

**COMPETITION COMMISSION OF PAKISTAN**

**ENQUIRY REPORT**

(Under the provisions of Section 37(2) of the Competition Act, 2010)

**IN THE MATTER OF COMPLAINT FILED BY M/S RECKITT BENCKISER  
PAKISTAN LIMITED AGAINST M/S UNILEVER PAKISTAN LIMITED FOR  
ALLEGED DECEPTIVE MARKETING PRACTICES**

**BY**

**Riaz Hussain & Amin Akbar**

**February 08, 2021**

A.A

- 2.3 The Respondent is a company that carries out the business of manufacturing, marketing, sales & distribution of consumer and household products namely Lifebuoy (care and protect) soap and Lifebuoy Hand Wash (the "**Products**").
- 2.4 The Complainant alleged that the Respondent has engaged in the vicious practices of anti-competitive and deceptive marketing, and hence, an instant complaint has been filed by the Complainant to prevent the Respondent company from engaging into deceptive practices during marketing and sales of its competing products. The Complainant further believes that, the matter, being otherwise, of general public interest requires an immediate action by the Honorable Commission since the net impression is to affect the consumer buying.
- 2.5 The Complainant alleged that the Respondent has a long standing history of making deceptive claims in a bid to increase sales of the products. Previously in the year 2018 during the month of Ramadan, the Respondent has aired on an advertisement for Lifebuoy Ittar soap on Television and Radio networks as well as print media which was not adequately disclaimed and was misleading to the public at large. The religious sentiments of the consumer were banked upon and it was claimed by the Respondent that the Lifebuoy Ittar soap "*revered fragrance gives protection against germs*". This claim gives a wrong impression of killing germs and provide the same protection as of an anti-bacterial soap. The Complainant has intimated the Respondent that the claim made by the same in its recent marketing campaign is false, deceptive, misleading, scientifically untenable and in violation of section 10 (2) (a) & (b) of the Act via letter dated 27-06-2018. Furthermore, the Complainant has requested the Respondent to stop airing on the said marketing materials and refrain from gaining unethical market share by deceiving consumers. The Respondent via dated 02-07-2018 has accepted the request of the Complainant and explicitly accepted the wrongdoings and modified its advertisement.
- 2.6 The Complainant submitted that the Respondent is engaged in the deceptive marketing practices through marketing campaign of Lifebuoy (Care and Protect) ("**Lifebuoy silver soap**") by claiming in print and electronic media "*100% guaranteed protection from germs*" or "*Jaraseem sey 100% yaqeeni hifazat*" without sufficient disclaimer. The Television Commercial (TVC) shows that children who use Lifebuoy (Care and Protect ("**Lifebuoy silver soap**")) are less likely to fall sick alleging that "*Kids haven't gotten weak, but germs have gotten stronger*" and they need to use "*New lifebuoy with active silver*". TVC further states that "*where there is lifebuoy there are few illness*". It was boldly claimed that the Lifebuoy is the "*World's No.1 Germ Protection Soap*" without qualifying through a disclaimer legible to the naked eye.
- 2.7 The Complainant believes that, claiming 100% protection is an impertinent claim and a mere deception ploy, given the number and types of microbes present in the atmosphere today are immeasurable, asserting a 100% protection from germs is clearly misleading and deceptive to the ordinary consumer. Even otherwise, achieving a value of 100% is not even mathematically possible since the reduction in microbes/live bacteria is deduced by way of

log reduction. Log reduction stands for a 10-fold (one decimal) or 90% reduction in live bacteria. A 3-log reduction on a surface with 1,000,000 microbes would leave 1,000 microbes, which equates to a 99.9% reduction in potentially harmful microorganisms. Hence, a 100% reduction is a scientific and a mathematical impossibility and since there has to be some rounding off. Furthermore, the Complainant believes that there is no study available on record where the products or any of its variants are compared with ordinary toilet soap. Since no reference of the so called "germs" or "Jaraseem" and their immunity has been made, claiming a 100% guaranteed protection even with a very heavy disinfectant/anti-bacterial ingredient is farfetched. Further, there is no data which demonstrate that silver oxide will provide 100% guaranteed protection from germs and the above claims seems to be an attempt to gain an unfair advantage over the competitors by misleading the consumer and public at large.

- 2.8 The Complainant, via letter dated 17-09-2019, asked the Respondent to stop making such unreliable claims and misleading the ordinary consumer. Claiming that an anti-bacterial soap provides a 100% guaranteed protection against germs "as per lab tests" without any reasonable basis is questionable. Despite this the Respondent is continuously marketing the said products as an anti-bacterial soap that provide complete protection against germs. Hence, evidently the Respondent is involved in dissemination of misleading information that is harmful to the public as well as competitors and are in violation of Section 10 of the Act.
- 2.9 The Complainant further mentioned that, the malafide and ill intentions of the Respondent are further highlighted by their blatant refusal to amend TVC vide letter dated 23-09-2019 by stating "*Lifebuoy care and protect variant provides 100% proven germ protection*" with the disclaimer "*as per lab test*". It is important to consider that laboratories are controlled environments and can by no stretch of the imagination duplicate real life situations. There is no guarantee that the products would provide protection from germs when a user comes in contact with daily routine and atmosphere. It is pertinent to mention here that presently, all variants of lifebuoy care and protect soap are marketed and sold on the basis of the aforementioned false and fraudulent claims. The recent advertisement campaign of "*naya lifebuoy care & protect*" also contain the false claim of "*100% guaranteed protection against germs*". (TVCs and social media content is attached as ANNEXURE-A).
- 2.10 The Complainant mentioned that the Respondent has recently started a campaign of Life buoy hand wash claiming "*99.9% germ protection in 10 seconds*" with a wholly inadequate disclaimer. It is simply stated in fine print that "*Creative visualization*" and "*as per tests on indicator organisms vs. an ordinary soap without actives*". The Respondent should have backed up the "*99.9% germ protection in 10 seconds*" claim with a credible clinical study and accordingly provided a disclaimer. The fine print disclaimer provided for the "*99.9% germ protection in 10 seconds*" claims reads as "*Refers to lathering time*". The Complainant believes that an ordinary consumer is easily deceived by this qualifying information which is merely the application or lathering time.



2.11 The Complainant has further submitted that the Respondent is involved in "Deceptive Marketing Practices" by distribution of false and misleading information to the consumers and also that the distribution of such information is capable of harming the business interest of competitors and are in violation of Section 10 of the Act. The Respondent is making below mentioned claims:-

- a) "100% guaranteed protection from germs"
- b) "Jaraseem sey 100% yaqeeni hifazat"
- c) "where there is lifebuoy there are few illnesses"
- d) "World's No.1 germ protection soap"
- e) "99.9% germ protection in 10 seconds"

2.12 The Complainant has mentioned that the Respondent made an attempt to mislead the consumer thereby violating Section 10 2(a) & (b) of the Act and same is liable to be restrained from dissemination of false and misleading information whilst marketing its products namely, life buoy care and protect soap and lifebuoy hand wash on following grounds:-

A. The case reported as 2010 CLD 1487 (the "Zong order") in application of section 10 of the Act, the first important step is to examine the scope and ambit of the terms 'false' and 'misleading'. 'False information' can be said to be include: oral or written statement 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. Whereas 'misleading information' may essentially include oral or written statements or representation 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 owing to vagueness or any omission (d) may or may not be deliberate or conscious. The Complainant believes that, the claims made out by the Respondent fall within the ambit of both false and misleading information.

B. That in this regard, it is submitted that as per Section 10 (2) (a) of the Act "*The deceptive marketing practices shall be deemed to have been resorted to or continued if an undertaking resort to- (a) the distribution of false or misleading information that is capable of harming business interests of another undertaking. In order to conclude that the Respondent has acted in violation of the aforesaid section; (i) there must be dissemination of false or misleading information, and (ii) it must be capable of harming another's business interest*". Furthermore, both limbs of section 10 (2) are met in the complaint since, the claims made by the respondent, *inter alia*, "jaraseem sey 100% yaqeeni hifazat; 'where there is lifebuoy there are few illness". 99.9% germs protection in 10 seconds" are not based on grounds realities and are entirely untrue and deceitful. For instance, a 100% guaranteed protection against germ and 99.9% germ protection in 10 seconds is not scientifically attainable. As such, the log values used to denote reduction in number of live bacteria cannot give a value of 100%. Also it is not justifiable that an anti-bacterial soap that has been

declared safe for human use can have such a high level of disinfectants and is able to eliminate 99.9% germs in merely 10 seconds.

- C. The silver oxide present in life buoy Silver has not been scientifically validated to provide a 100% guaranteed protection against germs. In the TVC of all the variants of Life buoy & Protection soap and Life buoy Hand Wash the claims i.e. 100% guaranteed protection from germs 99.9% germs protection respectively have been disclaimed by stating "as per lab reports". There is no clear mention of the types of microbes and the specific study undertaken by any certified testing laboratory that substantiates the said claims made by the Respondent, it may be relevant to note that The Federal Trade Commission's ("FTC") 1983 policy statement regarding substantiation of claims by way of scientific evidence states that 'competent and reliable scientific evidence' 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."

However, no quantifiable study can prove /justify the claims made out by the Respondent in accordance with the protocols and procedures accepted universally in microorganism testing. As such, the claims are entirely unconvincing.

- D. That in the case of proctor and Gamble Pakistan (private) Limited reported as **2010 CLD 1695** "This Honorable Commission observed that "the advertiser must have some recognizable substantiation for the claims made prior to making it in an advertisement" This doctrine was enunciated in the case of **Pfizer, 81 F.T.C.23 (1972)**, wherein the FTC held that advertisers must possess the level of substantiations expressly or impliedly claimed in the advertisement. It is to be noted that the concept of 'reasonable basis' is also provided under Section 10(2)(b) of the Act, which states that "the distribution 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". Hence, since the Respondent has disseminated false and misleading information with respect to the character, suitability for use and quality of its product and the same come within the domain of deceptive marketing practices which are likely to misinform an ordinary consumer. In the absence of any credible evidence, the claims amount to deception in term of Section 10(2) (b) of the Act.
- E. That moreover, the claim that life buoy Hand Wash provides "99.9% germ protection in 10 seconds" is absolutely deceitful. It is of paramount importance to mention here, that the fine print disclaimer provided by the Respondent do not prevent the TVC from being illusive. **The consumers are made to believe that the use of the product would provide germ protection in 10 seconds while as**

per the fine print disclaimer the same is merely the lathering time. This blatant contradiction is in itself proof of the deceptive marketing practices employed by the Respondent. It is a settled principle of law that fine print disclaimers or disclosures are inadequate to correct the deceptive impression generated by marketing campaigns with wide claims. Further fine print/inadequate disclaimers are in themselves, deceptive measures and contravene with the competition laws of the country.

- F. That in addition to the above, it is important to note that according to the FTC and numerous cases of this Honorable Commission, *inter alia*, the case reported as **2017 C L D 1550** when the disclosure of qualifying information is necessary to prevent an advertisement from being deceptive, the information should be presented 'clearly and conspicuous' and be placed 'as close as possible' to the advertising claim so that consumers can actually notice and understand it. A fine-print disclosure at the bottom of an advertisement, a disclaimer that is easily missed, a brief video superscript, or a disclaimer buried in a body of text unrelated to the claim being qualified are not likely to be effective. Nor can advertisers use fine print to contradict statements in an advertisement or to clear up misimpressions that the advertisement would leave otherwise. While evaluating the effectiveness of the disclaimer /disclosures provided in respect of the claims made out by the Respondent, the fact such as, prominence, presentation, placement, and proximity between the advertising claim and the associated disclaimer/ disclosure as per the view taken by the FTC in the manner of **Eband, Inc. and Ayman A.Difrawi 2016, Case No 6:16-cv-714-Orl-41TBS.** Hence, to ensure that disclosures are effective, advertisers are required to use clear and unambiguous language, place any qualifying information close to the claim being qualified, and avoid using small type or any distracting elements that could undercut the disclosure. After considering the above, there is no doubt that the Respondent has failed to substantiate the claims made in the advertisement of the product with reference to the character, properties, suitability for use and/or quality of use and in fact disseminated false and misleading information to the consumers in violation of Section 10 2(b) of the Act.
- G. That moreover, recently in the case reported as **2019 CLD 254**, wherein the claim of "Max ALL Purpose Cleaner" was under discussion it was held by this Honorable Commission with reference to the disclaimer i.e *"it kills 99.9% bacteria from surfaces, leaving floors and household surface, clean, shiny and germ free"* that the same *"does not appear in the same font, size as the claim itself even though it is in close proximity to it"* and therefore does not satisfy the standard of being "clear and conspicuous"
- H. That it is submitted that in the case of International Harvester Co., 104 F.T.C 949 at pg. 1058, it was held that, *"[i]t can be deceptive to tell only half the truth, and to omit the rest"*. This may occur where a seller fails to "disclose qualifying

information necessary to prevent one of his affirmative statements from creating a misleading impression." In this regard, it is imperative to add here that the claim "world No 1 anti-bacterial soap" has not been disclaimed /qualified by the Respondent whatsoever. Without prejudice to the foregoing, in the case reported as **2017 CLD 1609** the claim of safeguard soap i.e "Pakistan No 1 rated Antibacterial Soap" was under discussion. It was held that since, the word 'rated' has been displayed /written in significantly smaller font at the bottom of the advertisement an such a claim creates an impression and conveys the message that safeguard is 'Pakistan No. 1 Antibacterial Soap' in violation of Section 10(2)(b) of the Act. Hence, the disclaimers allegedly qualifying the claim fail to make necessary disclosure in accordance with law.

