



## 1. BACKGROUND

- 1.1 M/s. Service Industries Limited (the '**Complainant**'), filed a complaint against M/s. Panther Tyres Limited (the '**Respondent**') with the Competition Commission of Pakistan (the '**Commission**') for alleged violation of Section 10 of the Competition Act 2010 (the '**Act**'), pertaining to Deceptive Marketing Practices.
- 1.2 It was alleged in the complaint that the Respondent is engaged in anti-competitive practice(s) by making a false and misleading, substantial and quantifiable claim regarding its product i.e., tyres as "**PAKISTAN'S NO. 1 TYRE**" and being "**PIONEERS IN TYRE MANUFACTURING**" without there being any independent study/research or report for supporting the same. It was further alleged that the Respondent's Marketing Campaign Slogan by making the false and/or misleading claim deceives the ordinary consumer as to the quality, properties, suitability for use, character of the tyres and manufacturing experience which it doesn't have. The ordinary consumer due to the misleading impression created by the deceptive Marketing Campaign Slogan will make its transactional decision to buy the Respondent's tyres. It was alleged that the intent of the Respondent behind making such a false and/or misleading claim is irrelevant and it is sufficient that such a claim has the tendency and capacity to mislead the consumers.
- 1.3 The Complainant further stated that such misleading advertisement and false claim is not only likely to cause harm to its competitor(s), specially the Complainant, but through such advertisement it is also deceiving the ordinary consumer(s). It was also alleged that the Respondent by claiming that it produces "**PAKISTAN'S NO. 1 TYRES**" and it being the "**PIONEERS IN TYRE MANUFACTURING**", in its Marketing Campaign Slogan has also created a false/misleading comparison of goods in the process of advertising.
- 1.4 The Complainant alleged that the actions of the Respondent under the Marketing Campaign Slogan constitute violation of Section 10 (2) (a) (b) and (c) of the Act.
- 1.5 Based on the preliminary fact finding, on October 19, 2022, the Competent Authority initiated an enquiry in accordance with sub section (2) of Section 37 of the Act by appointing Mr. M. Salman Zafar, Senior Director (OFT) and Mr. Faiz-ur-Rehman, Joint Director (OFT) as enquiry officers (collectively the '**Enquiry Officers**') to conclude the enquiry.
- 1.6 The aim of the enquiry was to determine whether, *prima facie*, by disseminating false and misleading information:
  - a) The Respondent's conduct *is capable of harming the business interest* of the Complainant in violation of Section 10 (1) of the Act, in terms of Section 10 (2) (a) of the Act; and/or
  - b) The Respondent's conduct pertains to *the distribution of false or misleading information to consumers related to character, properties, suitability for use and*

*quality of goods*, in violation of Section 10 (1) of the Act, in terms of Section 10 (2) (b) of the Act?

- c) The Respondent's conduct pertains to false and misleading comparison of goods in violation of Section 10 (1) of the Act, in terms of Section 10 (2) (c) of the Act?
- d) The Respondent's conduct of anti-competitive behavior is spilling over the territorial limits of other provinces or not?

## **2. THE COMPLAINT:**

- 2.1 This section summarizes the contentions raised in the complaint:
- 2.2 The Complainant was established in 1953 and started its business in manufacturing shoes and later in 1970's pioneered in manufacturing bicycle tyres and tubes in Pakistan. Currently the Complainant manufactures tyres for tractors, motorcycles, rickshaws and bicycles in Pakistan along with other allied products.
- 2.3 That the Respondent, is a company incorporated under the laws of Pakistan, with its registered address at Panther House, 97-B Aziz Avenue, Jail Road, Lahore. The Respondent was established in 1983 and manufactures tyres for motorcycles, tractors and Earth Mover Tyres (OTR) trucks, in Pakistan along with other allied products.
- 2.4 The Complainant in its complaint submitted that they hold the majority market share for tyres in Pakistan in terms of sales. Since, the financial years of the Parties are different, therefore a comparison of their Quarterly Reports is more accurate. A comparison of Quarterly Reports of the Complainant and the Respondent clearly provides this comparison. The Complainant highlighted Page 20 of the Quarterly Report for Quarter ended on March 31, 2022 of the Complainant vis-à-vis Page 09 of the Quarterly Report for Quarter ended on March 31, 2022 of the Respondent. It can be clearly seen that the Complainant had a sale of tyres amounting to 6.8 billion Rupees on Quarter ended on March 31, 2022 and a sale of tyres amounting to 5.1 billion Rupees on Quarter ended March 31, 2021; whereas, during the same period the Respondent had a corresponding total sale of tyres and allied products of 4.4 billion Rupees and 3.4 billion Rupees, respectively.
- 2.5 The Complaint submitted that as per the 37<sup>th</sup> Global Tyre Report, the Complainant has been ranked at 73 followed by General Tyres & Rubber Company of Pakistan Limited being ranked at 75, in terms of sales. No other Pakistani Tyre manufacturer including the Respondent finds mention in that report.
- 2.6 The Complainant further stated that M/s. Aftab Associates (Pvt.) Limited is one of the oldest, full service Market Research Agency in Pakistan. It is known for conducting large scale surveys led by a team of experienced quantitative and qualitative researchers. M/s.

Aftab Associates (Pvt.) Limited conducted a survey of tyres and tubes manufacturers in Pakistan and presented its "Campaign Evaluation Study" in August 2022 to the Complainant. A perusal of this Study reflects that tyres and tubes manufactured by the Complainant are superior to its competitors including the Respondent in terms of top mind awareness; total unaided awareness; currently used brands, performance rating of tyres; and brand attributes rating.

- 2.7 It has been submitted that SGS is a Swiss multinational company headquartered in Geneva, Switzerland and is the World's leading testing, inspection and certification company providing inspection, verification, testing and certification services. It has more than 96,000 employees and operates over 2,600 offices and laboratories worldwide. It was ranked on Forbes Global 2000 in 2015, 2016, 2017, 2020 and 2021. SGS conducted tests on tyres manufactured by the Complainant and its competitors including the Respondent. The Complainant also runs an in-house laboratory that conducts tests on tyres similar to SGS, in fact, this laboratory is accredited with SGS. SGS conducted two tests in February 2018 and December 2018 and a comparison between the Complainant and the Respondent show that the tyres manufactured by the Complainant were far more abrasion resistant and durable than that of the Respondent, thus making them superior in quality. That tests were also conducted by Complainant's laboratory in July 2018 showing similar results.
- 2.8 It was further submitted that Section 10 of the Act prohibits '*deceptive marketing practices*' which encompasses protection of consumers and competitors from harm caused by the distribution of 'false' as well as 'misleading' information in the process of marketing and advertising campaigns by an undertaking.
- 2.9 In view of the above, the instant Complaint is being filed against the Respondent as it is engaged in anti-competitive practice(s) by making a false and misleading, substantial and quantifiable claim regarding its product i.e., tyres as "**PAKISTAN'S NO. 1 TYRE**" and being "**PIONEERS IN TYRE MANUFACTURING**" without there being any independent study/research or report for supporting the same. ("**Marketing Campaign Slogan**").  
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- 2.10 Such misleading advertisement and false claim is not only likely to cause harm to its competitor(s), specially the Complainant, but through such advertisement it is also deceiving the ordinary consumer(s) and therefore, warrants the learned Commission's immediate intervention. The Marketing Campaign has potential to create a misleading impression on the ordinary consumer as to the quality of its product which may result in the ordinary consumer choosing to buy the Respondent's tyres as opposed to the tyres produced and sold by the Respondent's competitors, including the Complainant, and will ultimately result in causing harm to the profits of its competitors, including the Complainant. The Marketing Campaign Slogan used by the Respondent is likely to get the Respondent a competitive edge enhancing its market share and the Complainant would be denied the market share which may otherwise could have been gained by the Complainant. Hence, the Respondent is in violation Section 10 (2) (a) of the Act.

- 2.11 The Marketing Campaign Slogan of the Respondent is available at all its retail outlets and being run at the electronic media including television and is also available at the following addresses:-
- <https://youtu.be/uk7nOah5OWE>  
<https://fb.watch/f8JGuJO7cV/>  
<https://panthertyres.com/>
- 2.12 The Complainant further submitted that vide its email dated 26-08-2022, they requested the Respondent to stop dissemination of the false and misleading information contained in the Marketing Campaign Slogan, however, the Respondent vide its email dated 26-08-2022 has refused to heed to the genuine request of the Complainant on the ground that they are No. 1 in Pakistan and pioneers in tyre manufacturing, owing to their range, portfolio, number of years in tyre manufacturing and expertise in making quality tyres which basis is incorrect and baseless.
- 2.13 The Complainant also alleged that the Marketing Campaign Slogan used by the Respondent claiming to be “**PAKISTAN’S NO. 1 TYRE**” and being “**PIONEERS IN TYRE MANUFACTURING**” is not puffery but a (false and/or misleading) substantial and quantifiable claim. The learned Commission has already dealt with such a proposition in the matter of **M/s Reckitt Benckiser Pakistan Limited Order dated 20 January, 2012 (2012 CLD 783)**, wherein by relying upon, the Commission decided that claim “No. 1 in Pakistan” is not a general assertion but a quantifiable and specific statement which describes specific characteristics. It was further held in this case that in the matter of Nestle USA (Nescafe Frothe Cappuccino), Report #4263, NAD Case Reports (Jan. 2005) wherein the marketing campaign slogan that “*Nescafe delivers brand credibility as the world’s No. 1 Coffee Brand*” was under review, it was held that the claim used in the advertisement by Nescafe was quantifiable; as it could be measured and defined. The statement was termed as ‘*substantial claim*’ and not ‘*puffery*’.
- 2.14 That the term “false information” includes oral and written representations that are contrary to truth or fact and not in accordance with reality. The term “misleading information” includes oral and written representations that are capable of giving wrong impression or idea or are likely to lead into error of conduct, thought or judgment. ***Reliance is placed on 2010 CLD 1478.***
- 2.15 That the Respondent in the Marketing Campaign Slogan claimed their tyres being “**PAKISTAN’S NO. 1 TYRE**” which is a false and misleading claim. Reference in this regard is made to submissions made above, the Quarterly Reports, the Campaign Evaluation Study, the SGS Lab Reports, Complainant’s Lab Reports and 37th Global Tyre Report which clearly contradict the Respondent’s claim.
- 2.16 That the Respondent in the Marketing Campaign Slogan has disseminated a false and misleading claim “**PIONEERS IN TYRE MANUFACTURING**”. The Cambridge

Dictionary defines the term “pioneer” as “a person who is one of the first people to do something. The Merriam-Webster Dictionary defines the term “pioneer” as “a person that originates or helps open up a new line of thought or activity or a new method or technical development”. This claim suggests that the Respondent was the first person to develop, make, construct and manufacture tyres in the world. This claim is deceptive, untrue and misleading as the Respondent has not pioneered tyre manufacturing neither in the World as the term suggests nor in Pakistan. It is submitted that the tyre was invented/developed by John Boyd Dunlop and Robert William Thomson had patented a design for tyre in 1846. It is further submitted that, in Pakistan, it was the Complainant that started manufacturing bicycle tyres in Pakistan in 1970’s. Similarly, the Ghandhara Tyres Rubber Company was set up in 1963 and started car tyre production in 1964 in Pakistan. On the other hand, the Respondent was incorporated in 1983, hence, this claim of Respondent that it is “PIONEERS IN TYRE MANUFACTURING” is false and misleading.

