



BEFORE THE
COMPETITION COMMISSION OF PAKISTAN

IN THE MATTER OF
SHOW CAUSE NOTICES ISSUED TO

M/S SK FARMS AND M/S HEALTH FIRST
Deceptive Marketing Practices

ON COMPLAINT FILED BY
M/S PAKISTAN POULTRY ASSOCIATION

(F. NO: F. NO: 222/OFT/PPA/CCP/16)

Date of hearing:

17-01-2019

Commission:

Dr. Muhammad Saleem
Member

Dr. Shahzad Ansar
Member

On Special Notice under Section 53
of the Competition Act, 2010:

Mr. Noman A. Farooqi
Chief Prosecutor General

Present on behalf of:

M/s Pakistan Poultry Association

Ali Kabir Shah, Advocate
Ali & Associates

Mr. Khali Saleem Malik
Ex Chairman

Muhammad Irfan Maken
Secretary

Mr. Khurram Qureshi



M/S SK Farm
M/S Health First

ORDER

1. This shall disposed of the proceedings initiated *vide* Show Cause Notice Nos. 01 & 02 of 2019 dated January 1, 2019 (the 'SCNs'), issued to M/s SK Farms and M/s Health First (the 'Respondents') by the Competition Commission of Pakistan (the 'Commission') for, *prima facie*, contravention of Sections 10(2)(a) and 10(2)(b) read with Section 10(1) of the Competition Act, 2010 (the 'Act').
2. The Commission received a Complaint from M/s Pakistan Poultry Association (hereinafter the 'PPA' or 'Complainant') wherein it was alleged that Respondents have advertised their products by making several misleading claims without any reasonable basis, which amounts to v. The Commission initiated an enquiry into the matter which was concluded *vide* Enquiry Report dated 02nd May 2018 (the 'Enquiry Report').

FACTUAL BACKGROUND

A. COMPLAINT, ENQUIRY AND SHOW CAUSE NOTICE:

3. The Complainant in its complaint alleged that the Respondents have made certain claims *vis-à-vis* their products i.e. a) Hormone Free, b) Anti-biotic free c) the chickens are fed the freshest and purest ingredients d) 100% vegetarian fed/roam free in organic vegetable fields, find food for themselves e) Fed only natural ingredients f) free range chicken and g) sheds 3-4 times larger than those used by commercial farmers, which appears to be an unsubstantiated in comparison with the Respondent's competing product, and thus *prima facie* constitutes a false or misleading comparison of goods in the process of advertising within the meaning and scope of Section 10(2) (c) of the Act, in violation of Section 10(1) of the Act.
4. The Commission initiated the enquiry and directed the Enquiry Committee to conduct a factfinding enquiry as to whether the Respondents by making the claims have contravened the aforesaid provisions of Section 10 of the Act. The Enquiry Report concluded that out of the six allegations made in the Complaint, the Respondents have substantiated five claims and only one claim i.e. i.e. 'Respondents' products are hormone free' stands unsubstantiated and is in *prima facie* violation of clauses (a) & (c) of subsection (2) read with subsection (1) of Section 10 of the Act.



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5. After considering the *prima facie* findings/conclusions and recommendations of the Enquiry Report, the proceedings under Section 30 of the Act were initiated against the Respondents by issuing the SCNs, which in its relevant parts is reproduced herein below:

“4. *WHEREAS, in terms of the Enquiry Report in general and paragraphs 2.1 to 2.13, it has been alleged by the Complainant that the Undertaking has made a claim stating that its products are a) Hormone Free, b) Anti-biotic free c) The chickens are fed the freshest and purest ingredients d) 100% vegetarian fed/roam free in organic vegetable fields, find food for themselves e) Fed only natural ingredients f) free range chicken and g) sheds 3-4 times larger than those used by commercial farmers, which appears to be an unsubstantiated comparison with the Respondent’s competing product, and thus prima facie constitutes a false or misleading comparison of goods in the process of advertising within the meaning and scope of Section 10(2) (c) of the Act, in violation of Section 10(1) of the Act; and*

