

# **COMPETITION COMMISSION OF PAKISTAN**

## **ENQUIRY REPORT**

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

**IN THE MATTER OF COMPLAINT FILED BY M/S NATIONAL  
FOODS LIMITED AGAINST M/S SHANGRILA (PRIVATE)  
LIMITED FOR DECEPTIVE MARKETING PRACTICES**

**BY**

Noman A. Farooqi/ Marryum Pervaiz  
**Dated: 13/08/2013**

## **A. BACKGROUND**

1. M/s National Foods Limited (the ‘**Complainant**’) filed a complaint with the Competition Commission of Pakistan (the ‘**Commission**’), against M/s Shangrila (Private) Limited (the ‘**Respondent**’) for alleged violation of Section 10 of the Competition Act, 2010 (the ‘**Act**’) i.e. deceptive marketing practices.
2. The Complainant alleged that the Respondent while marketing one of its products i.e. ‘*Shangrila Tomato Ketchup*’, through print media and billboards, has made a claim that ‘*Shangrila Tomato Ketchup*’ is ‘**Pakistan’s No.1 Tomato Ketchup**’. It has been alleged in the complaint that the Respondent has no reasonable basis to make such claim and is disseminating misleading and false information to the consumers that lacks a reasonable basis, related to character, properties or quality of product and is capable of harming the business interest of the Complainant. It has been alleged that such conduct amounts to deceptive marketing practices in violation of Section 10 of the Act.
3. Keeping in view the above, the Competent Authority initiated an Enquiry in accordance with sub-section (2) of Section 37 of the Act by appointing Mr. Noman A. Farooqi, Sr. Joint Director and Miss Marryum Pervaiz, Assistant Director, as the enquiry officers on 06-11-12. The undersigned Enquiry Officers were directed to conduct the enquiry on the issues raised in the complaint and to submit the enquiry report by giving findings and recommendations *inter alia* on the following:
  - (i) Whether the conduct of the Respondent is capable of harming the business interest of the Complainant in violation of Section 10(2)(a) of the Act?
  - (ii) Whether the Respondent is disseminating false/misleading information to the consumers that is lacking a reasonable basis, related to character, suitability for use, or quality of goods in violation of Section 10(2)(b) of the Act?

## **B. CORRESPONDENCE (COMPLAINT, COMMENTS, REJOINDER AND REQUISITION OF INFORMATION FROM OTHER RESOURCES)**

4. The details of the correspondence exchanged during the enquiry are as follows:

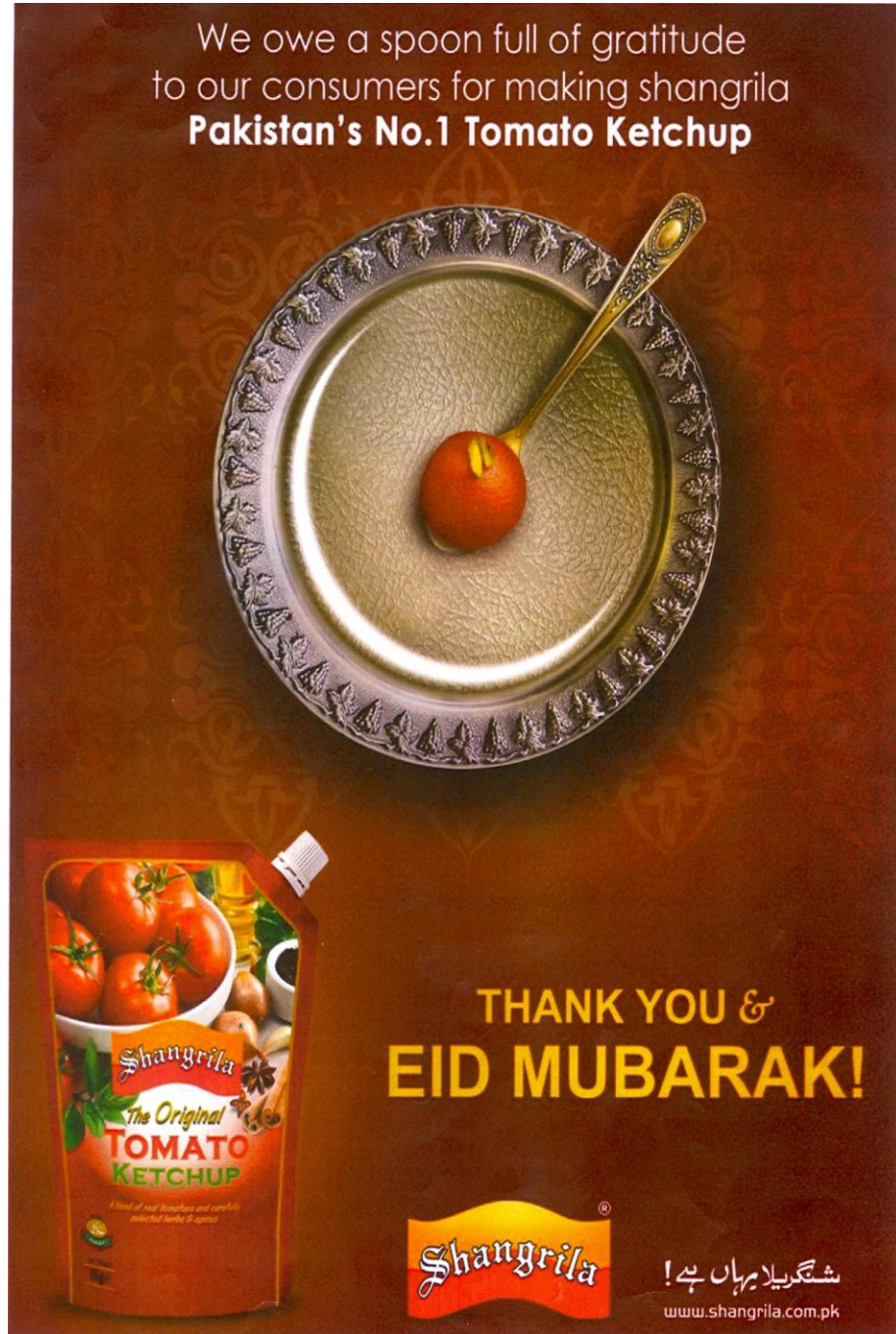
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### **I. THE COMPLAINT:**

5. The Complainant is a Public Limited Company registered under the Companies Ordinance, 1984. The Complainant is principally engaged in the manufacturing and marketing of various food products including ketchup since 1970s. It has been alleged in the complaint that:

- (i) The Respondent has recently launched a marketing campaign through print and outdoor advertising media all across Pakistan for ‘*Shangrila Ketchup*’ and claimed that their brand is ‘*No. 1 in Pakistan*’. The claim of the Respondent is prominently displayed on all their advertisements and for ease of reference is reproduced herein below:

*We owe a spoonful of gratitude to our consumers for making Shangrila Pakistan’s No 1 Tomato Ketchup....*







- (ii) The marketing campaign of the Respondent constitutes a false statement which is misleading and deceptive to a substantial segment of consumers in Pakistan. The deception is likely to adversely influence the purchasing decision of consumers and will negatively affect the business of the Complainant.
- (iii) These misleading advertisements are undertaken by the Respondent to tarnish the business, operations, affairs, interest, goodwill and reputation

of the Complainant regarding their product i.e. National Ketchup. Their deceptive marketing campaign leads to violation of Section 10 (2) (a) & (b) of the Act.

