



**BEFORE
THE COMPETITION COMMISSION OF PAKISTAN**

**IN THE MATTER OF
SHOW CAUSE NOTICE ISSUED TO**

**UNILEVER PAKISTAN LIMITED
On Complaint Filed By
RECKITT BENCKISER PAKISTAN LTD
FOR DECEPTIVE MARKETING PRACTICES**

(File No. 376/OFT/Unilever/CCP/2020)

Date of Hearing: 07.05.2021
04.06.2021
16.07.2021
03.01.2024
23.05.2024

Bench: **Member**
Mr. Abdul Rashid Sheikh

Member
Mr. Saeed Ahmad Nawaz

Present:
**Reckitt Benckiser
Pakistan Ltd.**

Barrister Haroon Dugal
Advocate Supreme Court
Mr. Waqar Waraich
Advocate High Court
Ms. Subhe Naseeb
Advocate High Court

Khawaja Aizaz Ahsan
Advocate High Court
Mr. Hamza Malik
Advocate High Court
Mr. Shaheer Roshan
Advocate High Court
Ms. Abiyya Kasmani
Advocate High Court



Unilever Pakistan Ltd.

ORDER

1. This order shall dispose of proceedings initiated pursuant to the Show Cause Notice No. 6/2021 dated 10.03.2021 (the '**SCN**') issued to Unilever Pakistan Limited (the '**Respondent**') for *prima facie* violation of Section 10 of the Competition Act, 2010 (the '**Act**').

2. The Competition Commission of Pakistan (the '**Commission**') received a complaint filed by Reckitt Benckiser Pakistan Limited (the '**Complainant**'), alleging that the Respondent has indulged itself into deceptive marketing practices in contravention of Section 10(2)(b) of the Act by making false and misleading claims with regard to its products **Lifebuoy (Care and Protect) Soap** and **Lifebuoy Hand Wash** (collectively, the '**Products**'). Moreover, the Respondent's conduct caused harm to the business interests of the Complainant in contravention of Section 10(2)(a) of the Act.

COMPLAINT, ENQUIRY, SCN and SUBMISSIONS

A. COMPLAINT

3. The Complainant alleged that the Respondent has engaged in deceptive marketing practices by spreading false and misleading information to consumers through the following advertised claims pertaining to **Lifebuoy (Care and Protect) Soap and Lifebuoy Hand Wash**:

- a. 100% Proven Germ Protection (Advertising Claim A)
- b. Jaraseem se 100% yaqeeni hifazat (Advertising Claim B)
- c. Where there is Lifebuoy, there are few illnesses (Advertising Claim C)
- d. World's No.1 germ protection soap (Advertising Claim D)
- e. 99.9% germ protection in 10 seconds (Advertising Claim E)

(Collectively referred to as the "alleged claims").

4. The Complainant alleged that the Respondent's claims of 100% protection from germs were impertinent and deceptive because the presence of countless types of germs in the atmosphere made the Respondent's claimed 100% efficacy of the Products scientifically impossible. It was further



contended that the "Log values" were used to measure the reduction of bacteria, but that could not reach 100%. It was, therefore, unreasonable to assert that an anti-bacterial soap could eliminate 99.9% of germs in just 10 seconds while being safe for human use. Additionally, the Complainant alleged that the claims lacked proper disclaimers. Consequently, the alleged claims were scientifically untenable and should be declared deceptive in violation of Section 10(2)(a) and 10(2)(b) of the Act.

B. ENQUIRY REPORT

5. The Complainant is an undertaking involved in manufacturing, marketing, sales, and distribution of consumer, household, healthcare, and pharmaceutical products. Its products include anti-bacterial soap and hand wash under the brand name **Dettol**. Similarly, the Respondent is also an undertaking engaged in the business of manufacturing, marketing, sales, and distribution of consumer and household products. Its Lifebuoy brand includes anti-bacterial soap called **Lifebuoy (Care and Protect) Soap and Lifebuoy Hand Wash**, referred to as the 'Products'.

6. After carefully evaluating the complaint, the Commission constituted an Enquiry Committee (EC) to investigate into the allegations. EC completed its Enquiry Report (ER) on 08.02.2021 and submitted its report. Considering the established standard of 'net general impression' of any claim and the necessary requirements for any 'disclaimer' and 'disclosure', EC reached the following general conclusion:

"6.13. Above mentioned excerpts help us to determine that in case of advertisement under investigation, it is necessary to observe that when the average consumer of the product views the advertisement, the message they receive is that Lifebuoy is the "World's No.1 germ protection soap", provides "100% proven germ protection", ensures "Jaraseem se 100% yaqeeni hifazat", "Where there is lifebuoy there are few illnesses" and "99.9% germ protection in 10 seconds". Additionally, the given disclaimers are technical concepts specially



understood and comprehended appropriately only by marketing experts and not the ordinary consumers. The Commission in one of its orders in the matter of Zong & Ufone (2010 CLD 1478) has defined 'ordinary consumer' as a person "who is the usual, common or foreseeable user or buyer of the product". Hence, the overall message given by the advertisement is that Lifebuoy provides 99.9% or 100% germ protection.

