



## STRENGTHENING CONSUMER PROTECTION WITH IPR

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**Abstract:** Enactment of the Consumer Protection Act, 1986 marked one of the most important milestones in the consumer movement in the country. It is one of the benevolent social legislation intended to protect the large body of consumers from exploitation. The Act has come as a panacea for consumers all over the country and has assumed the shape of practically the most important legislation in the country during the last few years. It has become the vehicle for enabling people to secure speedy and in-expensive redressal of their grievances. The provisions of this Act cover 'Products' as well as 'Services'. The products are those which are manufactured or produced and sold to consumers through wholesalers and retailers. The services are of the nature of transport, telephones, electricity, constructions, banking, insurance, medical treatment, etc. A strong intellectual property right (IPR) regime is a critical precondition for enhancing and stimulating economic growth in the country. It facilitates greater investment into the research and development as well as provides means to improve the quality of life of people of the country.

**Keywords:** Consumer rights, consumer benefits, Unfair trade practices, Trade Marks.

### Introduction

Every human being who consumes anything for survival is a consumer; every individual is a consumer, regardless of occupation, age, gender, community or religious affiliation. Consumer rights and welfare are now an integral part of the life of an individual and we all have made use of them at some or the other point in our daily routine. Consumers have traditionally called for government intervention, when the marketers fail to produce a socially desirable outcome. Governance is that broad field of economics, which concern the design of regulatory system through which exchange is smoothly conducted. The economic theory of regulation, most often examines how collective action by individuals, through the auspices of government, affects the

incentives of participants in markets. The role of government in regulating the marketing activities must be to contribute to the development of an efficient system, for creation of products or services; communication and delivery to the consumers. It should establish an efficient structure for governance of marketing activities, which involves the standardization and refinement of marketing tools and techniques for consumer benefits.<sup>1</sup>

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<sup>1</sup>. V.V. Sople and Jyoti Gattani, New IPR (Intellectual Property Rights) Legislation and Regulations for Marketing Activity, International Marketing Conference on Marketing & Society, 8-10 April, 2007, IIMK 720.

### What Act says?

The Consumer Protection Act, 1986 is an important social legislation to protect the consumers from exploitation from the business and trading community with bad intentions. Under this act the government has made provision for the establishment of consumer councils and other authorities for the settlement of consumers' disputes and for the matters connected therewith to secure speedy and in-expensive redressal of their grievances. With the enactment of this law, consumers now feel that they are in a position to deal with the business community and corporations against their exploitation. The broad salient features of Consumer Protection Act are:

- The Act is exclusively passed for the interest of the consumers.
- It seeks to promote the rights of the consumers.
- It covers private, public and co-operative sector.
- The provisions of Act are compensatory in nature.

In short, it protects the consumers from influences of the seller's (marketer/manufacturer) coercive power by way of unfair trade practices to restrict competition. The Consumer Protection Act, 1986 prohibits marketers from adopting the following unfair trade practice {Section 36A and Section 2(1) mn}:

- False representation of the quality, composition, style or model of goods and services.
- Falsely alleging affiliation and misleading statements about the usefulness of goods and Services.

- Warranties or guarantees given without adequate tests, or expressed in misleading terms, giving false or misleading facts disparaging the goods, services or trade of others.
- Announcing bargain prices for goods, which are either put on sale or are offered in quantities which are not reasonable with respect to the nature of the trade, offering gifts, prizes or other items with the intention of not providing them as offered.
- Sale of substandard and hazardous goods under defined conditions.

Enactment of the Consumer Protection Act, 1986 marked one of the most important milestones in the consumer movement in the country. It is one of the benevolent social legislation intended to protect the large body of consumers from exploitation. The Act has come as a panacea for consumers all over the country and has assumed the shape of practically the most important legislation in the country during the last few years. It has become the vehicle for enabling people to secure speedy and in-expensive redressal of their grievances. With the enactment of this law, consumers now feel that they are in a position to declare sellers beware whereas previously the consumers were at the receiving end and generally told buyers beware.

### Who is a consumer?

Any person who –

- (i) buys any goods for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment, and includes any user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promised, or under

any system of deferred payment when such use is made with the approval of such person, but does not include a person who obtains such goods for resale or for any commercial purpose; or

(ii) hires or avails of any services for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment, and includes any beneficiary of such services other than the person who hires or avails of the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first mentioned person.<sup>2</sup>

The provisions of this Act cover 'Products' as well as 'Services'. The products are those which are manufactured or produced and sold to consumers through wholesalers and retailers. The services are of the nature of transport, telephones, electricity, constructions, banking, insurance, medical treatment, etc. The services by and large include those provided by professionals such as Doctors, Engineers, Architects, Lawyers, etc. The objects of the Act are:

- Protection of Interests of Consumers
- Protection of Rights of Consumers
- Establishment of Consumer Protection Councils
- Establishment of Consumer Dispute Redressal Agencies.<sup>3</sup>

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<sup>2</sup>.Section 2 (d) of Consumer Protection Act, 1986.

