

COMPETITION COMMISSION OF PAKISTAN

ENQUIRY REPORT

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

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

BY

Marryum Pervaiz / Faiz ur Rehman

Dated: November 15, 2016

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A. BACKGROUND

1. M/s. Unilever Pakistan Limited (hereinafter referred to as the '**Complainant**') filed a complaint with the Competition Commission of Pakistan (hereinafter referred to as the '**Commission**') against M/s. Reckitt Benckiser Pakistan Limited (hereinafter referred to as the '**Respondent**') for an alleged violation of Section 10 of the Competition Act, 2010 (the '**Act**') that pertains to deceptive marketing practices.
2. The Complainant alleged in the complaint that the Respondent is airing and releasing in print and electronic media a misleading, deceptive, unsubstantiated and unethical advertisement campaign in respect of its soap under the brand name "Dettol" by claiming the following:-

Urdu Script

ہر سال چار کروڑ پاکستانی فلو وائرس کا شکار ہوتے ہیں،
فکر نہ کریں، ڈیٹول سوپ کرے فلو وائرس جیسے 99.9 فیصد تک جراثیم کا خاتمہ
اور دے جراثیم سے 24 گھنٹے لگاتار حفاظت
سردیوں میں پھیلنے والے جراثیموں سے 24 گھنٹے حفاظت
ڈیٹول سو فیصد یقینی

Har saal chaar crore Pakistani flu virus ka shikar hotay hain'

Fiker na karain, Dettol Soap karay flu virus jaisay 99.9 % tak germs ka khatma

Aur day jaraseem say 24 ghanay Lagatar Hifazat

Sardion me phalnay wallay jaraseem 24 ghanay lagatar hifazat

Dettol Be 100 % Sure'

English Script

Every year four crore Pakistani fall victim to the flu virus

Don't worry, Dettol soap kills flu virus like 99.9 % germs

And gives 24 hours constant protection from germs

24 hours protection from germs that spread in winters

Dettol be 100 % sure

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3. Considering the nature of allegations and the high sounded claims by the Respondent, the Competent Authority initiated an Enquiry in accordance with the provisions of sub-section (2) of Section 37 of the Act by appointing Ms. Marryum Pervaiz, Deputy Director (OFT) and Mr. Faiz-ur-Rehman, Assistant Director (OFT) as joint enquiry officers (hereinafter referred as the 'Enquiry Committee'). The enquiry committee was directed to conclude the enquiry on the issues raised in the complaint and submit their findings and recommendations *inter alia* on the following:-

Whether or not the allegations leveled in the complaint constitutes a, prima facie, violation of Section 10 of the Act?

B. COMPLAINT:

4. The Complainant is a company incorporated under Companies Ordinance, 1984, having its registered office in Karachi. The complainant is involved in the manufacturing of Personal Care, Food and Hygiene products.
5. Ms. Zarin Riaz Khawaja, Regional Manager of the Complainant filed a complaint on behalf of the Complainant with the Commission against the Respondent for initiating action with regard to the alleged violation of Section 10 of the Act.
6. In the complaint it was alleged that the Respondent is airing the aforementioned advertisement on various television and radio networks as well as on various billboards and print media. In the said advertisement, it has been claimed that Dettol alone can provide '*24 Hours constant germ protection*' against '*cold and flu viruses up to 99.9%*'.



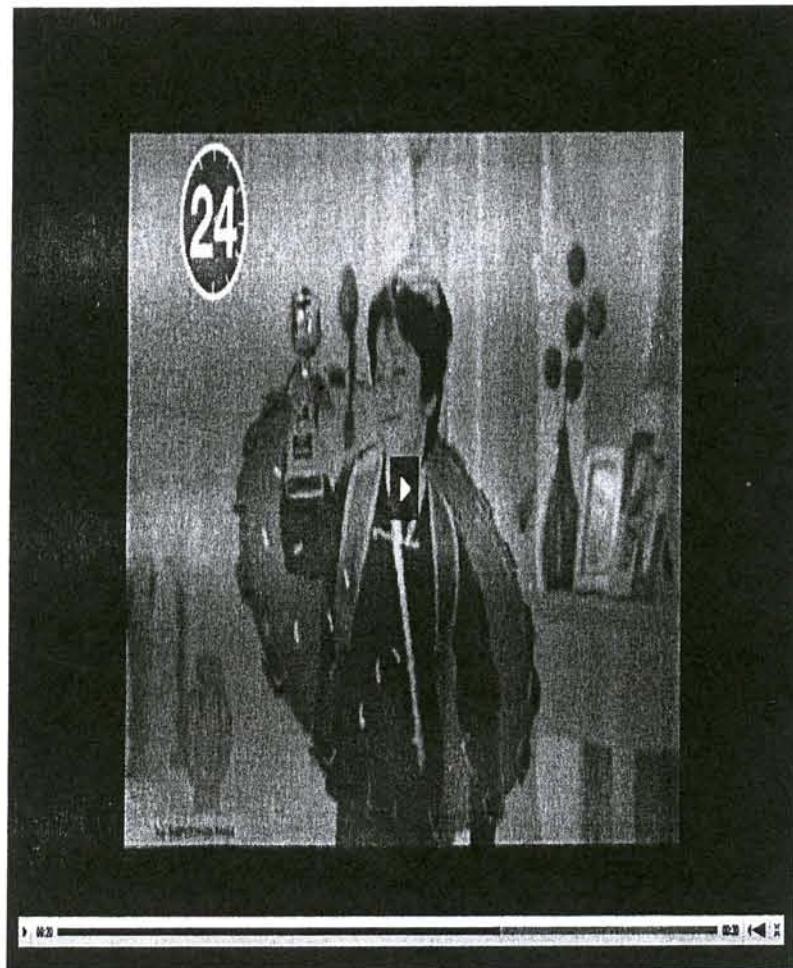
7. Through this false and unjustified claim, the Respondent is clearly deceiving the consumers into believing that after using Dettol, the consumer shall remain protected from germs/bacteria that may otherwise lead to cold and flu. The distribution of this false

