

NCDCA/2024/1178 dt 9/12/2024

Before the District Consumer Dispute Redressal Commission [Central District] - VIII,  
5th Floor Maharana Pratap ISBT Building, Kashmere Gate, Delhi  
Complaint Case No. 53/27.02.2013

Nikhil Jain, B-9/3, Vallabh Vihar Society,  
Sector-13, Rohini, Delhi-110085

...Complainant

Versus

OP. Emami Limited Regd. office-Emami Tower,  
687 Anandpur, EM Bypass, Kolkata-700107  
North Zone Office- Emami Ltd.2E/26, Jhandewalan  
Extension, New Delhi-110055

...Opposite Party

Coram:

Shri Inder Jeet Singh, President  
Ms Rashmi Bansal, Member -Female

Date of filing: 27.02.2013

Date of Order: 09.12.2024

### FINAL ORDER

Inder Jeet Singh, President

It is scheduled today for order (item no.1)



**1.1. (Introduction to case of parties)** –The complainant has grievances against OP of unfair trade practice inclusive of misleading advertisement in respect of a product “fair and handsome cream” world’s no.1 cream for men [hereinafter briefly referred as product or subject product], which was purchased for Rs. 79/- against cash memo by him for self-use and then used it as per instructions to gain fairness but it has not given the results especially of fair skin as assured of the product, the product is defective. The complainant purchased the product on the basis of claims of OP of the product including on the package of product. That is why the complaint against OP by seeking directions for corrective advertisement continuously for a period of one year across the year that the product does not provide fairness to the skin of men besides punitive damages of Rs.19,90,000/- and litigation cost of Rs. 10,000/- in favour of complainant and against the OP.

**1.2.** The OP opposed the complaint that neither there is any unfair trade practice nor any misleading advertisement nor this Consumer Fora has pecuniary jurisdiction on the basis



of claims alleged. The product is a scientific proven product, the complaint does not decipher any defect in the product to construe it a defective product. The complaint does not mention of obeying of the instructions given for use of the product. The product has gone through various scientific tests and it is also a tested product, meant for young men within the age of 16-35 years for protecting their facial and neck skin from UV rays of sun, which causes darken of the skin. The complainant is not entitled for any relief as claimed in the complaint.

1.3. (Previous proceedings) - This complaint was filed under the provision of the Consumer Protection Act 1986. The product was purchased by complainant for Rs. 79/-, the other claims are of Rs.20 lakhs and the total claim amount comes Rs.20,00,079/-. On perusal of the previous proceedings and other record, there is statement dated 24.09.2015 by Sh. Paras Jain, AR/brother of the complainant (besides he is also Advocate for complainant) that the entire claim in the complaint is restricted to the amount not exceeding of Rs. 20 lakhs. Then subsequent proceedings took place in the case.

1.4. Moreover, this complaint was earlier disposed off by Ld. Predecessors by reasoned final order dated 31.10.2015 in favour of the complainant and against the OP. However, the OP had preferred first appeal no. 549/2015 before the Hon'ble State Commission, Delhi and the appeal was allowed by order dated 01.05.2017 by remanding the matter back to hear the parties afresh and to decide the same after considering evidence of the parties and other material. Then the proceedings were resumed and proceeded with, now the final order is being rendered.

2.1. (Case of complainant) – Briefly, the complainant is a consumer and the complaint is through his AR Sh. Paras Jain for grievances of unfair trade practice u/s 2 (f) defining 'defect' and 2(r) defining 'unfair trade practice' under the Act 1986. The complainant purchased the product of Fair and Handsome cream, against invoice Annexure-1 to the complaint, to get all benefits as acclaimed by the OP to be the results one can get by use of the product being sold. The following benefits are mentioned on the label and packing of the products with instructions (which are visible from Annexure-3 to the complaint):

(i) Fast action lumino peptide-unique lumino peptide complex effectively penetrates deep in to tough male skin, making it fairer in just 3 weeks.

(ii) V-Block- Zinc Oxide protects skin from pigmentation caused by exposure to UVA/UVB rays, dirt and pollution.

(iii) Mark Free- Aloe Vera removes blemishes caused by shaving cuts and bruises.

(iv) Protein Booster- Smoothens skin, improves texture, reduces wrinkles and restores skin elasticity.

(v) Glow Plus- Skin nourishing agents like Vitamin-E & A make the skin glow more than ever-before.



However, the product is not of the quality and potency as claimed by the OP, the complainant did not get even a single benefit after using the product for tenure given as per directions/instructions mentioned on the labeling/ packing, which reads as “apply on face and neck twice daily after cleansing for faster glowing fairness. Regular usage recommended for the best results”. But the product Fair & Handsome, world’s no.1 fairness cream for man failed to show any of the result as claimed by OP.

2.2. The OP has been using the famous and well known actor as its Brand Ambassador for promotion of the product and making false promises and claims. It is claimed by OP that the product makes fairness to a man in just three weeks. It is unfair trade practice adopted by the OP, it is covered u/s 2(r) of the Act 1986 since OP has adopted such method for the purposes of promoting the sale, the use or supply of goods, which is unfair or deceptive practice as defined u/s 2(r) (i) (vi) of the Act 1986. The said advertisement was broadcasted by the OP on the television, which has been captured and fed to CDs (being Annexure-4 to the complaint). The OP has also advertised such claim on the website of this product, (its prints are Annexure-5 to the complaint). Moreover, the complainant wrote his grievances on email to the OP (Annexure-6 to the complaint) complaining of failure of the product but there was no response by the OP. The consumer has right of proper information about the product it buys and the complainant has purchased the product on the basis of claims made in the advertisement, therefore, there



is clear violation of Right to Information protected under the Act against unfair trade practice. That is why the complaint for the relief claimed (already enumerated in paragraph 1.1 above).

