

Central Consumer Protection Authority
Krishi Bhawan, New Delhi --110011

Case No: CCPA-11/13/2023-CCPA-Part (1)

In the matter of: M/s Fire and Personal Safety Enterprises regarding misleading advertisement and unfair trade practice.

CORAM:

Mrs. Nidhi Khare, Chief Commissioner

Mr. Anupam Mishra, Commissioner

APPEARANCES

For M/s Fire and Personal Safety Enterprises:

Mr. Sandeep Kumar Sharma (Managing Director) of M/s Fire and Personal Safety Enterprises

Date: 19.10.2023

ORDER

This case is taken up by the Central Consumer Protection Authority (hereinafter referred as CCPA) based on the information received from Writ Petition W.P. (C) 105/2023 in Delhi High Court against M/s Fire and Personal Safety Enterprises (hereinafter referred as opposite party) for misusing ISI mark on their products.

2. In the said writ petition, Bureau of Indian Standards (hereinafter referred as BIS) and CCPA were also made parties wherein BIS & CCPA satisfied Delhi High Court that grievance raised by the Petitioner in the said Writ Petition stands answered. Therefore, the Writ Petition was disposed of vide Order dated 11.09.2023. However, CCPA observed that the opposite party is allegedly misusing ISI mark on their products i.e., selling sub-standard Fire Extinguisher Balls, that may be hazardous to public safety.

3. Accordingly, CCPA took cognizance of the matter and conducted a preliminary inquiry to examine veracity of the claim/advertisement made by the opposite party. As per preliminary inquiry report, it was found that the opposite party sells Fire Extinguisher Balls on online platforms like www.flipkart.com & www.indiamart.com & www.gfofire.in. The official website of opposite party lists a number of products of the firm under "our products section" namely fire ball, flower pot fire, GFO fire fighter drum, GFO automatic

baby fire ball. The website is replete with pictures of the products of the opposite party bearing spurious ISI Mark without BIS license number whatsoever.

4. It is pertinent to mention that the ISI mark is given to a product only after a thorough scrutiny of manufacturing and testing facilities is done keeping into consideration safety and quality standards. The manufacturer of the product has to submit an application along with required documents and fees to Bureau of Indian Standards (hereinafter referred as BIS). After receiving the application, BIS officers conduct factory inspections, collect a sample of products, test them, and make an independent testing report. Once the samples meet the stipulated standard criteria, BIS certificate is given and ISI mark on the product can be used. However, using BIS standard mark "ISI" unauthorizedly on products is not only violation of BIS Act, 2016 but is also violation of consumer rights and constitutes misleading advertisement for the purpose of unfair trade practice under Consumer Protection Act, 2019.

5. Recognizing the significance of ensuring adherence to the provisions of the Consumer Protection Act, 2019 and the fundamental principle of equitable and transparent resolution, the matter was referred to the Director General (Investigation) CCPA to investigate into the matter and submit a report within 15 days.

6. The Director General (Investigation) in its investigation reports dated 17.07.2023 and 21.07.2023 submitted the following:

- i. Opposite party does not hold a license to use BIS Standard Mark on their product(s).
- ii. Section 17(3) of the BIS Act, 2016 specifies that 'No person shall use or apply or purport to use or apply in any manner, in the manufacture, distribution, sale, hire, lease or exhibit or offer for sale of any goods, article, process, system or service, or in the title of any patent or in any trade mark or design, a Standard Mark or any colorable imitation thereof, except under a valid license from the Bureau'. Thus, it is established that opposite party have misused ISI Mark thereby violating of Section 17(3) of BIS Act 2016.
- iii. During investigation, it has been observed that the official website of the opposite party i.e., www.gfofire.in as well as ecommerce platforms www.flipkart.com and www.indiamart.com are replete with pictures of the products of opposite party bearing spurious ISI Mark without BIS license number. Further, it is observed that at least in eight cases it has been falsely claimed in the product details of the products of the firm listed on www.instamart.com that the products are BIS certified.
- iv. It is pertinent to mention that license to use the Standard Mark (ISI Mark) on a product is granted to a manufacturer after assessing the Manufacturing and Testing Capabilities of the manufacturer as well as ensuring conformity of the

product to the requirements of the relevant Indian Standard(s) through testing. During operation of License, surveillance visits of the licensees' premises, testing of products drawn from factory and open market etc. are carried out by BIS to maintain a close vigil of the operation of the license as well as the Quality of BIS certified goods.

