

# **COMPETITION COMMISSION OF PAKISTAN**

## **ENQUIRY REPORT**

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

**IN THE MATTER OF COMPLAINT FILED BY M/S PAKISTAN  
POULTRY ASSOCIATION AGAINST M/S HEALTH FIRST & M/S SK  
FARMS FOR  
DECEPTIVE MARKETING PRACTICES**

**BY**



**Marryum Pervaiz & Urooj Azeem Awan**



**Dated: May 02, 2018**

## 1. BACKGROUND

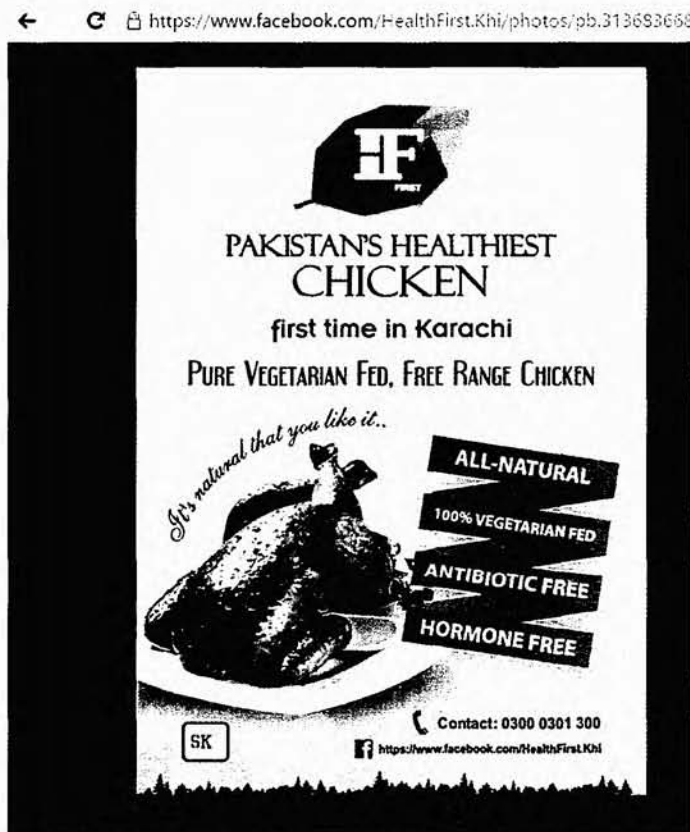
- 1.1 Pakistan Poultry Association (hereinafter referred to as the '**Complainant**'), through advocates M/s Ali & Associates, filed a complaint against M/s Health First & M/s SK Farms (hereinafter collectively referred to as the '**Respondents**'), with the Competition Commission of Pakistan (hereinafter referred to as the '**Commission**') for alleged violation of Section 10 of the Competition Act, 2010 (the '**Act**'), on their part, pertaining to Deceptive Marketing Practices.
- 1.2 The Complainant alleged that the Respondents are misleading their consumers by promoting their chicken as 'Hormone Free' and 'Anti-Biotic Free'. It was submitted that the claims made by the Respondents are unverified and therefore stand unsubstantiated. By doing so, the Respondents have allegedly engaged in Deceptive Marketing Practices and are also responsible for distorting healthy competition in the market.
- 1.3 Keeping in view the forgoing, the Competent Authority initiated an enquiry in accordance with sub section (2) of Section 37 of the Act by appointing Ms. Marryum Pervaiz, Deputy Director (OFT) and Ms. Urooj Azeem Awan, Management Executive (OFT) as enquiry officers (collectively referred to as the '**Enquiry Committee**') to conduct an enquiry into the matter.
- 1.4 The Enquiry Committee was directed to conduct the enquiry on the issues raised in the complaint and to submit the enquiry report by giving its findings and recommendations, *inter alia*, on the following issues;
  - I. Whether the Respondents are violating Section 10(1) in terms of Section 10(2)(c) of the Act, which prohibits *false or misleading comparison of goods in the process of advertising*; and/or
  - II. Whether the Respondents' conduct pertains to *the distribution of false or misleading information to consumers related to character, method of production, properties, suitability for use and quality of goods*, in violation of Section 10(1) in terms of Section 10(2)(b) of the Act;
  - III. Whether the Respondents' conduct is *capable of harming the business interests* of the other undertakings, in violation of Section 10(1) in terms of Section 10(2)(a) of the Act;

## 2. SUMMARY OF THE COMPLAINT

- 2.1 M/s Ali & Associates, on behalf of the Complainant, filed a complaint with the Commission. It was submitted in the complaint that the Complainant is the current representative body of the poultry sector in Pakistan and has been since its inception in 1978. The Complainant has been licensed by the Directorate General of Trade Organizations (DGTO) as a trade association and thus represents the poultry sector in terms of trade, commerce, industry and service.

- 2.2 It was submitted that the Complainant plays a key role in the development of the poultry sector and allied trade by bringing about and maintaining unanimity among its members and securing their business interests. Through its continuous efforts, the industry has received an investment which has made it the 11<sup>th</sup> largest broiler producing industry in the world, currently producing 1.2 billion broilers per annum, while employing 1.5 million people.
- 2.3 Other measures taken by the Complainant include educating farmers on ethical and/or hygienic breeding methods through technology. Steps have also been taken to educate the public with respect to the nutritional value of poultry goods. Other achievements includes dealing with numerous diseases and health problems by producing vaccines and providing better technology.
- 2.4 The Complainant alleged that the Respondents are advertising their products by making several misleading claims which are false, misleading and without the provision of any reasonable evidence or proof. The Respondents advertisement/ promotional material from their facebook page is reproduced as under (**Annexure-A**):



2.5 The Complainant submitted that the Respondents' following claims are indubitably false and designed to deceive and mislead the consumers:

- *Hormone Free*
- *Anti-Biotic free*
- *The chickens are fed the freshest and purest ingredients*
- *100% Vegetarian fed / Roam free in organic vegetable fields, find food for themselves*
- *Fed only natural ingredients*
- *Free Range Chicken*
- *Sheds 3-4 times larger than those used by commercial farmers*

2.6 It was submitted that the Respondents' claim of offering hormone and anti-biotic free chicken clearly indicates an attribute to their products which mischaracterizes competing products and therefore misleads consumers. It further stated that not a single broiler chicken produced in Pakistan is given any growth hormones. Pakistan produces **1.02 billion broilers** each year, and if hormones were being used, there would be a sizeable amount of import, production or consumption that would easily be traceable.

