BEFORE THE
COMPETITION COMMISSION OF PAKISTAN

IN THE MATTER OF SHOW CAUSE NOTICE ISSUED TO M/S 3M PAKISTAN (PRIVATE) LIMITED FOR PRIMA FACIE VIOLATION OF SECTION 10 OF THE COMPETITION ACT, 2010

ON A COMPLAINT FILED BY

M/S COLGATE-PALMOLIVE PAKISTAN LIMITED REGARDING DECEPTIVE MARKETING PRACTICES

<u>File No. 414/3-MPAKISTAN/OFT/CCP/2021/</u>

Dates of Hearing	23.04.2026, 07.07.2026, 20.08.2026 & 21.08.2026
Bench	Farid Ahmad Tarar **Chairman**
	Bushra Naz Malik **Member**
Assisted by:	Hafiz Naeem **Senior Legal Advisor**
	Meher Jamy **Assistant Director**
	Abdullah Alim Qureshi **Legal Consultant**
Present on behalf of	
M/s Colgate Palmolive Pakistan Ltd.	Agha Shah Waliullah **Director Legal**

SEAL OF THE COMPETITION COMMISSION OF PAKISTAN ISLAMABAD

Kamran Ahmed
Manager Legal

Muneeb Muzaffar
Marketing & Activation Manager

Omer Qadri
Director Marketing

M/s 3M Pakistan (Pvt.) Ltd.

Hasan Irfan Khan
Advocate Supreme Court

Mirza Saqib
Advocate High Court

Tariq Bashir
Advocate High Court

Nadir Ishaq
Advocate

ORDER

1. This Order shall dispose of the proceedings arising out of Show Cause Notice No.11/2024 dated 07.06.2024 (the "**SCN**"), issued to M/s 3M Pakistan (Private) Limited (the "**Respondent**") for *prima facie* violation of Section 10 of the Competition Act, 2010 (the "**Act**").

FACTUAL BACKGROUND

2. M/s Colgate-Palmolive Pakistan Limited (the "**Complainant**") alleged in its complaint dated 07.10.2021 that the Respondent engaged in deceptive marketing practices by initiating a below the line marketing campaign[1] and advertisement in various cities and different markets, which directly referred to the Complainant's product, namely, Max Scrub, and the Respondent's comparable product, Scotch Brite. As per the Complainant, through doctored videos the Respondent made false, deceptive, derogatory and defamatory claims about Max Scrub i.e., that when both Max Scrub and Scotch Brite are washed for 20 minutes, Max Scrub disintegrates and wears out badly as compared to Scotch Brite. Accordingly, such claims on the part of the Respondent not only discredited and disparaged the Complainant's product but also caused tremendous damage to its brand equity in contravention of Section 10 of the Act, thereby warranting necessary intervention by the Commission.

ENQUIRY PROCEEDINGS

3. After receipt of the complaint, the Competition Commission of Pakistan (the "**Commission**") initiated an enquiry into the matter under Section 37(2) of the Act and constituted an Enquiry Committee. The Enquiry Committee conducted the fact-finding exercise and sought the reply

[1] A targeted marketing strategy that focuses on engaging specific customer segments rather than a broad audience.

of the Respondent and involved both the Complainant as well as the Respondent during the enquiry. Statements of the employees of the Respondent were recorded as well as the statement of the concerned marketing agency.

4. The Enquiry Committee, after examining the material and evidence on record, submitted its Enquiry Report on 23.05.2024 and concluded that the Respondent had violated Section 10 of the Act by engaging in deceptive marketing practices. The relevant excerpts of the Enquiry Report read as follows:

> "*6.1 In light of the findings it can be concluded that by drawing a false comparison of the quality of products between Scotch Brite and Complainant's Max Scrub in the Karachi region, the Respondent has engaged in false comparison of goods in the process of advertising, prima facie, in violation of Section 10 (2) (c) of the Act.*
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> *6.2 In light of the available evidences, it can also be concluded that by drawing a false comparison of the quality of products between Scotch Brite and Complainant's Max Scrub to third party channel partners in the Karachi region, the Respondent has engaged in disseminating false information to consumers, including the distribution of information lacking a reasonable basis related to the quality, characteristics, properties and suitability for use, prima facie, in violation of Section 10 (2) (b) of the Act.*
>
> *6.3 It can also be concluded that by drawing a false comparison of the quality of products between Scotch Brite and Complainant's Max Scrub to third party channel partners in the Karachi region, the Respondent has engaged in disseminating false information that has the capability of harming the business interest of the Complainant, prima facie, in violation of Section 10 (2) (a) of the Act.*"

