

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 SEASONS FOODS (PVT) LTD.
& M/S QUICK FOOD INDUSTRIES (PVT) LTD.
AGAINST
M/S KITCHEN STONE
FOR DECEPTIVE MARKETING PRACTICES**

BY

Marryum Pervaiz & Urooj Azeem Awan

Dated: March 29, 2017



1. BACKGROUND

- 1.1 M/s Seasons Foods (Pvt) Ltd. ('Complainant No. 1') and M/s Quick Food Industries (Pvt) Ltd. ('Complainant No. 2'), collectively referred to as the 'Complainants', through Ali & Associates, filed individual complaints against M/s Kitchen Stone Foods (the 'Respondent'), with the Competition Commission of Pakistan (the 'Commission') for alleged violation of Section 10 of the Competition Act, 2010 (the 'Act'), pertaining to Deceptive Marketing Practices.
- 1.2 It was individually alleged by the Complainants that they are in the business of frozen/packaged food products and the Respondent has distorted healthy competition in the market by engaging in false and misleading comparison of goods and distributing false and misleading information capable of harming the business interest of the Complainants.
- 1.3 Based on the preliminary fact finding, 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 the 'Enquiry Committee') to conclude the enquiry.
- 1.4 The aim of the enquiry was to determine whether, *prima facie*, by engaging in false and misleading comparison of goods and distributing false and misleading information:
 - I. The Respondent is violating Section 10 (1) of the Act, 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. The Respondent's 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*, which is also *capable of harming the business interests* of the Complainants, in violation of Section 10 (1) of the Act, in terms of Section 10 (2) (a) and (b) of the Act;

2. THE COMPLAINT:

This section summarizes the contentions raised in each complaint by the Complainants:

A. IN THE MATTER OF COMPLAINANT NO. 1 (M/s Seasons Foods (Pvt) Ltd):

- 2.1 The Complainant No. 1 is an undertaking within the meanings of Section 2 (1) (q) of the Act, and the titled complaint has been filed on its behalf by Mr. Imran Ejaz, Chief Executive Officer of M/s Seasons Foods (Pvt) Ltd., and includes its affiliated companies and heirs.
- 2.2 The Complainant No. 1 is a part of Seasons Group of Companies which has been in the industry of flour, feed and oil mills for more than 50 years. It is further involved in the production of edible oil, poultry and ready-to-cook frozen food.

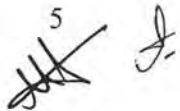
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- 2.3 The Complainant No. 1 entered the frozen/packaged food industry in 2006 as a new venture of the Seasons Group of Companies and since then is a leading Pakistani company in the poultry and frozen foods sector. Thereafter, it stepped into value added/ premium frozen food industry and has been involved in the production, packaging, marketing and distribution of frozen ready-to-cook chicken products.
- 2.4 The Complainant No. 1 launched a complete spectrum of frozen food products in 2006 including among others nuggets, burger patties, kebabs, samosas, spring rolls etc. In furtherance of this venture, the Complainant No. 1 made substantial investments to adhere to standards and principles. A state-of-the-art processing plant was established upon 11.5 acre site with a covered area of 140,000 sq. feet, which processes 6,000 birds per hour according to the Islamic Sharia Law. Furthermore, to keep up with the production line it has installed 1200 tons capacity cold storage which includes Blast Freezers, Storage Freezers and Chilled Storage for fresh and hygienic products.
- 2.5 The Complainant No. 1 employed stringent policies vis-à-vis production, packaging, supply chain management and distribution/retailing of its products to attain globally renowned certifications such as HACCP standards, FSSC 22000:2010 certified for Food-Safety Management System and YUM (FSA & QSA) certified for Quality Management. It has also obtained a license from the Punjab Food Authority through which it is able to control and monitor quality specific factors, which ensure consistency in its products and services while assuring customer satisfaction.
- 2.6 The Complainant No. 1 has developed a very distinct, eye catching and overtly recognizable packaging which is predominantly green in color with the picture of the finished product on the front, storage and cooking instructions on the top right and ingredients on the bottom left just below the cooking instructions. The packaging of its products also display the trade name of Complainant No. 1, i.e., 'Menu' on the top left of the box which is a registered trademark. The Complainant No. 1's packaging for one of its products is depicted hereunder:



- 2.7 It was alleged in the complaint that the Respondent used various billboards, kiosks at festivals and an extensive social media based marketing campaign, *inter alia*, videos, pictures and pamphlets etc., whereby the Respondent has, without any substantiated report, made false, baseless and devoid of evidence statement linking the Complainant No. 1's products to Cancer. The video released by the Respondent blatantly shows Complainant No. 1's packaging, though with a disdainful attempt of semi-blurring the packaging and logo. However, the distinctive Complainant No. 1's packaging is clearly recognizable and visible.
- 2.8 In addition to the videos, the Respondent has commenced a wide outdoor and direct marketing campaign through billboards and banner etc., wherein it has wrongly claimed that processed meat causes Cancer and has used a catchphrase "**Pakistan's only Non-Processed Frozen Food**". Other than the claims of processed meat causing Cancer, the catchphrase alone is a misrepresentation of the frozen food category in general and the Respondent's products in particular. (Respondent's social media video and billboards clipping are attached annexed - A)
- 2.9 Furthermore, the Respondent launched its marketing campaign deliberately in the month of Ramadan of 2016 with the intent of unfairly gaining sales in an uncompetitive manner as the month of Ramadan is historically a high yielding period for all food categories and frozen food products in particular.
- 2.10 In furtherance of the allegations, the Complainant No. 1 submitted that the Respondent is engaged in misleading comparison of goods by linking its products to 'Cancer', thereby playing with the sentiments of the consumer and instilling fear in order to influence sales at the expense of the Complainant No. 1. Therefore, in view of the allegations, the Respondent is, *prima facie*, violating of Section 10 (1) in terms of Section 10 (2) (a), (b) and (c) of the Act.
- 2.11 It was submitted that the Respondent has subliminally linked Complainant No. 1's packaging and products by flashing images of haphazard, unrelated and out of context statistics and articles/editorials (along with their titles) whereby the viewer visualizes the its packaging followed by few screens with the word Cancer which is also reinforced by a voiceover. Thus the overall outlay of the advertisement portrays that processed food causes Cancer whereas the Respondent's product are the only healthy alternative.
- 2.12 It has been submitted by Complainant No. 1 that all the articles and statistics depicted in the video are not based on proper research and do not concern its product. Furthermore, the Complainant No. 1 has submitted that the articles and statistics are amalgamations of randomly picked data which defame the its products in a malicious manner.
- 2.13 The Complainant No. 1 has assured within the complaint that its products undergo extensive procedures to ensure highest quality is delivered to the end consumer in the form of ready to cook products. These procedures, *inter alia*, include environmentally controlled houses, biosecurity measures, spray vaccinations, automated heating/cooling/ventilation, quality assurance labs, state-of-the-art processing plant, slaughtering according to the rules of Shariah, veterinary inspections and sanitized refrigeration, etc.

- 2.14 According to Complainant No. 1, it is pertinent to mention that the evidence shown by the Respondent does not concern or even link processed meat as one of the causes of Cancer. Respondent has shown a report in the video published by The World Health Organization (WHO) with the title **“International Childhood Cancer Day; 15 February, 2016”**. The report portrays an ill looking child with a shaved head (an indication of hair loss due to Chemotherapy) taken from the WHO website and is followed by a voiceover that says *“the latest report from the WHO puts it as simple as it gets; proceed meat causes Cancer”*. The report relates to Cancer among children but there is not even a single mention of Cancer being caused by processed meat or any meat or meat related products. This is a violation of Section 10 (2) (c) of the Act as the Respondent has tried to associate the Complainant No. 1’s products with causing Cancer based on a false and misleading report.
- 2.15 The Respondent has also flashed a few generic and unrelated statistics in the second screen to add veracity to its point of view. These statistics state that *“8.2 million people die each year from Cancer, an estimated 13% of all deaths worldwide; 70% increase in new cases of Cancer expected over the next 2 decades; and more than 100 Cancer types exist, each requiring unique diagnoses and treatment”*.
- 2.16 The 3rd article showcased in the video has been taken from BBC news with a bold heading, i.e., **“Processed Meat Do Cause Cancer: WHO”**. The Respondent has very artfully taken the viewer’s attention away from the first line of the referred article, which in actual clearly defines processed meat as bacon, sausages and ham. These types of processed meat are primarily pork based products and, therefore, automatically become irrelevant for the Pakistani consumers/markets. However, the Respondent has purposefully concealed this fact from its audience.
- 2.17 The 4th image showcased by the Respondent comprises of an article **“Processed Meat and Cancer: What You Need to Know”** extracted from the Cancer Research UK. Upon the perusal it is clear that the article advocates reasonable intake of red meat or processed meat - around 500 grams per week - in order to maintain a healthy and balanced diet. Furthermore, it defines the term processed meat as the meat which is not sold fresh and has been cured, salted and smoked etc. The examples of processed meat once again cite bacon, sausages, hotdogs and ham etc., which are primarily pork based products whereas the Complainant No. 1’s products line only comprises of white meat products such as Chicken and Fish. The said article clearly states that white meat products have no impact on the risk of acquiring Cancer.
- 2.18 The next article cited is titled **“New Health Warning Explained; How Processed Meat is Linked to Cancer”**, which also explains that over consumption of red meat and processed meat increases the risk of developing Cancer. The Respondent is misusing the editorial for maligning the Complainant No. 1 and its products in the minds of the consumers.
- 2.19 The last headline flashed by the Respondent states **“World Health Organization Says Processed Meat Causes Cancer”**. Upon depth study of the article it becomes evident that the said article was another attempt to hide relevant information from the consumers where the article actually says that over consumption of processed meat can likely elevate risks of protracting Cancer.

