

By Special Messenger
Through Registered Post/AD

IN THE COMPETITION APPELLATE TRIBUNAL

2ND Floor, Federal Courts Complex, G-11/1, Islamabad

email: registrartribunal@gmail.com

Tel No: 051-9320208, Fax No: 051-9320203

No. 103

Dated: 15-02-2024

PROCTOR & GAMBLE'S OF PAKISTAN (PVT)LTD

Vs.

COMPETITION COMMISSION OF PAKISTAN

NOTICE

Appeal No. 10/2017

Take notice that under rule 51 of the Competition Appellate Tribunal Rules, 2015, attested copies of the Judgement dated **15-02-2024** is enclosed for information and record.

2. Given under my hand and stamp of the Tribunal, this 15th day of February, 2024.

S.W.
15/02/2024

Registrar

REGISTRAR

Competition Appellate Tribunal
Government of Pakistan
Islamabad

Proctor & Gamble Pakistan (Pvt) Ltd.

Having its registered office at 12th
Floor, The Harbour Front, Dolmen City,
HC 3, Block 4, Marine Drive, Clifton. **Karachi.**

Competition Commission of Pakistan,

ISE Tower 7th Floor,
55-B, Jinnah Avenue, **Islamabad.**

Mr. Adil Saeed,

Khalid Anwer & Co.
153-K, Block-2, PECHS, **Karachi.**

Reckitt Benckiser Pakistan Limited (Complainant),

Having its Registered Office at 3rd Floor, Tenancy 04-05,
Corporate Office Block, Dolmen City, HC-3, Block 4, Scheme 5,
Clifton Karachi.

Zara Khalid (Authorized Officer of Reckitt Benckiser)

House 1-A, Street 32, Service Road 9th avenue, F-8/1, **Islamabad.**



19/2

S.L.A. (1)

By Registrar

BEFORE THE COMPETITION APPELLATE TRIBUNAL,
ISLAMABAD

Appeal No. 10 of 2017

Procter & Gamble Pakistan (Pvt.) Ltd.
Having its registered office at
12th Floor, the Harbour Front, Dolmen City,
HC 3, Block 4, Marine Drive, Clifton,
Karachi.

..... Appellant

Versus

1. The Competition Commission of Pakistan
(An Agency of the Federal Government of Pakistan)
Having its registered office at
7th Floor South, ISE Towers,
55-B, Jinnah Avenue,
Islamabad.

2. Reckitt Benckiser Pakistan Limited (Complainant),
Having its registered office at
3rd floor, Tenancy 04-05,
Corporate Office Block,
Dolmen City, HC-3,
Block 4, Scheme 5,
Clifton, Karachi.

..... Respondents

AMENDED MEMO OF APPEAL UNDER SECTION 42
OF THE COMPETITION ACT, 2010

Respectfully Sheweth:

Being aggrieved by the Order dated 20.07.2017 (the “**Impugned Order**”) of the Competition Commission of Pakistan (the “**Commission**”) passed by the Two Member Bench, comprising the Chairperson, Ms. Vadiyya Khalil, and the Member, Mr. Ikram Ul Haque Qureshi, received by the Appellant on 24.07.2017 with the Commission’s cover letter dated 21.07.2017, the Appellant most humbly submits this Appeal on the following facts and grounds:

CERTIFIED TO BE A TRUE COPY
S.W.
REGISTRAR
Competition Appellate Tribunal
Islamabad
Dated: 15-02-2024

**IN THE COMPETITION APPELLATE TRIBUNAL,
ISLAMABAD**

Appeal No. 10 of 2017

M/s Proctor & Gamble Pakistan (Pvt) Ltd.

.....**Appellant**

Versus

The Competition Commission of Pakistan and another

.....**Respondent**

Present: Justice Mazhar Alam Khan Miankhel, Chairperson.
Muhammad Asghar Ch. Member Technical-I.
Raja Saad Sultan, Member Technical-II.

