

Central Consumer Protection Authority
Room No. 545, Krishi Bhawan, New Delhi - 110001

Case No: CCPA-3/6/2023-CCPA

In the matter of: Case against Vijay Sales (India) Pvt. Ltd. regarding Misleading Advertisement.

CORAM:

Smt. Nidhi Khare, Chief Commissioner

Shri. Anupam Mishra, Commissioner

Appearance on behalf of Vijay Sales (India) Pvt. Ltd.:

Adv Raj Latha Kotni and Adv. Chahat Raghav

Date: 12.07.2024

ORDER

Central Consumer Protection Authority (hereinafter referred to as "CCPA") received the complaint on the GAMA Portal against a misleading advertisement related to Vijay Sales Online Store published by Vijay Sales (India) Pvt. Ltd. (hereinafter referred to as "opposite party") (e-commerce platform: www.vijaysales.com) through social, electronic or print media and also on its website.

2. The Complaint raised the following issues:

- i. The company has shown less price than MRP on Apple iPad Air 4th Gen 256 GB Wi-Fi + Cellular-Sky Blue. However, when a consumer clicks on the same post to buy the product, it takes him to a webpage where the displayed price is higher than the advertised price for the same product.
- ii. It appears that Vijay Sales (India) Pvt. Ltd. (e-commerce platform: vijaysales.com), through this advertisement, is trying to promote its e-commerce platform i.e. - www.vijaysales.com.

3. As per sub-section (1) of Section 19 of the Consumer Protection Act 2019 (hereinafter referred to as "Act"), "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.

4. Accordingly, CCPA conducted a preliminary inquiry to examine the veracity of the impugned advertisement made by the opposite party. As per the preliminary inquiry report, it was found that the opposite party has more than 106K followers on Instagram and 531K followers on Facebook where the said alleged advertisement was published, therefore by displaying the lower price of the product it deceived a class of consumers into believing it to be true. But in reality, the prices of the products increase when directed to the opposite party's website. Hence, by the preliminary inquiry, CCPA observed that there exists a prima facie case of false and misleading advertisement as well as unfair trade practice against the opposite party as the discrepancy shown in the advertised price being lower and the actual price is higher may have misled consumers and allured them towards the opposite party's website, to increase its sales.

5. Given the above, CCPA issued a notice dated 18th August 2021 to the opposite party to substantiate the allegation raised in the complaint. The opposite party has provided its response via email dated 08.09.2021 and has stated as below:

- i. The false price mentioned in the ad was not intentional and was purely a technological error and we never try to mislead our customers (whom we refer to as our Guests). We have identified the issue. The issue doesn't appear to be from the Vijay Sales website but an issue with the Facebook API integration that is causing a differentiation in numbers for some products. We have initiated a discussion with Facebook and they have confirmed to have involved their engineering team to look into the problem.
- ii. The issue as pointed out is occurring among the catalogue ads feature of Facebook which is connected to Facebook Pixel installed on the Vijay Sales

website. We have identified that this issue is not limited exclusively to Vijay Sales catalogue only on Facebook as their Facebook Pixel code is being used on our site hence Facebook is currently investigating the issue and they are still working on same.

6. In this regard, the CCPA directed the opposite party through a letter dated 17th November 2021 to submit a report mentioning the steps taken by it to resolve the issue of price mismatch and ensure such incidents do not get repeated in future. To this, the opposite party in its response dated 23rd November 2021 stated that it has continuously followed up with the Meta team (parent company of Facebook and Instagram) and still their team is working on it. In its support, the opposite party has submitted screenshots of its communication with the Meta team.

7. Pursuant to it, the CCPA sent a notice dated 16.12.2021 to Meta Platforms (Facebook & Instagram) to submit as to why consumers are being misled with false prices and if Facebook has taken any action to rectify the error of price mismatch.

8. Meta Platforms Inc. (Meta) responded via email dated 23.12.2021 and stated as follows:

- i. Advertisers such as Vijay Sales can add and manage products on their Facebook Catalog through the Commerce Manager¹ tool to advertise their products on Facebook or Instagram. However, if an advertiser does not use these tools properly, issues can arise that prevent product details from properly updating (i.e., syncing) from the advertiser's website.
- ii. Solely, Vijay Sales can correct the errors it made which caused the price mismatch.
- iii. Meta's Concierge Support has consistently worked with Vijay Sales to investigate the issue. Unfortunately, while Meta requested Vijay Sales to provide the necessary information on 01.12.2021, Vijay Sales did not provide the information until 18.12.2021. Nevertheless, Meta is continuing to investigate this issue and will continue to work with Vijay Sales to help resolve it.
- iv. Although Meta attempted to locate the particular offending product that was brought to Meta's attention (Apple iPad for INR 15,499) in Vijay Sales' Catalog, Meta was unable to locate it, which suggests that Vijay Sales removed it. So long as that product does not exist in Vijay Sales' Catalog, it will not appear as

an advertisement on the Facebook or Instagram platforms. In any case, to resolve pricing mismatch and any other issues caused by product details failing to sync properly, Vijay Sales must correct errors that it made when adding/updating its products on the Catalog, which are visible to it in its Commerce Manager.