6.14. Subsequently, keeping in view the settled principles of the Commission and the guidelines presented by FTC regarding disclaimers ad interpretation of the overall message disseminated by the advertisement infers that while viewing this advertisement the viewer is most likely to perceive Lifebuoy as being the 99.9% or 100% germ protection soap in its effectiveness to kill germs while watching the advertisement material."

7. ER further declared the disclaimers in respect of alleged claims to be inadequate and concluded that the same did not fulfil the requisite of standard of 'clear and conspicuous', as follows:

"10.1. It is evident that the Respondent, by making the above mentioned claims is, prima facie, entered into deceptive marketing practices in terms of Section 10(1) of the Act. Furthermore, it is, prima facie, distributing false and misleading information that is capable of harming business interest of other undertakings in terms of Section 10(2)(a) and is also distributing information to consumers that lacks reasonable basis about the character, properties and qualities of its product in terms of Section 10(2)(b) of the Act."

C. SHOW CAUSE NOTICE

8. Following the detailed examination of above findings, the Commission initiated proceedings under section 30 of the Act and issued SCN to the Respondent in the following terms:



“5. **WHEREAS**, in terms of the Enquiry Report in general and paragraph 2.1 to 2.13 in particular, it was alleged that the Undertaking is with relation to its Products, distributing false and misleading information by making claims A-“100% guaranteed protection from germs”, B-“Jaraseem se 100% yaqeeni hifazat”, C-“where there is lifebuoy there are few illnesses”, D-“World’s No.1 germ protection soap” and E-“99.9% germ protection in 10 seconds”: and

6. **WHEREAS**, in terms of Enquiry Report in general and paragraphs 6.17 to 6.59 in particular, it appears that the undertaking’s claims are deceptive and misleading and lacking reasonable bases as the undertaking has widely used the term ‘germs’ whereas the Products are tested only for specific type of virus and bacteria, therefore, claims A, B, C, D, and E appear to deceive the consumer about the character, properties and quality of goods and the disclaimer/disclosure does not fulfil the requirement of the concept ‘clear and conspicuous’ which is prima facie, in violation of Section 10(1) in general and Section 10(2)(b) of the Act; and

7. **WHEREAS**, in terms of the Enquiry Report in general and paragraph 6.60 to 6.68 in particular, it appears that the claims A, B, D and E are also capable of harming the business interest of the Complainant which is, prima facie, in violation of Section 10(2)(a) of the Act;”

D. **SUBMISSIONS**

9. The Complainant and Respondent along with their counsels appeared before the Commission on dates fixed for hearing and availed opportunity to present their detailed arguments, both oral and written, in support of their contentions. The submissions are summarized hereunder.



10. The counsel for the Respondents asserted that the Complaint was not clear as to how each of the alleged claims was false or misleading to an average consumer. He continued that the Complainant had misquoted Advertising Claim A and Advertising Claim B as 100% eradication of germs because the actual claim was “**100% Proven Germ Protection**” (the ‘**Actual Claim**’). The counsel alleged that EC referred to the Actual Claim only once and then adopted the misinterpreted Advertising Claim A throughout its report. He clarified that this led to create a misunderstanding in ER that the products protect against all types of germs in the environment. The learned counsel stressed that the Actual Claim never implied to provide protection against all types of germs. ER, therefore, lacked clarity on the ordinary and plain meaning of the Actual Claims, he declared.

11. The counsel stated that the products complained against complied with ASTM E2783-11; an internationally recognized protocol for microbial efficacy testing. The said protocol closely emulated in its testing the conditions relevant to consumer usage, he asserted. The learned counsel submitted ASTM E2783-11 Certificates before the Bench to support the Actual Claims. The counsel contended that the question of inadequacy of disclaimer shall not arise at the first instance as the Advertising Claim A referred to proven germ protection rather than protection from 100% of germs. Having denied the inadequacy of the disclaimer, the counsel asserted that they followed the guidelines set by Pakistan Advertisers Society. The learned counsel reiterated the defence taken above to defend Advertising Claim B as well.

