Consumer Protection Act 1986 is enacted for better protection of consumer interests. To attain this objective this Act provides the provisions for the protection of consumers from the Unfair Trade Practices also. The definition of Unfair Trade Practices is evolutionary in character. Before 1984 there was no definition of Unfair Trade Practices under any enactment. In 1984 the definition of Unfair Trade Practices was added to the M.R.T.P. Act 1969 w.e.f. 1-8-1984 as Section 36-A. After the Consumer Protection Act was enacted 1986, the definition of Unfair Trade Practices was removed form the M.R.T.P. Act 1969 and the same was incorporated, verbatim in the Consumer Protection Act 1986 w.e.f. 18-6-1993, thus making the Consumer Protection Act 1986 a complete Code for protection of consumer interests.

The definition of Unfair Trade Practices as provided in sec. 2(1)(r) of the Consumer Protection Act 1986 is as follows:

“2[(r)不公平贸易 practices” 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:-

(1) the practice of making any statement, whether orally or in writing or by visible representation which,-

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

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

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

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

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

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

(vii) 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;

(viii) makes to the public a representation in a form that purports to be,-

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

(ii) 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;

(ix) Materially misleads the public concerning the price at which a product or like products or goods, 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 ;

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

Explanation:- For the purposes of Clause (1), 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 displayed 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;

(2) permits the publication of any advertisement whether in any newspaper or otherwise, for the sale of 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 purposes of Clause (2) “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 ;

(3) Permits:-

(a) the offering of gifts, prizes or their items with the intention of not providing them as offered or creating impression that something is being given or offered free of change 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;

(3A) with holding from the participants of any scheme offering gifts, prizes or other items free of change, on its closure the information about final results of the scheme.

Explanation:- For the purposes 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 newspapers in which the scheme was originally advertised;]
likely to be used, by consumers, knowing or having reason to believe that the goods or services sold do not comply with the standards prescribed by 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;

(5) permits the hoarding or destruction of goods, or refuses 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.

[6]Manufacture of spurious goods or offering such goods or offering such goods for sale or adopting deceptive practices in the provision of service.

It may be noted that sub-section (3) A of section 2(1) (r) and clause (6) were added to this definition in 2002 to the Consumer Protection Act 1986 to widen the scope of the definition of Unfair Trade Practices with a view to give more protection to the consumers.

Before deciding as to what is an Unfair Trade Practice, regard must be had to the nature of the Trade Practice as such. A trade practice which causes loss or injury to the consumers of such goods or services either by eliminating or restricting competition would be considered as unfair trade practice. If the power to decide the nature of any trade practice is given to an authority, such authority is bound to follow the principle of Audi Alteram Partem before deciding the case, failing which the decision of the quasi-judicial authority is invalid. This inference can be drawn from the judgment of the Supreme Court in Kirtiraj (Nirmal V:s Director General (I & R) Investigation & Registrations) which was decided under Section 36-A of the MRTP Act 1969. The factual matrix of this case is as follows. The appellant, a public limited company, having registered in Ahmadabad, is engaged in the manufacture and sale of Nirma Washing Powder, Nirma Detergent Cakes and Nirma Bath Soaps. The appellant claimed that having established a good market for the sale of its various products, it thought of offering a scheme as an incentive to the consumers for its products. Therefore, the appellant flatted a scheme of awarding and distributing prizes through a lottery. According to this scheme, the appellant placed a coupon bearing a number in each KG pack of detergent/washing powder. The scheme was valid till 31st July, 1991 and the draw of lots was to be held on August 30th, 1991. The coupon kept in 1 KG packet mentioned that prizes worth Rupees 71 Lakhs were to be distributed which included Contessa Car, Maruthi 800 Car, BPL TV set, Gold Chain, Titan Watch, Steel Jug, Ladies Purse, Steel Brawl set and Cash.

One Mr. Azad Singh, New Delhi, made a complaint to the Director General (I&R) on 24-7-1991, alleging, inter alia, that the company while floating the scheme in question did not inform the customer as to in which news paper the result would be published, the company had increased the price of the detergent powder along with prize scheme, the said scheme is harming the interest of the other companies in this competition and the condition of the coupon is so bad that while opening the bag/ packet, it would got torn and the winner of the prize will have to face difficulty in getting the prize which would help the company in evading the responsibility for the increase in the price. Therefore, Azad Singh prayed that no opportunity is given to the appellant to produce evidence contrary to the complaint.

