



The Consumer Protection Act

with special reference to :-

Labelling, Claims and Advertisements

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Disclaimer

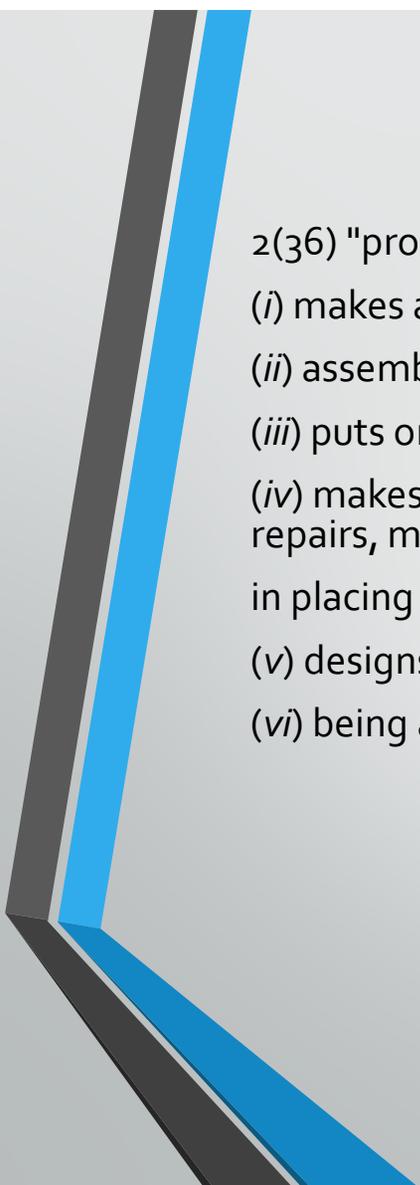
- Views are personal



LABEL

Labelling under the CP Act

2(1) "advertisement" means any audio or visual publicity, representation, endorsement or pronouncement made by means of light, sound, smoke, gas, print, electronic media, internet or website and includes any notice, circular, **label**, wrapper, invoice or such other documents;



2(36) "product manufacturer" means a person who—

(i) makes any product or parts thereof; or

(ii) assembles parts thereof made by others; or

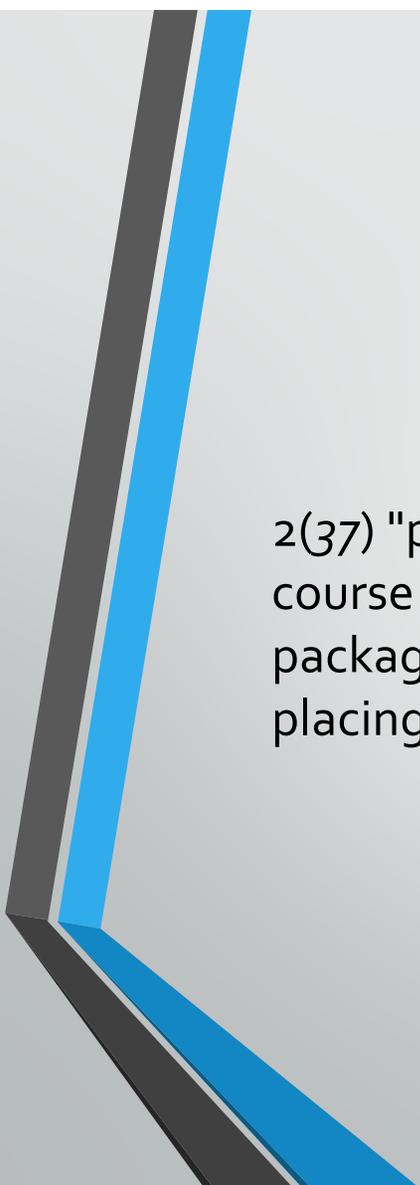
(iii) puts or causes to be put his own mark on any products made by any other person; or

(iv) makes a product and sells, distributes, leases, installs, prepares, packages, **labels**, markets, repairs, maintains such product or is otherwise involved

