

COMPETITION COMMISSION OF PAKISTAN

ENQUIRY REPORT

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

**IN THE MATTER OF COMPLAINT FILED BY M/S DADEX ETERNIT LIMITED
AGAINST M/S QASIM IRON WORKS FOR ALLEGED DECEPTIVE MARKETING
PRACTICES**

BY

M. Salman Zafar, Riaz Hussain & Amin Akbar

Dated: September 21, 2020

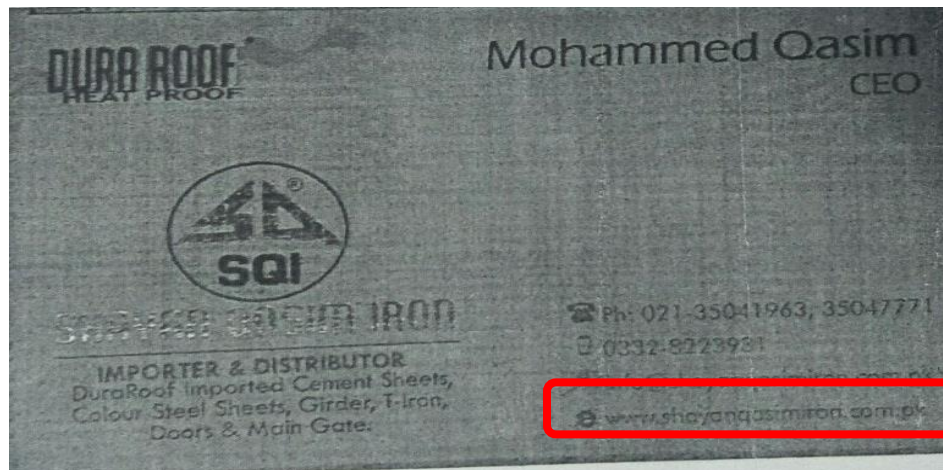
1. BACKGROUND

- 1.1 M/s Dadex Eternit Limited (the ‘**Complainant**’), filed a complaint against M/s Qasim Iron Works (the ‘**Respondent**’) with the Competition Commission of Pakistan (the ‘**Commission**’) for alleged violation of Section 10 of the Competition Act 2010 (the ‘**Act**’), pertaining to Deceptive Marketing Practices.
- 1.2 It was alleged in the complaint that the Respondent has initiated a malicious and deceptive campaign against the Complainant, where the Respondent has been circulating certain videos in the market through various mediums, including its official website, Official Facebook page, YouTube and WhatsApp. In these videos a false and misleading comparison has been made between two different quality products i.e. Fiber Cement Sheets and by doing so has distorted healthy competition in the market.
- 1.3 Based on the preliminary fact finding, the Competent Authority has initiated an enquiry in accordance with sub section (2) of Section 37 of the Act. The enquiry was headed by Ms. Marryum Pervaiz Joint Director (OFT) along with Mr. Riaz Hussain, Assistant Director (OFT) and Mr. Amin Akbar, Management Executive (OFT). However the enquiry committee was reconstituted following the appointment of Mr. Salman Zafar, Director (OFT) as Head of the Department along with Mr. Riaz Hussain, Assistant Director (OFT) and Mr. Amin Akbar, Management Executive (OFT) (collectively the ‘**Enquiry Officers**’) to conclude the enquiry.
- 1.4 The aim of the enquiry was to determine whether, *prima facie*, by disseminating false and misleading information and wrong comparison:
 - a) The Respondent is violating Section 10 (1) of the Act, in terms of Section 10 (2) (c) of the Act, which prohibits *false or misleading comparison of goods in the process of advertising*; and/or
 - b) The Respondent’s conduct *is capable of harming the business interest* of the Complainant in violation of Section 10 (1) of the Act, in terms of Section 10 (2) (a) of the Act; and/or
 - c) The Respondent’s conduct pertains to *the distribution of false or misleading information to consumers related to character, place of production, properties and quality of goods*, in violation of Section 10 (1) of the Act, in terms of Section 10 (2) (b) of the Act?

2. THE COMPLAINT:

- 2.1 The Complainant is a reputable company, incorporated as a Public Limited Company in the year 1959 having various offices spread across Pakistan, with its centers established at Karachi, Hyderabad and Lahore etc. It is engaged in the production of quality building materials.

- 2.2 The Respondent is a company named M/s Qasim Iron Works. It has engaged in the business of imports and distribution of imported cement sheets, color screen steel sheets, Girder, T-Iron, doors and main gates etc.
- 2.3 The Complainant alleged that the Respondent has engaged in the vicious practices of deceptive marketing, and is promoting false, untrue, and misleading information regarding the Complainant on social media websites, such as Facebook, YouTube, WhatsApp, as well as on the website under the URL www.shayanqasimiron.com.pk. These videos were also available on the official website of M/s Qasim Iron Works, as provided on the Business Card of Mr. Mohammad Qasim, which is given below:



- 2.4 The Complainant has submitted that the Respondent has falsely claimed that its products is superior to that of the Complainant, in terms of quality, efficacy, and fitness. It is pertinent to mention here that the Respondent, while making these extraordinary claims against the Complainant, has not provided any shred of evidence to substantiate its claims. It has come to the knowledge of the Complainant that these video(s) are causing defamation and harm to its business which are being circulated on total of 4 Social Media Networks. (Four video evidences are attached in DVD Format as **ANNEXURE-A**).
- 2.5 It has been alleged that the Respondent has tried to portray the Complainant's product as inferior to that provided by the Respondent through a video on the Compact Disk presented as **ANNEXURE-A** with title "**SQI Facebook-09-06_112133**" contains a screen recording of the Official Facebook Page of the Respondent i.e. "SQI- Shayan Qasim Iron". The Character of the Video can be seen naming the Complainant, at **00:54 Second**, in the video to cause damage to the business of the Complainant.
- 2.6 The Complainant further mentioned that the second video on the Compact Disk presented as **ANNEXURE-A** with title "**SQI Facebook-09-06_112133**" contains the screen recording of two separate videos provided on the official website (www.shayanqasimiron.com.pk) of the Respondent. The Complainant pointed out that the Respondent has tried to undermine the quality of product of the Complainant by claiming that the quality of production of the Complainant's products are much inferior to those of

provided by the Respondent. The Complainant alleged that this act of the Respondent constitutes a sheer violation of the Competition Act, 2010, and has caused serious harm to its business.

- 2.7 The Complainant has mentioned that the third video on the Compact Disk presented as **ANNEXURE-A** with title “**SQI whatsapp-VID-20190831-WA0017**” has been circulated in the business community, as well as, among the consumers to portray that the products of the Complainant are inferior, and low in quality, while claiming that the products of the Respondent are much better in quality, finishing and stability. The Complainant further alleged that the same video has been uploaded on the Official Facebook page of the Respondent as well on the official website of the Respondent.
- 2.8 The Complainant alleged that the same video, with title “**SQI-YouTube-09-06_112842**” contains a screen recording of a YouTube Channel i.e. “**Ali Ahsan**” having URL www.youtube.com/watch?v=RmP7aoD-Inc, has been circulate by the Respondent. The Complainant further mentioned that the video has been removed by the user named “Ali Ahsan”, after the actions taken by the Complainant.
- 2.9 The Complainant has served a legal notice to the Respondent on **07-09-2019**, to its Chief Executive Officer, Mr. Mohammad Qasim. The Respondent has served a reply to the notice dated **16-09-2019** by stating that, it has not defamed the Complainant or mislead the general public. The Respondent instead of apologizing for its misconduct, has tried to cause further harm to the Complainant by claiming that the Complainant has tried to create monopoly in the business market. As per the Complainant the Respondent has failed to substantiate these claims till date. (Copy of the Notice dated 07-09-2019 along with reply dated 16-09-2019 is attached as **ANNEXURE-B**).
- 2.10 The Complainant has further submitted that the Respondent has denied the allegations leveled in the legal notice and tried to distance itself from those video which were even available on its official website.
- 2.11 The Complainant has alleged that the aforementioned illegal actions of the Respondent has not only caused harm to the hard earned respect, fame, credibility, and prestige but has also caused pecuniary loss to the business of the Complainant and hurt its standing in the eyes of the general public and business market. The Complainant has suffered huge loss due to the aforementioned acts of the Respondent, and these vicious acts have also caused serious hardships for the Complainant’s business, and has resulted in mental agony and pain for the people involved in business with the Complainant.
- 2.12 The Complainant has further alleged that the Respondent, through advertisement, has violated the Section 10(2) (a) of the Act which provides that “*the distribution of false and misleading information that is capable of harming the business interest of another undertaking*”. Furthermore, the Respondent has violated Section 10(2) (b) of the which provides that “*the distribution of false and misleading information to consumers, including the distribution of information lacking a reasonable basis related to the price, character, method, or place of production, properties, suitability for use, or quality of goods*” and

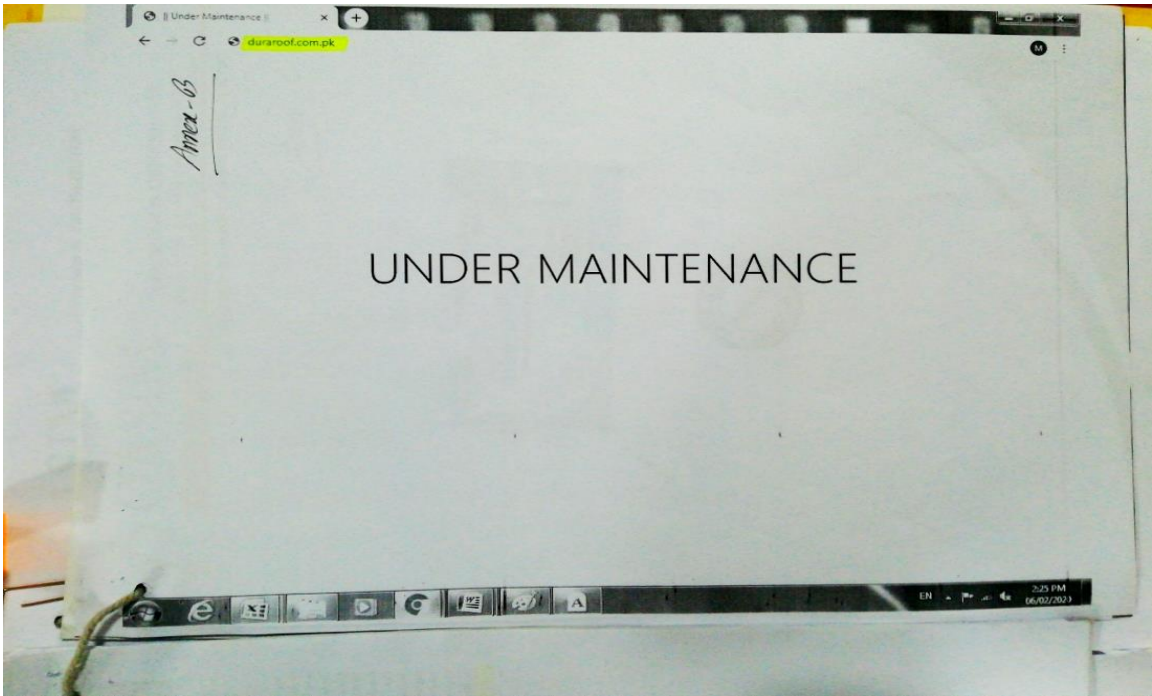
finally the Section 10(2) (c) of the Act which provides that spreading of “*false and misleading information, comparison of goods, in the process of advertising*” all these shall deemed to be an act of Deceptive Marketing.

