

CONSUMER AND COSMETICS

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ABSTRACT

Cosmetics serve as a means for consumers to accentuate their natural beauty, fostering a sense of confidence and well-being within themselves. Consumers use cosmetics to enhance their beauty and to feel good about themselves. Consumers connect with cosmetics on multiple levels, experiencing the benefits either physically, mentally or psychologically. Consumers feel highly confident, when they change their appearance by using cosmetic products, as there is tremendous pressure on them individuals about the same. The cosmetic industry is rapidly growing due to technological advancements and strong marketing techniques. Digital platforms have also increased sales and awareness amongst consumers about cosmetic products. In this competitive world, consumers should be aware of the legal requirements for product labelling. At the same time, the consumers should also be aware of the remedy available to them in case of deficiency in service of the cosmetic product.

INTRODUCTION

In India, almost everyone is a consumer of cosmetics, whether male or female. Everybody wants to look and feel good. In order to enhance our beauty, Indians buy cosmetics for hair care, skin care, deodorant, and fragrances. Consumers of cosmetics can be children, teenagers, or adults. There will be no one who does not use any cosmetics. In short, India has a huge market for cosmetics. So, there is a significant need for knowledge about cosmetics among Indian consumers.

Need to have knowledge about cosmetics by the consumers:

Proper Decision Making: Knowledge about cosmetic products helps consumers to make decisions properly. They are able to choose the products according to their needs and consumption.

Safety Concerns: Consumers are in a better position to choose the products, considering the adverse effects of cosmetics, and hence knowledge plays an important role in choosing the products.

Rising International Brands: The cosmetic industry in India is increasing by leaps and bounds. A large number of international brands are entering the market, and consumers need to know the variety of cosmetics available in the market.

Economic Impact: A significant portion of the income of the Indian consumers is spent on cosmetics. The value, quality and effectiveness of the products are essential to make the choices by the consumers in a better way and avoid wasting money.

Regulatory Awareness: The regulations and standards governing the cosmetics industry must be known to Indian consumers so that they can raise a concern or complaint and report any violation to the relevant authorities.

Self-confidence and self-care: Consumer's self-confidence and self-care quality are enhanced by the cosmetics. If the consumers have knowledge, they can better enjoy the benefits of the cosmetics.

Preventing from fraud: Better knowledge allows consumers to be prevented from being cheated which can be harmful to their body and also wasteful expenditure.

SAFETY OF CONSUMERS UNDER THE CONSUMER PROTECTION ACT, 1986

In India, consumers are empowered with consumer rights under the ¹Consumer Protection Act, 1986 and Labelling Declarations by the Bureau of Indian Standards Act, 2016. ²The Bureau of Indian Standards Act, 2016 sets the standards for cosmetics for the products listed under Schedule 'S' of the Drugs and Cosmetics Rules 1945. Consumer complaints can be redressed under the Consumer Protection Act, 1986. This Act imposes obligations on retailers, manufacturers, distributors and service providers and also provides consumers with their rights. It safeguards the interests of consumers by providing a legal framework. It encourages the consumers to point out the defects and deficiencies in the products and services. An aggrieved consumer can file a complaint and seek compensation through consumer forums and at higher levels through Commissions. Consumers have a right to know about the information and report any malpractices by filing a complaint. It allows a fair mechanism to the consumers by imposing a penalty or liability on manufacturers, sellers and service providers.

As per section 2(7), the Consumer Protection Act, 1986, ³consumer means a person who has bought goods for consideration paid fully or partly or promised or under any system of deferred

¹ The Consumer Protection Act, 1986

² The Bureau of Indian Standards Act, 2016

³ The Drug and Cosmetics Act 1940, s 2(7)

payment and includes the user of such goods, who is not the buyer but uses with the approval of the buyer and it does not include a person who buys goods in bulk for the purpose of re-selling the same. In simple words, a consumer is a person who purchases either products or services, to be consumed either by him or someone else.