- 2.17 That the false and misleading substantive and quantifiable claim “**PAKISTAN’S NO. 1 TYRE**” made by the Respondent leaves an impression on the *ordinary consumer* that the Respondent manufactures the number one quality product i.e., tyres, as compared to its competitors without there being any independent studies/surveys or report for claiming the same. Moreover, the false and misleading substantive and quantifiable claim that the Complainant is “**PIONEER IN TYRE MANUFACTURING**” is also not backed by any independent surveys/studies.
- 2.18 The doctrine of reasonable basis for making the advertising claim, prior to making it an advertisement, is well established. The concept of reasonable basis provides that the advertiser must have a reasonable basis in support of their claim and must have some recognizable substantiation for the claims made prior to making it in an advertisement. It is submitted that there is no reasonable basis for making a claim as depicted in the Marketing Campaign Slogan. *Reliance is placed on 2010 CLD 1695 & 2020 CLD 1148.*
- 2.19 It is well settled that there must be extensive, comprehensive and uniform nationwide study or survey to support such claims as it was observed by the Commission in another Order dated 20 July 2017 in the matter of *M/s Proctor and Gamble Pakistan (Pvt.) Limited (2017 CLD 1609)*.
- 2.20 Moreover, without prejudice to the aforesaid, the Respondent has not even used any visual disclaimers in its advertising campaign to offset the deception caused by the false and/or misleading Marketing Campaign Slogan. Put it another way and without prejudice, even if it is considered that the Marketing Campaign Slogan is not false and only misleading i.e., the substantial and quantifiable claim made by the Respondent is backed by independent studies/surveys it is still anti-competitive since it does not disclose independent studies/surveys that it has relied upon, in a prominent manner in an advertisement to an *ordinary consumer*. Such actions clearly amount to a blatant violation of the Act. It is also pertinent to mention that the learned Commission does not

approve *'fine print or mouse print'* disclaimers, regardless, the Respondent has not used any disclaimers at all in their advertisement campaigns. ***Reliance is placed on 2020 CLD 1148 and 2015 CLD 1864.***

- 2.21 That the actions of the Respondent under the Marketing Campaign Slogan constitute a violation of Section 10 (2) (a), 10 (2) (b) and 10 (2) (c) of the Act and therefore, the learned Commission's intervention is sought on the below-mentioned grounds.
- 2.22 That the claim/slogan of the Respondent i.e., **"PAKISTAN'S NO. 1 TYRE"** and **"PIONEERS IN TYRE MANUFACTURING"** is not puffery but is a specific assertion and/or statement of fact as to its position in the relevant market without there being any reasonable basis and data for disclosing the same to the consumer which is likely to induce consumer reliance and harm its competitors. It may kindly be noted that the statement of the Respondent is *quantifiable, specific, inaccurate, false and misleading* which constitutes a blatant violation of Section 10 (2) (a), 10 (2) (b) and 10 (2) (c) of the Act.
- 2.23 That the Marketing Campaign Slogan will not just deceive and mislead the ordinary consumer but will also result in harming the business of its competitors, including the Complainant. The Marketing Campaign has potential to create a misleading impression on the ordinary consumer as to the quality of its product which may result in the ordinary consumer choosing to buy the Respondent's tyres as opposed to the tyres produced and sold by the Respondent's competitors, including the Complainant, and will ultimately result in causing harm to the profits of its competitors, including the Complainant.
- 2.24 It is well settled law that to prove conduct under Section 10 (2) (a) of the 2010 Act, it is sufficient to show the existence of deceptive marketing practice that has a potential to cause harm to the competitors as opposed to actual harm and the conduct of the Respondent. By making false and misleading claims regarding its tyres' ranking in the market and it being the pioneer in tyre manufacturing, the Respondent will cause harm to its competitors, including the Complainant.
- 2.25 That the Respondent's Marketing Campaign Slogan by making the false and/or misleading claim that it produces **"PAKISTAN'S NO. 1 TYRES"** 'and it being **"PIONEERS IN TYRE MANUFACTURING"**, deceives the ordinary consumer as to the quality, properties, suitability for use, character of the tyres and manufacturing experience which it doesn't have. The ordinary consumer, due to the misleading impression created by the deceptive Marketing Campaign Slogan will make its transactional decision to buy the Respondent's tyres. It is pertinent to note that the intent of the Respondent behind making such a false and/or misleading claim is irrelevant, and it is sufficient that such a claim has the tendency and capacity to mislead the consumer thus the Respondent's marketing practice is in violation of Section 10 (2) (b) of the Act. The threshold set for a "consumer" for the purposes of Section 10 (2) (b) of the Act is that of an ordinary consumer and not a prudent consumer. In the market for tyres where

an ordinary consumer may be a motorcycle/car owner, the term consumer is likely to be construed liberally who may base its transactional decisions on such false or misleading claims like the Marketing Campaign Slogan (“**PAKISTAN’S NO. 1 TYRE**” and it being the “**PIONEER IN TYRE MANUFACTURING**”) used by the Undertaking. *Reliance is placed on 2010 CLD 1478 & 2021 CLD 84.*

- 2.26 That the Respondent by claiming that that it produces “**PAKISTAN’S NO. 1 TYRES**” and it being the “**PIONEERS IN TYRE MANUFACTURING**”, in its Marketing Campaign Slogan has created a false/misleading comparison of goods which is in violation of Section 10 (2) (c) of the Act. It is evident that the Marketing Campaign Slogan is a comparison of the Respondent’s tyres with other tyres in the tyre market, which is false as it is not based on any independent survey/research. The Respondent has categorized it’s tyres as the No. 1 tyres in Pakistan and has tried to make an impression that it is pioneer in tyre manufacturing, which is a *quantifiable, specific, factually inaccurate* claim that has no reasonable basis and has no independent survey backing such a claim. An ordinary consumer will see such a claim as a comparison between the Respondent’s tyres and other tyres in the market and will make a transactional decision on the same basis. The advertisement campaign being run by the Respondent makes a false comparison between its tyres and the tyres manufactured by the other competitors; however, the Respondent has not provided any disclaimer at all for the Marketing Campaign Slogan. Without prejudice to the foregoing, in the event the Respondent has undertaken independent surveys or added the claim on a reasonable basis the Marketing Campaign Slogan is still misleading as the same is not accompanied with a disclaimer, thus the comparison/claim continues to be misleading, hence, the Respondent is in violation Section 10 (2) (c) of the Act.
- 2.27 In light of the above submissions the Complainant concluded that the actions of the Respondent under the Marketing Campaign Slogan constitute a violation of Section 10 (2) (a), 10 (2) (b) and 10 (2) (c) of the Act.
- 2.28 The Complainant resultantly prayed for the following reliefs:
- a. The learned Commission may kindly initiate proceedings against the Respondent for violation of Section 10 of the Act for deceptive marketing practice, and any other violation of the competition law and impose penalties under the law.
  - b. The learned Commission may kindly restrain the Respondent, permanently as well as in the interim, from using its Marketing Campaign Slogan i.e., “**PAKISTAN’S NO. 1 TYRE**” and the claim “**PIONEERS IN TYER MANUFACTURING**” and/or direct the Respondent to change its marketing campaign slogan.
  - c. Direct the Respondent to commit on record before the learned Commission that it will not engage in any such anti-competitive or deceptive marketing practice that will harm its competitors and will deceive the ordinary consumers.



d. Any other relief deemed fit and appropriate by the learned Commission may also be granted.

### 3. RESPONDENT'S REPLY:

- 3.1 The complaint was forwarded to the Respondent for comments on November 11, 2022. The Respondent via letter dated November 14, 2022, requested for an extension in time limit, which was granted vide letter dated November 21, 2022.
- 3.2 The Respondent submitted its reply vide letter dated nil, which is summarized below.
- 3.3 The the instant reply has been filed by Mr. Ghulam Abbas son of Abdul Shakoore holding CNIC No. 36104-9209403-5, duly authorized by the Respondent to file the same, sign and verify pleadings and do all other acts, deeds, and things necessary and incidental thereto. He is well conversant with the facts of the case and can depose to the same.
- 3.4 The Respondent submitted that the Complainant does not reveal the correct factual position and the contents of the same are vague, unwarranted and do not disclose any cause of action under the laws on the subject. We categorically deny each and every allegation, assertion, and/or insinuation expressly or impliedly made in the complaint, which is contrary to or in derogation of the legal and factual position explained below.
- 3.5 It was stated that the Respondent has not committed any violation of the Act meriting an actionable claim before the Commission and the Complaint appears to have been filed in a mechanical manner with ulterior motives.
- 3.6 That, the enquiry is liable to be closed in terms of Section 37(2) of the Act as the Complainant has been unable to make out a, *prima facie*, case.
- 3.7 That the Respondent Company was started with a vision to make Pakistan self-reliant in the production and supply of tyres/tubes. Since its incorporation, the Respondent is renowned for its superior quality products and the regular introduction of new product lines. Over the period, the Respondent introduced new products in Pakistan that due to superior quality substituted the imported products and helped the country save foreign exchange. Currently, the following are the product lines of tyres/tubes being produced by Respondent:
  - i. Tractor Tyre/tube
  - ii. Truck Buss Bias Tyre/ tube
  - iii. Construction/Mining Machinery Tyre/tube
  - iv. Excavator Tyre/tube

- v. Light Truck Tyre/tube
- vi. Motorcycle Tyre/tube
- vii. Rickshaw Tyre/tube
- viii. Scooter Tyre/tube
- ix. Jeep Tyre/tube