For the Appellant: Mr. Adil Saeed, Advocate, for the appellant
For Respondent No.1: Mr. Jahanzeb Sukhera, Advocate
For Respondent No.2: Mr. Saad M. Hashmi, Advocate

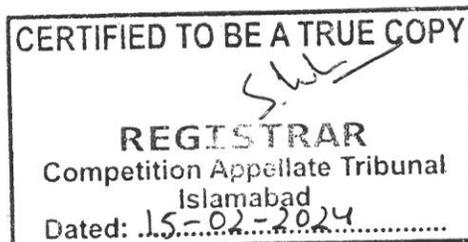
Date of hearing: 17.01.2024

JUDGMENT

Justice Mazhar Alam Khan Miankhel, Chairperson

The appellant Proctor & Gamble Pakistan (Pvt.) Ltd (**Appellant**) has impugned the order dated 20.07.2017 of the Competition commission of Pakistan (**Commission**) through instant appeal.

2. The Proceedings before the Commission were initiated on the complaint dated 21.11.2014 filed by one Burhan Khan, Marketing Director, Reckitt Benckiser Pakistan Limited (**The complainant**) respondent No.2.



The complaint after its initial process by the concerned staff of the Commission was referred to the Inquiry Committee (**Committee**) under Section 37 of the Competition Act, 2010 (**the Act**) and finally a report confirming the contents of the complaint was submitted by the "Committee" on 26.01.2016. The Commission after considering the report, issued a Show Cause Notice (**Notice**) under Section 30 of "**the Act**". The appellant feeling aggrieved contested the same by filing a reply to the "**Notice**" dated 17.03.2016 denying the allegation levelled by the **complainant** as well as the findings of the **Committee**. The **Commission** thereafter initiated the proceedings on the basis of available material and vide **impugned order**, the appellant was held responsible of contravening the provision of Section 10 of **the Act** for which the **Commission** imposed the following penalties/fines:-

- i) for violation of Section 10 of the Act related to the advertising claim and associated disclaimer/disclosure, the Commission hereby imposes a penalty in the amount of Rs. 10,000,000/- (Rupees Ten Million Only).
- ii) With regard to the advertising claim that Safeguard is No.1 rated Antibacterial Soap, the Respondent is directed to inform the public at large, the falsity of its advertising claim that Safeguard is Pakistan's No.1 rated Antibacterial Soap through appropriate clarifications in all Urdu and English dailies and through TV channels for a period of one (1) week from the date of this order.
- iii) The Respondent is directed to file a compliance report with the Registrar of the commission within the period of forty-five (45) days from the date of issuance of this order is

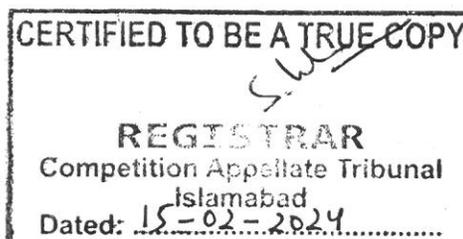
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REGISTRAR
 Competition Appellate Tribunal
 Islamabad
 Dated: 15-02-2024

reprimanded form indulging in deceptive marketing as well as other anti-competitive practices provided in the Act.

- iv) In the event the Respondent fails to comply with the above directions within the specified time period and continues with the contravention of Section 10 of the Act, the commission may impose additional penalties/fine as are provided, inter alia, under Section 38 of the Act.”

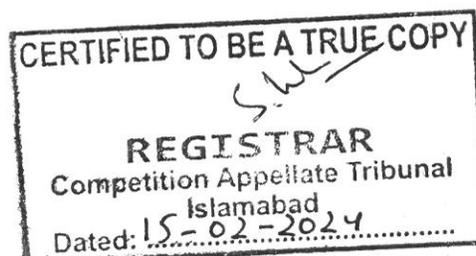
3. Learned counsel for the **appellant** was of the view that the appellant has set a highest bench mark of ethical and legal compliance for its business and the appellant never-ever indulged itself into mal-practices of deceptive marketing. He further contended that the claim of the appellant was that its questioned advertisement “**Pakistan’s No.1 Rated Anti-bacterial Soap**” was for its product and such exercise for conducting the survey was done by an international firm with the name of AC Nielsen in April, 2014. He further contended that as a part of business similar exercise is done by almost all the companies and similar study was also done by GFR brand health Tracker (BHT) and IPSOS Equity Studies. The learned counsel while questioning the imposition of huge penalty argued that the appellant never claimed that its product was No.1 in Pakistan rather it was rated No.1 by the public who used the same, so, it was for the Commission to have differentiated between the two claims. He was of the view that this aspect alone was sufficient to withdraw the notice and drop the proceedings, at the most the Commission could have taken a lenient view of the matter. He further contended that the appellant had dropped its claim on 26.01.2015 just after 03 days of the initiation of inquiry which started on 23.01.2015. It was



reprimanded form indulging in deceptive marketing as well as other anti-competitive practices provided in the Act.