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- 2.20 In addition to the above, an article under the heading **“Q & A on the carcinogenicity of the consumption of red meat and processed meat”**, more specifically Question 2, which reads, *“What do you consider as processed meat”*, is answered by WHO in the following words:

“Processed meat refers to meat that has been transformed through salting, curing, fermentation, smoking or other processes to enhance flavor or improve preservation.”

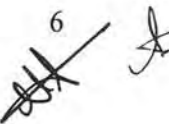
Therefore, to link the Complainant No. 1’s product with causes of Cancer is a false and deliberate attempt at tarnishing its goodwill.

- 2.21 The Complainant No. 1 has also alleged that the Respondent is deceiving the consumers by claiming that its products are “100% Non-Processed Food”. In addition to this, their billboards and banners in festivals read; *“Processed Meat Causes Cancer: Switch to Kitchen Stone Products”*. By doing so the act of the Respondent is capable of harming the business interests of other undertakings and wrongfully convincing the consumer into believing that its product is superior in character, suitability for use and quality as compared to the Complainant No. 1’s products.
- 2.22 In addition to the above, the Respondent is distributing various pamphlets and brochures which are titled *“Soch Ke Khao”*, wherein they have made various claims such as; *‘processed food contains unhealthy oils’, ‘increases your Cancer risk’, ‘the food is created to make you crave it’* and *‘they will make you gain weight fast’*. It is evident from the picture drawn that the Respondent is claiming that all its competitors produce processed food, wherein it produces 100% non-processed meat.
- 2.23 The Respondent has also stated in the videos that it is **“Pakistan’s first non-processed frozen food”** without any survey or evidence to support its claim.
- 2.24 It is submitted by the Complainant No. 1 that the term processed food is generally used to depict production of meat related products on an industrial scale. According to an article published by The National Health Care Service (NHS);

“Food processing techniques include freezing, canning, baking, drawing and pasteurizing products.”

Therefore, the Respondent’s product would also be classified as processed food as they include salt, sugar and are frozen in order to extend their shelf life. Moreover “non-processed frozen food” is in itself contradictory as ‘non-processed’ and ‘frozen food’ do not go together.

- 2.25 The packaging of Respondent’s product “Chicken Cheese Balls” states that the product contains 0.0 grams of cholesterol. The product Chicken Cheese Balls cannot have 0.0 grams of cholesterol as cheese itself as a raw material is full of cholesterol. Furthermore, the other raw materials used to make the product may also contain cholesterol. Therefore, this statement is baseless and is an attempt to target the largely growing health conscious market.

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- 2.26 Due to the aforementioned circumstances the Complainant No. 1 alleged that it has been and will continue to be irreparably harmed and damaged by the Respondent's conduct. Furthermore, these deceptive marketing practices have a direct impact on the consumer and it is in the interest of the general public that the Respondent should be restrained from such practices.
- 2.27 The Complainant No. 1 has prayed that the Commission may initiate proceedings under Section 30 of the Act and restrain the Respondent from distributing false & misleading information to the consumers, harming business interest of the competitors and making false & misleading comparison of goods, in violation of Section 10 (1) read with Section 10 (2) (a) (b) & (c) of the Act.
- 2.28 Furthermore, it has prayed that an order for confiscation, forfeiture, destruction and/or withdrawal of all of Respondent's product that carry deceptive information with regards to it being "100% Non-Processed Frozen Foods" may be passed.
- 2.29 It has also prayed to the Commission to direct the Respondent to compensate for the losses suffered by it as a result of deceptive marketing practices, which the Complainant No. 1 estimates to be amounting to 200 Million Rupees.

B. IN THE MATTER OF COMPLAINANT NO. 2 (M/s Quick Food Industries (Pvt) Ltd):

- 2.30 The Complainant No. 2 is also an undertaking within the meanings of Section 2 (1) (q) of the Act, and the titled complaint has been filed on its behalf by Mr. Muttaqi M. Ali, Chief Operating Officer of M/s Quick Food Industries (Pvt) Ltd.
- 2.31 The Complainant No. 2 is part of the Sanaullah Group of Companies, which is one of the oldest and well known industries in Pakistan. It is one of the leading national company in frozen food sector. It has been involved in the production, packaging, marketing and distribution of high quality, healthy and hygienic frozen food products for almost 20 years.
- 2.32 Complainant No. 2 submitted that in 1997 it launched a complete spectrum of frozen food products including, but not limited to, chicken nuggets, burger patties, kebabs, samosas, spring rolls, etc. under the brand name of 'Mon Salwa'. Furthermore, it has over the years invested in establishing state-of-the-art manufacturing and packaging facility which has diligently been kept up-to-date with ensuing technological advancement in the global frozen food category.
- 2.33 The Complainant No. 2 has attained Globally renowned certifications such as BRS (British Retail Consortium) and FSSC 22000, which demand high level of compliance with respect to the health hygiene and safety standard of the products.
- 2.34 Moreover, the Complainant No. 2 has also invested substantially in its supply chain management system by developing Pakistan's cold chain warehousing facilities network in addition to deploying more than 400 Mon Salwa branded freezers/chillers across the country at independent/ private/ third party retail outlets. The Complainant

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No. 2 has also endeavored to employ the best in class equipment supplied by leading Global Original Equipment Manufacturers.

- 2.35 The Complainant No. 2 has developed a substantial goodwill by virtue of its heritage of employing ethical and moral business policies and processes in general. Furthermore, the demand of Complainant No. 2's products in its respective export markets is a resounding testament of its compliance with the global health codes and standards.
- 2.36 The Complainant No. 2 has clearly established an extremely identifiable brand identity by using a cohesive trademark consisting of brand's name, the company's trade name, the trade dress/color of its packaging and logo etc. The Complainant No. 2's packaging for one of its products is depicted hereunder:



- 2.37 The Complainant No. 2 alleged that the cause for this complaint arose when the Respondent blatantly distorted healthy competition by publically distributing false and misleading information aimed at not only harming its business interests but also to damage its overall brand equity. The Complainant No. 2 has a very distinct and overtly recognizable packaging; pre dominantly in yellow color with slight shades variations for various products, which depict the pictures of the finish products on the front, storage, handling and cooking instructions along with the ingredients and nutrition information on the back and a smaller image of the finished products on the side (as shown above).
- 2.38 The Complainant No. 2 alleged that the Respondent launched a marketing campaign with various billboards and kiosks at festivals supported by extensive social media based marketing campaign including, but not limited to, videos whereby the

Respondent has without any substantiated report, evidence or study, made false, baseless and frivolous statements linking its products to Cancer.

- 2.39 It was submitted by Complainant No. 2 that the videos posted by the Respondent showcased the its packaging while semi-blurring the its logo on the packaging. However, despite blurring the logo, the Complainant No. 2's distinctive yellow colored packaging alongwith the picture of the finished product on the front, written content and ingredients on the back, the products name and trademark font style are clearly recognizable. The Respondent attempted to semi blur the logo on the front of the packaging but the logo on the sealant flap of the packaging has not been blurred by the Respondent in the advertisement whereby the logo along with the brand name is clearly visible.
- 2.40 It was further submitted that the Respondent conducted a wide outdoor and direct marketing campaign through billboards, banners etc. The Respondents billboards wrongly portrayed a catch-phrase reading "**Pakistan's Only Non-Processed Frozen Food**", which is a misrepresentation of the frozen food industry in general and Respondent's products in particular.
- 2.41 Furthermore, the Respondent launched the misleading campaign purposefully during Ramadan, which is a high yielding period for all food categories in general and frozen food industry in particular.
- 2.42 It was submitted that the Respondent, by instilling fear among the general public through linking frozen foods with Cancer, has unethically boosted its own business activity at the expense of not only the Complainant No. 2 but also other competitors in the industry. Therefore, by disseminating false and misleading information with regards to the production, suitability for use and the overall quality of the Complainant No. 2's products, the Respondent has engaged in deceptive marketing practices in violation of Section 10 (2) (a) and (b) of the Act.
- 2.43 The Respondent has shown a report in the video published by WHO with the title "**International Childhood Cancer Day; 15 February, 2016**". The report portrays an ill looking child with a shaved head (an indication of hair loss due to Chemotherapy) taken from the WHO website. The report relates to Cancer among children but there is not even a single indication of Cancer being caused by processed meat or any meat or meat related products at all.
- 2.44 The Respondent has also flashed a few generic and unrelated statistics in the second screen to add veracity to its point of view. These statistics state "*8.2 million people die each year from Cancer, an estimated 13% of all deaths worldwide; 70% increase in new cases of Cancer expected over the next 2 decades; and more than 100 Cancer types exist, each requiring unique diagnoses and treatment*".
- 2.45 The 3rd article showcased in the video has been taken from BBC news with a bold heading reading; "**Processed Meat Do Cause Cancer: WHO**". The Respondent has very artfully taken the viewer's attention away from the first line of said article which in actual clearly defines processed meat as bacon, sausages and ham. These types of processed meat are primarily pork based products and therefore become irrelevant for the Pakistani consumers/markets.

