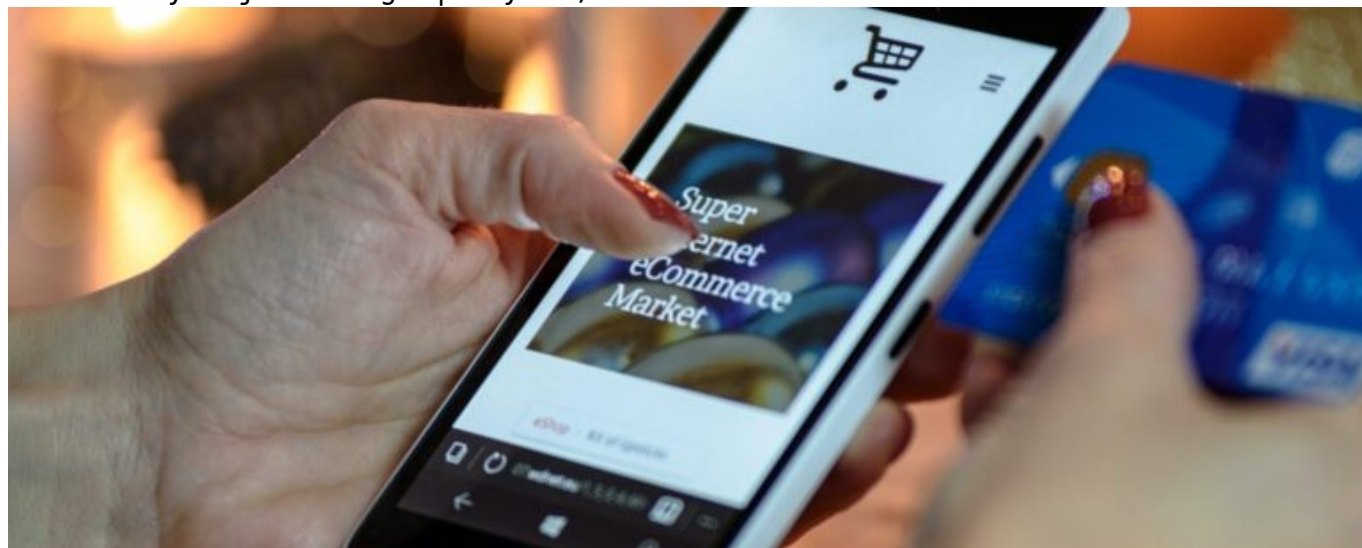


Germane To The Confluence Of Legal Metrology Act Vis-à-Vis The Consumer Protection Act On E-Commerce Entities

written by Rajdev Singh | May 21, 2021



“The more you know about how your customers discover your brand and make purchasing decisions, the better equipped you will be to execute on all other aspects of your business” - Casandra Campbell

INTRODUCTION

With the arrival of the second wave of Covid-19 in India, the work-from-home situation has remained the new normal. People are understandably hesitant to step outside which has increased their reliance on e-commerce marketplace entities (“entities”) like Amazon, Flipkart, etc., which makes it even more relevant to study and critically examine the compliances and liability for these giants to protect the interest of consumers in times of their spectacular business growth.

We herein critically analyse the compliances and liabilities articulated under the Legal Metrology Act (2009), in consonance with the Legal Metrology (Packed Commodities) Rules (2011) Vis-à-Vis Consumer Protection Act (2019) along with e-commerce rules 2020 to touch upon the legal jurisprudence and suggest a way forward in these unprecedented and difficult times.

UNDERLINING THE LEGAL COMPLIANCES

Under the Legal Metrology (Packaged Commodities) Rules (2011) (“LMPC”), Rule 10 necessitated that the e-commerce entities need to display certain declarations (as printed on the label of a packaged commodity) on the digital and electronic network used for e-commerce transactions. These declarations include:

- the name and address of the manufacturer
- name of the country of origin
- common/generic name of the product
- net quantity
- best before/use by date (if applicable)
- maximum retail price
- dimensions of the commodity

and such other declarations as provided for in the Rules (except the date of manufacture/packing of the product). Rule 10 read in consonance with Section 79(1) of the IT Act provides that the entities are not accountable for the accuracy of the declarations if they observe due diligence, restrict their function as the information provider and do not modify such information.

In addition to these, Consumer Protection E Commerce Rules 2020 also lay down several compliances that need to be followed by the entities under Rule 5 and 6.

- The entities are required to take an undertaking from the sellers regarding the specifications and details of the product, display the parameters for ranking of the sellers and goods, the feedback of the product and seller's contact information.
- The Rules also obligates that the entities display the imperative information required by the consumer to make an informed decision such as return, refund and cancellation policies or information on grievance and redressal routes, etc.
- It is mandatory for the entities to include in their terms and conditions a description of any differentiated treatment that might be given between goods or services or the sellers of the same category, in line with the objective of creating a level-playing field.
- Also, entities are required to maintain a record of the details of the sellers who have been previously removed or access to them has been disabled under certain intellectual property protection laws but used to repeatedly sell goods and services on these entities.
- The entities have to make their best effort to take part in the National Consumer Helpline for a speedy resolution of consumer complaints.
- Entities have to mention the name and details of the importer for the goods and services that have been imported.
- Entities have to ensure that the consumers give their explicit consent while making a purchase through an explicit and affirmative action, and not in an automatic manner such as a pre-ticked checkbox and refund all the proceeds within a reasonable period of time in accordance with the Reserve Bank of India prescriptions.

