

**Central Consumer Protection Authority**

**Krishi Bhawan, New Delhi -110001**

Case No: CCPA-2/20/2023-CCPA

In the matter of: **Suo Moto case against Big Tree Entertainment Private Limited (BookMyShow) (herein referred as "Opposite Party")**.

CORAM:

Mrs. Nidhi Khare, Chief Commissioner

Mr. Anupam Mishra, Commissioner

**APPEARANCES**

For Big Tree Entertainment Private Limited:

- i. Mr. Karun Mehta (Advocate)
- ii. Ms. Nikita Narsana
- iii. Mr. Yugam Taneja

Date: 11.02.2025

**ORDER**

1. The Central Consumer Protection Authority (hereinafter referred as 'CCPA') took Suo Moto cognizance against **Big Tree Entertainment Private Limited (BookMyShow)**. (hereinafter referred as 'opposite party') for not adhering to clause (2) of Annexure 1 of Guidelines for Prevention and Regulation of Dark Patterns, 2023.

2. CCPA took suo moto cognizance of the information from a web article via link [<https://filminformation.com/featured/cinemas-go-in-for-dynamic-flexible-pricing-but-this-way/>], which indicated that BookMyShow, in the booking process for the movie 'Animal' at Metro Inox cinemas, Marine Lines, Mumbai, has allegedly imposed an extra charge on customers. This action is reportedly explained by citing dynamic pricing and claiming an increase in the theater's price after the tickets were booked and confirmed via BookMyShow.

3. It is observed that, upon booking tickets on the platform, Re. 1 per ticket is automatically added as contribution towards 'BookASmile' in the form of pre-tick without consent of the consumer. This amounts to 'Basket Sneaking' as defined under the clause (2) of Annexure 1 of Guidelines for Prevention and Regulation of Dark Patterns, 2023.

4. Further, Rule 4(9) of Consumer Protection (E-Commerce) Rules, 2020 specifies that "every e-commerce entity shall only record the consent of a consumer for the purchase of any good or service offered on its platform where such consent is expressed through an explicit and affirmative action, and no such entity shall record such consent automatically, including in the form of pre-ticked checkboxes".

5. However, analysis of various complaints received in National Consumer Helpline reveals that additional charge being asked after the booking of confirmed tickets, citing price hike. Further, Complaints against BookMyShow registered at NCH from January 2023 to 17th December 2023 reveals that 34% of the total complaints pertains to 'paid amount not refunded' making it the highest category of complaints.

**1st Jan'23 ~ 17th Dec'23**

Status	Count
Disposed / Closed	313
Pending	90
Grand Total	403

**Nature of Grievances**

Nature of Grievance	Count	Count%
Deficiency in Services	126	31.3%
Paid amount not refunded	137	34.0%
Promised service not provided	28	6.9%
Wrong Promises	12	3.0%
Agency not responding	10	2.5%
Unsatisfactory redressal	7	1.7%
Misleading advertisement	6	1.5%
Promised gift not given	5	1.2%
Others	72	17.9%
<b>Grand Total</b>	<b>403</b>	<b>100.0%</b>

6. Following this, the CCPA vide its Letter dated 28.12.2023 sought information from the Opposite Party, alleging 'Basket Sneaking' as defined under the clause (2) of Annexure 1 of Guidelines for Prevention and Regulation of Dark Patterns, 2023. The opposite party was given an opportunity to respond within 15 days from the date of the notice.

7. In view of the above the Opposite Party vide response dated 22.01.2024, submitted the following:

- a. The Opposite Party **displayed adequate disclaimers on their platforms in relation to the contribution towards charitable purposes, to a customer booking tickets on the platforms and as such this is not a service we are providing to customers and the proceeds of the same are only used for social initiatives for underprivileged sections of the society.** The amount contributed towards 'BookASmile' are voluntary acts of kindness to contribute to the smiles of the less fortunate. The terms of the disclaimers are understood and agreed by the customers when they proceed with booking the tickets. Further, if the customer has still accidentally paid the amount towards 'BookASmile' then a request for refund can be made and the amount is refunded immediately.
- b. It was further submitted by the company that complaints on National Consumer Helpline pertaining to refunds are being decided by them based on individual facts and circumstances of each case.
- c. The cancellation of tickets and the subsequent course of action including refund/quantum of refund is determined on the basis of the policy followed by respective cinemas and the same is displayed by the Company on their website/ application.

8. Based on the above submissions of the company, following observations are made out:

- a. On the issue of additional charge being levied after the confirmation of booking of a movie ticket, contrary to submission of company, Link to news article is still active as on 06.02.2024.



