



BEFORE THE
COMPETITION COMMISSION OF PAKISTAN

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

(File No. 385/BRITISH LYCEUM/OFT/CCP/2020)

Date of Hearing:

29.01.2025

Commission:

Mr. Saeed Ahmad Nawaz
Member

Ms. Bushra Naz Malik
Member

Assisted by:

Barrister Ambreen Abbasi
Senior Legal Advisor

Moqeen ul Hassan
Legal Advisor

Present:

On Behalf of:

M/s British Lyceum (Private) Limited

Mr. Ali Javed Darugar
Advocate High Court

Mr. Syed Asad Hussain Rizvi
Advocate High Court

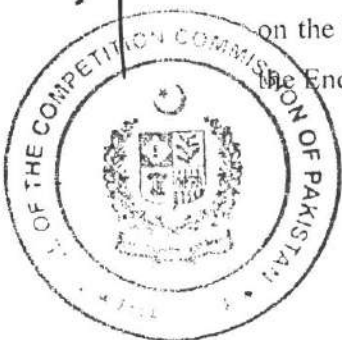


ORDER

1. This Order shall dispose of the proceedings initiated by the Competition Commission of Pakistan (hereinafter the "Commission") under Section 37 of the Competition Act, 2010 (the "2010 Act") vide Show Cause Notice No. 02/2024 dated 05.03.2024 (hereinafter the 'SCN') issued to M/s British Lyceum (Private) Limited for *prima facie* violation of Section 10 read with Section 10(2)(a) & (b) of the 2010 Act.

FACTUAL BACKGROUND

2. M/s British Lyceum (Private) Limited (hereinafter the 'Respondent') is engaged in providing online educational services and it is registered with the Securities and Exchange Commission of Pakistan under the Companies Act, 2017. The Respondent admittedly qualifies as an undertaking as defined in Section 2(1)(q) of the 2010 Act.
3. The Respondent published an advertisement in the Daily Jang newspaper on 24.08.2020, offering an attractive package to teachers seeking to join an online educational program purportedly in collaboration with Cambridge Global, UK. The advertisement contained the following claims:
 - *Teachers could earn between Rs. 80,000 and Rs. 250,000 per month;*
 - *The educational program, valued at Rs. 3.7 billion, was in collaboration with Cambridge Global; and*
 - *The presence of eminent educationists and technologists on their Board of Directors.*
4. The proposed program offered lucrative compensation to teachers willing to conduct online classes for one hour or more, covering subjects from Play Group to Matric, Cambridge, International Baccalaureate (IB), university levels, or any other subjects suitable for online instructions. The advertisement guaranteed monthly earnings ranging from Rs. 80,000 to Rs. 250,000 for participants.
5. Additionally, the advertisement featured logos of the Securities and Exchange Commission of Pakistan (SECP) and the Federal Board of Revenue (FBR), and claimed endorsement by Cambridge Global, UK. However, no supporting documents, disclaimers or website links were provided. Furthermore, despite claiming the inclusion of eminent educationists and technologists on their Board of Directors, neither such list was available on the Respondent's website nor the Respondent provided the same for consideration of the Enquiry Committee during the course of investigation proceedings.



6. The aforesaid ambitious educational program offered an enticing compensation package, urging interested teachers and qualified individuals to register promptly by paying a non-refundable fee of Rs. 995. The special package specifically targeted teachers and unemployed youth, however, the legitimacy of the claimed collaboration with Cambridge Global remained unverified.

INITIATION OF ENQUIRY

7. The Respondent's claims in its advertisements and representations raised concerns regarding potential deceptive marketing practices. Consequently, the Commission took *suo moto* notice of the advertisement published by the Respondent and initiated an enquiry under Section 37(1) of the 2010 Act by appointing the enquiry officers (hereinafter the "Enquiry Committee") to investigate the matter for potential violations of Section 10 of the 2010 Act, which prohibits deceptive marketing practices, and to submit a report for consideration of the Commission.
8. The Enquiry Committee concluded its findings *vide* Enquiry Report dated 16.03.2022 (herein after the "Enquiry Report"). The Enquiry Report was concluded in the following terms:

"4.2 In light of the facts and after a careful analysis of the information, documents and materials collected in the case under report, this Enquiry Committee concludes that the conduct of the Respondent, prima facie, has the potential to cause confusion among consumers through dissemination of false and misleading information related to character, properties and quality of its services via claims of "The teachers can earn Rs. 80,000 to Rs. 250,000 per month, Education program worthy of Rs. 3.75 Billion in collaboration with/ endorsed by the Cambridge Global, and Eminent educationists and technologists on their Board of Directors." in violation of Section 10(1) of the Act, in terms of Section 10 (2) (b) of the Act.

4.3 In view of the analysis, it can also be concluded that the conduct of the Respondent, prima facie, through dissemination of false or misleading information, has the potential to inflict harm on the business interests of other undertakings, in violation of Section 10 (1) in terms of Section 10 (2) (a) of the Act.

4.4 The deceptive marketing practices have a direct impact on the public at large. It is in the interest of the general public that the undertakings should be stopped to advertise their services in an unfair and misleading manner, and be encouraged to resort to transparent



advertising practices, which provide consumers with true and correct information.

4.5 In view of the above, the Respondent has, *prima facie*, entered into deceptive marketing practices thereby violating the provisions of Section 10(1) in terms of Section 10(2)(a) & (b) of the Act. Therefore, it is recommended that, in the interest of public at large, proceedings may be initiated against M/s. British Lyceum (Pvt.) Limited under the provisions of Section 30 of the Act for, *prima facie*, violation of Section 10 of the Act."

SHOW CAUSE NOTICE

9. In view of the recommendations of the Enquiry Committee and in the public interest, the Commission decided in its meeting held on 11.10.2023 to initiate proceedings against the Respondent under Section 30 of the 2010 Act. Accordingly, the Commission issued the SCN to the Respondent for *prima facie* violation of Section 10 of the 2010 Act. The relevant excerpts of the SCN are reproduced herein below:

"... 2. **WHEREAS**, the Undertaking, is engaged in deceptive marketing practices by making false claims related to its educational program that "Teachers can earn Rs. 80,000/- to Rs. 250,000/- per month, Education program worthy of Rs. 3.75 Billion is in collaboration with/endorsed by the Cambridge Global, and Eminent educationists and technologists on their Board of Directors", which has potential to mislead the consumers; and

3. **WHEREAS**, pursuant to Section 37(1) of the Act, a *suo moto* enquiry was initiated by the Commission to determine whether the claims made by the Undertaking violated Section 10 of the Act which, prohibits deceptive marketing practices; and

4. **WHEREAS**, the enquiry has been concluded vide enquiry report dated 16-03-2022 (the 'Enquiry Report'), a copy of which is appended herewith as Annex-I' and may be read as an integral part of this Show Cause Notice; and

5. **WHEREAS**, in terms of the Enquiry Report in general and paragraph 4.1 in particular, it appears that the conduct of the Undertaking amounts to the violation of Section 10 (1) in terms of Section 10 (2) (b) of the Act, which prohibits undertakings from dissemination of false and misleading information to consumers, including the distribution of information lacking a reasonable basis, related to the character, properties, suitability for use, or quality of goods; and

6. **WHEREAS**, in terms of the Enquiry Report in general and paragraph 4.2 in particular, it appears that the conduct of the Undertaking, *prima facie*, has the potential to cause confusion among consumers through dissemination of false and misleading information related to character, properties and quality of its services via claims "The teachers can earn



Rs.80,000/- to Rs.250,000/- per month, Educational Program worthy of Rs. 3.75 Billion in collaborations with/endorsed by the Cambridge Global, and Eminent educationists and technologist on their Board of Directors. ", in violation of Section 10(1) of the Act, in terms of Section 10 (2) (b) of the Act; and