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and baseless claim is detrimental to the health and hygiene of consumers. Such an unsubstantiated and unethical assertion is clearly an attempt to discourage consumers/public from frequent hand washing habit, and thereby exposing consumers to health risks, and is, therefore, a clear violation of Section 10(2)(b) of the Act with regards to suitability for use and quality of soap.

8. It is also pertinent to mention here that the Respondent's advertisement is asserting that Dettol alone can kill up to 99.9% germs causing cold and flu and is capable of protecting consumers up to 24 hours, without any validation whatsoever. The misleading communication is further strengthened through the visual use of the following mnemonics during the advertisement.

- ✓ 24 hours clock logo on top left of TVC.
- ✓ 24 hours shield depicted around the child/family during the TVC, and
- ✓ 24 hours logo during the last minute of TVC.



9. Furthermore, the claim violates the Code of Advertising Practice prescribed by the Pakistan Advertiser's Society ('Code of Advertising Practice') of which the Respondent is signatory. The claim in the advertisement is also contradictory to the practices

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endorsed by World Health Organization (WHO) which recommends washing hands as frequently as possible. It is also contradictory to the information provided on Dettol's Website (UK) where they list that frequent hand washing can prevent against illnesses like cold and flu.

10. The unethical and misleading advertisement while claiming that Dettol soap provides the consumer 24-hours constant germ Protection from germs/bacteria causing cold and flu further unethically strengthens its claim by mentioning in the Disclaimer that "As per Lab Testing, prevents germs (E.Coli and S. Aureus) from increasing up to 24 hours". It is pertinent to mention here that as a matter of fact common cold and flu are caused by influenza viruses and not by Bacteria.
11. They further alleged that the Respondent in conceiving, producing, airing and distributing deceptive and unsubstantiated information, *prima facie*, violates Section 10 of the Act which is detrimental to the interests of the consumers, competitors and promotion of fair competitive practices.

Under the circumstances, the complainant prayed the Commission that:

- i. cognizance be taken of the deceptive marketing practice and unethical behavior of the Respondent, and the Respondent be directed to desist from gaining further unfair advantage and market share against the competitors by misleading the consumer and public, and stop the airing and communication of the misleading, deceptive and unethical advertisement/communication; and
- ii. The Respondent, in the interim period, be directed to immediately take off airing the misleading advertisement and deceptive claims, pending the adjudication of the instant complaint from all mediums of communication whatsoever. The Respondent may also be directed to suitably modify the advertisement, claims and disclaimers to reflect the factual position.

C. RESPONDENT'S REPLY:

12. The Respondent while submitting their comments through Mr. Abdul Ghaffar Khan, Advocate of M/s. Fazal Ghani Advocates stated that the complaint is illegal, unlawful and without any justification and basis and the same is liable to be rejected with costs as it has been filed on presumption.
13. The Complainant is a company incorporated under the Companies Ordinance, 1984. The complaint cannot be filed without the approval of the Board of Directors of the Complainant. Neither a copy of the resolution of the Board of Directors of the complainant has been filed nor it has been stated in the complaint that such an approval of the Board of Directors has been obtained.
14. The complaint is baseless and has been filed without any reason and the same is liable to be rejected with exemplary costs. No reason or evidence whatsoever has been filed by the

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complainant to disprove the claim of the Respondent that "*Dettol Soap kary flu virus jaisay 99.9% germs ka khatma aur day jaraseem say 24 ghanay lagatar hifazat*"

15. That before airing the advertisement comprehensive studies were conducted by the elite in the profession as per ASTM E1874-97 Standard Test Method for Evaluation of Antibacterial Washes by Cup Scrub Technique which proved what is stated in the advertisement. (Annex-A)
16. The Respondent is not involved in deceptive marketing practices as alleged in the complaint and, therefore, the complaint is liable to be rejected with exemplary costs and penalty.