The Director General ( I & R) failed an application before the M.R.T.P. Commission requiring it to hold an enquiry into the Unfair Trade Practices U/S 36-D (I) of the M.R.T.P. Act 1969 and to pass an order of “cease and desist” against the company. In the complaint, it was alleged that the appellant while floating the scheme was trying to promote its detergent powder, to attract the customers to purchase the same, the company had raised the prices of detergent powder a few days before the impugned scheme was floated. This finding of the Commission proceeds of the fact that had raised the prices of the detergent powder was not bona fide and in fact an exercise to cover fully or partly the prize money. As a matter of fact the appellant placed before the court the audited balance-sheet and other evidence which indicated that the increase in the price of the powder was necessitated because of increase in the prices of the raw-materials and other connected factors. Thus, as no opportunity is given to the appellant to produce evidence contrary to the complaint, the finding of the Commission was aimed to protect the company from being robbed. Accordingly the matter is remitted to the National Commission to conduct the de novo proceedings allowing the parties to produce the evidence before it.

Applying the law to the facts in the instant case, the Apex Court observed that the Commission in its impugned order held that the offer made was floated with an intention to recover the value of the Company amounted to unfair trade practices under section 36 A(3)(a) of the Act and to support to this finding, the only material placed before the Commission was the complaint by the Director General (I&R) containing an averment that the Company had raised the prices of detergent powder a few days before the impugned scheme was floated. This finding of the court was based on the footing that the price money under the impugned scheme was either fully or partly covered by the amount charged in the transaction as a whole. This finding is without any cogent evidence before the Commission. As rightly argued by the appellant, if the Commission was to call upon it of its own volition to establish that the increase in the price of the detergent powder dehoes the prize money, the company would have produced the material to dislodge the assumption that this increase in prices of the detergent powder was bona fide and in fact an exercise to cover fully or partly the prize money. As a matter of fact the appellant placed before the court the audited balance-sheet and other evidence which indicated that the increase in the price of the powder was necessitated because of increase in the prices of the raw-materials and other connected factors. Thus, as no opportunity is given to the appellant to produce evidence contrary to the Commission, the finding of the Supreme Court on the matter of compensation is not justifiable. Accordingly the matter is remitted to the National Commission to conduct the de novo proceedings allowing the parties to produce the evidence before it.

The Consumer fora at the time of deciding the ‘unfair trade practices’ must have the following legal position in their favour.

1. They must have power to issue directions or corrective advertisements in the case of ‘unfair trade practices’, on the date of their decisions.

2. Existing law dealing with advertisements should not be ignored.

3. What is not prayed for by the complainant cannot be granted.

If any order is passed by the Consumer fora in violation of the above conditions their observation are invalid. This can be inferred from the decision of the Supreme Court in M/s. Godfrey Phillips India Ltd., Vs. Ajay Kumar.

The facts of this case were that an advertisement was issued in news papers and news magazines in 1999 for the cigarettes manufactured and sold by the applicant under the brand name of ‘Red and White’. The impugned advertisement apart from showing the packet of cigarettes with a forced brand name stated “Red and White smokers are one of a kind”. The advertisement also shows the smiling face of Akshay Kumar holding a cigarette. It also contains the statutory warning “Cigarette smoking is injurious to health”, as well as the price of the pack. The complaint was dismissed by the District Forum as the complainant had filed a suit in relation to the impugned advertisement in the Civil Court. In appeal in State Commission affirmed the order of the District Forum. Thereafter the complainant filed review petition before the National Commission. The National Commission held that the case of the complainant is that smoking of a cigarette by Akshay Kumar with the slogans used in the advertisement would detract people from the statutory warning. Seeing it comparative size of the letters etc., the statutory warning was nearly buried by the slogan. The complainant’s case was that Akshay Kumar and the solicitor of the advertisement amount to unfair trade practices. On the basis of this finding the National Commission gave the following directions:-

1. To discontinue forthwith the unfair trade practice of detracting from the statutory specified warning and not to publish any advertisement like...
the present one in any language giving the impression that a person who smokes by the White cigarette could perform such acts as could be performed by Akshay Kumar in films and thereby detracting from the specified warning.