<sup>3</sup>.[http://business.gov.in/consumer\\_rights/legal\\_frame\\_work.php](http://business.gov.in/consumer_rights/legal_frame_work.php).

### **IPR and Consumer Protection:**

A strong intellectual property right (IPR) regime is a critical precondition for enhancing and stimulating economic growth in the country. It facilitates greater investment into the research and development as well as provides means to improve the quality of life of people of the country. IPR not only protects the innovative and creative capacity of competitors and owners of IP rights that supply goods and services, but it also concern itself with the interests of the consumers of those goods and services, directly or indirectly. The existence of such rights is necessary for overall development of society.

The areas of intellectual property that are most relevant for consumer protection are Trade Marks, Geographical Indications and Protection against unfair competition. A trade mark is a sign which is used in the course of trade and distinguishes goods or services of one enterprise from those of other enterprises. While, a geographical indication is an indication used to identify goods having special characteristics originating from a definite geographical territory. These IP rights help the consumers in buying quality products and protect them from use of substandard products which may cause health and safety hazards. Thus, the proper operation of IP rights and their enforcement is very important for consumers. Further, it is the core of IP system that people of the country must be protected from unfair competition, that is, from any act of dishonest practice in trade and business.

### Trade mark and Consumers:

The Trade and Merchandise Mark Act<sup>4</sup> had been enacted with a view to protect trade interests to prevent the deception of the consumers by the misuse or abuse of the trade mark. The Trade Marks Act, 1999 is the governing law for Trade Marks in India. It has been enacted to provide for registration and better protection of trade marks for goods and services and for the prevention of the use of fraudulent marks. According to the Trade Marks Act, the 'trade mark' means a mark capable of being represented graphically and which is capable of distinguishing the goods or services of one person from those of others and may include shape of goods, their packaging and combination of colors.<sup>5</sup>

The Controller-General of Patents, Designs and Trade Marks, under the Department of Industrial Policy and Promotion (DIPP), Ministry of Commerce and Industry, is the 'Registrar of Trade Marks'. It directs and supervises the functioning of the Trade Marks Registry (TMR), which in turn administers the Trade Marks Act, 1999 and the Rules there under.

Trade marks are distinctive signs used to differentiate between identical or similar goods and services offered by different producers or services providers. It may be a distinctive word, phrase, logo, Internet domain name, graphic symbol, slogan or other device that is used to identify the source of a product and to distinguish a manufacturer's product from others.

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<sup>4</sup> This Act has consolidated The Trade Marks Act, 1940 and Indian Merchandise Marks Act, 1889 and provided law relating to registration and better protection of trademarks in the country.

<sup>5</sup> . Section 2 (zb) of Trade Mark Act, 1999.

Here, the term 'distinctive' means unique enough to help consumers recognize a particular product in the market place.

A service mark is same as a trade mark, which promote services and events, not only products. For example, when a business uses its name to market its goods or services in advertising copy or on signs, the name qualifies as a service mark.

Consumers often make their purchasing choices on the basis of recognizable trademarks/ service marks. So, the main thrust of trade mark Act is to ensure that trademarks don't overlap in a manner that causes users/ consumers to become confused about the source of a product. As per the Act, the trade mark shall not be registered if it is of nature so as to deceive public, cause confusion, has identity with or similar to an earlier trade mark, or comprises or contains scandalous or obscene matter, etc.

A trade mark essentially serves as a link between the consumer and the manufacturer. It enables the consumer to get closer with the manufacturer. Consumers, today, demand safety and a continuous assurance of quality. In a way, trade mark is a specified set of promises from the manufacturer to the consumer. So, a consumer can claim damages if his reasonable expectations are not fulfilled. Further, since the use of trade mark enables the manufacturer to distinguish his product from that of the others, the consumer becomes fully aware of the advantages of using that particular product.

The registration of a trade mark confers upon the owner the exclusive right to use that mark.<sup>6</sup> Thus, it is

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<sup>6</sup> . Section 28 (2) of Trade Mark Act, 1999.

his responsibility to educate the consumers on the unique features of his product as against products of other manufacturers. The main reason being that there is high level of consumer awareness of the goods and its manufacturer. Now, lots of alternatives are available for almost every product. So, the manufacturer or the owner of trade mark has to come up to the expectations of the consumers to make his Trade Mark acceptable to them.