12. The counsel declared Advertising Claim C a marketing slogan or puffery which was generally acceptable as legal. The counsel contended that Claim C should not be taken as a stand-alone statement as it referred to illnesses generally preventable with regular soap use and not all the diseases. Additionally, he claimed to have a reasonable basis for Claim C because lab tests scientifically proved the Products’ efficacy in reducing incidents of diarrhoea, acute respiratory infections, and eye infections. This claim aligned with the international understanding that soap and water were the most effective, easy, and cost-effective solutions to prevent infections, he argued.



He cited studies from the World Health Organization (WHO) and the Centres for Disease Control and Prevention (CDC) to emphasize the importance of hand washing. Similarly, he relied upon various lab tests to support his argument.

13. The counsel for the Respondents explained that the Products were claimed as **World No.1 based on high sales volume** in Advertising Claim D. Although the Respondent was no longer advertising this claim, it was previously supported by a clear disclaimer: "Unilever calculation based on Nielsen volume sales and information for the total markets (last 12 months)." He relied upon Nielsen Reports dated 22.02.2019 and 27.04.2020, which stated that the Respondent had the largest volume shares in the hygiene segment of soaps in 44 countries to substantiate Respondent's Advertising Claim D.

14. The learned counsel asserted that Advertising Claim E was made *only for Lifebuoy Hand Wash* and included the disclaimer: "as per lab tests on indicator organisms vs. an ordinary soap without actives." He argued that Lifebuoy Hand Wash was 99.9% effective against some of the most relevant microorganisms with 10 seconds of contact time. He clarified that the 10-second wash time referred to lathering time, which could be substantiated through lab tests. He relied upon certificates BCKT-20-001-F, AJ10, OP12, TKT-20-003-F, and an expert report from the Director of Unilever Research & Development, USA to support his assertions. The counsel argued that the disclaimers for Claim E met the "clear and conspicuous" criteria set by the Commission in the Matter of Proctor and Gamble (2017 CLD 1609).

15. In compliance of the directions of the Bench issued during the hearings on 03.01.2024 and 23.05.2024 to submit the same TVCs if aired in the developed countries the Respondent provided the variants of their Advertising Claims telecasted in Bangladesh, India, Saudi Arabia and UK. The scrutiny of the products' advertising in UK revealed that Advertising Claims A, B and C were not telecasted therein, Advertising Claim D was aired as World's No. 1 Hygiene Soap Brand instead of World's No. 1 Germ Protection Soap. Similarly,



Claim E was advertised as Kill 99.9% of Bacteria and not 99.9% Germ Protection in 10 Seconds. Moreover, appropriate disclaimers were displayed in the foreign jurisdictions contrary to illegible small font disclaimers added to Advertising Claims in Pakistan.

ANALYSIS AND DELIBERATION

16. Following issues are identified for deliberation.

I. Whether the Respondent's advertised Claims A, B, C, D & E amount to deceptive marketing practice with in the meanings of section 10(2)(b) of the Act by distributing false and misleading information to consumers, related to the character, properties, suitability for use or quality of the products?

II. Whether the Respondent resorted to deceptive marketing practice with in the meanings of section 10(2)(a) of the Act by distributing false and misleading information that is capable of harming business interests of another undertaking?

ISSUE NO. I

17. The Bench has carefully examined the case record before it and perused the submissions and supporting documents of both the parties. At the outset, it is noted that Section 10 of the Act prohibits 'deceptive marketing practices,' to protect the interests of consumers, competitors and market competition. Section 10 reads as follows:

"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 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 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 labelling or packaging.”

18. The Commission explained its analytical methodology for determining whether an advertisement amounted to a deceptive marketing practice in terms of Section 10 of the Act and interpreted false and misleading information in the Matter of M/S China Mobile Pak Limited and M/S Pakistan Telecom Mobile Limited, 2010 CLD 1478 (the 'Zong Order'), and referring to Standard Oil of Calif, 84, F.T.C. 1401 (1974) by the US Federal Trade Commission observed as under:

“[i]n evaluating representations, we are required to look at the complete advertisement and formulate our opinions on the basis of the net general impression conveyed by them and not on isolated scripts.”

“... **'False information'** can be said to include: oral or written statements or representations that are; (a) contrary to truth or fact and not in accordance with the reality or actuality; (b) usually implies either conscious wrong or culpable negligence, (c) has a stricter and stronger connotation, and (d) is not readily open to interpretation.

