

**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 Western Edge 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 Western Edge:**

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 Western Edge (opposite party) through sale of impugned products i.e. **“OMY Lady Skin Whitening Cream look as young as U Feel, Face Cream for oily Skin, Anti Pimple Cream for Men and Women”** on Meesho (Fashnear Technologies Pvt. Ltd.) by 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 veracity of above claims made by the opposite party. As per preliminary inquiry report it was found that the said advertisement was available on the e-commerce platform Meesho at URL (<https://www.meesho.com/omy-lady-new-collections-of-whitening-cream/p/24o3gx>) as on 02.03.2023. Further, the advertisement prominently displayed 841 rating, 301 reviews. However, neither it disclosed the ingredients nor any disclaimer or scientific validation was available based on which the alleged claim of skin whitening and transformation in the skin tone from dark/black to white was displayed in the advertisement.

3. It is paramount 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 laid down in the Consumer Protection (E-Commerce) Rules, 2020, so that consumers are empowered to make informed decision at pre-purchase stage. Thus, the opposite party had falsely represented its product without any substantiation thereby willfully and deliberately concealing important information from the consumers. Therefore, in the preliminary inquiry, it was found to be prima facie a fit case of misleading advertisement and unfair trade practice under the Consumer Protection Act, 2019 that was likely to impact consumers as a class.

4. Thereafter, a Notice dated 02.03.2023 was issued to Western Edge to furnish their response within 15 days regarding ingredients used, scientific study along with comparative data of the claims made in the advertisement of “OMY Lady Skin Whitening Cream look as young as U Feel, Face Cream for oily Skin, Anti Pimple Cream for Men and Women” (impugned product).

5. In response to the Notice, a reply dated 18.03.2023 was received from Western Edge (opposite party) submitted that:-

- a. 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].
- b. 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.
- c. However, all objectionable material and advertisement has been discontinued from all e-commerce platforms.
- d. 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, Western Edge will submit the information in due course of time.

6. However, the opposite party did not submitted any documents for substantiation of their alleged misleading claims and representation of the product. Therefore, the Central Authority gave an opportunity of hearing to the opposite party on 18.05.2023. But the opposite party failed to appear for a hearing before the Central Authority without any intimation. Therefore, an Order dated 18.05.2023 was issued wherein opposite party was given a final opportunity of hearing to appear on 25.05.2023 to substantiate their claim. In spite of that, it again failed to appear for hearing.

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

8. The investigation report from CDSCO dated 07.10.2023 highlighted that:
- i. O/o. Deputy Drug Controller (I), CDSCO, Zone Office, Ahmedabad was requested to conducted the investigation, based on which investigation was carried out jointly by the Drugs Inspector of CDSCO, Zonal office, Ahmedabad and Senior Drugs Inspector from FDCA Surat, Gujarat, wherein following are the findings of investigation that:

- a) M/s. Western Edge was involved in the marketing of product on online platform and it was admitted by them that they had advertised the product on online platform by adding misleading picture to promote the product i.e. before and after the use of the product for face whitening purpose, without the consent of manufacturer.
- b) In the joint investigation, it is reported that said product was manufactured and supplied by M/s Old Stone Enterprises, Plot No. 160, Shiv industries, Surat, holding Manufacturing License and supplied to M/s Western Edge, 3<sup>rd</sup> Floor, Plot No. 161, Survey No. 171. On enquiring & reviewing of the documents of the firm, it was found that it has not sold the product in question since last four months and not giving any misleading advertisement on online platform from the said period.

9. On the other hand, in the investigation report dated 18.10.2023 by DG (Investigation) CCPA, it was highlighted that:

- i. It is found that visual representations show skin of consumer who uses them, getting whitened from dark skin tone and product is defined as skin whitening and brightening body lotion cream.
- ii. Despite, having admitted their mistake in their reply to CCPA regarding misleading claim, Western Edge is still displaying the same advertisement as on 16.10.2023.
- iii. A final reminder was sent to the firm vide email dated 24 July 2023 to share the scientific records /data in order to establish the superlative claim made on the product. Yet, no reply had been received from the firm till 16.10.2023.
- iv. Technical input was sought from Petroleum, Coal and related department (PCD) of BIS regarding superlative claim made by the firm on the product. Further, the department forwarded the mail to CDSCO.
- v. As per the investigation report received from CDSCO, Ahmedabad it is found that the seller (M/s Western Edge) has admitted that they were advertising the product on online platform by adding misleading picture to promote the product, without consent of manufacturer.
- vi. The firm failed to provide any documentary evidence, third party independent report, scientific justification to substantiate its claim made in the advertisement of impugned product.
- vii. Therefore, CCPA may take necessary action for misleading advertisement as per the Consumer protection Act, 2019.