- iv) In the event the Respondent fails to comply with the above directions within the specified time period and continues with the contravention of Section 10 of the Act, the commission may impose additional penalties/fine as are provided, inter alia, under Section 38 of the Act.”

3. Learned counsel for the **appellant** was of the view that the appellant has set a highest bench mark of ethical and legal compliance for its business and the appellant never-ever indulged itself into mal-practices of deceptive marketing. He further contended that the claim of the appellant was that its questioned advertisement “**Pakistan’s No.1 Rated Anti-bacterial Soap**” was for its product and such exercise for conducting the survey was done by an international firm with the name of AC Nielsen in April, 2014. He further contended that as a part of business similar exercise is done by almost all the companies and similar study was also done by GFR brand health Tracker (BHT) and IPSOS Equity Studies. The learned counsel while questioning the imposition of huge penalty argued that the appellant never claimed that its product was No.1 in Pakistan rather it was rated No.1 by the public who used the same, so, it was for the Commission to have differentiated between the two claims. He was of the view that this aspect alone was sufficient to withdraw the notice and drop the proceedings, at the most the Commission could have taken a lenient view of the matter. He further contended that the appellant had dropped its claim on 26.01.2015 just after 03 days of the initiation of inquiry which started on 23.01.2015. It was

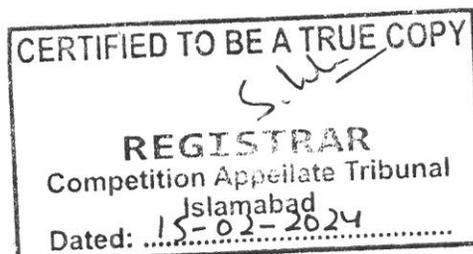


much before the findings of the "Committee", the issuance of "Notice" and the time of conclusion of the proceedings before the "Commission". There was no such claim of the appellant in the field at the time of its final verdict. Lastly he argued that the complainant had no locus standi to file the complaint specially when there was no evidence regarding any loss suffered by the Complainant. The learned counsel for the appellant prayed for the acceptance of his appeal by setting aside the findings of the "Commission".

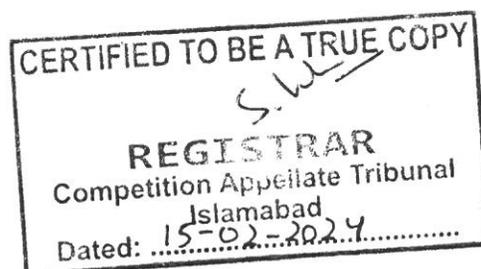
4. On the other side the learned counsel for the "respondent/commission" and the "complainant" by supporting the impugned order argued that the appellant was involved in deceptive marketing practices in contravention of Section 10 of the Act and his claim was false and frivolous, had no backing of scientific and health related study. The study relied upon by the appellant is nothing but just a public opinion and that the said exercise was conducted only in 02 cities i.e. Karachi and Lahore and not all over Pakistan which alone is sufficient to negate the claim of the appellant and a valid proof of deceptive marketing. While concluding the submissions, prayed for dismissal of the appeal.

