

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
M/S ATZAN NATURAL PRODUCTS AND OTHERS**

BY

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Amin Akbar & Mehmoona Allauddin

February 11, 2025

1. BACKGROUND

- 1.1 M/s Shahujee Herbal Pharma (the 'Complainant'), filed a complaint with the Competition Commission of Pakistan (the 'Commission') dated June 06, 2023, against M/s. Atzan Natural Products (Respondent No. 1), M/s. HerBBeck Nutraceuticals (Respondent No. 2), M/s. Muslim Herbal and Nutraceuticals (Respondent No. 3), M/s. Vital Mark Private Limited (Respondent No. 4), M/s. S-Asia Oriental Pharma (Respondent No. 5), M/s. Izfaar Nutraceuticals Industries (Respondent No. 6), M/s. Animal Life Care (Respondent No. 7) M/s. Hi-Vet Nutraceuticals Pharma (Respondent No. 8) and M/s. Blessco International (Respondent No. 9) collectively referred as (the Respondents), for alleged violation of Section 10 of the Competition Act, 2010 (the 'Act'), which prohibits deceptive marketing practices.
- 1.2 It was alleged in the complaint that the Respondents are using the registered and distinctive trademark "COLCOREX" of Complainant, hence distorting competition in the market. The Complainant believes that by doing so, the Respondents have the ability to affect consumer buying and has distorted healthy competition in the market.
- 1.3 Based on the preliminary fact-finding, the enquiry was initiated dated February 21, 2024 in accordance with sub section (2) of Section 37 of the Act by appointing Mr. Amin Akbar, Assistant Director (OFT) and Ms. Ayesha Batool, Research Analyst as enquiry officers (collectively the 'Enquiry Officers'/ 'Enquiry Committee'). Ms. Ayesha Batool took her Ex-Pakistan leave, and hence, the Enquiry Committee was reconstituted, and Ms. Mehmoona Allauddin, Management Executive (OFT), was appointed as the new inquiry officer (collectively the "Enquiry Committee").
- 1.4 The Enquiry Committee was directed to conduct the enquiry on the issues raised in the complaint, and to submit their enquiry report by giving their findings and recommendations, *inter alia*, on the following:
- i. *Whether the conduct of the Respondents' is capable of harming the business interest of other undertakings in, prima facie, violation of Section 10 (2)(a) of the Act?*
 - ii. *The Respondents are violating Section 10 (1) of the Act, in terms of Section 10 (2) (d) of the Act, which prohibits fraudulent use of another's trademark, firm name, or product labeling or packaging; and/or*
 - iii. *Whether there is a spillover effect of the conduct of the Respondents?*

2. THE COMPLAINANT

- 2.1 The Complainant stated that, it is carrying on a reputable business of manufacturing and selling of Veterinary herbal medicine since 1999. At the time of inception the Complainant invented and adopted the word "Colcorex" as Brand name of his product of Stomach problems of animals and has been continuously using the same brand name.

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- 2.2 The Complainant stated that it has also created a distinctive trademark "COLCOREX" to distinguish his high quality products and has been continuously using and advertising the said trademark. The Complainant has registered the said Trademark with Intellectual Property Organization of Pakistan (IPO) under the Trademark Ordinance, 2001 with Reg. No. 465002, dated 31/07/2017 in class 5 in respect of Veterinary preparation.
- 2.3 The Complainant also enlisted this product under brand name COLCOREX in Drug Regulatory Authority of Pakistan. Enlistment No. 012101121795. It has adopted a unique packaging (unit carton and label) design which has become the identity of COLCOREX The packaging, has distinctive color patterns and labeling which helps the Complainant's consumers to identify the authenticity of this medicine.
- 2.4 The Complainant mentioned that upon application for certification of the Copyrights for Artistic Work entitled COLCOREX, the IPO granted a certificate of registration of Copyright bearing No (19561-Copr Dated 31-03-2009 and 36910-Copr Dated 08-06-2018).
- 2.5 The Complainant mentioned that the Respondent No.1 (Manufacturer of natural Veterinary medicine) is using the Complainant's trade mark "COLCOREX" for similar goods (Syrup for Colic Relief for Veterinary use). Respondent No.1 has obtained Form - 7 (Provisional certificate for enlistment of product) by suppression of true facts in DRAP (False undertaking in DRAP that this product is not registered anywhere). Respondent No. 1 is using the similar trade mark and trade dress as that of the Complainant. Comparison between the packaging of the Complainant and the Respondent No. 1 reveals major similarities and is highly likely to deceive and cause confusion in the minds of Doctor, Pharmacist and consumers. The Respondent No. 1 have been involved in unauthorized use of the Complainant 's trademark and product labeling including color of packaging, font and style of text which appears to be, prima facie in violation of section 10 (2)(d) of the Act.
- 2.6 The Complainant mentioned that the Respondent No.2 (Manufacturer of natural Veterinary medicine) is manufacturing three products with the brand name "COLCOREX C", "TM-CALCOREX" And "CALCOJEX". All three marks are similar and identical to the Complainant Registered Trademark. These marks are similar in overall structures and also has phonetic similarity with the Complainant's Registered Trademark. This unauthorized usage of a confusingly similar trademark has created a likelihood of confusion among consumers and poses a direct threat to the complainant business and reputation. This confusion can lead to a loss of market share for the complainant's business, erosion of brand value, and potential harm to consumers who may unknowingly purchase products that are not of the same quality or safety standards as the complainant. The Respondent No. 2 have been involved in unauthorized use of the Complainant 's trademark and product labeling including color of packaging, font and style of text which appears to be, prima facie, in violation of section 10 (2)(d) of the Act.
- 2.7 The Complainant mentioned that the Respondent No.3 (Manufacturer of natural Veterinary medicine) is using the Complainant trade mark "Colcorex" for similar goods (Syrup for

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Colic Relief for Veterinary use) Respondent No.3 has had obtained Form – 7 (Provisional certificate for enlistment of product) by suppression of true facts in DRAP (False Undertaking in DRAP that this product is not registered anywhere) Respondent No. 3 using the similar trade dress as that of the Complainant. Comparison between the trade name and trade dress of the Complainant and the Respondent No. 3 reveals major similarities and is highly likely to deceive and cause confusion in the minds of Pharmacy owner, Doctors, Pharmacist and consumers. The Respondent No. 3 have been involved in unauthorized use of the Complainant 's trademark and product labeling including color of packaging, font and style of text which appears to be, prima facie in violation of section 10 (2)(d) of the Act.

- 2.8 The Complainant mentioned that the Respondent No.4 (Manufacturer of natural Veterinary medicine) is using brand name "CALCOREX T" which is quite similar to the Complainant trade mark "Colcorex" for similar goods Respondent No.4 product is also not registered in DRAP being a counterfeit drug. Respondent No.4 is also using the similar trade dress as that of the Complainant. Comparison between the trade name and trade dress of the Complainant and the Respondent No. 4 reveals major similarities and is highly likely to deceive and cause confusion in the minds of Pharmacy owner, Doctors, Pharmacist and consumers. The Respondent No. 4 have been involved in unauthorized use of the Complainant's trademark and product labeling including color of Packaging, font and style of text which appears to be, prima facie in violation of section 10 (2)(d) of the Act.
- 2.9 The Complainant mentioned that the Respondent No.5 (Manufacturer of natural Veterinary medicine and enlisted in DRAP), has been engaging in the production, distribution, promotion, and sale of products under the infringing marks "Colcorex V," "Gold Colcorex," and "AR Colcorex" without the Complainant's consent or authorization. The Respondent No. 5's unauthorized use of marks is confusingly similar to the Complainant registered trademark "COLCOREX" constitutes a direct violation of the Trademark Ordinance and violation of Section 10 of the Act, in particular Section 10 (2)(d) which prohibits fraudulent use of another's trademark, firm name, or product labeling or packaging .
- 2.10 The Complainant mentioned that the Respondent No.6 (Manufacturer of natural Veterinary medicine) is using brand name "SUPER COLCOREX" which is quite similar to the Complainant trade mark "Colcorex" for similar goods (Syrup for Colic Relief for Veterinary use). Respondent No.6's product is also not registered in DRAP hence being a counterfeit drug. DRAP has deferred the application of the Respondent No. 6 and ordered to change the brand name on 26th August 2022, But the Respondent No. 6 is still using the same brand name. Respondent No. 6 is also using the similar trade dress as that of the Complainant. Comparison between the trade name and trade dress of the Complainant and the Respondent No. 6 reveals major similarities and is highly likely to deceive and cause confusion in the minds of Pharmacy owner, Doctors, Pharmacist and consumers. The Respondent No. 6 involved in unauthorized use of the Complainant's trademark and product labeling including color of packaging, font and style of text which appears to be, prima facie in violation of section 10 (2)(d) of the Act.

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- 2.11 The Complainant mentioned that the Respondent No.7 (Manufacturer of natural Veterinary medicine and enlisted in DRAP) is using the brand name "COLCO-X" which sound alike Complainant's trade mark "Colcorex" for similar goods (Syrup for Colic Relief for Veterinary use) The brand name of Respondent No. 7 is easily mistaken with Complainant registered trademark. The word "COLCOX" similar here is to be understood as deceptively identical to "COLCOREX" .Comparison between the trade name of the Complainant and the Respondent No. 7 reveals major similarities and is highly likely to deceive and cause confusion in the minds of Pharmacy owner, Doctors, Pharmacist and consumers. The phonetic similarity appears to be, prima facie in violation of section 10 (2)(d) of the Act.
- 2.12 The Complainant mentioned that the Respondent No.8 (Manufacturer of natural Veterinary medicine) is using the brand name "Hi Calcorex" which is highly similar but Misspelled to Complainant trade mark "Colcorex" for similar goods (Syrup for Colic Relief for Veterinary use) creates confusion among consumers and is likely to mislead the public regarding the source of the products in question. Use of the identical mark "Calcorex" which is highly similar to the complainant's registered trademark "Colcorex," can be considered an unfair business practice and an act of unfair competition, as it infringes upon the complainant's exclusive rights as the registered trademark owner. Respondent No. 8 is also using the similar trade dress as that of the Complainant. Comparison between the packaging of the Complainant and the Respondent No. 8 reveals major similarities and is highly likely to deceive and cause confusion in the minds of Doctor, Pharmacist and consumers. The Respondent No. 8 have been involved in the infringement of the Complainant 's trademark and product labeling including color of packaging, font and style of text which appears to be, prima facie in violation of section 10 (2)(d) of the Act.
- 2.13 The Complainant via letter dated December 19, 2023, added M/s. Blessco International as another Respondent to the Complainat (Respondent No. 9) for use of identical mark "Kalcorex" which is highly similar to the complainant's registered trademark "Colcorex," and can be considered an unfair business practice and an act of unfair competition, as it infringes upon the complainant's exclusive rights as the registered trademark owner.
- 2.14 The Complainant stated that the Herbal medicine Colocrex syrup is a prescribed medicine as well as Over the counter drug. It is the alternative medicine (Health and OTC Medicine). Any person could point out at veterinary pharmacy shop and buy at his choice. So the Spurious, unregistered and counterfeit trademark product in Market cause confusion among Veterinary doctors and farmers. The Complainant's registration of this trademark provides with certain proprietary rights. The Complainant is entitled to restrict the use of the trademark, or a confusingly similar trademark, in association with confusingly similar products. The Complainant trademark serves as an important and distinctive representation of its products as well as the goodwill. The Complainant therefore, find it imperative to protect it against any misrepresentation that may cause substantial harm to its business by facilitating the loss of the trademark's effectiveness
- 2.15 The Complainant respectfully prayed that:

- a. In the spirit of fair business practices and to protect the rights of consumers, the Commission take action against the Respondents for violation of Section 10 of the Act.
- b. Order the temporary restraining on the Respondents until a thorough investigation has been completed.
- c. Conduct an inquiry into the matter, including gathering evidence and interviewing relevant parties involved.
- d. Issue an injunction restraining the Respondents, there agents, employees, and representatives from further use of the infringing marks "Colcorex" "Colcorex C" "Gold Colcorex" "TM-Calcorex" "Colcorex-T" "Super Colcorex" "Colco-X" and "Calcorex" "Calcojex" "AR Calcorex" and "Colcorex-V" or any other marks confusingly similar to the Complainant registered trademark "COLCOREX".
- e. Order the Respondents to immediately cease all production, distribution, promotion, and sale of products bearing the infringing marks.
- f. Award damages to the Complainant for the harm caused to their business as a result of the respondent's infringing activities Impose penalties or fines on Respondents for their willful infringement and unfair competition practices, as deemed appropriate under the law.
- g. Any other relief which this honorable Commission deems fit and appropriate in favor of the Complainant may also be awarded.

