

Central Consumer Protection Authority

**Ground Floor, CCPA Wing, Indian Institute of Public Administration, IP Estate,
Ring Road, New Delhi, 110002**

Case No: J-25/42/2021-CCPA

In the matter of: Suo-moto case against Naaptol Online Shopping Private Limited

CORAM:

Ms. Nidhi Khare, Chief Commissioner

Mr. Anupam Mishra, Commissioner

APPEARANCES

For Naaptol Online Shopping Private Limited

1. Mr. Nadiya Sarguroh, Advocate

Date: 02.02.2022

ORDER

1. The hearing was conducted through video conferencing.
2. This is a suo-moto case initiated by the Central Authority (CCPA) against Naaptol Online Shopping Private Limited ("Naaptol") wherein it was observed by CCPA, during its review, that the company was indulging in making allegedly misleading advertisements for some of its products and employing unfair methods to promote the sale of its products through broadcast and online mode. To discharge its role of protecting rights of consumers as a class, CCPA is actively involved in monitoring the consumer landscape in the country, which includes examination of complaints registered on the National Consumer Helpline (NCH).
3. Notice was issued to Naaptol on 07.07.2021 calling the company to substantiate the claims made in the advertisements on effectiveness of some of its products. Attention was also drawn in the notice to incongruity in issuing refunds, wherein it was found after examination of complaints, that consumers are denied refund through NEFT initially and are instead given vouchers by the company to utilize later were also raised. NEFT refund is given to consumers who register their complaint on NCH but was denied to them when they approached the company initially.

The advertisement of the following products was purportedly observed to be misleading:-

- a) <https://www.youtube.com/watch?v=rHC4M0SFw> (Magnetic Knee Support — LPO Code: 8872 - claims magnetic therapy - instant pain relief of knees)
- b) <https://www.youtube.com/watch?v=LTPyKH02zyU> (Get in Shape Slimming Belt Single - LPO Theme - Code: 8312 - Claims - Reduce 5 kilo weight in a month only by wearing the belt)
- c) https://www.youtube.com/watch?v=Td2r_D3vdDM (Kids Learning Tablet – LPO – Code: 9279 – Claim – Kids tablet – product does not have any features of tablet)
- d) <https://www.youtube.com/watch?v=D515d3LWWz0> (Set of 2 Gold Jewelry – Name is misleading since, jewelry is made of alloy and gold color plated)
- e) <https://www.youtube.com/watch?v=2axgLMgClSjU> (Acupressure Yoga Slippers – LPO – Code – 8516 – Claim - Acupressure Massage Slippers is an instant tool to relieve your pain in lower and upper back, neck, shoulders, hips, muscles & joints)
- f) https://www.youtube.com/watch?v=y3UJ_2mKTRE (KeraGain Miracle Hair Color Shampoo & 10 in 1 Miracle Hair Spray -LPO - Code:9021 – Video depicts application by hand, however, product usage directions states to use hand gloves.)

4. In response to the Notice, reply was received from Naaptol on 22.07.2021 inter alia stating that:

- *“We would like to apprise you that we are one of the oldest Home shopping platform in India and in providing alternative shopping mechanism our customers through our e-commerce platform www.naaptol.com. We would like to bring to your attention that other home shopping platforms like Home Shop 18 and Star CJ have shut down, thus making Naaptol the biggest home shopping platform in India. Infact the past 12 months i.e. June 2020 – July 2021, orders generated and placed through Naaptol platforms were approximately 90,76,431.*
- *As per industry practice, majority of e-commerce entities provide refund in the entity wallet to be utilized by customer later while shopping from their platform. Only if the customer chooses to opt for refund in bank*

account, the same is granted. Our voucher works in the same fashion of the wallets. As such we have taken into consideration the demands of our customers and those customers who did not agree to take refund vouchers, were provided refunds through NEFT. We also have the option of extending the voucher due date where customers are unable to utilize them.