In India, medicines and cosmetics are governed under The Drugs and Cosmetics Act, 1940, and ⁴The Drug and Cosmetics Rules, 2020. The Drug and Cosmetic Rules, 2020 is a significant change brought in India, replacing the previous 1945 version. It modernized the regulations of cosmetics and aligned them with international standards. Each and every medicine or cosmetics has to follow the standards prescribed under The Drugs and Cosmetics Act and the Rules. ⁵The Central Drugs Standard Control Organization (CSDCO) is the approval authority for conducting clinical trials, and research. It emphasizes the quality of medicines and cosmetics for improvement purposes and to maintain the quality of imported drugs or cosmetics. It provides expert advice to the State authorities regarding quality and improvement, so as to bring uniformity in the country. It emphasized the importance of Good Manufacturing Practices and stringent regulations on the manufacture, import and sale of cosmetics, thereby ensuring the safety and quality of the cosmetics.

As per section 3 (aaa) of the Drug and Cosmetic Act 1940, ⁶ “cosmetic means any article intended to be rubbed, poured, sprinkled or sprayed on, or introduced into, or otherwise applied to, the human body or any part thereof for cleansing, beautifying, promoting attractiveness, or altering the appearance, and includes any article intended for use as a component of cosmetic.”

Cosmetics are classified in the following manner under ⁷Schedule M-II of the Drug and Cosmetic Rules, 1945:

1. Powders,
2. Creams, lotions, emulsions, pastes, cleansing milks, shampoos, pomade, brilliantine, shaving creams, hair oils, etc.
3. Nail Polishes and Nail Lacquers,
4. Lipsticks & Lip Gloss etc.
5. Depilatories,
6. Preparations used for eyes,

⁴ The Drug and Cosmetics Rules, 2020

⁵ The Central Drugs Standard Control <<https://cdsco.gov.in/opencms/opencms/en/Home/>>.

⁶ The Drug and Cosmetics Act, 1940, s 3(aaa)

⁷ The Drug and Cosmetics Rules, 1945

7. Aerosol,
8. Alcoholic Fragrance Solutions (Cologne),
9. Hair Dyes,
10. Tooth Powders and Tooth Pastes etc.
11. Toilet Soaps.

As per section 9C⁸ of the Drug and Cosmetic Act, 1940, a cosmetic shall be deemed as misbranded if the contents of the colour or not labelled as per the prescribed manner or if the label or container has any false or misleading statement.

As per section ⁹D of the Drug and Cosmetic Act, 1940, a cosmetic shall be deemed to be spurious:

1. If imported under name under the name belonging to another cosmetic.
2. If substitute or imitation, it must not resemble another cosmetic product which could deceive consumers.
3. If the name of the individual or company name on the label or on the container of the product is fictitious or does not exist.
4. If it conveys the product of a manufacturer, to whom it does not truly belong.

As per section ¹⁰18 of the Drugs and Cosmetics Act, no person shall manufacture, sell, stock, or distribute any cosmetic, that is not of standard quality adulterated, spurious, or misbranded, or has an ingredient that is harmful or unsafe to use or which is imported or manufactured, but violating the provisions of the Act. The Central Government after consulting with the Board may grant the License, subject to the fulfilment of prescribed conditions.

As per section ¹¹24 of the Drugs and Cosmetics Act, every manufacturer is bound to disclose the place where the cosmetics are manufactured or stored to the Inspector.

As per section ¹²26A of the Drugs and Cosmetics Act, if the Central Government is satisfied that the use of any cosmetics involves any risk to the human being or animal or contains ingredients that are harmful, the Government may restrict or prohibit the manufacture, sale, or distribution of such cosmetic.

⁸ The Drug and Cosmetics Act 1940, s 9C

⁹ Ibid, s 9D

¹⁰ Ibid, s 18

¹¹ The Drug and Cosmetics Act 1940, s 24

¹² Ibid, s 26A

As per section ¹³26B of the Drugs and Cosmetics Act, if the Central Government is satisfied that the use of any cosmetics involves any risk to the human being or animal or contains ingredients that are harmful, the Government may restrict or prohibit the manufacture, sale, or distribution of such cosmetic.

Product Labelling means affixing important information about the product like ingredients, usage instructions, and safety warnings. ¹⁴Product Labelling has to comply with the regulatory standards prescribed under Cosmetic Rules, 2020 as well as specified or laid down by the ¹⁵'Bureau of Indian Standards' for the cosmetics.

