

GUIDELINES

SECTION 10: DECEPTIVE MARKETING PRACTICES

03 April 2023

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1. Mandate

- 1.1 The Competition Commission of Pakistan (the “**Commission**”) is mandated under the Competition Act 2010 (the “**Act**”) to ensure free competition in all spheres of commercial and economic activity, to enhance economic efficiency and to protect consumers from anti-competitive behaviour.
- 1.2 The Commission’s main enforcement functions pertain to four main pillars of competition law, i.e., **Section 3 – Abuse of Dominance; Section 4 – Prohibited Agreements, Section 10 – Deceptive Marketing Practices** as well as **Section 11 – Pre-Merger Approval**. Advocacy and research activities are covered under **Sections 28 and 29** of the Competition Act respectively.

2. Establishment of the Office of Fair Trade

- 2.1. The Office of Fair Trade (“**OFT**”) was established in 2008 with the goal to encourage businesses to comply with competition law and improve their trade practices through self-regulation while acting decisively to stop hardcore or flagrant offenders of the Act. OFT aims at being a watch dog in order to create a business environment in Pakistan that is based on healthy competition in order to protect consumers from deceptive marketing practices as enumerated in Section 10 of the Act. OFT also aims to ensure provision of adequate information to enable informed consumer choices.

3. The Guidelines

- 3.1. The Guidelines on Deceptive Marketing Practices (the “**Guidelines**”) are being issued by the Commission under Sections 28 and 29 of the Act, read with Regulation 41 of the Competition Commission (General Enforcement) Regulations, 2007 (the “**General Enforcement Regulations**”) ¹. These aim to explain the scope and application of Section 10 of the Act. The same contain general information and illustrations based on jurisprudence that has evolved through the decisions of the Commission under Section 10 of the Act for the convenience and guidance of all stakeholders. Readers are advised to carefully study the Act and to seek legal advice wherever necessary. The information in this document is not exhaustive and does not limit the investigation and enforcement powers of the Commission. The Commission may amend these Guidelines from time to time.

¹ Competition Commission (General Enforcement) Regulations, 2007, available at: https://www.cc.gov.pk/images/Downloads/regulations/updated/general_enforcement_regulations_revised_26_november_2016.pdf

4. Introduction to Section 10: Deceptive Marketing Practices

4.1. As stated above, OFT primarily deals with the enforcement of provisions of Section 10 of the Act. Section 10(1) of the Act prohibits deceptive marketing practices. Whereas, under Section 10(2) of the Act deceptive marketing practices shall be *deemed to have been resorted to or continued if an Undertaking resorts to:*

- a. *the distribution of false or misleading information that is capable of harming the business interest of another undertaking;*
- b. *the distribution of false or misleading information to consumers, including the distribution of information lacking a reasonable basis, related to the price, character, method or place of production, properties, suitability for use or quality of goods;*
- c. *false or misleading comparison of goods in the process of advertising; or*
- d. *fraudulent use of another's trademark, firm name, or product labeling or packaging.*

4.2 Who is an Undertaking?

4.2.1 Any entity engaged in an economic activity, directly or indirectly, be it production of goods or provision of services, and includes a natural or legal person.

4.2.2 For ease of reference, an undertaking, as defined in Section 2(1)(q) of the Act, means “*any natural or legal person, governmental body, including a regulatory authority, body corporate, partnership, association, trust or other entity in any way engaged, directly or indirectly, in the production, supply, distribution of goods or provision or control of services and shall include an association of undertakings.*”

4.3 What is Deceptive Marketing?

4.3.1 When an undertaking distributes false or misleading information or makes a representation, omission, or practice that can be material in nature and is likely to mislead the consumer.

4.3.2 **‘False information’** includes “*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.*”

4.3.3 **‘Misleading information’** includes “*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 onerous connotation and is somewhat open to interpretation as the circumstances and conduct of a party may be treated as relevant to a certain extent²."

4.4 *Express or Implied*

4.4.1 The Commission will consider any/all representations, whether express or implied.

Express Claim: "ABC Mouthwash prevents cold".
Implied Claim: "ABC Mouthwash kills the germs that cause cold."

