



BEFORE THE
COMPETITION COMMISSION OF PAKISTAN

IN THE MATTER OF

SHOW CAUSE NOTICE ISSUED TO
KITCHEN STONE FOODS
ON COMPLAINT FILED BY
M/S QUICK FOOD INDUSTREIS (PVT.) LIMITED
&
M/S SEASONS FOODS (PVT.) LIMITED

(F. NO: 241/OFT/KITCHENSTONE/CCP/2016)

Date(s) of hearing: 04-10-2017 & 29-12-2017

Commission: Dr. Shahzad Ansar
Member

Dr. Muhammad Saleem
Member

Present on behalf of:

M/s Quick Food Industries (Pvt.) Limited &
M/s Seasons Foods (Pvt.) Limited Mr. Ali Kabir Shah, Advocate
Mr. Mohsin Kudwai, Advocate
M/s Ali & Ali Associates



M/s Kitchen Stone Foods

Barrister Raj Adnan Khan
Mr. Hasan Ali
M/s Mandviwalla & Zafar

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Registrar
Competition Commission of Pakistan
Government of Pakistan
Islamabad

ORDER

1. This order shall dispose of the proceedings initiated under Section 30 of the Competition Act 2010 (the “Act”) *vide* the Show Cause Notice No. 04/2017 dated 16 August 2017 (the “SCN”) to M/s Kitchen Stone (hereinafter, “KTN” or the “Respondent”) by the Competition Commission of Pakistan (the “Commission”).



FACTUAL BACKGROUND

A. PARTIES TO THE PROCEEDINGS:

2. M/s Seasons Foods (Private) Limited (hereinafter the ‘SFPL’ or the ‘Complainant No. 1’) was established in 2006 in the emerging market of meat processing in Pakistan. The Complainant No. 1 is primarily engaged in the processing & delivery of primary processed chicken & chicken products in frozen & chilled form as well as ready to cook & ready to eat further processed chicken meat, flour & vegetable based products¹ under the brand name . The Complainant No. 1 is an undertaking in terms of clause (q) of sub-section (1) of Section 2 of the Act.
3. M/s Quick Food Industries (Private) Limited (hereinafter the ‘QFIPL’ or the ‘Complainant No. 2’) is a part of Sanaulah Group of Companies. It is engaged in manufacturing, marketing and distributing a large range of value added frozen food products which inter alia include chicken nuggets, burger patties, kebabs, samosas, spring rolls etc., under its brand name . The Complainant No. 2 is an undertaking in terms of clause (q) of sub-section (1) of Section 2 of the Act.
4. The Respondent is a frozen foods manufacturing company established in the year 2013. The Respondent is engaged in providing a range of fresh frozen food products, which inter alia include chicken, potatoes, vegetables or even cheese under its brand name . The Respondent claims that their products are prepared GMO free, organic, high-quality ingredients under hygienic conditions. The Respondent is an undertaking in terms of clause (q) of sub-section (1) of Section 2 of the Act.

¹<http://www.seasonsgroup.com.pk/seasons-foods-pvt-ltd/>

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B. COMPLAINT, ENQUIRY, SHOW CAUSE NOTICES&REPLIES:

5. The Complainant No. 1 & Complainant No. 2 (hereinafter collectively referred to as the '**Complainants**'), lodged a complainant under sub-section (2) of Section 37 of the Act read with Regulation 17 & 18 of the Competition Commission (General Enforcement) Regulations, 2007 (hereinafter the '**General Enforcement Regulations**'), alleging that the Respondent has engaged in deceptive marketing practices by virtue of advertising and claiming that its food products are "**100% Non-Processed**" or "**Pakistan's First Non-Processed Frozen Food**". Moreover, the Complainants alleged that the Respondent has made advert material including billboards, streaming videos and other material propagating claimsthat"**Processed Meat Causes Cancer: Switch to Kitchen Stone Products,**" which is false, misleading, unsubstantiatedand in violation of clause (a) & (b) of sub-section (2) of Section 10 read with sub-section (1) of Section 10 of the Act. The Complainants also alleged that in its advertisements, the Respondent has falsely compared its products with their products in violation of clause (c) of subsection (2) of Section 10 read with subsection (1) of Section 10 of the Act.
6. Based on its initial probe, the Commission initiated an enquiry in accordance with subsection (2) of Section 37 of the Act by appointing the Enquiry Committee to investigate the matter for possible violations of Section 10 of the Act, and to submit a report to the Commission along with the recommendations.
7. The enquiry was concluded vide Enquiry Report dated 29 March 2017 (hereinafter the '**Enquiry Report**'). The Enquiry Report concluded as follows:

"6.1 In light of the facts, it appears that the advertisement posted by the Respondent on its Facebook page draws direct misleading comparison by showcasing the Complainants' product packaging with articles citing risks and causes of Cancer, along with misleading narrations without proper substantiation, prima facie, in violation of Section 10 (1) of the Act in terms of Section 10 (2) (c) of the Act.

6.2 Similarly, it is evident that the advertisement posted by the Respondent on its Facebook page, product packaging, outdoor advertising tactics used and local marketing events hosted, claiming the Respondent's products to be '100% Non-



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Processed' or 'Pakistan's first non-processed frozen food', without any substantive proof, not only amounts to distributing false and misleading information to consumers related to character, method of production, properties, suitability for use and quality of goods but is also capable of harming the business interests of the Complainants and other undertakings within the same business, prima facie, in violation of Section 10 (1) of the Act in terms of Section 10 (2) (a) and (b) of the Act

6.3 However, in light of the financial statement of the Respondent and its scale of operations, it is clear that the Respondent's business operations are in no way comparable to that of the Complainants. The Respondent's revenue, as per its financial statement, also shows clearly that the losses suffered by the Complainants, due to the marketing efforts of the Respondent, do not on fair grounds amount to Rs. 200 million each.