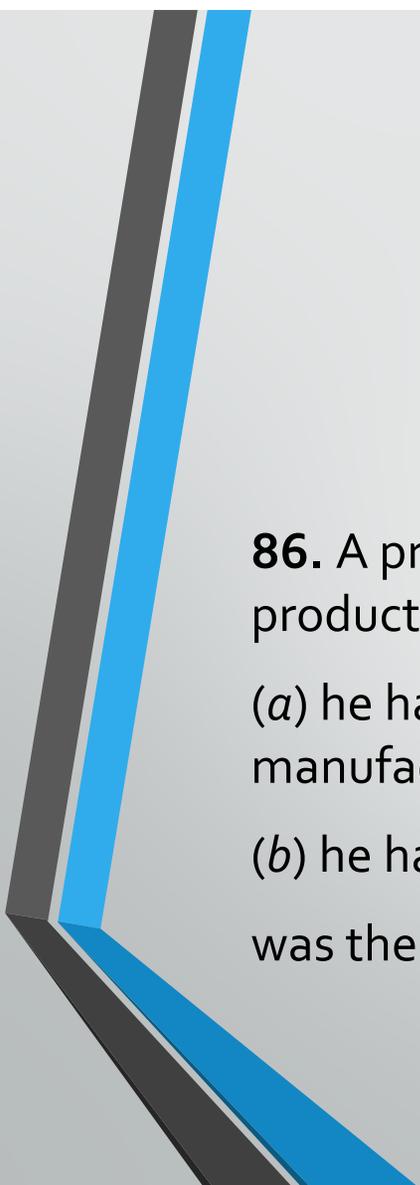
in placing such product for commercial purpose; or

(v) designs, produces, fabricates, constructs or re-manufactures any product before its sale; or

(vi) being a product seller of a product, is also a manufacturer of such product;



2(37) "product seller", in relation to a product, means a person who, in the course of business, imports, sells, distributes, leases, installs, prepares, packages, **labels**, markets, repairs, maintains, or otherwise is involved in placing such product for commercial purpose ...



86. A product seller who is not a product manufacturer shall be liable in a product liability action, if—

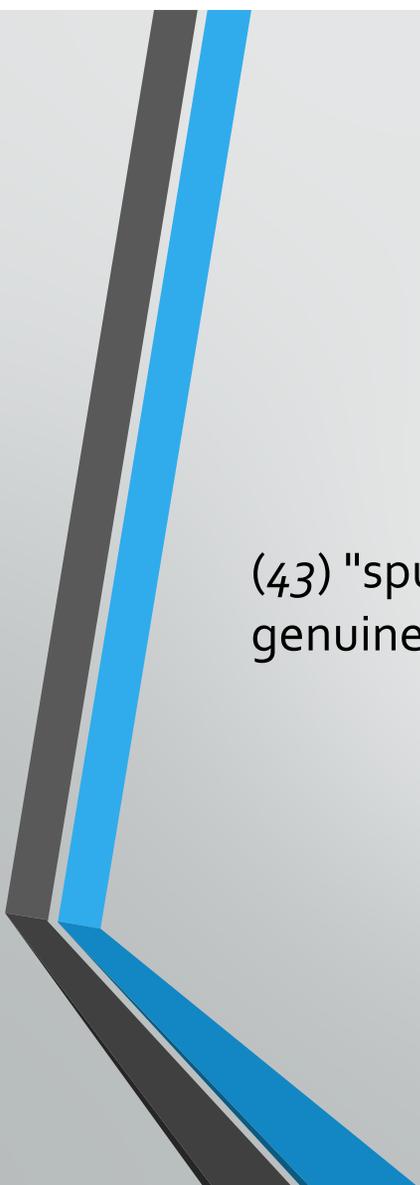
(a) he has exercised substantial control over the designing, testing, manufacturing, packaging or **labelling** of a product that caused harm; or

(b) he has altered or modified the product and such alteration or modification was the substantial factor in causing the harm; or ...



CLAIM

(10) "defect" means any ***fault, imperfection or shortcoming*** in the ***quality, quantity, potency, purity or standard*** which is required to be maintained by or under any law for the time being in force or under any contract, express or implied **or** as is **claimed** by the trader in any manner whatsoever in relation to any goods or product and the expression "defective" shall be construed accordingly;



(43) "spurious goods" means such goods which are falsely **claimed** to be genuine;



ADVERTISEMENT

Definition of "Advertisement"

2(1) "advertisement" means any audio or visual publicity, representation, endorsement or pronouncement made by means of light, sound, smoke, gas, print, electronic media, internet or website and includes any notice, circular, **label**, wrapper, invoice or such other documents;