- 2.46 The 4th image showcased by the Respondent comprises of an article **“Processed Meat and Cancer: What You Need to Know”** extracted from the Cancer research UK. Upon the perusal it is clear that the article advocates reasonable intake of red meat or processed meat, around 500 grams per week, in order to maintain a healthy and balanced diet. Furthermore, it defines the term processed meat as the meat which is not sold fresh and has been cured, salted and smoked etc. The examples of processed meat once again cite bacon, sausages, hotdogs and ham etc. which are primarily pork based products whereas the Complainant No. 2’s product range only comprises of white meat products such as Chicken and Fish. The said article clearly states white meat products have no impact on the risk of acquiring Cancer.
- 2.47 The next article cited is titled **“New Health Warning Explained; How Processed Meat is Linked to Cancer”**, which also explains that over consumption of red meat and processed meat increases the risk of developing Cancer. The Respondent is misusing the editorial for maligning the Complainant No. 2 and its products in the minds of the consumers.
- 2.48 The last headline flashed by the Respondent states **“World Health Organization Says Processed Meat Causes Cancer”**. Upon in depth study of the article it becomes evident that the said article was another attempt to hide relevant information from the consumers where the article actually says that over consumption of processed meat can likely elevate risks of protracting Cancer.
- 2.49 The Complainant No. 2 alleged that the Respondent has further claimed that it is **“Pakistan’s First Non-Processed Food”** without any survey, evidence or data to substantiate the same. The term ‘Non-Processed’ food is false and misleading on its own because it encompasses something which is left in its natural state or form without any alteration whatsoever. A research study conducted by John Hopkins Bloomberg School of Public Health stated that:

“Food processing refers to the practices used by food and beverage industries to transform raw plant and animal materials, such as grains, produce, meat and dairy, into products for consumers. Nearly all of our food has been processed in some way.”

And

“Examples (of processed food) include freezing vegetables, milling wheat into flour and frying potato chips. Slaughtering animals for meat is also sometimes considered a form of food processing.”

- 2.50 Similarly, Punjab Pure Foods Rules, 2011, clearly defines processed food as;

“Food having undergone any treatment resulting in a substantial change in the original state of the food, and shall include dividing, parting, severing, boning, mincing, skinning, pairing, peeling, grinding, cutting, cleaning, trimming, deep-freezing, freezing, chilling, milling, husking, packing or unpacking, the expression “unprocessed” shall be construed accordingly.”

Therefore, the claim of the Respondent to be 100% non-processed is completely false since the act of mere freezing entails processing.

2.51 It was submitted that the Respondent continued to deceive the consumers by outrightly advertising "*Processed Meat Causes Cancer... Switch to Kitchen Stone Products*" on its banners in festivals. These false and baseless advertisements are deceiving the consumers into making misinformed decisions and therefore the Respondent may be put on strict proof thereof.

2.52 In addition to the above the Respondent is distributing various pamphlets and brochures which are titled "**Soch Ke Khao**" wherein they have made various claims such as; '*processed food contains unhealthy oils*', '*increases your Cancer risk*', '*the food is created to make you crave it*' and '*they will make you gain weight fast*'. It is evident from the picture drawn that the Respondent is claiming all its competitors produce processed food, wherein it produces 100% non-processed meat.

2.53 According to an article published by The National Health Care Service (NHS);

"Food processing techniques include freezing, canning, baking, drawing and pasteurizing products."

Therefore, the Respondent's products would also be classified as processed food as they include salt, sugar and are frozen in order to extend their shelf life. Moreover "non-processed frozen food" is in itself contradictory as freezing is a process on its own.

2.54 Furthermore, the addition of ingredients to the meat as per the Respondent's "Secret Recipe" also renders the Respondent's claim of unprocessed food null.

2.55 The packaging of Respondent's product "Chicken Cheese Balls" states that the product contains 0.0 grams of cholesterol. The product Chicken Cheese Balls cannot have 0.0 grams of cholesterol as cheese itself as a raw material is full of cholesterol. Furthermore, the other raw materials used to make the product may also contain cholesterol. Therefore, this statement is baseless and is an attempt to target the largely growing health conscious market. Moreover, if the Respondent has by any means managed to reduce the amount of cholesterol in the product it would entail processing of food which lays the claim of 'Non-Processed' null again.

2.56 The Complainant No. 2 has prayed that the Commission may initiate proceedings under Section 30 of the Act and restrain the Respondent from distributing false & misleading information to the consumers, harming business interests of the competitors and making false & misleading comparison of goods, in violation of Section 10 (1) read with Section 10 (2) (a) (b) & (c) of the Act.

2.57 Furthermore, the Complainant No. 2 has prayed that an order for confiscation, forfeiture, destruction and/or withdrawal of all of Respondent's product that carry deceptive information with regards to it being "100% Non-Processed Frozen Foods" may be passed.

- 2.58 The Complainant No. 2 has also prayed to the Commission to direct the Respondent to compensate for the losses suffered by it as a result of deceptive marketing practices, which the it estimates to be amounting to 200 Million Rupees.

3. SUBMISSIONS OF THE RESPONDENT:

- 3.1 The complaints of both Complainant No. 1 and Complainant No. 2 were forwarded to the Respondent for comments/reply vide letter dated 30th of August, 2016. A reply was received from the Respondent vide letter dated 10th of September, 2016, the particulars of which are summarized hereunder.
- 3.2 The Respondent is a frozen foods manufacturing company that has been marketing its products since 2014, with the intent of providing a range of non-processed authentic Pakistani food to its consumers.
- 3.3 The Respondent has been instrumental in developing Pakistan's first non-processed frozen food, which is depicted in their promotions and advertisements on Facebook. Their motto is to provide healthy food as is depicted by the phrase "*Let's Eat Healthy*" on their packaging.
- 3.4 The Respondent had carried out substantial research for two years and after mixing the best quality fresh farm ingredients and trying different recipes they developed their high quality, healthy and hygienic non-processed frozen foods. The Respondent also made substantial investments in transportation and packaging facilities, which is a clear indication of the Respondent's dedication to ensure standardization in their fresh and hygienic products. The Respondent has employed stringent policies that aim at reducing health and safety based risks, which represents the Respondent's commitment to maintain high standards of product quality and integrity.
- 3.5 That the Respondent's advertising campaign was developed with the aim to objectively inform consumers about the quality standards of their frozen foods and to promote their non-processed snacks to families interested in eating healthy food.
- 3.6 In response to the Complainants' allegations the Respondent submitted that it has not distributed misleading and false information to consumers which lacks reasonable basis in relation to the product's character, properties or quality and neither is its claim a false or misleading comparison with the Complainants' products. It was vehemently denied that the Respondent's marketing campaign aimed to harm the business interests of the Complainants' or damage their overall brand equity and that they may be put to strict proof thereof.
- 3.7 The Respondent submitted that it has relied on a number of reliable research and studies that it has carried out internally and therefore the Facebook advertisement's claims and visuals were properly substantiated. The Respondent denies that its claim of being "*Pakistan's First Non-Processed Frozen Food*" is a misrepresentation of its products and that the Respondent sells chicken, beef and vegetarian products that are prepared without extra salting, curing, fermentation, smoking, or any such process to enhance flavor or improve preservation.

- 3.8 Furthermore, the Respondent submitted that Complainants have incorrectly alleged that the Respondent's claim is of being the "only" non-processed frozen food in Pakistan, whereas the Respondent's claim was of being the "first" non-processed frozen food in Pakistan. The Respondent's products have a shelf life of six months, as opposed to processed foods, which claim to have a shelf life of twelve months. It is submitted that the Respondent removes its products from the market within four months and discards them in the event that their products are not sold. In view of this the Respondent's products do not fall within the definition of "processed" as per the definition provided by the World Health Organization (WHO) which is reproduced below:

"Processed meat refers to meat that has been transformed through salting, curing, fermentation, smoking, or other processes to enhance, flavor or improve preservation. Most processed meats contain pork or beef, but processed meats may also contain other red meats, poultry, and offal or meat by-products such as blood.

Examples of processed meat include hot dogs (frankfurters), ham, sausages, corned beef and biltong or beef jerky as well as canned meat and meat-based preparations and sauces."

- 3.9 The Respondent through its Facebook advertisement has a right to objectively inform the consumers about the benefits of their non-processed frozen food and the allegations with respect to the Respondent engaging in unethical and deceptive marketing practices by misinforming the consumers about its products are unfounded and are liable to be disregarded as they are also damaging to the Respondent's reputation.
- 3.10 The Respondent's marketing campaign included a single video on Facebook and banners/kiosks at the Karachi Tea Festival, held at Frere Hall on March 4th to 6th, 2016 and the TW9Y Kite Fest held at DHA Golf Club in Karachi on March 6, 2016. No other advertisements or promotions on cable television or national TV were aired and therefore the Respondent categorically rejects there were various advertisements. It was submitted that the Respondent was promoting its own healthy products especially during Ramadan through infomercials on "10 Useful Pointers to Healthy Eating and Lifestyle during Ramadan".
- 3.11 The Respondent accepted that it claimed "Processed Meat Causes Cancer" in its Facebook advertisement, however, the assertion that the Complainants' products cause Cancer is ill-founded and hence was denied. It was also pointed out that the advertisements' net general impression should also be evaluated in addition to reasonable basis of claims made within the marketing content by the Respondent.
- 3.12 If the Respondent's Facebook advertisement is reviewed as a whole, it does not create or give an overall impression that the intention or purpose is to create a correlation between the Complainants' products and Cancer. The statement made by the Respondent that "Processed Meat Causes Cancer" was based on International Agency for Research on Cancer's (IRAC) announcement on October, 2015, that "Processed Meat is a definitive cause of Cancer and was classified as group 1 carcinogenic to humans".