- 3.8 The above said range makes “Panther” a No. 1 brand in Pakistan in terms of diversification of the product portfolio, as it has established its presence in all the segments by gaining the market share from the “import segment” where big companies of the world having centuries of experience leading the market.
- 3.9 That the Respondent has a “reasonable basis” to make the Impugned Claim, which has been upheld by the superior courts of this country.
- 3.10 That the Respondent is now currently working on a strategy to manufacture Tyre of every kind of vehicle in Pakistan. In addition, the Respondent has once again taken the lead and has produced the heaviest and the largest Tyre locally weighing up to 350 Kgs and having value around Rs. 4 Lacs, which is now commercially available in Pakistan as well as being exported to different parts of the world, as it has already met the export quality standards. That it is safe to say that no other local manufacturer has yet endeavoured to touch this Tyre segment.
- 3.11 That the Complainant’s case is primarily based on its market share in the motorcycle Tyre category that is the very reason no other category of Tyre has been mentioned in the complaint. Whereas Respondent is not claiming the No. 1 in motorcycle Tyre category but based on the diversity of the product range and track record of rapidly localizing the imported market.
- 3.12 That, the Complainant has based its entire claim on biased reports, surmises, and conjectures, which lack independence in entirety, to merit an actionable claim against the Respondent.
- 3.13 That the Respondent has implemented a strong ethical and internal regulatory policy so as to ensure that it is a dynamic and socially responsible organization complying with the laws of the country. In this regard, it may be noted that Respondent strictly adheres to all regulations, rules, laws and is also fully cognizant of its obligations under the Act.
- 3.14 That the Complaint is an attempt to disparage the reputation of the Respondent through filing an unwarranted claim.
- 3.15 The Respondent also submitted para-wise reply to the complaint on merits which is summarized below:

- 3.16 It is also pertinent to highlight here that the Respondent among the category of tyres mentioned by the Complainant is also manufacturer of rickshaw, tractor, TBB Types in Pakistan.
- 3.17 The figures so mentioned by the Complainant are misleading on the grounds that the sales of the Complainant as mentioned are not limited to tyres and tubes, but it so includes the sale of auto parts. Moreover, the majority of the sale of the Complainant comprised of cycle, wheelbarrow, rickshaw and motorcycle tyres and tubes. That the case of the Respondent with respect to No. 01 in Pakistan is in regard to the widest category of range of tyres that are currently being manufactured in Pakistan.
- 3.18 The report published by Tyre Business newspaper is about the top 75 global tyres manufacturers in terms of sales and the data of sales of respective companies has been taken from the published financial statements available on the websites of each company or stock exchange of respective country where the company operates or having head quarter. However, the Respondent's name was not included in the list because it was not a listed company earlier and its financial statements were not publicly available for making such comparisons and research by international newspaper agency. Had it been a listed company at that time and its financial statements were also publicly available, it would definitely have got its place in the list.
- 3.19 The report of Ms. Aftab Associates (Pvt.) Limited (agency) is titled "Post ATL Campaign Evaluation Study". This title itself explaining the scope of study, which is to evaluate the impact of a media campaign by the complainant at that point of time. Since the survey was conducted instantly after the media campaign, so it's natural to get the favourable results in parameter purely relating to media activity like, top mind awareness, total unaided awareness, brand attribute rating etc. All these attributes measure the performance of the media activity, and not that of the company nor its products. Further, a reference can be made to Page No. 50 of the Report in question, which makes out the case of the Respondent that it is superior in different categories, which include, Good Road Grip, Fair price, Less Punctures, Brand being easily available, No Wobbling in Tyre, Good Tread Design, Fair Tyre thickness, Tyre Colour, Opinion of Retailer about the brand. Moreover, the report in question talks about motorcycle tyres only where the Respondent is manufacturing a wide category of tyres. The author of the report in question is not independent, therefore, reliance on such a report ought to be made with great caution.
- 3.20 The data presented by the Complainant is false and misleading in its entirety. Firstly, the comparison has been drawn against a Respondent brand Tyre namely "Heavy Duty". We hereby confirm that the Respondent never produced and supplied its tyre with this brand name in the market. So, results relating to "Heavy Duty" cannot be associated with Respondent. Secondly, the data presented is four (04) years old and presently is not verifiable. The month of manufacturing is also not mentioned on the test results, which is very necessary to document while testing as vulcanised rubber changes its properties after three months of its manufacturing.

- 3.21 Test report variance as presented by Complainant is un-imaginable, they might have produced a special batch of tyres to be presented for such lab tests. Panther produces more than 24 brands (64 sizes) in the motorcycle tyre category to serve the varying needs of users. We do not only conduct abrasion testing of tyre before sending them to market but also perform a few other critical tests including but not limited to adhesion test, wobble test, mileage test, casing strength, tensile strength test, elongation test, etc. These tests together determine the excellence of the quality of our products. Whereas the Complainant is trying to prove its motorcycle tyre superior just based on a single quality attribute. As per the research agency, Aftab Associates, engaged by the complainant, Panther motorcycle tyres are superior in 9 attributes against 17 attributes presented in the report on page no. 50. As per this report, panther brand tyres are superior to those of the Complainant in terms of, good road grip, less puncture, no wobbling, fair tyre thickness, tyre colour, and in good tread designs. This endorsement has been made by the consultant engaged by the Complainant so can be treated as a testimony of the superior quality of panther products. The Complainant has presented the data relating to the motorcycle tyre category altogether ignoring the vast range of high-value high-end tyres. A motorcycle tyre is a low-value item and requires simple manufacturing technology and technical expertise whereas OTR, TBB, LT, and tractor tyres are high-end, high-value items that require the most sophisticated technology and manufacturing techniques. Panther has established its presence in these segments by competing with imported tyres being manufactured and supplied by big international companies equipped with the latest technology and having centuries of tyre manufacturing experience. The single most important factor for the "Panther" brand's success in the high-value segment is Quality. That is the very reason "Panther" is the largest local brand in the tractor, TBB, and OTR categories and rapidly substituting the imported tyre market.
- 3.22 It was submitted that the Complaint highly respects the mandate of the Commission and will continue to comply with the objective and intention behind the enactment of the Act.
- 3.23 The claim of the Respondent had a reasonable basis. Panther Tyres Limited was established in 1983 with the name Mian Tyre and Rubber Company (Pvt.) Limited and subsequently 2011 changed its name to Panther Tyres Limited. The Company was started with a vision to make Pakistan self-reliant in the production and supply of tyres/tubes. Since its incorporation, the Respondent is renowned for its superior quality products and the regular introduction of new product lines. Over the period, the Respondent introduced new products in Pakistan that due to superior quality substituted the imported products and helped the country save foreign exchange. Currently, the following are the product lines of tyres/tubes being produced by Respondent:
- i. Tractor Tyre/tube
  - ii. Truck Buss Bias Tyre/ tube
  - iii. Construction/Mining Industry Tyre/tube
  - iv. Excavator Tyre/tube
  - v. Light Truck Tyre/tube
  - vi. Motorcycle Tyre/tube

- vii. Rickshaw Tyre/tube
- viii. Scooter Tyre/tube
- ix. Jeep Tyre/tube

3.24 The above said range makes “Panther” a No. 1 brand in Pakistan in terms of diversification of the product portfolio, as it has established its presence in all the segments by capturing the market shares from the “import segment” where big companies of the world having centuries of experience remained the market leaders. Over the period the Respondent has invested in technology and manpower to move from the manufacturing of simple low-value motorcycle tyre to highly sophisticated high-value OTR tyre.

3.25 The Respondent further submitted that the advertisement in question had already been taken off before the Complainant approached this Commission.

3.26 It is submitted that the Respondent never claimed that it invented the tyre, and no individual is likely to take the impression that ad of the Respondent in any way is making such a claim. Nevertheless, it is pertinent to mention that Respondent since its incorporation has pioneered many tyres and tyre products, the list as follows:

- i. Motorcycle Tyre
- ii. Jointless tube and butyl tube
- iii. Rickshaw Tyre
- iv. Second Company to manufacture Tractor Tyre
- v. TBB Tyre
- vi. Excavator/Mining/Construction Machinery Tyre

3.27 The Respondent is proud to be a winner of the “Brand of the Year” award 2021 in the motorcycle tyre category due to its superior quality and consumers’ preferred choice. The company has been the winner of this award 6 times since 2012. This is a national award given by “Brands Foundation”, which is the only organization in Pakistan having national accreditation and global recognition. Panther has been declared as a winner of the “16<sup>th</sup> Consumer Choice Award 2022” and its products have been declared as the best tyres/tube by the Consumers Association of Pakistan (CAP). That the Respondent is also the proud winner of this award in 2019 & 2021. CAP is an independent body registered with govt. that evaluates the products of different Companies based on their quality standards, safety, and affordability. The winners are decided after a comprehensive survey of the market by an independent team of the association and then processed through stringent criteria under the supervision of area specialists.

3.28 All manufactured goods sold in the European Union (EU) must comply with a series of regulations before they can legally enter the EU market. An E-Mark is a European conformity mark that proves a vehicle or vehicle part complies with regulations, laws, and directives in the European Union. All items sold in Europe must bear an E-Mark. The E-mark certification is issued by a certified authority. Panther Tyres has the number of its products certified under the E8 category. These products relate to the category of a tractor

tyre, LT tyre, rickshaw tyre, scooter tyre, and motorcycle tyre. This certificate is itself proof that the tyres of Respondent have undergone strict and comprehensive testing before their qualification for export to European countries so are the best tyres in different ranges.

- 3.29 It was submitted that the Complainant has approached the learned Commission with malice to undermine the marketing campaign of the Respondent.
- 3.30 In the end, the Respondent prayed that the titled complaint may graciously be dismissed with special costs.
- 3.31 Any other relief that this Hon'ble Commission deems fit in the facts and circumstances of the matter may also be granted.

#### **4. REJOINDER:**

- 4.1 The comments/reply of the Respondent were forwarded to the Complainant for its comments/rejoinder vide letter dated November 29, 2022. The Complainant requested for extension in time via email dated December 05, 2022. The same was granted via letter dated December 06, 2022.
- 4.2 The Complainant submitted its rejoinder vide letter dated nil, the contents of which are reproduced below:
- 4.3 That it is submitted that the law is clear that the making of a claim by the Respondent "*Pakistan's No. 1 tyre*" is a quantifiable and specific claim describing specific characteristics and does not convey a general impression. It is also settled law that such a claim should have a reasonable basis to be based on some independent and recognizable source (*Reference is made to 2012 CLD 783; 2017 CLD 1609; 2015 CLD 1737; 2015 CLD 1638; 2022 CLD 525; and Order dated 11-11-2022 made in the Matter of Show Cause Notice issued to Berger Paints Pakistan passed by the Learned Bench of the Commission*).
- 4.4 Moreover, such a claim should also be accompanied by a disclaimer communicating the basis of making such a quantifiable and specific claim, so that the consumers are not misled while making a purchase choice. It is submitted that the reply filed by the Respondent does not point out any independent and recognizable source based on which the quantifiable and specific claim is being made nor is the Impugned Advertisement accompanied by any disclaimer communicating basis of making such a quantifiable and specific claim. Hence, the stated claim is illegal, false, misleading and offensive to Section 10 of the Act.
- 4.5 That the Hon'ble Commission published a notice in Daily Dawn on 23-09-2013 titled "Business Be Aware Before You Advertise", wherein the Commission warned businesses to ensure that their marketing and advertising campaigns do not violate Section 10 of the Act. This notice is still displayed at CCP's website

[https://www.cc.gov.pk/images/Downloads/public\\_notice.jpg](https://www.cc.gov.pk/images/Downloads/public_notice.jpg)). This Notice states that businesses should avoid making absolute claims without any reasonable justifications such as “No. 1 in Pakistan/World”. Reference is also made to the case reported as 2017 CLD 1609 (In the matter of: Proctor and Gamble (Pvt.) Limited. It is submitted that the Respondent has failed to show any reasonable justification for making the impugned Claim/Advertisement.