5. *WHEREAS, in terms of the Enquiry Report in general and paragraphs 6.39 to 6.43 Complainant’s product, it does create a bad name for the other players in the market indirectly by implying the use of hormones by the industry, which is in violation of Section 10(2) (c) of the Act, in violation of Section 10(1) of the Act; and*

6. *WHEREAS, in terms of the Enquiry Report in general and paragraphs 6.44 to 6.63 in particular, it appears that the Undertaking’s claims (b) to (g) are not found violating Section 10(1) of the Act in terms of Section 10(2)(c) of the Act; and*

7. *WHEREAS, in terms of the Enquiry Report in general and paragraphs 6.73 to 6.81 in particular, the Undertaking claim of ‘Hormone Free’, is capable of harming the business interests of the other undertakings, within the meaning and scope of Section 10(2) (a) of the Act, in violation of Section 10(1) of the Act; and”*



WRITTEN REPLIES & REJOINDER:

The Respondents filed a similar written reply to the SCNs. The submissions made in their written reply are summarized as follows:

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- (a). The business carried out by the Respondents was solely aimed at providing friends and family safe and healthy chicken. No marketing except by word of mouth or a few posts on facebook was carried out.
- (b). The Enquiry Committee in Paras 6.16 to 6.19, 6.22 to 6.30, 6.33 to 6.35 has exonerated the Respondents from the alleged violations by the Complainant.
- (c). As far as the claims of Respondents' chicken being antibiotic free, free range and fed all natural ingredients are concerned, the same has been substantiated by the Respondents through proper evidence.
- (d). Some allegations i.e. "the chickens are fed the freshest and ourest ingredients" and "Sheds 3-4 times larger than those used by commercial farmers" have been falsely attributed to the Respondents. This fact has also been verified and confirmed by the Enquiry Committee in the Enquiry Reports' paragraphs No. 6.20 - 6.21 and 6.36 - 6.37.
- (e). Health First closed down its operation in August 2017 and ceased to be operational in Karachi. This fact has also been verified and confirmed by the Enquiry Report in Paragraphs 6.78 thereof.
- (f). The claims and statements made in promotional materials regarding the chickens reared by the Respondent and sold by Health First being "harmone free" are true and correct. In fact it is a well known documented fact in the poultry industry of Pakistan that the chickens are indeed harmone free but the general public harbours the misconception that good sized chickens are a result of harmones whereas the truth of the matter is that the nutrition provided to the chickens is what results in excellent produce.

The statements made in relation to the harmone free nature of the chickens were to allay the concerns in the minds of concumers and to clarify the wrong perception in the minds of the consumers. The statemetns were not aimed at casting asperstions on any other player in the market. The statements are not capable of harming the business interest of any undertaking.



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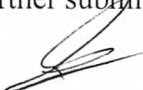
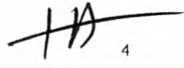
7. The written replies filed by the Respondents were provided to the Complainant. However, no rejoinder was filed by the Complainant.