6.4 The deceptive marketing practices have a direct impact on the public at large. It is in the interest of the general public that the undertakings should be stopped to market their products in an unfair and misleading manner and be encouraged to resort to the marketing practices which are transparent and give consumers true and correct information. Therefore, in light of the findings of this Enquiry Report, it is recommended that the Commission may consider initiating proceedings against the Respondent, i.e., M/s Kitchen Stone under Section 30 of the Act."

8. Based on the finding and recommendations of the Enquiry Report and in the public interest, the Commission decided to initiate proceedings under Section 30 of the Act and issued the SCN to the Respondent. The relevant parts of the SCN, for ease of reference, are reproduced herein below:

"4. Whereas, in terms of the Enquiry Report in general and paragraphs 2.1 to 2.58 in particular, the Complainants have alleged that the Undertaking [Respondent] is engaged in direct marketing campaign, among other means, through billboards and banners, wherein the Undertaking has made deceptive claims that processed meat causes cancer and has used, inter alia, catchphrases "100% Non-Processed Food", "Pakistan's first non-processed frozen food" and that in addition to this, their billboards and banners in festivals read "Processed Meat Causes Cancer: Switch to Kitchen Stone

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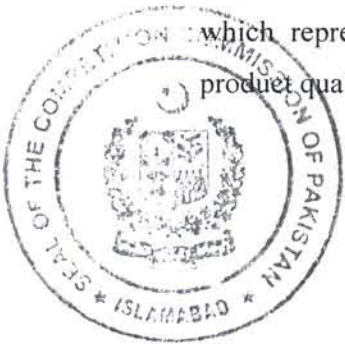


Products," which are false, misleading and deceptive in violation of Section 10 of the Act; and

5. *Whereas, in terms of the Enquiry Report in general and paragraphs 5.2 to 5.19 in particular, it appears that the advertisement posted by the Undertakings on its Facebook page with articles citing risks and causes of Cancer along with misleading narrations without substantiation, in violation of Section 10(1) read with Section 10(2)(c) of the Act; and*

6. *Whereas, in terms of the Enquiry Report in general and paragraphs 5.21 to 5.46 in particular, it appears that the advertisement posted by the Undertaking on its Facebook page, product packaging, outdoor advertising tactics used and local marketing events hosted, claiming the Undertaking's product to be "100% Non-Processed," "Pakistan's first non-processed frozen food," and that processed meat causes cancer without any substantiation, prima facie, amounts to distribution of false and misleading information related to products' character, method of production, properties, suitability for use and quality of goods in violation of Section 10(1) of the Act in terms of Section 10(2)(b) of the Act".*

9. The Respondent submitted its written reply to the SCN dated 15 September 2017 which was received on 18 September 2017 and the contents of the Enquiry Report, wherein it stated that it has been marketing its products since 2014 with the intent of providing a range of non-processed authentic Pakistani food to its consumers. According to the Respondent, it has made a substantial investment in transportation and packaging facilities, which is a clear indication of the Respondent's dedication to ensure standardization in their fresh and hygienic products. The Respondent has employed these stringent policies, aiming at reducing health and safety based risks, which represent the Respondent's commitment to maintaining high standards of product quality and integrity.



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10. The Respondent, while citing the provisions of the Act, the General Enforcement Regulations and the Consumer Protection from Unfair Trading Regulations of 2008 of United Kingdom (“CPUTR”), contended that neither has it distributed any misleading and/or false information to consumers which lacks reasonable basis in relation to its products character, properties, and quality, nor has it made any false or misleading comparison of its products with that of the Complainant’s. Furthermore, the Respondent denied that its marketing campaign is aimed at harming the business interests of the Complainants and other competitors in the market. The Respondent also contended that its products are compliant with the standard of health and safety regulations applicable in Pakistan. The Respondent further contended that the Complainants allegations are defamatory and the advertising claims “**100% Non-Processed**” and/or “**Pakistan’s First non-Processed Frozen Food**” do not amount to misrepresentation as its products contain no extra preservatives to increase the shelf life, which is not more than six months, in comparison to the Complainant’s products, which have a shelf-life of up to twelve months. The Respondent also claimed that it removes its products from the market within fourmonths, if unsold. Therefore, its products do not fall within the definition of “**processed**” food as per the definition provided by the World Health Organization (WHO). The Respondent also asserted that its marketing campaign is based on the reliable sources and it has not violated Section 10 of the Act in any sense. Rather, it claimed that the Complainants have filed the Complaint(s) to defame the Respondent. Moreover, the Respondent submitted that it had withdrawn its Facebook posts within forty (40) days from when it was posted.
11. Finally, the Respondent contended that it has developed Pakistan’s first non-processed frozen food, which is depicted in their marketing campaign. The advertised claims are based on trusted and accurate research papers and their internal R&D department for two years. Therefore, the advertised claims are also not in violation of Section 10 of the Act. Furthermore, the contention that the Respondent has distorted healthy competition in the market is ill-founded. Rather, the Respondent claimed that it being the new entrant in the market has added to the competition while the Complainants’ are impeding competition in the market by filing baseless and unsubstantiated complainant(s) as is in the instant case.