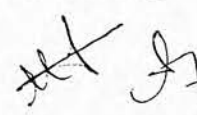
2.7 Moreover, it is virtually impossible to commercially produce and maintain chicken stocks without vaccinations and antibiotics, which is a universal practice. With the quantities produced, it is vital to ensure that all preventive measures are taken in order to ensure disease limitation in chicken stocks. The use of vaccinations and antibiotics is permitted in international standards as well. The Complainant also added that it believes that the Respondent is buying and selling 'Day Old Chicks' that are being bred and/or grown by the poultry industry and is also using the same standard pelleted feed. This feed contains by-products and processed ingredients, which include canola, rapeseed, soybean, sunflower, etc.

2.8 It submitted that it should be noted that the Respondents' claims are contradicting one another. The claim that their sheds are 3-4 times bigger than sheds used by commercial farmers directly contradicts the claim that their chickens are 'free range'. Furthermore, the Complainant submits that the Respondents' claim that each chicken is provided 3-4 times the space given to commercially produced chickens is false. Broiler farms in open sided houses provide 1 sqft/ chicken, which would mean that M/s SK Farms is providing 3-4 sqft/ chicken; however, an examination of the images provided by the Respondents utterly refutes this claim

2.9 Lastly, the Respondents' claim of their chicken being 'organic' cannot be held true as it has not been substantiated by any independent verification or certification. As mentioned earlier, the Respondents are growing brown coloured broilers and using pelleted feed, which would indicate the use of antibiotics and synthetic amino acids which invalidate claims of the chicken being organic in nature. The term "**organic**" is defined in a comprehensive article by the US Department of Agriculture Natural Program and as per the Complainant's knowledge it is apparent that the chicken

produced and sold by the Respondents does not fall within the ambit of the standard definition.

- 2.10 It was further submitted that the Food Safety and Inspection Service of the US Department of Agriculture (FSIS-FDA) stipulates that *"in order to obtain approval for labels bearing the claim "free range" or "free roaming" poultry producers must provide a brief description of the birds' housing conditions when the label is submitted to the FSIS Labelling and Consumer Protection Staff for approval. The written description of the housing conditions is reviewed to ensure the birds have "continuous free access to the outdoors for a significant portion of their lives." During the winter months in a northern climate birds are not "free range" in that they stay in coops all winter. Producers must also verify how animals are cared for during normal and inclement weather conditions, hacking or other conditions that would merit special protection.*
- 2.11 The Respondents are charging an exorbitant premium from the consumers at Rs.500/kg, whereas the wet market price is around Rs. 220/kg and the price of established brands of processed chicken is around Rs. 265/kg.
- 2.12 In addition to carrying out deceptive marketing, the Respondents also plagiarized on their website and social media page images from an international source to advertise the superiority of their products. The content that has been copied includes images from the BBC Food website and images from Graig Farm Organics website which further supports Respondents' contentions.
- 2.13 The Respondents are intentionally misleading their consumers through false claims, disparaging their competitor's products and preying on the sensibilities of consumers. Their high premium price may also mislead the consumer into believing that the higher price guarantees a different and higher quality product.
- 2.14 It was submitted that the Respondents behaviour is putting the poultry industry and other commercial undertakings at risk, as well as the Complainant, which has sustained damages as a result of the Respondents' misleading claims. If the Respondents are allowed to further carry out the way it conducts its business, the Complainant and its members will bear substantial and irreparable losses.
- 2.15 The Complainant has requested the Commission for the following reliefs:
- i. An order which restrains the Respondents from engaging in any deceptive marketing practices.
  - ii. Restraining the Respondents from making uncertified, unverified and misleading claims.
  - iii. An order directing the confiscation, forfeiture, destruction or market withdrawal of all of the Respondents' products/materials that are misleading or deceptive in nature.





### 3 REPLY OF M/s SK FARMS

- 3.1 A letter was written by the Enquiry Committee to the SK Farms (hereinafter individually referred as the '**Respondent No. 1**') on 27<sup>th</sup> of October, 2016, wherein it was called upon to furnish comments/reply to the complaint and to clarify its position regarding the alleged contentions raised within the complaint, in terms of Section 10 of the Act.
- 3.2 The Respondent No. 1 submitted a reply vide letter dated 3<sup>rd</sup> of November, 2016, wherein it clarified that Respondent No.1 and Health First are two different entities. Respondent No. 1 itself is based in Lahore and solely engaged in the production of chicken. It further submitted that Health First is a separate entity engaged in purchasing chicken from Respondent No. 1 and selling it in Karachi.
- 3.3 Respondent No. 1, in its reply to the Commission, outlines the fact that it has a small business that relies on grassroots marketing and therefore, do not use any written materials, pamphlets, flyers, advertisements, or social media to market its business/product. The Respondent No.1, therefore, stood by its claims and refutes all the allegations of deceptive marketing.
- 3.4 It was further submitted by the Respondent No. 1 that it started business three years ago to provide clean, healthy and safe chicken to its own family. It raised few broiler birds at its own farm without administering them any anti-biotic and feeding them clean vegetarian feed. Over a period of 3 years friends and family started asking for growing more for them due to taste of the chicken.
- 3.5 Soon Health First became a customer and started buying from Respondent No.1 and selling it in Karachi. Respondent No. 1 submitted that its growing methodology is simple:
- *We do not give our chickens any form of anti-biotic*
  - *Our chicken are not given any hormones*
  - *Our chicken are fed a purely vegetable feed, which is provided to the chicken inside the shed*
  - *Additionally, the chicken are let out of the sheds into our fields where they free range during the day from sunrise till sunset.*
- 3.6 Respondent No. 1 submitted that it has never advertised any information through marketing means lacking reasonable basis related to price, character, method or place of production, properties, suitability for use or quality of goods. It stated that it has not distributed false or misleading information depicting comparison of good since it does not have any form of marketing.
- 3.7 According to Respondent No. 1, its use of the claim '*Hormone Free*' is just to dispel the perceptions of use of hormones amongst the consumers. Respondent No. 1 also provided lab report showing that its birds had not been administered anti-biotic (**Annexure-B**). It submitted that since it is difficult to grow chicken without anti-biotic because of diseases, it has experienced above average mortality rates of 15% - 20%. It was forced to shut down its production between March and July, 2 years back, due to