4.6 That the Respondent has stated that the basis of its claim “Pakistan’s No. 1 tyre” is “diversification of its products portfolio” through which it has gained market share from the “import segment”. Thus, the Respondent has conceded that it is not making such a claim on the basis of quality or number of sales of its products made in the relevant market. The Respondent in its response has listed nine (9) different categories of tyres and tubes being manufactured by it on the basis of which it claims to be “No. 1 Tyre in Pakistan”. It is submitted that making the Impugned claim on the basis of stated categories and claiming a more “diversification of its products portfolio” is false and misleading and contravenes Section 10 of the Act because the Complainant has a greater range of diverse product portfolio in ten (10) different categories, as follows:-

- i. Tractor tyre and tubes
- ii. Light Truck tyre and tubes
- iii. Motorcycle tyre and tubes
- iv. Rickshaw tyre and tubes
- v. Scooter tyre and tubes
- vi. Jeep tyres and tubes
- vii. Wheel Barrow/trolley tyres and tubes
- viii. Motorcycle tubeless tyres
- ix. Bicycle tyre/tubes
- x. Truck Bus Bias tubes

4.7 It is also important to point out that the Respondent in its reply has not placed on record any independent data portraying a gain in market share from the “import segment”. It is submitted that, conversely, the Complainant has far larger production, capacity in tyres and tubes, which is translated into a larger sale by the Complainant as reflected in the account statements annexed with the Complaint.

4.8 Therefore, actually, the Complainant has captured a higher share in the market in the local and the import segment than the Respondent. Hence, “diversification of its products portfolio” being the basis of making the impugned claim by the Respondent and gaining market share in the “import segment” is also false and misleading and contravenes Section 10 of the Act.

4.9 That the Respondent has tried to make a case that Complainant’s case is primarily based on its market share in motorcycle category in the market. This assertion is vehemently denied as the Complainant has challenged the Impugned Advertisement wherein baseless and misleading claims of Respondent being “Pakistan No. 1 tyre” and

*“Pioneers in Tyre Manufacturing” are being made.* It is submitted that the said Advertisement relates to tyres of all categories and hence any assertion of the Respondent is misplaced. Complainant has placed on record third party research that was available to it, which pertained to motorcycle tyres/tubes, but this should not be taken to mean that the complaint is restricted to its market share in the category of motorcycle tyre/tubes.

4.10 That it is further submitted that although it is not the case of the Respondent that it is making the Impugned Claim in the Impugned Advertisement that it is “No. 1” in quality of tyres/tubes, yet along with the reply submitted by the Respondent, it has annexed Abrasion Comparison Report apparently conducted by its own laboratory on 26-11-2022 after the Complaint had been filed. It is submitted that it is not an independent report but conducted by the Respondent itself and since it was conducted after the filing of the Complaint it is an afterthought and tends to serve the Respondent’s self-interests. Furthermore, the Respondent laboratory does not have any accreditation with SGS or any other independent testing, inspection and certification company, therefore, the said report cannot be relied upon and cannot be said to be independent. Even otherwise and without prejudice, it is submitted that the figures shown in the said report reflect no difference between the quality of products of the Complainant and the Respondent.

4.11 That in the context of things, it would be appropriate to place the Impugned Advertisement in juxtaposition to the defense taken by the Respondent in its reply that the basis of its claim “Pakistan’s No. 1 tyre” is “diversification of its products portfolio” through which it has gained market share from the “import segment”. The Impugned Advertisement run by the Respondent initially depicts tyres being changed in vehicles (Jeep, Truck and Motorcycle) and then the vehicles being run in different terrains. It also shows that a vehicle has suddenly applied brakes and it stops immediately without any loss of life or limb, highlighting grip quality. During this a song is being played in the background as follows:

چل چل چل چلتا جا - دور دور نکلتا جا  
ساتھ بن تو سایہ بن - حق بن چھایہ بن  
امیدوں کے بوجھ اٹھا لے - دھن بن سرمایہ بن  
اپنے راستے آپ بنا اور بڑھتا جا  
چل چل چل چلتا جا - دور دور نکلتا جا  
چل چل چل چلتا جا - دور دور نکلتا جا  
دھوپ میں طوفانوں میں - کھیت میں کھلیانوں میں  
سر اٹھا کے آنکھ ملا کے - گزر نئے جہانوں میں  
ڈوبتے دن کے سورج کے سنگ چلتا جا



چل چل چل چلتا جا۔ دور دور نکلتا جا

At the end of the Advertisement, the following words are narrated in the background:

چلتے رہیں گے تو آگے بڑھیں گے۔ پینتھر ٹائرز آپ کی سواری اور جذبے کو رکنے نہ دیں کیونکہ ہم چلے  
تو پاکستان چلے گا۔ پاکستان کا نمبر 1 ٹائر، پینتھر ٹائرز چلے نان سٹاپ

Along with the above narrated words, the claim “Pakistan No. 1 tyre” and “Pioneers in Tyre Manufacturing” is made by the Respondent.

- 4.12 A perusal of the Impugned Advertisement simply shows that the Net General Impression created by it is that the Respondent’s tyres are “Pakistan No. 1 Tyres” in quality. The Impugned Advertisement does not give any impression, hint or suggestion that the claim is being made on the basis of “diversification of its products portfolio” or “gaining market share in the import segment”. Thus, the ordinary consumer would be purchasing Respondent’s products in the mistaken belief that they are “No. 1” in quality.
- 4.13 Hence, such representations contravene Section 10 of the Act by misleading the consumers and adversely affecting the interests of the competitors.
- 4.14 It was further submitted and pointed out that although it is not the case of the Respondent that it has based its claim that its products are “No. 1” in quality or sales. But it is nevertheless submitted that the Financial Quarterly Reports, the Campaign Evaluation Study, the SGS Lab Reports and 37<sup>th</sup> Global Tyre Report clearly spell out that the Respondent’s products are not “No. 1” in sales or quality.
- 4.15 Hence, the assertions made by the Complainant in its Reply are baseless and frivolous.
- 4.16 That the Complainant in its Complaint challenges the false and frivolous claim “Pioneers in Tyre Manufacturing” made by the Respondent. It was submitted that such a claim suggests that the Respondent was the first person to develop, claim, construct, and manufacture tyres in the world and is hence false and misleading. The Respondent in its reply has stated that it has been the first to manufacture some tyres in Pakistan, which have been listed in the said para. It is submitted that the claim “Pioneers in Tyre Manufacturing” does not support such a version and does not give any impression to the ordinary consumer that the Respondent was first to manufacture such tyres in Pakistan, hence such a claim is false and misleading.
- 4.17 Without prejudice, it was submitted that even if the term “Pioneers in Tyre Manufacturing” by some stretch of imagination be deemed to mean manufacturing of tyres first time in Pakistan, even then the claim of the Respondent is not true since no

such proof has been attached with the reply and the list of products given by the Respondent is vague and incorrect and the Respondent is put to its strict proof.

- 4.18 Hence, the assertions made by the Complainant in its Reply are baseless and frivolous.
- 4.19 It was submitted that the Impugned Claims of the Respondent being “Pakistan’s No. 1” and “Pioneer in Tyre Manufacturing” have been made by the Respondent on hoardings and stationary display at various detailed outlets (as annexed with the Complaint). A bare perusal of the same leaves an impression in the mind of the ordinary consumers that the products manufactured by the Respondent are No. 1 in quality and not No. 1 on the basis of “diversified products”, and the same are also misleading and false and in contravention of Section 10 of the Act.
- 4.20 The Complainant also submitted para-wise reply to the legal objections of the Respondent, which are summarized below:
- 4.21 The Respondent is in violation of Section 10 of the Act and Complaint has been filed without any ulterior motive.
- 4.22 The Complaint clearly spells out a violation of Section 10 of the Act and an enquiry needs to be conducted, show cause notice needs to be issued and the Respondent has to be penalized for violating the law.
- 4.23 It was submitted that the Respondent has no reasonable basis to make the impugned claims in the impugned Advertisements. The Contents of Preliminary Submissions are reiterated.
- 4.24 The Quarterly Reports, 37<sup>th</sup> Global Tyre Report, Campaign Evaluation Study and SGS Reports are not biased nor based on surmises and conjectures, the same are independent and made by third parties. The Complaint is based on true facts and carries an actionable claim against the Respondent.
- 4.25 The Complainant also submitted para-wise reply on merits, which are summarized below:
- 4.26 It was specifically denied that the figures mentioned in Complainant’s quarterly report are misleading in any manner. The Comparison of the quarterly reports of the Complainant and the Respondent clearly shows that the Complainant is leading the sales of tyres in the country by a long margin. A breakup of tyres sales of the Complainant shows that sales of tyres as per 31-03-2022 was Rs.6,804,129,435/- and sale of allied product/parts was Rs.699,978,945/-, so that a net sale of tyres amounts to Rs.6,104,150,490/- that is clearly far more than sales made by the Respondent.
- 4.27 The 37<sup>th</sup> Global Tyre Report has been made by making comparisons from the published financial statements (including Respondent’s Financial Statement) in Pakistan. It was

submitted that the Respondent was a listed company at that time when 37<sup>th</sup> Global Tyre Report was made and its financial statements were publicly available and in spite of this fact, the Respondent did not find a place in the said Report The 37<sup>th</sup> Global Tyre Report was published on 29-08-22 and carries the financial results of the Complainant's Annual Report published in April 2022. The Respondent was listed on the stock exchange on 28-01-2021 and its annual report was published on 31-08-2021 and hence the financial statements of the Respondent were publicly available when the 37<sup>th</sup> Global Tyre Report was prepared and published.

