

Fight for Rights

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‘Consumer Protection’ how does this affect our daily buying and selling operations? Are we guarded against unscrupulous vendors selling substandard products i.e., products which are priced way beyond their actual worth, or in the worst case scenario, products which are not at all what they promised to be.

In this commercial world we live in, goods and services reach the consumer via a commercial bridge which is operated by businessmen – people working for a profit who in some instances would take this profit making a step further at the cost of the consumer.

A market is healthy only when the consumer as well as the producer are happy. A fine example is the sale of ‘Bombay Onions’ in the city. Traders import low quality Bombay onions into the country and sell them at very low prices which is detrimental to the onion producers in the ‘Wayamba’ province who have no option but to bring down their own prices. The moment the prices plummet the traders buy the onions off these producers, store them and later put them back in the market for sale at a higher price. This is not ‘consumer protection’ but gross and ruthless manipulation of the consumer as well as the producer.

In developed countries consumers are aware of their rights and the redress they can seek through various institutions, government acts, environmental and intellectual property laws etc., when conducting a transaction. But how aware are the Sri Lankan consumers of the laws protecting them? It is not that our consumer is totally without help. We do have certain laws governing transactions i.e., “The Consumer Protection Act No 1 of 1979’ and the ‘Food Act No 26 of 1980. Both these acts have been formulated with the consumer in mind. What do these laws entail and how effective are they?

The Consumer Protection Act describes itself as An Act to make provision for the regulation of internal trade; for the protection of the consumer; for the establishment of fair trade practices; for the amendment of the National Prices

Commission Law, for the repeal of the Licensing of Traders Act No 62 of 1961; and for matters connected therewith or incidental thereto.

According to the Act, a commissioner of Internal Trade, any number of deputy and assistant commissioners and other officers as deemed necessary may be appointed for the purpose of regulating trade.

Section 6 of the Act says '(1) The Commissioner may, for the protection of the consumer, issue general directions to manufacturers or traders in respect of labelling, price-marking and packeting of any article and may, likewise by general directions issued to any class of manufacturers or traders in respect of labelling, price-marking and packeting of any article and may, likewise by general directions issued to any class of manufacturers or traders or by special directions issued to any particular manufacturer or trader, specify in relation to that class or that manufacturer or trader, as the case may be -

(a) the maximum quantity of any article to be sold on any day;

(b) the times during which and the places at which, such article may be sold; and

(c) any other conditions as to the manufacture, marketing, labelling or sale of that article.' Subsection (3) says 'Any manufacturer or trader who fails to comply with any direction issued under subsection (1) shall be guilty of an offense under this

Act.' Subsection (4) says 'Any person who removes, alters, obliterates, erases or defaces any label, description or price marked on any article shall be guilty of an offense under this Act.'

Section 7 says 'Any person who sells or offers to sell any article above the price marked on the article under section 6 shall be guilty of an offense.'

Section 8 which deals with manufacture or sale of articles below the specified standards says '(1) The Commissioner may inquire into complaints regarding the manufacture or sale of any article which does not conform to the standards and specifications determined by the Commissioner by notification published in the Gazette. Where any standards and specifications have been prescribed by the Bureau of Ceylon Standards in respect of any article, such standards and specifications shall be deemed to be the standards and specifications determined by the Commissioner for the purpose of this Act. (2) Any complaint under

subsection (1) shall be made to the Commissioner in writing so as to reach him within seven days of such sale. (3) At any inquiry held into such complaint the Commissioner shall give the manufacturer or trader against whom such complaint is made an opportunity of being heard either in person or by an agent on that behalf. (4) Where the Commissioner is of opinion after inquiry, that a manufacture or sale has been made of an article not conforming to the standards or specifications determined or deemed to be determined by the Commissioner he shall order the manufacturer or trader to pay compensation to the aggrieved party or to replace such article or to refund the amount paid for such article.'

What about misleading the consumer by not disclosing all the facts relating to a product or service? In the present day, the consumer is inundated with scores of press advertisements and TV commercials which advertise products and services at times, in a most irresponsible fashion. Sections 18 and 19 of the Consumer Protection Act deals with misleading and deceptive conduct and false representations. Section 18 says 'no trader shall, in the course of a trade or business engage in conduct that is misleading or deceptive.' Whilst Section 19 says 'any trader who, in the course of a trade or business, in connection with the supply or possible supply of goods or services or in connection with the promotion by any means of the supply or use of goods or services: (a) falsely represents that goods or services are of a particular standard, quality or grade, or that goods are of a particular style or modes; or (b) falsely represents that goods are new; or (c) represents that goods or services have sponsorship, approval, performance, characteristic accessories, uses or benefits they do not have; or (d) represents that such trader has a sponsorship, approval or affiliation he does not have; or (e) makes false or misleading statements concerning the need for any goods, services, replacements or re- pairs; or (f) makes false or misleading statements concerning the need for any goods, services, replacements or repairs; or (g) makes false or misleading statements concerning the existence or effect of any warranty or guarantee, shall be guilty of an offense under this Act.'

