



**BEFORE THE  
COMPETITION COMMISSION OF PAKISTAN**

IN THE MATTER OF  
SHOW CAUSE NOTICE ISSUED TO

***M/S QASIM IRON WORKS***  
**FOR DECEPTIVE MARKETING PRACTICES**  
**(F. NO: 386/DADEX/OFT/CCP/19)**

Date(s) of hearing: 17-12-2020

Commission:

Ms. Shaista Bano Gilani  
**Member**

Ms. Bushra Naz Malik  
**Member**

Present on behalf of:

**M/s Dadex Eternit Limited**  
(Complainant)

Mr. Umer Malik  
Advocate

**M/s Qasim Iron Works**  
(Respondent)

Mr. Muhammad Qasim  
Chief Executive Officer



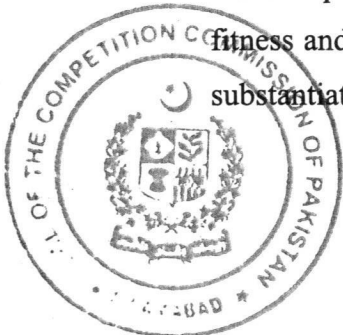
## ORDER

1. This Order shall dispose of proceedings initiated *vide* Show Cause Notice No. 55/2020 (hereinafter the 'SCN'), dated October 28, 2020, issued to M/s Qasim Iron Works (hereinafter the '**Respondent**') by the Competition Commission of Pakistan (hereinafter the '**Commission**') for, *prima facie* contravention of Section 10 of the Competition Act, 2010 (hereinafter the '**Act**').
2. In the instant matter, M/s Dadex Eternit Limited (hereinafter the '**Complainant**') had alleged that the Respondent was engaged in the practice of deceptive marketing within the meaning of Section 10 of the Act as it is disseminating false, untrue and misleading information regarding the Complainant's products through social media wherein the Respondent had claimed that the quality of the Complainant's products is inferior in comparison with the Respondent's similar products, in terms of their quality, efficacy and fitness, without providing any evidence to substantiate these claims. The Complainant had alleged that such actions of the Respondent had harmed the business interests of the Complainant.

### FACTUAL BACKGROUND

#### COMPLAINT, ENQUIRY AND SHOW CAUSE NOTICE

3. The Commission received a complaint against the Respondent on November 19, 2019, wherein the Complainant had asserted that it is a reputable Public Limited Company incorporated in the year 1959 and is engaged in the production of quality building material and has various offices in Pakistan with its centers established in Karachi, Hyderabad and Lahore etc. The Complainant claimed to have been equipped with state-of-the-art machinery and focused on quality and innovation in its business and customized solutions. The Complainant alleged that the Respondent had falsely claimed on various online platforms that its corrugated cement sheets branded as 'Dura Sheet' are superior to that of the Complainant's similar product branded as 'Dadex' in terms of quality, efficacy and fitness and while making these claims, the Respondent had not provided any evidence to substantiate its claims.



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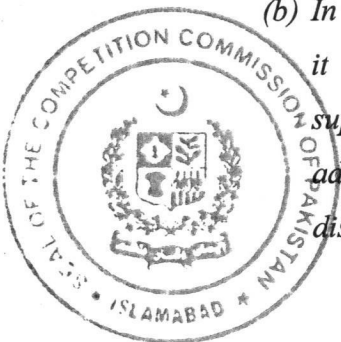
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4. The Complainant had alleged in its complaint that the Respondent had produced and shared deceptive videos against the Complainant on its website ([www.shayanqasimiron.com.pk](http://www.shayanqasimiron.com.pk)) as well as on different social media platforms such as Facebook, WhatsApp and YouTube etc. which portrayed the Complainant's cement sheets as inferior to similar product of the Respondent, and the Respondent's product was claimed to be of better quality than the Complainant's product. It was alleged that the protagonist in these videos had specifically named the Complainant and such deceptive claims on part of the Respondent had caused harm to the Complainant's business interests. Taking notice of these deceptive videos, the Complainant had served a legal notice to the Respondent on September 7, 2019. As a result of the said legal notice, the alleged video uploaded on YouTube was removed. The Complainant had further stated that the Respondent had replied to its legal notice in writing whereby it had denied any deceptive or misleading action on its part and had counter alleged that the Complainant was trying to create a monopoly in the relevant market.
5. After reviewing the contents of the Complaint and the video evidence provided by the Complainant, the Commission initiated an enquiry into the matter under Section 37(2) of the Act and constituted an Enquiry Committee for this purpose. The Enquiry Committee submitted its Enquiry Report on September 21, 2020 (hereinafter the 'ER') with the following findings, conclusions and recommendations:

