



BEFORE THE
COMPETITION COMMISSION OF PAKISTAN

IN THE MATTER OF
SHOW CAUSE NOTICE ISSUED TO

M/S NELSON PAINT INDUSTRIES (PVT) LIMITED
On Complaint Filed By
M/S NIPPON PAINT PAKISTAN (PVT) LTD
FOR DECEPTIVE MARKETING PRACTICES

(File No. 391/Nelson Paint/OFT/CCP/2021)

Date(s) of Hearing: 29.03.2022
12.08.2022

Commission: Ms. Rahat Kaunain Hassan
Chairperson

Mr. Mujtaba Ahmad Lodhi
Member

Present:

M/s Nippon Paint Pakistan
(Pvt) Ltd
(Complainant)

Mr. Hammad Saeed
Advocate High Court



M/s Nelson Paint Industries
(Pvt) Ltd
(Respondent)

Mr. Ahsan Hameed Lillah
Advocate High Court

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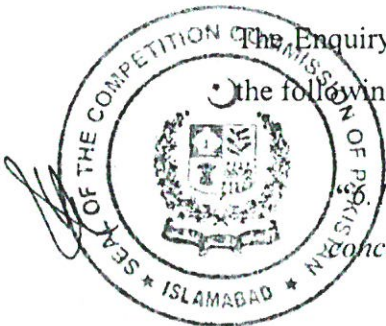
ORDER

1. This order shall dispose of proceedings arising out of Show Cause Notice No. 1/2022 dated January 13, 2022 (hereinafter the 'SCN') issued to M/s Nelson Paints Industries (Pvt.) Limited (hereinafter the '**Respondent**') for *prima facie* violation of Section 10 of the Competition Act, 2010 (hereinafter the '**Act**').
2. The Competition Commission of Pakistan (hereinafter the '**Commission**') received a complaint filed by M/s Nippon Paints Pakistan (Pvt.) Limited (hereinafter referred to as the '**Complainant**'), wherein the Respondent is alleged to have violated Section 10(2)(b) of the Act by distribution of false and misleading information to the consumers through TV commercials and radio transmission, as well as, Section 10(2)(a) of the Act by inflicting harm to the business interest of the Complainant.
3. The Complainant is an undertaking which is engaged in the manufacturing, marketing, sales and distribution of paints and associated products across Pakistan. Similarly, the Respondent is also engaged in the manufacturing and distribution of paint products. As per the Complaint, the Respondent illegally capitalized on the COVID-19 pandemic by falsely advertising certain paint products to offer COVID-19 protection. The Respondent is also alleged to have sold the products under the name of "*Nelson Extra Stainless (COVID-19 Protection)*" and "*Nelson Extra Klick Special Mall Enamel (COVID-19 Protection)*" (hereinafter referred to as the "**Products**"). This branding is alleged to have suggested the fact that usage of the Products offers protection from corona virus and that the said claim is made without any credible lab report or certifications. Neither the said claims provide any instruction or explanation as to duration of protection or time that is taken to disinfect the premises. Hence, the said claims are said to have caused deception to the consumers.

4. The Commission constituted an Enquiry Committee to further inquire into the matter.

The Enquiry Committee finalized its Enquiry Report (the "**ER**") on 27.12.2021 with the following *prima facie* findings:

In view of the position narrated in the preceding paragraphs, it is concluded that the Respondent could not back its claims through

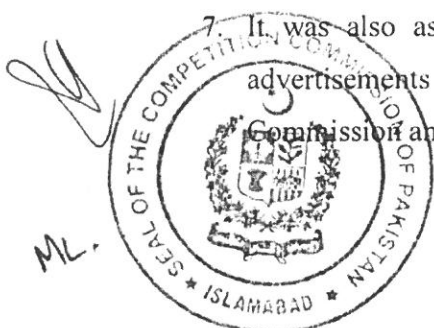


independent third party lab test reports and is likely to be involved in the distribution of false and misleading information to consumers, including the distribution of information lacking reasonable basis related to price, characteristics, properties in, prima facie, violation of Section 10(1) in general and in particular Section 10(2)(b) of the Act.

6.2. Besides, the behaviour of the Respondent is also capable of harming the business interest of other Undertakings, which apparently amounts to violation of Section 10(1) in general and in particular Section 10(2)(a) of the Act.”

5. Subsequent to the aforesaid findings, the Commission initiated proceedings against the Respondent under Section 30 of the Act, issued the SCN to the Respondent and provided the Respondent an opportunity of hearing. The Respondent appeared before the Commission and also submitted its written reply to the SCN.
6. The Respondent contended that it manufactured the impugned anti-bacterial paint, which contains a substance called Benzalkonium Chloride (**BKC**). As per the Respondent, BKC provides protection against microbes and bacteria and the Products are duly checked by *Pakistan Council of Scientific & Industrial Research Laboratories Complex (PCSIR)*. The Test Report No. ILD/ATR-2020-8772 and ILD/ATR-2021-10176-2 dated 24.01.2020 and 18.03.2021, respectively, are relied upon in this regard (the “**Lab Test Reports**”). In addition to that, the Respondent also relied upon other documents such as a report by *Lozangard* (Swiss Multinational and Biotechnology Company), a US patent certificate, an EU patent certificate, and a report of *Neogen* on the industrial application of BKC. It is claimed by the Respondent that anti-bacterial efficiency of its product is 99.9% and it has performed all necessary tests after development of the Products. It is further asserted that there exist no reports against the Respondent in respect of its inefficacy against corona virus and that the complaint is filed with malicious intention just to harm reputation of the Respondent.

