



**BEFORE THE  
COMPETITION COMMISSION OF PAKISTAN**

**IN THE MATTER OF  
SHOW CAUSE NOTICE ISSUED TO**

**M/S NESTLÉ PAKISTAN LIMITED  
On Complaint Filed By  
M/S PARENTS PAKISTAN (SMC-PRIVATE) LTD  
FOR DECEPTIVE MARKETING PRACTICES**

**(File No. 343/Parents Pakistan/OFT/CCP/2019)**

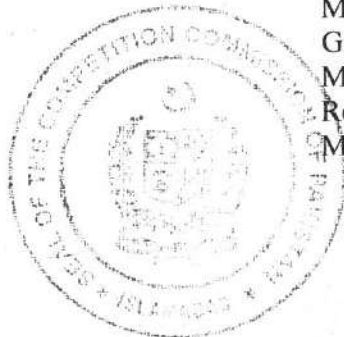
**Date of Hearing:** 29.04.2021  
15.06.2021  
30.06.2021

**Commission:** Ms. Rahat Kaunain Hassan  
**Chairperson**  
  
Ms. Bushra Naz Malik  
**Member**

**Present:**

**M/s Parents Pakistan  
(SMC-Private) Ltd** Nemo

**Ms Nestlé Pakistan Ltd** Mr. Farooq Amjad Mir,  
*Senior Advocate Supreme Court*  
Ms. Zainab Janjua,  
Advocate High Court  
Mr. Faisal Raza,  
*Senior Manager Legal Affairs*  
Miss Sameen Sahar  
*Head of Quality Assurance*  
Mr. Madhan Shahab  
Group Technology Manager,  
Mr. Mian Mitha, Corporate  
Regulatory and Scientific Affairs  
Manager



## ORDER

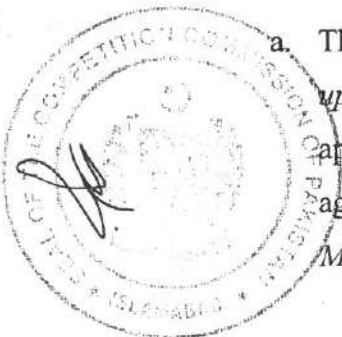
1. This order shall dispose off proceedings arising out of Show Cause Notice No. 7/2021 dated March 24, 2021 (hereinafter the 'SCN') issued to M/s Nestle Pakistan Limited (hereinafter the 'Respondent') for *prima facie* violation of Section 10 of the Competition Act, 2010 (hereinafter the 'Act').
2. M/s Parent Pakistan (SMC-Private) Limited (hereinafter referred to as the 'Complainant'), alleged that the Respondent resorted to deceptive marketing practices by disseminating false and misleading information to consumers in the form of its product packaging, labelling, television commercials, advertisements as well as statements made on its official website and social media platforms in respect of three products i.e. *Nestle Nido Fortigrow*, *Nestle Nido 3+* and *Nestle Bunyad* (hereinafter collectively referred as the 'Products'). Deceptive information is alleged to have been disseminated without any reliable scientific data which caused an impression to the consumers that the products are actually milk. Such an impression is also alleged to have lacked reasonable basis, related to character, properties, suitability of use or quality of the products in violation of Section 10(2)(b) of the Act.
3. The Complainant also alleged the Respondent for resorting to misleading comparison of goods in the process of advertising by not only comparing *Nestle Nido Fortigrow* to milk but also claiming that it is a better version of milk, hence, violated Section 10(2)(c) of the Act.

## FACTUAL BACKGROUND

### COMPLAINT:

4. The Competition Commission of Pakistan (the "Commission") received a complaint from the Complainant wherein he claimed itself to be an association of consumers which engaged in training/educating parents for overall well-being of their children, specifically focusing on nurturing social and moral values, health and balanced diet. The specifics of allegations in the Complaint are as follows;

- a. That the product *Nestle Nido 3+* is marketed by the Respondent as "growing up formula" for pre-school children between ages 3 to 5, however, there are no applicable standards available which would have governed products for such age group. The product packaging states that it contains "Milk solids, Malodextrin, Vegetable Oil, Sugar, Oligofructose, Minerals Inulin, Soya



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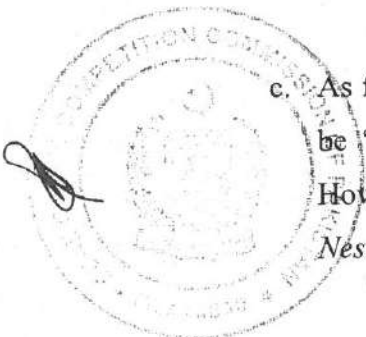
*Lecithin, Vitamins, Lactobacillus Rhamnosus*". For the given nutritional composition, the product neither qualifies to be a nutritional formula nor milk as it does not contain 'milk fats'.

Furthermore, as per nutritional information printed on the packaging, *Nestle Nido 3+* contains 20 grams of vegetable fat and 16 grams of milk proteins, which again does not comply with available applicable standards, hence, does not qualify to be categorized even as 'blend of skimmed milk and vegetable fat in powdered form'. Therefore, the Respondent disseminated false and misleading information as to the product's characteristics and quality. As per the Complainant, the product may best be called '*powdered tea whitener*'.

- b. The product *Nestle Nido Bunyad* is also labelled and marketed as growing up formula despite there being no applicable standard. On one hand the product packaging contains in this reference an image of a young boy with the word "*Ghazai Taqat*", but on the other hand, it mentions 20 grams of vegetable fats and 15 grams of milk proteins which is less than nutritional requirements of any applicable standards, hence, cannot be called a nutritional formula. As per the Complainant, the product is marketed by the Respondent as nutritional formula and various claims are made about its nutritional qualities.