- I. That under the Zong Order (subsequently adhered to in various orders), this Honorable Commission has held that the term 'consumer' for the purpose of section 10 of the Act shall be construed as consumer but need not necessarily be restricted to the end consumer of the goods or service. The Zong Order states that "unlike the ordinary prudent man the thrust of ordinary diligence, caution/duty of care and ability to mitigate (possible inquiries) on the part of the consumer would not be considered relevant factors when looking at a deceptive commercial practice". Misleading advertising has been defined in Article 2(2) of the European Union Council Directive 84/450 as "any advertising which is in any way, including its presentation deceives or is likely to deceive the persons to whom its addressed or whom it reaches and which, by reason of the deceptive nature, is likely to affect their economic behavior or which, for those reasons, injuries or is likely to injure a competitor". Hence, an ordinary consumer cannot be expected to exercise diligence with respect to the false and misleading information disseminating by the Respondent. Accordingly, the marketing and packaging of the product amount to trickery and fraud which is bound to confuse/mislead and ordinary consumer to choose the products of the Respondent.
- J. That furthermore, in the Zong order this Honorable Commission has discussed that "in evaluating advertising representation, we are required to look at the complete advertisement and formulate our opinions on them on the basis of the net general impression conveyed by them and not on isolated scripts". In this regard, it is submitted that the Respondent's claim that "where there is lifebuoy there are few illness" is most likely to mislead the consumer particularly, parents of young children into forming a wrong judgment that the use of the said product would protect their children from cold and flu. The TVC of Lifebuoy Care and protect silver visually depicts and creates the net general impression that those children who use the said soap will not fall sick and resultantly would not have to take sick leaves from school. In a similar manner, the TVC of "Naya Life buoy Care & Protect" also projects that those children who have big dreams need "big protection" and would not fall sick if they use the Respondent's product. As such,



such claims of the Respondent tend to alter consumer buying in a deceptive manner to the sheer detriment of the Complainant and other similarly placed companies marketing anti-bacterial soaps and hand washes in the relevant market.

- K. That furthermore, in terms of section 10(2) (a) of the Act, it has been constantly held by this Honorable Commission that to prove deceptive conduct under section 10(2) (a) of the Act, it is not necessary to show actual deception or harm to competitors. It is sufficient to show the existence of deceptive marketing practice that has the potential to harm the business interest of the competitors. As per Section 10 (2) (a) of the Act business interest of an entity includes the goodwill it has been established in the relevant market including its over-all sales and image. Since, the Products pose as possible alternatives of the Dettol Range of Products an increased sale of the Respondent's products would have a direct impact on the business of the Complainant.

2.13 The Complainant, therefore, respectfully prayed for the following reliefs:

- i. Declare and order that the Respondent is marketing its products namely, Lifebuoy Care & Protect soap and Lifebuoy Hand Wash and all their variants in breach of Section 10 of the Act;
- ii. Direct the Respondent and its agents, distributors, dealers, affiliates and representatives to immediately remove the deceptive claims from the marketing materials and advertisements of Lifebuoy Care & Protect soap and Lifebuoy Hand Wash as well as all their variants;
- iii. Permanently restrain the Respondent, its agents, distributors, dealers, affiliates, employees and representatives from indulging in deceptive marketing practices while marketing and selling Lifebuoy Care & Protect soap or Lifebuoy Hand Wash and any or all their variants.
- iv. Any other relief appropriate in the circumstances of the case may also be allowed.

**3.1. RESPONDENT'S COMMENTS**

- 3.1 The complaint was forwarded to the Respondent for comments on May 14, 2020. The Respondent before the lapse of the deadline has demanded for an extension in time limit through letter dated June 02, 2020, which was granted vide letter dated June 10, 2020.
- 3.2 The Respondent has submitted its reply vide letter dated June 22, 2020, which is summarized below.
- 3.3 The Respondent is a fast moving consumer goods company engaged in the production and sale of various consumer products under-world renowned brands, *inter alia*, Lifebuoy soap and Lifebuoy hand wash, with reference to the Lifebuoy brand, the Respondent has been



granted a license by the Pakistan Standard and Quality Control Authority ('PSQCA') under the classification of Toilet soap.

- 3.4 The Respondent has mentioned that Lifebuoy is one of the oldest brand and has a simple mission to help consumers defend themselves against infection causing germs through regular hand washing. This is something reflected in all Lifebuoy brand activities and communications. Moreover Lifebuoy was created to save lives and the Respondent's business and social mission have always been guided by the same. Lifebuoy offers technology that is constantly updated to combat evolving germs and eliminating barriers to adopt good hygiene practices, especially among children. Lifebuoy is the longest present health soap brand in Pakistan and is even today the company's most widely available germ protection soap. Furthermore Lifebuoy brand has been accredited by the international organization of Royal Society of Public Health, United Kingdom.
- 3.5 The Respondent has stated that it denies each and every averment contained in the Complaint, unless or until the same or any part thereof is expressly and specifically admitted here in below.
- 3.6 Secondly, the Respondent has raised some preliminary legal objections, which have been discussed as below:
- 3.7 That the background to the present complaint lies in the order dated 26.12.2019 ('Dettol Soap Order') of this Honorable Commission through which the Complainant was held to have employed deceptive marketing practices in relation to its product, Dettol Soap. The aforementioned order was passed after a complaint was lodged against the Complainant by the present Respondent. Moreover, the present complaint filed by the Complainant against the Respondent has attempted to incorrectly paint an analogue situation between the findings in the Dettol Soap Order with the marketing practices employed by the Respondent vis-à-vis the Lifebuoy brand. This has been done by intentionally misstating in the complaint the claims made by the Respondent in relation to the Lifebuoy brand and by withholding information offered by the Respondent in relation to the claims. In light of the Dettol Soap Order, the Complaint is doing nothing more than a counter-attack against the Respondent which fails to stand on its merit.
- 3.8 The Respondent believes that, the evidence for the complaint being a mere tool of reprisal against it lies in the language of the Complaint itself. Large parts of the Dettol Soap Order have been reproduced and/or paraphrased within the grounds of the Complaint. This has been intentionally done to mislead Honorable Commission into considering the applicability of the Dettol Soap Order to the present Complaint. This is despite the fact that claims made by the Respondent are completely distinct and can only fall within the scope of the Dettol Soap Order when they are intentionally misinterpreted.
- 3.9 The Respondent has alleged that the further evidence of Complainant's *mala fide intent* behind the Complaint lies in the fact that the Complaint has been belatedly filed. The Respondent has been making the claims since the year 2018 and the initial correspondence between the Respondent and Complainant regarding the claims made was exchanged in

September, 2019. Despite knowing the Respondent's clear stance since then, the Complaint was only filed in May, 2020, with no explanation provided for the delay in filing the Complaint.

3.10 The Respondent has mentioned that, before considering the factual misrepresentation of claims made by the Complainant in the complaint, it is important to reconsider the board legal framework of the present proceedings as developed by this Honorable Commission through its various rulings. Through the compliant, the Complainant has sought a declaration against the Respondent, Under Section 10 of the Competition Act, 2010('Act-2010'). Through the Order Reported as **2010 CLD 1478** ('Zong Order') this Honorable Commission clarified the ambit of Section 10 and held by that a violation of the said provision occurs where there is a distribution of (1) false information and/or (2) misleading information to a consumer . In this regard, the Honorable Commission laid down elaborate tests to determine whether certain information qualifies as false or misleading, the details of which have been repeated in the complaint and do not require reiteration. This Honorable Commission further explained the term consumer has to be liberally interpreted as an ordinary consumer and that the marketing practice in questioned to be considered as a whole to get net general impression. This Honorable Commission has, therefore developed the jurisprudence of Section 10 with great specificity. These ingredients have been vaguely alluded to in the compliant with no clarity as to how each of the claims made by the Respondent are either false or misleading to an average consumer, keeping in mind the advertisements in which the claims have been made as a whole.

3.11 The Respondent has stated that, the Complainant has identified five claims made by the Respondent in relation to the Lifebuoy brand. These identified as follow:

- a. *'100% guaranteed protection from germs' ('Advertising Claim A')*
- b. *'Jaraseem say 100% yaqeeni hifazat' ('Advertising Claim B')*
- c. *' where there is lifebuoy there are few illness' ('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')*

3.12 As per this Honorable Commission's Order reported as 210 CLD1995 ('Head & Shoulders Order'), a claim made in an advertisement must be grounded on some reasonable basis before it is made. As will be elaborated below, the claims made by the Respondent can be recognizably substantiated and do not violate Section 10 of the Act.

#### **A. ADVERTISING CLAIM A & B**

3.13 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 germs. The Complainant throughout the complaint, has intentionally and repeatedly falsely stated that the Respondent is making Claim A whereas it is clearly evident in the television advertisements shared by the Complainant that claim A has never been made by the Respondent and only Actual Claim is made. The Complainant has connected Claim A to lodge the frivolous and baseless complaint. Therefore, tried to deceive this Honorable Commission by falsifying Claim A.

- 3.14 The Respondent believes that the Claim A is completely distinct from Actual Claim. The Complainant has alleged that the Respondent claims 100% protection from germ i.e. by using the Lifebuoy brand 100% of germs will be eradicated. What has been claimed by the Respondent through Actual Claim is that the Lifebuoy brand has been 100% proven to protect from germs. Moreover, in reference to Actual Claim, the Respondent can recognizably substantiate the same by relying upon a number of test results. Lifebuoy Soap has been tested in third party independent labs for germ protection efficacy as per ASTM E2783-11 which is the internationally recognized protocol for microbial efficacy testing. With reference to various germs, the Lifebuoy Care and protect Soap has produced the following results:

Sl. No.	Microbe	Sample ID	Log Reduction
1	Influenza A H1N1	TKT-199002G	3.08
2	S.aureus	R2X	3.4548
3	E.coli	R2X	4.1014
4	P.aeruginosa	C2	5.7539

Both the Lifebuoy Mild care and Lifebuoy Lemon soap bars have the same material formulation as Lifebuoy care and protect. (The certificate of sample TKT-19002G identifying it as Lifebuoy Mild Care Soap is Attached as **Annexure-B** and certificates of sample R2X and C2 identifying them as Lifebuoy Lemon Soap Bar are further attached as **Annexure-C** respectively.

- 3.15 The Respondent has stated that, relying upon the tests referenced above that proves the efficacy of lifebuoy soap against various germs, the Respondent can recognizably

substantiate the Actual Claim. The Actual Claim, therefore, does not violate Section 10 of the Act-2010. It is further pertinent to note that the Respondent, out of abundant caution, also includes a disclaimer of 'As per lab tests' whenever and wherever Actual Claim is mentioned. This fact has been wholly omitted by the Complainant in the complaint. As per this Honorable Commission's Order reported as **2017 CLD 1609 ('Safeguard Order')** a disclaimer must be clear and conspicuous.

- 3.16 The Respondent further believes that, various factors are further taken into accounts to determine whether the disclaimer is adequate such as its prominence, presentation, placement, and the proximity between the claim and disclosure. While Actual Claim do not require a disclaimer as they only refer to proven germ protection and not protection from 100% of germs, the Respondent's disclaimer still follows the guideline set by the Pakistan Advertisers Society (Copy of the Guidelines are attached as **Annexure-D**). The disclaimer is prominently displayed on screen for the duration which the claim is made. As such, it fully compiles the criteria set by this Honorable Commission. Moreover, it is important to mention that a claim similar to Actual Claim is also made by the Complainant while marketing its product, Dettol Soap. The Complainant uses the claim 'Be 100% sure' with the disclaimer of 'in removing 99.9% germs'. Similar to Actual Claim, Complainant's claim cannot be interpreted as a claim through which Complainant is guaranteeing 100% protection against germ.

**B. ADVERTISING CLAIM - C**

- 3.17 The Respondent has stated that, with reference to claim C, it is important to first clarify that it is a part of a jingle at the end of the television advertisement for Lifebuoy soap and is not a stand-alone statement made by the Respondent. Nonetheless, the Respondent can recognizably substantiate the claim. Analyzing the claim in the context of Lifebuoy soap, it is obvious that the illness referred to in Claim C are those which are generally preventable with the regular use of soap and nor all illness. The usage of soap and water is one of the most efficacious, easy, and cost-effective solutions to prevent the spread of infections causing germs. This has been recognized by international renowned bodies such as the Center of the Disease Control and Prevention ('CDC') and World Health Organization ('WHO') relying upon the tests referred above proving the efficacy of Lifebuoy Soap along with the importance of using soap and water to prevent disease, the claim that using Lifebuoy Soap reduces illness is grounded is a reasonable basis. Moreover, in this reference, reading material on the importance of washing hands from the WHO and CDC is attached as **Annexure-E** respectively. It is further submitted by the Respondent that through the peer reviewed journal Nicholson et al, Tropical Medicine and International Health 2014 (attached as **Annexure-F**), it has been scientifically proven that Lifebuoy soap with hygiene intervention has reduced the incidence of diarrhea, acute respiratory infections and eye infection in the past. The findings are also in line with several order published studies confirming role of soap in reduction of diarrhea and respiratory infections. That in fact contribute as leading causes of childhood mortality. Therefore, Claim C stands recognizably substantiated.



- 3.18 The Respondent has mentioned that without prejudice to the above, Claim C can be considered as a marketing slogan and not a stand-alone claim. This Honorable Commission has recognized the usage of trade puffs and/or marketing slogans in marketing practices through its Order dated **20.01.2012** ('**Baygon Order**'). Therein, this Honorable Commission held that marketing slogans / puffery generally is a vague expression of an opinion which is not quantifiable. Claim C states that the existence of Lifebuoy Soap reduce the number of illnesses. This statement can be interpreted as a marketing slogan as it cannot be qualified that the existence of Lifebuoy alone reduces illness however Lifebuoy soap and hand washing hygiene plays an important role as a first line defense against infection causing germs.

