



**BEFORE THE  
COMPETITION COMMISSION OF PAKISTAN**

**In the Matter of Show Cause Notices Issued to**

**WEIGHT LOSS PRODUCTS MANUFACTURING COMPANIES  
For Deceptive Marketing Practices**

**(F. NO: 244/OFT/WL/CCP/2018)**

|   |  |
|---|--|
| Date(s) of Hearings                     | 17-09-2019<br>03-10-2019<br>24-06-2020   |
| Adjudicating Members                    | Ms. Shaista Bano Gillani<br><b>Member</b><br><br>Ms. Bushra Naz Malik<br><b>Member</b> |
| Present on behalf of:                   |  |
| M/s MPC Health and Foods                | Dr. Ijaz Ahmad Watto<br>Health and Food Manager-Regulatory<br>Affairs                  |
| M/s Herb Health Club (Pvt.) Limited     | Nemo   |
| M/s Hemani International (Pvt.) Limited | Mustafa Hemani<br>Chief Executive Officer  |
| M/s Al-Mughni Herbs                     | Mohammad Amir Khan<br>Zonal Sales Manager<br>Faisal Sarfraz Advocate<br>Legal Counsel  |
| M/s Herbs Man Laboratories              | Sibt-e-Hassan<br>Advisor   |
| M/s Royal Leaf International            | Nemo   |
| M/s Awami Laboratories                  | Irfan Shahid   |



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**M/s The Vitamin Company**

**M/s British Slimming Clinic**

**M/s Herbo Natural**

**M/s Lasani Pharma (Pvt.) Limited**

**M/s Qarshi Industries (Pvt.) Limited**

**M/s Herbal Medicine Pk**

**M/s Babar Herbal & Homeo Clinic**



**Chief Executive Officer  
/Director S&M  
Habib Ullah Cheema**

**Hassan Ahmed**

**Sardar Taimoor Aslam  
Advocate  
Muhammad Aslam Law Associates  
Mr. Usman  
Proprietor**

**Mr. Saeed Akhtar Khan  
Advocate  
Saeed Akhtar Law Associates**

**Mr. Sajid Farooq Hashmi  
Head of Legal  
Mr. Abdul Rashid  
General Manager (HRM & Legal)**

**Mr. Amjad Hussain Malik  
Advocate**

**Mr. Amjad Hussain Malik  
Advocate**

## ORDER

1. This order shall dispose of the proceedings initiated by the Competition Commission of Pakistan (the 'Commission') vide Show Cause Notices No. 18/2019 to 31/2019 (the 'SCNs') issued dated August 28, 2019 against 14 (fourteen) weight loss products manufacturers (hereinafter collectively the 'Respondents') for *prima facie* contravention of Section 10 of the Competition Act, 2010 (the 'Act').

### FACTUAL BACKGROUND

#### **A. Overview**

2. The Commission took suo moto notice under section 37(1) of the Act against several Companies pertaining to their engagement within the production, distribution, packaging and marketing of numerous weight loss products which, *prima facie*, involved violation of section 10 of the Act, Deceptive Marketing Practices.
3. The Respondents have been allegedly involved in dissemination of false and misleading information to the consumers through the adoption of various marketing strategies that revolved around absolute and exaggerated claims regarding their product's quality, suitability, characteristics and properties. It has been noticed that for decades, through advertisements, a fictitious impression of the products is created and the public is ultimately convinced that these weight loss products have miraculous outcomes within negligible amount of time. Further, the Respondents have been advertising/marketing and selling these products without mentioning the potential side effects that may occur as a consequence of regular consumption of the products.

#### **B. Parties to the Proceedings**

4. Following are the undertaking involved in the proceedings as the 'Respondents':

|   |                      |
|---|----------------------|
| M/s MPC Health and Foods                | (Respondents No. 1)  |
| M/s Herb Health Club (Pvt.) Limited     | (Respondents No. 2)  |
| M/s Hemani International (Pvt.) Limited | (Respondents No. 3)  |
| M/s Al-Mughni Herbs                     | (Respondents No. 4)  |
| M/s Herbs Man Laboratories              | (Respondents No. 5)  |
| M/s Royal Leaf International            | (Respondents No. 6)  |
| M/s Awami Laboratories                  | (Respondents No. 7)  |
| M/s The Vitamin Company                 | (Respondents No. 8)  |
| M/s British Slimming Clinic             | (Respondents No. 9)  |
| M/s Herbo Natural                       | (Respondents No. 10) |
| M/s Lasani Pharma (Pvt.) Limited        | (Respondents No. 11) |
| M/s Qarshi Industries (Pvt.) Limited    | (Respondents No. 12) |
| M/s Herbal Medicine Pk                  | (Respondents No. 13) |
| M/s Babar Herbal and Homeo Clinic       | (Respondents No. 14) |



### C. Enquiry Proceedings:

5. After reviewing the marketing content along with the advertisements and the claims made therein, the Commission, in exercise of its powers, initiated an inquiry into the matter under section 37(1) of the Act. An Enquiry Committee was constituted for investigating the matter which concluded the Enquiry Report dated 24 May 2019, *inter alia*, on the following issue:

*"Whether the undertakings are disseminating false and misleading information to their consumers that lack a reasonable basis, related to the character, properties, suitability for use, or quality in goods in, prima facie, violation of Section 10(2)(b) of the Act?"*

*"Whether the conduct of undertakings is capable of harming the business interest of other undertakings, in, prima facie, violation of Section 10(2)(a) of the Act?"*

6. Before going into the details of the merits of the case, the Bench would like to deliberate upon the general question of the jurisdiction of the Commission raised by some of the respondents, which shall apply to all the respondents in this matter:

### D. Does the Commission have Jurisdiction to intervene in the matter?

7. The enquiry initiated pursuant to Section 37 (1) of the Act, according to which the Commission is empowered to conduct enquiries "*on its own*" into matters relevant to the purposes of the Act. The Commission upon taking notice of advertisements and claims of weight loss product manufacturing undertakings and conducting an initial probe into the matter was satisfied that a more thorough investigation was required in view of the apparent misleading characteristics of the advertisements and in pursuance of the protection of potential consumers.
8. Furthermore, the Commission is empowered to initiate proceedings under Section 30 of the Act in relation to prima facie violations of substantive provisions of the Act, which in the present case pertains to Deceptive Marketing Practices prohibited under Section 10.
9. In terms of spillover jurisdiction, in LPG Association of Pakistan vs. Federation of Pakistan etc. WP NO. 9518/2009, the Lahore High Court held that while Parliament's legislative competence extends to inter-provincial trade and commerce, if CCP wants to take cognizance of an intra-provincial matter it shall have to establish that the activity in question has an effect on trade and commerce beyond the boundaries of a province. The court further explained it through the concept of "*spillover effect*". The court stated that:

*"In law; Spillover Effect may be referred to a situation where laws, regulations or policies of one governing unit effects the people outside its territorial limits.*



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*In the instant case if an anticompetitive behaviour is not affecting the trade and commerce of another Province, it does not come with the phrase 'interprovincial trade and commerce', as used in Entry 27 and discernible in Article 151. Conversely, if any act or omission, between anticompetitive behaviour, committed within geographical boundaries of a Province, has its effect beyond such territorial limits, would be subject of a Federal legislation and within its executive competence."*

10. The issue in the current matter is that whether the actions of the Respondents and its possible anti-competitive effects have interprovincial spillover effects. The fact that the Respondents have been operating and selling their products all over Pakistan, including the Federal Capital is a reason for the Bench to believe that it fulfills the criteria of spillover jurisdiction. Furthermore, most of the Respondents have been selling their products online via websites, which are accessible by consumers from any part of Pakistan through the internet. Therefore, it is been established that the alleged anti-competitive behavior would have a spillover effect on trade and commerce beyond the boundaries of a single province or territory and the Commission has the jurisdiction to take cognizance of the matter. After the establishment of the Commission's jurisdiction in the given matter, the case of each Respondent will be discussed separately.

**The Case of Respondent No. 1: M/s MPC Health and Foods:**

**E. Overview:**

11. In the matter of **Respondent No. 1 (M/s MPC Health and Foods)**, the Respondent has been advertising, marketing, distributing and selling the product named as '**Just Slim**' which is used as a weight loss/slimming medication. Following are the profound claims made by the Respondent which are under consideration:

- i. Increases good cholesterol (HDL) and decreases bad cholesterol (LDL);
- ii. Reduce 20-30 lb weight immediately by using the Just Slim capsule twice a day.

**F. Enquiry findings and Show Cause Notice:**

12. The Enquiry proceedings reveal that the **Respondent No. 1** in its reply, dated June 20, 2018, misled the Enquiry Committee by submitting that they have discontinued the import, sales and marketing of their product *Just Slim* for the last 18 months. However, in the month of March 2018, the Enquiry Committee placed an order of the product online as an anonymous customer and the same was delivered on March 09, 2018.
13. The **Respondent No.1** submitted that the product is an imported supplement, and as evidence provided the bill of entry for the import of their product.



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14. The Enquiry Committee concluded vide Enquiry Report, dated 24 May 2019, that **Respondent No. 1** is involved in the *prima facie* violation of Section 10(2) (b) and Section 10(2) (a) read with Section 10(1) of the Act. Following was stated:

"67. ....claims of that Just Slim can "Increase good cholesterol (HDL) and decrease bad cholesterol (LDL)" and one can "Reduce 20-30 lb weight immediately by using the Just Slim capsule twice a day" have not been substantiated and hence, appear to be false. Additionally, the Respondent No. 1 in its reply has not only failed to provide a reasonable basis for its claims, but this conduct is also capable of harming the business interest of other undertakings in the business of slimming/weight loss products. Therefore, the Respondent No. 1 has been found engaged in *prima facie* violation of Section 10(1) in general and in particular Section 10(2)(a) and (b) of the Act."

15. The Commission deemed it appropriate to initiate proceedings under Section 30 of the Act against the **Respondent No.1**. The relevant parts of SCN are produced hereunder;

"4. **WHEREAS**, in terms of the Enquiry Report in general and paragraphs 54 to 67 in particular, the Undertaking in order to promote the brand "Just Slim" launched a marketing campaign with several high sounding claims. Furthermore, false and unsubstantiated superiority claims have also been made, and thus *prima facie* constitutes violation of Section 10(1) of the Act; and

"5. **WHEREAS**, in terms of the Enquiry Report in general and paragraphs 54 to 67 in particular, it appears that the Undertaking's marketing claims "Increase good cholesterol (HDL) and decrease bad cholesterol (LDL) and one can "Reduce 20-30lb weight immediately by using the Just Slim capsule twice a day" have not been substantiated and hence, appear to be false and misleading;

6. **WHEREAS**, in terms of the Enquiry Report in general and paragraph 67 in particular, it appears that the Undertaking(s) failed to provide a reasonable basis of its claims and it appears that the information disseminated by the Undertaking through its advertisement is *prima facie* capable of harming the business interests of the competing undertakings, which constitutes a, *prima facie*, violation of Clause (a) of sub-section (2) of Section 10;

7. **WHEREAS**, in terms of the Enquiry Report in general and paragraphs 67 in particular, the Undertaking has disseminated false and misleading information to the consumers regarding its weight loss product "Just Slim", lacking reasonable basis relating to the character and suitability, which constitutes a, *prima facie*, violation of clause (b) of sub-section (2) of Section 10 of the Act.

Written reply and Oral Arguments:





16. The Respondent, vide SCN dated 28 August 2019, was called upon to respond in writing within fourteen (14) days of receipt of SCN to file the written reply and to avail the opportunity of hearing on 12 September 2019 which was later on re-scheduled for 17 September 2019.

17. The oral and written submissions of the **Respondent No. 1** are summarized as under:

- a) In response to the concerns raised via SCN, **Respondent no. 1** reiterated that they are only the importers and have no concern with manufacturing and that the nutritional supplement, of which their product is comprised of, is being sold worldwide by various international companies with the same formulation.
- b) They further clarified that the mentioned benefits can only be achieved if used as directed and they might vary from person to person depending upon exercise and diet of individual.
- c) They also emphasized that the constituents of the product are natural ingredients and have been clinically proven to aid weight loss.

### ISSUES

18. Out of all the arguments of the Respondent and perusal of the Enquiry Report, the bench regards it important to deliberate on the following issues:

- a. *Whether Respondent No.1 has engaged in deceptive marketing practices in contravention of Section 10(2)(b) read with Section 10(1) of the Act?*
- b. *Whether Respondent No.1 has engaged in deceptive marketing practices in contravention of Section 10(2)(a) of the Act; was the marketing strategy/ disbursed information regarding their business/product is capable of harming business interests of other undertakings?*

### ANALYSIS

- a) *Whether Respondent No.1 has engaged in deceptive marketing practices in contravention of Section 10(2) (b) read with Section 10(1) of the Act?*

19. During correspondence, **Respondent No. 1** maintained that they had discontinued the import and sale of the product for 18 months. However, on March 2018 the Enquiry Committee placed an order as an anonymous customer and the same was delivered on March 9, 2018. This clearly implies that **Respondent No. 1** has deceived the Committee and misled them regarding sale/purchase of the product and their business discontinuation.

When it comes to the question of high sounding claim of losing 20-30lb weight by using two capsules a day, we have to determine whether the claim made by Respondent No.1 is



mere puffery or is it an actionable claim in terms of Section 10 of the Act. **IN THE MATTER OF COMPLAINT FILED BY RECKITT BENCKISER PAKISTAN LTD AGAINST M/S S.C. JOHNSON & SON PAKISTAN LIMITED**, the Commission held the following:

*"we are of the considered view that generally "puffery" is intended to base on an expression of opinion not made as a representation of fact. "Puffing" statements are, while factually inaccurate; so grossly exaggerated that no ordinary consumer would rely on them. Hence, puffing" is generally vague and unquantifiable."*

21. Similarly, the Commission in **M/s Hi-Tech Lubricants Ltd Hi-Tech Blending (Pvt.) Limited** relied on **Newcal Industries v Ikon Office 513 F.3d 1038 (2008)** which stated the following:

*"A statement is considered puffery if the claim is extremely unlikely to induce consumer reliance. Ultimately, the difference between a statement of fact and mere puffery rests in the specificity and generality of the claim. "The common theme that seems to run through cases considering puffery in a variety of contexts is that consumer reliance will be induced by specific rather than general assertions." Thus, a statement that is quantifiable that makes a claim as to the specific or absolute characteristics of a product may be an actionable statement of fact while a general subjective claim about a product is non-actionable puffery."*

The Commission further stated that:

*"A claim, which is otherwise subjective exaggeration, is attached with another claim of specific character then it does not remain puffery any longer. This implies that "World's best call may be a puffery claim, however, "world's cheapest call" cannot be puffery since it is attached to the low price characteristic of the call. This is what happened in the Zong Case, when World's Cheapest Call was held to be an actionable claim."*

22. Keeping the above cases in view, the Bench is of the opinion that the claim "Reduce 20-30lb weight immediately by using the Just Slim capsule twice a day" is a claim which is measurable and cannot be considered as puffery, because the claim is very specific and quantifiable in terms of what it claims. Therefore, the high sounding claim of **Respondent No.1** cannot be passed off as puffery and needs to be based on a reasonable basis.

23. Regarding **superiority claims** by the Respondent, a superiority claim is made in comparison with a competitive product specifically or all other competitive products in the market and comes under Section 10(2)(c) of the Act which states:

*"2. The deceptive marketing practices shall be deemed to have be resorted to or continued if an undertaking resort to-*



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

24. The SCN mentions superiority claims being made by Respondent No.1, however neither the Enquiry Report, nor the SCN have alleged a violation of Section 10(2)(c) by the Respondent. Hence, the allegation regarding superiority claims by the Respondent is hereby dismissed.

25. In terms of disseminating false and misleading information to the consumer under Section 10(2)(b) of the Act, we refer to **Federal Trade Commission, and State of Connecticut v. Leanspa, LLC and others, (Case No. 3:11-CV-1715 (VLB))** where the plaintiffs alleged that the Defendants made the following unsubstantiated claims:

- a. *In connection with the advertising, marketing, promotion, offering for sale, or sale of the Defendants' Products, Defendants, directly or through affiliates acting on their behalf and for their benefit, have represented, expressly or by implication, that use of the Defendants' Products will result in rapid and substantial weight loss, including as much as losing twenty-five pounds in four weeks*
- b. *In connection with the advertising, marketing, promotion, offering for sale, or sale of the Defendants' Products, Defendants have represented, expressly or by implication, that clinical studies prove that their LeanSpa™ and SlimfueFM products will cause rapid and substantial weight loss.*

26. The Court in the afore-mentioned case held the following:

*"In connection with the advertising, marketing, promotion, offering for sale, or sale of any products or services, Defendants, whether acting directly or through any corporation, partnership, subsidiary, division, affiliate, or other entity or device, and their officers, agents, servants, employees, attorneys, and those persons or entities in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, are hereby preliminarily restrained and enjoined from:*

- a. *Making, or assisting others in making, directly or by implication, including through the use of a product name, endorsement, depiction, or illustration about the health or fitness benefits of any Dietary Supplement, Food, or Drug, including, but not limited to, representations regarding weight loss or muscle gain; unless the representation is non-misleading, and, at the time of making such representation, Defendants possess and rely upon competent and reliable scientific evidence that is sufficient in quality and quantity based on standards generally accepted in the relevant scientific fields, when considered in light of the entire body of relevant and reliable scientific evidence, to substantiate that the representation is true. For purposes of this section, competent and reliable scientific evidence means tests, analyses, research, or studies that have been*



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*conducted and evaluated in an objective manner by qualified persons and are generally accepted in the profession to yield accurate and reliable results; and*

- b. Misrepresenting, or assisting others in misrepresenting, directly or by implication, including through the use of a product name, endorsement, depiction, or illustration, the existence, contents, validity, results, conclusions, or interpretations of any test, study, or research concerning any Dietary Supplement, Food, or Drug."*

27. The above-mentioned case provides that while making a representation about dietary supplements such as weight loss products, the defendants must possess and rely upon competent and reliable scientific evidence that is sufficient in quantity and quality based on standards generally accepted in the relevant scientific fields, when considered in light of the entire body of relevant and reliable scientific evidence, to substantiate that the representation is true. **Competent and reliable scientific evidence means tests, analyses, research, or studies that have been conducted and evaluated in an objective manner by qualified persons and are generally accepted in the profession to yield accurate and reliable results.** The studies provided by the Respondent, regarding the ingredients of the product did not substantiate the claim that it would help the consumer reduce 20-30 lb weight in a short amount of time just by consuming the product capsules twice a day specifically. The claim is a very specific one and needs to be substantiated through proper and reliable and scientific evidence. Reliance is also placed on **Federal Trade Commission v. Sensa Products LLC and others (Case Number: 14-cv-72), Federal Trade Commission v. HCG Diet Direct LLC and Clint Ethington (Case Number: 2:14-cv-00015 NVW), Federal Trade Commission v. The Fountain of Youth Group LLC, LLC and Edita Kaye (Case Number: 3:04-CV-47-J-99HTS) and Federal Trade Commission v. Advanced Patch Technologies and others (Case Number: 104-CV-0670).**

28. The claim that the product burns extra calories and reduces fat deposition, was in fact, correct to some extent as the studies reflect that consistent use of ingredients of the product; the green tea extracts, Conjugated Linoleic Acid (CLA) and L-Carnitine aid in effective weight loss. The main question then comes down to whether the product can actually help reduce 25-30lb of weight in a short amount of time by consuming two capsules which is one of the claims by **Respondent No.1** and no competent or reliable scientific evidence was provided to substantiate this claim.