**2.3** The complaint is accompanied with documents/copies – Annexure-1 to 6 already enumerated besides authority letter in favour of Sh. Paras Jain, AR of the complainant to appear and proceed the complaint.

**3.1 (Case of OP)-** The OP opposed the complaint by filing written statement through Sh. V. K. Khetan, working for gain under OP. The written statement dated 29.07.2013 is strictly not replying corresponding to the paragraphs of the complaint, the written statement is narrative in paragraph 1 to 15 as per own case of the OP, at some places paragraphs of complaint are referred. Moreover, there is very specific plea [by the author of written statement] in paragraphs 7 & 9 of the written statement that these two paragraphs are of matter of record but the other paragraphs 1-6; 8-14 and 15 are true as per his knowledge. To say, paragraph 7 and 9 are not as per his knowledge of author of written statement.

**3.2.** The written statement pleads that complaint is false and it is not maintainable. The complainant alleges that he had purchased a tube of Fair & handsome cream on or about 08.10.2012 from a local shop but the cash memo filed does not contain serial number, name of the shop, name of the purchaser, which shows that the complainant had not purchased the said cream. Further, the case of complainant is that he did not obtain a single benefit after applying the product; in other words he had not obtained the desired results by using the cream. Whereas, the subject product - Fair & Handsome Cream- is manufactured by the OP under a licence from competent authority, the product is backed by scientific research, evaluation and quality control; it is manufactured under strict quality control and product is extensive and scientific research. The complainant failed to show that the use of cream regularly for more than three weeks as per the directions. The complainant has been motivated made to malign the goodwill and reputation of OP, who is renowned manufacturer of consumer goods.

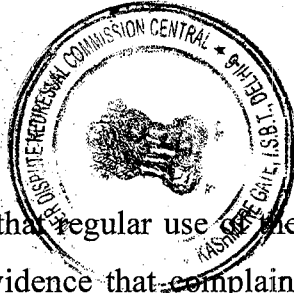


**3.3.1** The paragraph 7 of the written statement narrates that product Fair & Handsome product has been developed by USA based Dr. Chanda Zaveri, a renowned skin expert and protégé of two times noble prize winner in collaboration with India Herbalists and Dermatologists. He possesses various US patents for invention of peptide complex in respect of dermatology healing, treatment of alopecia, hair ailments and various cosmetic products relating to hair and skin care treatment and beautification and has also extensive know how and technical knowledge as regard to manufacture of various cosmetic and herbal products. The product also mentions this fact on its label.

The written statement explains the meanings of the terminology. The OP had also got done study, “evaluation of skin cream, formulation to confer fairness on healthy male subjects” conducted at the KET’s Scientific Research Centre, Mumbai in respect of its product (its finding are Annexure-A1) and it suggests that the complaint is false. Annexure-A2 to the written statement is justification notes in respect of fair and handsome product. There is nothing misleading as alleged in the complaint or unfair trade practice on the part of OP.

**3.3.2** The paragraph 9 of the written statement narrates that the product Fair & Handsome Cream is a personal care product to keep skin healthy. The skin being one of the larger organ of the human body besides the facial and neck skin largely exposed to the vagaries of nature, sun light (ultraviolet rays), dust, wind, etc., the cream provides protection and nourishment to the facial and neck skin.

In order to have desired result from the use of a personal care product in any market anywhere in the world depends upon a host of other adjacent factors such as proper usage of the product and proper nutritious diet, exercise, healthy habits, hygienic living condition etc. The effect of the product shall vary with these variables including age of the user. It is evident from the packaging that the product has been produced for the use of young man within the age group of 16-35 years for protecting their facial and neck skin from UV rays of the sun, which causes darkening of the skin, soften, nourish the skin and remove the blemishes. The OP has also received email of appreciation from the users for benefited from the product (which is Annexure-B2 to the written statement).



3.4 The OP emphasizes that regular use of the cream would definitely enhance the skin health but there is no evidence that complainant used the cream regularly for his skin condition or it did not improve. The claim of complainant is without appropriate medical opinion from a dermatologist. Moreover, there is no narration regarding the previous condition of the skin of the complainant, his life style and healthy habits his general physical condition, therefore, the complaint is not supported by any iota of evidence.

The allegations in the complaint do not establish any defect in the product nor it indicates any unfair trade practice by the OP vis-à-vis the product is manufactured by the OP for use in tropical country to provide protection from UV rays of the sun which causes darkening of the skin. The cream provides nourishment, which makes skin soft and supple generally making a fairer, smoother, softer, healthier, adding a healthy glow; although degree of effect will vary from person to person depending upon variable factors.

3.5. The complaint also suffers from non-joinder of necessary parties from whom the product was purchased. The complaint is mala-fide and it is not tenable besides there is no corroboration or averment to justify tall claim and any emotional disturbance suffer by the complainant to claim amount of Rs.19,90,000/- but the complaint is to malign the goodwill of OP. The complaint deserves dismissal with exemplary cost.