Definition of “endorsement”

2(18) "endorsement", *in relation to an advertisement*, means—

(i) any message, verbal statement, demonstration; or

(ii) depiction of the name, signature, likeness or other identifiable personal characteristics of an individual; or

(iii) depiction of the name or seal of any institution or organisation,

which makes the consumer to believe that it reflects the opinion, finding or experience of the person making such endorsement

Misleading Advertisement

2(28) "misleading advertisement" in relation to any product or service, means an advertisement, which—

(i) falsely **describes** such product or service; or

(ii) gives a **false guarantee** to, or is **likely to mislead** the consumers as to the nature, substance, quantity or quality of such product or service; or

(iii) conveys an express or implied **representation** which, if made by the manufacturer or seller or service provider thereof, would constitute an **unfair trade practice**; or

(iv) deliberately **conceals** important information;

Definition of “unfair trade practice”

2(47) "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:—

(i) making any statement, whether orally or in writing or by visible representation including by means of electronic record, which—

(a) falsely represents that the goods are of a particular standard, quality, quantity, grade, composition, style or model;

(b) falsely represents that the services are of a particular standard, quality or grade;

(c) falsely represents any re-built, second-hand, renovated, reconditioned or old goods as new goods;

(d) represents that the goods or services have sponsorship, approval, performance, characteristics, accessories, uses or benefits which such goods or services do not have;

(e) represents that the seller or the supplier has a sponsorship or approval or affiliation which such seller or supplier does not have;

(f) makes a false or misleading representation concerning the need for, or the usefulness of, any goods or services;

(g) gives to the public any warranty or guarantee of the performance, efficacy or length of life of a product or of any goods that is not based on an adequate or proper test thereof:

Provided that where a defence is raised to the effect that such warranty or guarantee is based on adequate or proper test, the burden of proof of such defence shall lie on the person raising such defence;

(h) makes to the public a representation in a form that purports to be—

(A) a warranty or guarantee of a product or of any goods or services; or

(B) a promise to replace, maintain or repair an article or any part thereof or to repeat or continue a service until it has achieved a specified result,

if such purported warranty or guarantee or promise is materially misleading or if there is no reasonable prospect that such warranty, guarantee or promise will be carried out;

(i) materially misleads the public concerning the price at which a product or like products or goods or services, have been or are, ordinarily sold or provided, and, for

this purpose, a representation as to price shall be deemed to refer to the price at which the product or goods or services has or have been sold by sellers or provided by

suppliers generally in the relevant market unless it is clearly specified to be the price at which the product has been sold or services have been provided by the person by

whom or on whose behalf the representation is made;

(j) gives false or misleading facts disparaging the goods, services or trade of another person.

Explanation.—For the purposes of this sub-clause, a statement that is,—

(A) expressed on an article offered or displayed for sale, or on its wrapper or container; or

(B) expressed on anything attached to, inserted in, or accompanying, an article offered or displayed for sale, or on anything on which the article is mounted for display or sale; or

(C) contained in or on anything that is sold, sent, delivered, transmitted or in any other manner whatsoever made available to a member of the public, shall be deemed to be a statement made to the public by, and only by, the person who had caused the statement to be so expressed, made or contained;

(ii) permitting the **publication of any advertisement**, whether in any newspaper or otherwise, including by way of electronic record, for the sale or supply at a bargain price of goods or services that are not intended to be offered for sale or supply at the bargain price, or for a period that is, and in quantities that are, reasonable, having regard to the nature of the market in which the business is carried on, the nature and size of business, and the nature of the advertisement.

Explanation.—For the purpose of this sub-clause, "bargain price" means,—

(A) a price that is stated in any advertisement to be a bargain price, by reference to an ordinary price or otherwise; or

(B) a price that a person who reads, hears or sees the advertisement, would reasonably understand to be a bargain price having regard to the prices at which the product advertised or like products are ordinarily sold;

(iii) permitting—

(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, **except such contest, lottery, game of chance or skill as may be prescribed;**

