

Date of Filing: 24/01/2011
Date of Order: 01/04/2011

**BEFORE THE I ADDITIONAL DISTRICT CONSUMER DISPUTES
REDRESSAL FORUM SESHADRIPURAM BANGALORE - 20**

Dated: 01st DAY OF APRIL 2011

PRESENT

**SRI.H.V.RAMACHANDRA RAO, B.SC., B.L., PRESIDENT
SRI.KESHAV RAO PATIL, B.COM., M.A., LL.B., PGDPR, MEMBER
SMT.NIVEDITHA J, B.SC., LLB., MEMBER**

COMPLAINT NO.155 OF 2011

01. Sri.Adithya Banavar,
S/o R.B.Krishna, Aged 21 years,
Residing at 206/1, 25th Cross,
5th Main, 3rd Block, Jayanagar,
Bangalore - 560 011.
02. Sri.Abhimanyu Kampani
S/o Arun Kampani,
Aged 21 years, Residing at Room
No.206, Ganga Hostel,
National Law School of India University,
Bangalore-560 242.
03. Sri.Aubrey Lyngdoh,
S/o Ricky Sootinck,
Aged 22 years,
Residing at Room No.201,
Ganga Hostel, National Law School
Of India University, Bangalore-242.
04. Smt.Lakshmi Nair
D/o K.Gopalakrishnan Nair,
Aged 19 years, Residing at Room No.101,
New Mess Block, National Law School of
Indian University, Bangalore.
05. Smt.Ashwini Obulesh D/o S.Obulesh,
Aged 20 years, Residing at Romm No.201,
Nilgiris Hostel, National Law Schoold of
India University, Bangalore-560 242

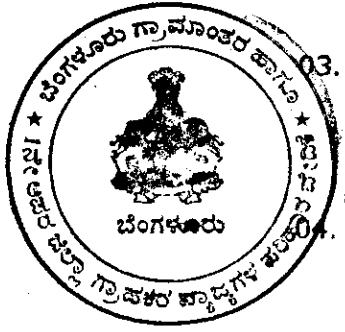
.... Complainant.

V/s

01. Palatte, Mantri Square,
Sampige Road, Bangalore-5,
Reptd by Manager.
02. M/s Pepsi Co India Holdings Pvt. Ltd.,
101/1, "A" Road, MIDC, Dhattav Roha,
Raigarh - 402 116, Maharashtra,
Reptd by its Director.

45





M/s Pepsico India Holdings Pvt., Ltd.,
34th KM Stone, NH-4, Teppadabegur,
Nelamangala, Bangalore-562 123,
Karnataka, Repted by Its Director

M/s Aradhana Foods and Juices Pvt., Ltd.,
NH-9, Mumbai Highway, Pothireddipallaya
Village, Sangareddy, Medak District-502 295
Andhra Pradesh, Repted by Its Director.

.... Opposite Parties

BY SRI. H.V.RAMACHANDRARAO, PRESIDENT

:- ORDER:-

The brief antecedents that lead to the filing of the complaint **U/s 12 of the Consumer Protection Act** seeking direction to the opposite parties to stop unfair trade practice and direction to opposite party to pay punitive damages to the complainant, are necessary:-

The complainants are the students pursuing their L.L.B. Degree in the National Law School of India University, Nagababhavi, Bangalore. The complainants went to the Manti Mall and purchased one liter water bottle of Aquafina, a 330 ml Pepsi Tin and 350 ml bottle of Nimbooz from the 1st opposite party. The one liter water bottle was given to the complainant at the rate of Rs.20/-, whereas it was purchased at M/s Food World Super Market Ltd., at Rs.15/-. The Pepsi Tin purchased at the 1st opposite party was for Rs.50/-, at M/s Food World Super Market Ltd., was Rs.25/-, the Nimbooz costed Rs.50/- at the 1st opposite party and costed at Rs.15/- at the Food World. The M.R.P at the 1st opposite party for these things are different from the M.R.P. marked on the Identical products at Food World. Such variations have been done at the manufacture's levels i.e., the other opposite parties. Hence, a notice was issued to the opposite parties on 17/08/2010 and demanded to refund extra amount charged. The 1st & 4th opposite party did not respond to the notice, the 2nd & 3rd opposite parties on 27/08/2010 the manufactures have replied admitting their manufacturing. It is an unfair trade practice. There is no warning either on the product or separate warning on the bill that certain identical product is available at much cheaper rate at other retail shops. It is an unfair trade practice. It leads to mental agony.

2. In this case only the 2nd & 3rd opposite parties engaged the services of an Advocate Sri.B.S.Ravikiran. The 1st & 4th opposite parties though served remained absent throughout the proceedings. On 11/03/2011 a version purported to be that of opposite parties 2 to 4 was filed. It is no version at all in the eye of law. None of the opposite parties have signed or verified the version. The said version is signed and verified only by said Sri.B.S.Ravikiran, the Advocate. Hence, it is no version at all.



