

COMPETITION COMMISSION OF PAKISTAN

ENQUIRY REPORT

(Under the provisions of Section 37(2) of the Competition Act, 2010)

**IN THE MATTER OF COMPLAINT FILED BY M/S COLGATE-PALMOLIVE
PAKISTAN PRIVATE LIMITED AGAINST M/S 3M PAKISTAN PRIVATE
LIMITED**

FOR

DECEPTIVE MARKETING PRACTICES

BY

 
RIAZ HUSSAIN & AMIN AKBAR

DATED: May 23, 2024

I. BACKGROUND:

- 1.1 The Competition Commission of Pakistan (the “**Commission**”) received a complaint dated October 11, 2021, filed by M/s. Colgate-Palmolive Pakistan Private Limited (the “**Complainant**”) against M/s. 3M Pakistan Private Limited (the “**Respondent**”) for the alleged violation of Section 10 of the Competition Act, 2010 (the “**Act**”), i.e., Deceptive Marketing Practices.
- 1.2 It was alleged in the complaint that the Respondent initiated a Below-the-Line marketing campaign in various cities of Pakistan wherein it made deceptive claims regarding the Complainant’s product. It was alleged that the Respondent claimed that after a 20-minute wash test, the product of the Complainant, i.e., Max Scrub (**MS**) disintegrated/wore out badly as compared to the Respondent’s product, i.e., Scotch Brite (**SB**). The Complainant alleged that the claim of the Respondent lacks reasonable basis, therefore, it attracts the provisions of Section 10 of the Act.
- 1.3 After attaining the preliminary facts, the Competent Authority, on January 20, 2022, initiated an enquiry in accordance with subsection (2) of Section 37 of the Act by appointing Mr. Usman Ahmed, Deputy Director (OFT) and Mr. Riaz Hussain, Assistant Director (OFT) as enquiry officers. However, during enquiry, the Enquiry Committee was reconstituted by the Competent Authority and the following officers were appointed as enquiry officers; Ms. Urooj Azeem Awan, Deputy Director (OFT) and Mr. Riaz Hussain, Deputy Director (OFT).
- 1.4 Following the resignation of Ms. Urooj Azeem Awan, the Enquiry Committee was once again reconstituted. To undertake the enquiry, the Competent Authority appointed the following officers as enquiry officers: Mr. Riaz Hussain, Deputy Director (OFT), and Mr. Amin Akbar, Assistant Director (OFT), (collectively the “**Enquiry Committee**”). The Enquiry Committee was directed to conduct the enquiry on the issues raised in the complaint and to submit the enquiry report by giving its findings and recommendations, *inter alia*, on the following;
 - I. *Whether the Respondent engaged in false or misleading comparison of goods in the process of advertising, prima facie, in violation of Section 10 (2) (c) of the Act?*
 - II. *Whether the Respondent is disseminating false or misleading information to consumers, including the distribution of information lacking a reasonable basis, related to the place of production, properties, suitability for use, and quality of goods, prima facie, in violation of Section 10 (2) (b) of the Act?*
 - III. *Whether the conduct of the Respondent is capable of harming the business interest of other undertakings, prima facie, in violation of Section 10 (2) (a) of the Act?*
 - IV. *Whether there is a spillover effect of the conduct of the Respondent?*

2. THE COMPLAINT:


- 2.1 The Complainant submitted that the Respondent initiated a Below-the-Line (BTL) marketing campaign in various cities and different markets which directly refer to the Complainant’s product MS. That the Respondent has been engaged in manufacturing and selling of various

products including washing scrubs namely 'Scotch Brite'. The Complainant and the Respondent are direct competitors in the relevant market

- 2.2 It was alleged in the complaint that the Respondent has made a false/misleading comparison of MS with SB through a video. The Complainant alleged that the Respondent has conducted a dishwashing demo at various places of different cities wherein various local sponges, along with MS and SB, were used for demonstration. The Respondent has claimed that, after 20 minutes wash the product of the Complainant disintegrated and wore out badly as compared to the Respondent's own product. The Complainant submitted that the subject advertisement has not only discredited MS but also caused tremendous damage to the brand equity of 'Max'.
- 2.3 The Complainant also submitted a comparative test report wherein a comparison of MS and SB after a 20 minute wash has been given in detail. The Complainant has also submitted various snapshots of activities conducted by the Respondent in different cities along with a copy of a video wherein a comparison of MS and SB has been given.
- 2.4 In light of the above allegations, the Complainant prayed to the Commission that an order, judgement and decree may be passed against the Respondent.