*6.1 Based on the information available on record and the submissions made in the written replies, we the undersigned enquiry officers have reached the following conclusions:*

*(a) In view of the forgoing and in particular Paragraphs 5.8 to 5.10 of this report, prima facie, the overall net general impression of the advertisement of the Respondent regarding its product Dura Sheet is that its product is superior to that of the Complainant's product Dadex.*

*(b) In view of the forgoing and in particular Paragraphs 5.25 to 5.35 above, it appears that the Respondent by using the claim "Dura Sheet is superior to Dadex, in terms of quality, efficacy and fitness" in its advertisement campaign for its product Dura Sheet is, prima facie, disseminating false/misleading information to the consumers that is*



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*lacking a reasonable basis, related to the quality of goods in violation of Section 10 and in particular Section 10(2)(b) of the Act*

*(c) In view of the forgoing and in particular Paragraphs 5.36 to 5.40 above, it appears that the Respondent by using the comparative statement "Dura Sheet is superior to Dadex, in terms of quality, efficacy and fitness" in its advertisement campaign for its product Dura Sheet is, prima facie, false/misleading comparison of goods in the process of advertisement in violation of Section 10 and in particular Section 10(2)(c) of the Act.*

*(d) In view of the forgoing and in particular Paragraphs 5.41 to 5.46 above, it appears that the conduct of the Respondent i.e. making of claim "Dura Sheet is superior to Dadex, in terms of quality, efficacy and fitness" in its marketing campaign and suggest the consumer to prefer the Respondent's product over the Complainant one, prima facie, is capable of harming the business interest of the Complainant in violation of Section 10 and in particular Section 10(2)(a) of the Act.*

6.2 ....The conclusions of this enquiry report warrant initiation of proceedings under Section 30 of the Act against the Respondent i.e. M/s Qasim Iron Works in accordance with the law.

6. Subsequent to these findings of the ER, the Commission issued a SCN dated October 28, 2020, to the Respondent under Section 30 of the Act. The relevant portion of the SCN is reproduced as follows:

*"5. WHEREAS, in terms of the Enquiry Report in general and paragraphs 2.3 to 2.13 in particular, it has been alleged by the Complainant that Undertaking in order to promote its product Dura Sheet launched a deceptive campaign against the Complainant's product Dadex through various mediums like official website, official Facebook page, YouTube and WhatsApp, wherein a comparison has been made between the sheds, fiber cements sheets with the Complainant's product claiming it of low and inferior quality, consequently damaging the*



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*Complainant's reputation and goodwill which, prima facie constitutes violation of Section 10(1) of the Act; and*

6. **WHEREAS**, *in terms of the Enquiry Report in general and paragraphs 5.25 to 5.35 in particular, it appears that the Undertaking by using the claim "Dura Sheet is better in quality/character in terms of thickness & fitness" without reasonable basis which is also capable of harming the business interest of the Complainant, prima facie, in violation of Section 10(1) of the Act in general, read with sub-Section 10(2)(b) of the Act; and;*

7. **WHEREAS**, *in terms of the Enquiry Report in general and paragraphs 5.36 to 5.40 in particular, it appears that the Undertaking by using the claim "Dura Sheet is superior to Dadex, in terms of quality, efficacy and fitness", tried to mislead the public by unsubstantiated comparisons of its product Dura Sheet with Complainant's product Dadex, which appears to be, prima facie, in violation of Section 10(1) of the Act in general, read with sub-Section 10(2)(c) of the Act; and;*

