

The Draft Consumer Protection (E-Commerce) Rules, 2020 Explained



Authors:

Vimarsh Singh & Stuti Sharma
Project Associates, Policy, LQF

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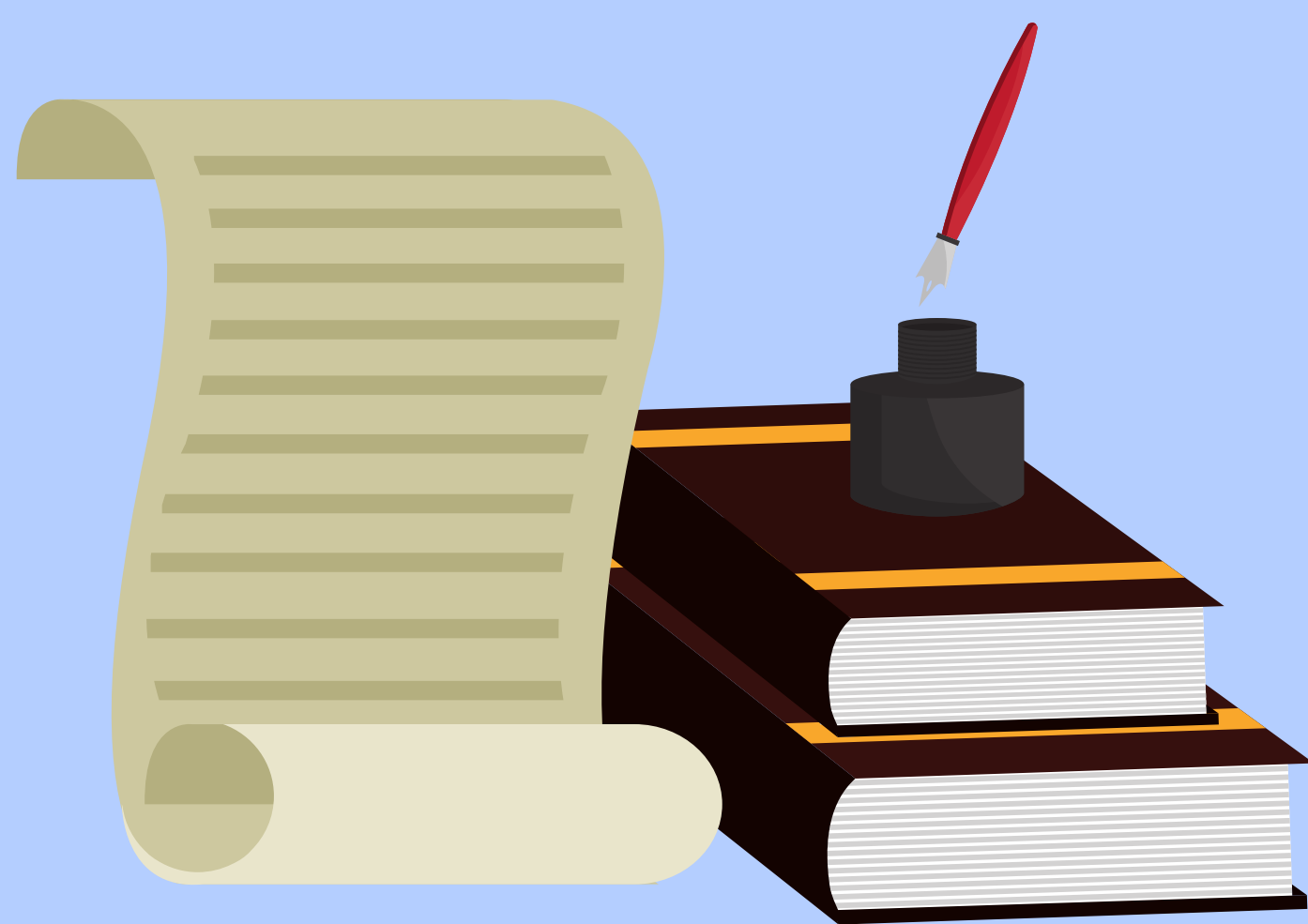


Overview

The E-Commerce market is growing at a breakneck pace in India and is expected to become the second-largest in the world by 2034. After receiving various complaints against the foreign e-commerce retailers operating in India, the Department of Consumer Affairs has notified new draft rules amending Consumer Protection (E-Commerce) Rules, 2020, to safeguard consumers' interests and strengthen the regulatory regime of e-commerce.