**C. ADVERTISING CLAIM - D:**

- 3.19 The Respondent has claimed that Lifebuoy is the No.1 Germ Protection soap in the world due to its high sales volume. This claim is no longer made by the Respondent. However, a fact omitted by the Complainant is that the Respondent also included a clear and conspicuous disclaimer whenever it made Claim D, which stated 'Unilever calculation based on Nielsen volume sales and information for the total markets (latest 12 months)'. This disclaimer appeared for the entire duration the claim was made and was the reasonable basis on which the Respondent supported the claim.
- 3.20 That prior to evaluating the data provided by Nielsen, it is important to highlight two decisions of this Honorable Commission where similar claims were made. Through the **Head & Shoulder Order**, it was held that Proctor and Gamble had recognizably substantiated their claim of being the World's No.1 Anti-Dandruff Shampoo on the basis of having the largest volume share in 56 markets as evaluated by Nielsen in its report. In contrast, in the **Safeguard Order**, Proctor and Gamble's claim that Safeguard was Pakistan No.1 Rated Anti-Bacterial Soap was rejected on the basis that the Nielsen report sought to be relied upon was only based on 600 consumers taken from two limited areas in Karachi and Lahore. This Honorable Commission further remarked that it was in fact the Lifebuoy brand which had the highest overall ranking.
- 3.21 The Respondent said that this Honorable Commission may consider Nielsen reports to evaluate whether a claim is substantiated or not, if it considers appropriate. With reference to Claim D, the Nielsen Report dated 22.02.2019 (Attached as **Annexure-G**) proves that Lifebuoy had the largest volume share in the hygiene segment of soaps in 44 countries. Similarly, the Nielsen Report dated 27.04.2020 (Attached as **Annexure-H**) proves that Lifebuoy leads the market share in the hygiene segment of soaps in 40 countries. In line with this Honorable Commission's jurisprudence, the Nielsen reports indicating Lifebuoy's leading volume share over its other competitors recognizably substantiate Claim D.

**D. ADVERTISING CLAIM - E:**

- 3.22 The Respondent submitted that it has made this claim in relation to Lifebuoy hand wash. It further states that using Lifebuoy hand wash for 10 seconds will provide 99.9%



protection from germs. Through the disclaimer, it is stated that the Claim E is made 'as per lab tests on indicator Organisms vs. an ordinary soap without actives'. While not necessary, the Respondent along with Claim E also gives the conspicuous disclaimer that the term 10 seconds in Claim E refers to lathering time. Advertising Claim E can be recognizably substantiated by the Respondent by relying upon the following test results which were conducted with the contact time of 10 seconds:

Sr. No.	Microbe	Sample ID	Log Reduction
1	E-faecalis	BCKT-20-001-F	3.13
2	E.coli	AJ10	3.1586
3	S.pyogenes	BCKT-20-001-F	3.86
4	Influenza A H1N1	TKT-20-003-F	4.67
5	S.pneumoniae	LB Total 10	4.8325
6	P.aeruginosa	OP12	5.8478

The certificate of sample BCKT-20-001-F, AJ10, OP12, and TKT-20-003-F identifying them as Lifebuoy hand wash has been submitted by the Respondent. The Respondent also submitted that an expert report from the Director, Unilever Research & Development, USA, is further attached so as to substantiate the technical reasoning of Claim E (Copy of the letter is attached and marked as **Annexure-I**).

- 3.23 The Respondent mentioned that, it is evident from the aforementioned test results and the expert letter, Lifebuoy hand wash has an efficacy of greater 99.9% against some of the most relevant micro-organism with the 10 second contact time. Advertising Claim E, therefore, is grounded on a reasonable basis.
- 3.24 The Respondent has requested that, if this Honorable Commission has any suggestion for modification to the claim, the Respondent undertakes to examine and incorporate them in accordance with law. The Respondent craves leave to urge further grounds and provide supplementary information to this Honorable Commission, if considered necessary. Further, in case Complainant responds to this para-wise reply, the Respondent reserves its right to provide a reply to Complainant's response. Moreover, this reply is without prejudice to any constitutional or jurisdictional objections that the Respondent may raise at the appropriate time before the appropriate forum.
- 3.25 Thirdly, para wise reply has been submitted by the Respondent, which is reproduced below:

- 3.26 The Respondent has denied the contents of paragraph 2.4 *ibid* by stating that the Respondent has not carried out any anti-competitive or deceptive marketing practices. The Complaint is nothing more than a counter-attack against the Respondent which fails to stand on its merits as every claim on which the Complainant is based on is misstated and concocted by the Complainant. Further the content of para 2.3 herein reproduced above is admitted by the Respondent to the extent that Respondent is engaged in the manufacturing, marketing, sale and distribution of consumer and household products, inter-alia under the world-renowned brand of Lifebuoy. However, the Lifebuoy brand does not fall under market category of anti-bacterial Soap. Lifebuoy Soap as per PSQCA standardization is a Toilet Soap. Lifebuoy soap has never been registered or asked to be registered under the drug laws enforced by the erstwhile Ministry of Health or Drug Regulatory Authority of Pakistan.
- 3.27 The contents of para 2.5 *ibid* are denied by the Respondent believing that, in fact, the Complainant who has a long standing history of being reprimanded by this Honorable Commission for engaging in deceptive marketing practices, having been founded in violation of Section 10 of the Act-2010 through the order dated 08.01.2015 ('Veet Order'), the order dated 11.08.2015 ('Dettol Surface Cleaner Order'), and the Dettol Soap Order. It is, thus the Complainant who is in the habit of repeatedly making false and misleading claims to consumers. The Respondent abides by the Act-2010 and the jurisprudence developed thereunder by this Honorable Commission. With reference to the claim made by the Respondent in relation to Lifebuoy Ittar Soap, the Respondent edited its advertisement campaign in the interest of a healthy and competitive marketplace without conceding any violation of the Act-2010 on its part, as evidenced by the Letter dated 02.07.2018.
- 3.28 The Respondent has denied the contents of herein reproduced para 2.5 and the Complainant is put to strict proof thereof. The Respondent did not explicitly claim any wrong-doing on its part as falsely alleged by the Complainant. The Respondent very clearly mentioned that it was editing its marketing campaign in the interest of a healthy and competitive marketplace and not because it is admitted to any wrong doing on its part.
- 3.29 The contents of paragraph 2.6 *ibid* are denied by the Respondent. First, through paragraph 2.6 the alleged claim 'kids haven't gotten weak, but germs have gotten strong, has been highlighted by the Complainant but was curiously omitted through the formal list of 'Claims' provided later in paragraph 2.11 of the Complaint reproduced above. The said claim, thus, even as per Complainant, does not violate Section 10 of the Act, 2010. Second, it has been stated that the Respondent has not provided any disclaimer which is legible to the naked eye. As has been clarified above, Advertising Claim A & B, D, and E have all been made with clear and conspicuous disclaimers appearing next to the said claims. Further, the contents of paragraph 2.7 are denied by the Respondent. As stated above, the Respondent claims 100% proven germ protection and not protection from 100% of germs. This claim has been intentionally misstated by the Complainant despite the fact that the correct and obvious interpretation of Actual Claim and Claim B was explained with great clarity to the Complainant through the letter dated 23.09.2019.

- 3.30 The Respondent has denied the content of Paragraph 2.7, 2.8 and 2.9 *ibid* by stating that the Complainant's intentional misrepresentation of Actual Claim and Claim B has further led it to falsely attribute to the Respondent that it has made a claim of silver oxide providing protection from 100% of germs. No comparative claim has been made regarding silver oxide and the Respondents claim has consistently of 100% proven germ protection, as evidenced by lab results. The *mala fide* intent behind the Complaint can be further gleaned from the fact that Complainant, while quoting the letter dated 23.09.2019 and annexing the same, did not include within Paragraph 2.9 *ibid* the correct and obvious interpretation of Actual Claim and Claim B which was provided to it through the said letter. The correct interpretation of Actual Claim and Claim B has been entirely omitted from the Complaint and a misrepresentation has been repeatedly espoused to mislead and deceive this Honorable Commission.
- 3.31 That the contents of Para 2.10 and 2.11 are denied by the Respondent as the disclaimers provided for Claim E are clear and conspicuous and do not require any further elaboration. With reference to the disclaimer of Claim E resting upon, '...lab results on indicator organism vs. and ordinary soap without actives', the same stands established through the documentary evidence provided with the reply. The 'credible clinical study' sought by the Complainant (which due to obvious exigencies of time and space cannot be included within a disclaimer in a television advertisement) has, therefore, been provided. With reference to the clarificatory disclaimer that the 10 seconds period refers to lathering time, it is unclear as to what exactly the Respondent is deceiving consumers into, as alleged by the Complainant. The lathering time of 10 seconds for Lifebuoy hand wash is what washes away the germ and hence provides protection from germs, as proved by the numerous lab tests quoted above. No false or misleading information, therefore, has been provided through Claim E.
- 3.32 Thirdly, the Respondent has replied to the grounds mentioned by the Complainant in the Complaint which is reproduced below:
- 3.33 The Respondent has denied the grounds herein reproduced in para 2.12 (A-F) *ibid*, by stating that the Respondent has not violated section 10 of the Act. Further, the Respondent claims 100% proven germ protection and '*jaraseem se 100% yaqeeni hifazat*' and not protection from 100% of germs. The Respondent has not made any claim in relation to silver oxide. Claim E stands recognizably substantiated in the light of the numerous lab results. Moreover, Complainant's insinuation of the alleged deception caused by the disclaimer of lathering time in the relation to the period of ten seconds in Claim E is wholly unclear. The ten seconds period can only refer to the lathering time and nothing else. This is also made obvious by the advertisement itself which shows a little girl using Lifebuoy hand wash for ten seconds, which is a clear and obvious reference to the lathering time. By looking at the advertisement holistically and understanding its net general impression, any lingering confusion (which should not exist in the first place) on part of the average consumer automatically stands abated. It is the ten seconds lathering time itself which washes away the germs, as stated in the claim. The disclaimer is merely clarificatory in nature and is neither a contradiction nor is it to deceitful. The Respondent believes that the

claims all stand recognizably substantiated, as detailed in the preliminary legal objections. Further the disclaimers, where necessary, are clear and conspicuous for consumers to read.

- 3.34 The contents of para 2.12 (G) are admitted by the Respondent to the extent of what has held in this Honorable Commission's order reported as 2019 CLD 254 ('Max Cleaner Order'). The applicability of the Max Cleaner Order to the Respondent's claims regarding Lifebuoy hand wash and Lifebuoy soap is however, denied by the Respondent. Furthermore, the contention raised in herein para 2.12 (H-K) are denied by the Respondent as Claim D made by the Respondent has been clearly qualified through the disclaimer 'Unilever calculation based on the Nielsen volume sales information for the total markets (Latest 12 months)'. The Claims stand recognizably substantiated and do not provide any false or misleading information. Moreover, Claim C is grounded in a reasonable basis and a holistic viewing of the advertisements conveys the correct message. Parents will, therefore come to the correct conclusion that using Lifebuoy product will protect their children from germs that cause illness, as established by the various test results. No harm, potential or otherwise, has been caused to Complainant.
- 3.35 The Respondent has, therefore, most respectfully prayed in the interests of justice that this Honorable Commission may be pleased to dismiss the instant Complaint and accordingly not initiate proceedings under Section 30 of the Act-2010 against the Respondent.

**REJOINDER BY THE COMPLAINANT**

- 4.1 The comments/reply of the Respondent were forwarded to the Complainant for its comments/rejoinder vide letter dated June 26, 2020. Later on the legal counsel of the Complainant has requested for extension in time for the submission of rejoinder, which was granted via letter dated July 15, 2020.
- 4.2 The Complainant has submitted its rejoinder vide letter dated July 29, 2020, the contents of which are reproduced below:
- 4.3 The Complainant has vehemently denied the Respondent's para-wise reply for being entirely based on misconceived, concocted and misleading facts application of law. The Complainant is of the view that the Respondent has completely failed to rebut the contentions raised in the Complaint *vis a vis* the deceptive marketing practice employed by it while marketing and distributing its products namely, Lifebuoy (Care and Protect) Soap and Lifebuoy hand wash. The Complainant undoubtedly, believes that the claims made out by the Respondent regarding the products clearly tantamount to distribution of false and misleading information to consumers that is *inter alia* capable of harming the business interests of the competing undertakings under section 10 2 (a) and 10 2 (b) of the Act. The Complainant has respectfully submitted that, the content of Complaint and what has already been submitted therein must be considered as an integral part of the rejoinder and it has made a genuine complaint.
- 4.4 The Complainant has stated that it reserve its right to make further additional submissions in defense, during the course of the hearing of the complaint, for kind assistance of this



Honorable Commission in discouraging and penalizing deceptive marketing practices employed by the Respondent. Additionally, the following response is submitted as a rejoinder to the misconceived contentions and submissions made by the Respondent, for the kind consideration of this Honorable Commission.

- 4.5 Initially, the para-wise reply to the preliminary legal objections were discussed by the Complainant as reproduced below:
- 4.6 The Complainant has vehemently denied here in reproduced para 3.8 *ibid* by stating it as incorrect. It is stressed that the allegation pertaining to an alleged “counter-attack” by the Complainant are entirely untrue and fabricated. As such the previous order dated 26-12-2019 i.e. Dettol Soap Order of this Honorable Commission is completely unrelated to the titled Complaint which stands on its own merits. The allegations and averments made by the Respondent in the paragraph under reply are just to create smokescreen against its own deceptive marketing practice and wrong doings.
- 4.7 The Complainant has strongly denied the para 3.9, 3.10, 3.11 and 3.12 *ibid* for being entirely untrue and incorrect. There is no cavil to the fact that the titled complaint successfully makes out a claim of deceptive marketing practices against Respondent. Further it is based on a distorted and fabricated version of the facts as well as complete misunderstanding of the law on the subject matter. The Complainant has highlighted the claims that are misleading to the ordinary consumer. The Respondent has not substantiated the claim.
- 4.8 The Complainant has denied the contents reproduced here in para 3.13 to 3.16 for being untrue and fabricated regarding the claim A and B. Admittedly, the claims A and B i.e. “100% guaranteed protection from germs” or “Jaraseem sey 100% yaqeeni hifazat” appears in the TVC and other marketing material of Lifebuoy (Care and Protect (Silver) soap (Lifebuoy Silver Soap) without providing a sufficient disclaimer in this regard whatsoever. The TVC contained in the USB appended with the complaint clearly shows that Respondent is misleading the consumer by making claim A and B. (Copies of the screenshot from different TVC of the products are attached as **Annexure-J**). The simple interpretation by the ordinary consumer of either claim “100% guaranteed protection from germs” or “Jaraseem sey 100% yaqeeni hifazat” at first instance is that the Respondent’s product successfully eradicated 100% of all germs. The misconception is enough to gain an unfair advantage in the market which is capable of harming the business interest of any competing undertaking. Instead of making claim A i.e. “100% guaranteed protection from germs” the Respondent is making the claim “100% proven germ protection” substantiating with third party lab reports. In this regard, it is worthwhile to mention that even otherwise the lab test i.e. ASTM E2783-11 quoted by the Respondent does not prove that the product provide 100% “proven” germ protection since the log values used to denote reduction in numbers of live bacteria cannot give a value of 100%. In such scientific testing, the log reduction is always denoted in decimals not in whole numbers. (Copies of articles on log values are attached as **Annexure-K**).



