

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 RECKITT
BENCKISER AGAINST PROCTER & GAMBLE PVT. LTD FOR
DECEPTIVE MARKETING PRACTICES**

**BY
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DATED: 26th JANUARY, 2016**

A. BACKGROUND

1. A complaint was filed by M/s Reckitt Benckiser Pakistan Limited (hereinafter referred to as the **Complainant**) against Procter & Gamble Pakistan (Pvt.) Limited (hereinafter referred to as the **Respondent**) for the deceptive marketing of their product ‘Safeguard’ which *prima facie* violates Section 10 of the Competition Act, 2010 (the “**Act**”) pertaining to deceptive marketing practices.
2. The Complainant has alleged that through television commercial and outdoor marketing, the Respondent is running a false, misleading and deceptive ad campaign that claims ‘Safeguard’ to be “*Pakistan’s No. 1 Rated Anti-bacterial Soap*”.
3. The Complainant has submitted that the claim portrayed in the ad campaign attempts to depict the Respondent as the market leader of this industry. In order to substantiate its stance, the Complainant has provided data on the value share and volume share of the three major antibacterial soaps sold in the market. The data is reproduced in the following table:

Table 1: Value & Volume Share

Share within Bar Soap Category	Year-to-Date MJ ‘14	
	Value Share (%age)	Volume Share (%age)
Dettol (Reckitt Benckiser)	9.3	7.4
Safeguard (P&G)	14.3	12.6
Lifebuoy (Unilever)	21.6	24.5

Source: **AC Nielsen Bi-Monthly Report on Value and Volume Share of Bar Segment**

4. The Complainant explains that the data in the above table that has been compiled by AC Nielsen which clearly establishes the position of the Respondent’s product in the market. The complaint negates the Respondent’s claim of being the market leader by highlighting the difference in the volume of the sales between the competing brands which reflects the popularity and quality of the brand ‘Lifebuoy’ as being the highest compared to the Respondent’s brand ‘Safeguard’. Therefore, the Respondent’s claim of its product being rated No. 1 in Pakistan is neither sustainable nor justifiable.

The Complainant also refers to the criteria the Competition Commission of Pakistan (the “**Commission**”) established “In the matter of China Mobile Pakistan (Ltd) Order and the P&G Head and Shoulders order”;

“The concept of having a reasonable basis is an established concept in USA and was introduced after much deliberations and public comments through Policy Statement regarding Advertising Substantiation. It provides that, the advertiser must have had some recognizable substantiation for the claims made prior to making it in an advertisement.”

“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. The approach of the Commission is not only in line with the standard used by the Federal Trade Commission of USA but of the European Commission as well.”

The Complainant further refers to the case of Johnson and Son Pakistan (Ltd) in which a similar claim was made i.e. their product ‘Baygon’ was advertised as No. 1 in the market. It was established in the Commission’s order that *“such claims were not general assertions but were in fact quantifiable and specific, which describes specific characteristic of the product.”*

5. According to the Complainant, the Respondent is engaged in violation of Section 10 (1) in terms of sub-sections 10 (2) (a), 10 (2) (b) and 10 (2) (c) of the Act. The Complainant has sought clarification on behalf of Safeguard’s advertisement on the basis upon which P&G has made such claims.



6. Keeping in view the foregoing, the Competent Authority initiated an Enquiry in accordance with sub-section (2) of Section 37 of the Act by constituting an Enquiry Committee. The Enquiry Committee was directed to conduct the enquiry on the issues raised in the complaint and to submit the enquiry report by giving findings and recommendations *inter alia* on the following:

“Whether the allegations leveled in the complaint constitutes a prima facie violation of Section 10 of the Act?”