Furthermore, nutritional composition mentioned on the packaging states that it contains "*Milk Solids, Vegetable Fats, Corn Syrup, Sugar, Soya Lecithin, Minerals, Stabilizer INS332 and Vitamins*", but does not include 'milk fats', therefore, the Complainant claimed that the product cannot be called milk either. The Respondent is alleged to have labelled the product previously as "*Dairy Based Formula*" or "*Reduced Fat Blend of Skimmed Milk and Vegetable Fats in Powdered Form*" while failing to disclose the fact that the product contains "*Vegetable Fat and Milk Solids*". Besides, the Complainant alleged that the product contains corn syrup which is widely recognized as unhealthy, therefore, banned in many countries.

- c. As far as *Nestle Nido Fortigrow* is concerned, the Complainant admitted it to be 'blend of skimmed milk powder and vegetable fat in powdered form'. However, it is alleged that the product's packaging alludes otherwise. Although *Nestle Nido Fortigrow* does not explicitly refer to the product as milk but



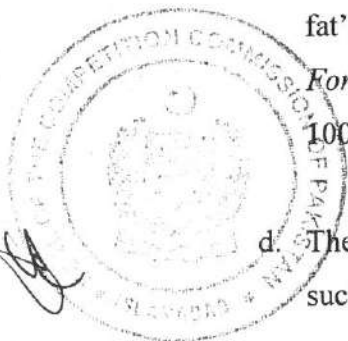
looking at the Respondent's advertisements holistically, the consumers is likely to get an impression of milk, hence, advertisement is misleading. The Complainant invited the Commission to look at following accounts.

First, the product packaging failed to mention that it is 'blend of skimmed milk powder and vegetable fat in powder form'. Whereas, relevant applicable standard not only required to mention name of the food on the packaging but also required to highlight edible vegetable fats or oils. Second, mentioning of nutritional composition on the packaging in the following manner is itself deceptive; "*Milk Solids Non Fat, Milk Fat, Vegetable Fat, Soya Lecithin, Vitamins and Minerals*". This is alleged mainly on the account that the process of manufacturing *Nestle Nido Fortigrow* is extractive one where, inter alia, water/moisture and milk fats are extracted from the milk to produce skimmed milk powder. Vegetable fats are then added to the skimmed milk powder to produce a 'blend of skimmed milk powder and vegetable fats in powdered form'. Therefore, 'skimmed milk powder' should have replaced 'milk solids non-fat' and 'milk fat' in the list of ingredients. Separately mentioning of 'milk fat' in the nutritional composition implied that milk fats are being added which is contrary to the fact.

Third, as per clause 8(b)(ii) of Part III of Punjab Regulations, nutritional composition needed to be mentioned "*in order of proportion in which they were used*", However, the product packaging of *Nestle Nido Fortigrow* lacks this aspect. Further, as per clause 4.1 of Codex General Guidelines and clause 8(14) of Part III of Punjab Regulations, it is also prohibited to make superlative claims such as the one mentioned on the product packaging i.e. "*BEST FOR SCHOOL KIDS*".

Fourth, the Respondent is also alleged to have not complied with PSQCA standard which required a minimum of 34% milk proteins in 'milk solids not fat'. Whereas, the nutritional composition mentioned on the *Nestle Nido Fortigrow* packaging shows that the product contains 23 grams of proteins per 100 grams.

d. The Respondent is also alleged to have adopted various advertisement modes such as flyers, social media campaign and television commercial as well as the



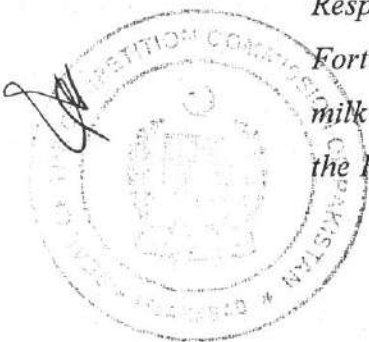
'Mission Nutrition' campaign and the '#morethanmilk' campaign, which all allegedly constitute as distributing false and misleading information wherein the Respondent not only resorted to comparison of *Nestle Nido Fortigrow* with milk, but also, claimed that it is a better version of milk. Failure to mention vegetable fat content on various forums is alleged to be misleading in terms of character, method of production, properties and quality and suitability of use. Hence, capable of misleading the consumers into believing that *Nestle Nido Fortigrow* is milk.

#### **ENQUIRY, SCNs, RESPONSES AND HEARINGS:**

5. Upon complaint, the Commission constituted an enquiry committee to probe the matter further. After evaluating facts and responses, the Enquiry Committee formulated the Enquiry Report dated 01.03.2021 (hereinafter the 'ER') which found the Respondent to have been involved in violation of Section 10 of the Act. Relevant portion of the ER reads as follows:

*"7.1 Therefore, keeping in view the overall marketing campaign of the Respondent regarding the Nestlé Nido products, including Nestlé Nido 3+, Nestlé NIDO Fortigrow, and Nestlé (Nido) Bunyad, along with technicality of the issue concerning the various categories of milk and dairy based/milk products, the Enquiry Committee is of the view that the general public has been misled by the Respondent into believing that this product is milk. The same has also been held by the Honorable Supreme Court in its order titled Watan Party versus Government of Punjab, etc., the product is not natural Milk. Additionally, the Respondent has also portrayed these products to be a better alternative of milk without a reasonable basis as the deliberation on efficacy and necessity of these products compared to natural/regular /loose milk is still being studied and under debate. Whereas till a final opinion is endorsed by all relevant expert national and international organization, to make any such claim which imply seniority of these formulae over milk for a child's health appears to be unsubstantiated and hence, false and misleading.*

*7.2 It is also very important to mention here that the packaging of the Respondent's Nestlé Nido product, including Nestlé Nido 3+, Nestlé Nido Fortigrow, and Nestlé (Nido) Bunyad are approved by PFA and the Glass of milk initially with white color is now changed to green color in order to follow the Honorable Supreme Court's order. Despite of the changed packaging, the*



marketing campaign as discussed above shows that the Respondent's product is milk or substitute of milk.

