

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 CHEVRON
PAKISTAN LUBRICANTS (PRIVATE) LIMITED AGAINST M/S
HI – TECH LUBRICANTS LIMITED AND ITS SUBSIDIARY, HI –
TECH BLENDING (PVT.) LIMITED FOR DECEPTIVE
MARKETING PRACTICES**

BY

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DATED: February 07, 2019

1. BACKGROUND

- 1.1. M/s Chevron Pakistan Lubricants (Private) Limited (hereinafter refer to as the “**Complainant**”), through its legal counsel, M/s RIAA Barker Gillette, has filed a complaint before the Competition Commission of Pakistan (the “**Commission**”) u/s 37(2) of the Competition Act, 2010 (the “**Act**”) against M/s Hi – Tech Lubricants Limited(the “**Respondent No. 1**”) and its subsidiary, Hi – Tech Blending (Pvt.) Limited (the “**Respondent No. 2**”), jointly referred as the “**Respondents**”, for alleged violation of Section 10 of the Act which prohibits deceptive marketing practices.
- 1.2. It has been alleged in the complaint that the Respondents have been engaged in distribution of false and misleading information to consumers, including false and misleading comparison of goods through their recent marketing campaign by making various efficiency and superiority claims, which amount to *prima facie* violation of Section 10 of the Act, i.e., Deceptive Marketing Practices.
- 1.3. Keeping in view of the above, the Commission has initiated an enquiry in terms of sub-section (2) of Section 37 of the Act by appointing Mr. Faiz-ur-Rehman, Assistant Director (OFT) and Ms. Fatima Shah, Management Executive (OFT) as enquiry officers (the “**Enquiry Committee**”). The Enquiry Committee has been 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;

Whether the allegations leveled in the complaint constitute, prima facie, violation of Section 10 of the Act?

2. COMPLAINT

- 2.1. The Complainant in its complaint to the Commission has made the following submissions stating that:
- 2.2. The Complainant is a manufacturer and supplier of lubricants for use in passenger vehicles, industrial and off – highway equipment, and various others forms of machinery. Whereas Respondent No. 1 is an agent and exclusive distributor of imported lubricants, etc., manufactured by SK Lubricant Co., Ltd., which are sold under the brand name “ZIC”. Respondent No. 2 is a wholly owned subsidiary of Respondent No. 1 and is engaged in the business of blending and bottling lubricants imported from SK Lubricants Co., Ltd.
- 2.3. A marketing campaign has been recently launched by the Respondents in order to promote the brand, “ZIC”, wherein numerous high sounding claims have been made pertaining to the quality and efficacy of ZIC lubricants. Additionally, superiority claims in comparison to competing products have also been made in their advertisements. Various claims made in their television commercials have been reproduced below. Copies of the television commercials are attached as Annexure – A (CD).

“Engine oil banta ha 80% base oil say layken har engine oil ZIC nahe hota”
Engine oil is made of 80% base oil but not every engine oil is ZIC;

“ZIC bana hai duniya ke behtareen base oil Yubase se, jiski VHVI Technology ghataye friction aur de lajawaab performance.”
ZIC is made of world’s best base oil Yubase. The VHVI technology of Yubase reduces friction and provides unmatched performance;

“Yubase ki low volatility aur pure saturates rakhay oil ko shafaaf, barhaey mileage aur dalay gari main jaan,”
The low volatility and pure saturates of Yubase keeps the oil pure, increases mileage and adds power and strength in the vehicle;

“Is hi liye har engine oil ZIC nahe hota aur ZIC se behtar koi engine oil nahi”
That is why not every engine oil is ZIC and no engine oil is better than ZIC.

- 2.4. Additional marketing material has also been developed through which similar claims have been made such as brochures created for a marketing campaign by the name of *“shandaar gift scheme”*. Following claims were made in the said marketing material about ZIC lubricants. Copy of this marketing material is attached as Annexure – B.

“Cleaner engine with ZIC, tested for best performance, friction reducer, greater performance, better mileage and cleaner engine with ZIC.”

Further claims include, *“Fuel efficient”*, *“Protects engine”*, *“the ultimate vitamin for your engine”*, *“more in very drop”*, *“ultimate engine protection”* and *“advance fuel saving.”*

- 2.5. Besides, the marketing campaign has also been launched on social media with various posts containing statements like;

“Don’t settle for just any engine oil, because no other engine oil is ZIC”
“Get double protection and extra care with ZIC engine Oil”
“Switch to ZIC and feel the difference of day and night”
“Use only ZIC Motor Oil”

- 2.6. The Complainant alleged that the overall marketing campaign of the Respondents is therefore, false and misleading. The false superiority claims regarding ZIC lubricants such as *“ZIC bana hai duniya ke behtareen base oil Yubase se”* are deceiving consumers into believing that these products are the best ones in the market, which is also giving an unwarranted competitive edge to the Respondents. Whereas such deceptive practices are clearly prohibited under Section 10 of the Act.

- 2.7. It may be noted that the falsehood of the Respondents’ aforementioned marketing campaign is evident from the fact that its claims made are self-contradictory. In their marketing

campaign the Respondents are giving the impression that *Yubase* is the world's best base oil. Whereas, they have simultaneously announced the launch of another new product called "ZIC Top", which according to them is made with PAO – the world's most technologically advanced base oil. The statement that PAO is world's most technologically advanced base oil is self-contradictory to their claim that *Yubase* is the best base oil in the world. The relevant marketing material is attached as Annexure – C.

- 2.8. Additionally, the Respondents are also using misleading statements by using technical terms like "*Yubase*" and "*VHVI technology*" to give an impression that these products are scientifically advanced products and hence, superior to other competing products in the market. By using phrases, like "*ultimate engine protection*", "*advanced fuel saving*", etc., allude superiority of these products, whereas in reality they have no actual bearing on quality of a lubricant.
- 2.9. The Respondents' statements include claims regarding the character, method of production, properties, suitability for use and quality of ZIC lubricants, which are false and/or misleading information to consumers as they lack a reasonable basis. Technical and emotive language has been used to imply that the products have been tested or endorsed by independent, third part specialized sources. However, no such efforts have been made by the Respondents and hence, they have entirely failed to substantiate their claims regarding ZIC products.
- 2.10. Any discussion as to quality of a lubricant must necessarily involve an assessment of the lubricants conformity with internationally recognized standards such as API (American Petroleum Institute) Performance Level or authoritative and reliable scientific evidence such as tests, analysis, etc. It may be noted that based on such international standards, ZIC lubricants and lubricants of its major competitors fall within the same or similar API Performance Level. Relevant evidence is attached as Annexures D.
- 2.11. Efficacy and characteristics of an engine oil can only be achieved by blending base oil with additives like friction modifiers and detergents, which help them achieve the required level of friction and cleanliness. On the other hand, base oils only play a supplemental role in this process. Therefore, the reliance placed on the base oil, *Yubase* or PAO, alone is false and misleading. Additionally, other than the blend itself, the formulation expertise plays a crucial role in affecting the quality and performance of an engine oil.
- 2.12. The Respondents have been making unsubstantiated claims suggesting that none of the other lubricants available in the market are better than ZIC lubricants in performance, even though its competitors' products fall in the same category as per international standards. Such behavior, therefore, is giving the Respondents an undue advantage over their competitors by inducing consumers to purchase ZIC lubricants on false and misleading premises, thereby also harming business interests of the competing undertakings in the market.
- 2.13. The Complainant, therefore, alleged that the conduct of the Respondents amounted to deceptive marketing practices prohibited under Section 10 of the Act, particularly, in terms of clauses (a), (b), and (c) of Section 10(2) of the Act.

