

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION  
NEW DELHI**

**REVISION PETITION NO. 156 OF 2018**

(Against the Order dated 22/09/2017 in Appeal No. 324/2016 of the State Commission  
Maharashtra)

1. YASH RAJ FILMS PVT. LTD.

5, SHAH INDUSTRIAL ESTATE VEERA DESAI  
ROAD, ANDHERI WEST,

MUMBAI-400053

MAHARAHSTRA

.....Petitioner(s)

Versus

1. AFREEN FATIMA ZAIDI & ANR.

R/O. HOUSE NO. 1-23-02, ZAIDI LANE, DEODI  
BAZAR,

AURANGABAD-430101

MAHARAHSTRA

2. CENTRAL BOARD OF FILM CERTIFICATION  
BHARAT BHAVAN

91E, WALKESHWAR ROAD,

MUMBAI-400006

MAHARAHSTRA

.....Respondent(s)

**BEFORE:**

**HON'BLE MR. JUSTICE V.K. JAIN, PRESIDING MEMBER**

**For the Petitioner :** Mr. Jayant K. Mehta, Advocate,  
Ms. Suveni Bhagat, Advocate

**For the Respondent :** Mr. Suman Chauhan, Advocate  
for R-2.  
NEMO for R-1.

**Dated : 18 Feb 2020**

**ORDER**

**JUSTICE V.K. JAIN, PRESIDING MEMBER**

The complainant, who is a teacher by profession, on watching the promos of the film, namely, "Fan" decided to watch the said film with her family members. The promo, which the complainant and her children had seen before deciding to go to a cinema hall to watch the movie,

included a song "Jabra Fan". When the complainant and her family members watched the movie, the song "Jabra Fan" was missing from the said movie. Feeling cheated and deceived, the complainant approached the concerned District Forum by way of a consumer complaint seeking compensation, alongwith a direction to the petitioners to air the promos and song with a caveat that the said song was not included in the film.

2. The complaint having been dismissed by the District Forum, the complainant approached the concerned State Commission by way of an appeal. The appeal was resisted by the petitioner who interalia submitted that the complainant cannot be said to be a consumer. On merits, it was submitted that the song "Jabra Fan" was shown on TV Channels as a promotional trailer of the film and it had been disclosed to the public at large by way of press interviews that the said song will not be a part of the movie.

3. The State Commission, vide impugned order dated 22.9.2017 directed the petitioner to pay compensation quantified at Rs.10,000/- to the complainant alongwith cost of litigation quantified at Rs.5,000/-. Being aggrieved, the petitioner is before this Commission.

4. The first question which arises for consideration in this petition is as to whether the complainant can be said to be a consumer within the meaning of Section 2(1)(d) of the Consumer Protection Act or not. Consumer means a person who buys goods or hires or avails services for a consideration. The complainant having paid the price of the tickets of the movie "Fan" to the Exhibitor (Cinema Hall), for watching the said movie, it cannot be disputed that the consideration was duly paid by her though she may not have paid it directly to the petitioner which is the producer of the film "Fan". However, it is not necessary that the consideration for purchasing goods or hiring or availing services must necessarily be paid directly to the person who sells the goods or renders services to the consumer. The consideration may also flow to the seller of the goods or the service provider as the case, may be through an intermediary. The complainant paid the price of the ticket to the Exhibitor. The price of the ticket received by the Exhibitor, after excluding the tax component, is shared between the Exhibitor, Distributor and Producer of the movie. This is not the case of the petitioner that no part of the price of the tickets was received by them through the Exhibitor/Distributor of the movie. Therefore, it cannot be accepted that the complainant was not a consumer of the petitioner.

5. The term deficiency has been defined as under in Section 2 (1) (g) of the Consumer Protection Act:-

1. *"deficiency" means any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which is required to be maintained by or under any law for the time being in force or has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any service;*

6. The term unfair trade practice is defined in Section 2(1)(r) of the Consumer Protection Act and it includes the practices enumerated in the said Clause though the aforesaid Clause is not exhaustive and there can be practices other than those specified therein which amount to an unfair method or unfair or deceptive practice.

7. When the producer of a movie shows the promos of the said movie on TV Channels, etc. and such promos include a song, any person watching the promo would be justified in believing that the movie would contain the song shown in the said promos, unless the promo itself contains a disclaimer that the song will not be a part of the movie. If a person likes the song shown in the promo and based upon such liking decides to visit a cinema hall for watching the said movie for a consideration, he is bound to feel deceived, disappointed and dejected if the song shown in the promo is not found in the film. The practice of including a song in the promo of a film shown widely on TV Channels but excluding the said song while exhibiting the movie, in my opinion, constitutes an unfair trade practice. The obvious purpose behind such an unfair trade practice is to draw the potential viewers to the cinema hall by luring them with the song which forms part of the promo and thereby making gain at the cost of the viewer if the song does not form part of the movie for which consideration is paid by the viewer. The exclusion of the song from the movie will also constitute a deficiency, as defined in Section (1)(g) of the C.P. Act, if the song is impliedly promised, but is later omitted while exhibiting the movie.

8. Though it is claimed that the Producer and Actor of the movie had declared publicly that the song which forms part of the promo would not be a part of the movie, the said disclosure, even if it was made, would not be sufficient since it is not necessary that a person who watches the promo containing the song would also happen to see the interview given by the actor/producer of the movie. In fact, I fail to understand the logic behind including the song in the promo but excluding it while exhibiting the movie, unless the intention of the producer is to deceive the viewer by making him believe that the song would form part of the movie while knowing it very well that the said song would not be a part of the movie when it is exhibited in the cinema halls.

9. For the reasons stated hereinabove, I find no justification to interfere with the impugned order in exercise of the revisional jurisdiction of this Commission. The revision petition is, therefore, dismissed, with no order as to costs.

.....J  
**V.K. JAIN**  
**PRESIDING MEMBER**