

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

Case No: CCPA-2/16/2023-CCPA

In the matter of: Case against Budge Budge Refineries Ltd. regarding Misleading Advertisement.

CORAM:

Smt. Nidhi Khare, Chief Commissioner

Shri. Anupam Mishra, Commissioner

Appearance on behalf of Budge Budge Refineries Ltd.:

Mr Pankaj Keshan, Mr J.P. Singh (Technical Head), and Mr Surya Agarwal (Son of MD)

Date: 30.05.2024

ORDER

Central Consumer Protection Authority (hereinafter referred to as "CCPA") received a complaint on the INGRAM portal with Complaint Grievance No. 372904 dated 8th August 2022 against Budge Budge Refineries Ltd. (hereinafter referred to as "opposite party") for the misleading advertisement of their edible oil product "Doctor's Choice".

2. The Complaint raised the following issues:

- I. In the advertisement, it has been claimed by the brand 'Doctor's Choice' that the mentioned edible oil is recommended and preferred by the doctor, whereas, such a claim is misrepresenting and misleading the consumers.
- II. The claims that the product contains MUFA & PUFA which keeps your heart healthy but showed with the visualization of fried food items is misleading.
- III. The advertisement represents the Doctor's Choice oil product along with a visualization of the person in the dress of a doctor and promotion of consumption of edible oil without any disclaimer.

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. Further, as per Regulation 4(7) of the Food Safety and Standards (Advertising and Claims) Regulations, 2018-

"Where the meaning of a trade mark, brand name or fancy name containing adjectives such as "natural", "fresh", "pure", "original", "traditional", "authentic", "genuine", "real", etc., appearing in the labelling, presentation or advertising of a food is such that it is likely to mislead consumer as to the nature of the food, in such cases a disclaimer in not less than 3mm size shall be given at appropriate place on the label stating that – "This is only a brand name or trade mark and does not represent its true nature"."

5. In view of the above, CCPA observed that the alleged misleading advertisement published by the opposite party contained no such disclaimer for the brand name Doctor's Choice and therefore, was misleading the consumers at large.

6. Given the above, CCPA issued a notice dated 3rd April 2023 to the opposite party to substantiate the following:

- i. Whether the edible oil is recommended and preferred by the doctor.
- ii. Advertisement by promoting fried food under the name of healthy oil for the heart.
- iii. Product displayed as containing MUFA PUFA with the visualization of fried food items.
- iv. No disclaimer for the brand name as per FSSAI regulations 2018 regulation 4(7).

7. The opposite party submitted its response dated 14th April 2023 stating that:

- i. The opposite party have been using the trademark "Doctors' Choice" in the commercial market for edible vegetable oil without causing any confusion or deception to consumers.
- ii. The term "Doctors' Choice" is distinctive and non-descriptive, and it does not convey any immediate idea about the kind, purpose, or other characteristics of the product. Therefore, the use of the trademark is not misleading in any way.

- iii. Further all Doctors' Choice product labels include a disclaimer stating that the name "Doctors' Choice" only represents the brand and not the true nature of the product and stated that this is in accordance with the regulations set forth by the Food Safety and Standards advertisement claim regulation 2006 and The Food Safety & Standards (Labelling and Display) Regulations, 2020.
- iv. The inclusion of the disclaimer on the product packaging ensures that there is no scope for any misconception about the nature of the product.
- v. However, the opposite party has updated/edited their advertisements and incorporated a declaration that will be prominently visible to viewers. A copy of the new advertisement is also shared with CCPA along with their response.
- vi. Furthermore, in the response "Product displayed as containing MUFA PUFA with the visualization of fried food items", the opposite party stated that the opposite party's advertisement claims that soybean oil is enriched with PUFA and MUFA, which is approved by FSSAI as per Food Safety and Standards (Advertising and Claims) Regulations, 2018. The claim that PUFA (ALA) contributes to maintaining normal blood cholesterol levels is also approved by FSSAI as per Annexure-II submitted along with the response.
- vii. Various research journals accept that maintaining normal cholesterol levels keeps the human heart healthy (submitted Annexure-III along with response dated 14.04.2023 as supporting documents). The Gazette of India, Extraordinary, Part III, Section 4 vide notification number F. No. 1-94/FSSAI/SP(Claims and Advertisements)/2017, dated 19th November 2018 page no 23, allows nutrient function claims and other function claims to be made based on current relevant scientific substantiation and recognized by generally accepted scientific review of the data. The scientific substantiation shall be reviewed by food business operators as new knowledge becomes available, and claims updated accordingly (submitted Annexure-IV as supporting documents).
- viii. Hence, based on the show cause notice, the opposite party will be incorporating the following recommendation in their advertisement to remove any confusion/ambiguity:

"The recommendation includes regular exercise and a balanced diet for a healthy life, consumption of different cooking oils from time to time for better results, and a disclaimer that the images shown are for illustration purpose only and may not be an exact representation of the products."

