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IN THE COMPETITION APPELLATE TRIBUNAL

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No. 73(iii) **/Reg./CAT/2026**
Dated: **21-05-2026**

RECKITT BENCKISER PAKISTAN LIMITED
Vs.
COMPETITION COMMISSION OF PAKISTAN

NOTICE

APPEAL NO. 47/ 2023

Take notice that under rule 51 of the Competition Appellate Tribunal Rules, 2015, attested copies of the judgment dated **20-05-2026** is enclosed for information and record.

2. Given under my hand and stamp of the Tribunal, this 21st day of May, 2026.

Competition Appellate Tribunal Islamabad

Mustajab Alam

(MUSTAJAB ALAM)
Registrar
REGISTRAR
Competition Appellate Tribunal
Government of Pakistan
Islamabad

1. **Reckitt Benckiser Pakistan Limited,**
   through its Chief Executive Officer,
   3rd Floor, Tenancy – 04 & 05, Corporate Office Block,
   Dolmen City, HC-Block 4, Scheme 5, Clifton, **Karachi.**

2. **Barrister Haroon Dugal,**
   Advocate Supreme Court,
   Haroon Dugal Law Chamber,
   House No. 72-A, Nazim-ud-din Road,
   Sector F-8/4, **Islamabad.**

3. **Competition Commission of Pakistan,**
   ISE Tower, 7th Floor,55-B, Jinnah Avenue,
   Islamabad.

4. **Square Distribution & Marketing System (Private) Ltd,**
   Through its CEO 17 KM Ferozepur Road,
   Lahore.

IN THE COMPETITION APPELLATE TRIBUNAL, ISLAMABAD

(Appeal No. 47 of 2023)

Reckitt Benckiser Pakistan Limited...Appellant

Versus

Competition Commission of Pakistan & another...Respondent

Present:	Justice (R) Muhammad Junaid Ghaffar, Chairperson. Dr. Faiz Illahi Memon, Member Technical-I Mr. Asim Akram Member Technical-II.
For the Appellant:	Mr. Haroon Dugal, Advocate.
For the Respondent:	Mr. Hafiz Naeem Senior Legal Advisor and Haider Afzal, Legal Advisor for CCP.
Date of hearing:	22.01.2026
Date of Judgment:	20.05.2026

JUDGMENT

Justice (R) Muhammad Junaid Ghaffar, (Chairperson): Through this Appeal, the Appellant has impugned order dated 09.02.2021, passed by two Members of the Competition Commission of Pakistan ("**Commission**"), through which penalty of PKR 75 million each (a total of PKR 150 million) for violation of Section 10 read with Section 10 (2)(a) and 2(b) of the Competition Act 2010 ("Act") in relation to deceptive marketing practices of omission and commission has been imposed. In addition to this, the Appellant has also been directed to cease and desist from undertaking misleading practices and to ensure inclusion of a disclaimer/disclosure i.e. '**NON-MEDICATED**' in explicit, express bold words on the product in question ("**Strepsils**") which shall prominently be displayed on the Product in print and/or in electronic advertising/marketing and to use its registered trade mark along with such disclaimer. In similar terms, further detailed and minute directions have also been issued to the Appellant in the following terms:

> i) The Respondent is further directed to place/make sufficient disclosure and/or adequate disclaimer not only on the box packing of the Product, but also on each of the strips containing the tablets;
>
> ii) Furthermore, along with the disclaimer/disclosure in English, a disclaimer/disclosure in Urdu in the same manner must also be included to the effect (یہ دوا نہیں ہے، دوا کے لیے ڈاکٹر سے رجوع کریں۔). The use of the above qualifying language is aimed to render harmless on otherwise deceptive use of brand name, as there is ambiguity that permits a misleading inference to be drawn with use of the brand name of the Product.
>
> (iii)The Respondent is further barred from using or making any of the claims or captions in marketing and sale of its product without giving the aforesaid disclaimer/disclosure be it a publication, print or electronic media.
>
> (iv)The Respondents are directed and required to ensure that its agents, distributors, dealers employees, any and all representative immediately remove from the market as well as on Facebook page and its website any/or all misleading publications and marketing material of the Product and are permanently restrained from indulging in deceptive marketing.
>
> (v)The compliance must be ensured within 40 days from the date of issuance of this Order. Meanwhile, the Respondent is directed to publicize/notify, conspicuously, at least three newspapers each, in English and Urdu, having nationwide circulation regarding the change in character of the Product from medicated/drug to food category in Pakistan such advertisements be given once a week until compliance is ensured within the time specified.