'Misleading information' may essentially include oral or written statements or representations that are; (a) capable of giving wrong impression or idea, (b) likely to lead into error of conduct, thought, or judgment, (c) tends to misinform or misguide owing to vagueness or any omission, (d) may or may



not be deliberate or conscious and (e) in contrast to false information, it has less onerous connotation and is somewhat open to interpretation as the circumstances and conduct of a party may be treated as relevant to a certain extent.”

19. In the Zong Order, the Commission also interpreted the term ‘consumer’ in the light of Section 10 of the Act to be construed as, “*Ordinary consumer but need not necessarily be restricted to the end consumer of the goods or services*” and noted that

“restricting its interpretation with the use of the word ‘average,’ ‘reasonable,’ or ‘prudent’ will only narrow down and put constraints in the effective implementation of the provision it would, rather be contrary to the intent of law. It would result in shifting the onus from Undertaking to the consumer and is likely to result in providing an easy exit for Undertakings from the application of Section 10”.

20. The Commission while appraising the market promotions considers the overall impression of the advertisement as it may contain express, implied, absolute, or qualified claims followed by disclaimers, explanations or warnings. The advertiser is responsible for substantiating its advertised claims. If an advertising claim is found false or misleading the proof of intent to spread a deceptive claim is not required. Likewise, evidence to prove that consumers were actually misled is also not needed for a violation of Section 10(2)(a) of the Act (Zong Oder, pp. 55).

21. The Commission addressed the issues of substantiation of advertising claims and whether the information distributed "lacks a reasonable basis" in its Order dated 23.02.2010 in the matter of Procter & Gamble Pakistan (Pvt) Limited (the "**P&G Order**"). The Commission observed that "the advertiser must have some recognizable substantiation for the claims made prior to making an advertisement." This doctrine is borrowed from US jurisprudence on the subject (Pfizer Inc., 81 F.T.C. 23 (1972)). The advertiser must possess



the level of substantiation claimed, which constitutes a "reasonable basis." This is determined on a case-by-case basis by analysing what are called the "Six Pfizer Factors" given hereunder:

- i. the type of claim;
- ii. the benefits if the claim is true;
- iii. the consequences if the claim is false;
- iv. the ease and cost of developing substantiation for the claims;
- v. the type of product; and
- vi. the level of substantiation experts in the field would agree is reasonable.

22. Furthermore, when a product involves health and safety claims, the advertising claims must have prior substantiation supported by 'competent and reliable scientific evidence,' which means:

"tests, analyses, research, studies, or other evidence based on the expertise of professionals in the relevant area, that has been conducted and evaluated in an objective manner by person qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results."

23. Advertisers, therefore, need to ensure that their health and safety claims are backed by solid scientific research, empirical data and well accepted evidence before making such claims in their advertisements. This is vital to protect consumers from false or misleading information and ensure that the claims are credible and trustworthy in the matters of human health, hygiene and safety. Moreover, the disclaimers and disclosures (if any) associated with the advertising claims must be clear and conspicuous enough so that the targeted consumers could easily notice and understand the same together with the advertisement as a whole. In Zong Order, the Commission observed that:

... it is a settled principle that fine print disclaimers [or disclosures] are inadequate to correct the deceptive



impressions. In fact, such disclaimers are, in themselves, a deceptive measure.”

24. In the Matter of Show Cause Notice Issued to M/s Proctor & Gamble Pakistan Private Limited dated 20.07.2017, the Commission has observed that while evaluating the effectiveness of a disclaimer or disclosure, it “...considers factors such as prominence, presentation, placement and proximity [4Ps] between the advertising claim and associated disclaimers/disclosure. The principle regarding disclaimer/disclosure is that they must be clear and conspicuous and placed as closed as possible with the advertising claim.”

25. The Bench now examines the Advertising Claims A, B and E.

Advertising Claim A: *100% Proven Germ Protection (Front side);*

Disclosure/Disclaimer: *As per Lab Test (Backside); and*

Screenshot of the Front & Backsides: Given Below.



26. The Bench perused the ER, SCN, allegations and defences of the parties and noted that irrespective of what is quoted in the Complaint and the SCN, ER has clearly concluded in Para 3.13 that:

“The Respondent has mentioned that at the outset, it is clarified that Advertising Claim A (mentioned in para 3.12 ibid) has been misquoted and the actual Claim A made by the Respondent is ‘100% Proven Germ Protection’ (Actual Claim). Actual Claim is used in relation to Lifebuoy soap and deliver the identical



message that Lifebuoy is proven to provide protection from Germ.”