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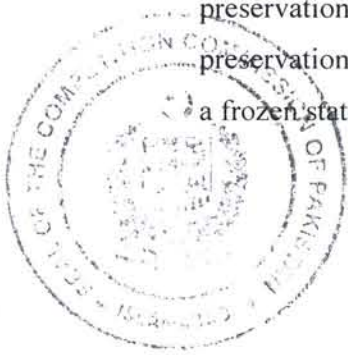

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12. On 06 October 2016, the Complainants submitted their rejoinder/reply to the aforementioned statements/contentions made by the Respondent. The Complainants submitted that the Respondent has failed to substantiate its claims that its products are “100% Non-Processed” frozen food items. The Complainants further contended that shelf life of a product does not depict or authenticate, whether or not the product is processed or non-processed and the Respondent has failed to substantiate its claim by any research or testing. The studies cited by the Respondent do not apply in Pakistan where only Halal meat-based products are produced. This is evident from the fact that the studies cited by the Respondent emphasis on pork (pig) based products such as ham, salami, bacon, sausages (pork sausages), hot dogs, corned beef, beef jerky as well as canned meat and meat-based sauces. The Complainants contended that none of these products are produced by the Respondent and/or the Complainants.
13. The Complainants further added that their products predominantly include chicken and/or vegetable-based product which adhere to strict quality management and proper certification, therefore, the Respondent should be put on the strict burden of proof as to how its products are even comparable, let alone better than the Complainants products.
14. The Complainants also contended the Respondent’s advertising claims that its products are non-processed, unparalleled and free of any preservatives, food colours, chemicals, and salting, among other things are unsubstantiated. Additionally, the Complainants submitted that there is no proof that the Respondent has carried out substantial research for 2 years and that its advertising claims are not backed by any evidence, certification, and quality control management system. They further stated that the allegations levelled against the Respondent are not defamatory as the same is protected by qualified privilege in the course of judicial proceedings. The Respondent entire marketing strategy and “Unique Selling Point” is based on an article published by the WHO which only limits the definition of non-processed food to salting, curing, fermentation, smoking or any such process to enhance flavour or improve preservation. According to the Complainants, the act of freezing food to improve preservation is itself a process as cooked or semi-cooked food products last longer in a frozen state.



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15. The Complainants relied on the definition of 'processed food' of the Punjab Pure Food Rules 2011, which is reproduced herein below:

"food having undergone any treatment resulting in a substantial change in the original state of food, and shall include dividing, parting, serving, boning, mincing, skinning, pairing, peeling, grinding, cutting, cleaning, trimming, deep freezing, freezing, chilling, milling, husking, packing or unpacking, the expression unprocessed shall be construed accordingly."

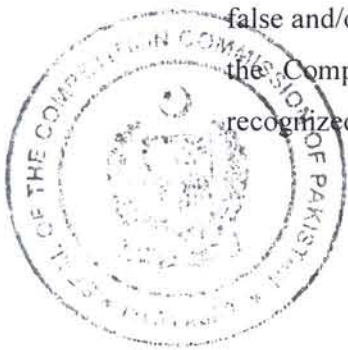
Citing to an international study by John Hopkins, a medical institution, the Respondent quoted that:

"the process used by food and beverage industries to transform raw plant and animal materials, such as grains, produce, meat and dairy, into products for consumers. Nearly all of our food has been processed in some way."

Page 7 of the said study also defines highly processed meat based food as:

"smoked, canned, salted and cured meat and products made from extruded remnants of meat such as nuggets, hot dogs and some sausages and burgers."

16. Based on the above definitions/descriptions, the Complainants contended that the Respondent's claim "100% Non-Processed" is unfounded. Furthermore, the Respondent's claim to have a shelf life of six (6) months has no substance, but in fact an absurd contention of being non-processed frozen food products, or their product is any different from any competitor in the market. Therefore, the Respondent has attempted to mislead the Commission.
17. The Complainants also contended that there is a substantive difference between entering into and marketing a product to gain consumer's attention and to disseminate false and/or misleading information to disparage a competitor's product. According to the Complainants, the fact that the Respondent has shown images of widely recognized packaging of their products, while just blurring the logo, the rest of the



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packaging is clearly visible in the advertisements posted by the Respondent, is indeed an attack on the reputation and goodwill of the Complainants. Therefore, the Respondent has clearly surpassed the thresholds of comparative advertisement by attaching the Complainants' products with one of the causes of cancer. Apart from Facebook posts, advertisements at various festivals, the Respondent has put up several billboards across the city, including a billboard of the main Shahrah-e-Faisal road, Karachi.

C. HEARINGS BEFORE THE COMMISSION:

18. Hearings in the matter were held on 04 October 2017 & 29 December 2017. The Complainants and the Respondent reiterated their stance reproduced above. Both parties argued on the standard of false and misleading information, the concept of consumers, comparative advertisements, reasonable basis or prior substantiation, in addition to the concept of net general impression or dominant message in the advertising and marketing campaigns of the Respondent in terms of the Commission's Orders **China Mobile Pak Limited and Pakistan Telecom Mobile Limited** reported as **2010 CLD 1478** and M/s Proctor & Gamble Pakistan (Private) Limited 23 February 2010 (hereinafter, the "**Head & Shoulder Order**"). Furthermore, the Respondent admitted that its streaming video is likely to draw a false or misleading comparison with its competitors' (including the Complainants') products and tendered unconditional apology before the Commission.

