

COMPETITION COMMISSION OF PAKISTAN

ENQUIRY REPORT

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

**IN THE MATTER OF COMPLAINT FILED BY M/S LE GRAND VERTEX AGAINST
MR. ZAHID ALI BHATTI, MR. SALMAN ALI BHATTI, M/S HUFFAZ
DISTRIBUTION AND M/S TRUE CARE PHARMA LIMITED FOR
DECEPTIVE MARKETING PRACTICES**

BY

 
Riaz Hussain & Amin Akbar

November 07, 2023

complainant is enlisted with the Drug Regulatory Authority (DRAP) as authorized manufacturer of (Tablet, Topical (Cream/ ointment/ lotion/ shampoo), Capsule, Dry Powder & Sachet. Moreover, the Complainant mentioned that it is an authorized firm of its branded product as LE-WET ointment (LUBREX), which is enlisted in the DRAP bearing enlistment No. 00185.0005. Furthermore, the Trade Mark of LUBREX and LE-WET is also registered with the Trade Mark Registry in Karachi, Pakistan, vide trade mark No. 144703 in class 3 dated 30-10-1997 and trade mark No. 477424 in class 3 dated 17-04-2019. The Trade Mark LE- WET is also registered in Class-5 dated 17.04.2019 vide Trade Mark No. 477429.

- 2.3 The Complainant stated that the Mark "LUBREX" (LE WET) is a very famous product in the country having exclusive goodwill in the market. The complainant is selling its famous and well known product "LUBREX" "LE WET" ointment in the form of Gel and Lotion bearing distinctive getup and color scheme or combination of color comprising predominantly of blue, black, green color text and white background as well as Silver Color LOGO.
- 2.4 The Complainant alleged that the Respondent No. 1 was its ex-employee, who resigned from the firm on the identification of issuance of fake receipt on behalf of the firm and embezzlement issues. It was further alleged by the Complainant that the Respondent No. 1 is a Distributor of Medicine who managed with his real brother (Respondent No. 2), Respondent No. 3 & Respondent No. 4 along with others to fraudulently manufacture fake and deceptive product in the same name and style of "LUBREX" "LE WET" and started unfair competitive practice such as using the trademark of the Complainant. The Respondent No. 4 is Complainant's firm Distributor who was appointed for Karachi District, and she is not authorized to sale any product in Lahore District or any other district.
- 2.5 The Complainant stated that the Respondents are fraudulently using similar, deceptive or confusingly similar mark i.e. LUBREX (LE-WET) in relation to similar product in the form of gel so as to pass off as the product of the complainant, which tantamount to deceptive marketing practices in contravention of class (d) of sub section 2 of section 10 read with section 1 of section 10 of the Act. In addition to that, the Respondent No. 1 & 2 with connivance of Respondent No. 3 & 4 are preparing and selling the fake and deceptive product in the name and style of LUBREX (LE-WET) in the market throughout Pakistan on discounted prices dishonestly and fraudulently. The Respondents are also using the trade mark, trade dress, labeling and packaging of the Complainant in contravention in class (d) of sub section 2 of section 10 read with sub section 1 of section 10 of the Act.
- 2.6 It was also alleged by the Complainant that the Respondents are also disseminating false and misleading information, including its substantially lower pricing in the market to detriment the consumers and competitors in contravention of clause (b) and clause (a) of subsection (2) of section 10 read with subsection (1) of section 10 of the Act, which cause heavy monetary loss and damaged the goodwill of the Complainant in the market which is not warranted by law.
- 2.7 The Complainant mentioned that it is an absolute proprietor of the trade mark of LUBREX and LE-WET and registered with the DRAP as authorized manufacturer, but the Respondents are creating confusion to the consumer by providing fake, identical product.

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- 2.8 The Complainant mentioned that on the information of deceptive marketing practice, on 14.03.2022, the Complainant purchased 5 packs from the Respondent No. 3 and received a receipt from the Respondent No. 3 which reflect the date of purchase, product name and Batch Number. The said products were fake and deceptive and based on it, the Complainant served a legal notice upon the Respondent No. 3 on 01.04.2022 and also moved an application to the concerned Police Station and Drug Inspector. It is worth mentioning here that on the complaint of representative of Complainant, Provincial Drug Inspector conducted raid and recovered spurious, deceptive and fake products from the custody of the Respondent No. 3. The Respondent No. 3 recorded his statement that he is purchasing the recovered product from Respondent No. 1 and 2 and at police station Shadman, Lahore the Respondent No. 1 and 2 recorded their statement that they are purchasing the said products from Respondent No. 4 and provide cash deposit slip where in cash was deposited in the bank account of Respondent No. 4 to the Police Officer. Therefore, it is obvious that all the Respondents are fully involved in this illegal sale purchase of counterfeit product and deceptive marketing. Hence the Respondents committed offence as well as contravened the provision of section 10 of the Act which is punishable under the law.
- 2.9 Furthermore, the Complainant stated that it has immediately issued a National wide proclamation in the Daily "JANG" on 02.04.2022 for public awareness. The Complainant highlighted that the Respondents are still selling the deceptive, similar and fake product in the Market and violated the fare market practice. They are not authorized to manufacture or sale LUBREX (LE WET) in the market and if the Respondents were not restrained from deceptive Marketing practice, then the Complainant would suffer an irreparable loss and injury.
- 2.10 Moreover, there is sufficient material available, which connects the Respondents and prove that the Respondents are fully involved in preparing and selling counterfeit product "LUBREX" (LE WET) which possesses major misleading similarities to the product of the Complainant (LUBREX) (LE WET) highly likely to deceive and cause confusion in the minds of consumer, therefore, the Complainant requested the worthy commission to take cognizance against the Respondents in accordance with law, for the vindication of justice. Due to the illegal act and deceptive marketing practice of the Respondents and due to fraudulent use of Trade Mark , name of the Complainant's firm and product labeling and packaging, the Complainant suffered monitory loss which is required to be recovered from the Respondents by imposing having fines in accordance with law. The worthy Commission has ample power to adjudicate upon the matter and punish the Respondents by imposing any penalty or issue any direction in the matter which it deems appropriate.
- 2.11 The Complainant prayed that the proceedings may kindly be initiated against the Respondents and imposed heavy penalty according to the circumstances of the case, upon the Respondents personally as well as collectively in violation and contravention of provision of section 10 of the Act.
- 2.12 It was further prayed that the Respondents, its proprietors, partners, directors, associates, agents, dealers, and any others may kindly be restrained from using the impugned marks "LUBREX" AND "LE-WET" or any other marks with any prefix or suffix and trade dress phonetically, visually and constructively similar to that of the Complainant marks and its

associate's trade dress. The Complainant prayed that the fake, deceptive and counterfeit products of respondents may kindly be confiscated/forfeited or destructed in the best interest of justice.

- 2.13 Any other relief which this Hon'ble Commission deems fit and appropriate according to the circumstances of the case may also be granted to the Complainant.

3. RESPONDENT'S COMMENTS:

A. Mr. Zahid Ali Bhatti (the 'Respondent No. 1')

- 3.1 The complaint was forwarded to the Respondent No. 1 for comments on September 19, 2022. The Respondent No. 1 submitted its reply, which is summarized below.
- 3.2 The Respondent No. 1 stated that on the same allegations, an enquiry has been conducted by police station Shadman, Lahore. It further stated that after gone through the facts thoroughly, the same was dismissed and consigned to record. Moreover, the Complainant in connivance with the drug inspector lodged FIR-1017/22 with the same police station on the same allegation. The same FIR is still underway and the case is pending for adjudication with the divisional bench of Honorable Lahore High Court.
- 3.3 The Respondent No. 1 stated that it is pertinent to mention here that the FIR on the same allegation has been initiated and in such situation a person should not be treated in any other proceedings as covered in article 13 of the Constitution of Pakistan 1973, which provide a safeguard against the double punishment.
- 3.4 The Respondent No. 1 respectfully submitted that the notice for appearance may kindly be withdrawn in the interest of justice and fair play.

B. Mr. Salman Ali Bhatti (the 'Respondent No. 2')

- 3.5 The complaint was forwarded to the Respondent No. 2 for comments on September 19, 2022. The Respondent No. 2 submitted its reply, which is summarized below.
- 3.6 The Respondent No. 2 stated that on the same allegations, an enquiry has been conducted by police station Shadman, Lahore. It further stated that after gone through the facts thoroughly, the same was dismissed and consigned to record. Moreover, the Complainant in connivance with the drug inspector lodged FIR-1017/22 with the same police station on the same allegation. The same FIR is still underway and the case is pending for adjudication with the divisional bench of Honorable Lahore High Court.
- 3.7 The Respondent No. 1 stated that it is pertinent to mention here that, the FIR on the same allegation has been initiated and in such situation a person should not be treated in any other proceedings as covered in article 13 of the Constitution of Pakistan 1973, which provide a safeguard against the double punishment.

3.8 The Respondent No. 1 respectfully submitted that the notice for appearance may kindly be withdrawn in the interest of justice and fair play.

C. Mr. Hafiz Inayat Ullah, trading as Huffaz Distribution (the 'Respondent No. 3')

3.9 The complaint was forwarded to the Respondent No. 3 for comments on September 19, 2022. The Proxy counsel via email dated October 03, 2022, has requested for extension in time, which was duly granted via email dated October 03, 2022. The Respondent No. 3 submitted its reply vide letter dated October 10, 2022. The reply was submitted in Urdu language, however, for true sense, English transcription is given below:

3.10 The Respondent No. 3 stated that both Respondent No. 1&2, portrayed themselves as Complainant's employee and sold them the alleged counterfeit product under the umbrella of original product. It further stated that due to this fact, the Complainant and Respondent No. 3 both has suffered huge losses. The Respondent No. 3 is neither involved in manufacturing of fake product nor does it have any knowledge about this product. The Respondent No. 3 stated that it has not purchased the same product after February 12, 2022, and after having the knowledge of the fact, it has demanded sales invoice from Respondent No. 1 and 2 to prove its innocence. The Respondents No. 1 & 2 have failed to provide the sales invoice to date. The Respondent No. 3 stated that the Respondents No. 1 & 2 are the real culprits selling the fake product for better commission and it has not violated any provisions of the law.

