

CENTRAL CONSUMER PROTECTION AUTHORITY
Room Mo 567-A, Krishi Bhawan, New Delhi - 110001

Ref: F.No. J-25/48/2022-CCPA

In matter of: Case against Alkari Devi Hospital, Dhanbad, Jharkhand regarding misleading advertisement and unfair trade practice.

CORAM:

Smt. Nidhi Khare, Chief Commissioner

Shri Anupam Mishra, Commissioner

Appearance:

For Alkari Devi Hospital: (i) Shri Jacob Mitra, Admin,

(ii) Shri Santosh Thakur

(Appeared on behalf of Ms. (Dr.) Nitu Kumari Singh, Managing Director)

Date: 24.08.2023

ORDER

This is a case taken up by the Central Consumer Protection Authority (CCPA) based on the information received from the Advertising Standards Council of India (ASCI) that an alleged misleading advertisement was published by Alkari Devi Hospital Dhanbad, Jharkhand (opposite party) in the Dainik Jagran Newspaper (Dhanbad Edition in Hindi language on 21st September, 2021) making the claim “**No. 1 Multi-Speciality Hospital for Women and Children**”.

2. Accordingly, CCPA conducted a preliminary inquiry to examine the above claim made by the opposite party. As per the preliminary inquiry report, it was found that neither any disclaimer to substantiate the above-noted claim was mentioned in the advertisement in newspaper nor any information or document was available on the website (<https://alkaridevihospital.com/>) to substantiate the claim by opposite party on 09.06.2022. Thus, it was clear that it is prima facie a case of misleading advertisement and unfair trade practice under the Consumer Protection Act, 2019.

3. Therefore, a notice dated 24.06.2022 was issued to the Alkari Devi Hospital by CCPA directing the opposite party to furnish its response within 15 days on the veracity of the claims made in the advertisement along with supporting documents.

4. With respect to the notice, reply dated 18.07.2022 was received from the opposite party submitting the following:

- i. It is admitted that the advertisement claiming “No. 1 Multi-Speciality Hospital for Women and Children” has been published in the newspaper by the opposite party and that same is still available on their website.
- ii. The opposite party did not have any intention to show “No. 1” on a Grade basis but to inform the consumers that best services are provided by Alkari Devi Hospital.
- iii. Instructions were given to the concerned staff to discontinue the advertisement in question.
- iv. The opposite party assured the Central Authority that steps have been taken to remove the said advertisement from their website and not to publish such nature of advertisement in future.

5. Thereafter, an opportunity of hearing was provided to the opposite party on 26.09.2022 wherein Shri Jacob Mitra, Admin, appeared on behalf of Ms. (Dr.) Nitu Kumari Singh, Managing Director Alkari Devi Hospital and submitted that:

- i. The advertisement was published by the said Hospital in “Dainik Jagran” newspaper as well as on their website (<https://alkaridevihospital.com/>).
- ii. It was admitted that the said advertisement was available on the website of the Alkari Devi Hospital on the date of hearing i.e. 26.09.2022 despite giving assurance in the written submission that steps will be taken to remove the said advertisement.
- iii. The opposite party submitted that the website developer has absconded and therefore, a time of 15 days was requested to discontinue the advertisement in question.

6. In view of the request made by the opposite party, 15 days time was granted to the opposite party at the time of hearing to submit an undertaking regarding compliance and discontinuation of the misleading advertisement from all formats including their website.

7. However, no undertaking was submitted by the opposite party within the 15 days time as prescribed in the hearing. Therefore, after waiting for more than 5 months 2 days, Deputy Commissioner, Dhanbad vide letter dated 28.02.2023 was requested to investigate in this matter and submit its report to the Central Authority. He was further reminded through letters dated 18.07.2023 and 31.07.2023 for the same.