- 3.13 Therefore, contrary to the Complainants' allegations, the Respondent has not claimed throughout the advertisement that their products are Cancerous and instead has simply claimed that processed meat increases the risk of Cancer by a certain extent.
- 3.14 The Complainants have incorrectly claimed that the article "International Childhood Cancer Day" headline was misused and misrepresented by the Respondent. It is submitted that the headline was not to grab the consumer's attention towards the child in the image but rather to reiterate the fact that eating processed meats causes colorectal and stomach Cancer and therefore should be avoided.
- 3.15 Therefore, the Respondent denied that it tried to take the consumer's attention away from the first line of the article which states "*Processed meats-such as bacon, sausages and ham*". The same article also defines processed meat as "*meat that has been modified to either extend its shelf life or change the taste and the main methods are smoking, curing or adding salt or preservatives*", and includes examples such as "*bacon, sausages, hot dogs, salami, corned beef, beefjerky and ham as well as canned meat and meat based sauces.*"
- 3.16 The Respondent's range of products include, *inter alia*, Paneer Tikka Sticks, Aloo Samosa, Veggie Kebab, Cutlets, Beef Samosa, Chicken Cheese Spring Roll, Chicken Spring Roll, Beef Shami Kebab, Chicken Shami Kebab, Chicken Reshmi Kebab, Chicken Malai Kofta, Kabuli Beef Kofta and Pizza Rolls. None of the aforesaid products are "processed" items as per the definition and examples provided by the WHO in their Q&A report.
- 3.17 The Respondent denies that is has misused the Article titled "*Processed Meat And Cancer - What You Need To Know*" extracted from Cancer Research UK. It has been submitted that the same is corroborated by scientific studies in the said article such as;

"In 2011, scientists estimated that around 3 in every hundred Cancers in the UK were due to eating too much red and processed meat (that's around 8,800 cases every year)."

Therefore, the general impression of this article appearing in the Respondent's Facebook advertisement acts as a deterrent to consumers from consuming processed meat.

- 3.18 The Complainants had quoted a statement made by Dr. Tim Byers, a professor of preventative medicine at the Colorado School of Public Health in Aurora in their complaint, which is reproduced in the article by Cari Nierenberg, Live Science Contributor on "*New Health Warning Explained: Plow Processed Meat is Linked to Cancer*". It is denied that the Respondent misused the said editorial and is submitted that when the article is read as a whole, without emphasizing certain phrases as the Complainants have done, it is understood that there is in fact a strong correlation between eating red and/or processed meat and colorectal Cancer.
- 3.19 The Respondent has not mentioned the names of the Complainants or the products of any of their competitors in its marketing campaigns or Facebook advertisement, and the logos/names/ingredients on the products in the Facebook video had been intentionally blurred out to avoid tarnishing any competitor's image. The Facebook

advertisement did not intend to harm or damage the Complainants' image and was simply a marketing strategy by the Respondent to further their own business interest by introducing their non-processed frozen foods to consumers.

- 3.20 The Respondent submitted the promotion of its products was not misleading or deceptive as per Regulation 5 of the *Consumer Protection from Unfair Trading Regulations, 2008*, which defines a practice misleading if it satisfies the following conditions:

*"(3) A commercial practice satisfies the conditions of this paragraph if-
(a) it concerns any marketing of a product (including comparative advertising) which creates confusion with any products, trademarks, trade names or other distinguishing marks of the competitor."*

- 3.21 It is submitted that since the Respondent's and Complainants' products are entirely different, the Facebook advertisement was not capable of deceiving consumers between their products and the Respondents'.
- 3.22 It is submitted that the Respondent's target market is entirely different from that of the Complainants'. Facebook gives the Respondent an audience that includes people who have expressed an interest in or liked pages associated with the Respondent's audience. Therefore, it is denied that the Respondent's Facebook marketing campaign affected the Complainants' target audience or consumers in any way and accordingly the their "business interest" was not damaged or harmed as a result of the same.
- 3.23 The Respondent has developed Pakistan's first non-processed frozen food which is depicted in their marketing campaign and it is denied that this claim has not been based on any survey, evidence or data. In making this claim the Respondent has relied on trusted and accurate research reports and therefore is not in violation of Section 10 (1) of the Act read with Section 10 (2) (b) of the Act.
- 3.24 As regards the contentions raised on the Respondent's "secret recipe" on the back of its packaging, it submitted that it has been made without any documentary proof and hence the Complainants' contentions are misconceived and denied. Even though it is common for companies to have secret recipes, the Respondent submits that it only uses all natural ingredients to make their secret "mix of spices". The Respondent has reproduced the ingredients of each of the 16 frozen food items in an Excel Sheet Format.
- 3.25 The Respondent's products do contain some total fat content even though it has negligible or no cholesterol, however, this is common as fat and cholesterol are two separate components of food. Respondent's products did in fact contain less than 42 milligrams of cholesterol per serving which means it has negligible cholesterol and therefore the Respondent has not misled the consumers. The Respondent's products are labeled 0.0g cholesterol and/or 0.0g trans-fat because they have rounded off the value in grams to one decimal place.

4. REJOINDERS:

4.1 The reply of the Respondent was sent to the Complainants for rejoinder on September 21, 2016.

A. REJOINDER BY COMPLAINANT NO. 1 (M/s Seasons Foods (Pvt) Ltd):

4.2 The Complainant No. 1 has submitted its rejoinder/comments to the Respondent's reply via its legal counsel vide letter dated 6th of October, 2016, which is summarized in the following paragraphs.

4.3 The reply stated that the Respondents have failed to provide any substantive evidence that their product is actually "100% Non-Processed" frozen food. Moreover, there is no evidence which substantiates the claim that the Respondents product is any different both health wise and quality wise as compared to any competitor product in the market. It is also pertinent to note that the Respondent has miserably failed to provide any evidence or research with regards to its internal research, development department and one of a kind logistics. Furthermore, the Respondent has not shown a single certification or quality management technique or method in order to substantiate its claim.

4.4 That the Respondent has admitted that they have in fact misused international research papers for their own personal benefit and as a result, when the advertising campaign is taken as a whole, it is clearly evident that the same has resulted in tarnishing the image of the Complainant No. 1 and the frozen food market as a whole. The same is evident from the fact that the Respondent has removed the video from their social media page after coming to know about the initiation of proceedings in this Hon'ble Commission.

4.5 That the Respondents have failed to objectify the statement that they use best quality, farm fresh products to produce their products. Furthermore, they have failed to provide any research and testing on their own product to substantiate their claim of being "Non-Processed".

4.6 That by showing the Complainant No. 1's packaging in their advertisement the Respondent has deliberately tarnished its image in the market in order to fraudulently boost their own sales.

4.7 The studies presented by the Respondent entail pork (pig) based products such as ham, salami, bacon, sausages (pork sausages), hot dogs, corned beef, beef jerky as well as canned meat and meat based sauces. It is pertinent to note that it is in fact the Respondent who produces beef based products whereas none of these products listed above relate to the Complainant No.1 as it produces pre-dominantly chicken based products, dairy products and vegetable products.

4.8 That it is a doubt of the Complainant No. 1 that the factory shown by the Respondent in the advertisement is not situated in Pakistan.

4.9 The Respondents are put on strict proof to provide evidence that their food products are "un-paralleled" and "free of any preservatives, food colors, and chemicals or salting".

- 4.10 The Respondent is put on strict proof to provide evidence that it has carried out substantial research for two years. Furthermore, with regards to the quality of the Respondent's products, it has not provided any evidence or certifications from any authority.
- 4.11 It is submitted that the Respondent is taking a very stringent and restrictive definition of producing "Non-Processed Frozen Foods". Its entire marketing strategy and unique selling proposition is based on a single article published by WHO which only limits the definition of non-processed to salting, curing, fermentation, smoking or any such process to enhance flavor or improve preservation of food. It is pertinent to note that the act of freezing food is itself a process to "improve preservation" as cooked or semi cooked food products last longer in a frozen state. It is pertinent to note that claiming to have a shelf life of six months is not substantive but in fact absurd proof of being non-processed or their product being any different from any competitor in the market.
- 4.12 It is submitted that the Respondent has deliberately shown the Complainant No. 1's packaging and linked the same with its claims of Cancer producing products.
- 4.13 In addition to the various kiosks at the festivals and the social media advertisement, the Respondent had put up various billboards across the city, including a billboard on main Shahrah-e-Faisal Road, which is one of the largest and busiest roads in the city. Furthermore, it is submitted that it cannot be considered a coincidence that the Respondent carried out various fraudulent advertisement techniques just before the month of Ramadan, which is the highest yielding period for the sales of frozen food.
- 4.14 That the instant case is quite similar to the case of Proctor and Gamble Pakistan (Pvt) Limited, 2010, where the Respondents claimed that their shampoo renders hair "100% dandruff free" (similar to the instant Respondent's claim of being 100% non-processed), whereby this Hon'ble Commission ordered that the Respondents;
- "shall not use the phrase '100% dandruff free' in their advertisement of the Product, unless it is properly substantiated by a cogent evidence providing it a reasonable basis for such claim."*
- 4.15 That the fourth article shown by the Respondents in the advertisement with the headline "**Processed Meat and Cancer – What You Need To Know**", extracted from Cancer Research UK, goes on to state; "*Both of these types of meat are distinct from 'white' meats, like fresh chicken or turkey, and fish (neither of which appear to increase your risk of Cancer)*". This is important to note as the Complainant No. 1's products are white meat based products. Furthermore, the statement that the Respondent removed the video from its social media page clearly shows the admission that the Respondent was well aware that its advertisement was in blatant violation of Section 10 of the Act.
- 4.16 The Respondent's products are also fried in oil which is a clear indication that they are just misleading the consumers into believing that their products are any different from that of the Complainant No. 1's products. The instructions on their packaging read "*preheat clean cooking oil in a wok for deep frying at 180 degrees C, fry ChikCheez for 3-4 minutes*". Therefore, the claim that the Respondent's target market includes specific groups who have expressed an interest in healthy eating is henceforth denied. In addition to the aforementioned, it is pertinent to note that it is not scientifically

possible for non-processed food to be prepared in 3-4 minutes. Thus, semi cooked foods are classified as being processed.

