



BEFORE THE  
COMPETITION COMMISSION OF PAKISTAN  
IN THE MATTER OF

COMPLAINT FILED BY M/S NATIONAL FOODS LIMITED AGAINST M/S  
SHANGRILA (PRIVATE) LIMITED  
(FILE NO. 108/SHANGRILA/COMP/2012)

Date(s) of Hearing: 29<sup>th</sup> November 2013  
24<sup>th</sup> February 2015

Present: Mr. Mueen Batlay  
Member

Dr. Shehzad Ansar  
Member

Mr. Ikram Ul Haque Qureshi  
Member

On behalf of M/s National Foods Limited Mr. Adnan Malik, GM (Marketing)

M/s Shangrila (Private) Limited

Mr. Hasan Madviwalla and Miss Sidra Jameel  
Advocates of Mandviwalla & Zafar



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Acting Secretary  
Competition Commission of Pakistan  
Government of Pakistan  
Islamabad

## ORDER

1. This order disposes of proceedings initiated under Section 30 of the Competition Act, 2010 (hereinafter the 'Act') vide Show Cause Notice No. 20/2013 dated 01<sup>st</sup> November, 2013 (hereinafter the 'SCN') issued to M/s. Shangrila Private Limited (hereinafter the 'Respondent') on the complaint filed by M/s National Foods Limited (hereinafter the 'Complainant').
2. The issue in this case was whether the claim 'Shangrila is Pakistan's No. 1 Tomato Ketchup' made by Respondent in the marketing campaign lacks reasonable basis regarding character, suitability for use, or quality of goods and is in violation of Section 10 and in particular Section 10 (2)(a) & (b) of the Act.

### UNDERTAKING

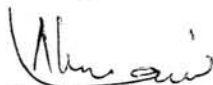
3. The Complainant is a company incorporated under the Companies Ordinance, 1984, and is engaged in the business of manufacturing Tomato Ketchup along with a range of other food products, and is an undertaking as defined under clause (q) of subsection (1) of Section 2 of the Act.
4. Respondent is a company incorporate under the Companies Ordinance, 1984, and is engaged in the business of manufacturing Tomato Ketchup along with a range of other food products, and is an undertaking as defined under clause (q) of subsection (1) of Section 2 of the Act.

### BACKGROUND

#### *Enquiry, Show Cause Notice and Response*

5. The Complainant filed a complaint dated 11<sup>th</sup> September, 2012, with the Competition Commission of Pakistan (hereinafter the 'Commission') against the Respondent wherein it was alleged that the Respondent claimed in its various marketing campaigns of 'Shangrila Ketchup' that their ketchup is 'No 1 in Pakistan'. It was also alleged in the complaint that the claim of Respondent is prominently displayed on all of its advertisements and lacks a reasonable basis relating to character, suitability for use or quality of goods, in violation of Section 10 of the Act, and that the marketing campaign is capable of harming the business interest of the Complainant.

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6. The Commission on 06<sup>th</sup> November 2012 initiated an Enquiry under Section 37(2) of the Act on the complaint. The Enquiry was concluded vide Enquiry Report dated 13<sup>th</sup> August 2013. In the Enquiry Report, while taking into account the documents submitted by Respondent and Complainant, concluded that the overall net impression of the marketing campaign advertisement of Shangrila is that 'Shangrila is Pakistan's No 1 Tomato Ketchup', whereas the actual market share of the Complainant was higher than that of the Respondent. Complainant had a market volume share of 49.2% and value share of 50.8% whereas Respondent had the market volume share of 20.7% and value share of 20.1% at the time of the marketing campaign. It was also noted that Respondent had made "Brand of the Year Award" the basis for authenticating its claim of being No. 1 in Pakistan. However, upon enquiry, Brands Foundation has clarified that their awards never empower the receiver to make a claim of being No. 1 in Pakistan.
7. The Commission, after considering the conclusions and recommendations of the Enquiry Report, issued a SCN to the Respondent for *prima facie* violations of Section 10 in general, and in particular Section 10(2)(a) & (b) of the Act.
8. In response to the SCN, the Respondent filed their written reply vide letter dated 18<sup>th</sup> November 2013, which is summarized as follows:

(a) The marketing campaign was addressed only to the customers of the Respondent and expressed gratitude towards them for giving their product recognition in the Pakistani market; hence the question of the alleged marketing campaign causing harm to the business of the Complainant does not arise.

(b) The advertisement was conveying an "Eid Mubarik" message to 'our consumers'. The No. 1 claim is not the only claim and other statements such as gratitude to our customers must be taken into account. As far as our consumers are concerned, we may be No. 1 to our consumers and we are not claiming to be No. 1 in Pakistan.

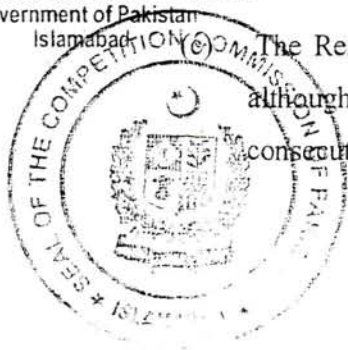
The Respondent has not based its claim on the "Brand of the Year" award, although we have been awarded the "Brand of the Year Award" for three consecutive years i.e. 2008, 2009 and 2010.

