of Ayurvedic Medicine and Surgery, and “M.I.M.S New Delhi”. Further, he claimed to be a skin (hair & nails) specialist yet failed to provide the registration number of the clinic and license number on the website in respect to the claim of Skin Specialist.

3. It may be accentuated here that Regulation 4.1 of the Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002 clearly enumerates that every physician shall display the registration number accorded to him by the State Medical Council/Medical Council of India in his clinic and in all his prescriptions, certificates, money receipts given to his patients. Further, Regulation 4.2 provides that physicians shall display as suffix to their names only recognized medical degrees or such certificates/diplomas and memberships/honours which confer professional knowledge or recognizes any exemplary qualification/achievements. As per Regulation 7.20 a physician shall not claim to be specialist unless he has a special qualification in that branch.

4. It is also paramount to mention that the advertisement by the Cosmo Skin Centre represents the difference in skin tone from acne-prone to spotless. However, no clinical evidence, veracity of specialization, registration number of Dr. Sanjay Kumar and license number of the Cosmo Skin Centre was mentioned to this effect. Thus, in the preliminary inquiry report it was evident that the opposite party represented the usefulness of their service by deliberately concealing relevant information from the consumers. Therefore, it was found to be a fit case of misleading advertisement and unfair trade practice that adversely impacted the consumers as a class.

5. In view of the above findings of the preliminary inquiry report, a Notice dated 24.06.2022 was issued to the Cosmo Skin Centre to submit their response within 15 days to substantiate the veracity of the claim made in the advertisement mentioned above. However, when no reply to corroborate the claim was received from the opposite party, reminders dated 18.08.2022, 24.11.2022 and 09.01.2023 were issued. Despite that no reply was submitted by the opposite party.

6. Subsequently, for the purpose of investigation u/s 16 of the Consumer Protection Act, 2019, Deputy Commissioner, Ranchi vide letter dated 08.08.2023 was requested to investigate the matter in detail and submit their investigation report to the Central Authority.

7. The Deputy Commissioner, Ranchi in its investigation report dated 10.11.2023 submitted the following:

- i. In compliance to the letter No. 1031/G dated 25/10/2023 from the Deputy Commissioner cum District Magistrate, Ranchi, Civil Surgeon, Ranchi constituted a team of 3 members headed by the Deputy Superintendent, Sadar Hospital, Ranchi including a Skin Specialist to inspect the Cosmo Skin Centre. The findings of the Inspection Report are as under:

- a. Since past 15 years, Dr. Sanjay Kumar is illegally operating Cosmo Skin Centre. The said clinic was not registered under the Clinical Establishment (Registration & Regulation) Rules 2013.
- b. Further, when inquired by the inspection team about his claim of skin specialist, it was submitted that he was not an Allopathy doctor and had only pursued ayurvedic related study (B.A.M.S).
- c. On the request made by the inspection team to furnish his BAMS degree, Dr. Sanjay Kumar failed to submit his degree.
- d. Hence, in view of the above it is clear that Dr. Sanjay Kumar is operating an illegal clinic and endangering the life of public at large. Therefore, based on above facts appropriate action may be initiated.
- e. Thereafter, vide letter dated 30.10.2023, Civil Surgeon, Ranchi imposed a fine of ₹1,00,000/- was imposed on the Cosmo Skin Centre in violation to the Rule 41 (1) of Clinical Establishment (Registration & Regulation) Rules, 2013 and further issued direction to close their Skin Centre.

8. Taking into consideration the above facts, the Central Authority provided an opportunity to the opposite party vide letter dated 10.11.2023 to furnish their comments on the content of above investigation report at the earliest and latest by 16.11.2023 and subsequently appear for hearing on 17.11.2023.

9. The opposite party vide email dated 16.11.2023 submitted that:

- i. The copy of the complaint made by Advertisement Standing Council of India may be made available based on which present case has been instituted.
- ii. The family is observing a holy chhath festival and for this reason it is beyond reach of them to collect all necessary documents for the present proceedings.
- iii. An adjournment was sought in the present case submitting that it is not in the reach of the opposite party to file their objection on 17.11.2023. Therefore, present reply is filed to seek adjournment in the matter for one month.

10. The Central Authority considered the submissions made by the opposite party, thereafter again shared copy of all relevant documents and granted a time of one week

to submit the supporting documents to substantiate the issues raised in the Notice and the matter was listed for hearing on 23.11.2023 at 11:00 A.M.