10. In light of the above facts, the Central Authority, gave one more opportunity to the opposite parties to appear for hearing on 25.10.2023, wherein Shri Sharad B Mavani, Proprietor of Western Edge made following submissions that:

- i. It was undertaken that both the entities i.e. manufacturer (Old Stone Enterprises) and seller (Western Edge) of the product OMY Lady Skin Whitening Cream are owned by him.
- ii. It operates only on e-commerce platform for the sale of said product.
- iii. It is a startup, due to which as a proprietor he was not aware about the consumer protection law which includes rights of consumers or provisions of misleading advertisement mentioned under the Consumer Protection Act, 2019.
- iv. It has been further submitted that on receipt of the Notice of CCPA, the sale and advertisement of the impugned product has been discontinued.

11. In the instant matter, the opposite party is taking the shelter that he was not aware about the consumer protection law and whereas it was admitted in their reply that it tried to promote the product with Unique Selling Points to just come up on the E Commerce platform. Inter-alia, operating a business i.e. registering name of the firm, application for GSTIN number, enrolling on e-commerce platforms by engaging in various terms and conditions through contract itself includes compliance of several laws at various levels. Therefore, the opposite party cannot shield itself by making claims that it was not aware about the responsibilities towards consumers as required under the Consumer Protection Act, 2019.

12. In furtherance to the above, their pictorial representation of product clearly depict of the usefulness & benefits that body parts with dark skin tone get whiten on use of the product offered for sale by them in the absence of ingredients and scientific validation to the effect as claimed in the advertisement. Hence, this creates natural and misleading deception in the mind of consumers that if the product is used their skin could be whitened.

13. 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.

14. It may be mentioned that with the enforcement of Consumer Protection Act, 2019 and increasing awareness of consumer rights, doctrine of Caveat Emptor has been evolved to Caveat Venditor. An advertisement should not attempt to hide material information from the consumers which may make the advertisement deceptive. Similarly, an advertisement is considered to be valid and not misleading when the representation made by way of

statements or visual presentations are truthful & honest and does not mislead consumers by exaggerating the practical usefulness or conveying fallacious benefit about the product.

15. A product should be sold fairly to the consumers by showcasing appropriate disclosures which should be placed in the advertisement in such a manner that they are clear, prominent and extremely hard to miss for viewers to notice. But the opposite party neither honestly conveyed to consumers the true facts through a proper disclaimer stating that skin whitening is merely a name and the pictorial representation of the impugned product does not guarantee any whitening of skin as showcased in the pictures, nor it mentioned any ingredients, scientific validation or proven result for whitening of skin.

16. 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 during the hearing on 25.10.2023 that the product is still available. The opposite party submitted that the impugned product is in inactivated form and consumers can't purchase it, further, it started selling only facial kits in western edge store.

17. As per investigation report of DG (Investigation), the product was still listed and had been sold on the platform of Meesho until 16.10.2023. Hence, the opposite party fallaciously made its submissions about delisting the product after receipt of Notice from CCPA and tried to mislead the Central Authority, whereas the impugned product along with the misleading claim was not delisted until 16.10.2023 and was being sold.

18. It is evident that in the era of digital economy, where for the ease of purchase of product, e-commerce platform is increasingly becoming a popular option for class of consumers, the fact that Western Edge holds 841 rating, 301 reviews on the e-commerce platform for the impugned product, makes it clear about its reach and impact, The said product which has been promoted with misleading claims and false representations about transformation in the skin tone from dark (black) to white without any substantiation has been done to simply deceive the consumers at large for the promotion of their sales by deliberately concealing important information of any scientific study or any disclaimer and it adversely affects the consumers' right to be informed before purchasing a product. Thus, it makes a fit case of misleading advertisement and unfair trade practice.

19. 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;*

20. In view of the above, the Central Authority hereby issues the following directions:-
- i. To discontinue the advertisement from all platforms where the opposite party is listed as a seller with immediate effect.
  - ii. Western Edge shall pay a penalty of ₹ 1,00,000/- for publishing a misleading advertisement with false and unsubstantiated representation of Skin Whitening & Brightening and 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