3. SUBMISSIONS OF THE RESPONDENT:

- 3.1 The complaint was forwarded to the Respondent by the Enquiry Committee for comments on February 14, 2022. However, the Respondent requested an extension vide letter dated February 25, 2022, which was granted through an email dated March 01, 2022. The Respondent, once again, requested another extension vide email dated March 12, 2022, which was granted vide email dated March 14, 2022. The Respondent finally submitted its comments, through its authorized representatives IRFAN & IRFAN Attorneys-At-Law, through letter dated March 26, 2022, the contents of which are summarized below.
- 3.2 That the titled complaint has been made by the Complainant against the Respondent company with the alleged allegation of false/misleading comparison of the Complainant's product MS with the Respondent's product SB, which is a violation of the Section 10 of the Act.
- 3.3 That the evidence attached with the complaint fails to substantiate the alleged claim put forth by the Complainant and does not disclose any contravention of Section 10 of the Act. The Respondent submitted that none of the materials submitted by the Complainant indicate any public marketing references to the Complainant's product.
- 3.4 That a bare perusal of the pictures attached with the complaint clearly reveal that no deceptive, defamatory or derogatory claims were being marketed by the Respondent. The attached pictures with the complaint just reflect that a marketing campaign has been carried out by the Respondent to increase reach of its products.

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- 3.5 That a video evidence attached with the complaint has no evidentiary value since the origin of the same is unknown and there does not exist a method to check the validity of the methodology employed. Even otherwise, the Respondent has unequivocally denied its involvement in making any false, defamatory, derogatory or deceptive claims against the Complainant in any manner whatsoever.
- 3.6 That it was requested to the Complainant, vide letter dated 20-10-2021, to share such doctored video or point out/identify the existence of any unfair marketing material published/shared by the Respondent, however, no reply was received from the Complainant. The Complainant instead of sharing such information with the Respondent, went on to file the complaint under reply in the most surreptitious and unwarranted manner.
- 3.7 That in the video submitted by the Complainant, a woman has conducted/performed activity that clearly refers to the comparative sponge only as a non-brand specific 'local sponge'. Moreover, in the first video, the sponge samples visible are marked as L.S. (which may or may not be branded local sponge) and S.B. only. The second video submitted by the Complainant was not a video of public marketing act by the Respondent and it was not made under the authorization. The video appears, per se, to be a singular trapping act by or on behalf of the Complainant to cook up false evidence, which is also evident from the fact that the video has been filmed by an anonymous individual and does not show any of the participants, and has also been filmed away from the main display/presentation. Moreover, the said video evidence is not admissible evidence in light of Judicial Precedents.
- 3.8 The Respondent denied that it has authorized any marketing campaigns and advertisement in various cities and different markets which in any way refers to the Complainant's product MS. The Respondent also denied that it has made false, deceptive, derogatory, defamatory claims against the Complainant and that the Respondent's alleged doctored videos were used for propaganda. The Respondent submitted that no such claims were made against the product of the Complainant which has caused any damage to the alleged brand equity of the Complainant's leading brand 'MAX'. The Respondent denied that the Complainant has any brand equity for Max brand for scrubs.
- 3.9 The Respondent denied that the alleged advertisement (which is not an advertisement by any stretch of imagination), discredited the Complainant's product in any manner whatsoever. The Respondent submitted that the videos in question show no contravention of the Act whereas the pictures attached therewith show normal marketing. The Respondent further submitted that the sponge marked with "MS" by a black marker in the alleged unauthorized video appears to be planted act by or on behalf of Complainant to cook up false evidence without showing the context of the video, who is filming, nor the location, and is only to create some sort of basis to file the present frivolous complaint. The comparative tests submitted by the Complainant cannot be relied upon since the same have no details as to their origin, the person performing, methodology employed, qualifications of the person performing them etc. The veracity of such report/test is highly questionable and cannot be made basis for any action against the Respondent.