- We would like to bring this to your kind attention with help of few instances that advertisement of our product which is Magnetic Knee Support does not make a claim that it is going to relieve the pain instantly and it is clearly stated that it will help reducing the pain gradually.
 - The advertisement of 'Shape Slimming belt' also distinctly mentions that "approximately" 5 kilos can be reduced in a month and no such claim is made that exactly 5 kilos will be lost or weight will be lost only wearing the shape slimming belt.
 - With regard to concern relating to 'Kids Learning Tablet', it is specifically shown in the advertisement that it is a kids tablet, which can be used as a small toy to learn alphabets, numbers etc. and not a usual tablet computer. The advertisement does not claim features of a real tablet or electronic gadget or computer tablet
 - In advertisement of 'Gold Jewellery Set', we would like to make it clear for you that the advertisement does claim that the jewellery set is a 24 or 18 or 14 carat "Real Gold Set" and makes clear distinction that it is an artificial set. Moreover, the price itself is enough for layman customer to understand that it is not real gold.
 - In connection with 'Accupressure Yoga Slippers', it is stated that the product only claims to improve blood circulation and not to relieve pain of the body.
 - The 566 complaints sent by CCPA for June 2020 to July 2021 is not even 1% of the orders generated through our platform for this period."
5. Upon perusal of reply submitted by the company, another Notice dated 11.08.2021 was sent highlighting that:-
- Refund policy of the company clearly states that for online refund shall be made as per the payment mode. The refund policy does not mention anything about refund vouchers. Examination of the complaints registered on NCH reveals that at the first instance,

company has provided refund only in the form of vouchers and even when consumers have approached customer support of the company, they have been denied cash refund and forced to accept refund vouchers.

- Screenshots of the video advertisement of Magnetic Knee Support and Accupressure Yoga Slippers clearly mention the claims highlighted by CCPA in its Notice dated 7.7.21.
- The company has made another advertisement for 'Silver Rakhi – Code 9778' wherein it has been claimed as 'pure silver', asli chandi and certificate of authenticity. However, the company has stated in its description that the product only has a silver color finish.
- Further, it has been observed that the company through its Live TV and YouTube broadcast has been using unfair methods to promote its products by falsely stating that it is available for a limited time to pressurize consumers to make an immediate decision and depriving consumers sufficient time to make an informed decision.

6. The company was provided 15 days' time to respond to the Notice dated 11.08.2021. The company sent an 'Interim reply' dated 27.08.2021 stating that it is in the process of collating necessary information to provide a detailed reply and clarification to the notice and requested not to proceed with any action against the company. However, due to no response from the company after considerable period, a Notice of final opportunity to submit detailed reply was sent to the company on 03.12.2021 providing 7 days' time to furnish its response. However, missing the period provided, the company submitted its response on 23.12.2021.

7. In its reply dated 23.12.2021, the company stated delay in responding to the second notice took place because many of its members in advertising and marketing were unwell and showing symptoms of Covid. In response to the issues raised, the company made the following submissions:

- *"We hereby state and reiterate that all customers who have asked for refund have been given final refund and that such refund has been credited to their accounts. We take note of the discrepancy in the refund policy and the Company is in process of updating their refund policy until the interim measure where refunds are to be granted to the Company shall continue to follow the current online and offline payment as provided in the refund policy. Therefore,*

Authority to close this issue, and the same ought not to be termed as unfair trade practice.

- *Advertisement of our product which is a magnetic knee support, we state that the instant relief from pain here does not seek to cure any disease which is in the Schedule of non-treatable diseases. Further the word instant is not associated with permanent relief from, and the Knee support provides certain instant relief from pain which helps the knee to be supported in the absence of which the Knee would experience much more pain. However, we note that word instant relief could cause a certain amount of confusion and as such committed to the cause of serving its customers better every day, Naaptol has removed the video and will upload the same without the words "instant relief". Nevertheless, as stated above the magnetic knee support does not claim the cure of any disease or magical remedy and thus, we request you to close this issue and the same ought not to be treated or termed as misleading advertisement.*
- *Acupressure Yoga Slippers we state that the instant relief from pain here does not seek to cure any disease which is in the Schedule of non-treatable diseases. Further the word instant is not associated with permanent relief from, and Acupressure is known worldwide to improve blood circulation which consequently relieves pain instantly on an intermediary basis from the pressure points located to resolve pain from different parts of the body. However, we note the concern of the Hon'ble authority that word instant relief could cause a certain amount of confusion and as such committed to the cause of serving its customers better every day, Naaptol has removed the video and will upload the same without the words "instant relief". Nevertheless, as stated above Acupressure Yoga Slippers does not claim the cure of any disease or magical remedy and thus we request you to close this issue and the same ought not to be treated or termed as misleading advertisement.*
- *We would like to clarify that the Advertisement correctly mentions "pure silver Rakhi" since the Rakhi consists of 2gms of pure silver. As correctly highlighted by you the description of the entire product mentions all the other metals and the bracelet adjoining to the Rakhi is made of Alloy Metal. In this sense the claim of the Rakhi being pure silver is correct and as such this advertisement cannot be claimed to be misleading and thus, we request you to close this issue and the same ought not to be treated or termed as misleading advertisement. As stated above we at Naaptol make our best endeavors to keep the interest of our*

consumers at the highest priority. Also, you may be aware that most of our competitive e-commerce entities are also selling same or similar products under the same or similar product names