- 2.14. Finally, the Complainant has sought the following prayers from the Commission:
- i. Declare that the Respondents are engaged in deceptive marketing practices;
 - ii. Direct the Respondents to immediately withdraw their current marketing campaign for ZIC lubricants;
 - iii. Restrain the Respondents from conducting the marketing campaigns which claim or suggest that ZIC lubricants are the best;
 - iv. Direct the Respondents to make appropriate changes to remove the impression that has been created in the unsubstantiated claims and the statements made by the Respondents as mentioned in paras above.
 - v. Impose a penalty of 10 % of the annual turnover of the Respondents and/or seventy five million rupees, as the Honorable Commission may deem appropriate in the facts and circumstances of the case; and
 - vi. Any other relief that this Honorable Commission may deem appropriate in the facts and circumstances of the case.

3. SUBMISSIONS OF THE RESPONDENTS

- 3.1. The complaint was forwarded to the Respondents by the Enquiry Committee for comments on June 05, 2018. Upon receiving the complaint, Respondent No. 1 requested for an extension in time limit through letter dated June 08, 2018, which was granted vide a letter dated June 11, 2018. Another extension was requested for by the Respondents through a letter dated June 19, 2018, which was also granted vide letter dated June 21, 2018.
- 3.2. The Respondent No.1, on behalf of both the Respondents, submitted its reply through its legal counsel Mr. Mohammad Ijaz Lashari (Advocate Supreme Court of Pakistan) vide his letter dated June 27, 2018. The contents of their reply are provided below:
- 3.3. Firstly, the following points were highlighted for consideration of the Commission.
- a) Distribution of false or misleading information by the Respondents which is also capable of harming the business interests of the Complainant.
 - The Respondents never presented false or untrue claims, neither against the Complainant and nor the industry competition. Under API category rulings, all lubricants within a certain category are rated as equals. The Respondents have made the claim “*ZIC say behtar koi engine oil nahi*”, which means that no engine oil is better than ZIC. This statement implies that other engine oils could be of the same standard/quality as ZIC, but none is superior to ZIC. Therefore, the Respondents have not adversely affected the image or brand name of the Complainant’s products.
 - Additionally, no data has been submitted by the Complainant in support of their allegations that its business has been harmed.

- b) The distribution of false or misleading information to consumers including the distribution of information lacking a reasonable basis, related to price, method or place of production, properties, suitability for use or quality of goods.
- The Respondents have not made any price related claims, whereas the data provided by the Complainant is related to price of the various competitors in the market.
 - No information has been presented by the Complainant as to what would prove as reasonable basis related to lubricants and hence, the Respondents are unable to understand the objective or the nature of the complaint.
 - However, the Complainant has presented advertisements of its products which themselves are full of misrepresentations, misleading and deceptive as indicated below, such as;
 - The use of the word ‘Formula’. The word is misleading as it suggests that the product is unique or superior.
 - The claim “Extreme Wear Protection Deposit Shield Technology” has been made, which has also not been substantiated. The claim also suggests that it is better than all other products on the basis of wear protection and thus, are they deceiving the consumer or is it trying to take a competitive edge over its competitors?
 - The claim “Deposit Shield Technology” is also a sophisticated statement which can be misleading for the general public, especially in absence of any form of substantiation.
- c) False or misleading comparison of goods in the process of advertisement.
- No comparison has been made by the Respondents in the advertisements against any competing products, therefore, the complainant is untenable under this provision.

3.4. The Respondents fully understand that providing or distributing false or misleading information is harmful for both consumer and competitors and are committed to providing valuable information to consumers as well as engaging in fair competition.

3.5. The Commission may at its convenience review all advertisements made by the Respondents to date. It may be noted that (i) information is being disseminated for the benefit and learning of the customers, which is fully supported by data, technical information and undertaking specifications. All such material is available on the internet for customers’ review; (ii) the Respondents would never indulge in any behavior which could be harmful for interest of the competitors and such conduct is against the ethics of the Respondents. The Respondents, in order to compete, emphasize on basis of services, availability, information and consistent product qualities within the API category specifications. A number of technical papers which substantiate the reason for disseminating information and key words in respect to the lubricant industry for the benefit of our customers were enclosed for ease of reference.

3.6. The period of advertisement of the Respondents was too short and did not make a significant adverse impact on customers of Complainant. The details of the advertisement is as under:

ZIC ATL Airing Plan Summary – August, 2017			
Medium	Number of Days	Total Channels	Gross Airing (Minutes)
Television	14	8	1,315
Radio	13	4	587

It is reiterated that the advertisement mentioned above pertains to year 2017 which was aired in August, 2017 and thus, being matter of the past, should not be made point of contention at present.

- 3.7. The primary objective of the advertisement is to launch the product and educate customers on composition of premium base oils, their importance in formulating Engine Oils, and the benefits a lubricant blender demands from premium base oils – the key factor responsible for a Premium Base Oil. The Complainant has mentioned that the Respondents’ advertisement praises Yubase and that base oil has no connection with formulated lubricant. However, the Complainant itself, in Chevron feature “Building Leadership in Base Oil”, only indulges in praise of its base oil.
- 3.8. Furthermore, in order to compete, the Respondents were only trying to differentiate their products from others. For this purpose, competitors avoid generic words and in fact, the act of branding is used to differentiate brands. Brands must have differentiation and this was also one reason for the advertisement. Lastly, as the competition is regularly involved in advertising high quality of their products, the objective of the Respondents’ campaign was to clarify that “NO ONE IS BETTER THAN ZIC”. Which means that competing products may same or equal, but not better than ZIC lubricants. This is the result of API Category Classification. The API Standard is clear about each category that is, with each category all are same / equal, and therefore, the Respondents made the claim “ZIC say behtar koi engine oil nahi”. This statement can also be said by the Complainant in its advertisement. In the market, the competition has been making superiority claims whereas the Respondent’s reply is that in each category, they are the same.
- 3.9. The Respondents have also submitted legal objections to the complaint on following grounds:
- 3.10. The present complaint under reply is false, frivolous and vexatious, having no substance and therefore, liable to be dismissed. The Respondents being a growing company in the field of oil industry is taking off rapidly due to their quality work. Thus, the Complainant is feeling threatened and wants to maintain its dominant position which is also against the provisions of the Competition Act, 2010. That the present complaint is motivated by business rivalry whereas the story narrated in the complaint is false, fabricated and baseless hence complaint is liable to be dismissed.
- 3.11. Additionally, the Respondents have neither directly nor indirectly raised any questions regarding the products of Complainant or other competitors, therefore, the complainant has no *locus standi* to file the present complaint against the Respondents. The Complainant has also not come before the Commission with clean hands, therefore, it is not entitled to get any equitable relief and hence, the complaint is liable to be dismissed. The present complaint has

been filed with *mala fide* intention by misrepresenting the nature of the case, suppressing the real facts, and thus, the instant complaint is liable to be dismissed.

3.12. That the advertisement schemes referred in the complaint dated 05.06.2018, were for the year 2017 and concluded in November, 2017. The present complaint is an afterthought having a period of six months and as such the complainant tried to create unfair pressure on the Respondents.

3.13. It is reiterated that the basic essence of the Complainant is our statement which reads “*engine oil banta hi 80% base oil se laikin her engine oil ZIC nahi hota*”, whereas the Complainant itself has emphasized on this matter itself on various forums by making statements like “*since more than 80% of the content of lubricants consists of base oil, higher quality base oil is essential in producing higher quality lubricants. GS Caltex group II base oil can give the optimal solution for top quality lubricants which conventional base oil are not able to provide the same.*” The Complainant has made such statements in its various marketing material. Relevant material has been enclosed by the Respondents for reference. Certificates of Analysis have also been enclosed, according to which the Respondents are applying 80% Base Oil in their production. This is not only relevant to ZIC Lubricants, but also to other products like HT Lube based on Exxon Mobil Base Oil, hence the complainant is estopped to file the instant complaint by its own conduct and therefore, the present complaint is liable to be dismissed.

3.14. That the Complainant has raised concerns with respect to the claims made by the Respondents related to its products’ quality. However, in its own advertisements, it has made similar claims which have been reproduced below. Evidentiary material has been provided by the Respondents.