Express Claim: "XYZ milk makes your bones strong"
Implied Claim: "Calcium is good for strong bones and teeth"

Express Claim: "DEF powder formula – Clinically proven growth for kids!"
Implied Claim: "Complete balanced nutrition to help kids grow"

4.5 *Who is a 'consumer'?*

4.5.1 The Commission considers whether a practice/representation/omission is deceptive from the perspective of an '**ordinary consumer**', i.e., the **usual, common or foreseeable user** or buyer of the product/service and the **same is not necessarily restricted to the end user**. Thus the scope of the term 'consumer' is construed **most liberally and in its widest amplitude³**.

4.6 *The 'Net General Impression' of the Advertisement/Marketing Material*

4.6.1 In construing what is false or misleading, the Commission considers **the net general impression conveyed by the marketing activity** and does not look at the words, phrases or other content of an advertisement or other such marketing material **in isolation apart from their context⁴**.

² In the Matter of M/S China Mobile Pak Limited & M/S Pakistan Telecom Mobile Limited Dated 29 September 2009 (the "**Zong Order**")

³ *ibid*

⁴ *ibid*

4.7 *Actual or Potential Deception*

- 4.7.1 For the purpose of establishing a deceptive marketing practice, **actual deception need not be necessary. It is sufficient that the same has potential to harm/mislead⁵**. It can also be deceptive for an undertaking **to simply remain silent and/or omit disclosures/relevant information.**

4.8 *Substantiation when Necessary*

- 4.8.1 There must be some **independent and recognizable substantiation** for any/all representations made prior to marketing the same⁶, particularly, when undertakings make representations which are specific in nature and can be quantified and/or qualified.
- 4.8.2 The Commission may consider **any** of the following factors on a **case-by-case basis**, when determining **what may be a reasonable level of substantiation** for a representation:
- i. the type of representation;
 - ii. the benefits of the representation if it is true;
 - iii. the potential consequences of the misrepresentation;
 - iv. the ease and cost of developing substantiation for the representation;
 - v. the type of good; and
 - vi. the level of substantiation experts in the field would agree is reasonable.
- 4.8.3 For instance, a brand claiming that it's the 'No. 1 brand', should provide a reliable, recognizable and independent market report that may elaborate on its market position vis-à-vis market shares, sales, or any other factors and an appropriate disclosure should be present on any advertising/marketing material referencing such independent report/study.

4.9 *What Information is Material?*

- 4.9.1 **Material information** is one which has the potential or capability of influencing consumer choices or the products and the competition in the relevant market.
- 4.9.2 It is **critical** to provide **accurate and authentic information** about goods because any **omission, vagueness, or distortion** of material information **impairs potential consumers' ability to make an informed decision⁷** or may **harm competition.**

⁵ In the Matter of Show Cause Notice issued to M/S Reckitt Benckiser Pakistan Limited for Deceptive Marketing Practices Dated 11 August 2015

⁶ Proctor & Gamble Order 2010 CLD 1695

⁷ Batteries Order dated 30 March 2018

4.9.3 One of the general principles applied in this regard is that the *"consumers are likely to have chosen differently but for the deception."*⁸

4.10 *Forms of Dissemination*

4.10.1 Without prejudice to the generality, forms of dissemination may include:

- a. Advertisements;
- b. Product packaging/labelling;
- c. Social media
- d. Testimonials/endorsements
- e. Websites/platforms
- f. Information provided by staff/agent, whether verbally or in writing
- g. Print media
- h. Television & Radio; and
- i. Any other marketing medium

5. *Instances of Deceptive Marketing Practices*

A non-exhaustive list of practices that may be regarded as violations of Section 10 of the Act are illustrated below:

5.1 *False & Misleading Information*

A watch manufactured in Pakistan by a local company is labeled as 'Swiss Made', which is false and may be a violation of Section 10 of the Act.

A real estate agent or company claims to be located and/or registered in a certain region/city, despite the actual location being somewhere else or the project not being registered at all. This may be deceptive.