SUBMISSIONS OF THE RESPONDENTS

M/s Atzan Natural Products (Respondent No. 1)

- 3.1 The complaint was forwarded to Respondent No. 1 for comments on March 11, 2024. Upon non-receipt of the response, a reminder dated March 27, 2024, was sent to Respondent No. 1. The Respondent No. 1 didn't reply in the stipulated time and a second reminder was served on April 17, 2024. The Respondent No. 1 submitted its reply through its legal counsel vide letter dated April 22, 2024, which is summarized below:
- 3.2 The Respondent No. 1 stated that the Complainant has no cause of action or locus standi to file the present complaint. Moreover, the titled complaint being barred by law is liable to be rejected under Order 7 Rule 11 CPC. The Respondent No. 1 asserts that they have fulfilled all terms and conditions of the Drug Regulatory Authority of Pakistan Act 2012, (DRAP-Act) receiving form No. 7 for their product COLCOREX after the enlistment of the product in the 17th meeting of the Enlistment Evaluation Committee (EEC) in 2019. The Respondent No. 1 further stated that the Complainant, with malicious intent, obtained registration for the same product in 112th meeting of EEC in 2022, omitting crucial facts,

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and has not appended the authority letter for the institution of the complaint, and therefore, the same should be dismissed being non-maintainable in the eye of law.

3.3 Secondly, the Respondent No. 1 replied to the facts of the complaint.

3.4 The Respondent No. 1 denied the contentions raised in the complaint and stated that every citizen of Pakistan has a fundamental right to do business of his own choice or name, and no one can stop it under the legal parameters. Furthermore, no infringement has been done by the Respondent No. 1, and no cause of action has arisen for the complainant. The Respondent No. 1 further stated that the Commission has no jurisdiction to entertain the complaint, as it is frivolous and vexatious and the Respondent No. 1 is entitled to get special cost under section 35-A of Code of Civil Procedure (CPC) from the Complainant.

3.5 The Respondent No. 1 stated that it has not violated any law of the land and has not transgressed sections 10(2) (a) and section 10 of the Act in any manner whatsoever. Moreover, the Respondent No. 1 asserted that the Complainant lacks entitlement to market the product COLCOREX under the Trade Mark Registration Act. They argue that the Complainant's actions violated section 2 (ii) and sections 24, 25, 26, and 27 of the DRAP-Act. Hence, committed heinous offenses under sections 420, 468, and 471 of the Pakistan Penal Code (PPC).

3.6 Moreover, the Respondent No. 1 stated that the fore noted product COLCOREX, which was enlisted in the 71st meeting of EEC dated 11-12-2019, while, that of the Complainant had been enlisted in the 112th meeting of EEC dated 03-11-2022 after two and half years from the registration of DRAP for the product of Respondent No. 1. The complainant has violated the condition No.7 (R) of the law laid down on the subject and an appeal is pending adjudication against the order date 26-12-2023 before the appellate board of DRAP.

3.7 The Respondent No. 1 denied all the contention raised in the complaint by not admitting and declaring it as incorrect. The Respondent No. 1 prayed respectfully that the complaint under reply merits outright dismissal and same may very graciously be dismissed with costs.

M/s Herbbeck Neutraceuticals (Respondent No. 2)

3.8 The complaint was forwarded to the Respondent No. 2 for comments on March 11, 2024, which was returned undelivered. However, the complaint was again forwarded via Pakistan Post which was again returned undelivered with a reason of no such address. The same complaint was then delivered by hand. The Respondent No. 2 submitted its reply vide letter dated May 15, 2024, which is summarized below:

3.9 The Respondent No. 2 stated that it is a company enlisted by DRAP dated 07-01-2019 bearing the form 6 # 857 and registered before the registration of the Complainant. The

Respondent No. 2 further stated that its products are registered with DRAP even before the registration of the Complainant's Colcorex syrup.

- 3.10 The Respondent No. 2 stated that after the launch of complaint by the Complainant in DRAP, the competent authority asked us for the change of brand name. After the decision of EEC's 118th meeting, the Respondent No. 2 has stopped the production of said product.
- 3.11 The Respondent No. 2 stated that it has already applied in DRAP for the change of its brand name TM Calcorex Syrup to Herborex Syrup and printing of this new brand name is under its development process. Moreover, the Respondent No.2 mentioned that it only market brands which are approved by DRAP and the DRAP has its own criteria for the approval of the brand name. The Respondent No.2 stated that it is only responsible if the said brand name TM Calcorex Syrup is to be found in market after the decision of EEC.

M/s Muslim Herb and Neutraceuticals (Respondent No. 3)

- 3.12 The complaint was forwarded to the Respondent No. 3 for comments on March 11, 2024. The Respondent No.3 , through its legal counsel requested an extension in time vide letter dated March 20, 2024, to submit a reply which was granted vide letter dated March 20,2024. The Respondent No. 3 submitted its reply through its legal counsel vide letter dated March 28, 2024, which is summarized below:
- 3.13 The Respondent No.3 stated that the complainant lacks the right and cause of action, presenting a legally flawed and non-maintainable complaint, tainted by ulterior motives and an attempt to blackmail the Respondent No.3 . Furthermore, the Respondent No. 3, stated that it is duly enlisted manufacturer under Enlistment No. 00777, submitted an application on 05-11-2018 for product enlistment (COLCOREX HERBAL SYRUP 120 ML - Veterinary), fulfilling all requisite formalities.
- 3.14 The Respondent No.3 mentioned that DRAP granted permission to manufacture COLCOREX HEBAL SYRUP and COLCOREX M. Herbal Syrup, enlisting them as Serial No. 0777811425 and 0777811427, respectively, in the 81st EEC meeting on 25-08-2020, issuing Form 7 for production commencement. While the complainant's product, COLOCOREX Syrup, was enlisted after a lapse of two years and three months in the 112th EEC meeting on 03-11-2022, establishing Respondent No. 3's priority and proprietary rights under the principle of "first come, first take."
- 3.15 Moreover, the Respondent No. 3 received a show cause notice dated 28-08-2023 regarding alleged brand name similarity and counterfeiting, responding with an explanation and offering personal appearance. In subsequent proceedings, at the 118th EEC meeting, the Respondent No. 3 presented a comprehensive defense, emphasizing chronological facts and priority rights. Despite this, the EEC issued an order dated 26-12-2023 to suspend the

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product's form 7, citing brand name concerns, which Respondent No. 3 argues as illegal, arbitrary, and against fundamental business rights, forming the basis of their appeal.

- 3.16 The Respondent No.3 stated that in the disputed order dated 26-12-2023, the Complainant asserted that he is marketing the product since 1999, filing an application on 25th October 2022, and obtaining enlistment certificate on 3rd November 2022, supported by trademark registration in 2006. Respondent No. 3 countered, stating their application was submitted on 05-11-2018, approved on 25-08-2020, prior to the complainant's application, resulting in the issuance of FORM 7 for their products.
- 3.17 The Respondent No.3 further stated that the Complainant's claim of obtaining a trademark certificate in 2006 lacks evidence, as the certificate was actually acquired on 31-07-2017, raising questions about its validity before product enlistment. This suggests potential malicious intent, as the Complainant obtained the certificate preemptively, possibly for future exploitation. Additionally, the EEC's reference to "Mr. Shah Mehmood" in the order is erroneous, as the actual owner of Respondent No. 3'S firm is Ijaz Ahmad, casting doubt on the integrity of the proceedings and suggesting manipulation by the Complainant to favor their case.
- 3.18 The Respondent No.3 prayed respectfully that the complaint has no merit and the same may very kindly be set aside.

M/s Vital Mark (PVY) Ltd (Respondent No. 4)

- 3.19 The complaint was forwarded to the Respondent No. 4 for comments on March 11, 2024. The Respondent No. 4 submitted its reply vide letter dated March 22, 2024, which is summarized below:
- 3.20 The Respondent No.4 stated that the Complainant has neither locus standi nor cause of action against Respondent No. 4. Moreover, the Complainant has filed the above titled complaint against Respondent No. 4 due to some ulterior motives just to harass and blackmail the Respondent No.4 .
- 3.21 The Respondent No.4 stated that it pertinent to mention that the Complainant on 02-10-2018 filed a suit for prohibitory permanent injunction and damages titled "Shahu Jee Herbal Pharma Vs Vital Mark Laboratories (Pvt.) Limited etc." which was adjudicated before the court of Noor Alam Civil judge Faisalabad against the violation of trade mark and copy right act to restrain Respondent No. 4 from manufacturing of its product "CALCOREX -T" which was dismissed due to non-prosecution by the learned trial court.
- 3.22 The Respondent No. 4 submitted that it has ceased production and removed all stock from the market within 30 days, in order to fulfil its obligations as per the compromise, arised as a result of Complainant's application to Station House Officer (SHO) Saddar Jaranwala

for the registration of First Information Report (FIR) against Respondent No. 4. On the other hand, the Respondent No. 4 has the right to register/enlist its products i.e. CALCOREX-T or KALCOREX or any other brand with DRAP for future production and marketing.

- 3.23 The Respondent No.4 stated that the Complainant till October 2022, illegally and in violation of DRAP-Act, manufactured the products, and just Trademark registration cannot protect the Complainant for his illegal acts. The Respondent No.4 denied the contentions raised in the title complaint based as incorrect assertions, and contest factual accuracy or relevance.
- 3.24 The Respondent No. 4 prayed that the complaint may be dismissed concerning Respondent No. 4, in the interests of justice and equity.

M/s S.Asia Oriental Pharma (Respondent No .5)

- 3.25 The complaint was forwarded to the Respondent No. 5 for comments on March 11, 2024. The Respondent No. 5 submitted its reply vide letter dated May 03, 2024, which is summarized below:
- 3.26 The Respondent No.5 stated that its firm is registered with DRAP since October 24, 2016, with latest instruments and production area with latest machinery. Moreover, it further stated that it has received Form-7 for Calcorex V on 22nd June, 2022 and started its production. Meanwhile, on 28th August, 2023, it has received show cause notice from DRAP with reference F.NO.10.4/2024- (Health and OTC) (M-116) for Calcorex V and the Respondent No. 5 submitted the report to DRAP with reference No. SCN/CV-R1, dated 8th September, 2023.
- 3.27 The Respondent No.5 further stated that after receiving the show cause notice from DRAP it has decided to stop the production of Calcorex V unless it gets the final decision from the DRAP. On 11th October, 2023 the Respondent No.5 received the personal hearing notice with reference F. NO. 10-05/2023- (Health and OTC) (M-118) from DRAP and hearing took place. On December 26, 2023, the Respondent No..5 received a counterfeiting notice from DRAP, prompting it to initiate a product name change and correspondingly wrote a letter to DRAP for brand name alteration on January 10, 2024.
- 3.28 Additionally, upon being informed about the production of unauthorized products Gold Colcorex (Liquid) and AR Calcorex (Liquid), we promptly notified both DRAP and the Area Drug Inspector, denying any involvement in the manufacturing and urging appropriate action.