B. COMPLAINT

7. The Complainant M/s Reckitt Benckiser Group is a multinational consumer goods company with its headquarter located in Slough, Berkshire, England. It is a major producer of health, hygiene and home products. It was formed in 1999 by the merger of the UK-based Reckitt & Colman PLC and the Netherlands-based Benckiser NV. It has operations in approximately 60 countries and its products are sold in almost 200 countries. Reckitt Benckiser Pakistan (RB) Ltd began operations in the late '50s. Today, RB operates one manufacturing unit in the country, providing household and pharmaceutical products to a diversified consumer base. The head office is located in Karachi and the sales operations are spread across the country with four regional offices and 16 area offices.
8. The Respondent, M/s Procter & Gamble also known as P&G, is an American multinational consumer goods company headquartered in downtown Cincinnati, Ohio, United States, founded by William Procter and James Gamble. Procter & Gamble commenced operations in Pakistan in 1991.
9. In its Complaint, the Complainant has also submitted that the Commission issued a print notice in the newspaper 'Dawn', dated September 23rd, 2013 (Copy of the publication provided in Annexure-A) to the attention of all business entities in Pakistan warning them to avoid making absolute claims without any reasonable justifications in relation to their products, such as the use of: No. 1 in Pakistan/World, No. 1 selling brand, Consumers' No. 1 choice, etc. as it may result in the contravention of Section 10 of the Act. The Respondent's advertisement as aired on television channels clearly shows that the Respondent has disregarded the warnings in the notice issued by the Commission with regard to making absolute claims without any reasonable basis.
10. The Complainant hold the Respondent in violation of Section 10 (1) in terms of sub-sections 10 (2) (a), 10 (2) (b) and 10(2) (c) of the Act as the information being advertised to consumers is false, misleading and lacks reasonable basis for making such claims.
11. The Complainant has sought the following prayers in its complaint::
 - (i) Seek clarification from P&G in respect of claims mentioned in the advertisement.
 - (ii) If the Commission is not satisfied then P&G should be directed to amend its advertisement on the grounds of failure to provide substantiation or proof in terms of its claim of the product's formulation to be based on a laboratory test and secondly, failure to inform in a responsible manner and not to mislead the market by clearly communicating the basis of its claims in the advertisement.

C. RESPONDENT'S REPLY AND REJOINDER

I. RESPONDENT'S REPLY

12. The Respondent replied with para-wise comments stating that it has not distributed false or misleading information to consumers, which lacks reasonable basis in relation to the product's character, properties and quality, neither is its claim of being "Pakistan's No. 1 Antibacterial Soap" without reasonable substantiation. The Respondent brings to the attention of the Commission the fact that in making claims with regard to 'Safeguard', it has relied on a number of reliable market surveys which include AC Neilson and the GfK Group, Germany. The AC Neilson report was conducted on more than 600 consumers in April 2014 and the Brand Health Tracker (BHT) study which was conducted by the GfK, which is Germany's largest market research institute and the fourth largest market research organization in the world. It was further submitted that throughout the marketing of its product, the Respondent does not claim that 'Safeguard' is the No. 1 antibacterial soap but it is "*Pakistan's No. 1 'Rated' Anti-bacterial Soap*". The term "*Rated*" is specifically used to clarify and inform consumers about the product's brand rating position in Pakistan as concluded by the reports produced by the aforementioned organizations. The Respondent places emphasis on the fact that it has not claimed to be no. 1 in Pakistan in terms of value or volume share as described by the Complainant.

13. The Respondent refers to the case of Head and Shoulders, Procter and Gamble Order of the Commission which recognizes claims of "*No. 1*" as reasonable substantiated by the AC Nielsen report. In the said matter, the Commission stated:

"I am of the considered view that the submissions made on behalf of P&G have some merit and P&G's claim of being World's No. 1 anti-dandruff shampoo is reasonably substantiated on the basis of the report by Nielsen."

14. The Respondent explains that Complainant has concealed the fact that a disclaimer appears on the TVC as well as the print advertisement of 'Safeguard.' The disclaimer states "*based on product in use test by AC Neilson in April 2014 amongst 600+ consumers*". Therefore, the assertion in the advertisement has been qualified by the disclaimer and confined to statistical data and analysis documented by the Neilson report.

15. Furthermore, the Respondent asserts that if the advertisement is reviewed as a whole, it does not create or give an overall impression that the intention or purpose of the "*No. 1 Rated Anti-bacterial Soap*" claim is used to induce or dupe consumers into purchasing the said product to their detriment. The alleged misleading and false claim only appears at the end of the television advertisement (TVC) alongside of which legible disclaimers are also shown on the screen for the same duration. The disclaimer used in the advert states:

"Based on the product in use test by AC Nielsen in April 2014 amongst 600+ consumers"

The Respondent has also explained that the recognition of the product's name and reputation is not only limited to consumer ratings but also includes ratings given by doctors and medical practitioners who are experts in their respective fields. In the survey conducted

by the global French market research company; IPSOS Mori, who investigated attitudes and preferences of 300 doctors (pediatricians and general practitioners) across the country with regard to soap brands, discovered that 45% of doctors across Pakistan chose 'Safeguard' as their number one preferred brand of anti-bacterial soap. On the basis of this alone, the Respondent has been marketing its product as being "Doctor's No. 1 choice" in Pakistan for fourteen years.