- b. On the issue of Non-refund of the paid amounts to the customers who canceled their movie tickets, out of the 90 complaints pending (at the time of issue of Notice) in NCH, as on date 32 complaints are pending.
- c. On the issue of automatic pre-tick option towards 'BookASmile' while booking of a movie ticket the company has accepted their practice of adding, Re. 1 per ticket automatically by way of pre -tick as contribution towards 'BookASmile' and has defended such practice by stating that adequate disclaimers are provided to customers for contribution towards charitable purposes and as such this is not a service that they are providing to customers and the proceeds of the same are only used for social initiatives for underprivileged sections of the society.
- d. The Rule 4(9) of Consumer Protection (E-Commerce) Rules, 2020 specifies that "every e-commerce entity shall only record the consent of a consumer for the purchase of any good or service offered on its platform where such consent is expressed through an explicit and affirmative action, and no such entity shall record such consent automatically, ***including in the form of pre-ticked checkboxes***".
- e. Also Clause (2) of Annexure 1 of the Guidelines on Prevention and Regulation of Dark Patterns 2003 provides 'Basket Sneaking' as under:
  - a. *"Basket sneaking" means inclusion of additional items such as products, services, payments to charity or donation at the time of checkout from a platform, without the consent of the user, such that the total amount payable by the user is more than the amount payable for the product or service chosen by the user.*

9. Accordingly, CCPA conducted a preliminary inquiry to examine violation of aforementioned laws. As per the preliminary inquiry report, CCPA found that:

Only charity is collected through pre-ticking and that 'no goods or service is being provided,' cannot be accepted, as it ultimately alters the total amount the consumer is required to pay. Additionally, the practice of basket sneaking encompasses not only 'goods or service' but also extends to 'charity' contributions.

10. From the preliminary inquiry report it seems appears that there is a prima facie instance of unfair trade practice involving basket sneaking and pre-ticking.

11. Section 19 (1) of the Consumer Protection Act, 2019 provides as under:

The Central Authority may, after receiving any information or complaint or directions from the Central Government or of its own motion, conduct or cause to be conducted a preliminary inquiry as to whether there exists a prima facie case of violation of consumer rights or any unfair trade practice or any false or misleading advertisement, by any person, which is prejudicial to the public interest or to the interests of consumers and if it is satisfied that there exists a prima facie case, it shall cause investigation to be made by the Director General or by the District Collector.

12. The Central Consumer Protection Authority (Submission of Inquiry or Investigation by the Investigation Wing) Regulations, 2021 under Clause 5(1) provides that where the Central Authority is of the opinion that a prima facie case exists, the Secretary shall convey the directions of the Central Authority within seven days of the receipt of the order of the Central Authority to the Director General to investigate the matter.

13. It further provides that '*a direction of investigation to the Director General under the sub -regulation (1) shall be deemed to be the commencement of an investigation under sub section (1) of section 19 of the Act*'.

14. The matter was accordingly sent to DG (Investigation) for detailed investigation and the report for the same was shared with the opposite party via e-mail on 11<sup>th</sup> November, 2024 and for their comments within 7 days.

15. The Opposite Party submitted its written response on 16.12.2024 stating that

- a. The process which was adopted by the company in promoting charity was and remains to be transparent, sincere and provides a right of choice for customer which is explicit and evident from the fact that the word 'Remove' is in 'red' whereas the rest of the text is black which makes it stand out to ensure that the customer in no way misses/overlooks its option. Further, the customer also has the option of claiming refund and this is communicated to the customer through the terms. Hence, the process nowhere misleads or forces a customer to make



a choice which he/she does not intend to. Rather the process allows the customer to review their choice and seek refund.

- b. With regard to Rule 4(9) of E-Commerce Rules it is submitted that the rule states that it is mandatory to record consent expressed in an explicit or affirmative action for the 'purchase of any good or service'. In view of the same, it is submitted that 'BookASmile' is not a part of a product or service which is sold through BMS but is entirely a contribution towards a social cause, independent of the service/product sold. Further, the proceeds of the same are entirely utilized for social cause initiative undertaken for the underprivileged sections of society, by BMS.
- c. In the present scenario, as is evident, the term 'BookASmile' (now known as BookAChange) is in an attention seeking form which cannot be missed by any customer.
- d. It also has a very vibrant colourful logo to attract the attention of customers. For the customer to know the amount to be paid, he or she has to scroll down, which would provide the total number of tickets booked and BookAChange contribution. Therefore, at any given point of time, the customer will be aware of this contribution. If the customer wishes to not contribute, the word remove is also in red colour which is well highlighted and easily stands out to gain attention. Therefore, such measures cannot be held as a dark pattern.

16. Based on the submissions of the opposite party wherein they stated that they are in complete compliance with the Rule 4(9) of E-Commerce Rules, 2020 and would not fall within the ambit of a dark pattern practice as envisaged under the Guidelines, as Basket Sneaking.

17. In view of the above, the Central Authority provided the opposite party an opportunity of hearing through video conferencing on 28.01.2025 to further substantiate their response in the above-stated matter.