- 3.10 The Respondent did not deny the attached evidence (pictures and video evidence) but, it has denied that such evidence disclosed any cause of action in favour of the Complainant against the Respondent. The Respondent has also submitted copies of advertisements and promotional material related to its product SB which clearly show that the focus of the Respondent was to promote its own product and reference to any branded competitive product was not made out.
- 3.11 In light of detailed submission above, the Respondent prayed that the complaint under reply may graciously be dismissed with heavy cost.

4. REJOINDER:

- 4.1 The Respondent's reply was forwarded to the Complainant for a rejoinder vide letter dated April 18, 2022. The Complainant vide letter dated April 28, 2022 requested for an extension of time till 15th of May, 2022 to submit its rejoinder which was granted accordingly. The said rejoinder was received through a letter dated May 13, 2022, the contents of which are summarized in the following paragraphs.
- 4.2 It was submitted that the Respondent has violated very valuable rights of the Complainant which is bound to cause huge loss to the Complainant which results in irreparable injury to the Complainant and its business. The Complainant and Respondent are competitors in the relevant market comprising of scrubs and other products.
- 4.3 That during the marketing BTL advertisement campaign, the Respondent has made false and defamatory claim that both scrubs, i.e., MS and SB were washed for 20 minutes after which MS disintegrated and wore out badly as compared to SB. Whereas, an independent third party Comparative Evaluation Report issued by Ipsos concluded: "*As per finding and observations, it's concluded both scrubs have performed equally good in terms of (wearing off & physical condition)*". Hence confirms that Respondent carried out false and misleading comparison of goods in the process of advertisement as well as deceptive marketing practices within the meanings and scope of Section 10 of the Act.
- 4.4 That the pictorial evidence and the video prepared during the advertisement clearly reveals the propaganda, wherein the Respondent through its Regional Sales Head, namely Mr. Muhammad Imran and Activation agency namely M/s Hype Direct Marketing, can be seen clearly claiming that both SB and MS were washed for 20 minutes. In the video evidence, a representative of the Respondent claimed that after a 20-minute wash the product of the Complainant disintegrated and wore out badly as compared to SB, with doctored imagery of MS.

5. ANALYSIS:

- 5.1 The Enquiry Committee was given the mandate to conduct an investigation and to submit the enquiry report by giving its findings and recommendations, *inter alia*, on the following issues:

I. *Whether the Respondent engaged in false or misleading comparison of goods in the process of advertising, prima facie, in violation of Section 10 (2) (c) of the Act?*

II. *Whether the Respondent is disseminating false or misleading information to consumers, including the distribution of information lacking a reasonable basis, related to the place of production, properties, suitability for use, and quality of goods, prima facie, in violation of Section 10 (2) (b) of the Act?*

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

IV. *Whether there is a spillover effect of the conduct of the Respondent?*

5.2 The Commission received a formal complaint from the Complainant wherein it was alleged that the Respondent carried out a marketing campaign in various cities across Pakistan. It was alleged that the product of the Respondent SB was misleadingly portrayed as better performing than the product of the Complainant MS to ordinary consumers. The facts of the complaint, briefly, are given as under:

- i. SB is manufactured and marketed by the Respondent whereas MS is a competing product of the Complainant in the relevant market;
- ii. The Respondent initiated a marketing campaign in various cities of Pakistan while making false and deceptive claims where both SB and MS were washed for 20 minutes, after which MS disintegrated and wore out as compared to SB;
- iii. The Respondent's false, fraudulent and misleading propaganda against MS caused tremendous damage to the brand equity of Complainant's leading brand MS; in contravention of Section 10 (2) (c), (b) & (a) of the Act.

CORRESPONDENCE:

5.3 During the Enquiry, the Committee sought various information from the Complainant and the Respondent, as well as the marketing agency through which the marketing activity was carried out.