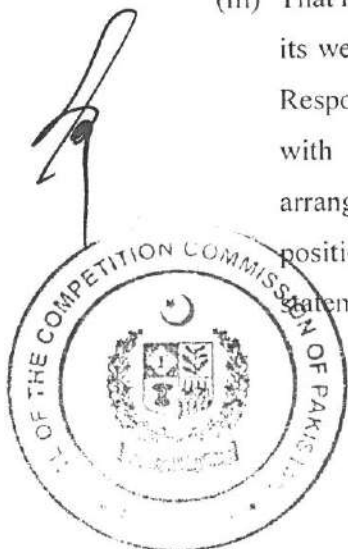
7. **WHEREAS**, in terms of the Enquiry Report in general and paragraph 4.3 in particular, it has been found that the conduct of the Undertaking, prima facie, through dissemination of false and misleading information, has the potential to inflict harm on the business interest of other undertakings, in violation of Section 10 (1) in terms of Section 10 (2) (a) of the Act; and

8. **WHEREAS**, in terms of the Enquiry Report in general and paragraphs 3.63 to 3.64 in particular, it has been found that the effect of anti-competitive behaviour of Undertaking is spilling over the territorial limits of other provinces hence it has a spillover effect; ... "

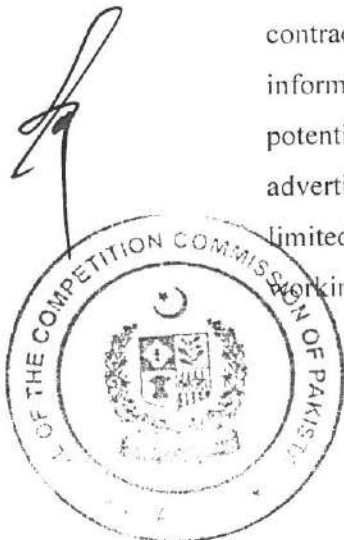
SUBMISSIONS OF THE RESPONDENT

10. In response to the SCN, the Respondent submitted its written reply to the Commission on 03.06.2024 wherein the Respondent denied all the allegations and claimed that the advertisement published by the Respondent was not violative of section 10 of the 2010 Act. A succinct representation of the written reply of the Respondent is as follows:

- (i) That it has duly complied with all its disclosure obligations with respect to the enquiry initiated by the Commission and has strived to provide the Enquiry Committee with all the information/documents that were required from the Respondent during enquiry proceedings.
- (ii) That the advertisement in question was published by the Respondent in good faith without any wilful intent to deceive the public. However, upon receiving the Commission's notices dated 02.09.2020 and 16.09.2020, indicating potential breach of Section 10 of the 2010 Act, the Respondent promptly ceased running the advertisement, which has never been published again.
- (iii) That no benefit was derived from the advertisement as it was promptly removed from its website and discontinued upon receipt of the Commission's notice, and also the Respondent provided complete disclosure to all prospective teachers in signing up with it and fully disclosed the commercial details that would govern their arrangement. Moreover, the Respondent, is a loss-making entity and is not in a position to absorb any financial loss or penalty, which is evidenced by its financial statements.



- (iv) That Section 10(2)(b) of the 2010 Act only applies with respect to “distribution of false or misleading information to consumers...”. The Enquiry Report, in paragraph 3.5 thereof, clearly holds that for the purpose of the enquiry, the word “Consumer” will be taken in to mean “Teachers”. Thus, the applicability of Section 10(2)(b) on the Respondent with respect to the alleged advertisement under the Enquiry Report has solely been occasioned on the account of the “Teachers” being construed as “Consumers”. However, keeping in view the structure of the Project, the term “Teachers” cannot constitute “Consumers.” By way of analogy, other laws such as consumers protection act(s) have defined consumer with respect to services as a person who “hires any service for a consideration”. Similarly, the Black’s Law Dictionary defines “consumer”, among other things, as a “buyer of service.” Therefore, under Section 10(2)(b), a consumer must be construed as the recipient of the service rather than its service provider.
- (v) That the Project does not operate as an intermediary or connectivity platform providing a two-way service and charging fees/consideration from both teachers and students. In this context, the teachers are service providers to the Project, which in turn provides the actual services to the students in the form of education and classes. The teachers do not receive any real service from the Respondent or any other affiliated party under the scheme of the Project. The Enquiry Report only refers to the annual refundable platform fee of Rs.995 and Rs.1500, which is nominal and does not establish a commercial arrangement designating teachers as service recipients. This fee merely serves as a cost reimbursement for teacher’s document verification.
- (vi) That the Enquiry Report has applied similar standard to the Respondent, as it would apply to a seller of “off the shelf products”, notwithstanding that the Respondent was advertising for hiring teachers as service providers.
- (vii) That the alleged advertisement for potential employees/service providers will necessarily and inevitably always contain “incomplete” information from the threshold as applicable for “off the shelf products”, because with respect to any contract covering employees/service providers, there is a plethora of material information that if covered in the relevant advertisement(s) would need the entire potential service/employment contract and HR manual to be printed in the advertisement informing potential employees/service providers including but not limited to the base salary, bonus structure, deduction policy, provident fund, gratuity, working hours, tax deduction and holiday policies.

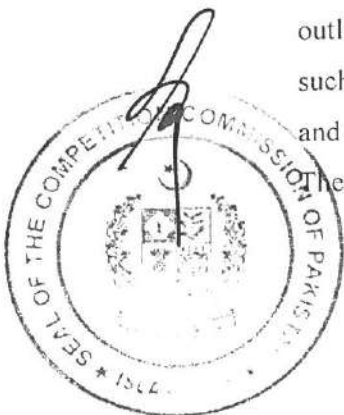


- (viii) That companies/service recipients also have a legitimate interest not to disclose all of these details at the very start, as this is something that both the parties will negotiate before the signing of a final agreement between the parties containing the commercial arrangement. Therefore, the advertisement regarding provision of services and employment should be viewed as an “invitation to treat” and will necessarily require the employee/service provider to view the detailed terms of engagement and negotiate the same before coming on board. Hence, this is very different from advertisements pertaining to “off the shelf” products that the “consumer” can just purchase in reliance of the advertisement and the claims made thereunder by going to any shop/placing an order.
- (ix) That the Enquiry Report’s standard of assessing the scope of Section 10 *vis-à-vis* the alleged advertisement and “incomplete” information is misplaced, keeping in view that the alleged advertisement itself was merely an invitation to treat, rather than to prompt an immediate buying of an off the shelf product by “consumers”.
- (x) That any claim with respect to payment of fee/salary will always/inevitably be subject to terms and conditions, which would be agreed upon at the time of signing of letter of engagement, and the same is implied. The claim of the Respondent itself states that teachers “*can*” earn and not teacher “*will*” earn the amount reflected in the advertisement. Thus, the claim is clearly advertising capacity rather than promising inevitability of the payment of the advertised amounts. The claim in the alleged advertisement is clearly *preceded* by a clear and visible asterisk signifying that conditions apply with respect to the claim following the asterisk.
- (xi) That the Enquiry Report has not dilated upon the very noticeable conditions of application mentioned on the alleged advertisement as: “Conditions for application” (Translation of Urdu Version), which lays out a preliminary criterion for submitting an application. This criterion includes the *expertise of a teacher to teach a subject*, which itself is a subjective assessment that necessarily requires reference to a more detailed criterion.
- (xii) That the process of submitting the application is also detailed, wherein the teacher is directed towards the website of the Respondent. The direction to the website is clearly required as part of the application process. Solely relying upon the disclaimer to conclude that the reader of the advertisement would be unaware of the availability of terms and conditions on the website is not appropriate. Even in the complete absence



of the disclaimer, the reader of the alleged advertisement is directed to the website in a clear, unambiguous and conspicuous manner.