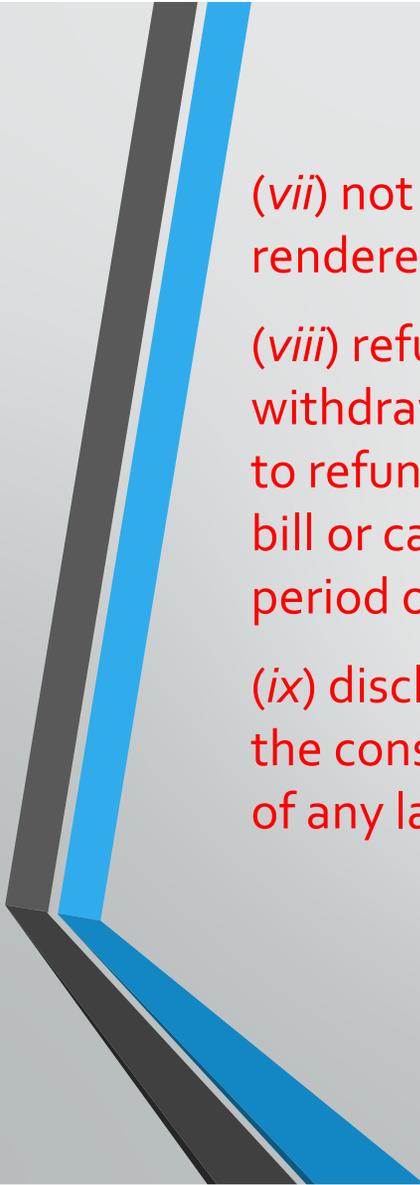
(c) withholding from the participants of any scheme offering gifts, prizes or other items free of charge on its closure, the information about final results of the scheme.

Explanation.—For the purpose of this sub-clause, the participants of a scheme shall be deemed to have been informed of the final results of the scheme where such results are within a reasonable time published, prominently in the same newspaper in which the scheme was originally advertised;

(iv) permitting the sale or supply of goods intended to be used, or are of a kind likely to be used by consumers, knowing or having reason to believe that the goods do not comply with the standards prescribed by the competent authority relating to performance, composition, contents, design, constructions, finishing or packaging as are necessary to prevent or reduce the risk of injury to the person using the goods;

(v) permitting the hoarding or destruction of goods, or refusal to sell the goods or to make them available for sale or to provide any service, if such hoarding or destruction or refusal raises or tends to raise or is intended to raise, the cost of those or other similar goods or services;

(vi) manufacturing of spurious goods or offering such goods for sale or adopting deceptive practices in the provision of services;



(vii) not issuing bill or cash memo or receipt for the goods sold or services rendered in such manner as may be prescribed;

(viii) refusing, after selling goods or rendering services, to take back or withdraw defective goods or to withdraw or discontinue deficient services and to refund the consideration thereof, if paid, within the period stipulated in the bill or cash memo or receipt or in the absence of such stipulation, within a period of thirty days;

(ix) disclosing to other person any personal information given in confidence by the consumer unless such disclosure is made in accordance with the provisions of any law for the time being in force.

Product Liability

83. A product liability action may be brought by a complainant against a **product manufacturer** or a **product service provider** or a **product seller**, as the case may be, for any harm caused to him on account of a defective product

84. (1) A product manufacturer shall be liable in a product liability action, if—

(a) the product contains a manufacturing defect; or

(b) the product is defective in design; or

(c) there is a deviation from manufacturing specifications; or

(d) the product does not conform to the express warranty; or

(e) the product fails to contain adequate instructions of correct usage to prevent any harm or any warning regarding improper or incorrect usage.

85. A product service provider shall be liable in a product liability action, if—

(a) the service provided by him was faulty or imperfect or deficient or inadequate in quality, nature or manner of performance which is required to be provided by or under any law for the time being in force, or pursuant to any contract or otherwise; or

(b) there was an act of omission or commission or negligence or conscious **withholding any information which caused harm**; or

(c) **the service provider did not issue adequate instructions or warnings to prevent any harm**; or

(d) the service did not conform to express warranty or the terms and conditions of the contract.