2. Record reflects that pursuant to a complaint by Respondent No.2[1] under Section 37(2) of the Act, the Commission constituted an enquiry committee and based on its report dated 29.06.2019 issued a show cause notice to the Appellant, whereby it was alleged that in terms of the Enquiry Report in general and paragraphs 2.1 to 2.24, paragraph 5.29 to 5.67 and paragraph 5.29 to 5.68, the Appellant had resorted to distribution of false and misleading information and/or withholding of material information related to its product *'Strepsils'* including its claims, which are deceptive and misleading, lacking reasonable basis related to character, method of production, properties, quality and suitability of use of its product *'Strepsils'* and finally the misleading campaign is also capable of harming the business interests of Respondent No.2; hence, prima facie, the Appellant has violated the provisions of Section 10(1) read with Section 10(2) (a) & (b) of the Act; hence, the show cause notice. The Appellant contested the show cause notice with a detailed reply, which was found unsatisfactory. The Commission settled three issues and through impugned order the Commission has imposed penalties as above and has also given certain directions.

3. Learned Counsel for the Appellant has contended that the Appellant has not indulged into any deceptive marketing practices in violation of section 10 of the Act; that the product in question including all variants, clearly indicate in a legible manner that these are non-

[1] Square Distribution & Marketing Systems (Private) Limited

medicated Lozenges; that Respondent No. 2 had no locus standi to approach the Commission, whereas the complaint was based on false and misleading information; that Respondent No.2 is not involved in the same line of business and product and therefore is not an undertaking within the contemplation of Section 37(2) of the Act; that no penalty could have been imposed upon the Appellant for violation of section 10(2)(a) of the Act as the Appellant was neither involved in dissemination of false or misleading information, nor the Appellant had caused any harm to the business interest of Respondent No.2 who is involved in the business of selling cough syrups duly registered as drugs under the Drugs Act, 1976; that pursuant to the directives of Ministry of Health dated 10th April, 2007, whereby the product in question was De-registered and permission was granted to sell and market the same as a confectionery or candy, the Appellant had relaunched the product with a disclaimer "non-medicated Lozenges"; that Lozenges are not inherently medicated products and are manufactured and marketed solely for soothing, refreshing or confectionery purposes without containing any pharmaceutical active substance; that the Commission has failed to determine the actual harm caused to Respondent No.2 as alleged, whereas this Tribunal in the case of *Unilever Pakistan Limited*[2] has already held that for sustaining penalty in terms of Section 10(2)(a) of the Act, it is mandatory upon the Commission to carry out a subjective analysis of the harm caused to the business interest of the complainant, which

[2] Order dated 14.01.2026 passed in Appeal No. 02 of 2025 by the Competition Appellate Tribunal.

exercise is lacking in the instant matter; that the Commission has failed to appreciate that the Appellant had followed the directions of Ministry of Health dated 10th April, 2007, in its letter and spirit and had made sufficient disclosure, whereas no factual incorrect claims was ever made; that the Appellant had got its products De-registered voluntarily which shows bona fides; that the Appellant has not made any claim contrary to law and facts, whereas proper disclaimer is printed on the packaging of the product which is sufficient compliance of the law and the directions of Ministry of Health as well as the Commission; that the Commission has no jurisdiction to determine any non-compliance of the directive of Ministry of Health; that the Commission has not held that the claims of the Appellant are deceptive; rather it is only in respect of whether the disclaimer was clear and conspicuous or not, therefore, no penalty could be imposed for violation of Section 10(2)(b) of the Act; that the alleged misrepresentation or omission / practice is neither material, nor it misleads the consumers as the Appellant is a law abiding and compliant company; hence, the finding of the Commission in this regard is not sustainable; that the claim of the Appellant is based on the study of M/s Neilson which is a global measurement and Data Analytics Company and its report has been accepted by the enquiry committee in respect of its claim "soothes in 10 seconds" while the claim "soothes and refreshes" has been deemed to be deceptive; that the disclaimer informs the ordinary consumer that it is no longer a pharmaceutical product, therefore, no misleading act can be attributed to the Appellant; that per settled law a mere advertising statement would probably not influence the purchasing decision, therefore, the impugned action of the Commission based on any such advertisement cannot be sustained and is therefore liable to be set-aside by this Tribunal. In the alternative, learned Counsel has further relied upon the compliance report purportedly filed before the Commission pursuant to the directions contained in the impugned order and placed before this Tribunal through CMA No.51 of 2025 filed under Rule 13 of the Competition Appellate Tribunal Rules, 2015, and has contended that the Appellant had made sufficient compliance of the directions and therefore, the penalty so imposed may be remitted in the interest of justice and fair play.

4. On the other hand, Commission's Counsel has supported the impugned order and has contended that the conduct of the Appellant has not been compliant as the Appellant is admittedly still using the word "Lozenges" which is deceptive, whereas the digital platforms still show the old advertising material; that the Appellant had not filed any compliance report with the Commission now placed on record and no specific date of compliance is mentioned or available on record; that no record has been produced in respect of print media advertisement as directed by the Commission; that the third party resellers are still showing the same misleading advertisement claims; hence, no case for any indulgence or leniency is made out and the Appeal is liable to be dismissed.

5. Heard and perused the record. Record reflects that based on the complaint of Respondent No.2 an inquiry committee was constituted by the Commission which furnished its report on 29th June 2019 and

based on it a show cause notice was issued which was contested and the Commission has thereafter passed the impugned order. The Commission in the impugned order has adjudicated the following issues.