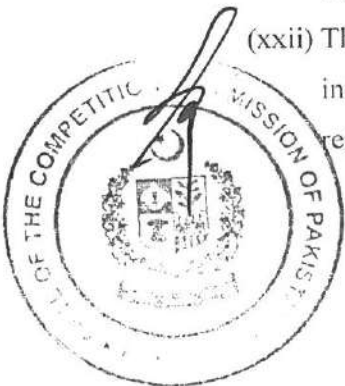
- (xiii) That the helpline specifically pertains to the use of the number to raise queries on WhatsApp. The helpline very visibly uses the universal logo for WhatsApp Messenger in its advertisement, and the same is common practice in the advertisement that WhatsApp Messenger logo with a help/number denotes the helpline/number is to be approached *via* WhatsApp Messenger only, and not through normal calls on cellular networks. The Respondent also did not claim anywhere that this number will provide services 24/7.
- (xiv) That the Enquiry Report misinterprets the terms and conditions under the alleged advertisement as the “terms and conditions” governing the use of the Respondent’s website by users. The terms and conditions on the website are standard terms and conditions that govern the use of a website and relate to privacy, copyright and other matters that are commonly available on all websites. The terms and conditions in the alleged advertisement relating to the terms that will govern the contractual relationship between teachers and the Respondent cannot, under any circumstances be understood to mean such terms and conditions. The reference in the alleged advertisement, as reasonably understood, was to the plethora of information contained on the website for teachers with respect to the conditions for provision of services by teachers.
- (xv) That the Enquiry Report, in paragraph 3.15 thereof, noted that the information for the criteria for selection of teachers is provided on the website. The Enquiry Report contains an acknowledgement that information pertaining to criteria for selection of teachers is available on the Respondent’s website, along with an earning calculator to allow calculation for the salary a teacher may be able to earn, based on additional factors that have been detailed in the earning calculator as well.
- (xvi) That the earnings calculator, available on the Respondent’s website, explicitly states that the “earnings” of a teacher is dependent upon hours taught, rating of the teacher, and the number of students taught. The excerpt from the Respondent’s “how to work” section of the website, reproduced in paragraph 3.15 of the Enquiry Report explicitly outlines that the teachers will be ranked “after the application” and the criterion for such ranking is based on qualification, passing school, experience, working institute and quality of lecture delivery, which in turn will determine the earnings of a teacher. The absence of information relating to the “standard” and “platinum” category is not



connected to the alleged advertisement as the same has not been mentioned in the alleged advertisement anywhere.

- (xvii) That the claim in the advertisement was established on good faith calculation based on hourly rate that the Respondent offered to teachers, which has been transparently disclosed by the Respondent on the website. The project is a commercial enterprise, dependent on consumer demand to take off.
- (xviii) That the endorsement of Cambridge Global UK is undeniable as there exists an MoU between the parties, and the same has been endorsed by Cambridge Global UK on their website to the extent of the Respondent, and the establishment of Cambridge Global, UK by the Respondent is admittedly for the creation of educational mega-projects in collaboration with multiple entities, such as American Lyceum LLC, American Lyceum (Pvt.) Limited and British Lyceum (Pvt.) Limited.
- (xix) That the Enquiry Report, in paragraph 3.36 has concluded the "*claim of collaboration with CG appears to be doubtful because using the name of a dormant company in the advertisement, so as to add credibility in the claim was not only false but misleading as well.*" The claim of the Respondent that there exists a strategic partnership between Cambridge Global, UK and the Respondent, along with other institutions, cannot be invalidated purely on the ground of the company being dormant, is not "trading", and "does not have any other income, for example investment." The collaboration of the Respondent and Cambridge Global, UK might not necessarily qualify as trade or investment, rather a simple endorsement that a company as a juristic entity is still entitled to do.
- (xx) That the findings of the Enquiry Report that the claim will result in teachers leaving prior employment to join the Project is misplaced as there is a process associated with joining the platform/project that has been outlined in detail on the Respondent's website and therefore the loss cannot be associated with the advertisement of the Respondent.
- (xxi) That it never claimed that as an entity the Respondent is valued at PKR 3.75 billion. The Respondent was merely projecting the potential scale of the available market and the available opportunity. The calculation was based on good faith estimation rather than any attempt to deceive the 'teachers'.

- (xxii) That the Enquiry Report has interpreted 'educationalists' and 'technologists' as individuals only possessing academic qualifications rather than expertise. In this regard, the Respondent submitted that its personnel, including Ms. Sumaira Daud and



Mr. Farasat Ali, possess the required practical / vocational experience in their fields. Ms. Sumaira Daud has demonstrated 19 years of experience with the American Lyceum, where she has served in the capacity of branch head, teacher trainer, franchise head, academic head, which demonstrate her substantial practical experience and knowledge in the field of education for almost two decades. Similarly, Mr. Farasat's experience at the American Lyceum for 13 years in the capacity of the consultant, analyst, administrator etc. brings along practical experience required for running / administering a school system. Additionally, Mr. Tahir Nadeem Qadri, the Chief Executive Officer, is also an ex-officio member of the Board of Directors and hold significant educational and technological expertise. He is a graduate of the Ghulam Ishaq Khan Institute of Engineering Science and Technology, Pakistan, and is a notified member of the IT Steering Committee of the Pakistan Engineering Council as well. Moreover, Mr. Tahir is a fellow member and an Executive Member of the Central Council of the Institute of Engineers, Pakistan, and has also served as the Vice Chairman (Electronics and Computers) for the same institute. Additionally, he was awarded the Best Performance Award – 2016 by the Institute of Engineers, Pakistan in 2016. Furthermore, Mr. Tahir has completed his certification in school leadership from the Harvard Graduate School of Education, Harvard University, Boston, Massachusetts, United States of America, along with multiple educational trainings at the Cambridge University, UK. Furthermore, in recognition of his expertise both as an educationist and as a technologist in the field of education won him the award for Best CEO by the International School Awards, Dubai, UAE.

HEARING

11. After the issuance of the SCN, the Commission ensured due process by affording the Respondent an opportunity of hearing. The hearing was conducted on 29.01.2025, during which the Respondent was represented by Mr. Ali Javed Darugar, Advocate of Prime Legal Company accompanied by Mr. Waleed Raza, Senior Manager of M/s British Lyceum Pvt. Limited.

12. During the hearing, learned counsel for the Respondent reiterated the stance already put forth in the reply to the SCN. The Respondent primarily defended its position in line with its previous submissions put forth in the reply of the SCN and did not present any new



substantive arguments or documentary evidence to either refute the allegations or to demonstrate corrective measures taken to address the concerns raised in the SCN.

13. Upon careful consideration of the Respondent's submissions, the Bench issued specific directions requiring the Respondent to submit the Audited Financial Statements, Directors' Reports, Record of amounts refunded to teachers and additional submissions, if any, to support the Respondent's claims. The Respondent submitted the aforesaid documents on 10.02.2025 for consideration of the Bench.

ISSUES

14. Keeping in view the oral and written submissions of the Respondent, the material/evidence placed on the record and the applicable law in the matter, the following issues are framed for the consideration and determination by the Bench:

- I. **Whether the Respondent has engaged in deceptive marketing practices by distributing false and misleading information in violation of Section 10 (1) read with Section 10(2)(b) of the 2010 Act?**
- II. **Whether the false and misleading information distributed by the Respondent was capable of harming the business interests of any other undertaking(s) in terms of Section 10(2)(a) of the 2010 Act?**

ANALYSIS

- I. **Whether the Respondent has engaged in deceptive marketing practices by distributing false and misleading information in violation of Section 10 (1) read with Section 10(2)(b) of the 2010 Act?**
15. The primary concern in the instant case pertains to deceptive character of the Respondent's advertisement and promotional materials. Section 10 of the 2010 Act prohibits deceptive marketing practices', and serves to protect both consumer and competition interests. For ease of reference, relevant excerpts of Section 10 are reproduced herein below:

"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 a reasonable basis, related to the price, character, method or place of production, properties, suitability for use, or quality of goods;"

16. Section 10(2)(b) is particularly relevant in evaluating whether the Respondent's advertisements and representations disseminated to consumers contained false or misleading information and whether such claims lacked a reasonable basis concerning the characteristics, suitability for use, or other essential aspects of the advertised educational program. The key question before the Bench, therefore, is whether the Respondent's marketing material misled consumers by providing inaccurate or unsubstantiated claims, thereby constituting a violation of the Section 10 of the 2010 Act.