The Consumer Protection Act 2019, was initially notified on August 9th, 2019. However, it came into effect on July 20th, 2020. As notified by the Centre on June 21st, 2021, the amendments to the rules are a more stringent rendition of the earlier version as released in 2020 by the Ministry of Consumer Affairs, Food, and Public Distribution.



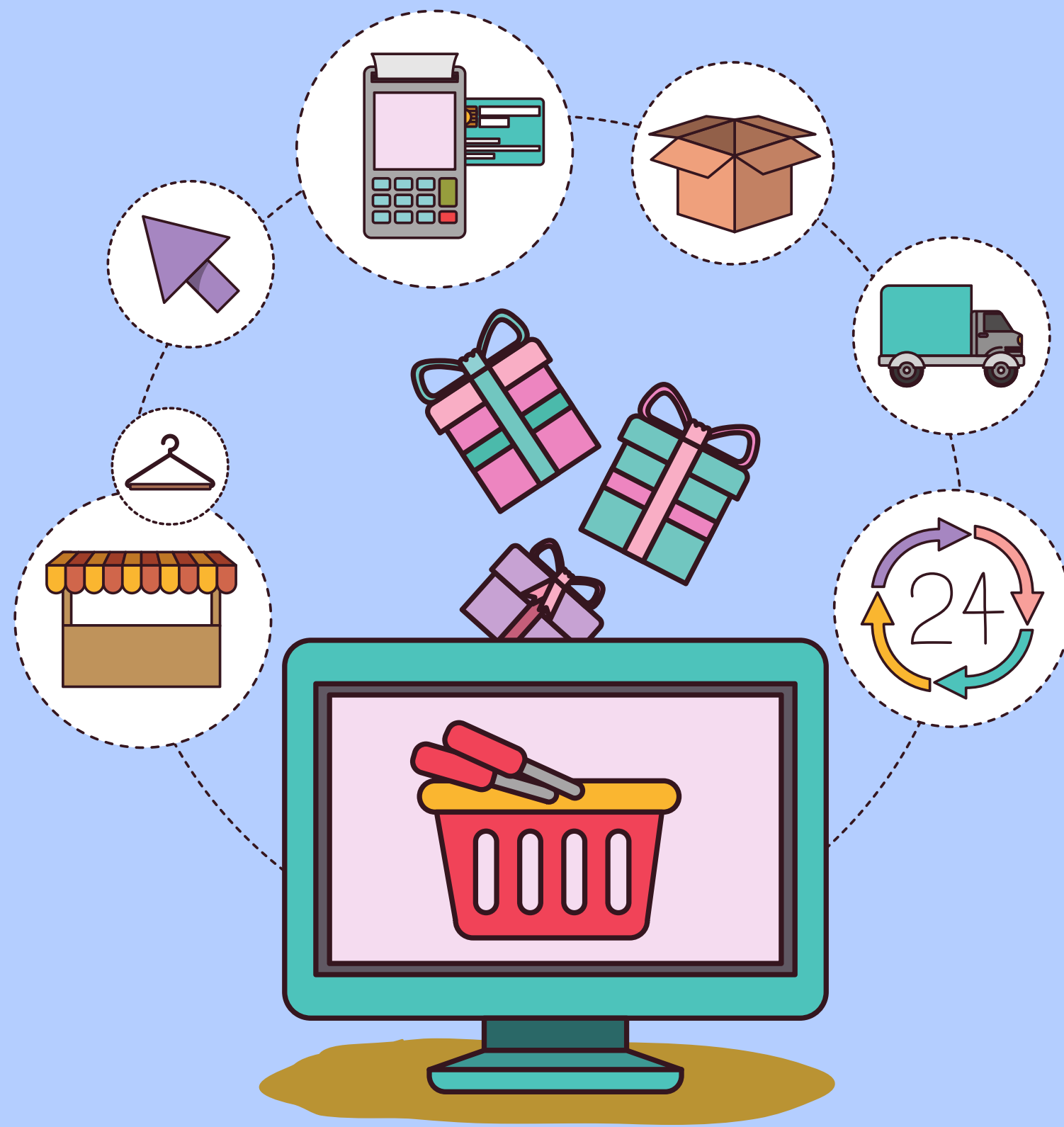
The current amendments are said to have the consumers' best interests vested in:

- Bringing transparency to the e-commerce platforms
- Strengthening the regulatory regime on foreign e-commerce entities operating their business in India
- Protecting the consumers from unfair trade practices, violation of privacy, issues of unattended grievances and,
- Ensuring a level-playing field for both domestic and international e-commerce entities



It also encourages the Central Government's initiative of Make in India to promote domestic industries and entrepreneurship.