- 4.9 The Complainant believes that the Respondent has no basis to make absolute claim regarding germ reduction and the same squarely falls within the ambit of dissemination of false and misleading information that is capable of influencing consumers as well as adversely affecting the business of other undertaking in violation of section 10 of the Act. Furthermore, the Respondent has accepted the claim B i.e. "Jaraseem sey 100% yaqeeni hifazat" as one made out by it and has thus employed the deceptive claim A i.e. claim "100% guaranteed protection from germs" which translates as Jaraseem say 100% yaqeeni hifazat. The Complainant believes that the claims do not fulfil the criteria of "Clear and conspicuous" as per the dictum laid down by various esteemed judgments including 2017 CLD 1609 (the Safeguard Order) and 2019 CLD 254. In the light of above para 4.8 *ibid* it is emphasized by the Complainant that 100% value claim remains unsubstantiated. The Complainant believes that the guidelines of the "Pakistan Advertisers Society" do not have an overriding effect over the express provisions of the Act as well as the dictum laid down by this Honorable Commission regarding disclaimers. Moreover, the contents of para 3.16 *ibid* is denied by the Complainant for being irrelevant.
- 4.10 The Complainant has denied the content reproduced in para 3.17 and 3.18 respectively by stating that the Claim C has not be substantiated by the Respondent and amounts to puffery.
- 4.11 The Complainant has denied the paragraph 3.19, 3.20 and 3.21 *ibid* respectively by stating it as incorrect and misleading. The alleged claims of the Respondent are tenable and nothing gives it the right to rate its product as "World's No. 1" in any manner.
- 4.12 The Complainant denied the para 3.22 *ibid* to the extent that the disclaimer "as per lab test on indicator organisms vs. ordinary soap without actives" and statement "lathering time are clear and conspicuous. Given the number and type of microbes present in the atmosphere today are immeasurable, asserting 99.9% protection from germs is clearly misleading and deceptive to the ordinary consumer. Furthermore, as highlighted in the above titled Complaint laboratories are controlled environments and can by no stretch of imagination duplicate real life situation.
- 4.13 The Complainant has denied the para 3.23 and 3.24 *ibid* as these justifications do not save claim E from being deceptive and misleading as envisaged under section 10 of the Act.
- 4.14 Secondly, the para-wise reply to the facts in the Complaint was made by the Complainant, which is reproduced below:
- 4.15 The Complainant has denied the herein reproduced para 3.26 and emphasized on the para 4.6 *ibid*. The Complainant believes that the para 3.27 *ibid* has no nexus to the deceptive, fraudulent and misleading marketing practices employed by the Respondent. The Complainant has emphasized on the para 4.6 and 4.7 *ibid*.
- 4.16 The Complainant has denied the contents of para 3.28 and 3.29 *ibid* respectively as being incorrect and distortive in nature. It is reiterated that the letter dated 02.07.2018 whereby the Respondent modified the claim with respect to "Lifebuoy Ittar Protect Soap"

tantamount to the admission that the claim under dispute is detrimental to the larger interest of a healthy competitive market place. The Complainant has mentioned that the claim "kids haven't gotten weak, but germs have gotten stronger" has been highlighted since the same appears in the TVC and aids in creating a misleading "net general impression" and hence clearly violates section 10 of the Act.

- 4.17 The Complainant has denied the contents of para 3.29 and 3.30 *ibid* respectively, and emphasized on the herein reproduced para 4.8 and 4.9. Further the Complainant also has denied the herein reproduced para 3.31 and emphasized on para 4.12 and 4.13 *ibid* respectively.
- 4.18 Thirdly, the reply to the Grounds have been made by the Complainant as reproduced below:
- 4.19 The Complainant has denied the content of para 3.33 *ibid* by stating it a mere distortion of facts. The Complainant has emphasized on herein reproduced para 4.6 and 4.7 respectively. It is submitted by the Complainant that the TVC of Lifebuoy Silver clearly depicts the claims made out by the Complainant *vis a vis* the efficacy of "Silver Oxide" against germs and emphasized on para 4.12 and 4.13 *ibid* respectively. The content in para 3.34 *ibid* regarding ground G is denied to the extent that it states that the judgment reported as 2019 CLD 254 is inapplicable to the matter at hand. Under section 10 2(b) of the Act and the dictum laid down by this Honorable Commission actual harm to the business of a competing undertaking is not the sine qua non for providing false, deceptive marketing practice employed by any entity that tricks the ordinary consumer.
- 4.20 The Complainant humbly prayed that this Honorable Commission may please accept the titled Complaint as prayed and provide any other relief which the Commission deems fit and appropriate may also be granted.

#### 5. REJOINDER OF THE RESPONDENT

- 5.1 The rejoinder of the Complainant was forwarded to the Respondent for its reply vide letter dated August 10, 2020. Later on the legal counsel of the Respondent requested for extension in time for the submission of reply to the rejoinder, which was granted via letter dated August 26, 2020.
- 5.2 The Respondent submitted its reply vide letter dated August 31, 2020, the contents of which are reproduced below:
- 5.3 The Respondent has denied the herein reproduced para no 4.3 by stating that it has recognizably substantiated the claims and has not employed any deceptive marketing practices. The Respondent has put the Complainant to strict proof for baseless allegations.
- 5.4 The Respondent has denied the content of the para 4.6 and 4.7 *ibid* by stating that the Complainant has failed to establish all alleged claims of Deceptive Marketing Practices. The Complainant has failed to provide any evidence for its statement that the Respondent's

narration of events are fabricated. The Respondent has stated that in the matter of record it has been making the claims since the year 2018 and the Complainant only filed the complaint after the Dettol Soap Order was passed by the Honorable Commission.

- 5.5 The Respondent has denied the herein reproduced para 4.8 and 4.9 by stating that the Respondent has not made the claim as stated by the Complainant (*100% guaranteed protection from germs*) and has only made actual claim (*100% proven germ protection*) in marketing campaigns. The claim stated by the Complainant does not come anywhere in the television commercial, but the actual claim by the Respondent is clearly shown on the packaging of the Respondent's products. Further, both the claims cannot be read interchangeably due to different meanings. The Complainant's assumption that the ordinary consumer will perceive in Complainant's own interpretation is entirely misplaced. Moreover, the Respondent has also denied the claim of lab tests conducted gave 100% log reduction value. The Complainant's understanding of ASTM E2783-11 standard is erroneous as it is a standard from assessment of antimicrobial properties of any test material and is not a lab test itself. As the claim states, *100% proven germ protection not 100% protection from germs*. The Respondent has stated that the lab results submitted, recognizably substantiate the Claim A and B.
- 5.6 The Respondent mentioned that the Complainant has admitted that the Respondent does not actually use Claim A but the Claim A is the alleged English translation of Claim B. Further the alleged translation provided by the Complainant is completely specious as the phrase "Jaraseem se 100% yaqeeni hifazat" is better translated as "100% proven germ protection" which is the Actual Claim. The Respondent believes that the disclaimers issued are in accordance with the directions of the Honorable Commission in various judgments. The Respondent has denied the claim that the guidelines of "Pakistan Advertisers Society" have an overriding effect over the provisions of the Act or the guidelines of this Honorable Commission.
- 5.7 The Respondent has denied the para 4.10 and 4.11 *ibid* by stating that it has perceptibly substantiated the claim by verifiable evidence. The Nielson report as provided by the Respondent in its reply to the Complaint clearly shows that Lifebuoy leads the market in terms of sales volume. The Claim D is in line with the verdict made by the Honorable Commission in the Safeguard Order.
- 5.8 The Respondent has denied the herein reproduced para 4.12 and 4.13 by citing that the disclaimers exhibited by the Respondent are in accordance of law. The Complainant's argument that Claim E is deceptive due to number of microbes present in the environment being immeasurable is another example of Complainant's codification of the claim made by the Respondent. The Respondent states that it has not claimed 99.9% protection from all germs present in the environment but limit Claim E to "*99.9% germs protection in 10 seconds*". In this context Claim E refer to the common germs present in the environment and not all germs which is substantiated with lab test reports.
- 5.9 The Respondent has denied the para no 4.16 *ibid* the statement quoted by the Complainant has been incorrectly quoted and clipped from the context provided in the said para. The

full statement was that the Respondent edited its marketing campaign for Lifebuoy Ittar Protect Soap in the interest of a healthy and competitive marketplace without admitting to any wrong doing on its part. The Respondent has not admitted the claim in relation to Lifebuoy Ittar Protect Soap was detrimental to larger interest of a healthy competitive market place, as stated by the Complainant in the denied para reference. Further the Respondent in its response has admitted that the Complainant has highlighted the claim "*Kids haven't gotten weak, but germs have gotten stronger*" but dropped it from the formal list of Claims.

- 5.10 The Respondent has denied the grounds D to K mentioned in para 4.19 *ibid* and detailed in para 2.12 *ibid* by stating that it has substantiated the claims and has not provided any false and misleading information. The Respondent further stated that the Max Cleaner Order is inapplicable to the Respondent's case. The Respondent ensures that the Claim C is grounded in a reasonable basis and a holistic viewing of the advertisements conveys the correct message.
- 5.11 The Respondent has most respectfully prayed that this Honorable Commission may please dismiss the instant Complaint.

**6. ANALYSIS**

- 6.1 As mentioned in para 1.4 above, the mandate of this enquiry is to determine whether, *prima facie*;
- a) The Respondent's conduct *is capable of harming the business interest* of the Complainant in violation of Section 10 (1) of the Act, in terms of Section 10 (2) (a) of the Act; and/or
  - b) The Respondent's conduct pertains to *the distribution of false or misleading information to consumers related to character, place of production, properties and quality of goods*, in violation of Section 10 (1) of the Act, in terms of Section 10 (2) (b) of the Act?
- 6.2 One of the objections raised by the Respondent that the complaint is nothing more than a counter-attack against the Respondent as it was lodged soon after the '**Dettol Soap Order**' dated 26-12-2019, wherein the present Respondent, i.e. M/s Unilever Pakistan Limited was the Complainant. Moreover, the Respondent submitted that it had been involved in making such claims since year 2018. However, it has been observed that prior to lodging a complaint with the Commission, various correspondence had been made by the Complainant via letters dated June 27, 2018 and September 17, 2019 with the Respondent for misleading advertisement regarding Lifebuoy Ittar and Lifebuoy Care and Protect Soap. Through the abovementioned letters, the Complainant had requested the Respondent to follow the code of Advertising Practices issued by Pakistan Advertising Society which was signed by both the parties. It is also pertinent to mention here the Complainant had also informed the Respondent that in case of non-compliance, the matter will be taken before



the Commission. This was mentioned categorically in the letter dated September 17, 2019, which was prior to the 'Dettol Soap Order'.

- 6.3 Before moving forward, it is also necessary to establish as to what constitutes as violation of Section 10 of the Act. The Commission, in its order held against **M/s CMPak Limited<sup>1</sup>** has defined "False" and "Misleading" information as deceptive marketing practices in the following manners:

**False Information:**

*'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:**

*"Whereas '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."*

- 6.4 The above reference suggests that any information distributed via marketing campaign can mislead consumers if it is vague in any way or has omitted certain material information, even if such a conduct is not deliberate. Consequently, distribution of misleading information is capable of giving a wrong impression with respect to a good or service which could induce a consumer into distorted decision making, hence, causing consumer injury. Therefore, if the Respondent's conduct is proven misleading, it would amount to deceptive marketing practices in terms of Section 10 of the Act.
- 6.5 The basic allegation under the complaint is the claims made by the Respondent, through TVCs circulated on various advertising channels. In order to determine instance of deception in the claims, the main focus of the Enquiry Committee, as per the general practice, is to evaluate its "net general impression". It was held in the Zong Order **(2010 CLD 1478)** "the approach of the Commission is to evaluate complete advertisements and an opinion regarding deception is to be formulated on the basis of the net general impression conveyed by them and not on isolated excerpts."<sup>2</sup>

<sup>1</sup> <http://cc.gov.pk/images/Downloads/ZONG%20-%20Order%20-%202019-09-09%20.pdf>

<sup>2</sup> <https://www.cc.gov.pk/images/Downloads/ZONG%20-%20Order%20-%202019-09-09%20.pdf>



- 6.6 The Canadian Competition Commission, according to its Competition Act, states: *"To determine whether a representation is false or misleading, the courts consider the "general impression" it conveys, as well as its literal meaning."*<sup>3</sup>
- 6.7 Moreover, we must kept in mind the principle laid down by the *Commission in the matter of Zong & Ufone (2010 CLD 1478)* that the advertisement has to be viewed as a whole without emphasizing isolated words or phrases apart from their context. The said marketing campaign was being launched since the year 2018 as admitted by the Respondent.
- 6.8 A case of Standard Oil of Calif, 84 F.T.C 1401 (1974) at pg. 1471 by the FTC puts light on how to evaluate the overall impression and impact of an advertisement.
- "[i]n evaluating advertising representations, we are required to look at the complete advertisement and formulate our opinions on them on the basis of the net general impression conveyed by them and not on isolated excerpts."*<sup>4</sup>
- 6.9 In pursuit of the above, the Enquiry Committee will examine the varied portions of marketing material of the Respondent on TVC's and other social and print media, submitted by the Complainant. The marketing campaign of the Respondent, under scrutiny of this enquiry, initiated in the year 2018, till date.