29. Furthermore, **Respondent No.1** submitted that the mentioned benefits can only be achieved if used as directed and they might vary from person to person depending upon exercise and diet of individual. There is no such disclaimer provided by **Respondent No.1** on the product/packing/marketing that the results may vary from person to person and these benefits do not apply to everyone. The respondent and any other market player, who wishes to advertise weight loss products, must be wary of the fact that these weight loss products could be used by people with different types of medical conditions, inter alia, hypertension,



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diabetes, etc. and disclaimers must be designed and provided with such weight loss products keeping in mind the different types and conditions of the consumers.

30. **Respondent No.1** also took the defense that they are mere importers of the product and not the manufactures of it and that nutritional supplement with the same formulation is being sold worldwide by various international companies. The fact that they are importers does not grant them immunity from any liability owed by the entity towards the end consumer, in fact **Respondent No.1** should be more careful when importing such products and advertising the same in a market to ensure that the consumers are not being misled into buying a product. The undertaking must determine through scientific and reliable evidence that the claims mentioned on the product are not false. The consumers rely on the information provided on the website of the Respondent and their advertisements/marketing content. In this regard, more responsibility lied upon **Respondent No. 1**, particularly with respect to Respondent's supply chain management responsibilities, to attain the accurate and concrete information regarding the product and disseminate it after proper validation as they did not manufacture the product locally, themselves. Therefore, the Respondent has failed to substantiate the claims made in favor of the product and are in contravention of **Section 10 2(b)** read with **Section 10 (1)** of the Act.

b) *Whether Respondent No.1 has engaged in deceptive marketing practices in contravention of Section 10(2)(a); was the marketing strategy/ disbursed information regarding their business/product capable of harming business interests of other undertakings?*

31. According to Section 10(2)(a) of the Act, *'the distribution of false or misleading information that is capable of harming the business interest of another undertaking'* constitutes a deceptive marketing practice. The Commission, in its **order dated 21 December 2012 In the matter of M/s. DHL Pakistan (Pvt.) Limited**, observed that *"it is important to recognize that part of any business' identity is the goodwill it has established with consumers, while part of a product identity is the reputation it has earned for quality and value."* Furthermore, in its order **dated 17 March 2015, in the matter of M/s. Jotun Pakistan (Pvt) Limited**, the Commission held that *"to prove conduct under Section 10(2)(a) of the Act, it is not necessary to show actual harm to competitors. It is sufficient to show the existence of a deceptive marketing practice that has the potential to harm the business interests of the competitors."* In the order **dated 08 February 2016, in the matter of Show Cause Notice issued to M/s A. Rahim Foods (Private) Limited**, the Commission held that *"while there are innumerable instances of misleading information that an undertaking may distribute to the targeted potential consumer and hence be culpable under Section 10(2)(a), a contravention of Section 10(2)(d) will almost in every circumstance lead to a consequent contravention of Section 10(2)(a), unless there exist exceptional circumstances in a particular case that warrant otherwise.* Finally, in the order **dated 26 December 2019 in the matter of Show Cause Notice Issued M/s Reckitt Benckiser Pakistan**, the Commission held that the rationale mentioned in the M/s A.Rahim Foods



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Order is also applicable to Section 10(2)(b) of the Act, as it is to Section 10(2)(d) of the Act.

32. The marketing strategy of the product as potentially misleading for the consumers has been discussed in detail above. The same practices are clearly capable of harming the business of other entities in the market. The analysis of the claims reveals that Respondent No.1 has portrayed deceptive results relating to usage of their product. There stand two dispositions of claims against weight loss products; the high sounding claims pertaining to relative efficacy of the product and the high sounding claims pertaining to the comparative advantage an undertaking might gain through their false claims by improving their image, goodwill, and sales. When undertakings portray such deceptive results of usage of their products, this results in having an unfair competitive advantage over other market players. Thus the practice of dissemination of wrong information and omission of material information with respect to efficacy of products amounts to adversely impacting other businesses who might not be relying on false and misleading claims.
33. As a violation of Section 10(2)(b) of the Act has been established hence in almost every circumstance it shall lead to a consequent contravention of Section 10(2)(a) of the Act, unless there exist **exceptional circumstances in a particular case that warrant otherwise**. In the present case no such circumstances have been brought before the Bench. Therefore, **Respondent No.1** is also liable of violating Section 10(2)(a) read with Section 10(1) of the Act, as **Respondent No.1** failed to establish that there exist exceptional circumstances that warrant that **Respondent No.1's** contravention is not capable of harming the business interest of other undertakings.

**The Case of Respondent No.2: M/s Herb Health Club Private Limited:**

**H. Overview:**

34. In the matter of **Respondent No. 2 (M/s Herb Health Club Private Limited)**, the marketing material of the weight loss/ slimming products named as 'Orange slim' and 'Apple Slim Diet' consists of following claims on its website and on packaging of its product:
- i. 100% safe and natural;
  - ii. Lose up to 7-8 kg fat from tummy, hips, thighs, waist & arms, just in one month.

**I. Enquiry findings and submissions of the Respondents:**

35. Considering the analysis of the product facts, marketing strategy of **Respondent No.2** and the facts substantiated through the response submitted, the Enquiry Report, concluded on 24 May 2019, stated that **Respondent No. 2** is involved in, *prima facie*, violation of Section 10(2)(a) and 10(2)(b) read with Section 10(1) of the Act. Following was stated:





"70. ....It is clearly mentioned on the product packaging of Apple Slimming Diet that the product has the ability to lose weight up to 7-8kg from different parts of the body, however, no documentary evidence has been submitted to prove this claim.....

..... no documentary evidence has been submitted by the Respondent No. 2 regarding the label of it being a 'Homeo Formulation' or whether the given homeopathic ingredients have been either attained from natural source or derived from a synthetic formulation to prove the claim of "100% natural food supplement".

72. .... if the claim "100% safe" is interpreted as the product not having any side effects, in that case no evidentiary material has been submitted. As previously discussed, such products, i.e., homeopathic products or even very simple products like green tea may have certain side effects. Therefore, no undertaking can make such absolute and high sounding health claims, that too in absence of any cogent evidence. It should be further noticed that no such results have been submitted for Orange Slim

73. In view of the forgoing, for making various abovementioned unsubstantiated claims, it is concluded that the Respondent No. 2 is, prima facie, involved in violation of Section 10 of the Act in terms of Section 10(2)(a) and (b) of the Act.

36. The Commission deemed it appropriate to initiate proceedings under Section 30 of the Act against the **Respondent No.2**. The relevant parts of SCN are produced hereunder;

"4. **WHEREAS**, in terms of the Enquiry Report in general and paragraphs 68 to 73 in particular, the Undertaking in order to promote the brand "Orange Slim" and "Apple Slim Diet" launched a marketing campaign with several high sounding claims. Furthermore, false and unsubstantiated superiority claims have also been made, and thus prima facie constitutes violation of Section 10(1) of the Act; and

"5. **WHEREAS**, in terms of the Enquiry Report in general and paragraphs 68 to 73 in particular, it appears that the Undertaking's marketing claims for its product "100% safe, lose weight the easy way, and loose up to 7-8 kgs fat from tummy, hips, thighs and arms just in one month" is interpreted as the product not having any side effects have not been substantiated and hence, appear to be false and misleading;

6. **WHEREAS**, in terms of the Enquiry Report in general and paragraphs 72 in particular, it appears that the Undertaking(s) failed to provide a reasonable basis of its claims and it appears that the information disseminated by the Undertaking through its advertisement is prima facie capable of harming the business interests of the competing undertakings, which constitutes a, prima facie, violation of Clause (a) of sub-section (2) of Section 10;



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7. **WHEREAS**, in terms of the Enquiry Report in general and paragraphs 68 to 73 in particular, the Undertaking has disseminated false and misleading information to the consumers regarding its weight loss product "Orange Slim" & "Apple Slim Diet", lacking reasonable basis relating to the character and suitability, which constitutes a, *prima facie*, violation of clause (b) of sub-section (2) of Section 10 of the Act.

**J. Written reply and Oral Arguments:**

37. **Respondent No.2**, vide SCN dated 28 August 2019, was called upon to respond in writing within fourteen (14) days of receipt of SCN to file the written reply and to avail the opportunity of hearing on 12 September 2019 which was later on re-scheduled for 17 September 2019.

38. **Respondent No. 2** filed no reply to the SCN and failed to appear before the Bench for the hearings held on the 17<sup>th</sup> September 2019 and 3<sup>rd</sup> October 2019. Therefore, the Bench will pass an order against the Respondent *ex parte* based on the material already a part of the record. In the light of the Commission's previous Order dated 22<sup>nd</sup> November 2019 in the matter of Show Cause Notice issued to M/s Mir Hassan Developers and Builders on compliant filed by M/s Meher Developers & Constructions Pvt Limited Anchor city) and Order dated 29<sup>th</sup> December 2019 passed by the Commission in the matter of Show Cause Notice issued to M/s Vision Developers Pvt limited reported as 2018 CLD 350, subsection (2) of section 30 of the Act read with clause (e) of sub-regulation (2) of Regulation 26 of the Competition Commission (General Enforcement) Regulations, 2007 empowers the Bench to proceed *ex parte* where an undertaking concerned does not avail the opportunity of hearing. In both these issues orders were passed *ex parte* which will be followed as a precedent in the current matter.



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## ISSUES

39. Since, **Respondent No. 2** failed to furnish any written reply, supporting evidence or attend the hearings, the perusal of the Enquiry Report deduces that it is important to deliberate on the following issues;

- a) *Whether Respondent No.2 has engaged in deceptive marketing practices in contravention of Section 10 (2)(b), read with Section 10 (1) of the Act?*
- b) *Whether Respondent No.2 has engaged in deceptive marketing practices in contravention of clause Section 10(2)(a); was the marketing strategy/ disbursed information regarding their business/product capable of harming business interests of other undertakings?*

## ANALYSIS

- a) *Whether Respondent No.2 has engaged in deceptive marketing practices in contravention of Section 10(2)(b), read with Section 10(1) of the Act?*

40. During initial correspondence, **Respondent No. 2** maintained, regarding the product Orange Slim, that the product consists of natural ingredients and is 100% safe for human use. **Respondent No.2** submitted that the product consists of ingredients like natural milk, sugar, vitamin C and food color. The list of ingredients suggests that many other ingredients are used in the finished product apart from these natural ones mentioned by **Respondent No.2**. The packaging indicated the nutritional value of the product "Orange Slim" is similar to what orange juice contains naturally. It is pertinent to mention here that no concrete evidence was provided by **Respondent No.2** to ascertain that the product "Orange Slim" is 100% natural. Regarding the second product "Apple Slimming Diet", **Respondent No.2** did submit a few reports that proved that the product is safe for consumption, however no concrete evidence was provided by **Respondent No.2** to prove that Apple Slimming Diet is a 100% safe product having no side effects at all on anyone who wishes to consume the product.

41. The high sounding claims "100% safe and natural" and "Lose up to 7-8 kgs fat from tummy, hips, thighs, waist & arms, just in one month" are claims which are specific and cannot be considered as puffery, because the claims are very specific and quantifiable, and they become actionable claims under Section 10 of the Act. Refer to **Paragraphs 20-22**, the discussion with respect to this issue holds the same as discussed above.

42. The SCN mentions superiority claims made by **Respondent No.2**, however, neither the Enquiry Report, nor the SCN have alleged a violation of Section 10(2)(c) by the Respondent. Hence the allegations regarding superiority claims by the Respondent are hereby dismissed. Refer to **Paragraph 23**, the discussion with respect to this issue holds the same as discussed above.



43. Taking under consideration the primary marketing material which included the website and the packaging of the product, "Orange slim" and "Apple Slimming diet" are referred to as natural weight loss supplements, which could reduce 7-8 KGs of fat from different body parts in just one month. It neither mentioned dietary requirements or exercise regime that must be adopted by the consumers to attain desirable results rather it was also mentioned on the website that no exercise was required to gain the expected outcome. The Respondent failed to provide any competent and reliable scientific evidence in its defense to prove the above-mentioned claim.
44. **Respondent no. 2** failed to prove that the product was "100% safe and natural" and free of any side effects, nor did they provide any DRAP enlisting which is required for herbal products. The Respondent also failed to prove that it can help you lose 7-8 kg weight from different parts of the body in just one month, without following any diet plan or exercise regime, due to lack of any competent and scientific evidence. As mentioned earlier in **Paragraph 27**, that making a representation about dietary supplements such as weight loss products, the defendants must possess and rely upon competent and reliable scientific evidence that is sufficient in quantity and quality based on standards generally accepted in the relevant scientific fields, when considered in light of the entire body of relevant and reliable scientific evidence, to substantiate that the representation is true. Competent and reliable scientific evidence means tests, analyses, research or studies that have been conducted and evaluated in an objective manner by qualified persons and are generally accepted in the profession to yield accurate and reliable results.
45. The Product packaging has a very specific claim, i.e. "no side effects", and Respondent cannot make these claims without providing competent and reliable scientific evidence because these claims give the consumers the idea that they can use the product without any side effects and it may cause serious health issues to common people, for example one of the products of the Respondent contains natural milk to which the allergies to human beings has already been proved worldwide. This risk is further exacerbated especially in the context of people with certain medical conditions, allergies and illnesses.
46. Hence, **Respondent No.2** has failed to substantiate the claims made in favor of the product which are highly misleading and can easily deceive consumers. Thus, **Respondent No. 2** is liable of deceptive marketing practices, and is in violation of Section 10(2)(b) read with Section 10 (1) of the Act.
- b) Whether Respondent No.2 has engaged in deceptive marketing practices in contravention of Section 10(2)(a); was the marketing strategy/disclosed information regarding the business/product capable of harming business interests of other undertakings?*

47. As we have established that a violation of Section 10(2)(b) of the Act will almost in every circumstance lead to a consequent contravention of Section 10(2)(a) of the Act, unless there exists exceptional circumstances in a particular case that warrant otherwise. Therefore, **Respondent No.2** is also liable of violating Section 10(2)(a) read with Section 10(1) of the



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Act, as Respondent No.2 failed to establish that there exist exceptional circumstances that warrant that Respondent No.2's contravention is not capable of harming the business interest of other undertakings. Reference to Paragraphs 31 to 33, the discussion with respect to this issue holds the same as constructed above.

**The Case of Respondent No. 3; M/s Hemani International Private Limited;**

**K. Overview:**

48. In the matter of Respondent No. 3 (M/s Hemani International Private Limited), the undertaking has been manufacturing, packing, marketing, distributing and selling the product named as 'Slim Tea' which is used as a product that aids weight loss. Following are the claims made by the respondent which are under scrutiny:

- i. Live Natural
- ii. Has laxative properties to give a healthy digestion
- iii. As you start consuming regularly, your appetite and hunger level reduces
- iv. Has ginseng extract in it to give you strength and energy as you start consuming less food
- v. Helps burn fat and calories
- vi. Increases Metabolism
- vii. A combination of herbs makes it a refreshing natural drink
- viii. Prevent diabetes

**L. Enquiry findings and submissions of the Respondents:**

49. The Enquiry proceedings reveal that the Respondent No. 3 in response to queries of the Enquiry committee, submitted that their product is a time tested and high quality product which has been authenticated by both, national and international agencies.

50. Taking in consideration the test report submitted, dated 26 January 2015, in which the Acute Oral Toxicity Test of the product 'Slim Tea' was conducted by the PCSIR, it was concluded that it is fit for human consumption.

51. Taking into account the response submitted by the undertaking and detailed examination of available information on various Public domains, the Enquiry Report concluded on 24 May 2019, stated that Respondent No. 3 is involved in *prima facie* violation of Section 10(2)(a) and Section 10(2)(b) read with Section 10(1) of the Act. Following was stated:

"77. In support of the above mentioned claims Respondent No. 3 has not submitted any documentary evidence, and hence no substantiation of claims have been made. Therefore, it appears that the Respondent No. 3 is, *prima facie*, involved in violation of Section 10 of the Act in term of Section 10(2)(a) and (b) of the Act."



*jm*

52. The Commission deemed it appropriate to initiate proceedings under Section 30 of the Act against **Respondent No.3**. The relevant parts of SCN are produced hereunder;

"4. **WHEREAS**, in terms of the Enquiry Report in general and paragraphs 74 to 77, the Undertaking in order to promote the brand "Slim Tea" launched a marketing campaign with several high sounding claims. Furthermore, false and unsubstantiated superiority claims have also been made, and thus prima facie constitutes violation of Section 10(1) of the Act; and

"5. **WHEREAS**, in terms of the Enquiry Report in general and paragraphs 76 in particular, it appears that the Undertaking's marketing claims on its website "Live natural, has laxative properties to give a healthy digestion, as you start consuming regularly your appetite and hunger level reduces, has ginseng extract in it to give you strength and energy as you start consuming less food, helps burn fat and calories, increase metabolism, a combination of herbs make it a refreshing natural drink, and prevent diabetes" have not been substantiated and hence, appear to be false and misleading;

6. **WHEREAS**, in terms of the Enquiry Report in general and paragraphs 74 to 77 in particular, it appears that the Undertaking(s) failed to provide a reasonable basis of its claims and it appears that the information disseminated by the Undertaking through its advertisement is prima facie capable of harming the business interests of the competing undertakings, which constitutes a, prima facie, violation of Clause (a) of sub-section (2) of Section 10;

7. **WHEREAS**, in terms of the Enquiry Report in general and paragraphs 74 to 77 in particular, the Undertaking has disseminated false and misleading information to the consumers regarding its weight loss product "Slim Tea", lacking reasonable basis relating to the character and suitability, which constitutes a, prima facie, violation of clause (b) of sub-section (2) of Section 10 of the Act.