2. To issue corrective advertisements of equal size in all the news papers in Hindi and English, like the present advertisement to neutralize the effect of the said impugned misleading advertisements.

3. Sri Ajay Kumar, shall be paid a sum of Rs.20,000/- by way of compensation and Rs.5,000/- as costs.

In the Supreme Court, the appellant contested all the above three findings of the Consumer Protection Act, 1986. Accepting the contention of the appellant the Supreme Court held as follows:

1. Direction (1) was given without any material or evidence whatsoever and there was not even a suggestion/pleading that the advertisement was of Akshay Kumar or that he could perform certain stunts without duplicates. There was not even an allegation that the statutory warning was detracted from. When such serious allegation which was to be established was not even specifically pleaded and when nothing specific was indicated in the complaint, the commission should not have given the direction on pure surmises.

2. As regards direction (2), the Supreme Court stated that advertisements in relation to cigarettes was prohibited by the Advertisements Act 2003. Therefore power to direct to give corrective advertisement was not there for the National Commission under Section 14 of the Consumer Protection Act. This power was given to the Consumer Fora by an amendment to the Consumer Protection Act in 2002, which added clause (hc) to Section 14.

3. As regards the third direction, the Supreme Court stated that there was no prior for any compensation. There was no allegation that the complainant suffered any loss. Section 14(1)(d) contemplates award of compensation to the consumer for any loss or injury suffered due to negligence of the opposite party. As there was no allegation or material placed on record indicating the loss suffered by the complainant compensation need not be awarded by the consumer fora. Moreover as the complainant himself stated that he was smoking cigarette for the last two decades the impugned advertisements cannot be said to have affected the complainant and/or caused any loss to him for warned grant of compensation. This case indicates the consumer fora has power and jurisdiction to order to give corrective advertisements under Section 14 of the Consumer Protection Act from 15-03-2003 in the matters of unfair trade practices.

In determine as to what is an unfair trade practice, it is necessary to examine whether the representation, comprehension of misleading the buyer.

As a matter of fact, it has been highlighted in the Inquiry report submitted by the Inquiry Officer (which was ordered on the allegations of irregularities in the allotment of plots by the Chairman and other officials) that the appellant was under no obligation to allot plots to the society whose land had been exempted because after the abandonment of acquisition in terms of Section 56(1) of the Punjab Town Improvement Act 1922, they failed to recover the development charges from the same and also ordered by the Government the acquisition proceedings in respect of the respondent’s land stood abandoned. It is amply clear that the exemption notification did not contemplate that the appellant trust was to allot plots to the members of the society whose land had been exempted for acquisition under the Government notification.

As a matter of fact, it has been highlighted in the Inquiry report submitted by the Inquiry Officer (which was ordered on the allegations of irregularities in the allotment of plots by the Chairman and other officials) that the appellant was under no obligation to allot plots to the society whose land had been exempted because after the abandonment of acquisition in terms of Section 56(1) of the Punjab Town Improvement Act 1922, they failed to recover the development charges from the society and the members of the society also appeared to be bogus. Furthermore, in view of the civil suit, in respect of land out of which plot no.32 had been carved out, having been decreed in favour of the land owner, it was clear that the said peace of land did not belonged to the society which could be placed at the disposal of the appellant for development and yet, it appear that in conformance with the officials of the appellant, they succeeded in getting it included in the list of allotted plots with an ulterior motive to get a plot in lieu thereof. Accordingly, the Supreme Court concluded that all these facts are relevant which were ignored by the three fora. Therefore the finding that the non-delivery of plot no.32 are an alternative plot in lieu thereof amounted to “unfair trade practices” on the part of the appellant Trust cannot be sustained. Hence, there is no material on the record to conclude that the appellant had indulged in “unfair trade practices”.

