



**BEFORE THE
COMPETITION COMMISSION OF PAKISTAN
IN THE MATTER OF**

SHOW CAUSE NOTICE ISSUED TO

M/S. AL-HILAL INDUSTRIES (PVT.) LIMITED

(FILE NO. 18/REG/OFT/FRESHER JUICE/CCP/2011)

Date(s) of hearing: October 19, 2011

Present: Ms. Rahat Kaunain Hassan
Chairperson

Mr. Shahzad Ansar
Member

On behalf of
M/s. Hilal Industries (Pvt) Limited Muhammad Azam Zia
Legal Advisor

ORDER

1. This order shall dispose of the proceedings pursuant to Show Cause Notice No. 25/2011 dated September 21, 2011 issued to M/s Al-Hilal Industries (Pvt) Limited, for *prima facie* violation of Section 10 (1) read with Section 10 (2) (b) of the Competition Act, 2010 (hereinafter “the Act”).

FACTUAL BACKGROUND

2. M/s. Al-Hilal Industries (Pvt) Limited, is an undertaking engaged in the business of manufacturing beverages and other consumer durables (hereinafter referred to as ‘the Undertaking’) as defined under clause (q) of sub-section (1) of Section 2 of the Competition Act, 2010 (the ‘Act’)

3. The Competition Commission of Pakistan (hereinafter “the Commission”) took notice of adverts of ‘Fresher Juice’ both in print and electronic media claiming to be ‘100 % pure juice.’ A perusal of the product’s website indicates that Fresher Juice is available in ten unique flavors namely Passion Fruit, Grape, Mango, Guavava, Apple, Falsa, Peach, Strawberry, Pomegranate and Lime. A bottle of Fresher Juice was purchased by the OFT department and it was found that the labeling on the bottle claimed “100 percent pure” in bold on the front face and was accompanied by an informative tag which bore the claim “Stay Fit, Drink Healthy”. The informative tag essentially states the nutritional value contained in the flavor/fruit for example a bottle of strawberry juice is accompanied by a tag stating the nutritional value contained in a cup of strawberries (144g). Reference is made to images below:



4. A perusal of the back of the bottle, however, seemingly had the effect of contradicting the claim of '100 % pure' as the ingredients include Sucrose and Acidulant. It is pertinent to mention that Sucrose is a scientific name for sugar which accounts for the juice's unnaturally sweet taste and Acidulant¹ is an additive that gives a sharp taste to foods and assists in the setting of gels and acts as a preservative. Under the ingredients section, it is also stated "contains no preservatives, artificial colours, and flavors." Reference is made to image of back of bottle packaging below:



The packaging and advertisements, *prima facie*, were in violation of Section 10 of the Act which reproduced herein below for ease of reference:

¹ Acidulants serve a variety of functions in foods including:

1. Flavoring to provide a desired taste and serve to intensify, enhance, blend or modify the overall flavor of the product.
2. Reduction of the pH to prevent or retard the growth of microorganisms and the germination of spores; and to increase the lethality of the process.
3. Maintenance or establishment of pH by serving as buffering agents. Usually a combination of free acids and salts are used.
4. Chelation of metal ions to assist in minimizing lipid oxidation (Cu, Fe), reducing color changes and controlling texture in some fruits and vegetables.
5. Alteration of the structure of foods including gels made from gums (pectin, carrageenan), and proteins.
6. Interaction with proteins and emulsifiers to modify the structure of foods such as doughs, alter the heat stability of proteins, and to serve as an emulsifier in processed cheese.
7. Modification of sugar crystallization in hard candy manufacturing.

Source: <http://class.fst.ohio-state.edu/fst621/Additive%20classes/Acids/ACIDU.htm>

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; or*
 - (d) *fraudulent use of another’s trademark, firm name, or product labeling or packaging.*

5. A letter was issued to the undertaking on June 22, 2011 and subsequent reminder was sent on July 4, 2011 to substantiate the claim of “100 % pure” through evidence in the form of reports or laboratory tests.

6. The undertaking replied vide letter dated July 06, 2011 stating that “*fruit juices that are not a 100 percent pure contain artificial substances whereas our brand Fresher contains no artificial substances. Furthermore, citrus fruit is probably the only kind of fruit from which we can extract juice and consume it as it is. However, most fruits such as mango, strawberry, guava, falsa, peach etc by their nature cannot be extracted in liquid, drinkable form. To achieve this purified water and other natural ingredients are required to be added to the pulp to bring it to liquid form as well as to bottle it. Due to the hot filling process sucrose has to be added to maintain its taste.*”

7. The undertaking did not supply any supporting document to substantiate their claim, therefore, the undertaking was again requested vide letter dated July 18, 2011 to provide documentary evidence, forming reasonable basis of its claims made in the advertisements and packaging within (7) seven days which they have not provided to date.