ANALYSIS AND DECISION

19. Based on the allegations levelled in the Complaint, findings of the Enquiry Report and replies filed thereto by the parties, following issues arise for the Commission's determination:

I. *Whether the Respondent's advertising claims amount to the dissemination of false and/or misleading information to consumers in violation of Section 10 of the Act?*

II. *Whether the Respondent advertising claims are in violation of Section 10(2) (c), 10(2) (b) and 10(2) (a) read with Section 10(1) of the Act?*



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ISSUE NO. I

20. The basic legal questions in determining the lawfulness of advertising and marketing campaign under Section 10 of the Act, in this case, are (a) *whether or not the Respondent advertised claims "100% Non-Processed" or "Pakistan's Only Non-Processed Frozen Food" are in contravention of Section 10 of the Act?* (b) *Whether the Respondent's claim that its products, in contrast to processed meat or processed meat based products were presumably not cancerous or save humans from certain types of cancers lack a reasonable basis in terms of Section 10 of the Act.*
21. To answer the first question, the Commission refers to its previous orders, wherein it has dealt with the concepts of false or misleading information. In the matter **China Mobile Pak Limited and Pakistan Telecom Mobile Limited** reported as **2010 CLD 1478**, the Commission has discussed that for the purposes of Section 10, the concept of false and/or misleading information have following connotations:

False Information

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

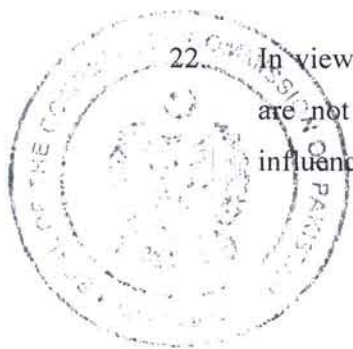
Misleading Information

Whereas, 'misleading information' may include oral or written statements or representations that are: (a) capable of giving the wrong impression or idea; (b) likely to lead into error of conduct, thought or judgement; (c) tend to misinform or misguide owing to vagueness or any omission; (d) may or may not be deliberate or conscious; and (e) in contrast to false information, it has less erroneous connotation and is somewhat open to interpretation as the circumstances and conduct of a party may be treated as relevant to a certain extent.

22. In view of the above, all representations whether intentional or unintentional which are not easily noticeable or easily understandable to target consumers and could influence their purchasing decision are materially false and adversely affect

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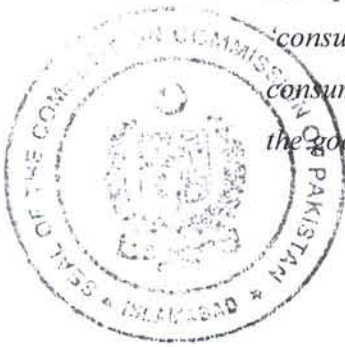
competition, hence are actionable under Section 10 of the Act. On the other hand, all representations, whether intentional or unintentional, that are capable of giving wrong impression or idea or have likelihood to induce one's conduct, thought or judgement, or have the potential to misinform or misguide due to vagueness or omission are materially misleading and could adversely affect competition, hence are actionable under Section 10 of the Act.

Consumer

With regard to the notion of 'consumer,' the Commission in its Zong Order (adhered to in the subsequent orders), has observed that 'consumer' for the purposes of Section 10 shall be construed as:

"32. the term 'consumer' under Section 10 is to be construed as an 'ordinary consumer' but not necessarily be restricted to the end-consumer of goods or services. The ordinary consumer is not the same as the 'ordinary prudent man' concept evolved under contract law. Unlike the ordinary prudent man, the thrust on ordinary diligence, caution/duty of care and ability to mitigate (possible inquiries) on the part of the consumer would not be considered relevant factor. It must be borne in mind that one of the objectives of the [Act] is to protect consumers from anticompetitive practices; hence, the beneficiary of law is the consumer.

Therefore, in order to implement the law in its true letter and spirit, the scope of the term consumer must be construed in most liberally and in its widest amplitude. [...] Restricting its interpretation with the use of the word 'average,' 'reasonable,' or 'prudent,' will not only narrow down and put constraints on the effective implementation of the provision, it would rather be contrary to the intent of the law. It would result in shifting the onus from the undertaking to the consumer and is likely to result in providing an easy exit for undertakings from the application of Section 10 of the [Act]. Accordingly, the term 'consumers' under Section 10 is to be construed as an 'ordinary consumer' but need not necessarily restricted to the end consumer of the goods or services."



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23. Given the nature of the products i.e. daily consumable items, wherein the Respondent's target audience are kids and general populace or typical buyers, therefore, the Commission shall adhere to the definition of "consumer" as discussed above.
24. As it has in the past, the Commission will evaluate the entire advertisement in terms of its net general impression or dominant message in determining how an ordinary consumer are likely to respond. Thus, as firstly observed in the matter of **China Mobile Pak Limited and Pakistan Telecom Mobile Limited** reported as **2010 CLD 1478²**, the concept of "net general impression" is reproduced hereunder:

Net General Impression

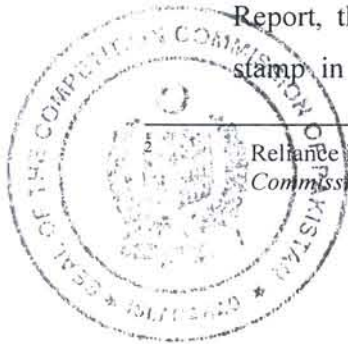
"35. [i]n evaluating advertising representations, we are required to look at the complete advertisement and formulate our opinion on them on the basis of net general impression conveyed by them and not on isolated scripts" [emphasis added]