27. A copy of the Enquiry Report was appended with the Show Cause Notice as **Annex-I** to be read as integral part of the SCN. Admittedly, the SCN erroneously cited ‘100% Guaranteed Protection from germs’ instead of ‘100% Proven Germ Protection’; the actual claim. It is really difficult to find any logical or scientific difference between the two claims as they are closely identical rather synonymous. Secondly, there is no meaningful distinction when the two phrases are compared from the perspective of an ordinary consumer. Finally, mere misquotation in the SCN will not absolve the Respondent from liability that may arise from violating the provisions of the Act.

28. According to Oxford English Dictionary, ‘germ’ is a microorganism, especially one which causes disease or a portion of an organism capable of developing into a new one or part of one. Scientifically, a germ may be beneficial, innocuous or harmful for humans. Disease causing germs are called pathogens and include viruses, bacteria, protozoa, worms, algae and fungi. The Respondent claimed on the front-side package of Lifebuoy Care & Protect Soap and TVC for the same that it provided 100% Proven Germ Protection. The expression proven in common language stands for established, confirmed, demonstrated, verified, recognized, sure, upheld and supported. Hence, they were expected to substantiate the Advertising Claim A with the empirical evidence available with them. Since the claim is an absolute statement of fact so the Respondent was required to prove that the product provided protection against all pathogens in the universe.

29. Interestingly, the Respondent never used Advertising Claim A “100% Proven Germ Protection” in the UK and used “100% better Germ Protection” in Bangladesh and India. They claimed “100% stronger Germ Protection” and “100% stronger Protection from Germs and Bacteria” in Saudi Arabia. Except for UK none of the jurisdictions reported form part of the developed world.



Evidently, all the claims made outside Pakistan were not absolute statements of fact, but claims based on comparative adjectives.

30. Some error in the wording or citation within the SCN is no defence for an unsubstantiated Advertising Claim and the Respondent remains responsible to prove it or face the consequence for the infringements of provisions of the Act regulating deceptive marketing. Therefore, the Respondent must still address and rectify any proven infringements of the Act. Thus, the Commission's findings below will consider whether the claim of '100% proven germ protection' through the use of the Lifebuoy soap amounts to a violation of Section 10(2)(b) of Act.

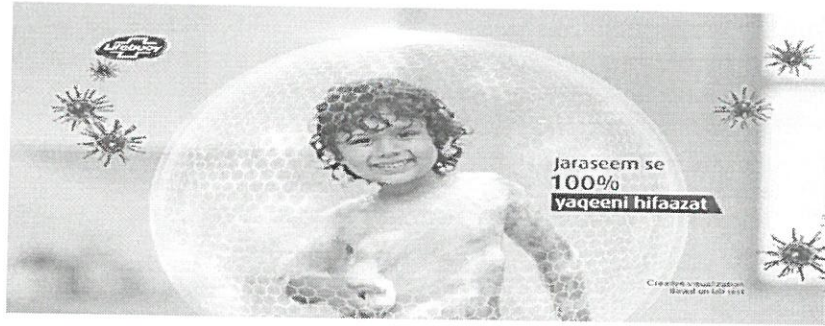
31. Advertising Claim A, as it appears on the packaging of Lifebuoy Care & Protect Soap and TVC for the same, is presented as an absolute claim. There are no references or indications suggesting the presence of a disclaimer on the backside of the packaging. According to the Respondent, there is a disclaimer stating "as per lab test" on the backside of the packaging and also it is aired in the TVC.

Advertising Claim B: *Jaraseem se 100% yaqeeni hifazat (Front side)*

Disclosure/Disclaimer: *Creative Visualization-Based on Lab Test (Backside); and*

Screenshot of the Front & Backsides: *Given Below.*





32. In order to substantiate the Advertising Claim A & B Unilever Pakistan Limited; the Respondent has submitted that Lifebuoy Care & Protect Soap was tested in third party independent labs for germ protection efficacy as per ASTM E2783-11; an internationally recognized protocol for microbial efficacy testing. The Company reported that Lifebuoy Care & Protect Soap, including Lifebuoy Mild Care Soap and Lifebuoy Lemon Soap bars produced the following results:

Sr. No.	Microbe	Sample ID	Log Reduction
1	Influenza A HINI	TKT-199002G	3.08
2	S. Aureus	R2X	3.4548
3	E. Coli	R2X	4.1014
4	P. Aeruginosa	C2	5.7539

Bioscience Laboratories, South Avenue, Bozeman, MT, USA

33. Advertising Claim B "Jaraseem se 100% Yaqeeni Hifazat", as it appears on the packaging of Naya Lifebuoy Care & Protect Soap and TVC for the product, is an Urdu equivalent of Advertising Claim A "100% Proven Germ Protection" and presented as an absolute statement of fact. There are no references or indications on the front suggesting the presence of a disclaimer. However, according to the Respondent, there is a disclaimer on the backside of the packaging stating "Based on Lab Test." While the lab tests covered only 4 types of microbes the general impression of the claim is that it provides 100% confirmed protection from all types of germs in the universe as it is an absolute statement of fact with nothing excluded.