SHOW CAUSE NOTICE PROCEEDINGS

5. Based on the findings of the Enquiry Report, the Commission initiated proceedings under Section 30 of the Act and issued the SCN to the Respondent on 07.06.2024 in the following terms:

> "*4. WHEREAS, in terms of the Enquiry Report in general and paragraphs 5.30 to 5.41 in particular, the Respondent Undertaking, by*

COMPETITION COMMISSION OF PAKISTAN ISLAMABAD *drawing a false comparison of the quality of products between Scotch Brite and Max Scrub, has engaged in false comparison of goods in the process of advertising, prima facie, in violation of section **10(2)(c)** of the Act; and*

*5. **WHEREAS**, in terms of the Enquiry Report in general and paragraphs 5.42 to 5.46 in particular, the Respondent Undertaking by drawing a false comparison between Scotch Brite and Max Scrub, has engaged in disseminating false information to consumers, including the distribution of information lacking reasonable basis related to the quality, characteristics, properties and suitability for use, prima facie, in violation of section **10(2)(b)** of the Act; and*

*6. **WHEREAS**, in terms of the Enquiry Report in general and paragraphs 5.47 to 5.51 in particular, the Respondent Undertaking by drawing a false comparison between its product Scotch Brite and Complainant's product Max Scrub, has engaged in disseminating false information that has the capability of harming the business interest of the Complainant, prima facie, in violation of section **10(2)(a)** of the Act;...*"

6. The Respondent was called upon to file its reply to the SCN and avail the opportunity of hearing before the Commission. A copy of the Enquiry Report was also enclosed with the SCN.

WRITTEN REPLY OF THE RESPONDENT

7. The Respondent submitted its written reply to the SCN on 30.09.2024, wherein it raised the following points:
    (i) the Enquiry Report's finding that the Respondent is liable under Section 10 of the Act is totally flawed and unsubstantiated as the Report is completely silent about any questioning done from the Complainant to determine the veracity of the video evidence attached with the complaint, including from where and how it came into the hands of the Complainant;
    (ii) the sole video of 24.09.2021, forming the basis of the entire case against the Respondent, shows the time of 7:29:03 pm which is beyond the sunset time in Karachi,

yet the video shows broad daylight thus proving that it was fabricated and cannot be regarded as evidence;

(iii) the video in question shows one of its employees giving a demonstration in his personal capacity without any authorization from the Respondent and that too only to third party channel partners;

(iv) it is a settled principle of law that the admissibility of visual evidence such as photographs and videos is subject to certain legal principles to ensure its reliability, relevance and admissibility;

(v) a bare perusal of the alleged visual evidence clearly reveals that no deceptive, derogatory and defamatory claims were made by the Respondent about Max Scrub to the public and/or to the consumers;

(vi) as per the case-law of the Commission, an 'ordinary consumer' is characterized as the common or expected user of a product. Therefore, third party channel partners/third party service providers cannot be classified as consumers and neither can these terms and the term consumer be considered interchangeable. Further, there is no evidence that the third party channel partners/third party service providers themselves ever passed on or displayed the relevant video to consumers;

(vii) the personal act of an individual employee of the Respondent, without any instructions from the Respondent and without its sanction or knowledge, cannot be attributed to the Respondent; and

(viii) the case-law on spillover effect relied on by the Enquiry Committee is not applicable to the case at hand as in those cases interprovincial trade and commerce was the main issue involved.

8. In view of its submissions, the Respondent requested that either the SCN be withdrawn or the proceedings be dropped for being without merit and for travelling beyond the scope and mandate of the Act.