- v. Opposite party do not hold a license to use BIS Standard Mark on their product. It is evident that for the purpose of promoting the sale, use or supply of their goods, the firm is misusing ISI Mark on their packaging and products and is falsely depicting and advertising their products on their official website and ecommerce platforms as bearing ISI Mark, thereby misleading the consumers to believe that their products conform to requirements of Indian Standard Specifications and that they have been granted license to use BIS Standard Mark after assessing their Manufacturing and Testing Capabilities. This act of opposite party amounts to "Unfair Trade Practices" as defined in Sub-clause i) of Section 2(47) of Consumer Protection Act, 2019 and "Misleading Advertisement" as defined in Section 2(28) of Consumer Protection Act, 2019.
- vi. A Search and Seizure operation was carried out at the address of the opposite party (i.e., 2nd Floor, Unit No. 221, Best Arcade, Plot No. 3, Pocket-6, Canara Bank ATM, Dwarka Sector 12, New Delhi), on 18 July 2023 and goods with spurious ISI Mark (12 pieces of fire extinguisher balls with ISI Mark without license number and Brand Name GFO (Green Fire Off); also some cartons and printed labels with spurious ISI Mark) have been seized.

7. Therefore, the CCPA issued a notice dated 14.08.2023 to the opposite party for violation of provisions of the Consumer Protection Act, 2019 highlighting the issue of misleading advertisement by deliberately concealing important information and falsely describing their Fire extinguisher balls with fake ISI mark which is likely to mislead consumers about safety and quality of such product. Opposite party adopted unfair/deceptive trade practice for the purpose of promoting of sale of their products by falsely representing that their product has BIS approval or certification for using ISI mark on their products. An opportunity to furnish its response was given to the opposite party within 15 days of the issue of the Notice.

8. In response to the notice, a reply dated 02.09.2023 was received from the opposite party, wherein, they made the following submissions:

- i. That they are not selling the fire extinguisher balls with ISI Mark because everybody in the fire safety sector knows that BIS does not cover the fire extinguisher balls. Secondly, the BIS has not given the license to use their ISI Mark to any brand of fire extinguisher ball as yet then how can they misuse this mark.

- ii. That the chemical powder inside of fire ball is approved by BIS so their customers are informed that the chemical is approved by BIS and they never use ISI Mark for advertising and selling of their product.
- iii. That they are selling the product on every platform but never use the BIS or ISI mark.
- iv. That the logo of ISI Mark was earlier printed on their old model of fireball and that was only for chemicals, not for the product and that the company has stopped manufacturing that model a few months ago.

9. Thereafter under Section 21 of the Consumer Protection Act, 2019, CCPA provided an opportunity of hearing to opposite party on 04.10.2023.




10. During the hearing, opposite party was represented by Sandeep Kumar Sharma (Managing Director) of M/s Fire and Personal Safety Enterprises, who made the following submissions:-

- i. That BIS does not cover the Fire Extinguisher Balls.
- ii. That the chemical powder inside the fire ball is approved by BIS.
- iii. That they are selling their product on every platform but have never used the BIS or ISI mark.
- iv. That the logo of ISI Mark was earlier printed on the older model of fireball and that was only for chemicals not for the product and that the company has stopped the manufacturing of that model a few months ago.
- v. That they have run many advertisements in Delhi Metro, various news channels like Aaj Tak and Zee News where they have never mentioned about product having ISI mark.

11. Reports by DG (Investigation) were sent to the opposite party vide letter dated 11.10.2023 to furnish their comments within 7 days before listing the matter for final hearing on 17.10.2023.

12. In the hearing held on 17.10.2023, Sandeep Kumar Sharma (Managing Director) of M/s Fire and Personal Safety Enterprises submitted on behalf of Opposite party that:


- i. They have used ISI mark on their fireball products due to lack of knowledge about existing Laws and Regulations. He further submitted that they had no intention to mislead consumers.
- ii. They had hired a product designer for product design and packaging, who used ISI mark erroneously.