Subsequently, this view was upheld by the U.S. Court of Appeal in the matter of **Beneficial Corp v FTC 542 F. 2d 611 (3rd Circuit, 1976)** in the following terms:

"The tendency of the advertising to deceive must be judged by viewing it as a whole, without emphasizing isolated words or phrases apart from this context." (pg. 617)

25. It is pertinent to mention that the concept of "net general impression" was endorsed by the U.S. Court of Appeal in the matter of **American Home Products Corporation v. Federal Trade Commission, 695 F. 2d 681 (1982-83 Trade Cases 65, 801)**. In the matter at hand, the Respondent has been advertising, marketing, promoting, offering to sell, and sold numerous purported meat-based products through various media, including product packaging, digital social media, website, outdoor advertising and local events since at least 2014. As mentioned in paragraph 5.24 of the Enquiry Report, the product name, image and the face of the packaging contains a circular stamp, in the golden colour reading "100% Non-Processed Meat" Plus, an orange

Reliance is placed on *Standard Oil of Calif, 84 F.T.C 1401 (1974) at pg. 1471 by the Federal Trade Commission of the USA.*



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label runs at the bottom of the face of packaging which has the following text written on it:

"Kitchen Stone is for families looking for a healthier option for ready to cook food. We use 100% non-processed meat, almost farm fresh vegetables, no food colour taste enhancer or any form of the preservatives."

Also, in or around [2016] the Respondent featured a streaming video of its products on its Facebook page. When consumers visited the Website, the video appeared at the right-hand corner of the screen, and the Respondent along with his wife stating, among other things:

Voiceover: *Kids of today have very different food likes and habits than 10 years back. Nuggets, burgers, and fast food are every child delicacy.*

*And yet such snacks are every mother's apprehension
{showing a number of kids having snacks and fast food in different settings}*

WHY?

{Image and voiceover}

Voiceover: *because with so much controversy can a mother really trust the ingredients of various products in the market:*

{showing blurred packaging of Mon Salwa, K&N, and Menu Food}

Voiceover: *various documentaries have covered the fast food industry. The latest report from the World Health Organization puts it as simple as it gets-PROCESSED MEAT CAUSES CANCER:*

{showing dire condition of the poultry industry and articles from WHO, etc.}

Mr. Kamran: *Hi, I'm Kamran and this is my wife Tabassum. We faced the same dilemma with our grandchildren. They loved fast food and we*



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believed it was not healthy. Hence, I and my wife have come up with the idea of Non-Processed Frozen Food.

{showing Mr. Kamran and his wife explaining the origin of Kitchen Stone}

Mr. Kamran: We researched a lot. Found that what best and most healthy ingredients are. We tried different recipes. Mixed best quality ingredients with them. We were not satisfied with the freshness of vegetables so we went to the farms in the countryside and took the sourcing for best vegetables. And of course, we had to do out research for healthiest sourcing of chicken and meat. Better than what we would buy for our homes. And then there is the freezing and transport. We wanted to make sure that our products taste fresh till they reach consumers.

{showing Mr. Kamran and his wife researching in different settings, like reading books & cooking and sitting in front of computer}

We have test marketed this for 2 years. We are finicky about our production process as well. Everything is as automated as it can get. Our employees are health checked and we follow the same levels of hygiene during preparation as in pharma industry.

{showing different stages of production at an automated manufacturing plant}

Mr. Kamran: The smiles on our grandchildren's faces when eating our non-processed frozen products have made everything worth it.

{showing a kid having a snack and giving thumbs up}

Mr. Kamran: Try our products if you are concerned about your children's health.

{showing Mr. Kamran and his wife recommending Kitchen Stone}


{Product line of Kitchen Stone is displayed}

The Respondent has made similar representations about the purported "100% Non-Processed" and "Pakistan's First Non-Processed Meat" products. In support of its

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contentions, the Respondents has provided a definition of the term “**processing**” by WHO to justify its claim “**100% Non-Processed,**” which reads as follows:

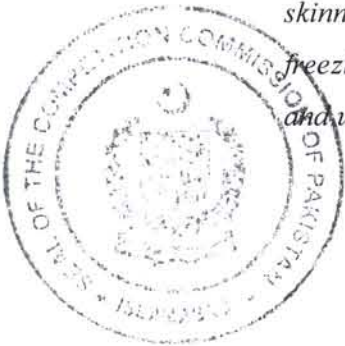
“Processed meat refers to meat that has been transformed through salting, curing, fermentation, smoking, or other processes to enhance, flavour, or improve preservation.”

“Most processed meats contain pork or beef, but processed meat may also contain other red meats, poultry, offal or meat by-products such as blood.”

“Examples of processed meat include hot dogs (frankfurters) ham, sausages, corned beef, and biltong or beef jerky as well as canned meat and meat-based preparation and sauces.”

27. Based on the above, the Respondent has argued that the allegations levelled by the Complainant were defamatory. While reaffirming the aforesaid claims, the Respondent contended that it is not engaged in misrepresentation as its products are without extra preservation with a shelf life of up to 06 (six) months. Furthermore, the Respondent claimed that its products are withdrawn from the market within in 04 (four) months if remained unsold. Therefore, its products do not fall within the purview of “**processed**” food as defined by W.H.O.
28. Additionally, the Respondent has contended that its products are compliant with health and safety standards/ regulations applicable in Pakistan. According to the Punjab Pure Food Rules 2011:

“Processed” in relation to any food means having undergone any treatment resulting in a substantial change in the original state of the food, but shall include dividing, parting, severing, boning, mincing, skinning, paring, peeling, grinding, cutting, cleaning, trimming, deep-freezing, freezing, chilling, milling, husking, packing, or unpacking and unprocessed shall be construed accordingly.



