

Consumer Protection Rights and Advertising Regulation in USA and UK

Uzma Hasan

PhD Scholar, Department of Management, FMIT, Jamia Hamdard, New Delhi, INDIA

Abstract- The research paper has made an attempt to delve into the consumer protection rights being provided to the citizens in USA and UK. The paper lays down the rights available with the residents of these two nations with respect to consumer protection.

Index Terms- Consumer Protection, Consumer Rights, Advertising, Marketing, Rights

I. INTRODUCTION

Marketing strategies have always been linked with providing a satisfactory purchasing experience to the consumers and this leaves a little scope for the sellers when it comes to avoiding the grievances of the buyers, thereby making consumer protection significant and imperative. The consumer satisfaction and protection has been hailed as the ultimate aim of all the marketing activities and thus governments all over the world have devised rules and regulations to safeguard the interests of the buyers and to make sure that they make their purchases with no fear of low grade products or dissatisfactory performance.

The purchase process starts with the consumer making a desired list of traits in his mind regarding the quality and performance of the product. If the product fails to deliver to the already established standards of performance in the consumer's mind, then it makes the consumer question his purchase decision. If the consumer feels that he has been duped by the manufacturer or he could have avoided the purchase but made it due to the deceptive advertising being promoted by the seller, then he has few options available with him to make his way around with the seller. Such consumer protection policies persisting in USA and UK are being studied in the paper.

Advertising regulation and consumer protection in United States of America

In 1938, the Federal Trade Commission (FTC) was given the authority to regulate "unfair or misleading" advertising. The Division of Advertising Practices protects consumers from unfair or deceptive advertising and marketing practices that raise health and safety concerns, as well as those that cause economic injury. The food and beverage advertising law towards the children dictates that only such products should be advertised towards children for consumption which meet the nutrition criteria as being set up by the Federal Trade Commission in the US.

- The Tobacco Control Act was established by the US Food and Drug Administration (1994) which restricted the advertisements of cigarettes.

- It was also established that the magazines aimed at teenagers must not use color of any kind and should stick to black text only.

The division of FTC dealing with protecting consumer's interests from unfair advertising includes –

FTC (1914) decided that the division dealing with customer protection and advertising would include:

- combating deceptive advertising of fraudulent cure-all claims for dietary supplements and weight loss products
- monitoring and stopping deceptive Internet marketing practices that develop in response to public health issues
- monitoring and developing effective enforcement strategies for new advertising techniques and media, such as word-of-mouth marketing;
- monitoring and reporting on the advertising of food to children, including the impact of practices by food companies and the media on childhood obesity;
- monitoring and reporting on industry practices regarding the marketing of violent movies, music, and electronic games to children;
- monitoring and reporting on alcohol and tobacco marketing practices.

The Division develops, reviews, and enforces a variety of consumer protection laws, regulations, and Guides, including:

- The Children's Online Privacy Protection Act, which is meant to give parents control over information online companies can collect about their children and how such information can be used;
- The Fairness to Contact Lens Consumers Act and the Contact Lens Rule, which increases consumers' ability to shop around when buying contact lenses;
- The Federal Cigarette and Smokeless Tobacco Acts, which require the FTC to review and approve tobacco company plans for rotating and displaying the statutory health warnings on tobacco labels and in ads; and
- Dietary Supplement Guides which provide businesses with guidance for claims they make for dietary supplements.

The history behind consumer protection in USA owes its existence to a number of economical crises and emergencies which rocked the American nation in the 19th century. The business at that time was governed by the common law popularly known as caveat emptor (let the buyer be aware) and all the business transactions used to take place under the shadow of this

act but over the years the laws pertaining to consumer rights and consumer protection have evolved in the American continent.

Today, the American consumers are protected from unsafe unfair business practices through a mixture of national, state, and local governmental laws and the existence of many private rights of actions. These public and private rights both protect consumers and, at a formal level, equip them with the knowledge they need to protect themselves.

President [John F. Kennedy](#) presented four consumer rights, which came to be known as "The Consumer Bill of Rights".

The rights have been discussed in detail below -

1. The Right to Safety: This right empowers an American citizen to get himself protected from any commercial product in the market which might cause harm or injury to him. The right applies to a variety of commercial products except automobile vehicles, where, the consumer is provided a right to follow with an action legally against the manufacturer of a product if it causes any injury to him even if he has followed the instructions mentioned on the label of the product and taken proper care in using that product.

2. The Right to information: This right empowers the citizens to get appropriate information about every product from the seller to help him decide that whether or not he requires it. The government makes it mandatory for all the manufacturers to mention the ingredient list, name and address of the manufacturer and any other relevant information on the packing of the product.