the fact that at that time of the year H9 virus and New Castle disease severely affected the poultry industry, causing major losses.

- 3.8 The Respondent No. 1 provided evidence through photos of its farms that the sheds have doors installed at the base through which the birds go out in the day to the attach fields to roam free and find nutrition themselves other than the vegetarian feed fed to them. The Respondent No.1 submitted that it fed its chickens with feed obtained from Big Feed (Pvt) limited which contained no animal protein, such as poultry by-product meal, blood meal or bone ash, etc. In its reply, the Respondent No.1 has attached a certificate from the feed supplier (**Annexure-C**). Moreover, it submitted that the claim was made only to show customers that its feed is purely vegetarian, without the addition of any chicken or fish waste.
- 3.9 Respondent No. 1's claim is based on the fact that its birds are raised in an environment where they have access to an open field, which consists of vegetable gardens. According to USDA (United States Department of Agriculture), the term free range means that birds have 'continuous free access to outdoors for a significant portion of the day'.
- 3.10 Respondent No. 1 submitted that due to the unconventional growing practices, its chickens often took between 42 to 60 days to reach slaughter weight of 1.8 kg per live bird. In comparison to this the commercially produced chicken achieves the same weight between 30 to 40 days.
- 3.11 Respondent No. 1 submitted that the Complainant argued that the former claimed its chicken to be "organic". The Respondent No. 1 countered argued that this was an absolutely false accusation, as neither the Respondent No. 1 nor M/s Health First had ever claimed their chicken to be organic.
- 3.12 The Respondent No. 1 further submitted that the Commission or the Complainant may suggest any guidelines or changes to the wordings used in the advertisements and it would be willing to comply with the same.

#### **4 REPLY OF M/S HEALTH FIRST**

- 4.1 A letter was written by the Enquiry Committee to M/s Health First (hereinafter individually referred as '**Respondent No. 2**') on 27<sup>th</sup> of October, 2016, wherein it was asked to furnish comments/reply to the complaint and to clarify its position regarding the alleged contentions raised within the complaint, in terms of Section 10 of the Act.
- 4.2 The Respondent No. 2 submitted a reply vide letter dated November 05, 2016, wherein it made submissions as summarised below.
- i. The Respondent No. 2 submitted that the Complainant has filed the complaint without verification of any facts and on mere conjunctures that blatantly float on the face of the complaint.



- ii. It was submitted that Respondent No.2 has been a customer of Respondent No. 1 to supply healthy chicken to friends and family in Karachi under the name of Health First.
- iii. That Respondent No. 2 operates at a very small scale through word-of-mouth. It has no shops or a retail facility. Its pamphlet provides a mobile number and a Facebook page to consumers to order chicken.
- iv. That Respondent No. 2 submitted that its Facebook page has since been deactivated due to caution. Their customers know that they only supplies chicken sourced from Respondent No. 1's farm.
- v. It further submitted that the complaint asserted that Respondent No. 2 is claiming its chicken as organic whereas no such claim has been marketed by the Respondent No. 2 in any of its marketing material.
- vi. It was submitted that the Respondent No. 1 sources its feed from Big Feed (Pvt.) Ltd which contains no animal proteins or by-products. Similarly, the complaint asserted that the Respondent No. 2 claimed its chickens were fed the ' *freshest* ' and ' *purest* ' ingredients. However, the Respondent No. 2 has never used any such claim in its marketing material.
- vii. It further stated that their claim of ' *free range chicken* ' is supported by the fact that Respondent No. 1's birds at farm have open access out of the sheds into the attaché fields. Additionally, the term " *Free Range* " does not indicate how long a bird should take to achieve weight.
- viii. As regards the claim of ' *hormone free* ', it was submitted that the Pakistan Poultry Association itself admits that all poultry products are hormone free. The use of hormone in poultry has been discontinued globally, hence the qualification 'Hormone Free' is meant to inform the customers about their question to use of hormones in the industry.
- ix. Furthermore, it was submitted that no anti-biotics are administered by the Respondent No. 1 to its birds because of which the operations of the Respondent No.1 were halted in the months of May 2015 to September 2015 and May 2016 to September 2016. Resultantly, operations of the Respondent No. 2 were also halted since Respondent No. 1 refused to administer anti-biotics to the birds.
- x. The Respondent No. 2 also submitted that there clientele is purely based within friends and family through word of mouth who are clearly aware of the fact that the chicken supplied is a broiler chicken, though raised in a healthier way.
- xi. The Respondent No. 2 also submitted that it is open to suggestions regarding the use of claims and any rectifications suggested by the Commission or the Complainant to the wording of the claims.



## 5 REJOINDER BY THE COMPLAINANT

- 5.1 A letter was written by the Enquiry Committee to the Complainant on 22<sup>nd</sup> of November, 2016, wherein the Complainant was asked to furnish its comments/rejoinder, if any, to the replies of the Respondents.
- 5.2 The Complainant did not submit any comments/rejoinder to the replies of the Respondents hence the assertions made within the complaint were considered full and final on behalf of the Complainant for the purposes of this Enquiry Report.