7.3 As a result, the Respondent has been found involved in distribution of false and misleading information to the consumers that lacks reasonable basis related to character, method of production, properties and quality of goods which, prima facie, constitutes violation of section 10(1) in general and section 10(2)(b) in particular. Furthermore, the Respondent is also found involved in false and misleading comparison of goods in the process of advertising in, prima facie, violation of section 10(1) in general and section 10(2)(c) in particular."

6. Pursuant to the Enquiry Report, the Commission issued a SCN to the Respondent and afforded it an opportunity of hearing. The SCN reads as follows;

"5. WHEREAS, in terms of Enquiry Report in general and paragraph 5.10 to 5.29 in particular, it appears that the Undertaking is marketing Nido Fortigrow and Nido 3+ with an old packaging available on its website opened via Facebook page referring to its product as 'Growing up milk' and is disseminating nutritional information on the product packaging of Nido Fortigrow, Nido 3+ and Bunyad that is not in line with the applicable standards, thereby disseminating false and misleading information which, prima facie, constitutes a violation of Section 10(1) in general read with Section 10(2)(b) of the Act; and

6. WHEREAS, in terms of the Enquiry Report in general and paragraph 5.30 to 5.32 in particular, it appears that the Undertaking tried to mislead the public by unsubstantiated comparison of 'Nido Fortigrow' with competing products with use of term "Best for School Kids" which appears to be, prima facie, in violation of Section 10(1) of the Act in general, read with sub-Section 10(2)(c) of the Act; and

7. WHEREAS, in terms of the Enquiry Report in general and paragraph 5.33 in particular, it appears that the Undertaking made claims like 'Best for School Kids' and other claims related to 'Respiratory Defenses', 'Gut Defenses', 'Brain Support Nutrient', 'Growth Development' on the packaging



of Nestle Nido Fortigrow without substantiating the claims, which, prima facie, constitutes violation of Section 10(1) in general read with Section 10(2)(b) of the Act; and

8. WHEREAS, in terms of the Enquiry Report in general and paragraph 5.4 to 5.65 in particular, it appears that the Undertaking distributed false and misleading information via flyers, statements made on its official website and social media platform which had the ability to influence the consumers to perceive that its products is not just milk but a better version of milk with added nutrition's which, prima facie, is a violation of Section 10(1) in general read with Section 10(2)(b) of the Act; and”

7. After submitting its written reply to the SCN, the Respondent appeared before the Commission on 29.04.2021 and while assuring its commitment towards compliance it denied all the allegations levelled against it. Primarily, the Respondent challenged maintainability of the complaint on the ground that the Complainant is not an undertaking and the complaint is filed with *mala fide* intention. Therefore, the Complaint is not maintainable under section 37(2) of the Act, read with Regulation 17 and 18 of General Enforcement Regulations, 2007 (hereinafter referred to as ‘GER’). Subsequent to that, all the alleged marketing material under investigation is claimed to be older versions of advertisements which is not currently on media anymore. The Commission was apprised on its compliance oriented approach in that the old archived record of its website and social media platforms contained few of the alleged advertising material, however, the material has been removed from the archives. It was also claimed the it has duly complied with the Orders of the Supreme Court of Pakistan issued in case titled *Watan Party v Government of Punjab (Civil Petition No. 2374-L/2016)* (hereinafter called ‘Watan Party’) wherein the respective Court ordered the Respondent to make disclosure on the product packaging to the effect that the product is “not natural milk”. Finally the Respondent requested the Commission to withdraw the SCN.

### ANALYSIS

8. At the outset, we note with disappointment that the Complainant has not appeared before the Commission throughout the hearings. This certainly reflects a non-serious conduct on part of the Complainant vis-à-vis the allegations made against the Respondent. We have, however, proceeded on what is placed on record before us. We have heard the Respondent



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and perused the evidence presented in its support. In our considered view, the following issues need to be addressed in the instant matter:

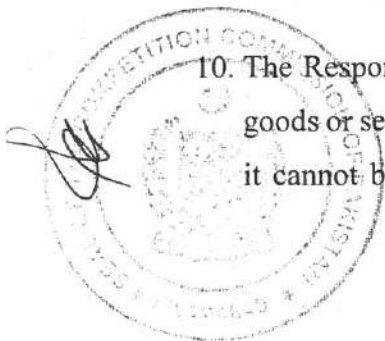
- i. **Whether the Complainant is an undertaking within the meaning of Section 2(1)(q) of the Act and whether the complaint is validly filed by him?**
- ii. **Whether the Respondent has violated Section 10(2)(b) of the Act by disseminating false and misleading information to the consumers related to character, suitability of use and quality of the Products i.e. Nido 3+ Nido fortigrow and Nido Bunyad in terms of its packaging?**
- iii. **Whether the Respondent has violated Section 10(2)(c) of the Act by making false and misleading comparison of goods in process of advertising?**