What are the new provisions, and what will be their implications for consumers and the e-commerce players?



First and foremost, to ensure absolute clarity of what constitutes an e-commerce entity, one needs to be acquainted with its legal definition.

An "e-commerce entity" as defined under Rule 3(b): means any person who owns, operates, or manages a digital or electronic facility or platform for electronic commerce, including any entity engaged by such person for the purpose of fulfillment of orders placed by a user on its platform and any 'related party' as defined under Section 2(76) of the Companies Act, 2013, but does not include a seller offering his goods or services for sale on a marketplace e-commerce entity."

Now that it is established what an e-commerce entity is, let's take a look at a few essential provisions:

On manipulating search results, reducing ambiguity and the violation of privacy.

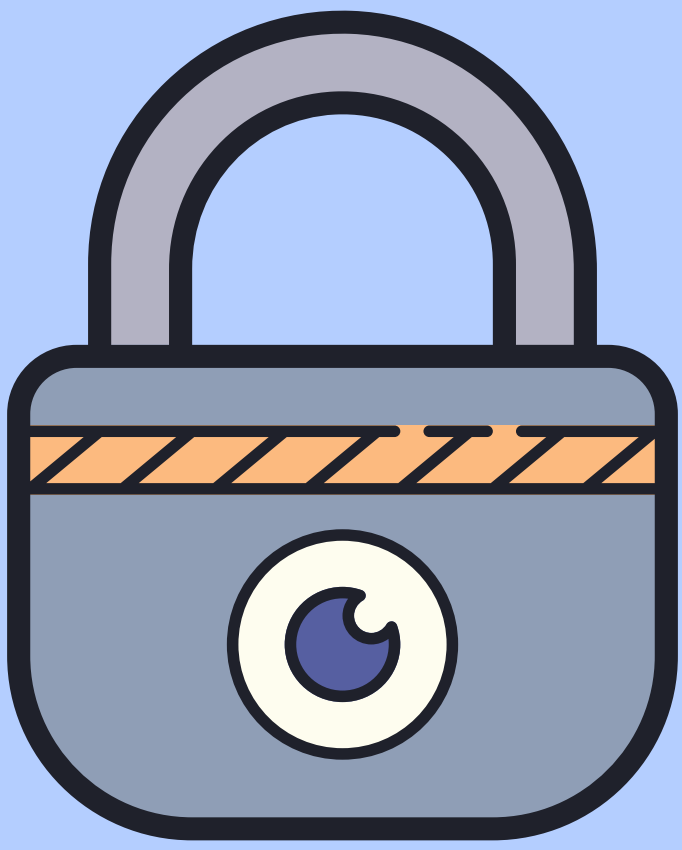
Rule 5(14) envisages provisions that are densely consumer interest centric; these intend to provide absolute transparency to consumers, protect them from any unjust trade practices and uprightly guard their right to privacy.

Under Rule 5(14), the E-tailers can not deceive consumers by unscrupulously manipulating search results and can not permit usage of their name for brands if such practices amount to unfair trade and harm the interests of consumers. This amendment comes under the backdrop of the accusations on brands like Flipkart and Amazon, who allegedly tweak their search results to promote their own (in-house) brands.