M/s Izfaar Neutraceutical Industries (Respondent No. 6)

3.29 The complaint was forwarded to the Respondent No. 6 for comments on March 11, 2024. Upon non-receipt of the response, a reminder dated March 27, 2024, was sent to the Respondent No. 6. The Respondent didn't reply in the stipulated time, therefore, a second reminder was served on April 17, 2024. However, the Respondent No. 6 didn't submit the comments and the third reminder was sent on May 08, 2024. The Respondent No. 6 submitted its reply vide letter dated May 10, 2024, which is summarized below:

3.30 The Respondent No.6 stated that the above mentioned complaint is not maintainable as the Respondent No.6 is a registered manufacturer and the DRAP has issued FORM-7 to the Respondent No. 6 to manufacture the said product under the name and style being used by the Respondent No. 6. The Respondent No. 6 further stated that when they filed the application for registration of the drug, they submitted four different names for the said product and the DRAP was inclined to register the above said name "Colcorex Liquid" at their own choice.

3.31 The Respondent No. 6 mentioned that it has never manufactured the product in contravention of Drug Act, 1976 and DRAP-Act. The Respondent No. 6 is of the view that just trade mark cannot protect and defy a pharmaceutical manufacturer to market his product which has been registered under the DRAP-Act, and they are protected under special law i.e. Rule 7 (17) of DRAP-Act. The Respondent No. 6 stated that a special law always override the general law, hence the product registered under DRAP-Act, cannot be blamed as irregular under the Trade Mark Registration Ordinance.

3.32 The Respondent No. 6 respectfully prayed that the complaint up to the Respondent No.6 under reply, kindly be dismissed with costs.

M/s Animal Life Care (Respondent No. 7)

3.33 The complaint was forwarded to the Respondent No. 7 for comments on March 11, 2024. The Respondent No. 7 submitted its reply vide letter dated March 22, 2024, which is summarized below:

3.34 The Respondent No. 7 stated that their firm is registered with DRAP and on September 20, 2023 DRAP issued a show cause notice that their product is similar with the brand name of other firm. Therefore, the Respondent No. 7 on October 11, 2023, submitted its reply to DRAP on the matter and the decision of DRAP is still pending. Furthermore, the Respondent No. 7 stated that they will accept the decision of EEC.

3.35 The Respondent No. 7 also asserted that their product was approved by DRAP in 66th meeting of EEC held on July 22, 2019, while the Complainant's product was approved in 112th meeting of EEC held on November 03, 2022.

M/s Hi-Vet Nutraceutical Pharma (Respondent No. 8)

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3.36 The complaint was forwarded to the Respondent No. 8 for comments on March 11, 2024. Upon non-receipt of the response, a reminder dated March 27, 2024, was sent to the Respondent no. 8. The Respondent No. 8 didn't reply in the stipulated time, therefore, a second reminder was served on April 17, 2024. However, the Respondent No. 8 did not submit its reply and a third reminder was sent on May 09, 2024. The Respondent No. 8 submitted its reply vide letter dated April 04, 2024, through its Chief Executive Officer, Mr. Malik Zaryab Shezal, which is summarized below:

3.37 The Respondent No. 8 stated that upon receiving the show cause notice from DRAP regarding the similarity of their product "Hi Calcorex" with Complainant's registered brand name "Colcorex", they immediately ceased the manufacturing and sale of the said product and initiated the process of changing the brand name in compliance with DRAP regulations along with the submission of affidavit, confirming to refrain from manufacturing the product under disputed brand name until the change is duly registered.

3.38 The Respondent No. 8 assured the Commission that they are committed to upholding intellectual property rights and complying with all relevant laws and regulations. The Respondent No. 8 requested the Commission to consider this clarification and to take into account their prompt actions in response to the allegations.

M/s Blessco International (Respondent No. 9)

3.39 The complaint was forwarded to the Respondent No. 9 for comments on March 11, 2024. Upon non-receipt of the response, a reminder dated March 27, 2024, was sent to the Respondent No.9. The Respondent No. 9 didn't reply in the stipulated time, therefore, a second reminder was served on April 17, 2024. The Respondent No. 9 submitted its reply vide letter dated April 04, 2024, which is summarized below:

3.40 The Respondent No. 9 stated that there is misconception in the market that Kalcorex is manufactured by the Respondent No. 9. The Respondent No. 9 clarified that they do not manufacture any such product. Someone in KPK is using Respondent No. 9's name and manufacture this product. The Respondent No. 9 further stated that their vicinity is licensed by DRAP and they do not manufacture nor responsible for products other than the list of products provided along with the reply.

3.41 The Respondent No. 9 respectfully prayed that the Commission take note of this clarification and take necessary steps to correct any misconception in the market.

4. REJOINDER

4.1 The replies of the Respondents were forwarded to the Complainant for its comments/rejoinder vide letter dated April 17, 2024, May 08, 2024 and May 31, 2024. The

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Complainant submitted its rejoinder vide letter dated Nil, and June 03, 2024, respectively, the contents of which are reproduced in the following paras.

M/s Atzan Natural Products (Respondent No. 1)

- 4.2 The Complainant stated that Respondent No.1's blanket denial of allegations without providing substantive evidence to refute them is insufficient. The Complainant's claims are supported by documentation and evidences. Moreover, the response of Respondent No. 1 lacks specificity and fails to address specific allegations raised in complaint. The Respondent No.1's attempt to shift blame and raise counterclaims against the Complainant is unwarranted.
- 4.3 The Complainant discussed the preliminary objections and stated that the assertions of the Respondent No.1, that the Complainant lacks the cause of action, locus standi and the title complaint is barred by law, against Respondent No.1 is unsubstantiated and without merit. The Complainant has a legitimate interest in protecting its trademark rights and preventing unfair competition. The Complainant's registration of the trademark "COLCOREX" predates any alleged registration by Respondent No. 1. The complainant has not concealed any facts and the claim of estoppel is also baseless and unsubstantiated.
- 4.4 The Complainant stated that it has duly complied with all the procedural requirements related to the complaint. The Complainant approached the Commission with clean hands and has acted in good faith. The Respondent No. 1 has no evidence to support the claim of sullied hands.
- 4.5 The Complainant denies the Respondent No.1's assertion that the Commission lacks jurisdiction to entertain the complaint. However, the Complainant submitted that the Commission has the statutory authority to adjudicate matters related to Competition Law including allegation of unfair competition and trademark violations. However the complaint is filed in accordance of the Act, which empowers the Commission to adjudicate on such matters.
- 4.6 The Complainant denied the submission reproduced in para 3.2 above, and stated that the complaint has been filed in good faith and is supported with evidence and legal grounds. Moreover, the Complainant denied of not causing any harm to its business by the Respondent No.1 and stated that it has suffered substantial business loss.
- 4.7 Furthermore, the Complainant submitted in its reply that Respondent No.1's claim of lack of knowledge regarding reputable business of Complainant is baseless because this information is a matter of public record and can easily be verified. Moreover, the Respondent No. 1's denial of adoption of Complainant's brand name "COLCOREX" should be rejected because the Complainant has provided evidence of continuous use of this brand name including registration with IPO.
- 4.8 The Complainant stated that the allegation of Respondent No. 1 that the Complainant has intentionally omitted mentioning the enlistment of the product "COLCOREX" in meeting

of EEC is not correct as the Complainant has provided evidence of the enlistment of the alleged product under enlistment No. 012101121795. The Complainant further stated that the Respondent No. 1 denial of copyright certification lacks merit in the face of documented proof of copyright certification. The Respondent No.1's denial of the allegations concerning the unauthorized use of trademark "COLCOREX" is unfounded. The complaint explicitly outlined the misuse of trademark by the Respondent No. 1 for similar goods.

- 4.9 The Respondent No 1's counterclaim alleging the violation of condition No.7 (R) lacks merit. The complaint is based on the Respondent No 1's unauthorized use of our trademark, not on any procedural irregularities, while the Respondent No. 1 mentions an appeal which is pending adjudication against the order dated 26-12-2023, it is imperative to note that the complaint addresses the infringement prior to this date, as evidenced by the suspension of their enlistment. The pendency of an appeal does not absolve the Respondent No. 1 of the trademark infringement prior to the suspension.

M/s Herbbeck Neutraceuticals (Respondent No. 2)

- 4.10 The Complainant stated that the Respondent No. 2 fails to address the core issue of trademark infringement and passing off. The Complainant specified that the assertion of Respondent No.2 that their company is enlisted with the DRAP prior to the Complainant's registration does not negate the fact that the use of a confusingly similar trademark is a direct violation of Section 10 (2)(d) of the Act. The Complainant's trademark "COLCOREX" is registered under the IPO and is entitled to protection against infringement and passing off.
- 4.11 The Complainant stated that the claim related to change in their brand name to "Herborex Syrup" is acknowledged; however, the continued use and presence of the infringing mark "TM-CALCOREX" in the market until this change still constitutes trademark infringement. The temporary cessation of production does not absolve the Respondent No.2 from the infringement activities carried out prior to the decision of the EEC dated 26th December 2023.
- 4.12 The Complainant mentioned that the Respondent No. 2's reliance on DRAP's nomenclature does not justify the adoption of a mark confusingly similar to that of Complainant's registered trademark. The doctrine of concurrent liability mandates that Respondent No.2 is subject to both the DRAP regulations and the provisions of trademark law. The issuance of a product registration by DRAP does not grant immunity from trademark infringement claims. The use of a trademark similar to that of the Complainant's, which is likely to cause confusion or deception, constitutes unfair competition and violates Section 10 of the Act.
- 4.13 The Complainant's evidence, including trademark registration certificates, copyright certificates, and packaging designs, substantiates the exclusive rights to the "COLCOREX" brand. The Respondent No. 2's use of similar marks such as "TM-CALCOREX" clearly infringes upon these rights.

4.14 In addition to the above, the Complainant submitted that Respondent No. 2 has made minor changes to comply with the suspension order for its product as "COLCOREX M". This minor modification does not resolve the core issue of infringement. The Complainant reiterates the prayers made in the complaint.

M/s Muslim Herb and Nutraceuticals (Respondent No. 3)

4.15 The Complainant stated that the assertion made by the Respondent No. 3 that the Complainant lacks the right or grounds to file this complaint is unsubstantiated and without merit. Dismissing the complaint as "bad in law" without providing legal basis or supporting arguments is insufficient to invalidate its validity. Accusations of the Complainant approaching the complaint with "unclean hands" lack of concrete evidence and fail to address the substantive issues at hand. Allegations that the complaint is motivated by ulterior motives, such as blackmail, lack of credible evidence is baseless. It is acknowledged that Respondent No. 3 holds valid enlistment under Enlistment No. 00777 and possesses a formal FORM 6 issued by DRAP on 23-07-2018.

4.16 Moreover, the Respondent No.3 on 05-11-2018, indeed applied for enlistment of their product, COLCOREX HERBAL SYRUP 120 ML (Veterinary), providing all coddle formalities. However, Respondent No.3 did not fulfill the requirement outlined in DRAP SRO 713(I) 2018 section 1.5 regarding the proposed brand name's trademark certification/clearance. As at the time of application, and till date Respondent No.3 did not have the trademark certificate. Respondent No.3 submitted the application by suppressing the true facts in DRAP, by asserting that the product Colcorex is not registered in any other forum.

4.17 The Complainant mentioned that that the Respondent No.3 miserably failed to prove its stance during DRAP hearing and unable to provide sufficient evidence to support their claims. Therefore, the decision of DRAP to suspend the enlistment of Respondent No.3 is justified and in accordance with the findings of the EEC. The arguments provided by Respondent No.3 were not supported by evidences and legal precedents.