Advertising Claim E: 99.9% germ protection in 10 seconds* (Front side)

Disclosure/Disclaimer: Creative Visualization-As per lab tests on indicator organisms vs an ordinary soap bar without actives. *10 seconds refer to lathering time; and

Screenshot of the Front: Given Below.



34. Advertising Claim E is identical to Advertising Claims A and B. There is a disclaimer on the front side of the Lifebuoy Zapzoom Hand Wash, but it is in very fine print, illegible and very difficult to read. Additionally, it is claimed that using the hand wash for 10 seconds would kill 99.9% germs. However, the 10 seconds actually referred to the lathering time, not the total time required for effective germs extermination. This subtle detail may be easily overlooked by consumers, who might assume that simply using the product for 10 seconds ensures complete protection from all types of germs. The fine print disclaimer fails to adequately clarify this, potentially misleading ordinary consumers about the product's actual efficacy.

35. The perusal of Advertising Claims submitted by the Respondent reveals that it used the promotional for the Lifebuoy Zapzoom Hand Wash as "Kill 99.9% of Bacteria" in the UK and used "99.9% Germ Protection in 10 Seconds" in Bangladesh, India and Saudi Arabia. Evidently, the Respondent has not used the same Advertising Claims in the developed world and even replaced an inclusive term of germs with specific category of bacteria. Moreover, appropriate disclaimers were added below all the claims for the product made outside Pakistan.

36. The Bench notes that the targeted audience for the common household product of the Unilever Pakistan Limited; the Respondent are the ordinary consumers, children, housewives and users of kitchens, toilets and wash



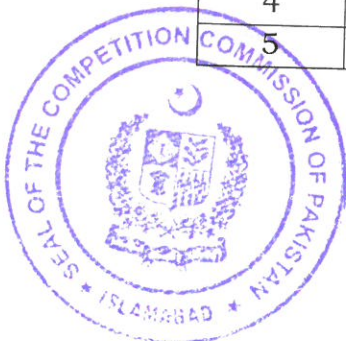
basins. It is unreasonable to expect ordinary consumers to exercise extra caution or conduct a thorough examination of the product. The claim creates a strong impression that the product kills 99.9% germs to offer complete and absolute protection from germs in all circumstances. Such an impression can be misleading, as it does not disclose any limitations or specific conditions under which the product was tested and could be completely effective.

37. Whereas, the Advertising Claim E is broad and absolute, the qualifiers are neither legible nor understandable to the average consumer. The disclaimers above disclosed as qualifiers do not diminish the strength of the claim. Therefore, the claim needs to be clear and accurate to avoid giving consumers a false sense of security regarding the product's effectiveness and constitutes a potential health hazard. Furthermore, the disclaimer is not conspicuous and in the language of the consumer, hence, it fails to fulfil the requirements of a legible and comprehensible disclosure as noted in para 23 above.

38. The Respondent submitted Certificates of samples BCKT-20-001-F, AJ 10, OP12, and TKT-20-003 identifying the microbes prone to germicidal action of Lifebuoy Hand Wash. The undertaking further submitted an expert report of the Director, Unilever Research & Development, USA to substantiate its claims with regard to Advertising Claim E. The Respondent claimed that the said test results, performed in a controlled lab environment, proved the claimed efficacy of its product, therefore, its claim was grounded on a reasonable basis. The results of the samples tested with the contact time of 10 seconds are summarised below:

Sr. No.	Microbe	Sample ID	Log Reduction
1	E-Faecallis	BCKT-20-001-F	3.13
2	F. Coli	AJ10	3.1586
3	Influenza A HINI	TKT-20-003-F	4.67
4	S. Pneumoniae	LB Total 10	4.8325
5	P. Aeruginosa	OP12	5.8478

Bhawans Research Center, India



39. The above tests relate to the efficacy of Lifebuoy Hand Wash against 5 specific microbes, therefore, using the same as an evidence to substantiate Advertising Claim E: 99.9% germ protection in 10 seconds against all kinds of germs, is illogical, misleading and deceptive as the advertisement suggests a 99.9% comprehensive protection. This creates a false impression of the product's efficacy because the consumers might believe they were fully protected from all germs, when in reality, the product's performance was limited to specific conditions or germs. This misrepresentation not only deceives consumers but also undermines trust in the product and the brand. Accurate and complete information is crucial to ensure that consumers are not misled by falsely exaggerated, baseless and unsubstantiated claims.