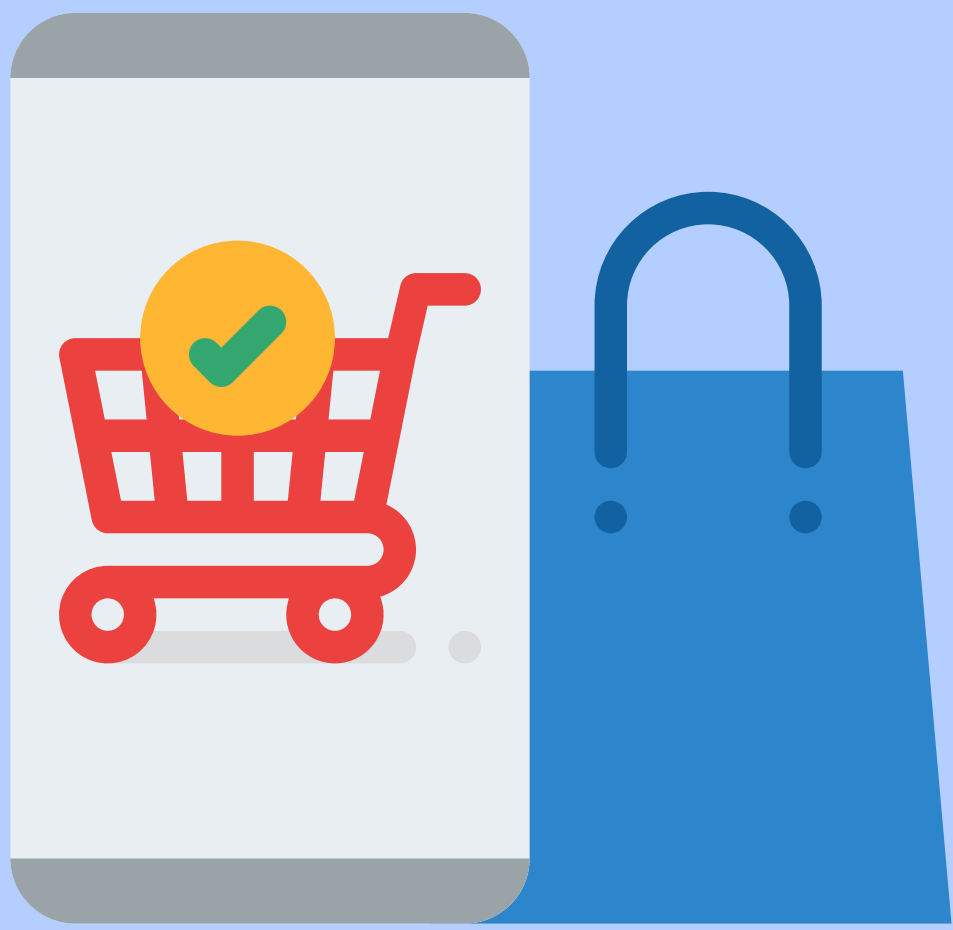
Furthermore, under Rule 5(14)(d), brands that have the prefix of an e-commerce service attached to them will be under probe if the brand's product turns out to be disadvantageous to the consumer. For instance, Amazon provides products with the prefix "AmazonBasics" on the web page while searching for any product.



Most importantly, Rule 5(14)(e) of the current proposed amendment upholds the right of privacy of the consumers to be supreme; according to the provision, all e-commerce platforms are prohibited from making available any information pertaining to the consumer to any person other than the consumer without the explicit affirmative consent of the consumer. No loopholes such as the automatic recording of personal information through pre-ticked boxes will be licit.