11. The opposite party vide email dated 22.11.2023 made the following submissions that:

- i. The word "Assure Cure & Care" did not fall within the purview of misleading advertisement and it cannot be equated from unfair trade practice.
- ii. Dr. Sanjay Kumar is a registered doctor from State Ayurvedic and Unani Medical Council, Bihar having registration No 6143 dated 13.01.1984.
- iii. The opposite party have every right to practice as an Ayurvedic Doctor and any profession, or to carry on any occupation, trade or business in terms Article 19(1)(g) of the Constitution of India.
- iv. They are not running a clinical establishment within the meaning of u/s 2 (C) of the Clinical Establishment (Registration and Regulation) Act, 2010. Therefore, it did not require any registration u/s 11 of the said Act, 2010.
- v. The report of the inspection team is not fully correct as it was informed that the opposite party is a registered Ayurvedic doctor and holds a degree of B.A.M.S.
- vi. In furtherance to the above, it was assured that the opposite party did not intend to mislead consumers. However, it is acknowledged that mistakes can occur and any of the misleading claims can be rectified immediately.

12. During the hearing held on 23.11.2023, Dr. Shri Sanjay Kumar submitted that:

- i. No advertisement was published in Prabhat Khabar.
- ii. It was admitted that the aforesaid doctor does not have any specialization as a Skin Specialist as showcased in the advertisements in newspaper and on their website.
- iii. The clinic for treatment of skin ailments/diseases is operated since 15 years and the Dr. Sanjay Kumar is practicing in the clinic (Cosmo Skin Centre) since past 6 years in Ranchi, Jharkhand and earlier was practicing in Patna, Bihar.
- iv. He holds provisional degree of B.A.M.S. from Bihar University since 1981.

13. It was observed that the written submissions made by the opposite party tried to deviate the present matter of misleading advertisement and unfair trade practice towards the authorization of Dr. Sanjay Kumar to operate the Clinic namely Cosmo Skin Centre. During the hearing, it was stated that the cognizance in the present matter was taken due to the misleading claim in the advertisement and unfair trade practice adopted by the opposite party as the advertisements gave a guarantee to the consumers by making a claim of "Assure Cure and Care" and deceptively represented himself as a skin specialist doctor for the promotion of services offered by them, when he could not produce any documents authorizing his expertise as skin specialist.

14. A person of ordinary prudence would fall prey of such malicious malpractices adopted by the opposite party through their misleading claim that created the notion of Res Ipsa Loquitur (things speak for itself). On enquiry about his B.A.M.S. final degree or marksheets, it was submitted that they he has only provisional degree since 1981 and cannot substantiate the claim of "Assure Cure and Care" as represented in the visual representation made in the advertisement. Thus, it is a fit case of misleading advertisement and unfair trade practice, impacting a large number of consumers as a class.

15. Under the Consumer Protection Act, 2019, u/s 2 (28) 'misleading advertisement' inter-alia means falsely describing a service by giving a false guarantee to mislead the consumers as to the nature or quality of such service 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, u/s 2 (47) 'unfair trade practice' refers to the practice when for the objective of promoting the use or supply of any service, 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 that the supplier have the approval or affiliation for representing the need or the usefulness of any service which they does not have.

16. Since, the 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 making disclosures in such a manner that they are clear, prominent and extremely hard to miss for viewers to notice. Further, it does not mislead consumers by exaggerating the practical usefulness or making false claims about the benefit of the service.

17. Further, upon investigation by the inspection team constituted by Deputy Commissioner, Ranchi and on enquiry by the CCPA the opposite party failed to provide veracity of specialization of Dr. Sanjay Kumar Mishra as a skin specialist even though the visual representation in the impugned advertisement clearly states that aforementioned doctor is a Skin Specialist. Additionally, the opposite party failed to

corroborated any clinical evidence or any scientific validation regarding the visual representation made through the difference of “Before” and “After” effect in skin tone from acne-prone to spotless skin after their treatment.

18. 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.*

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

- i. To discontinue the advertisement from all platforms with immediate effect where the opposite party have published it.
- ii. The opposite party shall pay a penalty of ₹ 1,00,000/- for publishing a misleading advertisement with false & unsubstantiated claim of “Assure Cure & Care” and falsely claiming himself to be skin specialist, thereby concealing important information and adopting unfair and deceptive trade practice.
- 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