- 2.13 The Complainant has prayed for the following reliefs;
- i. That the Respondent be directed to refrain from his illegal acts against the Complainant.
 - ii. That a penalty of Rs. Five Crore be imposed upon the Respondent under Section 38 of the Competition Act, 2010.
 - iii. Any other relief that this Honorable Commission deems fit may also be granted to the Complainant, in the best interests of justice.

3. RESPONDENT’S COMMENTS:

- 3.1 The complaint was forwarded to the Respondent by the Enquiry Committee for its comments on January 02, 2020. The Respondent before the lapse of the deadline requested for an extension in time limit through letter dated January 16, 2020, which was granted vide letter dated January 20, 2020.
- 3.2 The Respondent has submitted its reply via letter dated February 06, 2020, which is summarized as under:
- 3.3 The Respondent has submitted that it is a sole proprietorship concern duly registered with the local authorities (FBR) under the laws of Government of Pakistan, having National Tax No. 0921674-0.
- 3.4 The Respondent has stated that it is an inherited business and was dealing only in color steel sheets, Girder, T-iron, Doors and main gates since after 1992. The Respondent, for the purpose of expansion, has registered itself, in year 2016, as Importer with the intent to import cement sheets from Vietnam. Since after registration, the Respondent has started operating with the sale of imported cement sheets with the name of Dura Roof. The Respondent has admitted that, before starting import of Dura sheets from Vietnam, it was also a distributor of the Complainant’s locally manufactured sheets. At that time the complainant was the sole manufacturer and supplier of cement sheets in the market. Therefore, the Respondent decided to start imports rather than to purchase from the local manufacturer.
- 3.5 The Respondent has admitted that the Complainant is, in fact, engaged in the business of production, distribution and sales of building material with the brand name “**Dadex**”.
- 3.6 The Respondent has denied the legal status mentioned in para 2.2 *ibid* and stated that it is engaged in imports and distribution of color sheets, Girders, T-iron, Doors and main gates. However, the Respondent admitted that it has supplied its imported Dura Roof Sheets to various dealers/distributors/retailers including M/s Shayan Qasim Iron (SQI), and also engaged in the retail business of locally manufactured Colored Steel Sheets, Girders and T-irons.

- 3.7 The Respondent has denied that it has defamed the complainant’s business by circulating a video on various marketing channels. As mentioned above that the Respondent is a sole proprietor business and was operating with two different branches in different locations of Karachi city before the year 2017. However, the family business was further divided and a new and separate business entity, was formed in the name of Shayan Qasim Iron (SQI) and the ownership along with assets and liabilities of the business (M/s Shayan Qasim Iron) was also transferred to Mr. Shayan Qasim. The newly formed entity is not located at the address given by the complainant in its complaint.
- 3.8 The Respondent has denied that it has engaged in distribution of false and misleading information through a video on its official website and other social media. The official website of the Respondent is www.durarooft.com.pk which is still under construction and no such videos has been shared by the Respondent. Moreover, the Respondent has not created its Facebook, YouTube and other social media pages. (Screen print of the Respondent’s website is given below). The circulation of videos on various social media sites, contain a comparative statement, which has been denied by the Respondent.



Print Screen Dated 06.02.2020

- 3.9 The Respondent has denied and demanded strict proof regarding the use of Facebook page “SQI Facebook-09-06_112133 and pointed out the contradictions in the Complainant’s statement, i.e., The videos were recorded from the official Facebook Page of M/s Shayan Qasim Iron (SQI), a page run by the Respondent, i.e. M/s Qasim Iron Works.
- 3.10 The Respondent has submitted that the URL address, www.shayanqasimiron.com.pk is not its official website. It has been submitted that the Respondent was the sole right holder of its two branches, i.e., M/s Qasim Iron Works and M/s Shayan Qasim Iron since before the year 2017. However, the family business was divided further and the ownership of M/s Shayan Qasim Iron was transferred on December, 2017 to Mr. Shayan Qasim. The

Respondent alleged that the complainant with its malafide intent, is trying to create a nexus between two different business entities, wrongly. The Respondent has submitted a specimen of its official stamp along with visiting card, which is given below:



- 3.11 The Respondent has submitted that a video titled ‘SQI Whatsapp-VID-20190831-WA0017’ recorded or downloaded from an undisclosed source, demands strict proof that it was shared through the mobile phone numbers used and/or any other WhatsApp group created or used by the Respondent. Moreover, Mr. Ali Ahsan was not the employee, dealer and/or agent of the Respondent and the URL address ‘www.youtube.com/watch?v=RmP7aoD-Inc’ was not in its use.
- 3.12 The Respondent has admitted that a legal notice, dated 07-09-2019 was received at the given address and a reply to the notice was duly served to the Complainant. The allegations of the Complainant, through legal notice **ANNEXURE-B**, were also denied by the Respondent.
- 3.13 The Respondent has further mentioned that it has denied the involvement in the production, distribution and or use of any such video, which cause defamation to the Complainant’s product. Moreover, it has already been clarified that the URL address www.shayanqasimiron.com.pk and the Facebook page “SQI Facebook-09-06_112133” were not the official representation of the Respondent’s business.
- 3.14 The Respondent denied that it has tried to defame the complainant’s business and damage its goodwill, fame, credibility and prestige from its actions, hence, no financial loss was caused due to any act or action of the Respondent. In fact the complainant has filed various false and frivolous complaints against the Respondent in Custom, Pakistan Standard and Quality Control Authority and now with the Competition Commission of Pakistan, harassing and disturbing the business of the Respondent.

- 3.15 The Respondent has further mentioned that it has not contravened the provisions of section 10 of the Act, and has welcomed the Honorable Commission to visit the business site and verify the facts stated above.
- 3.16 The Respondent has humbly prayed that that the titled complaint made against the Respondent may be dismissed with exemplary costs, and any other order which this Honorable Commission deems fit and appropriate in the present circumstances, may also be granted.
- 3.17 Other than para wise reply to the complaint, the Respondent has also made some other submissions, which are as follows:
- 3.18 The Respondent has submitted that it is a responsible and law abiding citizen of the country, therefore, after receiving the legal notice dated 07-09-2019 from the complainant an internal investigation was conducted on the matter at hand and it was revealed that a daily wage worker had produced the alleged video on his mobile phone during a project work and forwarded to the owner of M/s Shayan Qasim Iron who has uploaded this video on its Facebook page. However, upon personal request and efforts, the video was deleted immediately from the website and Facebook page of M/s Shayan Qasim Iron.
- 3.19 Moreover, through a circular dated 25-09-2019, the retailers and distributors of Dura sheets were cautioned for such kind of actions in the future. It was also conveyed to the retailers and distributors that their supplies may be permanently suspended in case of non-compliance of notice. The Respondent has not allowed any of its agent, distributor and or retailer to advertise its product in such a way where a wrong impression has been created. Further, permanent removal of the videos has been ensured by the Respondent. Furthermore, the Respondent has taken all possible measures to ensure that no such kind of actions happen again in future.

4. REJOINDER BY THE COMPLAINANT:

- 4.1 The comments/reply of the Respondent were forwarded to the Complainant for its rejoinder vide letter dated February 10, 2020. The legal counsel of the Complainant has requested for extension in time for the submission of rejoinder, which was granted via letter dated February 20, 2020.
- 4.2 The Complainant has submitted its rejoinder vide letter dated February 25, 2020, the contents of which are reproduced below:
- 4.3 The Complainant has highlighted the admission statement made by the Respondent in the above mentioned paras 3.18 & 3.19 *ibid* through other submissions. The Complainant has reiterated para 3.18 & 3.19 *ibid* and submitted it as part of its rejoinder. The Complainant has submitted that the admission of the Respondent, through above mentioned paras, proves the facts mentioned in the complaint. The Complainant has mentioned that it has suffered huge losses due to the acts of the Respondent.

4.4 The Complainant has prayed that strict action against the respondent may kindly be taken. Furthermore, the above submission of the Complainant may kindly be taken as rejoinder and the Complainants legal counsel will argue the case at the time of final arguments, if needed be.

5. ANALYSIS:

5.1 As mentioned in para 1.4 above, the mandate of this enquiry is to determine whether, *prima facie*;

- a) The Respondent is violating Section 10 (1) of the Act, in terms of Section 10 (2) (c) of the Act, which prohibits *false or misleading comparison of goods in the process of advertising*; and/or
- b) The Respondent's conduct *is capable of harming the business interest* of the Complainant in violation of Section 10 (1) of the Act, in terms of Section 10 (2) (a) of the Act; and/or
- c) The Respondent's conduct pertains to *the distribution of false or misleading information to consumers, including the distribution of information lacking a reasonable basis, related to the price, character, place of production, properties and quality of goods*, in violation of Section 10 (1) of the Act, in terms of Section 10 (2) (b) of the Act?

5.2 Before moving forward, it is also necessary to establish as to what constitutes a violation of Section 10 of the Act. The Commission, in its order held against **M/s CMPak Limited**¹, has defined "**False**" and "**Misleading**" information as deceptive marketing practices in the following manners:

False Information:

'False information' can be said to include: oral or written statements or representations that are; (a) contrary to truth or fact and not in accordance with the reality or actuality; (b) usually implies either conscious wrong or culpable negligence; (c) has a stricter and stronger connotation, and (d) is not readily open to interpretation.