#### **ISSUE NO. I**

#### **Whether the Complainant is an undertaking within the meaning of Section 2(1)(q) of the Act and whether the complaint is validly filed by him?**

9. It is the preliminary legal objection of the Respondent that the SCN and the Enquiry Report are not maintainable on the account that requirements of Section 37(2) of the Act are not fulfilled. It is argued that the Complainant is neither an undertaking nor an association of consumers, and that the complaint is filed with mala fide intentions. While referring to the principle line of business stated in the Memorandum of Association of the Complainant, it is stated that the Complainant is established to promote, run, manage and maintain educational institutions to impart training to parents and others. The Respondent claimed that such line of business cannot be equated with performing functions as an 'association of consumers'. In addition to that, the Complainant is a single member company and by the very nature of the notion, single member companies cannot be equated with 'association of consumers' under any law. Neither is there any evidence on the record that has otherwise shown that the Complainant got itself registered as an 'association of consumer' with any registration authority.

10. The Respondent also objected that the Complainant has not been involved in provision of goods or services, but, got registered itself just one day before filing the complaint, therefore, it cannot be called an 'undertaking' as per Section 2(1)(q) of the Act. Not only that, the



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complaint is also claimed to have been filed with mala fide intention by some competitor of the Respondent while taking a cover of the Complainant just to vex the Respondent.

11. We have gone through the Memorandum of Association of the Complainant which is available on record and explains the principle line of its business in the following terms;

*(i) The principle line of business of the Company shall be to promote, establish, run, manage, and maintain educational institutions to impart training to the parents and other for overall wellbeing of children with specific focus on nurturing social and moral values, health, nutrition, balanced diet and balancing children life and to promote, establish, run, manage and maintain in such other educational institutions as may be considered appropriate for the promotion and advancement of education in the country and national and international affiliations to acquire the services of trainers, lecturers, teachers, managements kills and other professional from within the country and abroad as would be needed to run and promote related educational institutions set up by the Company subject, however, to the permission of competent authority but not to operate itself as university and not to act as a degree awarding institutions.*

*(ii) Except for the business mentioned in sub-clause (iii) hereunder, the Company may engage in all the lawful business and shall be authorized to take all necessary steps and actions in connection therewith and ancillary thereto.*

12. From the above it follows that the functions of the Complainant include provision of educational services which brings it in the ambit of an undertaking. Furthermore, the subject matter of the instant complaint is related to nutritional claims made by the Respondent, which is again directly related to the function being performed by the Complainant i.e. imparting training/education to parents and others for overall wellbeing of children with specific focus on nurturing social and moral values, health, nutrition and balanced diet. We do not find merit in this objection.

13. The SCN addressed the Complainant as both an undertaking and association of consumers. We will, therefore, not further labour this point.



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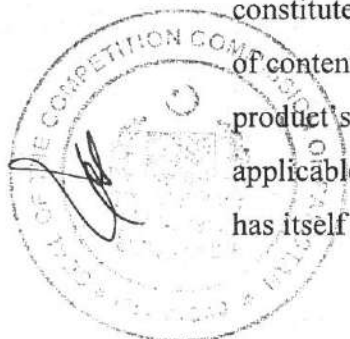
14. Allegation of mala fide intent alone without clear evidence would not prevent addressing the findings of the Enquiry Report which has independently found actions of the Respondent to be *prima facie* in violation of Section 10 of the Act.
15. We also consider that in view of the findings of the ER the matter needs determination in public interest.

## ISSUE NO. II

**Whether the Respondent has violated Section 10(2)(b) of the Act by disseminating false and misleading information to the consumers related to the Products' character, suitability of use and quality?**

### **Nestle Nido 3+**

16. In our considered view the record does not clarify when and how the Enquiry Committee determined falsity and misleading nature of the subject information. It is repeatedly stated at various instances in the Enquiry Report and the Complaint that there existed no standards applicable to products made for children aged 3 to 5, even then, it is found that nutritional information on the product packaging is not in line with applicable standard. On the contrary, the Respondent asserted that it has complied with the minimum standard available for other age groups and, thus, has reasonable substantiation for nutritional information printed on the product's packaging.
17. We are unable to understand on what grounds the Enquiry Committee has found QRI report and average composition contrary to each other, whereas what we actually see, is that the Respondent attempted to supplement its average composition through QRI report at a belated stage. This deferred substantiation on part of the Respondent cannot be equated with presentation of a false or misleading information.
18. In addition to the above, we have found some record of a detailed discussion on whether the product *Nestle Nido 3+* is a growing up formula or milk or some other dairy product? The ER, the Complaint and the Respondent's reply, all contain extensive details as to what constitutes milk or dairy product and what are applicable standards or proportional quantities of contents necessary for a product to be called as growing up formula or milk. As far as the product's nature as milk is concerned, we do not feel it necessary to go into details of the applicable standards relied by the Complainant or the ER, for the reason that the Respondent has itself admitted before the Commission that *Nestle Nido 3+* is not milk. We take note of