3.11 The Respondent No. 3 further stated that it has engaged in the distribution of the original product since long with a goodwill in the market. The Respondents No. 1 & 2 have sold the fake product as original product to it due to which the Respondent No. 3 is linked with these legal issues. After knowing the fact, the Respondent No. 3 has stopped selling the alleged fake product and nor will be involved in the selling in future.

3.12 The Respondent No. 3 respectfully submitted that the enquiry proceedings may be dismissed against it and legal proceedings be initiated against the Respondents No. 1 & 2.

3.13 The actual submissions are in Urdu language and is depicted below:

- 1- جناب محمد سلمان لظفر، ایکواٹری آفیسر
- 2- جناب ریاض حسین، ایکواٹری آفیسر
- 3- جناب امین اکبر، ایکواٹری آفیسر

بمقام پیشی رقم نمبر 435/LUBREX/OFT/CCP/2022 مورخہ 19-09-2022

Office of Fair Trade (OFT)
Dy. Dir. 212
Date: 10/10/22

عنوان: شکایت منجانب M/S LE GRAND VERTEX

تخریری جواب منجانب حافظ عنایت اللہ مسول ایف نمبر 3

تاریخ نمبر 451- 4 تا 1 کے جواب کی ضرورت نہ ہے کیونکہ منجانب مسول ایف نمبر 3 سے تعلق نہ رکھتے ہیں۔
 تاریخ نمبر 5- اس ضمن میں حقائق سمجھ اس طرح سے ہیں کہ زاپٹی بھٹی جو کہ LE GRAND VERTEX کمپنی کا ساہمہ دار تھا جس نے اپنے
 کی (پہلو رجسٹرڈ سید اسد حسینی کے ساتھ مل کر اپنے آپ کو کمپنی کا ملازم ظاہر کر کے جیسے جھٹی پر وہ ڈاکٹ کو اصلی پر وہ ڈاکٹ ظاہر کر کے مسول ایف کو فروخت
 جس سے منجانب سے مسول ایف نمبر 3 کو زاپٹی پر وہ ڈاکٹ زاپٹی بھٹی اور مسلمان بھٹی کے درمیان جو وہ ہیں اور وہ اس ایف کی خط و کتابت امر اہل ہے)
 صرف کمپنی کو نقصان پہنچا ہے بلکہ مسول ایف نمبر 3 کی ساکھ کو بھی شدید نقصان پہنچا ہے مسول ایف نمبر 3 نے تو جھٹی پر وہ ڈاکٹ بتانے میں ملوث
 ہے اور نہ ہی مسول ایف کے علم میں تھا کہ یہ جھٹی پر وہ ڈاکٹ ہے۔ مسول ایف نے مورخہ 12.02.2022 کے بعد سے کوئی مال نہ خریدتا ہے
 تاہم علم میں آنے کے بعد مسول ایف نمبر 3 نے زاپٹی بھٹی اور مسلمان بھٹی سے واپس طلب کی تا کہ اپنی بے گناہی ثابت کر
 سکے لیکن زاپٹی بھٹی اور مسلمان بھٹی واپس فراہم کرنے میں ناکام رہے اور مسول ایف نمبر 3 کو دھوکہ میں رکھتے رہے اور انوکھے کی فراہمی
 کے لیے وعدہ و وعید کرتے رہے۔ اور آج تک کمپنی کی انوکھے فراہم نہ کر سکے ہیں۔ لہذا زاپٹی بھٹی اور مسلمان بھٹی اس فراڈ کے اصل کردار
 ہیں جو بلا امتیاز اور جھٹی پر وہ ڈاکٹ کا کاروبار چلا رہے ہیں اور شریف شہر یوں کو دھوکہ دے کر اور زیادہ کمیشن آفر کر کے جھٹی پر وہ ڈاکٹ فروخت
 کر رہے ہیں۔ مسول ایف نے وہ ادوائے طور پر قانون کے کسی بھی حق کی خلاف ورزی نہ کی ہے اور بے گناہ ہے۔ چونکہ مذکورہ افراد نے
 قانون کی خلاف ورزی کی ہے۔

تاریخ نمبر 1456- ان شکایات کے جواب میں عرض ہے کہ مسول ایف نمبر 3 نے نہ تو جھٹی پر وہ ڈاکٹ تیار کی ہے اور نہ ہی اس جھٹی پر وہ ڈاکٹ کی تیسری سے کوئی تعلق
 ہے مسول ایف نمبر 3 ادویات کی ڈسٹری بیوٹن کا کام سرحد دارا نے کرتا ہے اور انوکھی ساکھ کا مالک ہے۔ زاپٹی بھٹی اور مسلمان بھٹی جھٹی نے جھٹی
 سازی دھوکہ دہی اور بدعتی سے جھٹی پر وہ ڈاکٹ مسول ایف نمبر 3 کو اصل ظاہر کر کے فروخت کی ہیں جس کی وجہ سے مسول ایف نمبر 3 کا کوئی
 نتیجہ نہیں ہوا ہے۔ اسی فراڈ کے متعلق مسول ایف نمبر 3 کے علم میں آنے کے بعد نہ تو مسول ایف نمبر 3 جھٹی پر وہ ڈاکٹ فروخت کرتا ہے
 اور نہ ہی آئندہ کرے گا۔ اصل بلگرام زاپٹی بھٹی اور مسلمان بھٹی جھٹی ہیں جنہوں نے جھٹی پر وہ ڈاکٹ مارکیٹ میں فروخت کر کے جہاں کمپنی کو

مسول ایف نمبر 3 ہر وہ جواب اپنا بیان جھٹی کر رہا ہے جسکی رو سے مسول ایف نمبر 3 کے قبضہ میں کوئی جھٹی پر وہ ڈاکٹ بائیس M/S
 LE GRAND VERTEX نہ ہے اور نہ ہی آئندہ فروخت کرے گا۔
 تاریخ نمبر 15- جواب کی ضرورت نہ ہے تاہم مسول ایف نمبر 3 جانی ہے کہ ایسی اور علامتی بنیاد پر اس قانونی وجہ کیوں میں ایجمنے مسول ایف نمبر 3 کو
 زاپٹی بھٹی اور مسلمان بھٹی نے دھوکہ میں رکھ کر جھٹی پر وہ ڈاکٹ فروخت کی ہے جن کے خلاف سخت کارروائی عمل میں آئی پہلی قرین انصاف
 ہے تاکہ ان کے دھوکہ اور شریف شہر یوں کو قانونی وجہ کیوں میں نہ لیا جائے اور کاروباری افراد کی ساکھ کو نقصان نہ پہنچائے۔
 اندر میں حقائق اور وضاحتی روشنی میں استدعا ہے کہ مسول ایف نمبر 3 کی حد تک کارروائی اور درخواست کو واپس دفتر کیا جائے اور اصل دستاویز
 زاپٹی بھٹی اور مسلمان بھٹی کے خلاف قانونی کارروائی عمل میں آئی جاوے جو کہ قرین انصاف ہے۔

العامش
 M. Mada
 حافظ عنایت اللہ (مسول ایف نمبر 3)
 M/S Huffaz Distributor
 آفس نمبر 596 شادمان لاہور
 0300-4935168

D. Ms. Samreen Kamran, trading as M/s True Care Pharma (the 'Respondent No. 4')

3.14 The complaint was forwarded to the Respondent No. 4 for comments on September 19, 2022. The letter was returned undelivered, and was again issued dated October 04, 2022. The Respondent No. 4 did not reply and a reminder dated October 24, 2022, was sent. The

Handwritten signature and initials "A.A"

Respondent No. 4 again did not reply within the stipulated time period and a final reminder dated November 01, 2022, was issued. Finally, the Respondent No. 4 submitted its reply dated November 07, 2022, which is reproduced below:

- 3.15 The Respondent No. 4 stated that at the very outset, the Act was promulgated to provide for free competition in all spheres of commercial and economic activity, to enhance economic efficiency and to protect consumers from anti-competitive behavior. As is evident from the title, the complainant has initiated a frivolous complaint under Section 10 of the Act that has a very limited application. It is pertinent to note that the provision of Section 10 of the Act only bars deceptive marketing practices and by virtue of sub-section 2-a, the term "Deceptive Marketing Practices" has been narrowed down to the distribution of false and misleading information only. From the record, it is *prima facie* evident that compliant under reply is baseless and frivolous as complainant has failed to make out any case against the answering respondent, who has always carried out business legitimately within the four corners of statutory enactments thus enjoying substantial goodwill and established reputation. The complainant, having invoked the jurisdiction of the learned Commission on ill-founded and untenable grounds, is not entitled to any relief. It is well in consonance to state that answering respondent has frivolously and baselessly been dragged into this case by the complainant simply to avoid and evade their own liability of settling the claims of the answering Respondent No. 4.
- 3.16 The Respondent No. 4 mentioned that the subject complaint is the outcome of dishonesty and bad faith, and Respondent No. 4 reserves her right to invoke jurisdiction of the Courts of law for redressal of grievance solely at the cost and expense of the complainant. The Respondent No. 4 humbly submitted that it has not violated any of the provisions of the Act.
- 3.17 Furthermore, the Respondent No. 4 is of the view that the facts of the case as put forth by the complainant itself substantiate the stance of the Respondent No. 4. In this regard the following material and undeniable facts are worth considering that makes the complaint baseless:
- a) That it was appointed as sole distributor of the Karachi region by the complainant with effect from 18-03-2018 for a period of three years.
 - b) That the business continued smoothly till June 2022, when the Respondent No. 4 was asked to return the stocks lying with it to the Complainant company's authorized distributor namely Health Partner, Lahore who had been dealing with the Respondent No. 4 during the entire term of the agreement.
 - c) That the Respondent No. 4 returned all the stocks as aforesaid on 10-06-2022 where after the complainant vide letter dated 15-06-2022 certified that nothing is outstanding against the Respondent No. 4.
 - d) That any use of such registered trademark by any other entity without consent of the proprietor is infringement of said exclusive rights.
- 3.18 Moreover, the Respondent No. 4 stated that complainant is guilty of concealing the material facts in the Complaint and has made disparaging, defamatory, false, and misleading

accusations. The Complainant has also concealed the material fact that it had issued a clean sheet to the Respondent No. 4 as aforesaid.