SHOW CAUSE NOTICE:

8. Based on the findings above, the Commission issued a Show Cause Notice (hereinafter the “SCN”) to the undertaking on September 21, 2011 , for *prima facie* violation of Section 10 (1) read with Section 10 (2) (b) of the Act. The relevant parts of the SCN are reproduced as follows:

“...the Undertaking prima facie appears to be distributing false or misleading information to customers/consumers lacking a reasonable basis related to the character, properties, and/or suitability for use of the juice in terms of clause (b) sub-section (2) of Section 10 of the Act as:

- a. Consumers are lead to believe that the juice is 100 percent pure without any additives;*
- b. Under the ingredients section it is explicitly stated “contains no preservatives, artificial colours, and flavors” while in contrast the ingredients in fine print in the back of the packaging include sucrose and acidulent”;*

SUBMISSIONS AND ANALYSIS

9. The undertaking replied to the SCN vide letter dated October 04, 2011 and their submissions can be summarized as follows:

- (i) The claim of 100% purity underlies the undertaking’s absolute faith in the quality of its products resulting from its earnest dedication in ensuring the highest possible quality of its juices. It has never been our intention to lead our customers into believing that the juice is without any additives whatsoever. Had that been the case, we would not have clearly mentioned the ingredients/additives on the juice bottle itself. Even otherwise, it would be contrary to common sense in attempting to make the consuming public believe in something that is scientifically impossible, namely, that juice in drinkable form can be extracted by simply squeezing fruits like guava, mango or peach etc. without the use of any additives.*
- (ii) Our claim is not “100% pure juice” as has been mentioned in the show cause notice, but merely “100% pure”, as printed on the bottle. The intention here, to be seen in the correct context considering the fact that the ingredients/additives are printed on the bottle itself, is that the juice is made from 100% pure food-grade ingredients inclusive of pure fruit and other absolutely necessary additives used in minimally trace quantities. The juice is based on real fruit pulp and its formulation is not based on ingredients that are meant to create a fruit like taste by artificial means.*

- (iii) *The print size of the ingredients on the back of the bottle is smaller (yet easily readable) than the size of the name of the brand and type of juice on the front, but it may be appreciated that this size difference is not an isolated occurrence in our case alone, but a long established global practice in respect of all packaged products. The obvious reason is that there is a lot more information that needs to be given on the back of the bottle than the front. In a nutshell, it is not the intention of the Undertaking to deceive its customers by writing the ingredients on the back of the bottle in small sized print.*
- (iv). *We absolutely submit to the Commission's authority and its valued input, guidance and/or any direction in letter and spirit. Moreover, we take this opportunity to express that if in spite of our explanations the worthy Commission in its superior wisdom is of the considered opinion that our claim of "100% pure" is deceptive, or has the potential to deceive the consumers, we are even ready and willing to forthwith discontinue use of the said claim.*

10. The hearing was scheduled for 19, October 2011 and the undertaking was represented by Mr. Mohammad Azam Zia, who reiterated the undertaking's stance that the product is reconstituted fruit juice that is pure and without any additives, preservatives, artificial colors or flavors. The constituents mentioned on the packaging i.e. purified water, fruit pulp, sucrose, acidulants and vitamin C are the natural ingredients of pure fruit juice and as such have been used to reconstitute the product. These constituents have therefore been listed on the packaging under the ingredients section. The Undertaking has never intended to mislead the consumers and is willing to make modifications to its marketing program in accordance with the guidance and directions of the Commission.

11. While the conciliatory and compliance oriented approach assured by the legal counsel of the undertaking needs to be appreciated, it is pertinent to recognize that for the disposal of subject proceedings the main issue in this matter is to determine the misleading and false aspect(s) of the marketing of Fresher Juice. Therefore, the issue that needs to be addressed is: whether, the claim with respect to Fresher Juice being 100 % pure along with contents and ingredients disclosed in fine print make such marketing of the product deceptive.

ISSUE:

Whether, the claim with respect to Fresher Juice being 100 % pure along with contents and ingredients disclosed in fine print at the back of the product make such marketing of the product deceptive?

12. Before addressing the issue at hand, it is important to shed light on the globally accepted definition(s) of what constitutes 100 % pure juice. As required by the *Fruit Juices and Fruit Nectar England Regulations 2003* and *Fruit Juices and Fruit Nectar Scotland Regulations 2003* the term “fruit juice” is used to describe a product that is directly obtained from the fruit and therefore, is not reconstituted with water and does not contain additives². A juice made by reconstituting concentrate has the Reserved Description³ of “Fruit Juice from Concentrate⁴”. Further a product is described as fruit "Nectar" when it contains at least 25% to 50% juice, depending on the fruit. Therefore, a juice or nectar including concentrate must state that it does and a juice or nectar containing added sugar must state the same. Comparable rules apply in all EU member states in their respective languages.