ISSUES

i. Whether the complaint is maintainable?

ii. Whether the alleged claims are false or misleading within the meanings of Section 10(2)(b) of the Act?

iii. Whether the alleged claims are capable of harming business interest of the Complainant or other businesses within the meanings of Section 10(2)(a) of the Act?

<u>Issue No.1 (whether the complaint is maintainable):</u>

6. The Appellant in its reply to the show cause notice had raised an objection regarding the maintainability of the complaint precisely on the ground that the complainant is not engaged in the same line of product as it is engaged in the distribution of cough syrups[3] duly registered by the Drug Regulatory Authority of Pakistan ("**DRAP**"), whereas the product of the Appellant has been de-registered by DRAP and is a non-medicated product. Though this argument appears to be attractive; however, it is the case of the Commission that under the garb of a de-registered product, the Appellant by its deceptive marketing and advertisements is selling the same as a medicated product. The Act

[3] "Dr.Koff"

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has defined relevant market in Section 2(1)(k)[4], however, in our considered view, for the present purposes and in respect of violation of Section 10 of the Act, the phrase "relevant market" has no nexus, as it does not refer to "relevant market" as compared to Sections 3 and 4 of the Act, whereas admittedly, the complainant is an undertaking in terms of Section 2(1)(q) of the Act and was competent to file a complaint in terms of Section 37(2) of the Act. In fact, there is no objection on behalf of the Appellant that Respondent No.2 was not an undertaking in terms of Section 2(1)(q) of the Act. Hence, the complaint cannot be thrown out on this ground alone. The Complainant is engaged either directly or indirectly in the production of similar product. Though in the complaint it has only referred to manufacturing cough syrups; but it also manufactures an identical product i.e. "Dr. Koff Lozenges". Lastly, as per the impugned order, the Appellant had in fact conceded to this and had not pressed this objection, but for the purpose of clarity and future guidance for all concerned, we have dilated upon this issue as well and are fully in agreement with the findings of the Commission in this regard. Therefore, the complaint was competent and maintainable in law. The issue is answered accordingly.

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4 (k) "relevant market" means the market which shall be determined by the Commission with reference to a product market and a geographic market and a product market comprises of all those products or services which are regarded as interchangeable or Substitutable by the consumers by reason of the products' characteristics, prices and intended uses. A geographic market comprises the area in which the undertakings concerned are involved in the supply of products or services and in which the conditions of competition are sufficiently homogenous and which can be distinguished from neighboring geographic areas because, in particular, the conditions of competition are appreciably different in those areas;

Issue No. (ii) Whether the alleged claims are false or misleading within the meanings of Section 10(2)(b) of the Act?

7. It is a matter of admitted position that the Appellant itself somewhere in 2007, (or prior to that) approached DRAP with a request to de-register the product (“**Strepsils lozenges”**) as a pharmaceutical product under the Drugs Act, 1976. This was a step initiated by the Appellant itself and based on this request, DRAP vide its letter dated 10th April 2007, informed the Appellant that Chairperson Drugs Registration Board has acceded to such request. The Appellant was further informed that the brand name “Strepsils” can be used for food products as confectionary manufactured and marketed under the Pure Food Act, 1960. It was further directed that no therapeutic claim for treatment, prevention, mitigation, symptoms or cure of disease shall be made. It was further directed to ensure that the words, expressions, form and manner of presentation shall not violate section 23(1)(h) of the Drugs Act 1976. Finally, the Appellant was further directed that a disclaimer that the product is non-medicated shall be printed in Urdu and English versions for the awareness of public. It was also clarified that no pharmacopeial ingredient shall be added in the food product. Though the Appellants Counsel has argued that even if the directions issued by DRAP post de-registration of the product have not been complied with, the Commission cannot investigate this aspect of the case, and no penalty can be imposed for such non-compliance. Again this argument seems to be attractive; however, at the same time, this