Misleading Information:

*"Whereas '**misleading information**' may essentially include oral or written statements or representations that are; (a) capable of giving wrong impression or idea, (b) likely to lead into error of conduct, thought, or judgment, (c) tends to misinform or misguide owing to vagueness or any omission, (d) may or may not be deliberate or conscious and (e) in contrast*

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

to false information, it has less onerous connotation and is somewhat open to interpretation as the circumstances and conduct of a party may be treated as relevant to a certain extent.”

- 5.3 The above reference suggests that any information distributed via marketing campaign can mislead consumers if it is vague in any way or has omitted certain information, even if such a conduct is not deliberate. Consequently, distribution of misleading information is capable of giving a wrong impression with respect to a good or service which could induce a consumer into distorted decision making, hence, causing consumer injury. Therefore, if the Respondent’s conduct is proven misleading, it would amount to deceptive marketing practices in terms of Section 10 of the Act.
- 5.4 Therefore, such false and misleading information (if proven), would amount to deceptive marketing practices. Furthermore, according to Section 10(2) (c) of the Act, “False and misleading comparison of goods in the process of advertising” is violable under the Act.
- 5.5 As mentioned in Para 2.5 to 2.8 *ibid*, the video evidences are of the screen recordings of Facebook Page, Website, YouTube and WhatsApp. The recordings were made by the Complainant, through a screen recording device/application. The Enquiry Committee deemed it fit to verify the authenticity of video evidence, therefore, all the four videos were sent the Department of Information Systems and Technology (IS&T), CCP for forensic analysis.
- 5.6 The purpose of obtaining forensic analysis was to verify that whether the URL was overwritten or not. The IS&T Department has submitted technical report, ANNEXURE-C, with its findings which are reproduced below:

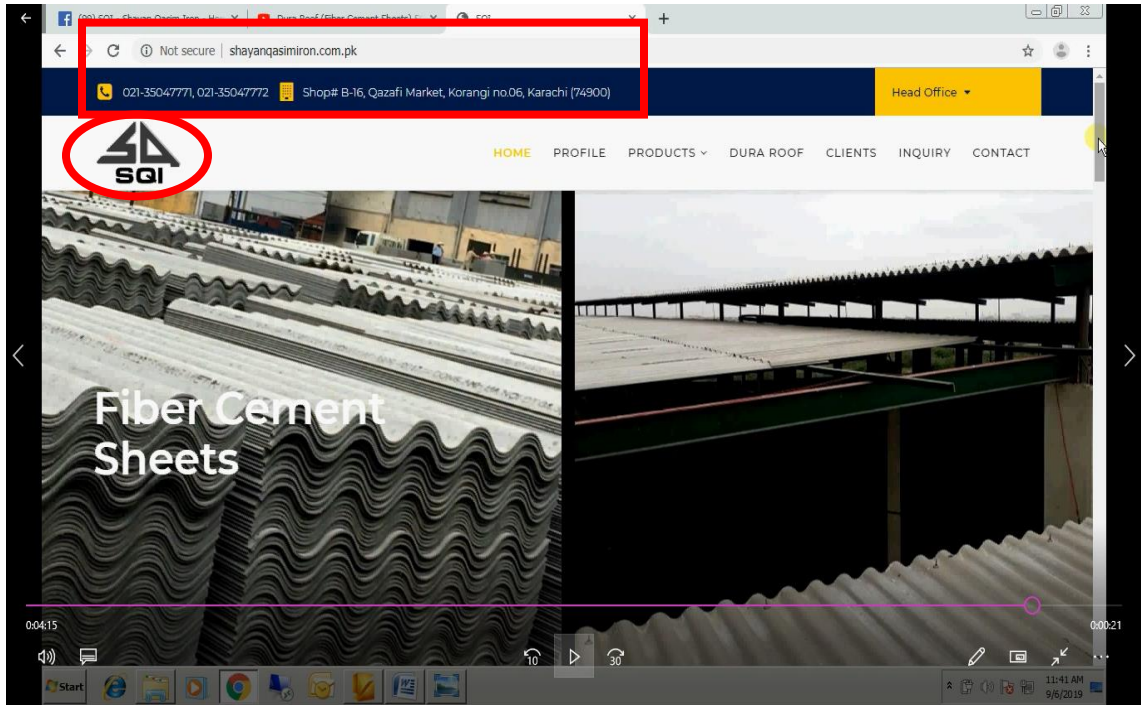
.....In depth analysis is carried out on recovered website’s by the IS&T forensic team using digital video techniques, it is found that the given video (evidence) is found on the M/s Qasim Iron Works website and it was uploaded on the website on 07th July, 2019. Similarly, source code analysis is also carried out by the IS&T forensic team, same uniform Resource Locator is found in the source code of recovered website of M/s Qasim Iron Works which later on was deleted by the owner. (The deletion date cannot be determined).

- 5.7 In light of the above, it can be concluded that the video evidence submitted by the Complainant was an unaltered first-hand information and the URL address was not overwritten. Moreover, in line with para 3.19 *ibid* the Respondent has not denied the existence of the alleged video but claims to have taken corrective actions over the distribution of the subjected video.

A. OVERALL NET GENERAL IMPRESSION OF THE RESPONDENT’S MARKETING CAMPAIGN:

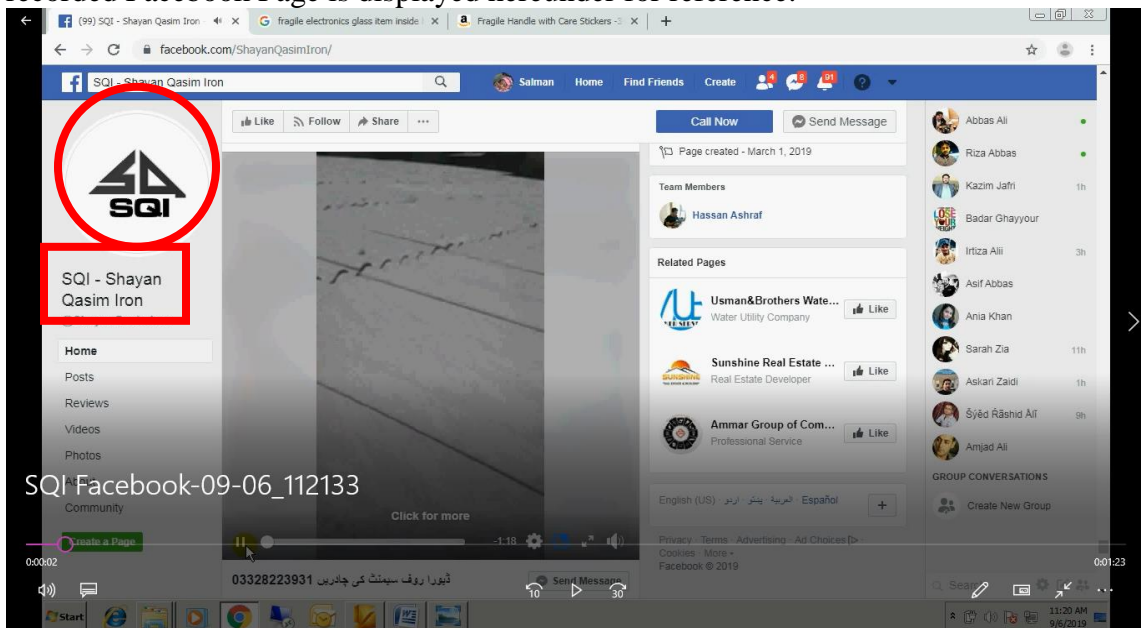
- 5.8 The basic allegation under the complaint is that the claim “*Dura Sheet is superior to Dadex, in terms of quality, efficacy and fitness*” made by the Respondent, through a video circulated on various advertising channels, is not only misleading and false but it also lacks a reasonable basis and capable of harming the business interest of the Complainant.
- 5.9 In order to determine instance of deception in any marketing material, the main focus of the Enquiry Committee, as per the general practice, is to evaluate its “net general impression”. The Canadian Competition Commission, according to its Competition Act, states: “*To determine whether a representation is false or misleading, the courts consider the "general impression" it conveys, as well as its literal meaning.*”²
- 5.10 Moreover, we must keep in mind the principle laid down by the *Commission in the matter of Zong & Ufone (2010 CLD 1478)* that the advertisement has to be viewed as a whole, without emphasizing isolated words or phrases apart from their context. The said marketing campaign was launched in the beginning of the month of September 2019.
- 5.11 One of the issue highlighted by the Respondent is that the alleged video are of the screen recording of URL www.shayanqasimiron.com.pk, however, the same has not the official representation of it. The official registered website of the Respondent is under URL www.durarooft.com.pk and no such video was prepared and distributed through its website, Facebook Page, YouTube Channel and WhatsApp group.
- 5.12 The Respondent has submitted that its family business was divided in year 2017 and all the administrative matters of M/s Shayan Qasim Iron were transferred to Mr. Shayan Qasim. The website under URL www.shayanqasimiron.com.pk was being operated by M/s Shayan Qasim Iron and the Respondent has nothing to do with the preparation and distribution of such video on any of the marketing mediums. Therefore, it is required to prove that M/s Qasim Iron Works and M/s Shayan Qasim Iron are two separate business entities or not.
- 5.13 As mentioned in Para 2.4 above, the Complainant has submitted a compact disk, ANNEXURE-A, contained a screen recording of website under URL www.shayanqasimiron.com.pk. Screen shot of recorded screen of website is displayed hereunder for ease of reference:

² <http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03133.html>

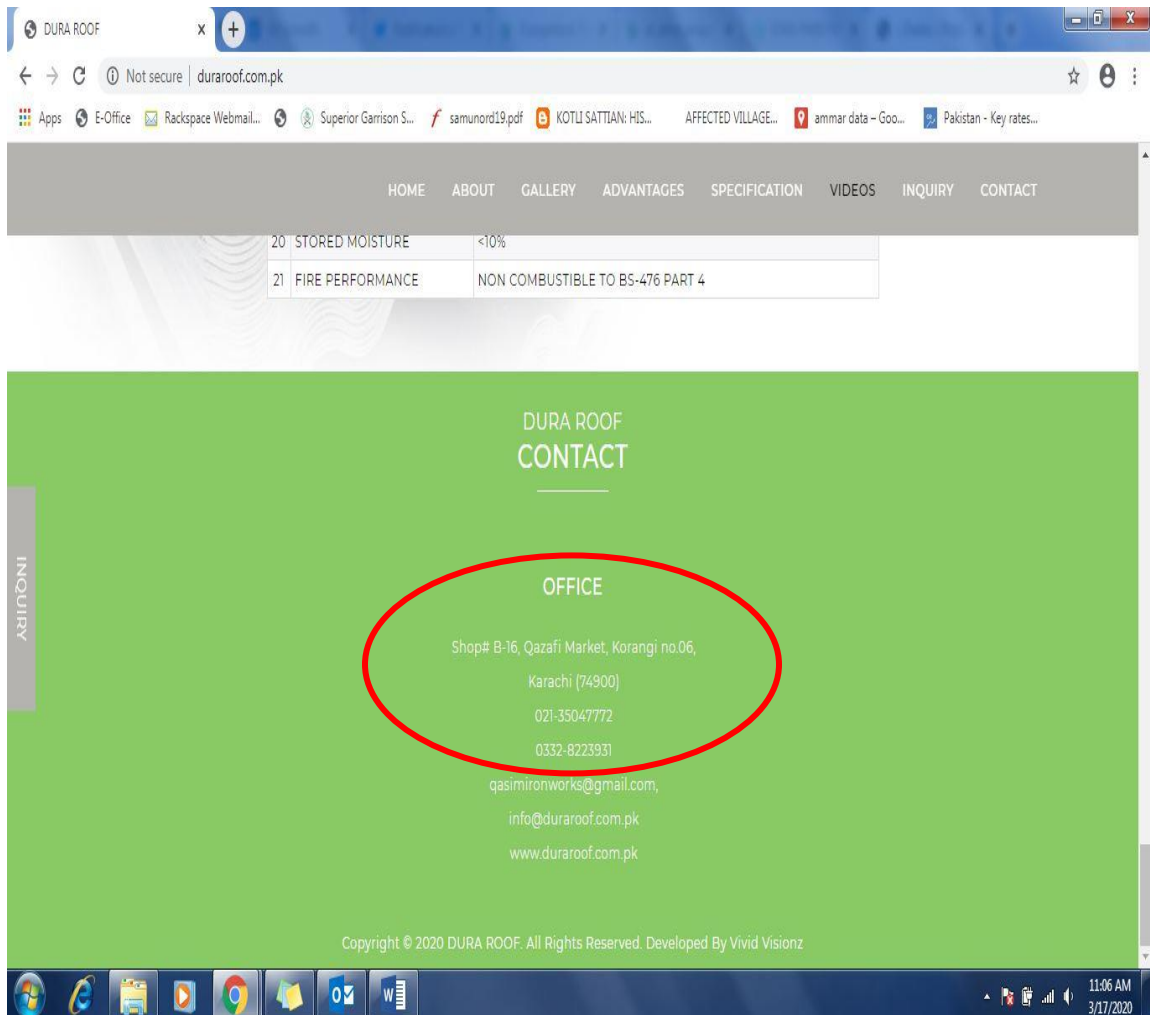


5.14 The highlighted area in the above image showed the contact details of a business entity namely SGI (Shayan Qasim Iron), which is located at “Shop no. B-16, Qazafi Market, Korangi no. 6, Karachi, Phone No. 021-35047771&35047772”. The URL www.shayanqasimiron.com.pk has been used to represent the above mentioned entity (SGI).

5.15 In addition to the above, the compact disk, ANNEXURE-A, also contained a screen recording of a Facebook Page titled “SGI Facebook-09-06_112133”. Screen shot of recorded Facebook Page is displayed hereunder for reference:

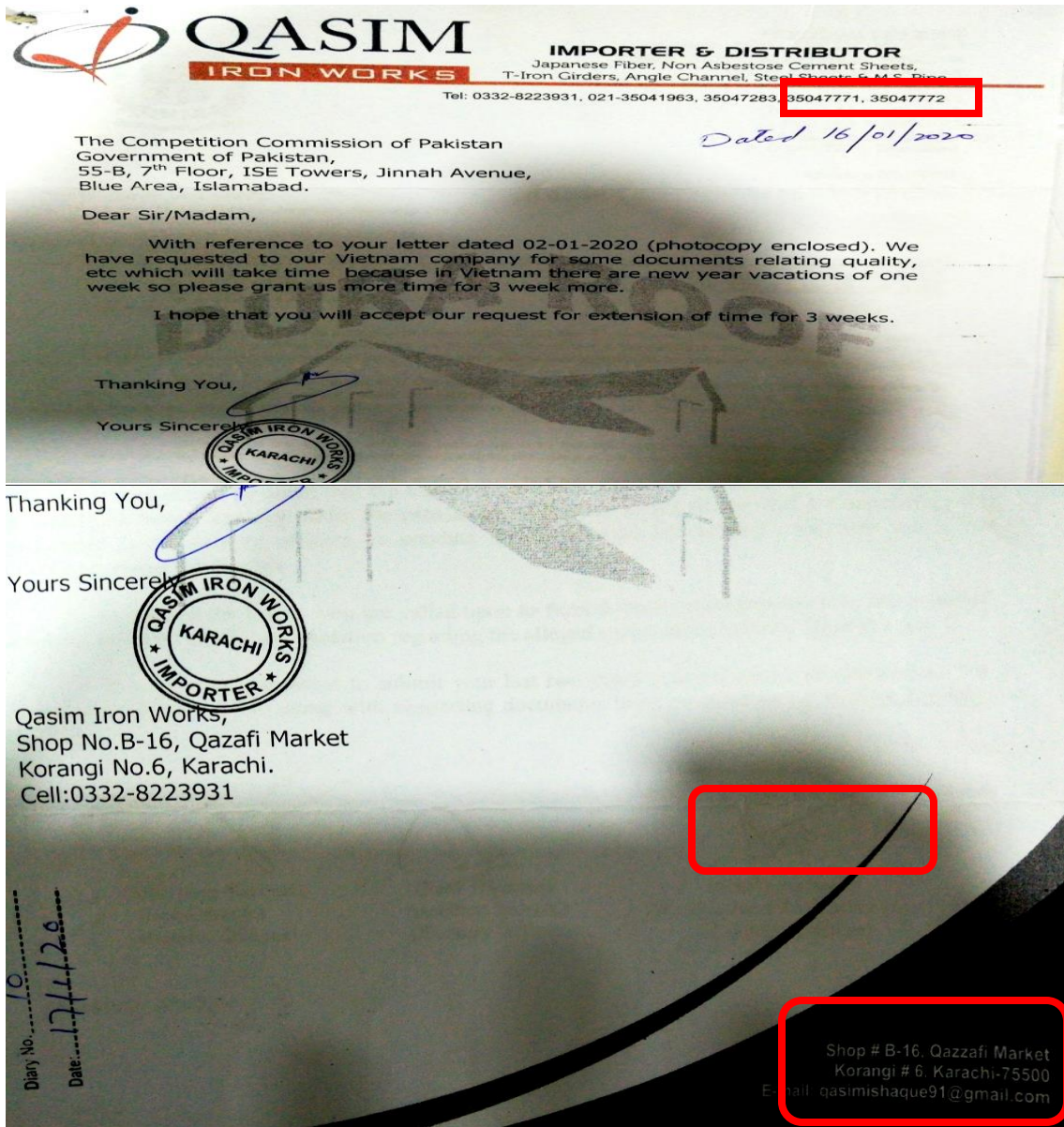


- 5.16 The above highlighted area showed that the Facebook Page has been used by an entity namely SQI (Shayan Qasim Iron). The video displayed on the abovementioned Facebook Page was of the video which has been displayed on the website of M/s Shayan Qasim Iron.
- 5.17 On the other hand the undersigned enquiry officers have also visited the website of the Respondent under URL www.duraroof.com.pk and affirms the contact detail that was also given on above mentioned website under URL www.shayanqasimiron.com.pk. Print screen of the Respondent website is displayed hereunder for ease of reference:



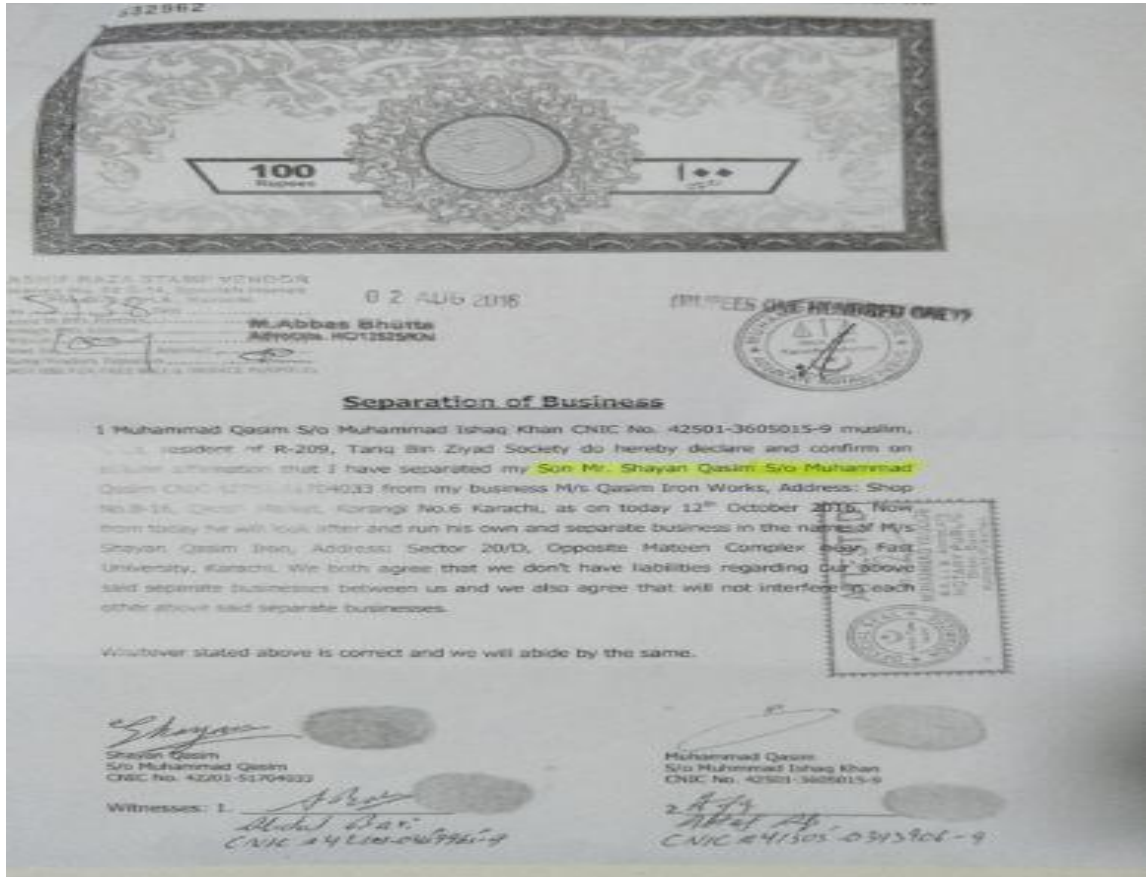
Website of M/s Qasim Iron Works (Respondent)