3.6 The written statement is accompanied with special power of attorney in favour of Sh. V.P. Khetan by the OP, Annexure-A1/evaluation of skin formulations, Annexure-A2/Fair & Handsome Cream handsome justification note (comprising certain references/literature on the ingredients of products, Tinasorb M, alovera, licorice, their compounds, properties and effects, two emails of appreciation- email dt 26.03.2013 & 06.02.2013/Annexure-B).

4.1.1. (Evidence)- In order to prove the complaint, the complainant Sh. Nikhil Jain led his evidence by filing detailed affidavit of evidence, it is on the pattern of complaint. In addition, 3CD compact have also been filed /proved with true transcript to show the audio-visual video advertisements of product by Ambassador of OP.

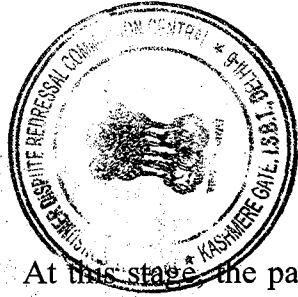
4.1.2. The complainant had filed an application for appearance and examination of that Ambassador as a witness in the proceedings, however, this application was not in detail and the request was declined by reasoned order dated 31.10.2017 by I.d. Predecessors. The complainant assailed this order dated 31.10.2017 in FA. No. 643/2017 before Hon'ble State Commission, Delhi and it was dealt by order dated 19.12.2017, the revision petition was dismissed on insistence of counsel Shri Paras Jain, Advocate for petitioner that before hearing on the revision petition, the original file of the case was to be summoned by the State Commission.

4.2.1 The OP also led its evidence by affidavit dated 09.04.2014 filed of Shri V P Khaitan, working for gain by narrating that he has read affidavit of Shri Nikhil Jain ( of complainant) and he has been authorized to file evidence of affidavit by OP.

4.2.2 There is another affidavit dated 17.05.2014 of Sh. Prof. Bijan Kr. Gupta under the title "affidavit of expert", it is on non-judicial stamp paper of Rs.100/-.

5.1.(Other aspects) – Subsequent to remand of matter by the Hon'ble State Commission, Delhi while setting aside final order in FA. No. 549/2015, the complainant filed an application seeking permission for picking up a fresh sample of product Fair & Handsome cream from open market and for its testing through appropriate laboratory. This application was heard on 01.12.2022 and it was dismissed/ disposed off by detailed reasoned order on 02.01.2023. Then both the parties were asked to make final submissions on date given being an old case.

5.2. However, the complainant assailed order dated 02.01.2023 in RP. No. 06/2023 before Hon'ble State Commission, Delhi and his revision petition was dismissed by order dated 13.09.2023. Thence, the complainant preferred RP no. 1858/2024 before Hon'ble National Commission, New Delhi against order of Hon'ble State Commission, Delhi. The proceedings were placed on record and there are specific directions that this District Commission shall proceed in the matter and shall not adjourn the case only on the ground of filing of revision petition.



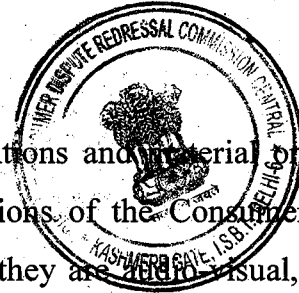
**6.1 (Final hearing)-** At this stage the parties filed their written arguments. The parties were also given opportunity to make oral submissions, then oral submissions were presented by Shri Arav Pandit, Advocate along-with Ms. Dhanakshi Gandhi, Advocate for OP.

The complainant failed to make the final submission despite the final opportunity and there were specific direction that this is an old case and on 02.08.2024 it was specifically recorded that counsel for complainant will come after preparation of the case but on the scheduled date of hearing, the counsel for complainant instead of appearing himself, he deputed Interns. In addition, when the OPs were heard on 10.09.2024 and while adjourning the case for orders, the complainant was again given an opportunity that submissions may be made within 15 days so that the complainant may not feel that he remained unheard, the complainant failed to make submissions despite this additional opportunity.

**6.2.** Since there are pleadings, evidence, documents, affidavit of expert and other literature besides written arguments of the parties, all of them will be considered while appreciating the case of parties.

**6.3.** After schedule of the date for order for today, it was 20.11.2024, when the complainant [through his counsel Shri Paras Jain, Advocate] presented an application alongwith Annexure-1/colour photo of label and packaging (being new packaging and label) of product Emami - Fair & Handsome Cream to take the same on record and the same may be considered that the OP has adopted new packaging and labeling for the product, which corroborates the case of complainant that OP had adopted unfair trade practices and methods to sell the product.. Then, immediately it was pointed out as to how it could be read in evidence being beyond the pleading, it was explained that the same may be considered as supplement to the written arguments. Thus, it was directed let the same be provided to the other side within week to inform and apprise the other side but it will not require separate finding on the application.





**7.1 (Findings)** - The case of the parties, their contentions and material on record are analyzed, assessed and considered besides the provisions of the Consumer Protection Act, 1986. The 3CDs of advertisement are also seen, they are unusual, they are of 39-seconds, 25-seconds and 24-seconds respectively, correspondingly their audio transcript filed are also read. The literature filed by OP are also considered, which pertains to ingredients of subject product like herbs, its properties, chemical properties, its use etc. The studies presented are also perused that too in reference to Sh. Prof. Bijan Kr. Gupta's affidavit and its contents.