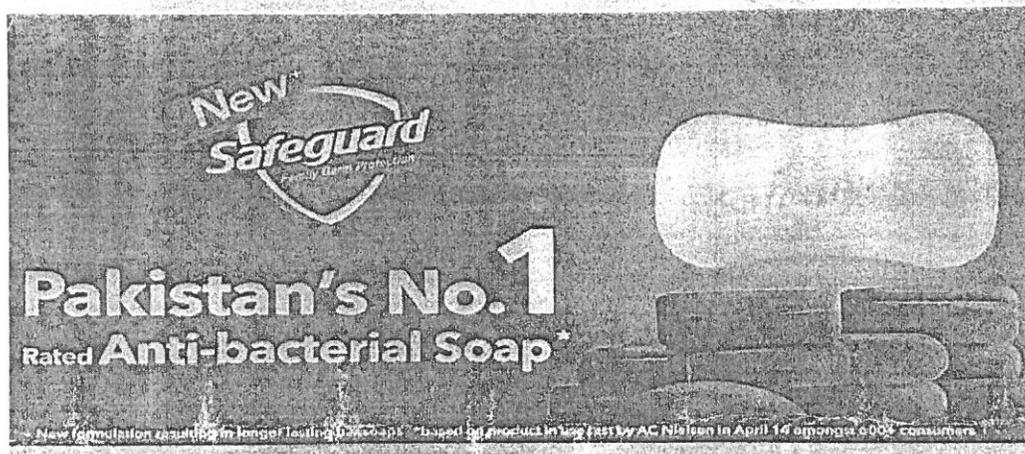
5. We have heard the learned counsel for the parties and have gone through the record.

6. A perusal of the record would reveal that both the appellant and the respondent (**complainant**) are multinational companies providing hygiene and health related products across the globe and have their similar set up of said production in Pakistan.

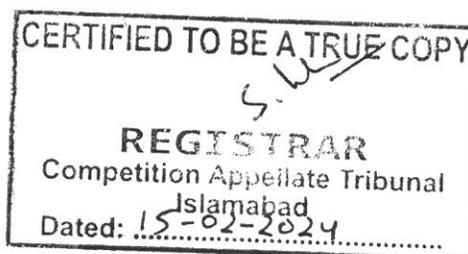


Being in similar nature of business, the competition between the two and other similar companies is but natural and understandable. A claim by the **appellant** regarding its one of the product "Safeguard Soap **"Pakistan's No.1** Rated **Anti-bacterial Soap**" was the basis for the complaint lodged by the **Complainant**. The **Complainant** alleged it to be a false claim deceiving the end users and having every probability of adversely affecting its business. After receipt of complaint, the **Commission** proceeded in the matter in accordance with the law and came to the conclusion that the stance of the **complainant** was established and the **Commission** imposed the penalties as noted above. Though the **appellant** alleged that the said product is a "**Pakistan's No.1** Rated **Anti-bacterial Soap**" and the appellant never claimed it to be the Pakistan's No.1 product but if we have a look upon the said advertisement the word "Pakistan No.1" is so bold and visible that it catches ones eye at its first glance. Whereas the word "rated" is in a much smaller font in comparison to "Pakistan's No.1". Similarly, a disclaimer has also been shown in the advertisement at the bottom but a layman and the general public at the time of purchasing the item can't notice such disclaimer. For a ready reference, the Picture of the Advertisement is pasted herein below.





7. A look at the above advertisement would show that the word "Rated" is even much smaller to "Anti-bacterial Soap". We have noted that there were three different studies regarding the claim of the **appellant** but all the three studies were based on public opinions and the above three studies confirm the fact that these were not based on any scientific research. There was no opinion showing the product's character properties and suitability for use. If these reports are seen in these perspectives, then one can easily come to the conclusion that it was a claim having no solid and scientific basis. If it is so, established, then the other finding would be of a deceptive claim. When such a claim is made in the manner noted above then the same is very much capable of harming the business of other competitor in the field. The said claim on the face of it reflects a sort of deception for the end user when it is based on the opinion of some 600+ people of Karachi & Lahore and not all over the Pakistan. The **complainant** during the course of hearing tried to make out a case that the claim of the **appellant** is false. He besides the claim of appellant referred to a study showing the value and volume share of sale which no doubt shows the lesser value shown against the



product of the **appellant** but it's not the issue before us. We in the circumstances would not like to discuss it further. However, the effect of alleged claim, as the same is placed, on the business to the Complainant and the other such competitors, we find no such specific evidence on the basis of which one can assess the exact figure of monetary loss but we cannot rule out the probability that such a claim has the capacity to harm and affect the business of others in the field. The mandate of the law is also supportive of the situation. Section 10 of the Act is reproduced as under:-

10. 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 of an Undertaking resorts to