- “*Put the Fight Back in the Engine*”
- “*Caltex’s Best Petrol Ever, Enhance Protection Performance in your Petrol or Diesel Engine, More Power to Lighten Your Load*”
- “*Now Your Entire Fleet Can Run Like New Enhancing Acceleration*”
- “*Maximum Engine Life*”
- “*Maximum Power & Performance*”
- “*Reduce Emission*”
- “*Minimum Maintenance Cost*”
- “*Low Oil Consumption*”
- “*The Most Technologically the Most Advance Protection in Every Engine Oil*”
- “*We Have Literally Change the Way the World Drive*”
- “*The Result Is More Efficient Engine That Is Less Likely To Require To Repairs*”
- “*Cleans and Protects Reduces Engine Heat Damage*”
- “*Always Performs At the Best*”

3.15. Hence, by making similar *unsubstantiated* claims itself, the Complainant has no locus standi to lodge a complaint against the Respondents. The Respondents conduct their business with honest, without intending to cause deception or harm the business of the Complainant.

However, due to intense competition in the market, it is necessary for the competitors to advertise the true quality of their products.

Clarification to the Statements of Television Commercial

“Engine oil banta hai 80% base oil se lekin har engine oil ZIC nahin hota.....”

- 3.16. The Respondents fully stand behind their statement.

“ZIC banta hai dunya ke behtareen base oil se, jiski VHVI Technology ghataye friction de lajawab performance”

It has been stated here that ZIC is made from Yubase, which is a better base oil. This is a fact as Yubase belongs to Group III & III+ Base Oil which is premium, as illustrated by evidence attached. This information is readily available on internet for consumers to understand. Evidence has also been provided to further clarify why Yubase is a good Base Oil. Under Group III oils, VHVI is an element which improved quality of Base Oil. VHVI – Very High Viscosity Index means that the higher the VI of the Base Oil, the less its viscosity will vary with change in temperature. If the oil does not thin out in high temperature environment, there will be reduction in friction. Oil thinning leads to friction. The advertisement only highlights this aspect of the product. The Respondents also stand by this statement as it is a fact and if there is a better base oil available in the market, then the Complainant has the onus of proving it.

- 3.17. The Complainant has provided a category comparison chart between various competing products in the market, including Caltex (Havoline / Delo), Shell, PSO, Castrol, ZIC and Total. Under each API category, it has placed equivalent API category products, which shows all products falling in similar performance/quality category. When this information was converted into consumer friendly language, the Respondents used the claim, “*no one is better than ZIC*” which emphasizes the fact that none of the other brands surpass ZIC brand as they are of equal quality/performance. The Respondents never claimed that “*ZIC sub say acha hai*”, which means “*ZIC is best*”. The Respondents have claimed that no competing brand is better than ZIC within the API category which implies that there can be other brands who are as good as ZIC but none can exceed it.
- 3.18. It is important to note that if a Base Oil has low volatility and has pure saturates, it means that Sulphur and other contaminants are not present in the base oil. These factors keep the engine oil clean give high engine performance results in fuel saving API SN or SM categories mention fuel saving. It is a widely understood concept that to make quality lubricants, the base oil must be clean of contaminants. The dirtier, the base oil, the dirtier will be the lubricants. Therefore, Yubase has a higher level of cleanliness which results in production of quality lubricants. This claim is supported by the Respondents with proof as well.
- 3.19. That the Complainant also misconceived use of the word “Shandar”. The same is not objectionable as it is a simple gift scheme for the distributors and the Complainant has no

right to complaint about it as these words are commonly used by advertisers. It is further clarified that Shandar scheme is not for its consumers, but it is a scheme for ZIC distributors in order to give them incentives.

- 3.20. It is reemphasized that the Respondents have never used the word “Best” and on this sole ground the complaint is liable to be dismissed. As far as the statement of “*har engine oil ZIC nahi hota*” is concerned, it is a matter of factual evidence and the Respondents also do not claim that their oil is like Caltex or similar to Caltex. It only means that the Respondents’ product is different from others and thus, it is neither a misleading nor a false statement.
- 3.21. The Respondents considers it important that its customers are also given information regarding the Base Oil used in addition to creating awareness regarding the ZIC Lubricants alone. Therefore, this information is widely available over the internet for any customer to learn and know more about the Respondent’s products. The Complainant similarly makes claims regarding its product ‘Havoline’ saying, “*It is optimized to provide complete engine protection plus ultimate performance*”. As a result, the Complainant should also clarify the difference between Respondents’ statements and its own statement, in particular the use of the word “Ultimate” by the Complainant, as it has been used to make severe objections to its use in its own complaint.
- 3.22. In addition to above, it should be noted that there are essentially two types of Base Oils, (1) Mineral Base Oil, which constitute Group I, II & Group III. In common usage; these are simply termed as “Base Oils”. Then there are (2) Synthetic Base Oils, which usually constitute of PAO (Poly Alpha Oliphins) Esters, Silicon, etc.; these are commonly termed as “Synthetic Base Oils”, being part of Group IV & V Base Oils. In simple terms, while discussing lubricants, use of the word “Base Oil” refers to Group I, II & III, whereas reference of terms like PAO and other kind of synthetic like Esters, Silicon, etc., stock types are mentioned to describe Synthetic Base Oil.
- 3.23. In the advertisement of the Respondents, they have not mentioned Synthetic Base Oils, rather they have only mentioned Base Oils. As stated earlier, the Respondents’ Base Oils being Yubase, is part of Group III, is a Mineral Base Oil and as a whole comes under the larger heading of Group I, II & III. Hence, it can be concluded that the Respondents’ claim stating “ZIC behtreen hay” implies that it falls under the category of Base Oil and therefore, the Respondents’ product is better than Group I & II because it falls under Group III. Furthermore, latest production of Group III + is even better than Group III. Respondents made the statement, “Yubase is the world’s better base oil”, but never stated that **Yubase is better than Synthetic Base Oil.**
- 3.24. When the Respondents launched ZIC Top, it was clearly stated that ZIC Top was comprised of Synthetic Base Oil and not (Base Oil). Therefore, technologically, it is the most advance oil and consumers over the years have come to understanding the difference between Base Oil and Synthetic Base Oil. Consequently, they can easily differentiate between such products. The inability of the Complainant to comprehend this matter is beyond our understanding.

- 3.25. It is presented that the Complainant is fully aware of the fact that their products are described in MDS technical specifications, material descriptions of which, for all products, are readily available with formulators, blenders, base oil and additive producers. This information along with the detailed technical literature provided therein can be taken directly from the internet. It is also a known fact that under commercial marketing practices, reams of information cannot be provided. Commercial advertisements have to be brief. It is only presumption of the Complainant that such description should be part of commercial advertisement. The Respondents could concede if, for example, the Complainant, for its product, Deposit Shield Technology's advertisement had also given such details in order to educate customers.
- 3.26. Moreover, it should be noted that in order to conform to API Levels, specifications are laid down which have to be met by manufacturers so as to qualify for a specific API Category. Thus, one has to meet the minimum specifications. In many cases, manufacturers not only meet the requirements, but also exceed the API Category. Similarly, the ZIC Lubricants not only meet API Specifications, but also exceed them, hence, the Respondents are in a position to claim that they are the better.
- 3.27. Furthermore, the Complainant is repeatedly trying to portray itself as an expert to the Commission and that its assertions should be held truthful, whereas factually they are incorrect. The Complainant stated, "*however, the quantity of base oil used in blending a lubricant, does not determine the quality*". In contrast, the type of Base Oil in fact does determine the quality of the lubricant. In order to produce any lubricant, it is important to select the right type of Base Oil; the better the Base Oil (technical specification), the better is the final lubricant formulated. Major improvements in lubricants have taken place due to advancement in base oils. The Commission's attention is also drawn to the catalogue of Castrol, wherein one of the leading manufacturers of lubricants claims that lubricants are made of 80% base oil and 20% additives.
- 3.28. Finally, when the Respondents state that a lubricant is made of 80% Base Oil, it means that the lubricant is made of 80% Base Oil and 20% Additives. The Respondents have never stated that ZIC is made from 100% Base Oil. It is acknowledged that formulation of lubricants matters. The question could have arisen if the advertisements under scrutiny claimed that ZIC lubricants are made with more Base Oil than the competitors (which were never made). The Complainant either misconceived the advertisement or is purposely misleading the Commission.
- 3.29. Additionally, while talking about the efficacy and characteristics of an engine oil, a paper published by the Complainant (Chevron) titled "The Evolving Base Oils Market, Drivers for Change & Increased Use of Group II Base Oil" states, "*In demanding engine test of critical performance attribute Group II out passes Group I*" along with providing information on how and why Group II alone is superior Base Oil than Group I. It has been shown under engine oil performance through different parameters of Group II being superior base oil. The Complainant (Chevron) has not stated that with the right formulation of Group I, the lubricant can be made superior to Group II. It is strange to note that while publishing a public document, the Complainant has made different claims, whereas in the complaint, it has taken another stance. The Complainant should be asked to clarify whether it can blend Group I with

additives better than an Engine Oil with PAO Stock and formulation? No doubt the efficiency of characteristics of engine oil can be achieved when base oil is blended with additives with like friction, modifiers, and detergents. However, the base oil also matters.