OBLIGATION FOR THE ENTITIES - E Commerce Rules 2020

Under both the LPMC Rules and E Commerce Rules 2020, it is stated that the entities can exercise exemption from their liabilities arising from the illegal and unethical acts of manufacturers/sellers/distributors if they come under the definition of "intermediary" as given under Section 79 (1) of the Information Technology Act (2008) provided they comply with the sub-section (2) and (3) of the said section. Subsection (2) provides that the function of such intermediaries should be restricted to furnish information made available by third parties and the intermediary should not initiate, select, modify or choose the receiver of such transmission.

The intermediaries should further observe due diligence and strictly adhere to all other rules and guidelines as prescribed by the Central Government while discharging its duties. Subsection (3) provides that protection given under section 79(1) will not apply to the cases where the intermediary has in any way abetted, conspired or aided in these unlawful acts by way of any threats or promises. Further, the intermediaries will not be able to exercise exemption from the said liability if they fail to take down any information, data or communication link within the control of the intermediary after receiving relevant knowledge or being notified by the Central Government.

The violation of these rules can be reported to the District Collector or can be taken up by the Central Government *suo moto*. It has been provided in Rule 32 of LPMC Rules that the contravention of the above discussed compliances will invite fine up to five thousand rupees.

Also, Section 49 of the Legal Metrology Act, 2009 provides for the pinpointing of liability in case of violations by the companies. Under sub-section (2), companies can nominate persons such as directors to be responsible for the conduct of the business carried out by such companies. Sub-section (1) provides that in case no nomination has been made, the person in charge at the commission of offence will be held responsible i.e., the directors of the company and the company itself as a legal entity.

The entities have to publish the rules and regulations, privacy policy and user agreement for access or usage of the intermediary's computer resource by any person. These rules and regulations have to enlist the information which can be considered illegal if posted online. Such information includes breaching or violation of any trademark, copyright, patent or any proprietary rights, and states what is considered obscene, pornographic, blasphemous, invasive of any one's privacy, pedophilic, racial, hateful, sexist, etc.

TRACING THE LEGAL JURISPRUDENCE

Whenever there has been any violation by the concerned entities, the judicial system has taken account of it to set out a well-defined jurisprudence and precedents to regulate the proper compliance of the legal provisions. Hence, we will discuss few judgments and orders:

Amazon Case

In the famous case law of *Amazon Seller Services Pvt. Ltd. v. Amway India Enterprises Pvt. Ltd.* [[1]], the Division Bench of Hon'ble Delhi High Court had provided for the requirements of marketplace e commerce entities by explaining the compliance of criteria laid down in either Section 79 (2) (a) or Section 79 (2) (b), and Section 79 (2) (c) of the IT Act. In the cases where the function of the e commerce entities is limited to providing access, it has to comply with Section 79 (2) (a) alone and where in addition to access, the entities provide other services to the customers it has to comply with Section 79 (2) (b) of the IT Act.

Snapdeal Case

In the case of *Sri Kunal Bahl vs State Of Karnataka* [[2]], a criminal complaint was filed against the executives of Snapdeal before the Hon'ble Karnataka High Court for allegedly flouting the Drugs and Cosmetics Act for selling a prescription drug for erectile dysfunction. The complaint was quashed on the grounds that Snapdeal and its executives are exempted from the liability under the safe harbor principle provided in Section 79 (1) of the IT Act.

Recently, a PIL [[3]] has also been filed before the Hon'ble Delhi High Court asking to direct major e commerce entities such as Amazon, Flipkart, Snapdeal, etc. to follow the LMPC Rules and CPA (2019). It has been argued in this petition that these major e commerce entities are flouting the rules by not making the various details of manufacturers and sellers (such as country of origin, GSTIN number, etc) public. The Bench then directed the Central Government to file an affidavit verifying if these major entities are complying with the concerned laws as claimed by them.

CONCLUSION AND THE WAY FORWARD - E Commerce Rules 2020

The E Commerce entities have several regulation/compliances to be followed and they are getting updated as per the need of the hour. The E commerce rules 2020 have laid down variety of compliances which needs to be followed to ensure safety of the consumers by the intermediaries but at the same time exempt them from certain liabilities if they meet the criteria.

It attempts to strike the balance where none of the parties are getting harmed unnecessarily while maintaining accountability. However, we must never forget that implementation is the key. Regular checks and inspections should be made to ensure their compliances. More procedural and definitional clarity needs to be read into the rules. These rules should be made aware to the public in simple and lucid language through various channels of communication. As more and more consumers will be empowered in terms of knowledge of their rights, these rules will be better put into use. The entities usually assume upper hand in cases of disputes with the consumers as they have more financial and legal resources. As the technology is developing exponentially and we have the power to order anything to our doorsteps ranging from groceries to food to furniture to cars, it becomes extremely important for such guidelines to be implemented and updated from time to time to ensure the best interest, safety and welfare of the consumers.

-
- [1] (2020) 267 DLT 228 (DB)
 - [2] Crl.P. No.4676 of 2020 & Crl.P. No.4712 of 2020
 - [3] [W.P.(C)3852/2020]
 - [4] E Commerce rules 2020

Contributed by – Raj Dev Singh, Partner, Ragini Sharma, Associate & Divyani Saldi, Intern