

COMPETITION COMMISSION OF PAKISTAN

ENQUIRY REPORT

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

**IN THE MATTER OF COMPLAINT FILED AGAINST
FRUIT JUICE MANUFACTURERS
FOR
DECEPTIVE MARKETING PRACTICES**

BY

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Dated: June 02, 2017



1. BACKGROUND

- 1.1. Mr. Sheikh Muhammad Umer Izhar (hereinafter referred to as the “**Complainant**”) filed a complaint through his counsel, M/s SAS & Associates, with the Competition Commission of Pakistan (hereinafter referred to as the “**Commission**”), against various ready-to-drink fruit juice manufacturers, including but not limited to “Shezan”, “Nestle” etc. (hereinafter collectively referred to as the “**Respondents**”) for alleged violation of Section 10 of the Competition Act, 2010 (the “**Act**”) i.e. Deceptive Marketing Practices.
- 1.2. The Complainant alleged in the complaint that the Respondents are involved in distribution of false and misleading information while marketing their products with high sounded claims like “100% pure”, “Rich in vitamins”, “No added sugar, colors or preservatives” and “100% Pure and Natural”, which not only lacks reasonable basis, related to character, properties, suitability of use, method of production or quality of their goods but also capable of harming the business interests of other undertakings engaged in the similar business. It has been further alleged that the conduct of the Respondents, *prima facie*, amounts to deceptive marketing practices in terms of Section 10 of the Act.
- 1.3. Keeping in view the above, the Commission initiated an enquiry in accordance with sub-Section (2) of Section 37 of the Act by appointing Mr. Faiz ur Rehman, Assistant Director (OFT), Mr. Riaz Hussain, Assistant Director (OFT), and Ms. Urooj Azeem Awan, Management Executive (OFT), as the enquiry officers (hereinafter referred to as the “**Enquiry Committee**”). The Enquiry Committee was directed to conduct the enquiry on the issues raised within the complaint and submit an enquiry report by giving findings and recommendations, *inter alia*, on the following:
 - I. *Whether the Respondents are disseminating false/misleading information to the consumers that is lacking a reasonable basis related to character, properties, suitability for use, method of production or quality of goods, in violation of Section 10 (2) (b) of the Act?*
 - II. *Whether the conduct of the Respondents is capable of harming the business interests of other undertakings in violation of Section 10 (2) (a) of the Act?*

2. THE COMPLAINT:

- 2.1 This section summarizes the contentions raised in the complaint:
- 2.2 The Complainant alleged that the Respondents repeatedly claim that the juices they manufacture are 100% pure & natural without any addition of sugar, color & preservatives.

It was further alleged that the Respondents were deceiving the consumers by false/misleading information encouraging the consumers to buy their products.

- 2.3 It was also alleged by the Complainant that the products which are 100% pure do not require any ingredients that have been displayed on the product packagings of fruit beverages available in the market. Therefore, it was reiterated that the Respondents are making baseless, unsubstantiated, deceptive & misleading claims to the public at large. The Complainant also shared the packagings of brands "Nestle", by Nestle' Pakistan Limited (hereinafter as 'NPL'), and "Shezan", by Shezan International Limited (hereinafter as 'SIL'), alongwith the complaint with the aforementioned claims displayed across their packages.

3. RESEARCH CONDUCTED BY ENQUIRY OFFICERS:

- 3.1 For the purposes of conducting a fair and thorough enquiry into the issues raised by the Complainant, the Enquiry Committee examined the market for other fruit juice manufacturers engaged in the conduct of writing the aforementioned claims on the packagings of their fruit juice products.
- 3.2 Upon examination, the Enquiry Committee found the following undertakings are also engaged in the manufacturing of fruit juices which are being sold in the market under the similar claims as illustrated by the Complainant:
- A. *TOPLX* by M/s A.F. International (hereinafter as 'AFI')
 - B. *Country Juices* by M/s Māaher Food Industries (Pvt) Limited (hereinafter as 'MFI')
 - C. *Fruitien* by M/s CitroPak Limited (hereinafter as 'CPL')
 - D. *Fruit Farm* by M/s Sunland Foods (hereinafter as 'SF')

4. SUBMISSIONS OF THE RESPONDENTS AND REJOINDER:

- 4.1 Therefore, keeping in view the foregoing, the Enquiry Committee confronted all the aforementioned Respondents and called upon them to furnish necessary explanation to justify their claims. The submissions of all of the Respondents are summarized below:

