



**BEFORE THE
COMPETITION COMMISSION OF PAKISTAN**

**In the matter of Show Cause issued to
M/s. RITS Incorporation**

File no. (1/3/Remaine/CMTA/CCP/2010)

Date of Hearing:

February 1, 2011

Bench Members:

**Ms. Rahat Kaunain Hassan
Chairperson**

**Dr. Joseph Wilson
Member**

Present for:
RITS Incorporation

**Barrister Yousaf Khosa
Leena Inaam Khan**

ORDER

1. This Order shall dispose of the proceedings pursuant to Show Cause Notice No. 01/2011 dated January 12, 2011 (hereinafter “SCN”) issued to M/s. RITS Incorporation, for *prima facie* violation of Section 10(1) read with Sections 10 (2) (b) of the Competition Act, 2010 (hereinafter “the Act”).

A. UNDERTAKING

2. RITS Incorporation, is an unregistered partnership, operating from 3/27, Roshan Villa, Delhi Mercantile Cooperative Housing Society, Karachi. RITS Incorporation is in the business of marketing and selling Fast Moving Consumer Goods in general and Remaine a purported hair fall solution, in particular, and is therefore an undertaking as per Section 2(1)(q) of the Act (the ‘Undertaking’).

B. FACTUAL BACKGROUND

3. In October 2010, the Competition Commission of Pakistan (the ‘Commission’) received information that a couple of advertisements of a hair fall solution product called ‘Remaine’ were making claims regarding absolute hair fall treatment. Upon viewing the advertisements it was found that the Undertaking claimed that the use of Remaine for 15 or even 10 days would stop hair from falling by 100 percent regardless of the underlying cause of hair fall. The advertisements, *prima facie*, were in violation of Section 10 of the Act which is reproduced herein below for ease of reference:

(1) No undertaking shall enter into deceptive marketing practices.

(2) The deceptive marketing practices shall be deemed to have been resorted to or continued of an undertaking resorts to :-

- (a) the distribution of false or misleading information that it 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.*

4. The said advertisements were regularly aired on major Pakistani television channels featuring prominent actors and a hair specialist guaranteeing that not a single hair will fall after treatment. Further, the studies or research relied upon in this regard did not confirm the purported claim of “100 percent stop in hair fall in 8-15 days”. A closer look at the product’s website showed that the claims were based on the positive effects of some herbs in combating hair fall contained in Remaine hair fall solution. No mention of scientific evidence that concludes the exact effects of the herbs in question was found on the website. Based on preliminary fact finding, The Office of Fair Trade taking cognizance on its own, recommended the Commission to initiate an enquiry under Section 37 (1) of the Act.

C. ENQUIRY

- 5. A letter was issued to RITS on November 8, 2010 to substantiate the claims made in the advertisement with evidence in the form of laboratory tests and research studies.
- 6. RITS replied on November 25, 2011 stating that Remaine is their renowned brand available in 50 locations including major cities of Pakistan. RITS claimed that:

Remaine comprises of fine and pure concentrated extracts of selected herbs (Emblica Officinalis, Trigonella Foenum Graecum, Acacia Concinna, Nardostachys Jatamansi and Lawsonia Alba) renowned for their 'Anti Hair Loss' properties and emerges as unani medicinal solution, a guaranteed remedy for hair loss problem. Systematic studies were performed on thousands of people of both sexes of different age groups with the problem of hair loss. Remaine safely and effectively stopped falling of hair in 100% users with no side effects. Remaine also nourishes, strengthens, thickens and lengthens hair and cures dandruff.

7. RITS, in the same letter attached a certificate of effectiveness from a Dr. Khurram Mushir, an email from a satisfied customer and pamphlets on Remaine literature. In the certificate Dr. Khurram Mushir stated 'during my trials on several patients suffering from hair loss problems, I have found Remaine delivering 100% positive results within 15 days, on all patients, with no reported side effects.' The pamphlets essentially intimated the active ingredients in Remaine which are extracts of five herbs and application method for best results. The supporting documentation did not suffice in forming reasonable basis of the absolute claims made in the advertisements and another letter was sent to RITS on November 29, 2010 to submit the requisite information by December 8, 2010. A letter was also sent to Dr. Khurram Mushir to validate his assertion of 100% positive results in 15 days through evidence of trials conducted.
8. RITS responded vide their letter dated December 7, 2010 with excerpts from "Indian Materia Medica" by A.K Nadkarni and "Agro's Dictionary of Medicinal Plants" by Prajapati and Kumar and a journal article published in Pakistan Journal of Scientific and Industrial Research Vol. 50 titled "Pharmacological and Clinical Evaluation of Herbal Formulation for the Treatment of Various Hair/Scalp Problems".
9. The Enquiry Committee comprising Ms. Mehreen Ibrahim Deputy Director (Legal) and Syed Umair Javed, Deputy Director (CMTA) analyzed the documentation in light of the claims made in the advertisements of the product. The Enquiry Report was

concluded on January 11, 2011. For ease of reference the relevant parts of the Enquiry Report have been reproduced as follows:

19. Perusal of the extracts from Indian books shows that the texts, merely summarizes the possible benefits and uses of the herbs in question. While these benefits and uses may be true, the extracts do not present any studies, trials or papers which support the claims of the manufacturers. It must be kept in mind that the issue before us is not whether the herbs in question are beneficial for the hair but whether the product Remaine provides absolute 100 percent hair fall solution.