9. On the basis of the above reply from Meta Platforms Inc. (Meta) the letter dated 27th May, 2023 to the opposite party was issued for seeking inputs and response regarding the price mismatch issue on Meta Platform and the opposite party's e-commerce website.

10. By mail dated 27th May, 2023 the opposite party submitted its response along with the Copy of mails between Meta and the opposite party stating that:-

"We would like to inform you that we have been actively engaging with the Meta authorities since September, 2021, in order to address this issue. However, despite our continuous efforts, we have not received a satisfactory response from them. The last email confirmation from Facebook was dated December 29, 2021, wherein they repeatedly requested the same details thereby prolonging the resolution process, as evidenced by the attached email correspondence.

We have diligently provided all the necessary screenshots, videos, and other requested information as per their requirements. We maintain that the false price mentioned in the advertisement was not intentional but rather a result of a technological error. As suggested by Meta (formerly Facebook), it is plausible that a syncing error occurred, which should not be attributed to misleading our customers, either from Vijay Sales or Meta's side."

11. CCPA referred the matter to DG investigation on 5th December 2023. The report of DG investigation is received on 30th April 2024 stating:

"On the online shopping platforms of M/s Vijay Sales, Amazon and Flipkart the complaint in question i.e. showing less price initially and higher price when clicked, is not found now.

The advertisement shown by M/s Vijay Sales (India) Pvt. Ltd. on Instagram/ Facebook was misleading intentionally or unintentionally. The Company appears in violation under section 2(28) of Consumer Protection Act, 2019 and the

Company also appears in violation of para 4 of the Guidelines for Prevention of Misleading Advertisements and Endorsements for Misleading Advertisements, 2022, via representing untruthful and dishonest claims in their advertisement."

12. The said investigation report is shared with the opposite party by mail dated 4th June 2024.

13. The opposite party was given an opportunity of hearing on 10th June 2024 through video conferencing. Adv Raj Latha Kotni and Adv. Chahat Raghav appeared on behalf of the opposite party and submitted that they had been engaged as the counsel in the matter on the very same day of the hearing and they requested for the adjournment of 15 days to file a detailed reply in the matter.

14. CCPA by an interim order dated 18th June 2024 directed the opposite party to submit its detailed reply by 23rd June 2024. The opposite party by mail dated 23rd June 2024 along with the vakalatnama of Advocate Raj Latha Kotni submitted its written submission and stated that:

- i. The opposite party respectfully denied any allegation relating to misleading advertisements or unfair business practices.
- ii. The opposite party also respectfully denies and disputes the contents of the letter as filed by a third-party service provider (Meta) dated 23rd December 2021.
- iii. The alleged price discrepancy as pointed out in the Complaint was due to a purely technical system malfunction on behalf of the third-party service provider as acknowledged by them, and there was no malafide intent of the opposite party behind the alleged pricing discrepancy.
- iv. The technical malfunction responsible for the alleged pricing discrepancy not only resulted in under-pricing of the opposite party's products but also there were instances of over-pricing of the opposite party's products resulting in potential losses to the Company.
- v. There was no deliberate attempt to mislead or gain any unfair advantage. It is crucial to note that during the period under review, both the Company and the entire nation were grappling with the unprecedented challenges posed by Covid-19 lockdowns and related restrictions. These extraordinary circumstances severely constrained the Company's ability to regularly monitor

and address technical issues in real-time. Having said this, on becoming aware of the technical malfunctioning the Company had immediately taken the said issue with the third-party service provider and had worked with the third-party service provider to get the issue sorted.

- vi. The Company did not derive any financial gain whatsoever from these inadvertent errors beyond their control. On the contrary, the Company incurred significant operational challenges and hardships as a direct result of the technical malfunctioning/glitches. It is respectfully brought to the Hon'ble Authority's notice that this was an isolated incident, with no prior history or subsequent occurrences of similar discrepancies reported.
- vii. There were technical malfunctions/errors that resulted in the pricing discrepancies and the factors to be considered while deciding the penalty under Section 21(7) of the Consumer Protection Act, 2019 are not satisfied in the present case and circumstances and the Hon'ble CCPA is requested not to levy any penalty.

15. Another opportunity for a hearing was given to the opposite party on 24th June 2024. Adv Raj Latha Kotni and Adv. Chahat Raghav appeared on behalf of the opposite party and stated that:

- i. The opposite party never tried or intended to attract the customer it was a pure technical error.
- ii. There are also instances where the product with a lower price was showcased with a higher price.
- iii. The opposite party is not trying to prove that there is no responsibility for it but it was not intentional and purely a technical error.
- iv. There are many conversations between the opposite party and the Meta where Meta has accepted the technical error from their side and was hidden by the Meta in its reply.
- v. The opposite party presented a video of a product advertising a higher price on the Meta platform Facebook whereas the actual cost of the same product is much lower on the Vijay sales website.

