

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 SHAHEEN
COSMETICS (PVT) LIMITED AND M/S GOLDEN PEARL
COSMETICS (PVT) LIMITED AGAINST M/S UNILEVER
PAKISTAN LIMITED FOR DECEPTIVE MARKETING
PRACTICES**



BY



MARRYUM PERVAIZ AND FATIMA SHAH

DATED: June 08, 2017

A. BACKGROUND

1. The complaints were filed with the Competition Commission of Pakistan (hereinafter referred to as the '**Commission**') by M/s Shaheen Cosmetics (Pvt) Limited (hereinafter referred to as the '**Complainant No. 1**') and M/s Golden Pearl Cosmetics (Pvt) Limited (hereinafter referred to as the '**Complainant No. 2**'), jointly referred to as the '**Complainants**', against M/s Unilever Pakistan Limited (hereinafter referred to as the '**Respondent**') pertinent to one of its products, 'Fair & Lovely', for an alleged violation of Section 10 of the Competition Act, 2010 (hereinafter referred to as the '**Act**'), i.e., Deceptive Marketing Practices.
2. The Complainants alleged that the Respondent was an undertaking involved in distribution of false and misleading information while advertising its aforementioned product which lacked a reasonable basis, related to character, method of production, properties, suitability for use, and quality of its product. It was further alleged that the Respondent was also involved in distribution of false and misleading comparison of the Complainants' products with that of the Respondent's product. It was, hence, submitted that such actions were capable of harming the business interests of other undertakings engaged in the similar business. Therefore, it was finally submitted that the conduct of the Respondent, *prima facie*, amounted to deceptive marketing practices in terms of the provisions of Section 10 of the Act.
3. Keeping in view the above, the Commission initiated an enquiry in accordance with sub-section (2) of section 37 of the Act by appointing Ms. Marryum Pervaiz, Deputy Director (OFT), and Ms. Fatima Shah, Management Executive (OFT), as the enquiry officers (hereinafter referred to as the '**Enquiry Committee**'). The Enquiry Committee was directed to conduct the enquiry on the issues raised in the complaint and submit an enquiry report by giving findings and recommendations, *inter alia*, on the following:
 - (i) Whether conduct of the Respondent is capable of harming the business interests of other undertakings in, *prima facie*, violation of Section 10(1) in general, and in particular, Section 10(2)(a) of the Act.
 - (ii) Whether the Respondent is disseminating false and misleading information to consumers, including the distribution of information lacking a reasonable basis, related to the character, method of production, properties, suitability for use and quality of products that are subject matter of this enquiry report in, *prima facie*, violation of Section 10(1) in general and in particular, Section 10(2)(b) of the Act.
 - (iii) Whether the Respondent is involved in false or misleading comparison of goods in the process of advertising in, *prima facie*, violation of Section 10(1) in general and in particular, Section 10(2)(c) of the Act.

B. CORRESPONDENCE (COMPLAINTS, COMMENTS, REJOINDERS AND COLLECTION OF INFORMATION FROM OTHER SOURCES)

I. Complaints:

4. The Complainant No. 1, according to its website¹, was established in 2007 and initiated its product line with the name, 'Face Fresh', whereas it registered itself as a private limited company with the Securities and Exchange Commission of Pakistan (SECP) in 2010. The Complainant No. 2 is a producer of beauty enhancing and caring products with the brand name, 'Golden Pearl'. The Complainant No. 2, as per its website², was established in 1997.
5. It was submitted by the Complainants that the Respondent had been involved in distribution of false and misleading information as well as false and misleading comparison of goods in the process of advertising via placing a blurred image of the Complainants' beauty creams, 'Face Fresh' and 'Golden Pearl', on billboards across the country. Photographs and videos of these billboards from various cities were also submitted as evidence with the Commission. It was further submitted that although the images were blurred, they could still be identified as the Complainants' products. Furthermore, it had been alleged that there was an assertion along with the blurred image, falsely declaring presence of mercury in the Complainants' products (Annexure-A).
6. The billboards referred to in the complaints contain the following message,

"Mercury vali creams say mohtaat"*
Disclaimer: *"*formula creams main mercury ho sakta hay jo muzir-e-sehat hay"*

"Beware of creams with mercury"*
Disclaimer: *"*formula creams may contain mercury which is injurious to health"*
7. The Complainant No. 1 in its complaint stated that it was a private limited company which was dedicated towards production of cosmetics and toiletry products with the brand name of 'Face Fresh' and that it had attained a significant reputation in the market. That the said brand had gained noteworthy goodwill in the market. It was further stated that the Respondent was involved in import and distribution of the product 'Fair & Lovely' across Pakistan and that it was responsible for its promotion and marketing.
8. The Complainant No. 1 alleged that its product had achieved considerable growth over the previous three to four years, whereas the Respondent had retaliated by defaming the Complainant No. 1's products in the market. It was further alleged that due to failure of the Respondent's initial efforts, it had then initiated a new campaign against Complainant

¹ <http://facefresh.com/about-us/>

² <http://www.goldenpearl.com.pk/about-us/>

No. 1, wherein blurred images of its product was placed at one corner of the billboard along with a precautionary message regarding presence of mercury in it. The Complainant No. 1, therefore, alleged that the Respondent was involved in violation of Section 10(2)(a) and (c) of the Act.

9. It was further submitted by the Complainant No. 1 that the Respondent was making absolute claims such as, "*Fair & Lovely is the first fairness cream in the world with 100% safe ingredients, and is dermatologist tested and proven*", without any proof. Thus, it was submitted that the conduct of the Respondent attracted provisions of Section 10(2)(b) of the Act as well.
10. The Complainant No. 2, likewise, alleged that the Respondent had been involved in malpractices and was damaging its goodwill through the aforementioned marketing campaign. Therefore, it was alleged that the Respondent had been involved in violation of Section 10 (2)(a)(b) and (c) of the Act.
11. The Complainant No. 1 also submitted a certificate by Infection Control Society of Pakistan (ICSP). Whereas both the Complainants submitted certificates by Drug Regulatory Authority of Pakistan (DRAP) and Pakistan Council of Scientific & Industrial Research (PCSIR) proving absence of mercury in their products.
12. The Complainant No. 1 alleged that due to such malpractices of the Respondent, the Complainant No.1 had suffered huge losses and its sales had reduced. Furthermore, a reference was made to one of Commission's orders wherein it was held that to prove such deceptive marketing practices, it was not necessary to show actual harm, rather it was sufficient to show the 'potential' to cause harm.
13. Consequently, the Complainants requested for the following reliefs:
 - i. The Respondent may be directed to refrain from conducting false and misleading campaigns
 - ii. The Complainants may be compensated for the loss incurred due to malpractices of the Respondent.
 - iii. The Respondent should be heavily fined for violation of Section 10 of the Act.
14. In addition to above, an application was submitted under Section 32 of the Act by the Complainant No. 1 to grant an interim order to suspend the current marketing campaign of the Respondent, the continuance of which may result in irreparable loss to the Complainant No. 1.
15. In light of the above, the Respondent was called upon to furnish information/clarification in response to the complaints.