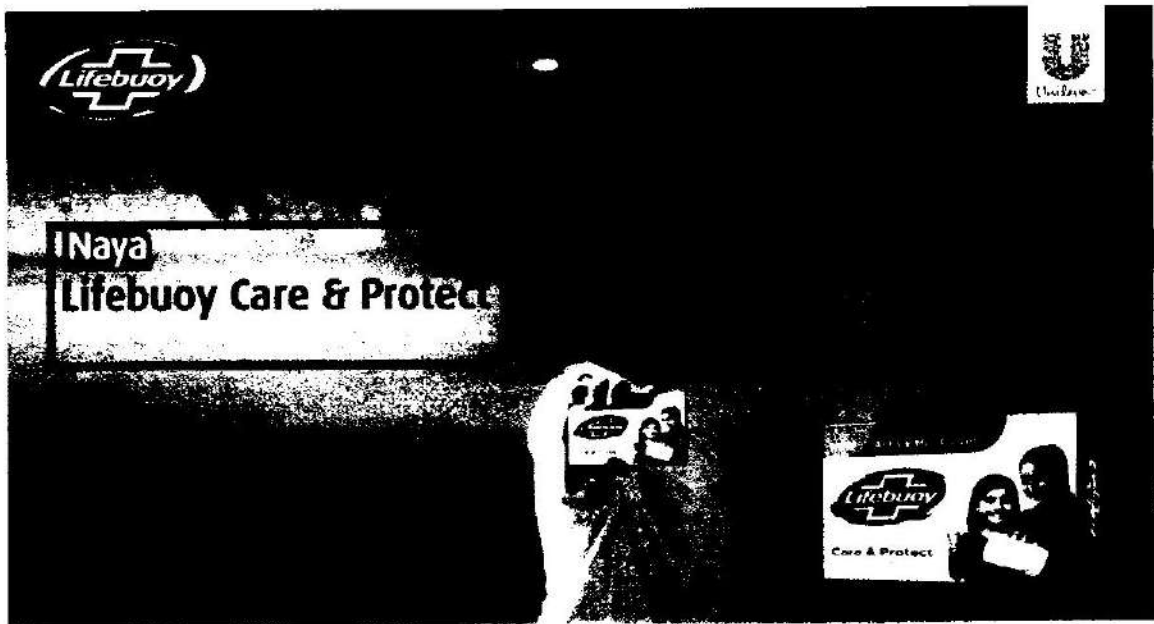


Fig. 1 (TVC Screenshot)

<sup>3</sup> <http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03133.html>

<sup>4</sup> [https://www.ftc.gov/sites/default/files/documents/commission\\_decision\\_volumes/volume-84/ftc\\_volume\\_decision\\_84\\_july\\_-\\_december\\_1974pages\\_1401-1493.pdf](https://www.ftc.gov/sites/default/files/documents/commission_decision_volumes/volume-84/ftc_volume_decision_84_july_-_december_1974pages_1401-1493.pdf)

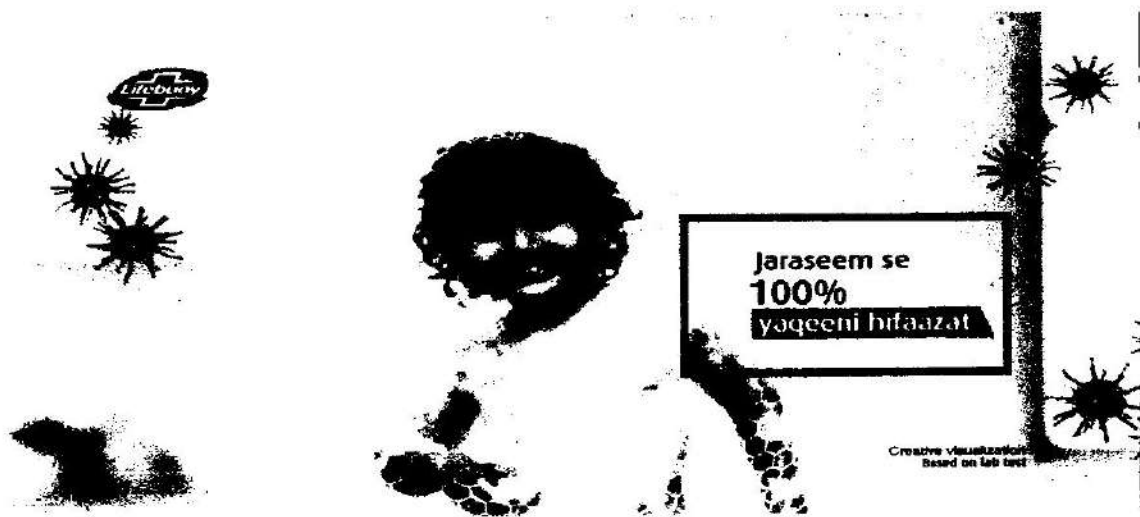


Fig. 2 (TVC Screenshot)

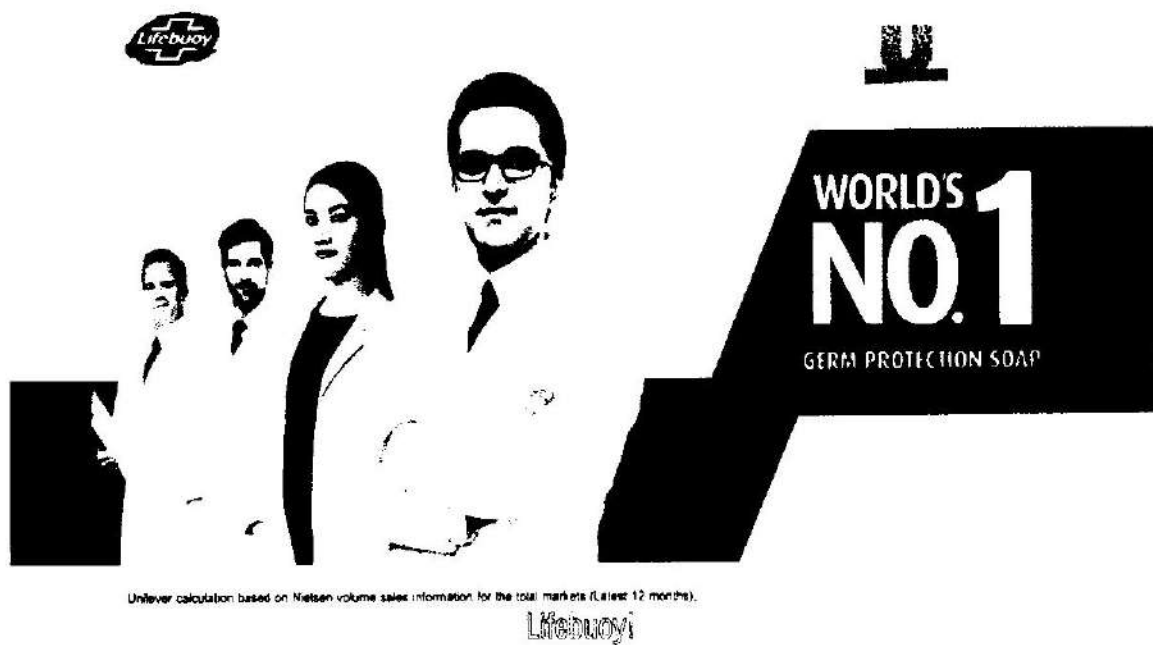


Fig. 3 (TVC Screenshot)

2 A.A



USE **LIFEBUOY ZAPZOOM**  
HANDWASH



**KILLS 99.99% GERMS IN  
10 SECONDS!\***

Fig. 4 (TVC Screenshot)



Fig. 5 (Packaging)



Fig. 6 (TVC Screenshot)

6.10 From the above TVC's adverts, it has been observed that the Respondent has made the following main claims to advertise its Products. The Complainant has also highlighted the below mentioned claims of the Respondent.

- A. "100% proven germ protection" (Fig. 5)
- B. "Jaraseem sey 100% yaqeeni hifazat" (Fig. 1&2)
- C. "where there is lifebuoy there are few illnesses"(Fig. 6)
- D. "World's No.1 germ protection soap" (Fig. 3)
- E. "99.9% germ protection in 10 seconds" (Fig. 4)

The disclaimers that appears on TVC's states the following:

For Claim-A, *Disclaimer has been given on packaging;*

For Claim-B, *Creative visualization; Based on lab test;*

For Claim-C, *No disclaimer*

For Claim-D, *Unilever calculation based on Nelsen volume sales information for the total months (last 12 months);*

For Claim-E, *As per Lab test on indicator organisms vs an ordinary soap without active.*

6.11 Although robust arguments have been provided by the Respondent to substantiate its claims, the overall impact of the advertisement needs to be taken into consideration. Since, the claims of the Respondent are based on Lab test reports which were conducted against various type of bacteria's. The Respondent submitted that every claim, made by it, have been backed by reasonable scientific evidence and appropriate disclaimer has been given. The Complainant alleged that during the TVC the disclaimer remains for a very short duration and the font size is not clear enough for the reader to read and understand what has been said in the TVC. In this regard, the Commission, in the case reported as 2017

4 A.A



**CLD 1550** when the disclosure of qualifying information is necessary to prevent and advertisement from being deceptive, "the information should be presented 'clear and conspicuously' and be placed as close as possible to the advertising claim so that consumers can actually notice and understand it". The principle regarding disclaimer/disclosure is that they must be 'clear and conspicuous' and placed 'as close as possible' to the advertising claim. While explaining 'clear and conspicuous' disclosures, the FTC in the matter of **Epand, Inc. And Ayman A. Difrawi2016, Case No: 6:16-cv-714-Orl-41TBS** has made it clear that:

- i). *In any communication that is solely visual or solely audible, the disclosure must be made through the same means through which the communication is presented. In any communication that includes a representation requiring a disclosure and is made through both visual and audible mean, such as a television advertisement, the disclosure must be made through the same means through which the representation is made;*
- (ii). *A visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from accompanying text or other visual elements so that it is easily noticed, read and understood;*
- (iii). *An audible disclosure, including the telephone or streaming video, must be delivered in a volume, speed, and cadence sufficient for ordinary consumers to easily hear and understand it;*
- (iv). *In any communication using an interactive electronic medium such as the internet software, the disclosure must be unavoidable.*
- (v). *The disclosure must use the diction and syntax understandable to ordinary consumers and must appear in each language in which the representation that requires the disclosure appears;*
- (vi). *The disclosure must comply with these requirements in each medium through which it is received, including all electronic devices and face-to-face communications;*
- (vii). *The disclosure must not be contradicted or mitigated by, or inconsistent with, anything else in the communication; and*
- (viii). *When representation or sales practices target a specific audience, such as children or elderly or the terminally ill, "ordinary consumer" includes reasonable members of that group.*

6.12 Therefore, it is safe to say that the placement of the disclaimers are not up to the standards of being "clear and conspicuous", in so far as the proper acceptable use of a disclaimer is concerned. This, hence, establishes that the advertisements have been made in a way that gives the overall impression that Lifebuoy actually means what it has claimed and for this substantial basis needs to be provided.

6.13 Abovementioned excerpts help us to determine that in case of the 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", provide "100% proven germ protection", ensures "Jaraseem se 100% yaqeeni hifazat", "where there is lifebuoy there is few illness" and "99.9% germ protection in 10 seconds". Additionally, the given disclaimers are technical concepts specifically understood and comprehended appropriately only by marketing experts and not the Ordinary consumers. The Commission in one of its order in the matter of Zong & Ufone (2010 CLD 1478) has define the '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 and 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.

6.15 In the following discussion, analysis will be carried out on the basis of the submissions made by both the parties for each claim made by the Respondent.

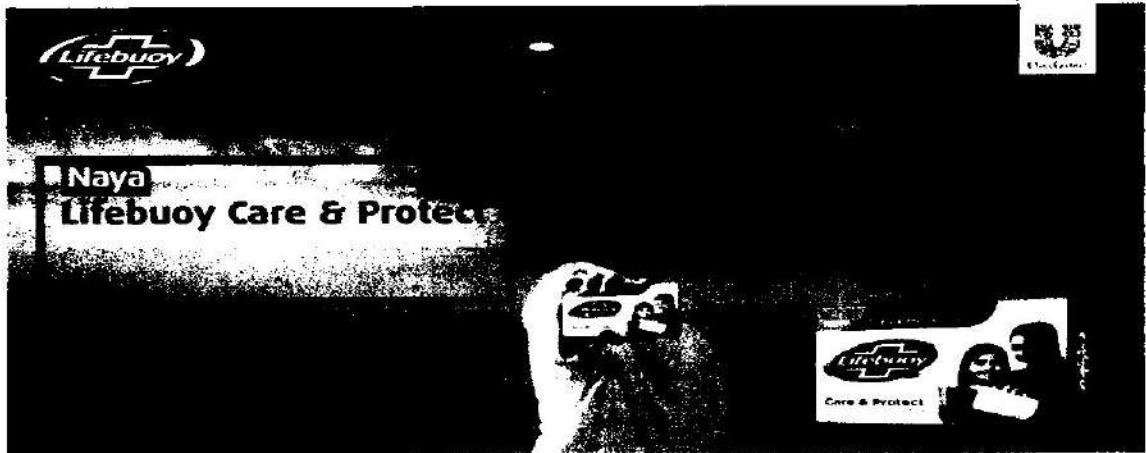
A. WHETHER, PRIMA FACIE, THE RESPONDENT IS INVOLVED IN THE DISTRIBUTION OF FALSE OR MISLEADING INFORMATION TO CONSUMERS RELATED TO CHARACTER, PROPERTIES, SUITABILITY FOR USE AND QUALITY OF GOODS IN VIOLATION OF SECTION (10) (2)(b) OF THE ACT.

6.16 All the claims of the Respondent will be discussed separately in order to determine that whether the Respondent has violated the provisions of Section 10 of the Act or not.