13. In the US, “fruit juice” can only be used to describe a product that is 100 percent fruit juice. According to The Code of Federal Regulations Title 21 Sec 102.33 (a) *“For a carbonated or noncarbonated beverage that contains less than 100 percent and more than 0 percent fruit or vegetable juice, ...if the common or usual name uses the word “juice,” it shall include a qualifying term such as “beverage,” “cocktail,” or “drink” appropriate to advise the consumer that the product is less than 100 percent juice (e.g., “diluted grape juice beverage” or “grape juice drink”*. The term "nectar" is generally accepted as the common or usual name in the U.S. and in international trade for a diluted juice beverage that contains fruit juice or puree, water, and may contain sweeteners. The Punjab Pure Food Rules, 2007 **“Fruit Juice”** (1) *shall be unfermented and un-concentrated liquids expressed from sound, ripe and fresh of one or more species of fruits of best quality. It shall be attractive in 217 appearances, free from objectionable flavors and any kind of deterioration. It shall be free from artificial colouring matter, flavoring agents, mineral acids, adulterant and preservatives other than permitted preservatives.*

² Fruits can be transported to the packing station where the juice is extracted and sold as fruit juice. Alternatively, the juice may be extracted in the country of origin and transported under refrigerated conditions to the country of sale, where it is often mildly pasteurised during packing to enhance preservation. This juice is usually sold in chilled cabinets in shops.

³ Reserved descriptions are controlled sales names. Products may be sold under those names only if they meet the prescribed compositional and labelling requirements of the Regulations.

⁴ Fruit juice from concentrate is juice which has been concentrated (by evaporation under reduced pressure to reduce its volume) and returned to its original state by the addition of water. Flavours lost during the process have to be restored. Pulp and cells recovered during the process of producing the fruit juice in question or fruit juice of the same kind may also be restored to the juice.

14. Having analyzed the labeling requirements for fruit juice in different jurisdictions, the Commission is of the view that, while it is beyond the Commission's mandate to enforce labeling requirements mentioned above, it is important to note that the undertaking's labeling could have the effect of confusing and hence misleading the consumer as to the true nature of the product. A perusal of the images of the front and back of the packaging above, make apparent that the claim on the front is "Peach Juice 100 % pure" while the back of the bottle bears the claim "Peach Nectar." It can be inferred from the definitions above that there is a clear distinction between the two, while the claim "Peach Juice 100 % pure" gives the impression that the said juice is directly obtained from the fruit without any additives the claim "Peach Nectar" on the back, in contrast gives the impression that the product contains fruit juice/puree/pulp, water, sweeteners and other additives. The undertaking has admitted that purified water and other natural ingredients are required to be added to the pulp to bring it to liquid form, and that the said juice is reconstituted with water. It can be inferred that the description provided more closely conforms to the internationally accepted definition of "Nectar". Alternately, the labeling on the packaging does not provide that the said juice is reconstituted with water when the undertaking has submitted such information. According to the labeling requirements of the Punjab Pure Food Rules, 2007 *"(5) There shall be written on the label of a package containing such juice prepared from concentrate, the words "(A) juice made from concentrate", "Reconstituted (A) juice", or "(A) juice made from concentrated (A) juice" as the case may be, without intervening written, printed, graphic matter and any other device in equal lettering."* However, it would be beyond the scope of this order to delve in such technicalities and not withstanding its applicability or non-applicability, the above serves as a guidance to support our view, that the claim of "Fresher Peach Juice 100 % pure" can not be justified in bold in the front of the bottle while printing and using the term "Peach Nectar" at the back of the bottle as it is a contradictory claim.

15. As for the ingredients mentioned at the back of the product referred to in the SCN the additives listed under the ingredients section "Sucrose", "Acidulent" are barely visible to the naked eye (*Reference is made to image(s) of packaging*) and it is a well established principle that fine print disclosures are inadequate in correcting the deceptive impression. Moreover, there is another well settled principle laid down in **Federal Trade Commission vs. Bronson Partners, LLC, [564 F.Supp.2d 119 (2008)]** that *"one true statement in the presence of a mass of false and misleading statements does not render an otherwise misleading advertisement non-misleading"*.