- 5.18 Furthermore, the Respondent has submitted its reply on its own letter head, copy of which is given hereunder for reference:



- 5.19 The highlighted areas showed and affirm the contact details given on the website of the Respondent under URL <http://www.durarroof.com.pk/>, and also given on the website of M/s Shayan Qasim Iron (SQI) under URL www.shayanqasimiron.com.pk. Therefore, it can be easily establish that either M/s Shayan Qasim Iron (SQI) has been operated by the Respondent or both the businesses have been operated under some sort of agreement.
- 5.20 Keeping in view of the above, the Respondent vide letter dated June 30, 2020, was asked to prove the assertion made by it in Para 3.7 & 3.10 *ibid*. The Respondent vide letter dated July 03, 2020 submitted the following documents:
- (i). A duly signed business separation deed.
 - (ii). Copy of circular/notice/warning letter issued to its dealers.
 - (iii). Tax registration certificate of Mr. Shayan Qasim Iron (SQI).
 - (iv). Photographs of shop hoarding (M/s Qasim Iron Works & M/s Shayan Qasim Iron)

5.21 The Respondent, through its reply, has submitted that the family business was divided in the year 2017 and a separate entity was formed in the name of M/s Shayan Qasim Iron (SQI). The business separation deed (the 'Deed') showed that both the parties were mutually agreed to separate their business assets and liabilities on October 12, 2016. According to the Deed, M/s Shayan Qasim Iron was located at Sector 20-D, Opposite Mateen Complex, Near FAST University, Karachi. However, the Respondent was located at Shop no. B-16, Qazafi Market, Korangi no. 6, Karachi. Copy of the Deed is depicted below:



Business seperation deed

5.22 A taxpayer registration certificate issued in favor of Mr. Shayan Qasim was also submitted by the Respondent to prove its assertion made in Para 3.7 & 3.10 *ibid*. It has been observe that Mr. Shayan Qasim was registered as active taxpayer on November 20, 2015 in individual capacity. At the time registration with Federal Board of Revenue (FBR) Mr. Shayan Qasim showed a business whose address was SB-3, Sector 20-D, Shah Latif Town, Malir Town, Karachi. Copy of the taxpayer registration certificate is depicted below:

		<small>Government of Pakistan Federal Board of Revenue Inland Revenue Services</small>
TAXPAYER REGISTRATION CERTIFICATE <small>(Under Section 181C of the Income Tax Ordinance 2001)</small>		
Registration No.	4220151704033	 4220151704033
Date of Registration	20-Nov-2015	
Type of Person	Individual	
Name	SHAYAN QASIM	
Address	Shop / Plot No. SB-3., Sector 20-D., Shah Latif Town, Malir Malir Town	
Tax Office	RTO-III KARACHI	
Activity Type	Business	

5.23 The Respondent has submitted that M/s Shayan Qasim Iron is also a distributor of the Respondent and engaged in the sale of the Respondent's imported product, i.e., Dura Sheet. Moreover, so many other overlapping factors have been observed between the Respondent and M/s Shayan Qasim Iron (SQI). Furthermore, the Product being advertised in the alleged video was actually belonged to the Respondent. Therefore, the Respondent could not withdraw its responsibility regarding the issue at hand. In light of the above discussion, we are of the view that the Respondent is ultimately responsible for the actions made on the website of M/s Shayan Qasim Iron (SQI).

5.24 In view of the above mentioned information, we will evaluate the marketing campaign of the Respondent in light of Section 10 of the Act which prohibits deceptive marketing practices.

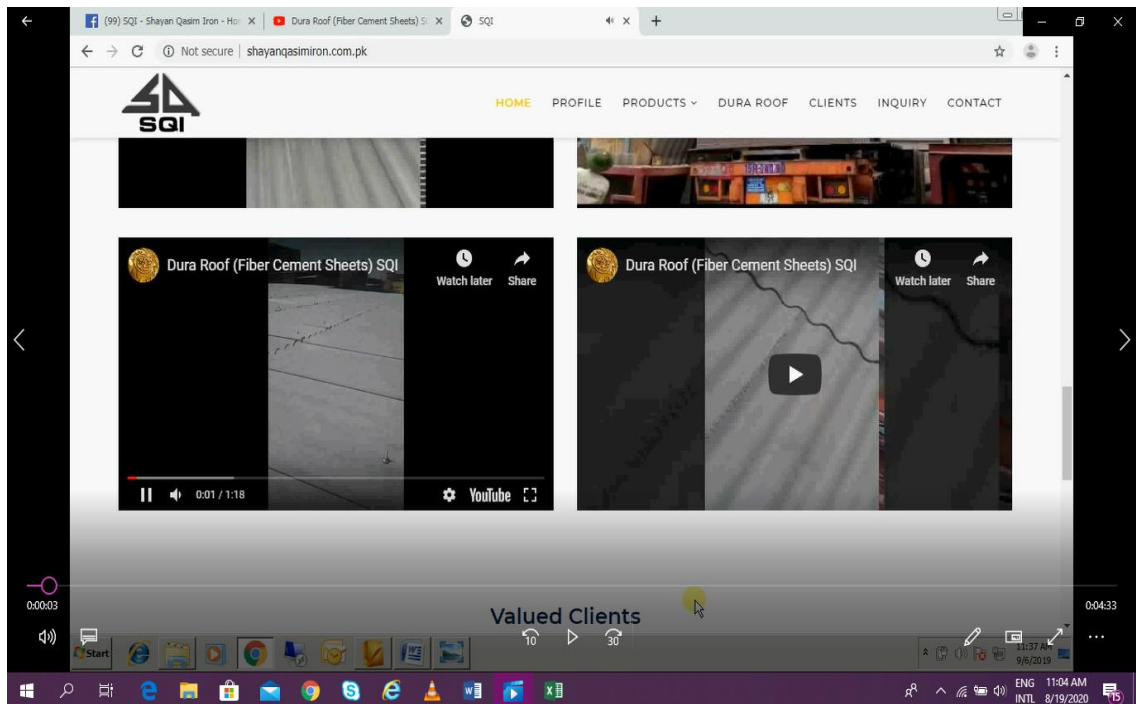
B. WHETHER, *PRIMA FACIE*, THE RESPONDENT IS INVOLVED IN THE DISTRIBUTION OF FALSE OR MISLEADING INFORMATION TO CONSUMERS RELATED TO QUALITY OF GOODS;

5.25 The Complainant has alleged in its complaint that a video has been shared on four different advertising channels, i.e., Facebook Page, YouTube Channel, WhatsApp Groups as well as on website under URL www.shayanqasimiron.com.pk. The enquiry committee will venture into determining whether the content of the video, circulated on various advertising channels, amounted to distribution of false and misleading information related to quality of goods in, *prima facie*, violation of Section 10(2) (b) of the Act.

(I). Website Advertisement:

5.26 Two different videos, ANNEXURE-A, were provided on the website under URL www.shayanqasimiron.com.pk. In the first video, the protagonist of the video introduced itself as Mr. Mohammad Bilal who constructed a shed with the Respondent's product (Dura Sheet). The Character said that the owner of the shed is very happy with its built quality. The Character further said that the quality/character of the Respondent's product is much better in terms of thickness and fitness. While comparing with the Complainant's product, the character said that the joints were not fixed properly with the Complainant's

product, however, it is easy to fix joints with the Respondent's product. The character of the video then compares a new product of the Respondent with used product of the Complainant. The Respondent has accepted that the video has been made by a daily wage worker during a project work which was forwarded to the owner of the M/s Shayan Qasim Iron who has uploaded the video on its website. It is pertinent to mention here that at the time of initial probe the alleged videos were not available on the Respondent's website www.duraroof.com.pk and www.shayanqasimiron.com.pk. Print screen of the recorded video submitted by the Complainant as evidence is given hereunder for reference:



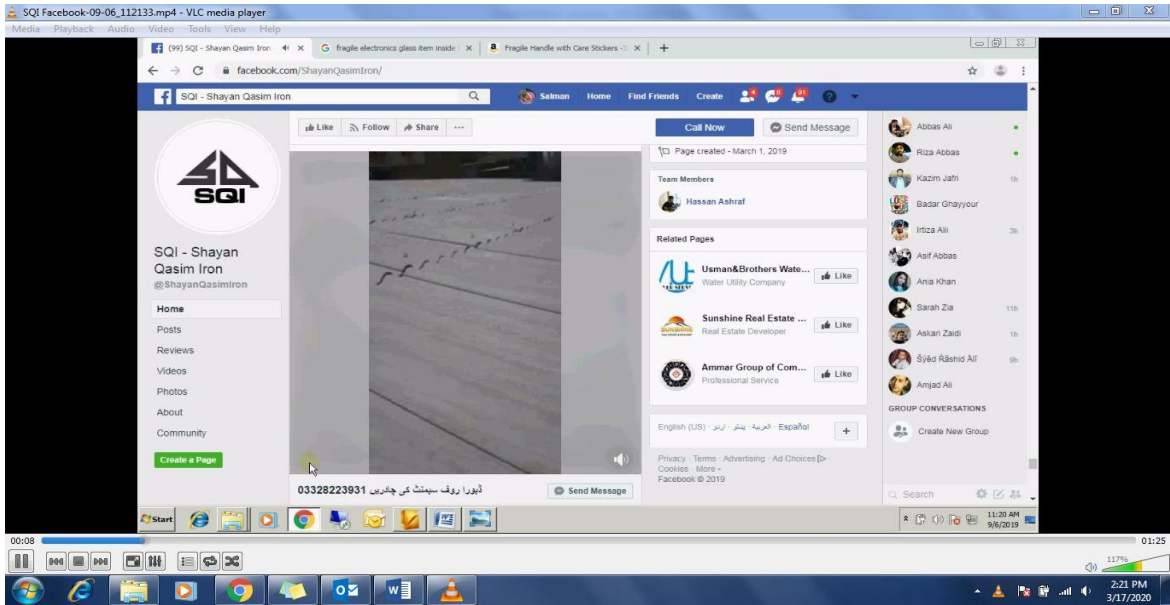
Screen Recording of Website

- 5.27 In the second video the two different products has been compared by the video maker (Mohammad Bilal). The character of the video has compared both the products by stating that “.....it has made the shed with the complainant’s product Dura Sheet, made in Vietnam, it is durable with respect to its thickness and fitness. The owner of the shed is very happy and want to replace its other shed made with the Complainant’s product. The character of the video portrayed the Complainant’s product as inferior in terms of thickness and fitness. The character further said that the joints were not properly fixed with the Complainant’s product, Dadex. The video maker advised the audience to buy Dura sheets instead of Dadex sheets”.