17. The Bench deems it appropriate to refer to the earlier orders of the Commission pertaining to the analytical scheme of the alleged infringement(s) under Section 10 of the 2010 Act. The Commission observed *In The Matter of China Mobile Pak Limited and Pakistan Telecom Mobile Limited* reported as 2010 CLD 1478 (*China Mobile case*), that in determining whether an advertisement or marketing material (and the advertised claims) constitute deceptive marketing practices, the Commission shall:

"...evaluate complete advertisement and make an opinion regarding deception [...] 1 on the basis of net general impression conveyed by them and not an isolated script".

18. Additionally, in the aforesaid case the Commission regarding the term 'consumers', held as follows:

"the term 'consumer' under Section 10 of the [Ordinance] is to be construed as an 'ordinary consumer' but need not be necessarily be restricted to the end consumer of the goods or services"

19. The Commission, in *China Mobile case*, with respect to 'false and misleading information' observed as follows:

False information: "oral or written statements or representations that are (a) contrary to the truth or fact and not in accordance with reality or actuality; (b) usually implied either conscious wrong or culpable negligence; (c) has a striker and stronger connotation, and (d) is not readily open to interpretation..."

Misleading information: "may essentially include oral or written statement or representation that are: (a) capable of giving wrong impression or idea,



(b) likely to lead into error of conduct, thought or judgement (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 erroneous connotation and is somewhat open to interpretation as the circumstances and conduct of a pan)) may be treated as relevant to a certain extent".

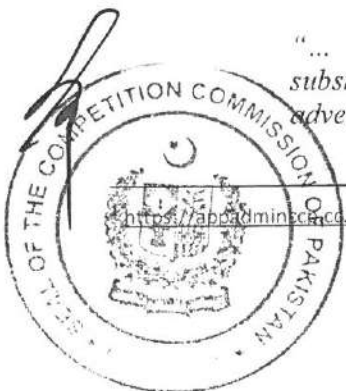
20. In *China Mobile case*, while referring to the judgment of Federal Trade Commission of United States of America passed in the case of **Standard Oil of Calif 84 F.T.C 1401**, the Commission has adhered to the concept of advertising representation and assessment thereof as follows:

"... in evaluating advertising representation, the [Commission] is required to look at the complete advertisement and formulate our opinion on the basis of general net impression conveyed by them and not on isolated scripts. As a rule, the above-stated view was upheld by the U.S. Court of Appeal in the matter of Beneficiary Corp v F.T.C, 542 F. 2d 611 (3rd Cir., 1976) in the following words 'the tendency of the advertising to deceive [or mislead] must be judged by viewing it as a whole, without emphasizing isolated words or phrases apart from the context ..."

21. While evaluating the 'net general impression' or dominant message, the Commission also examines express and implied claims contained in an advertisement or promotional campaign while holding the advertiser liable for both. The advertiser is liable for all such claims express or implied, if they are false, misleading or lack a reasonable basis for the same. Neither proof of intent to disseminate a deceptive claim, nor evidence that consumers have actually been misled is required for an act or omission to constitute violations under Section 10(2)(b) of the 2010 Act. In this regard reliance is placed on *M/s Eden Builders (Private) Limited (File No. 191/OFT/Eden Life/CCP/2015)*.¹

22. The Commission addressed the issue of substantiation of advertising claims and whether the information distributed "*lacks a reasonable basis*" in its Order dated 23.02.2010 passed **In The Matter of Proctor & Gamble Pakistan (Pvt.) Limited** reported as 2010 CLD 1695 (*Proctor & Gamble Case*), whereby the Commission observed as follows:

"... the advertiser must have some recognizable substantiation for the claims made prior to making an advertisement."



https://appadmin.ecm.gov.pk/ccporders/335cc472-faa3-44d7-98a2-2546723a6a05_show_cause_notice_issued_to_eden_builders.pdf

23. Deceptive marketing is evaluated based on the net general impression of an advertisement rather than isolated elements. The disclaimer(s) used to eliminate any misleading impression must be clear, conspicuous, and prominently placed. In the present case, the Respondent's advertisement prominently claimed lucrative earnings for teachers and a collaboration with Cambridge Global, yet failed to provide adequate substantiation to the Bench. The absence of verifiable evidence regarding the promised earnings, the nature of the collaboration, and the qualifications of the alleged eminent educationists raises serious concerns regarding the accuracy and transparency of the Respondent's advertised claims.
24. The advertisement published by the Respondent prominently displayed an earning potential ranging from Rs. 80,000 to Rs. 250,000 per month and an affiliation with Cambridge Global, yet it lacked essential disclosures regarding the conditions attached to these claims. The disclaimer regarding earnings was vague, and no concrete evidence was provided to substantiate the advertised financial benefits. Additionally, the alleged collaboration with Cambridge Global remained unverified, leading to potential consumer confusion and misrepresentation of the Respondent's actual market standing. The advertisement in question is reproduced herein below for ready reference:



25. The Commission has clearly set disclosure parameters in its earlier decisions which reinforces the aforesaid principle, for instance, in case of Askari Bank Ltd, United Bank

Ltd, My Bank Ltd & Habib Bank Ltd (2008) reported as 2010 CLD 1454 (the Banks case), the Commission held as follows:

"It is important to ensure that the material features of the product that are significant to the consumer in making his decision should be displayed clearly, prominently, and in terminology that can easily be understood by a lay person... In sum, all material features and conditions should be prominently displayed in clear and unambiguous language."

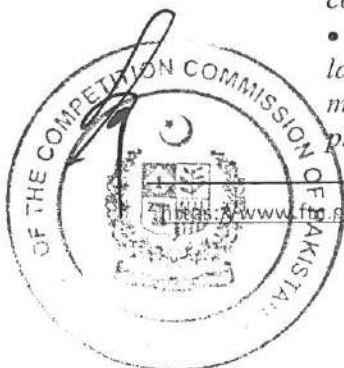
26. Federal Trade Commission of USA (FTC) provides clear guidelines that have to be abided by any advertiser in the process of advertising. The FTC provided following guidelines:

"[Defendant-Respondent], directly or through any corporation, subsidiary, division, or other device, in connection with an advertisement to promote, directly or indirectly, any extension of consumer credit, in or affecting commerce, shall not in any manner, expressly or by implication:

A. State the amount or percentage of any down payment, the number of payments or period of repayment, the amount of any payment, or the amount of any finance charge, without disclosing clearly and conspicuously all of the following terms:

The Consent Order defines "clearly and conspicuously" as:

- *In a print advertisement, the disclosure shall be in a type size, location, and in print that contrasts with the background against which it appears, sufficient for an ordinary consumer to notice, read, and comprehend it.*
- *In an electronic medium, an audio disclosure shall be delivered in a volume and cadence sufficient for an ordinary consumer to hear and comprehend it. A video disclosure shall be of a size and shade and appear on the screen for a duration and in a location sufficient for an ordinary consumer to read and comprehend it.*
- *In a television or video advertisement, an audio disclosure shall be delivered in a volume and cadence sufficient for an ordinary consumer to hear and comprehend it. A video disclosure shall be of a size and shade, and appear on the screen for a duration, and in a location, sufficient for an ordinary consumer to read and comprehend it.*
- *In a radio advertisement, the disclosure shall be delivered in a volume and cadence sufficient for an ordinary consumer to hear and comprehend it.*
- *In all advertisements, the disclosure shall be in understandable language and syntax. Nothing contrary to, inconsistent with, or in mitigation of the disclosure shall be used in any advertisement or promotion".²*