16. Various lab tests submitted by the Complainant No. 1 and Complainant No. 2 have been attached in this enquiry report and are labelled as Annexure-B and Annexure-C, respectively.

II. Respondent's Reply:

17. The Respondent, formerly known as Lever Brothers Pakistan Limited, initiated its operations in Pakistan in 1949. It is a multi-national company involved in production of fast moving consumer goods (FMCG), such as food, home care, personal care, etc. The Respondent via letter dated May 16, 2016, submitted that at the outset, the Complainants had filed a frivolous and baseless complaint in collusion which were not based on merits, especially in reference to Section 10 of the Act. The Respondent further submitted that the Complainants deliberately did not reveal the fact that they had filed parallel petitions at other forums as well.
18. The Respondent submitted that it was one of the largest FMCG companies in Pakistan established since 1949. It further submitted that the Respondent was known for its quality brands and ethical practices. The Respondent asserted that it was actively involved and invested in research and development and that it was also one of the largest tax payers in the country.
19. The Respondent stated that it had been manufacturing and marketing its high quality international brand, 'Fair & Lovely', in Pakistan and its affiliates in other jurisdictions for many decades. That this skin care and fairness product had acquired high repute and market share in the Pakistani market.
20. The Respondent alleged that various undertakings, such as the Complainants, had ventured on to take advantage of this skin care and fairness market by producing substandard and harmful products and had unethically earned high profits by cannibalizing the Respondent's market. The Respondent further alleged that other competitors, such as the Complainants, had been manufacturing and selling inferior quality and injurious fairness products by adding compounds and ingredients which contain high levels of mercury. It was stated in the reply that it was an established fact that presence of mercury in skin care products could have significant harmful effects on its users.
21. The Respondent submitted that its proactive efforts with the authorities had resulted in standardization of permissible limits of mercury in a skincare product. It was further submitted that these efforts had also resulted in promulgation of PSQCA standard number PS: 3228-2016 which had set the limit at 1ppm of mercury traces to be allowed in cosmetics and other skin care products. It was, therefore, submitted that the Respondent was selling Fair and Lovely in domestic and foreign jurisdictions with highly strict rules and that the product did not only comply with the standards set by PSQCA, but had also attained accreditation and certification from Skin Health Alliance UK.

22. The Respondent claimed that it specifically ensured that no compound or ingredient containing mercury was added to the product and that the trace presence of mercury remained below 1ppm. The Respondent further alleged that it got various competitors' products tested via an accredited laboratory, Intertek. It was, therefore, alleged that according to those lab tests, various fairness products, including the Complainants' products, contained high levels of mercury. (Annexure – D)
23. The Respondent submitted that it not only had the responsibility of creating awareness amongst consumers regarding such harmful practices, but it also had the right to defend itself from losing its market share ensuing such malpractices. It was presented by the Respondent that it had also engaged in efforts pertinent to setting of quality and health standards, curbing unethical practices, conducting possible advocacy sessions and culminating misuse of testing facilities with PCSIR and PSQCA. A letter addressed to PCSIR, dated May 02, 2016, was also provided to refer to the misuse of PCSIR accreditation.
24. The Respondent further presented separate comments specific to each of the Complainants in its reply which have been further reproduced below.

Respondent's Reply to Allegations Levelled by Complainant No. 1:

25. The Respondent alleged that Complainant No. 1 filed its complaint via the Admin Manager who was not authorized to do the same. It was further alleged that the Complainant No. 1 had itself acknowledged that the Respondent had only put a blurred image of competitors' products and in fact, only unidentifiable images were used in order to inform consumers to remain cognizant of the risk of potential harm. It was also submitted that in the absence of any appropriate actions taken by the relevant regulatory authorities, such hazardous products were successful to the detriment of consumer health and business interests of other fair competitors in the market.
26. It was also submitted that the harmful aspect of such products had already been proven by the tests referred to earlier. That the use of blurred images was an effort to warn the consumers by drawing a fair comparison between the Respondent's and other competitors' products and this was done under the right to do competitive advertising.
27. It was contested that Complainant No. 1 had claimed adverse impact on its market goodwill caused due to the Respondent's marketing campaign without any proof of market research, retail audit, or sales tax payment and that it was put to strict proof thereof.
28. It was, therefore, concluded by the Respondent that there had been no deceptive marketing carried out by the Respondent; that the allegations were denied; and that the Complainant No. 1 was put to strict proof thereof. Furthermore, it was alleged that the Complainant No. 1 had engaged in unfair, unethical, misleading and deceptive marketing

of its product and that the Commission was requested to proceed against it under provisions of the Act. It was further reiterated that the Complainant No. 1 had also concealed the fact of prior litigations undertaken by it against the Respondent in other courts on the same matter.

Respondent's Reply to Allegations Levelled by Complainant No. 2:

29. The Respondent alleged that Complainant No. 2 was not an incorporated entity and that the person claiming to be its Chairman had failed to furnish proof of authorization in that matter.
30. The Complainant No. 2 had alleged in its complaint that the Respondent had used its brand name unsustainably in its advertising campaign to mislead the consumers. Against this contention, it was submitted that the Respondent had only used blurred, unidentifiable images, without any names, to create awareness amongst the consumers regarding presence of harmful elements in such products. It was reiterated that such efforts were made in absence of any appropriate actions taken by the relevant regulatory authorities.
31. The proof of presence of harmful elements in the products through lab test were referred to again by the Respondent. And it was, therefore, submitted that the campaign was initiated for consumer awareness and to draw fair comparison under the right to do competitive advertising. The Respondent repeated that Complainant No. 2 had alleged damage to its market goodwill without any proof of market research, retail audit, or sales tax payment and that it was put to strict proof thereof.
32. It was alleged by the Respondent that there was no violation of Section 10 of the Act and that all such allegations were denied and put to strict proof thereof. It was alleged that Complainant No. 2 had in fact initiated a false campaign by claiming its product to be "mercury free" on billboards along with a clear image of the Respondent's product.
33. It was alleged by the Respondent that both the Complainants were creating substandard products in connivance with each other. It was further alleged that such players in the market have also damaged the image of Pakistan. An official magazine "Lutonline May 2013" of Government of Luton, UK, was referred and annexed wherein Pakistani creams containing mercury were specifically mentioned. These names included the products of both the Complainants along with other cream manufacturers. Another source, 'East London Line', was also referred to and annexed. This source also named the Complainants in the similar case and it was alleged by the Respondent that such actions were resulting in damaging the consumers as well as the national interest of Pakistan. It was, therefore, submitted that regulatory authorities, including the Commission, needed to take an immediate action.
34. Consequently, it was requested, that the complaints submitted by the Complainants, on the ground of being frivolous should be dismissed and that the Complainants be asked to immediately withdraw their unethical hoardings against the Respondent.