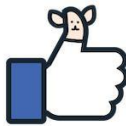
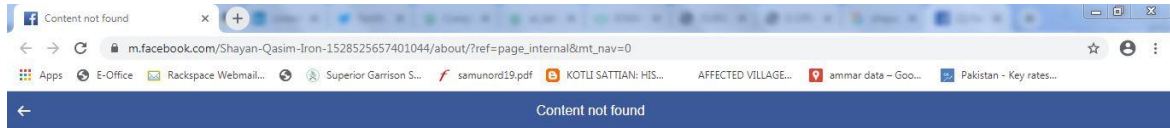
(II). Facebook Advertisement:

- 5.28 The same video was circulated on the Facebook page of M/s Shayan Qasim Iron (SQI). The Complainant has also provided a screen recording, **ANNEXURE-A**, of the above mentioned Facebook Page. The enquiry officers visited the Facebook Page titled SQI –

Shayan Qasim Iron, however, the same Page was found deleted. Print screen recording of the Facebook Page titled SQI – Shayan Qasim Iron is given hereunder as reference:



Facebook Page titled SQI-Shayan Qasim Iron



The link you followed may be broken, or the page may have been removed.

[Go to News Feed](#)

[Or visit our Help Center](#)

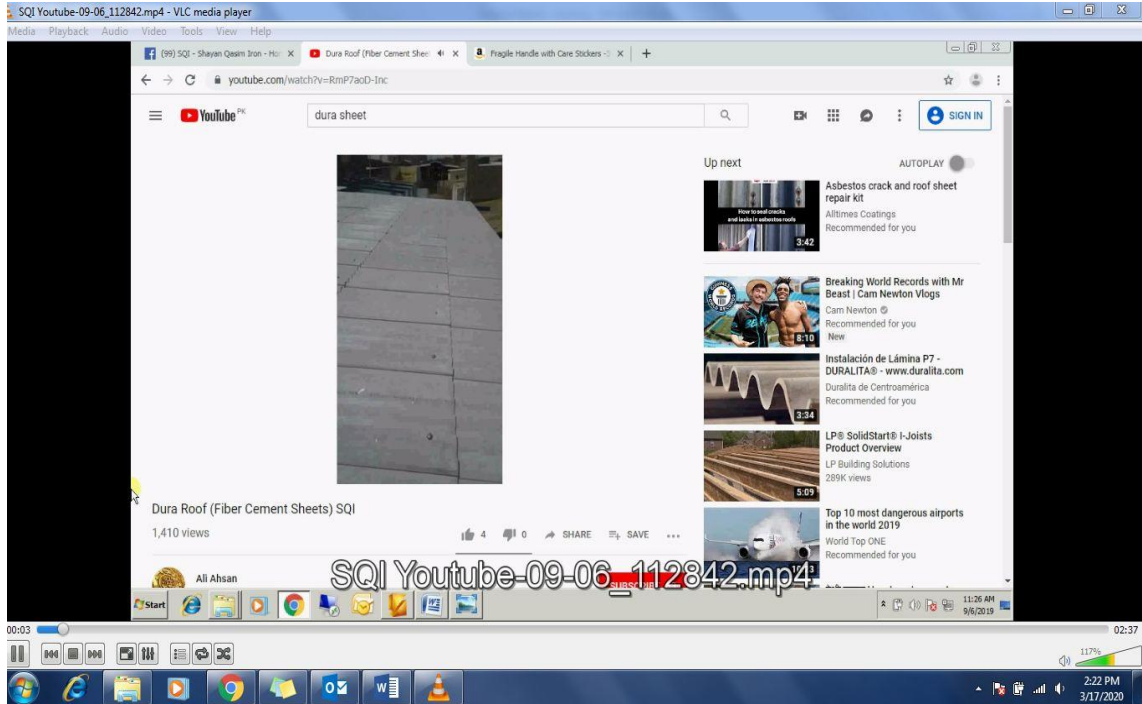


Facebook Page titled SQI-Shayan Qasim Iron visited on March 17, 2020

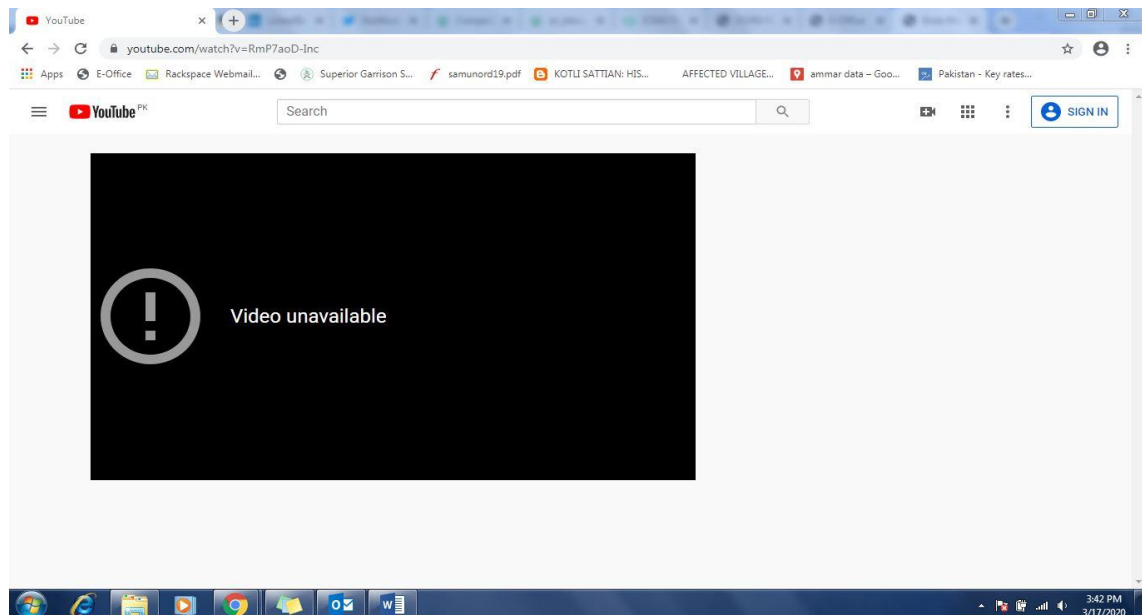
(III). YouTube Advertisement:

- 5.29 The same video, ANNEXURE-A, was also circulated on the YouTube channel of Mr. Ali Ahsan under URL www.youtube.com/watch?v=RmP7aoD-Inc. The Complainant submitted that after the action taken by it, the video has been removed by the user named

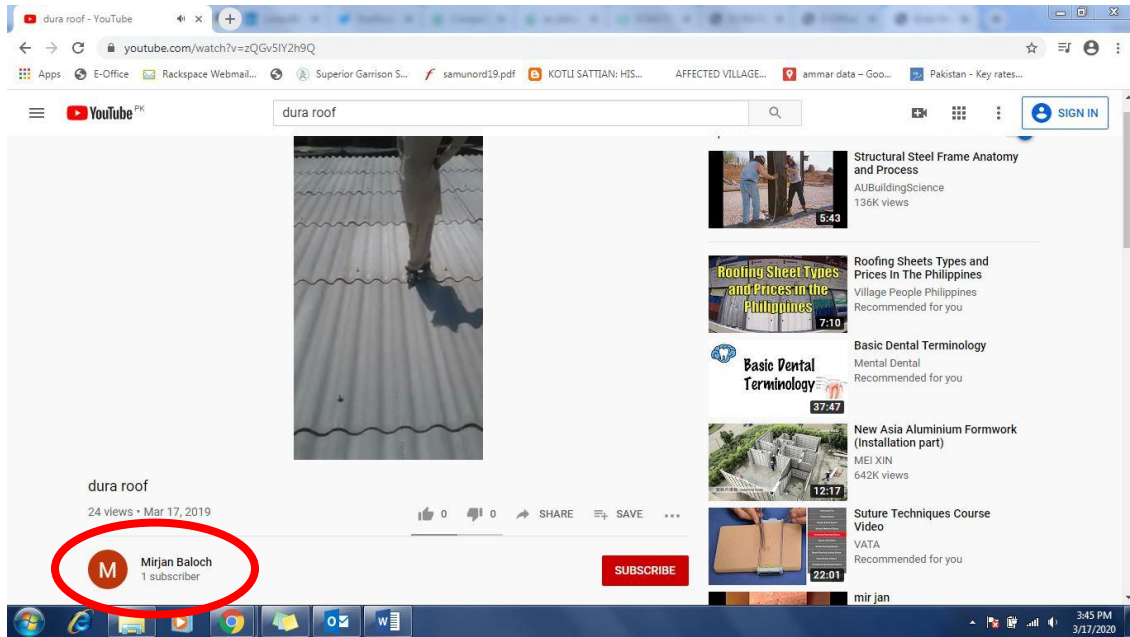
‘Ali Ahsan’. Print screen of YouTube Channel contain a video is given hereunder as reference:



5.30 The Respondent has submitted that the user of YouTube Channel, www.youtube.com/watch?v=RmP7aoD-Inc, was not the employee or agent of it, hence, denied the allegation of the Complainant that it has circulated the alleged video on its YouTube Channel. The undersigned officers also visited the YouTube channel, however, the video was removed by the user. It is pertinent to mention here that the same video has been circulated through another YouTube Channel named Mr. Mirjan Baloch.