4.18 The Complainant stated that Respondent No.3 should have respect the decision of DRAP as it is regulatory authority and their decision-making process is guided by legal principles and regulatory frameworks aimed at safeguarding public health and ensuring the integrity of the pharma industry. Furthermore, the Complainant stated that it is imperative to uphold the decision of the DRAP as lawful and they urge the Commssion to consider the decision in accordance with established legal principles and regulatory frameworks.

4.19 The Complainant accepted the content of para 3.14 for being correct, but it further stated that mere enlistment of product from DRAP is no enough to secure a brand name unless it is registred with IPO and the Respondent No.3 failed to fulfill this requirement. In contrast, complaint is backed by a registered trademark acquired in 2017. The registration of drugs should not be subject to a "first come, first take" basis. The criteria outlined in SRO 713 (1) 2018 explicitly states that the proposed brand name must be accompanied by a

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trademark certificate or clearance. Moreover, the Complainant stated that it is clearly written in point R of enlistment certificate that the enlistment holder must change the brand name if it bears resemblance to an already registered product. Given that the trademark "COLCOREX" is duly registered with the IPO by the Complainant, EEC has suspended the enlistment of Respondent No.3.

- 4.20 The Complainant stated that Respondent No.3 contends that both parties have different brand names for their products. However, it is a fact that Respondent No.3 is infringing upon the trademark "COLCOREX" as claimed in the complaint. The Respondent No. 3's product is listed as "Muslim Colcorex" while the Complainant's product is listed as "Shahujee Colcorex." The former represents the company name, while the latter is the brand name of the product in question.
- 4.21 The Complainant stated that priority should be to address that Respondent No.3 is infringing the Complainant's trademark and violating section 10 of the Act. Furthermore, it is pertinent to mention here that the Complainant is manufacturing its product "COLCOREX" since 1999 before the implementation of DRAP SRO 412 and prior to this enlistment of herbal pharma products was not mandatory as herbal units operated under the Drug Act 1976. Moreover, samples of COLCOREX were sent to livestock department by the Complainant and correspondence from the Livestock departments across Pakistan confirms the receipt of these samples which has been presented in the relevant meetings of EEC.
- 4.22 The Complainant further stated that although the trademark was registered in 2017, but research reports indicate that the product name was in use since 2006 by the Complainant itself and copyright was also obtained in 2006. However, It is important to note that the acquisition of a Trade Mark Certificate does not require prior enlistment of the product with the EEC. The Trade Mark registration process is separate from product enlistment procedures and serves to protect intellectual property rights.
- 4.23 The Complainant stated that the Respondent No.3 acknowledges appearing before the EEC, which subsequently suspended their enlistment. The issue brought before the Commission is about property rights concerning two products and a specific product name. This is distinct from a case involving spurious drugs, which would fall under the jurisdiction of drug courts.

M/s Vital Mark (PVY) Ltd (Respondent No. 4)

- 4.24 The Complainant denies the content reproduced in para 3.20 and 3.21 above by stating that the Complainant's intention is genuine and on merit. Furthermore, the Respondent No.4 obtained Form-6 from the DRAP, but it is crucial to note that Respondent No.4's manufacturing activities, particularly the production of CALOREX, were conducted without proper enlistment of product manufacturing as per the DRAP-Act. This raises concerns of regulatory compliance. Additionally, the Respondent No.4's actions appear to constitute trademark infringement. The Complainant stated that it has both Form-6 and Form-7 duly registered from IPO.

- 4.25 The Complainant agreed with the submissions of the Respondent No.4 related to suit for prohibitory permanent injunction and damages at IPO, however, the same has been dismissed on 10-04-2019 due to non-prosecution. The Complainant agreed with the submissions made in para 3.22 above, and stated that a compromise held between both parties based on two specific demands from the Complainant. Firstly, the Respondent No.4 immediately cease the production of "CALCOREX T" and secondly, the Respondent No.4 will recall the available stock of the said product from the market, but the products of the Respondent No.4 are still available in market so the Complainant reserves the right to initiate legal proceedings before any appropriate legal forum. As Respondent No.4 violates the aforementioned terms of the compromise.
- 4.26 Additionally, the Complainant holds the trademark certificate for "COLCOREX," indicating that Respondent No.4 has no right to obtain a brand name i.e CALCOREX T, KALCOREX which is similar, look-alike, or sound alike the Complainant's registered trademark.

M/s S.Asia Oriental Pharma (Respondent No .5)

- 4.27 The Complainant stated that although the Respondent No.5 received Form-7 for "Colcorex V" and commenced production based on DRAP guidelines but after our complaint to DRAP regarding similarity of brand names resulted in the suspension of enlistment of "Colcorex V" on 26th Decemeber 2023. Despite this suspension, Respondent No.5 continued using the same brand name. Furthermore, the decision of Respondent No.5 to change the product name only after receiving a counterfeiting notice from DRAP on December 26, 2023 raises questions about their awareness and intent regarding the infringement.
- 4.28 The Complainant further stated that Respondent No.5's assertion that they never manufactured unauthorized products sunh as "Gold Colcorex" and AR Calcorex" is contradicted by evidence provided by the area drug inspector. The Respondent No.5 has not provided the letter written to area drug inspector and drap dated April 1st 2024, April 17th 2024 and May 03, 2024. Additionally , Respondent No.5 has failed to provide the decision of personal hearing of the District Quality Control Board, where the Provincial Drug Inspector repoted that Respondent No.5 is selling stock without enlistment, thereby violating Section 23 of DRAP-Act.
- 4.29 The Complainant further mentioned that Respondent No. 5's proposal of alternate brand names such as "Calgorex-V," "Calcovex-V," "Calorest-V," and "Calco Plus-V," closely resemble with the Complainant's trademark suggests a deliberate attempt to continue infringing on trademark rights. This underscores the necessity for stringent action to effectively address this issue.

M/s Izfaar Neutraceutical Industries (Respondent No. 6)

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- 4.30 The Complainant stated that at the outset, the Complainant objected the Respondent No. 6's assertion that the complaint is not maintainable, lacks legal foundation. The issuance of Form-7 by the DRAP does not supersede or invalidate the provisions of the Act, or the protections afforded under the Trademark Ordinance, 2001. The Complainant's trademark "COLCOREX" is registered under the IPO and is entitled to protection against infringement and passing off.
- 4.31 The Complainant stated that the claim that DRAP choose the name of "COLCOREX LIQUID" for Respondent No. 6 lacks evidentiary support. Moreover, compliance with DRAP-Act and Drug Act 1976, does not exempt the Respondent No. 6 from adhering to the Trademark Ordinance 2001, and the Act.
- 4.32 The doctrine of concurrent liability mandates that Respondent No.6 is subject to both the DRAP regulations and the provisions of trademark law. The issuance of a product registration by DRAP does not grant immunity from trademark infringement claims. The use of a trademark similar to that of the Complainant, which is likely to cause confusion or deception, constitutes unfair competition and violates Section 10 of the Act.
- 4.33 The Complainant's evidence, including trademark registration certificates, copyright certificates, and packaging designs, substantiates the exclusive rights to the "COLCOREX" brand. The Respondent No. 6's packaging and use of the similar mark "COLCOREX LIQUID" clearly infringe upon these rights. The Complainant reiterates the prayers made in para 2.15 above.

M/s Animal Life Care (Respondent No. 7)

- 4.34 The Complainant stated that the Respondent No.7's assertion that the complaint has been lodged with DRAP, a regulatory authority for drug formulation, is noted. However, it is important to clarify that disputes regarding property rights and trademark infringement which fall outside the jurisdiction of DRAP. Furthermore, it is emphasized that Respondent No. 7 is utilizing the brand name "Colco-X," which bears striking resemblance to the Complainant's registered trademark, both in appearance and sound.
- 4.35 The Complainant prayed that the Commission issue an injunction restraining the Respondent No. 7, there agents, employees, and representatives from further use of the infringing marks "COCOREX", "CALCOREX-C," "CALCOJEX," "CALCO-X," "CALCOREX," "COLCOREX-V", "COLCORX", "GOLDCOLCOREX", "CALCOREXT", "TMCALCOREX", "ARCALCOREX", and "KAL COREX" or any other marks confusingly similar to the petitioner's registered trademark "COLCOREX."

M/s Hi-Vet Nutraceutical Pharma (Respondent No. 8)

- 4.36 The Complainant reiterates and adopts all averments, grounds, and prayers made in the original complaint and mentioned that the Respondent No.8's reply fails to address the core issue of trademark infringement and passing off adequately. The Complainant

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acknowledge the show cause notice from DRAP to Respondent No.8 and cessation of production of "Hi Calcorex" , however, this does not negate the fact that the use of a confusingly similar trademark has already caused harm to the Complainant.

4.37 Furthermore, the doctrine of concurrent liability mandates that Respondent No.8 is subject to both the DRAP regulations and the provisions of trademark law. The temporary cessation of production does not mitigate the infringement that has already occurred. The use of a trademark similar to that of the Complainant, which is likely to cause confusion or deception, constitutes unfair competition and violates Section 10 of the Act.

4.38 The Complainant's evidence, including trademark registration certificates, copyright certificates, and packaging designs, substantiates the exclusive rights to the "COLCOREX" brand. The Respondent No. 8's use of a similar mark clearly infringes upon these rights.

M/s Blessco International (Respondent No. 9)

4.39 The Complainant mentioned that Respondent No. 9 denies manufacturing "Kalcorex," attributing its production to misuse of their name by others in Khyber Pakhtunkhwa (KPK). However, as the manufacturer listed with DRAP, Respondent No. 9 bears the responsibility for products bearing their name on unit cartons. Disassociating from alleged manufacturing does not absolve them of accountability. The Complainant further stated that it is incumbent upon Respondent No. 9 to ensure that their firm name is not misused for unauthorized products, especially considering their registration as a manufacturer of human medicine. Moreover, Respondent No. 9's failure to report the misuse of the name to relevant authorities, such as drug controller, further underscores their accountability in this matter.

4.40 The Complainant prayed that this Hon'ble Commission allow the complaint as prayed.

5. ANALYSIS:

5.1 As mentioned in para 1.3 above, the mandate of this enquiry is to find out whether, *prima facie*:

- i. *the conduct of the Respondents are capable of harming the business interest of other undertakings in, prima facie, violation of Section 10 (2(a)) of the Act?*
- ii. *The Respondents are violating Section 10 (1) of the Act, in terms of Section 10 (2) (d) of the Act, which prohibits fraudulent use of another's trademark, firm name, or product labeling or packaging; and/or*
- iii. *Whether there is a spillover effect of the conduct of the Respondents?*

- 5.2 Before proceeding to the analysis it is important to clear the difference between the registration with IPO related to trademark and copyrights and registration with DRAP. The Registration Board of DRAP is responsible for granting registration to the drugs and biological products for human and veterinary use and advises the Authority in matters about the quality, safety, and efficacy of drugs and biological products¹. Along with this the board also has a representative of the IPO, Pakistan to ensure that the brand names are distinct and do not create market confusion. However, despite DRAP's regulatory framework, there have been instances of registrations with identical or similar brand names for different therapeutic goods, constituting a violation of intellectual property rights².
- 5.3 A notable case example is *Pfizer Inc. v. Ranbaxy Laboratories Ltd.* Pfizer registered its drug (Lipitor) with regulatory authorities worldwide. On the other hand, Ranbaxy also applied to the FDA to market a generic version of Lipitor. Despite regulatory approvals, Pfizer pursued litigation to protect its trademark and prevent potential market confusion³.
- 5.4 In another case, *Novartis AG and Novartis Pharmaceuticals Canada Inc. v. Samsung Bioepis Co. Ltd. and Biogen Inc.* The application of the ordinary test for trademark confusion was not affected by the fact that the names of both products had been approved by Health Canada⁴.
- 5.5 Hence, it is obvious that registration with DRAP does not equalize with registration of trademark with IPO. DRAP registration provide liscinec to the registring company to start production of its drug with a desired name, registered by IPO. Now therefore, analysis will be drawn based on the registration of trademark by Complainant and those of the Respondents.