As per section ¹⁶34 of the Cosmetic Rules, 2020, cosmetics shall have inner and outer labels specifying the following:

1. Name of cosmetics
2. Name of manufacturer and complete address of premises approved by Central Drugs Standard Control Organization
3. Date of expiry or use before
4. Batch Number
5. Manufacture licence number
6. If the cosmetics are hazardous, the inner label shall indicate directions for safe use, warning or caution, and names of ingredients that are hazardous.
7. The outer label shall carry a declaration of the net contents in terms of solid or liquid.
8. In the case of imported cosmetics, Registration Certification No. along with the name and address of the importer.
9. The ingredient lists should be in descending order of weight or volume.
10. Labelling of hair dyes shall be labelled in English and in the local language and shall appear on inner and outer labels with a word starting with "caution" which should inform about the ingredients in the cosmetics which are harmful to the body parts, eg. skin irritation.

If any provisions of the Drugs and Cosmetics Act and the rules are violated, it will attract a penalty. The impact of violations by the manufacturers is strictly regulated and it attracts penalties of both imprisonment and fine.

¹³ Ibid, s 26B

¹⁴ The Cosmetic Rules, 2020

¹⁵ The Bureau of Indian Standards Act, 2016

¹⁶ The Cosmetic Rules, 2020, s34

CASE LAWS

DHEERAJ KUMAR V. EASYDAY, BHARTI RETAILS:¹⁷ The Complainant (Dheeraj Kumar) purchased Garnier Hair Colour Crème from Easyday, Bharti Retails (opposite party) for Rs.157, instead of MRP Rs.145. He was charged Rs.12 extra by the opposite party. When the complainant realised that he had been charged Rs.12 extra by the opposite party, he approached the opposite party and that the staff did not refund the money, but the Manager also misbehaved with the complainant. It was prayed that the opposite party should refund the amount of Rs.12, which was charged extra, a sum of Rs.50000 as compensation for mental pain and agony, and the sum of Rs.11000 as litigation expenses. There was a deficiency in the service provided and the Court directed the opposite party to refund the extra amount of Rs.12 (Rs. twelve only) as well as awarded compensation of Rs.5,000 (Rs. five thousand only) and the cost of the complaint as Rs.1,100 (Rs. one thousand one hundred only).

JOHNSON & JOHNSON V. STATE OF MAHARASHTRA¹⁸: In the United States and Canada, Johnson & Johnson Company is facing thousands of lawsuits that the talcum powder causes cancer due to contamination with asbestos. The State Government had cancelled the company's license to manufacture the Johnson & Johnson baby powder on the basis of samples taken by the Food & Drug Administration at a random check. Based on the report submitted by the Food and Drug Administration the product was not as per the standard quality. The manufacture and sale were prohibited and the Company had to recall its product from the market.

Johnson & Johnson Company pleaded that they were not served show cause notice by the Maharashtra Food and Drug Administration and the supporting material provided by the Company was not considered. The Bombay High Court passed the order to allow Johnson & Johnson Company to manufacture the baby powder at the Mulund plant in Maharashtra but did not allow its sale or distribution. The court directed to send fresh samples of the baby powder for re-testing.

¹⁷ Dheeraj Kumar v. Easyday, Bharti Retails <<https://www.casemine.com/judgement/in/590a29654a932663936ed36e>> accessed 18 September 2023

¹⁸ Johnson & Johnson v. State of Maharashtra, <<https://scroll.in/latest/1037571/bombay-hc-allows-johnson-johnson-to-manufacture-baby-powder-but-freeze-on-sale-to-continue>>, accessed on 18 September 2023

CONCLUSION

The Drug and Cosmetic Act 1940 and the Cosmetic Rules 2020 have strict provisions which must be adhered to at all times. The Government has implemented stringent laws to safeguard the interests of consumers in the cosmetic industry. If these provisions are not complied with, the Government of India will levy a heavy penalty of imprisonment, fine, product recall or legal action against the manufacturer. So, it is in the interest of the individual to comply with the stringent provisions mentioned in the Act.

Labelling of cosmetics is very important as the ingredients which are harmful or hazardous should be spelled out and consumers should have full knowledge about the same. Similarly, products go through rigorous testing procedures such as clinical trials, and only if satisfied, then approved, thereby maintaining the standards of quality of the cosmetics. Such measures are necessary to deter unfair and illegal practices and to protect consumers from potentially hazardous products.

