

Central Consumer Protection Authority

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

Case No: J-25/20/2021-CCPA

In the matter of: Suo-moto case with regard to advertisements of Sensodyne Products

CORAM:

Ms. Nidhi Khare, Chief Commissioner

Mr. Anupam Mishra, Commissioner

APPEARANCES

For GlaxoSmithKline (GSK) Asia Pvt. Ltd.

1. Mr. S.S. Merchant, Advocate

Date: 27.01.2022

ORDER

1. The hearing was conducted through video conferencing.
2. This is a suo-moto case taken up by the Central Authority against GlaxoSmithKline (GSK) Consumer Healthcare Ltd. with regard to advertisement of Sensodyne products in India on various platforms including Television, Youtube, Facebook and Twitter purportedly showing dentists practicing outside India (practicing in the United Kingdom) endorsing the use of Sensodyne products namely Sensodyne Rapid Relief and Sensodyne Fresh Gel for protection against teeth sensitivity and making claims that Sensodyne is "Recommended by dentists worldwide", "World's No. 1 sensitivity toothpaste" and "clinically proven relief, works in 60 seconds"
3. Show-cause notice ("notice") to the company in this regard was issued on 11.03.2021.

4. In response to the notice, reply dated 18.03.2021 was received from Hindustan Unilever Limited (HUL) by email, inter alia stating that –

“That GlaxoSmithKline Consumer Healthcare Limited (“GSKCH”) has amalgamated with Hindustan Unilever Ltd. (“HUL”) on 01.04.2020 and has ceased to exist as a legal entity. The amalgamation took place pursuant to approval of the scheme of amalgamation of GSKCH with HUL by the National Company Law Tribunal Mumbai and Chandigarh Benches vide their orders dated 24 September 2019 and 26 February 2020 respectively. Copy of the order dated 24 September 2019 passed by the Ld. National Company Law Tribunal, Mumbai is enclosed as Annexure-A. Copy of the order dated 26 February 2020 passed by the Ld. National Company Law Tribunal, Chandigarh is enclosed as Annexure-B.

Accordingly, the board of directors of both HUL and GSKCH declared the scheme effective from 1 April 2020. Thus, in accordance with Clause 9 of the approved Scheme, all the estate, assets, properties, rights, claims, title, interest, authorities, etc. of GSKCH stood amalgamated with HUL w.e.f. 1 April 2020 and GSKCH stands dissolved without winding up.

The erstwhile GSKCH is not the manufacturer of the subject product i.e., Sensodyne (Rapid Relief and Fresh Gel) as alleged in the SCN. The said product is being manufactured by Global Health Care Products, a partnership firm having its address at Survey No.134, Khanvel Main Road, Dapada, Silvassa - 396230 (D&N.H.) and marketed by GlaxoSmithKline Asia Private Limited (“GSK Asia”) having its office at WeWork Two Horizon Centre, 5th Floor, DLF Two Horizon Centre, Golf Course Road, DLF Phase 5, Gurugram (Haryana), India – 122002.

Post the amalgamation with GSKCH, HUL has partnered with GSK Asia (via a consignment selling arrangement) to distribute certain brands (including Sensodyne) of GSK Asia in India. Thus, HUL is only a distributor of Sensodyne (Rapid Relief and Fresh Gel) and is not involved in the making, releasing, broadcasting, publishing or issuing of any advertisements in respect of the said product i.e., Sensodyne (Rapid Relief and Fresh Gel) nor has any control over the same.

Since GSKCH (which has now merged with HUL) is neither the manufacturer nor the marketer of Sensodyne (Rapid Relief and Fresh Gel), we, in good faith, believe that the SCN is required to be answered by the manufacturer/marketer of the subject product. Accordingly, we are apprising GSK Asia about the present SCN and a copy of this communication is also being marked to GSK Asia.

In light of the above, we hereby request your good office to revoke the SCN against GSKCH (which no longer exist in view of its amalgamation with HUL) / HUL and dispose of the proceedings accordingly.

We also request you to grant us an opportunity to further explain our stand and clarify any other questions that you may have at a personal hearing."

5. Further, reply was received from GSK Asia on the same date i.e. 18.03.2021 stating –

"Dear Sir

This is in reference to the above captioned show cause notice bearing number J-25/20/2021-CCPA dated 11th March 2021 ("SCN") which has been brought to our notice vide email dated 18 March 2021 issued in response to the SCN by HUL to your good office, with a copy marked to us.