- 4.28 It was submitted that the Campaign was run by the Complainant on 15-11-2020, survey was conducted from 09-01-2021 to 21-01-2021 and the Final Report from Aftab Associate was released on 01-04-2021. Therefore, the assertion of the Respondent and the survey was conducted immediately after the media campaign is repelled. The Report of Aftab Associates is unbiased and impartial as already admitted by the Respondent on Page 50 of the said Report that out of the 17 attributes mentioned therein, the Respondents fares better in 8 of such attributes and is an example of such impartiality.
- 4.29 It was submitted that the term "heavy duty" refers to "HD" tyres produced by the Respondent, therefore, the Results relating thereto are associated with the Respondent. It is submitted that the SGS is a Swiss multinational company head quarter in Geneva Switzerland and is the world's leading, testing, inspection and certification Company and has been ranked on Forbes Global 2000, 2015, 2016, 2017, 2020 and 2021. The Complainant has submitted the comparison test reports to the Commission in order to substantiate that Complainant's products are better in quality. Any assertion by Respondent that the Complainant has produced special batch of tyres to be presented for such lab tests is vehemently denied and repelled and the Respondent is put to its strict proof. The Complainant has also submitted SGS Tests Results conducted in 14<sup>th</sup> September, 2022, which shows that although the Respondent has improved its quality since 2018 SGS Results, yet the Respondent cannot be termed as "No. 1" in quality in tyre manufacturing in Pakistan. It was reiterated that SGS is an independent body that provide testing services and Respondent is put to its strict proof if it wants to challenge these reports. It is submitted that the Report of Aftab Associates is an impartial and a neutral report and as highlighted by the Respondent in Para under Reply, Page 50 of the said Report, out of the 17 attributes mentioned therein, the Respondent fares better in 8 of such attributes, which is an example of impartiality of the said Report. It was further submitted that the Complainant has presented the data relating to motorcycle category conducted by 3<sup>rd</sup> party being SGS, Aftab Associates and 37<sup>th</sup> Global Tyre Report as this data was readily available and conducted by third party.
- 4.30 It was submitted that the assertion of the Respondent that the advertisement in question has already been taken off before the Complaint was filed is vehemently denied and such assertion is misleading. The impugned Advertisement continues to be available on the electronic media and at retail outlets. **(Photographs taken on 13-12-2022 show that the Impugned Advertisement is available at Respondent's website).**

- 4.31 The Consumer Choice Award dated 14-11-2022 is an afterthought having been procured after the Complaint has been filed and has been issued by its issuer without taking any responsibility whatsoever. Furthermore, the said award is not backed by any survey as no survey has been placed on record. Similarly, the letter issued by Brands Foundation has also been issued by the issuer without any responsibility whatsoever. Similarly, it is not based on any survey as no survey has been placed on record.
- 4.32 It was submitted that all awards annexed with the reply (including the afore stated awards) have been issued in the “tyre and tubes categories”. It is pertinent to mention here that the Commission in its case reported as 2012 CLD 783 has already refuted the brand of the year award issued by the Brands Foundation having not been conferred for the entire area of products and has held that by winning any award of the year for running particular product (motor cycle tyre and tubes) from the Brands Foundation does not entitle an undertaking to make an absolute claim of being “No. 1 in Pakistan”, which applies in the instant matter also. The Complainant would like to place on record copies of awards and certifications awarded to it, Photographs from Complainant’s participation in International Exhibitions in Johannesburg, Las Vegas, Dubai, Milan-Italy and a survey conducted by pakwheels.com showing that the Complainant has the highest popularity ranking.
- 4.33 However, the Respondent has tried to assert that it produces quality products as it holds an E-Mark Certification. It is submitted that the Complainant holds ten (10) such marks i.e., (1) E-11 (2) E-8 (3) SNI (4) BIS (5) INMETRO (6) UKAS Management Systems (7) PNAC (8) SGS (9) SGS ISO45001:2018 (10) LSQA. The Complainant exports its products in various countries as it holds the said Certifications. Therefore, if E-Mark is a benchmark for quality, as stated by the Respondent, then the Complainant holds ten (10) such conformity marks and by such a standard its products should be of a superior quality.
- 4.34 No reply has been submitted by the Respondent to the Grounds raised by the Complainant in its complaint. Since the Complaint is backed by an affidavit and no reply to the Grounds has been made in the Reply by the Respondent. Therefore, as per law the Grounds mentioned in the Complaint are deemed to be admitted.
- 4.35 The Complainant in the end made the following prayers:
- a) The Reply filed by the Respondent/ be rejected being insufficient and contrary to the law and a show cause notice be issued to it and proceedings under law be initiated against the Respondent for violation of Section 10 of the Act for deceptive marketing practice, and any other violation of the competition law and impose penalties under the law.
  - b) The learned Commission may kindly restrain the Respondent, permanently as well as in the interim, from using its Marketing Campaign Slogan i.e., “**PAKISTAN’S NO. 1 TYRE**” and the claim “**PIONEERS IN TYRE MANUFACTURING**” and/or direct the Respondent to change its marketing campaign slogan.

- c) Direct the Respondent to commit on record before the learned Commission that it will not engage in any such anti-competitive or deceptive marketing practice that will harm its competitors and will deceive the ordinary consumers.
- d) Any other relief deemed fit and appropriate by the learned Commission may also be granted.

## 5. FURTHER CORRESPONDENCE:

- 5.1 The Complainant also submitted supplementary evidence in support of its contentions. The submissions of the Complainant were forwarded to the Respondent for their reply/comments. The Respondent in response requested for extension in time, which was granted vide letter dated December 06, 2022. The Respondent submitted its reply via letter dated nil, which is reproduced below for reference: -
- 5.2 It was submitted that it has been claimed that the Respondent does not lead the relevant market in terms of quality tyre production. To supplement this claim, the claimant has submitted the "Abrasion" test report of motorcycle tyre conducted by the lab. The comparative results are being tabulated below for quick reference:

Report No. (SIL)	Rep. No. (SGS)	Size	Manufacturer	Brand	Abrasion (Volume Loss mm <sup>3</sup> )	Percentage
SIL-1-A	1	2.25-17	Service Ind	Long life	172	-
SIL-1-B	2	2.25-17	Panther	Heavy Duty	188	9.1%
SIL-1-C	3	2.25-17	Diamond	Jumbo	170	-1.3%
SIL-2-A	8	2.50-17	Service Ind	Winner	186	
SIL-2-B	9	2.50-17	Panther	Heavy Duty	167	-10.2%
SIL-1-C	3	2.50-17	Diamond	Englander	168	-9.8%
SIL-3-A	15	3.00-17	Service Ind	Long Life	188	
SIL-3-B	16	3.00-17	Panther	Heavy Duty	203	8%
SIL-1-C	3	3.00-17	Diamond	Rush	160	-14.7%

- 5.3 In the above data, first and third table shows that Complainant's tyres are better abrasion resistant than that of Respondent's tyres. Whereas, in the second table of 2.50-17 category, Respondent's tyres are far better than those of Complainant's and also from all other tyre brands. An important point to note here is that 2.50-17 category has the largest market share in term of number of tyres sold by all manufactures. Whereas the sale volume of rest of two categories (2.25-17 & 3.00-17) together is less than that of

2.50-17 category. Which makes the Respondent a superior brand in the largest selling category of motorcycle tyre.

- 5.4 Moreover, Complainant's tyres in either of the three categories (2.25-17, 2.50-17, 3.00-17) are not the best in term of abrasion value. In two categories, diamond tyres are good whereas in the larger category, Respondent's tyre is better in quality. Complainant's tyre in all categories either fell in second position or on third position in terms of abrasion resistance value. The same can also be endorsed from the SGS reports of 2018 submitted by complainant in its initial response.
- 5.5 The abrasion resistance of Tyres is measured to quantify how well they resist wear and tear during their actual service. While testing, the Lab considered the wear and abrasion of tyres, the surface loss of rubber material that occurs during rolling and sliding contact of tyres with road tracks.
- 5.6 In order to calculate this resistance, mass loss and density of test piece is measured through testing equipment and then Relative Volume Loss of test piece is calculated in mm<sup>3</sup>. If the test results in a low amount of volume loss, it denotes that the product is superior in quality and durability and vice versa.
- 5.7 The Respondent sent its own and that of Complainant's tyres to SGS Pakistan to perform abrasion testing. As per test reports, our tyres volume loss values are less and more consistent than that of the Complainant's.
- 5.8 The results of samples are being tabulated below for the kind review of the Commission:

Report No. SGS	Size	Manufacturer	Brand	Abrasion (Volume Loss mm <sup>3</sup> )
2142024625	2.50-17	Panther	MB Heavy Duty	200
2142024627	2.50-17	Panther	Panther Power	199.8
2142024626	2.50-17	Panther	Panther Power Plus	199.7
		<b>Average Results</b>		<b>199.8</b>
2142024629	2.50-17	Service Ind	Cheetah	223
2142024630	2.50-17	Service Ind	Long Life	195
2142024631	2.50-17	Service Ind	Long Life	214
		<b>Average Results</b>		<b>210</b>

- 5.9 From the above table it can easily be inferred that the average abrasion of Panther brand tyres is better than that of Service.

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5.10 As per the test reports of 2018 and 2022 submitted by Complainant, Panther brand tyre abrasion results were not good in 2018 whereas these have improved significantly in latest test arranged by complainant as per following detail:

Size of Panther brand	Abrasion as per 2018 SGS report Submitted by Service with complaint	Abrasion as per 2022 SGS report Submitted by Service as supplementary evidence	Improvement
2.25-17	235	188	25%
2.50-17	271	167	62%
3.00-17	207	203	2%

5.11 From the above comparative results, we understand that there was wrong selection of Panther brand samples and those were not comparable SKUs with that of service.

5.12 Without prejudice to the above said submissions, we hereby reiterate that Abrasion result is not the only or major criterion for any tyre to be declared as the best performer. In this regard, ISO 4649:2010 is the standard that deals with method of abrasion testing. The relevant document says:-

*"These test methods are suitable for comparative testing, quality control, specification compliance testing, referee purposes, and research and development work. No close relation between the results of this abrasion test and service performance can be inferred." (Annexure B).*

5.13 As per the above said ISO documents, abrasion is not the only criteria for service performance but the other standard tests as reported in ISO 10231:2022, which also need to be performed in arriving at the final conclusion. The Respondent is producing tyres under stringent quality parameters. It is an ISO 9001 certified company and following all the requisite protocols set out for compliance thereof.

5.14 Finally, we again reiterate that the Complainant has built up all its case on motorcycle tyre category accordingly tests being presented are only relating to motorcycle tyres. Whereas, the Respondent is not claiming the No. 1 in motorcycle tyre category but basing it on the diversity of the product portfolio and its track record of rapidly localizing the imported market because of the superior quality products. The Respondent has not only pioneered the lightest auto tyre in Pakistan (motorcycle tyre) but also has the privilege to produce heaviest auto tyre (OTR tyre) here in Pakistan.

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The Respondent is the largest local company in supplying tractor tyre/, TBB tyre and OTR tyres.

## 6. ANALYSIS:

### INDUSTRY OVERVIEW

#### **Pakistan's Rubber Tyre Market:**

The Pakistan rubber Tyre market attained a volume of nearly 25.03 million units in 2021, driven by increasing vehicle ownership in Pakistan. Aided by favourable government policies, the market is expected to witness a further growth in the forecast period of 2023-2028, growing at a CAGR of 8.76%. The market is projected to reach about 41.43 million units by 2027<sup>1</sup>.