- 4.17 The Complainant No. 1 respects healthy competition as it is beneficial for the market as a whole. However, the Complainant No. 1 reserves its right to take legal action against any person or entity defaming its products by spreading false and baseless information that is capable of causing harm.
- 4.18 The Respondent should make its consumers aware of the nature of the product. Simply stating that they are using "secret recipes" does not inform the unwary consumers of the nature, character, method of production, properties, suitability for use and quality of products. It is denied that the products of the Respondent contain negligible amounts of Trans Fatty Acids and Cholesterol per serving and the Respondent is put on strict proof herewith.

B. IN THE MATTER OF COMPLAINANT NO. 2 (M/s Quick Food Industries (Pvt) Ltd):

- 4.19 The Complainant No. 2 submitted its rejoinder/comments to the Respondent's reply via its legal counsel vide letter dated 6th of October, 2016, which is summarized in the following paragraphs.
- 4.20 The reply stated that the Respondents have failed to provide any substantive evidence regarding their product that it is actually "100% Non-Processed" frozen food. Moreover, there is no evidence which substantiates the claim that the Respondent's product is any different, both health wise and quality wise, as compared to any competitors product in the market. It is also pertinent to note that the Respondent has failed to provide any evidence or research with regards to its internal research, development department and one of a kind logistics. Furthermore, the Respondent has not shown a single certification or quality management technique or method in order to substantiate its claim.
- 4.21 That the Respondent has admitted that they have in fact misused international research papers for their own personal benefit and as a result, when the advertising campaign is taken as a whole, it is clearly evident that the same has resulted in tarnishing the image of the Complainant No. 2 and the frozen food market as a whole. The same is evident from the fact that the Respondent has removed the video from their social media page after coming to know about the initiation of proceedings in this Hon'ble Commission.
- 4.22 That the Respondents have failed to objectify the statement that they use best quality, farm fresh products to produce their products. Furthermore, they have failed to provide any research and testing on their own product to substantiate their claim of being "Non-Processed".
- 4.23 That by showing the Complainant No. 2's packaging in their advertisement the Respondent has deliberately tarnished its image in the market in order to fraudulently boost its own sales.

- 4.24 The studies presented by the Respondent entail pork (pig) based products such as ham, salami, bacon, sausages (pork sausages), hot dogs, corned beef, beef jerky as well as canned meat and meat based sauces. It is pertinent to note that it is in fact the Respondent who produces beef based products whereas none of these products listed above relate to the Complainant No. 2 as it produces pre-dominantly chicken based products, dairy products and vegetable products.
- 4.25 That it is a doubt of the Complainant No. 2 that the factory shown by the Respondent in the advertisement is not situated in Pakistan.
- 4.26 The Respondents are put on strict proof to provide evidence that their food products are “un-paralleled” and “free of any preservatives, food colors, and chemicals or salting”.
- 4.27 The Respondent is put on strict proof to provide evidence that it has carried out substantial research for two years. Furthermore, with regards to the quality of the Respondent’s products, it has not provided any evidence or certifications from any authority.
- 4.28 It is submitted that the Respondent is taking a very stringent and restrictive definition of producing “Non-Processed Frozen Foods”. Its entire marketing strategy and unique selling proposition is based on a single article published by WHO which only limits the definition of non-processed to salting, curing, fermentation, smoking or any such process to enhance flavor or improve preservation of food. It is pertinent to note that the act of freezing food is itself a process to “improve preservation” as cooked or semi cooked food products last longer in a frozen state. It is pertinent to note that claiming to have a shelf life of six months is not substantive but in fact absurd proof of being non-processed or their product being any different from any competitor in the market.
- 4.29 It is submitted that the Respondent has deliberately shown the Complainant No. 2’s packaging and linked the same with its claims of Cancer producing products.
- 4.30 In addition to the various kiosks at the festivals and the social media advertisement, the Respondent had put up various billboards across the city, including a billboard on main Shahrah-e-Faisal Road, which is one of the largest and busiest roads in the city. Furthermore, it is submitted that it cannot be considered a coincidence that the Respondent carried out various fraudulent advertisement techniques just before the month of Ramadan, which is the highest yielding period for the sales of frozen food.
- 4.31 That the instant case is quite similar to the case of Proctor and Gamble Pakistan (Pvt) Limited, 2010, where the Respondents claimed that their shampoo renders hair “100% dandruff free” (similar to the instant Respondent’s claim of being 100% non-processed), whereby this Hon’ble Commission ordered that the Respondents;

“shall not use the phrase ‘100% dandruff free’ in their advertisement of the Product, unless it is properly substantiated by a cogent evidence providing it a reasonable basis for such claim.”

- 4.32 That the fourth article shown by the Respondents in the advertisement with the headline “**Processed Meat and Cancer – What You Need To Know**”, extracted from Cancer Research UK, goes on to state; “Both of these types of meat are distinct from ‘white’

meats, like fresh chicken or turkey, and fish (neither of which appear to increase your risk of Cancer)". This is important to note as the Complainant No. 2's products are white meat based products. Furthermore, the statement that the Respondents removed the video from their social media page clearly shows the admission that the Respondents were well aware that their advertisement was in blatant violation of Section 10 of the Act.

- 4.33 The Respondent's products are also fried in oil which is a clear indication that they are just misleading the consumers into believing that their products are any different from that of the Complainant No. 2's products. The instructions on their packaging read "*preheat clean cooking oil in a wok for deep frying at 180 degrees C, fry ChikCheez for 3-4 minutes*" Therefore, the claim that the Respondents target market includes specific groups who have expressed an interest in healthy eating is henceforth denied. In addition to the aforementioned, it is pertinent to note that it is not scientifically possible for non-processed food to be prepared in 3-4 minutes. Thus, semi cooked foods are classified as being processed.
- 4.34 The Complainant No. 2 respects healthy competition as it is beneficial for the market as a whole. However, the Complainant No. 2 reserves its right to take legal action against any person or entity defaming its products by spreading false and baseless information that is capable of causing harm.
- 4.35 The Respondent should make its consumers aware of the nature of the product. Simply stating that they are using "secret recipes" does not inform the unwary consumers of the nature, character, method of production, properties, suitability for use and quality of products. It is denied that the products of the Respondents contain negligible amounts of Trans Fatty Acids and Cholesterol per serving and the Respondent is put on strict proof herewith.

5. ANALYSIS:

- 5.1 In the following paragraphs the facts and evidences submitted by the Complainants and the Respondent are analyzed and discussed in order to reach a conclusion regarding the issues at hand, i.e.:
- I. Whether the Respondent's conduct pertains to *false or 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; and/or
 - II. Whether the Respondent's 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*, which is also *capable of harming the business interests* of the Complainants, in violation of Section 10 (1) of the Act, in terms of Section 10 (2) (a) and (b) of the Act;

I. **Whether the Respondent's conduct pertains to false or 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;**

5.2 In order to establish whether the Respondent has misleadingly compared the Complainants' products with its own in the process of advertising, it is important to analyze the elements of the Respondent's advertisement published on Facebook, as referred in Para. No. 2.8 above.

5.3 The Respondent's advertisement was published on its Facebook page on May 24, 2016. The advertisement is 2 minutes and 11 seconds in length and the storyboard revolves around how the Respondent came about the idea of launching its own frozen food products and the unique selling proposition of its products. The script of the advertisement reads:

VOICEOVER: Kids of today have very different food likes and habits than 10 years back. Nuggets, burgers and fast food are every child's delicacy. And yet such snacks are every mother's apprehension.

{Showing various kids having snacks and fast food in different settings}

WHY?

{Image and voiceover}

VOICEOVER: Because with so much controversy, can a mom really trust the ingredients of various products in the market.

{Showing blurred packagings of Mon Salwa, K&N's and Menu Foods}

VOICEOVER: Various documentaries have covered the fast food industry. The latest report from the World Health Organization puts it as simple as it gets – PROCESSED MEAT CAUSES CANCER.

{Showing dire conditions of the poultry industry and articles from WHO, etc.}

MR. KAMRAN: "Hi. I'm Kamran and this is my wife Tabassum. We faced the same dilemma with our grandchildren. They loved fast food and we believed it was not healthy. Hence, me and my wife have come up with the idea of Non-Processed Frozen Food."

{Showing Mr. Kamran and his wife (Mrs. Tabassum) explaining the origin of Kitchen Stone}

MR. KAMRAN: "We researched a lot. Found what are the best and most healthy ingredients. We tried different recipes. Mixed best quality ingredients with them. We were not satisfied with the freshness of vegetables so we went to the farms at the countryside and took the sourcing for best vegetables. And ofcourse we had to do our research for the healthiest sourcing of chicken and meat. Better than what we would buy for our homes. And then there is the freezing and transport. We wanted to make sure our products taste fresh till they reach consumers."

{Showing Mr. Kamran and Mrs. Tabassum researching in different settings}

MR. KAMRAN: "We have test marketed this for 2 years. We are finicky about our production process as well. Everything is as automated as it can get. Our employees are health checked and we follow the same levels of hygiene during preparation as in pharma industry."

{Showing different stages of production at an automated manufacturing plant}

MR. KAMRAN: "The smiles on our grandchildren's faces when eating our non-processed frozen products have just made everything worth it."

{Showing a kid having a snack and giving a thumbs up}

MR. KAMRAN: "Try our products if you are concerned about your children's health."