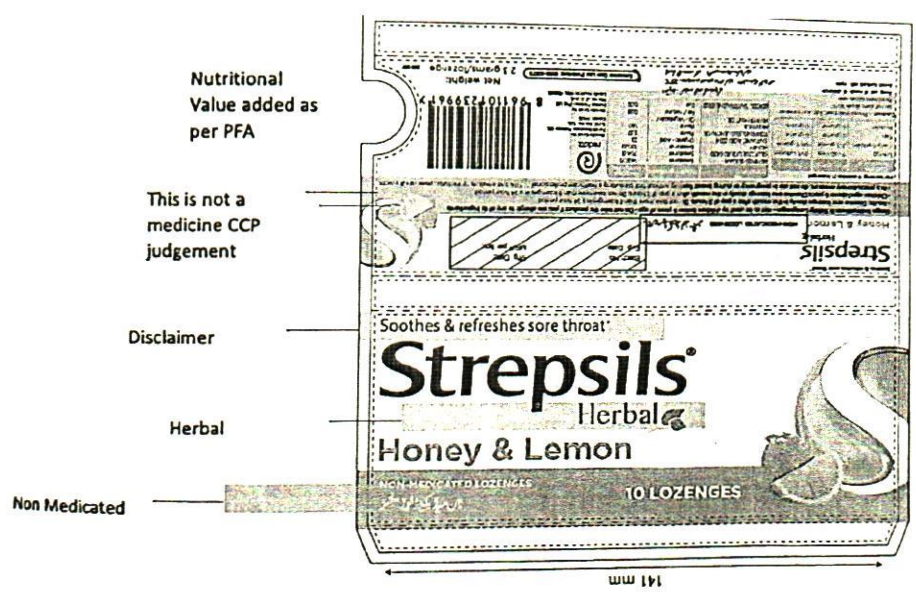
does not permit or sanction any violation of the Act by itself. If the Commission has taken notice of the alleged misleading advertisement, then the Commission on its own can act accordingly and see that whether the advertisement in and of itself is in violation of any provision of the Act. The Commission had received a complaint from Respondent No.2 alleging violation of Section 10 ibid and therefore, while finalizing the proceedings, even if it has referred to DRAP's directions, that does not annihilate the jurisdiction vested in the Commission independently.

8. As per the record available with us, it seems that the Enquiry committee had deliberated upon two alleged claims of the Appellant (*"Soothes and Refreshes Sore Throat*" and *"Soothes in less than 10 seconds"*), and it came to the conclusion that insofar as "Soothes in less than 10 seconds" is concerned, it was not deceptive in nature. However, the Commission disagreed with it and gave its own finding. The precise case of the Commission is that the Appellant had failed to disclose that post-deregistration, the product in question was not medicated anymore and had no therapeutic effects. According to the Commission once the product was de-registered, the marketing of the product lacks reasonable basis, particular to its character; hence, the same was in violation of Section 10 of the Act. To the extent that the Appellant ought to have conspicuously affirmed by way of advertisement and otherwise, that the product had gone into a change from a medicated product or a drug to a food preparation, we agree with the observations of the Commission that the Appellant had failed

in this regard and acted in a manner that its advertisements to a larger extent were deceptive. Having said that, we will dilate upon later, as to the specific violations committed and the penalties so imposed. But whatever material which was placed before the Commission (this is crucial as before this Tribunal the material so placed is not what was placed before the Commission during hearings) it clearly shows and affirms that the disclaimer was not proper and was misleading. It, in fact, had failed to comply with the directions of DRAP strictly; rather, an attempt was made to derive the benefits of it still being a registered drug or medication. The product packing as well as the wrapper as was placed before the Commission was as follows.

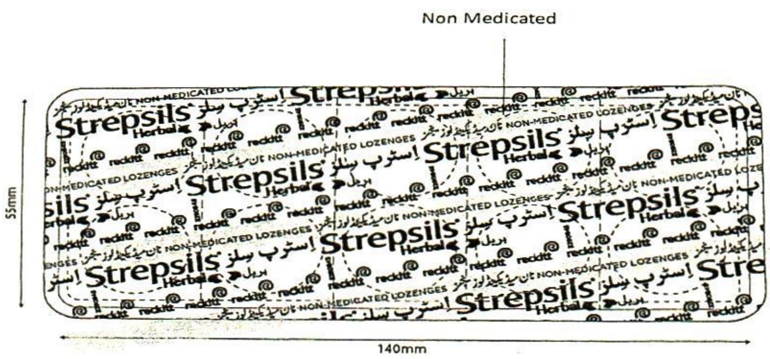
Figure 4 (at page 22 of ER)

It is also a matter of record that when this Tribunal was hearing the Appeal and the Appellant's Counsel was confronted as to whether, even after passing of the impugned order, the Appellant had complied with the directions of the Commission so as to establish its bonafide, and in response an application bearing CMA No. 51 of 2025 was filed and the following packing was shown to the Tribunal with the assertion that the advertisement and marketing strategies are not at all deceptive. The packing placed before us was as follows:



From perusal of the above reproduced packings (pre and post Commission's order) it clearly reflects that the Appellant has in fact accepted its mistake and has made certain rectifications in its packing of the product in question. Previously the Appellant's claim "*Soothes in less than 10 seconds*" was printed with the use of words "*Strepsils-Comfort*" whereas now it is claimed as "*Soothes & Refreshes sore throat*" with the use of words "*Strepsils-Herbal*". And most importantly, now the words "*Non-Medicated Lozenges*" is printed on the front in Urdu and English Language, whereas previously it was only in English and that too at the back side of the packing. In our considered view, this change in packing and printing of disclaimer and use of other words, by itself is an admission of a wrong being committed prior to the proceedings initiated by the Commission. It is a matter of record that the Appellant filed CMA No. 51 of 2025 seeking permission of this Tribunal to place various documents on record, including but not limited to the packaging of Strepsils pre-2007, after de-registration in 2007, packaging at the time of complaint in 2018 and packaging after compliance. As already noted, and reproduced hereinabove, the packaging has gone through a material change insofar as the one at the time of filing of complaint and post Commission's order is concerned. Such conduct on the part of the Appellant clearly shows that it has accepted the Commission's order in respect of packaging and its marketing practice and has therefore, materially changed it. Though, in its reply to this application, the Commission's stance is still the same and any compliance thereof by the Appellant has been categorically rejected. However, we are not in agreement in totality to this and are of the view that the Appellant has made substantial compliance insofar as its new and revised packaging is concerned.