- 3.30. The Complainant fully understands that a base oil, which is a near pure saturate, in comparison to a base oil, which has a higher Sulphur content, are two different types of oils. The latter may not be improved with friction modifiers and detergents. A higher VHVI Oil will require less friction, modifiers than a lower VHVI Oil, therefore, the Respondents assert that base oils play a major role in achieving engine oil efficacies. It should be noted that the Complainant's top most engine oil categories are blended with PAO stocks, whereas their lowest categories are blended mineral base stocks as well.
- 3.31. The Respondents believe that an important factor in blending is the use of quality base oils, as no formulation can help to improve the quality of engine oil if the base oil is of inferior grade and category. At this juncture, the Respondents are intimating their consumers to understand the importance of the type of base oil which is used in ZIC engine oils. Therefore, it can safely be concluded that Group I base oils are of least quality and base oils from Group III & III+ are of much higher quality. All this is verifiable from API technical literature, hence concerns raised by the Complainants are not sustainable.
- 3.32. The Commission should also note that in Pakistan, Shell, Helix, PSO and the Complainant itself, run their advertisement with the following slogans.
- "Design for Ultimate Engine Performance"
 - "No Other Motor Oil Cleans Your Engine Better"
 - "Unsurpassed Sludge Protection"
 - "Keep Your Engine Younger & Longer"
 - "Providing Superior Engine Protection"

Caltex (Complainant)

- "Enhanced Protection & Performance More Power to Lighten to Your Load"
 - "Extra Millage that's the Delo Effect"
 - "Now Your Entire Fleet Can Run Like New"
 - "Provides Longer Engine Life"
 - "Reduce Fuel Consumption, Low Oil Consumption"
- 3.33. The above mentioned slogans are evident that in the lubricant industry, it is necessary to educate the consumer for different products. It would be beneficial to the general public that ZIC products are differentiated from the above mentioned slogans. In this regard, Respondents are highlighting that ZIC is made from Yubase and furthermore, Respondents are educating their customers regarding the fact that Yubase is better than other base oils. There is no doubt that Yubase is a highly saturated base oil, having least level of Sulphur and other contaminants. The Viscosity Index (VI) in Yubase is very high, resulting in less usage of polymer like additives to compensate improvement of viscosity.
- 3.34. Respondents' advertisement, referred by the Complainant, is to promote the information that ZIC Lubricants are based on Yubase. The Respondents never named the Complainant in their

advertisement, nor did they talk about the competition with the Complainant's products. It is further added that the Respondents always confined themselves to Yubase and highlighted its features without naming anyone else. The Complainant argues negatively about the advertisement by taking the last line of advertisement, which is absolutely out of context.

- 3.35. The Complainant has also stated that other promotions of ZIC Top contradict our earlier statement of Yubase. The fact of the matter is that if the Respondents had said that Yubase is the best, then they would have not run the promotion of ZIC Top. The Complainant is basically reinforcing our view point. In this regard, the Respondents would like to raise a point that they disagree with the Complainant's arguments that lubricants are only high or low quality depending upon the formulation. All the players in the industry believe that the essential starting point of lubricant quality is base oil and not formulation. Of course, only with quality base oil, coupled with intricate additive technology, great lubricants are blended.
- 3.36. It is also not out of place to mention here, and also for the perusal of the Honorable Commission, that ZIC has been awarded "CONSUMER CHOICE AWARD" for the last five years as most popular lubricants by 'Pak Wheels'. Best lubricant by 'Za Rulem' and best lubricant by Korea for the last many years. Yubase has the largest share of Group III manufacturer, more than 40% of share in Group III sales and many other awards around the globe. The Respondent's products are good and the advertisement in this regard is a source of education for the customers/end users and has not been developed to deceive them in any manner.
- 3.37. In the end, it is prayed that all other marketing companies operating in Pakistan including the Complainant have published their brochures with similar slogans to attract the customers. Similarly, the Respondents have also advertised their products. Should the Honorable Competition Commission of Pakistan feel that there is some discrepancy in the advertisement of the Respondents, then it may please advise the Respondents accordingly.

4. REJOINDER BY THE COMPLAINANT

- 4.1. The comments/reply of the Respondents were forwarded to the Complainant for its comments/rejoinder vide letter dated July 16, 2018. The Complainant requested for extension in time for submission in time, which was granted to it through letter dated August 02, 2018.
- 4.2. The Complainant submitted its rejoinder vide letter dated August 24, 2018, the contents of which are reproduced below:
- 4.3. It has been submitted that the Respondents in their reply have failed to deny the contentions of the Complainant and have only submitted a general denial. That the Respondents have sought to attack the marketing campaign of the Complainant instead of putting forward its own defense and specifically denying the contentions of the Complainant. Such conduct of the Respondents shows that they have no basis to defend their statements, which are false, misleading or otherwise unsubstantiated and are illegal in terms of the Act.

- 4.4. That without prejudice to the foregoing, it has been respectfully submitted that the subject matter of the instant Complaint are the claims made by the Respondents. The Respondents instead of satisfactorily defending the statements have made a malicious attempt to divert the attention of this Hon'ble Commission by raising unsubstantiated and baseless allegations against the Complainant's marketing, which can, in any event, be defended by the Complainant.
- 4.5. That this Honourable Commission in the case titled as *In matter of: Messrs Tara Crop Sciences (Private) Limited for Deceptive Marketing Practices (reported at 2016 CLC 105)* has held that the onus is on undertakings to ensure that no deception results through their marketing practices. It is most respectfully submitted that the Respondents have failed to discharge the burden of proof placed upon it to show that their marketing practices did not amount to deceptive marketing practices. The Respondents have instead sought to hide their glaring breach and violation of the Act by attempting to divert the attention of this Hon'ble Commission to the marketing material of the Complaint, which the Complainant can, in any event, defend by convincing evidence.
- 4.6. It has been further submitted that the phrase "*ZIC say behtar koi engine oil nahi*", in literal terms, means that no other engine oil is better than ZIC, thereby creating an impression and implying that ZIC is the best engine oil available in the market. Such statement amounts to false and/or misleading information, which could only be substantiated by way of bench testing. The Respondents have not attached any such test to the reply; as such, the Respondents have failed to discharge the burden of proof placed upon it. Furthermore, the fact that whether or not the Complainant has attached any evidence or independent consumer survey report with respect to the negative impact of the Respondents' deceptive marketing practices is irrelevant for the purposes of this Complaint. It is also submitted that the impact of deceptive marketing practices is irrelevant for the purposes of violation of Section 10 of the Act.
- 4.7. That the Complainant in the instant Complaint has already stated as to how the Respondents have violated Section 10 of the Act. The Respondents, instead of attaching convincing evidence as to their reasonable basis for making the claims, have put the burden upon the Complainant. It is not incumbent upon the Complainant to show as to how the claims lack reasonable basis. With respect to Respondents' contentions regarding the advertisement of the Complainant, it was submitted that the marketing campaign of the Complainant is not the subject matter of the instant Complaint. Without prejudice to the foregoing, it is respectfully submitted that "*Formula*" is a brand and registered trademark of the Complainant. Furthermore, any statements made by the Complainant in their advertisements can be substantiated with cogent and convincing material, however, it is reiterated that such fact is not the subject matter of the instant Complaint.