- 3.19 The Respondent No. 4 mentioned that the Complainant deliberately concealed the correct address of the Respondent No. 4 so as to foster its ulterior motives and to defraud the Respondent No. 4 by preventing the same to submit true facts of the matter in hand that disentitles the Complainant from seeking any relief from the learned Commission.
- 3.20 The Respondent No. 4 denied that it has violated any provision of Act much less to talk of Section 10. Moreover, term "Deceptive Marketing Practices" as enunciated under the said Act, is neither attracted nor applicable to the facts of the instant case. The Respondent No. 4 vehemently denied the contents of para 2.4 above, by stating that the it has never breached any term of the agreement, nor it ever sent or sold any product beyond the territorial limits as per agreement. It is submitted that complainant has falsely implicated the Respondent No. 4 in the case however, there exists no proof that the Respondent is guilty of breach of Section 10 of the Act in any manner whatsoever.
- 3.21 The Respondent No. 4 denied the contents of para 2.8 to 2.12 above, for being ill-founded, baseless, concocted, misleading, and false. It is specifically denied that that any legal notice was ever served on Respondent. The Complainant has miserably failed to make out any case against the Respondent No. 4. It humbly submitted that the titled complaint is nothing but an abuse of due process of law and merits outright rejection.
- 3.22 The Respondent No. 4 stated the Complainant has made its best effort to harass and pressurize the Respondent to submit to its unjustifiable claims. The Complainant has miserably failed to make out any case warranting grant of any relief as prayed and titled complaint merits to be dismissed/rejected with exemplary cost.

4. REJOINDER:

- 4.1 The replies of the Respondents were forwarded to the Complainant for its comments/rejoinder vide letter dated November 17, 2022. The Complainant submitted its rejoinder vide letter dated November 24, 2022, the contents of which are reproduced in the following paras.
- 4.2 The Complainant stated that the complaint filed by him is based on the cogent evidence and the Act protects the right of the complainant. Hence the objection taken by the Respondents has no legal force. The Respondents has misconceived about the section 10 of the Act. Therefore, the objection taken by the Respondents are misconception of law and has no legal force. Furthermore, the clear-cut evidence is available on record against the Respondents, which the Respondents neither denied nor rebutted the said cogent evidence, the objection taken by the Respondents are baseless and false, and has no legal value.

- 4.3 The Complainant stated that this preliminary objection has no footing without any proof, the involvement of the Respondents in deceptive marketing practice is evident from the record.
- 4.4 The Complainant stated that the deposit receipts provided by Respondents clearly showing that they are fully involved in deceptive marketing practice and violated the provision of the Act. They caused heavy monetary loss to the Complainant by selling counterfeit product illegally, unlawfully and without lawful authority as well as other product on low price in the market, hence the Respondents are vicariously liable. A sufficient range of identical and similar products are also available in the market, which are creating confusion in the mind of the ultimate consumers.
- 4.5 The Complainant stated that the reply submitted by the Respondents are not based on facts as well as not according to the contents of the complaint. The Respondent No. 4 concealed the true facts from this Hon'ble Commission, fraudulently. The complaint is based on cogent, solid and strong evidence as well as oral and documentary proof. It is settled that "Man can tell lie but document cannot", in the presence of Bank deposit slips and statement of Respondent No. 1 & 2, who provided paid Bank Deposit slips in support of their stance which is available on record and these facts are not denied by Respondent No. 4. Furthermore, all of the Respondents are trying to save their skins by concealing the facts from this Honorable Commission. All the evidence already provided by the complainant to this Hon'ble Commission which are available on record and sufficient to connect the Respondents with the matter. The Complainant highlighted the considerable points as:-
- a) When a notice was served upon Respondent No. 4, why not she submitted her reply or any clarification or justification in her defense.
 - b) When the business was terminated by the Complainant and reason for termination was mentioned therein, even then the Respondent No. 4 was silent.
 - c) After termination of the business, the Respondent No. 4 immediately/ promptly launched a comprehensive range of identical/deceptive products parallel to the Complainant's product, few are mentioned below for the kind perusal and consideration of this Hon'ble Commission.

MARKETED BY	Product Name	MARKETED BY	Product
LEGRAND VERTEX	Lubrex (LEWET) Ointment	TrueCare Pharma	Lorex
-do-	Lubrex (CAREX) Lotion	-do-	Lorex
-do-	E-Vita	-do-	A-Vit
-do-	C-Vita	-do-	C-Vit
-do-	Calamix-V	-do-	Calavin-T
-DO-	SALIC	-do-	SASLIC

4.6 Moreover, the assertions raised by the Respondent No. 4 in para No. 3.18 above, are not related to this matter and is totally irrelevant. Nobody has authority to manufacture or sell or prepare counterfeit product, resembling or confusing product and deceive the customers in the market.

4.7 The Complainant denied the herein reproduced para 3.19 to 3.23 by stating them incorrect. The Complainant filed a true complaint based on evidence. The Complainant has not concealed any fact from this Hon'ble Commission. The Respondents are the persons, who had concealed the true facts from this Hon'ble Commission fraudulently. They want to save their skin by telling a lie. The reply submitted by the Respondent No. 4 is totally irrelevant and not according to the contents of the complaint hence the reply has no legal value. Material Facts are not rebutted by the Respondent No. 4 in her reply and under the law those points which are not rebutted by the Respondent No.4 would be considered and presumed as true facts. Moreover, the Complainant has proved his case without any shadow of doubt. No justification or explanation is available in the reply about the statement of Respondent No. 1 & 2 and payment receipts. No Bank Statement has been provided by the Respondent No. 4 to this Hon'ble Commission. The Respondent No. 4 is avoiding to disclose factual and a true picture of the matter because she is fully involved in this case. Sufficient Material is available which has connected all the Respondents with this violation. Therefore, this reply has no value and liable to be rejected.

4.8 The Complainant further stated that the replies submitted by the Respondent No. 1 & 2 are not based on facts and Respondent No. 1 & 2 conceal the true facts from this Hon'ble Commission. In fact they retracted from their statements which were submitted by them before the SHO Police Station Shadman, Lahore wherein their signatures and thumb impressions are available, Secondly, the application moved by the Complainant for the registration of case was not dismissed and the said application was forwarded for legal opinion because they took stance that the matter has been taken by the Provincial Drug Inspector so the concerned police officer was in waiting. However, the Provincial Quality Control Board Punjab after providing an opportunity of hearing to all the parties, granted permission for the registration of FIR. The Provincial Drug Inspector moved the

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Complaint for the registration of case and FIR No. 1017/22 was lodged, which is self-explanatory, therefore, there is no question of mala fide on the part of the Complainant.

- 4.9 Furthermore, the Respondents No. 1 & 2 applied pre arrest bail before the Hon'ble Drug Court Lahore and took same stance but the learned Trial Court dismissed the said bail petition on 05.09.2022. Then the Respondent No. 1 & 2 applied Pre Arrest Bail under section 498 Cr.PC before the Hon'ble Lahore High Court. The Excellency Mr. Justice Ali Baqir Ali Najfi and Mr. Justice Anwar UI Haq Pannu, Divisional Bench of Hon'ble Lahore High Court dismissed the said pre arrest bail on 26.10.2022. Now they are playing hide and seek with the Police Department.
- 4.10 The Complainant stated that there is no bar on the proceedings initiated by the Hon'ble Commission and Article 13 of Constitution of Islamic Republic of Pakistan, 1973 is not attracted in this case. This Hon'ble Commission has ample power to proceed against the Respondent No. 1 & 2 in accordance with law for the vindication of justice. It is further submitted that the Respondent No. 3 has also provided Chatting and correspondence with Respondent No. 1 and payment receipts where the signature of the Respondent No. 1 & 3 are available/existed. Respondent No. 4 also admitted and pointed out that Respondent No.1 & 2 are supplier of the said product and produced all relevant documents to this Hon'ble Commission, therefore, it is clear from the available record that both the Respondent No.1 & 2 are fully involved and stance taken by the them has no legal value. The Respondent No.1 & 2 are trying to manipulate the facts of the case and mislead this Hon'ble Commission.
- 4.11 The Complainant at the end stated that all the Respondents with the connivance and collusion of each other are trying to mislead to this Hon'ble Commission, fraudulently which is not warranted by law.