D. REJOINDER BY THE COMPLAINANT:

17. The Complainant, in its rejoinder has submitted that the Preliminary Objections raised by the Respondent are untrue, ill conceived, and produced with a view to cover up its objectionable and unlawful behavior and airing of the advertisement.
18. The complainant while denying the assertions of the Respondent has submitted that they are blatantly deceiving the consumers by claiming that Dettol soap provides consumers 24-hours constant germ protection from cold and flu with no accurate and substantive support/evidence of extended (24 hours) protection from Influenza Virus which is the prime cause of Cold and Flu. In addition, the Respondent in its advertisement further persists on the alleged claim by displaying "*24 Hours Germ Protection from Cold and Flu*" in the Key Visual ("KV"). However, the Disclaimer in the advert and the support/evidence provided to this Honourable Commission pertains to Staphylococcus Aureus ("S. Aureus") and Escherichia coli ("E. Coli") which is not the cause of cold and flu/influenza as claimed and alleged in their advertisement. The advertisements therefore false, unethical, misleading and violates Section 10 of the Act. The onus falls on the Respondent to substantiate its tall and dubious claims made in the impugned advertisement.
19. They further submitted that ASTM E1874-97 is an obsolete method since 2006. It was withdrawn in 2006 by ASTM with no replacement issued. After the obsolescence there have been two versions issued in 2009 and 2014 version replacing 2009 version. The history of these versions can be viewed at the ASTM website. It was stated that the already irrelevant support against organisms i.e. E. coli and S. Aureus becomes further baseless in light of the fact that the Testing method employed is not owned by ASTM any longer. Moreover, the Cup Scrub technique (ASTM E1874-97) being referred to by the Respondent was the study carried out on S. Aureus and E. Coli which are bacteria causing diarrhea and skin infections rather than cold and flu. This clearly contradicts Respondent's claim against Influenza as mentioned in their advertisement. The Respondents have clearly attempted to use irrelevant and obsolete studies to defend their unlawful claims and hence have violated the provisions of Section 10 of the Act.



E. ADDITIONAL SUBMISSIONS BY THE RESPONDENT:

20. The Commission vide letter dated 01-09-2015 demanded the following clarifications along with supporting documents for the letter submitted by the Respondent dated 10-03-2015;
- a. As comparisons are made between similar products, why was there a comparison made between a beauty soap (i.e. Dove) and an anti-bacterial soap by the Respondent?
 - b. Contact time in test ASTM E1874-97 was 30 minutes which is not logical considering the product's use in practical life.
 - c. The test ASTM E1874-97 gives protection against bacteria alone then how can it give protection against flu viruses?
 - d. The laboratory tests shows experiments on the Dettol Malaysian Skincare Bar, whereas justifications were required for Pakistani Dettol Soap.
 - e. Are the formulae for the two bar soaps the same?
 - f. The porcine skin used in the test was washed seven times before the final test was conducted. Why?
 - g. The confidence level achieved for both soap bars is the same in ASTM E1874-97 than how can it be stated that Dettol performs better than other soaps?
21. A time period of 14 days was given to the Respondent to submit their reply. The Respondent's advocate vide letter dated 16-09-2015 requested for an extension till 30-09-2015 which was granted by the Commission in the letter dated 22-09-2015.
22. A para-wise reply was received from the Respondent through a letter dated 29-09-2015 which contained the following submissions:
- i) A comparison was made between an anti-bacterial soap and an ordinary soap to highlight the superiority of performance of an anti-bacterial soap. Supporting documents were provided.
 - ii) The 30 minutes contact was between the bacteria and the substrate (porcine skin) to allow regrowth which was determined after 24 hours of the treatment. Whereas the contact time between the product (Dettol Soap) and the site was of a total of 60 seconds (15 seconds rubbing and 45 seconds lathering). Supporting documents were provided.
 - iii) It was submitted that in order to determine Virucidal Efficacy, a separate study was conducted via test method ASTM E-1052. **(Annex-B)**
 - iv) It was further submitted that the formulations of both, the Malaysian and Pakistan Dettol soaps are similar and hence the results conducted on Malaysian soap was submitted.