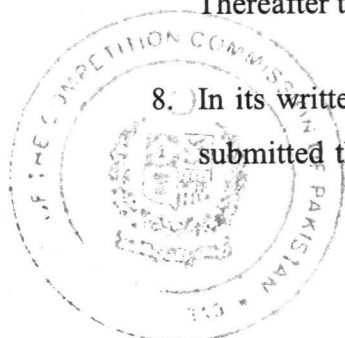
8. **WHEREAS**, *in terms of the Enquiry Report in general and paragraph 5.41 to 5.45 in particular, it appears that the Undertaking's conduct of distribution of false or misleading information suggesting the consumers to prefer the Undertaking's product over the Complainant's product, is capable of harming business interest of other undertakings and is in, prima facie, violation of Section 10(1) read with Section 10(2)(a) of the Act; and*

9. **WHEREAS**, *in view of the foregoing it appears that that the Undertaking's advertisement campaign is without a reasonable basis and tried to mislead the public with unsubstantiated claims and false comparison of its product Dura Sheet with Complainant's product Dadex, and is capable of harming the business interest of the Complainant which, prima facie, constitutes a violation of sub-Section (1) of Section 10 and in particular clauses (a), (b) & (c) of sub-Section (2) of Section 10 of the Act;"*

#### **WRITTEN REPLY AND ARGUMENTS**

7. Following the issuance of the SCN, the Respondent submitted its written reply to the SCN. Thereafter the Commission afforded an opportunity of hearing to the parties.

8. In its written reply to the SCN and oral arguments during the hearings, the Respondent submitted that it has been involved in selling color steel sheets, girders, T-irons, doors,



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main gates etc. since 1992. In 2016, it had registered itself with FBR as an importer of corrugated cement sheets branded as 'Dura Sheet'. It further claimed that before its status as importer, the Complainant was the only supplier of corrugated cement sheets under the brand name 'Dadex'.

9. The Respondent further asserted that its business is inherited one and is a sole proprietorship. Before 2017, the Respondent had been operating from two different branches in Karachi, however, in 2017 the business along with assets and liabilities was divided and a new separate entity by the name of 'M/s Shayan Qasim Iron' (hereinafter 'SQI') was created with a different identity from the Respondent. The Respondent further stated that SQI is involved in local purchase and distribution of the Respondent's imported corrugated cement sheets namely 'Dura Sheet' and has its own independent operating address.
10. The Respondent denied the allegations specified in the complaint regarding its official website and stated that '[www.shayanqasimiron.com.pk](http://www.shayanqasimiron.com.pk)', on which the alleged deceptive videos had been uploaded, was not its official website, rather '[www.duraroof.com.pk](http://www.duraroof.com.pk)' was its official website which was under construction at the time when the complaint was filed. The Respondent further stated that after receiving the legal notice dated September 7, 2019, from the Complainant, the Respondent had conducted an internal investigation into the matter, as a result of which he had found that a daily wagger employee was responsible for making the alleged deceptive videos during some project work and he had forwarded the said videos to the owner of SQI, namely Mr. Shayan Qasim. Subsequently, SQI had uploaded the said videos on its website i.e. [www.shayanqasimiron.com.pk](http://www.shayanqasimiron.com.pk), as well as its Facebook page, whereas the Respondent had no knowledge about it or any linkage to it whatsoever. As per the Respondent, upon finding that the said videos had been uploaded on various online platforms, he had ensured that the videos were removed from the website as well as the Facebook page of SQI, and had also taken measures to ensure that no such videos are uploaded or disseminated in the future. The Respondent stated that he had also served notice to its distributors, barring them from marketing or advertising any controversial or deceptive material in relation to the Complainant's product, a copy of which is available on the record.



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11. Furthermore, the Respondent denied the allegations levelled in the SCN and submitted that it had neither the intentions to harm the business interests of the Complainant nor did it engage in any activity which could have amounted to a violation of Section 10 of the Act. The Respondent further assured the Commission that it will comply with all of the Commission's directions and also submitted certain commitments on part of SQI. Finally, the Respondent requested the Commission to withdraw the SCN and dismiss the complaint.