#### **M. Written reply and Oral Arguments:**

53. **Respondent No.3**, vide SCN dated 28 August 2019, was called upon to respond in writing within fourteen (14) days of receipt of SCN to file the written reply and to avail the opportunity of hearing on 12 September 2019 which was later on re-scheduled for 17 September 2019.

54. The oral and written submissions of **Respondent No. 3** are summarized as under:

In response to the concerns raised via Show Cause Notice, **Respondent No. 3** submitted that their product 'Slim Tea' is time tested and consists of high quality





ingredients. The efficacy of the product has been authenticated by national and international agencies.

- b) They also submitted that some of the ingredients that are used in this particular product include cinnamon, mint leaves, winter cherries, Senna leaves and Indian ginseng. These natural herbs have been used by various historical herbalists to treat various diseases and the modern research and studies have established that these products have been useful in treating constipation, loss of appetite, obesity, dullness and have been useful in improving metabolism.
- c) The Respondent also submitted that they are internationally registered in various countries.
- d) While responding to the observation of having capability of harming other businesses in the market, they clarified that they are not using anyone else's trademark, firm name, product name or packaging and that their brands and labels are registered in Pakistan.

### ISSUES

55. Bearing in mind all the arguments of Respondent No.3 and perusal of the Enquiry Report, the Bench regards it important to deliberate on the following issues;

- a) *Whether Respondent No.3 has engaged in deceptive marketing practices in contravention of Section 10(2)(b), read with Section 10(1) of the Act?*
- b) *Whether Respondent No.3 has engaged in deceptive marketing practices in contravention of Section 10(2)(a); was the marketing strategy/disclosed information regarding their business/product capable of harming business interests of other undertakings?*

### ANALYSIS

- a) *Whether Respondent No.3 has engaged in deceptive marketing practices in contravention of Section 10(2)(b), read with Section 10(1) of the Act?*

56. The SCN mentions superiority claims being made by the Respondent, however neither the Enquiry Report nor the SCN have alleged a violation of Section 10(2)(c) by the Respondent. Hence the allegations regarding superiority claims are hereby dismissed. Refer to **Paragraphs 23-24**, the discussion with respect to this issue holds the same as discussed above.

57. Regarding the claim of the product being 'natural', **Respondent No. 3** submitted that the term "Live Natural" was the slogan of the company which was registered in several countries including Pakistan, corroborated by a certificate of registration. The Respondent implied that the slogan was not intended specifically for the product in question but had



been vastly portraying that the Company's business, in general, is related to products consisting ingredients from natural sources.

58. The claims such as "Has laxative properties to give a healthy digestion", "As you start consuming regularly, your appetite and hunger level reduces", "Has ginseng extract in it to give you strength and energy as you start consuming less food", "Helps burn fat and calories", "Increases metabolism", "prevents diabetes" and "A combination of herbs makes it a refreshing natural drink" all need substantiation. **Respondent No.3** provided documents explaining the properties and qualities of the ingredients used in their product. In the Bench's view, **Respondent No.3** provided evidence to prove that their product is in fact "A combination of herbs makes it a refreshing natural drink". Further they provided research material which showed that each individual ingredient such as Fennel, Cinnamon, Senna leaves, Mint and Winter Cherry etc. help in weight loss. Their above claims are generic for this purpose except for the last one which is discussed separately below. **Respondent No.3's** product also lacks any disclaimer about the potential side effects it may have on certain consumers as the product could be used by anyone for weight loss and the Respondent must be wary of the fact that it may have harmful effects on certain consumers having different medical conditions.

59. Lastly, the claim "prevents diabetes" is something related to medical sciences. The said claim has more significance as the consumers having certain medical conditions including, *inter alia*, diabetes would be tempted to buy this product based on the claim that it prevents diabetes. In order to substantiate such claims, firstly the product needs to be registered with DRAP, as the products serving medical purposes need to be registered. It is pertinent to mention here that the criteria is stricter for products claiming to have medical or medicinal purposes such as claiming to "prevent diabetes". No reliable and competent scientific evidence nor any lab test results were provided by the Respondent to prove that the product can actually prevent diabetes. Reference can be made to FTC's order In the matter of Oreck Corporation wherein Oreck claimed that its vacuum cleaner reduces the risk of or prevents the flu, illness or ailment cause by bacteria, moulds, or allergens such as common cold, diarrhea, upset stomachs, asthma, among other things. The FTC observed that Oreck cannot make representations that are misleading, when considered in the light of the entire body of relevant and reliable scientific evidence, to substantiate that representation is true. The Respondent also needs to be wary of the fact that having such claims on their product packaging can lead to endangering people's lives who are suffering from severe diseases such as diabetes, as they might rely on these products because of such claims to find a cure for their diseases.

60. This claim of Respondent does not fall under puffery as explained in **Paragraphs 20-22**.

61. Thus, by failing to substantiate their claims, and not providing enough proof of the claims given on the product description, the Respondent has not fulfilled the criteria provided in **Paragraphs 25-27** above, and hence, **Respondent No.3** is found to be in violation of Section 10(2)(b) of the Act.

*Whether Respondent No.3 has engaged in deceptive marketing practices in contravention of Section 10(2)(a); was the marketing strategy/ disbursed information*



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*regarding their business/product capable of harming business interests of other undertakings?*

62. As we have established that a violation of Section 10(2)(b) of the Act will almost in every circumstance lead to a consequent contravention of Section 10(2)(a) of the Act, unless there exist exceptional circumstances in a particular case that warrant otherwise. Therefore, **Respondent No.3** is also liable of violating Section 10(2)(a) read with Section 10(1) of the Act, as **Respondent No.3** failed to establish that there exist exceptional circumstances that warrant that **Respondent No.3's** contravention is not capable of harming the business interest of other undertakings. Respondent No.3, in reply to the SCN, submitted that their brand has a very reputable name in the market and the quality of their products are well known in the local as well as international market. Secondly, they mentioned that they are not using anyone else's trademark, firm name, product name or packaging and that their brands and labels are registered in Pakistan. They also submitted that they do not have any overt competitor in the market nor has the enquiry officer identified and alluded to any such undertaking, therefore, Section 10(2)(a) is not applicable or does not relate to marketing practices of the Respondent. However, the Bench is of the view that even in the current matter we have 13 other Respondents involved in the marketing and sale of weight loss products and there are many others in the same market involved in the sale and marketing of products that could be used as a substitute for the Respondent's product. Violation Section 10(2)(a) applies not only to Section 10(2)(d) but also to Section 10(2)(b) of the Act. Reference to **Paragraphs 31 to 33**, the discussion with respect to this issue holds the same as constructed above.

#### **The Case of Respondent No.4: M/s Al-Mughni Herb:**

##### **N. Overview:**

63. In the matter of **Respondent No. 4 (M/s Al-Mughni Herb)**, concerning the undertaking's marketing material of the weight loss/ slimming product named as 'Smart Belly Reducer Tea', the following claims on its website and on packaging of its product were under observation:

- i. Total Natural
- ii. No Side Effects
- iii. A convenient highly effective belly reducer solution
- iv. Benefits: Reduces fats, Regularize lipogenesis, It can reduce your belly 4-6 inches using 3 boxes.

##### **Enquiry findings and submissions of the Respondents:**

Considering the analysis of the product facts, the studies, documentary evidence and the information provided by the Respondent, the Enquiry Report, concluded on 24 May 2019,



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stated that **Respondent No. 4** is involved in *prima facie* violation of Section 10(1), Section 10(2)(a) and (b) in particular of the Act. Following was stated:

"81.....

-Total Natural

..... Therefore, the evidence submitted in this regard have no nexuses with the ingredients used in its product and the claim made by it.

- No Side Effects

The Respondent No. 4 has submitted scientific references regarding safe dosages of the ingredients mentioned in its reply, i.e., Fennel, Black Cumin, Lemon Grass and Rose Petal. However, as per the label, only two ingredients, i.e., Lemon Grass and Rose Petal are present in its product which are merely used as flavoring and aromatic agents in the product. Therefore, the evidence submitted in this regard are extraneous to the subject at hand.

- It can reduce your belly 4-6 inch using 3 boxes

The Respondent No. 4 submitted irrelevant documents as evidence to substantiate the claim, therefore, the Respondent No. 4's claim is unsubstantiated.

- A Convenient Highly Effective Belly Reducer Solution

No documentary evidence has been submitted to prove this claim that the product is highly effective and a convenient way to reduce belly

82. After analyzing the documents submitted by the Respondent No. 4 regarding the formulation and efficacy of the product, it is evident that the claims of the Respondent No. 4 are unsubstantiated and hence false. The Respondent No. 4, in its reply has failed to provide reasonable basis of the claims, therefore, it appears that it is, *prima facie*, violating Section 10(1) of the Act in term of Section 10(2)(a) and (b) of the Act."

65. The Commission deemed it appropriate to initiate proceedings under Section 30 of the Act against the **Respondent No. 4**. The relevant parts of SCN are produced hereunder;

"4. **WHEREAS**, in terms of the Enquiry Report in general and paragraphs 78 to 82 in particular, the Undertaking in order to promote the brand "Smart Belly Reducer Tea" launched a marketing campaign with several high sounding claims. Furthermore, false and unsubstantiated superiority claims have also been made, and thus *prima facie* constitutes violation of Section 10(1) of the Act; and

**WHEREAS**, in terms of the Enquiry Report in general and paragraph 81 in particular, it appears that the Undertaking's marketing claims for its product "Total



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*Natural”, “No side-Effects” and “Reduce belly 4-6 inches etc.” have not been substantiated and hence, appear to be false and misleading;*

6. **WHEREAS**, in terms of the Enquiry Report in general and paragraphs 78 to 82 in particular, it appears that the Undertaking failed to provide a reasonable basis of its claims and it appears that the information disseminated by the Undertaking through its advertisement is prima facie capable of harming the business interests of the competing undertakings, which constitutes a, prima facie, violation of Clause (a) of sub-section (2) of Section 10;

7. **WHEREAS**, in terms of the Enquiry Report in general and paragraphs 79 to 81 in particular, the Undertaking has disseminated false and misleading information to the consumers regarding its weight loss product “Smart Belly Reducer Tea”, lacking reasonable basis relating to the character and suitability, which constitutes a, prima facie, violation of clause (b) of sub-section (2) of Section 10 of the Act.

#### **O. Written reply and Oral Arguments:**

66. **Respondent No.4**, vide SCN dated 28 August 2019, was called upon to respond in writing within fourteen (14) days of receipt of SCN to file the written reply and to avail the opportunity of hearing on 12 September 2019 which was later on re-scheduled for 17 September 2019.

67. The oral and written submissions of **Respondent No. 4** are summarized as under:

- a) In response to the concerns raised via SCN, the **Respondent No. 4** submitted that their respective product marketing campaign is not vague, ambiguous or forecasts miraculous effects and does not mislead the consumers as the product labeling has clear warning statements like; consult your physician before taking, statements have not been evaluated by the food and drug administration and that the product is not intended to cure or prevent any disease
- b) They also mentioned that the old manufactured product as of date 15-01-2017 which was replaced by the product consisting of new ingredients and an advanced formula; dated 18-05-2018. The new finished product includes fennel seeds, black cumin, lemon grass, and rose petal, hence they have not made a false claim with respect to ingredients of the product.
- c) Furthermore, they emphasized that they are not using any chemicals or any sort of coloring which is harmful for human health.
- d) They also stressed that the undertaking is not indulging in any deceptive or anti-competitive practices which might hurt the business of other entities belonging to the same line of business.

Lastly, they focused on their product efficacy by stressing the benefits of fennel seeds which is helpful in treating gas, cramps, acts as a diuretic and aids in healthy digestion, which is an important ingredient of their product.



*Jm*



## ISSUES

68. Taking in account the written reply, supporting evidence and the findings of the Enquiry Report, it appears that it is important to deliberate on the following issues;

- a) *Whether Respondent No.4 has engaged in deceptive marketing practices in contravention of Section 10(2)(b), read with Section 10(1) of the Act?*
- b) *Whether Respondent No.4 has engaged in deceptive marketing practices in contravention of Section 10(2)(a); was the marketing strategy/ disbursed information regarding their business/product capable of harming business interests of other undertakings?*

## ANALYSIS

- a) *Whether Respondent No.4 has engaged in deceptive marketing practices in contravention of Section 10(2)(b), read with Section 10(1) of the Act?*

69. Regarding high sounding claims, **Respondent No. 4** made high sounding claims of "No side effects" and "It can reduce your belly 4-6 inches using 3 boxes". The bench is of the view that these claims cannot be regarded as mere puffery and these are actionable claims. Refer to **Paragraphs 20-22**, the discussion with respect to this issue holds the same as discussed above.

70. The SCN mentioned that **Respondent No. 4** made superiority claims, however, neither the Enquiry Report nor the SCN have alleged a violation of Section 10(2)(c) against the Respondent. Hence, the allegation regarding superiority claims by the Respondent are hereby dismissed. Refer to **Paragraphs 23-24**, the discussion with respect to this issue holds the same as discussed above.

71. In the light of the major claims made by **Respondent No. 4**, the advertising material present on the Respondent's website and on social media platforms was first analyzed. **Respondent No.4** claimed that its product comprised of natural ingredients, however, determination of the Enquiry Report indicated that the packaging of the product does not reflect the presence of Fennel and Black Cumin, contrary to the evidence attached by the Respondent as discussed in the earlier section. In response, Respondent No.4 stated that they had revised the formula of the product on 18<sup>th</sup> May 2018 which contained Fennel Seeds, Black Cumin, Lemon Grass and Rose Petal.

72. First of all, the Bench is of the view that the fact that the Respondent admitted themselves that the old formula had been revised and contained all the ingredients mentioned on the product packaging and website, which means they had been deceiving their consumers before revising the formula by mentioning that their product comprised of natural



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ingredients, which actually were lacking in the actual composition of the product. On the other hand, the Respondent failed to provide evidence to substantiate that the old formula had been revised and these two key ingredients (fennel and black cumin) were actually added to the new formula in corroboration of their claim that the product is all natural. Hence, the Respondent claimed that no misinformation has been provided to the consumer through the products' website and packaging.

73. The Product packaging has a very specific claim, i.e. "no side effects", with clarification that "it is useful for both sensitive and normal person". The Respondent cannot make this claim without providing competent and reliable scientific evidence because this claim gives the consumers the idea that they can use the product without any side effects while it may cause serious health issues to certain people, this risk is further exacerbated especially in the context of people with certain medical conditions, allergies and illnesses. The Respondent in their reply submitted that they do provide a disclaimer which states: "Warning: consult your physician before taking if you are pregnant, lactating, taking prescription or medication or you have an existing medical condition." This disclaimer is present on the packaging of the product of the Respondent and the Bench appreciates the fact that a disclaimer has been provided to the consumer, however, Bench does not encourage such exaggerated claims as the same does not absolve Respondent No. 4 of its responsibility and duty of due care and that still does not justify the claim that the product does not have any side effects for people having a medical condition and for people who do not have any.
74. **Respondent No.4** elaborated that the existing packaging only stated that the formula was totally herbal and a belly reducer. There was no mention of the fact that it was merely a supplement and weight loss could be achieved with a balanced diet and some form of physical activity. It could deceive the consumer as an '*all in one solution for their obesity*'. Also, the most specific claim of the Respondent's product was that it can "reduce belly 4-6 inches by using 3 boxes". This claim is a very specific one and needs to be backed by competent and reliable scientific evidence. No such evidence was provided to the Bench by **Respondent No.4** to back these specific claims.
75. Furthermore, only generic studies have been shared with the Bench, no specific tests/studies have been conducted by **Respondent No.4** which would justify the definite claims that the subject product "has no side effect" and it can "reduce belly 4-6 inches using 3 boxes". The generic studies included sources from different websites explaining the benefits and advantages of individual ingredients such as fennel seeds, black cumin, lemon grass, used in the product, and how these are helpful in weight loss for consumers. However, those studies/reports were not specific to the product of the Respondent. There are no studies or test reports submitted by the Respondent specific to their product that prove or justify the claims that the Respondent's product can "reduce belly 4-6 inches using 3 boxes". **Respondent No. 4** in its reply and representation failed to provide a reasonable basis for the claims made.



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76. As established earlier in **Paragraphs 25-27**, while making a representation about dietary supplements such as weight loss products, the defendants must possess and rely upon competent and reliable scientific evidence that is sufficient in quantity and quality based on the standards generally accepted within the relevant scientific fields, when considered in light of the entire body of relevant and reliable scientific evidence to substantiate that the representation is true. Competent and reliable scientific evidence means tests, analyses, research, or studies that have been conducted and evaluated in an objective manner by qualified persons and are generally accepted in the profession to yield accurate and reliable results. No such evidence or proof of reliable scientific tests or reports has been provided by **Respondent No.4**, therefore **Respondent No.4** is in violation of Section 10(2)(b) read with Section 10(1) of the Act.

*b) Whether the Respondent No.4 has engaged in deceptive marketing practices in contravention of Section 10(2)(a); was the marketing strategy/ disburshed information regarding their business/product capable of harming business interests of other undertakings?*

77. **Respondent No.4** submitted that the undertaking is not indulging in any deceptive or anti-competitive practices which might hurt the business of other entities belonging to the same line of business. The bench is of the view that when undertakings portray such deceptive results of usage of their products, this results in having an unfair competitive advantage over other market players. Thus the practice of dissemination of wrong information and omission of material information with respect to efficacy of products amounts to adversely impacting other businesses who might not be relying on false and misleading claims.

78. As we have established that a violation of Section 10(2)(b) of the Act will almost in every circumstance lead to a consequent contravention of Section 10(2)(a) of the Act, unless there exist exceptional circumstances in a particular case that warrant otherwise. Therefore, **Respondent No.4** is also liable of violating Section 10(2)(a) read with Section 10(1) of the Act, as **Respondent No.4** failed to establish that there exist exceptional circumstances that warrant that **Respondent No.4's** contravention is not capable of harming the business interest of other undertakings. Reference to **Paragraph 31 to 33**, the discussion with respect to this issue holds the same as constructed above.