C. HEARINGS IN THE PROCEEDINGS UNDER SECTION 30 OF THE ACT:

8. Hearing in the matter was held on 17th January 2019, Mr. Ali Kabir Shah, Ali & Associate along with Mr. Irfan Maken Secretary, PPA and Mr. Khalid Saleem Malik, Ex-Chairman, PPA, appeared on behalf of the Complainant. Mr. Khurram Qureshi put up an appearance on behalf of the Respondents. Mr. Noman A. Farooqi, Chief Prosecutor General was present on special notice under Section 53 of the Act. Mr. Farooqi briefed the Bench about the Complaint, Enquiry, and the issuance of Show Cause Notice under the instant proceedings.
9. Mr. Ali Kabir Shah, appearing on behalf of the Complainant acknowledged the fact that the Respondents are no more in business. It was also submitted by him that the chicken produced in Pakistan are hormone free. However, he asserted that by making the claim, it can be inferred that other competing poultry farmers' chicken are not hormone free. HE also submitted photocopies of few articles and submitted that Pakistan is protein deficient country and USA, Australia and South Africa have taken up the issue and banned the no hormones label marketing.
10. Mr. Khurram Qureshi appearing on behalf of the Respondents stated that they have stopped marketing two years ago and their intention was not to deceive the consumers. Their statement regarding 'hormone free chicken' was true and a statement which is true can't be deceptive. He further, submitted that the truthfulness of the statement by the Respondents has also been acknowledged by the Complainant during his submissions. He further stated that Commission may consider issuance of guidelines for marketing poultry products in future.

11. Mr. Farooqi present on special notice started his submissions by making reference to the principle of administration of justice i.e. 'Suspicion, however, strong it may be cannot take place of a proof'. The Party has to prove their case / allegations through cogent and un-rebutted allegations. Reference and reliance is placed on **Yasin Alias Ghulam Mustafa vs. the State**, reported as **2008 SCMR 336** and **Inamul Haq vs. the State**, reported as **1981 SCMR 152**. HE further submitted that



the Articles submitted by the Complainant in fact further strengthens the argument made by the Respondents that the poultry produced is free of hormones. He referred to the judgement of the Commission **in the matter of Show Cause Notice issued to China Mobile Pak Limited and Messrs Pakistan Telecom Mobile Limited,** reported as **2010 CLD 1478**, wherein it has been held as follows:

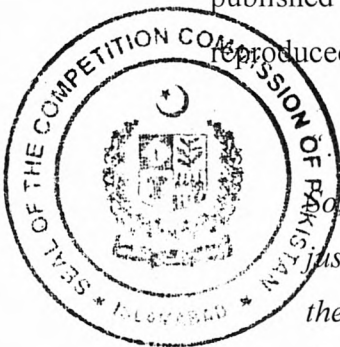
False information: "oral or written statements or representations that are: (a) contrary to the truth or fact and not in accordance with reality or actuality; (b) usually implied either conscious wrong or culpable negligence, (c) has a stricter and stronger connotation, and (d) is not readily open to interpretation...."

While,

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

He submitted that on the standard of the above referred Order of the Commission, the information disseminated by the Respondents is neither false nor misleading. Rather, the same is dissemination of a true fact which has been endorsed not only the Complainant, but is also corroborated by the Article of Dr. Waqar Azeem published in the *daily Nation* dated 14th January 2019, the relevant excerpts are

reproduced herein below:



... now if chicken be given growth hormone, it has to be injected just like insulin. Researchers indicate that to get the desired results the birds would require growth hormone injection several times a day. Administering injections several times a day is rather impossible as most poultry houses have the capacity for 20,000

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birds or more and there is no way to catch every bird and administer hormones to them several times a day. Using growth hormones to force chicken to grow quickly would clearly cause leg problems and early mortality.

...

Behind this rapid growth of chicken there are three main reasons and none of them has anything to do with hormones.

First, as already mentioned, is the genetic ability to grow to the physiological limit set by primary breeders by selecting best birds for performance, growth and other favourable traits. Due to the short generation interval, scientists have achieved the milestone to reduce to one day the year it took to achieve specified weight gain target.

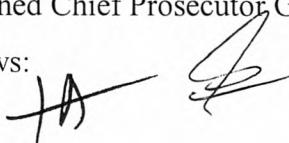
The third reason for this rapid growth is the better understanding of the environment required for optimal growth of the birds and maximum genetic potential through proper nutrition. These environmental factors are the required temperature, air quality, lighting, feeding, drinking, space and very importantly ventilation for optimal performance.

When all these three factors – superior genetics, exact high quality nutrition and right environment – combine, chicken does not require or benefit from growth hormone.