A. IN THE MATTER OF M/S NESTLE' PAKISTAN LIMITED (NPL)

- 4.2 Comments submitted by the General Counsel of the NPL are summarized in the following paragraphs.
- 4.3 NPL submitted that none of their *Nestle' Nesfruta* or *Nestle' Fruita Vitals* product range labels contained any of the following claims as referred to in the complaint, such as:

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- 100% pure
 - Rich in vitamins
 - 100% pure and natural
 - No added sugar color and preservatives
 - Each sip is full of health
 - Full of nutrition
 - Natural anti-depressant and anti-cancer properties
- 4.4 They further submitted that the entire product range contained claims that are based on scientific research according to applicable regulatory norms.
- 4.5 In response to the comments furnished by NPL, the Complainant stated that:
- NPL has been using unsubstantiated claims, for instance “100% Orange Juice”, on their packaging as shared along with the complaint.

B. IN THE MATTER OF M/S SHEZAN INTERNATIONAL LIMITED (SIL)

- 4.6 The para wise comments sent on behalf of SIL through their counsel M/s Cornelius, Lane & Mufti Advocates are discussed in the following paragraphs.
- 4.7 Commission through its letter dated 4th January, 2017 had sought information from SIL regarding issues which are the subject matter of your purported enquiry. SIL furnished their reply through their letter dated 16th of January, 2017, wherein they submitted that they had considered the matter resolved in a prior correspondence with the Commission on similar issues, since in particular no dissatisfaction was shown by the Commission.
- 4.8 As regards the Complaint under consideration, it was stated that it did not satisfy the requirements set forth in Section 37 (2) of the Act. It was also argued that the complaint was not made by an undertaking and it was neither based on sufficient facts nor substantiated by *prima facie* evidence which calls for an enquiry under the circumstances.
- 4.9 Furthermore, the Respondent submitted that it is a highly reputed manufacturer of juices and other food items. The Respondent, therefore, denied the allegations made within the complaint submitting that its products conform with applicable standards.
- 4.10 The Complainant was asked to submit his rejoinder to the reply furnished by SIL. The rejoinder submitted by the Complainant is summarized hereunder:
- The Complainant reserved his right to make any comment on the requirements set forth in Section 37 (2). However, the Act manifests that the Commission is empowered to initiate enquiry/action on its own and without any complaint.
 - It was submitted that the Complainant evidently falls under the ambit of the definition of “undertaking” as provided under Section 2, sub-Section (q) of the Act.

- Further it was submitted that the Complainant had already provided the packaging of the grapes and apple juices wherein they clearly claimed to be “All Pure” and “100% Pure”, which amounts to sufficient evidence to initiate the enquiry and issue a Show Cause Notice under the Act.
- It is to put the record straight that the Complainant is a businessman and is involved in distribution of various products, including but not limited to the juices in question, hence, falls under the definition of “*undertaking*” provided in the Act. Moreover by virtue of purchasing Shezan’s product an undeniable relationship has been established between the Complainant and Shezan. As communicated by the Commission the Act prohibits deceptive marketing practices, in other words any advertising of promotional material that misrepresents the nature, characteristic, qualities or geographic origins of goods, services or commercial activities. The Office of Fair Trade of Commission is specifically in place to oversee consumer protection issues under Section 10 of the Act. It is further mentioned that Office of Fair Trade enjoys all the powers to enforce the provisions of the Act in the deceptive marketing practice cases which is clearly the case being made out by the Complainant.

C. IN THE MATTER OF M/S A.F. INTERNATIONAL (AFI)

- 4.11 The para wise comments submitted by the Respondent are reproduced in the following paragraphs.
- 4.12 It was submitted that the notice of conducting of enquiry in this case is bad in law and contrary to facts. That the first letter titled ‘provision for information’ was issued to the Respondent on 4th of January, 2017, which was properly and explicitly responded with evidence vide letter dated 4th of February, 2017.
- 4.13 It was submitted that the complaint dated 7th of March, 2017, was specifically lodged against ‘Shezan’ and ‘Nestle’. The Complainant is therefore not a consumer of their products.
- 4.14 It was further submitted that their product ‘Topix’ is not distributing any false or misleading information that is harming the business interests of another undertaking.
- 4.15 Moreover, it was submitted that it uses mango fruit pulps and sugar for making juice products and no artificial or synthetic pulp and sweetener is used during production. Therefore, it claims to manufacture pure fruit juice. Copy of purchased receipt of mango fruit pulps was also furnished as evidence.