16. The Respondent strongly maintains that it is not in violation of Section 10 of the Act as the information being advertised to consumers is neither false nor misleading and is substantiated by aforementioned surveys/report.

II. REJOINDER BY COMPLAINANT

17. Para-wise comments were filed to the Committee which consisted of the following;

- (i) None of the reports submitted by P&G Pakistan support their claim that Safeguard is "*Pakistan's No. 1 Rated Anti-bacterial Soap*". They have violated Section 10 of the Act and are harming the business interest of Reckitt Benckiser Pakistan specifically in terms of its product 'Dettol'.
- (ii) The claim promulgated by P&G is misleading as none of the surveys conducted support this claim, and secondly these surveys are not based on sales data, for example the Neilson Retail Audit in which Lifebuoy has been found as the No. 1 anti-bacterial soap.
- (iii) P&G is relying on the Brand Health Tracker data which is anomalous and this particular fact is not mentioned in the disclaimer provided by P&G in its advertisement. After evaluating the Brand Health Tracker, it was observed that the data is formulated over a base of 1,370 respondents which is a very small number compared to the population of Pakistan.
- (iv) Moreover, the Respondent in its reply has made the assertion that its claim is not based on market share but on the rating/ranking of its product. The claim that appears on the advertisement "*Pakistan's No. 1 Rated Anti-bacterial Soap*" shows the word "*Rated*" in a much smaller font than the other words of the phrase. Thus the intention of the Respondent is clearly indicative of the fact that the aim was to advertise 'Safeguard' as Pakistan's No. 1 antibacterial soap.
- (v) To further assess the advertisement, we consider the disclaimer depicted in the advertisement. It is submitted that disclaimers (regardless of their placement in the advertisement) remain in the periphery of the consumer's perception, in that; they are rarely noticed or understood. It is not sufficient to rely completely on a disclaimer for the justification of a claim. It may not be read or understood by consumers. It is further emphasized that the existence of a disclaimer cannot alter the general impression created by the advertisement. The purpose behind a disclaimer is that it ought to provide essential information regarding the product to

consumers which may result in a change of perception. However, disclaimers are not always concentrated upon by consumers. However, even if the disclaimer were to be noticed by the consumers, the question that does arise is what is the main impression of the advertisement without the disclaimer? Is the core message of the advertisement so strong (No. 1 in Pakistan) that a disclaimer is unable to affect the first impression of the consumer?

- (vi) It is submitted that the disclaimer of this advertisement has been added in a perfunctory manner, and does not truly reflect the spirit and essence of the purpose of an actual disclaimer. The principal message of the advertisement overshadows the facts of the disclaimer.
- (vii) In view of the above submissions, it is thus submitted that the Respondent's reliance on the surveys carried out and the disclaimer in the advertisement are ill founded and the advertisement is a flagrant disregard of the provisions of the Competition Act 2010. Additionally, Reckitt Benckiser would also like to bring to the attention of the Commission that subsequent to the complaint being filed, the hoardings carrying the advertisements are no longer on display and have been removed from various locations.

D. ANALYSIS

18. As mentioned in Para 6. *ibid* the mandate of this enquiry is as follows:

“Whether the allegations leveled against the Respondent under the complaint constitutes a *prima facie* violation of Section 10 of the Act?”

19. **The Overall Net Impression of the Advertisement:** The allegation made in the complaint suggests that the claim made by the Respondent is misleading and false which lacks a reasonable basis; it is involved in false or misleading comparison of goods; and it is capable of harming the business interest of the Complainant.
20. In order to evaluate the allegations made by the Complainant, it is necessary to analyze the overall impression of the advertisement which for the ease of understanding is presented below:



21. At the analysis stage, the Committee sent the Respondent’s comments back to the Complainant for a rejoinder. Moreover, a letter dated 21st, January 2015 was sent to the Respondent asking for the copies of the relevant surveys that were the main source/basis of this particular claim. The reply contained reference of the following reports:

- **Neilson In-Market Usage Test** – in April 2014 Neilson carried out an in market usage test to validate superior performance of Safeguard’s formula and to identify consumer preference in anti-bacterial soaps. The test was conducted amongst 600+ consumers and results show that Safeguard is rated significantly better than competitive anti-bacterial soaps.
- **GFK Brand Health Tracker** – Attitude and Habits study is conducted by GFK on a quarterly basis. Compiled results from February 2013 till August 2014 show that Safeguard’s brand rating is significantly higher than the key anti-bacterial competitors.
- **IPSOS Equity Study** – the equity study is carried out to track the “equity” of its brands and their competitors. The study takes into account how consumers react to the brand; meaning – what they think or feel about the brand.
- **IPSOS Doctor’s No. 1 Choice** – a survey questionnaire based study conducted by ISPOS in 2013 which identified Doctors preference in anti-bacterial soaps among a representative sample of General Practitioners and Pediatricians. Survey results identified that Safeguard is the No. 1 Choice of Doctors in Pakistan.