There are Allopolagic and Ayurvedic medical practitioners involved in rendering medical services to the society. Prescribing Allopathic medicine by the Ayurvedic Doctors and vice-versa was treated as “unfair trade practices” under the Consumer Protection Act. In the present case, the Ayurvedic blend with the Allopathic treatment was treated as “unfair trade practice” under the Consumer Protection Act. The minority judgment held that though the society was given the exemption, the area was developed by the Trust and it was then offered to the society in the form of position of 151 residential plots of 150 sq yards each and therefore not handing over a plot in lieu of plot no.32 amounted to “unfair trade practices” on the part of appellant Trust. The National Commission confirmed this opinion. From this all an appeal was prepared before the Supreme Court.
admitted in the hospital run by the respondent at Rishikesh. The respondent prescribed medicine to the patient informing that the medicine is a combination of hundreds of herbs. The appellant was given a printed medial prescription for administering the medicine. During medication the condition of the patient deteriorated further and the patient is getting fits ever without fever also, hitherto which were occasioned only during fever. As the condition of the patient was deteriorating further, the appellant taken the patient to the respondent on his instruction and was given medicine in the form of thick white tablets and the appellant was instructed to use the medicine for three more years. The respondent assured more powerful medicine even though the condition of the patient worsening further when convulsions become more frequent with longer periods.

On making inquiry as to the nature of medicine prescribed by the respondent it was revealed that the small white tablets were SELGINK which is not meant for Children. It was alleged that the respondent was passing of allopathic medicines as Ayurvedic medicine. It was further alleged that he is a quack and guilty of medical negligence and criminal negligence and breach of duty as he is playing with the lives of the people without understanding the decease. He was prescribing allopathic medicine for which is not competent to prescribe20. This matters was raised before the National Commission which directed that the medicines be sent to an appropriate laboratory for testing their nature. The laboratory test revealed that the claim of the respondent was wrong and the National Commission held that he was guilty of "unfair trade practices". But in this case that is inconsistent with the existing medical practice is that the letter dated 24-03-2003 issued by the Secretary, Medical Education Department, Government of UP authorizing the Ayurvedic/Unani Medical Practitioners to prescribe Allopathic Medicine also. Although this letter was accepted by the National Commission also, with due respect to their authority, it is submitted that as a system of Ayurvedic/Unani Medicine is different from Allopathic Medical System, the UP Medical Education Department letter cited above should have been declared unreasonable because Ayurvedic/Unani Doctors are not having either sound knowledge in Allopathic Medicine nor having any formal qualification and training in prescribing in Allopathic Medicine. Both the systems are totally different.

On appeal the Supreme Court held that the respondent was held guilty of "unfair trade practices" and adopted unfair method and deceptive practice by making false statements orally as well as in writing. The supreme court further ruled that as Prasanth and the appellant having undergone physical and mental injury due to misleading advertisement, "unfair trade practices" and negligence of the respondents, both Prasanth and the appellant are entitled for enhanced compensation of Rs. 15,00,000/- for payment in their favour with a direction to the respondents to pay the amount to the appellant within three months22.

CONCLUSION: Very few cases reached the Apex Court on the topic of "unfair trade practices" for its consideration. The litigation on this topic appear to be very minimal as consequence of which there is no occasion to the Apex Court to consider the entire definition of "unfair trade practices" for interpretation on different fact situations by considering all the elements/essentials of the definition of "unfair trade practices". The fact that the definition of "unfair trade practices" is removed from the MRTP Act 1969 and added to the Consumer Protection Act 1986 indicates that the interpretation of later statute i.e. the Consumer Protection Act 1986 on the issue of "unfair trade practices". More specifically these rules are as follows11:-

1. Use of the same words in similar connection in a later statute gives rise to a presumption that they are intended to convey the same meaning as in the earlier statute.

2. On the same logic when word in an earlier statute have received an authoritative exposition by a superior court, use of same words in similar context, in a later Act will give rise to a presumption that the legislature intends that the same interpretation should also be followed for construction of those words in the later statute.

3. When a particular form of legislative enactment which has received authoritative interpretation whether by judicial decision or a long course of practice, is adopted in the framing of a later statute, it is a sound rule of construction to hold that the words so adopted were intended by the legislature to bare the meaning which has been so put up on them.

In view of this position, for interpretation of "unfair trade practices" under the Consumer Protection Act, 1986, the interpretation placed on the definition of "unfair trade practices" under the MRTP Act 1969 is relevant as this cannon of construction founds its acceptance of the Supreme Court also when it observed that, "it is a well settled rule of construction that when a statute is repealed and re-enacted and words in the repealed statute are reproduced in the new statute, they should be interpreted in the sense which has been judicially put on them under the repealed Act, because the Legislature is presumed to be acquainted with the construction which the Court serve put on the words and when they repeat the same words, it must be taken to have accepted the interpretation put on them by the court as correctly reflecting the Legislative mind23."