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D. IN THE MATTER OF M/S MAAHER FOOD INDUSTRIES (PVT) LIMITED (MFI)

- 4.16 It was submitted by MFI that they are a law abiding company and always make their utmost efforts to follow all the applicable laws. It clarified that its packaging does not contain the absolute words 100% pure fruits as mentioned in the complaint.
- 4.17 It was further submitted that instead, "From 100% Pure Fruits" is mentioned on the packaging of its nectar brand which means pure fruits are used to manufacture the nectar beverages in its product line.

E. IN THE MATTER OF M/S CITROPAK LIMITED (CPL)

- 4.18 It was submitted by CPL vide its letter dated 5th of May, 2017, that it had not been in violation of Section 10 of the Act.
- 4.19 Laboratory tests pertaining to authenticity report of 100% pure juices and no preservative and sweetener reports were submitted along with the reply conducted at Nuclear Institute for Agriculture and Biology (NIAB) and Qarshi Research International, respectively.

F. IN THE MATTER OF M/S SUNLAND FOODS (SF)

- 4.20 SF was directed to substantiate the claims on the packaging of their brand 'Fruit Farm' vide letter dated 14th of April, 2017, and vide subsequent reminders dated 27th of April, 2017, and 8th of May, 2017, but neither the communication was acknowledged nor any comments were furnished by the Respondent.

5. ANALYSIS:

- 5.1 The facts and evidence submitted by the Complainant and Respondents are analyzed and discussed hereunder in order to reach a conclusion regarding the following issues at hand:
- I. *Whether the Respondents are disseminating false/misleading information to the consumers that is lacking a reasonable basis related to character, properties, suitability for use, method of production or quality of goods, in violation of Section 10 (2) (b) of the Act?*
- II. *Whether the conduct of the Respondents is capable of harming the business interests of other undertakings in violation of Section 10 (2) (a) of the Act?*

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- 5.2 Relevant portions of Section 10 of the Act pertaining to deceptive marketing practices are reproduced below for the ease of reference:

10. Deceptive marketing practices.— (1) *No undertaking shall enter into deceptive marketing practices*

(2) *The deceptive marketing practices shall be deemed to have been resorted to or continued if an undertaking resorts to,*

(a) *the distribution of false or misleading information that is capable of harming the business interests of another undertaking;*

(b) *the distribution of false or misleading information to consumers, including the distribution of information lacking a reasonable basis, related to the price, character, method or place of production, properties, suitability for use, or quality of goods;*

- 5.3 There are three types of fruit beverages in the market, each categorized on the basis of actual fruit juice content in it. The three categories are Juices, Nectars and Still Drinks¹. What the final product can be called is regulated by national and regional food legislation, but with some variation.
- 5.4 Juice contains only the natural ingredients contained in fruit and vegetables. The juice undergoes a mild pasteurization process before packaging to ensure that the consumers get a safe, high quality product, without any risk of unwanted micro-organisms.
- 5.5 Nectar is a fruit juice that is too thick to drink – for example, from apricots, peaches and pears. The juice, or rather the purée, must therefore be diluted with water and have sugar added to make it drinkable. The fruit juice content in nectar can vary between 25 to 99 per cent.
- 5.6 The next step on the scale for less juice content is still drinks, namely fruit drinks, with less than 25 per cent of fruit content. Some countries require that the juice content is stated on the package and others have a minimum requirement for juice content.
- 5.7 Product content and labelling of fruit juices are subject to different regulations that vary globally. There are both mandatory directives and recommendations, and other regions may have a mixture of mandatory and voluntary standards.
- 5.8 Food and Drug Administration (FDA)² says beverages that purport to contain juice (fruit or vegetable juice) must declare the percentage of juice. Included are beverages that purport to contain juice by way of label statements, by pictures of fruits or vegetables on the label, or by taste and appearance causing the consumer to expect juice in the beverage. This includes

¹ <http://www.tetrapak.com/pk/findbyfood/juice-and-drinks/juice-nectar-still-drinks>

² <https://www.fda.gov/Food/GuidanceRegulation/GuidanceDocumentsRegulatoryInformation/LabelingNutrition/ucm064872.htm#Juices>

non-carbonated and carbonated beverages, full-strength (100%) juices, concentrated juices, diluted juices, and beverages that purport to contain juice but contain no juice.