20. The last piece of evidence submitted by Remaine is the study conducted at PCSIR in Karachi. The paper documents the pharmacological and clinical effects of a herbal formulation that included nine herbs, five of which are purportedly used in Remaine. According to the paper, inter alia, a one time clinical trial was conducted on 40 subjects with hair loss problems. According to the protocol, the herbal formulation was left in the hair for 2-4 hours and the process was repeated for 2-10 weeks. The results showed that in the formulation showed a positive response in 37 of the 40 patients, with 3 experiencing no change.

21. While the study in question provides a positive co-relation of hair fall treatment with the herbs purportedly used in Remaine, it cannot be extrapolated to support the claims that are being made in relation to the latter. First, the study used four additional herbs other than those purportedly used in Remaine and there is no way to determine the relevance of the herbs used in Remaine and the results of the study. Second, the study in question is extremely limited. Only 40 subjects were tested and the results of such a limited study cannot be held to be conclusive. Third, the study only provides generic descriptions of the results (excellent, good, fair, no effect), and does not provide the protocol for determining the results outcomes. Fourth, the subjects were exposed to the formulation for 2-10 weeks, and not just 15 days as claimed by RITS. In any event, the test result does not show 100 percent hair loss treatment being claimed by Remaine. Therefore, this study cannot be regarded as proof or evidence that Remaine provides 100 percent hair fall treatment.

22. *In view of the foregoing, RITS has failed to reasonably substantiate their claim despite being given a fair and reasonable time and chance. Therefore, it is our view that, given the discourse above, RITS has, prima facie, violated Section 10 of the Act by making unsubstantiated claims of absolute treatment of hair fall with relation to its product Remaine.*

10. As mentioned above, the excerpts from “Indian Materia Medica” and “Agro’s Dictionary of Medicinal Plants” merely stated the benefits of the herbs that form the active ingredients in Remaine. These benefits were not necessarily restricted to hair related treatment, for example, as per Agro’s Dictionary of Medicinal Plants the uses of the herb “*Nardostachys Jatamansi*” include insomnia, agitation, hair loss and greying of hair. In addition, the benefits had not been quantified to prove the extent to which each contributes to hair related treatment. The PCSIR study at the outset had not been conducted to specifically test the product Remaine, instead a formulation with other ingredients than those present in Remaine. Dr. Khurram Mushir has not submitted evidence of trials/experimentation conducted on patients to date.

11. The materials submitted clearly do not support absolute claims made in the adverts that guarantee “100 % stop in hair fall in 8-15 days” and appear to lack reasonable basis. 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.*”

D. SHOW CAUSE NOTICE

12. Taking into account the materials provided and the recommendation of the Enquiry Officers, the Commission issued a Show Cause Notice (hereinafter the “SCN”) to

RITS on January 12, 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 has failed to provide a reasonable basis for the claims made in relation to its product Remaine, and is therefore distributing false and misleading information to consumers, which constitutes a prima facie violation of Section 10(1) read with Section 10(2) (b) of the Act...the Undertaking, are hereby called upon to show cause in writing within fourteen (14) days of this show cause notice and to appear and place before the Commission, facts and material in support of its contention and avail the opportunity of being heard.

E. SUBMISSIONS AND FINDINGS

13. The hearing was scheduled for February 1, 2011 at the office of the Commission. Barrister Yousaf Khosa and Leena Inaam Khan represented RITS. The representatives expressed their inclination to amend the said adverts and sought guidance from the Commission such that the adverts comply with Section 10 of the Act. They were directed to remove absolute claims lacking reasonable basis entirely from their packaging as well as their advertisements.

14. RITS submitted three revised proposals on February 15, 2011, of which one proposal was partially acceptable as it incorporated the directions of the Commission but it still contained absolute claims. After further consultation, RITS rectified the revised proposal in compliance with Section 10 such that the claim on the packaging reads as:

Depending on the severity of the problem by applying twice a day the user will experience a decrease in hair fall. The results will be experienced by the user in 8-15 days.

15. The Bench appreciates the cooperation extended in ensuring compliance with the Act and has therefore taken a lenient view by not imposing any penalty for the committed violation. However, the parties are reprimanded to ensure more responsible behavior

in future with respect to marketing of the products and making any claims in respect thereof. All advertisements pertaining to the subject product whether electronic, printed or otherwise are hereby to be modified as agreed. Any existing marketing or advertising material making an absolute claim in any form with respect to the subject advert must be withdrawn within four weeks. Compliance report in this regard is to be submitted no later than 20th June 2011. The SCN is disposed of in terms of this Order.

(RAHAT KAUNAIN HASSAN)
CHAIRPERSON

(DR. JOSEPH WILSON)
MEMBER

ISLAMABAD, THE 11TH OF MAY 2011