- v) It was clarified again that both soaps have similar formulations.
- vi) It was clarified that the porcine skin had to be washed seven times before conducting the experiment to ensure that no other organisms are left on the surface except the ones being tested i.e. *S. aureus* and *E. coli*. The washing of the surface was thus deemed necessarily to attain accurate results.
- vii) Regarding the question involving value of confidence level, it was presented, that the Median value was the value representing the performance of the product to restrain regrowth of bacteria which was significantly lower for Dettol soap as compared to Dove hence proving superiority of Dettol's performance. This statistical analysis was carried out at 95% confidence level via using a data analysis software.
23. The Enquiry Committee after evaluation of the rejoinder of the Respondent did not find the clarification satisfactory and hence invited the Respondent for a meeting on 20-10-2015 vide letter dated 14-10-2015. Due to unavailability of the relevant representative, the Respondent requested to postpone the meeting to first week of December, 2015. The Enquiry Committee accepted the request and the meeting was rescheduled for 10-12-2015 in the letter dated 05-11-2015.
24. However, the Respondent submitted a letter dated 08-12-2015 requesting for a further extension regarding the meeting to any date in January, 2016 via *Mandviwalla & Zafar Advocates and Legal Consultants*. In response to this letter the Commission stated that reasonable time period was granted previously when the meeting was postponed from 20-10-2015 to 10-12-2015 and the Respondent failed to appear on both occasions. Instead the Respondent requested for a further extension of the meeting to January, 2016. Since the justification for the request was not cogent, the request was not entertained however, a final extension was provided to appear on 16-12-2015.
25. The enquiry committee in their letter further stated that the Respondent had been corresponding with the Commission through *M/s Fazleghani Advocates* whereas no notification was received regarding the change of counsel to *Mandiwalla & Zafar Advocates and Legal Consultants* from the Respondent. It was communicated by the enquiry officers that the latter is not authorized to apply for an extension on behalf of the Respondent. The enquiry officers demanded the relevant power of attorney in the name of *Mandiwalla & Zafar Advocates and Legal Consultants* which may be submitted and duly signed by the Respondent, before proceeding any further.
26. The Respondent was also informed that in case of failure to appear for the meeting, they will grant the right to the Commission to conclude the enquiry, in light of the statutory provision, independently.
27. The counsel from the Respondent provided the relevant power of attorney to act on behalf of the Respondent. A meeting was held on 16-12-2015 at the Commission's office in which the matter in hand was discussed in detail. During the meeting, the Respondent accepted the presence of unjustified portions in the claims made in their advertisements.

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Whereas, it was agreed that satisfactory justifications will be submitted by the Respondent regarding the remaining portions of the claim by the first week of January 2016 pursuant to which the enquiry officers will make their final submissions in the Enquiry Report.

F. ISSUES & ANALYSIS:

28. It is important to recall the issue in hand before going to analyze the facts of the enquiry:

Whether or not the allegations leveled in the complaint constitutes a, prima facie, violation of Section 10 of the Act?

29. Whereas, Section 10 of the Act pertaining to deceptive marketing practices is reproduced below for the ease of reference:

Deceptive marketing practices.— (1) No undertaking shall enter into deceptive marketing practices

(2) The deceptive marketing practices shall be deemed to have been resorted to or continued if an undertaking resorts to,

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

(b) the distribution of false or misleading information to consumers, including the distribution of information lacking a reasonable basis, related to the price, character, method or place of production, properties, suitability for use, or quality of goods;

(c) false or misleading comparison of goods in the process of advertising;
or

(d) fraudulent use of another's trademark, firm name, or product labeling or packaging.

a. COMMENTS ON RESPONDENT'S SUBMISSIONS:

30. The legal counsel of the Respondent submitted a reply on February 02, 2016, referred to the meeting with the enquiry committee. They submitted clarifications regarding the questions already raised by the enquiry officers earlier in their letter.
31. Below is our brief analysis to the submissions made by the Respondent on the questions raised by the enquiry officers:

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SUBMISSION#1:

A comparison is always made between similar products, whereas the Respondent has furnished the comparison between an antibacterial soap (i.e. Dettol) and a beauty soap (i.e. Dove). Please explain?

- 31.1 In response to the first question the Respondent submitted that the purpose of the comparison was to demonstrate the added effectiveness of their product i.e. Dettol, in killing bacteria, due to presence of Triclocarbon in it, as compared to a regular soap. A report by the American Cleaning Institute (ACI) was also submitted which highlighted the benefit of antibacterial soap in protection against germs in following words.

Personal cleansing and household cleaning products that contain an active antibacterial or antimicrobial ingredient provide extra protection against germs, including those that may cause disease. That's because their active ingredient helps them go beyond simple cleaning to kill or control the growth of microorganisms.