- 5.9 FDA says that the percentage of juice must be on the information panel (for packages with information panels), near the top. Only the brand name, product name, logo, or universal product code may be placed above it. It further directs to use easily legible boldface print or type that distinctly contrasts with the other printed or graphic material.
- 5.10 Similarly it says that juices made from concentrate must be labeled with terms such as “from concentrate,” or “reconstituted” as part of the name wherever it appears on the label. An exception is that, in the ingredient statement, the juice is declared as “concentrated ____ juice and water” or “water and concentrated ____ juice,” as appropriate.
- 5.11 It further states that if an added ingredient does not dilute the juice or, for an expressed juice, change its volume, one may continue to call it 100% juice but the percent juice statement must identify the added ingredient e.g., “100% juice with added preservative.”
- 5.12 If ascorbic acid is added at levels consistent with fortification of the juice, a declaration as part of the percent juice statement would constitute a nutrient content claim which would trigger compliance with more claims including the required accompanying information. If it were added at the level used as a preservative, then a statement such as 100% juice with preservative could be used. In this case it would be listed in the ingredient statement as a preservative.
- 5.13 Moreover, as required by the Fruit Juices and Fruit Nectar England Regulations 2003 and Fruit Juices and Fruit Nectar Scotland Regulations 2003 the term “fruit juice” is used to describe a product that is directly obtained from the fruit and therefore, is not reconstituted with water and does not contain additives³. A juice made by reconstituting concentrate has the Reserved Description⁴ of “Fruit Juice from Concentrate”⁵. Comparable rules apply in all EU member states in their respective languages.
- 5.14 Therefore the term "nectar" is generally accepted as the common or usual name in the U.S. and in international trade for a diluted juice beverage that contains fruit juice or puree, water and may contain sweeteners.

³ Fruits can be transported to the packing station where the juice is extracted and sold as fruit juice. Alternatively, the juice may be extracted in the country of origin and transported under refrigerated conditions to the country of sale, where it is often mildly pasteurised during packing to enhance preservation. This juice is usually sold in chilled cabinets in shops.

⁴ Reserved descriptions are controlled sales names. Products may be sold under those names only if they meet the prescribed compositional and labelling requirements of the Regulations.

⁵ Fruit juice from concentrate is juice which has been concentrated (by evaporation under reduced pressure to reduce its volume) and returned to its original state by the addition of water. Flavours lost during the process have to be restored. Pulp and cells recovered during the process of producing the fruit juice in question or fruit juice of the same kind may also be restored to the juice.



5.15 The Punjab Pure Food Rules, 2007⁶ defines “Fruit Juice” as;

“(1) shall be unfermented and un-concentrated liquids expressed from sound, ripe and fresh of one or more species of fruits of best quality. It shall be attractive in 217 appearances, free from objectionable flavors and any kind of deterioration. It shall be free from artificial colouring matter, flavoring agents, mineral acids, adulterant and preservatives other than permitted preservatives.”

5.16 According to the labeling requirements of the Punjab Pure Food Rules, 2007 “(5) There shall be written on the label of a package containing such juice prepared from concentrate, the words “(A) juice made from concentrate”, “Reconstituted (A) juice”, or “(A) juice made from concentrated (A) juice” as the case may be, without intervening written, printed, graphic matter and any other device in equal lettering.”

5.17 Consumers are concerned about chemical additives, colours and preservatives and they want more natural food. Research demonstrating an increased connection between food and health has also led to an interest in products without additives, and with health benefits and an organic association. This can also be seen by the rapidly growing Detox movement, which aims to detoxify and purify the body. Natural products such as fruit, vegetables and juices do the job here. At present, ‘natural’ is a powerful force in the food and beverage industries and many producers are riding the wave and using the word in the marketing of consumer products. However, the meaning of natural is not clearly defined though the basic essence of a natural product is to exist as found in nature or to have undergone minimal processing. Therefore, although the health trend and the juice market are beneficial to each other, deception has found its way through it as well.

5.18 It is pertinent to note here that it was held in the *Commission's ZONG Order* dated September 29, 2009, that “the approach of the Commission is to evaluate complete advertisements and an opinion regarding deception is to be formulated on the basis of the net general impression conveyed by them and not on isolated excerpts.”