## 6 ISSUES & ANALYSIS

- 6.1 Before moving towards analysis of the facts provided by the Complainant and the Respondents, it is important to examine the issues in question:
- I. Whether the Respondents are violating Section 10(1) in terms of Section 10(2)(c) of the Act, which prohibits *false or misleading comparison of goods in the process of advertising*; and/or
  - II. Whether the Respondents' conduct pertains to *the distribution of false or misleading information to consumers related to character, method of production, properties, suitability for use and quality of goods*, in violation of Section 10(1) in terms of Section 10(2)(b) of the Act;
  - III. Whether the Respondents' conduct is *capable of harming the business interests* of the other undertakings, in violation of Section 10(1) in terms of Section 10(2)(a) of the Act;
- I. **Whether the Respondents are violating Section 10(1) in terms of Section 10(2)(c) of the Act, which prohibits false or misleading comparison of goods in the process of advertising;**
- 6.2 The Complainant has alleged that the Respondents have drawn a comparison with the whole poultry industry through their advertising claims that are misleading and false and therefore, create a wrong image of the industry.
- 6.3 In order to establish whether the Respondents have misleadingly drawn comparison of its products with that of the whole poultry industry, it is important to analyse the elements of the Respondents' advertisements individually.
- 6.4 The Complainant had alleged that the Respondents had used the following claims in their advertisements:



- a. *Hormone Free*
- b. *Anti-Biotic free*
- c. *The chickens are fed the freshest and purest ingredients*
- d. *100% Vegetarian fed / Roam free in organic vegetable fields/ Free Range, find food for themselves*
- e. *Fed only natural ingredients*
- f. *Sheds 3-4 times larger than those used by commercial farmers*

6.5 A detailed assessment of the promotion material of both the Respondents is presented in the following paragraphs individually.

**ADVERTISING/ PROMOTION OF THE RESPONDENT NO. 1:**

6.6 Respondent No. 1 had submitted in its reply that it does not engage in any form of marketing or promotion. Similarly, the Enquiry Committee upon visit of the premises of the Respondent No. 1 could not find any marketing material printed by them.

6.7 The farm of the Respondent No. 1 did not contain any promotional material which indicated that it is claiming its chicken to be '*Hormone Free*'.

6.8 However, the advertising/ promotional material collected from the Facebook page<sup>1</sup> of the Respondent No. 2 displayed the logo of '**SKF**' which stood for Respondent No.1. The digital flyer of the Respondent No. 2 on the Facebook page displayed the following claims on it:

- Pure Vegetarian Fed
- Free Range Chicken
- All Natural
- 100% Vegetarian Fed
- Antibiotic Free
- Hormone Free

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<sup>1</sup> <https://www.facebook.com/HealthFirst.Khi/>



6.9 An image of the same is reproduced hereunder for reference:



6.10 The above mentioned claims were not displayed by the Respondent No. 1 itself, however, Respondent No. 2 sourced its chicken from the Respondent No. 1. Therefore, the Respondent No. 1 was clearly aware of the fact that its name and product is being used to make the aforementioned claims. For ease of reference all claims are analysed separately by the Enquiry Committee.

(a). **Hormone Free:**

6.11 Here it is pertinent to mention that it has been established by the Complainant, who is also the representative of the whole poultry industry, that the use of hormones has long been obsolete in the poultry industry.

6.12 Considering this fact it is important to note that since none of the undertaking in this industry is engaged in the use of hormones in their chicken, one of the players claiming to be hormone free would have an adverse impact on the overall industry and would create distrust among the ordinary consumers.

- 6.13 In this context, even though the Respondent No. 1 did not print or promote any marketing material of its own, the knowledge that its name was being used in someone else's promotion regarding its product without raising any objection may be viewed as intentional indirect marketing through aides.
- 6.14 In view of this, even if the claim does not draw a direct comparison between the Respondent No. 1's product with the industry, it does create a bad name for the other players in the market indirectly by implying that the industry uses hormones.
- 6.15 Therefore, due to the claim of '*hormone free*' by the Respondent No. 1, it is found, *prima facie*, engaged in false and misleading comparison of goods in the process of advertising, in violation of Section 10(1) of the Act, in terms of Section 10(2)(c) of the Act.

**a. Anti-Biotic Free:**

- 6.16 It is reiterated that the Respondent No. 1 has submitted that it has not been engaged in any sort of marketing or promotion of its brand.
- 6.17 In this context reference is made to Para No. 6.9 above, where it can be seen in the image that the claim of '*Anti Biotic Free*' is displayed in the Respondent No. 2's digital flyer along with the logo of Respondent No.1.
- 6.18 In this case also, the Respondent No. 1 is found claiming '*Anti Biotic Free*' indirectly, through aid of Respondent No. 2. However, the Respondent No. 1 has successfully submitted a lab test report, wherein it is established that no anti-biotic residue was found in bird sample from the Respondent No. 1's farm. **(Already attached as Annexure-B)**
- 6.19 Therefore, in this instance, the Respondent No. 1 is not found violating Section 10(1) of the Act in terms of Section 10(2)(c) of the Act.