35. The Respondent, via letter dated May 19, 2016, shared another document containing the opinion of an expert, President of Pakistan Association of Dermatologists and Head of Dermatology, Bolan Medical College, Quetta, which was posted on social media. The document contained tweets by the aforementioned expert who had posted a warning against the harmful elements that might be present in both the Complainants' products. He had also highlighted the need to get such products tested by relevant regulatory authorities.

III. Further Correspondence with the Complainants:

36. In the process of enquiry, a notification issued by the European Commission pertinent to dangerous non-food products, referred to as Rapid Alert System for dangerous non-food products (RAPEX), was discovered. According to this notification, the products of both the Complainants, Face Fresh Beauty Cream and Golden Pearl Beauty Cream, were withdrawn from the market in 2013 for containing mercury above the safety requirement level.
37. Therefore, via a letter dated July 28, 2016, the Complainants were called upon to comment on the aforementioned notification.

Submissions of the Complainant No. 1:

38. In this reference, the Complainant No. 1 submitted its response vide letter dated August 03, 2016. It was submitted in the reply that Complainant No. 1 got itself registered with the Securities and Exchange Commission of Pakistan and its intellectual property rights with the Intellectual Property Organization of Pakistan (IPO) in the year 2010. It was further submitted that its business was mainly focused in Pakistan and that the export license was attained on July 29, 2016. It was further submitted that from years 2010 to 2015, Complainant No. 1 had been engaged in various litigations pertinent to the matters of piracy, counterfeit products, etc., against other manufacturers who were using its brand name for the sale of their fake products.
39. It was reiterated by Complainant No.1 that it had already presented documentary proof of its certification from ICSP, DRAP, and PCSIR and that the relevant tests proved that its product did not contain excess level of mercury or any other harmful elements.
40. It was asserted by Complainant No. 1 that it was not aware of any such proceedings against it as no products were exported by it during that time period. It was further asserted that the batch numbers mentioned in the RAPEX Alert did not match any of its batch numbers and were in fact a counterfeit product. The Complainant No. 1 presented that other information and details on the relevant package did not match the criteria set by it for its own products. It was also submitted that the Alert had no legal impact on Complainant No. 1 and that no directions were given to it pertinent to the sale of its products.

41. The Complainant No. 1 once again mentioned the submission of reports from various labs proving its innocence with respect to presence of mercury in its product. Hence, it was submitted that the RAPEX Alert may be withdrawn and that the case may be proceeded against the Respondent.
42. The Complainant No. 1, via letter dated August 3, 2016, was called upon for a meeting on August 09, 2016, due to its unsatisfactory reply. During the meeting, the issue was thoroughly discussed and all the submissions presented in its earlier response were examined. Complainant No. 1 also submitted other supporting documents and various packs of its products demonstrating the details of its batch numbers, expiry dates, etc. The details of various lawsuits in reference to piracy, counterfeit products, etc., initiated by it against various other manufacturers were also submitted.
43. During the meeting, Complainant No. 1 was also requested to submit its export license to verify the dates as alleged by it. The issue of false claims of the Respondent pertinent to verification of its product from Skin Health Alliance, UK, was also raised. It was alleged by Complainant No. 1 that the Respondent was falsely using this mark at the time of submission of the complaint with the Commission and that the Respondent did not possess this certification. That the Respondent obtained this certification after initiation of the enquiry against it.
44. The Complainant No. 1 was, therefore, asked to submit proof of its allegations. In this reference, it submitted its export license and relevant portions of Skin Health Alliance demonstrating that the Respondent's product came in the list of approved products only after initiation of enquiry against it.

Submissions of the Complainant No. 2:

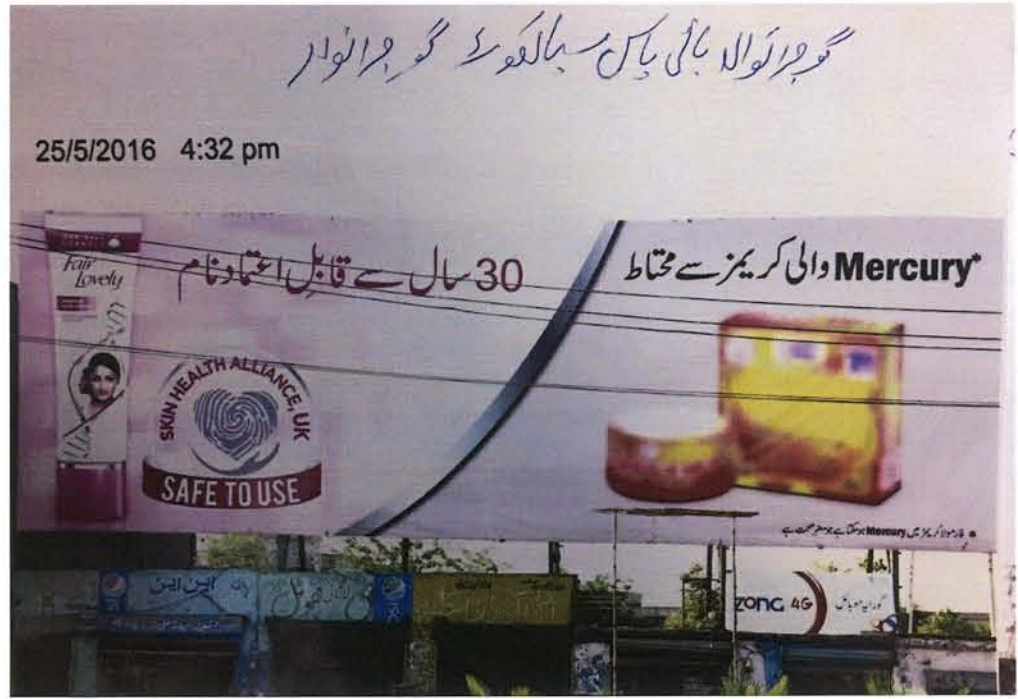
45. In response to the RAPEX Alert, Complainant No. 2 requested for a meeting and submitted its reply via letter dated August 15, 2016. The contents of the reply were thoroughly discussed in the meeting. The Complainant No. 2 in its reply made various submissions.
46. The Complainant No. 2 submitted that it had exported its product neither to the United Kingdom nor to Norway. It was further submitted that in pursuance of regulations laid down by importing countries, a product test was conducted in Birmingham City Laboratories, Birmingham, United Kingdom, which proved that there was no mercury in the product. A copy of the said test was submitted for evaluation. It was then asserted that the product, however, was never actually exported to the UK to date.
47. The Complainant No. 2 stated in its reply that it got its product tested from various labs in Sharjah and Dubai to attain export licenses to UAE. It was submitted that it had also obtained free sale certificate and the relevant lab tests were submitted as well. A product test from Pankemi Lab Larnaca, Cyprus, was also submitted.