86. A product seller who is not a product manufacturer shall be liable in a product liability action, if—

- (a) he has exercised substantial control over the designing, testing, manufacturing, packaging or labelling of a product that caused harm; or
- (b) he has altered or modified the product and such alteration or modification was the substantial factor in causing the harm; or
- (c) he has made an express warranty of a product independent of any express warranty made by a manufacturer and such product failed to conform to the express warranty made by the product seller which caused the harm; or
- (d) the product has been sold by him and the identity of product manufacturer of such product is not known, or if known, the service of notice or process or warrant cannot be effected on him or he is not subject to the law which is in force in India or the order, if any, passed or to be passed cannot be enforced against him; or
- (e) he failed to exercise reasonable care in assembling, inspecting or maintaining such product or he did not pass on the warnings or instructions of the product manufacturer regarding the dangers involved or proper usage of the product while selling such product and such failure was the proximate cause of the harm.



Powers of the Central Consumer Protection Authority (or “CCPA”) in relation to Labels, Claims and Advertising

- The CCPA is a new statutory authority, formed under this new Act

Powers of the CCPA – Sec 18(1)

18. (1) The Central Authority shall—

(a) protect, promote and enforce the rights of consumers as a class, and prevent violation of consumers rights under this Act;

(b) prevent unfair trade practices and ensure that no person engages himself in unfair trade practices;

(c) ensure that no false or misleading advertisement is made of any goods or services which contravenes the provisions of this Act or the rules or regulations made thereunder;

(d) ensure that no person takes part in the publication of any advertisement which is false or misleading.

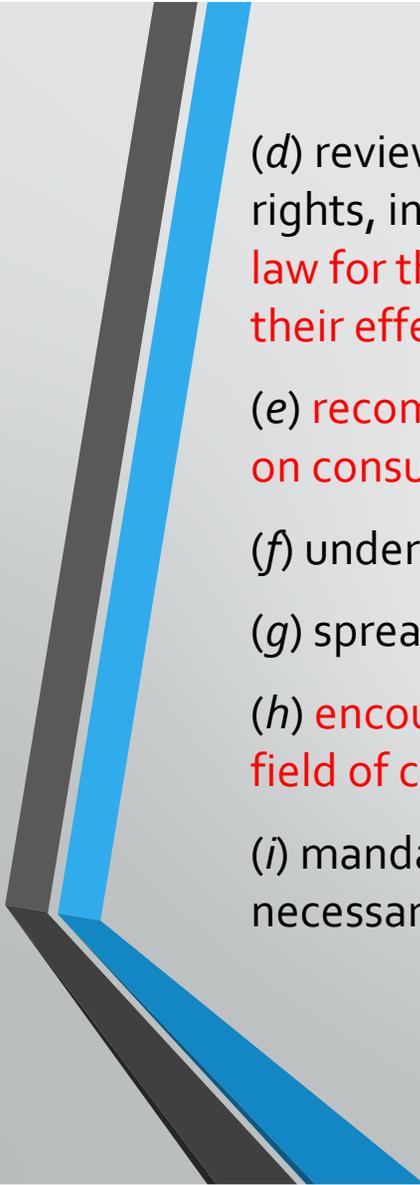
Functions of the CCPA – Sec 18(2)

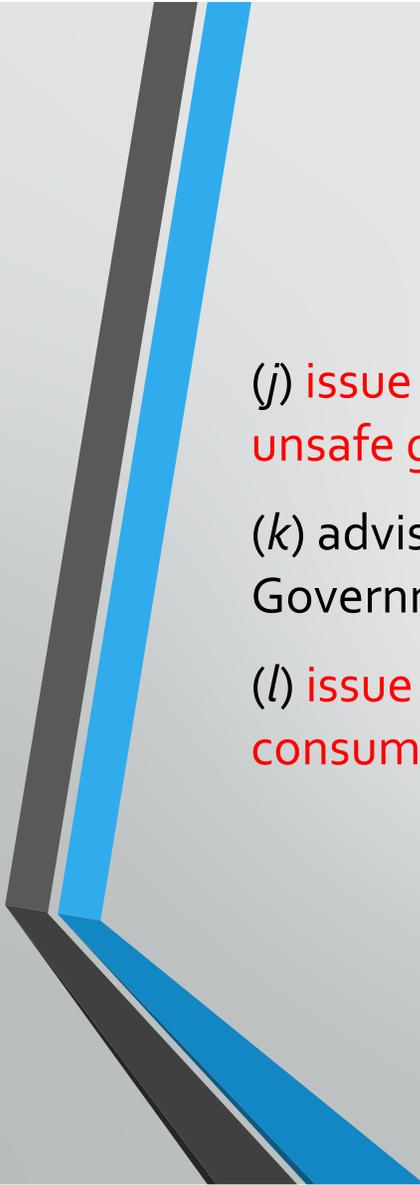
2) Without prejudice to the generality of the provisions contained in subsection (1), the Central Authority may, for any of the purposes aforesaid,—