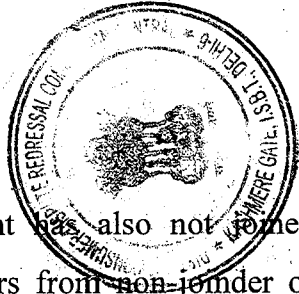
There are many allied issues emerged besides the core issue "whether or not the complainant has proved the complaint against OP". Therefore, it is appropriate to deal with allied issues firstly and then subject to it, main issue will be considered.

**7.2.1.** The OP has reservation that the pecuniary jurisdiction of the Consumer Forum was upto Rs.20 lakhs but the total value of the goods and other claims mentioned in complaint [for the purposes of the jurisdiction] is actually for Rs. 20,00,079/-, it is beyond the pecuniary jurisdiction, the complaint is to be dismissed. Whereas, the plea of complainant is just opposite to it that complaint is valid and proper.

**7.2.2** The answer of this contention is in the record itself, which has already been mentioned in paragraph 1.3 above that complainant's AR had given statement on oath on 24.09.2015 that the claim in the complaint is restricted to the extent of not exceeding Rs. 20 lakhs. Then complaint proceeded ahead after that statement on behalf of complainant, that value of complaint for the purposes of jurisdiction does not exceed Rs.20 lakhs, therefore, the complaint was within the pecuniary jurisdiction of this District Consumer Forum/Commission.

Since the present Consumer Fora has having jurisdiction, therefore, other issues are being taken up.

**7.3.1.** There is twin issue that the complainant failed to prove that he had actually purchased the product against invoice, since the invoice does not mention name of the complainant, its batch and date of purchase as well as the name of shop/store from whom it was purchased. As such the complainant is not a consumer. The other limb of issue was



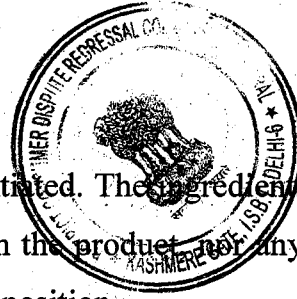
that complainant was also not joined that shop/seller of the product, therefore, the complaint suffers from non-joinder of necessary parties and complaint is liable to be dismissed.

On the other side, the case of complainant is that Annexure-1 is the invoice/cash memo T1/15566 dated 08.10.2012 and it was purchased from KB Fair Price Shop, C3/7, Ground Floor, Prashant Vihar, New Delhi for his use, which suffice to prove that the product was purchased by him for his use. He is a consumer.

7.3.2. As per record, the complainant has proved purchase of product against invoice of Rs. 79/- and the payment was by way of cash, which was generally a practice that when payment is made in cash, the cash memo is issued without name. The invoice Annexure-1 clearly mentions the date, cash memo number, timings, mode of payment-cash, name of its proprietor, address, contact number, Quantity-1 of Emami Fair & Handsome and its weight besides the payment of Rs. 79/- tendered. The paragraph no.2 of affidavit of evidence and also paragraph 2 of complaint mention name and address of shop. It establishes that the product was purchased by the complainant vis a vis it is never the case of OP that cash memo proved is claimed by someone else. The complainant was also end user of the product purchased, therefore, he is a consumer.

So far OP's objection of non-joinder of shop-keeper of the product is concerned, the complainant has grievances against the OP for want of results despite regular use, therefore, when no cause of action is narrated against shop-keeper nor any claim against it, the shop-keeper is not a necessary party and the issues involved can be determined in the absence of shop-keeper. It is held that the complaint is not bad under law for non-joinder of shop-keeper.

8.1 The complainant has grievances that the product was defective and despite use of the same as per instructions, it has not given result of fairness to his skin but on the other side the OP has reservation that complainant could not prove that the product was used as per instructions and other associated factors. The complainant could not prove what was the defect or short coming in the product to make out a case of defect, especially Advertising Standards Council of India, after its satisfaction, has held OP's claim that



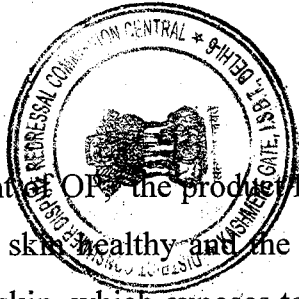
Fair & Handsome product gives fair skin is substantiated. The ingredients of the product meet the requirement, there was no short-coming in the product nor any defect therein, therefore, the claim of the complainant is absurd proposition.

**8.2** On comparison of rival contention, the case of complainant is that he was using the product regularly as per instructions given on packaging and label of product "apply on face and neck twice daily after cleansing for faster glowing fairness'. but he did not gain fairness in his skin or other benefits vis-à-vis on the other side the case of OP is that the product constituents of ingredients mentioned, there was no defect in the product but it was complainant, who could not prove the use of product as per instructions. There is no expert report by the complainant.

When a consumer buys product for end use and uses it, generally a consumer does not keep written account of use of that product alike following of medical prescriptions. Similarly, the complainant has not mentioned that after buying the product, on which date he started use of the product and what was the last date till then the product was used by him, what exactly was colour of his skin on the date product was firstly applied and what was the colour when product was lastly used and so on. Whether there was any such scale to measure it? Moreover, there is also no photograph of the complainant to make comparison as to what was the colour skin when use of the product was started and also photograph of date when product was lastly used at the end of that tenure. From that point of view, there is no record to cull out to make any conclusion whether or not there was fair skin of the complainant after use of the product.