A customer places an order for a product shown on a webpage with certain quality and specifications. However, the product received by the customer is of inferior quality and not up to the specifications advertised. Such practice may be deceptive.

An institute claiming that it is a 'top ranked' or 'No.1' institute in its respective category may be deceptive where its actual ranking is less.

⁸ Zong Order

An undertaking makes a 'Buy One, Get One Free' offer, but raises the price of the first item by an amount enough to cover the cost of the second (free) item. This may be deceptive.

A company marketing its products as medicated may be deceptive where the product does not have any medicinal properties or has undergone change in character without due disclosure.

A telecom company markets its calling rates as the 'cheapest call rate', whereas, the actual price per call is significantly higher than the rate advertised. This may be deceptive.

An advertisement for a new medicine where a reward would be offered to any consumer that consumed the product and reported any side-effects. However, when a consumer with side-effects reports the same, XYZ Company that issued the ad denies that there is any offer. This may be deceptive.

5.2 *Omission of Material Information*

- 5.2.1 An **omission** of material information in the marketing content/packaging material may be treated as misleading if, such is likely to mislead consumers, **even if unintentional**.
- 5.2.2 It is not necessary for any information to be withheld **deliberately** or **consciously** to be considered as misleading.
- 5.2.3 A misleading omission can also occur when an undertaking **hides or provides in an unclear, unintelligible, ambiguous or untimely manner**, any information that is likely to impact the consumer decision.

Omission of capacity/ampere on an electrical battery may be misleading as it is material information for the suitability of use of the battery that impacts the consumer choice.

FGH chocolate omits displaying allergen information on its packaging and in the nutrition label that it contains nuts – this may be deceptive.

Cash vouchers hidden inside packaging may be deceptive if appropriate disclosures are not made to consumers in the marketing material/content (for example the amount of the cash voucher, availability and expiry.)

5.3 *False or Misleading Comparison of Goods*

5.3.1 An undertaking comparing its goods with another competing undertaking must have **reasonable substantiation prior to making such comparisons**. Undertakings should exercise **caution** and ensure that any comparison with a competing good does not mislead consumers or wrongfully undermine another good.

5.3.2 Comparisons can be made of various features such as prices, features, or functions, etc.

A company claims, without any evidence, that its antibacterial soap provides 10 times greater germ protection than ordinary soaps. The same may be deceptive.

A company claiming that its milk formula product is a direct substitute of milk may be deceptive.

ABC steel has higher strength than all other steel – this may be deceptive.

Our single DFG product lasts twice as long as two of the PQR products – this may be deceptive.

5.4 *Fraudulent Use of Trademarks, Firm Name, Packaging and Labeling*

5.4.1 Trademark, Firm Name, Product labeling and packaging design are the basic differentiating factors between products and services. Where one **undertaking fraudulently copies or passes off the other's trademark or trade dress**, it is deceptive under Section 10(2)(d) of the Act as it may lead to **consumer confusion** regarding the goods and can **negatively impede the business of another undertaking**.

5.4.2 It is important to highlight that **unlike** the Intellectual Property Organization of Pakistan (“IPO”), the Commission **does not determine** or **advise** on the **allocation/availability** of trademarks⁹. The Commission is **only** concerned with the **fraudulent use of another's registered trademark, firm name and/or packaging/labelling**.

5.4.3 Importantly, the Commission is **not a declaratory forum nor a registration authority** to be approached, when there is a **dispute as to the ownership** of the trademark¹².

⁹ Agri-tech Limited versus Tara Group Pakistan 19 June 2015

¹² Hilal Foods Pvt. Ltd. versus Dabur Pakistan Pvt. Ltd. 26 August 2021

- 5.4.4 Owing to the difference in mandate of the IPO and Commission, mere **compliance** with IPO laws **does not absolve** any undertaking from complying with the relevant provisions of Section 10 of the Act.

A coffee brand using a trademark on its product that is similar/identical to that of a **registered trademark** of another famous coffee brand may be considered deceptive.

A frozen food company uses the labelling and packaging which is instantly identifiable/similar to another well-known frozen food/processed food brand may be deceptive.