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REBUTTAL OF THE COMPLAINANT

9. In response to the written reply of the Respondent, the Complainant filed a rejoinder submitting that:

   (i) the defense taken by the Respondent that the act of its employee, Muhammad Imran, was a personal act is untenable as the employee is the Regional Sales Manager for the Karachi South region and the activity occurred at a 3M branded kiosk during an official marketing campaign. Further, under settled legal principles an undertaking is responsible for the actions of its employees during the course of employment and the Respondent has not provided evidence of any disciplinary or remedial action taken by it against its employee since the unauthorized act came to its knowledge in 2021;

   (ii) the Commission has previously held that a consumer is not restricted to the end user, with entities along the distribution channel and B2B transactions explicitly included in the definition. Moreover, channel partners are specifically engaged to increase market presence and enhance sales so dissemination of false information to them will ultimately harm an undertaking's brand equity in the eyes of the end consumer;

   (iii) the veracity of the video evidence is not in question as the employee himself has admitted before the Enquiry Committee that he gave the demonstration involving the comparison of Max Scrub and Scotch Brite. Additionally, the Respondent's earlier claim that the person in the video was anonymous was contradicted by its own HR record which identified the person as its Regional Sales Manager; and

   (iv) the Respondent's characterization of the video dated 24.09.2021 as a single isolated incident is factually incorrect because in the modern era marketing campaigns and digital videos transcend regional boundaries. Also the Complainant is a trans-provincial entity having a nationwide product presence, therefore, even a single act of false dissemination about it can affect its business interests across all provinces.

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HEARINGS AND SUBMISSIONS OF THE PARTIES

10. After receiving the written replies of both sides, a hearing in the matter was held on 23.04.2026 to give the parties an opportunity to present their stance.

11. The Counsel for the Complainant presented his arguments first. He stated before the Bench that the Respondent's marketing campaign and advertisement took place in three cities: Karachi, Lahore and Islamabad. Insofar as the video evidence was concerned, the video was in circulation on digital platforms, which is how it reached the Complainant through a shopkeeper in Karachi. On being questioned by the Bench about the market share of both undertakings, the Counsel apprised the Bench that the Respondent has almost wound up its production business in Pakistan, leaving the Complainant as the only branded player in the market. During the hearing, the video and pictorial evidence submitted by the Complainant were also shown on-screen, with Counsel emphasizing that the employee of the Respondent had already admitted to making the video showing a comparison between the Complainant's Max Scrub and the Respondent's Scotch Brite.

12. Thereafter, the Counsel for the Respondent argued the case. The Counsel admitted at the outset that the Respondent did run a marketing campaign, however, he clarified that the same was assigned to a third party, M/s Hype Direct Marketing. On a query from the Bench, the Counsel informed that the Respondent's product, Scotch Brite, was only compared with local sponges during the marketing campaign and no authorization was given to compare the same with the Complainant's product, Max Scrub. The Counsel also averred that the Bench has to determine whether the video in question can be attributed to the Respondent or was it an act of an employee in his personal capacity, as evident from Muhammad Imran's statement incorporated in the Enquiry Report.

13. In view of the Complainant's request seeking Section 10(2)(a) of the Act to be invoked, the Bench sought the following information from the Complainant:

    (i) any corroborative material/evidence substantiating and quantifying the alleged financial loss or harm to business interests resulting from the impugned conduct, including change in market share of the Complainant before and after the launch of the alleged media campaign of the Respondent;

    (ii) any evidence reflective of increase in the market share of the Respondent during the relevant period of advertisement and subsequently (maximum 6 months);

    (iii) particulars of the shopkeeper from whom the video was received by the Complainant;

    (iv) evidence, if any, of supply orders cancelled by the Complainant's distribution network due to circulation of the alleged video; and

    (v) evidence related to the campaign of the Respondent and alleged circulation of the video.

14. Likewise, the Bench directed the Respondent to provide the following information:

    (i) As the Agency Agreement dated 01.08.2018, executed between the Respondent and Hype Direct Marketing, had to comply with the provisions of the Act, whether any disciplinary and/or punitive action was taken for not complying to the terms of the Agreement;

    (ii) evidence of marketing plan approved to be carried out by the Hype Direct Marketing;

    (iii) the total value of the aforesaid Agency Agreement and particulars of payment made against it; and

    (iv) particulars of any action taken by the Respondent against its employee(s) in light of the alleged campaign carried out during their marketing campaign under review.