**8.3.** Simultaneously another important aspect is also emerging by plain reading of packaging, the additional facts mentioned in the written statement and beyond it, more factors are mentioned in the written arguments. It needs to be narrated.

The packaging mentions that that product is to be used regularly twice after cleansing of face and neck, it will result into fairness. For other benefits like glow, use of vitamin-E and vitamin-A were suggested. There is nothing more. The product packaging uses expression Fair and fairness for 12 times coupled with face picture of a man to present an aura that use of cream will result into fairness in three weeks. However, in the

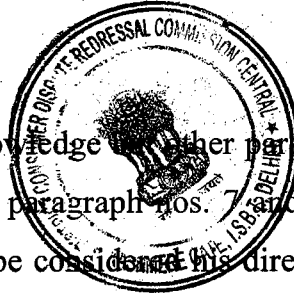


written statement of OP, the product Fair & Handsome Cream stated just a personal care product to keep skin healthy and the cream provides protection and nourishment to the facial and neck skin, which exposes to the vagaries of nature, sun light (ultraviolet rays), dust, wind, etc. Moreover, this product is for the use of young man within the age group of 16-35 years for protecting their facial and neck skin from UV rays of the sun, which causes darkening of the skin, soften, nourish the skin and remove the blemishes. In order to have desired result from the use of a personal care product it depends upon a factors such as proper usage of the product and proper nutritious diet, exercise, healthy habits, hygienic living condition etc. However, such robust conditions are not mentioned on the packaging and labeling of the product nor the written statement claims that product may result into fair or fairness of skin by use of product. There is another improvement in the final written arguments that the product is meant for normal young men (not sick person) in age of 16-35 years. What does sick person means? This additional requirement is also not mentioned on the packaging.

In case, such requirements so mentioned in the written statement and further requirements mentioned in written arguments were conditions precedent for use of product, but for want of mentioning them in the package and label, how OP can expect that the customer/complainant will be knowing them and to follow them? How it will result into fair of skin or fairness in skin by just following only tips just mentioned on the package, which are not complete instructions? It will not bring the results. The OP cannot blame the complainant by alleging that instructions were not followed.

**8.4.1.** There is another important aspect to be dealt with. It is matter of record that the complainant has not led any expert evidence on the subject but on the other side the OP claims that evidence on record proves case of OP besides it has also filed affidavit dated 17.05.2014 of Sh. Prof. Bijan Kr. Gupta to prove that there is study cases and scientific proof to gain fairness in three weeks. There two aspects involved and it needs discussion.

**8.4.2.** On plain reading of paragraph nos. 7 and 9 of affidavit dated 09.04.2014 of evidence of Shri V P Khaitan, they are repeat of paragraph nos. 7 and 9 of written statement. Whereas, in the verification of written statement, he specifically declares that

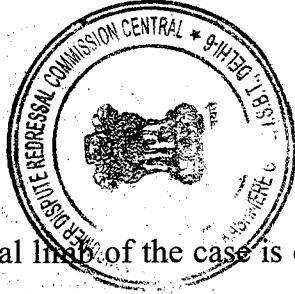


paragraph nos. 7 and 9 are not as per his own knowledge. Other paragraphs of written statement are true to his knowledge. Thus, when paragraph nos. 7 and 9 are hearsay as per author of written statement, then how it can be considered as direct evidence by so mentioning in the affidavit? The answer is in negative. Moreover, Shri V P Khaitan also deposes and declares that he is working for gain with OP, neither his status nor his qualification nor other material aspects are mentioned to cull out how he could depose on those technical and scientific aspects?.

**8.4.3.** The affidavit dated 17.05.2014 of Sh. Prof. Bijan Kr. Gupta is on non-judicial stamp paper of Rs.100/- [bearing West Bengal no.867892] attested by Notary Public at Kolkatta. It is not addressed to the Consumer Forum, Delhi by the deponent but begins with title affidavit of expert; it is general affidavit. Whereas as per section 13(5) of the Act, 1986 the proceedings under the Act, 1986 are judicial proceedings, however, as appearing the deponent of affidavit had not intended that affidavit to be for judicial proceedings in Delhi, that is why it as on non-judicial stamp paper as well as it was not addressed or meant for Consumer Forum, Delhi.

Otherwise, even if, it is to be construed affidavit of evidence, being matter of record, its contents reveals that either they are mentioning qualification of the deponent, or names of ingredients of product, its properties and functions, or previous study conducted and its efficacy. However, the deponent is not author of any of such studies nor to any tests of the product nor there is any personal opinion of the deponent, therefore, the affidavit of deponent cannot be construed as expert evidence on the product. The expert evidence shall contain element of personal opinion on the basis of experience or experiment with the product. In other words, the affidavit is just compilation and presentation of those materials.

**8.5** It also establishes that complainant's allegations of defect in product, which is not in the sense of short of any of ingredients out of which product formulated but of potency in the product and its standard while using under the instructions mentioned on package for use product but no result. It fulfills the requirement of section 2(f) of the Act, 1986. To that extent, the contentions of both the sides are disposed off.