8. An opportunity for a personal hearing was provided to the opposite party on 3rd May 2023. During the hearing Mr. Kranav Kapoor, Mr. Surya Agarwal, Mr. Pankaj Keshan, and Dr. M. Pal appeared on behalf of the opposite party and made the following submission:-

- a. That the product name Doctor's Choice has been used by the opposite party since 1999, and as on date, the product is available in varieties for different edible oils.
- b. It has been submitted by the company that the word mark for the Doctor's Choice under class 29 i.e., for edible oils and fats has been registered, whereas, the device mark for the logo of doctor's choice has not been registered yet and is in the pending status.
- c. Further, it has been claimed that before launching their edible product, test licenses have been done to confirm the product as not adulterated.
- d. In regard to this, the opposite party has taken approval of the products by FSSAI for the contents available in oil as they have been tested and provided the report of not being harmful.
- e. The opposite party stated and agreed to alter and improve the disclaimer with a bigger and more appropriate font size in the advertisements and packaging.

9. In according to the above hearing the opposite party also submitted its written submissions dated 3rd May 2023 and made further submissions:

- a. Opposite party is not indulged in any false health claim regarding its products, the health claims are done on the property of specific edible oil and each of the products i.e. edible oils available under the Doctors' Choice marks have been tested, analyzed, verified, approved and cleared by Laboratories as being of safe, nutritive, unadulterated and consumable quality.
- b. The opposite party submitted Laboratory test reports from our own NABL-approved QC lab (TC-11148), FSSAI approved Fare lab and Food safety lab in support of its claims.
- c. Opposite party is providing the following disclaimers on its packed products and the same has been incorporated in its advertisement:
 - i. 'Doctors' Choice' is only a brand name and it does not represent its true nature.
 - ii. Doctors' Choice recommends regular exercise and a balanced diet for a healthy life.

- iii. Experts encourage the consumption of different cooking oils from time to time for better results. The images shown are for illustration purposes only and may not be exact representations of the products.
- d. The advertisement storyline and labels of opposite party Doctors' Choice edible oil products were designed by RK SWAMY BBDO Pvt Ltd. and the opposite party has validated the label and disclaimers from FSSAI-approved Equinox lab, the lab report for label information validation for Doctors' Choice label is shared with CCPA.
- e. They also provided a Trademark Registration Certificate for Doctors' Choice and requested the objection to be waived.

10. As per sub-section (2) of Section 19 of the Act where, after preliminary inquiry, the Central Authority is of the opinion that the matter is to be dealt with by a Regulator established under any other law for the time being in force, it may refer such matter to the concerned Regulator along with its report.

11. Given the submissions made by the opposite party, a letter dated 16.06.2023 was sent to the Food Safety and Standards Authority of India (FSSAI) to obtain their comments on the matter to enable CCPA to seek certain required information. Reply of FSSAI dated 06.07.2023 was received stating that:

- i. As per Regulation 4, sub-regulation (7) of the FSS (Advertising and Claims) Regulations, 2018, if a food business operator (FBO) uses a brand name, trademark, or fancy name on the label or in the advertising of a food product, and that name contains adjectives such as "natural," "fresh," "pure," "original," "traditional," "authentic," "genuine," or "real," which could potentially mislead consumers about the actual nature of the food, then the FBO must include a clear disclaimer on the front of the product label.
- ii. This disclaimer should state: "This is only a brand name or trademark, or fancy name and does not represent its true nature; (relevant one may be chosen as applicable)." The purpose of this requirement is to prevent any confusion or incorrect impressions among consumers regarding the true characteristics of the food product. In this specific case, since the brand "Doctor's Choice" has been mentioned as a registered trademark, the FBO must ensure that the appropriate disclaimer is prominently displayed on the label and all advertisements of the food products associated with this brand.
- iii. M/s. Budge Budge Refineries Limited, based in West Bengal, is manufacturing edible oils in four variants: Doctors' Choice Kachi Ghani Oil, Doctors' Choice

Sunflower Oil, Doctors' Choice Soybean Oil, and Doctors' Choice Rice Bran Oil. These products are being promoted on their official website as healthy, cholesterol-free, and unadulterated oils. However, it has been observed that these claims may be misleading and not in line with Schedule II of the FSSAI (Food Safety and Standards Authority of India) regulations.