15. On 09.05.2026, the Complainant filed its reply to the Bench's request for information. It was submitted that:

(i) in the first year of launch, the Complainant had projected a market capture of 15% in the relevant product category. However, due to the Respondent's impugned conduct, the Complainant could only capture 4% market share in the first phase resulting in an estimated financial loss of Rs.600 Million;

(ii) the Respondent will be in the best position to provide exact sales figures, market share data, regional performance, customer conversion and distribution expansion data during and after the marketing campaign period as such information is within its exclusive possession. However, it was noted that based on available market information the Respondent was a market leader in the relevant category at the relevant time, with an estimated share of around 60%;

(iii) the name of the shopkeeper from whom the video was received was Mr. Mazhar who owns Bismillah Basit Store in Abbas Town, Karachi. The video was shared via WhatsApp on 25.09.2021 with Muneeb Muzaffar, Marketing & Activation Manager at the Complainant;

(iv) in fast-moving consumer goods and retail distribution channels, commercial harm is not limited to formal cancellation of written supply orders but is reflected through informal refusals, reduced ordering, reluctance to stock, hesitation by distributors, negative retailer feedback, delayed uptake and lower than expected repeat orders. Therefore, the absence of a large number of formal written cancellation orders should not be treated as an absence of harm; and

(v) evidence relating to the Respondent's marketing campaign and circulation of video has already been provided and is part of the Commission's record, especially the confession of the Respondent's employee, Muhammad Imran. This is important as an undertaking acts through its officers, employees, representatives, sales staff and agents.

16. The response of the Complainant was shared with the Respondent for its comments. In its replies dated 29.06.2026, 06.07.2026 and 07.07.2026, the Respondent rejected all the

assertions made by the Complainant and stated that the burden to prove the allegations against the Respondent and to quantify the financial harm/loss caused to its business interests lies squarely with the Complainant. The Respondent also objected to the introduction of fresh evidence at the belated stage of proceedings.

17. Thereafter, pursuant to the Respondent's request, another hearing in the matter was held on 07.07.2026. In that hearing, the Counsel for the Complainant merely requested the Bench to treat his previous submissions and rebuttals to the Respondent's objections as an integral part of the Complainant's case. On the other hand, the Counsel for the Respondent argued about the deficiencies in the evidence relied upon in the complaint and also in the Enquiry Report. He submitted that the pictorial evidence attached with the complaint did not show that the Respondent conducted a false or misleading comparison between its own product and that of the Complainant's; the video evidence could not be relied upon until its forensic was carried out; the details of the shopkeeper who shared the video evidence with the Complainant were never furnished in a timely manner and even the Enquiry Committee did not involve the shopkeeper at the enquiry stage; and the Respondent could not be held liable for the acts of its contractor and employee. Upon questioning from the Bench about the ultimate beneficiary of the acts of the employee and the actions taken, if any, in this regard, the Counsel for the Respondent informed that the concerned employee, Muhammad Imran, was no longer in the employment of the Respondent.

18. In light of the Respondent's contention that it is not accountable for the actions of its contractor and employee, the Bench directed it to furnish the following information:
    (i) Pursuant to Agency Agreement dated 01.08.2018 executed between the Respondent and Hype Direct Marketing, action taken, if any, against the said Undertaking;

(ii) Whether the entire payment has been made to the Hype Direct Marketing by the Respondent for the service hired. If yes, a brief particulars including date(s) of the payment(s) made against the contracted value;

(iii) Action taken, if any, by the Respondent internally in light of the alleged marketing campaign mentioned in the Complaint; and

(iv) Is Hype Direct Marketing aware of the pending proceedings before the Commission.