{Showing Mr. Kamran and Mrs. Tabassum recommending Kitchen Stone}

[Product line of Kitchen Stone is displayed]

[THE END]

- 5.4 Before commenting on the script and delivery of the advertisement, it is important to consider that The Honorable Commission has held in its order In the Matter of M/s China Mobile Pak Limited and M/s Pakistan Telecom Mobile Limited¹ (hereinafter referred to as the 'Zong Order') that the term consumer, as referred to in Section 10 of the Act, has to be construed in the widest sense so as to refer to the 'ordinary consumer,' which is distinct from the concept of the 'ordinary prudent man,' as evolved under Contract Law.
- 5.5 Furthermore, in U.S. the Federal Trade Commission (FTC) simply protects the public as a whole, some of whom may not be very attentive to advertising claims, and may not dissect such claims with alacrity².
- 5.6 It was observed in the case of Standard Oil of Calif, 84 F.T.C 1401 (1974)³ at pg. 1471 by the FTC that:

"[i]n evaluating representations, we are required to look at the complete advertisement and formulate our opinions on them on the basis of the net general impression conveyed by them and not on isolated excerpts."

Subsequently this view was upheld by the U.S. Court of Appeals in the matter of Beneficial Corp v. FTC, 542 F. 2d 611 (3rd Circuit, 1976)⁴ in the following terms:

"The tendency of the advertising to deceive must be judged by viewing it as a whole, without emphasizing isolated words or phrases apart from their context." (at pg. 617)

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

² Pitofsky, Beyond Nader: Consumer Protection and the Regulation of Advertising, 90 Harv. L. Rev, 661, 675 (1977) ("The standard for 'deception' has been the 'average' or 'ordinary' person in the audience addressed by the ad, taking into account that many who may be misled are unsophisticated and unwary"). See also Doherty, Clifford, Steers & Shenfield, Inc. v. F.T.C., 392 F.2d 921, 926 (6th Cir. 1968)

³ <http://caselaw.findlaw.com/us-supreme-court/449/232.html>

⁴ <http://openjurist.org/542/f2d/611/beneficial-corporation-v-federal-trade-commission>

- 5.7 In light of Para No. 5.3 to 5.6 above, it is clear that the Respondent has attempted to portray its product as the healthiest alternative to all the processed frozen food products in the market. Furthermore, the articles cited in the advertisement, when viewed as a whole give an impression that all processed food in the market is a cause of Cancer whereas only the Respondent's products are free of risk of Cancer.
- 5.8 It is pertinent to mention here that the articles cited in the advertisement actually concludes that consuming processed (red) meat can be a cause of increase in *rate of risk* of Cancer by a certain percentage and not the increase in the disease itself.
- 5.9 Furthermore, the Respondent has showcased the Complainants' product packaging while the voiceover in the advertisement is narrating "*Because with so much controversy, can a mom really trust the ingredients of various products in the market*". Such a statement being narrated while showcasing the competitors' products gives an overall impression that the competitors' products are unfit and unhealthy for consumption, without any reasonable basis. It is important to consider here that such an advertisement is marketed to an ordinary and unwary consumer, who has a tendency of making a buying decision subjective to the influence of the Respondent's advertisement content. An unwary consumer will most likely not go through the efforts of researching on the articles cited and therefore will start making an influenced decision subject to the Respondent's marketing efforts.
- 5.10 Moreover, the Respondent has narrated in the advertisement that after extensive research of two years it has come to finalize the recipes and ingredients used in its products which are free from any kind of processing. However, the Respondent failed to provide any evidence regarding its products being non-processed.
- 5.11 For the purposes of determining whether the Respondent's products were non-processed, the Respondent was called to the office of the Commission on 1st of December, 2016, to explain its manufacturing process flow. During the meeting the Respondent once again submitted that it is a producer of non-processed frozen food with a distribution of its products currently only in Hyderabad, Thatta and Jamshoro. It submitted that it has a staff of 16 persons in total other than a management team of one General Manager and four other members apart from Mr. Kamran himself and Mrs. Tabassum Kamran.
- 5.12 It was submitted that Kitchen Stone does not use any industrial food machines but rather uses mixers and choppers. Furthermore, it was submitted that none of its products contained chemicals, additives, preservatives, artificial flavors, taste enhancers and/or food colors. Therefore, its products are free from any processed ingredient and the claim of 100% non-processed is justified.
- 5.13 However, it was observed that the Respondent's submissions in the meeting were contrary to its advertisement aired on Facebook. The advertisement displayed a state-of-the-art manufacturing plant with automated systems and a detail check and balance system with a hygiene level equivalent to that of a pharma industry. The Respondent was therefore confronted about the factual position of its manufacturing plant to which the Respondent submitted that the advertisement has been created using exaggerated visual content which was contrary to the reality. The Respondent submitted that its plant

is actually located in a 1000 yrds. bungalow at Amir Khusroo Road, Karachi, out of which 500yrds. is in the use of production.

- 5.14 A simple process flow and factory map of the Respondent was also submitted which showed that the factory was based upon 6 work rooms or work stations. Each room was allocated to inventories, preparation, production, kitchen and packaging, respectively. A simplistic view of the process flow and factory map is attached annexed - B).
- 5.15 The Respondent also submitted its financial statement, from 01 Jan, 2016 till 25 Nov, 2016, to show the scale of its business operations. The statement clearly showed that Kitchen Stone is a very small scale business that had a closing balance of only Rs. 189,515/-. This further endorsed the submission of the Respondent that its operations were in no way comparable to the operations of the Complainants or other competitors in the market.
- 5.16 The Respondent further submitted that its advertisement was only posted on its Facebook page and no television or other marketing media was utilized for its promotion. The advertisement was viewed by 4000 people only.
- 5.17 Moreover, the advertisement was taken down by the Respondent on July 4, 2016, after the Complainants launched the complaints with the Commission and the complaints were forwarded to the Respondent for comments. Therefore, it was requested by the Respondent that the advertisement be pardoned. Later on an apology note was also posted by the Respondent on its page on November 11, 2016, in explanation of the advertisement, which can be seen hereunder for reference:



← → ↻ Secure | https://www.facebook.com/KitchenStoneFoods/?ref=page_internal



Kitchen Stone
@KitchenStoneFoods

Home
About
Shop



Kitchen Stone
11 November 2016 · 🌐

Apology

This refers to our advertisement that was posted in Kitchen Stone facebook page dated May 24 until July 4, 2016. We have come to know that some may have concluded that we referred to the competitors products in the advertisement as carcinogenic (cancer causing) which was not our intention. We hereby render our unconditional apology if any such reference was made and completely withdraw from it as it is not the case.

👍 Like 💬 Comment

Ayoub Raza and Sakhi Korejo like this. Top comments ▾

 **Alam Jaan Brohi Best**
27 November 2016 at 20:10

- 5.18 It is pertinent to mention here that the advertisement shared by the Respondent on its Facebook page⁵ induced the Complainants to lodge a formal complaint with the Commission.
- 5.19 Therefore, in view of the analysis drawn above, it is evident that the advertisement posted by the Respondent on its Facebook page draws direct misleading comparison by showing the Complainants' packaging with articles citing risks and causes of Cancer along with misleading narrations without proper substantiation, in violation of Section 10 (1) of the Act in terms of Section 10 (2) (c) of the Act.
- 5.20 However, the Respondent submitted that it had not been aware of any special law prevalent in Pakistan that pertained to regulating deceptive marketing practices. Therefore, the Respondent requested for a lenient view to be taken in the matter on grounds of being unwary of the prevalent law and demonstrated its will to comply with Section 10 of the Act.

II. **Whether the Respondent's 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, which is also capable of harming the business interests of the Complainants, in violation of Section 10 (1) of the Act, in terms of Section 10 (2) (a) and (b) of the Act;**

- 5.21 In order to analyze whether the Respondent has engaged in distribution of false and misleading information to consumers that is also capable of harming the business interest of Complainants, it is necessary to analyze in detail all the marketing media and tools used by the Respondent for the promotion of its products. In the Respondents' case, these media include product packaging, advertisement, digital social media and website, outdoor advertising and local events. Each of these media and tools is analyzed individually in the following paragraphs.
- 5.22 Firstly, the packaging used by Kitchen Stone is analyzed to determine whether any false or misleading information has been used by the Respondent on its packaging. The packaging used for the purposes of analysis was provided by the Respondent, sourced from Agha's Supermarket Karachi. The Respondent's packaging is majorly designed in shades of orange, brown and green colors.
- 5.23 The face of the packaging consists of a distinctive Kitchen Stone Logo on the top left corner with a tagline '*Lets Eat Healthy*' written under it. The face of the packaging contains the name of the product in bold visible letters. In this case the Enquiry Committee has taken a sample packaging of '*ChikCheez-Chicken Cheese Balls*' for analysis. The face of packaging also displays the image of the final cooked product in a platter under the products name. The face of the packaging is reproduced hereunder:

⁵ <https://www.facebook.com/KitchenStoneFoods/>



- 5.24 Other than the product name and image, the face of the packaging contains a circular stamp in gold color reading '100% NON-PROCESSED MEAT'. An orange label runs at the bottom of the face of packaging which has the following text written on it:

"Kitchen Stone is for families looking for healthier options for ready to cook food. We use 100% non-processed meat, almost farm fresh vegetables, no food color, taste enhancer or any form of preservatives."

- 5.25 The Respondent had provided the definition of processing by WHO to justify its '100% NON-PROCESSED' claim, which reads:

"Processed meat refers to meat that has been transformed through salting, curing, fermentation, smoking, or other processes to enhance, flavor or improve preservation."

However, according to the same definition, any process to enhance or flavor meat is also termed as processing.