<https://www.ftc.gov/system/files/documents/cases/141212rameycmpt.pdf>

27. The Bench carefully examined the Respondent's submissions, including its reliance on the disclaimer within the advertisement and the phrase "can earn" to justify its claims. The Respondent asserted that the phrase "can earn" in its advertisement implied only a possibility of earnings and was not a guaranteed income. The Bench observed that the advertisement of the Respondent prominently displayed the claim that teachers "can earn Rs. 80,000 to Rs. 250,000 per month." When presented without adequate qualification, this claim creates an expectation that such earnings are realistically attainable for a broad segment of applicants within this range. However, the advertisement failed to disclose key factors affecting higher earnings, such as the selection process, workload requirements, experience prerequisites, and category-based remuneration. Furthermore, in reality the payments were made well outside this stipulated range. This omission to disclose that the offer was only for the teachers selected on merit based criteria prevented the interested applicants (qualified as well as unqualified) from making informed decisions, thereby constituting deceptive marketing under section 10(2)(b) of the 2010 Act.
28. The Respondent further contended that an asterisk and the phrase "terms and conditions apply" directed consumers to the website for further details. However, the Bench is of the view that disclaimers must be clear, conspicuous and comprehensive, providing enough detail to correct any potentially misleading impressions as held in *the Banks case*. But the disclaimer in the Respondent's advertisement was in fine print and the same was not prominently placed, making it less noticeable to the interested candidates/consumers. This arrangement made them commit (submit their applications along-with fee demanded) well before signing on the terms and conditions and the ones hired were never paid the highest advertised salary-even the minimum in majority of cases.
29. When the primary advertisement is misleading detailed terms and conditions with additional information online does not absolve the advertiser from its liability under the 2010 Act. The onus lies on the advertiser to ensure that all material terms are clearly disclosed at the outset rather than requiring consumers to undertake additional effort to uncover them. In this regard, the Federal Trade Commission (FTC) in case of *American Home Products, 98 F.T.C. 136, 370 (1981)*, held that:

"...Whether the ill-effects of deceptive nondisclosure can be cured by a disclosure requirement limited to labelling, or whether a further



requirement of disclosure in advertising should be imposed, is essentially a question of remedy. As such, it is a matter within the discretion of the Commission. The question of whether in a particular case to require disclosure in advertising cannot be answered by application of any hard-and-fast principle. The test is simple and pragmatic: Is it likely that, unless such disclosure is made, a substantial body of consumers will be misled to their detriment?"

30. Disclaimers and undisclosed conditions cannot rectify a misleading advertisement. Once a false or misleading impression is created, subsequent clarifications, whether on a website or elsewhere, do not remedy its deceptive effect. It was the responsibility of the Respondent to ensure that the material information is clearly and prominently disclosed within the advertisement itself. Moreover, disclaimers must serve to clarify, not contradict, the primary message. In this case, the Respondent's disclaimer was insufficient to address the misleading nature of the absolute/unqualified earnings claim.
31. The Bench carefully examined the findings of the Enquiry Committee, regarding the review of the Respondent's website and supporting materials. The Enquiry Committee found no clear substantiation for the advertised earnings range on the Respondent's official website and the terms and conditions available on the Respondent's website did not address teachers' employment terms or remuneration details. Furthermore, the online earning calculator provided only partial and incomplete information regarding the selection process, remuneration structure, and payment methods. The payment evidence submitted by the Respondent included remuneration details solely for Silver and Gold category teachers, whereas the website listed four categories. Notably, no salary records were presented by the Respondent for the higher-income tiers to substantiate the claim that teachers could earn up to Rs. 250,000 per month. Similarly, no records were provided to establish that salary below Rs. 80,000/month was not paid to some of the teachers.
32. The Respondent contended that the earnings claim was based on good-faith calculations derived from hourly rates offered to teachers, with transparency ensured through the website. However, the Commission emphasizes that any earnings claims made in advertisements must be substantiated with concrete evidence and clearly disclosed conditions. The absence of such substantiation renders the claim misleading and deceptive. For instance, in *Proctor & Gamble Case* the Commission reaffirmed the requirement for advertisers to substantiate their claims, holding that "*An advertiser must have recognizable substantiation for claims made prior to their dissemination.*"

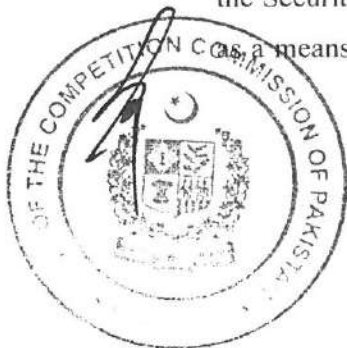


33. According to the record provided by the Respondent to the Enquiry Committee, only one teacher, Mr. Shafqat Ghafoor, received a payment of Rs. 87,667/- on 10.03.2021. However, upon cross-verification, it was found that the said individual was neither listed in the payroll records nor included among the actual recruited teachers. This inconsistency demonstrates an intent to mislead and reinforces the lack of a reasonable basis for the claim of the Respondent that teachers could expect to earn between Rs. 80,000 and Rs. 250,000 per month.
34. Moreover, the Respondent provided a helpline contact number, a key tool for potential teachers seeking clarification. However, the Enquiry Committee found that the said helpline was non-functional, which further impeded transparency of the Respondent's operations, as interested applicants could not verify the claims made by the Respondent in the advertisement. As per the Respondent the helpline number provided operates via WhatsApp Messenger only. However, it was the responsibility of the Respondent to ensure that clear and explicit instructions were provided about the functionality of their WhatsApp helpline so that potential applicants fully understand how to seek further information.
35. The Enquiry Report also established that Cambridge Global, UK is a dormant entity with no active operations or income. Promoting a collaboration with an inactive company, without disclosing its status, is inherently misleading and creates a false impression of credibility and endorsement. In this regard, the MoU submitted by the Respondent to substantiate its collaboration with/endorsement by Cambridge Global, UK bears the signatures of Cambridge Global UK alone, with no evidence of mutual agreement or execution by both parties. The Bench is of the view that even when signed by both the parties, MoU is generally considered a non-binding document unless it satisfies the essential elements of a contract under the Contract Act, 1872. This principle was reaffirmed in case of Syed Ahmed v. Syed Muzaffar Hussain PLJ 2008 Lahore 912, wherein the Lahore High Court categorically held that:



"Mere signing of a memorandum of understanding could not be termed as a valid agreement in the eyes of law, and unless an agreement was finalized, no legal or valid right would accrue to the plaintiff on the basis of the memorandum of understanding."