We, GlaxoSmithKline Asia Private Limited ("GSK Asia") having our office at WeWork Two Horizon Centre, 5th Floor, DLF Two Horizon Centre, Golf Course Road, DLF Phase 5, Gurugram (Haryana), India – 122002, understand that the SCN was mistakenly addressed to GlaxoSmithKline Consumer Healthcare Limited on the presumption that it is the manufacturer of the product Sensodyne, and the same has now been brought to our attention.

In this regard, it is correct that the said product is being manufactured by Global Health Care Products [a partnership firm having its address at Survey No.134, Khanvel Main Road, Dapada, Silvassa - 396230 (D&N.H.)] ("Global Health") and marketed by us, that is, GSK Asia.

Without prejudice to our rights and contentions in this matter, we are in the process of examining the SCN that we have received from HUL and will reply to the SCN on merits within 7 (seven) days' time from the date of this letter."

6. Thereafter, GlaxoSmithKline (GSK) Asia Private Ltd. submitted its reply vide email dated 25.03.2021, inter alia stating:-

(i) On showing foreign dentists endorsing Sensodyne products -

"We wish to clarify that none of the dentists appearing in our advertisements are governed by the Dentists Code and they do not practice in India.

It is submitted that none of the dentists appearing in the advertisements – the subject matter of the present SCN are governed by the Dentists Code. It is submitted that the Dentists Code has been framed by the Dental Council of India under Section 20 read with Section 17A of the Dentists Act, 1948 (Dentists Act). The Dentists Act applies to those dentists who are registered with the Dental Council of India and are practising in India. The Dentists Act and the Dentists Code do not apply to dentists practising outside India and who are registered with the statutory / regulatory body at the concerned jurisdiction. As would be seen from the above, none of the dentists appearing in the advertisements are practising in India and further they are not registered with the Dental Council of India. All of the above dentists are regulated by the laws of the UK and are within the regulatory supervision of General Dental Council. Thus, the allegation that there has been a violation of the Dentists Code is misconceived and not legally sustainable. We further submit that the laws of the UK do not prohibit dentists from endorsing or sharing their views on any cosmetic product in advertisements. In fact, General Dental Council's Guidance on Advertising permits Dentists to endorse products

We further submit that there are currently no legal provisions in India which prohibit dentists, registered and practicing outside India, to express their professional views in advertisements."

(ii) On claim of (a) clinically proven to relieve the sensitivity of teeth, (b) works in 60 seconds, (c) proven relief from the sensation caused by sensitive teeth and (d) provides long lasting sensitivity protection

"17. Through our advertisements, we intend to educate consumers about tooth sensitivity and increase their understanding & awareness. The advertisements of Sensodyne are aimed at educating the consumers about 'tooth sensitivity' and to enable them to manage the initial/mild stage of the same through appropriate oral hygiene and seek professional help if/when required.

18. Potassium Nitrate is one of the commonly used active ingredient in desensitizing toothpaste. This ingredient is also permitted by the Cosmetics Regulation (EC) No. 1223/2009 for use in cosmetic products. The effect of 5% Potassium Nitrate has also been evaluated through various clinical studies. Clinical studies have shown daily use of toothpaste containing potassium ions to be effective in building the long-term relief of Dentinal hypersensitivity. Since the beneficial effect of Potassium Nitrate in Dentine sensitivity is proven through availability of multiple clinical studies, it is claimed as 'Clinically proven'.

19. Sensodyne Fresh Gel, Fresh Mint, and Deep Clean variants contain Potassium Nitrate, which has been proven in placebo controlled double blind randomized clinical studies to reduce dentine hypersensitivity at 4, 8 and 12 weeks. There is significant evidence which proves that potassium containing toothpastes are effective in reducing Dentinal hypersensitivity. Formulations containing Potassium Nitrate have been accredited by the British Dental Association and the American Dental Association as effective in the management of Dentinal hypersensitivity.

20. Various studies supports the claim that Potassium Nitrate (which is also present in Sensodyne toothpastes) provides significant relief against Dentinal Hypersensitivity (DH). Some of these studies are listed below as short summaries"

The company has submitted 15 studies to substantiate its claim.

(iii) On claim – "Sensodyne Is Recommended By Dentists Worldwide And Is No. 1 Dentist Recommended Brand For Sensitive Teeth"

"27. Sensodyne is a well-known and reputed brand from the GlaxoSmithKline group of companies. It is dentist recommended toothpaste for sensitivity, offering a range of specifically formulated

toothpastes. Since being first introduced by the GlaxoSmithKline group of companies in 1961, Sensodyne toothpaste has become well recognized sensitive toothpaste with dentists around the world.