But are consumers in Sri Lanka aware of the redress. available if they are being duped? And even if they are how effective are these laws? A Consumers' when purchasing a product or a service have to satisfy themselves as to whether:-

- a) the seller provides a proper and easy-to-work-with before and after sales service?
- b) the seller can solve any problems the consumer might have with the product or service purchased?

c) the seller is concerned and responsive towards any problems faced by the consumer?

d) the seller will be prepared to adjust to the consumers' demands?

e) the seller can provide a creative solution to the consumers' needs?

Despite all this analysis, things can still go wrong. For example, a few months back, a well known computer firm sold a complete new system to a client they service but after the sale they were unable to provide the required knowledge and training which was an important part of the sales contract. With millions at stake what are the options available to the unfortunate consumer?

According to consumer law, when a trader supplies services to a consumer in the course of a business and the consumer, expressly or by implication, makes known to the trader any particular purpose for which the services are required or the result that he desires the services to achieve, there is an implied warranty that the services supplied under the contract for the supply of the services and any materials supplied in connection with those services will be reasonably fit for that purpose or are of such a nature and quality that they might reasonably be expected to achieve that result, except where circumstances show the consumer does not rely, or that it is unreasonable for him to rely, on the trader's skill or judgment.

All this is well and good. But legal issues mean money, time and hassle and within the parameters we operate more often than not the unscrupulous vendor gets away with it.

An article published in Social Justice 122, under the title 'Declare 1997 As The Year Of The Consumer' says "Sony has stated that its agent in Sri Lanka is not competent to repair but only to replace parts and as such its advertisements on providing a customer service is misleading to the unsuspecting consumer! This matter is under consideration by the Consumer Redress Unit with a request for an inquiry, where the Observer Ombudsman, Siedles Service Center, Ceylinco Insurance, the affected owner of the Sony Radio are called to give evidence for a consumer-oriented solution. This matter has been pending since April 1995.

In another case a person purchased a Gibson Refrigerator from Sherman Sons on the understanding that the refrigerator will give trouble-free service for a period of at least 10 years. However, within a period of two years the condenser had to be

replaced externally, whilst the original unit was sealed within the body for failure to provide the required cooling temperature and inability of the local agent to replace the sealed condenser unit. These examples demonstrate the tangible and intangible expectations of consumers which do not appear to concern the vendors operating in Sri Lanka.

The article goes on to say that 'health care is inadequate per capita of population in state hospitals and very expensive in private hospitals. For example, a caesarean childbirth with complications has cost an office worker Rs 60,000/-, the need for a National Health Scheme (contributory or non-contributory) is self-evident.

Public transport per capita of population is woefully inadequate when compared with vehicle ratios in other countries. Non-availability of transport in the city after 8 p.m. is a source of inconvenience to city workers.

There's a lack of tangible steps to relate the relevance of the courses taught in schools, universities and technical colleges to support growth of business and related employment vis-à-vis government policy on economic growth.

There is a need for the Government and the Opposition to jointly work to meet the expectations of consumers on products and services sold in the market vis-à-vis poor product quality, poor product reliability, product liability potential, poor field repair service, customer misuse, customer non-comprehension, late delivery, disconnected distributors/dealers, order processing, billing, accounts receivable errors, customer contact employees not empowered, and dictatorial management. There is a need to focus the attention of all those engaged in productivity improvement in their enterprises to ensure the retention of their customers, as otherwise the success of an enterprise, its competitiveness, its profitability and stability will be at risk.

The hidden aspects to productivity enhancement are employee empowerment, sharing meaningfully the gains achieved and provision of adequate transport, housing, health care and sanitation. The employee is the key to consumer loyalty, to the products and services produced by a business organization and as such the decade of productivity must be complemented by a decade dedicated to the consumer."

Be that as it may, a clearly shown fact is that the Sri Lankan consumer does not have the facility of 'informed choice' which is being pre-informed of quality, safety,

performance, price etc. of products and services prior to shopping, which can be achieved by comparative tests, evaluation and publication of results by independent accredited labs and institutions.

Providing this facility to the consumer is the main goal of The National Consumer Watch of Sri Lanka, an organization which was inaugurated in October 1988 and is dedicated to being the watchdog of the consumer.

Moddy C Fonseka, president of the organization says 'informed choice is the facility offered to consumers and well established in progressive countries of keeping consumers informed of the quality and performance of products and services, not through extravagant and unfounded claims of irresponsible advertisers, but through comparative tests and evaluations by independent, accredited labs, and institutions and the publication of their findings. This service provides the consumer with factual, unbiased information about which is the "Best Buy" and which is the "Worst Buy." It also warns them of items injurious to life and limb. A shopper's most trusted friend indeed! We have not given up our efforts, in that sphere, and will continue to fight until this basic consumer right is firmly established in Sri Lanka.