#### **Geographical Indications and Consumers:**

A Geographical Indication (GI) is a sign used on goods that have a specific geographical origin and possess qualities, reputation or characteristics that are essentially attributable to that origin. The Geographical Indication of Goods (Registration and Protection) Act, 1999 is the main Act which has been enacted to provide for the registration and better protection of geographical indications (GIs) relating to goods. According to the Act, the term 'geographical indication' (in relation to goods) means "an indication which identifies such goods as agricultural goods, natural goods or manufactured goods as originating, or manufactured in the territory of a country, or a region or locality in that territory, where a given quality, reputation or other characteristic of such goods is essentially attributable to its geographical origin and in case where such goods are manufactured goods, one of the activities of either the production or of processing or preparation of the goods concerned takes place in such territory, region or locality, as the case may be".

The Controller-General of Patents, Designs and Trade Marks, under the Department, Ministry of Commerce and Industry, is the 'Registrar of Geographical Indications'. It directs and supervises

the functioning of the Geographical Indications Registry (GIR), which in turn administers the Geographical Indication of Goods (Registration and Protection) Act, 1999 and the Rules there under.

GIs are source identifiers as they help the consumers to identify the place of origin of the goods as well as act as the indicator to the quality, reputation and other distinctive characteristics of goods that are essentially due to that place of origin. Any duplication and false use of GIs by unauthorized parties is detrimental for both the consumers as well as legitimate producers. Because of this, former are likely to be deceived as they get a worthless imitation of product, which they buy by considering as genuine product with specific qualities and characteristics. While, the producers suffer losses and damages as their valuable business is taken away from them and their established reputation for the products is damaged

#### **Protection against Unfair Competition:**

Protection against unfair competition has been recognized as one of the main objectives of intellectual property system. It does not grant exclusive rights to the owners with respect to the subject concerned, like in the case of patents, trade marks, etc. In fact, it prohibits any act of competition that is contrary to honest practices in industrial or commercial matters, referred to as "unfair competition".

The acts of unfair competition not only adversely affect the competitors, which tend to lose their customers and market share; but also affect consumers as they are likely to be misinformed and

mislead and tend to suffer economic and personal prejudice.

The following acts of unfair competition are closely related to IP and are directly relevant to consumer protection:-

- all acts of such a nature as to create confusion by any means whatever with the establishment, the goods, or the industrial or commercial activities, of a competitor
- false allegations in the course of trade of such a nature as to discredit the establishment, the goods, or the industrial or commercial activities, of a competitor
- indications or allegations the use of which in trade is liable to mislead the public as to the nature, manufacturing process, characteristics, suitability for their purpose or quantity, of the goods.

Whatever form unfair competition may take, it is in the interest of the honest and legitimate entrepreneur, the consumer and the public at large that they should be prevented from it as early and as effectively as possible. Free and fair competition between enterprises is considered to be the best means of satisfying supply and demand in the economy as well as of serving the interests of consumers and economy as a whole. This stimulates innovation and productivity and leads to the optimum allocation of resources in the economy; reduces costs and improves quality; as well as accelerates economic growth and development. Hence, In India, the Government has formulated a Competition which protects the interests of consumers and producers by promoting and sustaining a fair competition.

Further, fair play in the market place cannot be ensured only by the protection of industrial property rights. A wide range of unfair acts, such as misleading advertising, violation of trade secrets, etc., are usually not dealt with by specific laws on intellectual property. Thus, it is necessary to enforce Unfair Competition law to supplement the intellectual property laws and to grant fair protection to consumers.

### **Conclusion**

In today's changing market scenario, there is an increasing necessity of empowering the consumers through education and motivation regarding their rights and responsibilities. He/she should be equipped to be fully vigilant so as to be able to protect himself/herself from any wrongful act on the part of the seller/trader. Several steps have been taken by the Government, both at the Central and State level towards generating awareness among the consumers. Given all such initiatives, it is the responsibility of the consumer as well to keep in mind the following Suggestions:

- Purchase products only after their complete scrutiny and not at the cost of attractive advertisements.
- Keep check on the weighing and measuring instruments used by traders.
- Avoid buying fruits and vegetables from unhygienic place.
- Check print of MRP on the packet.
- Check the quantity as per the figure printed on the packet.
- Check the expiry date of the product, particularly that of eatables and medicines.

- Always collect bill at the time of purchase.
- Moreover, the packaging and appearance of the product should not be the guiding factor for consumer purchases. Along with cost consideration, consumer must be cautious of the quality of the product. Most importantly, it is the prime responsibility of a consumer to bring to the notice of the concerned authorities, any violation in their rights.