5.19 Similarly, it is well established in the *Commission's ZONG Order* dated September 29, 2009 and *Paints Order* dated January 13, 2012, that it is not a must to establish intent pertaining to the product in question that it “may or may not be deliberate or conscious in order for it to qualify as misleading.”

5.20 On the basis of information presented above, i.e., the conduct of the Respondents in light of submissions made by the Complainant, it will be determined whether the Respondents have been in violation of Section 10 of the Act.

⁶ <http://www.punjabcode.punjab.gov.pk/public/dr/PUNJAB%20PURE%20FOOD%20RULES,%202011.doc.pdf>

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I. WHETHER THE RESPONDENTS ARE DISSEMINATING FALSE/MISLEADING INFORMATION TO THE CONSUMERS THAT IS LACKING A REASONABLE BASIS RELATED TO CHARACTER, PROPERTIES, SUITABILITY FOR USE, METHOD OF PRODUCTION OR QUALITY OF GOODS, IN VIOLATION OF SECTION 10 (2) (B) OF THE ACT?

5.21 In order to analyze the product packagings of the Respondents under Section 10 (2) (b) of the Act, each packaging is analyzed individually hereunder:

A. IN THE MATTER OF M/S NESTLE' PAKISTAN LIMITED (NPL)

5.22 The packaging of NPL's Orange Fruit Juice, submitted by the Complainant alongwith the complaint, is analyzed hereunder:



5.23 It is clear from the front face of the packaging depicted above that the face of the Nestlé' Orange Fruit Juice brand claims to be "100% Orange Juice". It is to be considered here that NPL had submitted in its reply that none of its Nestlé' Nesfruta or Nestlé' Fruita Vitals product range labels contained claims such as referred to in the complaint.

5.24 Since NPL had denied use of any such claim on its packaging, therefore, it did not submit any substantiation of its fruit juice products in its replies. However, NPL submitted packagings of a range of its fruit juices under its two brands Nestlé' Nesfruta and Nestlé'

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Fruita Vitals. It was observed by the Enquiry Committee that the range of packagings did not include packaging of Nestle' Orange Juice.

- 5.25 Therefore, Nestle' Orange Juice under the umbrella of Nestle' Fruita Vitals had remained unjustified during the course of enquiry and, *prima facie*, violates Section 10 of the Act.
- 5.26 However, other fruit juice packagings of NPL displayed concentration of juice contained within the product on the face of the packaging. A sample of Chaunsa Fruit Juice is reproduced hereunder for reference:



- 5.27 Wherein the face of the packaging reads:

*"Mango Fruit Nectar
Made From Concentrate
With 30% Juice Content
And Natural Sweetener"*

- 5.28 It is observed here that the Nestle' Fruita Vitals brand of NPL is a Nectar brand which does not comprise of pure juices and are instead manufactured by addition of water,

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preservatives and other contents permitted by law to reconstitute juice from a concentrate to a drinkable form.

- 5.29 However, relevant and sufficient disclosure was found to be available on the packages of all Nestle' Fruita Vital Nectars except for the packaging of Nestle' Orange Juice.
- 5.30 Similarly, its Nesfruta brand has been observed to be fruit juices from the category of Still Drinks. However, it has been observed from sample packagings of Nesfruta that they are duly labelled by the Respondent as Fruit Drinks. A sample packaging is reproduced hereunder for reference:



- 5.31 Therefore, under the analysis drawn above based on categories of juices available in the market, i.e., Juices, Nectars and Still Drinks, NPL has been found to be violating Section 10 of the Act read with Section 10 (2) (b) of the Act for, *prima facie*, distribution of false and misleading information on the packaging of its Nestle' Fruita Vitals Orange Juice for claim of "100% Orange Juice".

B. IN THE MATTER OF M/S SHEZAN INTERNATIONAL LIMITED (SIL)

- 5.32 The packaging of SIL's Apple and Grape Fruit Juices is reproduced hereunder as a sample of analysis for ease of reference and brevity:

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- 5.33 It can clearly be seen from the packaging of Apple Juice by SIL above that it claims its Apple Juice is “100% Apple Juice”, whereas below the same claim is written on the packaging that it is “MADE FROM CONCENTRATE”.
- 5.34 The intention of the Respondent is clear from the face of the packaging that it has attempted to mislead its consumers by portraying its juice as 100% pure Apple juice.
- 5.35 Similarly, on the top of the packaging just below the brand name of the juice, i.e., All Pure, it has been written that the juice contains “No Sugar, Preservative or Color Added”. However, based on inference and common logic it can easily be deduced that to reconstitute a juice from concentrate certain components may have been added to the concentrate to bring it to a drinkable form. These components may include, but not limited to, purified water, sugar, preservatives, stabilisers, etc.
- 5.36 Moreover, the ingredients label on the side of the packaging reads that it has just been manufactured by using “Apple Juice”. However, the label on the front of the packaging saying *Made From Concentrate* is not justified by the ingredients label.