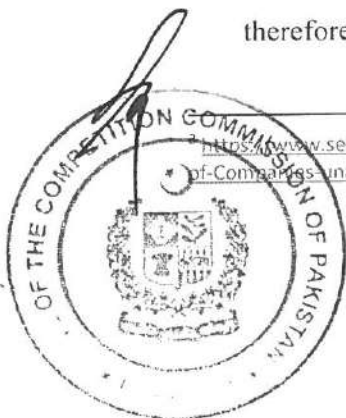
36. The Bench concurs the findings of the Enquiry Report in paragraphs 3.29 to 3.37, which further substantiate the lack of a valid and enforceable agreement between the Respondent and Cambridge Global UK. In light of these facts, the Respondent's reliance on the purported MoU to establish credibility is misleading and lacks any legal or substantive basis. The Bench, therefore, is convinced that Respondent's misrepresentation of its purported affiliation with Cambridge Global UK constitutes a violation of Section 10(2)(b) of the 2010 Act, which explicitly prohibits the dissemination of false or misleading information to consumers.
37. With respect to the Respondent's claim that the educational program carries worth of PKR 3.7 billion, the Respondent asserted that it did not claim that the Respondent, as an entity, is valued at PKR 3.7 billion but was merely projecting the potential market scale and opportunity. However, the Bench finds this explanation unpersuasive, as the advertisement provided no clear context or qualification indicating that this figure represented a market projection rather than the actual valuation of the Respondent's business. The omission of such clarification through an appropriate disclosure or disclaimer created a misleading impression for consumers.
38. We have examined the financial statements submitted by the Respondent, which reflect a total profit of less than PKR 1 million even after a long period of their operations which is not even one percent of the value claimed in the advertisement. Such limited profit has been earned despite a considerable passage of time since the publication of the advertisement, which further created doubt on the credibility of the projected valuation. This stark disparity between the advertised valuation and the actual financial performance of the Respondent reinforces the misleading nature of the claim. Presenting such an exaggerated figure without substantiation or disclosure amounts to deceptive marketing, as it has the potential to mislead consumers and other stakeholders including students and their parents regarding the Respondent's financial credibility and market position.
39. The Respondent highlighted its registration with the Federal Board of Revenue (FBR) and the Securities and Exchange Commission of Pakistan (SECP) through the advertisement as a means of projecting credibility. However, the Respondent has been included in the



SECP's publicly available³ "List of Companies Suspected to be Engaged in Unauthorized Activities." Such negative classification undermines the very credibility of the Respondent. The Respondent misleads consumers into believing that its operations are fully endorsed and compliant with regulatory standards. The aforesaid omission along with exaggerated financial representations by the Respondent, constitutes a serious breach of Section 10(2)(b) of the 2010 Act, as it distorts the perception of the Respondent's legitimacy and financial standing in the eyes of the consumers and public at large.

40. In this case the absence of clear disclaimers or supporting evidence by the Respondent aggravated the misleading nature of the representation, increasing the likelihood that consumers would interpret the PKR 3.7 billion figure as an established financial valuation rather than a speculative estimate. The Bench agrees with the findings of the Enquiry Report mentioned at paras 3.38 to 3.40, which highlight the lack of substantiation for the claimed valuation and the misleading nature of the Respondent's representation. Accordingly, the Bench affirms that this unsubstantiated financial claim by the Respondent constitutes deceptive marketing under Section 10(2)(b) of the 2010 Act.

41. The Respondent also argued that teachers do not qualify as "consumers" under Section 10(2)(b) of the 2010 Act, asserting that a consumer must be the recipient of a service rather than its provider. However, the Bench finds this argument legally flawed and without merit. In the China Mobile case, the Commission clarified that the term "consumer" under Section 10 of the Ordinance refers to an "ordinary consumer" and is not necessarily restricted to the final consumer of goods or services. Applying this precedent, the Bench is of the view that teachers, as the primary audience of the Respondent's advertisement, were misled into believing they would receive significant financial benefits and professional opportunities, which were never substantiated. In this regard, the Bench agrees with the findings of the Enquiry Report mentioned at para 3.5 which determined that teachers were the direct targets of the misleading advertisement, as they were induced to enrol in the program based on unverified claims of high earnings and affiliations. The advertisement was designed to attract teachers, encourage participation, and collect fees, placing them in the position of service recipients rather than mere providers. The Bench, therefore, rejects the Respondent's argument and reaffirms that the misleading claims



<https://www.secp.gov.pk/document/list-of-companies-indulged-in-unauthorized-activities-4/?ind=1727264933641&filename=List-of-Companies-indulged-in-unauthorized-activities-Updated-on-Sept-09-2024.pdf&wpdmdl=48154&refresh=68219a09db97c1747032585>

made in the advertisement constitute deceptive marketing under Section 10(2)(b) of the 2010 Act.

42. The Bench observed that while teachers were the immediate targets of the impugned advertisement, however, its misleading content may have had broader implications for other stakeholders, particularly students and their parents. The advertisement projected an image of a credible, well-resourced, and internationally affiliated educational platform, which could reasonably lead students and guardians to believe that the Respondent was offering a high-quality learning environment. In reality, giving false information about the faculty, overstating the program's worth, and making unproven claims about international partnerships could harm/damage students' expectations and trust in the institution. Such deceptive practices, even when not directed at students, may ultimately affect the quality and integrity of educational services offered to them, thereby harming public interest.
43. The Respondent in its advertisement further claimed that eminent educationists and technologists were present on its Board. To substantiate this, the Respondent provided names of certain individuals, including Ms. Sumaira Daud, Mr. Farasat Ali, and Mr. Tahir Nadeem Qadri, along with their respective professional backgrounds. While the Bench acknowledges their practical experience and qualifications, it is of the opinion that the advertisement created an expectation that well-recognized experts in education and technology were formally serving on the Board at the time of publication.
44. The use of the term "eminent" in the Respondent's advertisement, suggested that individuals serving on its Board were not only qualified but also widely recognized, respected, or distinguished in their respective fields. According to the Cambridge Dictionary⁴, the word "eminent" is defined as "famous, respected, or important", particularly in a specific profession or area of expertise. The Respondent has failed to substantiate the eminence of the individuals named, as no independent or objective recognition, professional awards, scholarly contributions, or leadership positions within prominent educational or technological institutions were provided. The use of the term "eminent" without any supporting evidence created a misleading impression of authority and prestige, which was likely to influence consumer perception regarding the credibility and standing of the Respondent's educational program. Furthermore, according to the



⁴ <https://dictionary.cambridge.org/dictionary/english/eminent>

Cambridge Dictionary⁵, an “educationist” is defined as someone with special knowledge of the principles and methods of teaching, while a “technologist” refers to an expert in modern technology, particularly in a specific industry. The Respondent failed to establish that the individuals referenced in the advertisement met these criteria in a widely recognized and authoritative manner. The absence of verifiable credentials supporting their eminence in their respective fields further weakens the legitimacy of the Respondent’s claim. The Bench, therefore, is of the view that the claim of having eminent educationists and technologists on the Board was exaggerated, unsubstantiated, and deceptive in violation of Section 10(2)(b) of the 2010 Act.

45. The advertisement was launched by the Respondent during the COVID-19 pandemic, which was a period when there were economic uncertainty, job insecurity, and limited employment opportunities. Schools, academies, and other educational institutions were facing closures or reduced operations, due to which many qualified teachers were actively seeking alternative sources of income and professional stability. By advertising exaggerated earnings potential and unverified international affiliations, the Respondent’s advertisement exploited the vulnerabilities of job-seeking educators during a time of crisis, creating false hope and unrealistic expectations. This makes the advertisement even more concerning/damaging from a consumer protection perspective and further aggravated the deceptive character of the Respondent’s advertisement. Accordingly, the Bench is of the view that the advertisement’s representation regarding the presence of eminent educationists and technologists on the Board of Directors was misleading and lacked substantiation, thereby constituting deceptive marketing under Section 10(2)(b) of the 2010 Act.

46. The Respondent in its defence contended that the advertisement was merely an “invitation to treat,” inherently containing incomplete information, with detailed terms to be negotiated upon engagement. However, the Bench finds this argument untenable, as advertisements, regardless of their preliminary nature, must not contain misleading or deceptive claims.