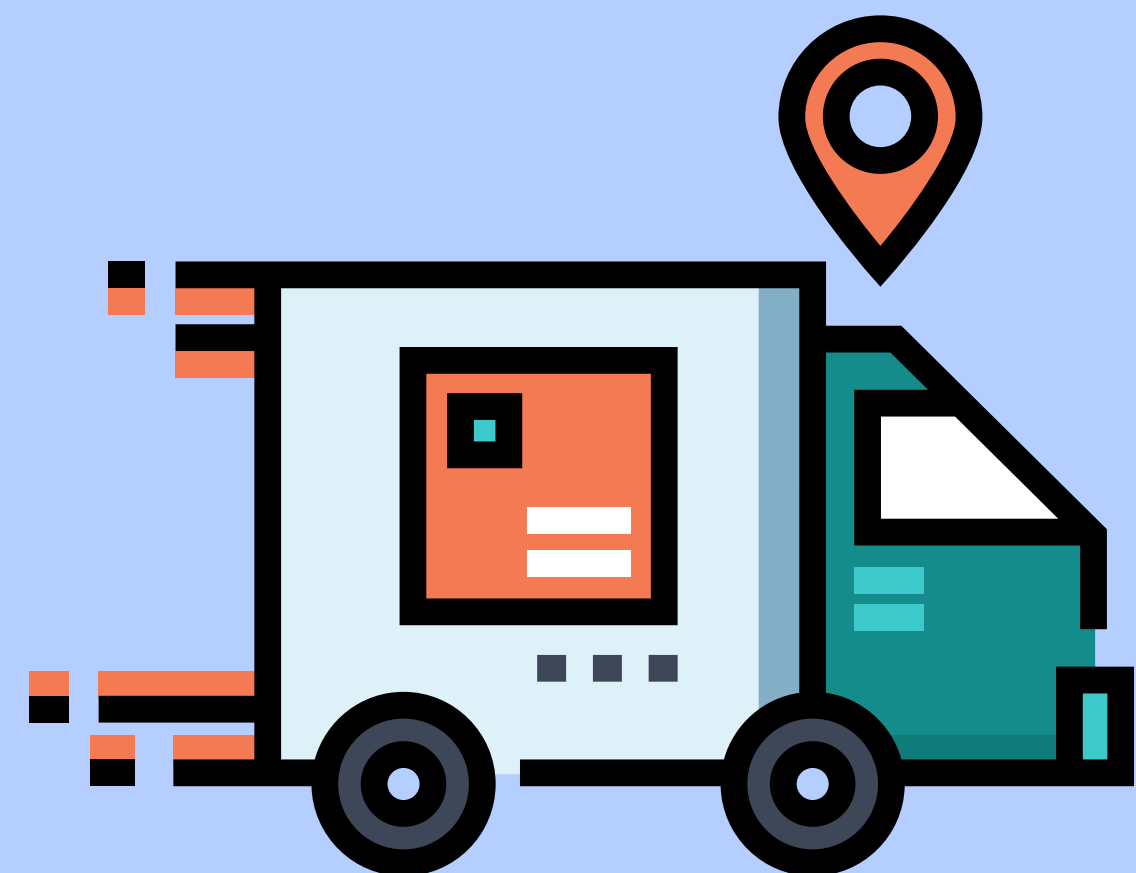
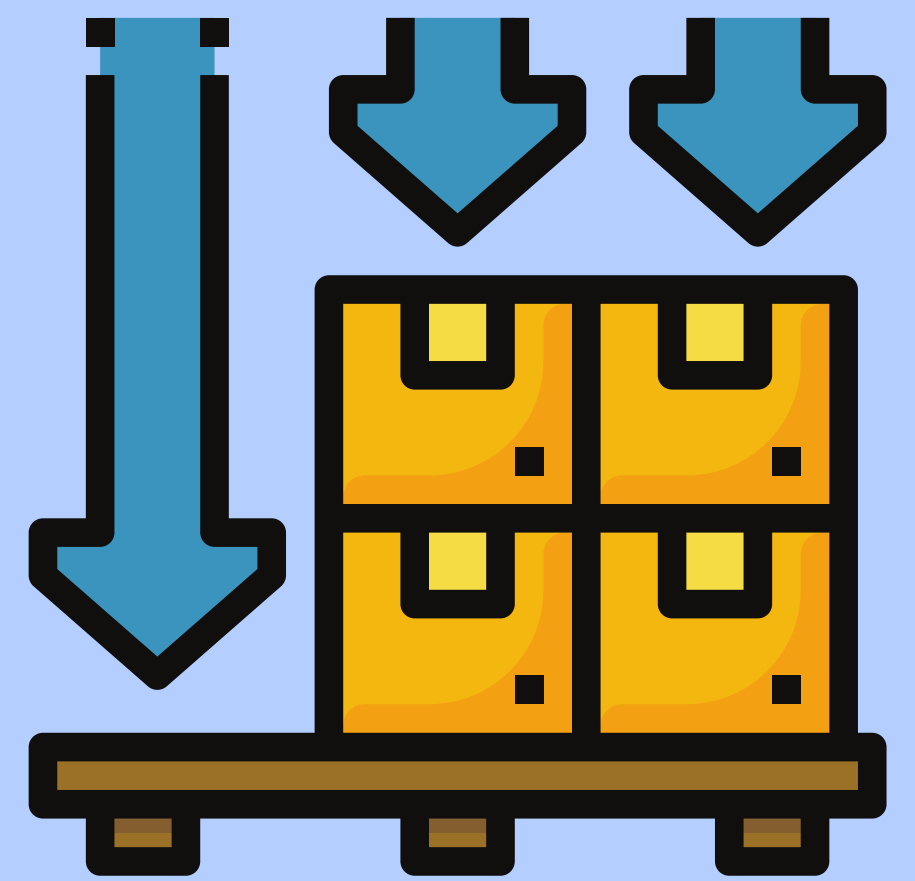
Lastly, per Rule 5(15), the sponsored products and entities on the e-commerce platforms need to be distinctly identified to provide absolute transparency to the consumers about the purchase they're about to make.