5. ANALYSIS:

- 5.1 As mentioned in para 1.3 above, the mandate of this enquiry is to find out whether, *prima facie*:
- Whether the conduct of the Respondents are capable of harming the business interest of other undertakings in, prima facie, violation of Section 10 (2(a)) of the Act?*
 - Whether the Respondents are disseminating false and misleading information to consumers, including the distribution of information lacking a reasonable basis, related to the character, properties, suitability for use, and quality of goods in, prima facie, violation of Section 10(1) in general and in particular, Section 10(2) (b) of the Act.*
 - The Respondents are violating Section 10 (1) of the Act, in terms of Section 10 (2) (d) of the Act, which prohibits fraudulent use of another's trademark, firm name, or product labeling or packaging; and/or*

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- d) *Whether there is any other violation of the Act by the Respondents?*
- e) *Whether there is a spillover effect of the conduct of the Respondents?*

5.2 Before analyzing the facts, it is important to understand the difference between false and misleading information. The Commission, in its order held against **M/s CMPak Limited**¹ has defined “**False**” and “**Misleading**” information as deceptive marketing practices in the following manners:

False Information:

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

Misleading Information:

*“Whereas ‘**misleading information**’ may essentially include oral or written statements or representations that are; (a) capable of giving wrong impression or idea, (b) likely to lead into error of conduct, thought, or judgment, (c) tends to misinform or misguide owing to vagueness or any omission, (d) may or may not be deliberate or conscious and (e) in contrast to false information, it has less onerous connotation and is somewhat open to interpretation as the circumstances and conduct of a party may be treated as relevant to a certain extent.”*

CORRESPONDENCE:

- 5.3 During the Enquiry, the Committee sought various information from the Complainant and the Respondents, as well as the distribution agency through which the distribution of the product was carried out in Karachi Region.
- 5.4 In this regard, all the evidence submitted by the Complainant in support of the allegations were also forwarded to the Respondents for their comment. Consequent to the correspondence, the Respondents denied the alleged fraudulent use of the Complainant’s trademark, product labeling or packaging.
- 5.5 Prior to the initiation of formal enquiry, the Complainant was asked to submit concrete evidence in support of each assertion made in the complaint. For this purpose, a meeting dated May 31, 2022, was conducted with the Complainant wherein the Complainant

¹ <http://cc.gov.pk/images/Downloads/ZONG%20-%20Order%20-%202029-09-09%20.pdf>

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submitted further evidence pertaining to the sales and marketing of alleged counterfeit products. During the meeting the Complainant also submitted an investigation report, prepared by Ms. Sidra Kazmi In-charge Pharmacist at Le-Grand Vertex.

- 5.6 The Respondent No. 1&2 submitted that a similar complaint has also been filed in police station, Shadman, Lahore with the same allegations which is still underway. The matter is also under adjudication in the drug court. Therefore, the present complaint with the Commission results in a multiplicity of proceedings between the parties and hence the Respondent No. 1&2 will suffer from double jeopardy.
- 5.7 The Respondent No. 3 has only been engaged in supply and distribution of pharma products including the Complainant's products. It has never been engaged in the production of such alleged counterfeit products. It has further submitted that it has procured the alleged products from Mr. Zahid Ali Bhatti (Respondent No. 1) who was an ex-employee of the Complainant and previously engaged in supply of such products on behalf of the Complainant.
- 5.8 The Respondent No. 4 submitted that it was appointed as sole distributor of Karachi Region by the Complainant with effect from 18-03-2018 for a period of three years. However, it continued till June 2022 without proper written agreement with the Complainant. On June 2022, the Complainant asked the Respondent No. 4 to return all the stocks, laying with the Respondent No. 4, to the national distributor of the Complainant namely Health Partner, who had been dealing with the Respondent No. 4 during the entire period.
- 5.9 The Respondent No. 4 returned all the stocks to the Health Partner on 10-06-2022 and received a clearance letter dated June 15, 2022 from the national distributor of the Complainant. In the clearance letter, it was certified that was no outstanding against Respondent No. 4.
- 5.10 The Respondent No. 4 has denied the allegations leveled in the complaint and submitted that it has not received any legal notice from the Complainant. Moreover, the Complainant has miserably failed to make out any case of deceptive marketing practices against it. The entire case of the Complainant is an outcome of summaries, conjunctures and lacked material cogent substance/evidence.
- 5.11 The comments of the Respondents were forwarded to the Complainant for rejoinder. The Complainant reiterated the allegations and submission made in the complaint. The Complainant submitted that the Respondents with the connivance and collusion of each other are trying to mislead the Commission.

MEETING WITH PARTIES:

- 5.12 After analysis of the complaint and information received from all parties, the Enquiry Committee deemed it appropriate to call upon the parties of the case for meeting to clarify various aspects of the case.

5.13 In this regard, letters dated February 03, 2023, were written to Respondent No. 1&2 and scheduled a Zoom meeting for February 06, 2023. Accordingly, a Zoom meeting was held with Respondent No. 1&2 on February 06, 2023. A summary of discussion with both the Respondents is as under:

- a. The Enquiry Committee inquired about the past status of Respondent No. 1 with the Complainant. The Respondent No. 1 submitted that he was an employee of the Complainant Company, and he was primarily responsible for sales and co-ordinations within and outside the company. He further submitted that sales targets were assigned to him and upon achievement of sales target, company provided him sales commission other than salary. He added that Respondent No. 4 (M/s True Care Pharma) contacted him to help out them in achieving sales target assigned to them. After an understanding, he agreed to distribute stocks in Lahore region.
- b. He submitted that Respondent No. 2 is his real brother and was never ever an employee of the Complainant Company. However, the Complainant, with its bad intent, involved him in the matters related to him. He informed the Enquiry Committee that Complainant, with similar allegations, has also launched FIR against them in the local police station at Shadman Town Lahore against them.
- c. They submitted that they have received alleged counterfeit products from Respondent No. 4 and distributed in Lahore region on commission basis. As evidence they submitted copies of cash deposit slips made in favor of Respondent No. 4. Respondent No. 1 further clarified that none of the Respondents have manufactured/marketed counterfeit products. Mr. Zahid Ali Bhatti revealed during the meeting that the packaging material used by the Complainant is printed from three different printers, therefore, the differences, mentioned by the Complainant, arises between two packaging.

5.14 The Enquiry Committee also conducted another Zoom meeting, dated February 09, 2023, with the Respondent No. 3 for certain clarifications regarding their comments to the complaint. A summary of discussion with both the Respondents is provided hereunder as:

- a. Upon question regarding confiscation of alleged counterfeit products from their premises, the Respondent No. 2 clarified that it's a duty of the Drug Inspector to visit medicine market and collect samples from stores and get them tested from Drug Testing Labs to ensure the quality of medicine. In this case, on a complaint, the Drug Inspector visited the premises of Respondent No. 3 and sealed their shop after collecting the alleged counterfeit products.
- b. The Respondent No. 3 further clarified that it purchased those alleged counterfeit packs from Respondent No. 1&2, however, they did not provide formal invoices of the transaction. The Respondent No. 3 denied the allegations of the Complainant

and submitted that it has not been involved in any kind of manufacturing and/or marketing of alleged counterfeit products. The Respondent No. 3 informed the Enquiry Committee that after 12.02.2022, it has not purchased any product from Respondent No. 1&2.



- 5.15 Another Zoom meeting dated February 13, 2023 was conducted with Respondent No. 4 wherein the proprietor of Respondent No. 4, Ms. Samreen Karman briefed the Enquiry Committee about the T&C of distribution agreement with the Complainant. She also clarified that M/s True Care Pharma is involved in sales and marketing of various pharmaceutical and nutraceutical products including the product of Complainant. However, she clarified that, as per agreement with the Complainant, she appointed a distributor namely Rapid Pharma for distribution of Complainant's products in the territory of Karachi.
- 5.16 She admitted that to achieve sales targets she hired a sales agent in Lahore region, however, she denied that M/s True Care Pharma has been involved in manufacturing and/or sales of counterfeit products. She informed the Enquiry Committee that she gets produced various other products from third party as Respondent No. 4 has no manufacturing facility.
- 5.17 After a detailed meeting with Respondents, the Enquiry Committee deemed it appropriate to conduct a meeting with the Complainant for rebuttal of the submissions made by the Respondents. Prior to this meeting, the Complainant via letter dated February 07, 2023, was asked to submit the following information/documents:
- i. Copy of report issued by Drug Testing Laboratory (DTL), along with their comments on it.
 - ii. Name and address of the printing press involved in printing of their packaging and other marketing material and sample copies of packaging material from each printer.
- 5.18 After receipt of the documents mentioned above, the Enquiry Committee called upon the Complainant for a Zoom meeting on March 14, 2023. The Complainant vide letter dated March 11, 2023, requested to reschedule the meeting due to unavailability of the relevant persons, however, the Enquiry Committee refused the request of the Complainant. The meeting was held on March 14, 2023 via Zoom. A summary of discussion is as under:
- a. Ms. Sidra Kazmi, In-charge Pharmacist, briefed the Enquiry Committee about the investigation report, prepared by her, regarding Lubrex Ointment sample recovered and seized during raid at M/s Huffaz Distribution (Respondent No. 3).
 - b. She briefed about various variables recorded in the investigation report.
 - c. Mr. Salamat Ali, CEO of the Complainant firm apprised the Enquiry Committee that the issue of counterfeiting arose in one single batch which is 21K124.

- d. The Enquiry Committee also observed various differences between two packaging of the Complainant, printed from two different printers and pointed out during the meeting.
- e. The Enquiry Committee directed the Complainant to submit complete record of sales invoices issued in favor of M/s Rapid Pharma (authorized distributor of Respondent No. 4) from the date of agreement till its termination.
- 5.19 The Enquiry Committee, vide letter dated April 13, 2023, directed the Respondent No. 4 to submit complete record of purchases received from M/s Health Partner (National distributor of Complainant) from the date of agreement till its termination on June 2022. The Respondent No. 4 vide letter dated nil has submitted that it had already submitted all relevant documents including the clearance certificate from the Complainant and did not submit the requisite information.
- 5.20 Based on the evidence available on record, the Enquiry Committee deemed it appropriate to visit the premises of Respondent No. 4 to collect a complete record of sales/purchase data, inflows and outflows of the inventory to corroborate with the data submitted by the Complainant. On 25th of May 2023, the members of Enquiry Committee visited the premises of Respondent No. 4 located at B-49, Block 10-A, Gulshan-e-Iqbal, Karachi and collected the requisite information/data/evidence.