- iv. The FSSAI Central License No. 10012031000062 is the license under which M/s. Budge Budge Refineries Limited operates. As per the regulations, any claims made by the company regarding their edible oils' health benefits, cholesterol-free nature, or lack of adulteration should comply with Schedule II of the FSSAI regulations.
- v. Using terms like "healthy," "cholesterol-free," and "unadulterated" without adhering to the specific guidelines laid out in Schedule II may create a misleading impression among consumers. It could imply that other products in the same category may contain high cholesterol or be adulterated, which may not necessarily be the case.
- vi. FSSAI referred to the concerned Central Licensing Authority/Designated Officer with the request to scrutinize the matter further vis-a-vis the provisions of FSS (Advertising and Claims) Regulations, 2018 and direct the FBO to ensure that all the claims should be made in line with Schedule II of the said regulations and the claims in violation of the same may be removed/withdrawn immediately.

12. On 8th January 2024 a letter was sent to the FSSAI to inquire about the updated status of the action taken by FSSAI against the opposite party in the present matter. In regard to this, the FSSAI has submitted the letter dated 23.01.2024 stating that:

"The Concerned Licensing Authority has issued the improvement notice dated 12.10.2023 to M/s. Budge Budge Refineries Limited and closed the case since the FBO has complied with the said notice and has removed all the misleading claims from the advertisements as well as from the label and has also submitted a copy of the rectified labels."

13. After receiving the inputs from the FSSAI an opportunity of hearing as per section 21 of the Act is provided to the opposite party on 17th May 2024. From the opposite party Mr. Pankaj Keshan, Mr. J.P. Singh (Technical Head), and Mr. Surya Agarwal (Son of MD) appeared before CCPA and made the following submissions:

- i. As per the submissions made during the hearing on 3rd May 2023, the opposite party has withdrawn the alleged misleading advertisement from all the media platforms.
 - ii. The opposite party is no longer making medical claims in their advertisements.
 - iii. The opposite party has now provided the disclaimer as per the FSS (Advertising and Claims) Regulations, 2018 on all its products i.e. on primary packaging, secondary packaging and also on its website.
14. On examination of all the documents submitted by the opposite party, the FSSAI response, and the submissions made during the hearing it is clear that:

- I. The opposite party was in violation of Regulation 4(7) of the Food Safety and Standards (Advertising and Claims) Regulations, 2018. And mislead the consumers into believing that their edible oil product Doctor's Choice is recommended by medical professionals.
- II. The opposite party on receipt of notice dated 3rd April 2023 informed CCPA vide its written submissions dated 3rd May 2023 that they are providing the disclaimers "Doctors' Choice is a brand and does not represent any recommendation of medical practitioner" on all its packed products under the brand name Doctors' Choice and the same has been incorporated in their advertisement. And the opposite party has validated the label and disclaimers from FSSAI-approved Equinox lab.

From the above CCPA observe that the opposite party has within one month of the receipt of notice dated 3rd April 2024 removed all the misleading advertisements representing the Doctor's Choice oil product along with a visualisation of the person in the dress of a Doctor and promotion of consumption of edible oil without any disclaimer from every media platform.

- III. Further, "Doctor's Choice" is a brand name as a registered trademark having Trade Mark No. 3117161 used by the opposite party since 1999. The CCPA observed a difference between the registered trade mark submitted by the opposite party and the brand logo used by the opposite party on its products.

In view of the above, a clarification may be sought from the Office of Controller General of Patents, Design & Trade Marks (CGPDTM), Department of Promotion of Industry and Internal Trade.

- IV. On the action taken by the FSSAI the opposite party has modified its advertisement and label of its products as per Schedule II of FSS (Advertising and Claims) Regulations, 2018.

15. Whereas, the CCPA is empowered under Section 21 of the Act, to issue directions to the manufacturer 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.

16. In view of the above, the Central Consumer Protection Authority hereby issues the following directions:

- A. Budge Budge Refineries Ltd. with respect to its brand name "Doctor's Choice" has to display a disclaimer in not less than 3mm size at the appropriate place on the label stating that – "This is only a brand name or trade mark and does not represent its true nature" as required under Regulation 4(7) of the Food Safety and Standards (Advertising and Claims) Regulations, 2018.
- B. Budge Budge Refineries Ltd will provide the above-stated disclaimer clearly and visibly in the advertisement of its products with the brand name Doctor's Choice.
- C. If subsequent violation is found a penalty of up to fifty lakh rupees will be imposed on Budge Budge Refineries Ltd.



Nidhi Khare

Chief Commissioner



Anupam Mishra

Commissioner