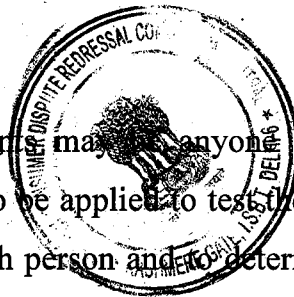


9.1 The other rival line of the case is on the point of unfair trade practice or method or misleading advertisement. The case of complainant is that OP has indulged in unfair trade practice and misleading advertisements acclaiming that by use of its product for three weeks, it results into fair skin of man. The package and labeling of package show visual impressions of a Man besides advertisement through brand ambassador to prompt for sale of product at large scale. But the OP has juxtaposition stand that product is scientifically proven product, it is backed by research, study and tests. The instructions are to be followed for desired results besides proper regular usage of the product and proper nutritious diet, exercise, healthy habits, hygienic living condition etc. There is nothing misleading or unfair trade practice or method.

9.2. On assessment of this rival plea, it needs to discuss material involved. The complainant has proved the package of product "Emami- Fair and Handsome world's no.1 cream for Men". There are visual impression of a Man with color skin shade after interval of one week, two week and three week (with scale of fast-o-meter) to show result of use of product [Annexure-3 page12-15]. The instructions for use are also mentioned to be followed to achieve the result. A word 'Fair' has been used repeatedly besides another word 'Fairness' on all the sides of package in cube shape. Thus, there is combination of visual of man, fair colour combination, words Fair and fairness with 'scale of fast-o-meter coupled with 1<sup>st</sup> week, 2<sup>nd</sup> week and 3<sup>rd</sup> week to create an aura and strong impression that use of product for three week will result into fair of skin. The advertisement (in 3CDs) is also to emphasize features of fair skin of men by use of product to be fair alike brand ambassador.

Fair skin refers to skin that has light complexion. The persons of fair skin typically have less melanin, which is a pigment responsible for skin colour. That is why OP emphasizes that the ingredient of the product constitute element, which contribute to the fair/fairness of skin.

Broadly, the advertisement are either informative [about the product or services or its use] or demand oriented/to promote sale of such product or services or combination of

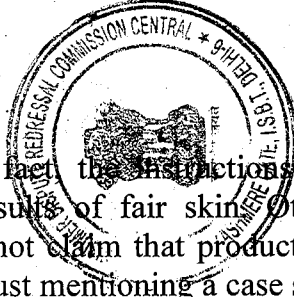


both. However, the receptive of such advertisements may vary from person to person but generally reasonable average man's intelligent test/standard is to be applied to test the character of trade practice or how it affects the psyche of any such person and to determine whether advertisement will be perceived as deceptive or not. The Advertising Standard Council of India (ASCI) was set up, to enforce ethical Code on advertising, and it was a non-profit organisation and non-statutory body. ASCI had adopted Code for its self-regulation advertising- (i) honest representation, (ii) non-offensive to public (iii) against harmful products/situations and (iv) fair in competition. Its objective were - (a) to enhance image and trustworthiness of advertisement (b) to safeguard against misleading advertising (c) to develop generally accepted standard of public decency and (d) to avoid such practice as are unacceptable to society at large. Therefore, OP's claim that Fair & Handsome product gives fair skin is substantiated by ASCI is not to be looked in isolation but under the totality of circumstances of this case. Therefore, the following conclusions are drawn from the material and evidence on record:

(i) The subject product presented in packaging and labeling with visual of a man coupled with words and other surroundings, described in this sub-paragraph 9.2 above. There is also instructions for benefit of fair of skin (for man) for applying the product cream locally for three weeks as "apply on face and neck twice daily after cleansing for faster glowing fairness. Regular usage recommended for the best results". For other benefits, there are further instruction like use of vitamin-A and vitamin-E. No further instructions are mentioned. It means to have benefit of fair skin, the instructions mentioned on package are to be followed, none else. The undisputed visual-audio advertisement, captured from TV advertisement, is also not an exception to this theme.

(ii) However, the case of OP in trial of this complainant [as mentioned in the written statement and evidence] is swinging firstly the Fair and Handsome cream product is for the use of young man within the age group of 16-35 years [but it was further qualified in final written arguments that the product is meant for those man of age of 16-35 years but not for sick person]. Secondly the product is for protecting their facial and neck skin from UV rays of the sun, which causes darkening of the skin, soften, nourish the skin and remove the blemishes. Thirdly, it is personal care product and for desired result from the use of a it depends upon its proper use for more than three weeks, proper nutritious diet, exercise, healthy habits, hygienic living condition etc.

But such conditions and instruction are not mentioned on the packaging and labeling of the product required to be followed for desired result nor in the advertisement. When these are necessary requirements, why OP with-held it from mentioning on the



packaging? In fact, the instructions given on the packaging is complete code to be followed for results of fair skin. Otherwise, the OP in its the written statement or otherwise does not claim that product may result into fair or fairness of skin by use of product except just mentioning a case study in the affidavit of Prof. Bijan Kr. Gupta.

(iii) As appearing the OP's stand is that instructions (i) and (ii) above are to be strictly followed together by the customer for desired result. If that is so, it also infers that just following one set of instructions (i) above exclusively, it would not give desired results. Whereas, the OP has not mentioned other conditions (ii) above on the packaging and labeling to be followed by the complainant while using the product. The packaging and labeling with instructions [(i) above] on itself is complete for use of product, what an ordinary man will take the impression from the name of subject product, its purpose, use and results for fair skin.

(iv) The Evaluation of Skin Formulations report (Annexure-A1) has been proved by the OP. It also lays down scale of skin as "0-for dark skin" and result of "8.2 for fairness". It means studies relied upon by the OP reflects that for results of test shows that product is for man having dark skin. The OP has not mentioned on the packaging, labeling and in the advertisement that product is meant for men having dark skin but packaging and label Annexure-3 (of paper book of complainant) highlights that 'fairness cream for men' on three sides of packing. The OP is offering, selling and advertising the product for Indians (men) irrespective of their complexions.