**b. The Chickens are Fed the Freshest and Purest Ingredients**

- 6.20 In this context, the Enquiry Committee during investigation did not find any evidence wherein the Respondent No. 1 had, either directly or indirectly, claimed that its chicken is fed with the freshest and purest ingredients.
- 6.21 Therefore, the Respondent No. 1 is not found violating Section 10(1) of the Act in terms of Section 10(2)(c) of the Act.



c. **100% Vegetarian Fed / Roam Free in Organic Vegetable Fields, Find Food for Themselves**

- 6.22 The Respondent No. 1 has not directly engaged in marketing, yet the digital flyer in Para No.6.9 displays the claim of a 100% Vegetarian Fed and Free Range.
- 6.23 However, no claim of '*finding food for themselves*' was found in the marketing material.
- 6.24 With respect to the claim of '100% Vegetarian Fed', the Respondent No. 1 has submitted evidence obtained from the supplier, i.e., Big Feed (Pvt) Ltd., of the poultry that the feed given to the chickens was 100 % vegetarian with no content of animal by-products.
- 6.25 Similarly, the Enquiry Committee, upon survey of the Respondent No.1's farm found out that the chicken was being fed the same vegetarian feed from Big Feed (Pvt.) Ltd., as submitted by the Respondent No.1. The same can be viewed from the images taken from the farm below:



- 6.26 Moreover, the term 'Free-Range' has not been specifically defined, yet several definitions can be sourced, some of which are as under:

*"For chickens, "free range" means the birds must "have access to the outdoors for an undetermined period each day, according to the USDA. ...*



*....If poultry is certified "free range" as part of the Humane Farm Animal Care (HFAC)'s Certified Humane program, it means the chickens spend at least six hours a day outdoors (weather permitting), and have at least two square feet per bird in their pens. The Certified Humane certification covers a variety of issues."*<sup>2</sup>

- 6.27 Therefore, in the definitions of free range given by USDA and HFAC above, it is common that the birds must have access to outdoors for a reasonable part of the day.
- 6.28 The Enquiry Committee upon survey found out that the farm of the Respondent No.1 is located on the outskirts of the city of Lahore. The Farm itself has a shed in the middle of a place in boundary on all sides. On three sides the shed is lined by fields of small vegetables and other leafy plants.
- 6.29 It was observed that, as per the submissions, the sheds have doors through which the birds have access to the fields outside. However, no flock of birds was maintained at the time of the survey and the sheds were being prepared for the next flock of birds.
- 6.30 Keeping in view the observations made at the farm, it is evident that the claim of *Free Range* by the Respondent No. 1 through the advertisement of Respondent No. 2 is not false and reasonably substantiated. Images of the farm are reproduced hereunder for reference:



<sup>2</sup> <https://www.thebalance.com/what-does-free-range-really-mean-2538247>



6.31 Moving on to the claim of '*Find food for themselves*' as alleged by the Complainant, none of the marketing material by Respondent No.1, either direct or indirect, was found claiming the same.

6.32 Therefore, Respondent No. 1 through the claims of '100% Vegetarian Fed and Free Range' is not drawing false and misleading comparison of its birds/ chicken with others produced by the rest of the industry in violation of Section 10(1) of the Act in terms of Section 10(2)(c) of the Act

**d. Fed Only Natural Ingredients**

6.33 Reference is again made to the digital flyer of the Respondent No.2 in Para No.6.9 above. The Respondent No. 1 was found claiming '*All Natural*' in its advertisement instead of the claim of '*fed only natural ingredients*'.

6.34 It is unclear from the claim of the Respondent No. 1 as to what does it associate the word '*natural*' with. The term '*natural*', if assumed to be used by the Respondent No. 1 for the feed being used as alleged by the Complainant, then the issue has reasonably been justified, as referred to in Para. No. 3.8 above. The Respondent No.1 has already produced a certificate from the feed supplier to assure its contention.

6.35 Therefore, the Respondent No. 1, for this specific claim of '*Fed only Natural Ingredients*' is not involved in the false and misleading comparison of its birds/chicken with the rest of the industry in violation of Section 10(2)(c) of the Act.

**e. Sheds 3-4 Times Larger Than Those Used By Commercial Farmers**

6.36 The Complainant has alleged that the Respondent No. 1 had claimed that its sheds have space 3 to 4 times larger than those used by commercial broilers. However, no such claim was found on the marketing material used by the Respondent No. 1 via Respondent No. 2.

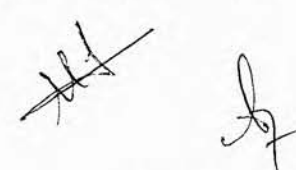
6.37 Therefore, the Respondent No. 1 is not found involved in false and misleading comparison of its birds/ chicken in violation of Section 10(2)(c) of the Act through the claims of '*Sheds 3-4 times larger than those used by commercial farmers*'.

**ADVERTISING/ PROMOTION OF THE RESPONDENT NO. 2:**

6.38 Respondent No. 2 had submitted in its reply that it operates via a Facebook page in its name. The Facebook page<sup>3</sup> of the Respondent No. 2 was analysed in detail for this purpose to extract all promotional material which was claimed according to the allegations. A detailed analysis of the allegations levelled by the Complainant is as under:

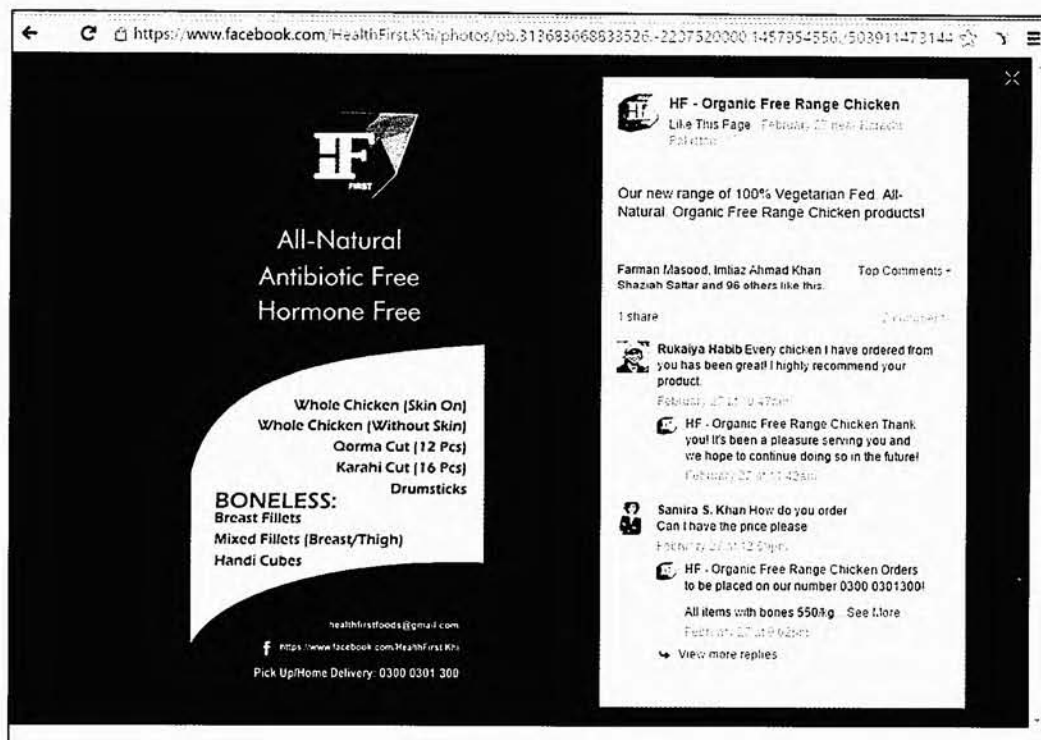
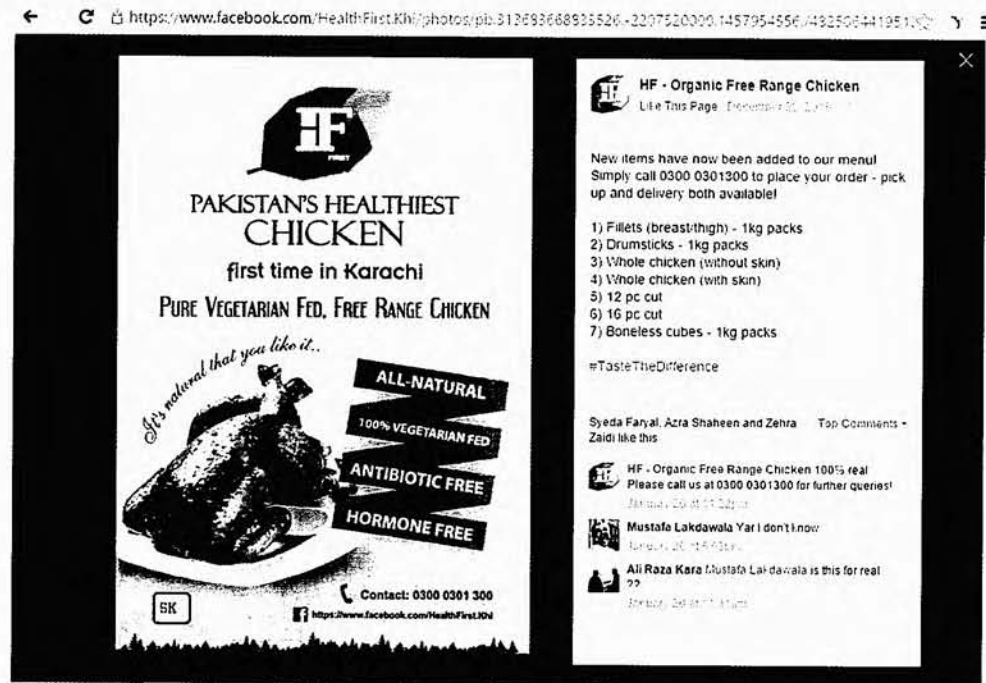
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<sup>3</sup> <https://www.facebook.com/HealthFirst.Khi/>



a. Hormone Free

- 6.39 The Facebook page of the Respondent No. 2 contained promotional material which indicated that it is claiming its product is 'Hormone Free'. An image of the sample promotional material containing the claim is reproduced hereunder for reference:



- 6.40 The images above prove that the Respondent No. 2 has been using the claim '*Hormone Free*' for its products. However, the fact of the case is that use of hormones in poultry industry have long been discontinued.
- 6.41 Even though the claim of '*Hormone Free*' is true in fact, it is misleading in essence since none of the undertakings in this industry are engaged in the use of hormones in their chicken. Therefore, if one claims to be hormone free, it would have an adverse impact on the overall industry and would create distrust among the consumers.
- 6.42 Here we reiterate that an ordinary consumer after going through the claim of '*Hormone Free*' may think that the bird/ chicken provided by the Respondent No.2 has this distinct quality as compared to others in the same industry. In view of this, even if the claim does not draw a direct comparison of Respondent No. 2's product with the industry, it does indirectly create a bad name for the other players in the market by implying that the rest of the industry uses hormones.
- 6.43 Therefore, the Respondent No. 2 is found, *prima facie*, engaged in false and misleading comparison of birds/ chicken in the process of advertising through the use of the claim '*Hormone Free*', in violation of Section 10(1) of the Act, in terms of Section 10(2)(c) of the Act.

**b. Anti-Biotic Free:**

- 6.44 In this context reference is made to Para No. 6.39 above where it can be seen in the images that the claim of Anti Biotic Free is displayed in the Respondent No. 2's digital flyer.
- 6.45 However, the Respondent No. 1 had successfully presented a lab test report wherein it is established that no anti-biotic residue was found in chicken sample from the Respondent No. 1's farm. **(Already attached as Annexure-B)**
- 6.46 Moreover, on the Respondent No. 2's Facebook page, a post was found dated 3<sup>rd</sup> of September, 2016, wherein it had apologized to its customers for non-availability of stock for its previous 3 months due to outbreak of poultry diseases.
- 6.47 It was informed to the consumers that since they did not administer anti-biotic to their birds, no flock had been kept during the outbreak and therefore chicken was unavailable. An image of the post is reproduced hereunder for reference:





- 6.48 Therefore, the Respondent No. 2 is not found engaged in false and misleading comparison of birds/ chicken in the process of advertising through the use of the claim '*Antibiotic Free*', in violation of Section 10(1) of the Act, in terms of Section 10(2)(c) of the Act.