According to us, the modification, post Commission's order, is in fact an admission of guilt to a certain extent. Otherwise, the Appellant could have agitated the issue and ought to have stuck to its old packaging and disclaimer(s). It is also a matter of record that the Appellant has now even printed the words "NON-MEDICATED LOZENGES" on the blister packing instead of the same being printed on outer boxes. The same is as follows:



This in our view is sufficient compliance insofar as the directions in respect of packaging is concerned. However, the moot question remains that whether the quantum of penalty imposed by the Commission for violation of Section 10(2)(a) of the Act can be sustained in the facts and circumstances of the case while rendering a decision in this Appeal. In the case of <u>*Unilever (Supra)*</u>, decided by this Tribunal, the Appellant had made certain modification immediately upon receiving the show cause notice for violation of Section 10 ibid by way of certain misleading advertisements and we had observed as follows:

6. From the above submission and conduct of the Appellant, it is clear, that once a show cause notice was issued, they have changed / modified their claims / advertisements. In the alternative they have discontinued some of the claims. This clearly reflects that insofar as the period in question is concerned, i.e. before issuance of show cause notice, they had used such claims / advertisement as alleged for advertisement and or for marketing. The very modification(s) and change(s) as suggested by the Appellant and as stated in Para 26 & 27 read with Grounds C & D of the memo of Appeal as well the statements dated 15.01.2024 at page 509 of the paper book, in fact amounts to an admission of the guilt, be it qualified and not of acquiescence as claimed by the Appellant. For the present purposes and for the period in question, at least impliedly, it has been accepted by the Appellant that it was a case of deceptive marketing practices falling within contemplation of Section 10 of the Act. It has also come on record that the Appellant has not used the advertisement claim "C" internationally, including Bangladesh, Saudi Arabia or United Kingdom, whereas claim "D" has been used in U.K as "World's No.1 Hygiene Soap" as against "World's No.1 Germ Protection Soap" in Pakistan. Having said that, it also needs to be appreciated that the Appellant at the very outset had proposed certain modifications in the alleged claims, which as per the stance of the Commission were not appropriate nor were in accordance with the relevant provisions of the Act and Regulation 30 of the Competition Commission (General Enforcement) Regulations, 2007. To this, it would suffice to observe that insofar as the present proceedings are concerned, they have triggered pursuant to issuance of a show cause notice by the Commission under Section 30 of the Act and are in respect of claims in existence on the date of show cause notice or prior to that. To us, it seems that this aspect of the case has been overlooked while passing the impugned order as there is no specific finding as to the stance of the Appellant regarding amendment of the claims and filing of any undertaking. It is only after our order dated 22.10.2025 that the Commission has filed its response that the same was not in accordance with the Act and Regulation 30 of the 2007 Regulations, hence, was discarded. The said order of this Tribunal reads as under;

22-10-2025 Mr. Khwaja Aizaz Ahsan, Advocate, for the Appellant.
Mr. Haider Afzal, Advocate along with
Hafiz Naeem, legal advisor, for the CCP / the Respondent.

We have briefly heard the Appellant's Counsel and while making his submissions, he has relied on his statement purportedly filed before the Commission during the hearing of the proceedings in question and submits that the Appellant had proposed necessary amendments in the claim so alleged in the show cause notice. According to him the Commission while passing the impugned order, did not consider the said proposal and the disclaimer so mentioned in the statement. When confronted, learned counsel for the Commission submits that the proposed statement / commitment was found unsatisfactory, therefore, the same was not considered. However, perusal of Impugned Order reflects that there is no finding of the Commission in respect of this statement and the amended claim of the Appellant.

2. In view of such position, learned counsel for the Commission is directed to file a proper response along with Diary Sheet, if available, of the proceedings conducted by the Commission. The response should specifically attend to the statement available at page No. 502 of the paper book. To come up on 05.11.2025.

7. Though the Commission has now come up with an explanation that neither the amendments nor the undertaking was in accordance with law or Regulations; however, admittedly, the impugned order is silent about this aspect of the matter. Once it is admitted that certain amendments were made in the claim, then it ought to have been dealt with in the impugned order. Therefore, at this stage of the proceedings, as an Appellate forum, we are only concerned with what has been alleged in the show cause notice and not beyond that or for that matter, after the date of issuance of the show cause notice. As of today, if any violation is being committed by the Appellant even after their claim of modification, the Commission can still proceed on this count, and we leave this aspect of the matter open for future adjudication in accordance with law. Since for the present purposes we are only concerned with the order before us and the imposition of penalty and the directions issued by the Commission, in law, we are not required to decide and adjudicate the events after issuance of show cause notice.