48. The Complainant No. 2 also stated that it had gotten its product registered in Afghanistan, Nigeria, UAE, and South Africa for which abidance of their regulations were also necessary, which demonstrated a positive reflection on Complainant No. 2. The trademark registrations were also submitted. It was alleged in the reply that Complainant No. 2 had also initiated cases against various manufacturers creating counterfeit products by its brand name. It was further submitted, along with proof, that those lawsuits held judgments in favor of Complainant No. 2.
49. Finally, Complainant No. 2 submitted that the notification might have been a ploy by the Respondent to defame it and therefore, the Respondent may be penalized under Section 10 of the Act.
50. The Complainant No. 2, vide letter dated September 02, 2016, submitted that the Respondent had removed its relevant marketing material as per the directions of the Intellectual Property Tribunal in another case. It was further submitted that due to removal of the marketing material and disbandment of the relevant comparative marketing campaign, the grievances of the Complainant No. 2 had been temporarily redressed. Therefore, it was requested that the complaint from the Complainant No. 2 may be withdrawn.

C. ANALYSIS

51. Prior to carrying out the analysis, it is important to recall the issues at hand. The undersigned enquiry officers were given the mandate to conduct an enquiry about the issues raised in the complaints and to submit the enquiry report by giving their findings and recommendations, *inter alia*, on the following issues:
- (i) Whether conduct of the Respondent is capable of harming the business interests of other undertakings in, *prima facie*, violation of Section 10(1) in general, and in particular, Section 10(2)(a) of the Act.
 - (ii) Whether the Respondent is disseminating false and misleading information to consumers, including the distribution of information lacking a reasonable basis, related to the character, method of production, properties, suitability for use and quality of products that are subject matter of this enquiry report in, *prima facie*, violation of Section 10(1) in general and in particular, Section 10(2)(b) of the Act.
 - (iii) Whether the Respondent is involved in false or misleading comparison of goods in the process of advertising in, *prima facie*, violation of Section 10(1) in general and in particular, Section 10(2)(c) of the Act.
52. For the purpose of analysis, it is necessary to first evaluate the marketing campaign launched by the Respondent. As mentioned earlier, submissions of the Complainants pertinent to this marketing campaign comprised upon videos and photographs of this campaign captured from across the country which covered various cities, including

Peshawar, Sargodha, Gujranwala, Multan, Sukkur, Hyderabad, and Larkana. Some of the marketing material submitted by the Complainants is displayed below:



Images submitted by Complainant No. 1

[Handwritten signature]



Images submitted by Complainant No. 2

[Handwritten signature]

I. **Overall Net Impression of the Respondent's Marketing Campaign:**

53. It can be observed from the pictures reproduced above that each billboard has been divided into two parts. The left side of the billboard contains the picture of the Respondent's product, 'Fair & Lovely', along with two messages which state:

- i. "30 saal say qaabil-e-aitimaad"
"Trustworthy since 30 years"
- ii. The billboard contains the heart shaped logo (stamp) of Skin Health Alliance UK stating: "SAFE TO USE"

The right side of the billboards contains a blurred image of various fairness creams that are available in the market including those of the Complainants. Around the blurred image the billboards state:

"Mercury vali creams say mohtaad"*

Disclaimer: *"*formula creams main mercury ho sakta hay jo muzir-e-sehat hay"*

"Beware of creams with mercury"*

Disclaimer: *"*formula creams may contain mercury which is injurious to health"*

54. It should be noted that as per general practice, mercury is an element which is used as a fairness inducing ingredient in beauty products. However, it has also been observed to generate various serious health concerns. Moreover, the use of mercury in skin care products has also been either prohibited or restricted by the U.S. Food and Drug Administration (FDA) according to which,

"Mercury compounds. Mercury compounds are readily absorbed through the skin on topical application and tend to accumulate in the body. They may cause allergic reactions, skin irritation, or neurotoxic problems. The use of mercury compounds in cosmetics is limited to eye area products at no more than 65 parts per million (0.0065 percent) of mercury calculated as the metal and is permitted only if no other effective and safe preservative is available. All other cosmetics containing mercury are adulterated and subject to regulatory action unless it occurs in a trace amount of less than 1 part per million (0.0001 percent) calculated as the metal and its presence is unavoidable under conditions of good manufacturing practice (21 CFR 700.13)."³

55. Accordingly, taking into consideration the above reference along with the marketing campaign of the Respondent, the overall net impression of the campaign clearly suggests that the Respondent is claiming that its product is safe to use, especially in comparison to other fairness creams that are available in the market. It should be noted that the Respondent has used blurred images of the competing products on the billboards. Moreover, instead of making an absolute statement, the statement comparing the two

³ <http://www.fda.gov/cosmetics/guidanceregulation/lawsregulations/ucm127406.htm>

products contains the word "may". Nonetheless, it should be further noted that the fact that an inference has been made regarding the probability of presence of mercury in other fairness creams present in the market, the Respondent's marketing campaign is clearly capable of creating apprehensions within the consumers pertinent to the safety of such products.