5.4 In this regard, visual evidence submitted by the Complainant in support of the allegations was also forwarded to the Respondent for comment. Consequent to correspondence, the Respondent stated that the person in the video, making the alleged false comparison, is an 'anonymous' entity. It went further to state that the video submitted by the Complainant was not a video of public marketing act by the Respondent and appears, per se, to be a singular trapping act by or on behalf of the Complainant to cook up false evidence, which is also evident from the fact that the video has been filmed by an anonymous individual and does not show any of the participants, while also being filmed away from the main display/presentation

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- 5.5 The comments of the Respondent were forwarded to the Complainant for rejoinder, whereby it was revealed that the person in question in the visual evidence was in fact an employee of the Respondent by the name of Mr. Mohammad Imran, bearing CNIC No. 42101-1797693-3, working in the Karachi region.
- 5.6 Analysis of the complaint and information received from all parties revealed the following anomalies:
- a. In the first video evidence received from the Complainant, dated September 24, 2021, at 7:29:03P.M, an anonymous person presents the condition of two scrubs after they have been washed for 20 min(s). The scrubs only bear initials 'M.S' & 'S.B' on the sponge side of the scrubs written with board markers. The Complainant claims that the anonymous person is in fact an employee of the Respondent. The Respondent has chosen to stay silent on the matter by calling the person anonymous and video frivolous.
 - b. In the second video evidence, dated September 27, 2021, at 3:59:14 p.m., a representative of the Respondent has been recorded presenting the condition of two unknown scrubs after a wash of 20 min(s) at the Respondent's kiosk. It is difficult to determine whether the scrub being compared to is in fact the Complainant's MS, therefore the evidence is not sufficient in this regard.

ON-SITE INSPECTION:

- 5.7 The information gathered by the Committee revealed the possibility of unfair trading practices. Therefore, in order to collect further facts and precise determination of allegations, the Committee conducted an onsite inspection and collected information under Section 33(3) of the Act, which, for the ease of reference, is being reproduced herein below:
- "...The Commission may, for the purpose of a proceeding or enquiry under this Act, requires any undertaking*
- a) *To produce before, and to allow to be examined and kept by, an officer of the Commission specified in this behalf, any books, accounts and other documents in the custody or under the control of the undertaking so required, being documents relating to any matter the examination of which may be necessary for the purpose of this Act; and*
 - b) *To furnish to an officer so specified such information in its possession, relating to any matter as may be , necessary for the purpose of this Act"*
- 5.8 In pursuance of the Powers under Section 33(3) (a) & (b) of the Act, the nominated officers visited the premises of the Respondent on the 16th of September, 2022, for examination of the following documents pertaining to the enquiry:
- i. HR records pertaining to the marketing activity alleged in the subject complaint
 - ii. Marketing strategy devised for the execution of the alleged activity

- iii. Communications (electronic and paper based) regarding the alleged activity with M/s Hype Direct Marketing
- iv. Visual archives maintained of the alleged activity
- v. Inventory and merchandise procured for the execution of the alleged activity

5.9 The evidence submitted to the queries in the preceding paragraphs included the following:

- i. Email communication between Respondent's Marketing personnel and M/s Hype Marketing regarding the alleged activity (Pages 1-6 of Annex-A).
- ii. Market Dress-up activation plan. (Page 7 of Annex-A).
- iii. Local Purchase Order receipt. (Page 8 of Annex-A).
- iv. List of Respondent's employees associated with/supervised the alleged activity in different regions. (Page 9 of Annex-A).
- v. Deck of Scotch Brite Visibility Drive June-2021 (Page 10 of Annex-A).
- vi. Visual archives of the alleged activity on a portable USB device, including pictures and videos of the alleged activity.

5.10 An analysis of the data collected from the on-site inspection showed evidence of the presence of the anonymous person referred to in Para No. 5.5 and 5.6. The same was acknowledged by the Respondent during on-site investigation and was further authenticated by the list of personnel associated with/supervised the alleged activity, referred to in Para. 5.9 (iv) above.

5.11 The employee named Mr. Muhammad Imran, works as a Regional Sales Manager for the Respondent in the Karachi South region. The video submitted by the Complainant shows the employee holding two scrubs, each marked as MS and SB. The employee goes on to explain how one scrub (MS) has deteriorated more than the other (SB) after a 20 min washer test in a spinner.