8. It is of much relevance to observe that imposition of penalty is dependent on the allegations stated in the show cause notice. A person cannot be penalized for an act which is not alleged in the show cause notice. This is a settled proposition of law[5], and we need not deliberate it any further. What we have noticed from the impugned order is, that perhaps due to delay in passing of the order after issuance of show cause notice, the situation which has emerged is that the Appellant claims to have either, abandoned the claims as alleged in the show cause notice, or has modified the same. In that case, the Commission ought to have considered the entire situation post show cause notice and could have confronted the Appellant, either with a supplementary or a fresh show cause notice, for continuance of the alleged claims. This is not the case in hand, therefore in our considered view, and owing to the conduct of the Appellant as above, imposition of such a heavy penalty as mentioned in the impugned order does not commensurate with the alleged conduct; hence, not justified and consequently thereof must be reduced.

9. For imposition of penalty, the jurisprudence that has evolved over the years is that penalty must be commensurate with the gravity of the offence committed. A continuous and willful non-compliant attitude may lead to a higher pitch of penalty. Therefore, every case should be decided on its own merits, whereas default on the part of an undertaking would not ipso facto makes it liable for maximum or a higher penalty. The circumstances prevalent in a particular case are of pivotal importance before a penalty is quantified. The intent, conduct and behavior of an undertaking must be deeply investigated before imposition of penalty. Though the Act confers discretion on the Commission, but it does not make it incumbent upon the Commission to overlook the conduct of an undertaking and must impose it mandatorily.

10. It is also a settled proposition that punishment disproportionate to the gravity of offence / guilt is as much illegal as the act itself calling for its imposition. There could always be a case of some misconception / a different understanding of the relevant provision of the Act. This, in and of itself, is not a ground to sustain imposition of maximum or higher penalty. As already observed, the Commission while imposing any penalty which is on a higher or maximum side, must keep in mind the gravity of the charge and the attending circumstances prevalent in a particular case. Penalties for deceptive practices are determined based on the nature and extent of the violation, prior conduct, and remedial actions. We are mindful of the fact that the Act provides for a range of penalties, and the quantum varies widely, but proportionality and deterrence are key considerations in imposition of penalties in Anti Competition Laws. As discussed in Para 5 above, it is the case of the Appellant that certain claims

[5] The Collector Central Excise and Land Customs v. Rahm Din 1987 SCMR 1840 and Fatal Yarn (Pvt.) Ltd. v. Commissioner Inland Revenue 2021 SCMR 1133

were not in use anymore when the show cause notice was issued, whereas some had been modified immediately. Hence, while imposing the penalty, the Commission ought to have kept this conduct and behavior in mind. It is more relevant in the present set of facts as the impugned order is completely silent in this regard. It is settled worldwide that Anti Competition Regulators (Federal Trade Commission and like organizations) when determining penalties, always consider; the nature and extent of the violation; the violator's history and intent; any remedial actions taken; good faith efforts to comply with the law; absence of willful or bad-faith intent and the violator's cooperation with the investigation. These mitigating factors can result in lower penalties, settlement agreements, or even warnings instead of fines, depending on the circumstances. These mitigating factors play a crucial role in determining the quantum of penalties. The Commission, therefore, must weigh these factors to ensure that penalties are fair, proportionate, and encourage future compliance rather than simply punish. As already noted, the impugned order has completely skipped the assurance and undertaking of the Appellant to modify the claims as well as co-operation and remedial efforts. At least, a specific finding ought to have been given either way. Here one more thing is to be noted and that is, the proceedings were initiated based on a complaint by Respondent No.2; however, there is no determination of any injury caused to the complainant by the alleged misleading advertisements. Impliedly, its claim has been rejected. Since neither any assistance has been provided to us on behalf of Respondent No.2; nor we are adjudicating the entire merits of the case owing to Appellants own submissions as noted at para 5 above, we leave this aspect of the matter as it is, and will decide it in an appropriate case as to whether while alleging violation of Section 10(2)(a) of the Act, is it mandatory upon the Commission to carry out a subjective analysis of the harm caused to the business interests of the complainant or not.

9. The above observations clarify as to the concept of imposing maximum penalties and its reductions in the case of a compliant undertaking. Though it is entirely dependent on the particular facts as are prevalent and which may differ from case to case; however, the broad principles for levying and sustaining the penalties are common. It is only that the discretion which must be exercised fairly and justly by applying the same on a particular set of facts. Since in the instant case, the Appellant has made substantial compliance regarding packaging after passing of the impugned order, specially as contained in Para 51(i), (ii) & (iii) thereof, therefore, pursuant to our above observations in <u>*Unilever (Supra)*</u>, we are of the view that the penalty imposed in this case is on the higher side; hence, the same is reduced from Rs. 75 million to Rs. 30 million (Rupees Thirty Million Only) in respect of

offence for violation of Section 10(2)(b) of the Act. The issue is answered accordingly with reduction in the quantum of penalty.