56. These billboards, therefore, clearly suggest that other fairness creams available in the market might contain mercury which could have significant adverse impact on health of its consumer. Resultantly, this campaign might distort the decision making process of the consumers, as in response to such substantial insinuations, they might prefer the Respondent's product over other competing brands present in the market. Therefore, it can be concluded that this marketing campaign of the Respondent is also highly capable of harming business interests of the competing undertakings of the Respondent such as the Complainants.
57. The Respondent, however, claimed that it had only used blurred images which could not be clearly identified as any particular brand. As mentioned earlier, various photographs of the billboards and videos were demanded from the Complainants to prove the presence of this campaign. Therefore, the images of the billboards were thoroughly analyzed.
58. It may be noted that the various fairness creams present in the market, including those of the Complainants are being widely used across Pakistan. As pointed out by the Complainants, these brands have been in business for several years and hence, have gained a considerable amount of goodwill and reputation among the consumers. Besides, due to their low prices, they have also been able to target and gain a significant share in the market. Moreover, the Complainant No. 1 has also initiated its own marketing campaign via electronic and print media which has further contributed to its image building and recognition in the market. Consequently, products of both the Complainants as well as the Respondent are widely popular and hence, their packaging is also widely identifiable by the general public.
59. In addition to above, the blurred images of the Complainants' products were thoroughly analyzed by the Enquiry Committee. The images of their packaging are reproduced hereunder:



Face Fresh Beauty Cream - Complainant No. 1



Golden Pearl Beauty Cream - Complainant No. 2

Handwritten signature or initials in blue ink.

When these images of the Complainants' packaging were compared with the images on the billboard, it was concluded that even though the images of the packages were blurred, owing to their distinct features, awareness and wide popularity within the general public, and lack of effort invested by the Respondent in making these images suitably unidentifiable, the blurred images used by the Respondent were still clearly identifiable as the Complainants' products.

60. Furthermore, it was submitted by the Respondent that this initiative was undertaken by it in good faith to create awareness among the consumers pertinent to the adverse health impacts that have been proven to be associated with use of these low quality and injurious creams. Additionally, it was further asserted by the Respondent that this was done in response to the failure of the relevant regulatory authorities to take appropriate and necessary actions in this regard.
61. Subsequently, in light of the above discussion, it is necessary to reiterate the mandate of the Commission in general and the Enquiry Committee in particular. The Commission is mandated to ensure that economic activity remains unhindered in all spheres of the economy. This is attained via enforcement of the Act that restricts and regulates all kinds of anti-competitive behaviors in the market. One of the ways through which the Commission regulates this behavior is via enforcement of Section 10 of the Act which prohibits deceptive marketing practices. The relevant section, for the ease of understanding, is reproduced below:

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

(2) *the deceptive marketing practices shall be deemed to have been resorted to or continued if an Undertaking resorts to—*

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

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

(c) *false or misleading comparison of goods in the process of advertising;*

62. As it has been established that the images used by the Respondent are clearly identifiable and the Respondent has not denied the initiation of this campaign at any stage, hence, it has been concluded that the Respondent has in fact engaged in comparison of goods in the process of advertising. However, the Act does not prohibit undertakings from engaging in comparison, rather it forbids undertakings from engaging in false and misleading comparison of goods in the process of advertising.
63. As mentioned earlier, the Respondent, through its advertising campaign, has been disseminating cautionary messages within the public regarding the probability of

presence of an injurious element, 'mercury', in various skin care products that are being sold across the country, including those of the Complainants. Therefore, in order to verify the validity of the message distributed by the Respondent and to determine, *prima facie*, violation of section 10 of the Act, the Enquiry Committee ventured out to determine whether mercury was in fact present in the Complainants' and the Respondent's products or not.

II. False and Misleading Comparison of Products in the Process of Advertising:

64. For the purpose of this enquiry report, deceptive marketing practices in, *prima facie*, violation of Section 10 of the Act would have been resorted to by the Respondent if it is established that mercury is in fact *not* present in the Complainants' products.
65. In order to confirm this, the Complainants were requested to submit proofs regarding absence of mercury in their products. In order to validate this contention, both the Complainants submitted various lab reports that have already been discussed earlier. During the course of enquiry, upon the discovery of the RAPEX Alert referred to earlier, the Complainants submitted further laboratory tests which also proved absence of mercury in their products. As far as the withdrawal of products with their brand names were concerned, the Complainants alleged that there had been numerous counterfeit products available in the market using their brand names.
66. To substantiate this assertion, the Complainants proved that the batch numbers of their products were different from those mentioned in the alert. Furthermore, the Complainants also submitted copies of various law suits against manufacturers who had been selling low quality products in the market using the packaging and brand names of the Complainants. The Complainants also submitted evidence pertinent to their export history according to which neither one of them had exported their products to the countries mentioned in the RAPEX Alert. These documents were thoroughly analyzed by the Enquiry Committee and the submissions of the Complainants were accepted in their favor.
67. As mentioned earlier, both the Complainants had submitted various tests from different labs, such as PCSIR, DRAP, etc., according to which their products were free of mercury. This information was also shared with the Respondent for rejoinder who further submitted test reports from Intertek Laboratories. According to this report, the products of the Complainants, amongst other fairness products present in the market, contained very high levels of mercury.
68. Due to contradiction in test results submitted by both parties, the Enquiry Committee attempted to attain an unbiased view. For this purpose, various product samples of all the relevant undertakings, the Complainants and the Respondent, were collected arbitrarily from the market. On October 27, 2016, the following three product samples of the undertakings were sent to Qarshi Research International (Pvt) Limited to test for presence of mercury in them.

- i. Fair & Lovely – Respondent
- ii. Face Fresh Beauty Cream – Complainant No. 1
- iii. Golden Pearl Beauty Cream – Complainant No. 2

69. Qarshi Research International (Pvt.) Limited submitted its results on November 04, 2016. The test results are attached in Annexure – E. According to these tests, the Respondent's product contained mercury below detection level, i.e., <0.05 ppm. Similarly, the product of the Complainant No. 1 also contained mercury below detection level, i.e., <0.05 ppm. However, the product of the Complainant No. 2 contained mercury equivalent to 0.05 ppm.
70. In order to determine the implications of these results, the Respondent, via letter dated November 22, 2016, was requested to send the PSQCA Standards pertinent to skin care products, i.e., PS: 3228-2016. The Respondent submitted its reply on November 25, 2016. According to the standards, in conformation to the standards set by the FDA mentioned in para 54, mercury up to the maximum limit of 1ppm is allowed in skin care products. If a product contains less than 1ppm of mercury, it is considered as safe for use.
71. As a result, taking into consideration the test results attained from a third party for the purpose of gaining an unbiased perspective, it has been established that none of the undertakings who are party to this enquiry add mercury to their products beyond the permitted limits. Therefore, as far as presence of mercury and its implications are concerned, the products do not raise the relevant concerns.
72. Consequently, in light of the above discussion, it can be concluded that the Respondent has been involved in false and misleading comparison of products in the process of advertising by suggesting that its product is a safer option compared to the Complainants' products due to the likelihood of presence of mercury in them. Furthermore, even though the Respondent has used blurred images of various products, they are still identifiable and hence, a clear comparison has in fact taken place. Subsequently, conduct of the Respondent in this marketing campaign, *prima facie*, clearly amounts to violation of Section 10(1) in terms of sub-Section 10(2)(c) of the Act which prohibits false and misleading comparison of goods in the process of advertising.