DETAILS OF WITNESS ACCOUNT:

5.12 In light of the evidence collected during the on-site inspection, it was deemed necessary by the Enquiry Committee to summon the employees who were associated with/ supervised the alleged activity on behalf of the Respondent. The list of employees in association with the alleged activity had already been collected during the on-site inspection.

5.13 Therefore, in pursuance of the Powers under Section 33(1) of Act, seven (07) of the employees of the Respondent from the referred list were called to attendance to record their statements vide notices issued dated 28th of September, 2022, calling for attendance on 12th of October, 2022.

5.14 The attendance of the employees for the said purpose was delayed by the Respondent on various accounts over the next couple months.

5.15 On one of the accounts, the legal counsel of the Respondent appeared for a witness statement record accompanied by only three (03) of the summoned employees. The EC had cleared the counsel beforehand that all the witness statements shall be collected at one point in time.

Therefore, the Enquiry Committee did not proceed with recording statements of the three (03) employees presented by the Respondent's counsel.

- 5.16 A final intimation of attendance was served to the Country General Manager, Mr. Muhammad Tariq, on the 20th of December, 2022 for appearance of all of the summoned employees on 11th of January, 2023, failing which no further opportunity would be granted to the Respondent.
- 5.17 Following the final intimation, all the summoned employees of the Respondent appeared to have their statements recorded on the 11th of January, 2023. (A list of seven (07) summoned employees is attached as Annex-B).
- 5.18 It was observed during the witness statement record that almost all of the employees displayed a disassociation and unawareness of the alleged activity. All the employees submitted that they were part of the sales team of the Respondent and that they had no part to play in the marketing activities of the Respondent. Moreover, most of the employees submitted that they are not aware of the alleged activity, nor were supervising any such activity.
- 5.19 It was submitted that their core job entails making sure of the sales of the Respondent's products in the market and the efficient distribution in their designated regions. It was also submitted by all of the summoned employees that a separate marketing department exists for such activities and the sales team is not involved or engaged into such activities or their communication thereof. Therefore, all the employees, excepting Mr. Muhammad Imran, submitted that they were not present on the site of the alleged activity in any of their designated regions. (Soft archive of the witness statements is attached as Annex-C for reference).
- 5.20 The alleged employee, Mr. Muhammad Imran, was also summoned for the witness record. Mr. Muhammad Imran also seconded the fact that he was part of the sales team and was not officially required to be at the alleged activity by the Respondent. He also submitted that he was not aware of the activity. However, he submitted that he had attended the activity in his own capacity by chance.
- 5.21 Upon inquiring regarding the alleged video of false comparison, Mr. Muhammad Imran submitted that he had, in his personal capacity, picked up scrubs from the kiosk and gave a demonstration of the activity to the distribution team/sales team/channel partner (word's used interchangeably during statement record) and described them as third party channel partners. Upon imploring further, Mr. Muhammad Imran argued that no false information was given out to the customers in the market and that the demonstration was purely given to the channel partners.

VISIT TO M/S HYPE MARKETING

- 5.22 In light of the statement records, nothing conclusive could be drawn from the witness statements since the employees had displayed a disassociation with the marketing activities of the Respondent, despite the fact that the list of employees involved during the marketing campaign had been provided by the Respondent itself during the on-site inspection, duly signed and stamped.