The registered 'lion' logo of TI confectionary is imitated by OP for its own confectionary brand – this may be deceptive.

The use of similar/identical layout of the registered packaging and labelling of the famous CZ Nuts by its competitor, KZ Nuts, may be deceptive.

5.5 *Environmental Claims*

- 5.5.1 Undertakings may make claims regarding the beneficial environmental impact of their products, for example, being **CFC Free, eco-friendly, environment friendly, ozone-friendly or green/recyclable**. However, these claims would be false or misleading where, for instance, such product contains ingredients that are not environment friendly and may be in violation of Section 10 of the Act.

If the packaging of deodorants and antiperspirants is labeled as 'CFC Free', whereas factually the products contain chlorofluorocarbons. In such a case, the environmental claim on the packaging may be false and may be treated as deceptive.

Claiming "green, made with recycled content" may be deceptive if the environmental costs of using recycled content outweigh the environmental benefits of using it.

Diesel oil branded as 'Green XL Plus Diesel' and marketed to reduce black emissions may be considered deceptive where such 'green' additives are absent in the product and it has no impact on emissions.

5.6 *Health & Safety Claims*

- 5.6.1 Any representations/claims related to health and safety must be substantiated by **competent and reliable scientific evidence**, which may include research studies, control group tests, etc.
- 5.6.2 As such claims relate to the health and safety of an ordinary consumer, the Commission typically requires **a relatively high level of substantiation**, i.e., **sufficient in quality and quantity claim** and should be based on **standards generally accepted by experts in the relevant area**.
- 5.6.3 The Commission may refer to a standard prescribed by the authority concerned. For example, for food packaging and quality, standards issued by the Pakistan Standards and Quality Control Authority (**PSQCA**) may be considered. Similarly, for drugs/pharmaceutical products, the requirements issued by the Drug Regulatory Authority of Pakistan (**DRAP**) may be considered.

A surface cleaner marketed as a product that kills 99.9% germs including Covid-19 may be a deceptive claim where the scientific testing only indicates efficacy against a limited number of bacterial strains and not against Corona viruses.

A tea company marketing a certain blend of green tea claiming that it can help to lose 10 pounds in a week may be treated as false or misleading, if found not to have a reasonable scientific basis.

A company claiming that its products contain lower fat content compared to other substitutable food products, thereby, being healthier, may be deceptive in the absence of reasonable substantiation (limited testing from a range of products).

A cosmetics company advertising that its whitening products make a person fairer may be deceptive without any reasonable substantiation and without any appropriate disclosures related to side-effects or harmful exposure.

5.7 *Bait and Switch Advertising*

- 5.7.1 Bait and switch advertising relates to a **false/misleading impression** created about the offer of a good to **attract a consumer** to contact the undertaking selling/providing the good only to find that the good is no longer available, there are hidden terms or conditions that

are important and impact the consumer decision or that said good is available at another price. **The intent behind bait-and-switch is to lure the customer to a point-of-sale or buying decision.**

- 5.7.2 Undertakings are **cautioned to clearly disclose the duration of the discount, stock available and all other terms and conditions, across all media.**

An undertaking advertises a stock clearance sale of up to 70% discount, whereas, upon arrival at the store, none/very few of the items are on a 70% discount. Such practices may be deceptive.

Introductory price offer of a product launched without quantifying the expiry of the offer may be deceptive.

A product is advertised at a certain price, however, at actual purchase, the price is higher than the advertised price. This may be deceptive.

‘Black Friday Sale Deals – Today only from 9 am to 10 pm, while stocks last’ – This may be an appropriate message where the time and duration of the discount period and stock availability are clearly specified.

5.8 *Future Claims*

- 5.8.1 Undertakings often use representations that may relate to **a point in time in the future or an event yet to happen** in order to attract investment or increase sales. Such claims may be **material in nature** if they influence the buying decision of the consumer and should have a reasonable basis.

A real estate agent claims that its project will be developed in the area in the next 3 years. The agent continues to make these claims despite knowing there are no plans to develop in time. This may be deceptive.