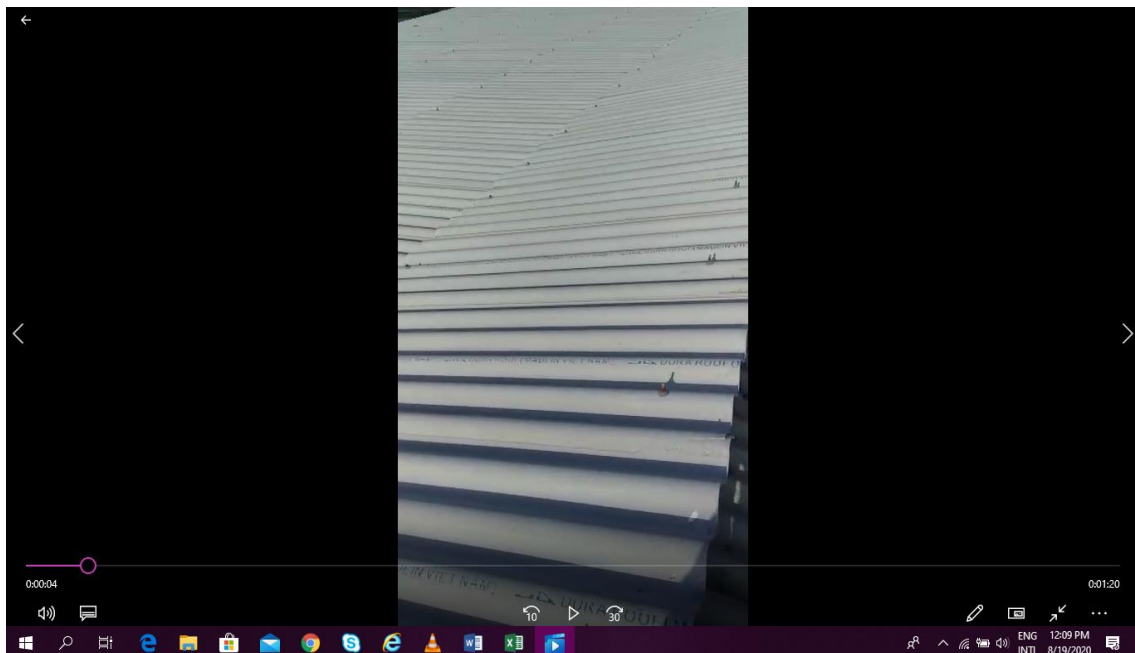
Print Screen of YouTube Channel (Mr. Ali Ahsan)



Print Screen of YouTube Channel (Mr. Mirjan Baloch)

(IV). WhatsApp Advertisement:

5.31 As mentioned in Para 2.7 above, the same video was circulated among the business community. The Respondent has denied that it has involved in preparation and distribution of such video. Moreover, it is hard to prove that the alleged video was shared through a cell number or group operated by the Respondent. However, it is pertinent to mention here that the circulated video on WhatsApp was the same, which has been circulated on other advertising channels including website titled www.shayanqasimiron.com.pk. Print screen of video recorded on WhatsApp is given hereunder for reference:



- 5.32 The Respondent, through the videos ANNEXURE-A circulated on various advertising channels, has made a claim that its imported product (Dura Sheet) is better than the Complainant's locally manufactured product (Dadex) in terms of its thickness. The Respondent claimed that it has imported and offered, better quality, 6mm thickness sheets as compared to the Complainant's product. The Respondent has not submitted any documentary evidence to prove its claim. However, the product specifications of both the parties are available on their website. As per the Complainant's website³, it has followed PS 430, ISO 393/1 standards and manufactured a range of products with 6mm & 7mm thickness.
- 5.33 On the other hand the Respondent deals with the imported Fiber Cement Corrugated Roofing Sheets. The product specifications are also given on its website⁴. The following product specification chart has been given on the Respondent's website:

DURA ROOF

1	SPECIFICATION TO WHICH IT CONFORMS	IS14870 :2000 (ISO-9933-1995(E))
2	PROFILE	BIGSIX
3	OVER ALL WIDTH	920 to 1100 mm
4	STANDARD LENGTHS	1520 TO 3050 mm
5	THICKNESS	6 mm To 7 mm
6	COLOUR	GREY OR COATED (RED, BLUE, WHITE, GREEN)
7	SURFACE TEXTURE	EXTERNAL SMOOTH SURFACE
8	NO. OF CORRUGATIONS	SIX
9	PITCH OF CORRUGATION	177 mm
10	DEPTH OF CORRUGATION	51 mm
11	BREAKING LOAD	>4300 N/ meter of width, when tested at 1100 mm span as per (ISO/BIS-CLASS-7)
12	WIND LAOD (KG/M2)	>200 KG/M2
13	PROST RESISTANCE	MEETS ISO-9933 CRITERIA
14	MNINMUM ROOF SLOPE	10 DEGREE
15	WATER PERMEABILITY	MEETS IS 14871
16	PURLIN	STEEL OR WOOD

³ http://www.dadex.com/product_services/pipesystems_and_roofings/corrugated_sheets.shtml

⁴ <http://durarroof.com.pk/>

17	THERMAL MOVEMENT	THERMAL MOVEMENT IS NEGLIGIBLE. HOWEVER MOVEMENT JOINTS SHOULD BE PROVIDED IN ASSOCIATION WITH THE STRUCTURAL FRAME WORK
18	SOUND INSULATION	24 TO 26 DB when tested in a critical frequency of 1003150 HZ
19	DIMENSIONAL STABILITY	2.5 TO 3.5 mm /m
20	STORED MOISTURE	<10%
21	FIRE PERFORMANCE	NON COMBUSTIBLE TO BS-476 PART 4

5.34 From the above chart, it has been observed that the Respondent’s products are manufactured in accordance to IS14870:2000 (ISO-9933-1995(E) standards. The Respondent’s product is available in 6mm and 7mm thickness while the Complainant is also manufacturing its product in 6mm & 7mm thickness, therefore, the Respondent’s claim that its product is better in quality, in terms of thickness, is misleading action in nature. The Commission has defined misleading actions in its **Zong & Ufone Order 20210 CLD 1478**, wherein the Commission has established that;

“Misleading actions

(1) A commercial practice is a misleading action if it satisfies the conditions in either paragraph (2) or paragraph (3).

(3) A commercial practice satisfies the conditions of this paragraph if— (a) it concerns any marketing of a product (including comparative advertising) which creates confusion with any products, trademarks, trade names or other distinguishing marks of a competitor;”⁵

5.35 After analyzing the content of the video and given specifications of both the products, it is evident that the claim of the Respondent that ***“Dura Sheet is better in quality/character in terms of thickness & fitness*** is inappropriate. The Respondent in its reply has failed to provide a reasonable basis of this claim therefore, *prima facie*, violates Section 10 (1) in general and in particular Section 10 (2) (b) of the Act.

C. WHETHER, PRIMA FACIE, THE RESPONDENT HAS ENGAGED IN FALSE OR MISLEADING COMPARISON OF GOODS IN THE PROCESS OF ADVERTISING IN VIOLATION OF SECTION 10(2)(C) OF THE ACT;

5.36 It has also been alleged by the Complainant that the claims made by the Respondent in its marketing campaign are false, misleading and lacks a reasonable basis related to quality of goods and the act of the Respondent also falls under Section 10(2) (c) of the Act, which provides that spreading of *“false comparison of goods in the process of advertisement”*, shall deemed to be an act of deceptive marketing practices.

⁵ <https://www.cc.gov.pk/images/Downloads/ZONG%20-%20Order%20-%202029-09-09%20.pdf>

- 5.37 In the video, it has been observed that the character of video compared the attributes of two products and portrayed the Complainant's product (Dadex) as inferior quality as compared to the Respondent's product (Dura Sheets). Moreover, it is not logical to compare a new product with the used one, which has been done.
- 5.38 The Federal Trade Commission (FTC) in its order related to **KFC Corp., 138 F.T.C. 442 (2004)** established that;

*“This consent order, among other things, prohibits Respondent KFC Corporation from representing that eating KFC fried chicken is better for a consumer’s health than eating a Burger King Whopper, or that eating KFC fried chicken is compatible with “low carbohydrate” weight loss programs, unless the representation is true and, at the time it is made, the respondent possesses and relies upon competent and reliable evidence – which in certain specified cases must be competent and reliable scientific evidence – that substantiates the representation”.*⁶

- 5.39 Furthermore, in relation to better efficacy of the product under discussion the FTC in its case **Novartis Corp. v. FTC, 223 F.3d 783 (D.C. Cir. 2000)** establishes that,

*“The Commission found that Novartis's advertisements of its Doan's back pain remedies were "deceptive" in violation of the Federal Trade Commission Act (Act), 15 U.S.C. §§ 41 et seq., because they contained an unsubstantiated implied claim of superior efficacy. Accordingly, it ordered Novartis to cease the deceptive advertising and to include in future Doan's advertisements a corrective disclaimer of superiority”.*⁷

- 5.40 However, the Respondent in this regard has not submitted any documentary evidence to prove that its product is better in quality/character as compared to the Complainant's product. Hence, the enquiry committee once again relied on the information available on the website of both the parties regarding the specifications of both the products. As the quality matter in terms of thickness was discussed in the alleged video, therefore, we have only examined the quality of the product in terms of thickness, which is the same in this case. The Respondent in its reply has failed to provide a reasonable basis of the said claim. The Respondent in this way is providing a misleading comparison of goods. At the same time, it is disseminating information that lacks reasonable basis related to the character, properties and quality of goods therefore, prima facie, violates Section 10 (1) in general and in particular Section 10 (2) (b) & (c) of the Act.