- 5.26 Similarly, according to the Punjab Pure Food Rules, 2011, processing is defined as:

"“processed”, in relation to any food, means having undergone any treatment resulting in a substantial change in the original state of the food, but shall include dividing, parting, severing, boning, mincing, skinning, paring, peeling, grinding, cutting, cleaning, trimming, deep-freezing, freezing, chilling, milling, husking, packing or unpacking, and “unprocessed” shall be construed accordingly;”

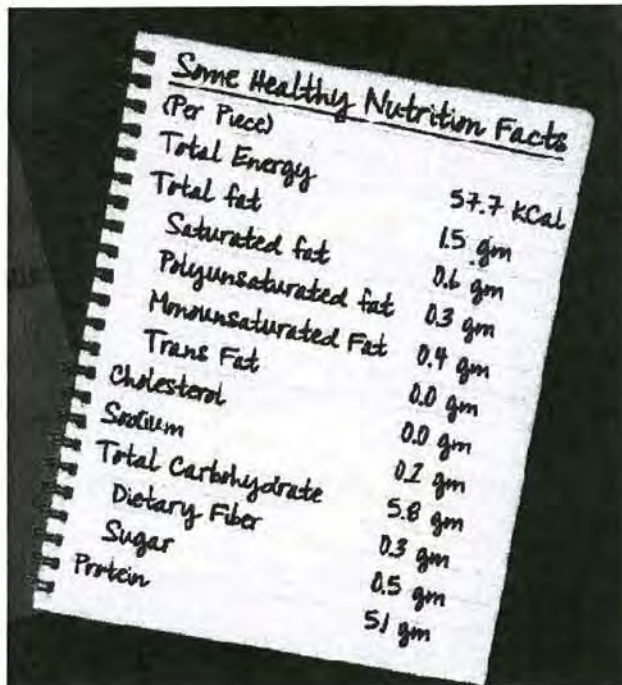
In terms of the definition above, the Respondent is engaged in a variety of activities termed under processing. Therefore, the Respondent has failed to justify the use of words '100% NON-PROCESSED' for its products.

- 5.27 Furthermore, the Respondent, in its submissions, has failed to provide any substantiation to the claims of not using food color, taste enhancer or any form of preservatives.
- 5.28 The back of the product's packaging contains the name of the product aligned centrally on the top followed by ingredients and health nutrition facts under it. Contact information is then provided at the bottom of the page in an orange label with a Halal logo at the bottom left corner. The back of the packaging is reproduced hereunder for reference:



- 5.29 It is pertinent to mention here that the Complainants had raised their concerns over the health nutrition facts of the product 'ChikCheez-Chicken Cheese Balls', which are reproduced hereunder for reference:

[Handwritten signature]



Some Healthy Nutrition Facts (Per Piece)	
Total Energy	57.7 kcal
Total fat	1.5 gm
Saturated fat	0.6 gm
Polyunsaturated fat	0.3 gm
Monounsaturated Fat	0.4 gm
Trans Fat	0.0 gm
Cholesterol	0.0 gm
Sodium	0.2 gm
Total Carbohydrate	5.8 gm
Dietary Fiber	0.3 gm
Sugar	0.5 gm
Protein	5.1 gm

- 5.30 The Complainants had submitted that it was not logically possible for the product *ChikCheez* to have 0.0 gm of Cholesterol per piece since the product contained fair amount of cheese, among other ingredients, in its recipe.
- 5.31 According to the Respondent, its product contained less than 42 milligrams of cholesterol per serving which means it has negligible cholesterol and therefore the values had been rounded off to the nearest decimal place. A standard pack of *ChikCheez* has a net weight of 300gm with a 12 piece serving.
- 5.32 In reference to the list of ingredients of each product provided by the Respondent during correspondence, the Enquiry Committee, upon analysis found out that in a batch of 3kg of chicken mince, 600gm of Cheddar Cheese was used to produce a finished product. Which means that a 3kg batch approximately produces 10 packs of 300gm *ChikCheez*. Similarly, each pack of 300gm *ChikCheez* then contains approximately 60gm of Cheddar Cheese. Therefore, each piece in a standard *ChikCheez* pack contains 5gm of cheese.

$$\begin{aligned} \{3000\text{gm of Chicken}/300\text{gm nt. wt. per pack} &= 10 \text{ packs of } 300\text{gm ChikCheez Balls}\} \\ \{600\text{gm of Cheese}/10 \text{ packs} &= 60\text{gm of Cheese per pack}\} \\ \{60\text{gm of Cheese}/12\text{pieces} &= 5\text{gm of Cheese per piece}\} \end{aligned}$$

- 5.33 According to estimated nutrition facts⁶, a 100gm of Cheddar Cheese contains 105mg of Cholesterol. Therefore, each piece in *ChikCheez* contains approximately 0.005gm of cholesterol, which when rounded off to one decimal place equals to 0.0gm.

$$\{100\text{gms of cheese} = 105\text{mg of Cholesterol}\}$$

⁶ <http://nutritiondata.self.com/facts/dairy-and-egg-products/8/2>



Cholesterol when converted into grams will therefore be;

$$\{105\text{mg} = 0.105\text{gm}\}$$

As we require to calculate amount of Cholesterol in 5gms of Cheese;

$$\{100\text{gm of Cheese} = 0.105\text{gm of Cholesterol}\}$$

Therefore,

$$\{5\text{gm of Cheese} = 0.105 * 5 / 100\}$$
$$\{\text{Cholesterol per piece of ChickCheez Balls} = 0.0052 \text{ gm}\}$$

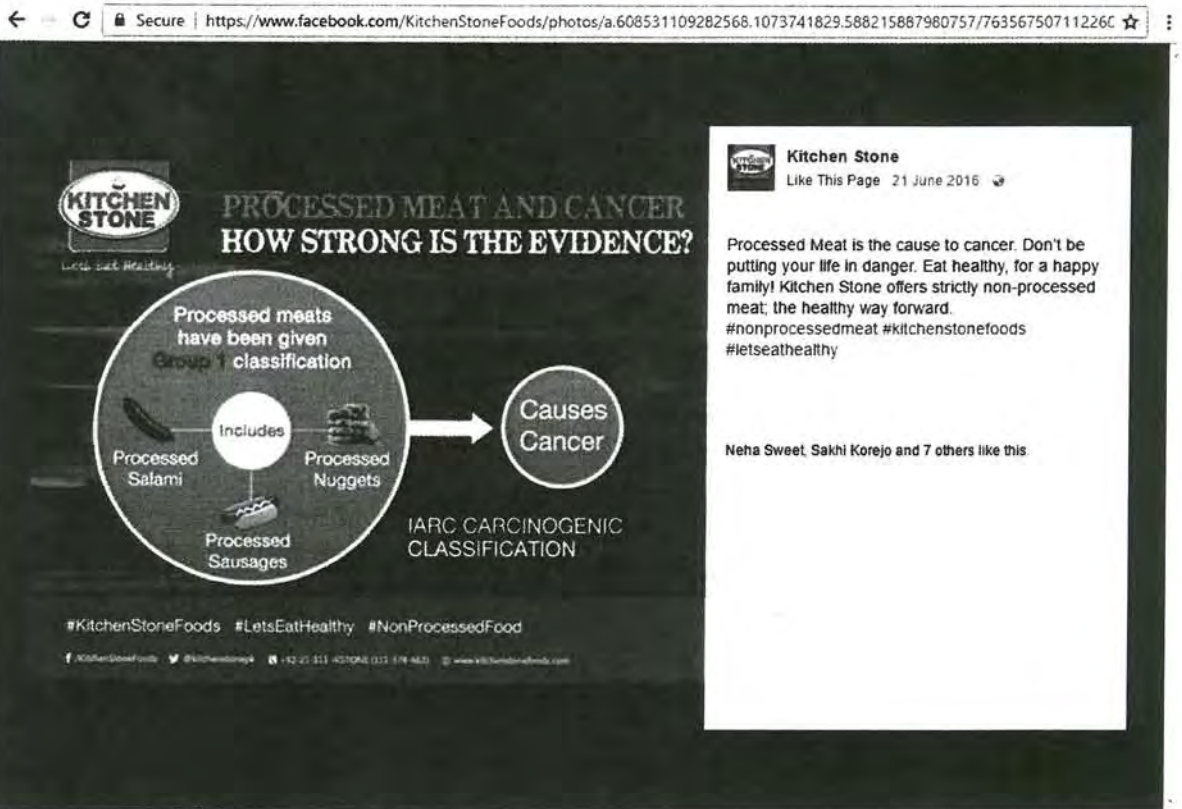
- 5.34 Therefore, the allegations of misrepresentation raised by the Complainants against the Respondent regarding nutritional facts on its packaging are misplaced and the values shown on the packaging are true in light of the available information.
- 5.35 Apart from the nutrition labelling on the Respondent's packaging, the Complainants had also raised concerns over the 'Secret Recipe' of the Respondent. The Complainants had alleged that non-disclosure of the recipe of the Respondent's products on its packaging can be termed as a misleading action under Section 10 of the Act.
- 5.36 However, it is not unheard of in the global food industry that certain undertakings have extensively guarded their secret recipe over the years. These secret recipes had over time become their unique selling propositions. Kentucky Fried Chicken (KFC) is one of these famously known brands that have extensively guarded its *Secret Recipe of 11 Herbs & Spices*⁷. The secret recipe of KFC was developed by Colonel Sanders, the founder of KFC, in 1930's. The secret recipe was unknown to anybody other than Col. Sanders himself for years. However, due to the size of its operations, the secret recipe has now been shared with a handful of people who are bound by strict confidentiality contracts.
- 5.37 Therefore, non-disclosure of the recipe by the Respondent or terming its recipe as a 'secret recipe' does not pertain to deceptive marketing practices under Section 10 of the Act as long as food compliant with the prevalent food laws is being provided to the consumers. However, for the purposes of this enquiry, the Respondent has shared its recipe charts for each product with the Enquiry Committee. The Enquiry Committee has purposefully kept the recipe charts confidential in the matter.
- 5.38 Moving on to the advertisement posted by the Respondent on its Facebook page, a detail analysis of the advertisement has been given in Para No. 5.3 to 5.19 above. In light of the referred paragraphs, the advertisement of the Respondent, *prima facie*, appears to distribute false and misleading information to consumers in violation of Section 10 (2) (b) of the Act.
- 5.39 However, the Respondent had immediately taken down the advertisement from its Facebook page when concerns were raised by the Complainants in order to rectify an ignorant mistake. As discussed already, the Respondent had also added an apology note to clarify any misconceptions caused by it.