#### **The Case of Respondent No.5: M/s Herbs Man Laboratories:**

##### **P. Overview:**

19. In the matter of **Respondent No. 5 (M/s Herbs Man Laboratories)**, concerning the marketing material of the weight loss/slimming product named as "Smartil", following claims on its website and on packaging of its product are under observation:

Smartil - for Obesity

Assist to reduce your extra body fat and makes you Slim, Smart, Beautiful, Healthy



*Healthy, A combination of precious homeopathic medicine, Aik maah kay ilaj say 15-20 pounds wazan kam kijiye, doosray maah 30 (Reduce 15-20 pounds with one month's use, 30 pounds in the 2<sup>nd</sup> Month )" have not been substantiated and hence, appear to be false and misleading;*

6. **WHEREAS**, in terms of the Enquiry Report in general and paragraphs 85 to 91 in particular, it appears that the Undertaking failed to provide a reasonable basis of its claims and it appears that the information disseminated by the Undertaking through its advertisement is *prima facie* capable of harming the business interests of the competing undertakings, which constitutes a, *prima facie*, violation of Clause (a) of sub-section (2) of Section 10;

7. **WHEREAS**, in terms of the Enquiry Report in general and paragraphs 90 to 91 in particular, the Undertaking has disseminated false and misleading information to the consumers regarding its weight loss product "Smartil", lacking reasonable basis relating to the character and suitability, which constitutes a, *prima facie*, violation of clause (b) of sub-section (2) of Section 10 of the Act.

#### **R. Written reply and Oral Arguments:**

82. **Respondent No.5**, vide SCN dated 28 August 2019, was called upon to respond in writing within fourteen (14) days of receipt of SCN to file the written reply and to avail the opportunity of hearing on 12 September 2019 which was later on re-scheduled for 17 September 2019.

83. The oral and written submissions of **Respondent No. 5** are summarized as under:

- a) To the concerns raised via SCN, **Respondent No. 5** responded that the content of show cause notice is misleading and lacks any evidence, and the intention behind issuance of the SCN is to blackmail the Respondent. Hence, the content of the SCN was denied.
- b) It was further added that M/s Herbs Man Laboratory was closed when the license application of the subject Company was rejected by the DRAP (under DRAP Act 2012).
- c) **Respondent No.5** also submitted that upon failing to obtain license from DRAP; the manufacturing, packaging and supply of the said product was discontinued and that its previous premises has been sold and it no longer has the ownership of premises or the product under consideration. Hence, the product packaging or labelling cannot be associated with **Respondent No.5** and if anyone else is involved in product manufacturing, packaging, selling and marketing, they should be held firmly accountable instead of **Respondent No.**



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- iii. A combination of precious homeopathic medicine
- iv. Aik maah kay ilaj say 15-20 pounds wazan kam kijiye, (Reduce 15-20 pounds with one month's use)
- v. doosray maah 30 pounds wazan kam kijiye (Reduce 30 pounds in the 2<sup>nd</sup> Month)

**Q. Enquiry findings and submissions of the Respondents:**

80. Considering the analysis of the product facts, the studies, documentary evidence and the information provided by the Respondent, the Enquiry Report, concluded on 24 May 2019, stated that **Respondent No. 5** is involved in *prima facie violation of Section 10(1), Section 10(2)(a) and (b) of the Act*. Following was stated:

*"86. Moreover, the product also contains the label of being "homeopathic", however, as per submissions of the Respondent No. 05, it has failed to obtain the due approval from the relevant authority, i.e., DRAP. Therefore, there is also no evidence of it being a genuine homeopathic product."*

*"- Aik maah kay ilaj say 15-20 pounds wazan kam kijiye (Reduce 15-20 pounds with one month's use):*

*88. No documentary evidence was submitted to prove the claim that the product has the ability to assist in reduction of 15-20 pounds in one month.*

*- Dusray maah 30 pounds wazan kam kijiye (Reduce 30 pounds in the second month):*

*89. No documentary evidence was submitted to prove the claim that the product has the ability to assist in reduction of 30 pounds by the end of the second month of use.*

*91. In view of the foregoing, it appears that the Respondent No. 5 is, prima facie, involved in violation of Section 10 of the Act in terms of Section 10(2)(a) and (b) of the Act."*

81. The Commission deemed it appropriate to initiate proceedings under Section 30 of the Act against **Respondent No. 5**. The relevant parts of SCN are produced hereunder;

*"4. WHEREAS, in terms of the Enquiry Report in general and paragraphs 83 to 91 in particular, the Undertaking in order to promote the brand "Smartil" launched a marketing campaign with several high sounding claims. Furthermore, false and unsubstantiated superiority claims have also been made, and thus prima facie constitutes violation of Section 10(1) of the Act; and*

*WHEREAS, in terms of the Enquiry Report in general and paragraph 83 in particular, it appears that the Undertaking's marketing claims for its product "Smartil for Obesity, Assist to reduce your extra body fat and makes you Slim, Smart, Beautiful,*



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- d) Lastly, they submitted that the 'Pocket Manual of Homeopathic Materia Medica' does not pertain any validated relevance or isolated reference to their product but is just a generic document.

#### ISSUES

84. Taking in account the written reply, supporting evidence and the Enquiry Report deduce, it appears that it important to deliberate on the following issue;

- a) *Whether Respondent No.5 has engaged in deceptive marketing practices in contravention of Section 10(2)(b), read with Section 10(1) of the Act?*
- b) *Whether Respondent No.5 has engaged in deceptive marketing practices in contravention of Section 10(2)(a); was the marketing strategy/ disburshed information regarding their business/product capable of harming business interests of other undertakings?*

#### ANALYSIS

- a) *Whether Respondent No.5 has engaged in deceptive marketing practices in contravention of Section 10(2)(b), read with Section 10(1) of the Act?*

85. The Respondent No.5 submitted that the content of show cause notice is misleading and lacks any evidence, and the intention behind issuance of the SCN is to blackmail the Respondent. Hence, the content of the SCN was denied. It must be noted that the SCN is based on what has been found deceptive in the Enquiry Report. The Enquiry Report found two very specific claims of the Respondent *prima facie* deceptive based on the correspondence with the Respondent and failure of the Respondent to provide enough evidence to prove that the claims made by them on their product are not *prima facie* deceptive. Therefore, the submission that the issuance of SCN lacks any evidence and is being used to blackmail the Respondent is dismissed.

86. Regarding high sounding claim of "Reduce 15-20 pounds with one month's use, 30 pounds in the 2<sup>nd</sup> Month", the Bench is of the view that this claim cannot be regarded as mere puffery, as it is very specific with respect the product's effectiveness and is an actionable claim. Refer to Paragraphs 20-22, the discussion with respect to this issue holds the same as discussed above.

87. The SCN also mentions that Respondent No. 5 made superiority claims, however, neither the Enquiry Report nor the SCN have alleged a violation of Section 10(2)(c) against the Respondent. Hence, the allegation regarding superiority claims by the Respondent are hereby dismissed. Refer to Paragraphs 23-24, the discussion with respect to this issue holds the same as discussed above.



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88. The claims "Smartil-For Obesity", and "Assist to reduce your extra body fat and makes you slim-smart-beautiful-healthy" have been mentioned in the SCN issued to **Respondent No.5**, however, these claims have not been proven to be deceptive in the light of Enquiry Report, nor have they been deliberated upon by the Enquiry Officers. Therefore, the said two claims have been discarded by the bench respectively.
89. The case was made on the packaging of the product. **Respondent No.5** claimed that upon failing to obtain license from DRAP; the manufacturing, packaging and supply of the said product was discontinued and that its previous premises has been sold and it no longer has the ownership of premises or the product under consideration. The Bench is of the view that the onus to prove that they have discontinued the product lies on **Respondent No.5**. They provided the documents showing their failure to obtain a license from DRAP, however they did not provide any document or evidence regarding the sale of the premises of the product under consideration. The fact that the said product is still in the market and being sold with the same product name and packaging as the Enquiry Report provided evidence that the product was purchased from the market on March 01, 2018, and the receipt of it was also provided. The Respondent failed to dissociate itself from the product by not providing enough evidence, the Bench will proceed against **Respondent No.5** in the said matter, considering the product is still being marketed and sold by the Respondent.
90. In terms of violation of Section 10(2)(b) of the Act, **Respondent No.5** in the marketing of their product claimed that their product is "A combination of precious homeopathic medicine", however, as mentioned above, the Respondent submitted themselves that they failed to gain a license from DRAP. The Respondent only submitted 'Pocket Manual of Homeopathic Materia Medica' and also accepted the fact that the manual they submitted does not pertain any validated relevance or isolated reference to their product but is just a generic document, hence it failed to substantiate the claim that their product is "a combination of precious homeopathic medicine". Furthermore, the Respondent claimed "Reduce 15-20 pounds with one month's use" and "Reduce 30 pounds in the 2<sup>nd</sup> Month". These are very specific claims and the Bench will like to reiterate that making a representation about dietary supplements such as weight loss products, the defendants must possess and rely upon competent and reliable scientific evidence that is sufficient in quantity and quality based on the standards generally accepted within the relevant scientific fields, when considered in light of the entire body of relevant and reliable scientific evidence to substantiate that the representation is true. Competent and reliable scientific evidence means tests, analyses, research, or studies that have been conducted and evaluated in an objective manner by qualified persons and are generally accepted in the profession to yield accurate and reliable results. (Refer to Paragraph 25-27) The respondent and any other market player, who wishes to advertise weight loss products, must be wary of the fact that these weight loss products could be used by people with different types of medical conditions, inter alia, hypertension, diabetes, etc. and disclaimers must be designed and provided with such weight loss products keeping in mind the different types and conditions of the consumers. As mentioned earlier, **Respondent No.5** only submitted 'Pocket Manual of Homeopathic Materia Medica' and also accepted the fact that the manual they submitted



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does not pertain any validated relevance or isolated reference to their product but is just a generic document. **Respondent No.5** did not submit any list of ingredients nor did they provide any tests or lab reports specific to their product to prove the claims in question. Hence, no reliable and scientific evidence has been provided by **Respondent No.5** to substantiate the above mentioned claims.

91. Keeping the foregoing in mind, **Respondent No.5** is found to be in violation of Section 10(2)(b) of the Act by providing false and misleading information to the consumers during marketing its product and failing to substantiate any of its claims regarding the product.

*b) Whether Respondent No.5 has engaged in deceptive marketing practices in contravention of Section 10(2)(a); was the marketing strategy/ disbursed information regarding their business/product capable of harming business interests of other undertakings?*

92. As we have established that a violation of Section 10(2)(b) of the Act will almost in every circumstance lead to a consequent contravention of Section 10(2)(a) of the Act, unless there exist exceptional circumstances in a particular case that warrant otherwise. Therefore, **Respondent No.5** is also liable of violating Section 10(2)(a) read with Section 10(1) of the Act, as **Respondent No.5** failed to establish that there exist exceptional circumstances that warrant that **Respondent No.5's** contravention is not capable of harming the business interest of other undertakings. Reference to **Paragraph 31 to 33**, the discussion with respect to this issue holds the same as constructed above.

#### **The Case of Respondent No. 6: M/s Royal Leaf International:**

##### **S. Overview:**

93. In the matter of **Respondent No. 6 (M/s Royal Leaf International)**, concerning the undertaking's marketing material of the weight loss/slimming product named as "Diet Excel Slimming Tea", following claims on its website and on packaging of the product were under observation:

- i. 100% Natural
- ii. Slimming Tea
- iii. Chinese & Asian Traditional Formula
- iv. Herbal beverage with no preservations or artificial colors
- v. Eliminates fat storage and water retention
- vi. Promotes overall health while controlling weight problems
- vii. Helps to accelerate thermogenesis or fat burning process in body to help get rid of stubborn bulges



**Enquiry findings and submissions of the Respondents:**

94. **Respondent No. 6**, while responding to the queries of the Enquiry Committee, asked for extension in time to submit its response. However, despite the issuance of several reminders to **Respondent No. 6**, no reply was furnished to the Enquiry Committee. Thus, no substantiations have been received for the claims made.

95. Considering absence of any rebuttal from the **Respondent No. 6**, the Enquiry Report, concluded on 24 May 2019 stated that **Respondent No. 6** is involved in *prima facie* violation of Section 10(1) and Section 10(2)(a) and (b) in particular of the Act. Following was stated:

*"93. ...it appears that the Respondent No. 6 has no reasonable justification for making the claims on its marketing material and hence, is prima facie involved in violation of Section 10 of the Act in terms of Section 10(2)(a) and (b) of the Act."*

96. The Commission deemed it appropriate to initiate proceedings under Section 30 of the Act against **Respondent No. 6**. The relevant parts of SCN are produced hereunder:

*"4. WHEREAS, in terms of the Enquiry Report in general and paragraphs 92 to 93 in particular, the Undertaking in order to promote the brand "Diet Excel Slimming Tea" launched a marketing campaign with several high sounding claims. Furthermore, false and unsubstantiated superiority claims have also been made, and thus prima facie constitutes violation of Section 10(1) of the Act; and*

*"5. WHEREAS, in terms of the Enquiry Report in general and paragraph 93 in particular, it appears that the Undertaking's marketing claims for its product "Total Natural", "100% Natural, Slimming Tea, Chinese & Asian Traditional Formula, Herbal Beverage with no preservatives or artificial colors, eliminates fat storage and water retention, promotes overall health while controlling weight problems and helps to accelerate thermogenesis or fat burning process in the body to get rid of stubborn bulges" have not been substantiated and hence, appear to be false and misleading;*

*6. WHEREAS, in terms of the Enquiry Report in general and paragraphs 92 to 93 in Particular, the Undertaking did not file any reply despite several reminders. Therefore, it appears that the Undertaking has not reasonable justification for making the claims on its marketing material and hence is, prima facie, capable of harming the business interests of the competing undertakings, which constitutes a, prima facie, violation of clause (a) of sub-section (2) of Section 10;*

*7. WHEREAS, in terms of the Enquiry Report in general and paragraphs 92 to 93 in Particular, the Undertaking did not file any reply despite several reminders. Therefore, it appears that the Undertaking has not reasonable justification for making the claims on its marketing material and hence is, prima facie, capable of harming the*





*business interests of the competing undertakings, which constitutes a, prima facie, violation of clause (b) of sub-section (2) of Section 10;*

#### U. Written reply and Oral Arguments:

97. **Respondent No.6**, vide SCN dated 28 August 2019, was called upon to respond in writing within fourteen (14) days of receipt of SCN to file the written reply and to avail the opportunity of hearing on 12 September 2019 which was later on re-scheduled for 17 September 2019.
98. **Respondent No. 6** filed no reply to the SCN and failed to appear before the Bench for the hearings held on 17<sup>th</sup> September 2019 and 3<sup>rd</sup> October 2019. Therefore, the Bench would pass an order against the Respondent *ex parte*; similar to the case of Respondent No. 2,

#### ISSUES

99. Considering the absence of any response/rebuttal of concerns raised by the Enquiry Committee and the findings of Enquiry Report, taking in account the marketing material and packaging information of the product, it is important to deliberate on the following issues;
- a) *Whether Respondent No.6 has engaged in deceptive marketing practices in contravention of Section 10(2)(b), read with Section 10(1) of the Act?*
- b) *Whether Respondent No.6 has engaged in deceptive marketing practices in contravention of Section 10(2)(a); was the marketing strategy/ disbursed information regarding their business/product capable of harming business interests of other undertakings?*

#### ANALYSIS

- a) *Whether Respondent No.6 has engaged in deceptive marketing practices in contravention of Section 10(2)(b) read with Section 10(1) of the Act?*
100. It has been noticed by the bench that the SCN issued to Respondent No.6 consists of a fatal mistake as Paragraph 7 mentions the following:

*"WHEREAS, in terms of the Enquiry Report in general and paragraphs 92 to 93 in Particular, the Undertaking did not file any reply despite several reminders. Therefore, it appears that the Undertaking has not reasonable justification for making the claims on its marketing material and hence is, prima facie, capable of harming the business interests of the competing undertakings,*



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which constitutes a, prima facie, violation of clause (b) of sub-section (2) of Section 10:"

101. According to Section 10(2)(b) of the Act:

*"the deceptive marketing practices shall be deemed to have been resorted to or continued if an Undertaking resorts to 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."*

102. It has been noticed that the SCN has alleged a violation of Section 10(2)(b) of the Act on the basis of "harming the business interests of the competing undertakings". In order to allege Section 10(2)(b), reproduced above, the SCN must mention the allegation of dissemination of false or misleading information to the 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. Therefore, the allegation pertaining to Section 10(2)(b) in the SCN is dismissed by the bench respectively.

103. However, with respect to violation of Section 10(2)(a) of the Act, it is pertinent to point out that Respondent No. 6, despite several reminders did not submit any reply and also failed to appear before the Commission, hence no substantiations had been received for the claims made. The Respondent had made various high sounding claims through its marketing material including but not limited to if taken regularly, 'Balances Endocrine system, improves circulation, enhances immunity' and 'it can prevent cancer in large intestine'. It is necessary to examine the claim with respect to the prevention of cancer as cancer being a fatal illness requires highest degree of scientific evidence to prove or establish that by taking the product of Respondent regularly, such an illness can be prevented. Therefore, in absence, of any kind of evidence in support of its claim, the same would be considered to be false and misleading. As a result of such claim, the Respondent would enjoy undue competitive advantage against competing undertakings in the form of inflated sales of its product, thereby potentially harming the business interests of competitor undertakings in terms of Section 10(2)(a) of the Act. Hence, Respondent No. 6 is liable for violation of Section 10(2)(a) of the Act.

#### The Case of Respondent No. 7; M/s Awami Laboratories

##### V. Overview:

104. In the matter of **Respondent No. 7 (M/s Awami Laboratories)**, concerning the marketing material of the weight loss/ slimming product named as "Slim Smart", the following specific claims are under scrutiny:

Reduce weight up-to 1kg per week



- ii. Controls Appetite
- iii. Burns fats fast
- iv. Accelerates energy
- v. Boosts thermogenesis

**W. Enquiry findings and submissions of the Respondents:**

105. During the Enquiry proceedings, while responding to the queries of Enquiry Committee, **Respondent No.7** submitted various clarifications. It was submitted that the subject product is a traditional product based on 'Tibb-e-Unani' and the undertaking has obtained license from DRAP for its manufacturing.

106. References for the claims, "Burns fats fast", and "Accelerates energy", "Boosts thermogenesis" have been annexed, taken from the authoritative books approved by DRAP. As per the content of these references, the ingredients mentioned on the product, i.e., Aloe Vera (anti-oxidants), Fennel (boosts metabolism), Saffron (anti-oxidant), Carum (anti-constipation), Lac, Cloves (Anti-constipation), etc., play a positive role in weight loss.