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HEARING AND COMMITMENT

9. Hearings in the matter were held on 29<sup>th</sup> November 2013 and February 24<sup>th</sup>, 2015. The hearings were attended by Mr. Adnan Malik, General Manager (Marketing) on behalf of the Complainant. Mr. Hasan Macdviwalla and Miss Sidra Jameel Advocates of Mandviwalla & Zafar, Legal Consultants and Advocates, appeared on behalf of the Respondent.
10. The representative of the Complainant argued before the Commission that, in terms of clear findings of the Enquiry Report and the Retail Audit Survey conducted by A.C. Neilson, the Complainant had major market share while the market share of Respondent was quite low. It was also submitted that even the Brands Foundation has not allowed Respondent to use 'No. 1' tagline. On the other hand the Counsel appearing on behalf of the Respondent reiterated their stance taken in their written submissions submitted before the Commission on 18<sup>th</sup> November 2013.
11. Regarding the 'reasonable basis' for making any claim in the advertisement, the Commission in one of its earlier Orders i.e. In the matter of Procter and Gamble reported as 2010 CLD 1695 has observed that:

*"The concept of having a reasonable basis is an established concept in USA and was introduced after much deliberations and public comments through Policy Statement Regarding Advertising Substantiation. It provides that, the advertiser must have had some recognizable substantiation for the claims made prior to making it in an advertisement."*

12. In view of the above, we are of the view that the findings of the Enquiry Report are well reasoned as no reasonable basis for making the claim i.e. 'Shangrilla is Pakistan's No 1 Tomato Ketchup' has been placed before us. Further, the submissions of the Respondents that the advertisement was aimed at their customers and was not meant for any other consumers is not well reasoned and therefore, unjustified as well.

It is also worth mentioning that the Respondent itself has submitted that their claim i.e. 'No. 1 in Pakistan is not premised on the "Brand of the Year" award and the Brands Foundation has also taken the stance that they do not grant any certificate to any undertaking to claim No. 1 in the market. Therefore, the claim 'Shangrilla is

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Pakistan's No 1 Tomato Ketchup' does lack reasonable basis and is misleading and false and in violation of Section 10(2)(b) of the Act.

14. Further the Complainant has also submitted that information which shows a certain dip in their market share subsequent to the launch of the marketing campaign by the Respondent. On the other hand, the Respondent has denied it but has not submitted anything before us to the contrary. Further, in light of the above, the claim which is deceptive in terms of Section 10(2)(b) of the Act and, in presence of the reduction in market share of the Complainant and increase in market share of the Respondent, though minimal, is sufficient to establish a violation of Section 10(2)(a) of the Act.

15. Notwithstanding the above, the Respondent filed an application for acceptance of the commitment under Regulation 30 of the Competition Commission (General Enforcement) Regulations, 2007 and disposal of the show cause notice. The commitments tendered vide the aforesaid application are as follows:

- (a) *That the Respondent will not use marketing campaign which is the subject matter of the Show Cause Notice.*
- (b) *That all future marketing campaigns will be in compliance with the competition law.*

16. The Commission, during the hearing held on 29<sup>th</sup> November 2013, inquired from the representative of the Complainant as to whether they have any reservations to the commitments submitted by the Respondent. The representative of the Complainant submitted that they have no objection on the commitments as long as the Respondent do not use the advertisement in question and undertakes not to indulge itself in deceptive marketing campaign in violation of Section 10 of the Act in the future. On the hearing held on 24<sup>th</sup> February 2015, the Representative of the Complainant also expressed his appreciation for the fact that there have been no violations of the commitments made by the Respondents since the commitments were made, however stated that the Respondent should be penalized so as to create a deterrence for indulging in deceptive marketing practices.

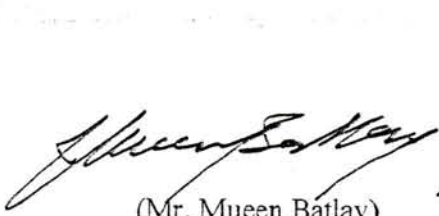
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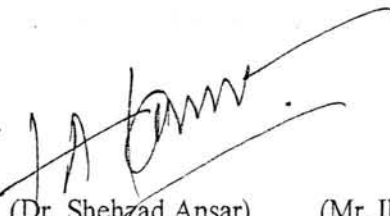
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17. Although, in terms of the commitments made by the Respondent, the concerns of the Commission with respect to deceptive marketing have been addressed, however, the Respondent is reprimanded not to indulge in deceptive marketing practices in future as it shall entail penal consequences. Moreover the Respondent shall continue to refrain from making the subject claims in the present form in their advertisements or marketing campaigns.
18. Further, the Respondent is directed to file the undertaking along with the compliance report within thirty (30) days from the date of receipt of the Order with the Registrar of the Commission, stating that it has stopped its marketing campaign under review and has also withdrawn all the materials regarding the marketing campaign under review from the public domain, and in future the Respondent will ensure compliance with the provisions of the Act.
19. In terms of the commitment made by the Respondent's counsel and the statement made and commitments filed during the hearing, we, therefore, deem it appropriate to dispose of the show cause notice no. 20/2013 issued to the Respondent, accordingly.



(Mr. Mueen Batlay)  
Member



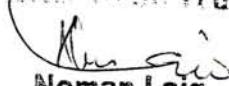
(Dr. Shehzad Ansari)  
Member



(Mr. Ikram Ul Haque Qureshi)  
Member

Islamabad the February 26, 2015

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