19. On 18.07.2026, the Respondent submitted its answer to query (ii) only, stating that in the year 2021 it paid nearly PKR 44.81 Million to Hype Direct Marketing for its marketing services. No clarity was provided on whether any action had been taken against Muhammad Imran prior to his leaving the Respondent's employment. Subsequently, on 20.07.2026 the Respondent filed its written submissions based on its oral arguments. In particular, the Respondent emphasized that the ingredients of Section 10 of the Act had not been proven; the burden of proof remained on the Complainant throughout to prove its case, with its failure to provide the best available evidence necessitating an adverse inference that the evidence in its possession if produced would not have supported its case; the provenance and authenticity of the video evidence had not been established even though the same was the foundational piece of evidence against the Respondent; and no liability could be attached to the Respondent as the principal actors, Muhammad Imran and Hype Direct Marketing, were not proceeded against.

20. On account of the comprehensive reply filed by the Respondent, the Bench conducted additional hearings in the matter on 20.08.2026 and 21.08.2026 to give the Complainant and Respondent a final opportunity to present their case. The Counsel for the Respondent presented his arguments in the first instance, casting doubt on the authenticity and veracity of the video dated 24.09.2021 due to the various defects committed by the Enquiry Committee in conducting the said video's examination and analysis. Secondly, the Counsel highlighted

the contradictory position taken by the Enquiry Committee vis-a-vis Muhammad Imran's statement. Counsel averred that while the Committee believed Muhammad Imran's admission that he made the video comparing Max Scrub and Scotch Brite, it rejected his qualification that the video was made in his personal capacity. Likewise, whilst accepting the statement of the CEO of Hype Direct Marketing that Muhammad Imran was present at the marketing campaign, the Enquiry Committee discounted his statements that he was unaware of the video dated 24.09.2021 and that only unbranded/mushroom brands were used for drawing comparisons with Scotch Brite and no comparison was drawn with the Complainant's product. Counsel also strongly emphasized the complete failure of the Complainant to establish its case against the Respondent on each count of Section 10 of the Act, requesting the Bench to draw an adverse inference against the Complainant for failing to highlight the particulars of the person who shared the video with the Complainant and the person who received the video on behalf of the Complainant in the complaint. Further, Counsel protested the Enquiry Committee's methodology of placing the burden of proof on the Respondent to prove its innocence in the matter, instead of directing the Complainant to furnish credible and cogent evidence establishing the Respondent's guilt. Counsel also highlighted that neither any evidence was available on the record which showed that the video of 24.09.2021 was disseminated on social media platforms nor did the Enquiry Report elaborate on this aspect, thereby rendering the entire case of the Complainant without merit.

21. In rebuttal, the Complainant rejected all submissions of the Respondent and asserted that in the presence of Muhammad Imran's admission before the Enquiry Committee that he had made the video comparing Max Scrub and Scotch Brite, all technical objections on the veracity and authenticity of the video became irrelevant. Moreover, Counsel stated that the Respondent cannot escape liability for the deceptive conduct of its employee by merely submitting that the same was a personal act of the employee because an employee works for the company's benefits and its actions are taken to be that of its employer. In support of this

contention, the Director Marketing of the Complainant pointed out that since the deceptive claim made by the employee of the Respondent was that Max Scrub wore out badly compared to Scotch Brite after being washed for 20 minutes, the same was part of a demonstration activity. Such activities are normally developed by companies themselves, especially their R&D Departments and it is, therefore, unlikely that Muhammad Imran came up with this particular idea for the video on his own. Resultantly, the video is directly attributable to the Respondent. Lastly, the Director Marketing explained that the video of 24.09.2021 was direct evidence of the fact that similar demonstrations were being made to consumers at the point of purchase/sale in different locations i.e., Islamabad, Lahore and Karachi and so its lack of dissemination on social media platforms was inconsequential.