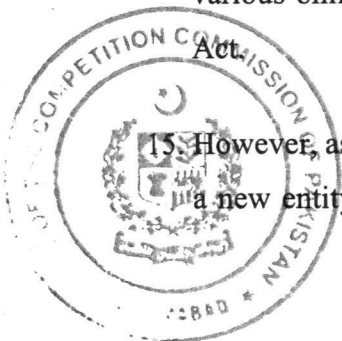
### ANALYSIS AND DECISION

12. Arguments of the parties were heard and record of the case was perused.

13. Keeping in view the oral and written submissions made by the parties, the material/evidence placed on the record and the applicable law in the matter, the following issue is framed for the purpose of deliberation and determination:

i. *Whether the Respondent has resorted to deceptive marketing practices in violation of Section 10 of the Act?*

14. Having carefully perused the allegedly deceptive videos submitted before us by the Complainant as well as the publicly available specifications of the corrugated cement sheets marketed by the Complainant and the Respondent respectively, we are in agreement with the ER's conclusion that the overall net general impression generated by the videos in question regarding the Respondent's product Dura Sheet was that its product was superior to that of the Complainant's product Dadex. Furthermore, we also agree with the ER's other conclusions that the dissemination of the videos in question had amounted to distribution of false and misleading information to the consumers without a reasonable basis and also that the said videos involved false and misleading comparison of goods in the process of advertisement which was capable of harming the business interests of the Complainant. We are therefore of the view that the distribution and dissemination of the said videos on various online platforms constituted deceptive marketing as defined in Section 10 of the



15. However, as per the record available before us, the Respondent's business was divided and a new entity i.e. SQI was created in 2017, whereby the administrative rights, assets and



liabilities of SQI were transferred to Mr. Shayan Qasim (who happened to be the son of Mr. Muhammad Qasim, who is the owner of the Respondent undertaking). The aforesaid fact is established by the Deed of Separation of Business and the Tax Registration Certificate submitted by the Respondent as evidence. It is claimed by the Respondent that SQI is a distributor of the Respondent and is engaged in the sale of the Respondent's product namely Dura Sheet.

16. The record also reveals that the Complainant had served the Respondent with a legal notice dated September 7, 2019. As per the assertions of the Respondent, it had initiated an internal investigation pursuant to the said legal notice, which had revealed that a daily wage worker had produced the alleged deceptive videos and shared them with Mr. Shayan Qasim (owner of SQI) who had then uploaded the same on the official website of his business i.e. [www.shayanqasimiron.com.pk](http://www.shayanqasimiron.com.pk), as well as its Facebook page. However, the said content was removed from SQI's website and Facebook page after the intervention of the Respondent's owner namely Mr. Muhammad Qasim. Subsequently, a letter was issued by the Respondent to its distributors prohibiting them from any such activity in the future.

17. There is nothing on the record to conclusively establish that the Respondent itself had produced or disseminated the deceptive videos in question. The URL of the official website of the Respondent is [www.durarroof.com.pk](http://www.durarroof.com.pk), whereas the deceptive videos were shared on SQI's website which has a different URL i.e. [www.shayanqasimiron.com.pk](http://www.shayanqasimiron.com.pk). Furthermore, the Facebook page on which the video was shared was that of SQI whereas the YouTube channel on which the video was shared was of one Mr. Ali Ahsan who is claimed to be unknown to both the Complainant as well as the Respondent. The Respondent claims that Mr. Ali Ahsan is neither his employee nor a distributor, and his claim has not been conclusively rebutted by the Enquiry Committee or the Complainant. Moreover, the Complainant has failed to conclusively prove that the alleged WhatsApp groups in which the deceptive videos were shared were created and managed by the Respondent. It appears from the record as well as the submissions of the parties that while the deceptive videos were indeed disseminated on online platforms, the said dissemination was carried out by the distributor of the Respondent, namely SQI.