On the basis of vehicle type, the market can be segmented into two-wheeler and three wheeler tyres, passenger cars and light truck tyres, and heavy commercial and OTR tyres. The market, based on segment, can be classified into OEM and replacement. Based on market type, the market can be divided into legitimate market and grey market. Based on design, the market can be categorised into radial and bias. The market, based on type, can be divided into tube tyres and tubeless tyres. The major regional markets for rubber Tyre in Pakistan are Sindh, Punjab, Khyber Pakhtunkhwa, and Balochistan, among others.

- 6.1 As mentioned in para 1.6 above, the mandate of this enquiry is to determine whether, *prima facie*:
- a) The Respondent's conduct *is capable of harming the business interest* of the Complainant in violation of Section 10 (1) of the Act, in terms of Section 10 (2) (a) of the Act; and/or
  - b) The Respondent's conduct pertains to *the distribution of false or misleading information to consumers related to character, properties, suitability for use and quality of goods*, in violation of Section 10 (1) of the Act, in terms of Section 10 (2) (b) of the Act?
  - c) The Respondent's conduct pertains to false and misleading comparison of goods in violation of Section 10 (1) of the Act, in terms of Section 10 (2) (c) of the Act?
  - d) The Respondent's conduct of anti-competitive behavior is spilling over the territorial limits of other provinces or not?

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<sup>1</sup> <https://www.expertmarketresearch.com/reports/pakistan-rubber-tyre-market>



## OVERALL NET GENERAL IMPRESSION OF THE MARKETING CAMPAIGN SLOGAN

- 6.2 The main allegation against the Respondent is that it is engaged in anti-competitive practice(s) by making a false and misleading, substantial and quantifiable claim regarding its product i.e., tyres as “PAKISTAN’S NO. 1 TYRE” and being “PIONEERS IN TYRE MANUFACTURING” without there being any independent study/research or report for supporting the same. In this regard, it is imperative for us to first understand the overall net general impression of the marketing campaign slogan.
- 6.3 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<sup>2</sup> has defined “False” and “Misleading” information as deceptive marketing practices in the following manners:

### False Information:

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

### Misleading Information:

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

- 6.4 The above reference suggests that any information distributed via a marketing campaign can mislead consumers if it is vague in any way or has omitted certain material information, even if such a conduct is not deliberate. Consequently, distribution of false and misleading information is capable of giving a wrong impression with respect to a good or service, which could induce a consumer into distorted decision making, hence, causing consumer injury. Therefore, if the Respondent’s conduct is proven false and misleading, it would amount to deceptive marketing practices in terms of Section 10 of the Act. 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

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<sup>2</sup> <http://cc.gov.pk/images/Downloads/ZONG%20-%20Order%20-%202029-09-09%20.pdf>

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.

6.5 Moreover, 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.

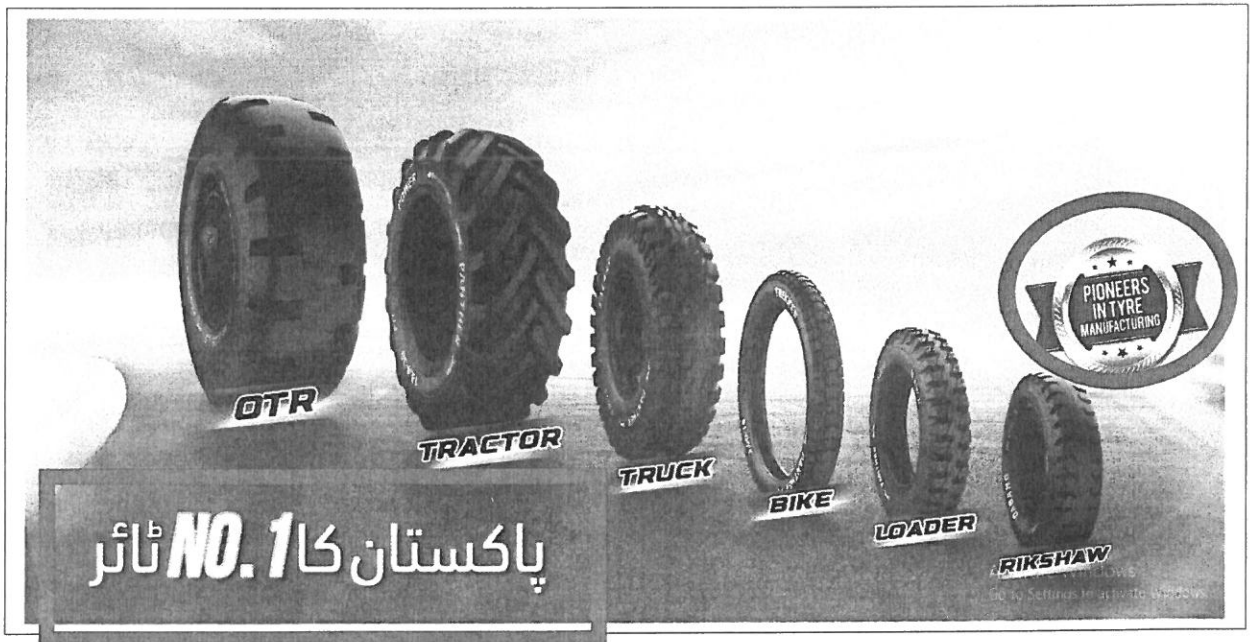
6.6 The Marketing Campaign Slogan of the Respondent is available at all its retail outlets and being run at the electronic media including television and is also available at the following links & website:-

<https://youtu.be/uk7nOah5OWE>

<https://fb.watch/f8JGuJO7cV/>

<https://panthertyres.com/>

6.7 The relevant portion of TVC is given below for reference:



6.8 The Marketing Campaign Slogan of the Respondent being "Pakistan's No. 1" and "Pioneer in Tyre Manufacturing" have also been displayed on hoardings and stationary display at various detailed outlets across Pakistan. The same are depicted below for reference:



- 6.9 The Impugned Advertisement run by the Respondent initially depicts tyres being changed in vehicles (Jeep, Truck and Motorcycle) and then the vehicles being run in different terrains. It also shows that a vehicle has suddenly applied brakes and it stops immediately without any loss of life or limb, highlighting grip quality. In the meantime, a song is being played in the background as follows:

چل چل چلتا جا - دور دور نکلتا جا  
 ساتھ بن تو سایہ بن - حق بن چھایہ بن  
 امیدوں کے بوجھ اٹھا لے - دھن بن سرمایہ بن  
 اپنے راستے آپ بنا اور بڑھتا جا  
 چل چل چلتا جا - دور دور نکلتا جا  
 چل چل چلتا جا - دور دور نکلتا جا  
 دھوپ میں طوفانوں میں - کھیت میں کھلیانوں میں  
 سر اٹھا کے آنکھ ملا کے - گزر نئے جہانوں میں  
 ڈوبتے دن کے سورج کے سنگ چلتا جا

At the end of the Advertisement, the following words are narrated in the background:

چلتے رہیں گے تو آگے بڑھیں گے۔ پنتھر ٹائرز آپ کی سواری اور جذبے کو رکنے نہ دیں کیونکہ ہم چلے  
تو پاکستان چلے گا۔ پاکستان کا نمبر 1 ٹائر، پینتھر ٹائرز چلے نان سٹاپ

Along with the above narrated words, the claim “Pakistan’s No. 1 tyre” and “Pioneers in Tyre Manufacturing” is made by the Respondent.

- 6.10 A perusal of the Marketing Campaign Slogan of the Respondent simply shows that the Overall Net General Impression created by it is that the Respondent’s tyres are “**PAKISTAN’S NO. 1 TYRE**”, and also that the Respondent is “**PIONEERS IN TYRE MANUFACTURING**”. The marketing claim does not give any impression, hint or suggestion that the claim is being made on the basis of “*diversification of its products portfolio*” or “*gaining market share in the import segment*” as submitted by the Respondent in its reply. Thus, the ordinary consumer would be purchasing Respondent’s products in the mistaken belief that they are actually “Pakistan’s No. 1 Tyre” and also the Pioneers in Tyre Manufacturing”.
- 6.11 Relying on Standard Oil of Calif, 84 F.T.C 1401 (1974) at pg. 1471, the Commission in its Zong Order has elaborated the concept of advertising representation as follows<sup>3</sup>:-
- “[i]n evaluating advertising representations, we are required to look at the complete advertisement and formulate our opinions on them on the basis of the net general impression conveyed by them and not on isolated excerpts.”*
- 6.12 Abovementioned excerpts help us determine that in case of the advertisement under investigation, it is necessary to observe that when the average consumer of the product views the advertisement, the message they receive is that Respondent’s tyres are “**PAKISTAN’S NO. 1 TYRE**” and also “**PIONEERS IN TYRE MANUFACTURING**”.
- 6.13 In view of the above, and on the basis of the marketing material used for the campaign by the Respondent, *prima facie*, the overall net general impression of the marketing campaign from the perspective of an ‘ordinary consumer’ is that the Respondent’s tyre is “Pakistan’s No. 1 Tyre” and the Respondent is “Pioneers in Tyre Manufacturing”.

<sup>3</sup> [https://cc.gov.pk/images/Downloads/proctor\\_and\\_gamble\\_20\\_07\\_2017.pdf](https://cc.gov.pk/images/Downloads/proctor_and_gamble_20_07_2017.pdf)

**WHETHER THE RESPONDENT'S CONDUCT PERTAINS TO THE DISTRIBUTION OF FALSE OR MISLEADING INFORMATION TO CONSUMERS RELATED TO CHARACTER, PROPERTIES, SUITABILITY FOR USE AND QUALITY OF GOODS, IN VIOLATION OF SECTION 10 (1) OF THE ACT, IN TERMS OF SECTION 10 (2) (B) OF THE ACT.**

- 6.14 **Reasonable Basis for the Claim 'PAKISTAN'S NO. 1 TYRE'**: The Complainant alleged that the Respondent is engaged in anti-competitive practice(s) by making a false and misleading, substantial and quantifiable claim regarding its product i.e., tyres as "PAKISTAN'S NO. 1 TYRE" and being "PIONEERS IN TYRE MANUFACTURING" without there being any independent study/research or report for supporting the same. Reference in this regard was made to the Quarterly Reports, the Campaign Evaluation Study, the SGS Lab Reports, Complainant's Lab Reports and 37<sup>th</sup> Global Tyre Report.
- 6.15 The Respondent in response took the plea that the basis of its claim "*Pakistan's No. 1 tyre*" is "*diversification of its products portfolio*" through which it has gained market share from the "import segment". The Respondent in its response has listed nine (9) different categories of tyres and tubes being manufactured by it on the basis of which it claims to be "No. 1 Tyre in Pakistan". Currently, the following are the product lines of tyres/tubes being produced by Respondent:
- i. Tractor Tyre/tube
  - ii. Truck Buss Bias Tyre/ tube
  - iii. Construction/Mining Industry Tyre/tube
  - iv. Excavator Tyre/tube
  - v. Light Truck Tyre/tube
  - vi. Motorcycle Tyre/tube
  - vii. Rickshaw Tyre/tube
  - viii. Scooter Tyre/tube
  - ix. Jeep Tyre/tube
- 6.16 The Respondent further stated that the above said range makes Respondent a No. 1 Brand in Pakistan in terms of diversification of the product portfolio, as it has established its presence in all the segments by capturing the market shares from the "import segment" where big companies of the world having centuries of experience remained the market leaders. Over the period the Respondent has invested in technology and manpower to move from the manufacturing of simple low-value motorcycle Tyre to highly sophisticated high-value OTR Tyre.
- 6.17 After analyzing the response and documents submitted by the Complainant and the Respondent, it was observed that according to the Annual Financial Statements, 2021, total sales of the Complainant and the Respondent were Rs. 39.57 billion and Rs. 16.20

billion, respectively. It suggests that the Complainant's total sales were more than double as that of the Respondent.