107. Considering the analysis of the product facts, the referred researches, documentary evidence and the information provided by the Respondent, the Enquiry Report, concluded on 24 May 2019, stated that **Respondent No. 7** is involved in *prima facie* violation of Section 10(1) and Section 102(a) and (b) of the Act. Following was stated:

*"101. it appears that the Respondent No. 7 has primarily made generic claims. Additionally, DRAP has also enlisted Slim Smart as a "herbal" "supplement for weight loss" which proves that the product is herbal, hence natural. Moreover, that it also has the ability to help in weight loss. However, use of the claim, "reduce up to 1kg per week", without any disclosures may be deceptive. Therefore, it is proposed that the Respondent No. 7 may be called upon to make relevant disclosures on its marketing material. Without such disclaimers, the Respondent No. 7 appears to be, in prima facie, violation of Section 10(1), read with Section 10(2)(a) and (b) of the Act."*

108. The Commission deemed it appropriate to initiate proceedings under Section 30 of the Act against **Respondent No. 7**. The relevant parts of SCN are produced hereunder;

*"4. WHEREAS, in terms of the Enquiry Report in general and paragraphs 94 to 101 in particular, the Undertaking in order to promote the brand "Slim Smart" launched a marketing campaign with several high sounding claims. Furthermore, false and unsubstantiated superiority claims have also been made, and thus prima facie constitutes violation of Section 10(1) of the Act; and*



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“5. *WHEREAS, in terms of the Enquiry Report in general and paragraph 96 in particular, it appears that the Undertaking’s marketing claims for its product “Reduce up to 1 kg per week, control appetite, burns fats fast, accelerates energy and boost thermogenesis” have not been substantiated and hence, appear to be false and misleading;*

6. *WHEREAS, in terms of the Enquiry Report in general and paragraphs 94 to 101 in particular, it appears that the Undertaking failed to provide a reasonable basis of its claims and it appears that the information disseminated by the Undertaking through its advertisement is prima facie capable of harming the business interests of the competing undertakings, which constitutes a, prima facie, violation of Clause (a) of sub-section (2) of Section 10;*

7. *WHEREAS, in terms of the Enquiry Report in general and paragraphs 94 to 101 in particular, the Undertaking has disseminated false and misleading information to the consumers regarding its weight loss product “Slim Smart”, lacking reasonable basis relating to the character and suitability, which constitutes a, prima facie, violation of clause (b) of sub-section (2) of Section 10 of the Act.*

#### **X. Written reply and Oral Arguments:**

109. **Respondent No.7**, vide SCN dated 28 August 2019, was called upon to respond in writing within fourteen (14) days of receipt of SCN to file the written reply and to avail the opportunity of hearing on 12 September 2019 which was later on re-scheduled for 17 September 2019.

110. The oral and written submissions of **Respondent No. 7** are summarized as under:

- a) In response to the SCN, it was submitted by **Respondent No. 7** that they hired the services of qualified and registered Tabibs and the subject Company is a law abiding practitioner of Tibb-e-Unani which is enlisted by the Directorate of Health and OTC, the Drug Regulatory Authority of Pakistan. (DRAP)
- b) It was further stated that **Respondent no. 7** has added a disclaimer on the website which clearly states that *the results may vary from person to person because of intake of food, levels of exercise and rates of metabolism.*
- c) Furthermore, they again provided DRAP authoritative books.

111. Taking in account the written reply, supporting evidence and the findings of Enquiry Report, it appears that it important to deliberate on the following issues;

*Whether Respondent No.7 has engaged in deceptive marketing practices in contravention of Section 10(2)(b), read with Section 10(1) of the Act?*



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- b) *Whether Respondent No.7 has engaged in deceptive marketing practices in contravention of Section 10(2)(a); was the marketing strategy/ disbursed information regarding their business/product capable of harming business interests of other undertakings?*

#### ANALYSIS

- a) *Whether Respondent No.7 has engaged in deceptive marketing practices in contravention of Section 10(2)(b) read with Section 10(1) of the Act?*
112. Respondent No.7 made a high sounding claim i.e. "Reduce weight up to 1-kg per week". The claim in question cannot be regarded as mere puffery as it is a very specific one and is actionable in the view of the Bench. Refer to **Paragraphs 20-22**, the discussion regarding the issue holds the same as discussed above.
113. As far as superiority claims are concerned, the Bench is of the view that neither the Enquiry Report nor the SCN alleged any violation of Section 10(2)(c) by the Respondent. Therefore, the allegation regarding superiority claims by the Respondent are hereby dismissed. Refer to **Paragraphs 23-24**, the discussion with respect to the issue holds the same as discussed above.
114. The following claims "controls appetite", "Burns fat fast", accelerates energy", and "boosts thermogenesis" have been mentioned in the SCN issued to **Respondent No.7**, however, these claims have not been proven to be deceptive in the light of Enquiry Report, not have they been deliberated upon by the Enquiry Officers. Therefore, the said four claims have been discarded by the bench respectively.
115. For assessing remaining claims made, the advertising material present on the Respondent's website and on packaging of the product was first analyzed. Respondent has failed to provide evidence for one claim, that the product "Slim Smart" could reduce "up to 1 kg per week" without any disclosures, which seemed to be deceptive. **Respondent No.7** had made the submission that they provided the disclosure that exercise, food intake and metabolism of each individual may vary the results accordingly. The Respondent in the reply to the SCN dated 16<sup>th</sup> September 2019 submitted that they included disclaimer on the website and on packaging.
116. Furthermore, generic studies have been shared with the Bench, no test/ studies have been conducted by the Respondent for the particular impact of the product nor disclosures relating to side effects and cautions to be taken has been provided. Nothing has been provided by **Respondent No.7** which could be termed as competent and reliable scientific proof or lab tests reports to substantiate their claims, as it is a necessary requirement when it comes to dietary supplements and weight loss products before marketing them with the help of such claims. Refer to **Paragraphs 25-27**, where



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the criteria regarding the marketing of dietary supplements has been provided by the Bench.

117. Hence, the Respondent has failed to substantiate the major claim made in favor of the product stating that "Slim Smart" could reduce "up to 1 kg per week", which may deceive its consumers. Thus, the **Respondent No. 7** is found to be in violation of Section 10(2)(b) of the Act.

b) *Whether the Respondent No.7 has engaged in deceptive marketing practices in contravention of Section 10(2)(a); was the marketing strategy/ disbursed information regarding their business/product capable of harming business interests of other undertakings?*

118. As we have established that a violation of Section 10(2)(b) of the Act will almost in every circumstance lead to a consequent contravention of Section 10(2)(a) of the Act, unless there exist exceptional circumstances in a particular case that warrant otherwise. Therefore, **Respondent No.7** is also liable of violating Section 10(2)(a) read with Section 10(1) of the Act, as **Respondent No.7** failed to establish that there exist exceptional circumstances that warrant that **Respondent No.7's** contravention is not capable of harming the business interest of other undertakings. Reference to **Paragraph 31 to 33**, the discussion with respect to this issue holds the same as constructed above.

#### The Case of Respondent No. 8; M/s The Vitamin Company;

##### **Y. Overview:**

119. In the matter of **Respondent No. 8 (M/s The Vitamin Company)**, concerning the marketing material of the weight loss/ slimming product named as "Ultra Slim Plus", following specific claims were under scrutiny:

- i. All natural
- ii. Ultra Slim Plus is the ultimate way to reduce your weight
- iii. Burns excessive fats
- iv. Reduce 15-20 pounds weight just in a few weeks.

##### **Z. Enquiry findings and submissions of the Respondents:**

120. The Enquiry Committee stated that **Respondent No. 8's** product is being marketed through misleading information lacking reasonable basis and is *prima facie* in violation of Section 10(2)(a) and (b) read with Section 10(1) of the Act. The Enquiry Report conducted on 24 May 2019, stated the following:





"124. As the scientific evidence on efficacy of these ingredients, primarily *Garcinia Cambogia* with respect to weight loss is not very strong, the Respondent No. 9 has given disclaimers in its marketing material that good diet and moderate exercise supplemented with its products would enhance the results of the program. However, the Respondent No. 9 has failed to provide any scientific study/trials to prove the claim that "it can reduce 15-20lbs weight just in few weeks" and was also unable to provide any lab test to prove that all the ingredients present in its product were from natural source. Therefore, the unsubstantiated claims of the Respondent No. 9 have ability to deceive an ordinary consumer. Therefore, the conduct of the Respondent No. 9, *prima facie*, appears to be in violation of Section 10(1) of the Act in term of Section 10(2)(a) & (b) of the Act."

121. The Commission deemed it appropriate to initiate proceedings under Section 30 of the Act against **Respondent No. 8** and afforded the opportunity of hearing to the party. The relevant parts of SCN are produced hereunder;

"4. **WHEREAS**, in terms of the Enquiry Report in general and paragraphs 112 to 124 in particular, the Undertaking in order to promote the brand "Ultra Slim" launched a marketing campaign with several high sounding claims. Furthermore, false and unsubstantiated superiority claims have also been made, and thus *prima facie* constitutes violation of Section 10(1) of the Act; and

"5. **WHEREAS**, in terms of the Enquiry Report in general and paragraph 112 in particular, it appears that the Undertaking's marketing claims "All natural, Ultra Slim Smart is the Ultimate Way to reduce your weight, Burns excessive fat and reduce 15-20 pounds weight just in a few weeks" have not been substantiated and hence, appear to be false and misleading;

6. **WHEREAS**, in terms of the Enquiry Report in general and paragraphs 112 to 124 in particular, it appears that the Undertaking failed to provide a reasonable basis of its claims and it appears that the information disseminated by the Undertaking through its advertisement is *prima facie* capable of harming the business interests of the competing undertakings, which constitutes a, *prima facie*, violation of Clause (a) of sub-section (2) of Section 10;

7. **WHEREAS**, in terms of the Enquiry Report in general and paragraphs 112 to 124 in particular, the Undertaking has disseminated false and misleading information to the consumers regarding its weight loss product "Ultra Slim Plus", lacking reasonable basis relating to the character and suitability, which constitutes a, *prima facie*, violation of clause (b) of sub-section (2) of Section 10 of the Act.



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**AA. Written reply and Oral Arguments:**

122. The Respondent, vide SCN dated 28 August 2019, was called upon to respond in writing within fourteen (14) days of receipt of SCN to file the written reply and to avail the opportunity of hearing on 12 September 2019 which was later on re-scheduled for 17 September 2019.

123. The oral and written submissions of **Respondent No. 8** are summarized as under:

- a) In response to the SCN, it was submitted by **Respondent No. 8** that the product manufactured was of superior quality ingredients. **Respondent No.8** provided details of the ingredients of the product along with its properties on its online platform. It was further stressed that the product was an imported herbal supplement registered with DRAP as well as having FDA's registration, so compliance with basic requirements for such a business were fulfilled.
- b) It was further stated that the cumulative effect of ingredients that it contained, mainly green tea, were globally recognized as an effective substance in weight loss. One thing lacking in the marketing of the said product was the failure on part of the **Respondent No. 8** to convey that this product would have a different impact on every individual based on their physiology. The Respondent accepted the fact, in reply to the SCN, that absence of such a disclaimer created a loophole that could easily let the consumer believe that the product would have an impact on their body without considering any pre-requisites for efficacy of the product and was ready for compliance.

124. Taking in account the written reply, supporting evidence and the Enquiry Report, it appears that it is important to deliberate on the following issues;

- a) *Whether the Undertaking has engaged in deceptive marketing practices in contravention of Section 10(2)(b), read Section 10(1) of the Act?*
- b) *Whether the Undertaking has engaged in deceptive marketing practices in contravention of Section 10(2)(a); was the marketing strategy/ disbursed information regarding their business/product capable of harming business interests of other undertakings?*

**ANALYSIS**

- a) *Whether Respondent No.8 has engaged in deceptive marketing practices in contravention of Section 10(2)(b), read with Section 10(1) of the Act?*

125. **Respondent No.8** successfully proved that the product was an imported herbal supplement registered with the DRAP as well as having FDA's registration. The product is made, and then imported from USA.



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126. **Respondent No.8** was able to prove that the cumulative effect of all ingredients joined together can assist in weight loss as all of the ingredients lead to decreased appetite, increased metabolism, speed up fat burning and was able to substantiate their claim that the product helps in weight loss and burning extra fats from the body and is also comprised of natural ingredients.
127. **Respondent No. 8** made a high sounding claim i.e. "Reduce 15-20 pounds weight just in a few weeks." In the Bench's view, this claim is a very specific one and cannot be regarded as mere puffery, hence the claim is actionable under the Act. Refer to **Paragraphs 20-22**, the discussion with respect to this issue holds the same as discussed above.
128. As far as superiority claims are concerned, neither the Enquiry Report nor the SCN have alleged a violation of Section 10(2)(c) of the Act by the Respondent. Hence, the allegation of superiority claims made by the Respondent are hereby dismissed. Refer to **Paragraphs 23-24**, the discussion regarding the issue holds the same as discussed above.
129. The claims "Ultra Slim Plus is the ultimate way to reduce your weight" and "Burns excessive fats" have been mentioned in the SCN issued to **Respondent No.8**, however, these claims have not been proven to be deceptive in the light of Enquiry Report, nor have they been deliberated upon by the Enquiry Officers. Therefore, the said two claims have been discarded by the bench respectively.
130. The Respondent submitted that all the ingredients mentioned by the Respondent were natural and had attributes to help weight loss. However, the Respondent agreed that it was failure on part of the **Respondent No. 8** to convey that this product would have a different impact on every individual based on their physiology. The Respondent accepted the fact, in reply to the SCN, that absence of such a disclaimer created a loophole that could easily let the consumer believe that the product would have an impact on their body without considering any pre-requisites for efficacy of the product and was ready for compliance. The Bench agrees that **Respondent No.8's** product lacks any disclaimer about the different impact of product on every individual based on their physiology and also lacks the disclaimer about the potential side effects it may have on certain consumers as the product could be used by anyone for weight loss and the Respondent must be wary of the fact that it may have harmful effects on certain consumers having different medical conditions. (Refer to **Paragraph 29**) It is also pertinent to mention that making such a specific claim about a product usage must be proved through competent and reliable scientific evidence. Refer to **Paragraph 25-27**, where it has been established by the Bench that in case of marketing of any dietary supplements or weight loss products, making a representation about dietary supplements such as weight loss products, the defendants must possess and rely upon competent and reliable scientific evidence that is sufficient in quantity and quality based on standards generally accepted in the relevant scientific fields, when considered in



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light of the entire body of relevant and reliable scientific evidence, to substantiate that the representation is true. Competent and reliable scientific evidence means tests, analyses, research, or studies that have been conducted and evaluated in an objective manner by qualified persons and are generally accepted in the profession to yield accurate and reliable results.

131. If undertakings are allowed to advertise their products without reasonable basis, this would put them at an unfair advantage; as consumers would be inclined towards purchasing their product based on false assertions. Thus, prior disclosures and proper product information should be the basis of all the claims while marketing a weight loss product. Therefore, based on the above discussion, **Respondent No.8** is *prima facie* in violation of Section 10(2)(b) of the Act, because no competent and reliable scientific evidence has been provided to substantiate the claim that the usage of the product can help lose 15-20 pounds of weight in just a few weeks.

b) *Whether Respondent No.8 has engaged in deceptive marketing practices in contravention of clause Section 10(2)(a); was the marketing strategy/ disbursed information regarding their business/product capable of harming business interests of other undertakings?*

132. As we have established that a violation of Section 10(2)(b) of the Act will almost in every circumstance lead to a consequent contravention of Section 10(2)(a) of the Act, unless there exist exceptional circumstances in a particular case that warrant otherwise. Therefore, **Respondent No.8** is also liable of violating Section 10(2)(a) read with Section 10(1) of the Act, as **Respondent No.8** failed to establish that there exist exceptional circumstances that warrant that **Respondent No.8's** contravention is not capable of harming the business interest of other undertakings. Reference to **Paragraph 31 to 33**, the discussion with respect to this issue holds the same as constructed above.

#### The Case of Respondent No. 9; M/s British Slimming Clinic;

##### **BB. Overview:**

133. In the matter of **Respondent No. 9 (M/s British Slimming Clinic)**, concerning the marketing material of 10 different weight loss packages such as "Hilton's F2", "Double Action", "Helle", and "Executive" etc. offered to clients, following specific claims were under scrutiny:

- i. Latest British Research - Khasusi rotational diet plan yani keh ab har cheez khain aur wazan bhe ghatain (Special rotational diet plan, which mean you can eat anything and still reduce weight)
- ii. Mulk ke wifaqi idaray se registered wahid slimming clinic network (The only slimming network in the country registered with a federal authority)
- iii. Asia ka sab se barra slimming network (Asia's largest slimming network)
- iv. 31 saal aur 100% guaranteed nataij (31 years and 100% guaranteed results)



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*h* 42



- v. Na adwiyaaat kee tension, na hi kisi izaafi diet aur warzish kee jhanjhat (Neither is there any need to worry about medicines, nor is there any strain of extra diet and exercise)
- vi. Ziada moassir aur taqatwar diet supplement jo maheno ka kaam dinon main karay bina kisi side effect kay (Extra effective and powerful diet supplement which does months' worth of work in days without any side effects)
- vii. Ab sab kuch khain aur wazan ghatain (Now eat everything and lose weight)

**CC. Enquiry findings and submissions of the Respondents:**

134. During the Enquiry proceedings, while responding to the queries of Enquiry Committee, the **Respondent No. 9** submitted its detailed response asserting that their products help obese people to lose weight by providing them guidance via diet plans and charts. It was further added that **Respondent No.9** does not indulge in selling any medication or drugs for weight loss and the supplements furnished by the Respondent do not fall in the category of medications or drugs.
135. The Enquiry Committee concluded that **Respondent No. 9** is disseminating misleading information by making unsubstantiated claims which lack any reasonable basis and this is, prima facie, in violation of Section 10(2) (a) and (b) read with Section 10(1) of the Act. The Enquiry Report concluded on 24 May 2019, stated the following:

*"127. .... the impression disseminated by the Respondent No. 10 by saying "yani keh ab har cheez khain aur wazan bhe ghatain (now eat everything and still lose weight)" and "pehlay say bhi taiz woh bhi bina kisi izaafi diet aur warzish kay! (Faster than before, that too without any additional diet or exercise) is that there is absolutely no restriction on any kind of caloric intake. However, all the above mentioned packages are based on VLCD diet plans, requiring the individual to have very low caloric intake everyday which is bound to help an individual lose weight.*

*128. Additionally, its clients along with following a very strict, low caloric diet, will also have to take certain food supplement and a syrup as well as undertake a moderate exercise regime like walking to achieve the desired results. Therefore, the insinuation made by the Respondent No. 10 that its magical packages can assist its clients lose weight with having to undertake any sort of diet, chemicals or exercise is absolutely false and misleading. This conduct of the Respondent No. 10, consequently, amounts to prima facie violation of Section 10 of the Act, read with sub-Section 10(2)(b).*

*129. .... the various claims made regarding the efficacy of its ten (10) packages remain unsubstantiated and hence, the Respondent No. 10 appears to be in prima facie violation of Section 10 of the Act, read with sub-Section 10(2)(b).*



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130. The Respondent No. 10 submitted that it has been duly approved by the Federal Ministry of Health and has also been verified by trusted laboratories of Pakistan. However, no evidence has been submitted in this regard.