40. Furthermore, ordinary consumers are unlikely to investigate the types of laboratory tests conducted to substantiate the claims made about the products. They are primarily attracted to the bold advertising claims displayed on the packaging and in TV Commercials and readily rely upon the highly appealing descriptions. Hence, it is essential that any claims made are clearly and conspicuously qualified to justify their reliability and validity in a wide spectrum of real life social conditions.

41. In the Matter of Show Cause Notice Issued to M/s Colgate Palmolive For Deceptive Marketing Practices dated 10.08.2017, where the respondent has relied on identical test reports, the Commission has held that:

“42. Moreover, complete reliance on laboratory test results would result in a skewed decision regarding the advertising claims. For example, laboratory tests often do not include all germs and do not represent the imperfections of real-world usage. Ideal conditions of a laboratory are incomparable to that of household circumstances. Since laboratory conditions are appreciably different from those found in common households, special steps are required to achieve 99.9% efficacy against bacteria in a normal, everyday settings where cleaning takes place. Short of these special steps, like letting a particular quantity of undiluted phenyl stand on the surface for a specific duration of time, achieving 99.9% efficacy against bacteria is



not possible. This is not made clear to the consumers during marketing/ advertising as well as on the packaging of Max APC, leading them to reasonably believe that ordinary diluted cleaning with the product would achieve the same result.”

42. The argument of the Respondent regarding Advertising Claim C, that killing 99.9% of germs refers to common microbes in the environment only rather than all types of germs is untenable and inconsistent with the absolute statement of fact made in the advertisement. The overall general impression of the Advertising Claim C is that Lifebuoy Hand Wash kills 99.9% of all the pathogens including viruses, bacteria, protozoa, worms, algae and fungi and any interpretation to the contrary to avoid any civil liability arising out of the advertisement is legally and ethically invalid.

43. In view of the above, the Bench finds that the Respondent has failed to provide the minimum level of substantiation required in terms of competent and reliable scientific evidence viz., Advertising Claim A, B and E. Consequently, these claims are held misleading and deceptive regarding the products characteristics, constituting a violation of Section 10(2)(b) of the Act.

Advertising Claim C: *Where there is Lifebuoy, there are few illnesses*
Disclosure/Disclaimer: None
Screenshots of the TVC: Given Below:



44. Advertising Claim C is aired in a 30 second TVC. The commercial shows a classroom scene where a teacher and a mother, who is a doctor, discuss protecting children from bacteria and viruses. Their conversation suggests



that using 'Lifebuoy Silver' can protect against bacteria and viruses causing illnesses like influenza. The doctor explains that germs are becoming stronger and states that "Lifebuoy Silver with active silver" provides "10 times better germ protection". The commercial ends with an image of the product and the Claim D, "World's No.1 Germ Protection Soap," while Advertising Claim C is heard in a voice-over. Screenshot of the Advertising Claim D is pictured below:



45. The Respondent has not advertised Advertising Claim C in Bangladesh, Saudi Arabia or UK. It is not clear whether the undertaking presented it stand-alone or in combination with Advertising Claim D in India. It invoked the doctrine of puffery to defend the Advertising Claim C and declared it to be a mere slogan which was legal and not objectionable. However, net general impression of the statement "Lifebuoy Silver with active silver" provides "10X better germ protection" in TVC followed by Advertising Claim D: World's No.1 Germ Protection Soap (pictured above) makes it absolute and factual. Hence, Advertising Claim C is far from a mere slogan to be treated as puffery.

Advertising Claim D: *World's No.1 Germ Protection Soap*

Disclosure/Disclaimer: *Unilever calculation based on Nielsen volume sale information for the total markets (Last 12 months)*

Screenshot of the Front: Given Below.



46. The Respondent contended that Advertising Claim D was based on Neilson Report of 2019 suggesting that the product was present in 14 out of 44 countries studied. The report established the Product's 'World's No.1' position as a 'hygiene' skin cleansing brand based on volume share. Similarly, a subsequent Neilson Report dated 27.04.2020 showed the Product's volume share at 36.50% in 20 out of 40 countries examined. According to the Respondent the cited reports established its brand as the largest in the world in terms of volume share.

47. While the Respondent used Advertising Claim D: World's No.1 Germ Protection Soap in Bangladesh, India and Saudi Arabia it advertised the claim in UK as World's No.1 Hygiene Soap Brand. The Bench finds it difficult to disaggregate the share volume and standing of the product from the position of the brand in the category of 'hygiene and skin cleansing' in a limited number of countries studied. Similarly, World's No.1 brand in hygiene category and World's No.1 Germ Protection Soap are not synonymous.