**c. The Chickens are Fed the Freshest and Purest Ingredients**

- 6.49 In this context, the Enquiry Committee during investigation did not find any evidence wherein the Respondent No. 2 had claimed that its chicken is fed with the freshest and purest ingredients.

- 6.50 Therefore, for this specific claim, the Respondent No. 2 is not found engaged in false and misleading comparison of its birds/ chicken in the process of advertising in violation of Section 10(1) of the Act, in terms of Section 10(2)(c) of the Act.

**d. 100% Vegetarian Fed / Roam Free in Organic Vegetable Fields/ Free Range, Find Food For Themselves**

- 6.51 Reference is made to the digital flyers in Para No. 6.39 again which display the claim '*100% Vegetarian Fed and Free Range*'. Moreover, another image is presented, also extracted from the Facebook page of the Respondent No. 2, displaying similar claims:

*[Handwritten signatures]*



- 6.52 The Complainant has also provided an image of Respondent No. 2's facebook page claiming that its chickens have the ability to '*find food for themselves*'
- 6.53 With respect to the claim of 100% Vegetarian Fed, the Respondent No. 2 had submitted evidence obtained from the poultry feed supplier, i.e., Big Feed (Pvt) Ltd., that the feed was 100 % vegetarian with no content of animal by-products. **(Already attached as Annexure-C)**
- 6.54 Moreover, in reference to definitions of Free Range in Para No. 3.9 above, it is found common that the birds must have access to outdoors for a reasonable part of the day. The Enquiry Committee upon survey found out that the farm of the Respondent No.1 is located in the outskirts of the city of Lahore. The farm itself has a shed in the middle of fields of small vegetables and other leafy plants.
- 6.55 Keeping in view the observations made at the farm, it is evident that the claims made by the Respondent No.2 are not false and reasonably substantiated.
- 6.56 Therefore, for aforementioned claims, the Respondent No. 2 is not found engaged in false and misleading comparison of its birds/ chicken in the process of advertising in violation of Section 10(1) of the Act, in terms of Section 10(2)(c) of the Act.

e. **Fed Only Natural Ingredients**

- 6.57 Reference is made to the digital flyers of the Respondent No.2 in Para No. 6.9 above, wherein it was found claiming '*All Natural*' in its advertisement instead of the claim of '*fed only natural ingredients*'.
- 6.58 The terms natural if assumed to be used by the Respondent No. 2 for the feed given to birds as alleged by the Complainant, then the issue has reasonably been justified, as referred to Para. No. 3.8 above.
- 6.59 Therefore, the Respondent No. 2 is not found violating Section 10(2)(c) of the Act through the claims of '*Fed only Natural Ingredients*'.

f. **Sheds 3-4 Times Larger Than Those Used By Commercial Farmers**



- 6.61 The Complainant had alleged that the Respondent No. 2 had claimed that its sources sheds have space 3 to 4 times larger than those used by commercial broilers.
- 6.62 However, no such claim was found on the marketing material used by the Respondent No. 2.
- 6.63 Therefore, the Respondent No. 2 is not found violating Section 10(2)(c) of the Act through the claims of '*Sheds 3-4 times larger than those used by commercial farmers*'.

II. **Whether the Respondents' conduct pertains to the distribution of false or misleading information to consumers related to character, method of production, properties, suitability for use and quality of goods, is in violation of Section 10(1) in terms of Section 10(2)(b) of the Act?**

- 6.64 Before moving on, it is important to review the claims the Complainant had alleged that the Respondents were using without substantiation:

- a. *Hormone Free*
- b. *Anti-Biotic free*
- c. *The chickens are fed the freshest and purest ingredients*
- d. *100% Vegetarian fed / Roam free in organic vegetable fields/ Free Range, find food for themselves*
- e. *Fed only natural ingredients*
- f. *Sheds 3-4 times larger than those used by commercial farmers*

- 6.65 As per the analysis presented in para No. 6.1 to 6.63 of this report it was found that all of the Respondents' claims were substantiated through proper evidence or investigation.

   
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- 6.66 However, the claim of '*Hormone Free*', despite being true in nature was found to be capable of creating a wrong comparison of the poultry industry.
- 6.67 The Honourable Commission has, in the case of Proctor and Gamble Pakistan (Pvt.) Limited (2010 CLD 1695<sup>4</sup>), noted that misleading information includes any information that is capable of giving a wrong impression or idea, or is likely to lead to an error of conduct, thought or judgment, or which tends to misinform or misguide the consumer. It is furthermore an established view that it is not necessary that the deceptive information cause actual deception, but it is in fact sufficient that the misleading information tends to cause deception amongst the ordinary consumers.
- 6.68 In view of this, it is safe to say that the claim of '*Hormone Free*' by both the Respondents is capable of misleading the consumer into thinking that the rest of the poultry industry administers hormones to its birds, which is contrary to the facts.
- 6.69 This does not only create possibility of misguidance but it is also a cause of deception since actual harm caused need not be proven for the purposes of the Act, rather, mere intention is also sufficient to prove a violation.
- 6.70 It was proven that the Respondent No. 1 has not engaged in advertising or promoting itself. However, the Respondent No. 1 has also not barred knowingly the Respondent No. 2 from using its name with the claim of '*Hormone Free*', thereby passively marketing its product through Respondent No. 2.
- 6.71 Therefore, the Respondent No. 1 is found to be violating Section 10(1) of the Act in terms of Section 10(2)(b) of the Act, related to character, method of production, properties, suitability for use and quality of goods through the passive use of the claim '*Hormone Free*'.
- 6.72 Similarly, the Respondent No. 2 is also found to be violating Section 10(1) of the Act in terms of Section 10 (2)(b) of the Act, related to character, method of production, properties, suitability for use and quality of goods through the active use of the claim '*Hormone Free*'.