KEY FACTS OF THE CASE:

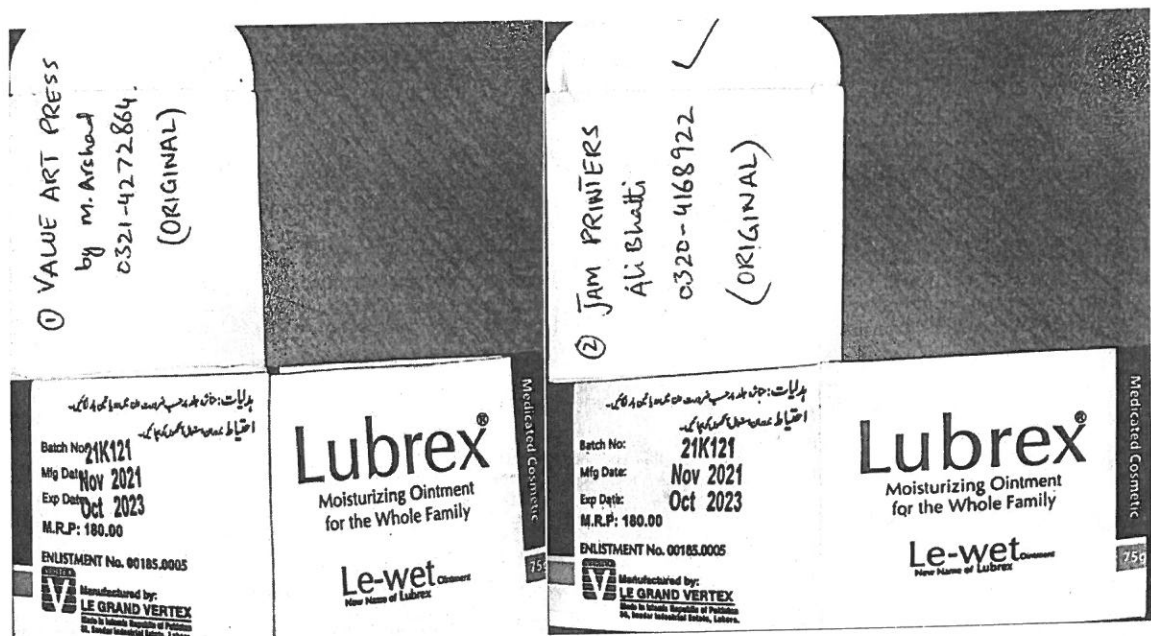
- 5.21 The Enquiry Committee, during the course of fact-finding and investigation, has made the following observations related to the evidences submitted/collected and would like to bring them into consideration.
- 5.21 First, the purchase receipt submitted by the Complainant along with complaint shows that the alleged counterfeit product has been purchased from M/s Huffaz Medical Store on March 12, 2022, however, Respondent No. 3 (M/s Huffaz Distribution) has denied the allegation and submitted that this is a case of manufacturing of counterfeit products, but it has no concern with manufacturing of therapeutic goods/alternative medicine. The Respondent No. 3 further submitted that it has never purchased/received the products from any other supplier except Mr. Zahid Ali Bhatti, who has been supplying the alleged products for over three years on behalf of the Complainant. It is pertinent to mention here that Mr. Zahid Ali Bhatti was an ex-employee of the Complainant and had been involved in sales distribution of the Complainant's product.
- 5.22 After confiscation of alleged counterfeit products from M/s Huffaz Distribution, the Drug Inspector sent one sample of seized product to the Complainant for preparation of comparative study through its own technical expert, i.e., Pharmacist. In-Charge Pharmacist, Ms. Sidra Kazmi prepared an investigation report and highlighted various variable between the two sample products (original vs seized). In its investigation report, the In-Charge Pharmacist mentions the following observations related to the packaging:

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Unit Carton Variables		
S. No	Original Sample	Seized Sample
1.	Brand Name: Lubrex Moisturizing Ointment Le-Wet Ointment 75g	Brand Name: Lubrex Moisturizing Ointment Le-Wet Ointment 75g
2.	1 Jar	1 Jar
3.	Contains: Each gram contains Petroleum BP 369.3mg Mineral Oil BP 0.56ml Paraffin wax BP 74.12mg	Contains: Each gram contains Petroleum BP 369.3mg Mineral Oil BP 0.56ml Paraffin wax BP 74.12mg
4.	Manufactured By:  <u>LE-GRAND VERTEX</u> Made in Islamic Republic of Pakistan, 30, Sundar Industrial Estate, Lahore	Manufactured By:  <u>LE-GRAND VERTEX</u> Made in Islamic Republic of Pakistan, 30, Sundar Industrial Estate, Lahore
5.	Particularly our company's logo on this specific batch bearing no. 21K124 is in silver color Complies with the approved format.	On seized sample company's logo is in black color Does not comply with the original sample
6.	Font & font size of unit carton complies with the approved format. <ul style="list-style-type: none"> • Storage condition: Keep in cool & dry place (small 'p' is used). • Slightly big font size and dark black color is comply with approved format. 	Font& font size of unit carton does not complies with the approved format. <ul style="list-style-type: none"> • Storage condition: Keep in cool & dry Place (Capital 'P' is used). • Slightly small font size and dim dark black color is observed that does not comply with original carton.
7.	Color scheme of carton complies with the approved format (purple and green)	Color scheme of carton does not complies with the approved format (Blue and green)
Carton Overprinting Variables		
8.	Batch coding information (batch no. Mfg. date, Exp. Date & M.R.P is printed in black color. <ul style="list-style-type: none"> • Batch No. 21K124 • Mfg. Date: Nov 2021 • Exp. Date: Oct 2023 	Batch coding information (batch no. Mfg. date, Exp. Date & M.R.P is printed in black color. <ul style="list-style-type: none"> • Batch No. 21k124 • Mfg. Date: Nov 2021 • Exp. Date: Oct 2023

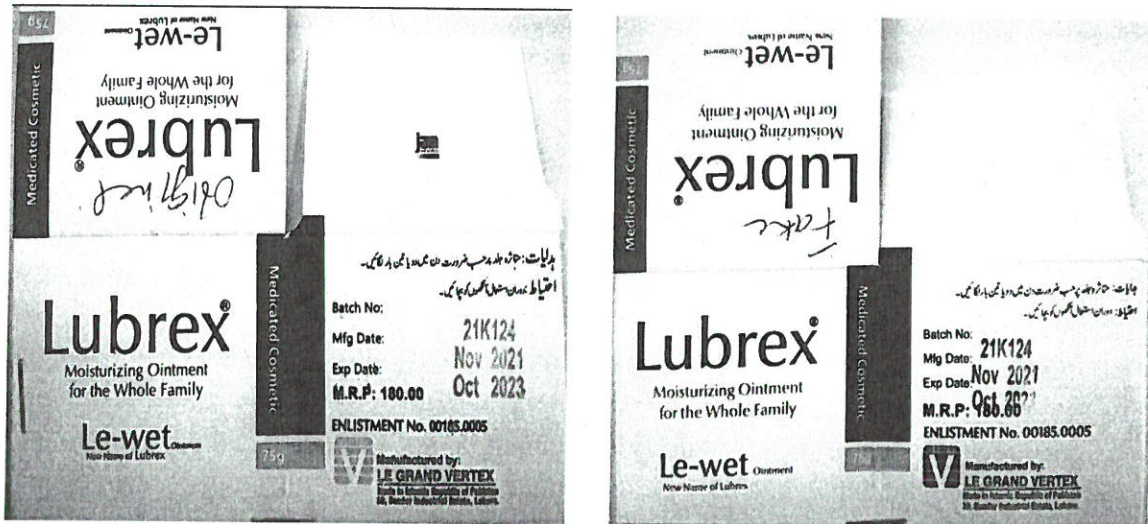
	• M.R.P: 180	• M.R.P: 180
9.	Font & Size of overprinting complies with the approved format.	Font & Size of overprinting does not complies with the original format. Letter 'k' in batch number using as small alphabet.
Jar Variables		
10.	Company's logo on lid of the jar complies with the approved format.	Company's logo on lid of the jar gives slightly sharp look as compared to original product.
11.	Width of approved jar is 22cm	Seized sample jar width is 24cm that is slightly larger than original jar.
12.	Height of the jar complies with approved one.	Height of jar is slightly less than the original one.
13.	Plastic material used for jar complies with approved material	Plastic material used for jar does not complies with the original one, it is too soft to pinch easily.

5.23 It has been observed that 13 different variables/differences have been identified between original and seized samples. During a meeting dated March 14, 2023, the representatives of the Complainant mentioned that the Respondents have made a copy of only one single batch bearing no. 21K124, whereas the additional evidence submitted by the Complainant showing different batch no., i.e. 21K121. Similarly, the same batch Nos. i.e., 21K121 has been noted on the packaging samples acquired from Jam Printers and Value Art Printers. Furthermore, variation between two packaging from Jam Printers and Value Art Printers has been observed. A snapshot of packaging acquired from Jam Printers and Value Art Printers is depicted below:



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5.24 Second, the alleged product sample bearing batch No. 21K124, submitted with the complaint, was recovered from Respondent No. 3, who has been engaged in distribution of alleged product along with other pharmaceutical products. The Respondent No. 3 has submitted an affidavit before the Enquiry Committee and clarified that it purchased those products from Respondent No. 1& 2 and they did not provide proper bill warranty to Respondent No. 3. As evidence, the Respondent No. 3 submitted copies of informal bills/invoices issued by Respondent No. 1& 2 along with WhatsApp chat record between Respondent No. 1&3. A snapshot of packaging submitted by the Complainant along with complaint is depicted below:



5.25 During a meeting dated February 03, 2023, the Respondent No. 1&2 disclosed their relationship with Respondent 3&4 and submitted that they were working as commission agents of Respondent No. 4 for Lahore region only. They further submitted that the instant complaint is baseless and filed with mala fide intent as the same has been filed with Police Station, Shadman Town, Lahore with connivance of Drug Inspector, Mr. Imran Sarfaraz. Respondent No. 1&2 submitted that they made all purchases from Respondent No. 4 and sold in Lahore. In support of their allegation, they submitted copies of deposit slips showing the payments made in the bank account of Respondent No. 4.