III. Distribution of False and Misleading Information in the Process of Advertising That is Also Capable of Harming Business Interests of Other Undertakings:

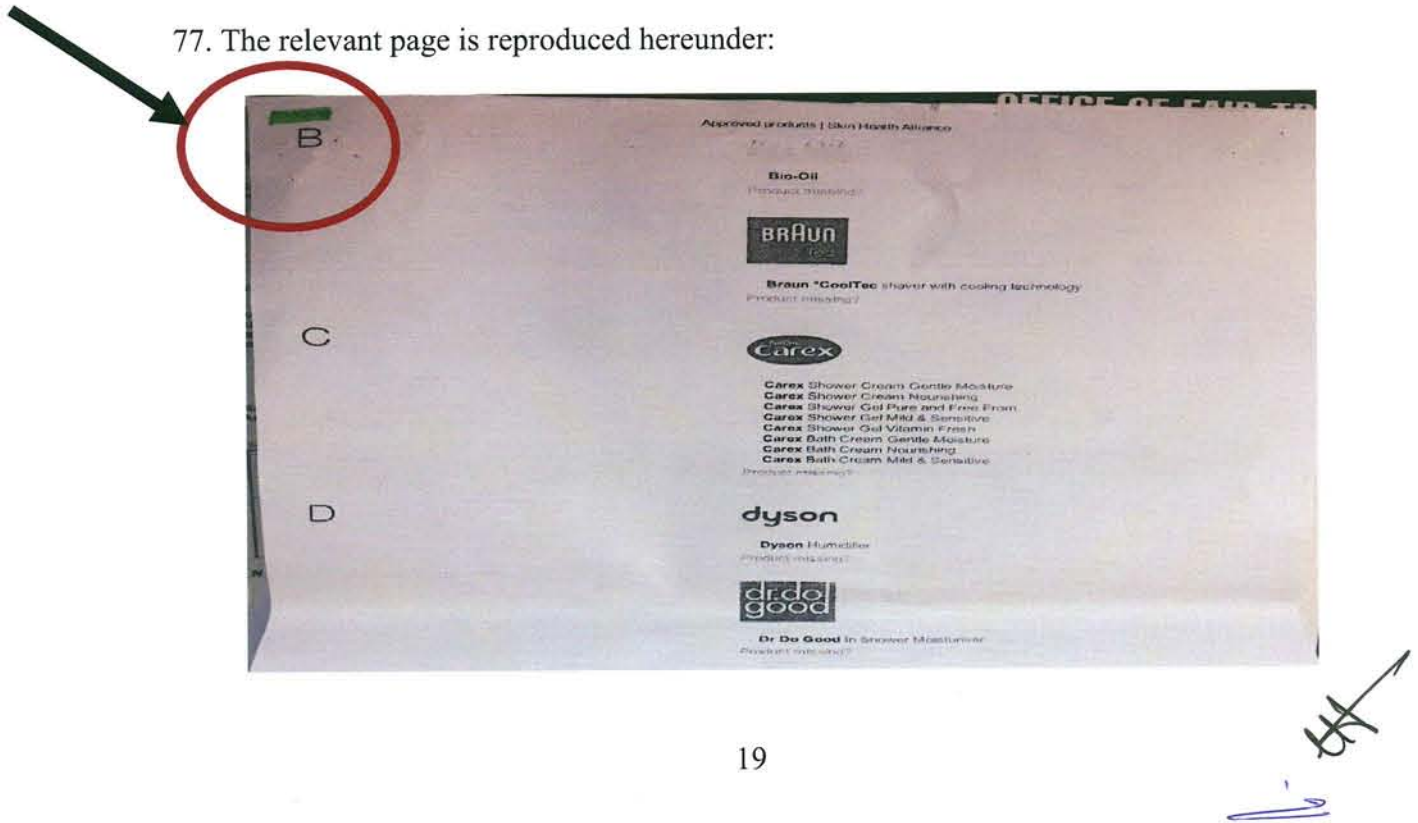
73. As discussed in the above paragraph, as the amount of mercury found in the Complainants' products were below hazardous limit, maligning the Complainants' brand image around the country by falsely inferring that the Respondent's product is safer to use compared to the Complainants' products, the Respondent's conduct in this marketing campaign also amounts to distribution of false and misleading information to consumers, related to the character, method of production, properties, suitability for use and quality of the products under discussion in this enquiry report.

74. It should be further noted that the Respondent's marketing campaign also has the ability to influence the buying decisions of the consumers erroneously. The false inference of probability of presence of mercury in the Complainants' products is a message which is also capable of having severe consequences such as harming business interests of other undertakings.

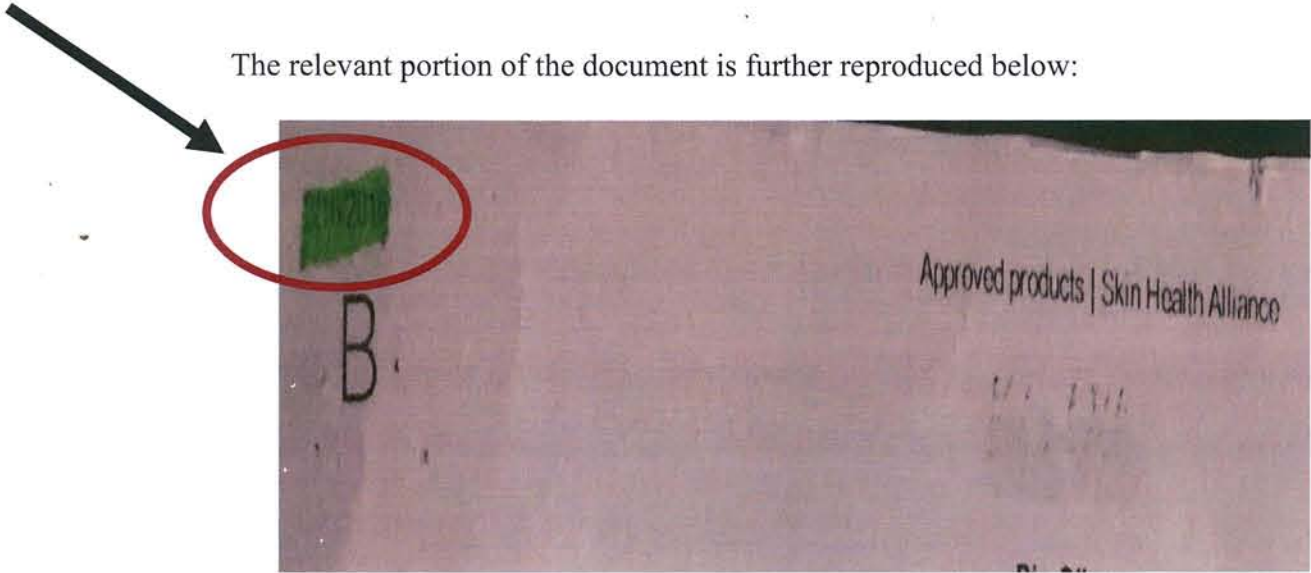
75. Therefore, in view of the preceding paragraphs, the Respondent is not only involved in the, *prima facie*, violation of Section 10(2)(c) of the Act, but it is also distributing false and misleading information to the consumers lacking a reasonable basis related to the character, method of production, properties, suitability for use and quality of products that are discussed in this enquiry report in, *prima facie*, violation of sub-Sections 10(2)(b) of the Act. This act of the Respondent is also capable of harming business interests of other undertakings including the Complainants', thus, *prima facie*, violating sub-Section 10(2)(a) of the Act.