- 5.23 In furtherance of the investigation, the Enquiry Committee deemed it fit to visit the marketing agency hired by the Respondent for the alleged activity, i.e., M/s Hype Marketing (hereinafter referred to as ‘Hype’). The Enquiry Committee visited Hype to meet with its Chief executive Officer, Mr. Tahir Abid, on the 10th of February, 2023.
- a. Mr. Tahir Abid, being a prime participant of the alleged marketing activity, revealed that Mr. Muhammad Imran of the Karachi South region did visit the alleged activity of the Respondent. However, Hype was not aware of the alleged video shared by the Complainant.
 - b. It was also shared with the Enquiry Committee that Mr. Hamid Mehmood, Area Sales Manager Islamabad and Rawalpindi Region, visited the alleged marketing activity in the G-9 market of the Federal Capital Territory for the cake cutting ceremony, contrary to disassociation shown by Mr. Hamid Mehmood during his statement record.
 - c. The list of employees who supervised the alleged activity, which was shared by the Respondent during the on-site inspection, was shared with Hype. Hype admitted to being familiar with Mr. Muhammad Imran from Karachi region, Mr. Hamid Mehmood from Islamabad and Rawalpindi region, and Mr. Tanveer Hussain from the Lahore region from the referred list and submitted that these employees have been associated with the marketing activities Hype has conducted over the years for the Respondent.
 - d. In furtherance, Hype submitted that it is not aware of a marketing team of the Respondent excepting Mr. Mohsin Ali Khan, working as the Marketing Manager for the Respondent.
 - e. Hype also submitted that for the alleged activity, unbranded/ mushroom brands were only used to draw a comparison with the Respondent’s product SB in the washing test and that no comparison was drawn with the Complainant’s product MS. (A signed and stamped undertaking of the submissions of M/s Hype Marketing is attached as Annex-D).

ANOMALIES IN THE EVIDENCES

- 5.24 The Enquiry Committee, during the course of fact finding and investigation, observed a few anomalies in the evidences collected and would like to bring them into consideration.
- 5.25 Firstly, during correspondence with the Respondent, the Respondent had dissociated itself from the person in the video evidence of the alleged activity shared by the Complainant. The Respondent had called it an ‘anonymous individual’, while suggesting that the Complainant might have doctored the video evidence with malafide intent towards the Respondent. However, it was revealed by the Complainant over the course of investigation, and later on acknowledged during the on-site inspection, that the anonymous individual was in fact a current employee of the Respondent itself.
- 5.26 Secondly, during the on-site inspection of the Respondent, a duly signed and stamped list of eleven (11) supervisors/employees associated with the alleged marketing activity was shared with the Enquiry Committee, among other documents already summarised above. Seven (07) of these supervisors/employees were summoned to the office of the Commission to record their statement regarding the happenings of the alleged activity.

5.27 However, on appearance, all employees submitted dissociation with the alleged activity altogether. It was submitted that they were neither aware of any such activity, nor were they part of the marketing team which conducted these kinds of activities, contrary to the signed submission of the Respondent. Only Mr. Muhammad Imran, the employee from the alleged video, submitted that he had visited the site upon chance and had on his own given a demonstration to third party channel partners present on site.

5.28 Thirdly, it was revealed during visit to Hype that Mr. Hamid Mehmood, Area Sales Manager Islamabad and Rawalpindi Region, visited the alleged marketing activity in the G-9 market of the Federal Capital Territory for the cake cutting ceremony, contrary to his recorded statement. Mr. Mehmood had submitted that he was not aware of any such marketing activity being conducted by the Respondent.

5.29 Furthermore, Hype submitted that they were familiar/recognized Mr. Muhammad Imran from Karachi region, Mr. Hamid Mehmood from Islamabad and Rawalpindi region, and Mr. Tanveer Hussain from the Lahore region from the shared list of employees and submitted that these employees have been associated with the marketing activities Hype has conducted over the years for the Respondent. This also goes contrary to the witness account of these referred employees who submitted complete dissociation with the marketing activities of the Respondent.

I. **Whether the Respondent engaged in false or misleading comparison of goods in the process of advertising, prima facie, in violation of Section 10 (2) (c) of the Act?**

5.30 In order to analyse the facts of the case under Section 10 (2) (c) of the Act, it is important to understand the meaning of false and misleading information.

5.31 The Commission has, in the matter of **M/s CMPak Limited¹**, defined “**False**” and “**Misleading**” information as deceptive marketing practices in the following manners:

False Information:

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

Misleading Information:

“Whereas ‘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

¹ <http://cc.gov.pk/images/Downloads/ZONG%20-%20Order%20-%202029-09-09%20.pdf>

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not be deliberate or conscious and (e) in contrast to false information, it has less onerous connotation and is somewhat open to interpretation as the circumstances and conduct of a party may be treated as relevant to a certain extent.”