Proposed Amendments to Consumer Protection (E-Commerce) Rules 2020 also added Rule 5(7), which ensures that the e-commerce entities have to provide the names and details of the importer of any given product and notify the goods along with their country of origin at the time of review or pre-purchase stage. The entities also have to provide a ranking for goods. In addition to this, the e-commerce entities have to provide a domestically available alternative product on the same page when the customer is buying an imported interest or service.



Furthermore, amended Rule 7(5)(d) also ensures that "best before or use before date, information related to return, refund, exchange, expiration date, details of best before usage, warranty and guarantee, delivery and shipment, cost and return shipping, mode of payments, and any other similar information" has to be mentioned while the consumer is viewing the product.



On the use of unscrupulous elements by E-commerce entities to attract and deceive consumers

Market e-commerce giants viz Amazon and Walmart owned Flipkart are particularly notorious for using flash sales as a marketing gimmick to lure in customers by offering massive discounts. The draft e-commerce rules impose a ban on flash sale(s), defined in Rule 3(1)(e) as "the sale organized by an e-commerce entity at significantly reduced prices, high discounts or any other such promotions or attractive offers for a predetermined period on selective goods and services or otherwise with an intent to draw a large number of consumers."



This definition also includes a sale of specific products that last for a short period and offers discounted deals ranging from 50 to 70 percent on maximum retail price.



Rule 5(16) of the draft rules proposes to ban flash sales as this practice of e-commerce entities is placing the customers in a disadvantageous position. To add to that, the foreign e-commerce players are flouting several Indian laws by using complex business structures while small sellers lack enough financial resources to leverage such discounts. Additionally, during flash sales, customers buy goods in a rush to save money without taking a proper look into the product specification and brand, and that is why the draft rules have only restricted back-to-back sales, which usually take place every weekend and not the traditional ones which are seasonal or take place on special occasions.





Rules 5(II) and 5(I2) prohibit the Mis-selling and Cross-selling respectively of commodities and services by the e-retailers. Rule 5(II) enforces e-commerce platforms to mark sponsored products distinctively and display the best before or use before the date to their customers. Under Rule 5(I2), e-tailers will not suggest goods relating to or ancillary to the goods the customer is buying; in this, the entity has to disclose to its users by displaying on their website that they are cross-selling. The new amendments added Rule 5(I9), which gives the necessary direction to every e-commerce entity to communicate clearly and prominently in its invoice the seller's name in the same font size as that of the e-commerce entity's name.

The above amendments further reinforce the very intention of the Consumer Protection Act, 2019, to protect the consumer against any fraudulent practice. Rule 5(3) ensures that no e-commerce entity shall adopt any unfair trade practices in the course of its business or otherwise; in furtherance of the rule mentioned above, Rule 5(4) provides that e-commerce entities shall not display nor promote misleading advertisement.

Conclusion Statement

The Ministry of Consumer Affairs has taken a big step by regulating every foreign e-commerce entity. These new e-commerce rules aim to give more power to the consumers and further strengthen their rights. The draft rules are seemingly more consumer-centric as in addition to the Consumer Protection Act, 2019 and Information Technology Act, 2000, provisions such as grievance redressal mechanism, guarding consumers privacy, prohibition of deceptive advertising practices are envisaged in the draft rules. The new draft rules stand for the protection of consumer rights and aim to provide absolute transparency to the consumers. However, the Department of Consumer Affairs needs to provide certain clarifications in the coming weeks as these draft rules are still not finalized.

