

## Media & Entertainment - Pakistan

### Limp, flaky product claims? A warning against misleading advertising

Contributed by [Vellani & Vellani](#)

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In one of its last decisions before the lapse of the Competition Ordinance 2009 on March 26 2010, the Competition Commission passed an order against Procter and Gamble Pakistan (Private) Limited for violating Section 10 of the Competition Ordinance 2009, which prohibits deceptive marketing practices.

The commission took *ex officio* action against advertisements for Procter and Gamble Pakistan's product Head & Shoulders, which claimed that the product is '[the] world's number one anti-dandruff shampoo' and suggested that its use renders the hair '100% dandruff free'. Procter and Gamble Pakistan was asked to explain the basis for such claims.

Procter and Gamble Pakistan's response to the commission raised objections as to the scope and validity of the ordinance. In addition, the company contended that:

- the claim that Head & Shoulders is the leading anti-dandruff shampoo had been made reasonably, based on data from market research company Nielsen;
- the claim '100% dandruff free' appeared in conjunction with the phrase 'up to 100% of visible flakes with regular use' in the advertisement; and
- the claim '100% dandruff free' had been made reasonably on the basis of information made available by the company's internal research and development department and by external institutes and dermatologists - such data showed that Head & Shoulders shampoo removes 100% of visible flakes.

After hearing the submissions from Procter and Gamble Pakistan, the commission held as follows:

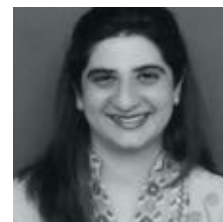
- As regards the objection on the constitutionality and validity of the commission or the ordinance, the commission would proceed on the assumption that its existence was legal and valid until a court of competent jurisdiction determined otherwise.
- As regards Procter and Gamble Pakistan's claim that its product was the world's number one anti-dandruff shampoo, this claim was reasonably substantiated on the basis of the Nielsen report.
- As regards Procter and Gamble Pakistan's claim that the phrase '100% dandruff free' appeared in the advertisement in conjunction with the phrase 'up to 100% of visible flakes with regular use', the overall net impression of the advertisement was not that regular use of the product would remove up to 100% of visible flakes (which was the information disclosed in comparatively unnoticeable fine print to one side of the advertisement). By contrast, the message and claim in the main part of the advertisement was simple and clear, and an ordinary consumer would be likely to infer only that the product renders hair 100% dandruff free.
- In terms of the basis of the claim, it was established that a fixed distance of two feet had been chosen as the distance at which visible flakes might be observed because this was a realistic distance that people would choose when speaking to each other - a lesser distance was likely to be perceived as an invasion of personal space. The commission noted that this might well be the case, but that the distance shown in the advertisement was much less than two feet. The commission held that these two aspects were significant and should have been communicated to the consumer in marketing the product.
- When Procter and Gamble Pakistan was asked to state whether the claim '100% dandruff free' had ever been challenged anywhere in the world as deceptive, the company answered that it had not response was in the negative. However, it was found that such claims regarding the product had been challenged in the United Kingdom and in Hungary, and had been declared misleading in those jurisdictions.
- The commission noted that Procter and Gamble Pakistan had modified the advertisement of its own accord after the first hearing: it had increased the font size

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of the statement 'up to 100% visible flakes with regular use', which appeared at the bottom of the advertisement, and had added the word 'stay' before the phrase '100% dandruff free'. However, the commission considered that the claim was still potentially misleading and deceptive and lacked a reasonable basis, since the advertisement as a whole still gave the impression that regular use of the product would render hair 100% free of dandruff. Moreover, the commission opined that an undertaking of Procter and Gamble's status, which has a presence in 83 countries and claims that its products "touch the lives of people 3 billion times every day" needed to exhibit greater caution and a greater sense of responsibility to consumers.

- The claim that use of the product renders hair '100% dandruff free' is deceptive and tantamount to disseminating misleading information under Section 10(2)(b) of the ordinance, as it lacks a reasonable basis in respect of the character, suitability of use or properties of the product.

Taking all of the facts and circumstances in to account, the commission issued an order that gave Procter and Gamble Pakistan two weeks in which to:

- stop the use of the advertisement in its current (ie, modified) form in all media;
- refrain from using the phrase '100% dandruff free' in future advertisements for the product, unless it is properly substantiated by cogent evidence that gives a reasonable basis for such a claim;
- modify its '100% dandruff free' claim to include the significant clarifying condition that it 'removes 100% of visible dandruff flakes', and state that 'the claim is based on the visibility of flakes at two feet when used regularly' - these amendments are in line with the form of words approved by ClearCast for television advertisements in the United Kingdom; and
- file a compliance report with the commission once its directions had been implemented.

The commission stated that if Procter and Gamble Pakistan failed to comply with the directions in time and remained in contravention of Section 10 of the ordinance, the company would be liable under Section 38 for a fine of PRs25 million (approximately \$300,000) and an additional penalty of PRs250,000 a day from the date on which the order was issued.

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