DECEPTIVE MARKETING PRACTICES – DISSEMINATION OF FALSE AND MISLEADING INFORMATION TO CONSUMERS

Complainant: M/s Reckitt Benckiser Pakistan Ltd.
Respondent: M/s Unilever Pakistan Limited
Decision: The Respondent was directed to cease deceptive marketing, include clear disclaimers in advertisements, pay a penalty of Rs. 60 million with a compliance report due in 30 days, and in case of continued violation, pay Rs. 500,000 daily, thereby disposing of the show cause notice.

M/s Reckitt Benckiser Pakistan Ltd. ("the Complainant") filed a complaint before the Competition Commission of Pakistan, alleging that M/s Unilever Pakistan Limited ("the Respondent") engaged in deceptive marketing practices by disseminating false and misleading information to consumers through the following advertised claims relating to Lifebuoy (Care and Protect) Soap and Lifebuoy Hand Wash:

(a) 100% Proven Germ Protection
(b) "Jaraseem se 100% yaqeeni hifazat"
(c) "Where there is Lifebuoy, there are few illness"
(d) "World's No. 1 Germ Protection Soap"
(e) 99.9% Germ Protection in 10 Seconds
(collectively referred to as the "Alleged Claims").

The Complainant contended that the Respondent's claim of 100% efficacy was scientifically impossible. "Log values" are typically used to measure bacterial reduction, but they do not represent complete elimination (i.e., 100%). It was, therefore, unreasonable to claim that an anti-bacterial soap could eliminate 99.9% of germs in just 10 seconds while remaining safe for human use. Additionally, the claims lacked necessary disclaimers. Thus, the Alleged Claims were scientifically untenable and constituted deceptive marketing in violation of Sections 10(2)(a) and (b) of the Competition Act.

Following a preliminary evaluation, the Commission constituted an Enquiry Committee (EC) to investigate the allegations. The EC completed and submitted its Enquiry Report (ER). After considering the standard of the "net general impression" of any claim and the necessary requirements for disclaimers and disclosures, the Commission initiated proceedings and issued a Show Cause Notice (SCN) to the Respondent.

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Both parties, along with their counsel, appeared before the Commission on scheduled hearing dates and presented detailed oral and written arguments in support of their contentions.

Counsel for the Respondent argued that the complaint lacked clarity regarding how each Alleged Claim was misleading to the average consumer. They asserted that Claims A and B were misquoted by the Complainant, as the actual claim was "100% Proven Germ Protection," not "100% eradication of germs." Therefore, the ER lacked clarity on the plain meaning of the claims.

It was also contended that the products complied with ASTM E2783-11, an internationally recognized protocol for microbial efficacy testing, which replicates conditions relevant to consumer usage. Claim C was described as "marketing puffery," legally permissible and referring generally to illness preventable with regular soap use. Lab tests were cited to support its efficacy in reducing incidents of diarrhea, acute respiratory infections, and eye infections.

Regarding Claim D, the counsel stated that "World's No. 1" referred to sales volume. Claim E, it was argued, was specific to Lifebuoy Hand Wash and accompanied by the disclaimer: "As per lab tests on indicator organism vs. an ordinary soap without actives." It was claimed that Lifebuoy Hand Wash was 99.9% effective against certain micro-organisms with 10 seconds of contact time.

The Commission identified the following issues for deliberation:

1. Whether the Respondent's advertising Claims A, B, C, D, and E amount to deceptive marketing within the meaning of Section 10(2)(b) of the Act by distributing false and misleading information related to the character, properties, suitability for use, or quality of the products?
2. Whether the Respondent engaged in deceptive marketing practices within the meaning of Section 10(2)(a) of the Act by distributing information capable of harming the business interests of another undertaking?

After reviewing the submissions and supporting documents from both parties, the Commission emphasized that Section 10 of the Act prohibits deceptive marketing practices to protect the interests of consumers, competitors, and market integrity. It interpreted "consumer" under Section 10 to mean the ordinary consumer, which may include, but is not limited to, the end user of goods or services.

The Commission evaluates the overall impression of an advertisement, which may include express or implied claims, absolute or qualified statements, and the presence of disclaimers. The advertiser bears the burden of substantiating such claims. If a claim is misleading or false, intent or evidence of actual deception is not required for a violation of Section 10(2)(a).

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The Commission stressed the need for advertisers to support health and safety claims with robust scientific research, empirical data, and credible evidence. Claims affecting human health and safety must be verifiable and trustworthy. Disclaimers must be clear, conspicuous, and easily understood by consumers in the context of the advertisement.

The Bench concluded that the dissemination of false or misleading information in violation of Sections 10(2)(b), 10(2)(c), and 10(2)(d) inherently violates Section 10(2)(a), as it adversely affects the business interests of competitors. Deceptive marketing practices distort fair competition and damage both the quantitative (returns) and qualitative (brand reputation) interests of competitors. Unless exceptional circumstances exist, such harm is presumed to be directly attributable to deceptive advertising.

The Bench held that the Respondent engaged in deceptive marketing through Claims A, B, C, D, and E in violation of Sections 10(2)(a) and 10(2)(b) read with Section 10(1) of the Act. The Respondent demonstrated a deliberate intent to mislead by using different versions of product claims in different countries, with the most misleading version marketed in Pakistan.

Penalty Imposed:

i. Rs. 10,000,000/- (Rupees Ten Million) for contravention of Section 10(1)(a); and
ii. Rs. 50,000,000/- (Rupees Fifty Million) for contravention of Section 10(1) read with Section 10(2)(b) through dissemination of Claims A, B, C, D, and E.

The Respondent was ordered to pay a total of Rs. 60,000,000/- (Rupees Sixty Million) and submit a compliance report within thirty (30) days of the issuance of the order. In case of continued non-compliance, an additional fine of Rs. 500,000/- (Rupees Five Hundred Thousand) per day will be imposed. The SCN was thus disposed of, and the complaint was allowed.

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