⁷ <http://www.kfc-arabia.com/english/our-story/the-secret-recipe>

5.40 With regards to the marketing by the Respondent on the digital social media, the Respondent posted a series of health facts and other posts on its Facebook page to educate the viewers on how processed foods cause Cancer. However, in the process, the Respondent tried to promote itself as the healthier non-processed alternative to all the processed food products available in the market. The fact that the Respondent distributes information related to processed food and Cancer is not false or misleading as long as there is ample evidence to substantiate the same. However, trying to promote itself as a non-processed food item is misleading and unjustified. The Respondent may be producing home-made styled frozen products, but these products cannot be called non-processed according to the definitions by the relevant bodies. Some of the Facebook posts are displayed hereunder for reference:



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5.41 Similarly, a campaign was launched by the Respondent on its website⁸ and Facebook page called 'Soch Ke Khao' under which various health facts were marketed by the Respondent. The campaign was directed to changing the consumer buying behavior by promoting the concept of switching to Kitchen Stone products which are healthier than the processed food available in the market. Sample images of the campaign can be viewed hereunder for reference:



⁸ <http://www.kitchenstonefoods.com/>

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This is Sarah
Sarah gives her kids nuggets everyday
Nuggets contain processed meat which may causes cancer*
Sarah is not smart
Don't be like Sarah!
Switch to



KITCHEN STONE
ChikCheez
 Chicken Cheese Balls

* <http://m.cancer.org/cancer/news/news/world-health-organization-says-processed-meat-causes-cancer>
100% unprocessed real meat · No preservatives · No color · No nitrate · No food gum

KITCHEN STONE
Soch Ke Khao

The journal BMC Medicine found that in 10 European countries, the heaviest consumers of processed meat were 44% more likely to die prematurely from any cause than those who ate very little



#KitchenStoneFoods #LetsEatHealthy #NonProcessedFood
f /KitchenStoneFoods @kitchenstonepk +92-21-111-KSTONE (111-578-663) www.kitchenstonefoods.com

KITCHEN STONE
Soch Ke Khao

Did you know that 7 out of every 10 foods that touch your mouth are altered with chemical ingredients

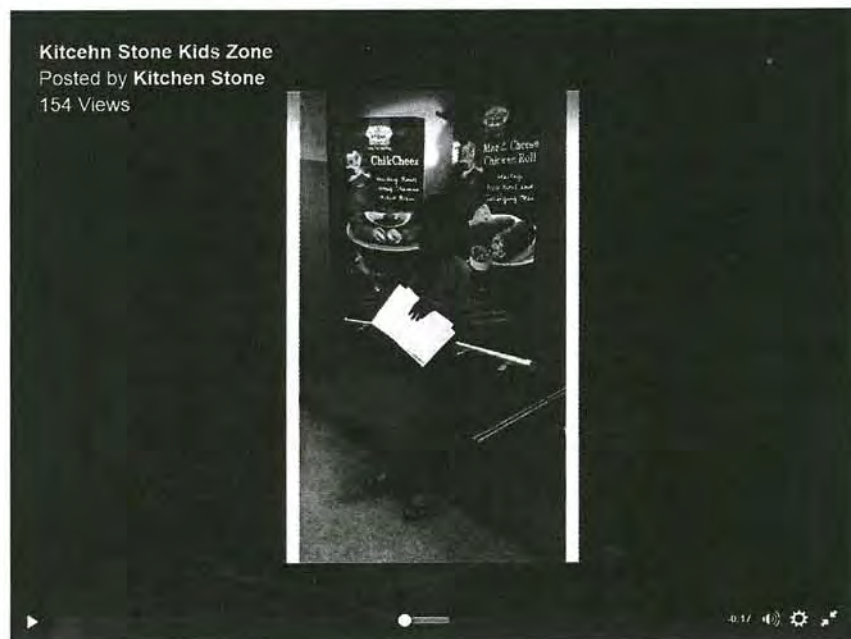
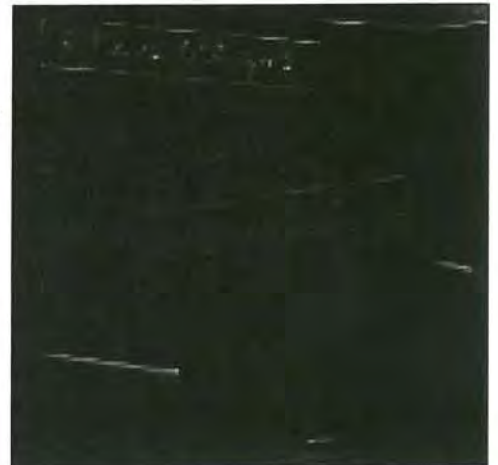



#KitchenStoneFoods #LetsEatHealthy #NonProcessedFood
f /KitchenStoneFoods @kitchenstonepk +92-21-111-KSTONE (111-578-663) www.kitchenstonefoods.com

- 5.42 Therefore, the digital and social media promotions by the Respondent are, *prima facie*, in violation of Section 10 of the Act.
- 5.43 Furthermore, contrary to the submissions of the Respondent in its reply and the meeting, the Enquiry Committee upon analysis found out that the Respondent had held a star studded launching ceremony of its brand in Karachi where it had extensively promoted

itself as a non-processed frozen food brand⁹. Moreover, it had invited various renowned persons from the entertainment industry to attract attention to its event. Food stalls for Kitchen Stone were installed at the event for attendees to taste test its various products. Reviews of renowned figures were taken at the event after the taste test and uploaded to its Facebook page for promotion. Some of these figures particularly stressed upon Kitchen Stone being non-processed in their reviews¹⁰.

- 5.44 The Respondent had also engaged in promoting its brand in various educational institutes in Karachi¹¹. All of the promotional material displayed at these events contained the slogan '100% NON-PROCESSED MEAT'. Some of these are reproduced hereunder for reference whereas the rest can be accessed on the Respondent's Facebook page:



⁹<https://www.facebook.com/KitchenStoneFoods/videos/vb.588215887980757/754459424689735/?type=2&theater>

¹⁰https://www.facebook.com/pg/KitchenStoneFoods/videos/?ref=page_internal

¹¹https://www.facebook.com/pg/KitchenStoneFoods/videos/?ref=page_internal

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- 5.45 The Respondent had also installed a billboard on Shahrah-e-Faisal in Karachi for the promotion of its brand which is one of the hotspots for outdoor advertising in Karachi due to the high number of commuters on that avenue on a daily basis. The billboard also marketed that the Respondent is the first non-processed frozen food company in Pakistan. The billboard is reproduced hereunder for reference:



- 5.46 Therefore, in view of the analysis drawn above, it is evident that the advertisement posted by the Respondent on its Facebook page, product packaging, outdoor advertising tactics used and local marketing events hosted, claiming the Respondent's products to be '*100% Non-Processed*' or '*Pakistan's first non-processed frozen food*', amount to distribution of false and misleading information to the consumers related to character, method of production, properties, suitability for use and quality of goods, which is also capable of harming the business interests of the Complainants and other undertakings, in violation of Section 10 (1) of the Act in terms of Section 10 (2) (a) and (b) of the Act.
- 5.47 However, the Respondent has demonstrated its will to rectify its marketing content in accordance with the Section 10 of the Act.

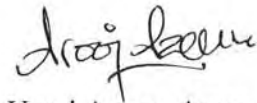
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6. CONCLUSION / RECOMMENDATIONS:

- 6.1 In light of the facts, it appears that the advertisement posted by the Respondent on its Facebook page draws direct misleading comparison by showcasing the Complainants' product packaging with articles citing risks and causes of Cancer, along with misleading narrations without proper substantiation, *prima facie*, in violation of Section 10 (1) of the Act in terms of Section 10 (2) (c) of the Act.
- 6.2 Similarly, it is evident that the advertisement posted by the Respondent on its Facebook page, product packaging, outdoor advertising tactics used and local marketing events hosted, claiming the Respondent's products to be '**100% Non-Processed**' or '**Pakistan's first non-processed frozen food**', without any substantive proof, not only amounts to distributing false and misleading information to consumers related to character, method of production, properties, suitability for use and quality of goods but is also capable of harming the business interests of the Complainants and other undertakings within the same business, *prima facie*, in violation of Section 10 (1) of the Act in terms of Section 10 (2) (a) and (b) of the Act
- 6.3 However, in light of the financial statement of the Respondent and its scale of operations, it is clear that the Respondent's business operations are in no way comparable to that of the Complainants. The Respondent's revenue, as per its financial statement, also shows clearly that the losses suffered by the Complainants, due to the marketing efforts of the Respondent, do not on fair grounds amount to Rs. 200 million each.
- 6.4 The deceptive marketing practices have a direct impact on the public at large. It is in the interest of the general public that the undertakings should be stopped to market their products in an unfair and misleading manner and be encouraged to resort to the marketing practices which are transparent and give consumers true and correct information. Therefore, in light of the findings of this Enquiry Report, it is recommended that the Commission may consider initiating proceedings against the Respondent, i.e., M/s Kitchen Stone under Section 30 of the Act.



Marryum Pervaiz
Deputy Director
Enquiry Officer



Urooj Azeem Awan
Management Executive
Enquiry Officer