- (iv) Based on the AC Neilson Audit Retail Survey, the Respondent is not “**No. 1 in Pakistan**” as alleged by the Respondent in their marketing campaign. The Respondent holds a volume share of 21.1% in ketchup & sauce category in Pakistan as compared to Complainant’s volume share of 48.7% in the same category from July 2011 to June, 2012.
  - (v) The Respondent has also breached the Code of Advertising Practice (PAS) as their advertisement is not based on true facts and was created to mislead innocent consumers. It is also recognized that unethical competitive practices in the advertising business leads to financial waste, divisiveness, loss of prestige and to the weakening of public confidence in both advertisements and businesses.
  - (vi) The Complainant further submitted that they had also submitted a Complaint to Pakistan Advertisers Society regarding the misleading Advertisement of ***Shangrila Tomato Ketchup*** and they have sent an inquiry letter to the Respondent but they have not responded.
  - (vii) In view of the above, the Complainant has requested for the following reliefs:
    - (a). To take immediate necessary action against the Respondent;
    - (b). Inquire from them that on what basis they claimed that ***Shangrila Ketchup is No.1 in Pakistan***;
    - (c). Instruct them to immediately remove all their advertisements throughout Pakistan;
    - (d). Impose any other penalty on them as you may think relevant.
6. The Complainant vide letter dated 07-11-2012 was requested to provide the latest A.C.Nielson survey report pertaining to the comparative data of related fields after the month of June, 2012. Another letter was written to the Complainant to provide the original survey on the letterhead of A.C.Nielson. Since, no information was received within the prescribed time; therefore, a reminder was issued on 27-11-2012. The required A.C.Nielson Survey Report was provided through letter dated 30-11-2012 by the Complainant. The latest report is annexed with this report as **Annex-A**.
7. The A.C.Nielson Survey Report contains the value and volume shares of the Complainant and the Respondent for the period of October 2011 to September 2012 and for ease of reference, said data is summarized below:

| Category-<br>Ketchup & Sauces | VOLUME SHARE          |                       | VALUE SHARE           |                       |
|-------------------------------|-----------------------|-----------------------|-----------------------|-----------------------|
|                               | National<br>Foods Ltd | Shangrila<br>Products | National<br>Foods Ltd | Shangrila<br>Products |
| Total Urban Pakistan          | 49.2                  | 20.7                  | 50.8                  | 20.1                  |
| Total Karachi City            | 57.9                  | 23.2                  | 59.5                  | 22.3                  |
| Total Lahore City             | 35.0                  | 23.7                  | 35.4                  | 23.3                  |
| Total Faisalabad City         | 24.3                  | 55.3                  | 24.4                  | 55.1                  |
| Total Hyderabad City          | 54.0                  | 14.0                  | 55.8                  | 13.1                  |
| Total Isb/Rwp City            | 46.1                  | 19.3                  | 47.6                  | 18.7                  |
| Total Gujranwala City         | 47.3                  | 15.7                  | 49.2                  | 15.8                  |
| Total Multan City             | 49.6                  | 27.5                  | 51.6                  | 26.1                  |

## II. COMMENTS/ REPLY OF THE RESPONDENT:

8. Through the letter dated 07-11-2012 the complaint alongwith its annexures was forwarded to the Respondent for their comments/reply. The Respondent vide their letter dated 13-11-2012 requested for an extension in time to file the written reply. In response vide letter dated 15-11-2012, the Respondent was granted the extension till 01-12-2012 to file their comments/reply to the complaint. No reply was submitted by the respondent till 01-12-2012, consequently a reminder was issued to the Respondent on 04-12-2012. The reply from the Respondent was received on 07-12-2012 affirming the following fact:
- (i) The Respondent has been in the business of manufacturing Tomato Ketchup along with other range of products for the past twenty (20) years.
  - (ii) Complainant's argument against the Respondent for not being '*Pakistan's No. 1 Tomato Ketchup*' is based on the sales data provided that shows market share in terms of sales volume, which does not apply in this case.
  - (iii) The Respondent's statement doesn't claim Shangrila Tomato Ketchup as the No.1 selling brand and neither was the perception given to such effect. This is the Complainant's one sided view.

- (iv) The claim is based on nationwide brand recognition, current market standing, company profile, majority of consumer's preferences and experts panel recommendations of the Brands Foundation of Pakistan (hereinafter the '**BFP**').
- (v) The Respondent has been awarded '*Brand of the Year Award*' consecutively for the last five years by the BFP in the category Ketchups & Sauces. The award certificates for the years 2008 to 2011 are annexed with this report as '**Annex-B1**' to '**Annex-B4**'.
- (vi) BFP is the company established as a non-profit organization licensed under section 42 of the Companies Ordinance, 1984. It is licensed by Securities and Exchange Commission of Pakistan. BFP is dedicated to the promotion of brand excellence and improvement of branding standards in Pakistan.
- (vii) The Respondent alleged that their claim is based on the declaration and honors provided by BFP, as they consecutively received Brand of the years Awards from 2008 to 2011-12. BFP is the company that follows established marketing research procedures and practices and announces awards on the basis of consumer preferences. The campaign of '**Pakistan No.1**' Tomato Ketchup is based on consumer preference and can not be considered as deceptive.
- (viii) They at the end clarified the reason for not responding to Pakistan Advertiser Society by stating that the Chief Executive of the Complainant also happens to be the Chairman of Advertiser society. The complaint in this way was given endorsement of being credible by the officers of Pakistan Advertiser Society.

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### **III. REJOINDER BY THE COMPLAINANT:**

- 9. The comments/reply of the Respondent was forwarded to the Complainant for their rejoinder/comments, if any, through letter dated 06-12-2012.
- 10. The Complainant filed their rejoinder on 14-12-2012. The rejoinder in its material aspects is summarized as follows:
  - (i) The relevant survey data collected by A.C.Nielsen Pakistan has already been submitted. It shows that the market share of *Nationals Foods ketchup* is more than two and a half times larger than that of the Respondent's ketchup. They further clarified that the market share data has been compiled not only in relation to the total volume of ketchup sales but also the total value of ketchup sales throughout Pakistan.