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- 5.37 Therefore, from the packaging of the Respondent, it is not possible to categorize the product of the Respondent within Juice, Nectars or Still Drinks categories.
- 5.38 The packaging of Grape Juice is also reproduced hereunder for reference:



- 5.39 The face of the Grape Nectar packaging of the Respondent contains claim of being “*Rich in Vitamin C*”. Similarly, the ingredients label on the side of the packaging contains “*Grape Juice, Cane Sugar, Citric Acid, CMC (E-466), Ascorbic Acid, Natural Flavor and Preservative.*” as ingredients of the nectar.
- 5.40 However, the claim on the face of the packaging reading “*Rich in Vitamin C*” is not justified by the ingredients on the side of the packaging. The claim gives the impression that the nectar has been fortified by Vitamin C to increase its health benefits. However, the same is not the case in actual and the Respondent has also failed to substantiate the same in its replies.

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5.41 The packaging of Strawberry Nectar by the Respondent is also reproduced hereunder for reference:



5.42 The analysis drawn for the Grape Nectar packaging of the Respondent, referred to in Para No. 5.38 to 5.40 above, is reiterated for the Strawberry Nectar packaging, for the sake of brevity.

5.43 Therefore, in light of analysis of packagings of SIL drawn above, it is clear that the Respondent has, *prima facie*, violated Section 10 (1) read with Section 10 (2) (b) of the Act by labelling its fruit juice brand All Pure with claims of "100% Juice" and "Rich in Vitamin C".

C. IN THE MATTER OF M/S A.F. INTERNATIONAL (AFI)

5.44 The packaging of AFI's Mango Fruit Juice is reproduced hereunder for analysis:

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- 5.45 The packaging above contains the claim “Mango 100%” and “Pure Fruit Juice” on the face which represents that the juice is 100% pure and no artificial or foreign component has been added to the product.
- 5.46 However, the Respondent submitted in its reply that it purchases Mango pulp from the market to manufacture its juice. This clearly indicates that the juice is prepared from a concentrate by adding other components to it to bring it into a drinkable form.
- 5.47 This is an indication of the fact that the product is not a Juice and instead may be categorized under either Nectars or Still Drinks, based upon the concentration of actual juice content within the beverage.

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- 5.48 Furthermore, the ingredients label of the packaging shows that the beverage contains “Purified Water, Mango Pulp, Sugar, Vitamin C, Sodium Citrate, Artificial Colors and Flavors.”
- 5.49 The use of all these ingredient is also an evidnece of the fact that the beverage has been manufactured from several other ingredients including artificial colors and flavors. Therefore, AFI’s Mango fruit beverage *Topix* can not be categorized as a juice.
- 5.50 In light of the above, AFI is found in violation of Section 10 (1) read with Section 10 (2) (b) of the Act, by disseminating misleading information through the use of words “*Mango 100%*” and “*Pure Fruit Juice*” on the packaging of its product *Topix*.

D. IN THE MATTER OF M/S MAAHER FOOD INDUSTRIES (PVT) LIMITED (MFI)

- 5.51 A sample packaging of MFI’s Country Guava Nectar is reproduced hereunder from its webpage⁷ for analysis:



- 5.52 The packaging of all of Country Nectars contain the claim “*From 100% Pure Fruit*” on the face of the packaging, as can be seen above. The Respondent has submitted in its reply that

⁷ <http://www.countryjuices.com/nectars.php>

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it had not been violating Section 10 of the Act since its nectars were sourced from 100% fruits.