- *The Episodes nowhere claim that they are live episodes and thus are exclusive episodes which are run on the Channels and hence it is implied that the reference to such stock and inventory is not live or status. Further no such consumer complaints have been lodged recording this as an unfair practice since the consumers understand the episodes are not live episodes, and the same episodes and advertisements are run on the channel over the period. However, we have taken note of the observation made by the Hon'ble Authority and have begun to run further clarificatory disclaimers on all such advertisements where limited order or stock is mentioned.*
- *We deny that prices are fictitious and further state that discounted prices are those agreed by Vendors for sale of a particular product.”*

8. Thereafter, opportunity of hearing was provided to Naaptol on 02.02.2022 wherein, Ms. Nadiya Sarguroh, Learned counsel appearing on behalf of Naaptol made the following submissions:

- On Misleading advertisements :

(1) Shape Slimming Belt: We have not claimed that 5 kilo will be lost as a guarantee and that only by wearing the belt there will be weight loss. The claims is only an approximation. These products are sold at various e-commerce platform including Amazon, Flipkart, Myntra and no guarantee has been made in the advertisement. The ad is a product of creativity and we don't see it as misleading.

(2) Kids learning tablet: Features of a tablet cannot be advised to a kids learning tablet. This is a common product which is sold everywhere for kids who are using a kids tablet, kids laptop and it has normal functions to boost the development including speech, learning and alphabets of the kid. The very name that it is a kids learning tablet does not mean that is a real tablet or it is an electronic gadget

(3) Gold Jewelry: The ad does not anywhere claim that it is a 24 K or a 18 K or 14 K gold set. It does not make any indication to a lay person that for Rs. 200 a real gold jewellery set is being displayed or being sold. Merely if we have stated that it is a gold jewellery set but we have not made assertion that it is a real gold 24 k , 14 k , 18 k gold, it cannot be held misleading. It is again

a product of creativity where you are selling stuff and you have to appeal to the market.

(4) Pure Silver Rakhi: It is a pure rakhi because this rakhi actually contains 2g of pure silver and the rest of the metal bracelet is not the rakhi, that is only the bracelet. In the description of the product, it is also stated that the product is made of alloy. Here there is an assertion which is actually true i.e. 2g of pure silver. And the bifurcation of the entire product description says that the bracelet is made of alloy.

Counsel for Naaptol Ms. Nadiya Sarguroh agreed that there have been advertisement wherein the client has made certain representations which are incorrect.

These 2 ads are:-

1. Magnetic Knee Support
2. The accu pressure Yoga Slippers

(1) Counsel agreed that words could have been described a little better but it is not an assertion to cure or claim to cure any disease which is non-treatable as per Drugs and Cosmetics Act, 1940.

(2) These slippers also have various pressure points which click into your feet and when you wear them, you get relief from the pain that is there but it is not seeking to cure your pain completely, it is not seeking to cure any disease under the schedule, it not seeking to cure any relief from any non-treatable disease.

Counsel further added that the complaints are not even 1% of the consumers all across India and every company will have consumer complaints. 1% should not be treated as whole perception of the work/service that client is giving.

Our subscriber base is heavy. In the year where the complaints have been tallied, we have made around 90,76,431 customers – about a crore of customers and the complaints used as ref June 2020 – July 2021 is hardly 1%. – req. to be taken in to consideration.

Refunds

Counsel for Naaptol agreed that the policy was not updated due to internal corporate issues but added that refunds have been made to all the customers.

If they didn't accept the vouchers, we paid them through NEFT. Although the refund mechanism may have been slightly different to what is there on the

website, we rest assure that each of the customer have received refund through NEFT, if they have not accepted the voucher.

On Live TV/YouTube Broadcast

We submit these shows are shot once, they are recorded and then they are displayed until the product is finally is stopped or is discontinued.

The fact that it is a not a live show and an exclusive show is understood by all customers and it is pre-recorded and put on the TV shows., It is only a creative representation of selling the product to customers., they are aware that this is an exclusive show and not a live show. Therefore, there are no live comments being made or live offers being taken; calls directly go to sales team which handles taking of the order; and then taken ahead in terms of how order is processed.