(a) **inquire or cause an inquiry or investigation to be made into violations of consumer rights or unfair trade practices, either *suo motu* or on a complaint received or on the directions from the Central Government;**

(b) file complaints before the District Commission, the State Commission or the National Commission, as the case may be, under this Act;

(c) intervene in any proceedings before the District Commission or the State Commission or the National Commission, as the case may be, in respect of any allegation of violation of consumer rights or unfair trade practices;

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- (d) review the matters relating to, and the factors inhibiting enjoyment of, consumer rights, including safeguards provided for the protection of consumers under any other law for the time being in force and recommend appropriate remedial measures for their effective implementation;
 - (e) recommend adoption of international covenants and best international practices on consumer rights to ensure effective enforcement of consumer rights;
 - (f) undertake and promote research in the field of consumer rights;
 - (g) spread and promote awareness on consumer rights;
 - (h) encourage non-Governmental organisations and other institutions working in the field of consumer rights to co-operate and work with consumer protection agencies;
 - (i) mandate the use of unique and universal goods identifiers in such goods, as may be necessary, to prevent unfair trade practices and to protect consumers' interest;



(j) issue safety notices to alert consumers against dangerous or hazardous or unsafe goods or services;

(k) advise the Ministries and Departments of the Central and State Governments on consumer welfare measures;

(l) issue necessary guidelines to prevent unfair trade practices and protect consumers' interest.

Inquiry by CCPA – Sec 19(1)

19. (1) The Central Authority may, **after receiving any information or complaint or directions from the Central Government or of its own motion**, conduct or cause to be conducted a **preliminary** inquiry as to whether there exists a ***prima facie case of violation of consumer rights or any unfair trade practice or any false or misleading advertisement***, by any person, which is prejudicial to the public interest or to the interests of consumers and if it is satisfied that there exists a *prima facie* case, it shall cause investigation to be made by the Director- General or by the District Collector.

Powers of CCPA after investigation

20. Where the Central Authority is satisfied on the basis of investigation that there is sufficient evidence to show violation of consumer rights or **unfair trade practice** by a person, it may pass such order as may be necessary, including—

- (a) **recalling of goods or withdrawal of services** which are dangerous, hazardous or unsafe;
- (b) **reimbursement of the prices of goods or services so recalled** to purchasers of such goods or services; and
- (c) **discontinuation of practices which are unfair** and prejudicial to consumers' interest:

Provided that the Central Authority shall give the person an opportunity of being heard before passing an order under this section.

CCPA and advertisements investigated

21. (1) Where the Central Authority is satisfied after investigation that any **advertisement is false or misleading and is prejudicial to the interest of any consumer or is in contravention of consumer rights**, it may, by order, issue directions to the concerned trader or manufacturer or endorser or advertiser or publisher, as the case may be, to **discontinue such advertisement** or to to **modify the same** in such manner and within such time as may be specified in that order.

Fines and prohibition by CCPA – Sec 18(2)&(3)

- Rs. 10 lakhs for misleading advertisements (manufacturer/endorser)
- Rs. 50 lakhs for subsequent ones (ditto)
- Prohibition on advertising for upto a year (endorser)
- Prohibition on advertising, subsequent ones, for upto 3 years (endorser)
- Rs 10 lakhs on party to publication of misleading advertisement

Search & Seizure by the CCPA

22. (1) For the purpose of conducting an investigation after preliminary inquiry under subsection (1) of section 19, the Director-General or any other officer authorised by him in this behalf, or the District Collector, as the case may be, may, if he has any reason to believe that any person has violated any consumer rights or committed unfair trade practice or causes any false or misleading advertisement to be made, shall,—

(a) enter at any reasonable time into any such premises and search for any document or record or article or any other form of evidence and seize such document, record, article or such evidence;

(b) make a note or an inventory of such record or article; or

(c) require any person to produce any record, register or other document or article.

(2) The provisions of the Code of Criminal Procedure, 1973, relating to search and seizure shall apply, as far as may be, for search and seizure under this Act.



Q&A

- At the end of the session



THANK YOU