- 5.32 In light of the definitions above, any statement or representation, which is not accompanied by substantiation, may be deemed as false representation.
- 5.33 In this regard, it is first important to establish that the Respondent had made any representations during the marketing activity.
- 5.34 The employee of the Respondent, namely Mr. Muhammad Imran from Karachi region, acknowledged the existence of the alleged video wherein a comparison is being drawn between the products MS and SB. The employee also acknowledged the fact that he was giving a demonstration to third party channel partners on site during the alleged activity in the Karachi region. Therefore, the counter allegation of the Respondent as to the video being doctored does not have merit.
- 5.35 The fact that the employee submitted that he had done so on its own accord does not have merit either since the employee is, to this day, under employment of the Respondent and is therefore to be considered as a representative of the Respondent. The Respondent submitted that it had not authorised or directed any demonstration on its behalf from the employee and therefore is not responsible for the actions of the employee.
- 5.36 However, the Respondent did not submit evidence of any remedial actions it had taken against the referred employee after the demonstration came to the knowledge of the Respondent. Therefore, since the employee is a representative of the Respondent, the marketing representations made by him in the alleged video are to be considered as representations made by the Respondent itself. Therefore, the Respondent is responsible for any and all actions of its employees.
- 5.37 The Respondent had also argued that it had not purchased the Complainant’s MS for the demonstrations in the alleged activity.
- 5.38 However, the circumstances of the matter highlight that either the product MS was already available at the kiosk where the employee gave his demonstration to the third party channel partners or the employee had prior knowledge of the activity and brought the Complainant’s MS to the alleged activity himself. All of the circumstances are contrary to the individual submissions of the Respondent and the employee, respectively.
- 5.39 The Respondent, during the course of investigation, did not make its submissions regarding the merits of the matter at hand, which was making a false and misleading comparison of goods during the course of marketing. Therefore, the Respondent never submitted any substantiation regarding the comparison its employee had drawn during the demonstration.

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5.40 Any representation made, in the absence of substantiation, is a dissemination of false information. In the current matter, no substantiation was provided as to the comparison of quality drawn between MS and SB.

5.41 In light of the findings it can be concluded that by drawing a false comparison of the quality of products between *Scotch Brite* and Complainant's *Max Scrub* in the Karachi region, the Respondent has engaged in false comparison of goods in the process of advertising, *prima facie*, in violation of Section 10 (2) (c) of the Act.

II. Whether the Respondent is disseminating false or misleading information to consumers, including the distribution of information lacking a reasonable basis, related to the place of production, properties, suitability for use, and quality of goods, prima facie, in violation of Section 10 (2) (b) of the Act?

5.42 To draw an analysis under Section 10 (2) (b) of the Act, it is necessary to define what is meant by the word 'consumer'. The Commission, in its Order held against **M/s CMPak Limited**¹⁷, states that;

“Therefore, from OFT’s perspective, the consumer to whom such information is disseminated has to be the ‘ordinary consumer’ who is the usual, common or foreseeable user or buyer of the product. Such a consumer need not necessarily be restricted to the end user.”

5.43 In light of this, it is evident that the consumer is not restricted to the end user and does include entities along the distribution channel or business-to-business transactions.

5.44 Based on the facts of the case, the demonstration of false comparison by the employee of the Respondent in the video of the Karachi region was made to third party channel partners. The demonstration was not made to direct employees of the Respondent.

5.45 Therefore, the false information was disseminated to people outside of the organization, who specialize in increasing market presence, with the goal to enhance sales.

5.46 Therefore, in light of the available evidences, it can be concluded that by drawing a false comparison of the quality of products between *Scotch Brite* and Complainant's *Max Scrub* to third party channel partners in the Karachi region, the Respondent has engaged in disseminating false information to consumers, including the distribution of information lacking a reasonable basis related to the quality, characteristics, properties and suitability for use, *prima facie*, in violation of Section 10 (2) (b) of the Act.