- 6.18 Furthermore, according to the unaudited quarterly report ended March 2022, the total sales figure for 'Tyre' is Rs. 6.8 billion in the case of Complainant. During the same period, the total sales figure for the Respondent is Rs. 4.4 billion. Therefore, it can be concluded that in the said quarter the total sales of the Respondent are less than the sales revenue generated from the sales of tyres only by the Complainant. Hence, it is obvious that the total sales and the sales revenue generated from the sale of tyres only by the Complainant is higher than that of the Respondent.
- 6.19 A perusal of the 37<sup>th</sup> Global Tyre Report, submitted by the Complainant reveals that the Complainant has been ranked at 73. Apart from the Complainant, General Tyres & Rubber Company of Pakistan Limited has been ranked at 75, in terms of sales. The Respondent is not a part of this ranking. However, the Respondent in its defense submitted that its name was not included in the list because it was not a listed company earlier and its financial statements were not publicly available for making such comparisons and research by international newspaper agency. The Respondent also took the plea that had it been a listed company at that time and its financial statements were also publicly available, it would definitely have got its place in the list.
- 6.20 In reference to the above, it has been noticed that as rightly pointed out by the Complainant, the 37<sup>th</sup> Global Tyre Report has been made by making comparisons from the published Financial Statements of listed companies in Pakistan. However, it is highlighted that the Respondent was a listed company at that time when 37<sup>th</sup> Global Tyre Report was made and its Financial Statements were publicly available and in spite of this fact, the Respondent did not find a place in the said Report. The 37<sup>th</sup> Global Tyre Report was published on 29-08-2022 and carries the financial results of the Complainant's Annual Report published in April 2022. The Respondent was listed on the stock exchange on 28-01-2021 and its annual report was published on 31-08-2021 and hence the financial statements of the Respondent were publicly available when the 37<sup>th</sup> Global Tyre Report was prepared and published. From the aforesaid discussion, it can be deduced that in spite of the fact that the Respondent was a listed company at the time of publication of 37<sup>th</sup> Global Tyre Report and its Financial Statements were publicly available, it could not make it to the list of an internationally acclaimed Global Tyre Report of 2022. Hence, the Respondent misstated the fact about it being not on the list.
- 6.21 Concerning the survey conducted by M/s. Aftab Associates (Pvt.) Limited, wherein it presented its "Campaign Evaluation Study" in August 2022 to the Complainant. A perusal of this Study reflects that tyres and tubes manufactured by the Complainant are superior to its competitors including the Respondent in terms of top mind awareness; total unaided awareness; currently used brands, performance rating of tyres; and brand attributes rating. As the survey was conducted at the request of the Complainant, the

author of the report in question cannot be termed as independent. However, it is also relevant to mention here that the Respondent also referred extracts of the Report of Aftab Associates in its defense by mentioning the Page 50 of the said Report, which states that out of the 17 attributes mentioned therein, the Respondents fares better in 8 of such attributes.

6.22 A comparison between the Complainant and the Respondent's tyres, based on the tests conducted by SGS, shows that the tyres manufactured by the Complainant were far more abrasion resistant and durable than that the Respondent making them superior in quality. As the Complainant submitted tests conducted way back in 2018, they were asked to submit latest tests reports. The Complainant submitted SGS Tests Results conducted on 14<sup>th</sup> September 2022, which shows that although the Respondent has improved its quality since 2018 SGS Results, yet the Respondent cannot be termed as "No. 1" in quality in Tyre manufacturing in Pakistan. Since, SGS is an independent body that provide testing services in Pakistan hence the test reports can be relied on.

6.23 The Respondent also submitted in its defense that it is the winner of the "Brand of the Year" award 2021 in the motorcycle Tyre category due to its superior quality and consumers' preferred choice. The Respondent has been the winner of this award 6 times since 2012. This is a national award given by "Brands Foundation", which is the only organization in Pakistan having national accreditation and global recognition. It was submitted that all awards have been issued in the "Tyre and tubes categories.

6.24 Regarding the claim of winner of "Brand of the Year" Award", the Commission in one of its earlier Orders i.e., In the Matter of Shangrila Pvt. Ltd has observed that:

*"It was also noted that Respondent had made "Brand of the Year Award" the basis for authenticating its claim of being No. 1 in Pakistan. However, upon enquiry, Brands Foundation has clarified that their awards never empower the receiver to make a claim of being No. 1 in Pakistan<sup>4</sup>.*

6.25 As mentioned above, even a source such as Brand of the Year Award, an award that employs a comprehensive methodology to establish its results and is supervised by Brands Foundation of Pakistan (BFP) was not accepted as a valid defense for the claim. BFP is an independent and authoritative platform that has a legal mandate to perform several tasks, which include conducting brand audit rating. This further substantiates the reasoning that brand ratings and brand awards have very little relevance as far as the actual use and characteristics of the products are concerned, and this aspect should not be used to influence consumers' decision-making process. Therefore, it can be positively concluded that to use brand ratings to represent superiority of a product is a misleading practice.

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<sup>4</sup> [https://www.cc.gov.pk/images/Downloads/national\\_foods\\_limited\\_againsta\\_shangrila\\_pvt.pdf](https://www.cc.gov.pk/images/Downloads/national_foods_limited_againsta_shangrila_pvt.pdf)

- 6.26 The Respondent further submitted that they have been declared as a winner of the “16<sup>th</sup> Consumer Choice Award 2022” and its products have been declared as the best tyres/tube by the Consumers Association of Pakistan (CAP). It also submitted that they are also the proud winner of this award in 2019 & 2021. CAP is an independent body registered with govt. which evaluates the products of different Companies based on their quality standards, safety, and affordability. The winners are decided after a comprehensive survey of the market by an independent team of the association and then processed through stringent criteria under the supervision of area specialists.
- 6.27 At the outset, it is clarified that as per the information available on the website of the CAP, it is a non-government, non-profit organization, registered under Societies Registration Act XXI of 1860<sup>5</sup>. It is in no way working under the patronage of the Government of Pakistan. Moreover, in reference to the above, it has been noticed the Consumer Association of Pakistan has awarded the Consumer Choice Award to the Respondent without taking any responsibility on the association’s behalf. Furthermore, they have clarified that the said certification has been issued upon the request of the Respondent for whatever purpose this may serve them the best. Picture of the same is depicted below for reference:-

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<sup>5</sup> <http://www.cap.org.pk/about/>



CONSUMERS  
CHOICE



Dated: 14-11-2022

**TO WHOM IT MAY CONCERN**

This letter is to confirm that M/S. Panther Tyres Limited is the Consecutive winner of

**"Consumer Choice Award "**

in category of Tyre & Tubes Since 2019 until 2022.

This certification is done upon their request for whatever purpose this may serve them best without any responsibility on the association behalf.

Please let me take this opportunity to thank you for being one of our most valued clients, and I hope that we will have the privilege to continue to serve in the future.

Sincerely yours,

  
Muhammad Fayyaz Khan  
Manager Marketing  
Consumers Association of Pakistan



6.28 It is, therefore, appropriate to conclude that above said award is not a valid document to support a strong claim such as "Pakistan's No. 1 Tyre".

6.29 In response to the claim of "PIONEERS IN TYRE MANUFACTURING", the Respondent submitted that it never claimed that it invented the Tyre, and no individual is likely to take the impression that advertisement of the Respondent in any way is making such a claim. Nevertheless, it is pertinent to mention that Respondent since its incorporation has pioneered many tyres and tyre products, the list as follows:

- i. Motorcycle Tyre
- ii. Jointless tube and butyl tube
- iii. Rickshaw Tyre
- iv. Second Company to manufacture Tractor Tyre

- v. TBB Tyre
- vi. Excavator/Mining/Construction Machinery Tyre

- 6.30 In this regard, it is stated that the Oxford Dictionary defines the term “pioneer” as “a person who is the first to study and develop a particular area of knowledge, culture, etc. that other people then continue to develop<sup>6</sup>.” The Merriam-Webster Dictionary defines the term “pioneer” as “a person that originates or helps open up a new line of thought or activity or a new method or technical development<sup>7</sup>”. The claim when reviewed from the perspective of an ordinary consumer, *prima facie*, gives an impression that the Respondent was the first person to develop, make, construct and manufacture tyres in the world or Pakistan. As mentioned by the Complainant, Tyre was invented/developed by John Boyd Dunlop and Robert William Thomson patented a design for Tyre in 1846. Moreover, perusal of the record suggests that it was the Complainant that started manufacturing bicycle tyres in Pakistan in 1970’s. Similarly, the Ghandhara Tyres Rubber Company was set up in 1963, and started car Tyre production in 1964 in Pakistan. On the other hand, the Respondent was incorporated in 1983, hence, this claim of Respondent that it is “PIONEERS IN TYRE MANUFACTURING” is false and misleading.
- 6.31 The Respondent also submitted that all its manufactured goods sold in the European Union (EU) must comply with a series of regulations before they can legally enter the EU market. An E-Mark is a European conformity mark that proves a vehicle or vehicle part complies with regulations, laws, and directives in the European Union. All items sold in Europe must bear an E-Mark. The Respondent further submitted that the E-mark certification is issued by a certified authority. The Respondent has the number of its products certified under the E8 category. These products relate to the category of tractor Tyre, LT Tyre, rickshaw Tyre, scooter Tyre, and motorcycle Tyre. This certificate is itself proof that the tyres of Respondent have undergone strict and comprehensive testing before their qualification for export to European countries so are the best tyres in different ranges.
- 6.32 The Complainant in its response clarified that the Complainant itself holds ten (10) such marks i.e., (1) E-11 (2) E-8 (3) SNI (4) BIS (5) INMETRO (6) UKAS Management Systems (7) PNAC (8) SGS (9) SGS ISO45001:2018 (10) LSQA. The Complainant exports its products in various countries as it holds the said Certifications. Thus, having an E-Mark does not make anyone Pakistan’s No. 1 Tyre.
- 6.33 It is also pertinent to mention here that the Respondent in its reply submitted that the advertisement in question had already been taken off before the Complainant approached this Commission. The Complainant in its rejoinder submitted that the assertion of the Respondent that the advertisement in question has already been taken off before the