A real estate company offering allotment of commercial shops for an upfront payment of PKR 5 million along with a monthly return of 20%, without actually delivering the project. This may be deceptive.

Lose 20 kg in one month*

*comes with money back guarantee!

This may be deceptive as the product has already been sold, consumed and may not lead to the desired results.

Study while you work, anywhere in Canada!

This may be deceptive as working in another country is subject to so many requirements such as visa permissions, language, work restrictions for

6. Adequate Disclosures

- 6.1 Deception lies in the failure to disclose material information or giving actual or potential misleading information capable of being misunderstood by an ordinary habitual user. **Burden is on the undertakings to take necessary measures to ensure that all such information is disclosed to the consumer.**
- 6.2 Undertakings are **cautioned that use of adequate disclosures alone may not be sufficient in correcting the deception.** Commission considers deception effective at the **first contact between a seller and buyer, for instance, the impression created from an advertisement or buying the item in a shop.** Section 10 of the Act may, thus, be violated even if the truth is subsequently made known to the consumer¹⁰.
- 6.3 **The use of fine print disclaimers and qualifications that are difficult to read and/or hide important information must be avoided. There should be no ambiguity.**
- 6.4 The Commission **cannot prescribe a set form of disclosures**, e.g., specified font, etc. and **decides what is an appropriate disclosure on a case-to-case basis** as the medium for dissemination of information and content varies. The Commission takes into consideration the **medium used** to advertise the good in question and **any reasonable limitations of space or time associated therewith.** Nevertheless, **the onus is on the undertakings to disclose all relevant/material information to an extent appropriate to the medium and the product. The lack of space in advertisements has never been and is never meant to be a platform for facilitating distortion of information**¹¹.
- 6.5 Disclosures must be made **clearly and conspicuously.** Undertakings should ensure that any disclosures made are *inter alia*:

¹⁰ Zong Order

¹¹ In the Matter of Show Cause Notices Issued to Askari Bank Ltd, United Bank Ltd My Bank Ltd & Habib Bank Ltd Dated 14 January 2010

- Prominently/instantly visible;
- Adequately presented;
- Appropriately placed;
- Large/clear font – **bold and legible**
- Bright/conspicuous colors¹² distinct from the surrounding;
- In the same language as the rest of the advertisement;

An undertaking prints on its juice products in fine print that they are '100% pure juice without any additives', when the nutrition label reads that 'nectar containing sucrose and acidulates'. This may be deceptive.

A bank claiming to have the lowest fixed mark-up rate on car loans fails to adequately disclose that the offer is only available for a limited time. This may be deceptive.

Calcium X for Women – Once a Day

Bottle must mention side effects, dosage, 'See a Doctor' warning label, counteractions, general information, ingredients, etc.

The use of antibacterial soap – kills 99.9% of bacteria *

*Disclosures related to scientific testing, active ingredients, use, warnings, directions, inactive ingredients.

BIZ Weather Protection Paint – Disclosures regarding number of coats required to achieve desired results.

- 6.6 Importantly for **videos & audio** (voice-overs, radio, telemarketing, etc.), disclosures should be for a **reasonable duration, in a clear audio track that is easily understandable**. Undertakings should **avoid** using voice-overs that **are too quick or too quiet**. Moreover, **flashing disclaimers on screen for only a brief moment or a fast-moving text** may also be viewed as **deceptive**.

¹² CCP vs Cable Manufacturers Dated 26 March 2019

6.7 *Warranties/Guarantees*

- 6.7.1 A warranty/guarantee is where an undertaking **gives a promise as to the quality, condition or performance of a product or an undertaking to do an act**. For example, ‘money back guarantee’ or a written assurance that the product is ‘true and genuine’ to the specifications advertised.
- 6.7.2 Undertakings are **cautioned to disclose its existence and all terms and conditions** prominently such as **coverage, restrictions and limitations** (if any) and **the method of claiming the same**.

Free replacement/refund within 14 days*

*Terms and conditions apply/for more information visit webpage – this may be deceptive.