22. Although robust evidence has been provided by the Respondent to substantiate its claims, the overall impact of the advertisement needs to be taken into consideration. Since the Respondent has based its claim of being No. 1 in Pakistan on ‘ratings’ instead of market share and value share, the emphasis should be on the term “*Rated*”. However, in its advertisement, the term “*Rated*” is used in a way that it remains unnoticed. It can be observed that the term “*Rated*” is typed in a smaller font as compared to the rest of the phrase. It can be perceived that the focal point of the advertisement is “*Pakistan’s No. 1*”.

Therefore, at the first sight, the consumer would only concentrate on the phrase “Pakistan’s No. 1” whereas “Rated” can easily be disregarded.

23. Furthermore, during the TVC the disclaimer remains for a very short duration and the font size is not clear enough for the reader to read and understand what has been said in the TVC. Pertaining to disclaimers, Federal Trade Commission (FTC) of USA provides clear guidelines that have to be abided by any advertiser in the process of advertising. The FTC in one of its orders provided following guidelines.

“[Defendant-Respondent], directly or through any corporation, subsidiary, division, or other device, in connection with an advertisement to promote, directly or indirectly, any extension of consumer credit, in or affecting commerce, shall not in any manner, expressly or by implication:

A. State the amount or percentage of any down payment, the number of payments or period of repayment, the amount of any payment, or the amount of any finance charge, without disclosing clearly and conspicuously all of the following terms:

13. The Consent Order defines "clearly and conspicuously" as:

A. In a print advertisement, the disclosure shall be in a type size, location, and in print that contrasts with the background against which it appears, sufficient for an ordinary consumer to notice, read, and comprehend it.

B. In an electronic medium, an audio disclosure shall be delivered in a volume and cadence sufficient for an ordinary consumer to hear and comprehend it. A video disclosure shall be of a size and shade and appear on the screen for a duration and in a location sufficient for an ordinary consumer to read and comprehend it.

C. In a television or video advertisement, an audio disclosure shall be delivered in a volume and cadence sufficient for an ordinary consumer to hear and comprehend it. A video disclosure shall be of a size and shade, and appear on the screen for a duration, and in a location, sufficient for an ordinary consumer to read and comprehend it.

D. In a radio advertisement, the disclosure shall be delivered in a volume and cadence sufficient for an ordinary consumer to hear and comprehend it.

E. In all advertisements, the disclosure shall be in understandable language and syntax. Nothing contrary to, inconsistent with, or in mitigation of the disclosure shall be used in any advertisement or promotion.”¹

24. Therefore, it is safe to say that the way the term “Rated” has been positioned in the advertisement as well as the placement of the disclaimer is in violation of the guidelines presented by FTC. This hence establishes that the advertisement has been made in a way that gives the overall impression that Safeguard is Pakistan’s No.1 anti-bacterial soap and for this substantial basis needs to be provided.

¹ <https://www.ftc.gov/system/files/documents/cases/141212rameycmpt.pdf>

25. A case of Standard Oil of Calif, 84 F.T.C 1401 (1974) at pg. 1471 by the FTC puts light on how to evaluate the overall impression and impact of an advertisement.

*"[i]n evaluating advertising representations, we are required to look at the complete advertisement and formulate our opinions on them on the basis of the net general impression conveyed by them and not on isolated excerpts."*²

26. Consequently FTC Policy Statement on Deception dated October 14, 1983 takes reference of the U.S. Court of Appeals in the matter of Beneficial Corp v. FTC, 542 F. 2d 611 (3rd Circuit. 1976), which also sustained this view 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."*³