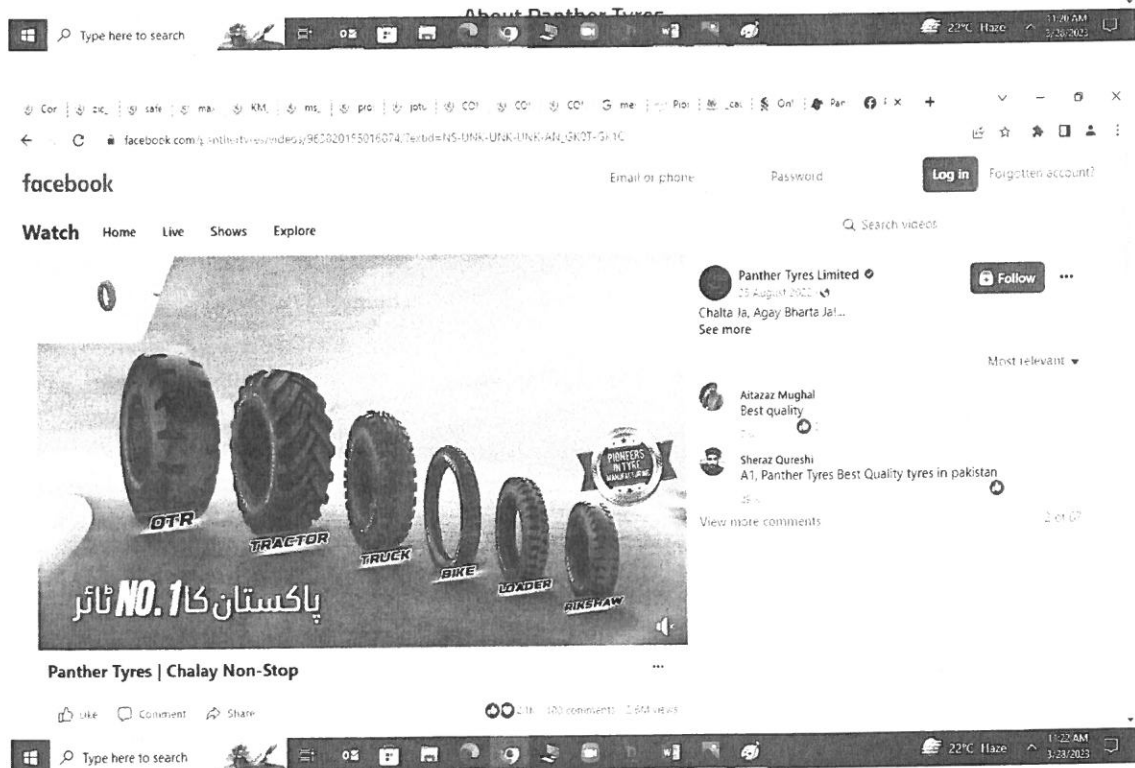
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<sup>6</sup> [https://www.oxfordlearnersdictionaries.com/definition/english/pioneer\\_1?q=pioneer](https://www.oxfordlearnersdictionaries.com/definition/english/pioneer_1?q=pioneer)

<sup>7</sup> <https://www.merriam-webster.com/dictionary/pioneer>

Complaint was filed is vehemently denied and such assertion is misleading. The impugned Advertisement continues to be available on the electronic media and at retail outlets.

6.34 In reference to the above, the Enquiry Committee deemed it appropriate to independently verify the said assertions. Consequently, it was noticed that the said claims are still available on the website and the Facebook page of the Respondent. Screen shot of the same are depicted below:-



S.2 7

- 6.35 In view of the above, it can be concluded that the claim from the advertisement is simple and clear and an ordinary consumer is likely to infer only that, the product of the Respondent is No. 1 in Pakistan, and they are Pioneers in Tyre Manufacturing, thereby, false and misleading.
- 6.36 Furthermore, as concluded in Para 6.2 to 6.35 above, the Respondent's submissions in this regard do not justify the use of the Marketing Campaign Slogan of being "PAKISTAN'S NO. 1 TYRE" and being "PIONEERS IN TYRE MANUFACTURING."
- 6.37 Therefore, when the overall net general impression of the Marketing Campaign Slogan i.e., "PAKISTAN'S NO. 1 TYRE" and being "PIONEERS IN TYRE MANUFACTURING" is taken into account and considered along with the submissions made and discussed above, it appears that the said claim is false and misleading and lacks a reasonable basis regarding *character, properties, suitability for use and quality of goods* and hence is in, *prima facie*, violation of Section 10(1) of the Act in terms of Section 10(2) (b) of the Act.

**WHETHER THE CONDUCT OF THE RESPONDENT IS CAPABLE OF HARMING THE BUSINESS INTEREST OF THE COMPLAINANT IN VIOLATION OF SECTION 10 (1) OF THE ACT, IN TERMS OF SECTION 10 (2) (a) OF THE ACT.**

- 6.38 In this regard, the Complainant has submitted that the claim 'PAKISTAN'S NO. 1 TYRE' and being "PIONEERS IN TYRE MANUFACTURING" 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 the said marketing claim/slogan has the potential to create a misleading impression to the ordinary consumer which may induce a buying decision, thereby, resulting in causing harm to the profits of the competitors. It is well settled law that "to prove conduct under Section 10(2)(a) of the Act, it is sufficient to show the existence of deceptive marketing practices that has a potential to cause harm to the competitors<sup>8</sup>."
- 6.39 The Respondent in response took the plea that the basis of its claim "Pakistan's No. 1 Tyre" is "diversification of its products portfolio" through which it has gained market share from the "import segment".
- 6.40 As already concluded in paragraph 6.2 to 6.37 above, the claim of the Respondent, *prima facie*, is false and misleading and lacks a reasonable basis related to *character, properties, suitability for use and quality of goods*. 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

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<sup>8</sup> [https://cc.gov.pk/images/Downloads/jotun\\_pakistan.pdf](https://cc.gov.pk/images/Downloads/jotun_pakistan.pdf)

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.

- 6.41 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.
- 6.42 Keeping in view the above, we are of the view that, *prima facie*, the conduct of the Respondent i.e., making the claim “**PAKISTAN’S NO. 1 TYRE**” and being “**PIONEERS IN TYRE MANUFACTURING**” in its advertisement/ marketing campaign, without any reasonable basis, is capable of harming the business interest of the Complainant, in violation of Section 10(1) of the Act, in terms of Section 10(2) (a) of the Act.
- 6.43 With regards to specific allegation under Section 10(2) (c) of the Act, the Complainant submitted that the Respondent has disseminated false and misleading information through a marketing campaign slogan, i.e., “**PAKISTAN’S NO. 1 TYRE**” and being “**PIONEERS IN TYRE MANUFACTURING**” and has resultantly done a false and misleading comparison of goods. The Complainant alleged that through the use of the claim No. 1, the Respondent has also violated Section 10(2) (c) of the Act by implying a false comparison of its product with the rest.
- 6.44 On the other hand, the Respondent in response took the plea that the basis of its claim “*Pakistan’s No. 1 Tyre*” is “*diversification of its products portfolio*” through which it has gained market share from the “import segment.”
- 6.45 Sub-section 10(2) (c) of the Act prohibits the ‘false or misleading comparison of goods in the process of advertising’ and also constitutes a deceptive marketing practice in terms of Section 10(1) of the Act. The Commission while interpreting the sub-section 10(2) (c), In the Matter of Show Cause Notice issued to M/s Reckitt Benckiser Pakistan, held that “Similar to the proceeding sub-sections, a comparison of goods made without reasonable basis will be considered to be false and misleading in terms of this provision”.
- 6.46 Similarly, the Commission In the Matter of Show Cause Notice issued to Dairy Companies held that “Certain marketing campaigns may draw a comparison of goods and/or services offered by one undertaking to the goods and/or services by others on the market. Such comparison may relate to factors involving price, quality, range or volume.”
- 6.47 The Respondent’s use of the term ‘**PAKISTAN’S NO. 1 TYRE**’ and being “**PIONEERS IN TYRE MANUFACTURING**” in its marketing campaign as discussed above is false and misleading.
- 6.48 However, no evidence has come to light pertaining to the Respondent explicitly or impliedly comparing its product to that of the others, either falsely or misleadingly. In light of this, the presence of a, *prima facie*, false or misleading claim by the Respondent,

does not appear to be amounting to engaging in false or misleading comparison of its product to that of the others.

- 6.49 As regards the effect of anti-competitive behavior spilling over territorial limits of other provinces is concerned, it is highlighted that the Respondent has marketed itself as "PAKISTAN'S NO. 1 TYRE" and being "PIONEERS IN TYRE MANUFACTURING" through electronic media, social media as well as outdoor advertisements across Pakistan.
- 6.50 The social media platforms, electronic advertisement and outdoor advertisement campaign run by the Respondent has a national outreach and significant viewership. Hence, the scope of the advertisements was not restricted to a particular area or province. In view of the above, it can be established that the effect of anticompetitive behavior is spilling over the territorial limits of provinces.

## 7. CONCLUSIONS AND RECOMMENDATIONS

- 7.1 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:
- 7.2 In view of the foregoing and in particular Paras 6.2 to 6.13 above, on the basis of the marketing material used for the campaign by the Respondent, *prima facie*, the overall net general impression of the marketing campaign from the perspective of an 'ordinary consumer' is that the Respondent is "Pakistan's No. 1 Tyre" and also the "Pioneers in Tyre Manufacturing".
- 7.3 In view of the foregoing and in particular Para 6.2 to 6.37 above, the Respondent's claim "PAKISTAN'S NO. 1 TYRE" and being "PIONEERS IN TYRE MANUFACTURING" regarding its products disseminated through advertisements/ marketing campaign, *prima facie*, is false and misleading and lacks a reasonable basis regarding *character, properties, suitability for use and quality of goods* in violation of Section 10 (1) read with sub-section (2)(b) of the Act.
- 7.4 In view of the foregoing and in particular Para 6.38 to 6.42 above, *prima facie*, the conduct of the Respondent i.e., making the claim "PAKISTAN'S NO. 1 TYRE" and being "PIONEERS IN TYRE MANUFACTURING" regarding its tyres in its 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(1) read with sub-section 2(a) of the Act.
- 7.5 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

this enquiry report warrant initiation of proceedings under Section 30 of the Act against the Respondent i.e., M/s. Panther Tyres Limited in accordance with the law.



M. Salman Zafar  
Senior Director (OFT)  
(Enquiry Officer)



Faiz ur Rehman  
Joint Director (OFT)  
(Enquiry Officer)