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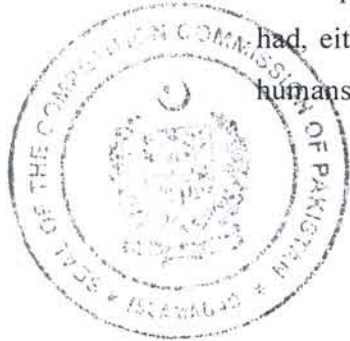
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29. According to a 2015 Report by WHO titled “**Processed meats do cause cancer–WHO**” published on the BBC News Website on 26 October 2015, in this section “*What is Processed Meat?*” it is described that:

“Processed meat has been modified to either extend its shelf life or change the taste and the main method are smoking, curing, or adding salt or preservation.

Simply putting beef through a mincer does not mean the resulting mince is “”processed unless it is modified further.”

30. Having heard the parties at length, read through their submissions and relevant legal provisions as regards the description of “processed meat” and keeping in view the Respondent’s products *such as* Chicken Cheese Balls, Chicken Samosa, and Chicken Spring Rolls, the Commission is of the of the considered opinion that the Respondent’s product may or may not contain entirely synthetic and unnaturally processed ingredients including meat, its advertising claims “**100% Non-Processed**” and “**Pakistan’s First Non-Processed Meat,**” essentially fall within the category of processed meat or processed meat based products. Hence, the Respondent’s advertising claim amounts to the dissemination of false and misleading information in substance, hence deceptive and in contravention of Section 10 of the Act.
31. Coming now to the second question, whether or not the processed meat or processed meat-based products are cancerous or increase the risk of cancer in humans, the Commission notes that it is not a standard-setting or regulatory authority to decide on the merits and demerits of the advertised claim and associated products of the Complainants or the Respondent. Nonetheless, Section 10 of the Act mandates the Commission to assess whether the advertised claim has prior substantiation or reasonable basis to make the claims as such. In this regard, we are
32. In its advertisements, the Respondent had propagated that processed meat or meat-based products cause cancer and since its products are “**100% Non-Processed,**” it had, either implicitly or explicitly, claimed that its products do not cause cancers in humans, and hence ensuring or enhancing health and safety of its consumers.



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33. In its previous orders, *for instance*, in the matter of Show Cause Notice issued to *M/s Procter & Gamble (Private) Limited for deceptive marketing practices* reported as 2017 CLD 1609, the Commission has observed that health and safety claims need to be backed up by competent and reliable scientific evidence prior to making such claims.

34. In paragraph 33 of the aforesaid Order, the Commission has quoted that competent and reliable scientific evidence means:

“tests, analyses, research, studies, or other evidence based on the expertise of professionals in the relevant area, that has been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.”

35. Based on the above, the Commission notes that the Respondent’s advertised claims pertain to risks associated with [processed] meat and cancer and its targeted audience or consumers are children and parents, the Respondent ought to possess reasonable basis or prior substantiation in terms of competent and reliable scientific evidence. Such evidence must be sufficient in quality and quantity based on standards generally accepted in the relevant fields when evaluated in light of the entire body of relevant and reliable evidence, in order to substantiate that the advertised claim or representation by the Respondent (whether seller and/or a marketer) is truthful. It is settled proposition of law that for the purposes of Section 10 of the Act, the onus is upon the undertakings to ensure that the claims made by them have a reasonable basis or prior substantiation. In this regard reference is made to *M/s Procter and Gamble Pakistan (Private) Limited reported as 2010 CLD 1695*, wherein the Commission has observed that: *“the advertiser must have some recognizable substantiation for the claims made prior to making it in an advertisement”*.

36. In its submissions, the Respondent has claimed that it has spent 2-years of research to understand the nexus between processed meats or processed meat-based products and the causes of cancer in a human. In truth and in fact, however, the Commission is of the considered opinion that the Respondent neither has any qualification or qualified staff to conduct such research, nor has it demonstrated that the procedures applied by



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it are generally accepted in this profession in order to yield accurate results in respect of its product line and prevention or even reduce the likelihood of cancer in humans. The publication and data relied upon by the Respondent, *albeit* suggests that the processed food and processed meats of a different kind could cause cancer, the Respondent could not contend that those publications are related to its products and advertised claims. After reviewing the case record, the Commission holds that the Respondent's advertisement material lacks a reasonable basis or prior substantiation in terms of competent and reliable scientific evidence as discussed above. The net impression conveyed by the Respondent's representations regarding its products is clear from a facial analysis that consumer its products would save from cancer, which is unacceptable in light of the evidence adduced by it. Therefore, the Respondent's representations for the advertisement of its products is unsubstantial and deceptive in contravention of Section 10 of the Act.