Analysis By the Enquiry Officers:

- 31.2 The enquiry officers analyzed the facts and found that American Cleaning Institute (ACI) is representing producers of household, industrial, and institutional cleaning products, their ingredients and finished packaging; oleo-chemical producers; and chemical distributors to the cleaning product industry¹. As per the information provided by this institute regarding benefits of anti-bacterial soaps, the website states that anti-bacterial soaps have additional benefits over and above those provided by a regular soap in hand washing for killing germs.
- 31.3 **Conversely, to the citation of ACI website, the U.S. Food and Drug Administration (FDA) on its website has stated that there isn't enough science to show that over-the-counter (OTC) antibacterial soaps are better at preventing illness than washing with plain soap and water. To date, the benefits of using antibacterial hand soap haven't been proven. In addition, the wide use of these products over a long time has raised the question of potential negative effects on your health.**²
- 31.4 **FDA further stated that for other products, such as OTC consumer antiseptic products, FDA has not received evidence that triclosan provides a benefit to human health. At this time, FDA doesn't have evidence that triclosan in OTC**

¹ <http://www.cleaninginstitute.org/about/default.aspx>

² <http://www.fda.gov/ForConsumers/ConsumerUpdates/ucm378393.htm>

consumer antibacterial soaps and body washes provides any benefit over washing with regular soap and water.³

- 31.5 There is a clear contradiction in information provided by ACI as compared to that provided by FDA. It should be noted that FDA is a government organization dedicated to public welfare. Whereas ACI is an association of producers involved in this industry with a conflict of interest. Hence, the Respondent's references of the ACI's websites lacks validity as it demonstrates clear inconsistency when compared to the facts provided by the FDA.
- 31.6 It has also been observed that it is illogical to compare a beauty bar with an antibacterial soap to prove its efficacy over the formation of bacteria. Further, the test report (ASTM E1874-97) submitted by the Respondent to prove the efficacy of dettol skincare antibacterial soap on bacteria's (S. aureus & E. coli) is an obsolete method since 2006. It was withdrawn in 2006 by ASTM with no replacement issued. After the obsolescence there have been two versions issued in 2009 and 2014 version replacing 2009 version. The history of these versions can be viewed at the ASTM website. These testing method employed is not owned by ASTM any longer⁴.
- 31.7 Moreover, the Cup Scrub technique (ASTM E1874-97) being referred by the Respondent was the study carried out on S. Aureus and E. Coli which are bacteria causing diarrhea and skin infections rather than cold and flu.

SUBMISSION#2:

The contact time in test American Society for Testing and Materials ASTM E1874-97 is 30 minutes which does not appear to be logical.

- 31.8 The Respondent submitted that 30 minutes time was allowed for contact between bacteria and the substrate (porcine skin) to allow growth/regrowth of bacteria. The contact time between the soap and the skin was only 60 seconds (15 seconds of rubbing the product against the substrate and 45 seconds for making lather).

Analysis By the Enquiry Officers:

- 31.9 The enquiry officers found the reply satisfactory but as the test method ASTM E1874-97 is already an obsolete version, the clarification regarding the same is of no use for the purpose of enquiry.

³ <http://www.fda.gov/forconsumers/consumerupdates/ucm205999.htm>

⁴ <https://www.astm.org/DATABASE.CART/HISTORICAL/E1874-97.htm>

SUBMISSION#3:

The test ASTM E1874-97 is on bacteria only. How it can give protection against Flu Viruses?

31.10 In response to this question, reference was made to the Frequently Asked Questions on the website of ACI about antibacterial soaps which is cited below:

Q. What microorganisms do disinfectants or antibacterial cleaners kill on household surfaces?

A. Depending on the active ingredient(s) and the product formulation, they kill bacteria such as Salmonella and E. coli, which cause intestinal illness, and Staphylococcus which causes skin infections; fungus that causes athlete's foot; and viruses such as Herpes simplex, Rhinovirus, which is the leading cause of the common cold; and Rotavirus, the major cause of diarrhea in young children.


31.11 In response to the Commission's concerns regarding the effectiveness of the test ASTM E1874-97 against flu, as it was conducted against bacteria, they submitted that test ASTM E-1052 displayed the effectiveness of their product against Pand Swine Flu (H1N1) within a one minute contact time. They further submitted that the test conducted by them of its product demonstrated complete effectiveness against H1N1 virus.

Analysis By the Enquiry Officers:

31.12 On the citation of ACI website, the argument presented in para 31.5 is repeated. Furthermore, it is pertinent to mention here, that the Respondent has claimed to cite a response from ACI's website about FAQs regarding antibacterial soaps. **However, the website actually provide a reference of a question regarding surface cleaners and not antibacterial soaps.**⁵ Which, on the part of the Respondent, is demonstration of clear deception in their response. Moreover, it is a well-established fact that ingredients used in disinfectants and surface cleaners are not suitable for use on human skin as they are extremely harsh and dangerous.

31.13 Moreover, the submission of test ASTM E1874-97 (which is an obsolete method) on bacteria is irrelevant to the claim made by the Respondent against the protection of cold & flu.

⁵ http://www.cleaninginstitute.org/clean_living/faqs_about_cleaning__disinfecting.aspx



SUBMISSION#4:

Is Malaysian Skincare Bar and Pakistani Dettol antibacterial soap the same?

31.14 It was submitted by the Responded that both the products are the same. They have provided it in writing on the letter head of the Responded.