ISSUES

22. After carefully examining the complaint, the Enquiry Report and the oral and written submissions of the parties, the following issues are framed for determination of the matter:

    I. **Whether the Respondent has violated Section 10(1) read with Section 10(2)(c) of the Act?**

    II. **Whether the Respondent has violated Section 10(1) read with Section 10(2)(b) of the Act?**

    III. **Whether the Respondent has violated Section 10(1) read with Section 10(2)(a) of the Act?**

ANALYSIS

I. Whether the Respondent has violated Section 10(1) read with Section 10(2)(c) of the Act?

23. The perusal of the case file reveals that a below the line marketing/advertising campaign was initiated by the Respondent across different cities of the country in order to promote the sales

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of its product. During this campaign, one of the activities designed for the public was the comparison of the quality of Scotch Brite with other local sponges. As per the Respondent in its reply submitted to the complaint, the sponge sample visible in Annexure B of the complaint (pictures of the marketing activity) are marked L.S (Local Sponge, which may or may not be branded local sponge) and S.B (Scotch Brite). The Complainant submitted two videos in support of its contentions and multiple pictures and details of the advertising/marketing campaign run by the Respondent. The Respondent never denied that it had initiated the said campaign or that its Scotch Brite sponge was compared with other sponges. Its emphasis was only that the video submitted by the Complainant was not admissible. Initially, the Respondent denied knowledge of the person who was giving the demonstration in the video submitted by the Complainant. However, when the Complainant identified the person/employee and the said employee, Muhammad Imran, also admitted before the Enquiry Committee that indeed he is the person who is giving the demo in the video, the Respondent changed its stance and claimed that the demo was given by the employee in his personal capacity without authorization.

24. The above background establishes the fact that there was an advertising campaign commissioned by the Respondent through a third party company i.e., M/s Hype Direct Marketing, which executed an agency agreement with the Respondent for running different marketing campaigns and for providing different services for such campaigns. One such camping was run in the year 2021 and a hefty amount of around PKR 45 Million was paid to the said agency for running the advertising campaign of the Respondent.

25. In the video under question, it can be seen that a person is giving a demonstration of two sponges. On one sponge, it is written S.B and on the other it is written M.S. The person giving the demo narrates that after washing both sponges for twenty minutes, this is the condition of both the sponges. Scotch Brite is relatively in a good condition whereas Max Scrub is

relatively in bad shape. Therefore, the primary allegation levelled by the Complainant against the Respondent in the matter is the violation of Section 10(2)(c) of the Act. It is the Complainant's case that by making the impugned claim in the video dated 24.09.2021, the Respondent has engaged in '*false or misleading comparison of goods in the process of advertising*'. However, the Respondent countered this contention by challenging the veracity and authenticity of the video evidence. The Respondent also vehemently argued that it cannot be held liable for the personal acts of its employee.

26. Since the Respondent has attacked the foundational evidence underpinning the case, it is important to first deal with this point. The Bench has carefully considered the Respondent's objections to the video but finds the same to be untenable. The objections raised by the Respondent become secondary when the admission of Muhammad Imran, employee of the Respondent, is examined. His acknowledgement that he did indeed make a comparison between the Complainant's product and the Respondent's product in the video of 24.09.2021 puts to rest all criticisms of the video in question. The relevant excerpt from the Enquiry Report is reproduced hereinbelow for reference:

> "*5.21 Upon inquiring regarding the alleged video of false comparison,* ***Mr. Muhammad Imran submitted that he had, in his personal capacity, picked up scrubs from the kiosk and gave a demonstration of the activity to the distribution team/sales team/channel partner*** *(word's used interchangeably during statement record) and described them as third party channel partners. Upon imploring further, Mr. Muhammad Imran argued that no false information was given out to the customers in the market and that the demonstration was purely given to the channel partners.*"
>
> (***Emphasis supplied***)

27. In the above circumstances, when the employee of the Respondent has accepted that he did undertake a comparison between Max Scrub and Scotch Brite, the stance of the Respondent that the video evidence is unreliable loses all merit.

28. Insofar as the contention of the Respondent regarding the personal act of the employee is concerned, suffice to say that it is a settled principle of law that an employer is liable for the acts of its employee committed during the course of employment, especially if the wrongful act is closely connected with the nature of employment.[2] It is an admitted fact that Muhammad Imran is a Regional Sales Manager for the Respondent and he was associated with and/or supervised the marketing campaign launched by the Respondent. Resultantly, when Muhammad Imran made the video comparing the Complainant's product with the Respondent's product, he did so while performing his duty at the very place directed to him by the Respondent. In this situation, the Respondent is squarely liable for the act of Muhammad Imran, even if it allegedly did not authorize Muhammad Imran to conduct such a comparison because there is a very close connection between the comparison undertaken by Muhammad Imran and the duty he was officially assigned to perform.