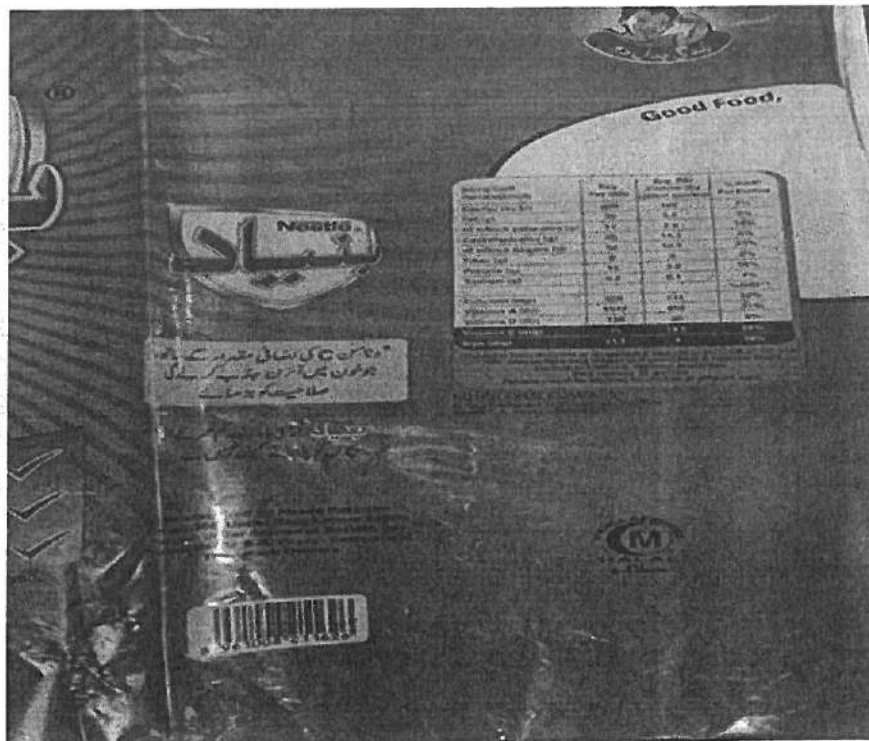


the Respondent's assertion with regard to previous litigation before the Honorable Supreme Court of Pakistan in *Watan Party* case, *supra*, wherein the subject products of the Respondent were held not as milk and the Respondent was ordered accordingly to label disclosure on its products' packaging to the effect that its products are 'not natural milk'. Since facts admitted need not be proved, therefore, the factual admitted position remains that the product i.e. *Nestle Nido 3+* is not milk and it is accordingly disclosed on the packaging.

### **Nestle Nido Bunyad**

19. As far as *Nestle Nido Bunyad* is concerned, it was alleged that previously, the product packaging contained the phrase 'Vegetable Fat & Milk Solid'. However, after the approval from PFA of the said product, the packaging contained the following phrases: 'Dairy Based Formula' or 'Reduced Fat Blend of Skimmed Milk and Vegetable Fat in Powdered Form'. The ER has found contravention with respect to the previous packaging and we observe that the current packaging includes due disclosure(s).

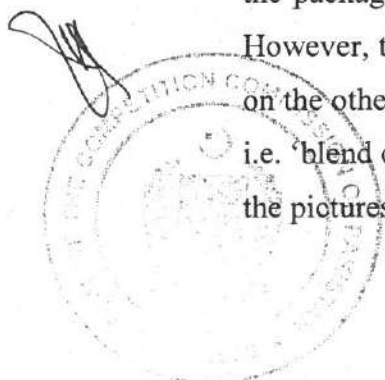




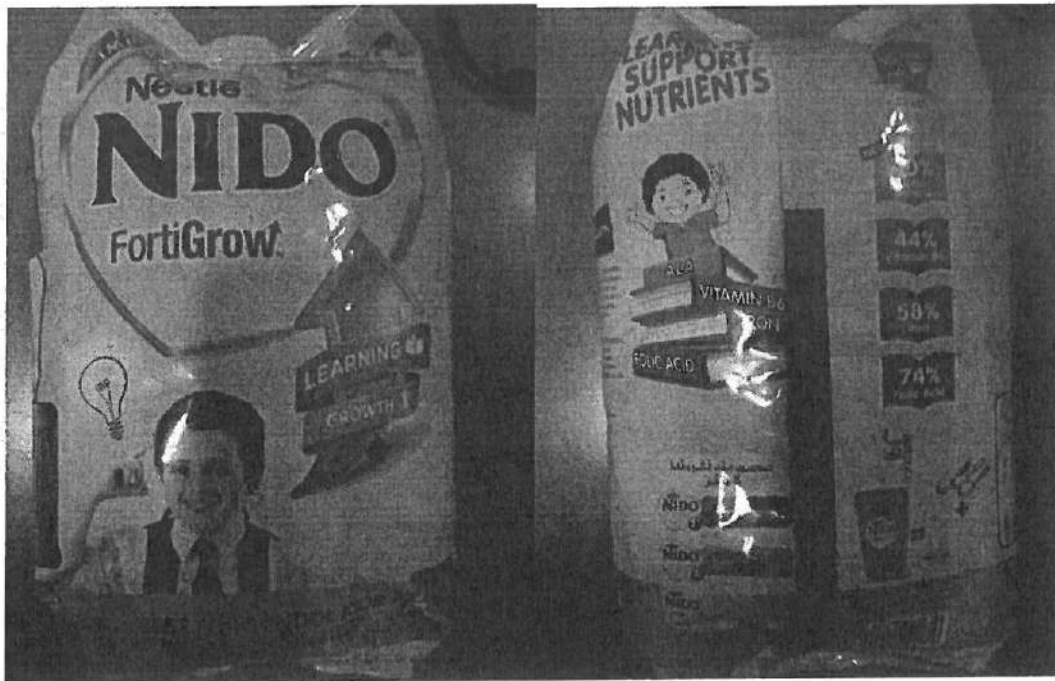
20. We would also like to address another instance in the ER (para 5.36), wherein the Complainant's version is quoted by the Enquiry Committee, according to this version, *Nestle Nido Bunyad* is advertised falsely or is misleading in that it claims to contain 20 grams of vegetable fat and 15 grams of milk protein. The Respondent is not able to substantiate the premise of making such claim. While, the Respondent may have failed to satisfy the Enquiry Committee on account of how they calculated quantum of MSNF in the product, we are of the considered view that we need to demonstrate restraint in such matters where assessment regarding verifying the accuracy of such nutritional facts/composition of products appearing on the packaging is not in our purview and falls in other authorities domain.