- Asia ka sab say bara slimming network – Asia's Largest Slimming Network  
131. No evidence has been submitted in this regard.

- 31 saal aur 100% guaranteed nataij – 31 years and 100% guaranteed results  
132. No evidence has been submitted in this regard.

- Na adwiyat ki tension, na hi kisi izaafi diet aur warzish ki jhanjhat – Neither is there any need to worry about medicines, nor is there any strain of extra diet and exercise

134. These are absolutely false and misleading claims as even though the Respondent No. 10 does not sell any medicines, it does encourage use of a nutritional supplement which is not a natural way of losing weight. Whereas use of no medicines suggests that no unnatural product would have to be consumed. Moreover, the program shared with the Enquiry Committee is based on a very low colic diet (VLCD) along with light exercise encouraged. Therefore, this whole statement is highly misleading and false too.

136. As per the lab tests, the said product – Syrup is titled as "Rapid Body Fat Reduction", where in the above mentioned statement, it has also been claimed that it is a "more effective and powerful diet supplement" will "do months' work in days". The lab tests demonstrate that the product contains water, Vitamin C, sucrose and color. In this reference, it has been submitted by the Respondent No. 10 and verified by the Enquiry Committee that Vitamin C has a positive impact on weight loss. It is, however, important to acknowledge that no documentary evidence has been submitted regarding efficacy of the said Syrup in particular.

- 2500 calories ki ghazai taqat sirf 110 calories main maujud – 2500 calories worth of nutrition present in only 110 calories

140. No documentary evidence in the form of laboratory tests has been submitted in this regard.

144. In view of the above discussed information, for making unsubstantiated high sounding claims, the Respondent No. 10 appears to be engaged in prima facie violation of Section 10 of the Act which prohibits deceptive marketing practices."

The Commission deemed it appropriate to initiate proceedings under Section 30 of the Act against Respondent No. 9. The relevant parts of SCN are produced hereunder:



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"4. *WHEREAS, in terms of the Enquiry Report in general and paragraphs 125 to 144 in particular, the Undertaking in order to promote its weight loss products under "diet plans such as Hilton's F2, Executive etc."* launched a marketing campaign with several high sounding claims. Furthermore, false and unsubstantiated superiority claims have also been made, and thus prima facie constitutes violation of Section 10(1) of the Act; and

"5. *WHEREAS, in terms of the Enquiry Report in general and paragraph 126 to 133 in particular, it appears that the Undertaking's marketing claims "...." have not been substantiated and hence, appear to be false and misleading;*

6. *WHEREAS, in terms of the Enquiry Report in general and paragraphs 128 to 133 in particular, it appears that the Undertaking failed to provide a reasonable basis of its claims and it appears that the information disseminated by the Undertaking through its advertisement is prima facie capable of harming the business interests of the competing undertakings, which constitutes a, prima facie, violation of Clause (a) of sub-section (2) of Section 10;*

7. *WHEREAS, in terms of the Enquiry Report in general and paragraphs 128 to 143 in particular, the Undertaking has disseminated false and misleading information to the consumers regarding its weight loss product "diet plans such as Hilton's F2, Executive etc", lacking reasonable basis relating to the character and suitability, which constitutes a, prima facie, violation of clause (b) of sub-section (2) of Section 10 of the Act.*

**DD. Written reply and Oral Arguments:**

137. **Respondent No.9**, vide SCN dated 28 August 2019, was called upon to respond in writing within fourteen (14) days of receipt of SCN to file the written reply and to avail the opportunity of hearing on 12 September 2019 which was later on re-scheduled for 17 September 2019.

138. The oral and written submissions of **Respondent No. 9** are summarized as under:

- a) In response to the SCN, **Respondent No. 9** submitted that their business deals with providing products that help lose weight if used along with proper diet charts.
- b) They submitted that the British Slim Diet is one of the most comprehensively tested formulas and their product is approved by the Federal Ministry of Health. An extremely elaborated diet chart is provided to clients which is very exhaustive in nature and speeds up the weight loss process.



139. Taking in account the written reply, supporting evidence and findings of the Enquiry Report, it appears that it is important to deliberate on the following issues;

- a) *Whether Respondent No.9 has engaged in deceptive marketing practices in contravention of Section 10(2)(b), read with Section 10(1) of the Act?*
- b) *Whether Respondent No.9 has engaged in deceptive marketing practices in contravention of Section 10(2)(a); was the marketing strategy/ disbursed information regarding their business/product capable of harming business interests of other undertakings?*

### ANALYSIS

- a) *Whether Respondent No.9 has engaged in deceptive marketing practices in contravention of Section 10(2)(b), read with Section 10(1) of the Act?*

140. It is pertinent to mention that **Respondent 9's** products hold popularity amongst the masses due to its widespread advertisement throughout the country. Therefore, their marketing material has a huge impact on the consumers.
141. **Respondent No.9** made several high sounding claims in their products' marketing and according to this Bench, they are very specific and cannot be regarded as mere puffery, hence they are actionable claims under the Act. Refer to **Paragraphs 20-22**, the discussion with respect to this issue holds the same as constructed above.
142. As far as superiority claims are concerned, neither the Enquiry Report nor the SCN have alleged a violation of Section 10(2)(c) of the Act by the Respondent. Hence, the allegation of superiority claims made by the Respondent are hereby dismissed. Refer to **Paragraphs 23-24**, the discussion regarding the issue holds the same as discussed above.
143. All the statements in the marketing material of **Respondent No. 9** explicitly exclude diet and exercise as part of the weight loss process and thus by focusing on miraculous effects of the products, a false impression has been created, contrary to the actual practice. **Respondent No.9** submitted that it provided a calorie controlled diet plan to the consumers along with diet supplements, which indeed helped in weight reduction. Hence, there is a proper regime that has to be followed by the consumer to attain desirable results and sole reliance on the products cannot help them do so, however, the claims such as "Khasusi rotational diet plan yani keh ab har cheez khain aur wazan bhe ghatain" (Special rotational diet plan, which mean you can eat anything and still reduce weight), "Ab sab kuch khain aur wazan ghatain" (Now eat everything and lose weight) and "Na adwiyat kee tension, na hi kisi izaafi diet aur warzish kee jhanjhat" (Neither medicines, nor is there any strain of extra diet and exercise), are contrary to the submissions of **Respondent No.9**.



144. Taking in consideration the certain claims against various products offered by the Respondent contrary to the response submitted by them, the insinuation of **Respondent No. 9** that its magical packages can assist its clients lose weight without having to undertake any sort of diet, chemicals or exercise is absolutely false and misleading.
145. For the claim, "Ikkeeswe sadi ka breakthrough" (A 21<sup>st</sup> Century breakthrough) and "Ziada moassir aur taqatwar diet supplement jo maheno ka kaam dinon main karay bina kissi side effect kay" (A more effective and powerful diet supplement which can do months' work in days, that too without any side effects) are highly misleading and false as no evidence has been submitted by the **Respondent No.9** to prove the that its products are "A 21<sup>st</sup> Century breakthrough" and have zero side effects on the consumer. No reliable and competent evidence has been submitted in this regard.
146. The other claim – "Mulk kay wifaqi idaray say registered wahid slimming clinic network" – The only slimming network in the country registered with a federal authority, has also not been backed by any material evidence. The Respondent has only provided a Certificate of Registration of Firm from the Registrar of Firms Islamabad, however no proof of their registration with the Ministry of Health has been provided by the Respondent.
147. No evidence has been submitted to prove the claim; "Asia ka sab say bara slimming network (Asia's Largest Slimming Network)".
148. No evidence has been submitted to prove the claim; "31 saal aur 100% guaranteed nataij (31 years and 100% guaranteed results)".
149. The claim, "Ziada moassir aur taqatwar diet supplement jo maheno ka kaam dinon main karay bina kissi side effect kay (A more effective and powerful diet supplement which can do months' work in days, that too without any side effects)" is highly misleading and false as no competent and reliable evidence has been submitted by the **Respondent No.9** to prove the that its products have zero side effects on the consumer.
150. The evidence submitted for the ingredients of the syrup named "Rapid Body Fat Reduction" does not reflect its efficacy for weight loss. The lab tests merely demonstrate that the product contains water, Vitamin C, sucrose and color which cannot be considered supporting evidence for the claim that it is a more effective and powerful diet supplement and it will "do months of work in days".
151. **Respondent no. 9** claimed that "you can lose weight by eating whatever you want". As discussed throughout the analysis, the discussion was not about the effectiveness of the product nor about its benefits (in general). The target was to achieve truthful marketing. Hence, the submission that the British Slimming Center provided a diet plan and



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supplements was contrary to its claim that the desired result could be achieved by eating whatever a person desires.

152. Keeping all of the above discussion in mind, we refer to **Paragraph 25-27** of this order, where it has been established by the Bench that in case of marketing of any dietary supplements or weight loss products, making a representation about dietary supplements such as weight loss products, the defendants must possess and rely upon competent and reliable scientific evidence that is sufficient in quantity and quality based on standards generally accepted in the relevant scientific fields, when considered in light of the entire body of relevant and reliable scientific evidence, to substantiate that the representation is true. Competent and reliable scientific evidence means tests, analyses, research, or studies that have been conducted and evaluated in an objective manner by qualified persons and are generally accepted in the profession to yield accurate and reliable results. No such evidence has been provided by **Respondent No.9** which can be considered competent and reliable scientific evidence in support of their claims. Hence, **Respondent No.9** is in violation of Section 10(2)(b) read with Section 10(1) of the Act. **Respondent No.9's** product also lacks any disclaimer about the potential side effects it may have on certain consumers as the product could be used by anyone for weight loss and the Respondent must be wary of the fact that it may have harmful effects on certain consumers having different medical conditions. (Refer to **Paragraph 29**)

*b) Whether Respondent No.9 has engaged in deceptive marketing practices in contravention of Section 10(2)(a); was the marketing strategy/ disbursed information regarding their business/product capable of harming business interests of other undertakings?*

153. As we have established that a violation of Section 10(2)(b) of the Act will almost in every circumstance lead to a consequent contravention of Section 10(2)(a) of the Act, unless there exist exceptional circumstances in a particular case that warrant otherwise. Therefore, **Respondent No.9** is also liable of violating Section 10(2)(a) read with Section 10(1) of the Act, as **Respondent No.9** failed to establish that there exist exceptional circumstances that warrant that **Respondent No.9's** contravention is not capable of harming the business interest of other undertakings. Reference to **Paragraph 31 to 33**, the discussion with respect to this issue holds the same as constructed above.

#### The Case of Respondent No. 10; M/s Herbo Natural:

##### EE. Overview:

154. In the matter of **Respondent No. 10 (M/s Herbo Natural)**, concerning the marketing material regarding the weight loss product 'SlimEasy', the following specific claims were under scrutiny:



A complete research based product  
100% pure and natural solution for weight loss

  
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- iii. Aik maheenay may 14 sey 22 pounds tak wazan kam karain – Lose 14 to 22 pounds of weight in one month
- iv. Yeh aik mukammal taur par research based product hay – it is a completely research based product
- v. Cures constipation and others

**FF.Enquiry findings and submissions of the Respondents:**

155. The Enquiry Committee reached the conclusion that **Respondent No. 10** is disseminating misleading information and making unsubstantiated claims lacking reasonable basis and is in violation of Section 10(2) (a) and (b) of the act. The Enquiry Report, concluded on 24 May 2019, stated the following:

*“- SlimEasy™ contains 100% nature ingredients/100% Natural & Pure Solution for Weight loss/Nature's Fat Fighting Ingredients/Har kisam kay Chemical say mukammal taur per paak (clean of all types of chemicals)  
149. No documentary evidence has been submitted in this regard.*

*- Yeh aik mukammal taur par research based product hay – it is a completely research based product  
150. No documentary evidence or clarification has been submitted in this regard*

*- Aik maheenay may 14 sey 22 pounds tak waza kam karain – Lose 14 to 22 pounds of weight in one month  
151. No documentary evidence or clarifications have been submitted pertinent to this high sounding claim.*

*153. Consequently, the Respondent No. 11 appears to be involved in prima facie violation of Section 10(1), read with Section 10(2)(a) and (b) of the Act.”*

156. The Commission deemed it appropriate to initiate proceedings under Section 30 of the Act against **Respondent No. 10**. The relevant parts of SCN are produced hereunder:

*“4. WHEREAS, in terms of the Enquiry Report in general and paragraphs 145 to 153 in particular, the Undertaking in order to promote the brand “Slim Easy” launched a marketing campaign with several high sounding claims. Furthermore, false and unsubstantiated superiority claims have also been made, and thus prima facie constitutes violation of Section 10(1) of the Act; and*

*“5. WHEREAS, in terms of the Enquiry Report in general and paragraph 145 in particular, it appears that the Undertaking’s marketing claims “A complete research based product, 100% pure and natural solution for weight loss, mukammal taur par research kee bunyaad per banayi gayi hai, aik maheenay mai 14 se 22 pound tak wazan*



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*kam karain and cures constipation and others" have not been substantiated and hence, appear to be false and misleading;*

6. **WHEREAS**, in terms of the Enquiry Report in general and paragraphs 145 to 153 in particular, it appears that the Undertaking failed to provide a reasonable basis of its claims and it appears that the information disseminated by the Undertaking through its advertisement is *prima facie* capable of harming the business interests of the competing undertakings, which constitutes a, *prima facie*, violation of Clause (a) of sub-section (2) of Section 10;

7. **WHEREAS**, in terms of the Enquiry Report in general and paragraphs 145 to 153 in particular, the Undertaking has disseminated false and misleading information to the consumers regarding its weight loss product "Slim Easy", lacking reasonable basis relating to the character and suitability, which constitutes a, *prima facie*, violation of clause (b) of sub-section (2) of Section 10 of the Act.

**GG. Written reply and Oral Arguments:**

157. **Respondent No. 10**, vide SCN dated 28 August 2019, was called upon to respond in writing within fourteen (14) days of receipt of SCN to file the written reply and to avail the opportunity of hearing on 12 September 2019, which was later on re-scheduled for 17 September 2019.

158. The oral and written submissions of **Respondent No. 10** are summarized as under:

- a) In response to the SCN, the Respondent emphasized that ingredients used in the product are 100% natural, mostly consisting of crushed herbs in the form of capsule, and are stable in nature which have no side effects.
- b) They submitted that the product has synergetic efficacy for weight loss due to its ingredients.
- c) For the claim that the product can reduce up to 14-22 pounds in a month, the Respondent submitted that they modified their claim by removing the word 'month' from it. They further added that it is possible to reduce the said amount of weight because they provided a proper exercise plan along with the product.

159. Taking in account the written reply, supporting evidence and the Enquiry Report deduce, it appears that it important to deliberate on the following issues;

a) *Whether Respondent No.10 has engaged in deceptive marketing practices in contravention of Section 10(2)(b), read with Section 10(1) of the Act?*

b) *Whether Respondent No.10 has engaged in deceptive marketing practices in contravention of Section 10(2)(a); was the marketing strategy/ disbursed information*



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*regarding their business/product capable of harming business interests of other undertakings?*

### ANALYSIS

*a) Whether Respondent No.10 has engaged in deceptive marketing practices in contravention of Section 10(2)(b), read with Section 10(1) of the Act?*

160. Respondent No.10 made several high sounding claims in their products' marketing and according to this Bench, they are very specific and cannot be regarded as mere puffery, hence they are actionable claims under the Act. Refer to Paragraphs 20-22, the discussion with respect to this issue holds the same as constructed above.
161. As far as superiority claims are concerned, neither the Enquiry Report nor the SCN have alleged a violation of Section 10(2)(c) of the Act by the Respondent. Hence, the allegation of superiority claims made by the Respondent are hereby dismissed. Refer to Paragraphs 23-24, the discussion regarding the issue holds the same as discussed above.
162. The claim pertaining to "cures constipation and others" has been mentioned in the SCN issued to Respondent No.10, however, the said claim has not been proven to be deceptive in the light of Enquiry Report, nor the same had been deliberated upon by the Enquiry Officers. Therefore, the said claim has been discarded by the bench.
163. Respondent No.10 has made a very specific claim that a consumer of the product can "lose 14-22 pounds of weight in one month" without any disclosures, while it was submitted to the Bench that it can only be achieved through a proper diet and exercise plan. Hence, a proper regime has to be followed by the consumer to attain desirable results and merely relying on the product cannot help them to achieve the desired results. The product lacks such disclosures. The Respondent also failed to provide any reliable evidence, including the lack of their enlistment with DRAP, regarding their claim that the product is all natural and is a completely research based product. It is pertinent to mention that in case of marketing of any dietary supplements or weight loss products, while making a representation about dietary supplements and weight loss products the defendants must possess and rely upon competent and reliable scientific evidence that is sufficient in quantity and quality based on standards generally accepted in the relevant scientific fields, when considered in light of the entire body of relevant and reliable scientific evidence, to substantiate that the representation is true. Competent and reliable scientific evidence means tests, analyses, research, or studies that have been conducted and evaluated in an objective manner by qualified persons and are generally accepted in the profession to yield accurate and reliable results. (refer to Paragraphs 25-27). Respondent No.10's product also lacks any disclaimer about the potential side effects it may have on certain consumers as the product could be used by anyone for weight loss and the Respondent must be wary of the fact that it may have



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harmful effects on certain consumer having different medical conditions. (Refer to Paragraph 29)

164. **Respondent No.10** also submitted that the undertaking has removed deceptive statements from its advertisements as submitted in the written reply dated 15<sup>th</sup> September 2019, the tagline, "*our product can reduce weight up to 14-22 pounds in a month*" has been altered and the claim 'within a month' has been removed. Further, they showed an inclination towards amending claims as per the guidance of the Commission and commitment to comply with the relevant regulations and laws. The Bench acknowledges the Respondents inclination towards corrective behavior in this regard.