ISSUE NO. II

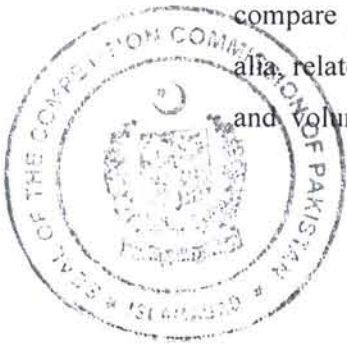
37. The Commission shall now examine the Respondent's advertised claims in terms of Section 10(2)(c), 10(2)(b) and 10(2)(a) read with Section 10(1) of the Act.
38. Section 10(2)(c) of the Act reads:

"2. The deceptive marketing practices shall be deemed to have been resorted to or continued if an Undertaking resorts to—"

[...]

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

39. The Act does not define as to what amounts to "**false or misleading comparison**" of goods and/or services in advertising as such. Nevertheless, the Commission deems it pertinent to mention that comparative advertisements are legal if they are truthful or have a reasonable basis or prior substantiation in the circumstances.
40. In this context, it is observed that certain advertisement and sales material may compare goods and/or services to others on the market. This comparison may, inter alia, relate to pricing, method or place of production, usage and suitability, and quality and volume of goods and/or services. Such comparative advertising may be false



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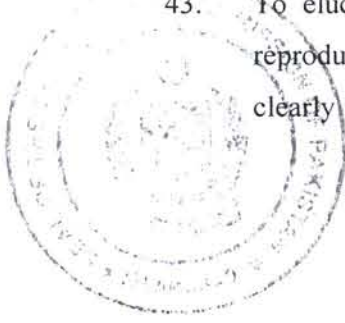
and/or misleading if the comparison is incorrect or does not appropriately compares the products.

41. In the matter of the Show Cause Notice to *M/s Colgate Palmolive for deceptive marketing practices* reported as **2017 CLD 1550**, the Commission has observed that *“a comparison of goods lacking a reasonable basis will be considered to be false and misleading”* under Section 10(2)(c) of the Act. While referring to the Statement of Policy Regarding Comparative Advertising (comparing a product to another company’s product in an advertisement) by the FTC, the Commission has noted that:

“Comparative advertising is appropriate where the comparisons are clearly identified, truthful and non-deceptive.” In the context of health and safety claims, the Commission has further noted that *“the comparison must be analyzed and held to the highest level of scrutiny in order ensure that the statements made are accurate and narrowly drawn. It is only when comparative advertising compares material, relevant, verifiable and representative features and is not [false or] misleading, may thereby a legitimate means of informing consumers of their advantage.”*

42. In the matter at hand, the Complainants have claimed that the Respondent has indulged in false and misleading comparison of its products with their products. The Respondent, on the other hand, has contended that neither has it distributed any false or misleading information nor indulged in a false or misleading comparison of its products in its advertising and marketing campaign. The Commission finds the Respondent’s arguments are unfounded owing to its unsubstantiated claims that its products are **“100% Non-Processed”** or **“Pakistan’s First Non-Processed Frozen Food,”** and processed meat or processed meat-based products are cancerous or increase the risk of cancer. Also, the Respondent has displayed its products line with that of the Complainants, therefore, drawing a false and misleading comparison of the two.

43. To elucidate the above, the Commission refers to the script of video streaming reproduced in paragraph 22 above, wherein the Respondent’s advertised claims clearly draw a comparison between its products and the Complainants’ products, in



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particular, their healthiness and safety. Therefore, the Respondent's advised claims draw a false and misleading comparison between in violation of Section 10(2) (c) read with Section 10(1) of the Act.

44. Section 10(2)(b) of the Act reads:

*"(2) The deceptive marketing practices shall be deemed to have been restored to or continued of an Undertaking resorts to
[...]
(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."*

45. Section 10(2) (b) encompasses a broad array of practices involving economic injury brought on consumers by deceptive marketing practices by Undertakings. This provision has two limbs (a) the first limb, declares dissemination of the obvious false and/or misleading information to consumer as illegal, (b) while the second limb declares any distribution of information to consumer which lacks a reasonable basis, related to price, character, method or place or production, properties, and suitability for use, or quality of goods in the process of advertising either false or misleading as illegal. In its earlier decisions, including Zong Order and Head & Shoulder Order, the Commission dealt with advertised claims at length and has warned that any claim made without a "reasonable basis" would violate Section 10 of the Act, whether or not the claim was true.

46. As an initial matter, there is no question that the Respondent, at least prior to the Commission's enquiry, had expressly marketed or represented its entire product line as "100% Non-Processed" and/or "Pakistan First Non-Processed Frozen Food" without any reasonable factual basis, disclaimers or qualifying statements. Put differently, when viewed the Respondent's claims from viewpoint of ordinary consumers, they were express and absolute in nature and context, and hence material to the consumer. This is to say, the Respondent advertised claims have the potential to affect the consumer's conduct or decision with regard to the Respondent's products.

The Respondent has not, nor could it, dispute that it has consistently advertised its



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products as the only healthy, safe, natural and unprocessed frozen food available in Pakistan. It is well-established above that the Respondent has no reasonable basis or prior substantiation in terms of competent and reliable scientific evidence pertaining to the health and safety claims propagated by it. The Commission, therefore, finds that it requires no extrinsic evidence to establish the impression that consumer would take away from such advertisement if the claim is reasonably clear from the face of the advertisement as is in the matter at hand. In view of the purported evidence, the Commission is of the considered opinion that the Respondent has contravened Section 10(2)(b) read with Section 10 (1) of the Act.