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

¹⁷ <http://cc.gov.pk/images/Downloads/ZONG%20-%20Order%20-%2029-09-09%20.pdf>

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- 5.47 Through the available evidence in the instant matter, it is clear that the Respondent has disseminated information to third party channel partners with regards to a false comparison drawn between MS and SB.
- 5.48 The false information disseminated in this case pertains to the quality of the Complainant's products MS and how it deteriorates at a faster rate compared to the Respondent's product SB. The information was shared with channel partners whose job is to ensure an efficient distribution of the client's product in their relative markets.
- 5.49 The product of the Complainant and the Respondent are of identical nature and their relative markets are identical too. Therefore, any information given to channel partners will end up in the same relative markets as that of the Complainant's, thereby creating a bad word for the Complainant's product.
- 5.50 This in turn has the potential of harming the business interest/brand equity of the Complainant.
- 5.51 Therefore, in light of the available evidences, it can be concluded that by drawing a false comparison of the quality of products between *Scotch Brite* and Complainant's *Max Scrub* to third party channel partners in the Karachi region, the Respondent has engaged in disseminating false information that has the capability of harming the business interest of the Complainant, *prima facie*, in violation of Section 10 (2) (a) of the Act.

IV. Whether there is a spillover effect of the conduct of the Respondent?

- 5.52 It is relevant to mention here that the term spill-over effect has been delved into by Lahore High Court and High Court of Sindh in the cases titled LPG Association Case and Mirpurkhas Sugar Mills Limited versus Federation of Pakistan (2022 CLD 352 Karachi) respectively. Relevant portions of the said judgments are reproduced below for ease of reference:

The LPG Association Case

"1.7 'Spillover Effect' is an economic term, used for positive or negative effect of an economic activity, causing benefit without paying or suffer without compensation. It is also termed as externality or neighbourhood effect. 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. In the instant case if an anticompetitive behaviour is not effecting the trade and commerce of another Province, it does not come with the phrase 'interprovincial trade & 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."

The Mirpurkhas Sugar Mills Case

"Nonetheless, if any act or omission, translated as anti-competitive behaviour, is although committed within geographical boundaries of a province has spillover effect into territorial limits of another province or a territory would fall within

executive competence of the federation to regulate but also within its exclusive legislative mandate to legislate on.”

5.53 The judgments cited above make it abundantly clear that the jurisdiction of the Commission is determined by the effects rather than the location of the anti-competitive activity/behaviour. In this day and age, the effects of deceptive marketing practices through marketing/advertising campaigns transcend regional boundaries. The Complainant’s nationwide presence in Pakistan means that any anti-competitive activity/behaviour, specifically, the dissemination of false and misleading information, capable of harming its business interests, regarding any of its products by the Respondent through marketing/advertising campaigns, will, inevitably, exceed or spill over territorial limits of the province.

5.54 Foregoing in view, it is concluded that the Respondent’s violations through the alleged marketing/advertising campaign appears to have a spill-over effect.


6. CONCLUSION & RECOMMENDATION


6.1 In light of the findings it can be concluded that by drawing a false comparison of the quality of products between *Scotch Brite* and Complainant’s *Max Scrub* in the Karachi region, the Respondent has engaged in false comparison of goods in the process of advertising, *prima facie*, in violation of Section 10 (2) (c) of the Act.

6.2 In light of the available evidences, it can also be concluded that by drawing a false comparison of the quality of products between *Scotch Brite* and Complainant’s *Max Scrub* to third party channel partners in the Karachi region, the Respondent has engaged in disseminating false information to consumers, including the distribution of information lacking a reasonable basis related to the quality, characteristics, properties and suitability for use, *prima facie*, in violation of Section 10 (2) (b) of the Act.

6.3 It can also be concluded that by drawing a false comparison of the quality of products between *Scotch Brite* and Complainant’s *Max Scrub* to third party channel partners in the Karachi region, the Respondent has engaged in disseminating false information that has the capability of harming the business interest of the Complainant, *prima facie*, in violation of Section 10 (2) (a) of the Act.

6.4 Therefore, it is recommended that the Commission may initiate proceedings against M/s 3M Pakistan Private Limited under Section 30 of the Act for the, *prima facie*, violation of Section 10 of the Act.


Rjaz Hussain
Deputy Director
Enquiry Officer


Amin Akbar
Assistant Director
Enquiry Officer

