

Central Consumer Protection Authority

Case No: CCPA-2/37/2022-CCPA (Prev. Ref. J-25/15/2022)

In the matter of: Case against Sheth Brothers regarding misleading advertisement of 'Pratikal Kadha'

CORAM:

Smt. Nidhi Khare, Chief Commissioner

Shri. Anupam Mishra, Commissioner

Appearance on behalf of Sheth Brothers:

Mr. Devashish K. Trivedi, Advocate

Gaurav Sheth, Owner

Date: 18.10.2023

ORDER

1. The Central Consumer Protection Authority (CCPA) has received a complaint from the Advertising Standards Council of India (ASCI) with respect to alleged misleading advertisement of 'Pratikal Kadha', a product by Sheth Brothers (hereinafter referred to as 'opposite party')
2. In the said advertisement, the opposite party has made the following claims with respect to the 'Pratikal Kadha' :-
 - (i) "Virus ko Hatao, Immunity Badhao"
 - (ii) "Build Immunity no one can defeat!"
 - (iii) "the battle with the viruses has now turned into a war and Pratikal Kadha is your weapon to fight against them"
 - (iv) "According to our seers and sages, balancing KAPHA, PITTA and VATTA is vital for immunity building and PRATIKA KADHA exactly does the same and more"
3. As per the notice, the opposite party was provided 15 days to furnish its response. Since no response was received from the company in the prescribed time period, a reminder notice was sent to the company on 18.08.2022, providing 7 more days to the company to submit its response.

4. The opposite party submitted its response on 01.09.2022 inter alia submitting that the advertisement in question has already been removed with effect from 04.08.2022 from Facebook and the company website. Further, the claims made in the advertisement are lawfully correct as the same are in accordance with what is mentioned in the authoritative book ARYABHISHEK which contains details about Ayurvedic medicines. To substantiate this averment, the opposite party has annexed the relevant pages of ARYABHISHEK along with the reply.
5. Pertinently, the response mentions that the product is no longer available in the market and the advertisement is also discontinued.
6. To investigate the matter, the Central Authority referred the matter to the Director General (Investigation) on 23.02.2023.
7. Vide letter dated 29.05.2023, the company was provided an opportunity of hearing through video conferencing on 19.06.2023 to further substantiate their claim in the above-stated matter.
8. Since the opposite party submitted in its response that the claims are in accordance with what is mentioned in the authoritative book ARYABHISHEK on Ayurveda, CCPA vide letter dated 31.05.2023 also requested the National Pharmacovigilance Coordination Centre (NPvCC), to provide comments on whether the claims made by the company in their advertisement are misleading as to enable CCPA to comprehensively examine the whole issue.
9. The investigation report from the Director General (Investigation) CCPA was received on 16.06.2023, which stated the following:
 - (i) If the claims of the opposite party were correct, it would have submitted the documents substantiating their claims and would have continued the sale of their products. However, they choose to remove their advertisement which clearly shows that there is no supporting evidence for their claim.
 - (ii) It is seen that the product is still listed on their website with buying options available with "Amazon" and "Tata 1mg". Hence the claim of the opposite party that the product is not available in the market is incorrect and is also misleading.
 - (iii) Since there is no scientific proof or study that the ingredients of the product will boost the immunity of an individual to fight against virus, the claim of the opposite party stands as misleading.
10. Therefore, as per the investigation report by the Director General (Investigation), it is clear that the company's claims with regard to the product 'Pratikar Kadha' are misleading and the averment that the product is not available in the market is also misleading as the product is still available in the market for sale through e-commerce platforms.
11. Further, NPvCC submitted its comments to CCPA vide report dated 16.06.2023 highlighting the following-
 - (i) The product on the official website of Sheth Brothers is not found.
 - (ii) This product is also seen at other e-commerce platforms like:-

BigBasket (<https://www.bigbasket.com/pd/40275085/sheth-brothers-pratikal-kadha-ayurvedic-immunity-booster-powder-100-g/>)

Flipkart (<https://www.flipkart.com/sheth-brothers-pratikal-kadha-100g/p/itm1481231511b00>)

Justdial (<https://www.justdial.com/jdmart/Bhavnagar/Pratikal-Kadha/pid-2018623097/0278P278STD6361>) etc.