- (ii) To put emphasis on their stance they provided a copy of A.C.Nielsen Pakistan's letter titled '**Confirmation of Information Required**' dated 27-11-2012. Copy of the letter is attached as '**Annex-C**'.
- (iii) Attention was brought to the *Order of the Commission in the matter of Proctor & Gamble, Pakistan reported as 2010 CLD 1695*, wherein the Commission had accepted the report of AC Neilson as evidence in support of Proctor & Gamble's claim regarding one of their product i.e. Head & Shoulder Shampoo (anti dandruff shampoo) as being ***World's No.1 anti dandruff shampoo***. In the light of the aforementioned Order, the sales data provided by Neilson substantiates that ***National Ketchup*** is the market leader in Pakistan.
- (iv) They further explained that although BFP is licensed by Securities & Exchange Commission of Pakistan but such licensing does not and cannot, in and of itself, confer upon the BFP any authority of the kind alluded by the Respondent. Therefore, as stated by the Respondent that BFP has been "...assigned sole rights by the Government of Pakistan to announce such endorsements to various brands on the basis of Consumer Preferences..." is not merely false, but is absurd.
- (v) The methods adopted by BFP for brands recognition is also criticized by the Complainant. They stated that BFP should consider actual market share of the product as it directly relates with consumer preference (as given by AC Neilson). In the absence of such reliance it is obvious that BFP does not rely upon any empirical data in determining which product is the rightful contender for the award.
- (vi) They further draw attention to the publication in the *daily Express Tribune* dated: 6-07-2012 entitled "**For Sale: Brands of the Year Awards**" wherein it is stated that:
- (a). "In a practice that not only misleads 180 million Pakistanis but also remains unnoticed by the country's consumer watchdog body for the last four years, the Brands Foundation has been giving "Brands of the Year Awards" exclusively for money..."
- (b). An investigation by The Express Tribune, however, has revealed serious malpractices in the manner the award has been given out.
- (c). A careful study of the Pre Event Report (for 2010 awards) and background interviews of industry sources strongly indicate that money was a top criterion for awarding the accolade. It was also found that, in many categories, some brands won the title only because the competition either



refused to participate or denied paying a participation fee of Rs. 125,000/- — which is charged only from winners...”

Copy of the Article Published in the *daily Express Tribune* is attached as **‘Annex-D’**

- (vii) They alleged that if the Respondent had intended to acknowledge and reply upon the purported award granted to them by BFP, then they should have referenced this award with their caption and brought it to the attention of public, which they have not done, Instead they have clearly referred to themselves as **‘Pakistan’s No.1 Tomato Ketchup’**.
- (viii) They brought attention to Commission order in the matter of S.C. Johnsons & Sons Pakistan Limited, where it was held that the undertakings cannot place reliance on the ‘Brand of the Year Award’ to claim itself as **‘No.1 in Pakistan’**.
- (ix) A complaint can be raised before the Pakistan Advertisers Society by any member and merely because the C.E.O. of the Complainant happens to be the Chairman of the Society, it does not preclude or bar him from raising a complaint on his own behalf, as a member.
- (x) The deceptive claim of the Respondent is with *mala fide* intent to increase the sales and popularity of **Shangrila Ketchup**, which would jeopardize the market position of **National Ketchup** but would also tantamount to **Shagrila Ketchup** making illegal gains at the Complainant’s cost.
- (xi) At the end it was prayed that Commission should take strict and immediate action against deceptive claim of the Respondent.

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#### **IV. CORRESPONDENCE WITH M/S BRAND FOUNDATION OF PAKISTAN:**

- 11. Through letter dated 07-12-2012, BFP was requested to provide the following information:
  - (i). What procedure is to be adopted by companies to secure nominations in any category for the awards presented by your company?
  - (ii). What procedure is adopted by your company to shortlist the companies for the award in any category?
  - (iii). Please confirm the number of years during which M/s Shangrila (Pvt.) Ltd won the award of ‘Brand of the Year’ in the category of ‘Tomato Ketchup’?

- (iv). The list of other nominees/ contenders for the award of ‘Brand of the Year’ in the category of ‘Tomato Ketchup’ during the years when the award was only won by M/s Shangrila (Pvt.) Ltd.
- (v). Please also provide the assessment of all the nominees/contenders along with M/s Shangrila (Pvt.) Ltd for the award of ‘Brand of the Year’ in the last five years under the category of Tomato Ketchup? (Please provide the details about all the nominees/contenders separately)
12. Since, no reply was filed by BFP within the prescribed time i.e. till 14-12-2012; therefore, a reminder was issued by the on 14-12-2012, requesting BFP to provide the aforementioned information at earliest.
13. BFP through their letter dated 20-12-12, requested for an extension of time period to file the reply, till 10-01-2013. Time period to file the reply was extended accordingly.
14. BFP in their reply gave a brief profile of their company by indicating that it is an independent, authoritative and vibrant platform established as nonprofit public company licensed under section 42 of the Companies Ordinance 1984 by the Government of Pakistan. BFP has a legal mandate to perform the following jobs:
- (i) Promote brand culture in Pakistan;
  - (ii) Conduct brand quality and intellectual property survey;
  - (iii) Conduct brand audit rating and establish international standard scientific labs;
  - (iv) Develop brand research and establish best brand practices;
  - (v) Act as sponsoring body for a University dedicated to develop expertise and create awareness for brand research and empowerment.
15. World Intellectual Property Organization, in the category of National NGOs, has granted the ‘*Permanent Observer Status*’ to BFP.
16. BFP has submitted a point wise reply of all the questions asked by the enquiry officers in their letter dated 07-12-2012. A copy of the said letter is attached as ‘**Annex-E**’ For ease of convenience they are reproduced herein below:
- (i) What procedure is to be adopted by companies to secure nominations in any category for the awards presented by your company?
- Every year before start of the activity ‘Brands Award Council’ conduct a focus group survey to finalized the categories to be included in the upcoming ‘Brand of the year Award’. Once the category is finalized ... top three to five brands in every category are finalized and the selection procedure follows.
- (ii) What procedure is adopted by your company to shortlist the companies for the award in any category?