8. The Deputy Commissioner, Dhanbad in its Investigation Report dated 26.07.2023 submitted the following:

- i. In respect to the claim of “No. 1 Multi-Speciality Hospital for Women and Children” made by Alkari Devi Hospital, an investigation was carried out by the Chief Medical Officer (CMO) and Civil Surgeon (CS), Dhanbad on 14.07.2023 wherein it was found that the said claim was available on the official website of the said Hospital till the time of investigation i.e. 12:07 P.M. on 14.07.2023.
- ii. Shri Jacob Mitra, Admin of Alkari Devi Hospital mentioned that they forgot to discontinue the claim in question from the video until the inspection carried out by the CMO and CS, Dhanbad on 14.07.2023.
- iii. Further, the investigation report submitted by the CMO and CS, Dhanbad explicitly stated that the claim of “No. 1 Multi-Speciality Hospital for Women and Children” made by Alkari Devi Hospital was self-acclaimed. Thus, it is crystal clear that the above mentioned Hospital has made false and misleading advertisement.

9. The opposite party in its letter dated 14.07.2023 submitted that steps had been taken to discontinue the claim of “No. 1 Multi-Speciality Hospital for Women and Children” from all media and print media. However, a video clip which was not easily visible to the staff could not be removed as on 14.07.2023. The same was discontinued now and the mistake was regretted.

10. The Central Authority decided to give final opportunity to the opposite party to furnish its comments within 7 days on the content of investigation report before listing the matter for final hearing on 21.07.2023. Accordingly, through a letter dated 10.08.2023, investigation report was shared with the opposite party. However, no comments were received on the same until 21.08.2023.

11. In the hearing held on 21.08.2023, Shri Jacob Mitra, Admin, submitted on behalf of the Alkari Devi Hospital that:

- i. Post hearing dated 26.09.2022, the advertisement in question had been discontinued from the social media sites as well as from the website of the Alkari Devi Hospital.
- ii. On receipt of the letter dated 10.08.2023, it was brought to the notice that the claim of “No. 1 Multi-Speciality Hospital for Women and Children” is available in the video made by the opposite party. To rectify the same, it has been discontinued at present.
- iii. The claim of “No. 1 Multi-Speciality Hospital for Women and Children” was made based on the following:
 - a) 24*7 availability of Doctors.
 - b) Only Alkari Devi Hospital has DM (Doctorate of Medicines) Doctors specialized in Neonatology.

- c) It is the only hospital with complete NICU (neonatal intensive care unit) for newborns.
- d) Alkari Devi Hospital holds Google rating of 4.9 by 1 thousand plus consumers for child and women care in Dhanbad.

12. It may be mentioned that an advertisement is considered to be valid and not misleading when it does not mislead consumers by exaggerating the accuracy, performance of service and it ensures that the claims have not only been independently substantiated but are based on true and objective facts. However, in the instant matter, neither any comparative study was undertaken by a third party before making the above claim nor any State Agency has given any certificate to the effect that the misleading claim made by the opposite party can be considered to be a valid advertisement.

13. Under the Consumer Protection Act, 2019, misleading advertisement inter alia means falsely describing such product or service or deliberately concealing important information or that which conveys an express or implied representation which, if made, will constitute unfair trade practice. Besides, unfair trade practice refers to the practice when for the objective of promoting the sale of services, any person, adopts unfair or deceptive methods through inter alia any statement, whether orally or in writing including by means of electronic record.

14. The Central Authority has carefully considered the submissions made by the opposite party and investigation report submitted by DC Dhanbad and found that the advertisement was not based on any true facts but on self-acclaimed imagination. It was available since September 2021 in the newspaper, on streets through hoardings, and on website till 14.07.2023 despite giving an undertaking on 26.09.2022 to discontinue the misleading claim of "No. 1 Multi-Speciality Hospital for Women and Children." Therefore, it is clear that the opposite party has falsely described its service knowing that such deceptive trade practice will cloud the judgment of large number of consumers to avail the services offered by them. Thus, it makes a fit case of misleading advertisement and unfair trade practice.

15. It may be mentioned that the Central Authority is empowered u/s 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.*

16. In view of the above, u/s 21 of the Consumer Protection Act. 2019, Central Authority hereby issues the following Directions to the opposite party:

- a) To discontinue the present advertisement from all electronic and print media whatsoever.
- b) Alkari Devi Hospital shall pay a penalty of ₹ 50,000/- for publishing a false and misleading advertisement claim "No. 1 Multi-Speciality Hospital for Women and Children" which affected the consumers as a class.
- c) The opposite party shall submit the amount of penalty and a compliance report to CCPA on the above directions within 30 days from the date of this Order.


Nidhi Khare
Chief Commissioner


Anupam Mishra
Commissioner