The product is referred to be IMMUNITY BOOSTER on these platforms. Additionally, the webpages of BigBasket mentioned- "Immunization with 'Kadha' is the best way to prevent viral infection"; whereas the webpages of Justdial mentioned- "Immunization with 'Kadha' is the best way to prevent viral infections"

(iii) It is clear from the description and contents available in the annexures provided by the company that, the product is not a classical product. No justification for the composition is seen in the annexures. Similarly, different models might evaluate the individual ingredients immune-boosting/immunomodulatory activity. However, based on these immunomodulatory profiles of individual ingredients; the therapeutic potential of the compound (PRATIKAR KADHA) cannot be ascertained.

12. It is crystal clear from the NPvCC report that the information submitted by Sheth Brothers doesn't substantiate the immune-boosting activity of the product. Though the advertisement is removed from the website and Facebook, there are other e-commerce platforms where a similar advertisement is seen, which is misleading

13. No appearance was made on behalf of the opposite party on the scheduled hearing date i.e., 19.06.2023. Taking into view the absence of the opposite party on the hearing date, the observations made by the Director General (Investigation) and the NPvCC, an Order was passed on 21.06.2023 rescheduling the hearing on 30.06.2023. Along with the Order, the copy of the report by Director General (Investigation) and the NPvCC were also sent to the opposite party.

14. On 30.06.2023, appearing on behalf of the opposite party, Mr. Devashish K. Trivedi, Advocate informed that they have filed their written submission dated 9th June 2023. To which the Central Authority conveyed that their written submission dated 9th June 2023 was not received and they are required to send the same by 5:00 PM on 30th June 2023. Further, during the hearing it was also made clear to the opposite party that the hearing was scheduled with respect to the Show Cause Notice dated 21st July 2022 and their response dated 1st September 2023.

The opposite party was asked to clarify on the following points:-

- I. Misleading claims as mentioned in the show cause notice dated 21.07.2022.

- II. Averments made by the opposite party in their response dated 01.09.2022 w.r.t to the discontinuation of the misleading advertisement and the product 'Pratikal Kadha'.
 - III. Violation of Rule 6(5)(d) of the Consumer Protection (e-commerce) Rules, 2020 i.e. non-disclosure of the list of ingredients in the description box on the e-commerce website.
15. With respect to the points mentioned above in para 14 the opposite party in the hearing was silent on points I & II and made the following submissions with regard to point III:-
- I. Rejected the said allegations as false and not true. And stated that they have correctly disclosed all the ingredients on their label on the website and have annexed relevant documents with their written submission dated 9th June 2023 in support of their averment which are as follows:-
 - a. Ayurvedic Proprietary Medicine Label, which shows the list of the ingredients as required by the company to be displayed on their product label.
 - b. Product Permission dated 28.04.2022 for 'Pratikal Kadha' by Joint Commissioner (Ayurved), Food & Drugs Control Administration, Gujarat State, Gandhinagar
 - c. Label of the product 'Pratikal Kadha'.
 - d. Screenshot of their own website taken by mobile.
16. As directed by Central Authority on 30.6.2023 during hearing, the opposite party submitted its written submissions by 5:20 PM on 30th June 2023 along with the following annexures:-
- (i) Annexure- B Colly:-
 - a. Label of the product 'Pratikal Kadha'
 - b. Ayurvedic Proprietary Medicine Label
 - c. Product Permission dated 28.04.2022 for 'Pratikal Kadha' by Joint Commissioner (Ayurved), Food & Drugs Control Administration, Gujarat State, Gandhinagar
 - (ii) Annexure-C, the Vakalatnama of Advocate Mr. Devashish K. Trivedi
17. On examination of the documents stated in para 16 above, CCPA found the following:
- (i) The product permission report issued by the Joint Commissioner (Ayurved), Food & Drugs Control Administration, Gujarat State, Gandhinagar only indicates the presence of the said ingredients in the said product. But it does

not substantiate the claims of immunity-boosting ayurvedic properties of the Pratikar Kadha.

- (ii) The screenshot of the Sheth Brothers website submitted by the company indicates that the misleading claim "*According to our seers and sages, balancing KAPHA, PITTA and VATTA is vital for immunity building and PRATIKA KADHA exactly does the same and more*" is still displayed on the company's website which contradicts their own submissions made in para 8 of their response dated 01.09.2022 which stated that the said advertisement had been discontinued since long and said product was also no more available in the market.