3. ~~The complainant has filed the written statement. The opposite parties have filed the documents and citations with affidavit. The arguments were heard.~~

4. The points that arise for our consideration are:-

:- POINTS:-

A. Whether there is unfair trade practice committed by the opposite parties?

B. What Order?

5. Our findings are:-

Point (A) : In the Positive

Point (B) : As per detailed

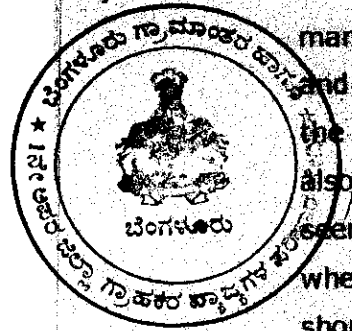
order for the following:-

:-REASONS:-

Point A & B:-

6. None of the allegations/facts in the complaint is challenged or denied by the opposite parties, in the sense version filed is no version as it has not been signed or verified by any of the opposite party Nos. 2 to 4, even Advocate has not filed the Vakalath for opposite party No. 4 also. Hence, the complainant is unchallenged and cannot be disbelieved. Even otherwise reading the complaint in conjunction with the documents produced by the complainants and the documents produced by the opposite parties and on the verification of the bottles shown before this Forum by the complainants in presence of the Advocate of the opposite party on 07/03/2011 and on 18/03/2011, it is established, admitted that opposite party Nos. 2 to 4 are the

[Handwritten signature]



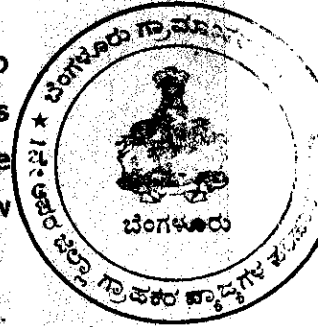
manufacturers of Aquafina water, Pepsi tin and Nimbooz respectively and it was being sold in a shop called as WOW PEPSI at the 3rd Floor in the Mantri Mall, Malleshwaram, Bangalore. The 1st opposite party is also in Mantri mall who sub leases the Food Court in the 3rd Floor as seen in the Annexure 'A' the photo produced by the opposite parties, wherein the customers purchases the food materials from different food shops, sit in the places of opposite party No.1 and eat or drink as the case may be, for which these shops have to pay certain amount to the 1st opposite party. In this case, it is the WOW PEPSI and not, the 1st opposite party is responsible for sale of the water bottles, Pepsi bottle and the Nimbooz bottle.

7. It is also an undisputed fact that the 1st opposite party give only the plates, cups to the shop owners on hire basis, it engages its own men to clean it and giving it to the shop owners, the food shop owners, for which he charges. The 1st opposite party has no share or part being played in the business of these food or drinks, except collecting his rent or charges.

8. It is also established that the complainants went to the 3rd Floor of Mantri Mall and in the shop called as Pepsi Pallate i.e., the 1st opposite party and to the shop shown in the photos. The complainants went to the said shop on 20/05/2010 at 13.56.07 hours and purchased one liter Pepsi can and it was sold to them for Rs.50/-, one liter Nimbooz for Rs.50/- and one liter Aquafina water for Rs.20/- and said shop collected only Rs.120/-. The M.R.P shown on the bottles is Rs.50/- 50/- and 30/- respectively. These are printed by opposite party Nos. 2 to 4 admittedly. But on the very day, these complainants purchased the said Nimbooz, Pepsi and Aquafina at Food World in the same Sampige Road and they paid Rs.15/-, 15/- and 15/- respectively and the M.R.P. printed therein is Rs.15/-, 15/- and 15/- only. Regarding the very material, how can the opposite parties printed different M.R.Ps? How can the retailer collected the different amounts?

9. Regarding water bottle of Aquafina at Mantri Mall at Pepsi W w i.e., of the 1st opposite party, it was printed as Rs.30/- and it was sold to the complainants for Rs.20/-, how? there is no answer. For the same bottle without any change either in the water contents or in the quantity

of the bottle, the opposite parties has printed Rs.15/- and it was sold to Rs.15/- only at Food World In the same road where Mantri Mall is situated, there is no extra service is being therein. For the same material, how can the opposite parties print different M.R.Ps and how can the retailer charges less than M.R.P.? there is no answer.