28. Our claim that Sensodyne is recommended by dentists worldwide and is no. 1 dentist recommended brand for sensitive teeth are also well supported and, in this regard, we wish to highlight the following:

28.1 Ipsos GmbH was commissioned by GlaxoSmithKline Service Unlimited to conduct a claim test in India. The objective of the study was to determine dentist's recommendation for toothpaste for sensitive teeth to gauge if Sensodyne toothpaste is the No. 1 dentist recommended brand for sensitive teeth, so to make claims for advertising and communication purposes. The said survey was conducted between 23 September 2020 to 14 October 2020. The said survey concluded that dentists in India recommend Sensodyne toothpaste to patients who suffer from Sensitive Teeth, and that Sensodyne is the No. 1 dentist recommended toothpaste brand for sensitive teeth. Statistically more dentists in the sample recommended Sensodyne Toothpaste most often to patients who suffer from Sensitive Teeth than the next best competitor at 95% confidence level (41% vs 22%). Copy of the Letter dated 9 December 2020 issued by Ipsos GmbH communicating survey result is annexed herewith as ANNEXURE F.

28.2 GfK SE was commissioned by GlaxoSmithKline Services Unlimited to conduct a claim test to determine dentist's recommendation for toothpastes for sensitive teeth, to gauge if Sensodyne is the no.1 Dentist recommended toothpaste brand for Sensitive Teeth, so to make claims for advertising and communication purposes. The survey was conducted between May to June 2018. The survey concluded that Dentists in India recommend SENSODYNE toothpaste to patients who suffer from Sensitive Teeth, and that Sensodyne is the No. 1 Dentist recommended toothpaste brand for Sensitive Teeth, statistically more Dentists in the sample recommended Sensodyne Toothpaste most often to patients who suffer from Sensitive Teeth than the next best competitor at 95% confidence level (27% vs 21%). Copy of the Letter dated 18 July 2018 issued by GfK SE communicating the survey result is annexed herewith as ANNEXURE G.

29. Thus, we respectfully submit that our claim that Sensodyne is recommended by dentists worldwide and is no. 1 dentist recommended brand for sensitive teeth are also well supported and cannot be termed misleading in any manner. The research findings indicate that Dentists across various locations are recommending Sensodyne toothpaste essentially owing to the product's quality and reliability for helping in the symptoms of tooth sensitivity."

7. The company further submitted in its reply a list of 7 dentists appearing in various advertisements of Sensodyne products along with their names, address, registration details and place of practice. In addition, the company also submitted the Guidance on Advertising published by General Dental Council, U.K., pointing out that dentists practicing in U.K. are allowed to endorse products.

The List of Dentists appearing in the advertisement of Sensodyne products, as submitted by the company, is as follows -

S No.	Dentist	Address	Registration Details and Place of Practice
1.	Dr. Subir Banerji	112 The Avenue, Ealing City – London (UK) Pin Code - W13 8JX	Registered with General Dental Council, UK (GDC Number: 62269) Place of Practice: UK More details available at: https://www.subirbanerji.co.uk/about-the-practice
2.	Dr. Aditya Dubagunta	Rosebrough Dental Practice Four Lane Ends, Benton Road, City - Newcastle upon Tyne(UK) Pin Code - NE7 7 UH	Registered with General Dental Council, UK (GDC Number: 248583) Place of Practice: UK More details available at: https://www.rosebroughdentalpractice.co.uk/meet-our-team
3.	Dr. Poorna Thakkar	Aveley Dental Practice 116 High St,	Registered with General Dental Council, UK (GDC Number: 191167)

		Aveley, South Ockendon RM15 4BX, City – Essex (UK)	Place of Practice: UK More details available at: https://aveleydentalpractice.co.uk/d7-doctors/
4.	Dr. Vidyasakar Kurinjinathan	Heacham Drive Dental Practice , 2 Heacham Drive, City - Leicester (UK), Pin Code - LE4 0LE	Registered with General Dental Council, UK (GDC Number: 100351) Place of Practice: UK More details available at: https://www.heachamdrivedentalpractice.co.uk/meet-the-team/
5.	Dr. Dilip Pathak	Inverurie Smile Care City – Inverurie – (Scotland, UK) Pin Code - AB51 3QA	Registered with General Dental Council, UK (GDC Number: 248970) Place of Practice: UK More details available at: https://www.inveruriesmilecare.co.uk/kintoredentist-p53
6.	Dr. Sushma Kapoor	35, Asher Place Esher, Surrey (UK) Pin Code - KT108PU	Pediatric Dentist at King's College London More details available at: http://www.checkcompany.co.uk/director/8178513/MRSSUSHMA-KAPOO
7.	Dr. Satbir Golar	17 Craven Road, London, W23Bp	Registered with General Dental Council, UK (GDC Number: 65570) Place of Practice: UK More details available at: https://paddingtondental.co.uk/about-us/meet-the-team/