- (a). The Brands apply to BFP in their respective category and after the final selection of categories the management of BFP through experts conduct an internal focus group study to finalize the top five most trusted and popular brands in every category with the help of the whole sale market, super markets, big shopping centers etc and on the basis of input from the educated professionals, qualified consumers and people bonded with the brands.
- (b). Once the *top* five brands in every category are finalized – top three brands were included in a nationwide consumer survey in all major trade cities for rating of their preference. Research method is the most important approach in this scenario and our **research methodology** is as follows:
  - (i). To secure credible ratings based on consumer & expert’s opinion and the distinct voice of potential and qualified customers, we have designed our study where both quantitative and qualitative methods were given due preference.
  - (ii). **Quantitative consumer survey mainly** engages analysis of numerical data regarding people bond with the brand which reflect the majority of consumer preference. It is a numbers-based research discipline, quantitative research statistically measures consumer mind-set, perception, and preference. Over 15000 qualified respondents participated in the quantitative consumer survey. Each respondent was first examined for their brand mindset and asked questionnaire related to brand quality, affordability, familiarity and availability. After careful analysis of the viewpoints expressed, the nominated brands was given the corresponding ratings.
  - (iii). **Qualitative research** is a highly subjective research discipline, designed to look beyond the percentages to gain an understanding of the customer's feelings, impressions and viewpoints. While the results of the nationwide consumer survey were being received, the management constituted a panel of experts to conduct the qualitative research on the participating brands of each category in which following major attributes of brand research were considered and evaluated:
    - (a). Strong market standing of the brand,
    - (b). Brand Popularity and trust level,
    - (c). Nationwide Brand Recognition,
    - (d). Sound Company Profile and corporate structure,

- (e). Distinctive and innovative feature of the brand (if any),  
and
  - (f). Consumer preference.
- (iii) Please confirm the number of years during which the Respondent won the award of ‘Brand of the Year’ in the category of ‘Tomato Ketchup’?

The Respondent has won the award of ‘Brand of the Year’ in the category of tomato Ketchup in 2008, 2009 and 2010 consecutively.

- (iv) The list of other nominees/ contenders for the award of ‘Brand of the Year’ in the category of ‘Tomato Ketchup’ during the years when the award was only won by M/s Shangrila (Pvt) Ltd.

| Sr. No. | Years | Contenders                                     |
|---------|-------|--|
| 1       | 2008  | Mitchelles, National, Shangrila                |
| 2       | 2009  | Mitchelles, National, Shezan, Shangrila        |
| 3       | 2010  | Mitchelles, National, Shezan, Shangrila, Knorr |

- (v) Please also provide the assessment of all the nominees/contenders along with M/s Shangrila (Pvt) Ltd for the award of ‘Brand of the Year’ in the last five years under the category of Tomato Ketchup? (Please provide the details about all the nominees/contenders separately)

It comprises of Quantitative Consumer Survey (60%) and Qualitative focus group analysis of company profile and other characteristics (40%). Individual analysis of the Complainant & the Respondent is as follows:

**YEAR 2008 SURVEY RESULTS FOR THE CATEGORY OF TOMATO KETCHUP:**

**Complainant’s-Quantitative Consumer Survey:**

| Sr. No. | Attributes    | Rating    |
|---------|---------------|-----------|
| 1       | Quality       | Excellent |
| 2       | Familiarity   | Excellent |
| 3       | Affordability | Excellent |
| 4       | Availability  | Excellent |
| 5       | Reliability   | Excellent |

**Respondent’s-Quantitative Consumer Survey:**

| Sr. No. | Attributes    | Rating      |
|---------|---------------|-------------|
| 1       | Quality       | Outstanding |
| 2       | Familiarity   | Excellent   |
| 3       | Affordability | Excellent   |
| 4       | Availability  | Excellent   |
| 5       | Reliability   | Outstanding |

**YEAR 2009 SURVEY RESULTS FOR THE CATEGORY OF TOMATO KETCHUP:**

**Complainant's-Quantitative Consumer Survey:**

| <b>Sr. No.</b> | <b>Attributes</b> | <b>Rating</b> |
|----------------|-------------------|---------------|
| 1              | Quality           | 80%           |
| 2              | Familiarity       | 80%           |
| 3              | Affordability     | 80%           |
| 4              | Availability      | 80%           |
| 5              | Reliability       | 80%           |

**Respondent's-Quantitative Consumer Survey:**

| <b>Sr. No.</b> | <b>Attributes</b> | <b>Rating</b> |
|----------------|-------------------|---------------|
| 1              | Quality           | 85%           |
| 2              | Familiarity       | 85%           |
| 3              | Affordability     | 80%           |
| 4              | Availability      | 85%           |
| 5              | Reliability       | 90%           |

**YEAR 2010 SURVEY RESULTS FOR THE CATEGORY OF TOMATO KETCHUP:**

**Complainant's-Quantitative Consumer Survey:**

| <b>Sr. No.</b> | <b>Attributes</b> | <b>Rating</b> |
|----------------|-------------------|---------------|
| 1              | Quality           | 80%           |
| 2              | Familiarity       | 80%           |
| 3              | Affordability     | 85%           |
| 4              | Availability      | 85%           |
| 5              | Reliability       | 80%           |

**Respondent's-Quantitative Consumer Survey:**

| <b>Sr. No.</b> | <b>Attributes</b> | <b>Rating</b> |
|----------------|-------------------|---------------|
| 1              | Quality           | 90%           |
| 2              | Familiarity       | 90%           |
| 3              | Affordability     | 85%           |
| 4              | Availability      | 85%           |
| 5              | Reliability       | 90%           |

17. BFP in its reply has also clarified that winner brand is not declared on the basis of:
- (i) Single criterion as number of unit sales, as in our country proper unit sold is not declared by industries.



- (ii) All the input is based on the response of consumer survey and the relevant departments simply calculate the percentage of each attribute earned by each brand.
- (iii) **This evaluation is in no way related with declaring any brand as the number one or two in any industry category;** as we analyze the consumer preference, brand attributes analysis, current year market standing and company profile.
- (iv) We do not disclose the contender brands to winner brand unless requested. **Further we never communicate any such wording like number one or two to any brand as our evaluation is not based on a single attribute** rather it is based on a comprehensive evaluation process and we communicate the brand winners as **'The most popular and trusted brand of the year'**.
- (v) Every year detail of winner brand and their analysis of current year market standings is printed in the form of a publication with the name of **'The Most Acclaimed Brands of Pakistan'**.
- (vi) All previous four awards ceremonies are chaired by the then Prime Minister of Pakistan;
- (vii) If the Respondent has made any such claim as **No. 1 Tomato Ketchup**, it must have been on some other input.

## C. ANALYSIS

18. As mentioned in Para 3 *ibid* the undersigned enquiry officers are directed to conduct the enquiry on the issues raised in the complaint and to submit the enquiry report by giving their findings and recommendations on the TORs. In the subsequent paragraphs the facts and evidence against each TOR is discussed.