3. The Right to Choose: The right to choose says that the consumers should have a wide array of products to choose from as they venture in the market to choose the product they wish to purchase. The government stresses on the need of having a healthy competition in the market so that the consumers be provided with the superior quality of products and an option to switch from one seller to another in case of dissatisfaction.

4. The Right to be Heard: This rights empowers the citizens to voice their complaints against those sellers who fail to provide them with standard quality of products and inundate the consumers with sub standard products. The American government has created many forums for the consumers where they can voice their opinion as against any seller who is manufacturing low quality products deemed unsuitable for the human consumption.

In 1985, four more consumer rights were added to the already existing set of rights by the government of USA -

5. The Right to Satisfaction of the basic needs: This right emphasized on the need to have access to basic services such as health care, education, public utilities, water and sanitation adequate food, clothing, shelter, for all the citizens of USA.

6. The Right to Redress: This consumer right empowers an American citizen to take file a complaint against the seller or the manufacturer who has provided him with a defective product item and take a legal action against him by filing a case against him in any judicial court of the country.

7. The Right to Consumer Education: This right emphasizes on the need of making the consumer aware about his rights as a consumer while making a purchase transaction. Often, it happens that a manufacturer or a seller succeeds in cheating a consumer because a consumer is not fully aware of his rights.

Hence, the inclusion of this right made it mandatory for the citizens to be aware of their rights.

8. The right to a healthy environment: The right stresses on providing such an environment to the consumer which is non-threatening to the well-being of present and future generations of consumers.

Consumer Rights Law - USA

This legal area encompasses a large body of laws enacted by the government to protect consumers by regulating many of the following business transactions and practices: advertising, sales and business practices; product branding; mail fraud; sound banking and truth in lending; quality produce and meats; housing material and other product standards; and all manner of other types of consumer transactions. Some states also regulate door-to-door sales, abusive collection practices and referral and promotional sales.

ABA - Consumer Protection Committee

The Consumer Protection Committee monitors and reports on developments in the law of false and deceptive advertising, unfair trade practices and illegal marketing. These developments often include cases brought by private litigants, the Federal Trade Commission (FTC) and state attorneys general, as well as consumer class actions and legal suits against the sellers.

II. ADVERTISING REGULATION AND CONSUMER PROTECTION IN UNITED KINGDOM

The Consumer Protection Act, 1987 is an act of the Parliament of United Kingdom which lays down provisions to safeguard the interests of the consumers in their country. The aim of the Consumer Protection Act is to help shield the consumers from products which fail to reach a reasonable level of safety. The Act goes on to establish a 'general safety requirement' which says that all goods for domestic use must be reasonably safe, bearing in mind all the circumstances. The powers under the act allow suspected goods to be suspended from sale for up to six months, while checks on safety are conducted. If the goods under check are found to be faulty, then the goods may be destroyed by the inspection agencies.

The act also states that if any consumer gets injury or in extreme cases die while using a defective consumer good, then in such a scenario, the case would be filed against the manufacturer and importer as well and not only against the seller of the product. The act also states that it is a criminal offence to misguide the customers while quoting a price of the product to them. A seller would be held liable if he wrongly print the price of the product on the packaging or if he misquotes the price during an advertisement of the product. (2012)

When the British consumers buy goods (including goods supplied as part of a service), the consumer law gives them certain rights as a consumer. The law says that the goods must:-

- be of satisfactory quality. This means that the goods should be of the quality that a reasonable person would expect given the description, price and any other relevant circumstances. The consumer can take into account the appearance and finish of the goods, and whether there are any defects (including minor ones). The consumer can also take into account whether

publicized information about specific features of the goods is accurate, and whether the goods are safe when used properly

- be fit for the purpose. This means that the consumer must be able to use them for the purposes as he would normally expect from this type of product
- match their description. This means that if there is a verbal or written description of the goods, it must be accurate. And if consumer chooses goods after seeing a sample, the goods must match the sample.

It is a criminal offence for a trader to put a false description on goods.

The act says that as a consumer, you have the right to return the goods and get your money back if they are not of satisfactory quality, are not fit for their purpose, or do not match their description. However, you only have this right for a short time after you bought the goods. Alternatively, you may have the right to compensation. You may have the right to ask the trader to repair or replace the goods, to get some of your money back, or to cancel the contract you made when you bought the goods. If the trader offers you a credit note, you do not have to accept it. (2011)

III. MISLEADING ADVERTISEMENTS

The ASA (1961) which is the UK's independent regulator of advertising across all media applies the advertising codes on all the advertisers which are written by the Committee of Advertising Practice. The ASA (1961) states that it may take the Consumer Protection from Unfair Trading Regulations 2008 into account when it adjudicates on complaints about advertisements that are alleged to be misleading. Advertisements must not materially mislead or be likely to do so. Advertisements must not mislead consumers by omitting material information. They must not mislead by hiding material information or presenting it in an unclear, unintelligible, ambiguous or untimely manner. Material information is information that consumers need in context to make informed decisions about whether or how to buy a product or service. Whether the omission or presentation of material information is likely to mislead consumers depends on the context, the medium and, if the medium of the advertisement is constrained by time or space, the measures that the advertiser takes to make that information available to consumers by other means.

