

DIRECT SELLING



PROVISIONS OF THE CONSUMER PROTECTION ACT, 2019

20 October 2020

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Direct Selling : Section 2(13)

“**Direct Selling**” means marketing, distribution and sale of goods or provision of services through a network of sellers, other than through a permanent retail location;



E-commerce : Section 2(16)



“**E-commerce**” means buying or selling of goods or services including digital products over digital or electronic network;



Electronic Service Provider

Section 2(17)

“Electronic Service Provider” means a person who provides technologies or processes to enable a product seller to engage in advertising or selling goods or services to a consumer and includes any online market place or online auction sites;

Endorsement: Section 2(18)

- "endorsement"**, in relation to an advertisement, means—
- i. any message, verbal statement, demonstration; or depiction of the name, signature, likeness or
 - ii. 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;

Express Warranty : Section 2(19)

"express warranty" means any material statement, affirmation of fact, promise or description relating to a product or service warranting that it conforms to such material statement, affirmation, promise or description and includes any sample or model of a product warranting that the whole of such product conforms to such sample or model;

Misleading Advertisement : Section 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
- iii. is likely to mislead the consumers as to the nature, substance, quantity or quality of such product or service; or
- iv. 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
- v. deliberately conceals important information;

Product Liability : Section 2(34)

"product liability" means the responsibility of a product manufacturer or product seller, of any product or service, to compensate for any harm caused to a consumer by such defective product manufactured or sold or by deficiency in services relating thereto;

Product Seller : Section 2(37)

"product seller", in relation to a product, means a person who, in the course of business, imports, sells, distributes, leases, installs, prepares, packages, labels, markets, repairs, maintains, or otherwise is involved in placing such product for commercial purpose and includes—

1. a manufacturer who is also a product seller; or
2. a service provider, but does not include—
 - a) a seller of immovable property, unless such person is engaged in the sale of constructed house or in the construction of homes or flats;
 - b) a provider of professional services in any transaction in which, the sale or use of a product is only incidental thereto, but furnishing of opinion, skill or services being the essence of such transaction;

Product Seller : Section 2(37)

- c) a person who—
- acts only in a financial capacity with respect to the sale of the product;
 - is not a manufacturer, wholesaler, distributor, retailer, direct seller or an electronic service provider;
 - leases a product, without having a reasonable opportunity to inspect and discover defects in the product, under a lease arrangement in which the selection, possession, maintenance, and operation of the product are controlled by a person other than the lessor;

Product Service Provider : Section 2(38)

"product service provider", in relation to a product, means a person who provides any service in respect of such product;

Establishment of Central Consumer Protection Authority : Section 10

Establishment of Central Consumer Protection Authority to regulate matters relating to violation of rights of consumers, unfair trade practices and false or misleading advertisements which are prejudicial to the interests of public and consumers and to promote, protect and enforce the rights of consumers as a class. The CCPA will be functional at the District, State and the National Level.

The Central Authority shall have an Investigation Wing headed by a Director General for the purpose of conducting inquiry or investigation.

Power of Central Authority to Recall Goods : Section 20

Power of Central Authority to recall goods: 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 CCPA has powers to direct :Section 21

The CCPA has powers to direct the trader or manufacturer or the endorser or advertiser or publisher, to modify or discontinue any advertisement as also impose heavy penalty upto 10 lakhs of rupees. In case of non-compliance of such directions, there is imprisonment as well.

The Consumer Disputes Redressal Commissions have been established to achieve the aims and objects as stated herein above, for the protection of the Consumer by a three tier system at the District, State and National Level, where the pecuniary jurisdiction of the District Commission is for consideration paid upto Rs 1 Crore, for the State Commission upto 10 crores and the National Commission is above 10 crores.

In case of the aggrieved person wants to file an appeal, then the appellant has to deposit 50% of the awarded amount, for the appeal to be entertained.

The Complaint can be filed in the Commission having territorial jurisdiction : Section 34

The Complaint can be filed in the Commission having territorial jurisdiction as under:

- a) the opposite party or each of the opposite parties, where there are more than one, at the time of the institution of the complaint, ordinarily resides or carries on business or has a branch office or personally works for gain; or
- b) any of the opposite parties, where there are more than one, at the time of the institution of the complaint, actually and voluntarily resides, or carries on business or has a branch office, or personally works for gain, provided that in such case the permission of the District Commission is given; or
- c) the cause of action, wholly or in part, arises; or
- d) the complainant resides or personally works for gain.