Issue No. (iii) Whether the alleged claims are capable of harming business interest of the Complainant or other businesses within the meanings of Section 10(2)(a) of the Act?

10. Before proceeding further on this issue, it would be advantageous to refer to Section 10 of the Act which reads as under:

> Section 10 of the Competition Act, 2010.
>
> (1) Deceptive Marketing Practices. (1) No. undertaking shall enter into deceptive Marketing Practices.
>
> (2) The Deceptive Marketing Practices shall be deemed to have been resorted to or continued if an undertaking resorts to
>
> (a) the distribution of false or misleading information that is capable of harming the business interests of another undertaking;
>
> (b) the distribution of false or misleading information to consumers, including the distribution of information lacking are reasonable basis, related to the price, character, method or place of production, properties, suitability for use, or quality of goods;
>
> (c) false or misleading comparison of goods in the process of advertising; or
>
> (d) fraudulent use of another's trademark, firm name, or product labeling or packaging.

As could be gleaned from the above provision, it has two components. The first one i.e. Section 10(2)(b) which relates to distribution of false and misleading information to "consumers" and its consequences have already been dealt with while deciding Issue No.(ii) as above. The second category relates to alleged violation of Section 10(2)(a) of the Act, which provides that deceptive marketing practices shall be deemed to have been resorted to if the distribution of false or misleading information *"is capable of harming the business interests of another undertaking"*. We have already decided the issue that insofar as the alleged misleading information is concerned, it was

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violative of section 10(2)(b) of the Act as such information had misled the general consumers. However, as against the opinion of the Commission that if an undertaking has committed any violation of section 10(2)(b) of the Act, such act is mandatorily also violative of Section 10(2)(a) of the Act, we are of the considered view that it is not so in each case. To establish violation of Section 10(2)(a) of the Act, the Commission must establish or at least conduct an assessment as to the harm caused to the other undertaking / complainant. In the case of ***Unilever (Supra)*** we have dealt with this issue and learned Counsel for the Appellant has rightly placed reliance on such observations. The relevant para is as under;

> "...Here one more thing is to be noted and that is, the proceedings were initiated based on a complaint by Respondent No.2; however, there is no determination of any injury caused to the complainant by the alleged misleading advertisements. Impliedly, its claim has been rejected. Since neither any assistance has been provided to us on behalf of Respondent No.2; nor we are adjudicating the entire merits of the case owing to Appellants own submissions as noted at para 5 above, we leave this aspect of the matter as it is, and will decide it in an appropriate case as to whether while alleging violation of Section 10(2)(a) of the Act, is it mandatory upon the Commission to carry out a subjective analysis of the harm caused to the business interests of the complainant or not."

11. The facts are identical in this case as well. Respondent No.2/ complainant despite being served has not come forward to assist this Tribunal on this aspect of the matter, whereas again, the Commission has failed to follow our guidelines as above and there has been no exercise by the Commission to determine the actual loss caused to Respondent No.2 / Complainant. In fact, the claim of the said Respondent stands rejected to the extent of Section 10(2)(a) of the

Act. In the case of *Unilever (Supra)* we had left this aspect of the matter for it to be decided in an appropriate case as to whether while alleging violation of Section 10(2)(a) of the Act, is it mandatory upon the Commission to carry out a subjective analysis of the harm caused to the business interests of the complainant or not. And the answer to this question is in the affirmative for the simple reason that if this wasn't the intention of the legislature then there was no need to add section 10(2)(a) independently, in addition to Section 10(2)(b) ibid. This sub-section would be redundant if in each case it is held that violation of Section 10(2)(b) also amounts to violation of Section 10(2)(a) as well. Both sub-sections are independent of each other and are to be construed accordingly. Per settled law redundancy cannot be attributed to the legislature. In the case of ***Rahim Foods***[6] the Hon'ble Supreme Courts had the occasion to deal with issue, though somewhat differently in the context of simultaneous violation of Sections 10(2)(a) and 10(2)(d) of the Act. The finding / observations of the Hon'ble Supreme Court in this context are very apt and instructive. Brief facts of that case are that K&N's Foods (Pvt) Limited filed a complaint against A. Rahim Foods (Pvt.) Limited with the Commission asserting involvement of Rahim Foods in deceptive marketing practices in contravention of the provisions of section 10 of the Act. Based on an enquiry report, the Commission initiated proceedings against Rahim Foods and issued a show cause notice for violation of Section 10(2)(a) and 10(2)(d) of the Act. The Commission found

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[6] A. RAHIM FOODS (PVT.) LIMITED v K&N'S FOODS (PVT.) LIMITED (2023 CLD 1001)