Offering 2 years warranty for cellphone, however, when claimed it is only applicable for replacement of the touch panel and does not cover other parts. This may be deceptive.

An undertaking offers a 3 year **limited** warranty on its entire range of washing machines, which states: “for complete details, see a copy of our warranty at a dealer located near you.” This may be deceptive.

6.8 *Endorsement and Testimonials*

- 6.8.1 True endorsements help in providing valuable input to potential buyers in evaluating a particular product or service.
- 6.8.2 Undertakings and endorsers alike promoting products or services through endorsements/testimonials should keep in view the following:
- There should be **truth in advertising**. Endorsers **should be genuine users** of the endorsed goods, and if not, the endorser **should not** make any representations **concerning the personal use of the goods or exaggerated claims**.

Example: Wow! This product gives miraculous results!

- There should be a **disclosure** of a ‘**material connection**’, i.e., **paid sponsorship/advertisement** or a **personal relation** to the undertaking concerning.

- iii. All disclosures should be **clear and placed with the endorsement message.**

6.8.3 Testimonials/Endorsement can be made by:

- i. An expert that should be **qualified/skilled person in the relevant field.**

For example, dentists endorsing toothpaste should have the necessary qualifications that enables them to give their expert opinion.

- ii. Another consumer sharing their experience with the product or service advertised.

A consumer shares his experience by stating: "my diabetes is cured by using this product for x days."

- iii. Celebrity/influencer/endorser should **base their opinions on honest use/experience** with the goods being advertised.

Famous celebrity endorses soap that makes their skin fair and smoother.

6.8.4 **Undertakings and endorsers share equal responsibility and are expected to exercise caution while promoting/marketing goods.**

7. **Puffery**

- 7.1 A statement is considered puffery if **the claim is extremely unlikely to induce consumer reliance.**

- 7.2 A statement that is **quantifiable**, that makes a claim as to the "**specific or absolute characteristics of goods,**" may be **an actionable statement of fact** while a **general, subjective claim about a good is non-actionable puffery.**

- 7.3 "Puffery" is intended to be based on **an expression of opinion not made as a representation of fact.**

- 7.4 In simple terms, ‘Puffing’ statements are, **while factually inaccurate**, so **grossly exaggerated** that is extremely unlikely to induce consumer reliance¹³. Hence, ‘puffing’ is **generally vague and unquantifiable**¹⁴.

An undertaking that markets its energy drink as a drink that gives you superpowers and the ability to fly is ‘puffery’.

Paint commercial where the painted color does not fade or is scratched from a tornado.

A fast food undertaking claims to be the ‘king of fast food’. This is puffery.

What is **NOT** ‘puffery’ – “Consumers prefer our burger more than any other burger in town.”

8. E-Commerce Platforms

- 8.1 With the advent of internet, e-commerce has witnessed a boom in recent years and has emerged as an independent sector, thereby, widening the scope/possibility of deception. Thus, in the online marketplace, e-commerce undertakings may have a **greater responsibility** in making representations and placing adequate disclosures. **Platform operators and ecommerce businesses share equal responsibility and are expected to exercise caution while promoting/marketing goods.**
- 8.2 Importantly, undertakings should **display all material information accurately** on platforms/websites/product pages as well as **complete terms and conditions in a clear and conspicuous manner.**
- 8.3 For example, details should be disclosed relating to **price, quality, quantity, mode of payments, return, refund, exchange, warranty or guarantee, delivery or shipment, and any grievance redressal mechanism(s) in place, etc.**

¹³ Reckitt Benckiser Pakistan Ltd. versus S.C. Johnson & Sons Pakistan Ltd Dated 20 January 2012.