5.26 Third, Respondent No. 4 was appointed as sole distributor of the Karachi region by the Complainant with effect from 18-03-2018 for a period of three years. However, after the expiration of three years contract period, the Complainant continued supplying products to Respondent No. 4, till June 2022. It is important to mention here that at the time of filing the complaint with the Commission, Respondent No. 4 was still an authorized distributor of the Complainant.

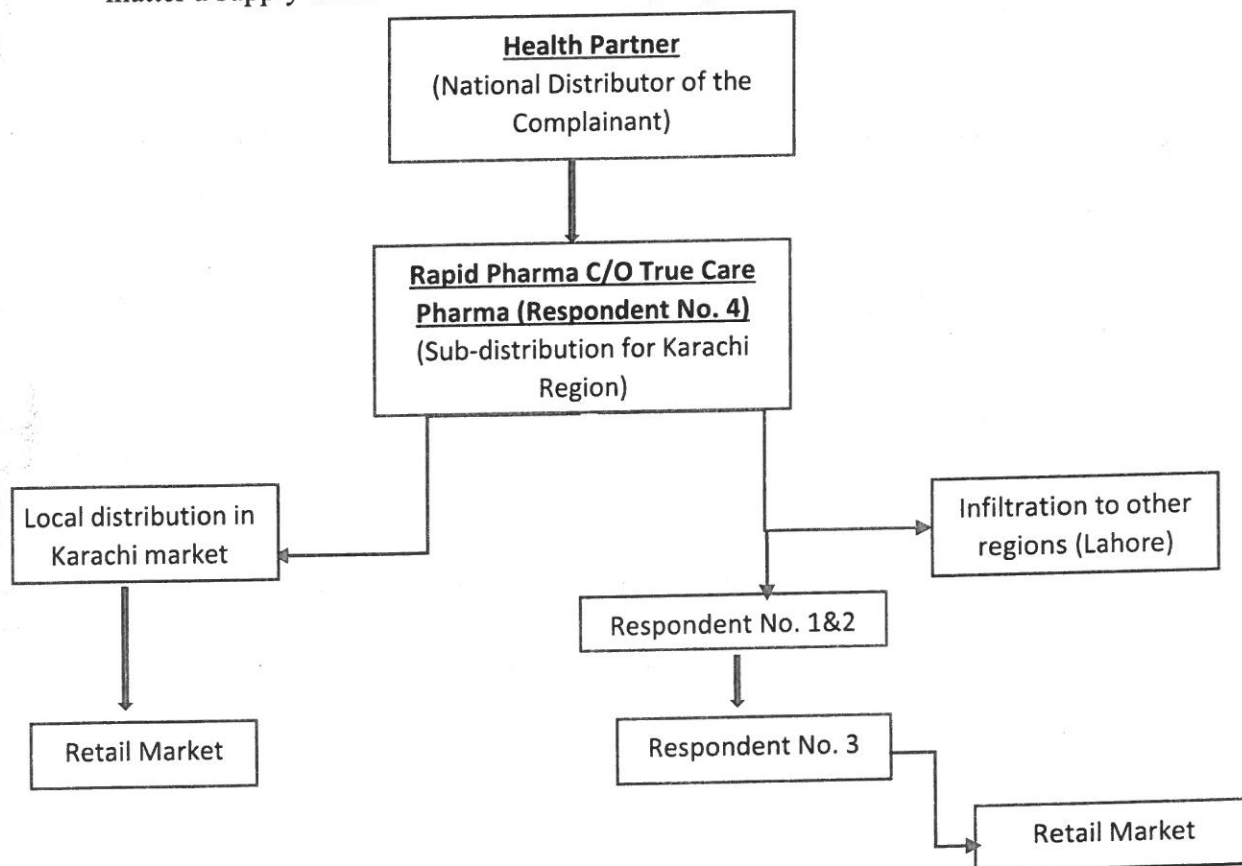
5.27 Fourth, an FIR No. 1017/2022 dated 30.07.2022 was registered under section schedule (ii), (iii)&(iv) of the DRAP Act, 2012 with Police station Shadman Lahore on the allegations that on 21.03.2022 Imran Sarfraz area Drug Inspector along with other witnesses carried

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out inspection of the premises of Respondent No. 3 and recovered two types of therapeutic goods on Form No. 5 and also took one sample for the purposes of test/analysis. The recovered samples were forwarded to the Complainant for comparative analysis. According to the comparative statement issued by Ms. Sidra Kazmi, the recovered products were declared spurious u/s (zb)(ii) of the Drug Act, 1976. Though, the Govt. Analyst declared the medicine of standard quality. Copy of DTL report is attached and marked as **Annex-A.**

5.28 Fifth, the Respondent No. 1, 2 & 3, submitted their statements before the investigation officer at Police Station Shadman and admitted that they received the alleged products from Respondent No. 4. However, the name of Respondent No. 4 is not mentioned in the FIR No. 1017/2022 dated 30.07.2022, whereas at that time the Complainant was aware about the nexuses of Respondent No. 4 with other Respondents. This fact can be verified from the complaint received by the Commission on April 25, 2022, wherein the Complainant itself mentioned about this nexuses.

5.29 Sixth, the main allegation against the Respondents is that they are involved in manufacturing, distribution, marketing and sales of the alleged counterfeit products. Hence, distorted competition in the market by imitating the registered trademark, firm name and product labeling or packaging in violation of Section 10 of the Act. In the instant matter a supply chain flow chart of the alleged product is as under:



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5.30 Keeping in view the facts/observations mentioned above, the Enquiry Committee will analyze the allegations leveled in the complaint along with evidence submitted by the Complainant and determine that the following:

I. **WHETHER THE ALLEGATIONS LEVELED AGAINST THE RESPONDENTS UNDER THE COMPLAINT CONSTITUTES A PRIMA FACIE VIOLATION OF SECTION 10(1) IN TERMS OF SECTION 10(2) (a), (b) & (d) OF THE ACT?**

5.31 In order to analyze the facts of the case under Section 10 (2) (d) of the Act, it is important to understand the term 'trade mark,' which is defined under the Trademark Act, 1940, as,

"trade mark" means a mark used or proposed to be used in relation to goods for the purpose of indicating or so as to indicate a connection in the course of trade between the goods and some person having the right, either as proprietor or as registered user, to use the mark whether with or without any indication of the identity of that person."²

Therefore, a trademark is a distinguishable sign, mark, design or expression which differentiates goods and services of the producer from that of its competitors.

5.32 International Trademark Association defines trade dress as, *"Trade dress is the overall commercial image (look and feel) of a product that indicates or identifies the source of the product and distinguishes it from those of others. It may include the design or shape/configuration of a product; product labeling and packaging; and even the décor or environment in which services are provided. Trade dress can consist of such elements as size, shape, color and texture, to the extent that such elements are not functional. In many countries, trade dress is referred to as 'get-up' or 'product design.'*"³

5.33 For the purposes of this Enquiry Report, the trade dress shall be taken in the meanings of product labelling and packaging, in accordance with Section 10 of the Act.

5.34 The Unfair Commercial Practices Directive 2005 (UCPD), defines prohibited commercial practices as also *"Promoting a product similar to a product made by a particular manufacturer in such a manner as to deliberately mislead the consumer into believing that the product is made by the same manufacturer when it is not."*⁴

5.22 Now in order to form an analysis, it would be crucial to draw a comparison between two packaging. While analyzing the net general impression of the marketing campaign another important aspect which must be kept into mind is that the advertisement has to be viewed

² http://www.acif.org.pk/Files/TradeMarkAct_1940.pdf

³ <http://www.inta.org/TrademarkBasics/FactSheets/Pages/Trade-Dress.aspx>

⁴ <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52016SC0163>,

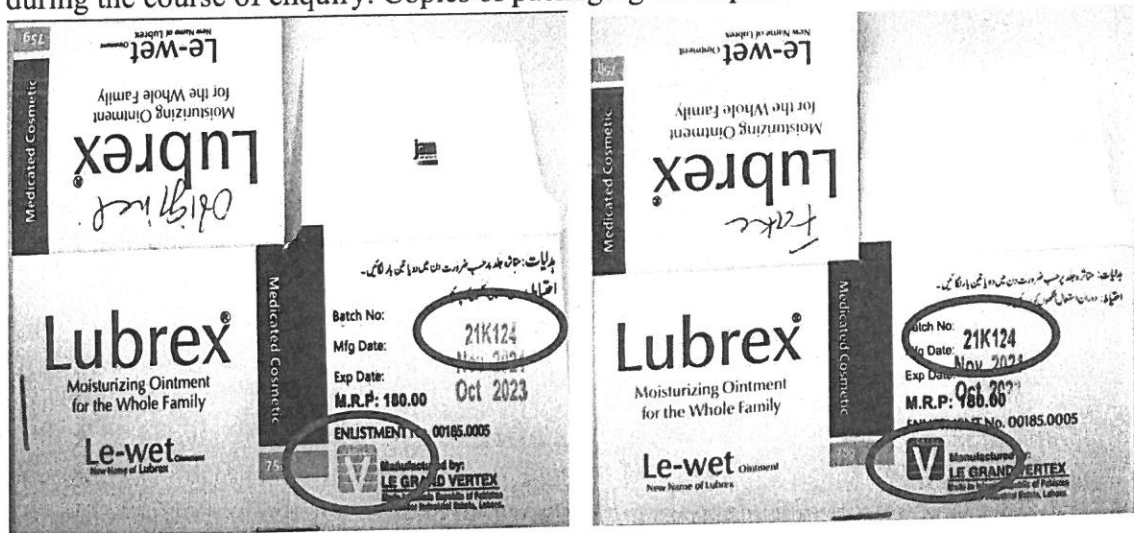
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from the point of view of “a purchaser of average intelligence and imperfect recollection”, which has been quoted by the Hon’ble Supreme Court of Pakistan in a **Civil Appeals No. 444 & 445 of 2017**⁵.