29. The Bench shall now examine the merits of the allegation against the Respondent. It has been settled by the Commission[3] that in order to prove a violation of Section 10(2)(c) of the Act, four elements need to be fulfilled, namely:

(i) false or misleading;

(ii) comparison;

(iii) goods; and

(iv) in the process of advertising.

30. In the facts of the present case, elements (ii) and (iii) are self-evident as the employee of the Respondent, Muhammad Imran, by showing the condition of the two sponges, Max Scrub and Scotch Brite, after a 20 minute wash has indeed made a comparison between the goods of the

[2] *Pakistan Television Corporation vs. Noor Sanat* Shah (2023 SCMR 616); *Lister v Hesley Hall Limited* [2002] 1 AC 215, UKHL

[3] *In the Matter of Show Cause Notices issued to M/s Unilever Pakistan Limited and M/s Friesland Campina Engro Pakistan Limited on a Complaint filed by M/s Pakistan Fruit Juice Company Private Limited regarding Deceptive Marketing Practices* (2025 CLD 651)

Complainant and the Respondent. In respect of the first element, the Commission has already held ***In the Matter of Messrs Reckitt Benckiser Pakistan Limited for Deceptive Marketing Practices*** (2015 CLD 1864) that '*Similarly to the preceding subsections, a comparison of goods made without reasonable basis will be considered to be false and misleading in terms of this provisions*' (para 30). Before us, the Respondent has not been able to provide any reasonable basis or recognizable substantiation for the comparison drawn between Max Scrub and Scotch Brite. This fact was also highlighted in the Enquiry Report, wherein it was observed:

> "*5.39 The Respondent, during the course of investigation, did not make its submissions regarding the merits of the matter at hand, which was making a false and misleading comparison of goods during the course of marketing.* ***Therefore, the Respondent never submitted any substantiation regarding the comparison its employee had drawn during the demonstration.***"
>
> (***Emphasis supplied***)

31. Therefore, in the absence of any reasonable basis or recognizable substantiation submitted by the Respondent, the comparison made by its employee is to be treated as false or misleading. It is important to mention here that along with the complaint, the Complainant also submitted a third party lab report with respect to the quality of Scotch Brite and Max Scrub. The said report after conducting various tests concluded that both the products are of similar quality. The Respondent failed to rebut this report and its emphasis was only that it had not authorized any comparison of Max Scrub and Scotch Brite. It was also submitted that during the advertising campaign, the only comparison to be drawn was between Scotch Brite and local unbranded sponges. The Respondent during these proceedings never questioned the quality of the Max Scrub sponge.

32. With regard to the fourth element, the Bench considers the video to be advertising as it was made during the marketing campaign launched by the Respondent for the promotion of its product. However, the Respondent has taken the ground that the video was only made for the consumption of third party channel partners/third party service providers and not the

Respondent's consumers, therefore, it cannot be treated as an advertisement made for the general public. However, we find this argument of the Respondent to be untenable for the reason recorded in the Enquiry Report:

> "*5.44 Based on the facts of the case, __the demonstration of false comparison by the employee of the Respondent in the video of the Karachi region was made to third party channel partners__. The demonstration was not made to direct employees of the Respondent.*
>
> *5.45 Therefore, the __false information was disseminated to people outside of the organization, who specialize in increasing market presence, with the goal to enhance sales__.*"
>
> (*__Emphasis supplied__*)

33. It may be noticed from the afore-noted, particularly para 5.45 of the Enquiry Report, that although the video may have originally only been made for third party channel partners/third party service providers, these partners and providers were specifically tasked with increasing the visibility of the Respondent's product in order to influence consumers to prefer Scotch Brite over other comparable/similar products. Consequently, the Respondent's argument that the video was not intended for general viewership is superficial, as it ignores the reality that third party channel partners/third party service providers were hired in the first place to disseminate favourable content about the Respondent's product amongst the public. Accordingly, based on the discussion above it has become clear that all four elements listed in Section 10(2)(c) of the Act are satisfied on the facts of the instant case. Resultantly, the Respondent is found in violation of Section 10(1) read with Section 10(2)(c) of the Act.