Advertising Claim-A & B ("100% proven germ protection" & "jaraseem say 100% yaqeeni hifazat")

6.17 For ease of reference, the relevant screenshots of TVC advertisement of the Respondent are given below:





- 6.18 With regards to the claim "100% proven germ protection", it must be clarified that the same has been incorrectly reproduced as "100% guaranteed germ protection" in the complaint. The Enquiry Committee's findings below will consider whether the claim of "100% proven germ protection" through the use of Lifebuoy amounts to a violation of Section 10(2) (b) of the Act.
- 6.19 The Complainant submitted that the silver oxide, present in the Lifebuoy soap, has not been scientifically validated and proven in terms of guaranteed germ protection. Moreover, the Complainant, vide letter dated 17-09-2019, requested to the Respondent to amend the claims aired on various TV channels as such claims seems to be an attempt to gain unfair advantage against competitors by misleading the consumers and public. The Respondent, vide letter dated 23-09-2019, refused to amend the TVC by stating that '*Lifebuoy Care and Protect variants provides 100% proven germ protection with the disclaimer "as per lab tests"*'. In this regard, the Complainant submitted that the laboratories are controlled environments in which tests are conducted in a very different way that does not correspond to the open environment.
- 6.20 In addition to this the Complainant submitted that claiming 100% protection from germs is an impertinent claim and mere deception play. Given the numbers and types of microbes present in the atmosphere today are immeasurable, asserting a 100% protection from germs is clearly misleading and deceptive to ordinary consumer. Even otherwise, achieving, a value of 100% is not even mathematically possible since the reduction in microbes/live bacteria is deduced by way of log reduction. The Respondent submitted that it has relied upon a number of test results conducted in third party independent labs for germ protection efficacy as per ASTM E2783-11, which is an internationally recognized protocol for microbial efficacy testing. It is pertinent to mention here that the Lifebuoy Products were tested only for the bacteria and virus including, Influenza A, H1N1, Staphylococcus aureus, Escherichia coli and Pseudomonas aeruginosa, while the claims incorporates the word "Germ".
- 6.21 Since, the tests were performed against four type of bacteria's/virus including; Influenza A, H1N1, Staphylococcus aureus, Escherichia coli and Pseudomonas aeruginosa whereas, the term 'germs' has been used by the Respondent in the above mentioned claim which is a

much wider term. In order to understand it more clearly it has been searched in the dictionary.

The general definition of germ given in oxford dictionary is:<sup>6</sup>

- *A microorganism, especially one that causes disease*
- *A portion of an organism capable of developing into a new one or part of one.*

Whereas, medical dictionary define the terms 'Germ' as under:<sup>7</sup>

- *A small mass of living substance capable of developing into an organism or one of its parts*
- *a very small living thing that causes disease*

Germs are disease-causing microorganisms that cause infection and illness. The four major types of germs are bacteria, viruses, fungi, and protozoa. They can invade plants, animals, and people, and sometimes they make us sick.<sup>8</sup>

6.22 Germs are disease-causing microorganisms that cause infection and illness. The best defense against germs is good hygiene and regular cleaning, whether it is your house or your body. Not only does this help to prevent the spread of germs, it also removes the types of conditions that encourage them to grow. The four major types of germs are bacteria, viruses, fungi, and protozoa. They can invade plants, animals, and people, and sometimes they make us sick. Germs can be categorized into four types<sup>9</sup>:

- A. Bacteria** are single-celled organisms, which can reproduce very quickly. Bacteria get nutrients from their environments so they can live. In some cases, that environment is a human body. Bacteria can reproduce outside of the body or within the body as they cause infections.
- B. Viruses** are simpler than bacteria in structure and are usually not even really considered a living organism. They possess the same ability as bacteria to clone themselves and reproduce rapidly. Viruses can only survive by taking over a host cell in another creature, so they are constantly looking for animals and humans to infect. They need to be inside living cells to grow and reproduce. Most viruses cannot survive very long if they are not inside a living thing like a plant, animal, or person.
- C. Fungi** are multi-celled (made of many cells), plant-like organisms. Unlike other plants, fungi cannot make their own food from soil, water, and air. Instead, fungi get their nutrition from plants, people, and animals. They thrive in damp, warm places. Most fungi are not dangerous. Examples of something caused by fungi are ringworm and athlete's foot, an itchy rash that develops between the toes.

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<sup>6</sup> <http://www.oxforddictionaries.com/definition/english/germ>

<sup>7</sup> <http://www.merriam-webster.com/dictionary/germ>

<sup>8</sup> <http://www.mayoclinic.com/>

<sup>9</sup> <http://www.mayoclinic.com/>



D. **Protozoa** are one-cell organisms that love moisture and often spread diseases through water. Some protozoa cause intestinal infections that lead to diarrhea, nausea, and belly pain. Some protozoa invade your body through the food you eat or the water you drink. Others, such as malaria, are transmitted by mosquitoes<sup>10</sup>.

- 6.23 The test organisms used by laboratory were *Pseudomonas aeruginosa*, *Escherichia coli*, and *staphylococcus aureus*, which are only three species of bacteria. Each of them belongs to a genus having many species. Like *Pseudomonas* is a genus belonging to a family *Pseudomonadaceae* containing 191 validly described species. The efficacy of Lifebuoy Products has been tested against only one type of virus. It is evident that the test of the Respondent was conducted on three species of bacteria and one type of virus and the term used on the packaging of the product and on TVC is different i.e. Germ or Jaraseem. Germ is a much wider term and bacteria are only one form of germs. As the tests of the Respondent are conducted only for bacteria and virus, therefore it is inappropriate and deceptive to articulate that:

**"100% proven germ protection"**  
**&**  
**"jaraseem say 100% yaqeeni hifazat"**

- 6.24 The Respondent submitted that the claim '*100% proven germ protection & Jaraseem say 100% yaqeeni hifazat*' has been misinterpreted by the Complainant as it only refers to proven germ protection and not protection from 100% germs. In this regard, if we consider the argument of the Respondent that the Lifebuoy Products is proven for germ protection instead of providing protection from 100% germs, the claim is still, *prima facie*, false and misleading as it does not refer the kind of germs for which the Lifebuoy Products are tested. The targeted audience in this matter is the ordinary consumer, and from whom there is no extra level of caution is expected. This claim gives the ordinary consumer the net general impression that it is an absolute representation and that the Product will provide 100% protection from all kind of germs. Hence, the use of term 'Germ' by the Respondent in its marketing claim is deceptive in nature. Reliance is placed on the Commission's earlier decision, **In the Matter of Show Cause Notice Issued to M/s Reckitt Benckiser Pakistan Limited**, wherein the Commission held that "*the terms 'germs' under a common definition include bacteria, viruses and fungi*". It was further held that "*while it is evident that the product has tested successfully against four type of bacteria, there is no evidence that is has been tested against viruses and fungi, and to use the term 'germs' therefore becomes blatantly misleading.*"
- 6.25 Moreover, laboratory conditions are based on controlled environment which is substantially different from the environment found in common household, and special steps are required to achieve 100% efficacy against bacteria and virus in normal conditions.

<sup>10</sup> <http://kidshealth.org/kid/talk/qa/germs.html#>

- 6.26 In this regard, it is relevant to mention that the Commission, in its order held against M/s **CMPak Limited**<sup>11</sup>, has defined "**False**" and "**Misleading**" information as deceptive marketing practices in the following manners:

**False Information:**

*'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:**

*"Whereas '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."*

- 6.27 It is clear, after reviewing the packaging of the Lifebuoy Products and the TVC advertisement, that the Respondent is using a wider term, "Germs", which deceives the consumers and makes them believe that the product is effective against all kind of germs including viruses and fungi. Therefore, the claim that the product is "*100% proven germ protection & Jaraseem say 100% yaqeeni hefazat*" is not only capable of harming the business interest of other undertakings making antibacterial soaps, but also amounts to deceive the consumer about the character, properties and quality of their own product and, *prima facie*, violates Section 10 (1) in general and in particular Section 10 (2) (a) & (b) of the Act.
- 6.28 In addition to the above, the Respondent submitted that the claim has been qualified by a disclaimer i.e. '*as per lab test*'. The test reports submitted by the Respondent in order to prove the efficacy up to 100% of the Lifebuoy soap, against germs, only covers four (4) types of bacteria and not the germs category as a whole. In the disclaimed part, the Respondent has not mentioned the name and type germ which have been tested to prove the efficacy of Lifebuoy Products. Further, the disclaimer was written in a small font which is difficult to read by the ordinary consumer. It has been observed that the disclaimer in advertising claim A does not appear in the same font size as the claim itself, even though it is in close proximity to it. Reliance is placed on the Commission's earlier Order, **In the Matter of Show Cause Notice, Issued to M/s Colgate-Palmolive Pakistan Limited,**

<sup>11</sup> <http://cc.gov.pk/images/Downloads/ZONG%20-%20Order%20-%2029-09-09%20.pdf>

wherein the Commission held that *"The disclaimer in Advertising Claim No. 2 does not appear in the same font size as the Claim itself, even though it is in close proximity to it. In the absence of this disclaimer, the prominent claim '...kills 99.9% bacteria' would be patently false statement as the consumer would be unaware that those results are only possible, if at all, through concentrated usage. Therefore, the Commission is of the considered view that the disclaimer was required to be much more prominent with better presentation to attract the immediate attention of a potential buyer. The Commission is not satisfied that the standard of being 'clear and conspicuous' have been satisfied, in so far as the proper acceptable use of a disclaimer is concerned."*

- 6.29 Moreover, claim A is considered to be an absolute claim as it has not be qualified or limited through the use of a disclaimer or otherwise. Although there is an asterisk which is provided with the disclaimer used to draw the attention of the consumers to a qualifying statement or disclosure. The targeted audience in this matter is the ordinary consumer and from whom there is no extra level of caution expected as opposed to a reasonable or prudent consumer. In its '**Zong Order**' the Commission observed that *"it is a settled principle that 'fine print disclaimer, are inadequate to correct the deceptive impression'"* As mentioned in Para 6.9 above, *the disclosures must be clear and conspicuous.*
- 6.30 It is also important to highlight that in evaluating the effectiveness of disclosures, the Commission considers factors such as prominence, presentation, placement and proximity between the claim and its associated disclaimer. The disclaimer in Claim A does not appear in the same font size as the Claim-A itself. In the absence of effective, prominent disclaimer, the prominent claim of "100% proven germ protection & Jaraseem say 100% yaqeeni hefazat" is to be treated as false statement as the consumer would be unaware that the Lifebuoy Products are proven against only 03 kind of bacteria's. Therefore, we the Enquiry Officers are of the view that the disclaimer was required to be much more prominent with better presentation.
- 6.31 Therefore, the claim that the product is "100% proven germ protection & Jaraseem say 100% yaqeeni hefazat" is not only capable of harming the business interest of other undertakings making antibacterial soaps, but also amounts to deceive the consumer about the character, properties and quality of their own product and, *prima facie*, violates Section 10 (1) in general and in particular Section 10 (2) (a) & (b) of the Act.

**Advertising Claim –C ("where there is lifebuoy there are few illness")**

- 6.32 The Complainant also submitted the Television Commercial (TVC) of the Product (Lifebuoy Silver Soap & Hand Wash), which contains the following statements and depictions:

*The TVC depicts a mother (Lady Doctor) entering the class room with her child, where the class teacher enrolling students by calling their names as:*

<i>Eena!</i>	<i>Absent.</i>
<i>Faizal!</i>	<i>Absent</i>

*A dialog started between mother and teacher in the following lines:*

**Mother said:**

*Why so many kids are absent?*

**Teacher reply:**

*Kids are weaker nowadays.*

**Doctor Said:**

*Mmmhmm, hear the truth from a doctor. Back in our days, did people catch a cold again and again?*

**Teacher reply:**

*No.*

**Doctor said:**

*The kids have not gotten weaker, the germs have become stronger.*

**Teacher said:**

*So?*

**Doctor reply:**

*That's why we have the new Lifebuoy silver with active silver.*

*During this the main claim appears as:*

**10X better protection.**

*Lifebuoy protects against germs.*

***Where there is Lifebuoy, there are few illness!***

*At the end of the advertisement, the second main claim appears as:*

**World's No. 1 Germs Protection Soap.**



ef A.A





- 6.33 The message reproduced hereinabove flashed on the TV screen for 30 seconds only. The TVC portrays a class room scene in which a class teacher and a mother (Doctor by profession) are talking about how the children could be saved from various kind of bacteria's and virus. The conversation between the two characters suggests that the use of 'Lifebuoy Silver' can protect them from bacteria and virus causing influenza, among other things. It is then endorsed and further explained by a mother (Doctor by profession), who states that how the germs have become stronger and stronger. She then goes on to state that **Lifebuoy Silver with active silver**, which provides 10 time better germ protection. The TVC ends on this note with Product image claiming that 'World's No. 1 germ protection soap'. At the 20<sup>th</sup> second of TVC, a jingle has been started with a voice over. The Advertising Claim-C, can be heard at a duration of 00:24 for a moment.
- 6.34 To support its case, the Complainant submitted that the Advertising Claim-C is most likely to mislead the consumer particularly, parents of young children into forming a wrong judgment that use of said product would protect their children from cold and flu. The TVC of Lifebuoy Care and Protect Silver visually depicts and creates the net general impression that those children who use the said soap will not fall sick and resultantly would not have to take sick leaves from schools.
- 6.35 The Complainant also referred to the Commission's Zong Order wherein the Honorable Commission had discussed that *"in evaluating advertising representation, we are required to look at the complete advertisement and formulate our opinions on them on the basis of the net general impression conveyed by them and not on isolated scripts."*
- 6.36 With regards to the Advertising Claim-C, the Respondent submitted that it is a part of jingle at the end of a television advertisement for the Product and is not a stand-alone statement made by it. It was further submitted that it is obvious that the illness referred to in Advertising Claim-C are those which are generally preventable with the regular use of soap and not all illness. The usage of soap and water is one of the most efficacious, easy and

cost-effective solution to prevent the spread of infection causing germs. This has also been recognized by international renewed bodies such as Center for Disease Control and Prevention (CDC) and World Health Organization (WHO). The Respondent also submitted that without prejudice to the above, Advertising Claim-C could be considered as a marketing slogan and not a stand-alone claim.