### **Nestle Nido Fortigrow**

21. For *Nestle Nido Fortigrow*, the Complainant admitted in the complaint that it is a 'blend of skimmed milk powder and vegetable fat in powdered form', however, he alleged that the Respondent failed to mention this nomenclature on the product packaging. The Complainant also claimed that relevant standard requires not only the name of the food to be written on the packaging, but also, a statement highlighting presence of edible vegetable fat or oils. However, the Respondent failed to comply with this requirement. The Enquiry Committee on the other hand found that the latest product packaging contained its actual nomenclature i.e. 'blend of skimmed milk powder and vegetable fat in powdered form' which is shown in the pictures given below:



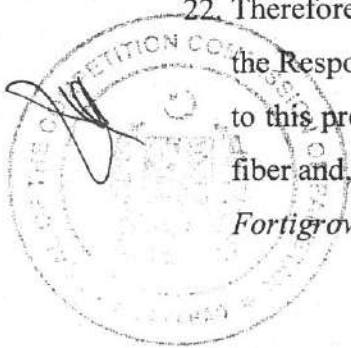
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The Enquiry Committee highlighted that the said nomenclature is used only after approval of the product labelling from PFA on October 15, 2020, whereas, previous product packaging lacked this nomenclature. Following picture shows the previous packaging:



22. Therefore, the Enquiry Committee concluded that to the extent of the previous packaging, the Respondent had been disseminating false and misleading information. Also with respect to this product, the composition also consists of *inter alia* fats, carbohydrates vitamins and fiber and, in particular, in the instant case, protein. Similar to *Nido Bunyad* and *Nido3+*, *Nido Fortigrow* was also found to be in violation of Section 10 of the Act in the ER. The concern



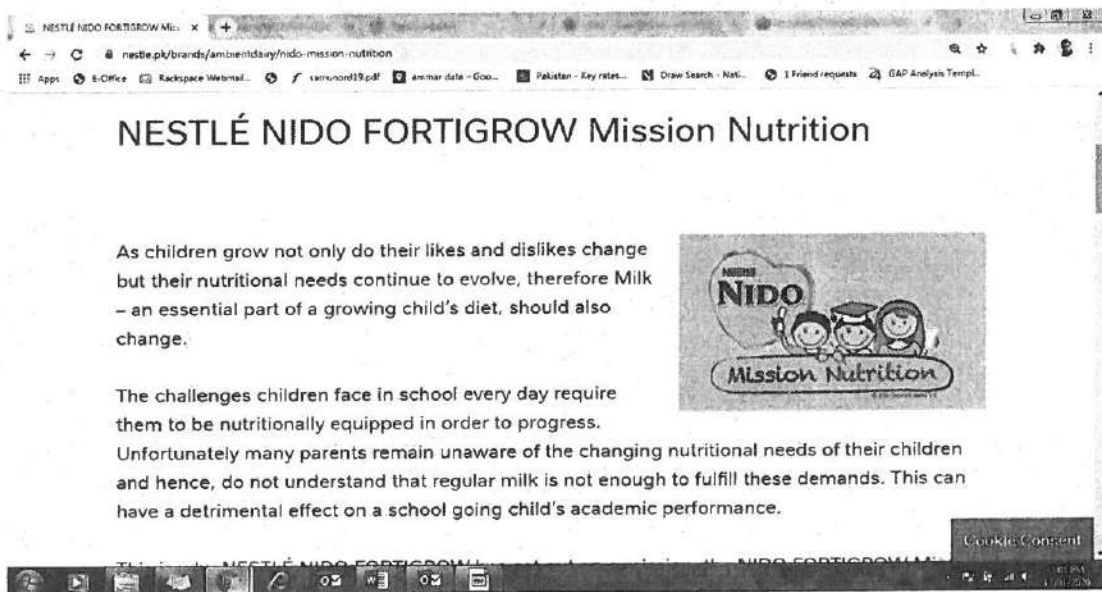
in the ER was primarily to understand the basis of the calculation of denominator i.e. MSNF for purposes of making any such claim. However, we are inclined to exercise restraint in view of what has already been stated above.

23. The Enquiry Committee has collected evidence in the form of flyers, television commercials, *Nestle Pakistan Nutrition Mission*, #MoreThanMilk campaign and product packaging, wherein the Respondent is found to have disseminated an impression of milk. The Enquiry Committee has emphasized the phrase “doodh k sath sath” (Translation: “including milk”) on the flyer which was found to have created an impression of the product as milk. We are in agreement with the ER on this count.