Further, this evaluation also does not mention that it is for age group of 16-35 years or requirement of other conditions being invoked by OP, already discussed in sub-paragraph (ii) above.

The conclusions drawn above, makes it crystal clear that the OP is offering the product - Fair and Handsome cream with few, negligible and limited instructions on the packaging and labeling that its use regular use for three weeks will result into fairness in the skin of man, despite knowing that instructions mentioned are incomplete instructions and for want of following the other requirements, it will not give the result claimed. A reasonable/ average intelligent customer will also take the convincing impression that by following those exclusive instructions so mentioned on package would give the results claimed on the product. This proves misleading advertisement and unfair trade practice that in order to promote product and sales, such strategy was adopted by the OP. In case the ingredients of product are having properties and potentials but it would not extend benefit to the OP, since to derive all benefits of such potentials all requirement were to be



followed but such instruction ought not be withheld being necessary information and requirement needed to be followed by the consumer of product.

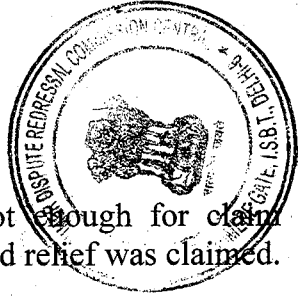
Thus, in view of the above, it is held that complainant has succeeded to establish the complaint against OP that there is unfair trade practice by OP by adopting methods of representations on packaging and by advertisement which were deceptive and misleading to promote sale of its product. The OP is required to be directed to discontinue the unfair trade practice in respect of its product and to withdraw those advertisements of its brand ambassador and not to re-exhibit by mode of audio or visual or combination thereof forthwith. It would not be out of context to mention that recently on 20.11.2024 the complainant has placed on record colour xerox copy of new packaging of the product, some of new features mentioned are 'for tough male skin', 'no.1 fair and handsome " besides other impressions and changed wordings. The OP has changed appearance and many wordings of packing and labeling but no comments are warranted by this Commission that it was to dislodge claim of fairness of skin by OP.

Since this complaint pertains to year 2013 in respect of the respect product but on 20.11.2024 the complainant has also placed on record the new packaging and labeling of OP's product Fair and Handsome for man, this new label or packing does not bear those words or instructions which were on packaging and label (Annexure-3 to complaint), therefore, corrective advertisement in news paper on daily basis for a period of one year is not required and complainant's this request is declined to that extent.

**10.1** The last limb of the case is on point of damages. The OP denies the claim of complainant that no loss or injury is suffered by the complainant nor any negligence on the part of OP; the OP cannot be burdened with any amount of damages or compensation.

The OP derives reasons from the following cases:

(i) General Motors India Private Limited Vs Ashok Ramnik Lal Tolat and anr [IV 2014 CPJ 1 (SC)] there advertisement and sale of vehicle as SUV, which was purchased by complainant but it was passenger car, he had sought refund of amount with interest. That matter went upto super Commission and he awarded punitive damages by the National Commission. Held that mere proof of unfair trade



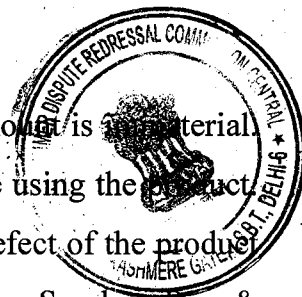
practice is not enough for claim of award of relief of unless cause of loss is also established and relief was claimed.

(ii) Ravneet Singh Bagga Vs. M/s KLM Royal Dutch & Another (2000) 1 SCC 66, held that the deficiency in service cannot be alleged without attributing fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of the, performance which is required to be performed by a person in pursuance of a contract or otherwise in relation to any service. The Burden of proving a deficiency in service is upon the person who alleges it. The complainant has, on facts, been found to have not established any willful fault, imperfection, shortcoming or inadequacy in the service of the OP 1. In the absence of deficiency in service, the aggrieved person may have a remedy under the common law to file a suit for damages cannot insist for grant of relief under the Act for the alleged acts of commission and omission attributable to the OP 1 which otherwise do not amount to deficiency in service. In case of bona fide disputes no willful fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance in the service can be informed. If on facts, it is found that the person or authority rendering service had taken all precautions and considered all relevant facts and circumstances in the course of the transaction and that their own action or the final decision was in good faith, it cannot be said that there had been deficiency in service. If the action of the OP 1 is found to be in good-faith, there is no deficiency of service entitling the aggrieved person to claim relief under the Act. The rendering of deficient service has to be considered and decided in each case according to the facts of that case for which no hard and fast rule can be laid down. Inefficiency, lack of due care, absence of bona fide, rashness and haste or omission and the like may be the factors to ascertain the deficiency in rendering the service."

The case as set up by the complainant is that his total relief/claim does not exceed of Rs.20 lakhs, which comprises the price of product purchased, punitive damages and costs.

**10.2.** It needs to assess the record and see the provisions of law to appreciate rival stand. The expression used 'loss' or 'injury' is not defined in the Act, 1986, therefore, their ordinary meaning is to be considered by taking external aid of dictionary. 'Injury' means 'illegal harm or damage or wrongful treatment, it may be to body, mind and property. 'Loss' means 'things or amount lost'.