### I OVERALL NET IMPRESSION OF THE MARKETING CAMPAIGN / ADVERTISEMENT

19. The basic allegation under the complaint is that the Claim ***"No. 1 Tomato Ketchup in Pakistan"*** made by the Respondent is not only misleading and false but it also lacks a reasonable basis and is capable of harming the business interest of the Complainant.
20. In order to address the TORs, it is imperative for us to first understand the overall net impression of the marketing campaign/advertisements. In this regard, we must keep 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"***. While analyzing the net overall impression of the marketing campaign another important aspect which must be kept into mind is that the advertisement has to be viewed from the point of view of **'ordinary consumer'** which has clearly been defined by the Commission ***2010 CLD 1473*** and who is not the same as the ***'ordinary prudent man'*** concept evolved under contract law.

21. The print media advertisement and the billboards/hoardings regarding Shangrilla Ketchup contain a very prominent and absolute claim i.e. **“We owe a spoonful of gratitude to our consumers for making Shangrila Pakistan’s No. 1 Tomato Ketchup”**. It is pertinent to highlight that in the first statement the Respondent is thanking its consumers for making is Pakistan’s No. 1 ketchup. In the entire statement, the thank you to consumers is followed by a statement of fact i.e. Pakistan’s No. 1 Tomato Ketchup. It is worth mentioning that when the statement is viewed as a whole the only impression coming to an ordinary consumer’s mind would be that Shangrila is **Pakistan’s No. 1 Tomato Ketchup**. In the print media the advertisement was published in weekly Jang Sunday Magazine from 19-25 August 2012. In addition to the print media advertisement the marketing campaign was also carried out by the Respondent through placing huge billboards. The images of both such marketing material is already depicted in paragraph (5) above of this Report. Copy of the Print Media Advertisement is attached as **‘Annex-F’**.
22. The advertisement/ marketing campaign when viewed as a whole gives a, *prima facie*, impression that Shangrilla is Pakistan’s No. 1 Tomato Ketchup. It is also pertinent to highlight that the first part of the statement i.e. **“We owe a spoonful of gratitude to our consumers for making Shangrila”** infact complements the second part of the statement which is a statement of fact and a claim shown in a bold and pertinent font i.e. **“Pakistan’s No. 1 Tomato Ketchup”**. It has also been noted that although the Respondent has categorically emphasized in its reply and comments to the complaint that the said claim has been made with reference to the award of ‘Brand of the Year’, however, review of the advertisement / marketing campaign makes it clear that the claims and the statements made therein have made no reference to the said award and the advertisements does not contain any logo of ‘Brand of the Year’.
23. In view of the above, and on the basis of the marketing material used for the campaign of *Shangrilla Ketchup* by the Respondent, *prima facie*, the overall net impression of the marketing campaign/ advertisement from the perspective of an ‘ordinary consumer’ is that **‘Shangrilla is Pakistan’s No. 1 Tomato Ketchup’**.
24. Having concluded regarding the overall net general impression of the marketing campaign/ advertisement we must now proceed to address the T.O.Rs referred to us and mentioned in Para (3) *ibid*. However, we deem it appropriate to address the T.O.R No. (ii) first and then address the T.O.R. No. (i).

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**II WHETHER THE RESPONDENT IS DISSEMINATING FALSE AND MISLEADING INFORMATION TO THE CONSUMER THAT IS LACKING REASONABLE BASIS**

25. In this part of the Report, the aspects of reasonable basis of the claim are discussed in light of the submissions made in the complaint and the comments made by the Respondent and BFP.

26. It is pertinent to mention here that provisions of clause (b) of subsection (2) of Section 10 read with subsection (1) of Section 10 of the Act *inter alia* prohibits the undertaking(s) from dissemination of information which lacks reasonable basis regarding the ‘price’, ‘character’, ‘method or place of production’, ‘properties’, ‘suitability for use’, or quality of good’. For convenience and brevity the relevant provisions are reproduced herein below:

“**Section 10 (2)(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;”

27. In this regard, the Complainant has alleged that as recently as; in the month of August 2012 the Respondent has launched a marketing campaign through print media and outdoor advertisements across Pakistan of its tomato ketchup. The Complainant has alleged that the marketing campaign of the Respondent constitutes a false statement which is misleading and deceptive to the substantial segment of consumers in Pakistan. In support the Complainant has relied upon the Audit Retail Survey of A.C.Neilson. In terms of the said Audit Retail Survey the Respondent holds a volume share of 21.1% in ketchup & sauce category in Pakistan as compared to Complainant’s volume share of 48.7% in the same category from July 2011 to June, 2012.
28. In response to the aforesaid allegations, the Respondent denied the allegations made in the complaint. It was submitted by the Respondent that the Complainant’s argument against the Respondent for not being ‘**Pakistan’s No. 1 Tomato Ketchup**’ is based on the sales data provided which shows market share in terms of sales volume does not apply in this case. It was also submitted by them that the statement made in the marketing campaign does not in any manner claim that Shangrila Tomato Ketchup is the No.1 selling brand and neither was the perception given to such effect. This is the Complainant’s one sided view. The Respondent submitted that the claim is based on nationwide brand recognition, current market standing, company profile, and majority of consumer’s preferences and experts panel recommendations of BFP.
29. The Respondent stated that their claim is based on the declaration and honors provided by BFP, as they consecutively received Brand of the years Awards from BFP during the years 2008 to 2011-12. It was also submitted by them that since, BFP is the company that follows established marketing research procedures and practices and announces awards on the basis of consumer preferences. The campaign of ‘**Pakistan No.1**’ Tomato Ketchup is based on consumer preference and can not be considered as deceptive.
30. In response to the comments of the Respondent, the Complainant through the rejoinder refuted the submissions of the Respondent and reiterated their stance from the complaint. It was submitted that as per the Audit Retail Survey the market share of the Complainant is two and a half times larger than that of the

Respondent's ketchup. They further clarified that the market share data has been compiled not only in relation to the total volume of ketchup sales but also the total value of ketchup sales throughout Pakistan. In this regard reliance was also placed on the letter dated 27-11-2012 issued by A.C.Neilson which is annexed as 'Annex-C' to this report. Regarding the authenticity and acceptability of the A.C.Neilson survey, the Complainant relied on the Order of the Commission in the matter of Proctor & Gamble, Pakistan reported as 2010 CLD 1695, wherein the Commission had accepted the report of AC Neilson as evidence in support of Proctor & Gamble's claim regarding one of their product i.e. Head & Shoulder Shampoo (anti dandruff shampoo) as being **World's No.1 anti dandruff shampoo**.