165. Main issue under consideration is whether the advertisement creates a false illusion in the mind of the consumer or not? **Respondent No. 10** has not provided any evidence that reflect the success of its product in weight loss. Regarding product disclosures, it is pertinent to mention that even on the website, **Respondent No. 10** has mentioned a small note in a smaller and illegible font that *diet plan will be provided*. Hence, the disclosure is improper and product usage details are deceiving having the ability to deceive the consumers. This note could have also been mentioned more profoundly in the description section of the product to avoid deception along with packaging. Further the claim that the product is 100% pure and natural, are also misleading with no eligible disclosures. Hence, **Respondent No.10** is in violation of Section 10(2)(b) read with Section 10(1) of the Act.

b) *Whether the Respondent No.10 has engaged in deceptive marketing practices in contravention of Section 10(2)(a); was the marketing strategy/ disburshed information regarding their business/product capable of harming business interests of other undertakings?*

166. As we have established that a violation of Section 10(2)(b) of the Act will almost in every circumstance lead to a consequent contravention of Section 10(2)(a) of the Act, unless there exist exceptional circumstances in a particular case that warrant otherwise. Therefore, **Respondent No.10** is also liable of violating Section 10(2)(a) read with Section 10(1) of the Act, as **Respondent No.10** failed to establish that there exist exceptional circumstances that warrant that **Respondent No.10**'s contravention is not capable of harming the business interest of other undertakings. Reference to Paragraph 31 to 33, the discussion with respect to this issue holds the same as constructed above.



The Case of Respondent No. 11: M/s Lasani Pharma Private Limited;

**HH. Overview:**

167. In the matter of **Respondent No. 11 (M/s Lasani Pharma Private Limited)**, concerning the undertaking's marketing material regarding the weight loss product "Arq-e-Mehzil", following specific claims were under scrutiny:

- i. No side effects
- ii. Pakistan's No. 1 brand
- iii. Har kisam kay motapay ki wajuhaat ko kam karnay kay liye muassir dawa 'An effective medicine to reduce all causes of obesity'

**II. Enquiry findings and submissions of the Respondents:**

168. The Enquiry Committee concluded that **Respondent No.11** is guilty under Section 10(2) (a) and (b) of the act. The Enquiry Report, concluded on 24 May 2019, stated following:

*"168. Therefore, the Respondent No. 13 is apparently found engaged in deceptive marketing claims for making the following false and misleading claims, in prima facie violation of Section 10(2)(a), (b) and (c) of the Act.*

*- No Side Effects*

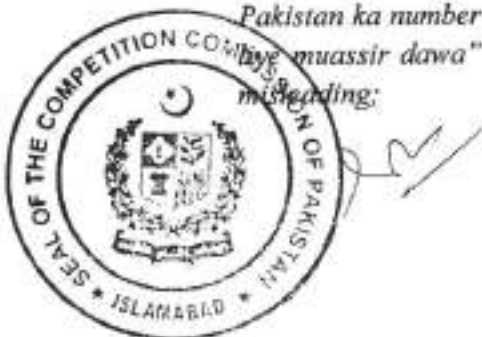
*- Pakistan ka Number-1 Brand*

*- Har kisam kay motapay ki wajuhaat ko kam karnay kay liye muassir dawa – an effective medicine to reduce all causes of obesity."*

169. The Commission deemed it appropriate to initiate proceedings under Section 30 of the Act against **Respondent No. 11**. The relevant parts of SCN are produced hereunder:

*"4. WHEREAS, in terms of the Enquiry Report in general and paragraphs 162 to 168 in particular, the Undertaking in order to promote the brand "Arq-e-Mehzil" launched a marketing campaign with several high sounding claims. Furthermore, false and unsubstantiated superiority claims have also been made, and thus prima facie constitutes violation of Section 10(1) of the Act; and*

*"5. WHEREAS, in terms of the Enquiry Report in general and paragraph 145 in particular, it appears that the Undertaking's marketing claims "No side effects, Pakistan ka number 1 brand, Har kisam kay motapay ki wajuhaat ko kam karnay kay liye muassir dawa" have not been substantiated and hence, appear to be false and misleading;*





6. *WHEREAS, in terms of the Enquiry Report in general and paragraphs 164 in particular, it appears that the Undertaking failed to provide a reasonable basis of its claims and it appears that the information disseminated by the Undertaking through its advertisement is prima facie capable of harming the business interests of the competing undertakings, which constitutes a, prima facie, violation of Clause (a) of sub-section (2) of Section 10;*

7. *WHEREAS, in terms of the Enquiry Report in general and paragraphs 166 to 168 in particular, the Undertaking has disseminated false and misleading information to the consumers regarding its weight loss product "Arq-e-Mehzil", lacking reasonable basis relating to the character and suitability, which constitutes a, prima facie, violation of clause (b) of sub-section (2) of Section 10 of the Act.*

8. *WHEREAS, in terms of the Enquiry Report in general and paragraph 165 in particular, it appears that the Undertaking tried to mislead that the public by making a claim "Pakistan's No.1 brand" of "Arq-e-Mehzil" with competing products 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.....*

#### **JJ. Written reply and Oral Arguments:**

170. Respondent No.11, vide SCN dated 28 August 2019, was called upon to respond in writing within fourteen (14) days of receipt of SCN to file the written reply and to avail the opportunity of hearing on 12 September 2019, which was later on re-scheduled for 17 September 2019.

171. The oral and written submissions of the **Respondent No. 11** are summarized as under:

- In response to the SCN, the Respondent submitted that they are engaged in this business since 1999 and have a wide local distribution network in Pakistan.
- They submitted that new and innovative medicines and systems are incorporated in manufacturing process of the products to meet changing demands of consumers. Their top priority is to provide research based herbal medicines.
- They also submitted that their product is well-known, famous and a symbol of quality in Pakistan and they have the copyrights for the brand Arq-e-Mehzal.

172. Taking in account the written reply, supporting evidence and the Enquiry Report deduce, it appears that it important to deliberate on the following issues;

(a) *Whether Respondent No.11 has engaged in deceptive marketing practices in contravention of Section 10(2)(b) and Section 10(2)(c), read with Section 10(1) of the Act.*



- b) *Whether Respondent No.11 has engaged in deceptive marketing practices in contravention of Section 10(2)(a); was the marketing strategy/ disbursed information regarding their business/product capable of harming business interests of other undertakings?*

### ANALYSIS

- a) *Whether Respondent No.11 has engaged in deceptive marketing practices in contravention of 10(2)(b) and Section 10(2)(c), read with Section 10(1) of the Act?*

173. Respondent No.11 made several high sounding claims in their product's marketing and according to this Bench, they are very specific and cannot be regarded as mere puffery, hence they are actionable claims under the Act. Refer to **Paragraphs 20-22**, the discussion with respect to this issue holds the same as constructed above.
174. In response to the first allegation against Respondent No. 11, that its product contained no side effects, the undertaking provided the list of ingredients including Henbani, Russa Grass, Fennel, Berg Mako, Rose, Khar-E-Khasak, Mint, Chichoy and Tulsi. They submitted that these constituents are herbal and had been used domestically. Respondent No.11 had indeed annexed DRAP enlistment of the product with details all the ingredients used, test reports as well as extracts from "Unani Pharmacopoeia of India". The reports and laboratory test were only able to prove that the product of Respondent No.11 consists of all natural ingredients. However, the bench is of the view that a product consisting of all natural ingredients does not really mean it has no side effects. The Respondent and any other market player, who wishes to advertise weight loss products, must be wary of the fact that these weight loss products could be used by people with different types of medical conditions, inter alia, hypertension, diabetes, allergies etc., and disclaimers must be designed and provided with such weight loss products keeping in mind the different types and conditions of the consumers and the Respondents must provide legible disclaimers on their product that their product might have different side effects on consumers suffering from different medical conditions.
175. Regarding the 2<sup>nd</sup> claim that the Respondent No.11's product is Pakistan's No.1 Brand, the Respondent submitted that there are other companies and manufacturers who are making their products with the same product name "Arq-e-Mehzal", however, it is only the Respondent who has the intellectual property rights to use the brand name "Arq-e-Mehzal". Respondent No.11 did provide the Trademark and Copyright Registration to the Bench. The Trademark is registered for the Respondent's company logo "Lasani Pharma (Pvt.) Limited, while the Copyright is registered in the "Artistic Work (Label Design)" entitled ARQ MEHZAL HERBAL PRODUCTS Arq-e-Mehzal (in Urdu). Even if Respondent No.11 is the only one among the manufactures of different products named as Arq-e-Mehzal, the claim that it is "Pakistan's No.1 Brand" still has no merit.

The Respondent made a claim that it is Pakistan's No.1 Brand, but failed to provide any survey results or other data to support its claim of being the 'No.1 Brand' in Pakistan.



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Having a registered trademark and copyright does not give them the qualification to brand themselves as Pakistan's No.1 Brand. However, it had been alleged in enquiry report and the SCN that such claim is in violation of Section 10(2)(c), therefore it is necessary to examine the instant claim in perspective of Section 10(2)(c) and the parameters set out in the said Section, which mandatorily contemplate comparison of goods in the process of advertising.

177. It has been held by the Commission In the Matter of Show Cause Notice Issued to M/s. Reckitt Benckiser Pakistan Limited reported as 2015 CLD 1864, that "Comparison was made whenever qualities of two or more products or services were judged against each other—Comparison of goods made without reasonable basis would be considered to be false and misleading". Further, In the Matter of Show Cause Notice Issued to M/s. Colgate Palmolive it had been held that "Section 10(2)(c) of the Act prohibits the 'false or misleading comparison of goods in the process of advertising' and also constitutes a deceptive marketing practice in terms of Section 10(1) of the Act. Similar, to the preceding sub-section, a comparison of goods lacking a reasonable basis will be considered to be false and misleading in terms of this provision. A comparison is made whenever the qualities of two or more products or services are judged against each other". Moreover, it had been held in the Judgment of the Court (First Chamber) of 19 April 2007, titled 'De Landtsheer Emmanuel SA V Comite Interprofessionel du Vin de Champagne and Veuve Clicquot Ponsardin SA' Reference for a preliminary ruling: Cour d'appel de Bruxelles- Belgium, at paragraph 51 that "for an advertisement to be considered to be comparative advertising, and accordingly to fall within the scope of the directive, it is essential the advertisement identifies a competitor of the advertiser or goods or services which the competitor offers".
178. Therefore, in light of the above, in absence of comparison of qualities of two or more products or services against each other or identification of competitor of the advertiser, violation of Section 10(2)(c) does not appear to be established.
179. In light of the above, the claim of Respondent No. 11 that it is "Pakistan's No. 1 Brand", does not appear to attract clutches of Section 10(2)(c) as any comparison with rival products is absent.
180. The Respondent No. 11 claimed that its product is an effective medicine to reduce **all causes of obesity**. The generic impact of the ingredients used in the final product had been supported by research as well as feedback from several qualified Hakims and Tibbs who had applauded the product as useful and had recommended to their patients. However, there was still insufficient evidence to substantiate the claim that this syrup has the ability to eliminate **'all'** causes of obesity on its own. In order to substantiate such a claim, a very thorough, competent and reliable scientific evidence is needed. To eliminate all causes of obesity by using just one syrup sounds to be a very far-fetched idea, and such a claim can easily disseminate false and misleading information to the



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consumer. Refer to **Paragraph 25-27** of the this order, where it is mentioned that in case of marketing of any dietary supplements or weight loss products, while making a representation about dietary supplements such as weight loss products the defendants must possess and rely upon competent and reliable scientific evidence that is sufficient in quantity and quality based on standards generally accepted in the relevant scientific fields, when considered in light of the entire body of relevant and reliable scientific evidence, to substantiate that the representation is true. Competent and reliable scientific evidence means tests, analyses, research, or studies that have been conducted and evaluated in an objective manner by qualified persons and are generally accepted in the profession to yield accurate and reliable results. Hence **Respondent No.11** is in violation of Section 10(2)(b) of the Act for disseminating false information among the customers. **Respondent No.11's** product also lacks any disclaimer about the potential side effects it may have on certain consumers as the product could be used by anyone for weight loss and the Respondent must be wary of the fact that it may have harmful effects on certain consumers having different medical conditions. (Refer to **Paragraph 29**)

*b) Whether Respondent No.11 has engaged in deceptive marketing practices in contravention of Section 10(2)(a); was the marketing strategy/ disburshed information regarding their business/product capable of harming business interests of other undertakings?*

181. As we have established that a violation of Section 10(2)(b) of the Act will almost in every circumstance lead to a consequent contravention of Section 10(2)(a) of the Act, unless there exist exceptional circumstances in a particular case that warrant otherwise. Therefore, **Respondent No.11** is also liable of violating Section 10(2)(a) read with Section 10(1) of the Act, as **Respondent No.11** failed to establish that there exist exceptional circumstances that warrant that **Respondent No.11's** contravention is not capable of harming the business interest of other undertakings. Reference to **Paragraph 31 to 33**, the discussion with respect to this issue holds the same as constructed above.

**The Case of Respondent No. 12: M/s Qarshi Industries Private Limited:**

**KK. Overview:**

182. **Respondent No. 12** is manufacturing various products in the field of medicine, however, the product which is under consideration for the purpose of this matter is 'Anti-Fat Tablets'. The following specific claims related to the subject product were under scrutiny:

- i. Anti-fat is a herbal preparation for eliminating unwanted fat/Eliminates unwanted fat
- ii. Controlling excessive weight gain/Controls excessive weight gain
- iii. (It helps) keep the body healthy, active and smart





**LL. Enquiry findings and submissions of the Respondents:**

183. The Enquiry Report, concluded on 24 May 2019, stated the following:

*"172. ....it is important to note that this product has a minute effect on weight loss independently and little to no significant long term effect on weight loss. This product can only assist in weight loss in a complementary role as an effective weight loss regime requires a proper diet and exercise plan. Whereas, the Respondent No. 14 has failed to inform the public that a proper diet and exercise regime would be required to achieve desired long term results with the use of this product as merely having an impact on digestive system and constipation does not cause substantive weight loss. Consequently, in absence of necessary and relevant disclosures, the Respondent No. 12 is found in prima facie violation of Section 10(2)(a) and (b) of the Act."*

184. The Commission deemed it appropriate to initiate proceedings under Section 30 of the Act against the **Respondent No. 12**. The relevant parts of SCN are produced hereunder:

*"4. WHEREAS, in terms of the Enquiry Report in general and paragraphs 169 to 172 in particular, the Undertaking in order to promote the brand "Anti-Fat Tablets" launched a marketing campaign with several high sounding claims. Furthermore, false and unsubstantiated superiority claims have also been made, and thus prima facie constitutes violation of Section 10(1) of the Act; and*

*"5. WHEREAS, in terms of the Enquiry Report in general and paragraph 170 in particular, it appears that the Undertaking's marketing claims "Anti-fat is a herbal preparation for eliminating unwanted fat/ eliminates unwanted fat, controlling excessive weight gain/ controls excessive weight gain, (it helps) keep the body healthy, active and smart" have not been substantiated and hence, appear to be false and misleading;*

*6. WHEREAS, in terms of the Enquiry Report in general and paragraphs 171 to 172 in particular, it appears that the Undertaking failed to provide a reasonable basis of its claims and it appears that the information disseminated by the Undertaking through its advertisement is prima facie capable of harming the business interests of the competing undertakings, which constitutes a, prima facie, violation of Clause (a) of sub-section (2) of Section 10;*

*7. WHEREAS, in terms of the Enquiry Report in general and paragraphs 171 to 172 in particular, the Undertaking has disseminated false and misleading information to the consumers regarding its weight loss product "Anti-Fat Tablets", lacking reasonable basis relating to the character and suitability, which constitutes a, prima facie, violation of clause (b) of sub-section (2) of Section 10 of the Act.*



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**MM. Written reply and Oral Arguments:**

185. **Respondent No.12**, vide SCN dated 28 August 2019, was called upon to respond in writing within fourteen (14) days of receipt of SCN to file the written reply and to avail the opportunity of hearing on 12 September 2019 which was later on re-scheduled for 17 September 2019.
186. The oral and written submissions of **Respondent No. 12** are summarized as under:
- a) In response to the SCN, the Respondent emphasized that ingredients used in the product are herbal, which have no side effects as per authoritative Unani books and the Respondent has attained multiple certifications and accreditations and follows the best market practices.
  - b) They submitted that the product has synergetic efficacy for weight loss, as the herbal formulation, is in accordance with the benefits described in the Unani books.
  - c) They also submitted that all their products are empirical in nature and ingredients are in natural and crude form, which strengthens the body system and improves its functioning.
187. Taking in account the written reply, supporting evidence and the Enquiry Report deduce, it appears that it important to deliberate on the following issues;
- a) *Whether Respondent No.12 has engaged in deceptive marketing practices in contravention of Section 10(2)(b), read with Section 10(1) of the Act?*
  - b) *Whether Respondent No.12 has engaged in deceptive marketing practices in contravention Section 10(2)(a); was the marketing strategy/ disbursed information regarding their business/product capable of harming business interests of other undertakings?*

**ANALYSIS**

- a) *Whether Respondent No.12 has engaged in deceptive marketing practices in contravention of Section 10(2)(b) read with Section 10(1) of the Act?*

188. In terms of high sounding claims, the bench is of the view that the claims made by **Respondent No.12** are not as specific as other Respondents, however these claims still need substantiation for them to be considered as non-deceptive claims according to the Act.

As far as superiority claims are concerned, neither the Enquiry Report nor the SCN have alleged a violation of Section 10(2)(c) of the Act by the Respondent. Hence, the



allegation of superiority claims made by the Respondent are hereby dismissed. Refer to **Paragraphs 23-24**, the discussion regarding the issue holds the same as discussed above.

190. Regarding a violation of Section 10(2)(b) of the Act, there must be proper disclosures which are legible for the consumer when a manufacturer wishes to advertise its product. All the statements and claims in the marketing material of **Respondent No. 12** explicitly exclude diet and exercise as part of the weight loss process. There is a proper regime that has to be followed by the consumer to attain desirable results and relying solely on the Respondent's products would not help them attain any significant weight loss. The product lacks such disclosures. Since, our focus is on "deceptive marketing strategy" that the **Respondent No. 12** may have adopted, the Respondent has not provided any evidence that reflects the success of Respondent's product in weight loss with or without following a specific diet or exercise regime. Regarding product disclosures, it is pertinent to mention that even on the website, Respondent has failed to mention any product specific disclosures regarding the efficacy of the product and related cautions.
191. The Respondent's claim that it eliminates unwanted fat from the body, although the claim is a non-quantifiable one, there needs to be competent and reliable scientific evidence to substantiate such a claim when it comes to marketing weight loss products. (Refer to **Paragraph 25-27**) There has not been any such evidence provided by **Respondent No. 12**.
192. **Respondent No.12** failed to provide any competent and reliable scientific evidence to substantiate their claim that the product is useful in eliminating unwanted fat from the body nor did the packaging of the product shows a disclaimer that proper exercise and diet is needed to achieve desirable results. In conclusion, the Respondent No.12 has resorted to deceptive marketing practices in contravention of Section 10(2)(b) read with Section 10(1) of the Act.