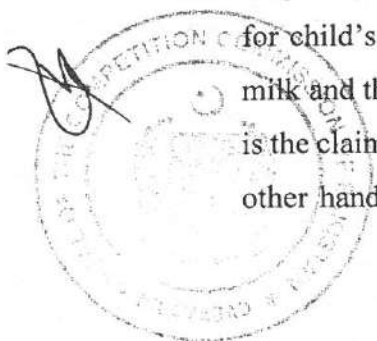
### Television Commercials/Advertising Material

#### *Nestle Pakistan Nutrition Mission:*

24. ‘Mission Nutrition’ is an awareness campaign initiated by the Respondent through its representatives, wherein the Respondent conducted various school activities while engaging students, teachers and parents. Following is the statement of the Respondent available on its website and Facebook page in relation to Mission Nutrition:



25. As per the ER, text and video of Mission Nutrition, it primarily exhibited importance of milk for child's nutritional needs and his overall wellbeing, followed by inadequacy of regular milk and then, finally, provided *Nestle Nido Fortigrow* as a better alternate. Coupled with it is the claim printed on product packaging which says “BEST FOR SCHOOL KIDS”. On the other hand, the Respondent stated that Mission Nutrition campaign was based on widely



accepted scientific opinion that milk is not the best diet for kids as it lacks vitamin D, iron and zinc. Since these nutrients do not occur naturally in milk, therefore, the Respondent claimed that fortified foods such as breakfast cereals, orange juices and soya milk are equally good sources.

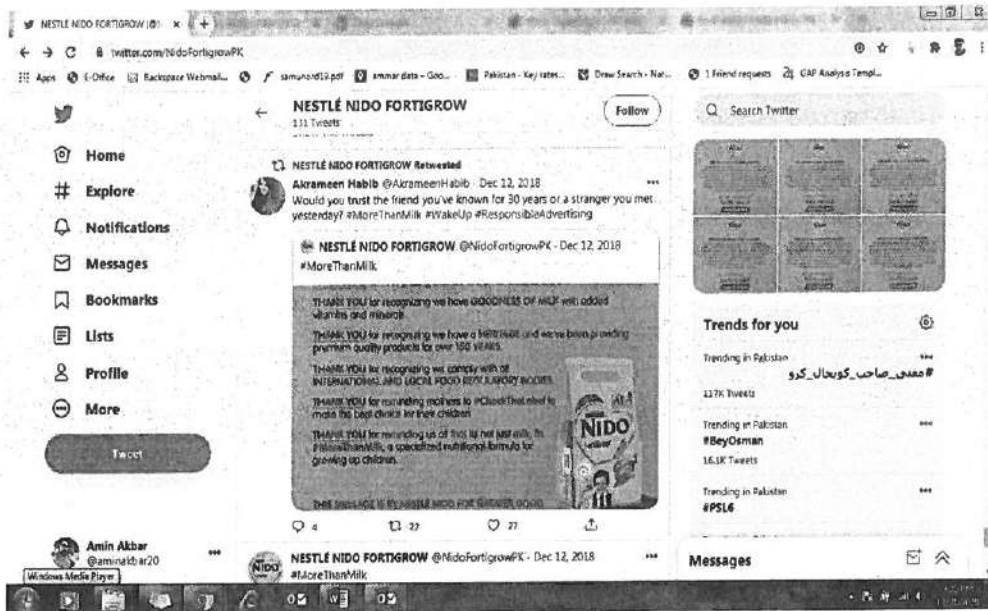
26. We are in agreement here with the ER in finding that 'Mission Nutrition' campaign is capable of delivering the general public, especially children, teachers and parents, an impression of the product as milk or its substitute with added nutrition which, as a better option, should be made a constant part of child's diet. When the Respondent made a claim of superiority of its product over regular milk, it would have been the duty of the Respondent to substantiate in what respect the product supersedes regular milk. Merely putting forward an assertion, that fortified food is better than regular food, is not enough. We have seen the record and could not find any study report or research paper of some credible and independent research institute which would have duly verified the fact. We would like to highlight here the duty of due diligence and care in selling one's products.

27. Keeping in view the above, we hold that 'Mission Nutrition' campaign was potentially capable of misleading the consumer to believe and perceive the product as milk. However, this campaign has also been discontinued and the same has been removed from the website with the assurance that no such similar practice would be undertaken in future.

*#MoreThanMilk Campaign:*

28. Another advertisement campaign on Twitter page alleged by the Complainant is shown below:





29. It is alleged that the very expression ‘#More Than Milk’ is deceptive in nature for the reason that *Nestle Nido Fortigrow* is compared with milk or claimed even better than milk. The Enquiry Committee has found it false and misleading in nature. We agree with the findings of the Enquiry Committee. The expression ‘#MoreThanMilk’ just adds up to previously discussed misleading effects of the alleged advertisements. Consumers’ comment(s) on the social media page also provides a glimpse of consumers’ understanding about the product. We are, therefore, of the view that the alleged expression amounts to distribution of misleading information to the consumers and violates Section 10(2)(b) of the Act. We notice that the Respondent has removed the same from the twitter page.

30. Available evidence on the record shows that when all the alleged previous advertisements/campaigns are taken holistically then they definitely cast an impression of the products as milk or some better version of milk. This impression had the tendency to mislead ordinary consumers into believing that *Nestle Nido* products are actually milk which can be substituted with regular milk in terms of characteristics, properties and benefits. Therefore, the alleged advertisements to the extent stated above, that have been mainly discontinued, did contravene Section 10(2)(b) of the Act.





### ISSUE NO. III

#### Whether the Respondent has violated Section 10(2)(c) of the Act by making false and misleading comparison of goods in process of advertising?