47. While an invitation to treat does not constitute a formal offer, it must still adhere to truthful and transparent marketing practices. The advertisement in question did not merely invite



<https://dictionary.cambridge.org/dictionary/english/educationist>

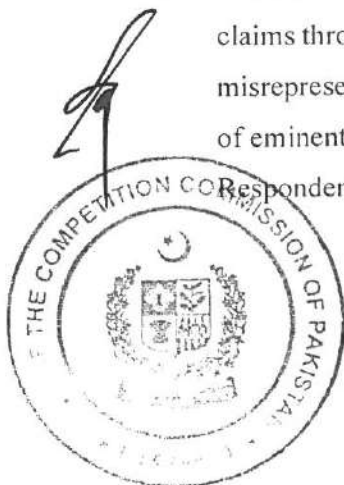
interest; rather, it made definitive claims regarding earning potential and affiliations, creating specific expectations among consumers. By projecting absolute figures for teacher earnings and implying a collaboration with Cambridge Global UK, the Respondent conveyed a misleading impression that was likely to influence consumer decisions. Such representations, even in preliminary marketing materials, have the potential to mislead consumers into believing that they are entering into a reliable and financially secure arrangement. Accordingly, the Bench rejects the Respondent's defence and holds that the advertisement's misleading claims contravenes Section 10(2)(b) of the 2010 Act.

48. The Respondent also contended that no benefit was derived from the advertisement, as it was promptly withdrawn, and that the Respondent is operating at a loss, making it financially unviable to absorb any penalties. However, the Bench observes that the absence of financial gain does not absolve the Respondent from liability for disseminating misleading information. The primary objective of imposing penalties is to deter deceptive marketing practices and protect consumer interests, regardless of the advertiser's financial status.

49. Furthermore, the Bench noted with concern that the Respondent was specifically directed to submit audited financial statements, yet the statements provided lacked the required signatures of the Chief Executive Officer and Director and only stamped and signed by the Auditor. This raises serious questions regarding the authenticity, accuracy, and completeness of the financial statements.

50. Additionally, the financial statements reflect payables to 'American Lyceum', indicating that it is a related party. However, no such disclosure about the related party transactions has been made by the Respondent, which is against the established accounting and financial reporting standards. The failure to disclose related party relationships and transactions is a matter of regulatory concern and further undermines the credibility of the financial information submitted by the Respondent.

51. In view of the above analysis, the Bench concludes that the Respondent made misleading claims through the alleged advertisement by projecting unsubstantiated earnings potential, misrepresenting its affiliation with Cambridge Global, and falsely implying the presence of eminent educationists and technologists on its Board. The disclaimers provided by the Respondent were inadequate and failed to rectify the deceptive nature of the claims. These



representations created false expectations among consumers and stakeholders, amounting to deceptive marketing practices. Accordingly, the Respondent's conduct constitutes a violation of Section 10(2)(b) of the 2010 Act.

II. Whether the false and misleading information distributed by the Respondent was capable of harming the business interests of any other undertaking(s) in terms of Section 10(2)(a) of the 2010 Act?

52. As established in the preceding paragraphs, the Respondent's advertisement contained multiple misrepresentations, including claims that its educational program was in collaboration with or endorsed by Cambridge Global, that it had eminent educationists and technologists on its Board of Directors, that teachers could earn between Rs. 80,000 to Rs. 250,000 per month, and that the program was worth Rs. 3.7 billion. These claims were found to be false or misleading, lacking substantiation and adequate disclosure. In order to determine whether the deception on part of Respondent was capable of harming business interests of other competing undertakings in violation of Section 10(2)(a) of the Act, the Bench will consider whether the Respondent's advertisement was "capable of harming the business interests of another undertaking" by unfairly attracting consumers or applicants away from legitimate educational institutions operating within the same sector.
53. In order to establish violation of section 10(2)(a) of the Act, the Bench is also guided by the findings of the Supreme Court in A. Rahim Foods (Pvt.) Limited and another v. K & N's Food (Pvt.) Limited and others 2023 CLD 1001 at paras 20-22 (*A. Rahim case*). In this case, the Apex Court held that:

"19. ... The Commission opined that though the distribution of false or misleading information may take place in numerous forms, the parasitic copycat packaging which causes deceptive confusion to the consumers also amounts to the distribution of misleading information capable of harming the business interest of another undertaking within the meaning of Section 10(2)(a) of the Act, in addition to being culpable under Section 10(2)(d) of the Act. The Commission observed that a contravention of Section 10(2)(d) will almost in every case lead to a consequent contravention of Section 10(2)(a) of the Act unless there exist exceptional circumstances in a particular case that warrant otherwise. On the other hand, the Tribunal held that as Rahim Foods had not distributed any false or misleading information regarding the K&N's Foods products, the contravention of Section 10(2)(a) of the Act was not made out.



20. The general difference between misrepresentation in a passing-off action and misrepresentation in an injurious falsehood action is that in the former action, the misrepresentation is made by the defendant concerning his own goods while in the latter it is made by the defendant concerning the goods of the plaintiff. In passing-off action, the defendant by misrepresentation primarily attempts to take undue benefit of the reputation (goodwill) of the goods of the plaintiff though he thereby also causes damage to the business of the plaintiff indirectly; but in an injurious falsehood action, the direct and express purpose of the misrepresentation is to cause damage to the reputation (goodwill) of the goods of the plaintiff though it may also impliedly or indirectly benefit the business of the defendant.

21. There is nothing in the language of section 10(2)(a) of the Act that suggests that the legislature has changed therein the meaning of 'misrepresentation' as understood in common law action for injurious falsehood. On the contrary, the use of words 'false or misleading information' in section 10(2)(a) shows that the legislature has intended to retain the same meaning; for in common law both the terms 'false' and 'misleading' are used in injurious falsehood actions for a representation to be taken as 'misrepresentation'. Further, the use of phrase 'harming the business interests of another undertaking' in section 10(2)(a) of the Act, and not in section 10(2)(d), denotes that the said phrase has been used in the sense of causing express and direct harm to the business interests of the complainant undertaking as it is understood in an injurious falsehood action. And the non-mentioning of this phrase in section 10(2)(d) of the Act shows that the damage caused to the business interests of the complainant undertaking is taken to be an implied and indirect effect of the fraudulent use of its trademark, etc., as it is understood in a passing-off action, which the legislature has considered unnecessary to be expressly mentioned.

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

54. At the outset, it is mentioned that the Supreme Court in the judgment *supra* interpreted the words 'false or misleading' in section 10(2)(a) to have the same meaning as given to them in the common law under the concept of 'injurious falsehood'. Further, the phrase 'harming the business interests of another undertaking' has been interpreted in the sense of causing express and direct harm to the business interests of the complainant undertaking

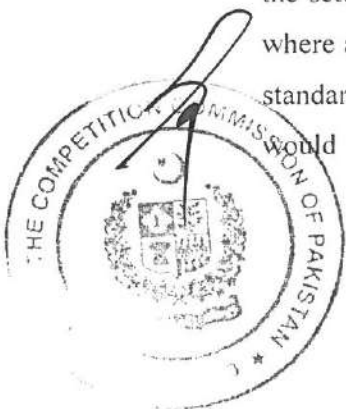


due to the respondent's act of copying its packaging, as happens in an injurious falsehood action.

55. The Bench has reviewed the facts of the instant matter and notes that these are distinguishable from the facts of *A. Rahim case* which was a dispute between two parties, initiated by a complaint from K&N's against the respondent undertaking. The instant case is arising out of a *suo moto* proceedings initiated against the Respondent to protect the market from deceptive practices and the interests of consumers/public at large. Criteria for proving damage to the public at large differs from proving personal damage, primarily, due to the scope and nature of the harm, the former requiring a broader impact and often involving public interest consideration. However in case of personal harm, the harm must be directly experienced by the individual, and the plaintiff must demonstrate a clear causal link between the defendant's actions and the injury.