27. Abovementioned excerpts help us determine that in case of the advertisement under investigation, it is necessary to observe that when the average consumer of the product views the advertisement, the message they receive is that Safeguard is the No.1 anti-bacterial soap in Pakistan as the term "*Rated*" is positioned in the advertisement in a way that directs the viewer to focus on Safeguard being "Pakistan's No.1 Antibacterial Soap" rather than it being "*Pakistan's No.1 'Rated' Anti-bacterial Soap*". Additionally, the term "*Rated*" along with the given disclaimer are technical concepts specifically understood and comprehended appropriately only by marketing experts and not the average consumers. Hence, the overall message given by the advertisement is that Safeguard is Pakistan's No.1 anti-bacterial soap.
28. Subsequently, keeping in view the guidelines presented by FTC regarding disclaimers and interpretation of the overall message disseminated by the advertisement infers that while viewing this advertisement the viewer is most likely to perceive Safeguard as being the No.1 antibacterial soap in its effectiveness to kill germs or as the most selling brand in its product category rather than focusing on the term "*Rated*" and perceiving it as the No.1 'rated' anti-bacterial soap while watching the advertisement material.
29. **Reasonable Basis for the Claim 'Pakistan's No. 1 Rated Anti-Bacterial Soap':** The requisite documents received by the Respondent comprised of Neilson In-Market Usage Test, GFK Brand Health Tracker, IPSOS Equity Study, IPSOS Doctor's No. 1 Choice Study which, according to the Respondent, presented the basis of their claim. In all of these tests, the product Safeguard had the highest ranking as compared to its competitors under observation. However, before we proceed to accept the findings of these studies, it is necessary to examine the relevance of these surveys and the methodology that has been employed by them to measure the hypothesis under consideration in the reports.

² https://www.ftc.gov/sites/default/files/documents/commission_decision_volumes/volume-84/ftc_volume_decision_84_july_-_december_1974pages_1401-1493.pdf

³ <http://www.fda.gov/ohrms/dockets/dockets/05p0224/05p-0224-cp00001-Exhibit-12-FTC-Policy-Statement-vol1.pdf>

30. **Neilson In-Market Usage Test** - AC Nielsen was hired by the Respondent to carry out an independent and representative study to identify preference for both Safeguard formulations (old and new) as well as their competition. Following are the main elements of the test:

- In-Market Usage Test
- Door to Door Placement and Recall
- Extended Two Weeks Usage
- Two Bar Soaps Per Consumer (115g for Safeguard, 100g for Dettol, and 115g for Lifebuoy)
- Total Base = 600+ Consumers
- Two Locations = Karachi (South) and Lahore (North) as two representative cities

The consumer sample comprises of females ranging between 24-44 years of age who are primary purchasers of the product category under observation. This test was conducted in November 2014. The process initiates with exposure to and placement of the products with the sample consumers. The consumers are requested to use the product for two weeks. At the end of the two weeks the product is recalled from the market and the questionnaire is presented to the sample consumers for a feedback. The different topics covered in the questionnaire are; Mileage/Melting, Fragrance/Scent Performance, Lather Performance Bar Characteristics, Germ Protection, Ingredients, Cleansing & Refreshing, Skin Benefit, Cleansing & Refreshing, Rinse, Value, Package, Equity, and Esteem. All these elements are then used to reflect the brand rating of the products. The sample consumers post usage are asked questions regarding performance of the products in reference to each of the aforementioned categories. The result of this questionnaire was such that Safeguard's new formula did better than all the competing range of brands engaged for the study.

31. Prior to acceptance of the best rated claims of the Respondent, it is crucial to highlight a few observations made with respect to relevance, importance, and quality of methodology of the conducted tests.

- The test takes into consideration only 600+ consumers in its sample which is a very small number for representation of the whole of Pakistan's population. To base absolute claims on the response of such a weak representation is highly objectionable.
- Similarly, the locations chosen for sample selection includes south part of Karachi and north segment of Lahore only. A claim made on the foundation of a test which has opted for only two metropolitan cities in the whole of Pakistan and moreover, has engaged only single geographical parts within those cities loses its level of reliance and cannot be accepted to represent response and perception of the users in the whole of Pakistan. It is a well-established fact that preferences and habits of individuals vary across different communities, localities, cities, regions, income classes, etc. Hence, this test demonstrates a low level of reliability.

- Furthermore, the questionnaire comprises of questions that are asked from the sample consumers after the products are used. The response received from the respondents is highly subjective as it is not based on any objective measures but mere subjective perception with respect to performance of the products in the aforementioned characteristics. To use such an indicator is irrelevant while considering the use of a product and results in deceptive marketing as the consumer while purchasing an anti-bacterial soap is searching for a soap that has an effective performance in killing bacteria rather than a soap with high brand perception and rating.

32. **GFK Brand Health Tracker** – GFK conducted a study to evaluate brand health of the same products. The brand health tracker is a tool developed to track in-market performance of brands measuring specific metrics such as Brand Awareness, Consideration, Penetration, Brand Rating, and Value Perception. It is run quarterly among 300 respondents. From February 2013 to November 2014, 3323 females were interviewed. All representative consumers were from urban areas. The sample of users are primary purchasers of the concerned product category. The research asks the respondents questions regarding the metrics, the results of which are used to evaluate the perception of the brand.