12. He summed up his submissions by stating that the Complainant has failed to make out a case of deceptive marketing practices in violation of Section 10 of the Act, hence, the SCNs may be disposed off accordingly.

ANALYSIS & DECISION

On careful review of the Enquiry Report, the SCN and the submissions made by the Respondent and the Learned Chief Prosecutor General, the substantive issue in the instant matter is as follows:



Whether the Respondents have violated the provisions of Section 10 of the Act, by resorting to deceptive marketing practices through making claim of 'Hormone Free Poultry'?

14. The basic and fundamental question, which needs to be addressed under this particular matter is that the claims made by the Respondents were false or misleading and whether the claims have been substantiated, if yes, to what extent?. We are of the view that the advertiser must have some recognizable substantiation for the claims made prior to making it in an advertisement and in this regard, he had rightly placed reliance on Order of Commission **in the matter of Show Cause Notice issued to M/s Green Field Developers (Pvt.) Limited**, reported as **2018 CLD 404**; and Order of the Commission **in the matter of Show Cause Notice issued to M/s Eden Builders (Pvt.) Limited**, reported as **2018 CLD 482**.
15. From the material placed before us and the submissions made, it needs to be appreciated that, it is the duty of the Complainant approaching the Commission to provide prima facie evidence along with the Complaint in order to prove that the allegations made against any Respondent have some basis. Further, in the instant matter, it is on the record that the Respondents have closed down their business in Karachi in August 2017. The Enquiry Report also concluded that out of six (6) allegations against the Respondents only one is made out on prima facie basis i.e. the poultry products are hormone free.
16. It is interesting to note that in the instant matter, the Complainant has itself acknowledged the fact that no hormones are used in the poultry breeding process and in face the statement made by the Respondents is true. Further, in almost all the articles submitted by the Complainant nowhere has it been mentioned that hormones are injected in the poultry for their growth. In the article of Dr. Waqar Azeem published in the daily Nation on 14th January 2019, it is clearly mentioned that in poultry farming no hormones are used for growth purposes. Rather, it is the environment which is available in the poultry farms which facilitates the growth of the poultry.
- We disagree with the submissions made by the Complainant that the use of claim 'Hormone Free' by the Respondents would make the consumers think that the competing poultry farmers use hormones in the poultry farming. In this regard, we are in agreement with the submissions made by the Chief Prosecutor General that **'Suspicion, however, strong it may be, cannot take place of a proof'** and also concur with the judgments cited in this regard. We are of the firm opinion that no hormones



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are used in the process of poultry farming as has been highlighted in the Dr. Waqar Azeem's article. Further, the same fact has also been acknowledged in the news item provided by the Complainant i.e. the Sydney Morning Herald dated 8th October 2011. The news article of Bizzcommunity dated 15th March 2017 under the title Deceptive Food Labeling damages consumer trust, only talks about deceptive labelling in Dairy Industry and meat. There is no mention of poultry in it. Further, the USDA meat and poultry labelling terms provided by the complainant also highlights and permits the use of 'no hormones added' in juxtaposition of 'federal regulations prohibits the use of hormones'.

18. From the above, it is clear that the claim used by the Respondents i.e. 'hormones free' is not deceptive in terms of clause (b) of subsection (2) of Section 10 of the Act and is also not in violation of clause (c) of subsection (2) of Section 10 of the Act; as no comparison is made by the Respondent in the process of marketing or advertising.

CONCLUSION

19. Based on the above discussions and analysis, we are of the firm opinion that no violation is made out in the instant matter vis-à-vis clause (b) & (c) of subsection (2) of Section 10 of the Act, therefore, we are of the opinion that no determination under clause (a) of subsection (2) of Section 10 of the Act can be made.
20. In terms of the above, the Show Cause Notices issued to the Respondents are hereby set aside and the matter is disposed off.

m. Jabir

Dr. Muhammad Saleem
Member

Dr. Shahzad Ansari

Dr. Shahzad Ansari
Member



Islamabad the 26th day of March 2019.