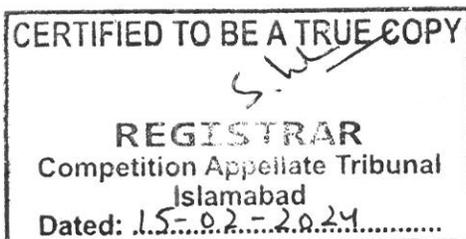
(a) the distribution of false or misleading information that is capable of harming the business interests of another undertaking;

(b) the distribution of false or misleading information to consumers, including the distribution of information lacking a 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

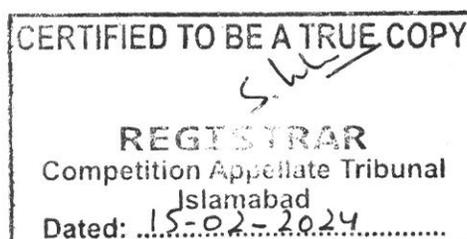
(d) fraudulent use of another's trademark, firm name, or product labeling or packaging

8. A look at the above provision of law also makes it clear that any such attempt which is capable of harming the business would be considered as contravention of law. The provision of law adds the factor of probability.



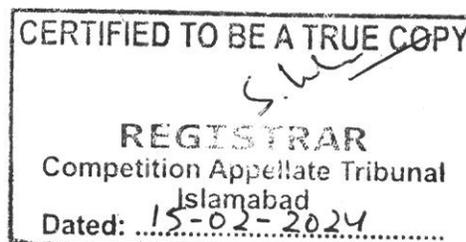
9. The argument of the learned counsel for the appellant regarding the locus standi of the complainant, in our view, appears, to be misconceived. Anyone can file a complaint just to inform the Commission regarding any violation and contravention of the provisions of the Act. Rest is job of the Commission to look into the matter. If the complaint is found to be a baseless one by the commission, that can be dismissed at its inception without initiation of the proceedings. The appellant during the course of hearing also tried to make out a case that he was not called/summoned by the Commission and as such was not provided a chance of hearing which is a clear violation of the golden principle of law that no one should be condemned unheard but we think that the argument of the appellant has no force as the findings of the inquiry Committee are nothing but of a fact finding nature and even the Commission is not bound to act upon the same. The record of the case is very much clear that the appellant was provided a chance of hearing during the proceedings before the Commission and he was duly heard under the law throughout the proceedings.

10. We have noticed that the **Commission** has based its findings by referring and considering the US and the UK standards and guidelines. When the learned counsel for the **Commission** was confronted regarding this aspect, he frankly admitted the position but also referred to an advertisement available on the appeal file dated 23.09.2013 for the awareness of the general public. Yes! the ~~said~~ said advertisement reflects certain guidelines but the same are based



on the provision of the **Act**, however, we would like to observe that the **appellant** and the **Complainant** companies both are multinational companies and this do not lie in their mouth to say that the US/UK standards were considered. Both the companies being multinational companies are fully aware of the same and they are morally and ethically bound to follow the international guidelines and the standards.

11. The stance of the appellant that the questioned claim was dropped on 26.01.2015 just after three days of the initiation of the inquiry and to which he was not aware of, is established on the record and there is no denial of the same. This would mean that at the time of report of the committee, Notice and the conclusion of the proceedings before the Commission, there was no such claim by the appellant in the field and that was dropped before the initiation of the proceedings by the Commission. This would mean that it was not a continuing contravention of the law. We would say that this conduct of the Appellant rather reflects the bonafide of the Appellant which attracts a lenient consideration of the matter regarding the fixation of penalty. Moreover, the Commission has not so far finalized the rules and regulation for imposition of penalty as per requirement of the Act. The market correction at this point of time in 2024, with reference to initiation of inquiry and proceedings of the Commission in 2014 have also become irrelevant, rather such corrections would greatly distort already deteriorating market/business environment ~~of~~ of the country.



10. We in the circumstances, partially allow the appeal and reduce the penalty amount to five million as a token penalty. Rest is maintained and set aside the penalty at serial No.(ii) for the above reasons.

-sd-

Chairperson

-sd-

Member Technical-II

-sd-

Member Technical-I

Announced in open court

15.02.2024