16. Further, during the hearing the CCPA asked the opposite party whether they tried to rectify the mismatch of the prices prior to the CCPA notice dated 18th August

2021. To which the company replied the issue was brought to their notice and they took action after the notice dated 18.08.2021 from CCPA was received.

17. Further, during the hearing the CCPA directed the opposite party to submit all the additional documents and screen recording videos presented by them during the hearing. To which the opposite party requested an extension of time till 27th June 2024, which was accepted by the CCPA.

18. The opposite submitted its written submissions dated 27th June 2024 along with five screen recording videos and screenshots in support of their written submissions and stated that:

- i. There were no malafide intentions on the part of the opposite party as the same can be established by the proactive involvement of the opposite party with a third party service provider (Meta) in resolving the issue.
- ii. The third-party service provider in its response letter to CCPA had concealed the true picture at hand. The opposite party, via the attached video files establishes that even though the microdata (particularly relating to product pricing) on Vijay Sales dedicated third-party service provider's page is correctly entered and tallies with the said product pricing data on the opposite party's website, the price that finally gets shown on Vijay Sales dedicated third-party service provider's page visible to the end consumer is different which justifies and supports the opposite party's argument and submission that there was indeed a technical glitch even though the microdata was correctly entered and there was no malafide intention of the opposite party to mislead its end consumers.
- iii. The technical malfunction responsible for the pricing discrepancies did not only result in underpricing of the opposite party's products but also in instances of over-pricing of the opposite party's products resulting in potential losses to the opposite party.
- iv. During the period under review, both the opposite party and the entire nation were grappling with the unprecedented challenges posed by COVID-19 lockdown-related restrictions. These extraordinary circumstances severely constrained the opposite party's ability to monitor and address technical issues in real-time regularly.

- v. As evidenced by the extensive email correspondence between the opposite party and the third-party service provider that was presented to the CCPA during the hearing held on 24.6.2024, the opposite party took immediate corrective measures to rectify the technical pricing mismatching error which was beyond the opposite party's control. This shows its dedication to maintaining consumer trust and upholding the highest standards of integrity and transparency and also serves as a testament to the opposite party's proactive approach towards addressing challenges promptly.
- vi. The consumers buying iPad are niche consumers and there is no evidence or allegation of a single consumer impacted or affected by the error. Further, the investigation report did not find any evidence whatsoever regarding the frequency and duration of the offence. Thereby proving that the incident in question was an isolated one. Additionally, no class of persons has been left vulnerable to potential adverse effects of such incident and the consumers of iPad are more likely to know the actual prices of the product. It shall further be noted that no revenue has been generated as a result of sales made by virtue of such price discrepancy.
- vii. There were technical malfunctions/errors that have resulted in the pricing discrepancies and that the factors to be considered while deciding penalty under Section 21(7) of the Consumer Protection Act, 2019 are not satisfied in the present case and circumstances and requested CCPA to not levy any penalty.

19. 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

20. CCPA has carefully examined the response submitted by the opposite party, the submissions made during the hearings, the written submissions made by the opposite party, DG Investigation report and concludes that:-

- i. The said misleading advertisement was displayed on the M/s Meta Platforms (Facebook/ Instagram) during the COVID-19 times when most consumers were actively using social media. Further, as submitted by the opposite party the action for rectifying such price mismatch was taken by them only after it was brought to their notice by CCPA's notice dated 18th August 2021 and the complaint on GAMA portal was received by CCPA on 11th August 2021. Hence, the said misleading advertisement was visible to 106K followers on Instagram and 531K followers on Facebook of the opposite party for approx. 7 days.
- ii. The mismatch of prices (whether higher or lower) on the Meta Platform and Opposite party website has resulted in sales benefits to the opposite party only. And opposite party being negligent in its responsibility did not rectified such error in the prices.
- iii. Under the Consumer Protection Act, 2019, it is the responsibility of the opposite party to have a robust system in place to check such instances and timely rectify them at their end. To which the opposite has failed.

21. It may be mentioned that the CCPA 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 the 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 advertisement was visible on the M/s Meta Platforms (Facebook/ Instagram) where the opposite party has a significant amount of followers 106K followers on Instagram and 531K followers on Facebook. Hence it cannot be ignored that misleading advertisement has a wide reach among consumers. Further, the misleading advertisement with a price mismatch was available on the Meta Platform from 11.08.2021 from the date of the complaint till 18.08.2021 date of notice issued to the opposite party, i.e. for 7 days to mislead consumers.

23. In view of the above the CCPA hereby passes the following directions to the opposite party:

- (i) The opposite party shall withdraw all misleading advertisements regarding price mismatch from all print/ media/ social media platforms effective immediately.
- (ii) The opposite party to establish a robust system in place to check whether its published advertisements align with the Consumer Protection Act, 2019.
- (iii) The opposite party shall pay the penalty of ₹ 1,00,000 for publishing a false or misleading advertisement and submit a compliance report of the directions of this order within 15 days.



Nidhi Khare
Chief Commissioner



Anupam Mishra
Commissioner