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18. However, we are of the view that although the Respondent is not directly involved in the production and dissemination of the deceptive videos, it failed to keep a check on the activities of its distributor, namely SQI, which was clearly involved in deceptive marketing of the Respondent's products. In its recent decision *in the matter of complaint filed by Kennol Performance Oil against M/s Kennol Petroleum (Pvt.) Limited and others (Case No. 344/KENNOL/OFT/CCP/2019)*, the Commission has held as follows:

*'...the Respondents cannot be allowed to get away with violation of law merely on the pretext that the alleged action is not carried out by themselves, but rather by one of their distributor... undertakings in the market should be vigilant and considerate of their distributors or employees acting on their behalf. They cannot be allowed to resort to any sort of argument which shifts their burden on others and help them to get away. Undertakings must ensure proper training and procedures for their employees and distributors in order to make them aware of what may constitute violation of competition laws and that distributors or employees do not transgress from their domains.'*

19. Applying the aforementioned principle to the present case, the Respondent had a duty to remain vigilant regarding the activities of the distributors of its products, which are essentially acting on its behalf as its representatives and agents. The Respondent was clearly negligent on this account and only acted once the Complainant had served the legal notice dated September 7, 2019. The Respondent failed to ensure proper training and establish procedures for its distributors in order to make them aware of what may constitute violation of competition laws and to ensure that its distributors do not transgress the law. Rather the Respondent has tried to get away with violation of Section 10 of the Act which has been established in the present case merely on the pretext that the said violation has not been carried out by it, but rather by one of its distributors.

20. We are, however, also cognizant that the Respondent had promptly acted after receiving the Complainant's legal notice and had initiated an internal inquiry and ensured removal of the deceptive videos from the platforms of SQI. The Respondent had also issued a notice to its distributors on September 25, 2019 for restraining such practices in the future. Furthermore, on February 18, 2021, the Respondent had also submitted certain commitments before the Commission dated September 17, 2019 which it had obtained from SQI wherein the Respondent had asserted its supervisory role as the principal party



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responsible for ensuring that its distributors will not market or advertise its products without prior written authorization from the Respondent.

21. Keeping in view the above mentioned conduct of the Respondent, we are inclined to take a lenient view in the instant matter and not impose any penalty on the Respondent in terms of Section 38 of the Act. However, we are inclined to pass the following directions to the Respondent in terms of Section 31(1)(c)(i) of the Act:

- i) The Respondent shall, within 7 days from the passing of this order, publish/uploaded on the home page of its website (www.durarooof.com.pk) a notice, whereby it shall retract the false and misleading assertions which were made in relation to the product of the Complainant in the deceptive videos disseminated by the Respondent's distributor namely M/s Shayan Qasim Iron, and shall submit a compliance report in this regard before the Registrar of the Commission within 7 days of publishing the same. The notice shall be published prominently so that it is visible to all visitors to the website and shall remain visible for a period for not less than 90 days from the date of its publication/uploading.
- ii) The Respondent shall refrain from producing and/or disseminating any information in the future through any means which may constitute violation of Section 10 of the Act.
- iii) The Respondent shall obtain written commitments from all its present and future (if any) distributors and agents which are involved in the sale and marketing of the Respondent's products, stating that they will not produce and/or disseminate any information in relation to the Respondent's products which may constitute violation of Section 10 of the Act, and that in case they failed to abide by the said commitments their distributorships will be cancelled by the Respondent. The Respondent shall submit before the Registrar of the Commission a list of all its present (as on the date of passing of this order) distributors and agents along with their written commitments within 45 days of the passing of this order.
- iv) The Respondent shall ensure proper training and establish procedures for its distributors and agents in order to make them aware of what may constitute violation of competition laws.



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22. In case the Respondent fails to abide by the aforementioned directions and timelines, the Commission shall proceed against it in exercise of its powers under Section 38(1)(b) of the Act.

23. The proceedings initiated vide Show Cause Notice No. 55 of 2020 dated October 28, 2020 are hereby disposed of.



(Ms. Shaista Bano Gilani)  
*Member*



(Ms. Bushra Naz Malik)  
*Member*



ISLAMABAD, THE 13<sup>th</sup> DAY OF SEPTEMBER, 2021