II. Whether the Respondent has violated Section 10(1) read with Section 10(2)(b) of the Act?

34. The second allegation against the Respondent is that it distributed false or misleading information to consumers lacking a reasonable basis related to the quality of goods.

35. The Bench is of the view that on the basis of the available evidence, the Respondent has not contravened Section 10(1) read with Section 10(2)(b) of the Act as it did not distribute any false and misleading information to consumers regarding its own product, Scotch Brite. Instead, the focus of the video dated 24.09.2021 was on the poor performance of Max Scrub after being washed for 20 minutes. Nowhere in that video does the Respondent's employee, Muhammad Imran, make any exaggerated claim about Scotch Brite, whether in terms of its superior properties, suitability for use or better quality. Accordingly, since the purpose of the comparison conducted in the video was to highlight the substandard quality of Max Scrub, the essential ingredient of Section 10(2)(b) that an undertaking make a false or misleading claim about its own product is not fulfilled. No liability can thus be attached to the Respondent under this provision.

III. Whether the Respondent has violated Section 10(1) read with Section 10(2)(a) of the Act?

36. Lastly, the Respondent has been accused of breaching Section 10(2)(a) of the Act. In this regard, the Enquiry Report observed that the Respondent has engaged in disseminating false information that has the capability of harming the business interests of the Complainant as '*The product of the Complainant and the Respondent are of identical nature and their relative markets are identical too. Therefore, any information given to channel partners will end up in the same relative markets as that of the Complainant's, thereby creating a bad word for the Complainant's product*' (para 5.49). More so, when '*The false information disseminated in this case pertains to the quality of the Complainant's product MS and how it deteriorates at a faster rate compared to the Respondent's product SB*' (para 5.48).

37. While the Bench does not dispute the fact that the Respondent disseminated denigrating information about the Complainant's product, however, the material on record does not fulfil

the requirements of Section 10(2)(a) of the Act. Ample opportunity was given to the Complainant to establish its case under this issue; however, it failed to produce any concrete evidence in support of its claims. Therefore, we are of the considered opinion that the Complainant has not been able to make out a case against the Respondent for violation of Section 10(1) read with Section 10(2)(a) of the Act.

DECISION AND PENALTY

38. In view of the above, the Bench finds the Respondent to be in violation of Section 10(1) read with Section 10(2)(c) of the Act. Consequently, the appropriate quantum of penalty now needs to be decided. For the said purpose, guidance is solicited from the Guidelines on Imposition of Financial Penalties (Fining Guidelines), the objective of which is to deter undertakings from engaging in anti-competitive practices and to reflect the seriousness of the infringement.

39. The Respondent is an internationally well-reputed company, which despite being fully aware of the applicable laws operating in the country, including the Competition Act, 2010, still engaged in deceptive marketing practices against the Complainant's product. Therefore, the Bench in exercise of its powers under Section 38 of the Act hereby imposes a penalty of PKR 10,000,000/- (Rupees Ten Million only) on the Respondent for violation of Section 10(1) read with Section 10(2)(c) of the Act. The Respondent shall submit a Compliance Report to the Registrar Office with regard to the penalty amount within sixty (60) days from the date of this Order, failing which it shall be liable to pay an additional penalty of PKR 50,000/- (Rupees Fifty Thousand only) per day from the date of this Order.

40. The Respondent is also directed to strictly ensure that it does not repeat the same or similar conduct in the future in respect of either the Complainant's product or any other undertaking's comparable product.

41. SCN No.11/2024 is disposed of in the above terms.

Farid Ahmad Tarar
(Chairman)

Bushra Naz Malik
(Member)

ISLAMABAD, THE 4th DAY OF SEPTEMBER, 2026

SEAL OF THE COMPETITION COMMISSION OF PAKISTAN * ISLAMABAD *