8. From the list sent by the company, it can be noticed that :-

- All the dentists have their place of practice as U.K.
 - 6 out of the 7 dentists are registered with General Dental Council (GDC), U.K. and the company has also provided each dentist's GDC Number, while 1 of the dentist is a Pediatric Dentist at King's College, London
9. Opportunity of hearing as provided under the Consumer Protection, 2019 was provided to the company on 20.12.2021. However, the company responded stating –

Dear Sir/Madam,

This is in reference to the above captioned show cause notice bearing number J-25/20/2021-CCPA dated 11th March 2021 ("SCN") for which we had submitted our response dated 25 March 2021. We are in receipt of an email informing us about the virtual hearing scheduled on 20 December 2021 at 4 P.M.

At the outset, we wish to express our gratitude for giving us an opportunity to represent our case before you. In this regard, we wish to humbly state that the GSK team who would be required to be present during this hearing are travelling for a matter on the same date and it would not be possible for them to attend this hearing.

In view of above, we request you to kindly grant an adjournment of the hearing and assign any other alternate date convenient to you after seven (7) days.

The request made by us is a bona fide and genuine request on account of the pre-scheduled travel of the GSK team.

We look forward to hearing from you. We shall be available to render assistance and clarifications, if any required.

Considering the request made by the company, the hearing was adjourned to 29.12.2021. However, again, the company sent an email stating its unavailability to appear for the hearing.

Dear Madam,

At the outset, we express our sincere gratitude for accepting our request and granting us the adjournment.

We however wish to humbly state that the revised hearing date of 29 December 2021 being the year end, some of the key members of the GSK team would be on annual leave and will not be able to attend the hearing.

In view of the above, we would request you to kindly grant a new hearing date in the week of 10th in the month of January 2022.

We look forward to hearing from you. We shall be available to render assistance and clarifications, if any required.

Thereafter, considering the request, the matter was postponed for hearing on 10.01.2021. However, due to unavailability of the Chief Commissioner and Commissioner on the said date, the matter could not be heard. The matter was hence postponed for hearing on 27.01.2022.

10. Mr. S.S. Merchant, appearing on behalf of GSK made the following submissions –

- GSK Consumer Healthcare Limited has amalgamated with Unilever pursuant to approval of scheme of amalgamation by order of National Company Law Tribunal (NCLT) Mumbai and Chandigarh Benches vide orders dated 24 September 2019 and 26 February 2020 respectively. The amalgamation scheme became effective since 1st April 2020 and GSK Consumer Healthcare stands dissolved without winding up. There is no corporate entity of GSK Consumer Healthcare Limited and thus the Show-cause notice is infructuous in law.
- Claim made by label of Sensodyne Rapid Relief i.e. “Works in 60 seconds” is no longer in use.
- Many links of advertisement on Youtube as mentioned in the notice are not accessible for public viewership.
- Advertisement by dentists per se is not prohibited. The persons appearing in the advertisements are dentists practicing in U.K. and hence not subject to any rules or regulations of Indian law. Laws in U.K. allow dentists to endorse products. The persons are appearing as dental professionals and as a subject matter expert and not as a model. It is legally permissible in their home country to advertise and endorse products.
- The Advertising Standards Council of India (ASCI) in its order dated 12.05.2010 has also noted that there are no legal provisions prohibiting dentists not registered in India to promote

products in advertisements and closed a similar complaint against Sensodyne.

- The claims made in the advertisement of the products are neither false nor misleading. It is not prohibited to make such claims under the Drugs and Cosmetics Act, 1940.
- GSK Asia is the marketer of the product and not the manufacturer. The products are manufactured by Global Health Care Limited, whose license to manufacture was recently renewed on 06.01.2022.
- All ingredients of the products are in accordance with BIS standards which are IS 4707 and IS 6356.
- In 2019, case was registered against GSK Consumer Healthcare Ltd., who was the then manufacturer of Sensodyne for selling 'cosmetic products' as clinical ones by Food and Drug Administration (FDA), Maharashtra. The company has filed appeal in the case which is pending in the Bombay High Court vide W.P. (C) 4841 of 2019.

11. The Show-cause Notice was issued by CCPA to GSK Consumer Health Care Ltd. on 11.03.2021. HUL replied to the notice on 18.03.2021 stating that GSK Consumer Healthcare has amalgamated with HUL on 1.4.2020 and ceased to be a legal entity pursuant to scheme of amalgamation approved by NCLT benches at Mumbai and Chandigarh vide orders dated 24.09.2019 and 26.02.2020 respectively.