- iii. He further stated that the chemical powder inside the fire ball is approved by BIS. That's why they used the term "approved by  "
- iv. He stated that they are using chemical named MonoAmmonium Phosphate (MAP) 90% which is approved by BIS and MonoAmmonium Phosphate (MAP) 50% in their product.
- v. He stated that they started selling the said product at the time of Covid-19 Pandemic and stopped manufacturing & selling it after Covid-19 Pandemic. Thus, they had only sold the product worth maximum of Rs. 3,00,000- 4,00,000 with the term " approved by 
- vi. He stated that they are going to discontinue the business of fireball as China is capturing the fireball market in India by providing Fireballs at very low price.
- vii. He stated that website named www.gffire.in was created by Trade India and they have asked Trade India to remove the impugned product image from the site. Thus, as of today, there is no such image of impugned product on www.gffire.in
- viii. He stated that Amazon India has suspended their amazon account. That's why they are not able to remove the impugned product image from www.amazon.in
- ix. He stated that other sellers and website named www.moglix.com are using their impugned product images. Opposite party assured that they had asked moglix to stop using their product images.
- x. He has accepted their fault of using ISI mark on their product despite the fact that they don't have any license for it.
- xi. He stated that they have removed the term "approved by  "from their products.

13. Section 2(1) of Consumer Protection Act, 2019, defines "advertisement" as 'any audio or visual publicity, representation, endorsement or pronouncement made by means of light, sound, smoke, gas, print, electronic media, internet or website and includes any notice, circular, label, wrapper, invoice or such other documents'. Therefore, opposite party selling its products by representing, visual publicity on electronic media comes under definition of advertisement. Label and wrapper of the opposite party's product also falls under the definition of advertisement. Therefore, opposite party using ISI mark on

their products will be considered as an advertisement under Consumer Protection Act, 2019.

14. Section 2(28) of Consumer Protection Act, 2019, defines "misleading advertisement" in relation to any product or service, as '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.

15. It may be mentioned that the presence of BIS Standard Mark on a product is an assurance of conformity of the product to the requirements of Indian Standard Specifications. Whereas, opposite party deliberately concealed important information by using term "approved by  " on their products and falsely described their product to be approved by BIS which simultaneously gives false guarantee as to nature or quality of their product. Therefore, opposite party's advertisement violates the Section-2(28) of the Consumer Protection Act, 2019.

16. Section- 2(47) of the Consumer Protection Act, 2019 defines "unfair trade practice" i.e., 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—

(a) Falsely represents that the goods are of a particular standard, quality, quantity, grade, composition, style or model

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


(e) Represents that the seller or the supplier has a sponsorship or approval or affiliation which such seller or supplier does not have;

Explanation: - For the purposes of this sub-clause, a statement that is,—

(A) expressed on an article offered or displayed for sale, or on its wrapper or container;
or

(B) contained in or on anything that is sold, sent, delivered, transmitted or in any other manner whatsoever made available to a member of the public, shall be deemed to be a statement made to the public by, and only by, the person who had caused the statement to be so expressed, made or contained;

17. It is pertinent to mention that opposite party for the purpose of promoting the sale, use or supply of their products has adopted unfair or deceptive practice including representing that their products has approval of BIS which the opposite party does not have. Despite the fact that BIS does not cover Fire Extinguisher Ball category and still opposite party is using ISI logo on their product is a clear violation of Section-2(49) of the Consumer Protection Act, 2019. Sale of Fire Extinguisher Ball having spurious ISI mark infringes the right of consumer as a class, specifically the right to be protected against the marketing of goods, products or service which are hazardous to life and property and the right to be informed about the quantity, quality, purity, standard so as to protect the consumer against unfair trade practices, which are defined under Section- 2(9) of the Consumer Protection Act, 2019.

18. The CCPA has carefully considered the written submissions as well as submissions made during hearing and investigation report submitted by Director General (Investigation) and found that the advertisement is misleading as it conveys an express representation describing their product to be approved by BIS by using term “approved by ” whereas no such certificate or approval has been given by BIS to opposite party to use this symbol on their products. Opposite party misled consumers to believe that their products conform to requirements of Indian Standard Specifications and that they have been granted license to use BIS Standard Mark which consequently affects safety of consumers as a class. Additionally, opposite party has deliberately misled consumers by falsely describing their products to be conforming BIS Standards so that such deceptive trade practice clouds the judgment of large number of consumers to buy the products offered by opposite party. Thus, it is clearly a fit case of misleading advertisement and unfair trade practice.

19. The CCPA is empowered under Section- 21 of the Consumer Protection Act, 2019 to issue directions to the advertiser 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 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, CCPA hereby issues the following directions to the opposite party:

- a) To discontinue the impugned advertisement from all electronic and print media whatsoever with immediate effect.

- b) M/s Fire and Personal Safety Enterprises shall pay a penalty of ₹ 1,00,000 for publishing misleading advertisement and adopting unfair trade practice for sale of their products by using spurious ISI mark on their products, thereby hazarding public safety to grave risk.
- c) The opposite party 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.



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Nidhi Khare
Chief Commissioner



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Anupam Mishra
Commissioner