18. During the hearing, the Central Authority attempted to access the mandatory compliance documents in the presence of the opposite party, represented by Shri Karun Mehta (Advocate) by navigating the company's website i.e., BookMyShow and sharing the screen. The counsel attempted to draw the attention of the Central Authority towards booking of tickets on the online platform wherein "the pre-tick

(basket sneaking) issue has been resolved by BookMyShow after the CCPA notice was issued. The customers now being given an option to choose whether or not they wish to contribute towards BookASmile. Further, the counsel submitted that the term 'BookASmile' (now known as BookAChange) is in an attention seeking form which cannot be missed by any customer. It also has a very vibrant colorful logo to attract the attention of customers. For the customer to know the amount to be paid, he or she has to scroll down, which would provide the total number of tickets booked and BookAChange contribution. Therefore, at any given point of time, the customer will be aware of this contribution. If the customer wishes to not contribute, the word remove is also in red color which is well highlighted and easily stands out to gain attention.

19. CCPA has carefully examined the response submitted by the opposite party, and the submissions made during the hearing sought clarification from the Opposite Party vide its e-mail dated 06.02.2024 on following grounds:

- a. Date of the commencement of the initiative of BookASmile and total amount received from this initiative.
- b. Audited report of the last two years of BookMyShow along with financial statements.
- c. Supporting documents for the proceeds which is utilized for social initiatives for underprivileged sections of the society as mentioned in their reply dated 22.01.2024.
- d. The Company has now changed the name of their initiative BookASmile to BookAChange which is mentioned in their current reply dated 16.12.2024, the reasons for the change to be given.
- e. Whether registration under any statute being obtained for the above initiative. Details thereof.

20. The Opposite Party in its response dated 06.02.2025 submitted that

- a. The Company had already changed its interface regarding BookAChange (previously known as BookASmile) which is well noted in the Investigation Report.
- b. The Company has discontinued the pre-tick feature since April, 2024 for "BookASmile" and does not intend to introduce a pre-tick option towards 'BookASmile'/'BookAChange'; donations on the platform.



- c. The Company submitted that they do not intend to make any further arguments or submissions on this issue as the change in interface which is already in place and the findings on other issues in the Investigation Report, the Company requested the Central Authority to close the present complaint.

21. Based on the aforementioned response, CCPA provided another opportunity of hearing to the Opposite Party on 07.02.2025 wherein Mr. Karun Mehta, Advocate representing Opposite Party denied providing the information regarding Audit report and financial statements of the Company and other relevant information sought by CCPA vide e-mail dated 06.02.2025. Further, the Opposite Party submitted to the Commissioner, CCPA that the Company do not wish to make any further arguments on the financial statements of the Company as the issue pertains to pre-tick option towards 'BookASmile'/'BookAChange' donations on the platform has already been resolved.

22. Section 9 (v) of the Consumer Protection Act, 2019 defines "consumer rights" includes,—

*(v) the right to seek redressal against unfair trade practice or restrictive trade practices or unscrupulous exploitation of consumers;*

Section 18 of the Act defines Powers and Functions of Central Authority which includes (1) The Central Authority shall—

*(a) protect, promote and enforce the rights of consumers as a class, and prevent violation of consumers rights under this Act;*

Section 20 of the Act defines Power of Central Authority to recall goods which includes

*Where the Central Authority is satisfied on the basis of investigation that there is sufficient evidence to show violation of consumer rights or unfair trade practice by a person, it may pass such order as may be necessary, including—*

*(a) recalling of goods or withdrawal of services which are dangerous, hazardous or unsafe;*

*(b) reimbursement of the prices of goods or services so recalled to purchasers of such goods or services; and (c) discontinuation of practices which are unfair and prejudicial to consumers' interest:*

The Central Consumer Protection Authority (CCPA) has been established under Section 10 of the Consumer Protection Act, 2019 to regulate matters relating to



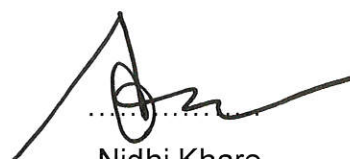
violation of consumer rights, unfair trade practices and false or misleading advertisements prejudicial to the interest of public and consumers to promote, protect and enforce the rights of consumers as a class.

In view of the above, CCPA is mandated to protect and enforce the rights of consumers as a class which includes protection from unscrupulous exploitation of consumers.

23. CCPA hereby issues the following directions to the Opposite Party:

- a. Furnish details regarding the initiation of the **BookASmile** initiative, including the total amount received through this initiative.
- b. Provide the **audited annual reports** of **BookMyShow** for the past two years, along with financial statements.
- c. Submit supporting documents demonstrating the utilization of proceeds for social initiatives benefiting underprivileged sections of society, as stated in their reply dated **22.01.2024**.
- d. Clarify when did the Company officially change the name of the initiative from BookASmile to BookAChange, as referenced in their most recent response dated 16.12.2024. Additionally, does this name change reflect any shift in the Company's approach, strategy or overall vision.
- e. Clarify whether the initiative is registered under any **statute**, along with details of such registration.

24. The Opposite Party is directed to submit the detailed information within a month from the date of receipt of this communication.



Nidhi Khare

Chief Commissioner



Anupam Mishra  
Commissioner