Rahim Foods as guilty and penalized it in respect of both these sections and imposed separate penalties of Rs. 10 million for each offence. In Appeal, this Tribunal, affirmed the findings of the Commission that Rahim Foods had used K&N's Foods product labelling and packaging in a deceptive marketing manner, and held that section 10(2)(d) of the Act had been violated. The Tribunal, however, held that as Rahim Foods had not distributed any false or misleading information regarding the K&N's Foods products, the penalty imposed by the Commission upon Rahim Foods for the contravention of section 10(2)(a) of the Act was not warranted. With these reasons, the Tribunal allowed the appeal of Rahim Foods partially and set aside the order of the Commission with regard to imposing a penalty for contravention of section 10(2)(a) of the Act, while maintaining the order of the Commission to the extent of imposition of penalty for contravention of section 10(2)(d) ibid. Rahim Foods further appealed before the Hon'ble Supreme Court and the Hon'ble Supreme Court maintained the order of the this Tribunal whereby the allegation in respect of Section 10(2)(a) was set-aside. The finding of the Hon'ble Supreme Court is as under;

> 21. There is nothing in the language of section 10(2)(a) of the Act that suggests that the legislature has changed therein the meaning of 'misrepresentation' as understood in common law action for injurious falsehood. On the contrary, the use of the words 'false or misleading information' in section 10(2)(a) shows that the legislature has intended to retain the same meaning; for in common law both the terms 'false'[22(7)] and 'misleading'[23][8] are used in injurious falsehood actions for a representation to be taken as 'misrepresentation'. *Further, the use of the phrase 'harming the business interests of another undertaking' in section 10(2)(a) of the Act, and*

[7] 22: Kaye v Robertson [1991] F.S.R. 62 CA per Glidewell J 23:
[8] 23: White v Mellin [1895] A.C. 154 HL per Lord Shand

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Dated: ....

<u>not in section 10(2)(d), denotes that the said phrase has been used in the sense of causing express and direct harm to the business interests of the complainant undertaking as it is understood in an injurious falsehood action. And the non-mentioning of this phrase in section 10(2)(d) of the Act shows that the damage caused to the business interests of the complainant undertaking is taken to be an implied and indirect effect of the fraudulent use of its trademark, etc., as it is understood in a passing-off action, which the legislature has considered unnecessary to be expressly mentioned.</u> **<u>(Emphasis supplied by us)</u>**

22. In the present case, Rahim Foods made 'misrepresentation' concerning its own products by fraudulent use of the K&N's Foods products labelling and packaging primarily to take advantage of the reputation (goodwill) of the products of K&N's Foods, not concerning the products of K&N's Foods to cause the express and direct harm to the business interests of K&N's Foods. Therefore, we find that the view of the Tribunal is legally correct on the non-applicability of the provisions of section 10(2)(a) of the Act to the facts of the present case.

From perusal of the above observations of the Hon'ble Supreme Court, it clearly reflects that for establishing violation of section 10(2)(a) of the Act, it is mandatory that the Commission must come to a definite conclusion that an injury or harm has been caused to the business interest of the complainant. The focus of the Hon'ble Supreme Court has been on the use of the words ***'harming the business interests of another undertaking'*** and therefore, if no exercise is carried out to establish that in fact the business interest of the complainant was caused any harm, no allegation for violation of this sub-section can be proved, notwithstanding violation of Section 10(2)(d) of the Act or for that matter Section 10(2)(b) of the Act. Moreover, this Tribunal in the case of ***Kindom Valley***[9] has also come to the same conclusion by following the dicta laid down by the Hon'ble Supreme Court in the case of *<u>A. Rahim Foods (Supra)</u>*. Therefore, the penalty imposed by

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[9] Kingdom Valley (Pvt) Limited v CCP (judgment dated 15.04.2026 in Appeal No 40 of 2025)

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the Commission in this case for violation of Section 10(2)(a) of the Act cannot be sustained as the Commission has failed to establish any such direct violation by the Appellant; hence, the penalty of Rs 75 million imposed upon the Appellant for violation of Section 10(2)(a) of the Act is hereby ***set-aside***. This issue is answered accordingly.

12. In view of hereinabove discussion the Appeal is ***partly allowed*** in the above terms read with our findings in respect of Issue Nos. (ii) & (iii), whereby the quantum of penalties have been modified and or set-aside. The Appellant shall pay a reduced amount of penalty of Rs. 30 million (Rupees Thirty Million) in addition to strict compliance of directions contained in Para 54[10] of the impugned order which shall be done within a maximum period of 30 days from the date of this judgment, failing which the penalty imposed by the Commission for violation of Section 10(2)(b) of the Act shall stand restored.

Chairperson

Member Technical-I

Member Technical-II

Dated: 20.05.2026

(Approved for Reporting)

[10] (v)The compliance must be ensured within 40 days from the date of issuance of this Order. Meanwhile, the Respondent is directed to publicize/notify, conspicuously, at least three newspapers each, in English and Urdu, having nationwide circulation regarding the change in character of the Product from medicated/drug to food category in Pakistan such advertisements be given once a week until compliance is ensured within the time specified.

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Dated: 21.05.2026