*b) Whether Respondent No.12 has engaged in deceptive marketing practices in contravention of Section 10(2)(a); was the marketing strategy/ disbursed information regarding their business/product capable of harming business interests of other undertakings?*

193. As we have established that a violation of Section 10(2)(b) of the Act will almost in every circumstance lead to a consequent contravention of Section 10(2)(a) of the Act, unless there exist exceptional circumstances in a particular case that warrant otherwise. Therefore, **Respondent No.12** is also liable of violating Section 10(2)(a) read with Section 10(1) of the Act, as **Respondent No.12** failed to establish that there exist exceptional circumstances that warrant that **Respondent No.12's** contravention is not capable of harming the business interest of other undertakings. Reference to **Paragraph 31 to 33** the discussion with respect to this issue holds the same as constructed above.



The Case of Respondent No. 13: M/s Herbal Medicine.pk

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Respondent No. 14: Baber Herbal and Homeo Clinic:

**NN. Overview:**

194. **Respondent No. 13**, M/s Herbal Medicine.pk is manufacturing various products in the field of medicine, however, the few products which are under consideration for the purpose of this matter are 'Slim Chakotra', 'Ultra Fat Cutter' and 'Slim Course'. Following specific claims related to subject products are under scrutiny:

- i. 100% Natural Products
- ii. The product 'Slim Chakotra' has ability to help you "lose weight up to 6-8kg just in 30days

195. On the other hand, **Respondent No. 14**, M/s Baber Homeo was asked to substantiate the following claims made on its marketing material, published in various weekly magazines namely Mashriq, Nai Baat, Dunya, Jinnah and Khabrain dated April 04, 2018. The following claims were made by **Respondent No. 14** on above mentioned weekly magazines:

- i. Motapa khatam, barha hua pait, jismani faltu charbi guarantee say khatam (eliminate excessive fat with guarantee)
- ii. Na Dieting (No Dieting)
- iii. Na Parhaiz (No Dieting Restriction)
- iv. Na Warzish (No Exercise).

**OO. Enquiry findings and submissions of the Respondents:**

196. During the Enquiry proceedings it was observed that the name of the manufacturer, i.e., Babar Davakhana can be clearly seen on the packaging of the product of Respondent No. 13. The enquiry committee noted that the products manufactured and advertised on Herbal Medicine.pk- **Respondent No. 13** and the products advertised on weekly magazines by M/s Baber Home Clinic - **Respondent No 14** belongs to the same manufacturer, i.e., M/s Babar Davakhana, located on Railway Workshop Road, Rawalpindi.

197. Hence, the enquiry committee concluded that the products of **Respondent No.13 and 14** were manufactured by the same manufacturer and addressed simultaneously. The **Respondent No. 13** was repeatedly asked to substantiate the claims made by it in its marketing material, however, no proper response, substantiating evidence or rebuttal was received from it.

198. **Respondent No. 14** submitted in its reply that it has closed its business since January 2018 and the products/herbal medicine are not being manufactured or



promoted/ marketed by the Respondent anymore. It has been mentioned by **Respondent No. 14** that the new business is being carried out by Mr. Asad Iqbal (CEO) with the name of BD Marketing. However, the weekly magazine's extracts obtained by the Enquiry officers were dated March 04, 2018. Therefore, the assertion made by **Respondent No. 14** was found to be false that they have wound-up their manufacturing/marketing practices since January 2018 by the enquiry committee.

199. The Enquiry Report, concluded on 24 May 2019, stated the following:

*"174. .... The Respondent No. 13 claims in its marketing material that its slimming products are "100% Natural Products" and "The product 'Slim Chakorta' has ability to help you "lose weight up to 6-8kg just in 30days" without any "Side Effects".*

*175. .... The Respondent No. 13 was asked to substantiate the claims made by it in its marketing material, however, as no reply was received from it, it can be concluded that the Respondent No. 13 has no reasonable basis for making these high sounding claims and hence, avoided correspondence with the Enquiry Committee. Therefore, in light of the given facts, it appears that the Respondent No. 13 is, prima facie, involved in violation of Section 10(1) of the Act in terms of Section 10(2)(a) and (b) of the Act.*

*176. .... The following claims were made by the Respondent No. 14 on above mentioned weekly magazines: - Motapa khatam, baraha hua pait, jismani faltu charbi guarantee say khatam (eliminate excessive fat and control appetite with guarantee) - Na Dieting (No Dieting) - Na Parhaz (No Dieting Restriction) - Na Warzish (No Exercise)*

*182. In light of the above, it can be concluded that products manufactured and marketed by M/s Babar Herbal and Homeo Clinic and the products of M/s Herbal Medicine.pk own by one entity namely M/s Babar Davakhana. In conclusion, as the relevant Respondents failed to substantiate their claims, they (Respondent No. 13 and Respondent No. 14) are, prima facie, involved in violation of Section 10(1) of the Act in terms of Section 10(2)(a) and (b) of the Act."*

200. The Commission deemed it appropriate to initiate proceedings under Section 30 of the Act against the **Respondent No. 13** and **Respondent No. 14**. The relevant parts of SCN's issued to **Respondent No. 13** are produced hereunder:



*WHEREAS, in terms of the Enquiry Report in general and paragraphs 173 to 175 in particular, the Undertaking in order to promote the brand "Slim Chakorta, Ultra Fat Buster Tablets, German Slimming Tea and Slim Course" launched a marketing campaign with several high sounding claims. Furthermore, false and unsubstantiated*

*superiority claims have also been made, and thus prima facie constitutes violation of Section 10(1) of the Act; and*

*"5. WHEREAS, in terms of the Enquiry Report in general and paragraph 174 in particular, it appears that the Undertaking's marketing claims "100% Natural products", "The product Slim Chakotra has ability to help you' lose weight upto 6-8 kg just in 30 days", appear to be false and misleading;*

*6. WHEREAS, in terms of the Enquiry Report in general and paragraphs 172 to 175 in particular, it appears that the Undertaking failed to provide a reasonable basis of its claims and it appears that the information disseminated by the Undertaking through its advertisement is prima facie capable of harming the business interests of the competing undertakings, which constitutes a, prima facie, violation of Clause (a) of sub-section (2) of Section 10;*

*7. WHEREAS, in terms of the Enquiry Report in general and paragraphs 172 to 175 in particular, the Undertaking has disseminated false and misleading information to the consumers regarding its weight loss products "Slim Chakotra, Ultra Fat Cutter Tablets, German Slimming Tea and Slim Course", lacking reasonable basis relating to the character and suitability, which constitutes a, prima facie, violation of clause (b) of sub-section (2) of Section 10 of the Act.*

201. The relevant parts of the SCN issued to Respondent No.14 are produced hereunder:

*4. WHEREAS, in terms of enquiry report in general and paragraph 176 to 182 in particular, that the undertaking in order to promote its weight loss products launched a marketing campaign with several high sounding claims. Furthermore, false and unsubstantiated superiority claims have also been made, and thus prima facie constitutes violation of Section 10(1) of the Act. and;*

*5. WHEREAS, in terms of enquiry report in general and Paragraph 176 in particular, it appears that the undertaking's, marketing claims ("eliminate excessive fat with guarantee), appear to be false and misleading;*

*6. WHEREAS, in terms of Enquiry Report in general and paragraph 176 to 182 in particular, it appears that the undertaking failed to provide a reasonable basis of its claims and it appears that the information disseminated by the Undertaking through its advertisement is prima facie capable of harming the business interests of the competing undertakings, which constitutes a, prima facie, violation of Clause (a) of sub-section (2) of Section 10;*

*7. WHEREAS, in terms of Enquiry Report in general and paragraph 176 to 182 in particular, the undertaking has disseminated false and misleading information to consumers regarding its weight loss products lacking reasonable*





*basis relating to the character, and suitability, which constitutes a prima facie violation of clause (b) of sub-section (2) of Section 10 of the Act.*

**PP. Written reply and Oral Arguments:**

202. The Respondents, vide SCN dated 28 August 2019, were called upon to respond in writing within fourteen (14) days of receipt of SCN's, to file the written reply and to avail the opportunity of hearing on 12 September 2019 which was later on re-scheduled for 17 September 2019.
203. **Respondent No. 13 and Respondent No. 14** did not file any oral or written response to SCNs. Therefore, Bench would proceed in this matter ex parte (**similar to the case of Respondent No. 2**) as despite seeking time for submitting replies the Respondents failed submit any oral or written replies to defend the allegations against them.
204. Taking in account the supporting evidence and the Enquiry Report conclusion, it appears that it important to deliberate on the following issues;
- a) *Whether Respondent No.13 and 14 have engaged in deceptive marketing practices in contravention of Section 10(2)(b) read Section 10(1) of the Act?*
- b) *Whether Respondent No.13 and 14 have engaged in deceptive marketing practices in contravention of Section 10(2)(a); was the marketing strategy/ disbursed information regarding their business/product capable of harming business interests of other undertakings?*

**ANALYSIS**

1. *Whether Respondent No.13 and 14 have engaged in deceptive marketing practices in contravention of Section 10(2)(b) read with Section 10(1) of the Act?*
205. Both **Respondent No.13 and 14** made several high sounding claims in their products' marketing and according to this Bench, they are very specific and cannot be regarded as mere puffery, hence they are actionable claims under the Act. Refer to **Paragraphs 20-22**, the discussion with respect to this issue holds the same as constructed above.
206. As far as superiority claims are concerned, neither the Enquiry Report nor the SCN have alleged a violation of Section 10(2)(c) of the Act by the Respondents. Hence, the allegation of superiority claims made by the Respondents are hereby dismissed. Refer to **Paragraphs 23-24**, the discussion regarding the issue holds the same as discussed above.



Coming towards **Respondent No.13**, they claimed that their products, "Slim Chakotra", "Ultra Fat Cutter" and "Slim Course" are 100% natural. No evidence regarding their products being natural has been provided by Respondent No.13,

including their registration with DRAP as total natural and herbal product. It is important to mention that these are the sort of claims that can only be made part of the marketing material if there is enough competent and reliable scientific evidence to substantiate these claims, otherwise it would be a contravention of Section 10(2)(b), as false and misleading information would be disseminated to consumers. **Respondent No. 13** also claimed that their product "Slim Chakotra" has the ability to help you "lose 6-8 kgs weight in just in 30 days." This is a very specific claim and once again, competent and reliable scientific evidence is needed to substantiate such a claim (refer to **Paragraph 25-27**) in order for a company to be able to advertise their product, without contravening Section 10(2)(b) of the Act. No such competent and reliable scientific evidence was provided by **Respondent No.13** to substantiate any of the above mentioned claims, and hence **Respondent No.13** is in contravention of Section 10(2)(b) read with Section 10(1) of the Act.

208. **Respondent No.14** claimed that their products "eliminate excessive fats, with guarantee" and that too without following any special diet plans or doing any specific exercises. The use of the term "guarantee" in the claim makes it more objectionable, as it gives the consumer the impression that elimination of excessive fats is guaranteed with the use of their products. Section 239.2(a), Guides for the advertising of warranties and Guarantees, in Code of Federal Regulations, states the following:

*"If an advertisement mentions a warranty or guarantee that is offered on the advertised product, the advertisement should disclose, with such clarity and prominence as will be noticed and understood by prospective purchasers, that prior to sale, at the place where the product is sold, prospective purchasers can see the written warranty or guarantee for complete details of the warranty coverage."*

209. The Respondent No.14 failed to disclose the guarantee on its product with clarity and prominence as will be noticed and understood by prospective purchasers and they can see the written guarantee for complete details of its coverage at the time of purchase. In fact, the Respondent No.14 mentioned the word "Guarantee" in its claim, without intending to provide any such service.
210. The above-mentioned claims also need to be substantiated with competent and reliable scientific evidence, (refer to **Paragraph 25-27**) otherwise, such claims are in contravention of Section 10(2)(b) of the Act, as it falls under the category of disseminating false and misleading information to the consumers. No such competent and reliable scientific evidence was provided by **Respondent No. 14** to substantiate these claims, hence, **Respondent No. 14** is in contravention of Section 10(2)(b) of the Act.

**Respondent No. 13** through its website and **Respondent No.14** through newspaper advertisements had made high sounding claims as mentioned in the Enquiry Report and above. No submissions on part of the Respondents sustained the determinations of the



enquiry report and lead us to the conclusion that both **Respondent No.13** and **Respondent No.14** are in violation of Section 10 of the Act, particularly section 10(2)(b) read with Section 10(1).

2. *Whether Respondent No. 13 and 14 have engaged in deceptive marketing practices in contravention of Section 10(2)(a); was the marketing strategy/ disbursed information regarding their business/product capable of harming business interests of other undertakings?*

212. As we have established that a violation of Section 10(2)(b) of the Act will almost in every circumstance lead to a consequent contravention of Section 10(2)(a) of the Act, unless there exist exceptional circumstances in a particular case that warrant otherwise. Therefore, **Respondent No.13 and 14** are also liable of violating Section 10(2)(a) read with Section 10(1) of the Act, as both the Respondents failed to establish that there exist exceptional circumstances that warrant that their contravention is not capable of harming the business interest of other undertakings. Reference to **Paragraph 31 to 33**, the discussion with respect to this issue holds the same as constructed above.

### CONCLUSION:

213. For decades, through advertisements, a fictitious impression about the weight loss products is created and the public is ultimately convinced that these products have miraculous outcomes within negligible amount of time. Further, the Respondents have been advertising/marketing and selling these products without mentioning the potential side effects that may occur as a consequence of regular consumption of the products. The Respondents have also failed to disclose to their consumers the potential impact their product can have on people having different medical conditions, such as diabetes, hypertension, allergies etc., which may cause life endangering effects on consumers suffering from certain medical conditions.

214. After adjudicating upon the case of each Respondent in the matter, the Bench has reached the conclusion that deceptive marketing, specifically in terms of Section 10(2)(b) of the Act, is an industry wide practice and the market of weight loss products and dietary supplements had remained unregulated for a long time. The Bench, therefore, is inclined towards corrective behavior in this matter, and has decided not to impose penalties on any of the Respondents, however, the Bench has decided to issue guidelines in terms of marketing of weight loss products. Taking inspiration from the guidelines provided by the Competition Bureau Canada for weight loss products, following guidelines are issued to all the undertakings marketing weight loss products in the market:

1. In order to substantiate weight loss claims, the undertaking advertising a weight loss product must possess and rely upon competent and reliable scientific evidence that is sufficient in quantity and quality based on standards generally accepted in the relevant scientific fields, when considered in light of the entire body of relevant and reliable scientific evidence, to substantiate that the representation is true. Competent



and reliable scientific evidence means tests, analyses, research, or studies that have been conducted and evaluated in an objective manner by qualified persons and are generally accepted in the profession to yield accurate and reliable results.

2. When it comes to weight loss claims, testing must be adequate and proper, and the undertakings marketing a weight loss product should pay particular attention to ensure that testing:
  - a. Is done properly and in a controlled environment to account for other variable. For example, testing that does not account for other factors such as changes in diet, exercise and lifestyle would not likely be adequate and proper.
  - b. Is conducted as objectively as possible.
  - c. Establishes that the results are not mere chance or a one-time effect, by demonstrating that the product causes the desired effect.
  - d. Is conducted before the claim is made.
3. In the Bench's view testing should be rigorous. For example, an independent, well-conducted, randomized, placebo-controlled, double blind study for a weight loss product to be considered adequate and proper.
4. To ensure that the results are reliable, the Bench recommends that undertakings use the services of reputable laboratories to design and conduct testing of the products.
5. The undertakings must remember to not include false or misleading representations to the public when marketing a weight loss product. These include representations that suggests that claims have been endorsed or approved by a reputable body or government agency, or have been substantiated in extensive clinical trials, where that is not the case.
6. Similarly, if the product is being marketed through the use of testimonials or is endorsed by influencers, the bench would expect them to be true, accurately conveyed and provided by actual customers who have no material connection with the undertaking advertising the product unless such a connection is properly disclosed.
7. In addition to the above, the undertaking advertising a weight loss product must include fit and appropriate disclaimers with respect to the product(s) including but not limited to about the side effects of its product on common people and people with certain medical conditions or illnesses, as well as varying results on consumers based on their diet, age, exercise and any other relevant aspects, in their marketing/advertising material.

Further, the Respondents are hereby directed to do the following:

To comply with the aforementioned guidelines.




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- b. All advertisements, promotional materials, or instructional manuals pertaining to the weight loss products; manufactured by the Undertakings whether electronic, printed or otherwise are to be modified to disclose and display (i) truthful claims (ii) omit untrue claims (iii) the presence of disclaimers about its side effects on certain consumers with medical conditions etc., on each pack for the consumer, within a period of 120 days starting from the date of this order.
- c. The disclosure with respect to the disclaimers, side effects and omission of untrue claims on marketing materials of weight loss products as mentioned at (b) above should be made with the use of bright/conspicuous colors distinct from the color of the packaging of the product and should be printed in clear, bold and legible size.
- d. During 120 days period given at (b) above, the Respondents will issue, four advertisements/public notices of A-4 size, to be published in at least two Urdu and two English newspapers of national circulation; making due disclosures to the public regarding the disclaimers and side effects of their products and the omission of untrue claims from their products.
- e. With respect to (d) above, "advertisements/public notices" may be published by the Respondents on an individual or collective basis. In case of Respondents which are members of the association, public notice may be given by the association (naming the members therein) and in case of non-members, a collective advertisement naming the Respondents therein. The text and content of such advertisement prior to publication shall be cleared by the office of the Registrar of the Commission.
- f. A compliance report with respect to implementation of the aforementioned directions must be filed by the Undertakings no later than 180 days from the date of this Order.
216. Continued violation and/or non-adherence to the directions of the Commission, by any of the Respondents may attract proceedings, in accordance with Section 38 of the Act.

217. Ordered accordingly

  
(Shaista Bano Gillani)  
Member

  
(Bushra Naz Malik)  
Member