- 4.8. That the Statements specifically “ZIC se behtar koi engine oil nahi” amounts to false or misleading comparison of goods as the Respondents have failed to prove as to how their product is the best and how could no other products be better than ZIC.
- 4.9. It has been submitted that majority of the documents were internal documents and presentations of the Respondents. No bench testing or comparative testing has been done and/or attached by the Respondents to show as to how “ZIC se behtar koi engine oil nahi”. Furthermore, the fact that the television commercial of the Respondents stating therein that “ZIC se behtar koi engine oil nahi” was aired for a short time does not absolve the Respondents from their violation of Section 10 of the Act.
- 4.10. It has been further submitted that the said document was published by a separate and independent entity and in any event, the said document praises a particular technology and not a base oil itself. Furthermore, any document published by a separate and independent foreign entity does not fall within the jurisdiction of this Hon’ble Commission as the Act does not apply to foreign entities. In relation to the Respondents’ contention that their statement “ZIC se behatar koi engine oil nahi” is mere puffing and does not violate the Act, it has been submitted that puffing is generally vague and unquantifiable. However, the aforesaid statement is a quantifiable and specific statement as it implies that ZIC engine oils are best in the market.
- 4.11. Furthermore, the Respondents have sought to rely on a case study of Pakistan State Oil’s case study to justify that their advertisements have little influence on consumers demand. Such study has become irrelevant as this Hon’ble Commission has already found that the advertisements of the Pakistan State Oil amount to deceptive marketing practices.
- 4.12. That the Respondents’ comments have been vehemently denied as false and misleading as they have failed to establish as to how the instant Complaint is false, frivolous, and vexatious and having no substance.
- 4.13. It has been further submitted that the Complainant is compliant with all the provisions of the Act and welcomes healthy competition. However, the Complainant considers it its responsibility to bring to the attention of this Hon’ble Commission any violations of the Act as has been committed by the Respondents.
- 4.14. That with respect to the case initiated against the Respondents by the Commission, it has been submitted that it is not within the knowledge of the Complainant. However, the Respondents have failed to state as to whether the proceedings before this Hon’ble Commission with respect to their advertisement have concluded or still remained pending.
- 4.15. It has been asserted that the claims made in the advertisements create an impression that ZIC engine oils are the best in the market, thereby implying that the products of the Complainant and other competitors are inferior. Even otherwise, it is submitted that for the purposes of

filing a complaint before this Hon'ble Commission for violation of Section 10 of the Act, it was irrelevant to establish locus standi on the basis that the Respondents raised questions in their advertisements with regards to Complainant's products.

- 4.16. It has been further asserted that the Respondents have failed to show as to how the Complainant had filed the instant Complaint with *mala fide* intention and by twisting the nature of the case and suppressing real facts. That the instant Complaint was neither based on business rivalry nor was the case of the Complainant false, fabricated or baseless.
- 4.17. The Complainant has submitted that the instant Complaint is neither an afterthought nor is the Complainant trying to create any unfair pressure upon the Complainant. It has been further submitted that GS Caltex is a separate and independent entity operating in Korea, which has no nexus or concern with the Complainant. Furthermore, GS Caltex is a foreign entity and the Act does not apply and the jurisdiction of this Hon'ble Commission does not extend to the marketing campaign of GS Caltex. Moreover, reliance placed upon any statements made by GS Caltex for the purposes of the instant Complaint is highly absurd and irrelevant.
- 4.18. Allegations made by the Respondents have been vehemently denied stating that the marketing claims associated with the Complainant were not made by it and were mostly made by entities abroad, which have no concern with the Complainant nor the same fell within the purview of the Act. Furthermore, with regards to any statements made by Complainant, it has been further reiterated that such statements are not the subject matter of the instant Complaint and in any event, are capable of being substantiated by the Complainant. Furthermore, some of the claims submitted in the reply have not been reproduced in full, which shows that the Respondents have made a *mala fide* attempt to mislead the Commission.
- 4.19. With regards to the word "*Formula*", it has been restated that it is a brand and registered trademark of the Complainant. Furthermore, the "*Deposit Shield Technology*" is a globally patented technology of the Complainant, which is based on extensive testing. With respect to the survey report by *Pakwheels*, the Complainant has submitted that *Pakwheels* is not an official or accredited body in the field of lubricants. As such, the reliance upon a survey report of *Pakwheels* to substantiate that ZIC is the most popular brand in the market is absurd. Furthermore, by stating that "*Har Engine Oil ZIC nahi hota*", the Respondents have implied that ZIC is the best. However, the Respondents have sought to justify this statement by stating that GS Caltex has made similar statements.
- 4.20. It has been reiterated that GS Caltex is a separate and independent foreign entity, which had no concern with the Complainant since the Act does not extend the Commission's jurisdiction to foreign entities. Even otherwise, the Respondents are required to discharge their burden of proof rather than pointing fingers at the marketing campaign of other competitors (including the Complainant), which is not the subject matter of the instant Complaint. With respect to the statements that *Yubase* is the world's best base oil, it has been submitted that the

Respondents have failed to annex any document or report, which could substantiate that it is in fact the “world’s best base oil”.

- 4.21. It has been stated that some of the evidence submitted by the Complainant merely shows that ZIC lubricants and the lubricants of its major competitors fell within the same or similar API Performance Level, through which the Respondents cannot create an impression that ZIC is the best engine oil available in the market. The impression given by the advertisement campaign, specifically “*ZIC say behtar koi engine oil nahi*” and “*ZIC banta hai duniya ke behtareen base oil se...*” is such that ZIC is the best. With regards to base oils, the Respondents have failed to defend as to how “*Yubase*” is the best in the world, and have instead sought to shift the onus on the Complainant to show if they have better base oils. It has been emphasized that the essence and overall impression of the campaign is to state that ZIC and the base oil used therein are the best.
- 4.22. It has been highlighted that the Complainant has not stated that the phrase “*shandaar gift scheme*” is deceptive and the Respondents have failed to understand as to why the Complainant has mentioned the “*shandaar gift scheme*”.
- 4.23. That the Respondents have taken contradictory stances. On one hand they have stated that their products are equal to those of their competitors, but on the other hand they have stated that ZIC is different. Such contradictory stances show that the Respondents are not worthy of credence and that their contentions are false. Furthermore, the Respondents have raised questions about the Complainant’s ISO SYN Technology, which is not the subject matter of the instant Complaint; as thus, the mentioning thereof is highly irrelevant.
- 4.24. It has been emphasized that the phrases “*ZIC se behtar koi engine oil nahi*”, “*Har engine oil ZIC nahi hota*” and “*ZIC banta hai duniya ke behtareen base oil se*” necessarily imply that the ZIC products are the best in the market and there is no engine oil, which could possibly be better and equivalent to ZIC. It has, therefore, been submitted that the Respondents are required to substantiate their claims by cogent evidence and reasonable basis thereof.
- 4.25. It has been reiterated that the Respondents have repeatedly adopted contradictory stances. They are once again stating that ZIC top is made of the most advanced oil (PAO), but on the other hand, have claimed that *Yubase* is the world’s best base oil (albeit stating now that its better, not best, which fact is vehemently denied).
- 4.26. The Complainant has stated that the Respondents have failed to inform the consumers regarding the reasonable basis of making the said claims. That with the use of technical and emotive language, the Respondents have created an impression that their claims are scientifically proven or tested. Furthermore, the Respondents have not only failed to show as to how the claims are substantiated, but they have also failed to provide any disclaimer while making such unproven claims. It has also been reiterated that the claims made by the

Respondents in the campaign while advertising ZIC lubricants contravene each of the prohibitions contained in sections 10(2) (a), (b) and (c) of the Act.