I. **WHETHER THE RESPONDENT IS VIOLATING SECTION 10(1) OF THE ACT, IN TERMS OF SECTION 10 (2) (D) OF THE ACT, WHICH PROHIBITS FRAUDULENT USE OF ANOTHER'S TRADEMARK, FIRM NAME, OR PRODUCT LABELING OR PACKAGING.**

- 5.6 The Complainant has registered the said Trademark with Intellectual Property Organization of Pakistan (IPO) under the Trademark Ordinance, 2001 with Reg. No. 465002, dated 31/07/2017 in class 5 in respect of Veterinary preparation. While non of the respondents have submitted any such certificate of registration of trademark with IPO.
- 5.7 The Complainant also enlisted this product under the brand name "COLCOREX" in the DRAP. Enlistment No. 012101121795. It has adopted a unique packaging (unit carton and

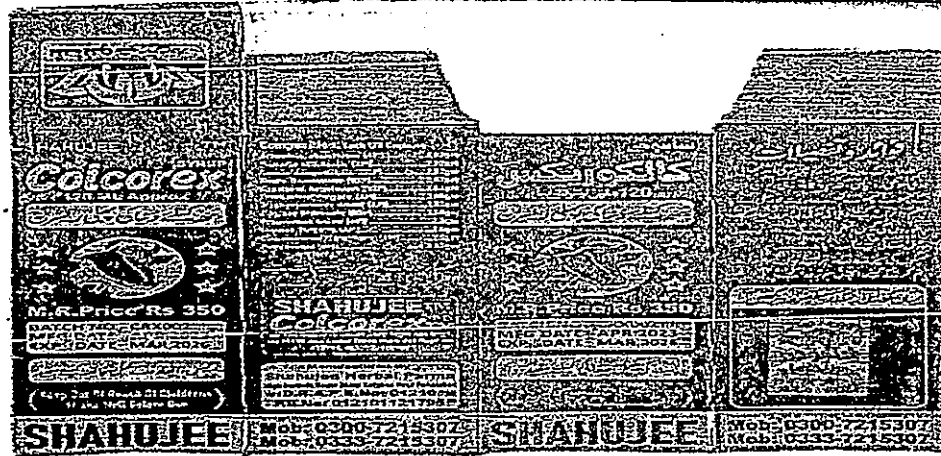
¹ <https://www.dra.gov.pk/about-us/boards-and-committees/registration-board/>

² <https://www.aliassociates.com.pk/news/Protecting-Patients-and-Trademarks-The-Conundrum-of-Similar-Brand-Name-Registrations-by-DRAP>

³ <https://www.slideshare.net/slideshow/lipitor-litigation/87965665>

⁴ <https://www.pharmainbrief.com/2024/02/federal-court-finds-trademark-confusion-between-the-names-of-two-approved-biologics/>

label) design which has become the identity of "COLCOREX" The packaging, has distinctive color patterns and labeling which helps the Complainant's consumers to identify the authenticity of this medicine. The IPO has also granted a certificate of registration of copyright bearing No (19561-Copr Dated 31-03-2009 and 36910-Copr Dated 08-06-2018) to the Complainant. The packaging of the Complainant is shown below for ease of reference:



- 5.8 On the other hand all of the Respondents have adopted the trade names "Colcorex", "Colcorex C", "Gold Colcorex", "TM-Calcorex", "Colcorex-T" "Super Colcorex", "Colco-X" "Calcorex ", "Calcojex", "AR Calcorex", "Colcorex-V" and "Kalcorex". Although almost all Respondents have stated in their replies that they enlisted their respective products with the DRAP prior to that of the Complainant, it is important to note that this alone does not absolve them of potential violations of other laws, such as the unauthorized use of another undertaking's trademark or brand name, as stipulated in Section 10(2)(d) of the Act, which requires careful consideration. Therefore, despite the DRAP enlistment, there is still need to address concerns regarding the alleged unauthorized use of the Complainant's brand name in a manner consistent with the applicable laws and regulations.
- 5.9 It is also pertinent to mention here that the Complainant has filed a complaint with DRAP about the adoption of a deceptively similar names by the Respondents and the DRAP vide its decision dated December 26, 2023, has directed all the Respondents to change their product names.

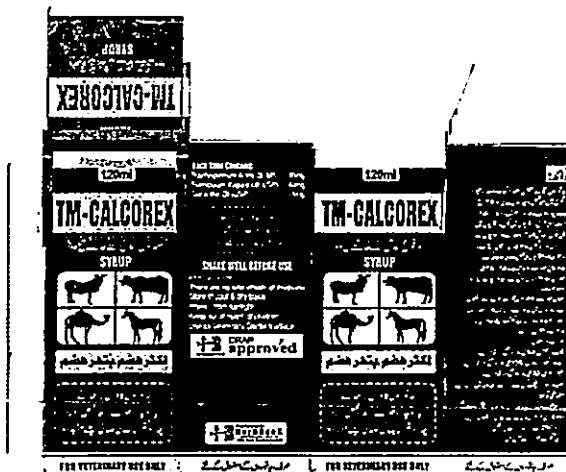
M/s Atzan Natural Products (Respondent No. 1)

- 5.10 The Complainant has alleged that the Respondent No.1 is selling its product under the brand name of "COLCOREX FORT" which is deceptively similar with the trademark of Complainant i.e. "COLCOREX" as mentioned in para 2.5 *ibid*.

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M/s Herbbeck Nutraceuticals (Respondent No. 2)

- 5.16 The Complainant has alleged that the Respondent No. 2 is selling its product under the brand name of "COLCOREX C", "TM-CALCOREX" And "CALCOJEX" which is deceptively similar with the trademark of Complainant i.e. "COLCOREX" as mentioned in para 2.6 *ibid*.
- 5.17 The Respondent No. 2 in its submissions stated that it has stated using the brand names "COLCOREX C", "TM-CALCOREX" And "CALCOJEX" after the fulfillment of all the terms and conditions under DRAP-Act. However after the launch of complaint in DRAP, the Respondent No. 2 has applied in DRAP for the change of brand name TM Calcorex to Herborex Syrup. Furthermore, the Respondent No. 2 has not provided any evidence for the product "COLCOREX C" And "CALCOJEX".
- 5.18 Thus, even after the application of the change of brand name, Respondent No. 2's actions will be scrutinized in accordance with the provisions set forth in Section 10 of the Act for the time period in which he unauthorizedly used the brand name of the Complainant. The images of the products of both the Complainant and the Respondent No. 2 is depicted below for easy reference:

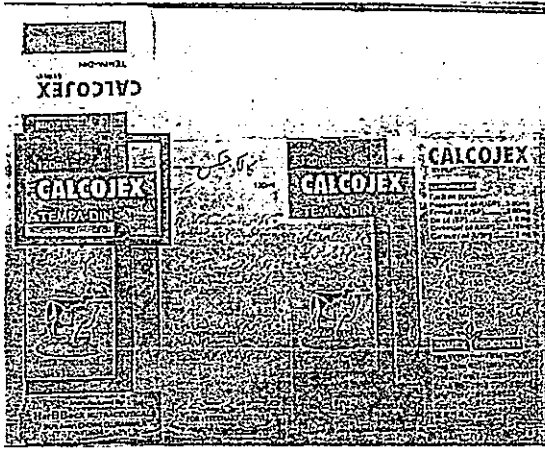


(Respondent's Product)

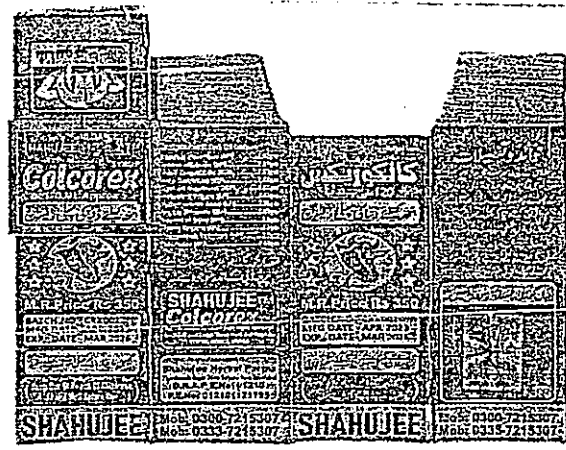


(Respondent's Product)

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(Respondent's Product)



(Complainant's Product)

- 5.19 If we compare the Complainant and the Respondent No. 2's brand name "COLCOREX" and "TM-CALCOREX" respectively, we observe that the Respondent No. 2 just has replaced a second letter "O" with "A" and add TM before CALCOREX.
- 5.20 While analysing the artistic work and label design of both the packaging it has been noted that the Respondent No. 2 adopted a slightly different color scheme and packaging than that of the Complainant. The name is written with black color placed inside a yellow rectangular box with images of four animals under the brand name. On the other hand the Complainant's trademark features yellow color with capital C followed by lower case letters and display a cow image with shadow of red color in a yellow circle and three stars vertically on both sides of the circle.
- 5.21 Secondly, if we compare the Complainant and the Respondent No. 2's brand name "COLCOREX" and "CALCOREX-C" respectively, we observe that Respondent No. 2 has replaced a second letter "O" with "A" and add C after CALCOREX. Furthermore, the brand name is clearly displayed on the Respondent No. 2's product in a bold yellow typeface. An Urdu tagline subtitled "Selenium & Cobalt Syrup" is printed on the packaging below the tradename. In addition to the above, on a white background a vector graphic of a horse, cow, goat, and calf is printed. On the other hand the Complainant's trademark features yellow color with capital C followed by lower case letters and display a cow image with shadow of red color in a yellow circle and three stars vertically on both sides of the circle.
- 5.22 Thirdly, if we compare the Complainant and the Respondent No. 2's brand name "COLCOREX" and "CALCOJEX" respectively, we observe that the Respondent No. 2 has shown the brand name in a bold white font on a green background, along with the subtitle "Tempa-Din Syrup." The package has writing in both English and Urdu beside a vector image of a cow in a grassy environment. On the other hand the Complainant's trademark features yellow color with capital C followed by lower case letters and display a cow image with shadow of red color in a yellow circle and three stars vertically on both

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sides of the circle. Despite their commonalities, these components help give each product a unique visual identity.

- 5.23 From the above, it can be concluded that the Respondent No. 2 has adopted an identical trademark/brand name as that of the Complainant's registered trademark/brand name for its products "COLCOREX C" and "TM-CALCOREX" with the intension to take benefit of the goodwill attached to that of the 'COLCOREX'. The Complainant is directly engaged in manufacturing of veterinary medicine and any other product of other undertakings similar to that of the Complainant's can easily deceive the ordinary consumer by believing that the medicine of the Respondent No. 2 probably belongs to the Complainant. Moreover, for its product "CALCOJEX" the enquiry committee believes that the tradename and packaging of the product is unique and different to that of the Complainant, Hence causing no confusion among the ordinary consumer. Therefore, the act of using the trademark/trade name similar to that of the Complainant by the Respondent No. 2 for its products "COLCOREX C" and "TM-CALCOREX", *prima facie*, misleading in nature and in violation of Section 10(2) (d) of the Act.