Analysis By the Enquiry Officers:

31.15 The Respondent failed to provide any cogent evidence/ test report to prove the similarity between Malaysian and Pakistani Dettol Bar Soap. In the absence of any substantial prove, submissions made by the Respondent on its own letter head cannot be relied upon. Further, it is reminded again that an obsolete test method was used by the Respondent (ASTM E1874-97) to show the efficacy of Malaysian Dettol Bar soap over Dove white beauty soap on S. aureus and E.Coli.

SUBMISSION#5:

Why has the porcine skin used in one of the tests been washed seven times before the final test?

31.16 It was submitted by the Respondent that porcine skin was used as it is most similar to human skin. It was washed seven times prior to its use to make sure that there was no additional bacterial activity except the one that was tested i.e . S. aureus and E. coli. The purpose of the study was to conduct research only against S. aureus and E. coli.

Analysis By the Enquiry Officers:

31.17 The submissions made by the Respondent in para 31.16 above are accepted. However, it is reminded again that the test method ASTM E1874-97 is an obsolete method which cannot be relied upon.

SUBMISSION#6:

If achieved confidence level in test ASTM E1874-97 is same for both soap bars, how does Dettol perform better than the other soaps?

31.18 It was clarified by the Respondent that the effectiveness of the soaps for its strength to prevent regrowth of bacteria is represented through the 'Median' value which for Dove Soap was 4.853 as compared to Dettol, for which it was 1.770.

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Analysis By the Enquiry Officers:

31.19 The test method used by the Respondent ASTM E1874-97 is an obsolete method and cannot be relied upon.

b. DECEPTIVE CLAIMS BY THE RESPONDENT:

32. We find it relevant and important to look at all the claims made in the advertisements (aired and published) for the purpose of Section 10 of the Act separately. For the purpose of clarity, all are stated here:

- i) Dettol soap kills germs like flu virus upto 99.9%
- ii) 24 hour protection from germs that spread in winters/ 24 hours constant protection from germs
- iii) 24 hours germ protection from Cold & Flu:
(The claim of 24 hours in visuals):
 - 24 hours clock logo on top left of TVC.
 - 24 hours shield depicted around the child/family during the TVC, and
 - 24 hours logo during the last minute of TVC.
- iv) **Disclaimer:** As per standard lab testing, prevents germs (E.coli & S.aureus) from increasing upto 24 hours.

i. Dettol Soap Kills Germs Like Flu Virus upto 99.9%:

33. The Respondent, during the TVC claimed that Dettol Soap kills germs like flu virus upto 99.9%. As the TVC was aired in urdu language the exact words used by the Respondent during the TVC are '*Dettol Soap karay flu virus jaisay 99.9 % tak germs ka khatma*'.
Dettol Soap karay flu virus jaisay 99.9 % tak germs ka khatma
34. The impression that can easily be taken from the above statement is that Dettol can kill not only flu virus but also some other germs that are like flu virus. Before going to analyze the statement, we find it appropriate to understand what is flu virus.

Flu (Definition):

The flu is caused by the influenza virus. Common classes of the influenza virus are type A and type B, each of which includes several subtypes or strains. Type A is usually responsible for the annual outbreaks that typically occur in the late fall and early winter. The influenza virus changes often, so having flu caused by one strain does not give you full immunity to other strains⁶.

⁶ <http://www.webmd.com/cold-and-flu/tc/influenza-cause>

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Types of Influenza Viruses:

There are four types of influenza viruses: A, B, C and D. Human influenza A and B viruses cause seasonal epidemics of disease almost every winter in the United States. The emergence of a new and very different influenza A virus to infect people can cause an influenza pandemic. Influenza type C infections generally cause a mild respiratory illness and are not thought to cause epidemics. Influenza D viruses primarily affect cattle and are not known to infect or cause illness in people.

Influenza A viruses are divided into subtypes based on two proteins on the surface of the virus: the hemagglutinin (H) and the neuraminidase (N). There are 18 different hemagglutinin subtypes and 11 different neuraminidase subtypes. (H1 through H18 and N1 through N11 respectively).

Influenza A viruses can be further broken down into different strains. Current subtypes of influenza A viruses found in people are influenza A (H1N1) and influenza A (H3N2) viruses⁷.

35. This is obvious from the definition and further explanation that flu is caused by influenza virus having four types. The Respondent has submitted two test report to substantiate its claims. Test ASTM E1874-97 is on bacteria (E.coli & S. aureus) whereas, another test ASTM E-1052 (in-vitro suspension test) is against Pand Swine Flu (Influenza A- H1N1). Here we find it relevant to know about swine flu also and its types.

Swine Flu:

Swine influenza is a respiratory disease of pigs caused by type A influenza viruses that regularly cause outbreaks of influenza in pigs. Influenza viruses that commonly circulate in swine are called "swine influenza viruses" or "swine flu viruses." Like human influenza viruses, there are different subtypes and strains of swine influenza viruses. The main swine influenza viruses circulating in U.S. pigs in recent years have been, swine

⁷ <http://www.cdc.gov/flu/about/viruses/types.htm>

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triple reassortant (tr) H1N1 influenza virus, trH3N2 virus, and trH1N2 virus⁸.