6.37 In order to discuss this claim, it is important to understand first that whether it is a claim in actual or it is just market slogan used by the Respondent. It is a written statement which comes and go in a while in the TVC. It is also important to discuss the difference between slogan and puffery. Respondent is of the view that it is a marketing slogan/puffery.

6.38 The Cambridge Dictionary defines the term Slogan as:

**Slogan:** "a short easily remembered phrase, especially one used to advertise and idea or a product<sup>12</sup>"

6.39 The term "puffery" also termed as "puffing" is defined in **Black's Law Dictionary 8th Edn.**, as "the expression of an exaggerated opinion – as opposed to a factual misrepresentation – with the intent to sell a good or service." The Federal Trade Commission (the „FTC“) as early as in 1957 in the matter of **Better Living, Inc., et al., 54 F.T.C. 648 (1957)** defined "puffery" as a "term frequently used to denote the exaggerations reasonably to be expected of a seller as to the degree of quality of his product, the truth or falsity of which cannot be precisely determined." This definition was affirmed by the United States Court of Appeals third circuit in **259 F.2d 271 (1958)**. The United States Court of Appeals in the matter of **Newcal Industries v. Ikon Office Solution 513 F.3d 1038 (2008)** held that:

*"A statement is considered puffery if the claim is extremely unlikely to induce consumer reliance. Ultimately, the difference between a statement of fact and mere puffery rests in the specificity or generality of the claim. Id. at 246. "The common theme that seems to run through cases considering puffery in a variety of contexts is that consumer reliance will be induced by specific rather than general assertions." Id. Thus, a statement that is quantifiable, that makes a claim as to the "specific or absolute characteristics of a product," may be an actionable statement of fact while a general, subjective claim about a product is nonactionable puffery. Id."*

6.40 Keeping in view the above, it can be concluded that generally "puffery" is intended to base on an expression of opinion not made as a representation of fact. "Puffing" statements are, while factually inaccurate; so grossly exaggerated that no ordinary consumer would rely on them. Hence „puffing" is generally vague and unquantifiable.

6.41 The Respondent used the Advertising Claim-C as a slogan/jingle during the TVC of one of its Product, i.e., Lifebuoy Silver Soap and Lifebuoy Hand Wash, therefore, it cannot be

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<sup>12</sup> <https://dictionary.cambridge.org/dictionary/english/slogan>

termed as separate claim. However, it is important to analyze the net general impression of whole TVC rather than taking it on isolated scripts. In the TVC the Respondent claimed that Lifebuoy Silver provides 10X better germ protection right after the Advertising Claim-C, however, no scientific study/evidence have been provided to substantiate the claim "10X better germ protection". So, the Respondent's claim, '10X better germ protection', is misleading in nature. The net general impression, conveyed by the TVC, is that the Lifebuoy Silver has an ability to provide 10 time better germ protection. which is scientifically not proven, hence, misleading.

- 6.42 In view of the above, it can be concluded that the Advertising Claim-C of the Respondent has not been proven as false or misleading claim as it is not quantifiable, however, it is important to note that Advertising Claim-C, if read along with Claim "10X better germ protection" is quantifiable, which conveys misleading impression to the consumers. Considering the net general impression of the advertisement which portrayed a misleading information to the ordinary consumer to believe that the Lifebuoy Silver provides 10 time better germ protection, hence misleading and amounts to deceive the consumer about the character, properties and quality of product in, *prima facie*, violation of Section 10 (1) in general and in particular Section 10 (b) of the Act.

**Advertising Claim -D ("World's No.1 Germ Protection Soap")**

- 6.43 The primary allegation against the Respondent is that it had made a claim '*World's No. 1 Germ Protection Soap*' without providing a reasonable basis, in violation of Section 10 of the Act. The screenshot of TVC is depicted below:



- 6.44 With reference to reasonable basis for the claim "*World's No. 1 Germ Protection Soap*", the Respondent has submitted that, the claim of "*World's No. 1 Germ Protection Soap*" is primarily based on the reports of the Neilson Company submitted through letter dated February 25, 2019 and April 27, 2020. According to the Nielson Report dated February 22, 2019, among the Respondent's defined 'hygiene' Skin Cleansing Brand, Lifebuoy is

present in 17 out of 44 analyzed countries, and it is ranked as the top selling brand based on the aggregate of the listed countries on volume sales in the latest 12 month data period. It is submitted that the Neilson report states that out of total hygiene segment of 694, 993 kgs/ltrs, the Product had 263, 759 kgs/ltrs volume share (38%). The soap with second highest market share was Proctor & Gamble's Safeguard which had a 152, 044 kgs/ltrs volume share (21.87%). According to the subsequent Nielson Report dated April 27, 2020, among the Respondent's defined 'hygiene' Skin Cleansing Brand, Lifebuoy is present in 20 out of 40 analyzed countries, and it is ranked as the top selling brand based on the aggregate of the listed countries on volume sales in the latest 12 month data period. It is submitted that the Neilson report states that out of total hygiene segment of 652, 912 kgs/ltrs, the Product had 238, 335 kgs/ltrs volume share (36.50%). The soap with second highest market share was Proctor & Gamble's Safeguard which had a 152, 893 kgs/ltrs volume share (23.41%). It is important to highlight that in the Nielsen reports, 'Dettol' the Complainant's brand was ranked as 3<sup>rd</sup> largest selling brand in the world.

- 6.45 It is pertinent to mention here that the Product being an international brand is available all around the world in different packaging. In UK, the Product has also been advertised with similar claim of being World's No. 1, which for ease of reference, the print screen shot is given below<sup>13</sup>:



<sup>13</sup> <https://www.youtube.com/watch?v=dRFpJHR65kQ>

2  
A.A

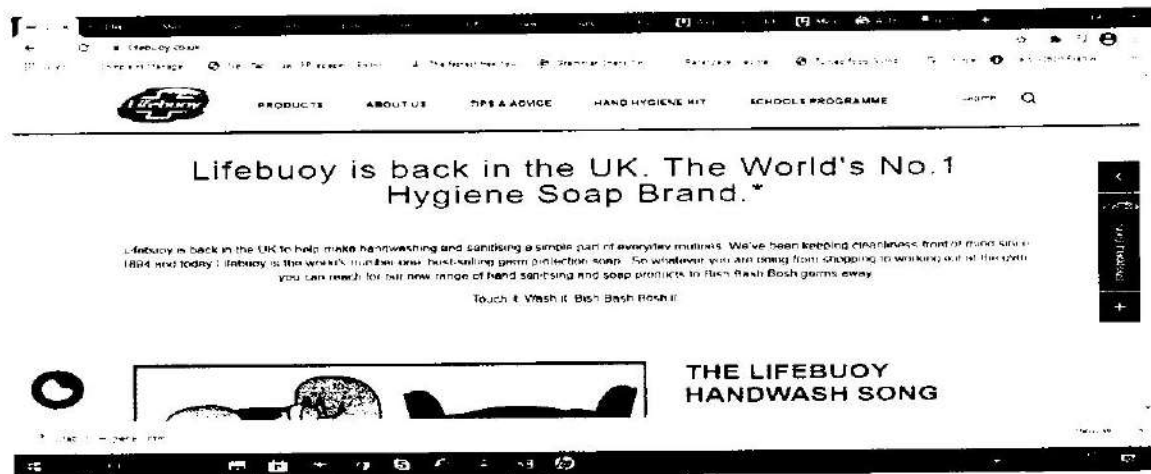




- 6.46 In UK, the Product has many variants including but limited to Lifebuoy Hand Wash, Lifebuoy Hand Sanitizer Gel and Lifebuoy Hand Sanitizer Spray. The web site<sup>14</sup> of Lifebuoy in UK reveals that:

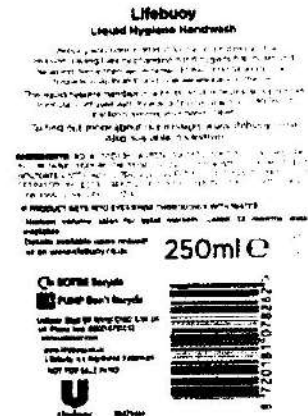
Lifebuoy is back in the UK. The World's No.1 Hygiene  
Soap Brand.\*

<sup>14</sup> <https://www.lifebuoy.co.uk>



- 6.47 In UK, the counterpart of the Respondent Company clearly mentions on its website that the Product is NO. 1 brand in hygiene category. Whereas, in Pakistan the Respondent Company claims that they are the "World's NO. 1 Germ Protection Soap". The reports of Nielsen Company, submitted by the Respondent, clearly reveals that the Product was the highest volume sale for the last 12 months in the 'hygiene' segment.
- 6.48 It is clear after reviewing the images of the Product available outside the Pakistan that they are using the word (hygiene) while making the claim "World's No. 1 brand" on the packaging of the product as well as in the TVC. Whereas in Pakistan, the Respondent is using a term "Germs", which deceives the consumers and makes them believe that the product is effective against all kind of germs including bacteria, viruses and fungi and stands proven world's no. 1 germ protection brand. (The Enquiry Committee has also analyzed the marketing practices with respect to the similar claims made by the Respondent in other jurisdictions. The analysis sheet is attached as **Annexure-L**.) In view of the above, it can be concluded that the Respondent has, intentionally, adopted the rigorous approach to advertise its Product in Pakistan as world no. 1 brand. Therefore, the claim "World's No. 1 Germ Protection Soap" is not only capable of harming the business interest of other undertakings making antibacterial soaps including the Complainant, but also amounts to deceive the consumer about the character, properties and quality of their own Product and, *prima facie*, violates Section 10 (1) in general and in particular Section 10 (2) (b) of the Act.
- 6.49 The image of Lifebuoy Hygiene Hand Wash (being sold and marketed in United Kingdom) can be seen below. The packaging clearly mentions that it can only kill 99.9% of bacteria. The packaging also includes the form of bacteria on which they are effective:

27 A.A



*Lifebuoy Liquid Hygiene Hand wash, with its pH skin neutral anti-bacterial formula, is infused with Pine and Thyme oil and kills 99.9% of bacteria, leaving your hands clean.*

- 6.50 With regards to the disclaimer, the Complainant alleged that the claim have not been qualified through a disclaimer which is legible to the naked eye. Considering now the appropriateness of the disclaimer/disclosure printed on the Respondent marketing and advertising material reproduced above, it is apparent that the same are in fine print or in significantly smaller print and have been in an attempt to offset and/or limit the liability or to qualify the advertising claim. In its Zong Order, the Commission has observed that:

*"[...] it is settled principle that the fine print disclaimer [or disclosures] are inadequate to correct the deceptive impression. In fact, such disclaimers [or disclosures] are, in themselves, a deceptive measure."*

- 6.51 While evaluating the effectiveness of disclaimer/disclosure, the Commission considers factors such as prominence, presentation, placement and proximity between the advertising claim and the associated disclaimer/disclosure. The principle regarding disclaimer/disclosure is that they must be 'clear and conspicuous' and placed 'as close as possible' with the advertising claim.

7 A.A

- 6.52 Keeping in view of the above mentioned principle, it has been observed that the Respondent's disclaimer/disclosure placed at the bottom of the advertisement was neither easily noticeable/legible nor easily understandable by an ordinary consumer. Furthermore, the most part of the TVC and other marketing and advertising campaigns material was in Urdu, whereas the disclaimer/disclosure was in English and appears for not more than 4 seconds (momentarily) out of a total circa 30 seconds TVC, which is inadequate to correct the deceptive impression of the Product (Lifebuoy) as 'World's NO. 1 Germ Protection Soap'. It is also pertinent to mention that the claim 'World's No. 1 Germ Protection Soap' appears at a duration of 27:00 second out of total 30:00 seconds TVC. At the same length, the disclaimer/disclosure appears at the bottom of the claim with comparatively smaller font size. In Zong Order, the Commission has observed that *'Even if express or implied representation in an advertisement is accompanied by disclaimers or qualifiers [i.e. disclosures]; such caveat will nullify a misleading [practice] only, if they appear, in such a way as to eliminate the advertisement tendency to mislead its overall effect'*. Therefore, the undersigned are of the considered view that the disclaimer/disclosure used by the Respondent in its marketing and advertisement campaigns itself tantamount to the distribution of false and misleading information to the consumers in violation of Section 10(2) (b) of the Act.

**Advertising Claim –E ("99.9% Germ Protection in 10 Seconds")**

- 6.53 The Complainant also submitted the Television Commercial (TVC) of the Product (Lifebuoy Hand Wash), which contains the following statements and depictions:



10:00

99.9 %  
Germ Protection\*

Lifebuoy

Rs. 99

NEW

Lifebuoy

Total 10

10 sec. germ protection in just 10 seconds

Switch to Lifebuoy  
Superfast Handwash,  
99.9% germ protection\* in  
10  
SECONDS\*\*

U  
Unilever

\*Positive visualization  
\*As per lab test on indicator organism vs an ordinary soap without actives  
\*\*Refers to lathering time

- 6.54 The claim of the Respondent that its product provides 99.9% germ protection only in 10 seconds is primarily based on test reports conducted by the BRC against five types of bacteria and one type of virus only with the contact time of 10 seconds. The Respondent submitted that the claim is qualified through a disclaimer '*as per lab tests on indicator organisms vs. and ordinary soap without actives*'. Moreover, the Respondent also submitted that, while not necessary, a disclaimer for clarification purpose that the term 10 seconds refers to lathering time is also given at the bottom of the claim.
- 6.55 This claim is also made through the TVC, submitted by the Complainant. At the outset, the objections as raised above with regards to the use of term 'germs' remain valid for this claim also. Furthermore, it has been observed that the Respondent has also relied on expert report from the Director, Unilever Research & Development, USA which was carried out to evaluate and establish antibacterial efficacy of the Product when tested against indicator germs. However, it is pertinent to mention that an ordinary consumer, while purchasing a well marketed product Lifebuoy, will be unaware of or least concerned about investigating itself about the kinds of laboratory tests that have been conducted to prove the claims portrayed on the product. At the first glance, consumers would be attracted to the product



because of the claims that are displayed and would rely on the description labelled on the packaging. Therefore, it is crucial to qualify or include a disclaimer which fulfills the purpose of justifying the relevant claim. The expert report reveals that only one type of bacteria, i.e. E. coli was used as indicator organisms to prove the claim, i.e. *99.9% germ protection in 10 seconds*. However, it is reiterated that ideal conditions of a laboratory are incomparable to that of ordinary circumstances.