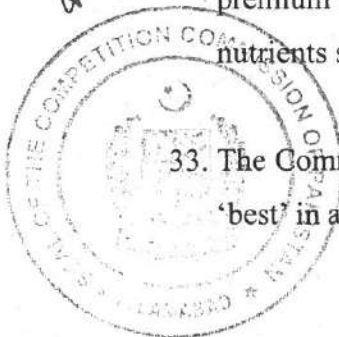
31. The allegation of section 10(2)(c) is limited to the product *Nestle Nido Fortigrow*, which packaging is labelled with a claim "*best for school kids*". Emphasis is laid on the claim by the Enquiry Committee in the following terms:

*"5.31 While evaluating the response of the Respondent, it is important to note that when the claim of Best for school kids is made, it indeed infers superiority or a certain position of a product compared to other competing product. The claim of Best for school kids will never be used if there is no competition in the field (market in this case). Here it is also relevant to mention that the practice of comparing competing goods in the process of advertising is not prohibited. What is considered a violation is that the assessments made have false or misleading inferences. Therefore, the Enquiry Committee is of the view that this statement is a comparative statement which implies its superiority of other competing products, which in this case is milk, considering the net general impression of the overall marketing material of this product and its range of products. Since the Respondent has not been able to prove its superiority to milk or any other competing product, this claim appears to be deceptive.*

*5.32 In light of the above discussion, it can therefore be determined that the claim made by the Respondent is false and misleading. Moreover, the Respondent is also found involved in false and misleading comparison of goods in the process of advertising in, prima facie, violation of section 10 (1) in general and section 10 (2) (c) in particular."*

32. In response, the Respondent stated that the claim is only meant to suggest the product best suited for school going children and it is only used to compare the Respondent's own products catering for the same age group. Further, that the claim is made to highlight premium quality of the product because it undergoes more fortification and contains nutrients such as Alpha Linoleic Acid (ALA), hence claimed as '*Best for school kids*'".

33. The Commission has already held in its *Hi-Tech Lubricant* case, that mere use of the word '*best*' in an advertisement is not sufficient to claim it a deceptive advertisement. The context



always remains relevant and in the instant matter, we are inclined to hold that the word 'best' is used as a puffery claim, rather than a misleading or deceptive statement as it does not create any express specific warranty or guarantee for the consumer and is used only in a broader exaggerated sense. Therefore, violation of Section 10(2)(c) of the Act is not established.

## CONCLUSION

34. In conclusion, we would like to reproduce the brief summary and status of the alleged contraventions in the SCN, which the Bench required the Office of the Registrar to present:

Alleged Contraventions	Comments of the Respondent	Remarks
<b>1. Nestle Nido 3+</b> <ul style="list-style-type: none"> <li>Previous packaging - violation of Section 10(2)(b) of the Act</li> </ul>	The packaging at issue was subsequently approved by Punjab Food Authority (PFA) and also changed to include due disclosures in light of the Watan Party case.	Verified
<b>2. Nestle Nido Fortigrow</b> <ul style="list-style-type: none"> <li>Previous packaging - violation of Section 10(2)(b) of the Act</li> <li>Display of unapproved packaging on accessing the link available through Facebook page.</li> <li>Nutritional Facts not in line with the applicable standards - a violation of Section 10(2)(b) of the Act.</li> <li>Claim 'best for school kids' violation of Section 10(2)(b)(c) of the Act.</li> <li>Claims made on the products regarding offering respiratory defense, immune defense, gut defenses, brain support nutrients, growth development violation of section 10(2)(b) of the Act.</li> </ul>	<p>Current packaging contains the due disclosure.</p> <p>The same has been removed from the website.</p> <p>No applicable standards prescribed as per submission of Respondents. Respondents were comparing the product with their own range of products and the claim 'best for school kids' actually means 'best suited for school kids'. These benefits are due to the presence of a component namely ALA. However, in the new packaging even this has been removed.</p>	<p>Verified</p> <p>Verified</p> <p>The current packaging of Nido FortiGrow appearing on the packaging/website does not contain the claim 'best for school kids.'</p> <p>No scientific evidence provided to support such claims. However, no such claims are found on the new packaging of the products.</p>
<b>Nestle Nido Bunyad</b> <ul style="list-style-type: none"> <li>Previous packaging - a violation of Section 10(2)(b) of the Act</li> </ul>	Current packaging contains the due disclosure	Verified
Nestle Pakistan Flyer	This was a one-time instance. The said flyer was distributed to the retailers for that purpose.	-
Website and social media pages	The advertisement has been removed.	Same has been verified.
TVC	The TVCs have been discontinued.	-
Nestle Pakistan Mission Nutrition	The campaign has been removed from website.	Same has been verified.

#more than milk	The Respondent has directed the concerned representative of twitter to remove the said posts immediately from their platform. In this regard the Respondent also agreed to share the necessary correspondence with the Bench.	The page of Nestle Nido FortiGrow has been removed from the Twitter.
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35. Since, with respect to enforcement under Section 10 of the Competition Act, a compliance-oriented approach has been appreciated, therefore, in the given facts and circumstances, we are inclined to take a lenient view and not impose any penalty where contravention is made out but has been rectified and duly addressed. In this regard, the Respondent has provided due disclosures, discontinued the impugned advertising material and has consistently committed to refrain from any such deceptive marketing practices and to ensure compliance with the provisions of the Act. Nevertheless, the Respondent is strongly cautioned not to repeat any such conduct in future.

36. We wish to encourage undertakings towards compliance and corrective behavior and in the given facts and circumstances, we wish to record appreciation for the counsels and the representatives in duly addressing concerns arising from the ER.

37. The proceedings are disposed off in terms of this Order.

  
(Rahat Kaunain Hassan)  
*Chairperson*

  
(Bushra Naz Malik)  
*Member*



**ISLAMABAD, THE 21<sup>st</sup> DAY OF FEBRUARY, 2022.**