48. The contention of the Respondent to substantiate Advertising Claim D on the basis of the Nielsen Reports referred above is not sufficiently plausible to establish measurable superiority of Lifebuoy over the products of competitors. The disclaimer on the packaging of the product is equally incomprehensible for consumers. The Respondent has failed to present empirical evidence or reliable data, such as comprehensive market research, sales figures, scientific studies or validation by a relevant third-party to substantiate their claim. Therefore, the Advertising Claim D tantamount to the distribution of false and misleading information to consumers in violation of Section 10 (2)(b) of the Act.

ISSUE NO. II

49. Whether the Respondent resorted to deceptive marketing practice with in the meanings of section 10(2)(a) of the Act by distributing false and misleading information that is capable of harming business interests of another undertaking? Section 10(2)(a) of the Act reads as follows:



“(2) The deceptive marketing practices shall be deemed to have been resorted to or continued of an undertaking resort to:

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

50. In the Matter of M/s DHL Pakistan (Pvt) Limited Order dated 21.12.2012, the Commission has observed that *“it is important to recognize that part of business’ identity is goodwill it has established with consumers, while part of the product’s identity is the reputation it has earned for quality and value”*. The Commission further held in the Matter of M/s Jotun Pakistan (Pvt) Limited Order dated 17.03.2015, that *“To prove conduct under Section 10(2)(a) of the Act, it is not necessary to show actual harm to competitors. It is sufficient to show the existence of a deceptive marketing practice that has the potential to harm the business interest of the competitor”*.

51. In the light of foregoing, the Bench finds that disseminating false or misleading information to consumers in violation of Section 10(2)(b), 10(2)(c) or 10(2)(d) of the Act, constitutes an inherent infringement of Section 10(2)(a) by detrimentally impacting competitors' business interests. Deceptive marketing distorts fair competition, giving undue advantage to the undertaking in breach of law, to the detriment of returns (quantitative interests), brand image and product reputation (qualitative standing) of the competitors. The correlation between deceptive marketing of one undertaking and potential harm to the business interests of the competitors is, therefore, perfectly logical, valid and verifiable. This principle shall be applicable unless exceptional circumstances warrant a divergent interpretation in a specific case, potentially absolving the undertaking from liability under Section 10(2)(a) of the Act.

DECISION



52. The Respondent has disseminated false and misleading information in the form of the Advertising Claim A, B, C, D and E which amounts to deceptive



marketing practice within the meanings of Section 10(2)(a) and 10(2)(b) read with Section 10(1) of the Act.

53. Keeping in view the aforesaid, the Respondent is hereby directed to:
- i. Cease and desist from undertaking misleading marketing of its products and restrain from making aforementioned unsubstantiated Advertising Claims in a manner which may give the consumer a false net impression of efficacy of its products.
 - ii. Ensure to include clear, comprehensible and conspicuous disclaimer or disclosure in its advertisements.

54. Given the respondent's flagrant violations of Section 10 of the Act, which continued even after the issuance of the SCN, and persisted until the issuance of this order. Moreover, the Respondent has demonstrated its clear intent of deliberate violation through their actions by using different versions of advertisement claims for the same product in different countries, with the worst deception occurring in Pakistan. The Bench hereby imposes a penalty of:

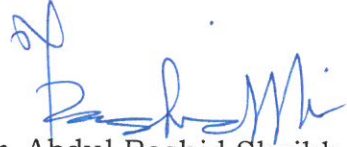
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- i. Rs. 10,000,000/- (Rupees Ten Million) for one count of contravention of Section 10(1)(a); and
 - ii. Rs. 50,000,000/- (Rupees Fifty Million) for of contravention of Section 10(1) read with Section 10(2)(b) of the Act by advertising the advertising claims A, B, C, D & E.

55. The Respondent is, therefore, liable to pay a sum of Rs. 60,000,000/- (Rupees Sixty Million) and also directed to file a compliance report with the Registrar of the Commission within a period of 30 days from the date of issuance of this Order.

56. In case of continued violation, the Respondent shall be additionally liable to payment of Rs. 500,000/- (Rupees Five Hundred Thousand) on daily basis.



57. In terms of above, the SCN No.6/2021 is hereby disposed of.


Mr. Abdul Rashid Sheikh
(Member)


Mr. Saeed Ahmad Nawaz
(Member)



ISLAMABAD, THE 31st DAY OF JULY 2024.