5.35 The Complainant’s products include tablet, topical (cream/ointment/lotion/shampoo), capsules dry powder and sachet. The Complainant has filed the complaint in terms of its ointment cream namely Lubrex Le-wet only. Therefore, the analysis in this enquiry report will be limited to the alleged product, i.e., Le-Wet Ointment.

5.36 The Complainant’s product is available in plastic jar, packed in carton. Lubrex is a registered trademark of the Complainant with the trademark registry in Karachi, vide trademark no. 144703 in class 3 dated 30.10.1997. The Complainant also obtained trademark certificates in class 3 and class 5 for its well know mark, i.e., Le-Wet. Copies of trademark certificates are attached and marked as **Annex-B**. It is important to mention here that no copyright certification has been obtained by the Complainant in terms of packaging of Lubrex ointment.

5.37 It is important to mention that in this enquiry we will analyze various elements of the Complainant’s packaging bearing batch no. 21K124, and the packaging recovered from the premises of Respondent No. 3 along with additional packaging submitted by the Complaint during the course of enquiry. Copies of packaging are depicted below:



(Complainant’s Packaging)

(Seized Packaging from Respondent No. 3)

5.38 From the above images, it has been observed that the dominating features of both packaging are identical including the product name, firm name and other descriptive features of packaging. However, slight difference including color scheme of both logs and color scheme of cartons, as mentioned by the Complainant in its investigation report has

⁵ C.A 444&445/2017-page-09 Para 15

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also been observed. In addition, it has also been observed that font & font size of the seized unit carton does not comply with original sample, especially in descriptive features where a storage condition is described as “Keep in cool & dry Place” wherein letter “P” is used in capital letters whereas in original packaging the Complaint used a small letter “p”.

(Back side of original Pack)



(Back side of Seized Pack)



5.39 Similarly, the same variations have been observed in a sticker placed on jar inside the carton. It is important to mention here that the Complainant, in its investigation report, has pointed out another variation between two packaging, i.e., in batch coding information letter “k” is used in small letters whereas in original packaging the same information is given with capital letter “K”. However, in the seized packaging depicted above in para 5.38, submitted by the Complainant, a capital letter “K” as opposed to the submission of the Complainant, has been observed.

5.40 Based on the investigation report, discussed in para 5.22 above, the seized product was declared as “spurious therapeutic goods”. Consequently, a FIR No. 1017/2022 dated 30.07.2022 registered under section schedule (ii) (ii) & (iv) of the DRAP Act, 2012 (Enlistment Rules 2014) with Police Station Shadman, Lahore on the allegation of recovery of spurious therapeutic goods from the premises of Respondent No. 3.

5.41 The Respondent No. 3 denied the allegation and submitted that it purchased these products from Respondent No. 1&2, therefore, both were nominated in the same FIR No. 1017/2022. The Respondent No. 1, 2 & 3 filed a post arrest bail petition before Drug Court, Lahore. On the said petition, a hearing was conducted on 13.12.2022 wherein the Hon’ble Court mentioned that “the Govt Analyst declared the seized medicine of standard quality” whereas the Complainant had declared it as spurious therapeutic goods through its investigation report.

5.42 As far as counterfeit packaging is concerned, nothing was recovered from Respondent No. 1, 2 & 4. However, the Respondent No. 1&2 admitted that they purchased these products from Respondent No. 4 and supplied to Respondent No. 3. As evidence, the Respondent

Handwritten initials: A.A.

No. 3 submitted WhatsApp communications and copies of informal receipts, signed by Respondent No. 1&2. The transaction of alleged counterfeit products is evident from the communications between Respondent 1, 2 & 3. Copies of WhatsApp communication and informal invoices are attached and marked as Annex-C.

5.43 As mentioned above that Respondent No. 1&2 purchased these products from Respondent No. 4. As evidence the Respondent No. 1&2 has submitted copies of bank payment slips issued in favor of Respondent No. 4. A copy of bank payment slip is attached as marked as Annex-D.

5.44 It is important to mention here that at the time of complaint, the Respondent No. 4 was an authorized distributor of the Complainant's products in Karachi region. The Respondent No. 4 has denied the allegations of the Complainant and submitted that it has only been involved in distribution of the Complainant's products. After filing of complaint, the Complainant terminated its agreement in June 2022 and issued a clearance certificate dated 15-06-2022 to Respondent No. 4. It is also worth mentioning that Complainant didn't provide any concrete evidence (sales trail) showing the involvement of Respondent No. 4 in manufacturing, distribution, marketing and sales of alleged counterfeit products.

5.45 Therefore, the Enquiry Committee visited the medicine market of Karachi city for the purpose of collecting evidence against Respondent No. 4. However, no evidence was found in terms of product packaging. The Enquiry Committee also visited the premises of Respondent No. 4 and collected records of inflows and outflows of inventory maintained by it. The Complainant has also submitted the records of total stocks issued to Respondent No. 4 from the date of commencement and termination of distribution agreement.

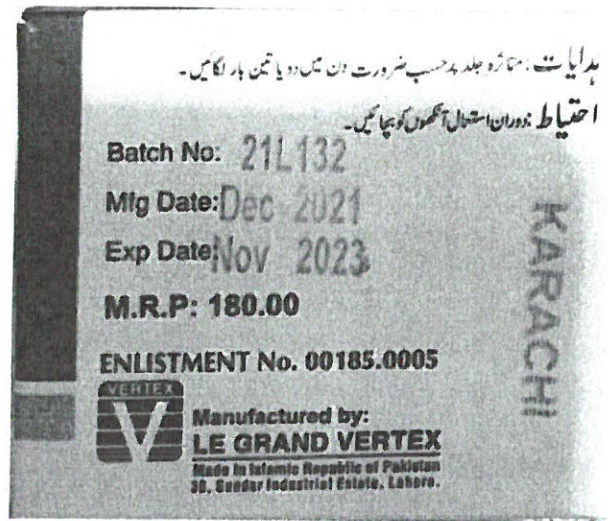
5.46 The Enquiry Committee analyzed the data submitted by both parties and found that the Complainant supplied approx. 5800 units of Lubrex (Le-wet ointment) bearing Batch No. 21K124 to Respondent No. 4 whereas the Respondent No. 4 recorded an inventory of 2400 units of same batch, which points that the remaining was infiltrated to other areas. The Complainant, in its complaint, has also pointed out that Respondent No. 4 has sent some stocks to other regions which is, as per Complainant, a violation of terms of distribution agreement. A summary sheet of sales invoices issued by the Complainant and inventory recorded by Respondent No. 4 is attached and marked as Annex-E.

5.47 Respondent No. 1&2 have admitted that they received the alleged products from Respondent No. 4 and sold them in local market, which further validates the allegation of infiltration. The Respondent No. 4 also admits that it has appointed a commission agent in Lahore for sale of the alleged products. However, the act of infiltration is not prohibited under Section 10 of the Act.

5.48 As mentioned above, the Enquiry Committee also visited various markets of Karachi city for purpose of collecting the supply chain trail of those alleged counterfeit products,

submitted by the Complainant during the course of enquiry. However, the trail, so far, collected by the Enquiry Committee does not indicate that such products were supplied by M/s Rapid Pharma (Authorized distributor of Respondent No. 4).