- 6.56 Moreover, complete reliance on laboratory test results would result in a skewed decision regarding the claims made. 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 'ordinary' circumstances. An example of the hand-sanitizer industry can be taken into consideration. In an experiment, three popular hand-sanitizers were tested on 8th graders in America in normal conditions. The test results showed a 46%-60% elimination of bacteria. Microbiologist Jason Tetro from the University of Michigan describes laboratory tests results as; "*it's the optimal environment for the hand sanitizer to work*"<sup>15</sup>.
- 6.57 A similar case was investigated by the Federal Trade Commission (FTC) in the United States of America in 2011 titled **In the Matter of ORECK CORPORATION, a corporation.** Involving a vacuum cleaner manufacturer called Oreck. The manufacturer Oreck came under FTC scrutiny after they allegedly deceived consumers when making health claims about their leading products; the 'Oreck Halo' vacuum cleaner and the 'Oreck ProShield Plus' portable air cleaner. Oreck claimed that these products would kill germs, prevent flu, eliminate all airborne particles, kill up to 99.9% of common germs and pathogens like E. coli and MRSA, and many more statements which were said to be backed by independent research by top scientists. According to an Oreck settlement report released by the Federal Trade Commission, Oreck exaggerated these claims and provided misleading information to consumers. Therefore, consumers who purchased either of these Oreck products were entitled to compensation through an Oreck class action lawsuit.
- 6.58 With reference to the disclaimer/disclosure, it has been observed that the same does not appear in the similar font size as the claim itself, even though it is in close proximity to it. In the absence of this disclaimer, the prominent claim of '*99.9% germ protection in 10 seconds*' would be a patently false statement as the consumer would be unaware that these results are possible, if at all, through 10 seconds application/lathering time. Therefore, we are of the view that the disclaimer/disclosure does not satisfy the standard of '*clear and conspicuous*'.
- 6.59 In light of the above, it can be concluded that the Advertising Claim-E constitutes a, prima facie, violation of Section 10(1) in terms of Section 10(2) (b) of the Act.

**B. WHETHER, PRIMA FACIE, THE RESPONDENT IS INVOLVED IN THE DISTRIBUTION OF FALSE OR MISLEADING INFORMATION THAT IS**

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<sup>15</sup> <http://ns.umich.edu/new/releases/1084-u-m-students-don-masks-and-wash-hands-for-influenza-study>

**CAPABLE OF HARMING THE BUSINESS INTERESTS OF ANOTHER UNDERTAKING IN VIOLATION OF SECTION (10) (2)(A) OF THE ACT.**

- 6.60 Sub-section 10(2) (a) of the Act provides that 'distribution of false or misleading information that is capable of harming the business interest of another undertaking' constitutes a deceptive marketing practice for the purpose of Section 10(1) of the Act and is therefore prohibited. For a violation under this sub-section to be actionable both elements must be present.
- 6.61 The Commission in its **Order In The Matter Of Complaint Filed By M/S DHL Pakistan (Pvt.) Ltd, (DHL Order)** it was stated that *'it is important to recognize that part of any business' identity is the goodwill it has established with consumers, while part of a product's identity is the reputation it has earned for quality and value'*. In its **Order In The Matter Of Show Cause Notice Issued To M.S Jotun Pakistan (Pvt) Limited For Deceptive Marketing Practices**, the Commission held 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 practices that has the potential to harm the business interests of the competitors'*.
- 6.62 In this regard the Complainant submitted that since the Respondent poses its products as possible alternatives of the Dettol range of products, an increased sale of Respondent Company's products would have a direct impact on the business of the Complainant.
- 6.63 With reference to the Advertising Claim A&B *'100% proven germ protection or Jaraseem say 100% yaqeeni hefazat'*, the Respondent has submitted the statement was supported by the results of BRC lab against 3 types of bacteria and one type of virus.
- 6.64 Since the basis of the lab tests is to show the efficacy of Lifebuoy Products against bacteria and virus, however the Respondent has used a wider term of **'Germ'** to mislead the consumers to believe that the Lifebuoy Products are proven 100% effective against all types of germs. Since, no other antibacterial brand has been advertised with the 100% germ protection efficacy or 100% effectiveness against germs, the Respondent's claim has the potential of harming the business interests of all producers of antibacterial soaps. We therefore find this claim to constitute, *prima facie*, violation of Section 10(1) in terms of Section 10(2) (a) of the Act.
- 6.65 With regards to the Advertising Claim – D *'World's No. 1 germ protection soap'*, the Respondent has submitted the statement was supported by the results of the Nielsen Report dated February 22, 2019 and April 27, 2020 (the **'Study'**) which analyzed the Product volume share in the hygiene category.
- 6.66 Since the basis of the Study is to calculate the volume share of the Product in the hygiene category in the world and to declare the No. 1 selling brand in the specific category. Although, the Product of the Respondent has the highest sales for the last 12 months in hygiene category, however, the Respondent advertised it as *'World's No. 1 germ protection soap'*. Since the Product has not been proven as *'germ'* protection, therefore, the

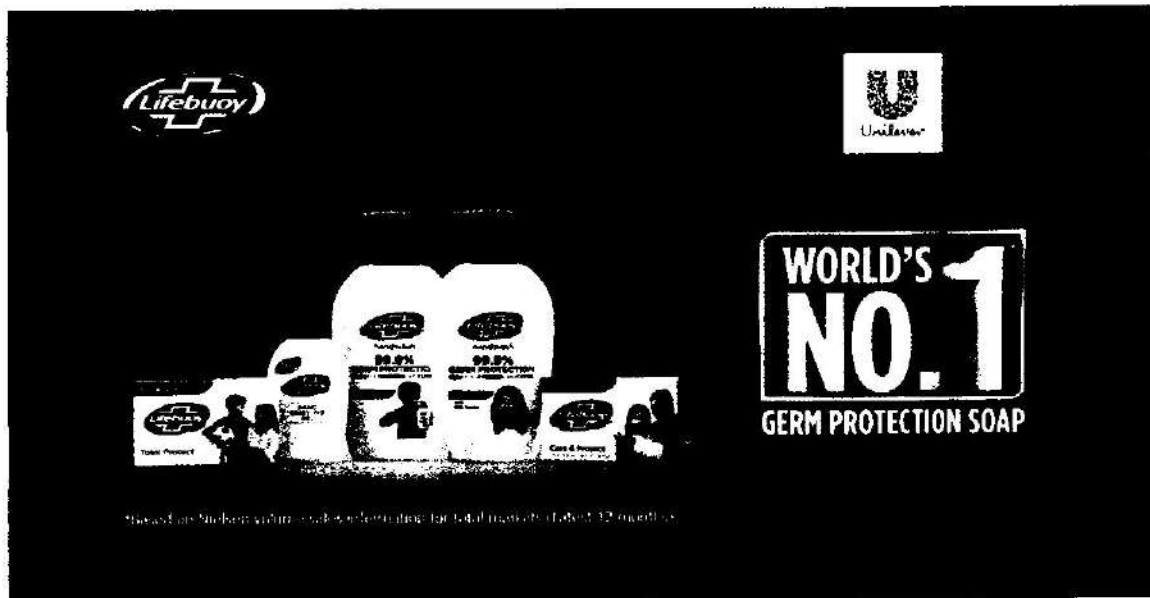
Respondent's claim has the potential of harming the business interests of all producers of antibacterial products. We therefore, find this claim to constitute, *prima facie*, violation of Section 10(1) in terms of Section 10(2) (a) of the Act.

- 6.67 With reference to the Advertising Claim-E '99.9% germ protection in 10 seconds\*' the Respondent has submitted the BRC lab report which provided the efficacy of Lifebuoy Soap against few type of bacteria and virus only. The lab test results and expert report, from the Director, Unilever Research & Development, USA which was carried out to evaluate and establish antibacterial efficacy of the Product when tested against indicator germs, shows that the Product have more than 99.9% efficacy against specific bacteria and virus. The Respondent has once again used a wider term of 'germs' while claiming the Product's 99.9% efficacy in 10 seconds. We therefore, find this claim to constitute, *prima facie*, violation of Section 10(1) in terms of Section 10(2) (a) of the Act.
- 6.68 It is pertinent to mention here that the Respondent submitted that if the Honorable Commission has any suggestions for modifications to the claims, the Respondent undertakes to examine and incorporate them in accordance with law.

#### RESPONDENT'S REPLY TO THE FINDINGS

- 7.1 During the course of enquiry, it has been observed that after initiation of enquiry, the Respondent has changed its TVC and amend its claims accordingly. As an example, at the time of complaint it was claimed that Lifebuoy Hand Wash kills 99.9% germs in 10 seconds, however, it has been observed that in new TVC the Respondent mentioned clearly that '*Lifebuoy laray virus aur bacteria se*'. Moreover, to meet the standards of term 'clear and conspicuous', the Respondent has made better presentation of disclaimer/disclosure in the new TVC. However, at the end of new TVC, the claims '99.9% germ protection' and 'World's No. 1 germ protection soap' appears again. The screenshot of new TVC is given hereunder:





- 8.1 The Respondent is using a wider term "Germs" while making the Advertising Claim – A, B, D, and E in the TVC as well as on the packaging of the Product to make it more attractive to the consumers. The same products that are available on the international market specify the bacteria and virus against which they are tested. Therefore, it is suggested to use the specific type of bacteria and virus against which it is tested. The Respondent by using the terms "germs" in the TVC as well as on the packaging is disseminating false and misleading information that lacks a reasonable basis about the character, properties and quality of its product and is also taking a competitive advantage against the other competitors and hence, *prima facie*, violates Sec 10 (1) in general and in particular Section 10 (2) (a) & (b) of the Act.
- 8.2 The Respondent, to substantiate its Advertising Claim-C, i.e., *where there is a lifebuoy, there are few illness*, has submitted that it is a marketing slogan and a part of jingle at the end of a television advertisement for the Product and is not a stand-alone statement made by it. However, the net general impression of whole advertisement is taken into consideration. The Advertising Claim – C is proven a market slogan/puffery statement, but if we look at the last two claims in the same TVC that Lifebuoy Silver provides 10 time better germ protection and it is World's No. 1 germ protection soap; it will be interpreted that Lifebuoy Silver Soap can kill all kind germs which caused illness, which is not true. The advertisement in this way provides a misleading impression in the minds of ordinary consumer; prohibited under Section 10 (1) in general and in particular Section 10 (2) (b) of the Act.
- 8.3 The Respondent has added qualifier in the advertisement while making Advertising Claim – A&B i.e., *„creative visualization and based on lab test"* however, the Respondent has not specify the type of germs which are tested. Moreover, the disclaimer/disclosure does not



fulfill the requirement of the concept of 'clear and conspicuous' as it appears in an illegible font size. Consumers listening to the TV advertisement while doing work or while listening to it on radio will continuously get an impression that Lifebuoy Silver provides protection against all type of bacteria, virus, fungi and protozoa.

- 8.4 Moreover the Respondents has also added qualifying statement while advertising its Claim D & E i.e. For Claim-D '*Unilever calculation based on Nelsen volume sales information for the total months' (last 12 months)*; and For Claim-E, *As per Lab test on indicator organisms vs an ordinary soap without active*. The disclaimer/disclosure does not fulfill the requirement of the concept of 'clear and conspicuous' as it appears in an illegible font size. Consumers listening to the TV advertisement while doing work or while listening to it on radio will continuously get an impression that Lifebuoy provides 99.9% Germ protection and is World's No-1 Germ protection soap.

#### 9. ANALYSIS OF THE CLAIMS


- 9.1 Holistic analysis of the claims advertised by the Respondent regarding its product lifebuoy soap and Hand wash, the Enquiry Committee found that the claims are being advertised nationwide and are not limited to one particular provincial territory.
- 9.2 As regards the effect of anti-competitive behavior spilling over territorial limits of other provinces is concerned, the advertisement of the Respondent was circulated via nation wide TV Commercials. Hence the scope of the TVC was not restricted to a particular area or province, in fact, it is available to ordinary consumers around the country. The TVC had a nation wide effect because the ordinary consumers can excess the TVC's via Television.
- 9.3 In view of the above, it can be established that the effect of anticompetitive behavior is spilling over the territorial limits of other provinces.

#### 10. CONCLUSIONS AND RECOMMENDATIONS

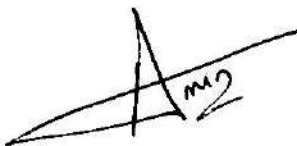
- 10.1 It is evident that the Respondent, by making the above mentioned claims is, *prima facie*, entered into deceptive marketing practices in terms of Section 10 (1) of the Act. Furthermore, it is, *prima facie*, distributing false and misleading information that is capable of harming the business 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 quality of its product in terms of Section 10 (2) (b) of the Act.
- 10.2 The deceptive marketing practices have a direct impact on the public at large. The undertakings should disclose correct information regarding their product to the consumers. False and misleading advertisements induce the consumers to purchase the product and hence it gives the undertaking a competitive edge over other competing undertakings. Hence, it is in the interest of the public that the undertakings should be stopped from advertising their products in a deceptive manner and be encouraged to resort to advertising practices that are transparent and give consumers/customers true and correct information about the products, rather than making false and misleading claims. It is recommended that



proceedings u/s 30 of the Act may be initiated against the Respondent for, *prima facie*, violation of Section 10 (1) in general and for specific violation of Section 10 (2) (a) & (b) of the Act.



Riaz Hussain  
(Enquiry Officer)



Amin Akbar  
(Enquiry Officer)