47. Section 10(2)(a) of the Act reads:

“(2) The deceptive marketing practices shall be deemed to have been restored to or continued of an Undertaking resorts to—

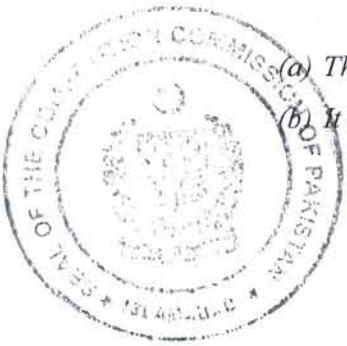
(a) the distribution of false or misleading information that is capable of harming the business interests of another undertaking.”

48. In regard to harm to the competing business undertakings, the Commission has, in its ***Order in the Matter of Jotun Pakistan (Private) Limited*** reported as **2015 CLD 1638**, held that:

“14. [...] to prove conduct under Section 10(2)(a) of the Act, it is not necessary to show actual harm to a competitor. It is sufficient for the existence of deceptive marketing practice that has the potential to harm the business interests of the competitors.”

49. In its defense, the Respondent has contended that it is indeed the Complainants who have failed to substantiate their claim that it has carried out a deceptive marketing campaign injurious to their business interests. Referring to the Commission’s order ***in the matter of Tara Crop Sciences (Private) Limited*** reported as **2016 CLD 105**, the Respondent has argued that a violation of Section 10(2)(a) is made out if the two elements are present:

- (a) There must be dissemination of false or misleading information, and*
(b) It must be capable of harming another’s business interest.



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50. The Respondent has further argued that its advertised claims, including, *inter alia*, the Facebook post is based on the market study, well-recognized research, it has not engaged in the dissemination of false or misleading information. And since, it has removed its Facebook post, there is no harm or damage to the goodwill or business interests of the Complainants. Thus, it has not violated Section 10(2)(a) of the Act. In this context, the Commission notes that since the Complainants have not made any express or implied claims as the Respondent, they are not obligated to prove whether or not the processed meat or processed meat-based products are cancerous or increase the risk of cancer. In all cases, the Respondent is obligated to prove its claims or provide a reasonable basis in terms of competent and reliable evidence, which it has failed to provide.
51. Since, deceptive marketing practices carried out by the Respondent are likely to mislead consumers in terms of their purchasing decision in the circumstances, the Commission, therefore, holds that the same are capable of harming the business interests of the competing business undertakings in contravention of Section 10(2)(a) read with Section 10(1) of the Act.

COMMITMENT & COMPLIANCE

52. During the hearing held on 04 October 2017, the Respondent tendered an unconditional apology and made a commitment to discontinue the impugned advertised claims as noted above. Through its Commitment dated 16 October 2017, the Respondent has submitted that:

“2.1 The following were the claims made by the Respondent on its products:

- a) The packaging of the Respondent’s products mentioned “100% Non-Processed Food”*
- b) The marketing campaign of the Respondent’s product mentioned that it is “Pakistan’s First Non-Processed Food Company”*

2.2 In relation to claim (a) we confirm that the same has been removed from the packaging of the Respondent’s product. The claim on the product now appears as “Lets Eat Healthy.”



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2.3 In relation to claim (b), we confirm that the same has been removed from the marketing campaign of the Respondent's products.

2.4 It may not be out of place to mention, that the above changes in the products and their marketing campaign were made prior to issuance of Show Cause Notice, keeping in view the commercial interests of other competitors. The same facts have duly been appreciated by the enquiry committee in their Enquiry Report at paragraphs 5.14 to 5.17, 5.20, 5.39 and 5.40 at page Nos.: 24, 25 29 and 30, respectively

3.1 In view of the above commitments, this Hon'ble Commission is respectfully prayed to take lenient view of the circumstances of the case and dispose of the instant proceedings without imposition of any penalty or adverse consequences for the Respondent"

53. It is on the record, the Respondent has made the aforementioned changes on its product packaging material, including withdrawal of its marketing campaign to the satisfaction of the Commission.

REMEDIES AND PENALTY

54. At the very outset, the Commission notes that in today's increasingly health-conscious environment, consumers are getting more attuned to food, beverages and nutrition supplements, especially those marketed to children and parents. Each year, food and beverage industry spend millions of rupees marketing their products to elderly, adults, youth, children and adolescents. By virtue of this order, the Commission, hereby deems it appropriate to highlight the importance of truthful advertising. The business undertakings involved in this sector need to pay special care that their advertising and promotional material, irrespective of the medium, must truthfully demonstrate the pricing, character, method or place of production, properties, suitability for use and quality of their products and services.



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55. As noted in the preceding paragraphs, it is established that the Respondent has engaged in deceptive marketing practices prohibited under Section 10(2) (c), 10(2) (b) and 10(1) (a) read with Section 10(1) of the Act. The commitments and compliance filed by Respondent denote its willingness to conduct its business activities in accordance with the provisions of the Act and associated rules and regulations. Nevertheless, in accordance with Section 37 of the Competition Commission (General Enforcement) Regulations 2007 read with Section 38 of the Act, the Commission a penalty in the amount of PKR 1,000,000 (Rupees One Million only) on the Respondent, which it is directed to deposit within forty-five (45) days from the date of this order.
56. The Respondent is also directed to refrain from indulging in any form of deceptive marketing practices in the future and is forewarned that repeat violations may attract stricter penalties as per the law. Further, the penalty so imposed on the Respondent shall be deposited with the Registrar of the Commission within thirty (30) days from the date of this Order.
57. In terms of the above, the SCN is hereby disposed of.



Dr. Shahzad Ansar
Member



Dr. Muhammad Saleem
Member

Islamabad the 29th December, 2017



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Adnan Sabir Malik
Registrar
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