31. It was also submitted by them that the statement of the Respondent that BFP has been "...assigned sole rights by the Government of Pakistan to announce such endorsements to various brands on the basis of Consumer Preferences..." is not merely false, but is absurd. The methods adopted by BFP for brands recognition is also criticized by the Complainant. They stated that BFP should consider actual market share of the product as it directly relates to consumer preference (as given by A.C. Neilson). In the absence of such reliance it is obvious that BFP does not rely upon any empirical data in determining which product is the rightful contender for the award.

32. The Complainant further referred and relied upon the article published in the *daily Express Tribune* dated: 6-07-2012 titled **"For Sale: Brands of the Year Awards"** wherein it is stated that:

*"(a).In a practice that not only misleads 180 million Pakistanis but also remains unnoticed by the country's consumer watchdog body for the last four years, the Brands Foundation has been giving "Brands of the Year Awards" exclusively for money..."*

*(b).A careful study of the Pre Event Report (for 2010 awards) and background interviews of industry sources strongly indicate that money was a top criterion for awarding the accolade. It was also found that, in many categories, some brands won the title only because the competition either refused to participate or denied paying a participation fee of Rs. 125,000/- — which is charged only from winners..."*

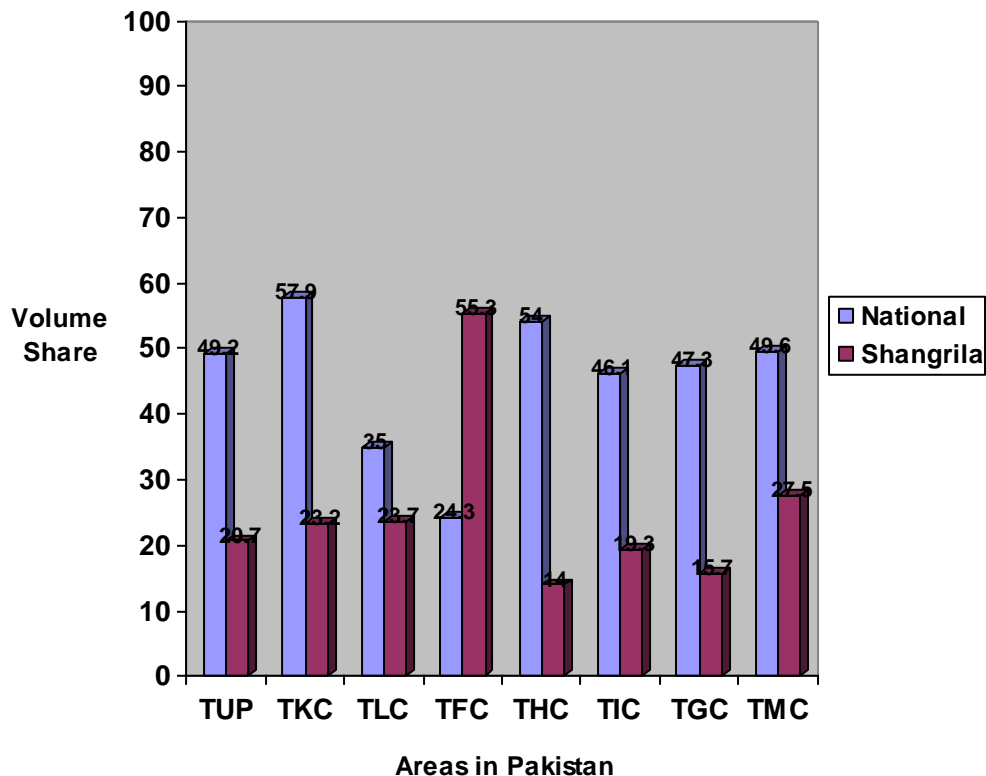
33. Based on the above submissions, it was deemed appropriate to seek clarifications from BFP regarding the process followed by them in awarding 'Brand of the Year' awards. It was submitted by them that for the Brand of the Year award evaluation of the competing brands based upon quantitative survey findings is conducted from over 15,000 respondents from all over Pakistan and qualitative research findings are conducted by a panel of experts.

34. BFP also clarified that winner brand is not declared on the basis of single criterion as number of unit sales, as in our country proper unit sold is not declared by

industries. All the input is based on the response of consumer survey and the relevant departments simply calculate the percent of each attribute earned by each brand. This evaluation is in no way related with declaring any brand as the number one or two in any industry category; as we analyze the consumer preference, brand attributes analysis, current year market standing and company profile. Further we never communicate any such wording like number one or two to any brand as our evaluation is not based on a single attribute rather it is based on a comprehensive evaluation process and we communicate the brand winners as 'The most popular and trusted brand of the year'. If the Respondent has made any such claim as No. 1 Tomato Ketchup, it must have been on some other input (emphasis added).

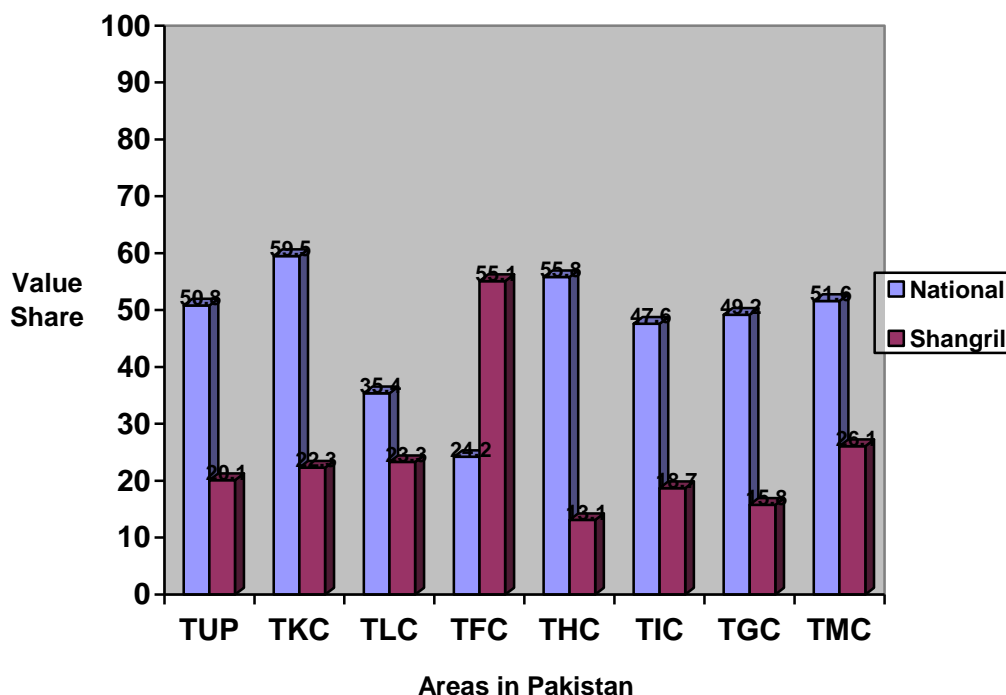
35. As per our own analysis of the Audit Retail Survey of A.C. Neilson, it appears that the Complainant holds a major market share as compared to the Respondent. The same is depicted in the figure below:

**VOLUME SHARE OF MARKET ON LATEST 12 MONTHS**  
**(Oct, 2011 to Sept, 2012)**  
**Category-Ketchups & Sauces**





**VALUE SHARE OF MARKET ON LATEST 12 MONTHS**  
**(Oct, 2011 to Sept, 2012)**  
**Category-Ketchups & Sauces**



| TUP                  | TKC                | TLC               | TFC                   | THC                  | TIC                             | TGC                   | TMC               |
|----------------------|--------------------|-------------------|-----------------------|----------------------|---------------------------------|-----------------------|-------------------|
| Total Urban Pakistan | Total Karachi City | Total Lahore City | Total Faisalabad City | Total Hyderabad City | Total Islamabad/Rawalpindi City | Total Gujranwala City | Total Multan city |

36. On the other hand the Respondent has submitted that in the present case, the findings of the Audit Retail Survey based on the Value and Volume share does not apply and placed reliance on the ‘Brand of the Year’ award in support of the claim made through their advertisement / marketing campaign. We fail to understand why the Audit Retail Survey of A.C.Neilson is not relevant. We are also unable to understand that a survey which is being conducted from over 15,000 respondents across Pakistan is more valuable than the survey which is more comprehensive and has taken into account the market figures of a larger segment of consumers. The article published in the *daily Express Tribune* dated: 6-07-2012 titled “***For Sale: Brands of the Year Awards***” which is ‘Annex-D’ to this Report is also of great relevance which has casted serious doubts of the awards conferred by BFP. We were also unable to locate any counter press release from BFP in response to the aforesaid article.
37. Regarding the Complainant’s submissions and reliance on the A.C. Neilson Audit Retail survey, we appreciate the fact that earlier the Commission vide Order of the Commission in the matter of Proctor & Gamble Pakistan reported as 2010 CLD 1695 has endorsed the A.C.Neilson Audit Retail Survey as valid to substantiate the claim of being No. 1. We also are cognizant of the Order dated

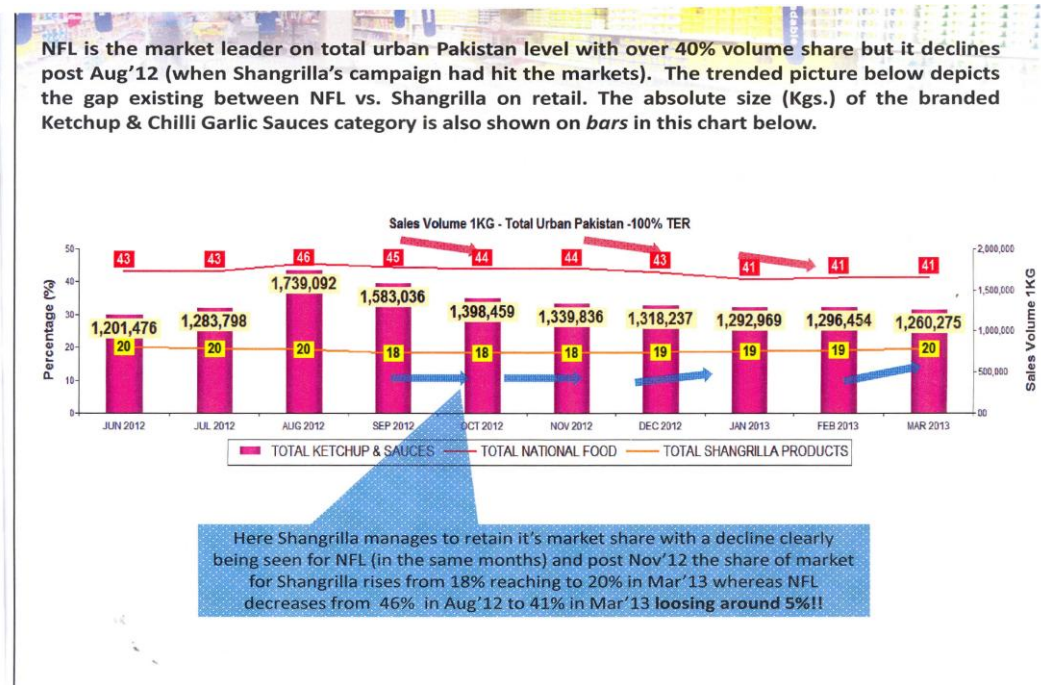
20-01-2012 of the Commission in the matter of S.C. Johnsons & Sons that winning of ‘Brand of the Year’ award from the BFP, would not entitle any undertaking to make any such absolute claim. We also note that BFP has also made similar submissions in this regard i.e. “...this evaluation is in no way related with declaring any brand as the number one or two in any industry category...if the Respondent has made any such claim as **No. 1 Tomato Ketchup**, it must have been on some other input (emphasis added).

38. We also note that the Complainant despite of being No. 1 in the market on the basis of AC Neilson Audit Survey is not making any such claims. Moreover, on the basis of Respondent’s submissions we understand that the statement made in the marketing campaign does not in any manner claim that Shangrila Tomato Ketchup is the No.1 selling brand and neither was the perception given to such effect. On the other hand, the Respondent is making a claim through their advertisement/ marketing campaign that “We owe a spoonful of gratitude to our consumers for making Shangrila Pakistan’s No 1 Tomato Ketchup”. As already described in paragraphs (19) to (24) that “We owe a spoonful of gratitude to our consumers for making Shangrila” infact complements the second part of the statement which is a statement of fact and a claim shown in a bold and pertinent font i.e. “**Pakistan’s No 1 Tomato Ketchup**” and the only impression an ordinary consumer would get from the statement is that Shangrila ketchup is **Pakistan’s No. 1 Tomato Ketchup**”. Furthermore, as concluded in Para 23 above, the overall net impression of the marketing campaign/ advertisement from the perspective of an ‘ordinary consumer’ is that ‘**Shangrilla is Pakistan’s No. 1 Tomato Ketchup**’. Therefore, the Respondent’s submissions in this regard are not acceptable.
39. When the, *prima facie*, overall net impression of the advertisement/ marketing campaign i.e. ‘**Shangrilla is Pakistan’s No. 1 Tomato Ketchup**’ is taken into account and considered with the submissions made and discussed above, it appears that the said claim lacks reasonable basis regarding character, suitability for use, or quality of goods and hence is in, *prima facie*, violation of Section 10 in particular Section 10(2)(b) of the Act.