16. Reference is also made to **New Zealand Commerce Commission v Brownlie Brothers (District Court Napier, CRI 2003-041-3200, 29 March 2004)** for misleading representations relating to the freshness, content and origin in relation to its juice products wherein it was held *"The Commission is of the view that the reasonable consumer should not be expected to conduct a comparative analysis of information contained in secondary labeling but should be able to make an informed and not misleading choice based on information conspicuously displayed."*

17. We are of the considered view, that the claim of "100 % pure juice" can not be justified as it lacks reasonable basis and misleads consumers into thinking that Fresher Juice is "100% pure" when it is like any other packaged juice or nectar with additives. As relied upon in the Proctor and Gamble order *"The concept of having a reasonable basis is an established concept in the USA and was introduced after much deliberation and public comments through Policy Statement Regarding Advertising Substantiation. It is a concept which provides that, the advertiser must have had some recognizable substantiation for the claims made prior to making it an advertisement."*

18. In May 2008, The **Australian Competition and Consumer Commission (ACCC)** accepted an undertaking (A.C.N. 065 591 219) from Harvey Fresh (1994) Ltd, under section 87B of the *Trade Practices Act 1974* , wherein the company had acknowledged the '100% juice' claim on the label of its 250mL Apple & Blackcurrant fruit juice product was wrong and may have misled consumers. Brief facts of the case correspond aptly with the case at hand- the product label contained the words '100% juice' and "Apple & Blackcurrant". However, in contrast, the small print ingredients listed on the reverse side of the label indicated the product consisted of apple concentrate, blackcurrant flavour, grape skin extract and colour 466. As part of the remedial action, Harvey Fresh undertook not to claim a fruit juice product is 100 per cent juice when the product does not contain 100 percent juice, inform its retail customers about the incorrect labeling, recall the product from suppliers and distributors, place a corrective notice on its website, and implement and maintain a trade practices law compliance program for its officers and employees.

19. It is well established in the Commission's **ZONG Order dated September 29, 2009 and Paints Order dated January 13, 2012** that it is not a must to establish intent and information pertaining to the product in question *"may or may not be deliberate or conscious in order for it to qualify as misleading"*. Accordingly, the onus is on the undertakings to ensure that no deception occurs through their marketing

practices. Therefore the undertaking's justification that it has never been its intention to lead customers into believing that the juice is without any additives whatsoever is not relevant.

20. An additional aspect of the undertaking's marketing that warrants some observation while strictly not being a part of the SCN is the use of the phrase "Stay Fit, Drink Healthy" on the informative tag that every bottle of Fresher Juice is accompanied with. (*Reference is made to image(s)*). The undertaking has admitted that "*Due to the hot filling process sucrose has to be added to maintain its taste.*" and "sucrose" has been disclosed in the ingredients section at the back of the bottle in fine print. To an ordinary consumer, the claim of "Stay Fit, Drink Healthy" read with the claim "100 percent pure", if not undoubtedly is most likely to denote that the juice does not contain added sugar. It was held in the Commission's **ZONG Order dated September 29, 2009** "*the approach of the Commission is to evaluate complete advertisements and an opinion regarding deception is to be formulated on the basis of the net general impression conveyed by them and not on isolated excerpts.*" In this regard, we deem it appropriate to add that the informative tag also gives an overall deceptive impression as the use of phrase "Stay Healthy, Stay Fit" is, to say the least potentially misleading when in reality sucrose is added to the juice which is distinct from fructose (i.e. fruit sugar). Hence, its implications for a sugar patient would also be distinct and perhaps not so healthy to stay fit.

21. Keeping in view all the facts and circumstances of the matter at hand, the Commission is of the view that consumers are entitled to expect that actual contents of packaged juice match the overall impression created by the packaging and the marketing of the product. The *undertakings must say what they mean and show what they sell* to prevent deceptive marketing. The labeling on packaged juice can have a significant impact on not only the consumer's purchasing decision but also the maintenance of fair competition in the market. In our considered view, there is no doubt that the undertaking's marketing in relation to its product, Fresher Juice, is deceptive and found to be lacking a reasonable basis, in terms of Section 10 (1) read with Section 10 (2) (b) of the Act. However, it needs to be appreciated that the undertaking has given the assurance on stamp paper to rectify such practice and remove from all labels as well as print and electronic advertisements of its product, the claim of "100 % pure" as of January 30, 2012. Keeping in view the cooperation extended, the Commission, owing to its compliance oriented approach, particularly in

OFT matters is not imposing any penalty for the committed violation. However, the undertakings are reprimanded to ensure more responsible behaviour in the future with respect to the marketing of their products.

22. If there are other undertakings carrying out deceptive marketing of similar nature with respect to juice products they need to be proceeded against in order to rectify such conduct; failing which, the Commission shall take a stricter penal action.

23. In terms of what has been stated above, the Show Cause Notice No. 25/2011 is accordingly disposed off.

(RAHAT KAUNAIN HASSAN)
CHAIRPERSON

(SHAHZAD ANSAR)
MEMBER

Islamabad the June 20, 2012