

(2007) 08 NCDRC CK 0036

In the National Consumer Disputes Redressal Commission

SOCIETY OF CATALYSTS

APPELLANT

Vs

VODAPHONE ESSAR MOBILE SERVICE LIMITED

RESPONDENT

Date of Decision : 22-08-2007

Acts Referred:

Citation : 2007 4 CPJ 70

Hon'ble Judges : J.D.Kapoor , Rumnita Mittal J.

Advocate : Omesh Saigal

Judgement

1. -COMPLAINT is being taken up at admission stage.

2. COMPLAINANT claims to be a voluntary consumer association and therefore looks after the interests of consumers at large. This complaint is against the telecom company known as Vodaphone Essar Mobile Services Limited that provides mobile phone service under the brand name "hutch". It is alleged that the OP has announced a contest/lottery to its users and has promised rewards of gold coins and a Maruti SX4 car to a lucky winner. All the Hutch users who have used the voice service for more than 20 minutes in a day are eligible to participate in the contest. The participation is automatic for all the users who fulfils this condition. That on inquiry the said programme got the following message in reply, "roz jeeto sona! Har din sirf bees minute se adhik baat karne par ap pa sakte hain mauka sona jeetne ka, yehi nahin app saath mein jeet sakte hain ek Maruti SX4 bhi". On further inquiry, it was revealed that there was no charge for the contest, the only condition of 20 minutes applied.

According to the complainant this is highly unfair trade practice as contemplated by Section 2 (1) (r) (3) of Consumer Protection Act, 1986. The relevant provision is as under: "unfair trade practice" means a trade practice which, for the purpose of promoting the sale, use or supply of any goods or for the provision of any service, adopts any unfair method or unfair or deceptive practice including any of the following practices, namely- (1) (2) (3) permits- (a) the offering of gifts, prizes or other items with the intention of not providing them as offered or creating impression that something is being

given or offered free of charge when it is fully or partly covered by the amount charged in the transaction as a whole; (b) the conduct of any contest, lottery, game of chance or skill, for the purpose of promoting, directly or indirectly, the sale, use or supply of any product or any business interest.

3. ALLEGATIONS of the complainant are that the general impression given is that as the participation is free, the prize money is being given by the organisers of the contest from out of their pocket. The OP is a telecom company who is not supposed to perform such contest, the whole motive behind the contest is to generate profits through such contest as in a report in Hindustan Times dated 15. 7. 2007, it was published that "the Average Revenue Per User (ARPU) is going down, so every company is focussed on value added services (VAS), estimated to be worth Rs. 4,950 crores in March 2007 and is set to grow by 65% and generate business worth Rs. 8,200 crores by the end of this financial year, according to estimates made by the Assocham. The complainant society carried out a quick and short sample survey, through personal and telephonic contact and otherwise found that almost every ten Hutch users out of a hundred were aware of this contest and they stated that if their talk fell marginally short of 20 minutes on any day, they would make up the difference by making an unnecessary call if need be. This would mean that about 20 lacs Hutch subscribers were willing to make unnecessary calls for a few minutes a day to be able to participate in the contest. There are an estimated 200 lacs Hutch users in the country of these about 10% (i. e. 20 lacs) are aware of the contest and are willing to make marginal adjustments to be able to participate in the contest. It is the estimate of the complainant that on an average all of them have spoken/ will speak an extra two minutes on any single day over the period of the contest to be able to participate in the contest. This means an extra talk time of 40 lac minutes at a cost of approximately Rs. 40 lacs to all the consumers.

4. THE aforesaid allegations prima facie make out a case of highly unfair trade practice as it appears that the contest or lottery is being held not for the interest of phone users but merely to ensure that they make more calls to generate more revenue for the OP-company, the service provider. Prima facie holding of such contest or lottery by mobile service providers is unfair trade practice, firstly the impression has been given that the participation in the contest is free of charge which apparently is false since the cost of organising the contest including the prize money is fully covered in the "transaction as a whole" and secondly it is clear that this contest or similar contests are held for profit and for promoting the business interest of the service provider and give impression that every person who has 20 minutes talk time would get gold coins as well as Maruti SX4 whereas not even fraction of such users would get these prizes and in return the service provider would generate business running in several hundred crores and would only give few lacs by way of prizes. Aforesaid facts and reasons are sufficient to admit the complaint. In the result the complaint is admitted. Let notice be issued to the OP returnable on 25. 9. 2007. Since this complaint has been filed under Section 12 (c) of Consumer Protection Act 1986, on behalf of

consumers at large and numerous consumers having similar interest against the unfair trade practice, we by way of interim order, the OP as well as all other such service providers are restrained from holding, announcing or declaring such schemes, contest or lottery forthwith as floated by the OP-company.

5. THIS order be published in all the national dailies for information of one and all and for compliance of the interim order by all the service provider of mobile phones.

6. COPY of this order be sent to Cellular Operators Association of India with the direction to inform all its members who are providing service of mobile phones about this order. Matter relisted.