¹⁴ Chevron Pakistan Lubricants Pvt. Ltd. versus Hi-Tech Lubricants Ltd Dated 15 September 2020

9. Enforcement

9.1 Under Section 37(1) and (2) of the Act, the Commission can initiate an enquiry **on its own, through a reference by the Federal Government or on a complaint filed by any undertaking or a registered association of consumers.**

9.2 Under Section 28(1)(d) of the Act read with the Seeking Advice Guidelines, undertakings may also **seek advice** from the Commission as to whether **any action proposed to be taken is consistent with the provisions of Section 10 of the Act.**

9.3 *Procedure for filing a complaint with the Commission*

9.3.1 Complaints can be filed either in-person, through courier, through email: complaints@cc.gov.pk or through the Commission's online complaint portal at: <http://203.99.62.74/CMS/complaint.aspx>

9.3.2 The form are specified under Regulation 18 of the General Enforcement Regulations as follows:

i. A complaint/ reference/ application shall state –

- Name of the person/undertaking making the complaint/reference/application.
- Address in Pakistan for delivery of notice/document;
- Telephone number, fax number and electronic mail address, if available;
- Mode of service of notice/ documents to be used;
- Name and address(es) of respondent(s); and
- Name and address of authorized representative, if any.

ii. The complaint/ reference/ application shall contain -

- A brief statement of facts;
- A summary of the alleged contravention of the act;
- A succinct presentation in support of each contravention;
- Such other particulars as may be specified by the Commission;
- A schedule listing all documents/affidavits/evidence in support of each of the presentations; and
- Relief(s) sought.

9.3.3 Accordingly, the kind of evidences important to establish a *prima facie* violation of Section 10 of the Act include the following:

- Copy of the alleged deceptive advertisements across various media.
- Evidence of supply/distribution networks or outreach of the goods in question

- Evidence related to operations, market share, goodwill and potential harm
- Marketing expenses borne by an undertaking
- Copy of registered trademark(s) and copyrights
- Original product packaging (in hard form)

9.3.4 As per Regulation 19 of the General Enforcement Regulations, any complaint submitted to the Commission shall be accompanied with the fee as prescribed under the Fee Schedule.

9.3.5 **The Commission under Section 37(2) of the Act read with Regulation 20 of the General Enforcement Regulations has the power to dispose of any frivolous or vexatious complaints/applications.**

9.4 *Proceedings of the Commission*

Stage 1 – Initiation of Enquiry

9.4.1 Following the initial scrutiny of a complaint/preliminary probe into a matter, the Commission may initiate a formal enquiry by constituting an Enquiry Committee to further investigate into the matter.

Stage 2 – Enquiry Committee Investigation

9.4.2 The Enquiry Committee collects evidence through *inter alia* correspondence and independent market research.

9.4.3 The Enquiry Committee then concludes its *prima facie* observations in the form of an Enquiry Report and presents its recommendations to the Commission.

9.4.4 Based on the findings of the Enquiry Report and recommendations of the Enquiry Committee, the Commission may initiate proceedings under Section 30 of the Act or dispose off the matter.

Stage 3 – Issuance of Show-Cause & Interim Orders

9.4.5 Under Section 30 of the Act, a show-cause is generally issued to the undertakings concerned and an opportunity for hearing is provided. The undertaking(s) may also file an application for an interim order under Section 32 of the Act read with Regulation 25 of the General Enforcement Regulations during the show-cause proceedings.

Stage 4 – Orders of the Commission

- 9.4.6 After hearings have been concluded, the Commission can issue an Order under Section 31 of the Act requiring the undertaking(s) concerned to take such actions as may be necessary to restore the previous market condition, to not repeat the prohibitions or confiscate, forfeit or destroy any goods having harmful effects.
- 9.4.7 Based on commitments submitted by an undertaking, the compliance-oriented approach and other factual circumstances, the Commission may also take a lenient view in the matter.
- 9.4.8 In particular, under Regulation 30 to 32 of the General Enforcement Regulations provides for the method of submitting commitments to the Commission and approval of the same.
- 9.4.9 If such commitments are deemed appropriate and accepted by the Commission, it may issue a Favourable Decision under Regulations 33 and 37 of the General Enforcement Regulations through which the Commission shall limit itself to imposing a penalty of PKR 7,500,000 or 1% of the annual turnover of the undertaking for each violation.

9.5 *Contact Details*

For further information, undertakings may visit the website of the Commission at:
www.cc.gov.pk

OR

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