For advertisements that quote prices for an advertised product or service, material information includes:

- The main characteristics of the product or service
- The identity (for example a trading name) and geographical address of the marketer and any other trader on whose behalf the advertiser is acting
- The price of the advertised product or service, including taxes, or, if the nature of the product or service is such that the price cannot be calculated in advance, the manner in which the price is calculated
- Delivery charges

The arrangements for payment, delivery, performance or complaint handling, if those differ from the arrangements that consumers are likely to reasonably expect

That consumers have the right to withdraw or cancel, if they have that right.

Advertisements must not mislead by omitting the identity of the advertiser. Advertisements must not falsely imply that the advertiser is acting as a consumer or for purposes outside its trade, business, craft or profession. Advertisements must make clear their commercial intent, if that is not obvious from the context. No advertisement may use images of very brief duration, or any other technique that is likely to influence consumers, without their being fully aware of what has been done.

IV. CONSUMER REMEDIES FOR FAULTY GOODS IN UK

Currently, UK consumers have a legal "right to reject" faulty goods. This means a right to a refund if they act within "a reasonable time".

The right to reject is available as a first hand remedy for the grieving consumers. It is a simple, easy to use remedy which inspires consumer confidence. Under normal circumstances, a consumer usually has 30 days to return faulty goods and receive a refund, with limited flexibility for special circumstances such as perishable goods, or goods which both parties know will not be used for some time.

V. DISCUSSION

The research shows that both USA and UK take keen interest in safeguarding the rights of the buyers and in helping them get a fair deal from the manufacturers while making a purchase. The countries have put in place an adequate number of rules to make sure that the buyers are treated fairly and they have a say in the post purchase services being offered to them by the sellers. Although, in the larger picture, a fair and just system of sale and purchase of goods can be institutionalized by having a marketplace where the sellers sell goods of supreme quality in full trust to their buyers, while the buyers will be able to make the purchases in full faith.

REFERENCES

- [1] Advertising Standards Authority ASA (1961), *Advertising codes*, viewed 30 July 2012, <<http://www.asa.org.uk/>>
- [2] US Food and Drug Administration (1994), *Protecting kids from tobacco*, viewed 1 August 2012, <<http://www.fda.gov/TobaccoProducts/ProtectingKidsfromTobacco/RegsRestrictingSale/ucm204589.htm#Advertising>>
- [3] The Federal Trade Commission (1914), *Consumer Protection*, viewed 1 August 2012, <<http://www.ftc.gov/bcp/index.shtml>>
- [4] *Consumer Protection in USA 2012*, Consumer bill of rights viewed 26th August 2012 <http://en.wikipedia.org/wiki/Consumer_Bill_of_Rights>
- [5] The FTC (1938), *Advertising regulations & Consumer protection*, viewed 30 July 2012, <http://www.ftc.gov/bcp/bcpap.shtml>
- [6] The Federal Trade Commission, *Division of Advertising Practices*, viewed 25th August 2012, <https://www.ftc.gov/about-ftc/bureaus-offices/bureau-consumer-protection/our-divisions/division-advertising-practices>

- [7] Misleading advertisements, viewed on 6th September 2012, www.kb.clearcast.co.uk
- [8] Rights and advertising, viewed on 18th September 2012 www.businesscompanion.info
- [9] Weber Waller, Jillian G. Brady and R.J. Acosta (2011) , “Consumer Protection in the United States: An Overview Spencer”
- [10] Fair Credit Billing Act, *Consumer Rights Laws – know your rights under the law*, viewed 25th August 2012, <https://ascendantequitydotcom.wordpress.com/tag/fair-credit-billing-act/>
- [11] United States Department of Justice, viewed 30th September 2012, <https://www.legalizemusic.com/resources/>
- [12] Returning Goods - Transcript and Notes, viewed 15th September 2012, <http://jeffreyhill.typepad.com/files/returninggoods.pdf>
- [13] Guide on Market Surveillance and Safety of Consumer Products, viewed 10th August 2012, http://www.oecd-ilibrary.org/governance/guide-on-market-surveillance-and-safety-of-consumer-products/manufacturers-complaint-form_9789289335898-18-en
- [14] Misleading advertising, BCAP code, viewed on 12th September 2012 https://www.asa.org.uk/type/broadcast/code_section/03.html

AUTHORS

First Author – Uzma Hasan, PhD Scholar, Department of Management, FMIT, Jamia Hamdard, New Delhi, INDIA
Email – me.uzma@gmail.com Contact: +91-09711873289