76. In addition to above, allegations of the Complainant No. 1 pertinent to the use of stamp/logo of 'Skin Health Alliance UK' were also analyzed. The Respondent in its reply submitted on the matter that it had already attained accreditation and certification from Skin Health Alliance UK for their product, Fair & Lovely. Conversely, the Complainant No. 1 contended that the same were attained after it had submitted its complaint with the Commission. In this reference, certain pages were presented to the enquiry Committee which were taken from the official website of Skin Health Alliance UK which showed the list of their approved products. The lists of their approved products were submitted for two different time periods. The first document showed the list of approved products from the date, March 16, 2016, which is a date before the submission of these complaints with the Commission.

77. The relevant page is reproduced hereunder:

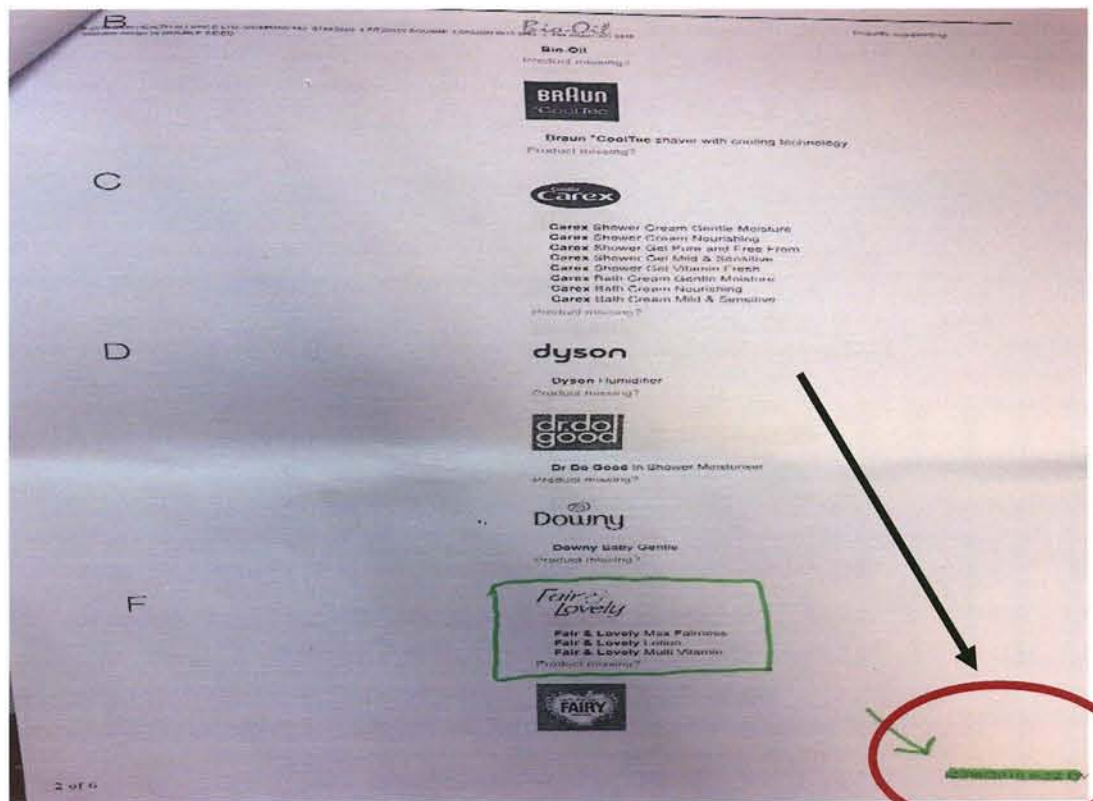


The relevant portion of the document is further reproduced below:



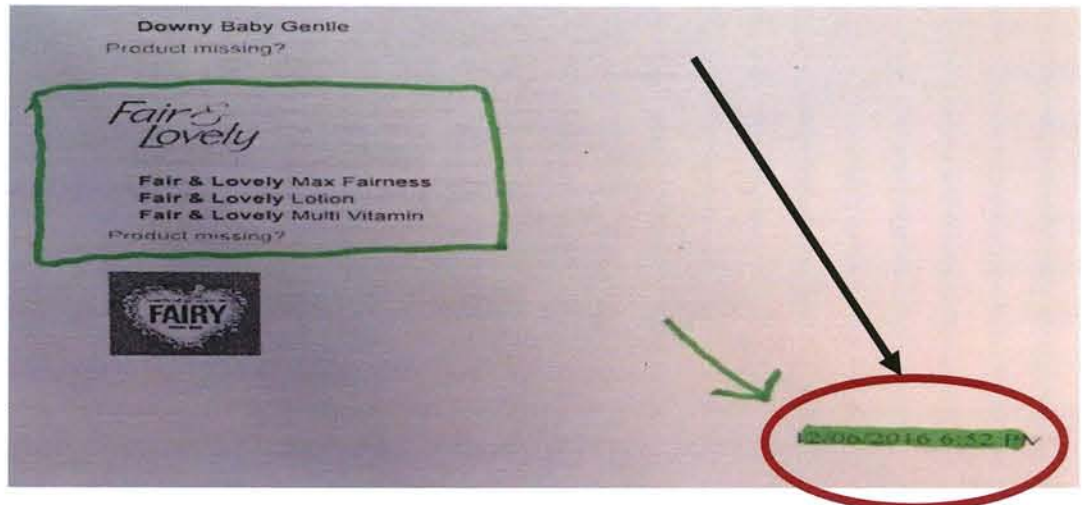
78. According to this document, Fair & Lovely was not a part of the list of products approved by Skin Health Alliance UK prior to submission of the complaint with the Commission, which was in March 2016. However, it is pertinent to note that the Respondent had been using this logo before the Complainants filed complaints with the Commission.