The Complaint can be filed in the Commission having territorial jurisdiction : Section 34

The Complaint can be filed in the Commission having territorial jurisdiction as under:

the opposite party or each of the opposite parties, where there are more than one, at the time of the institution of the complaint, ordinarily resides or carries on business or has a branch office or personally works for gain; or

any of the opposite parties, where there are more than one, at the time of the institution of the complaint, actually and voluntarily resides, or carries on business or has a branch office, or personally works for gain, provided that in such case the permission of the District Commission is given; or the cause of action, wholly or in part, arises; or the complainant resides or personally works for gain.

Product Liability Chapter VI

Section 82:

Product Liability: This Chapter shall apply to every claim for compensation under a product liability action by a Complainant for any harm caused by a defective product manufactured by a product manufacturer or serviced by a product service provider or sold by a product seller.

Section 84:

(2) A product manufacturer shall be liable in product liability action even if he proves that he was not negligent or fraudulent in making the express warranty of a product.

Liability of product seller : Section 85

Liability of product seller: A product seller who is not a product manufacturer shall be liable in a product liability action, if—

- a) he has exercised substantial control over the designing, testing, manufacturing, packaging or labelling of a product that caused harm; or
- b) he has altered or modified the product and such alteration or modification was the substantial factor in causing the harm; or
- c) he has made an express warranty of a product independent of any express warranty made by a manufacturer and such product failed to conform to the express warranty made by the product seller which caused the harm; or

Liability of Product Seller : Section 85

c) the product has been sold by him and the identity of product manufacturer of such product is not known, or if known, the service of notice or process or warrant cannot be effected on him or he is not subject to the law which is in force in India or the order, if any, passed or to be passed cannot be enforced against him; or

d) he failed to exercise reasonable care in assembling, inspecting or maintaining such product or he did not pass on the warnings or instructions of the product manufacturer regarding the dangers involved or proper usage of the product while selling such product and such failure was the proximate cause of the harm.

Exceptions to product liability action : Section 87

Exceptions to product liability action:

- (1) A product liability action cannot be brought against the product seller if, at the time of harm, the product was misused, altered, or modified.

- (2) In any product liability action based on the failure to provide adequate warnings or instructions, the product manufacturer shall not be liable, if—
 - the product was purchased by an employer for use at the workplace and the product manufacturer had provided warnings or instructions to such employer;
 - the product was sold as a component or material to be used in another product and necessary warnings or instructions were given by the product manufacturer to the purchaser of such component or material, but the harm was caused to the complainant by use of the end product in which such component or material was used;

Exceptions to product liability action : Section 87

the product was one which was legally meant to be used or dispensed only by or under the supervision of an expert or a class of experts and the product manufacturer had employed reasonable means to give the warnings or instructions for usage of such product to such expert or class of experts; or the complainant, while using such product, was under the influence of alcohol or any prescription drug which had not been prescribed by a medical practitioner.

- (3) A product manufacturer shall not be liable for failure to instruct or warn about a danger which is obvious or commonly known to the user or consumer of such product or which, such user or consumer, ought to have known, taking into account the characteristics of such product.

Punishment for manufacturing for sale or for storing or selling or distributing or importing spurious goods : Section 91

Punishment for manufacturing for sale or for storing or selling or distributing or importing spurious goods:

(1) Whoever, by himself or by any other person on his behalf, manufactures for sale or stores or sells or distributes or imports any spurious goods shall be punished, if such act—

- a) causing injury not amounting to grievous hurt to the consumer, with imprisonment for a term which may extend to one year and with fine which may extend to three lakh rupees;
- b) causing injury resulting in grievous hurt to the consumer, with imprisonment for a term which may extend to seven years and with fine which may extend to five lakh rupees
- c) results in the death of a consumer, with imprisonment for a term which shall not be less than seven years, but may extend to imprisonment for life and with fine which shall not be less than ten lakh rupees.

Punishment for manufacturing for sale or for storing or selling or distributing or importing spurious goods : Section 91

2) The offences under clauses (b) and (c) of sub-section (1) shall be cognizable and non-bailable.

3) Notwithstanding the punishment under sub-section (1), the court may, in case of first conviction, suspend any licence issued to the person referred to in that sub-section, under any law for the time being in force, for a period up to two years, and in case of second or subsequent conviction, cancel the licence.

Measures to prevent unfair trade practices in e-commerce, direct selling Chapter VIII: Section 94

Measures to prevent unfair trade practices in e-commerce, direct selling, etc:

For the purposes of preventing unfair trade practices in e-commerce, direct selling and also to protect the interest and rights of consumers, the Central Government may take such measures in the manner as may be prescribed

Every Indian is a consumer first know your Rights



Thank You

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HOME

THE CONSUMER PROTECTION ACT, 2019