M/s Muslim Herb and Neutraceuticals (Respondent No. 3)

- 5.24 The Complainant has alleged that the Respondent No. 3 is selling its product under the brand name of "COLCOREX" later modified by the Respondent No. 3 to "COLCOREX-M" which is deceptively similar with the trademark of Complainant i.e. "COLCOREX" as mentioned in para 2.7 *ibid*.
- 5.25 The Respondent No. 3 in its submissions stated that it has stated using the brand names "COLCOREX" after the fulfillment of all the codal formalities under DRAP-Act. However after the launch of complaint in DRAP, the Respondent No. 3 has applied in DRAP for the change of brand name "COLCOREX" to "COLCOREX-M". The images of the products of both the Complainant and the Respondent No. 3 is depicted below for easy reference:



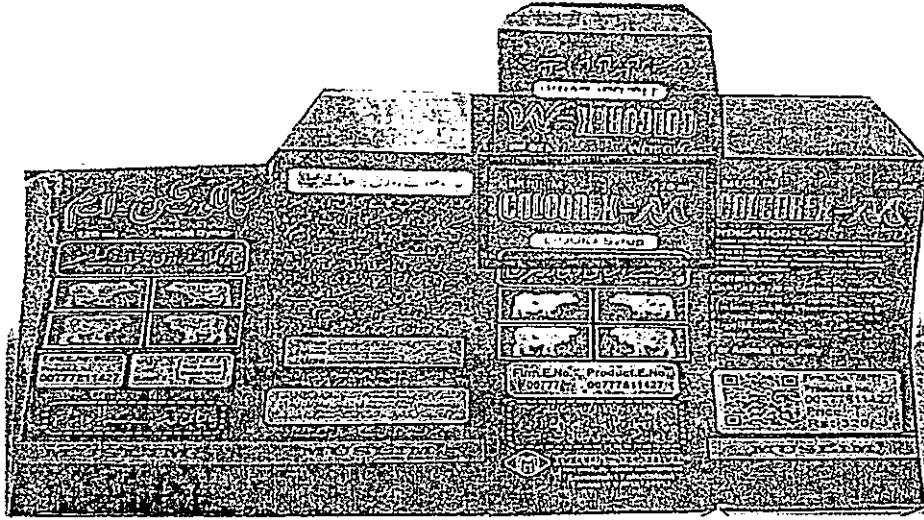
(Respondent's Product)



(Complainant's Product)

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5.26 After the Complainant's complaint with the DRAP the Respondent No. 3 has modified its product as shown below: Analysis will be made out for both the initial and the revised packaging of the Respondent No. 3. The Image of the revised product is presented below:



5.27 The image appended in para 5.25 above shows the visual representation of Respondent No. 3's trademark with complainant's trademark. The Respondent No. 3 has reproduced the spelling of Complainant's trademark "COLCOREX" in dark yellow color on a dark blue background in different font style with all alphabets in CAPS. Under the tradename, the Respondent No. 3 has imitated the same tag line of the Complainant 'دنیا کی پہلی ریسرچ'. On the other hand the Complainant's trademark features yellow color with capital C followed by lower case letters and display a cow image with shadow of red color in a yellow circle and three stars vertically on both sides of the circle.

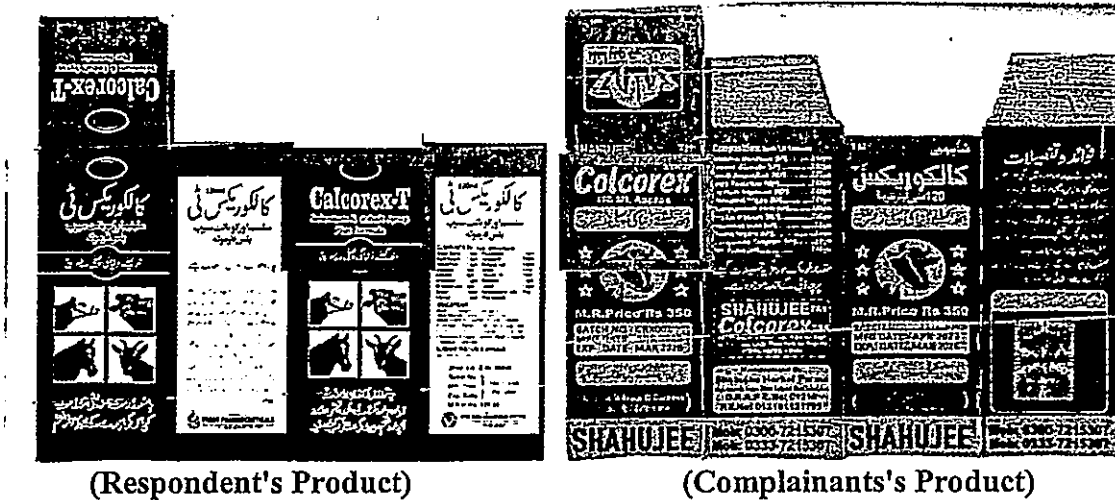
5.28 Secondly, the image appended in para 5.26 above shows the visual representation of Respondent No. 3's revised trademark with complainant's trademark. The Respondent No. 3 has reproduced the spelling of Complainant's trademark "COLCOREX" with an addition of alphabet "M" at the end of the word in dark yellow color on a dark blue background in different font style with all alphabets in CAPS. Under the tradename, the Respondent No. 3 has imitated the same tag line of the Complainant 'دنیا کی پہلی ریسرچ'. On the other hand the Complainant's trademark features yellow color with capital C followed by lower case letters and display a cow image with shadow of red color in a yellow circle and three stars vertically on both sides of the circle.

5.29 From the above, it appears that the use of exactly similar trade name for initially and the tradename after revision by Respondent No.3 with slight variations in color scheme, font style and size seems , *prima facie*, misleading in nature and in violation of Section 10(2) (d) of the Act.

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- 5.30 The Complainant has alleged that the Respondent No. 4 is selling its product under the brand name of "CALCOREX T" which is deceptively similar with the trademark of Complainant i.e. "COLCOREX" as mentioned in para 2.8 *ibid*.
- 5.31 It is pertinent to mention that the complainant on 02-10-2018 filed a suit for prohibitory permanent injunction and damages titled "Shahjee Herbal Pharma Vs Vital Mark Laboratories (Pvt.) Limited etc." which was adjudicated before the court of Noor Alam Civil judge Faisalabad against the violation of trade mark and copyright act to restrain the Respondent No. 4 from the manufacturing of its product "CALCOREX -T" which was dismissed by the learned trial court vide order dated 10-04-20219 due to non-prosecution.
- 5.32 Furthermore, the Complainant filed an FIR to SHO PS Saddar Jaranwala against the Respondent no. 4, as a result a compromise has been made between the Complainant and the Respondent No. 4 for ceasing the production and removing all stock from the market within 30 days. The Respondent No. 4 is involved in the production of medicine "CALCOREXT" without enlistment from DRAP. The images of the products of both the Complainant and the Respondent No. 4 is depicted below for easy reference:



- 5.33 If we compare the Complainant and the Respondent No. 4's brand name "COLCOREX" and "CALCOREX-T" respectively, we observe that Respondent No. 4 has replaced a second letter "O" with "A" and add T after CALCOREX. Furthermore, the brand name is clearly displayed on the Respondent No. 4's product in a bold yellow typeface. A tagline subtitled "Selenium & Cobalt Syrup" is printed on the packaging below the tradename. In addition to the above, on a white background a vector graphic of a horse, cow, goat, and calf is printed on a light blue circle. On the other hand the Complainant's trademark features yellow color with capital C followed by lower case letters and display a cow image with shadow of red color in a yellow circle and three stars vertically on both sides of the circle.

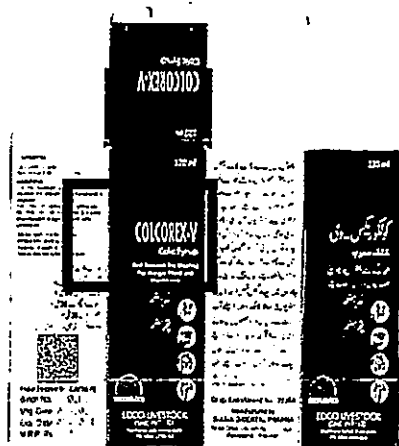
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5.34 Foregoing in view, it may be ascertained that both the products of the Complainant and the Respondent No. 4 has similarity in their tradenames and are operating in the similar target market i.e. (herbal medicine for colic problems in animals). The use of similar tradename and lack of registration of trademark by the Respondent No. 4 from IPO could lead to consumer confusion. The packaging colors and design elements, though slightly different, might not be enough to differentiate the products significantly when the name of the medicine is deceptively same. Therefore the conduct of Respondent No. 4, *prima facie* does amount to violation of Section 10 (2) (d) of the Act.

M/s S.Asia Oriental Pharma (Respondent No .5)

5.35 The Complainant has alleged that the Respondent No. 5 is selling its product under the brand name of "COLCOREX V," "GOLD COLCOREX," and "AR CALCOREX" which is deceptively similar with the trademark of Complainant i.,e. "COLCOREX" as mentioned in para 2.9 *ibid*.

5.36 The Respondent No. 5 stated that it has received Form-7 for COLCOREX V on 22nd June, 2022 and started its production. Meanwhile, on 28th August, 2023, it has received show cause notice from DRAP with reference F.NO.10.4/2024- (Health and OTC) (M-116) for COLCOREX V. The Respondent No. 5 further stated that after receiving the show cause notice from DRAP it has decided to stop the production of COLCOREX V unless it gets the final decision from the DRAP. On 11th October, 2023 the Respondent No. 5 received the personal hearing notice with reference F. NO. 10-05/2023- (Health and OTC) (M-118) from DRAP and hearing took place. On December 26, 2023, the Respondent No. 5 received a counterfeiting notice from DRAP, prompting it to initiate a product name change and correspondingly wrote a letter to DRAP for brand name alteration on January 10, 2024. The images of the products of both the Complainant and the Respondent No. 5 is depicted below for easy reference:

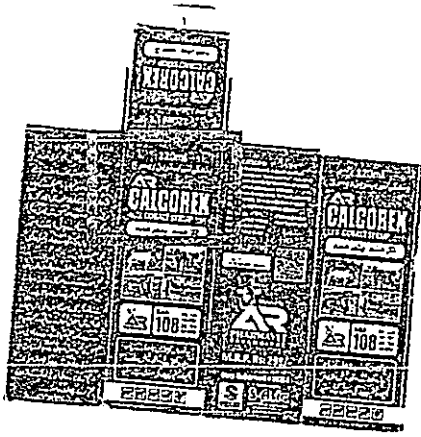


(Respondent's Product)

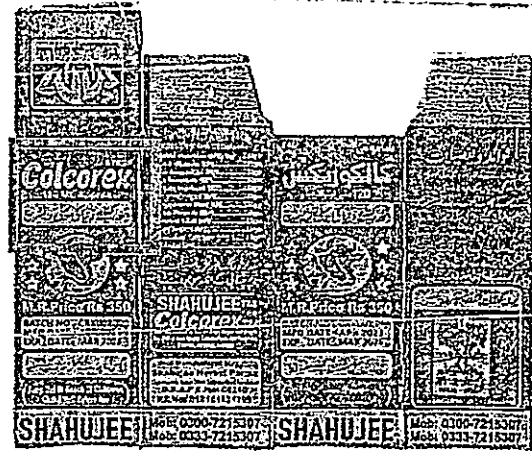


(Respondent's Product)

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(Respondent's Product)



(Complainant's Product)

5.37 If we compare the Complainant and the Respondent No. 5's brand name "COLCOREX" and "COLCOREX-V" respectively, we observe that Respondent No. 5 has added alphabet V after the brandname of Complainant i.e. COLCOREX. in white uppercase letters with the phrases 'Colic Syrup' in white underneath in a red rectangular box and 'Best Research for Bloating, for Hunger, Thirst and Weight Gain' in white underneath the former phrase. Followed by an Urdu phrase 'lakar hazam pathar hazam' with a vector outline of four animals in circles vertically, against the blue background. In addition to this there is also an Urdu tagline on the back side of the packaging underneath the trademark in Urdu 'banh k liye behtreen research'. On the other hand the Complainant's trademark features yellow color with capital C followed by lower case letters and display a cow image with shadow of red color in a yellow circle and three stars vertically on both sides of the circle, with a tagline in Urdu "بہترین کیلئے دنیا کی پہلی ریسرچ" in blue in yellow rectangular box.