- 5.49 The Complainant also failed to provide any concrete evidence against the Respondents. In fact, a non-uniformity of the Complainant's own product packaging has been noticed. At the time of the complaint, the Complainant submitted that it used a standard silver logo for its entire production line bearing Batch No. 21K124 and the same has also been reflected from its own investigation report. Whereas during a meeting dated March 14, 2023, the Enquiry Committee pointed out that they had used the same black logo on another batch bearing no. 21K121. In response to the observation of Enquiry Committee, the CEO of the Complainant's firm admitted that, previously, they had used black logo when it was mistakenly printed by one of their printers. However, the same black logo has also been observed on another packaging batch No. 21L132, submitted by the Complainant. Copy of packaging is depicted below:



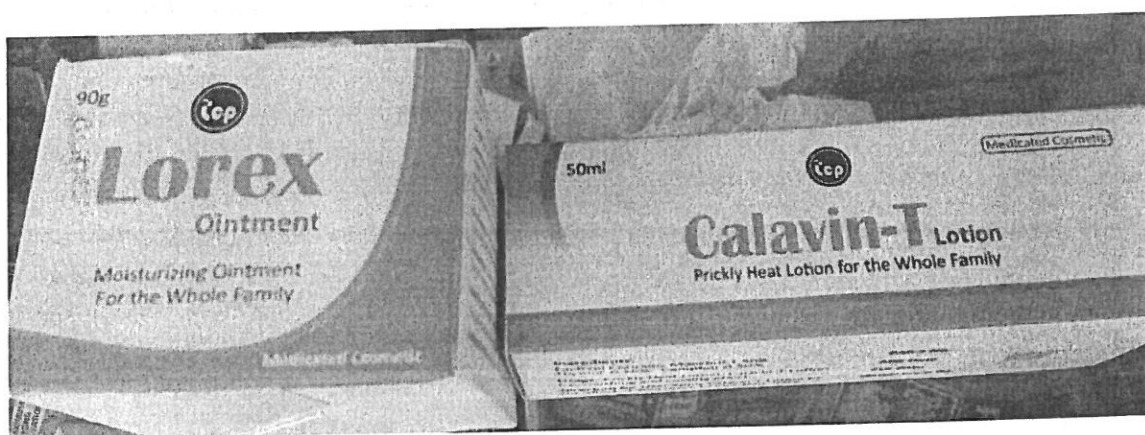
- 5.50 In addition to the above, it has also been noticed that the Complainant used a manual stamp for punching of batch coding information on their product packaging. Therefore, it is highly likelihood that the Complainant, mistakenly, itself used a small letter "k" while punching batch number 21k124. The Complainant failed to provide any evidence, which points the act of counterfeiting by the Respondents.
- 5.51 During the meeting, the Complainant pointed out that the alleged counterfeit product has been sold in local market of Lahore region with heavy discounts, which is even not possible for the Complainant to sell its original products on such heavy discounts. Whereas the sales invoices issued to M/s Rapid Pharma showed that the Complainant sold its products to Respondent No. 4 on a 50% discount. The informal sales invoices issued to Respondent No. 3 showed a discount of 17%, which points that the Respondent No. 4 has passed a portion of its own discount margin to Respondent No. 3.

5.52 In light of the above, it can be concluded that the Complainant has failed to establish that the recovered articles belong to the Respondents. The Enquiry Committee observed that the packaging printed by the Complainant from their printers are not consistent with the approved packaging format. Therefore, the act of fraudulent use of trademark, product labeling or packaging, bearing batch no. 21K124, by the Respondents has not been established.

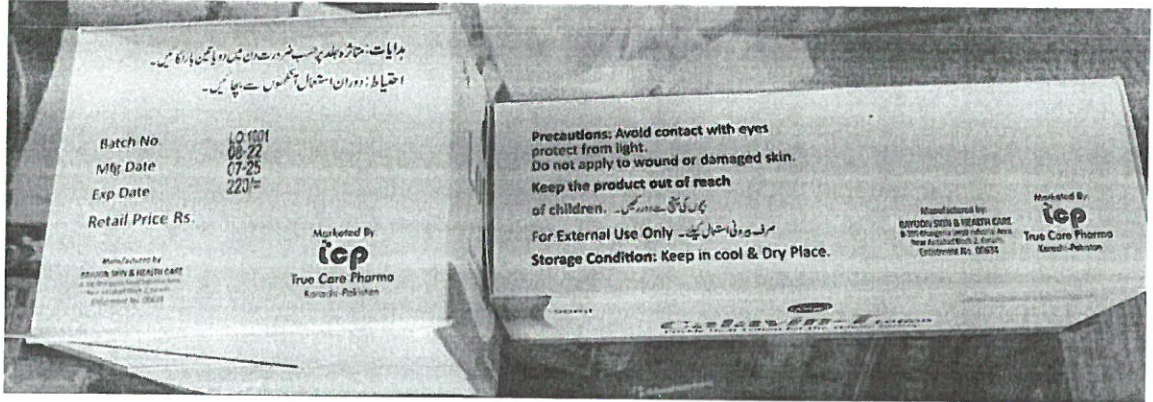
5.53 The Complainant, in its rebuttal, has submitted that after termination of distribution agreement, the Respondent No. 4 launched a range of identical/deceptive products parallel to the Complainant products. Details of some parallel products are as under:

Product Name	Marketed By	Product Name	Marketed By
Lubrex (Le-wet-ointment)	Le-Grand Vertex	Lorex	True Care Pharma
Lubrex (Carex Lotion)	-do-	Lorex	-do-
E-Vita	-do-	A-Vit	-do-
C-Vita	-do-	C-Vit	-do-
Calamix-V	-do-	Calavin-T	-do-
SALIC	-do-	SASLIC	-do-

5.54 The Complainant, vide email dated October 13, 2023, was asked to submit original packaging of alleged products along with purchase receipts. The Complainant was also asked to submit evidence with regards to the spillover effect of the alleged marketing campaign of Respondent No. 4 for their newly launched products. Images of alleged packaging are depicted below.



7 A.A



- 5.55 The Respondent No. 4 vide letter dated October 17, 2023, was asked to respond over the allegation made by the Complainant in its rejoinder. The Respondent No. 4 did not submit any reply to the Enquiry Committee. As mentioned in para 5.55 above, the Complainant was also asked to submit original packaging of the alleged products along with evidence showing the spillover effect of the alleged practices of Respondent No. 4. However, the Complaint failed to produce any evidence on record.
- 5.56 It is pertinent to mention here that the scope of the Enquiry Committee is restricted to only analyze the facts pertaining to the allegation regarding production, distribution, marketing and sales of counterfeit products by the Respondents. Therefore, it is beyond the mandate of this Enquiry Committee to analyze the facts pertaining to the products newly launched by the Respondent No. 4.
- 5.57 Therefore, based on the evidence available on record, the Enquiry Committee reached on a conclusion that Respondent No. 1, 2 & 3 are only channel partners of Respondent No. 4 for distribution and sale of alleged counterfeit products. The Respondent No. 4 was an authorized distributor of the Complainant at the time when the alleged practices were carried out. The Respondent No. 4 found involved in infiltration of the Complainant's original products to various other locations. However, the act of infiltration is not prohibited under the Act. The purchase receipts submitted by the Complainant do not confirm the involvement of Respondent No. 4 in production and distribution of alleged counterfeit products. In fact, the various batches produced by the Complainant are inconsistent packaging and non- uniform with the original approved packaging design.
- 5.58 In light of the above, we are of the view that the allegations leveled against the Respondents under the complaint do not constitute a , *prima facie*, violation of Section 10(1) in terms of Section 10(2) (a), (b) & (d) of the Act. Therefore, a case of deceptive marketing practices against the Respondents has not been made out.

II. Whether there is a spillover effect of the conduct of the Respondents?

7 A.A

- 5.60 The Complainant has submitted purchase invoices of alleged counterfeit products, bearing batch No. 21K124, from Lahore and Karachi. Therefore, the Enquiry Committee found that the products are being marketed and sold nationwide and are not limited to one particular province.
- 5.61 As regards, the effect of anti-competitive behavior spilling over territorial limits of other provinces is concerned, the product was marketed and sold nationwide. Hence, the scope of marketing was not restricted to a particular area or province, in fact, it is available to consumers around the country. The products have a nationwide effect because the consumer can buy the product anywhere in the country.


6. FINDINGS & CONCLUSION:


- 6.1 Based on the information available on record and submissions made before us, we the undersigned enquiry officers have reached the following conclusions:
- 6.2 In the matter of Respondent No. 1, the alleged counterfeit articles were not recovered from his possession. The Respondent No. 4 supplied the alleged product, which were sold in Lahore through Respondent No. 1. The Respondent No. 1 submitted the bank deposit slips showing the deposits in the account of Respondent No. 4.
- 6.3 In the matter of Respondent No. 2, he is real brother of Respondent No. 1 and was found involved in supply of alleged product on behalf of his brother, i.e., Respondent No. 1. The Complainant has also failed to provide cogent evidence to establish that Respondent No. 2 was actually involved in fraudulent use of its trademark, labeling or packaging.
- 6.4 In the matter of Respondent No. 3, the alleged counterfeit articles were recovered from their premises, however, it produced informal invoices of the product issued by Respondent No. 1. The Respondent No. 3 a distributor of pharmaceutical products including the products of the Complainant. The Respondent No. 3 provided a trail record of invoices showing the purchase of alleged product from Respondent No. 1.
- 6.5 In the matter of Respondent No. 4, at the time of complaint the Respondent No. 4 was an authorized distributor of the Complainant for Karachi region. After termination of distribution agreement, the Complainant issued a clearance certificate to Respondent No. 4 which points that the Complainant has no evidence of malpractices against Respondent No. 4. Whereas, the Complainant has sufficient evidence that the Respondent No. 4, with the connivance of Respondent No. 1&2, infiltrated the Complainant's product to other regions. However, alleged product was not recovered from Respondent No. 4. The Respondent No. 4 admitted that it has appointed Respondent No. 1 as commission agent for supply of the Complainant's product in Lahore region.

- 6.6 In light of the findings above, it can be concluded that the Respondent No. 1, 2 & 3 were channel partners of Respondent No. 4 for distribution and sale of the Complainant's product in Lahore region, whereas the Respondent No. 4 was an authorized distributor of the Complainant for Karachi region only. The Respondent No. 4 supplied the Complainant's products to Respondent No. 1&2, which were sold to Respondent No. 3 in breach of distribution agreement.
- 6.7 It can further be concluded that, *prima facie*, the allegations made against the Respondents have not been made out as, the purchase invoices provided by the Complainant are of the different undertakings, whose address, company name and contact details do not match with that of the Respondent No. 1, 2 & 4. The Respondent No. 3, being as distributor, purchased the alleged product from Respondent No. 1.

7 RECOMMENDATIONS:

- 7.1 A case of, *prima facie*, deceptive marketing practices against the Respondents has not been made out. Therefore, it is recommended that the complaint against the Respondents may be disposed of in accordance with law.


Rizq Hussain
Deputy Director
Enquiry Officer


Amin Akbar
Assistant Director
Enquiry Officer