33. Safeguard ranked highest on this study as well, however, it is pertinent to note that this test also employs a very small number of sample to represent the whole of Pakistan. Furthermore, only urban areas were targeted. In addition to that, the survey is based on questions asked from the respondents who give subjective answers. As mentioned before, the metrics used in the survey barely reflect the use of the product i.e. effectiveness as an anti-bacterial soap. The survey is a brand health tracker which represents the perception of the sample consumers pertaining to the product category under scrutiny. Whereas, prior to making such major claims, it is highly necessary to consider the nature and use of the product. The product Safeguard is an ‘anti-bacterial’ soap which the consumers purchase with the aim to gain protection against harmful bacteria and diseases caused by it. Whereas this survey only reflects the performance of the marketing activities of the company. Therefore, to make an absolute claim on the basis of a weak test is objectionable.

34. **IPSOS Equity Study** – the third report presented by the Respondent was the IPSOS Equity study which aims to measure the equity of a brand i.e. how consumers react to a brand by evaluating what they think or feel about the brand. Following are the key aspects of the methodology of this study;

- Door to door interviews
- Consumer Representative Sample: Females aged between 15-64
- Conducted in June 2014
- Primary Product Consumers

Brand Equity was calculated by asking interviewees to rank the products under consideration on a 10-point scale. The questions asked were as follows;

- i. Taking into account everything that you look for in a personal cleansing products (i.e. bar soap/shower gel), how would you rate each of the brands?

- ii. Indicate how much you agree or disagree for each of the following brands of personal cleansing products (i.e. bar soap/shower gel): “This brand has a great deal of personal meaning to me.”

It is therefore appropriate to conclude that above test, again, is based on highly subjective answers and refers not to the effectiveness of its anti-bacterial performance rather reveals sheer perception of the sample consumers about the brand is not valid to support a strong claim such as “*Pakistan’s No.1 Rated Anti-bacterial Soap*”.

35. **IPSOS Doctor’s No.1 Choice Study** – finalized on 29th January, 2013, the report contained results of the interviews conducted with 300 doctors (General Practitioners & Pediatricians) from all four provinces (9 Cities) after inquiring them on following questions:

- i. What brand of soap do you prefer for face and hand washing?
 - To evaluate the performance of the product, 6 different brands (3 anti-bacterial and 3 regular soaps) were taken.
- ii. What brand of anti-bacterial soap do you prefer?
- iii. What brand of anti-bacterial soap would you recommend?

36. In response to these question, Safeguard gained the highest number of votes. However, it is necessary to repeat that the sample is not significant enough to represent the whole population. The brands chosen for the test may be selected in a way that Safeguard was expected to perform the best. It is highly likely that there are other medicated and/or anti-bacterial brands available in the market that may be preferred to Safeguard but were not included in the survey. As mentioned before, this test is also based on subjective replies of the interviewed doctors that cannot be used as a justification of an absolute claim.

37. The Respondent presented that on the basis of abovementioned survey alone, Safeguard has been marketed as being “*Doctor’s No. 1 Choice*” in Pakistan for fourteen years. It therefore binds us to state that past incorrect marketing practices cannot be used as a justification for present and/or future marketing practices and this claim does not bind us to allow the Respondent to use such an absolute claim any further.

38. In this regard, it is important to differentiate between statement being a ‘claim’ or ‘puffery’. According to Federal Trade Commission (FTC), following questions need to be examined to distinguish a puffery statement from an absolute claim;

- i. *Would a reasonable buyer be justified in relying on the claim?*
- ii. *Can the challenged statement alone be proven true or false?*

39. Addressing ‘clause ii’ first, the answer is yes. The Respondent in its reply with reference to Head and Shoulders, Procter and Gamble Order of the Commission stated that the Commission recognized claims of “No. 1” as reasonably substantiated by the AC Neilson report. In the said matter, the Commission stated:

“I am of the considered view that the submissions made on behalf of P&G have some merit and P&G’s claim of being World’s No. 1 anti-dandruff shampoo is reasonably substantiated on the basis of the report by Neilson.”⁴

40. For this purpose it is important to examine the context in which the Commission made this statement. While justifying the claim of being “World’s No.1 Anti Dandruff Shampoo”, the Respondent of the case-Proctor & Gamble-presented a report submitted by AC Nielsen according to which following conclusion was established;