79. The other document shows the list of approved products on the website on June 12, 2016, which is a date after the complaints were filed by the Complainants with the Commission. The relevant page is presented below:



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The relevant portion is further reproduced below:



This list of a later date, contrariwise, shows that the Respondent's product is included in the list of products approved by this organization.

80. Consequently, due to the contradictory assertions of the Respondent and Complainant No. 1, the relevant organization, i.e., Skin Health Alliance UK, was inquired on the matter via their online portal on December 09, 2016. A reply was received vide email on December 14, 2016, according to which it was confirmed that the Unilever's product, 'Fair and Lovely', was awarded Skin Health Alliance dermatological accreditation on May 28, 2012. Ensuing this confirmation, through letter dated December 15, 2016, this information was verified from the Respondent itself. The Respondent, vide letter dated December 29, 2016, submitted its certificate of accreditation which corroborated with the information submitted by Skin Health Alliance (Annexure – D). However, it is important to note that this certificate was granted to 'Hindustan Unilever Ltd.' which is located in India and is different from the Respondent, i.e., Unilever Pakistan Limited.
81. In this matter, it is essential to note that as per Section 1(3) of the Act, the scope of the Act extends to the whole of Pakistan, elucidated in the following words:

“(3) It shall apply to all undertakings and all actions or matters that take place in Pakistan and distort competition within Pakistan.”

82. As a result, in light of the above discussion, by using the logo of Skin Health Alliance UK awarded to Hindustan Unilever Limited, the Respondent has also been involved in distribution of false and misleading information to consumers lacking a reasonable basis related to its product. Reason being that as submitted by the Respondent, i.e., Unilever Pakistan Limited, it has been manufacturing and marketing its international brand, 'Fair & Lovely', in Pakistan and its affiliates in other jurisdictions for many decades. Whereas the certificate of accreditation from Skin Health Alliance UK has been awarded to Hindustan Unilever Limited specifically, evidenced by the same date of endorsement,

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i.e., May 28, 2012. Moreover, it is a known fact that identical brands manufactured in different countries are of different qualities.

83. Since the accreditation from Skin Health Alliance UK belongs to Hindustan Unilever Limited and not to the Respondent, it can be concluded that the Respondent has been falsely using logo of an accreditation which it has actually never attained itself. Therefore, it can be established that by using a logo of an accreditation which does not belong to it, the Respondent has been involved in distribution of false and misleading information to consumers, including distribution of information lacking a reasonable basis which is also capable of harming business interests of other competing undertakings, including that of the Complainants in, *prima facie*, violation of Section 10(2)(a) and (b) of the Act.
84. Therefore, in the process of this enquiry, the Respondent has been, *prima facie*, found involved in violation of Section 10 of the Act read with sub-Sections 10(2)(a)(b) and (c).

D. CONCLUSION & RECOMMENDATIONS

85. Pursuant to the mandate of this enquiry report, the Enquiry Committee analyzed the marketing campaign of the Respondent with respect to its product, 'Fair & Lovely', in order to determine possible violation of Section 10 of the Act. In the said campaign, the Respondent had installed billboards all around the country using logo of Skin Health Alliance UK, simultaneously making claims such as;

Fair & Lovely

- i. "Trustworthy since the last 30 years"
- ii. "SAFE TO USE"

Furthermore, it had also made comparisons with other competing fairness creams, including those of the Complainants', by placing blurred images of their products on the billboards placed with the following statements;

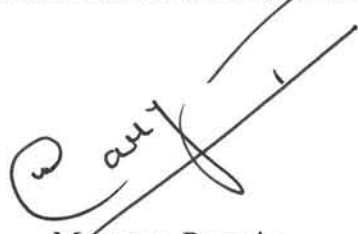
"Beware of creams with mercury"*

Disclaimer: *"formula creams may contain mercury which is injurious to health"*

86. Based on the findings of this enquiry, the Enquiry Committee is of the opinion that the Respondent; by using logo of Skin Health Alliance UK, the accreditation of which it does not hold; and by implying that its product is safe to use, especially in comparison to the products of the Complainants; is involved in making false and misleading claims and comparisons in its marketing campaign without any substantial justification.
87. Consequently, it has been concluded that the conduct of the Respondent amounts to distribution of false and misleading information to consumers, including distribution of information lacking a reasonable basis, related to character, method of production,

properties, suitability for use, and quality of the fairness creams that are subject matter of this enquiry report. It has been further concluded that this conduct of the Respondent also amounts to engaging in false and misleading comparison of its product, Fair & Lovely, with the Complainants' products, Face Fresh and Golden Pearl. Therefore, it has been established that the conduct of the Respondent constitutes, *prima facie*, violation of Section 10(1) of the Act, within the meaning and scope of Section 10(2)(b) and (c) of the Act.

88. Deceptive marketing practices discussed in this enquiry report have a direct impact on the public at large. As skin care is a sensitive matter, every player in the market has the responsibility to take necessary measures to ensure that no false or misleading information is distributed to the consumers, especially because these products may have an impact on their health. Moreover, consumers are reasonably wary of the skin care products they use and therefore, the information disseminated by the manufacturers is crucial to their buying decisions. Hence, distribution of false or misleading information by any market player of any magnitude also has the ability to distort the demand of such products significantly, which is capable of harming business interests of competing undertakings like the Complainants'. Therefore, it has been further established that the conduct of the Respondent also constitutes, *prima facie*, violation of Section 10(1) of the Act, within the meaning and scope of Section 10(2)(a) of the Act.
89. This, therefore, helps us to conclude that it is in the interest of the general public that the Respondent discontinues advertising its product in an unfair and misleading manner. The Respondent is encouraged to resort to an advertising practice that is transparent and gives consumers a clear impression of what it has to offer without damaging the reputation of other players, especially, in the absence of having a reasonable basis for doing so.
90. The Enquiry Committee recommends that in view of the, *prima facie*, violation of Section 10 of the Act, the Commission may initiate proceedings against M/s Unilever Pakistan Limited under Section 30 of the Act.



Marrayum Pervaiz
Deputy Director (OFT)
Enquiry Officer



Fatima Shah
Management Executive (OFT)
Enquiry Officer