- 4.27. It has also been submitted that the Respondents have admitted that ZIC is better without providing any reasonable basis for it and that the claims made in the advertisements create an impression that ZIC engine oils are the **best** in the market, thereby implying that the products of the Complainant and other competitors are inferior. Furthermore, it is acknowledged that base oil is a key component of a lubricant, however, the Complainant has only posed a question as to the effectiveness of the impression that base oil can determine the high performance of an engine oil as claimed by the Respondents.
- 4.28. It has been alleged that the Respondents are using the word “*behtar*” in isolation. The phrase is “*ZIC se behtar koi engine oil nahi*”, which means that no one is better than ZIC. This necessarily implies that ZIC is the best. Furthermore, the Respondents never stated in their advertisements that *Yubase* was ‘better’. They have stated that *Yubase* is the world’s best base oil. As such, the contentions of the Respondents are self-contradictory.
- 4.29. It has been reiterated that any alleged statements of the competitors of the Respondents including the Complainant are not the subject matter of the instant Complaint, therefore, mentioning thereof is irrelevant. To the extent that the statements are actually made by the Complainant, the Complainant has reasonable basis for making all the statements in the process of marketing its products. In order to support their contention that *Yubase* is better than other base oils, the Respondents have failed to attach any bench testing which gives edge to their lubricants as compared to other lubricants in the market.
- 4.30. That by stating that “*ZIC se behtar koi engine oil nahi*” and that *Yubase* is a better and world’s best base oil, the Respondents are not claiming that their lubricants are equal, but are in fact implying that they are the best. Furthermore, the fact that the Respondents have stated that ZIC Top is made of the world’s most technologically advanced base oil does not signify that the Respondents’ intention is not to state that *Yubase* is the best base oil. It only signifies that the Respondents have set no stone unturned in stating that their lubricants are the best available in the market, thereby violating Section 10 of the Act. With respect to the awards received by the Respondents, it is reiterated that they are not awarded by any accredited or official body. Their reliance thereon is, therefore, misleading.
- 4.31. It has been finally prayed for that in light of the above and the contents of the Complaint, proceedings may be initiated against the Respondents for violations of the provisions of the Act.
- 4.32. In view of the above, the Respondents were called upon for a meeting vide letter dated September 27, 2018. The meeting was held on October 11, 2018, wherein submissions of the Respondents were discussed. A few further documents were also requested for by the Enquiry Committee pertinent to claims made by the Respondents.

- 4.33. The Complainant was also called upon for a meeting vide letter dated September 27, 2018. The meeting was held on October 18, 2018. The Complainant submitted further replies in response to the discussions held during the meeting. The contents of the submissions are reproduced below.
- 4.34. It has been submitted by the Complainant that the Respondent has, *inter alia*, claimed either by express statement or by implication in its marketing campaign that ZIC products are superior to other products or are the best. However, not only is such a statement inherently false, but such a claim can only be made on the basis of comparative data obtained by testing one product against another. The perception that a product blended with Group III Base Oil or PAO Base Oil would always be superior in performance when compared with another oil of the same Viscosity Grade and API Performance Level Oil which is manufactured with a premium Group II Base Oil is somewhat misleading and technically incorrect.
- 4.35. The Complainant has submitted that the performance of Passenger Car Motor Oils (PCMOs) and Heavy-Duty Diesel Engine Oils (HDEOs) are mainly assessed on the API Performance Level and other International Industry Standards such as ILSAC, ACEA and Original Equipment Manufacturer (OEM) Standards (such as Daimler, MAN, Volvo, Mack, Renault, Cummins, Caterpillar, BMW, Detroit Diesel, GM, Ford, Volkswagen, etc.). Whereas, all OEMs have their own criteria that require additional performance testing in addition to API/ACEA Performance Levels. Use of a premium Base Oil with the same performance claims does not guarantee that it is in-fact the best engine oil. Without having conducted a complete competitive bench and engine testing, it would be incorrect to make such claims. Therefore, when oils claim to be meeting the same specification, the criterion for determining the performance of the oil would be its real world performance case. That using better raw materials is one thing, but formulating using those components for the most synergistic effect is a different matter.
- 4.36. As an example, the Complainant submitted that for the purpose of comparison, “Product A” can only be compared with “Product B” if the two have the same Viscosity Grade, API and other Performance Claims including the OEM Approvals / Industry Standards. Only then it would be fair to compare both the products against the test parameters included in API / ACEA/ ILSAC / OEM Specifications. It is not a given or essential that Synthetic Products would always be better regardless of the formulation and additive chemistry.
- 4.37. The Complainant further submitted that the formulation of lubricating engine oils is an extremely complex process and has a major impact on the performance of oil, such as, but not limited to, engine performance, fuel efficiency, wear protection, oil life, emission controls and cleanliness etc. These performance requirements cannot be met alone with the base oil, whether Group 1, Group II or Group III (Fully Synthetic).

- 4.38. The Complainant clarified that as PCMOs and HDEOs are a blend of 70% - 85% Base Oil, the remaining 15% - 30% comprises of Performance Additives which are used to enhance the performance of the oil, enabling it to meet stringent OEM requirements and International Industry Standards and deliver robust performance under severe operating conditions. It is emphasized by the Complainant that aside from the raw materials (Base Oils and Additives) used in the PCMOs and HDEOs, the formulation expertise plays a vital role for superior performance of any oil.
- 4.39. The Complainant further clarified that there are certain key properties of an oil which can only be achieved by using additives, for example, wear protection and cleanliness comes primarily from additives (like anti-wear additives and detergents/ dispersants) and anti-foam additives, pour point depressants and viscosity index improvers and in that base oils play a supplemental role. That each of the components in an oil needs to be very finely balanced in the finished product and a critical requirement is the blending process.
- 4.40. It was argued by the Complainant that given that the aforementioned performance attributes and characteristics are measured by a certain specification or standard, they cannot be exactly equated with one another so as to determine whether an improvement in one feature is worth the compromise on another feature. As such, it is inherently false to claim that any particular engine oil is the best without having complete supporting data vis-à-vis other commercially available products of same viscosity grade and specifications.
- 4.41. In support of the above, it was highlighted by the Complainant that 'ZIC' is a brand of products and not a product in itself. That as far as the Pakistani market is concerned, fifteen or more lubricating oils are currently being marketed and sold under the brand name of 'ZIC'. It was emphasized that the Respondent was not claiming that any one particular product is the best. If indeed any one product were the best and was suitable for use in all types of vehicles, the Respondent itself would have had no need to sell multiple products. The fact that the Respondent markets multiple differentiable products proves that no one product can be described as best and suited for all the vehicles. Naturally, it follows that if the Respondent cannot claim that one of its products is the best it certainly cannot claim that all of the various ZIC lubricants that it sells are the best.
- 4.42. That the reason why brands produce and market a variety of products is because they are designed to be used in different types of engines or vehicles depending upon the application and OEM requirements. That this was particularly true for older engines and different OEM requirements. It was submitted that the most advanced engines oils which have the highest international certifications may not be suitable for use in older engines which have not been designed to use such engine oil. For example, an older Bedford Truck which has been designed to operate on API CF-4 / SG SAE 20W-50 Oil or API CF SAE 40 Oil and has been running on API CF-4 SAE 20W-50 Oil is likely to have high oil consumption and possible piston / cylinder liner wear if switched to a fully synthetic API CJ-4, 5W-30 or 10W-30 Oil because of the difference in viscosity (later being the lower viscosity) and high detergency

and dispersency of API CJ-4 as compared to API CF-4 Oil. Given the above, allowing the Respondent to market its products as generally superior would be to allow it to misguide customers into using its products even if such products were not suitable for their vehicles.