The complainant purchased the product manufactured by the OP to gain benefit of fair skin, but the product did not work despite following the instructions mentioned. He also misled by advertisement. Therefore, that complainant suffered loss of Rs.79/-, which

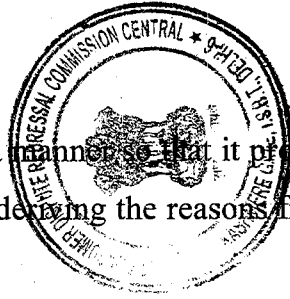


was price of product purchased and for the purposes of losses, the amount is material. There is no evidence by the complainant that he had any injury, while using the product. The product had not worked for him, he complained it to the OP of defect of the product and want of any result despite regular use and his agony. In *Padma Sundara Rao & Others Vs State of Tamil Nadu & others II* 2002 SLT, 483, rule on precedent was discussed that ratio of a case is facts specific i.e. ratio of case has to be read as per the facts of a particular case and even change of a single fact can make difference to the ratio of case. The features of this complaint are different from the cases cited on behalf of OP especially the complainant has claimed/requested for punitive damages. The circumstances and evidence proved the case of complainant that he had suffered loss by buying the product.

**10.3** Since, the complainant claims punitive damages in his favour and against OP; Is it a fit case to award punitive damages?.

Firstly, what is punitive damages? What is its purpose? The Punitive damages (exemplary damages) are assessed and awarded in order to pinch respondent for outrageous/intolerant behaviour and/or to refrain it or to deter others from engaging in conduct similar to that which formed basis of law suit. Punitive damages are also imposed to reform defaulting party as well as to deter other from indulging in such wrongs. Punitive damages are generally given in civil action, however, there is also law in proviso to section 14(1)(d) the Consumer Protection Act, 1986 (w.e.f.15.03.2003 as notified and amended by Act 62 of 2002) for punitive damages. The punitive damages are not fine or penalty as fine is imposed in criminal trials.

It requires to refer evidence on record as well as the contention of the parties. As per their records the OP is leading manufacturer of the product Fair and Handsome cream. The paragraph nos. 8 and 10 above of this order are exhaustive dealing with the rival plea of use of product, its result and unfair trade practice on the part of OP. The OP has also availed the services of its brand ambassador to promote its subject product and sales.



It needs to be dealt in a manner so that it proves to be a deterrent and OP may not repeat it again. Therefore, by deleting the reasons from the record, it is held, it is fit case to award punitive damages.

Now, another allied question is quantification of damages. The damages should be to the extent that it may actually pinch the defaulter, therefore, by deriving reasons of over-all aspect of size of the OP, its engagement for the product at extensive level as acclaimed to be world's no.1 man cream, affording the celebrities for promotion of products, different modes of advertisement etc. vis a vis indulge of OP in unfair trade practice, the punitive damages are determined as Rs.15,00,000/-, out of which Rs.14,50,000/- shall be deposited with State Consumer Welfare Funds Delhi (A/c no. 000000103105447-7, IFSC Code SBIN0001187, MICR Code 110002049) within 45 days of this final order and remaining Rs.50,000/- shall be payable to the complainant since he has been pursuing the case since 2013. It is clarified that the complainant had total claim not exceeding Rs.20 lakhs; loss of price of product of Rs.79/- was not separately mentioned by the complainant, therefore, the amount allowed in favour of complainant includes that loss amount of price too.

The complainant also seeks litigation cost of Rs. 10,000/- In order to file the present complaint under the Consumer Protection Act, the procedure prescribed is to be followed irrespective of amount involved. The complaint was filed in 2013 but it has seen different rounds from original side to appeal to remand of matter back for fresh decision. The complainant deserves the cost. The cost claimed is appropriate, therefore, costs of Rs.10,000/- is allowed in favour of complainant against OP.

**11.** Accordingly, the complaint is partly allowed in favour of complainant and against the OP while directing OP (i) to discontinue the unfair trade practice in respect of its product, to withdraw those packages, labels, advertisements either of its brand ambassador or otherwise and not to re-exhibit by mode of audio or visual or combination of both forthwith; (ii) to deposit punitive damages of Rs.14,50,000/- in



the Delhi State Consumer Welfare Fund (its receipt will be furnished to this Commission in time), (iii) to pay balance punitive damages Rs. 50,000/- (which includes loss amount of Rs.79/-) to the complainant as determined and payable and (iv) to pay costs of Rs.10,000/- to the complainant. The amount will be deposited and payable within 45 days from the date of this order.

The OP is at liberty to deposit the amount (which is payable to the complainant), with the Registry of this Commission by way of valid instrument in the name of the complainant. It is clarified, to dispel doubts, if to be perceived, whomsoever is Principal Officer(s) of OP, by whatever designation(s), will be responsible for compliances of directions/orders as well as for legal consequences of non-compliances of such directions.

12. Announced on this 9th day of December, 2024 [अग्रहायण 18, साका 1946]. Copy of this Order be sent/provided forthwith to the parties free of cost as per rules for compliances, besides to upload on the website of this Commission, besides to upload on the website of this Commission. A copy be also sent to Delhi State Consumer Welfare Fund authorities for appropriate information and action as per rules.

[Rashmi Bansal]  
Member (Female)

  
[Inder Jeet Singh]  
President

[ijs153]

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Registrar/Examiner

District Consumer Dispute Redressal Commission (Central)  
Authorized under Regulation 21 of C.P. (C.C.P.) Regulation 2020

*9.12.24*