56. The *A. Rahim case* is silent on how the statutory requirement of '*capable of harming*' is to be applied. The honorable Supreme Court has not interpreted this phrase or provided guidance on what constitutes conduct that is '*capable of harming*' competition. Nonetheless, under established principles of statutory interpretation, each word in a statute must be given effect, and no word is treated as surplus or redundant. No word used by lawmakers is either redundant or can be substituted, added or read in a piece of legislation. Reliance is placed on *Hasnat Ahmad Khan v Institution Officer* 2010 SCMR 354. While interpreting statutes, it is presumed that the legislature choose its words carefully, therefore, if a word or phrase had been added somewhere, such addition was not to be deemed redundant, conversely, if a word or phrase had been left out somewhere, such omission was not to be deemed inconsequential. Change in language (of a statute) implied a change in the intent. Reliance in this regard is placed on *Reference No. 1 of 2010 PLD 2013 SC 279*. Therefore, in the absence of judicial interpretation, the phrase '*capable of harming*' must be understood in a way that preserves its legislative intent and ensures that it is not rendered meaningless.

57. The phrase '*capable of harming*' is not defined in the Act. Therefore, in accordance with the settled principle of statutory interpretation, one can rely on the dictionary meaning, where a statutory term is undefined, its ordinary and natural meaning, as reflected in the standard dictionaries may be relied upon. The phrase '*capable of*' according to dictionary would generally mean '*susceptible to*', '*having the potential to*' or '*able to*' etc.



Accordingly, conduct need not to result in actual harm; it is sufficient if it has the potential or tendency to cause harm to competition. Reliance can also be placed on The Bombay Gas Co. Ltd v. R.N. Kulkarni AIR 1965 Bombay 172, Municipal Corporation of Delhi v. Shashank Steel Industries (P.) Ltd and etc. AIR 2003 Delhi 110 and Jamnabai w/o Hoondraj v. Jethamal and others AIR 1937 Sind 316, where the phrase 'capable of' was not defined in the statute, so the superior courts used the dictionary definition or the ordinary signification of the expression when interpreting it.

58. Given the aforesaid distinguishing features of the two cases, the Bench is of the view that the *A. Rahim* case is not applicable to the facts of the present case. Respondent's actions indeed fall within the ambit of section 10(2)(a) of the Act particularly in relation to the false and misleading advertisement which was capable of harming business interest of other undertakings. Unlike, *A. Rahim*, which concerned direct and express harm to a specific complainant, the present case involves conduct falling within the scope of Section 10(2)(a) of the Act, particularly, misrepresentations 'capable of harming' the business interests of competing undertakings. The Respondent's false and misleading claims had the potential to mislead consumers taking them away from the competitors and adversely affecting the competitors and competition within the industry.

59. One needs to underscore that the words in section 10(2)(a), "capable of harming the business interests of another undertaking", does not mean that the causation of actual harm needs to be established. The words 'capable of' would denote "capacity" or "propensity" to cause a particular effect, albeit "harm" in the context of section 10(2)(a). This "capacity", "propensity" or "capability" will have to be adjudged through an objective test, namely, as to whether a common intelligent man would construe the impugned advertisement to be causing or have caused harm to the business interests of another undertaking. The advertisement in question presented exaggerated and misleading claims, including projected high earnings for teachers, a claimed valuation of PKR 3.7 Billion, and an unverified affiliation with Cambridge Global UK, giving the impression of credibility and scale. Applying the latter 'objective test', it is evident that the advertisement is *ex facie* capable of afflicting untold harm and damage not only to members of the public, particularly teachers, who may have been induced to engage with the Respondent's program under false deceptions; but also to other legitimate educational institutions whose reputations and market share could be adversely affected. The deceptive



nature of the advertisement had the potential to divert interest, trust, and opportunities away from genuine educational undertakings toward a misrepresented and unsubstantiated venture.

60. A recent decision of a three member bench in the case of M/s Options International (SMC-Pvt.) Ltd through its CEO Appellant v. The Competition Commission of Pakistan through its Registrar and another PLD 2024 899 SC is also relevant. In this case the matter before the Commission, and then before the Competition Appellate Tribunal (CAT), was with regard to the use of the Starbucks name and logo by M/s Options International and selling its products under such name despite that it had no authorization/licensing arrangement with the Starbucks to sell and promote its business using the STARBUCKS MARKS. The Commission held that the Options' conduct is liable to harm the business interest of Starbucks and other competing coffeehouses in Pakistan which constitutes a contravention of Section 10(2)(a) read with Section 10(1) of the Act. Competition Appellate Tribunal upheld the order of the Commission and Options appealed to the honorable Supreme Court of Pakistan wherein it contended that since Starbucks does not have any outlet in Pakistan, nor has authorized anyone to use its name, logo and products in Pakistan, therefore, the Options was not in competition with the Starbucks, its authorized user(s) and/or its products. The Supreme Court while disagreeing with Options contention held that:

"The appellant had put itself forward by selling its own products under the international brand name Starbucks and by using its logo, which must have had the effect of distorting competition within Pakistan because a local vendor selling similar products, as those being sold by the appellant, would be at a serious disadvantage and not able to compete therewith since the unsuspecting public would believe, understand or perceive the same to be the genuine products of [Starbucks]."

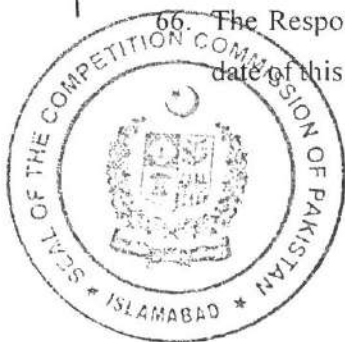
61. In view of the above, the Bench holds that the Respondent's actions violated the provisions of Section 10(2)(a), which prohibits deceptive marketing practices 'capable of' harming business interest of another undertaking(s) by unfairly attracting consumers or applicants away from legitimate educational institutions operating within the same sector.



DECISION AND PENALTY

62. While imposing financial penalties, the Commission always keeps in mind the Guidelines on Imposition of Financial Penalties (Fining Guidelines). These Guidelines state that policy objective of any fine is to create deterrence as well as to reflect seriousness of the infringement. In this case, the Bench considered the seriousness of the infringement, particularly the nature and extent of the deceptive claims related to projected earnings, affiliations, and the qualifications of its Board which created a misleading impression among the teacher and public. Moreover, key aggravating factors considered by the Bench in determining the penalty include the publication of advertisement by the Respondent during the COVID-19 pandemic, the Respondent's inclusion in the Securities and Exchange Commission of Pakistan's publicly available 'List of Companies Suspected to be Engaged in Unauthorized Activities,' as well as the submission of improper financial statements. These factors raise serious concerns regarding the Respondent's overall credibility and compliance. On the other hand, Respondent's removal of the impugned advertisement within 9 days of its publication and the absence of prior violations were also considered as mitigating factors while determining the quantum of penalty.
63. The Bench, after carefully considering the findings of the Enquiry Report, the submissions and materials provided by the Respondent, the overall impact of the marketing claims, and the legislative mandate under Section 10 of the 2010 Act, concludes that the Respondent has violated Section 10(2)(b) by disseminating misleading information regarding projected earnings, affiliations, and the qualifications of its Board of Directors and these misrepresentations were capable of harming the business interests of other undertakings, thereby also constituting a violation of Section 10(2)(a) of the 2010 Act.
64. Therefore, the Bench hereby imposes a penalty of PKR 3,000,000/- (Three Million Rupees) for violation of Section 10(2)(b) of the 2010 Act.
65. The bench also hereby imposes a penalty of PKR 2,000,000/- (Two Million Rupees) upon the Respondent for violation of Section 10(2)(a) of the 2010 Act.


66. The Respondent is directed to deposit the penalty amounts within sixty (60) days from date of this Order. Failure to comply shall render the Respondent liable to a further penalty



of PKR 50,000 (Rupees Fifty Thousand) per day from date of issuance of this Order and initiation of criminal proceedings against the Respondent pursuant to Section 38 of the 2010 Act before the court of competent jurisdiction.

67. In terms of the above, SCN No. 02/2024 is hereby disposed of.

68. It is so ordered.


Saeed Ahmad Nawaz
Member


Bushra Naz Malik
Member



ISLAMABAD, THE 19th DAY OF MAY, 2025