5.38 Secondly, if we compare the Complainant and the Respondent No. 5's brand name "COLCOREX" and "GOLD COLCOREX" respectively, we see that both the trademarks use the name "Colcorex," with added phrase of "Gold Cobalt Syrup," which provides only a slight distinction. The word GOLD is written above the tradename in white color, while the tradename is written in bright yellow color on a dark blue background packaging with a picture of cow, goat and horse in a circular shape. On the other hand the Complainant's trademark features yellow color with capital C followed by lower case letters and display a cow image with shadow of red color in a yellow circle and three stars vertically on both sides of the circle, with a tagline in Urdu "بہترین کیلئے دنیا کی پہلی ریسرچ" in blue in yellow rectangular box.

5.39 Thirdly, if we compare the Complainant and the Respondent No. 5's brand name "COLCOREX" and "AR CALCOREX" respectively, we see that both the trademarks use the name "Colcorex," with an addition of "AR" before the tradename and replacing the second letter O with A. The word "CALCOREX" is written in bold form with yellow color on a purple background packaging. The word "AR" is written above the tradename in white color and in a very stylish font. On the other hand the Complainant's trademark features yellow color with capital C followed by lower case letters and display a cow image with

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shadow of red color in a yellow circle and three stars vertically on both sides of the circle, with a tagline in Urdu "بہو کیانے دنیا کی پہلی ریسرچ" in blue in yellow rectangular box.

- 5.40 In light of the above it is clear that the Respondent No. 5 has imitated the tradename of the Complainant with the addition of 'V' at the end of the "COLCOREX" to make it "COLCOREX-V", addition of word "GOLD" before "COLCOREX" to make it "GOLD COLCOREX" and addition of word "AR" before "CALCOREX" to make it "AR CALCOREX". The products manufactured by Respondent No. 5 creates a visual similarity that could mislead consumers into thinking the products actually belongs to the Complainant. Therefore the conduct of Respondent No. 5, *prima facie* does amount to violation of Section 10 (2) (d) of the Act.

M/s Izfaar Neutraceutical Industries (Respondent No. 6)

- 5.41 The Complainant has alleged that the Respondent No. 6 is selling its product under the brand name of "SUPER COLCOREX" which is deceptively similar with the trademark of Complainant i.e. "COLCOREX" as mentioned in para 2.10 *ibid*.

- 5.42 The Respondent No. 6 in its reply stated that it is a registered manufacturer and the DRAP has issued FORM-7 to the Respondent No. 6 to manufacture the said product under the name and style being used by the Respondent No. 6. The Respondent No. 6 mentioned that it has never manufactured the product in contravention of Drug Act, 1976 and DRAP-Act. The Respondent No. 6 is of the view that just trade mark cannot protect and defy a pharmaceutical manufacturer to market his product which has been registered under the DRAP-Act, and they are protected under special law i.e. Rule 7 (17) of DRAP-Act. The images of the products of both the Complainant and the Respondent No. 6 is depicted below for easy reference:



(Respondent's Product)



(Complainant's Product)

- 5.43 If we compare the Complainant and the Respondent No. 6's brand name "COLCOREX" and "SUPER COLCOREX" respectively, one of the main points of resemblance between the two packages is the use of the same brand name, "COLCOREX," which is prominently printed in yellow with red border. This together with the identical Urdu tagline *بہو کیانے*

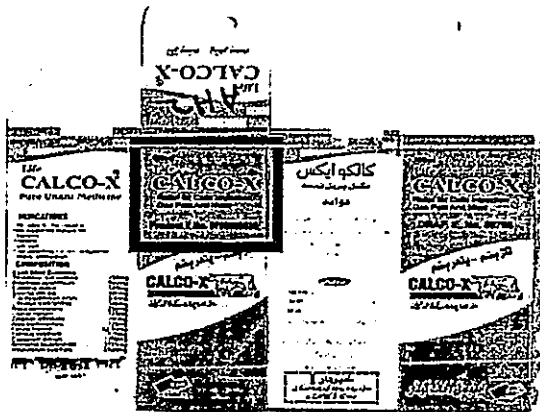
"دنیا کی پہلی ریسرچ" and the same product descriptor "COBALT SYRUP" produce a strong visual and linguistic overlap that might easily lead to customer misidentification. The tradename is written on a blue background with word "SUPER" on the top right side of the tradename in red color bordered with white line, which visually strengthens their similarity. The packaging for the product has an oval design with vector outlines of a buffalo a goat and horse. On the other hand the Complainant's trademark features yellow color with capital C followed by lower case letters and display a cow image with shadow of red color in a yellow circle and three stars vertically on both sides of the circle, with a tagline in Urdu "بہتر کیلئے دنیا کی پہلی ریسرچ" in blue in yellow rectangular box.

5.44 In light of the above it can be safely established that the Respondent No. 6 has imitated the tradename of the Complainant with the addition of 'SUPER' with the "COLCOREX" to make it "SUPER COLCORX". The product manufactured by Respondent No. 6 creates a visual similarity that could mislead consumers into thinking the products actually belongs to the Complainant. Therefore the conduct of Respondent No. 6 , *prima faice* does amount to violation of Section 10 (2) (d) of the Act.

M/s Animal Life Care (Respondent No. 7)

5.45 The Complainant has alleged that the Respondent No. 7 is selling its product under the brand name of "COLCO-X" which is deceptively similar with the trademark of Complainant i.e. "COLCOREX" as mentioned in para 2.11 *ibid*.

5.46 The Respondent No. 7 in its submissions stated that it is registered with DRAP and its product was approved by DRAP in 66th meeting of EEC held on July 22, 2019. On September 20, 2023 DRAP issued a show cause notice that their product is similar with the brand name of the Complainant. Therefore, the Respondent No. 7 on October 11, 2023, submitted its reply to DRAP on the matter and the decision of DRAP is still pending. Since, the matter is still pending with the DRAP regarding the similarity of its product's brand name with that of Complainant, the Respondent No. 7 cannot exclude its liability for being securtnized under Section 10(2) (d) of the Act. The images of the products of both the Complainant and the Respondent No. 7 is depicted below for easy reference:



(Respondent's Product)



(Complainant's Product)

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5.47 The packaging of the product "CALCO-X" by the Respondent No. 7 and "COLCOREX" by the Complainant have been examined by the enquiry committee. After close inspection, it seems that there are some minor striking parallels that can cause confusion for customers. The names of both brands begin with the letter "C" and finish with phonemes that are similar ("-X" for CALCO-X and "-ex" for Colcorex). This phonetic similarity may lead to auditory confusion, especially in situations when products are vocally advocated or in scenarios involving rapid choosing.

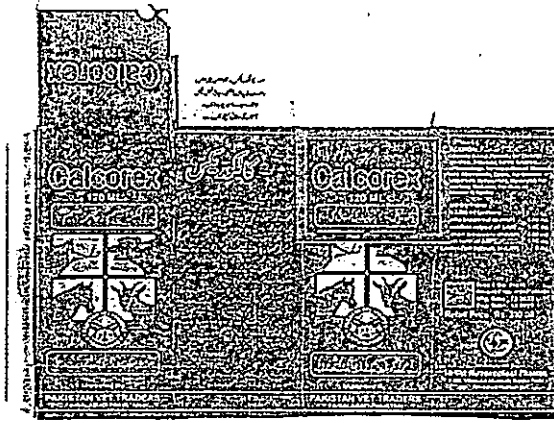
5.48 In addition, both the packagings of the Respondent No. 7 and that of the Complainant are different in color patterns being used. The trade name "CALCO-X" is placed on an orange background with blue color with a tagline of "Lakar Hazam---Pathar Hazam" printed on a yellow background below the tradename. Furthermore, the tradename is also printed on yellow background with black bold characters adjacent to the pictures of a buffalo and a calf. The DRAP enlistment number is also printed below the tradename. On the other hand the Complainant's trademark features yellow color with capital C followed by lower case letters and display a cow image with shadow of red color in a yellow circle and three stars vertically on both sides of the circle, with a tagline in Urdu "دنیا کی پہلی ریسرچ" in blue in yellow rectangular box.

5.49 Regarding the difference, the enquiry committee observes that the two products feature unique color schemes and different design components. The overall net general impression of the packaging does not create confusion in the mind of the ordinary consumers. Consequently, despite the auditory similarity of the tradename, there is no any chance that customers will confuse one product for another. Hence, the product manufactured by Respondent No. 7 does not create a visual similarity that could mislead consumers into thinking the product actually belongs to the Complainant. Therefore the conduct of Respondent No. 7, *prima facie* does not amount to violation of Section 10 (2) (d) of the Act.

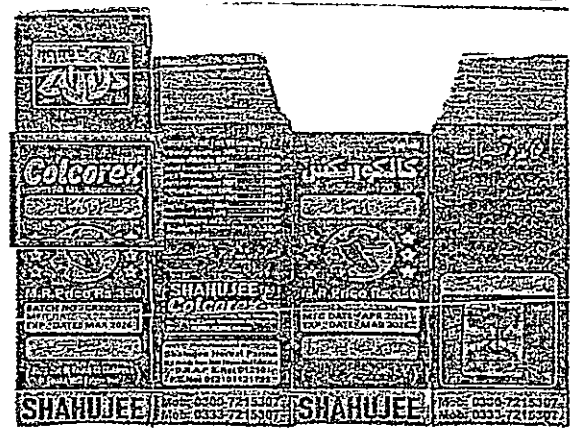
M/s Hi-Vet Nutraceutical Pharma (Respondent No. 8)

5.50 The Complainant has alleged that the Respondent No. 8 is selling its product under the brand name of "HI CALCOREX" which is deceptively similar with the trademark of Complainant i.e. "COLCOREX" as mentioned in para 2.12 *ibid*.

5.51 The Respondent No. 8 in its submissions stated that upon receiving the show cause notice from DRAP regarding the similarity of their product "HI CALCOREX" with Complainant's registered brand name "COLCOREX", they immediately ceased the manufacturing and sale of the said product and initiated the process of changing the brand name in compliance with DRAP regulations along with the submission of affidavit, confirming to refrain from manufacturing the product under disputed brand name until the change is duly registered. The images of the products of both the Complainant and the Respondent No. 8 is depicted below for easy reference:



(Respondent's Product)



(Complainant's Product)

5.52 If we compare the Complainant and the Respondent No. 8's brand name "COLCOREX" and "HI CALCOREX" respectively, the Respondent No. 8's packaging features a predominantly blue background with the brand name "Calcorex" prominently printed in yellow with a white outline. This design also includes the word "Hi" above the brand name, likely referring to "Hi Vet," and a tagline of "ہی کی صفائی کی دوا" written in yellow color on a red rectangular box below the brand name. Images of animals such as a cow, buffalo, horse, and goat appear beneath this tagline in square boxes. On the other hand the Complainant's trademark features yellow color with capital C followed by lower case letters and display a cow image with shadow of red color in a yellow circle and three stars vertically on both sides of the circle, with a tagline in Urdu "بہترین دنیا کی پرہی" in blue in yellow rectangular box.