- 5.53 However, the claim on the packaging gives an impression that the beverage is 100% pure fruits without the addition of any unnatural ingredients. It is pertinent to consider that an ordinary consumer does not possess ordinary diligence to differentiate between Juices, Nectars and Still Drinks. Furthermore, the beverages industry in Paksitan has put in negligible efforts to aware the consumer regarding the types of fruit beverages and what health impacts they may have on an ordinary consumer.
- 5.54 Since the Respondent denied use of any deceptive claim, it failed to substantiate the claim of *from 100% fruits* on its product packaging. Therefore, the claim, when taken as a whole alongwith the graphical representations on the packaging, depicts that the beverage has been manufactured from 100% fruits.
- 5.55 It is also pertinent to mention that a prior packaging of the Respondent of Apple flavored nectar was available in the market containing the claim "100% Clear Apple Nectar". It was observed that during the course of enquiry the packaging of the products by the Respondent changed a few times. Moreover, despite multiple efforts, the packaging of the Respondent could not be found in the market. (The packaging of Clear Apple Nectar from the webpage of the Respondent is reproduced hereunder for reference.)



- 5.56 The Respondent was expressly directed to submit the packagings of its fruit juices and nectars, along with a list of its distributorship across Pakistan. However, despite providing

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sufficient time period, the same was not furnished by the Respondent based on reasons that did not appear to be cogent.

- 5.57 The conduct of the Respondent therefore, *prima facie*, appears malafide and the claims contained on the packaging of the beverages found on its webpage violate Section 10 (1) of the Act, in terms of Section 10 (2) (b) of the Act.

E. IN THE MATTER OF M/S CITROPAK LIMITED (CPL)

- 5.58 The packagings of a few sample products of CPL are reproduced hereunder for ease of analysis:



- 5.59 The face of packagings of both samples claim that the beverage is "100% Pure". It is also claimed on the packaging that no preservatives or sugar is added to the blends to form a drinkable juice.

- 5.60 However, the ingredient label on the packaging of Apple juice reads "Water and Apple Juice Concentrate". Based on the ingredients, it is evident that the beverage has been

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manufactured from a concentrate and therefore may or may not be a Juice, based on the concentration of pure juice in the finished product.

- 5.61 Similarly, the ingredients label on the 10 Fruits Juice depicted above reads that it contains water, wheat dextrin and pulps, concentrates and purees of the 10 fruits.
- 5.62 The Respondent, in order to substantiate the use of the claims, submitted analytical lab tests conducted by Qarshi Research International Pvt. Ltd on its products. The tests were conducted on Fruitien Orange Juice, Chaunsa Mango Nectar, Joy Mango Fruit Drink, Juinior Mango Drink. The tests showed that the juices were free from preservatives & artificial sweeteners.
- 5.63 In light of the evidence submitted it is clear that no artificial agent was added to the beverage during the process of manufacturing. However, preparation from concentrates, purees and pulps does not justify the use of "100% Pure" on the packaging of the products.
- 5.64 An ordinary consumer generally looks at the face of the packaging to judge whether the product is upto the requirements or not. However, in this case the packaging of the Respondent does not disclose that the product has been manufactured from concentrates. Therefore, the claim of 100% Pure, in the absence of relevant disclosure portrays that the products are pure 100% juices.
- 5.65 Therefore, in light of the above, CPL is found, *prima facie*, violating Section 10 (1) of the Act in terms of Section 10 (2) (b) of the Act by using the claim of "100% Pure" on the packaging of its beverages *Fruitien*.

F. IN THE MATTER OF SUNLAND FOODS (SF)

- 5.66 The packaging of SF's fruit juice named 'Fruit Farm' is reproduced hereunder for reference:





- 5.67 The packaging of Fruit Farm Guava Juice claims that the juice is “100% Pure Guava Juice” whereas the ingredients label on the side reads that the product contains treated water, sugar, pure guava pulp, citric acid, stabilisers, vitamin C, natural Guava flavor, preservatives and color. The ingredients clearly indicate that the product has been reconstituted from a concentrate by adding water and sugar to bring back its flavor lost during dilution of pulp.
- 5.68 Furthermore, the packaging claims that the beverage is rich in Vitamin C. It is pertinent to mention that Guava has natural properties of possessing three times more Vitamin C than citrus fruits such as oranges. However, the ingredients label reads that Vitamin C has been added to the beverage. Bringing the fact into consideration that Guava already possesses three times more Vitamic C, Enquiry Committee is at a loss to understand the reason for fortifying the beverage with more Vitamin C.
- 5.69 The face of the packaging also claims that the beverage contains ‘Natural Flavors, No Artificial Colors’, as can be seen on the packaging displayed above. However, the ingredients label reads that although natural Guava flavors have been added to the beverage, the colors added do not specify if they were natural or artificial colors.
- 5.70 Another sample of Mango Juice by SF, under the umbrella of Fruit Farm, was acquired by the Enquiry Committee for the purposes of analysis and similar claims were found on its packaging as well. An image of the packaging is reproduced hereunder for reference and the analysis for Guava Juice is reiterated for the sake of brevity:

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- 5.71 Since SF has been at a loss to substantiate the claims made on its packaging during the course of the enquiry, the available information indicates a, *prima facie*, violation of Section 10 (1) of the Act in terms of Section 10 (2) (b) of the Act by the use of claims such as “100% Pure Guava Juice”, “100% Pure Mango Juice”, “Rich in Vitamin C” and “Natural Flavors, No Artificial Colors”.
- 5.72 A similar case was investigated by the Commission against M/s Al-Hilal Industries (Pvt) Limited⁸. The Commission took notice of adverts of ‘Fresher Juice’ by the undertaking both in print and electronic media claiming to be ‘100 % pure juice.’ A perusal of the back of the bottle, however, seemingly had the effect of contradicting the claim of ‘100 % pure’ as the ingredients include Sucrose and Acidulant. Under the ingredients section, it was also stated “contains no preservatives, artificial colours, and flavors.”
- 5.73 Based on the analysis of packagings of all the Respondents presented above, it is evident that the Respondents have been found violating Section 10 (2) (b) of the Act by disseminating false and misleading claims to the consumers related to character, properties, suitability for use, method of production and quality of products.

⁸ http://www.cc.gov.pk/images/Downloads/fresher_juice_20_06_2012.pdf

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II. WHETHER THE CONDUCT OF THE RESPONDENTS IS CAPABLE OF HARMING THE BUSINESS INTEREST OF OTHER UNDERTAKINGS IN VIOLATION OF SECTION 10 (2) (A) OF THE ACT;

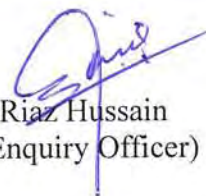
- 5.74 As per the analysis presented in Para No. 5.1 to 5.73 of this report, the Respondents are, *prima facie*, violating Section 10 of the Act by distributing false and misleading information to the general public. Similarly, where there is a notion of harm caused to the general public at large through deceptive marketing practices, there is a possibility of harm being caused to business interests of other undertakings engaged in similar business within the same industry.
- 5.75 Therefore, in view of the above, the Respondents are also found distributing false and misleading information that is capable of harming the business interests of other undertakings, *prima facie*, in violation of Section 10 (1) of the Act, in terms of Section 10 (2) (a) of the Act.

6. CONCLUSION AND RECOMMENDATIONS

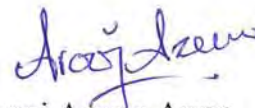
- 6.1 After careful examination of allegations levelled by the Complainant and analysing the information, documents and materials collected in the case under report, we are of the opinion that the conduct of the Respondents, i.e., marketing their fruit juice brands to consumers with respective claims such as "100% Orange Juice", "100% Apple Juice", "No Sugar, Preservative or Color Added", "Rich in Vitamin C", "Mango 100%", "Pure Fruit Juice", "From 100% Pure Fruit", "100% Clear Apple Nectar", "100% Pure", "100% Pure Guava Juice", "100% Pure Mango Juice", "Rich in Vitamin C" and "Natural Flavors, No Artificial Colors", is not justified and is in violation of Section 10 (1) of the Act read with Section 10 (2) (b) of the Act in terms of character, properties, suitability for use, method of production and quality of goods.
- 6.2 Moreover, the conduct of the Respondents is also capable of harming the business interests of other undertakings, thereby violating Section 10 (1) of the Act in terms of Section 10 (2) (a) of the Act.
- 6.3 In view of the above, it is recommended that, in the interest of the public at large, proceedings may be initiated against M/s Nestle' Pakistan Limited, M/s Shezan International Limited, M/s A.F. International, M/s Maaher Foods (Pvt) Limited, M/s CitroPak Limited and M/s Sunland Foods under provisions of Section 30 of the Act for, *prima facie*, violation of Section 10 of the Act.



Faiz ur Rehman
(Enquiry Officer)



Riaz Hussain
(Enquiry Officer)



Urooj Azeem Awan
(Enquiry Officer)