- 4.43. It was asserted that by claiming that ZIC products are superior, the Respondent has given specific weight to the fact that its products fall within the American Petroleum Institute categorization of 'API SN'. However, it is important to note that while there is no doubt that 'API SN' is one of the higher performance levels for PCMOs awarded by American Petroleum Institute, this does not in any way support the Respondent's claim that ZIC products are superior to all other products and are the best. 'API SN' simply indicates that an engine oil has been successfully tested against a certain set of parameters / specifications established by the American Petroleum Institute. Several engine oils can be designated as 'API SN' and yet they can be different depending upon the additive chemistry and other performance claims or OEM approvals. For example, Honda recommends API SM / SN Oils for their latest models but recommends to use to their own Honda Genuine Oils especially under the warranty period. Toyota recommends API SM or API SN Oils but also recommends using their own Toyota Genuine Oils. (Please see attached copies of Owner's Manual from Honda Civic and Toyota Corolla and List of Toyota Motor Oil Guide 2017 for their lubrication requirements). Further, API SN is no longer the highest category, as API has also introduced API SN Plus oil category which has certain additional performance advantages. This puts the Respondent claims on weaker ground, as the Complainant and many other oil companies have already started marketing API SN Plus oils.
- 4.44. This is also evident from the fact that the Respondent markets multiple ZIC products designated as 'API SN' of different Viscosity Grades such as Zic X5 SAE 20W-50 API SN, Zic X7 SAE 10W-40 API SN and Zic X7 SAE 0W-20 API SN. Categorization alone cannot form sufficient basis from claiming that 'ZIC' products are superior. Zic has a wide range of PCMOs and HDEOs in Pakistan and so do the other Oil Marketing Companies. It would, therefore, be incorrect to claim that there is no better Engine Oil then Zic. For example Zic X7 SAE 0W-20 API SN should not be compared with Caltex Havoline ProDS Fully Synthetic SAE 5W-40 API SN or Helix Ultra 5W-20 API SN because of difference in Viscosity Grades though they have the same API Performance level.
- 4.45. The Respondent's claim/statement also implies clearly that Zic X5 API SN SAE 20W-50 Oil would be superior in performance in all aspects as compared to another commercially available product of SAE 20W-50 API SN Performance Claim. In that context, a fully synthetic SAE 10W-40 Oil be that API SN, SM or SL are not suitable for API "Resource Conserving" Claim and hence, use of a fully synthetic base oil in this case would be irrelevant for the same reason that Viscosity of the oil (SAE 10W-40) would not qualify the claim.
- 4.46. It was argued that without having to provide complete supporting data and bench mark comparisons for each and every of their PCMO and HDEO with the other commercially available products of the same Viscosity Grade, API Performance Level and other OEM /

Industry Standards, simply claiming “*Zic se behtar koi engine oil nahi*” – meaning – ‘There is no better Engine Oil than Zic’ would be technically incorrect.

- 4.47. It was stated that no engine oil is made up of a neat base oil, and in fact it is not possible to use neat base oil as a substitute for well formulated Engine Oil (PCMO or HDEO) for the reasons explained above due to necessity of additives. That if an API SC / CC oil is blended with premium Group III or even synthetic Base Oil, it will not deliver the same performance as of a well formulated group II base Oil of API SM or SN performance. It was contended that v the Respondent has been deceiving customers when it implies that ‘Yubase’ is superior to base oils used in products of other brands and that ZIC products are made of 80% base oil. While ‘Yubase’ is indeed a good base oil categorized as a group III base oil, there are many base oils which may be just as good as ‘Yubase’ or even superior and are also categorized as Group III such as Nexbase (Neste), S-oil(S-Oil) and Etro(Petronas), etc.
- 4.48. There are vast approvals from the industry and OEMs which prove the performances in the 4 GP III Base Oil suppliers. Therefore, the basis of comparison to claim world’s best base oil is Yubase and that Engine Oils blended with “Yubase” are the best, have to be supported with more concrete data. Without having to conduct a complete competitive bench and engine testing, it would be incorrect to make such claims.
- 4.49. It was further stated that one would only be able to determine that a particular engine oil is better than other engine oils by conducting a complete comparative “Bench” and “Engine” test on the two products having the same Viscosity Grade and which are identical in API Performance Levels, Industry Specifications and OEM approvals, etc. In that, Zic should have provided comparative data with all the commercially available PCMOs and HDEOs from other oil marketing companies. However, the Respondent, in defending the complaint, has not provided any supporting data on the basis of which it can claim that ‘ZIC’ Engine Oils are the best. From this it appears that the Respondent has not undertaken any comparative testing, otherwise it would have chosen to rely on the results of comparative tests viz-a-viz other competing products commercially available in Pakistan from other Oil Marketing Companies (OMCs). It was, therefore, concluded by the Complainant that the Respondent has chosen to make unsubstantiated claims in their advertisement in an effort to misinform and deceive consumers into believing that ‘ZIC’ products are superior to other engine oils.
- 4.50. It was, hence, prayed for that the Commission consider this complaint seriously, as the nature of the claims made by the Respondent are *prima facie* deceptive to consumers. That if the Commission does not take action against the Respondent, it will in effect be permitting companies to make general claims of the superiority of their products without consequence. As a result, competitors of such companies would no doubt be driven to make similar claims and ultimately, the consumer would suffer.

5. ANALYSIS

- 5.1. As mentioned in para 1.3 above, the mandate of this enquiry is to determine whether, *prima facie*;
- a. *the conduct of Respondents is capable of harming the business interest of another undertaking such as the Complainant in prima facie violation of section 10(1) of the Act in general and section 10(2)(a) in particular.*
 - b. *the Respondents are disseminating false and misleading information to consumers, including the distribution of information lacking a reasonable basis related to character, method of production, properties and suitability for use and quality of products.*
 - c. *the Respondents are involved in false and misleading comparison of goods in the process of advertising, in prima facie violation of section 10(1) in general and in particular, section 10(2)(c) of the Act.*
- 5.2. Before proceeding further, it must be identified that certain statements have certain effects with regard to the case in hand. The statements made by the Respondents can be categorized as below:-
- i. *Declaratory statements*
 - ii. *Comparative statements*

“*Engine oil banta ha 80% base oil say layken har engine oil ZIC nahe hota*” is a declaratory statement for this the Respondents have to provide chemical bonding of engine oil that establishes the fact that engine oil is made of 80 % base oil . However, statements like *ZIC se behtar koi engine oil nahi*” falls in the category of comparative statement.

- 5.3. In this regard, it is elucidated that certain terms have a much broader spectrum and can never be used in isolation, for instance, “best” and “better”. Use of said terms inherently includes all other available contemporaries of the product in hand and under discussion. The assertion of Respondents that the term “behtareen” may be translated as better is unquestionably wrong and unfounded. Nonetheless in harmony to various renowned Urdu to English dictionaries, the term “behtareen” is translated as “best”. In view of the forgoing, exclusion of the competitor’s product as alleged by the Respondents, in presence of such statements, stand no ground.
- 5.4. In order to arrive at a conclusion, the facts and evidence furnished by the Complainant and the Respondents are analyzed and discussed in the following paras:-
- I. **Whether the Respondents are disseminating false and misleading information to consumers, including the distribution of information lacking a reasonable basis related to character, method of production, properties and suitability for use and quality of products.**

a. Television Commercials (TVCs)

- 5.5. In order to promote the sale of their brand “ZIC”, the Respondents launched their campaign through electronic media, wherein numerous claims were made pertaining to the quality and efficacy of “ZIC” lubricants. Such claims have been made by the use of following statements in the TVCs.

“Engine oil banta ha 80% base oil say layken har engine oil ZIC nahe hota”
Engine oil is made of 80% base oil but not every engine oil is ZIC;

“ZIC bana hai duniya ke behtareen base oil Yubase se, jiski VHVI Technology ghataye friction aur de lajawaab performance.”
ZIC is made of world’s best base oil Yubase. The VHVI technology of Yubase reduces friction and provides unmatched performance;

“Yubase ki low volatility aur pure saturates rakhay oil ko shafaaf, barhaey mileage aur dalay gari main jaan,”

The low volatility and pure saturates of Yubase keep the oil pure, increase mileage and add power and strength in the vehicle;

“Is hi liye har engine oil ZIC nahe hota aur ZIC se behtar koi engine oil nahi”

That is why not every engine oil is ZIC and no engine oil is better than ZIC.