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<sup>4</sup> <http://www.cc.gov.pk/images/Downloads/Proctor-and-Gamble-Order-Finalized.pdf>

III. **Whether the Respondents' conduct is capable of harming the business interests of the other undertakings, in violation of Section 10(1) in terms of Section 10(2)(a) of the Act;**

- 6.73 In reference to the analysis drawn above, it is evident that the consumer may be at risk of deception through the use of the claim of '*Hormone Free*' by the Respondents.
- 6.74 In this particular matter, the customer will be deceived through a wrong impression created by the Respondents that the poultry industry used hormones in the growth of the birds. This impression has a strong likelihood of creating a bad name for the market players in the poultry industry.
- 6.75 Therefore, the claim of '*Hormone Free*' by the Respondent No. 1, in promotion through Respondent No. 2, is capable of harming the business interests of the other undertakings, in violation of Section 10(1) of the Act, in terms of Section 10(2)(a) of the Act.
- 6.76 Similarly, the use of claim of '*Hormone Free*' by the Respondent No. 2 is also capable of harming the business interests of the other undertakings, in violation of Section 10(1) of the Act in terms of Section 10(2)(a) of the Act.
- 6.77 It is pertinent to note that the Respondent No. 1 and Respondent No. 2 had both agreed on complying with the law and directions of the Commission in the said matter.
- 6.78 Moreover, the farm of Respondent No. 1 was visited on 19<sup>th</sup> of September, 2017, by a representative of the Commission. It was found out during that visit that the Respondent No. 1 has discontinued production of chicken on grounds that it was not profitable to grow chicken without the administration of anti-biotic. An image of the recent survey is reproduced hereunder for reference:



A handwritten signature or mark, possibly a stylized 'X' or a set of initials, written in dark ink.

A handwritten signature or mark, possibly a stylized 'S' or a set of initials, written in dark ink.





- 6.79 Therefore, since the Respondent No. 1 has ceased business, it is no longer in violation of the Act presently. However, the past violations in the matter still hold.
- 6.80 Similarly, Respondent No. 2 has also submitted in its reply that it had temporarily ceased to use its Facebook page as a medium of promotion until the matter is resolved. It was found during the investigation that the Respondent No. 2 had actually not used its Facebook page for promotion after the reply was received and all the posts related to the subject matter were of a past period.
- 6.81 Since the production of chicken has been ceased by the Respondent No. 1, it is assumed that the Respondent No. 2 has also either ceased operation due to the unavailability of chickens/ birds from the supplier or is not operating due to the enquiry at present. In both cases the Respondent No. 2 is liable for the past violations in the matter.

## **7 CONCLUSION AND RECOMMENDATIONS**

- 7.1 After careful examination of allegations levelled by the Complainant and analysing the information and material facts collected in the case under report, we are of the opinion that the conduct of the Respondents, i.e., use of the claim '*Hormone Free*' was not justified even if substantiated.
- 7.2 However, the Respondents were not found to be violating the provisions of the Act related to allegations by the Complainant against the claims of *anti-biotic free, the chickens are fed the freshest and purest ingredients, 100% vegetarian fed / roam free in organic vegetable fields, find food for themselves, fed only natural ingredients, free range chicken & sheds 3-4 times larger than those used by commercial farmers.*
- 7.3 Therefore, M/s SK Farms (Respondent No. 1) and M/s Health First (Respondent No. 2), due to drawing a false and misleading comparison through the use of claim

'Hormone Free', are found to be violating Section 10(1) in terms of Section 10(2)(c) of the Act.

- 7.4 Furthermore, the Respondents are found violating the provisions of Section 10(1) in terms of Section 10 (2)(a) & (b) of the Act, through distribution of false and misleading information to consumers related to character, method of production, properties, suitability for use and quality of goods through the use of claim 'Hormone Free', which is also capable of harming the business interests of other undertakings in the industry.
- 7.5 Therefore, it is recommended that, in the interest of the public at large, proceedings may be initiated against M/s SK Farms and M/s Health First under provisions of Section 30 of the Act for, *prima facie*, violation of Section 10 of the Act.



Maryum Pervaiz  
Deputy Director  
(Enquiry Officer)



Urooj Azeem Awan  
Management Executive  
(Enquiry Officer)



## PAKISTAN'S HEALTHIEST CHICKEN

first time in Karachi

PURE VEGETARIAN FED, FREE RANGE CHICKEN

*It's natural that you like it..*




**ALL-NATURAL**


**100% VEGETARIAN FED**

**ANTIBIOTIC FREE**

**HORMONE FREE**

SK

 Contact: 0300 0301 300

 <https://www.facebook.com/HealthFirst.Khi>



<https://www.facebook.com/HealthFirst.Khi/photos/pb.313683668>



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Contact: 0300 0301 300



<https://www.facebook.com/HealthFirst.Khi>



# Grand Parent Laboratory

Annex B.

1.5-KM, Off Raiwind Road  
(Bhupian Chowk), Opp. COMSA  
University Lahore.  
E-MAIL: gplaboratory@hotmail.com

Date 21-Mar-16  
Farm SK Farm  
Samples: Two live Birds  
Test Required Antibiotics residue test  
Result: No antibiotics residue was detected

  
21/3/16

Dr. Faisal Amin.

## Note:

This test is subjective in vitro test based on bacterial inhibition

This report is not valid for legal purpose





**BIG FEED**  
**(PRIVATE) LIMITED**

Annex-C.  
2 - A, AHMAD BLOCK, NEW GARDEN TOWN,  
P.O. BOX 157, LAHORE - 54600, PAKISTAN.  
TEL : (+92-42) 35835373 74, 35837512-14  
UAN: 111-111-220  
FAX : (+92-42) 35835371-35860519  
E - Mail: bigbird@bigbirdgroup.com.pk  
<http://www.bigbirdgroup.com.pk>

## To whom it may concern

It is to verify that our feeds contain no animal protein sources like poultry by-product meal, fish meal blood meal or bone ash etc. etc. It is purely base on vegetable protein sources.

*Dr. Zia-Ud-Din Qureshi*  
21.3.16

Dr. Zia-Ud-Din Qureshi