Swine flu viruses do not usually infect humans, but rare human infections have occurred. Swine flu viruses can cause high levels of illness in pig herds, but cause few deaths in pigs. Swine influenza viruses can circulate among swine throughout the year, but most outbreaks occur during the late fall and winter months similar to outbreaks in humans⁹

How many swine flu viruses are there?

Like influenza viruses in humans and other animals, swine flu viruses change constantly. Pigs can be infected by avian influenza and human influenza viruses as well as swine influenza viruses. When influenza viruses from different species infect pigs, the viruses can reassort (i.e. swap genes) and new viruses that are a mix of swine, human and/or avian influenza viruses can emerge. Over the years, different variations of swine flu viruses have emerged. At this time, there are three main influenza A virus subtypes that have been isolated in pigs in the United States: H1N1, H1N2, and H3N2¹⁰.

Can humans be infected with swine influenza viruses?

Yes. Swine flu viruses do not normally infect humans, however, sporadic human infections with influenza viruses that normally infect swine have occurred. When this happens, these viruses are called "variant viruses." Most commonly, human infections with variant viruses have occurred in people exposed to infected pigs (e.g., children near pigs at a fair or workers in the swine industry). In addition, there have been documented cases of multiple persons becoming sick after exposure to one or more sick pigs¹¹.

⁸ <http://www.cdc.gov/flu/swineflu/index.htm>

⁹ http://www.cdc.gov/flu/swineflu/keyfacts_pigs.htm

¹⁰ http://www.cdc.gov/flu/swineflu/keyfacts_pigs.htm

¹¹ <http://www.cdc.gov/flu/swineflu/keyfacts-variant.htm>

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36. As already stated, flu is caused by influenza virus having different types. The test report submitted by the Respondent to substantiate this claims is ASTM E-1052 (in-vitro suspension test) which is against Pand Swine Flu caused by Influenza A- H1N1. This means that the Dettol is specifically effective against Pand Swine Flu (H1N1) virus. Further the Respondent, during the advertisement, is using a broad statement i.e. '**Dettol Soap karay flu virus jaisay 99.9 % tak germs ka khatma**'. Whereas, they failed to provide any other documentary evidence to support this extensive claim. Hence, by using a wider statement they are making the consumers to believe that Dettol can give protection against other germs also which are like flu virus.
37. The Respondent not only failed to provide a reasonable basis of this claim but this claim is also capable of harming the business interest of many other undertakings in the same line of business, therefore, *prima facie*, violates Section 10 (1) in general and in particular Section 10 (2) (a) & (b) of the Act.

ii. 24 hours protection from germs that spread in winters/ 24 hours constant protection from germs:

38. The Respondent has submitted a test method ASTM E1874-97 that is effective against bacteria's E. coli and S. aureus only (an obsolete method which cannot be relied upon). Another test they submitted ASTM E-1052 is against Pand Swine Flu (Influenza A-H1N1). This means that tests were conducted specifically on two species of bacteria and Pand Swine Flu H1N1. 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 on dictionary.

39. The general definition of germ given in oxford dictionary is:¹²
- *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:¹³

- *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*

40. 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.¹⁴
41. It is important to mention again that the test was conducted on only two species of bacteria i.e. E. coli, and S. aureus. Each of them belongs to a genus having many species.

¹² <http://www.oxforddictionaries.com/definition/english/germ>

¹³ <http://www.merriam-webster.com/dictionary/germ>

¹⁴ <http://www.mayoclinic.com/>

Hence it is evident that the test of the Respondent was conducted on two species of bacteria but they are using a wider term i.e. Germs. As the test of the Respondent is conducted only for bacteria and influenza virus A- H1N1, it is inappropriate and deceptive to articulate that Dettol gives protection from germs. Further, the method used by the Respondent to show the effectiveness of Dettol on bacteria's i.e. E. coli, and S. aureus is an obsolete method and hence cannot be relied upon.

42. Earlier, in the matter of a similar claim, of the Respondent with reference to one of their product i.e. '*Dettol Surface Cleaner*', was declared by the Commission¹⁵ as well as the Competition Appellate Tribunal¹⁶ to be lacking reasonable basis. Accordingly, the claim under review i.e. '*Kills 99.9% of Germs*' was amended/modified by the Respondent and in this regard commitments were also filed by the Respondent before the Registrar of the Commission as well as the Registrar of the Competition Appellate Tribunal in the year 2015.
43. In addition to this, if we recall the subject claim, it insist in providing 24 hour protection against all the germs that spread in winter. Apparently, a much wider claim has been made by the Respondent without any substantial prove.
44. It is also pertinent to mention here that the Respondent does not provide any reasonable basis of making the claim of 24 hours germ protection. They have not submitted a single document to support this contention.
45. Thus, if we analyze the claim as a whole, the Respondent has failed to prove that Dettol can give 24 hours protection from germs that spread in winters/ 24 hours constant protection from germs. Therefore, this act of Respondent 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.

