

## ORDER

In the matter of show cause notice issued to M/S. Nestle Pakistan Ltd on complaint filed by M/S. Parent Pakistan (SMC-PVT) limited



Competition Commission of Pakistan

www.cc.gov.pk

### BACKGROUND & COMPLAINT



- ⇒ The Complainant filed a formal complaint with the Commission against the Respondent for allegedly disseminating false and misleading information to consumers about its three products i.e., Nestle Nido Fortigrow, Nestle Nido 3+ and Nestle Bunyad, through television commercials, packaging, labelling, social media platforms, official websites, etc.
- ⇒ It was further alleged that there was no scientific and/or reasonable basis for such false/misleading information and the Respondent was also misleadingly comparing its products to actual milk.



### DATE OF ORDER

21 February 2022



### BENCH MEMBERS

Ms. Rahat Kaunain Hassan  
Ms. Bushra Naz Malik



### SECTOR/MARKET

Powdered Milk/Milk  
Formula Industry/Sector



### NATURE & SECTION VIOLATION

Deceptive Marketing Practices in violation of **Section 10** of the Act



### PARTIES

Complainant:  
**1.** Parents Pakistan (SMC-Private) Limited

Respondent:  
**1.** Nestle Pakistan Limited

### FINDINGS OF ENQUIRY REPORT



#### The Enquiry Committee concluded that:

- ⇒ The Respondent, prima facie, was found involved in distribution of false and misleading information to the consumers through the portrayal that its products are dairy based/actual milk.
- ⇒ The Respondent has, prima facie, deceptively portrayed its products through advertisements to be a better alternative of milk without any scientific and reasonable basis.
- ⇒ The Respondent also, prima facie, was found involved in the false and misleading comparison of goods in the process of advertising its products in violation of section 10 of the Competition Act

### ISSUES FRAMED BY THE BENCH



- ⇒ Whether the Complainant is an undertaking within the meaning of Section 2(1)(q) of the Act and whether the complaint is validly filed by it?
- ⇒ Whether the Respondent has violated Section 10(2)(b) of the Act by disseminating false and misleading information to the consumers related to character, suitability of use and quality of the Products i.e. Nido 3+ Nido fortigrow and Nido Bunyad in terms of its packaging?
- ⇒ Whether the Respondent has violated Section 10(2)(c) of the Act by making false and misleading comparison of goods in process of advertising?


After considering the findings and recommendations of the Enquiry Report, the Commission issued a show-cause notice to the Respondent.

SCN ISSUANCE DATE:  
24 March 2021

## FINDINGS OF THE BENCH

<p><b>1.</b></p>	<p><b>2.</b></p>	<p><b>3.</b></p>	<p><b>4.</b></p>
<p>The Complainant was an undertaking in accordance with the provisions of the Act as it provided educational services, being a form of economic activity.</p>	<p>As far as the Nestle Nido 3+’s nature as milk is concerned, the Respondent had itself admitted before the Commission that Nestle Nido 3+ is not milk. Moreover, the Supreme Court Order cited therein also clarified that the Respondent’s products are ‘not natural milk’. Hence, disclosures were made to this effect on the packaging.</p>	<p>With respect to Nestle Nido Bunyad, the current packaging contained due disclosures of the fact that it was a form of milk powder. Moreover, it is not for the Commission to verify the exact quantum and requirements of individual ingredients in the formula and the same falls within the ambit of other authorities.</p>	<p>Section 10(2)(c) alleged violationthe Bench found that the same was not established as mere use of the word ‘best’ in the Respondent’s claim that its product (Nestle Nido Fortigrow) are ‘Best for School Kids’ did not create any express specific statement, warranty or guarantee and can be considered to be mere puffery considering its exaggerated use.</p>
<p><b>5.</b></p>	<p><b>6.</b></p>	<p><b>7.</b></p>	<p><b>8.</b></p>
<p>However, concerning the general advertisement and marketing material, the content did give an overall net general impression that the Respondent’s products were milk or like milk.</p>	<p>Moreover, the ‘Mission Nutrition’ campaign did indicate that the products are a good substitute for milk. However, there was no credible evidence supporting the said statement on record</p>	<p>The ‘#More than Milk’ campaign was also found deceptive considering that the same also implied that the Respondent’s product is better than milk.</p>	<p>For Nestle Nido Fortigrow, it was also found that the current product packaging contained the actual disclosures and nomenclature of the milk formula.</p>

## CONCLUSION




### NIDO 3+

**Alleged Contraventions**

Previous packaging - violation of Section 10(2)(b) of the Act.

**Comments of the Respondent**

The packaging at issue was subsequently approved by Punjab Food Authority (PFA) and also changed to include due disclosures in light of the Watan Party case.




### FLYER

**Alleged Contraventions**

Nestle Pakistan Flyer - Misleading information was being circulated.

**Comments of the Respondent**

This was a one-time instance. The said flyer was distributed to the retailers for that purpose.




### CAMPAIGN

**Alleged Contraventions**

Nestle Pakistan Mission Nutrition Campaign - Misleading information was being circulated.

**Comments of the Respondent**

The campaign has been removed from website.




### NIDO FORTIGROW

**Alleged Contraventions**

Packaging, labelling and claims were in violation Section 10 of the Act.

**Comments of the Respondent**

The Respondent in its defense submitted that the current product packaging and labeling contain the due disclosure, whereas previous unapproved labeling, nutritional facts, and claims have been removed.




### DIGITAL MEDIA

**Alleged Contraventions**

Website and social media pages- Misleading information was being circulated.

**Comments of the Respondent**

The advertisement has been removed.




### FALSE CLAIM

**Alleged Contraventions**

Claim of #more than milk - Misleading information was being circulated.

**Comments of the Respondent**

The Respondent has directed the concerned representative of twitter to remove the said posts immediately from their platform.




### NIDO BUNYAD

**Alleged Contraventions**

Previous packaging - violation of Section 10(2)(b) of the Act.

**Comments of the Respondent**

The packaging at issue was subsequently approved by Punjab Food Authority (PFA) and also changed to include due disclosures in light of the Watan Party case.



### TVC

**Alleged Contraventions**

Television commercials Misleading information was being circulated.

**Comments of the Respondent**

The TVCs have been discontinued.

**All these claims were verified by the Commission**



## PENALTY IMPOSED

The Bench noted that since, with respect to enforcement under Section 10 of the Competition Act, a compliance-oriented approach has been appreciated and that the Respondent had removed and stopped the impugned advertising/marketing material as well as provided due disclosures on its packaging, in the given facts and circumstances, it took a lenient view and did not impose any penalty.



TO DOWNLOAD  
THE ORDER



## DIRECTIONS

- 1** The Respondent was strongly cautioned not to repeat any such conduct in the future.
- 2** The Bench encourages undertakings towards compliance and corrective behavior.