Videos are creative representations, no complaint lodged of creating pressure tactics by the consumers; that these are all pressure mechanism because everybody knows its not a live video, and because it's a recorded show played everyday on the channel and consumers are aware about it; we humbly request you to not term this as an unfair trade practice

9. After the hearing, the company has filed another reply on 3.2.22 reiterating the submissions made during the hearing and further adding that :-

“Alternatively, it is prayed that the imposed Penalty (if any) be reduced in light of Naaptol's prompt act of correction, which was done solely for the benefit of its viewers and customers.”

10. During examination, it was observed that a significant number of complaints have been registered by consumers against Naaptol which relate to “Low Quality”. Data received from NCH showed that during the period June 2020 – July 2021, 566 complaints were registered by consumers

Naaptol-July20-May21			
Month	Online Shopping	Tele Shopping	Total dockets registered
Jul-20	23	21	44
Aug-20	34	22	56
Sep-20	39	28	67
Oct-20	26	23	49
Nov-20	15	17	32
Dec-20	31	21	52
Jan-21	24	31	55
Feb-21	26	25	51
Mar-21	30	24	54
Apr-21	22	17	39
May-21	39	28	67
Total	309	257	566

Online Shopping

S.No.	Nature of Grievance	Count	Percentage
1	Low Quality	60	20
2	Received less quantity than promised in the advertisement	21	7
3	Sale of Spurious / Fake Products/Duplicate product	13	4
4	Charging more than MRP	5	2
5	Received less quantity than promised in the advertisement(Accessories Missing)	4	1
6	others-refund/non-delivery/defective products/wrong promises etc	194	65
	Total	297	100

Tele-shopping

S.No.	Nature of Grievance	Count	Percentage
1	Low Quality	47	20
2	Product is not the same as depicted in TV/Website	21	9
3	Sale of Spurious / Fake Products	17	7
4	Received less quantity than promised in the advertisement(Accessories Missing)	11	5
5	Charging more than MRP	5	2
6	others-refund/non-delivery/defective products/wrong promises etc	133	57

Total	234	100
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Also, it was observed that some of the products were making claims which were clearly incongruous to the products being advertised. The Live broadcast on YouTube and Television by the company were further observed to be inducing viewers to make immediate buying decision by continuously airing that the product is available for a limited time.

"Misleading advertisement" has been defined in under Section 2(28) of the Consumer Protection Act, 2019 -

"2 (28) "misleading advertisement" in relation to any product or service, means an advertisement, which—

(i) falsely describes such product or service; or

(ii) gives a false guarantee to, or is likely to mislead the consumers as to the nature, substance, quantity or quality of such product or service; or

(iii) conveys an express or implied representation which, if made by the manufacturer or seller or service provider thereof, would constitute an unfair trade practice; or

(iv) deliberately conceals important information;

'Unfair Trade Practice' as defined in the Consumer Protection Act, 2019 includes

2(47) : "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 service, adopts any unfair method or unfair or deceptive practice including any of the following practices, namely

(i) making any statement, whether orally or in writing or by visible representation including by means of electronic record, which

(d) represents that the goods or services have sponsorship, approval, performance, characteristics, accessories, uses or benefits which such goods or services do not have;

(f) makes a false or misleading representation concerning the need for, or the usefulness of, any goods or services

11. Taking in view the claims made in the advertisement and the reply submitted by the company, it is clear that :-

- Set of 2 Gold Jewelry

If the jewelry is not made of gold, the opposite party has no basis to call the same as "gold jewelry". Calling the product by such name could surely mislead consumers of the actual nature, substance and quality of the product. Additionally, the advertisement does not clarify anywhere that the product is not actually made of gold. Thus the submission made by counsel deserves to be rejected and the advertisement qualifies as 'misleading advertisement' in terms of 2(28) of the Act.

- Magnetic Knee Support – Claim: "Instant Pain Relief For Your Knees"

In its reply dated 07.07.2021, the company has categorically denied making the claim that the product is going to relieve the pain instantly. However, in its second reply dated 23.12.2021, it has been admitted that words "instant relief" could cause confusion among consumers. Naaptol has removed the video

The company has not submitted any scientific or documentary evidence to substantiate the claims made in the advertisement. Without any proof to substantiate the claim, the opposite party cannot be allowed to claim that the product offers instant pain relief. Making such a claim will unquestionably give a false impression of the efficacy of the product. Counsel for the company admits that the representation made in the ad is incorrect. Therefore, the advertisement also qualifies as 'misleading advertisement'.