### III WHETHER THE CONDUCT OF RESPONDENT IS CAPABLE OF HARMING THE BUSINESS INTEREST OF THE COMPLAINANT AND OTHER UNDERTAKINGS

40. In this regard the Complainant has submitted that the claim ‘**Shangrilla is Pakistan’s No. 1 Tomato Ketchup**’ is false and misleading and lacks reasonable basis. Dissemination of such deceptive claims is likely to adversely influence the purchasing decision of consumers and will negatively affect the business of the Complainant. It was also submitted by the Complainant that these misleading advertisements are undertaken by the Respondent with *mala fide* intent to increase the sales and popularity of Shangrila Tomato Ketchup, which would jeopardize the market position of National Tomato Ketchup but would also tantamount to Shagrila Tomato Ketchup making illegal gains at the Complainant’s cost. Hence is in violation of Section 10 of the Act.

41. On the other hand the Respondent supported the claim by stating that their claim is based on the declaration and honors provided by BFP, as they consecutively received Brand of the years Awards from 2008 to 2011-12. BFP is the company that follows established marketing research procedures and practices and announces awards on the basis of consumer preferences. The campaign of 'Pakistan No. 1' Tomato Ketchup is based on consumer preference and can not be considered as deceptive. They further submitted that the Respondent's statement doesn't claim Shangrila Tomato Ketchup as the No.1 selling brand and neither was the perception given to such effect. This is the Complainant's one sided view.
42. Since, the Complainant had alleged that the Respondent's campaign of 'Pakistan No.1' Tomato Ketchup is capable of harming the business interest of the Complainant as the same is false and misleading; hence deceptive in terms of the Section 10 of the Act. Therefore, the Complainant was requested vide letter dated 06-05-2013 to provide documentary evidence regarding the actual harm, if any caused by the Respondent's campaign and/or the basis of making such allegation on or before 13-05-2013. The letter remained un-responded; therefore, a reminder was issued on 14-05-2013 through which the Complainant was requested to provide the requested information at the earliest. The Complainant vide its letter dated 15-05-2013 responded to the query raised in this regard. The complainant submitted AC. Nielson's Ketchup Retail Audit Report, a copy whereof is annexed as **Annex-G** to this report, to substantiate the basis of the allegations made in the complainant. The sales volumes of the Ketchup as depicted in the Nielson's Ketchup Retail Audit Report are depicted as follows:



Source: Nielson's Ketchup Retail Audit Report (Annex-G)



Source: Nielson's Ketchup Retail Audit Report (Annex-G)

43. From perusal of the graphs depicted above and the Neilson's Report, it appears that the Volume sales of the Complainant have declined during August 2012 to March, 2013 from 46% to 41% in Total Urban Pakistan. Whereas, it appears that the Respondent has maintained its percentage of market of 20% from August 2012 i.e. when the marketing campaign started till March 2013 with slight variations during this time period in Total Urban Pakistan. It is pertinent to mention again that the marketing campaign of the Respondent started in August, 2012. Here it seems that the change in market shares is due to the marketing campaign, which gives the consumers an impression that Shangrilla is Pakistan's No. 1 ketchup and based on such an absolute claim many consumers would make a transactional decision.
44. As already concluded in paragraph (25) to (39), the claim of the Respondent, *prima facie*, lacks reasonable basis. Here it needs to be appreciated that any undertaking by making any claim which is either false, misleading or lacking a reasonable basis would give the said undertaking a competitive edge over other undertakings and would ultimately result in higher sales. At this point we must point out that Section 10(2)(a) of the Act does not lead to the conclusion that it applies only in cases where false and misleading information is made by one undertaking vis-à-vis another specific undertaking. It can be towards all the other competing undertakings.

45. Furthermore, as per the language of clause (a) of subsection (2) of Section 10 read with subsection (1) of Section 10 of the Act, it is sufficient to establish that the advertisement has the tendency/potential to deceive and the capacity to mislead. From the data made available, it appears that despite of having a dominant position in the ketchup markets, there was a significant dip in the sales volumes of the Complainant subsequent to the launch of marketing campaign of the Respondent in August 2012. Consequently, it seems that the Respondent's claim in its advertisement, which is *prima facie* found to be misleading in deceptive in terms of Paragraphs (25) to (39) above of this enquiry report, appears to possess the tendency to mislead the consumers and induce them to take a transactional decision based upon the claim made in the Advertisement i.e. '**Shangrilla is Pakistan's No. 1 Tomato Ketchup**' and is the best ketchup in Pakistan.
46. Keeping in view the above we are of the view that, *prima facie*, the conduct of the Respondent i.e. making the claim '**Shangrilla is Pakistan's No. 1 Tomato Ketchup**' in its advertisement/ marketing campaign is capable of harming the business interest of the Complainant in violation of Section 10 of the Act in particular Section 10(2)(a) of the Act.

#### **D. CONCLUSION/FINDINGS AND RECOMMENDATIONS**

47. Based on the information available on record and the submissions made during the enquiry through correspondence before us, we the undersigned enquiry officers have reached the following conclusions:
- (i). *Prima facie*, the overall net impression of the marketing campaign/ advertisement from the perspective of an 'ordinary consumer' is that '**Shangrilla is Pakistan's No. 1 Tomato Ketchup**'.
  - (ii). The conduct of the Respondent i.e. making the claim '**Pakistan's No. 1 Tomato Ketchup**' regarding its ketchup products in its advertisement/ marketing campaign, *prima facie*, is capable of harming the business interest of other undertakings which *inter alia* include the Complainant, and is in violation of Section 10 of the Act.
  - (iii). The Respondent's claim '**Pakistan's No. 1 Tomato Ketchup**' regarding its ketchup products disseminated through advertisements/ marketing campaign, *prima facie*, is false and misleading and lacks reasonable basis regarding character, suitability for use, or quality of goods in violation of Section 10 of the Act.



48. The deceptive marketing practices have a direct impact on the public at large. It is in the interest of the general public that the undertakings should be stopped to advertise their products in an unfair and misleading manner and be encouraged to resort to the advertising practices which are transparent and gives consumers/customers true and correct information. *Prima facie*, violations under the Act in terms of the conclusions of this enquiry report warrant initiation of proceedings under Section 30 of the Act against the Respondent i.e. M/s Shangrila (Private) Limited in accordance with the law.

**Noman A. Farooqi**  
Senior Joint Director  
Enquiry Officer

**Marryum Pervaiz**  
Assistant Director  
Enquiry Officer