(1999) 07 NCDRC CK 0060

In the National Consumer Disputes Redressal Commission

DIRECTOR GENERAL (INVESTIGATION AND REGISTRATION) APPELLANT

Vs

UNIVERSAL GENERICS PVT. LTD. RESPONDENT

Date of Decision : 09-07-1999

Acts Referred:

Citation : 2001 1 CPJ 49

Hon'ble Judges : A.N.Divecha , R.K.Anand J.

Final Decision : NOE discharged

Judgement

1. AN enquiry was instituted on the basis of the Preliminary Investigation Report (PIR) of the Director (Research) who was entrusted with investigation into the complaint dated 11.5.1989 of one Shri Raj Kumar. The Director (Research) after investigation submitted his PIR and recommended institution of an enquiry under Sections 36A(1) and 33(1)(f) of the MRTP Act, 1969 (the Act for brief).

2. ACCORDINGLY, a Notice of Enquiry was issued to the respondent charging it with adoption of and indulgence in unfair trade practices only. It has been alleged that the respondent was importing and marketing cod liver oil under the brand name of "Seven Seas" and making certain false and misleading claims in respect of its quality and standard. It has been further alleged that it is actually vegetable oil fortified with vitamins A and D which was being marketed and sold as "Seven Seas" and not cod liver oil obtained from the liver of cod fish. In reply to the Notice of Enquiry, while denying the allegations, it has been stated on behalf of the respondent that the complaint has been made by one Shri Raj Kumar who is none other than Shri R.K. Badhwar on whose complaint an enquiry No. UTPE 98/85 was instituted and in the order of 16.6.1986'' passed by the Commission it was held that prima facie there was no evidence to support the allegations of unfair trade practices under Section 36A(1) of the Act and no purpose would be served by issuing a Notice of Enquiry and the enquiry was ordered to be dropped at that very stage. It has been mentioned that the present complainant, Shri Raj Kumar who is a business rival, has made the complaint merely with a view to damaging the reputation of the respondent and

is totally baseless. It has also been clarified that the respondent is a licensee of the British Codliver Oils Ltd., U.K. which is the trade mark owner of the "Seven Seas" and was importing cod liver oil liquid BP grade from the British Codliver Oils Ltd., U.K. since 1977 and cod liver oil liquid 170 ML, cod liver oil capsules 100s and 500s were manufactured under a drug manufacturing licence and sold throughout the country. It has been further pointed out that these products were periodically tested and were found to be conforming to the specifications laid down by the British Pharmacopoeia.

On completion of pleadings the following issues were framed : (i) Whether the respondent has indulged in or is indulging in the UTPs as mentioned in the NOE ? (ii) If the answer to Issue No. 1 is in affirmative, whether the same are prejudicial to the public interest ? (iii) What relief ?

3. SHRI Raj Kumar, the complainant and SHRI S.K. Chib appeared as witnesses on behalf of the DG and while the enquiry was at the stage of evidence, an application under Section 36D(2) of the Act was moved on behalf of the respondent stating that the respondent had discontinued the marketing of the product more than 10 years ago and the respondent also gave an undertaking that it would not market the product in future also. A copy of the above application of the respondent was furnished to the DG. We have heard both the learned Advocates for the DG as well as the respondent. It transpires from the perusal of case file that the enquiry was instituted in 1989 and more than 10 years have elapsed since then and the respondent has stopped importing and marketing cod liver oil "Seven Seas" in the meantime. There have been no complaints of adoption of unfair trade practices against the respondent during this period. The unfair trade practice alleged in the Notice of Enquiry can, therefore, be said to have been discontinued with the discontinuation of import and marketing of cod liver oil by the respondent. In other words, the cause of action does not survive now. In any case, on conclusion of the present enquiry, a cease and desist order would have been passed if the allegations of unfair trade practices had been fully established against the respondent who has himself made an application under Section 36D(2) of the Act indicating that the alleged unfair trade practice has since been stopped. The respondent has also given an undertaking that it will not indulge in same or similar prohibited trade practice in future. It thus appears that the provisions of Section 36D(2) have been complied with and in that view of the matter, it is not necessary to persist with the enquiry or to pass a cease and desist order. In the result, the application under Section 36D(2) of the Act is allowed and the Notice of Enquiry is discharged. NOE discharged.