- Accupressure Yoga Slippers – Claim: "Accupressure Massage Slippers – Claim: "Accupressure Massage Slippers is an instant tool to relieve your pain in lower and upper back, neck, shoulders, hips, muscles and joints"

No proof has been submitted by the company to substantiate if the product is an "instant" tool to relieve pain. Counsel for the company admits that the representation made in the ad is incorrect. Therefore, this advertisement also qualifies as 'misleading advertisement'

12. It was also observed that the company runs promotional programmes through Television and Youtube. During such programmes, it was observed that a product is stated as available only for a limited time and potential consumers are called on to make a buying decision as early as possible. However, the product is made available on the next day as well. Due to continuous and incessant call of limited stock and showing that time is running out, consumers are deprived of making an informed decision of buying the product.

The company has admitted that the promotional episodes run on the channel are not live and are pre-recorded and reference to the stock or inventory is not the live status. The episodes also make claims such as 'limited stock',

'available only for today'. This not only misleads consumers on the actual availability of the product, it also exploits consumer rights by creating an impression of scarcity in the mind of consumer.

Therefore, using such methods to promote its products qualifies as unfair trade practice.

13. In view of the above, it is clear that this is a case of misleading advertisement and fit for class action. Counsel for the company has admitted that the claims made in advertisement of Magnetic Knee Support and Accupressure Yoga slippers were incorrect. The advertisement for "Set of 2 Gold Jewelry" is also misleading as it gives a false impression to consumers on the actual nature and substance of the product.

14. Data received from NCH indicates that from the 566 complaints registered against the company during July 2020 to May 2021 indicates that 234 docket are from teleshopping and 294 docket were from online shopping. In both mediums, "Low Quality, Product not same as depicted on TV/Website, Sale of spurious/fake products were the prime grievance raised by consumers.

Further, recent data from NCH indicates that 399 complaints have been registered against the company from June 2021 to 25.01.2022 which includes 203 docket from online shopping and 196 docket from teleshopping which again highlights that 'low quality sale of spurious/fake goods and product different from what is depicted on TV' continue to be the prime concerns faced by consumers.

Month	Online Shopping	Teleshopping	Total
Jun-21	42	30	72
Jul-21	26	28	54
Aug-21	26	23	49
Sep-21	24	27	51
Oct-21	22	20	42
Nov-21	17	28	45
Dec-21	20	21	41
Till 25Jan22	26	19	45
Total	203	196	399

Online Shopping

S.No.	Nature of Grievances	No. of grievances
1	Low Quality	39
2	Received less quantity than promised in the advertisement	12
3	Sale of Spurious / Fake Products/Duplicate product	13

4	Charging more than MRP.	2
5	Product is not the same as depicted in TV/Website	5
6	Others-refund/non-delivery/defective products/wrong promises etc.	132
	Total	203

Teleshopping

S.No.	Nature of Grievances	No. of grievances
1	Low Quality	43
2	Received less quantity than promised in the advertisement	12
3	Sale of Spurious / Fake Products/Duplicate product	14
4	Product is not the same as depicted in TV/Website	2
5	Others-refund/non-delivery/defective products/wrong promises etc.	125
	Total	196

15. In the reply dated 03.02.2022, the company has prayed for a reduced penalty in the case.

It is pertinent to note that the opposite party runs a 24X7 channel which is broadcast on a daily basis across the country in various languages i.e. Hindi, Tamil, Kannada, Telegu and Malayalam. Moreover, as mentioned by the company in its reply and submitted by the counsel during hearing, in the period of June 2020 – July 2021, the orders generated approximately 1 crore rupees. This makes it clear that the advertisements have had a far-reaching impact on numerous consumers and the potential number of consumers affected by such advertisements is significant.

16. In view the above, the Central Authority hereby passes the following direction :-

- a) Opposite party shall discontinue the advertisements of “Set of 2 Gold Jewelry”, “Magnetic Knee Support”, “Acupressure Yoga Slippers” and shall clearly mention in the episodes offering a product for sale to consumers that it is recorded episode and does not show the live status of inventory of the product.
- b) Opposite party shall immediately discontinue any practices which create artificial scarcity of products including :-

- (i) Showing that the product is available only today if it is going to be on sale within the next 30 days as well.
- (ii) Opposite party shall clearly display on its channel or platform running a promotion that it is pre-recorded episode.
- c) Opposite party shall be pay penalty of ₹10,00,000 for the misleading advertisements of the products as mentioned in (a) above.
- d) Complaints registered on NCH in the period of May 2021 to January 2022 shall be forwarded to opposite party which shall submit complaint-wise action taken report within 15 days.

New Delhi


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Nidhi Khare
Chief Commissioner


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Anupam Mishra
Commissioner