

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 Lohiya Retails 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 Lohiya Retails:

Shri R Prashant Bhrigu, Advocate on behalf of Lohiya Retails

Date: 30.08.2023

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 Lohiya Retails (opposite party) through sale of "NAZAKAA Skin Whitening SPF 35+ De tan Moisturizing Body Lotion for Fairness" on Flipkart by making claim of skin whitening and brightening and representing transformation in skin tone from dark to white without any scientific validation.

2. Accordingly, CCPA conducted a preliminary inquiry to examine the above claim made by the opposite party which are prejudicial to the interest of consumers as a class. As per the preliminary inquiry report, it was found that the advertisement was available on the Flipkart at URL (https://www.flipkart.com/nazakaa-whitening-body-lotion-spf-35-moisturizer-fairness-face-hand-body/p/itm67fcdfeaaaf3be?pid=MSCGHVGPV7HMEFXJ&lid=LSTMSCGHVGPV7HMEFXJMFJEQS&marketplace=FLIPKART&q=whitening+body+lotion&store=g9b%2Fema%2F5la&srno=s_1_39&otracker=search&otracker1=search&fm=Search&iid=4070b7e3-a360-484c-b90d-751245d127e9.MSCGHVGPV7HMEFXJ.SEARCH&ppt=sp&ppn=sp&qH=e0f1c24bfd347e3c) on 02.03.2023. The advertisement prominently displayed 41 rating and 16 reviews but did not disclose the ingredients or scientific validation based on which the representation of Skin Whitening/Brightening was made in the advertisement of the product.

3. Under Consumer Protection (E-Commerce) Rules, 2020, it is the duty of the seller offering goods through marketplace e-commerce entity that it shall provide all relevant details about the goods offered for sale for enabling the consumer to make an informed decision. However, in the above matter the opposite party failed to prominently display the important information. Thus, prima facie it appeared a case of misleading advertisement and unfair trade practice under the Consumer Protection Act, 2019.

4. Hence, a Notice dated 02.03.2023 was issued to the Lohiya Retails to furnish their response within 15 days regarding ingredients used, scientific justification and third party validation along with comparative data of the claims made in the advertisement of NAZAKAA Skin Whitening SPF 35+ De tan Moisturizing Body Lotion for Fairness on Flipkart e-commerce platform.

5. In response to the notice, a reply dated 13.03.2023 was received from Shri R Prashant Bhrigu, Advocate on behalf of opposite party submitting that:

- i. Nazakaa body lotion is a type of moisturizer which helps the skin in moisturizing, lightening and fairness as the active ingredient which is used in the moisturizer is Alpha Arbutin which lightens the skin if used regularly.
- ii. Other brands are selling the same kind of product, therefore, Lohiya Retails copied the title name and pasted it while listing of the product on www.flipkart.com.
- iii. The Ingredients of the product are Aqua demineralised, Stearic acid, Glyceryl monostearate, Cetyl Alcohol, Cetostearyl alcohol, Glycerine, Octyl Methoxycinnamate, Alpha arbutin, Titanium Dioxide, Triethanolamine, Phenoxyethanol, Acrylic copolymer, Ethylene diamine tetra acetate, Isopropyl myristate, Dimethicone, Fragrance. No harmful ingredient is used in the product.
- iv. The product contains Alpha Arbutin which lightens the skin if used regularly as per the research. "Arbutin as a Skin Depigmenting Agent with Antimelanogenic and Antioxidant Properties", Antioxidants (Basel). 2021 Jul; 10(7): 1129. Published online 2021 Jul 15. doi:10.3390/antiox10071129. [<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8301119/>]
- v. Lohiya Retails is involved in selling products online on e-commerce site Flipkart with Brand Name, Nazakaa and currently this brand is abandoned.
- vi. It has already withdrawn and removed the said product from the e-commerce site Flipkart and hence, agreed for corrective advertisement.

6. In view of the above submissions CCPA requested the Drug Controller General of India, Central Drugs Standards Control Organization to investigate the matter in detail and submit its report to the Central Authority.

7. In its Investigation Report vide email dated 03.06.2023 it was highlighted that:
- i. On enquiry with the retailer, they had never sold the "skin whitening Face cream, and as regards to Lotion, they have discontinued the sale of the product after receiving notice from CCPA.
 - ii. The retailer clarified that whitening is used only as a name and nowhere claimed for whitening of skin on the label viz "Whitening Body Lotion".