“the Product had 41.7% value share and 35.7% volume share in the 56 reported markets out of the 60 total markets. The Shampoo with second highest market share was Unilever's All Clear Anti Dandruff Shampoo which had a 8.6% value share and a 9% volume share. Also, the report covers 83% of the Worlds Shampoo sales (which includes all types of shampoos including anti-dandruff shampoos) this means that 17% of the world’s shampoo sales data is not reported. This 17% includes countries that have small overall shampoo volumes (e.g. Somalia, Burundi, Belize. etc.) where Nielson does not have agencies or systems in place to collect information at a brand level. Even if we assume that the second highest selling shampoo Unilever’s “All Clear Anti Dandruff Shampoo” occupies 100% of the remaining market shares, something which is practically impossible in reality – All Clear Anti Dandruff Shampoo would have a value share of 22.6%, which is still significantly lower than Head and Shoulders value share of 41.7%. In view of the above, the Product would still be world’s highest selling anti-dandruff shampoo irrespective of the market share composition of the unreported markets.”⁵

41. In view of the above, the decision made by the Commission to accept the Respondent’s previous claim regarding its product Head & Shoulders was based on an AC Nielsen **sales report** which showed the ranking of the product while giving **quantitative numbers** regarding market share and volume share of the product category. Hence, to say that presenting any AC Nielsen report would be appropriate to make a claim is not correct whereas a quantitative report presented by AC Nielsen is acceptable for a quantitative claim. This also brings us to distinguish a statement from being mere puffery or being a claim is that a claim such as “No.1” in any category can be proved quantitatively, as shown in the example above, and to prove such an absolute claim it is necessary to provide a quantitative proof rather than reports based on highly subjective elements such as AC Nielsen and GfK reports, reflecting brand ratings, presented by the Respondent in this case.
42. Furthermore, the Complainant in this matter presented AC Nielsen reports based on sales data comprising of market share and volume shares of the antibacterial soaps and Safeguard neither held the highest market share nor did it have the highest volume share. There was also no proof submitted by the Respondent displaying superiority of their product pertaining to its anti-bacterial activity in comparison to the competing products via scientific laboratory tests. Therefore, on the basis of considering the findings of a relevant

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

⁵ <http://www.cc.gov.pk/images/Downloads/Proctor-and-Gamble-Order-Finalized.pdf>

and quantitative report presented by the Complainant, it is safe to say that the product, Safeguard, is not the no.1 anti-bacterial soap and adding the term “*Rated*” even with a disclaimer does not hold any significance to a consumer when they are looking for an anti-bacterial soap. The statement, thus, could be proven false which fulfills the first requisite of qualifying it as an absolute claim rather than it merely being a puffery statement.

43. Regarding the claim of “No. 1 in Pakistan”, the Commission in one of its earlier Orders i.e. *In the Matter of Shangrila Pvt. Ltd* has observed that;

*“While taking into account the documents, the overall net impression of the marketing campaign advertisement of Shangrila is that **“Shangrila is Pakistan’s No. 1 Tomato Ketchup,”** whereas, the actual market share of the Complainant was higher than that of the Respondent. The Complainant had a market volume share of 49.2% and value share of 50.8% whereas Respondent had the market volume share of 20.7% and value share of 20.1 % at the time of the marketing campaign. It was also noted that Respondent had made “Brand of the Year Award” the basis for authenticating its claim of being No. 1 in Pakistan. However, upon enquiry, Brands Foundation has clarified that their awards never empower the receiver to make a claim of being No.1 in Pakistan.”⁶*

44. It is also pertinent to mention that the Respondent, by relying completely on survey data that is based entirely upon **ratings** of the product is basing its “No. 1” claim on only one attribute of the product, i.e. what doctors/consumers have rated the product to be. However, there is no reliance on the market share, volume share or actual sales of the product. The claim would be far more justifiable if it was backed by the fact that Safeguard has the highest market share or highest number of sales in Pakistan.
45. As mentioned before, in case of Shangrila Pvt. Ltd, even a source such as Brand of the Year Award, an award that employs a comprehensive methodology to establish its results and is supervised by Brands Foundation of Pakistan (BFP) was not accepted as a valid defense for the claim. BFP is an independent and authoritative platform that has a legal mandate to perform several tasks which includes conducting brand audit rating. This further substantiates the reasoning that brand ratings and brand awards have very little relevance as far as the actual use and characteristics of the products are concerned and this aspect should not be used to influence consumers’ decision making process. Therefore, it can be positively concluded that to use brand ratings to represent superiority of a product is a misleading practice.
46. Now for the purpose of addressing ‘clause i’ of para 40 i.e. *would a reasonable buyer be justified in relying on the claim*, we will take two factors into consideration. It has been established above that the Respondent has made an absolute claim, such as being No.1, which is believable and quantifiable. Hence, it would be justified of the consumers to believe the claims made in the advertisement as they would expect it to be based on a reasonable justification. Moreover, the Respondent is a company of high reputation in Pakistan and has been operating in the country for over two decades. According to the