D. WHETHER, THE RESPONDENT’S CONDUCT IS CAPABLE OF HARMING THE BUSINESS INTEREST OF THE COMPLAINANT IN VIOLATION OF SECTION 10 (1) OF THE ACT, IN TERMS OF SECTION 10 (2) (A) OF THE ACT;

⁶ https://www.ftc.gov/sites/default/files/documents/commission_decision_volumes/volume-138/volume138.pdf

⁷ <https://www.ftc.gov/sites/default/files/documents/cases/2000/08/novartis.pdf>

- 5.41 It has also been alleged by the Complainant that the claims made by the Respondent in its marketing campaign of Dura Sheet are false, misleading and lacks reasonable basis related to quality of goods and same is capable of harming the business interest of the Complainant, which amounts to deceptive marketing practices in violation of Section 10 of the Act.
- 5.42 The character of the video has stated that “**I would suggest all of you to use Dura Sheets**”, as compared to the Complainant’s product (Dadex). The Respondent, altogether, has denied the preparation and distribution of the alleged video, therefore, it has not argued the content of the video.
- 5.43 Further in light of the discussions 5.26 to 5.42 *ibid.* the claim “***Dura Sheet is better in quality/character in terms of thickness & fitness***” which gives an overall impression that Dura Sheet is superior, *prima facie*, appears to be false and misleading in nature and is in violation of Section 10(2) (a) of the Act which is applied towards all the other competing undertakings. Any undertaking by making any claim which either false, misleading or lacking a reasonable basis would give the said undertaking a competitive edge over other undertakings. It is pertinent to mention here that, the Respondent was the distributor of the Complainant’s product prior to become a competitive undertaking as mentioned in para 3.4 *ibid.*
- 5.44 Furthermore, the language of Section 10(2)(a) of the Act and the principle laid down by the Commission in its **Zong & Ufone Order 20210 CLD 1478**, the actual deception and the actual loss need not to be shown, it is sufficient to establish that the advertisement has the tendency/potential to deceive and the capacity to mislead. The Respondent’s claim in the advertisement does possess the tendency to mislead the consumers and induce them to take a transactional decision based upon the claim made in the advertisement. It appears that the Respondent by making such claims are, *prima facie*, making an effort to induce the consumers to believe that Dura Sheet is the most popular and reliable product for roofing.
- 5.45 The Commission has further, in its order for **M/S. Jotun Pakistan (pvt.) limited** (F. NO: 120/ICI/JOTUN/OFT/CCP/2012) has established that;

*“The second question before the Commission is whether the claim 'No.1 Paints' is capable of harming the business interests of Respondent's competitors. To prove conduct under Section 10 (2) of the Act, it is not necessary to show actual harm to competitors. **It is sufficient to show the existence of a deceptive marketing practice that has the potential to harm the business interests of the competitors.** Among such deceptive marketing practices is the distribution of claims lacking reasonable basis that are essentially designed and used to gain an unfair advantage over competitors. The unsubstantiated claim of being the 'No.1 Paint' in Pakistan is capable of creating, unfairly, a positive consumer perception in favor of the Respondent which, in turn, is capable of harming the image, goodwill, sales, and other business interests of competitors in the market. In light of the above, the Respondent's unsubstantiated claim of being the 'No. 1 Paint' in Pakistan is false and misleading information capable of harming the*

business interest of its competitors, distributed in violation of Section 10(1) read with Section 10(2)(a) of the Act.”⁸

5.46 Keeping in view of the above, we are of the view that the conduct of the Respondent, i.e., making of claim ***Dura Sheet is superior to Dadex, in terms of quality, efficacy and fitness***” in its advertisement is, *prima facie*, capable of harming the business interest of the Complainant, which is a violation in terms of Section 10 and in particular Section 10(2) (a) of the Act.

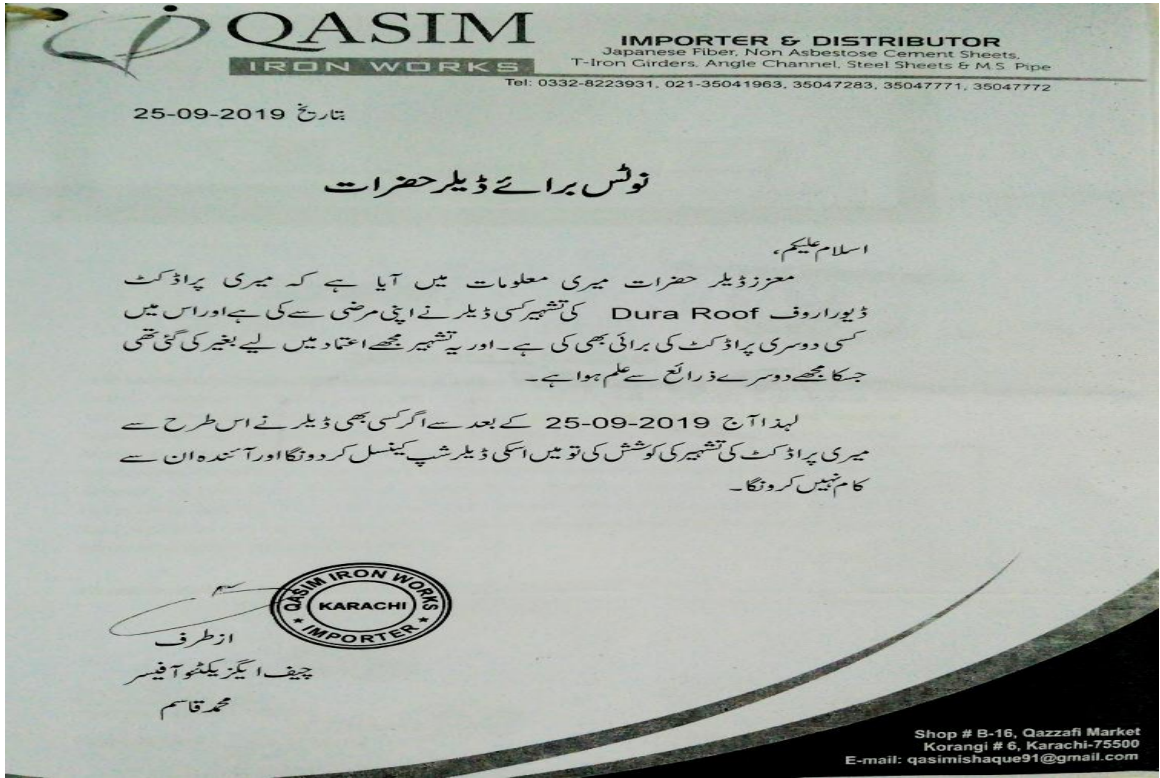
E. CONDUCT OF THE RESPONDENT:

5.47 Before filing a complaint with the Commission, the Complainant has served a legal notice, dated 07.09.2020 to the Respondent in order to refrain it from promoting false and misleading information on Facebook, YouTube Channel, WhatsApp as well as on website. The Respondent through its reply dated 16.09.2019 has denied all the allegation leveled by the Complainant through the legal notice. The Respondent has denied the circulation of alleged video on electronic media, i.e., Facebook, YouTube Channel and WhatsApp.

5.48 As mentioned in Para 3.18 & 3.19 above, the Respondent has conducted an internal investigation regarding the preparation and distribution of alleged videos. The findings of internal investigation has been shared by the Respondent with the enquiry officers and informed that the alleged video was prepared by a daily wage worker. Later on, the alleged videos were uploaded on various electronics media, however, upon receiving legal notice from the Complainant, the Respondent took some positive measure to remove the cause of deception. The following steps were taken by the Respondent before filing of complaint by the Complainant with the Commission:

(i). After an in-house investigation, the Respondent, through a cautionary notice dated September 25, 2019, refrained all of its distributor/retailers/stockiest for such kind of unauthorized activities, including the promotion of the Respondent’s product. Copy of the cautionary notice is given hereunder for reference:

⁸ https://www.cc.gov.pk/images/Downloads/jotun_pakistan.pdf



(ii). Before filing of complaint by the Complainant with the Commission, the Respondent has ensured the removal of such videos from electronic media, i.e. Facebook, YouTube as well as on website under URL www.shayanqasimiron.com.pk. The Complainant in its complaint vide Para 2.8 above, admitted that the videos were removed at the time of complaint.

6. CONCLUSION AND RECOMENDTAIONS:

- 6.1 Based on the information available on record and the submissions made in the written replies, we the undersigned enquiry officers have reached the following conclusions:
- In view of the forgoing and in particular Paragraphs 5.8 to 5.10 of this report, prima facie, the overall net general impression of the advertisement of the Respondent regarding its product Dura Sheet is that its product is superior to that of the Complainant's product Dadex.
 - In view of the forgoing and in particular Paragraphs 5.25 to 5.35 above, it appears that the Respondent by using the claim "***Dura Sheet is superior to Dadex, in terms of quality, efficacy and fitness***" in its advertisement campaign for its product Dura Sheet is, *prima facie*, disseminating false/misleading information to the consumers that is lacking a reasonable basis, related to the quality of goods in violation of Section 10 and in particular Section 10(2)(b) of the Act.

- (c). In view of the forgoing and in particular Paragraphs 5.36 to 5.40 above, it appears that the Respondent by using the comparative statement “***Dura Sheet is superior to Dadex, in terms of quality, efficacy and fitness***” in its advertisement campaign for its product Dura Sheet is, *prima facie*, false/misleading comparison of goods in the process of advertisement in violation of Section 10 and in particular Section 10(2) (c) of the Act.
- (d). In view of the forgoing and in particular Paragraphs 5.41 to 5.46 above, it appears that the conduct of the Respondent i.e. making of claim “***Dura Sheet is superior to Dadex, in terms of quality, efficacy and fitness***” in its marketing campaign and suggest the consumer to prefer the Respondent’s product over the Complainant one, *prima facie*, is capable of harming the business interest of the Complainant in violation of Section 10 and in particular Section 10(2)(a) of the Act.

6.2 The deceptive marketing practices have a direct impact on the public at large; as any claim made in the marketing campaign might give the undertakings a competitive edge over other competing undertaking and would have the effect of inducing the consumers making a transactional decision. Hence, it is in the interest of the general public that the undertakings should be stopped to advertise their products in an unfair and misleading manner and be encouraged to resort to the advertising practices which are transparent and gives consumers/customers true and correct information about the products, rather than making misleading and false claims, *Prima facie*, constitute violations under the Act. The conclusions of this enquiry report warrant initiation of proceedings under Section 30 of the Act against the Respondent i.e. M/s Qasim Iron Works in accordance with the law.

M. Salman Zafar
(Enquiry Officer)

Riaz Hussain
(Enquiry Officer)

Amin Akbar
(Enquiry Officer)