8. Pertinently an opportunity of hearing was provided to the opposite party on 11.08.2023 wherein Shri R Prashant Bhrigu, Advocate appeared on behalf of the opposite party and submitted that:

- i. The term 'Skin Whitening' and 'For Whitening' is used only as a trademark name and not as claim.
- ii. The advertisement highlighted 'Skin Brightening' are made based on the practice adopted by competitive sellers.
- iii. Flipkart has blocked the listing of the product and the product has been delisted at present from sale on the e-commerce platform.
- iv. The claim is just for indicative purpose, however, time may be provided to submit additional documents in the matter.

9. The Central Authority, granted time till 14.08.2023 for submission of additional documents, failing which final order may be issued. Shri R Prashant Bhrigu agreed for the same, however, no documents have been submitted as on 29.08.2023.

10. In the instant matter, the opposite party is taking the refuge that skin whitening & brightening is used only as the trademark name of the product NAZAKAA skin whitening body lotion for fairness. However, their pictorial description clearly depict body parts with dark skin tone get whiten on use of the product offered for sale by them, this creates natural deception in the mind of consumers that if the product is used their skin could be whitened. Therefore, the opposite party cannot shield itself by making false representation under the garb of product's trademark name, illustratively, if they had been selling toilet cleaner or surface cleaner or shoe polish or bleaching powder it would not have adversely affected consumers. Buyers would have noticed that it is mere a trademark and does not have any connection with whitening of skin.

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. It may be mentioned that with strengthening and awareness of consumer rights and coming into force of Consumer Protection Act, 2019, doctrine of Caveat Emptor has been evolved to Caveat Venditor. An advertisement is considered to be valid and not misleading when it contains honest representation by way of statements or visual presentations and does not mislead consumers by exaggerating the practical usefulness or benefit of the product. Also, an advertisement shall not attempt to hide material information which may make the advertisement deceptive.

13. It may be accentuated here that disclosures should have been 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 trade mark and the product skin whitening body lotion does not guarantee any whitening of skin as showcased in the pictures, nor it mentioned any scientific validation or proven result for highlighting whitening/brightening of skin.

14. It is therefore, evident that in the era of digitalization where purchase of product through e-commerce platform is the most preferred option by class of consumers, the opposite party had falsely represented the transformation in the skin tone without any substantiation to simply deceive the consumers at large for the promotion of their sales. Thus, it makes a fit case of misleading advertisement and unfair trade practice.

15. 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;*
- (c) *the vulnerability of the class of persons likely to be adversely affected by such offence;*

16. 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.
- ii. Lohiya Retails shall pay a penalty of ₹ 50,000/- for publishing a false representation of Skin Whitening & Brightening and deliberately concealing important information, which adversely affects the consumers as a class.
- 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

Lohiya - Retailer

WHITENING BODY LOTION

PACK OF-1

100ml



NAZAKAA



Home > Beauty and G... > Body & Face... > Body and Fac... > Skin Brighten... > NAZAKAA SK... > NAZAKAA SK...
NAZAKAA Skin Whitening SPF 35+ De tan Moisturizing Body Lotion For Fairness- (100 ml)

3.9★ 41 Ratings & 16 Reviews Assured

₹199 ₹400 50% off

Available offers

- Partner Offer Sign up for Flipkart Pay Later and get Flipkart Gift Card worth up to ₹500* Know More
- Partner Offer Buy this product and get upto ₹250 off on Flipkart Furniture Know More
- Bank Offer 5% Cashback on Flipkart Axis Bank Card T&C

Delivery Enter Delivery Pincode Check Enter pincode

Usually delivered in 7 days Enter pincode for exact delivery dates/charges

View Details

Quantity 100 ml

ADD TO CART

BUY NOW

Highlights

- All Day, Day Usage Lotion For Anti-ageing, Daily Care, Moisturization & Nourishment, Radiance & Glow, Skin Brightening, Spot Removal
- For Men, Women
- Organic Type: Natural
- No Returns Applicable
- Cash on Delivery available

Seller Lohiya Retailer 3.8★