

Non-compliance of mandatory declaration Provisions by E-commerce

SS Rana & Co

India February 16 2021

The National Secretary General, *Confederation of All India Traders (CAIT)* has issued a letter dated January 24, 2021 to the Hon'ble Minister for Commerce and Consumer Affairs, alleging non-compliance of mandatory declaration provisions of the Legal Metrology and Consumer Protection Rules by e-commerce giants in India.

The letter, *inter alia*, alleges that e-commerce portals like Flipkart, and food delivery sites like Zomato and Swiggy, amongst others, are openly infringing the mandatory provisions of the Legal Metrology (Packaged Commodities) Rules, 2011 (**LM Rules**) and the Consumer Protection (e-Commerce) Rules, 2020 (**Consumer Rules**). It has further been alleged by CAIT that no action has been taken by the concerned Department(s) against these erring entities, even though the law concerning them has been amended and implemented almost three years ago, i.e. back in January 2018. The letter mainly focuses on Rule 10 of the LM Rules and Rule 4(2) of the Consumer Rules, both of which are concerning regulating of e-commerce entities and e-commerce marketplace like entities in such a manner that, there is complete transparency between the manufacturer/seller of the goods and the end consumer purchasing the said goods.

Legal Metrology Laws in India

E-commerce to make mandatory declarations

Rule 10 of the Amended LM Rules requires e-commerce entities to mandatorily make declarations, similar to the ones made on the label of the goods, specifically for pre-packaged commodities. A list of the declarations that are to be made are as under:

1. Name and address of the manufacturer
2. Country of origin of the product
3. Common/generic name of the product
4. Net quantity
5. Best before/use date (wherever applicable)
6. Maximum Retail Price (which should also mention the words "Inclusive of all taxes")
7. Dimensions of the product/commodity

In an e-commerce marketplace like setup, the onus of declaring the correct information to the consumer, lies with the manufacturer/seller/dealer/importer, as applicable, and not the e-commerce entity, provided:

1. the entity's role is limited to providing access to a communication system which is used to either transmit or temporarily store or host information which is made available by the manufacturer or seller or dealer or importer;
2. the transmission is not initiated by the e-commerce entity, nor does the entity select the receiver of the transmission and choose or alter the information which is present in the transmission; and
3. the entity observes due diligence whilst discharging its duties as an intermediary, under the Information Technology Act, 2000, and follows the guidelines which are issued by the Central Government.

The very fact that the e-commerce entity has to observe due diligence when it is discharging its functions implies that the entity has to ensure that not only is the consumer receiving the information as directed by the LM Rules, but also that the information which is being provided is correct and can be relied upon.

Penalty for not making required declarations

In the event that such information is not provided by the manufacturer/seller, the e-commerce entity will be liable to punishment as well.

Guidelines for Operations- FSSAI

Similar duties were imposed on online food businesses vide **Guidelines for Operations** dated February 02, 2017, issued by the Food Safety and Standards Authority of India (FSSAI). These guidelines require that businesses that sell pre-packaged food items either through a physical store or online, will be compulsorily required to make certain declarations on their websites/portals for items such as pre-packaged goods, clothing, etc. This change will affect certain items that are otherwise not considered as pre-packaged goods, but when sold online, will fall under the purview of a pre-packaged commodity, essentially because the same is being packed in the absence of the consumer.

To explain this, take the example of your local grocery store selling rice from a large 30-kilo sack. The seller takes smaller quantities of rice from this sack and sells it as per the requirements of the buyer. However, if this same mechanism is being implied by this seller to sell rice via an online grocery portal, he will have to provide those mandatory declarations on the portal for this item, because now this rice has become a pre-packaged commodity because it was not packed in the presence of the consumer. Therefore, even online grocery stores will now have to provide a label on their products in which these declarations are provided and the information in them is also correct. It is however pertinent to note that several online grocery sellers till date haven't followed these rules.

COVID-19 and rise in online shopping

Due to COVID-19 and the subsequent imposition of lockdown, several brick and mortar grocery stores started selling their products online, either by starting their own websites or by getting associated with e-commerce portals. However, non-adherence to the

aforementioned Rules also led to the sale of sub-standard goods. It would be relevant to mention here that failure to commit to these rules amounts to selling non-standard packages, and invites penalty on the infringer, which can be in the form of a fine and/or imprisonment, several sellers continue to not implement these rules whilst selling their products online.

New E-commerce Rules under Consumer Protection Act, 2019

The Consumer Rules were notified in the year 2020 for the purpose of complementing the New Consumer Protection Act of 2019. These Rules were enacted with the motive of regulating transactions made on e-commerce entities and setting certain duties and liabilities on these entities and people selling their products and offering their services on online platforms.

Rule 4(2) of the Rules again speaks about disclosure of information to the consumer in an e-commerce marketplace in a manner that is accessible as well as clearly understandable. The list of disclosures that the seller has to make under the Consumer Rules are as under:

1. The legal name of the entity
2. Geographic address of the entity's headquarters and all branches
3. Name and details of its website; and
4. Contact details of the entity, which include customer care numbers, email address, and information about any grievance officer.

The Consumer Rules also requires e-commerce entities to hire a Nodal Officer, who is a resident of India, and this Officer's role shall be to ensure proper compliance with the Consumer Protection Rules.

As buying and selling goods have become so much easier due to e-commerce platforms, it has become even more important to focus on laws that will ensure the protection of the consumer's rights when availing products and services from such online websites/portals. The number of players in the online market has also increased, thereby giving the consumer multiple options to choose from, when it comes to the same product or service. However, without transparency such options have no use, and neither can one ensure that competitors are not an option for unfair trade practices under the garb of doing business.

The above-mentioned letter sent by CAIT for compliance of mandatory declaration provisions was aimed to bring to the attention of the concerned Ministry, the latches in its departments which have been entrusted with the task of keeping a check on whether the rules prescribed under the LM Rules and the Consumer Protection Rules are being followed diligently by the concerned parties.

It is imperative that requisite declarations as enumerated under the Law are made in view of Consumer welfare and interests. Hence, E-commerce entities/portals should ensure that such rules are being followed by the sellers/manufacturers in order to ensure transparency.