10. Any-way even to understand what this "Palette" is. The President and Members had gone to the Mantri Mall on 18/03/2011 itself at 14:23:29 and 14:37:54 hours and purchased a Panipuri at Shivasagar and a water bottle at Pepsi and it is seen that the water bottle of the opposite parties the M.R.P. is Rs.30/- and it was sold at Rs.25/- and the said bills are also reads thus:-

---Thank You---
---Visit Again---

SHIVSAGAR
PALETTE
MANTRI SQUARE
BANGALORE-560003
KARNATKA - 0

TIN : 29340090737
BILLNo:018749 Mar 18, 2011 14:23:29

Item Name	Price	Qty	Total
PANI POKRI	35.00	1.000	35.00
Grand Total			35.00
Net Bill Amount	₹	35.00	
Cash Payment			35.00
Total Item -->	1		
Total Qty -->	1.000		

PEPSI
PALETTE
MANTRI SQUARE
BANGALORE-560003
KARNATKA - 5

BILLNo:P244879 Mar 18, 2011 14:37:54

B I L L

Item Name:	Price	Qty	Total	Rs
AQUAFINA	25.00	1.000	25.00	
Grand Total			25.00	
VAT Details				
VAT 0.0 %				0.00
Net Bill Amount	₹	25.00		
ent		100.00		
Net Balance			75.00	
Total Item -->	1			
Total Qty -->	1.000			

---Thank You---
---Visit Again---

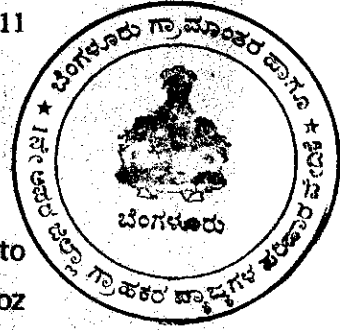


On enquiry it was found that the 1st opposite party is only giving its plates to the shop owners to supply food to their customers of the shop owners of the Food Court to drink and eat and it supplies plates etc., to the Food shops owners, it cleans and returns to the shop owners. It has no nexus to the business of the Food Court shops. This the complainants are not aware of these things.

11. These printing different MRP for the same material without any change in the material either in the contents or in the quantity is nothing but an unfair trade practice and selling it to the consumers is really unfair trade practice and also deficiency in service. This has to be curtailed. How can the same material will have a different M.R.P. at different places? There is no answer. If the retailer wants to sell it for higher price, it is his business and he has to satisfy the customers that he is selling it at a particular price in case customers wants to take it they may take, if they may not take or they may reject it, but the manufacture cannot print different prices for the same commodity, it is nothing but an unfair trade practice. As the prints different M.R.P. he will allow the retailer to gain more profit for the same material which is impermissible in law. The complainants are the customers. The material purchased at a particular place has a particular M.R.P. the same material must have the same M.R.P. at a different place also. It cannot have two different M.R.Ps. Hence, printing different M.R.Ps is bad in law, is unfair trade practice.

12. The learned counsel for the Opposite parties cited AIR 2007 Delhi 137 and 1972(10 SCC 472. There is no dispute about the proposition of law stated therein. But these principles are not applicable to the facts and circumstances of this case. There is no basis to apply these principles to this case. Discussing and distinguishing these judgments will only bulk and bulge the records. Regulation 17(5) of the Consumer's Protection Regulation 2005 prohibits quoting quotation from the judgments of the Higher Courts in details. Under the circumstances, if we direct the opposite parties to stop printing different M.R.Ps to the same material to be sold at different places and direct them to pay certain compensation and cost, we think that will meet the ends of justice.

[Handwritten signature]

ORDER:-

1. The Complaint is Allowed-In-part.
2. The opposite parties are directed to stop printing different MRPs to the same quantity water bottles, Pepsi Cans or bottles and Nimbooz bottles of the same quantity and print only one M.R.P. for all the things of equal quantities.
3. The opposite parties are also directed to pay a compensation of Rs.5,000/- to the complainants within 30 days from the date of this order.
4. The opposite parties are further directed to pay Rs.2,000/- to the complainants towards cost of this litigation within 30 days from the date of this order.
5. The opposite parties shall submit the compliance report with proof of necessary documents to this Forum within 45 days from the date of this order.
6. Return the extra sets filed by the parties to the concerned as under Regulation 20(3) of the Consumer's Protection Regulation 2005.
7. Send a copy of this order to both parties free of costs, Immediately.

(Dictated to the Stenographer, transcribed and typed by him, corrected and then pronounced by us in the Open Forum on this the 1st Day of April 2011)

Nivedita J
MEMBER

K. Srinivas
MEMBER

[Signature]
PRESIDENT

CERTIFIED TO BE TRUE COPY (FREE)

[Signature]
Y. Asst Registrar - cum - Asst.
Administrative Officer IA & Rural
District Consumer Disputes
Redressal Forum,

Place B. Y. N. S. Dated 06-04-11