- 5.6. Clips of one of the TVC is presented below:





- 5.7. While evaluating the TVC referred above, the Respondents are giving an overall general impression that “ZIC say *behtar* koi engine oil nahi” which means that no engine oil is better than ZIC. The Respondents in order to attract consumers have made certain claims without any proper exercise of testing their products against other competing products. Such claims cannot be made or allowed in the absence of any documentary evidence in support of their claims. Moreover, some comparative data must be obtained by an independent and impartial agency. The above stated statement is quantifiable and explicit as it can be safely inferred that ZIC engine oils are either the best or equally good as others in the market. The main dynamics of the marketing campaign launched by the Respondents are to convince the consumers into believing that ZIC is second to none.
- 5.8. With regard to the statement “ZIC bana hai duniya ke behtareen base oil Yubase se”, the Respondents have failed to supply any document or proof, which could verify that it is in fact the World’s best base oil. In fact the stance that Yubase is the best base oil in the world so far unsubstantiated and has been made without providing any documentary evidence. It is reiterated that the Respondents have been given opportunities to share any unbiased principle document from which they could establish that they use the best available quality of Yubase. To this point the Respondents have failed to prove the above two moot points.
- 5.9. The Respondents have also made a claim that low volatility and pure saturates keep the oil unadulterated, increase mileage and strengthen the vehicle. Additionally it has also claimed that VHVI technology Yubase reduces friction and provides unmatched performance. In this regard, the Respondents have to prove the following:-
- i. *That the Yubase is low in volatility and processes pure saturates.*
 - ii. *Such characteristics is present in Yubase to an extent that enables it to achieve the above stated claims.*
 - iii. *VHVI technology enables Yubase to reduce friction and provide unmatched performance.*

Again the Respondents have not provided the Commission with such a chemical analysis of the Yubase oil that establishes the nature of Yubase oil as claimed and such nature is performance enhancing characteristic for the engine oil.

- 5.10. Thus, in light of the above, it can be concluded that the Respondents have been involved in distribution of false and misleading information to the consumers that lacks a reasonable basis related to character, method of production, properties and suitability for use and quality of ZIC Lubricants, *prima facie*, in violation of section 10 (1) of the Act.

b. Social Media Pages

- 5.11. Apart from the above, the Respondents also launched their marketing campaign on social media with various posts containing statements like;

“Don’t settle for just any engine oil, because no other engine oil is ZIC”
“Get double protection and extra care with ZIC engine Oil”
“Switch to ZIC and feel the difference of day and night”
“Use only ZIC Motor Oil”



- 5.12. The Respondents stated in their marketing campaign on social media that the use of ZIC engine oil provides extra care and double protection, whereas it has failed to provide the reference point from which the protection may be doubled. As comprehensively discussed above such comparative statements can only be made while having a reference point. Such

reference points are naturally the products available in the same category, in essence, the competitors. Hence the same could only be justified by providing a chemical analysis of the all products used for the similar purpose.

- 5.13. The assertion that only a particular engine oil is the better in the market, a complete comparative bench and engine testing was needed. In fact the Respondents did not mention any such report in their marketing campaign whether their product ZIC lubricant had gone through any such performance testing or whether any other tests were conducted in this regard. Additionally the Respondents have failed to provide necessary information to the Commission in this regard.
- 5.14. The Respondents have made a very high sounding claim stating that “*No engine oil is better than ZIC*”, which suggests that the entire range of ZIC Lubricants are better than the entire product range of all its competitors, local as well as imported, which has not been substantiated. It may be possible that “some” of the Respondents’ products belonging to a certain category or certain features/characteristics of its products may be better than its competitors. Where even in that case, the statement would have to be proven.
- 5.15. It is important to note that while making such comparative statements, it is imperative that the undertakings disclose the category, time period, and source pertinent to the said statement so as to avoid any likelihood of misunderstanding. It is necessary that during the process of marketing, undertakings make a very clear statements which leave no room for confusion and hence, deception, as open ended statements often omit material information which tend to be misleading.
- 5.16. In view of the above, it is significant to highlight that the Respondents have also failed to provide any comparative analysis of its products that fall in either the category of Passenger Car Motor Oils (PCMO) and Heavy-Duty Diesel Engine Oils (HDEO) with other products available in the same sector. Against this backdrop no quantifiable claim in terms of quality, characteristics or any trait can be made in absence of any certifying and reaffirming statement by a competent third party.
- 5.17. After thorough examination of all the factors, it can safely be concluded that the Respondents have failed to substantiate or provide any reasonable basis for making such kinds of high sounded claims.
- 5.18. Hence, by apparent distribution of false and misleading information to the consumers that lacks a reasonable basis related to character, method of production, properties and suitability for use and quality of ZIC Lubricants, the Respondents’ conduct amounts to *prima facie* violation of section 10(1) of the Act.

II. Whether the Respondents are involved in false and misleading comparison of goods in the process of advertising, in prima facie violation of Section 10(1) in general and in particular, Section 10(2)(c) of the Act.

- 5.19. It is important to note that when the claims like “*No engine oil is better than ZIC*” and “*Get double protection and extra care with ZIC engine Oil*” are made without informing consumers the basis of such comparison, the Respondents have compared other lubricants in the process of advertising ZIC Lubricants. Therefore, it would be reasonable to accept that the Respondents by using the claim of “*No engine oil is better than ZIC*” and “*Get double protection and extra care with ZIC engine Oil*” have in fact engaged in comparison of goods in the process of advertising its product.
- 5.20. However, it is to be noted that the practice of comparing competing goods in the process of advertising is not prohibited. What is deemed unlawful is that the assessments made should not have false or misleading inferences. Which in the case of ZIC Lubricants has proven to be false and/or misleading.
- 5.21. In light of the above discussion and findings of the enquiry report, it can, therefore, be determined that the claims made by the Respondents are false and misleading. The Respondents have also distributed false and misleading information while comparing ‘ZIC’ to its competing products and both these elements have the ability to influence consumers’ decision making process while choosing between different alternatives at the time of purchase.

III. Whether the conduct of Respondents are capable of harming the business interest of another undertaking such as the complainant in prima facie violation of section 10(1) of the Act in general and section 10(2)(a) in particular.

- 5.22. As per the analysis presented in Para No 5.1 to Para 5.19 of this enquiry report, the Respondents are not only *prima facie* violating Section 10 of the Act through distribution of false or misleading information to the general public, but also there is a possibility of harm being caused to other competing undertakings including the Complainant in *prima facie*, violation of Section 10(1) of the Act, in terms of Section 10(2)(a) of the Act.

6. CONCLUSION

- 6.1. In light of the discussion made in the preceding paras, the Enquiry Committee is of the considered view that Respondents’ claim of “*ZIC say behtar koi engine oil nahi*”, “*ZIC bana hai duniya ke behtareen base oil Yubase se*”, and “*Get double protection and extra care with ZIC engine Oil*” without any reasonable basis is in *prima facie* violation of Section 10(1) of the Act, within the meaning and scope of Section 10(2)(a), 10(2)(b), and 10(2)(c) of the Act.

- 6.2. In order to protect consumers and to ensure that they are not deceived while taking decision on the basis of false and misleading information, the interest of the general public demands that deceptive marketing practices must be discouraged at all levels and a fair competition in the market is promoted.

7. RECOMMENDATIONS

- 7.1. The deceptive marketing practices, as discussed in this enquiry report, have a direct impact on the public at large. It is, therefore, in the interest of the general public that the undertakings should be stopped from advertising their products/services in an unfair and misleading manner and be encouraged to resort to the advertising practices that are transparent and give consumers true and correct information. Therefore, *prima facie*, violations under the Act in terms of the findings of this enquiry report warrant initiation of proceedings against M/s Hi – Tech Lubricants Limited and its subsidiary, M/s. Hi – Tech Blending (Pvt.) Limited under Section 30 of the Act.

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