5.53 Given the similarities in the brand names, with both starting with "C" and only having a difference of second letter i.e. "A" and "O" there is a noticeable resemblance that could cause confusion, especially in a quick purchase scenario. This similarity in brand names is a critical factor because it might lead consumers to mistakenly associate one product with the other, even if the visual packaging elements differ. Hence, the product manufactured by Respondent No. 8 does create a visual similarity that could mislead consumers into thinking the product actually belongs to the Complainant. Therefore the conduct of Respondent No. 8, *prima facie* does amount to violation of Section 10 (2) (d) of the Act.

M/s Blessco International (Respondent No. 9)

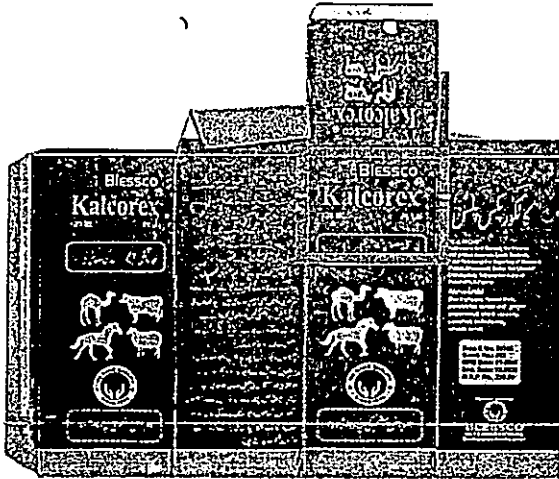
5.54 The Complainant has alleged that the Respondent No. 9 is selling its product under the brand name of "KALCOREX" which is deceptively similar with the trademark of Complainant i.e. "COLCOREX" as mentioned in para 2.13 *ibid*.

5.55 The Respondent No. 9 in its submissions stated that there is misconception in the market that "KALCOREX" is being manufactured by the Respondent No. 9. The Respondent No. 9 clarified that it do not manufacture any such product. Someone in KPK is using Respondent No. 9's name and manufacture this product. The Respondent No. 9 further stated that their vicinity is licensed by DRAP and they do not manufacture nor responsible for products other than the list of products provided along with the reply.

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5.56 Furthermore, the Complainant in its rejoinder mentioned that as the manufacturer listed with DRAP. Respondent No. 9 bears the responsibility for products bearing their name on unit cartons. Disassociating from alleged manufacturing does not absolve them of accountability.

5.57 The enquiry committee believes that it is the responsibility of the Respondent No. 9 to stop the other undertaking which is using the brand name of the Respondent No. 9. The Enquiry Committee will analyse the products of both the Complainant and the Respondent No. 9 to determine the violation. The images of the products of both the Complainant and the Respondent No. 9 is depicted below for easy reference:



(Respondent's Product)



(Complainant's Product)

5.58 If we compare the Complainant and the Respondent No. 9's brand name "COLCOREX" and "KALCOREX" respectively, the enquiry committee is of the view that both are phonetically similar, differing only in a single letter, which can easily confuse consumers, especially in spoken contexts. This similarity is particularly problematic in a market where precise pronunciation might not always be ensured by consumers or vendors. The Respondent No. 9's packaging features a predominantly blue background with the brand name "KALCOREX" prominently printed in yellow color. This design also includes the word "BLESSCO" above the brand name, likely referring to "Respondent No. 9" and a tagline of "bunh, qabz, aaphr, pait ki safai ki dawa" written in yellow color inside a white boarderd rectangular box. Below the brand name, images of animals such as a camel, buffalo, horse, and sheep appear beneath this tagline. On the other hand the Complainant's trademark features yellow color with capital C followed by lower case letters and display a cow image with shadow of red color in a yellow circle and three stars vertically on both sides of the circle, with a tagline in Urdu "اپنی کیلئے دنیا کی پہلی ریسرچ" in blue in yellow rectangular box.

5.59 The market positioning of both products as remedies for animal health problems, specifically targeting chronic indigestion, exacerbates the issue. Since they are direct competitors, any confusion caused by similar names and packaging could directly impact consumer choice. Hence, the product manufactured by Respondent No. 9 does create a visual similarity that could mislead consumers into thinking the product actually belongs to the Complainant. Therefore the conduct of Respondent No. 9, *prima facie* does amount to violation of Section 10 (2) (d) of the Act.

5.60 In summary, the violation proved in para 5.10 to 5.59 above is hereby provided in tabular form for ease of understanding:

Sr. No.	Respondents	Products	Violation Proven
1.	M/s Atzan Natural Products	COLCOREX FORT	✓
2.	M/s Herbbeck Nutraceuticals	COLCOREX-C	✓
		TM-CALCOREX	✓
		CALCOJEX	×
3.	M/s Muslim Herb and Nutraceuticals	COLCOREX-M	✓
4.	M/s Vital Mark (PVY)	COLCOREX-T	✓
5.	M/s S.Asia Oriental Pharma	COLCOREX-V	✓
		GOLD COLCOREX	✓
		AR-CALCOREX	✓
6.	M/s Izfaar Nutraceutical Industries	SUPER COLCOREX	✓
7.	M/s Animal Life Care	COLCO-X	×
8.	M/s Hi-Vet Nutraceutical Pharma	HI-CALCOREX	✓
9.	M/s Blessco International	KALCOREX	✓

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

5.63 The Complainant, in its complaint, has submitted that a fraudulent adoption of another's trademark and tradename is in clear contravention of the Act. In fact, the said adoption by the Respondents is to cause grave injury to the Complainant's established reputation in the market and to grab the general's public attention to create undue damage for its offerings. Hence the unauthorized and blatant use of the Complainant's trademark/trade name by the Respondents is in violation of Section 10 of the Act and clearly has the potential to further harm the business interest of the Complainant in violation of Section 10(2)(a) of the Act.

5.64 The Complainant relied upon the precedents laid down by the Commission that a mere potential harm to the business interests of the Complainant suffices to constitute a violation of the provision of Section 10(2)(a) of the Act (2022 CLD 1343).

5.65 In this regard, it seems, in the instant matter, that the Respondents have made misrepresentation concerning their own products/services by fraudulent use of the

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Complainant's trademark/trade name to take advantage of the reputation (goodwill) of the products/services of the Complainant, not concerning the products/services of the Complainant to cause the express or direct harm to the business interests of the Complainant. Moreover, the Complainant via letter dated June 12, 2024, was asked to provide evidence for loosing business interest, but it has not provided any evidence of the express or direct harm caused by the Respondents through fraudulent use of its trademark/trade name.

5.66 Therefore, it can be concluded that Respondent No. 1 to Respondent No. 9 has not violated the provision of Section 10(2)(a) of the Act.

III. WHETHER THERE IS A SPILLOVER EFFECT OF THE RESPONDENT'S CONDUCT?

5.67 It is relevant to mention here that the term spill-over effect has been delved into by Lahore High Court and High Court of Sindh in the cases titled LPG Association Case and Mirpurkhas Sugar Mills Limited versus Federation of Pakistan (2022 CLD 352 Karachi) respectively. Relevant portions of the said judgments are reproduced below for ease of reference:

The LPG Association Case

"1.7 'Spillover Effect' is an economic term, used for positive or negative effect of an economic activity, causing benefit without paying or suffer without compensation. It is also termed as externality or neighbourhood effect. In law; Spillover Effect may be referred to a situation where laws, regulations or policies of one governing unit effects the people outside its territorial limits. In the instant case if an anticompetitive behaviour is not effecting the trade and commerce of another Province, it does not come with the phrase 'interprovincial trade & commerce', as used in Entry 27 and discernible in Article 151. Conversely, if any act or omission, between anticompetitive behaviour, committed within geographical boundaries of a Province, has its effect beyond such territorial limits, would be subject of a Federal legislation and within its executive competence."

The Mirpurkhas Sugar Mills Case

"Nonetheless, if any act or omission, translated as anti-competitive behaviour, is although committed within geographical boundaries of a province has spillover effect into territorial limits of another province or a territory would fall within executive competence of the federation to regulate but also within its exclusive legislative mandate to legislate on."

5.68 The judgments cited above make it abundantly clear that the jurisdiction of the Commission is determined by the effects rather than the location of the anti-competitive activity/behaviour. In this day and age, the effects of deceptive marketing practices through marketing/advertising campaigns transcend regional boundaries. The Complainant's nationwide sales in Pakistan means that any anti-competitive activity/behaviour,

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specifically, the dissemination of false and misleading information, capable of harming its business interests, regarding any of its products by the Respondents through marketing/advertising campaigns, will, inevitably, exceed or spill over territorial limits of the province.

5.69 In addition to the above, it is pertinent to mention here that the Complainant via letter dated July 08, 2024, has submitted the purchase receipts of the Respondent No, 2, 5, 6, 7 and 8 which substantiate their nationwide presence i.e. beyond the boundaries of Punjab.

5.70 Foregoing in view, and the statement made in para 5.68 – 5.69 above, it is concluded that the Respondent's violations through the alleged marketing/advertising campaign appears to have a spill-over effect.

6. CONCLUSION AND RECOMMENDATIONS:

6.1 In view of the analysis drawn in this report, the products manufactured by the Respondents except Respondent No. 7 does creates a visual similarity that could mislead consumers into thinking the product actually belongs to that of the Complainant. Hence, *prima facie*, were found to be fraudulently using the Complainant's registered trademark/tradename "COLCOREX", in violation of Section 10 of the Act in terms of Section 10 (2) (d) of the Act, as shown below:

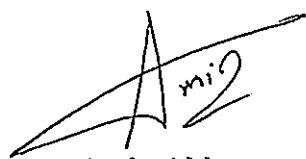
Sr. No.	Respondents	Products	Violation Proven
1.	M/s Atzan Natural Products	COLCOREX FORT	✓
2.	M/s Herbbeck Nutraceuticals	COLCOREX-C	✓
		TM-CALCOREX	✓
		CALCOJEX	×
3.	M/s Muslim Herb and Nutraceuticals	COLCOREX-M	✓
4.	M/s Vital Mark (PVY)	COLCOREX-T	✓
5.	M/s S.Asia Oriental Pharma	COLCOREX-V	✓
		GOLD COLCOREX	✓
		AR-CALCOREX	✓
6.	M/s Izfaar Nutraceutical Industries	SUPER COLCOREX	✓
7.	M/s Animal Life Care	COLCO-X	×
8.	M/s Hi-Vet Nutraceutical Pharma	HI-CALCOREX	✓
9.	M/s Blessco International	KALCOREX	✓

6.2 Moreover, due to the non-provision of any evidence related to harming the business interest of the Complainant, the violation of Section 10 of the Act, in terms of Section 10 (2) (a) of the Act could not be determined against all the Respondents.

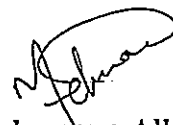
6.3 Therefore, in light of the above mentioned findings, it is recommended that the Commission may consider initiation of proceedings against the Respondents including M/s. Atzan Natural Products, M/s. HerBBeck Nutraceuticals, M/s. Muslim Herbal and Nutraceuticals, M/s. Vital Mark Private Limited, M/s. S-Asia Oriental Pharma, M/s. Izfaar

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Nutraceuticals Industries, M/s. Hi-Vet Nutraceuticals Pharma and M/s. Blessco International under Section 30 of the Act for, *prima facie*, violation of Section 10 of the Act.

A handwritten signature in black ink, appearing to be 'Amin Akbar', with a large, sweeping stroke across the top.

Amin Akbar
Assistant Director (OFT)
(Enquiry Officer)

A handwritten signature in black ink, appearing to be 'Mehmoona Allauddin', with a circular flourish at the top.

Mehmoona Allauddin
Management Executive (OFT)
(Enquiry Officer)