The reply further notes that:-

"Since GSKCH (which has now merged with HUL) is neither the manufacturer nor the marketer of Sensodyne (Rapid Relief and Fresh Gel), we, in good faith, believe that the SCN is required to be answered by the manufacturer/marketer of the subject product. Accordingly, we are apprising GSK Asia about the present SCN and a copy of this communication is also being marked to GSK Asia."

GSK Asia also sent its reply on 18.03.2021 stating that they are examining the reply received.

"Without prejudice to our rights and contentions in this matter, we are in the process of examining the SCN that we have received"

from HUL and will reply to the SCN on merits within 7 (seven) days' time from the date of this letter."

Thereafter, on 25.03.2021, the Central Authority received a comprehensive reply from GSK Asia addressing the concerns raised.

Reply received from GSK Asia dated 18.03.2021 and 25.03.2021 as mentioned in Para (4) and (5) above clearly indicate that the company i.e. GSK Asia, has accepted the notice issued by the Central Authority with regard to advertisement of Sensodyne products. Therefore, contention of counsel of opposite party that the notice is infructuous as GSK Consumer Healthcare Ltd. does not exist as a legal entity cannot be countenanced.

12. Before delving into contours of the Consumer Protection Act, 2019, it is relevant to highlight the law governing endorsement by dentists in India.

Regulation 8.15.5 of the Revised Dentists (Code of Ethics) Regulations, 2014 stipulates the law governing endorsement by dentists in India. It states that:-

"8.15.5 Endorsement:

A Dental surgeon shall not endorse any drug or product of the industry publically. Any study conducted on the efficacy or otherwise of such products shall be presented to and / or through appropriate scientific bodies or published in appropriate scientific journals in a proper way."

It is clear from the above provision that dentists registered in India are not allowed to endorse any drug or product of the industry publically.

13. Under the Consumer Protection Act, 2019, 'endorsement' as:

"2 (18) "endorsement", in relation to an advertisement, means—

(i) any message, verbal statement, demonstration; or

(ii) depiction of the name, signature, likeness or other identifiable personal characteristics of an individual; or

(iii) depiction of the name or seal of any institution or organisation,

which makes the consumer to believe that it reflects the opinion, finding or experience of the person making such endorsement”

“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;

Further, Unfair trade practice has been defines as –

“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.....”

By showing dentists practicing outside India for endorsement of its product in the advertisements broadcasted in India, the opposite party is attempting to circumvent the law in force as applicable for endorsements by dentists in India.

Interdiction of dentists in India from endorsing products publically cannot be construed to imply that foreign dentists are allowed to endorse products in advertisements broadcasted in India.

Since dentists, who are medical professionals qualified for treating dental health issues can be seen in the advertisement appreciating, recommending and suggesting the use of the product, the advertisement gives consumers an indubitable impression that if consumers do not buy the product, they are ignoring advice of a dentist. As a result, consumer susceptibility around teeth sensitiveness is being exploited by the company to unfairly promote the sale of its product. The company is seeking to draw large number of potential

consumers by giving an implication that practicing dentists of U.K. are recommending its product. Use of such methods to promote the sale of its product constitutes an unfair trade practice under the provisions of the Act.

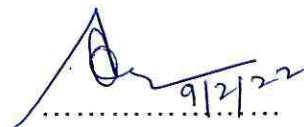
14. Given that the regulations governing dentists in India clearly bars endorsement of any product or drug publically, the opposite party cannot be allowed to circumvent the law in force in India and show foreign dentists to exploit consumer apprehensions towards tooth sensitivity. Therefore, advertisement of sensodyne products in India which show endorsements by dentists practicing outside India qualify as 'misleading advertisement' in terms of Section 2(28) of the Consumer Protection Act, 2019.

15. In view of the above, the Central Authority hereby passes the following directions –

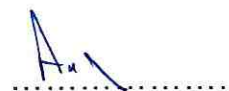
(a) Opposite party shall discontinue all advertisements for Sensodyne product in India which show dentists practicing outside India endorsing the product within 7 days in terms of Section 21 (1) of the Consumer Protection Act, 2019.

(b) Director General (Investigation) shall conduct investigation of the claims "Recommended by dentists worldwide", "World's No. 1 sensitivity toothpaste" and "clinically proven relief, works in 60 seconds" and the documents submitted by the company in support of the claims and submit its report within 15 days.

New Delhi



Nidhi Khare
Chief Commissioner



Anupam Mishra
Commissioner