iii. 24 hours germ protection from Cold & Flu:

46. Before analyzing this claim, it is important to know the difference between Cold & Flu.

*The flu and the common cold are both respiratory illnesses but they are caused by different viruses. Because these two types of illnesses have similar symptoms, it can be difficult to tell the difference between them based on symptoms alone.*¹⁷

¹⁵ 2016 CLD 1864; In the matter of Show Cause Notice issued to M/s Reckitt Benckiser Pakistan Limited for deceptive marketing Practices

¹⁶ Order dated 26-11-2015 in the Appeal No. 01/2015 titled M/s Reckitt Benckiser Pakistan Limited vs. Competition Commission of Pakistan.

¹⁷ <https://www.cdc.gov/flu/about/qa/coldflu.htm>

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Many different viruses can cause the common cold, but rhinoviruses are the most common. Rhinoviruses can also trigger asthma attacks and have been linked to sinus and ear infections. Other viruses that can cause colds include respiratory syncytial virus, human parainfluenza viruses, and human metapneumovirus.¹⁸

47. The test submitted by the Respondent to substantiate the claim is specifically against the Swine flu caused by influenza A- H1N1 virus. Whereas, it is clear that there is a difference between cold and flu and both are caused by different viruses. A web link showing a clear difference between cold, swine flu and seasonal flu symptoms is as under:
[http://www.mtoliveboe.org/cmsAdmin/uploads/cold flu swine flu-1 001.pdf](http://www.mtoliveboe.org/cmsAdmin/uploads/cold%20flu%20swine%20flu-1_001.pdf)
48. The Respondent has not submitted any information about 24 hours protection against Cold and Flu. Further, the claim is in contradiction to the fact that frequent hand washing is an essential part of preventing the spread of infection in the community and at home. The claim of 24 hours germs protection has been extensively used by the Respondent during the whole advertisement with no substantial prove. During the TVC, it was used as following:
- 24 hours clock logo on top left of TVC.
 - 24 hours shield depicted around the child/family during the TVC, and
 - 24 hours logo during the last minute of TVC.
49. Thus the Respondent has not only failed to provide a reasonable basis of this claim but this claim is also capable of harming the business interest of many other undertakings in the same line of business, therefore, *prima facie*, violates Section 10 (1) in general and in particular Section 10 (2) (a) & (b) of the Act.

iv. As per standard lab testing, prevents germs (E.coli & S.aureus) from increasing upto 24 hours (Disclaimer):

50. The Respondent has not submitted any evidence to substantiate the claim of 24 hours protection against E.coli & S.aureus. The test method submitted by the Respondent ASTM E1874-97 is an obsolete method which does not reflect 24 hours protection against stated bacterias.

¹⁸ <https://www.cdc.gov/Features/Rhinoviruses/index.html>





51. Thus, this act of the Respondent is not only misleading the consumers about the character, properties and quality of product being offered by them but it is also capable of harming the business interest of many other undertakings in the same line of business, therefore, *prima facie*, violates Section 10 (1) in general and in particular Section 10 (2) (a) & (b) of the Act.

G. CONCLUSION AND RECOMMENDATIONS:

52. The Respondent has submitted two test reports to substantiate its claims made through advertisements. First report marked as ASTM E1874-97 is an absolute method of testing which cannot be relied upon. This method was suspended and subsequently replaced by ASTM E1874-14 during the year 2014.
53. The other test report submitted by the Respondent marked as ASTM E-1052 also shows the results against Pand Swine Flu. Both the reports were found insufficient to substantiate the claims made by the Respondent in its advertisement campaign. It has also

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been observed that the Respondent has made wider claims through the advertisements in contrast to actual facts placed before the enquiry officers.

54. Keeping in view, the aforementioned facts it is quite evident that the Respondent by making high sounded claims in their advertisements released from time to time has, *prima facie*, entered into deceptive marketing practices in terms of the provisions of section 10(1) of the Act. Moreover, it has been involved in distributing false and misleading information that is capable of harming the business interests of other undertakings in terms of section 10(2)(a) and also distributing information to consumers that lacks reasonable basis related to characters, properties and quality of its product in terms of section 10(2)(b) of the Act.
55. Therefore, it is recommended that in the interest of the public at large, proceedings may be initiated against the Respondent under the provisions of Section 30 of the Act for, *prima facie*, violation of Section 10(1) in terms of section 10(2)(a) and (b) of the Act.



(Marrayum Pervaiz)
Deputy Director
Enquiry Officer



(Faiz ur Rehman)
Assistant Director
Enquiry Officer