⁶ http://www.cc.gov.pk/images/Downloads/national_foods_limited_againsta_shangrila_pvt.pdf

Respondent, P&G serves nearly 5 billion consumers around the world with one of the largest and strongest portfolios of trusted, quality, leadership brands. Therefore, any information distributed by the Respondent holds value in consumers' mind and hence will be accepted by them. For this reason, there is high responsibility on the Respondent to be cautious while disseminating any kind of information regarding their products and their use.

47. Hence, the above discussion suggests that the statement used by the Respondent is a claim rather than merely being a puffery statement, necessitating the Commission to demand a reasonable and justified basis for the claim. However, so far the submissions provided by the Respondent lack validity and reliability in this regard. Therefore, discussion above suggests that the Respondent has been involved in distribution of false or misleading information to consumers via making claims that lack a reasonable basis.
48. **False or Misleading Comparison of Goods In The Process of Advertising:** Addressing the final allegation submitted by the Complainant, it is necessary to first determine whether the Respondent has indulged in comparison of goods at all? While evaluating the advertisement material, the Respondent has not directly stated that its product is superior in any way compared to its competitors' products. However, it is important to note that when the claim of being No.1 is made, it indeed infers superiority or a certain position of an object (anti-bacterial soap in this case) compared to other competing objects. The claim of being No.1 will never be used if there is no competition in the field (market in this case). Therefore, it would be justifiable to accept that the Respondent by using the claim of being No.1 has in fact engaged in comparison of goods in the process of advertising its product.
49. However, it is to be noted that the practice of comparing competing goods in the process of advertising is not prohibited. What is deemed unlawful is that the assessments made should not have false or misleading inferences. Which in the case of Safeguard, based on the unreliable sources (subjective brand rating reports) adopted by the Respondent, has proven to be false and/or misleading.
50. In light of the above discussion and findings of the enquiry report, it can therefore be determined that the claims made by the Respondent are false and misleading. The Respondent has also distributed false and misleading information while comparing 'Safeguard' to its competing products and both these elements have the ability to influence consumers' decision making process while choosing between different alternatives at the time of purchase. This deviation in decision making based on a false/misleading claim is, hence, also capable of harming the business interests of other undertakings.

E. CONCLUSION & RECOMMENDATIONS

51. Based on the discussion above, the Enquiry Committee is of the opinion that the Respondent's use of the claim "*Pakistan's No.1 Rated Anti-bacterial Soap*" *prima facie* amounts to a violation of Section 10(1) of the Act, within the meaning and scope of Section 10(2)(a), 10(2)(b) and 10(2)(c).

52. The deceptive marketing practices discussed in this enquiry report have a direct impact on the public at large. Especially when the product has the ability to influence the decisions of consumers pertaining to their health and hygiene, every player in the market has the responsibility to take necessary measures to ensure that no misleading information is distributed to the consumers as these products may have an impact on their health. In addition to this, it has also been observed that the marketing activities of such products increase in seasons prone to quick spread of diseases. During this time the consumers are also taking all necessary precautions to avoid any such ailments. Hence, distribution of false or misleading information by any market player of any magnitude would have a high impact on decisions made by the consumers as a consequence of high sensitivity towards such information during aforementioned vulnerable circumstances.
53. It is also necessary to mention here that the Commission in the past has published notices and warnings in the newspapers aimed at market players in reference to making claims such as Pakistan's No.1, world's No.1, etc., without any substantial justification. Consequently, negligence should not be dealt with leniency if any firm is found to have been engaged in such casual and unintentional or intended deceptive marketing practices.
54. This therefore helps us conclude that it is in the interest of the general public that the Respondent discontinues advertising its product in an unfair and misleading manner. The Respondent is encouraged to resort to an advertising practice that is transparent and gives consumers a clear impression of what it has to offer.
55. The Enquiry Committee recommends that in view of the *prima facie* violation of Section 10 of the Act, the Commission initiate proceedings against Procter & Gamble Pakistan (Private) Limited under Section 30 of the Act.

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(OFT)

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Management Executive
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