18. As per Section 2(28) of the Act, "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

19. As per Clause 4 of the Guidelines for Prevention of Misleading Advertisements and Endorsements for Misleading Advertisements, 2022 issued by the CCPA, the conditions of non-misleading advertisements are as under-

Conditions for non-misleading and valid advertisement. –

- (1) An advertisement shall be considered to be valid and not misleading, if—
 - (a) it contains truthful and honest representation;
 - (b) it does not mislead consumers by exaggerating the accuracy, scientific validity or practical usefulness or capability or performance or service of the goods or product;
 - (c) it does not present rights conferred on consumers by any law as a distinctive feature of advertiser's offer;
 - (d) it does not suggest that the claims made in such advertisement are universally accepted if there is a significant division of informed or scientific opinion pertaining to such claims;

(e) it does not mislead about the nature or extent of the risk to consumers' personal security, or that of their family if they fail to purchase the advertised goods, product or service;

(f) it ensures that the claims that have not been independently substantiated but are based merely on the content of a publication do not mislead consumers;

(g) it complies with the provisions contained in any other sector specific law and the rules and regulations made thereunder.

20. The Central Authority has carefully examined the written submissions submitted by the opposite party, the investigation report by the Director General (Investigation), the report by NPvCC, and submissions made during the hearing and conclude that:-

(i) Contrary to the submission made by the opposite party that the product is no longer available for sale, the product "Pratikal Kadha" continues to be sold to consumers through the AyurvedMart e-commerce entity (URL - https://ayurvedmart.com/seth-brothers/5191-5653-pratikal-kadha.html#/28-grams-100_grams) (copy enclosed).

(ii) As per the NPvCC report, the information submitted by the opposite party does not substantiate the immunity-boosting claim of the product. There are other e-commerce platforms like Bigbasket, Justdial, AyurvedMart, and Flipkart where a similar advertisement is still seen in which the company claims "Immunization with 'Kadha' is the best way to prevent viral infection", which have been made without basis.

(iii) The report by the Director General (Investigation) also concludes that the company's claims with regard to the product Pratikal Kadha are not substantiated by any scientific proof or study.

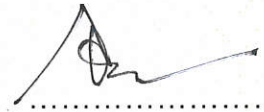
(iv) The claims "Virus ko Hatao, Immunity Badhao", "Build Immunity no one can defeat!" and "the battle with the viruses has now turned into a war and Pratikal Kadha is your weapon to fight against them" was not found substantiated by any scientific study. Hence, it clearly mislead the consumers with regard to immunity boosting properties of the product.

21. It may be mentioned that the Central Authority under Section 21 (2) of the Act in respect of false or misleading advertisement may impose a penalty which may extend to ten lakh rupees. Further, Section 21(7) of the 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.

And, for every subsequent contravention the penalty may extend up to fifty lakhs rupees

22. The aforementioned misleading claims on 'Pratikal Kadha' were visible on the Facebook page of the Sheth Brothers, which has a significant number of followers of around 48,000. Hence, it cannot be ignored that the misleading advertisement made by the opposite party have had a wide reach among consumers.
23. The claim "According to our seers and sages, balancing KAPHA, PITTA and VATA is vital for immunity building and PRATIKAR KADHA exactly does the same and more" is still displayed on the company's website as clearly seen as per the screenshot of the Sheth Brothers website submitted by the company as WhatsApp Image 2023-06-30 at 4.45.50 PM. Therefore the company is still making such misleading claims over their website.
24. Further, the product is not only sold on the opposite party's own website but also other popular e-commerce entities which have a wide reach among consumers such as Flipkart, Big Basket, AyurvedMart and Justdial wherein other misleading claims on immunity have been made such as 'Immunization with Kadha is the best way to prevent viral infections', which stands incorrect in view of the report by the Director General (Investigation) and the report by NPvCC.
25. In view of the above, the Central Authority hereby passes the following directions:
- (i) Any claim with respect to immune boosting properties of 'Pratikal Kadha' shall be immediately discontinued and removed from all print/ media/ social media platforms as well as from e-commerce platforms.
- (ii) The opposite party shall pay the penalty of ₹50,000 for publishing false or misleading advertisement with respect to 'Pratikal Kadha' and submit a compliance report of the directions of this order within 15 days.



Nidhi Khare
Chief Commissioner



Anupam Mishra
Commissioner