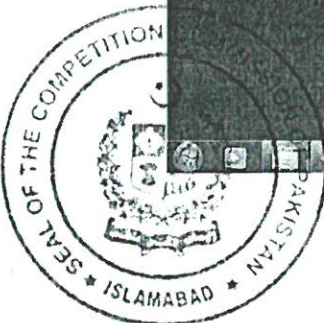
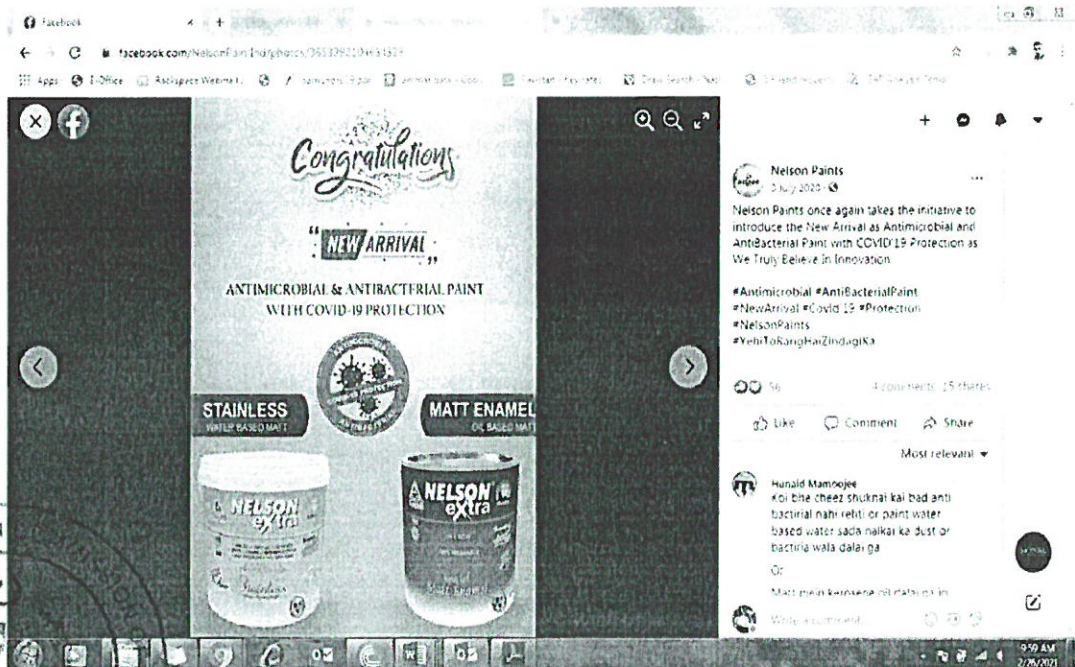
7. It was also asserted by the Respondent that it has already stopped the alleged advertisements and selling of the Products at the time when it received notice from the Commission and that a very small number of the Products were manufactured and sold



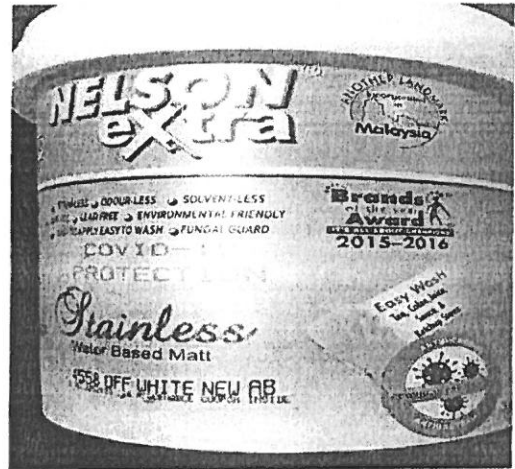
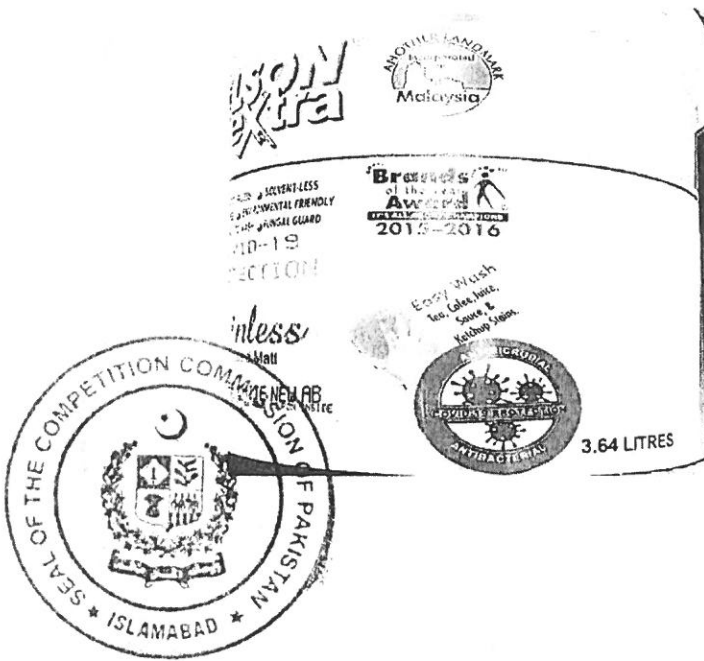
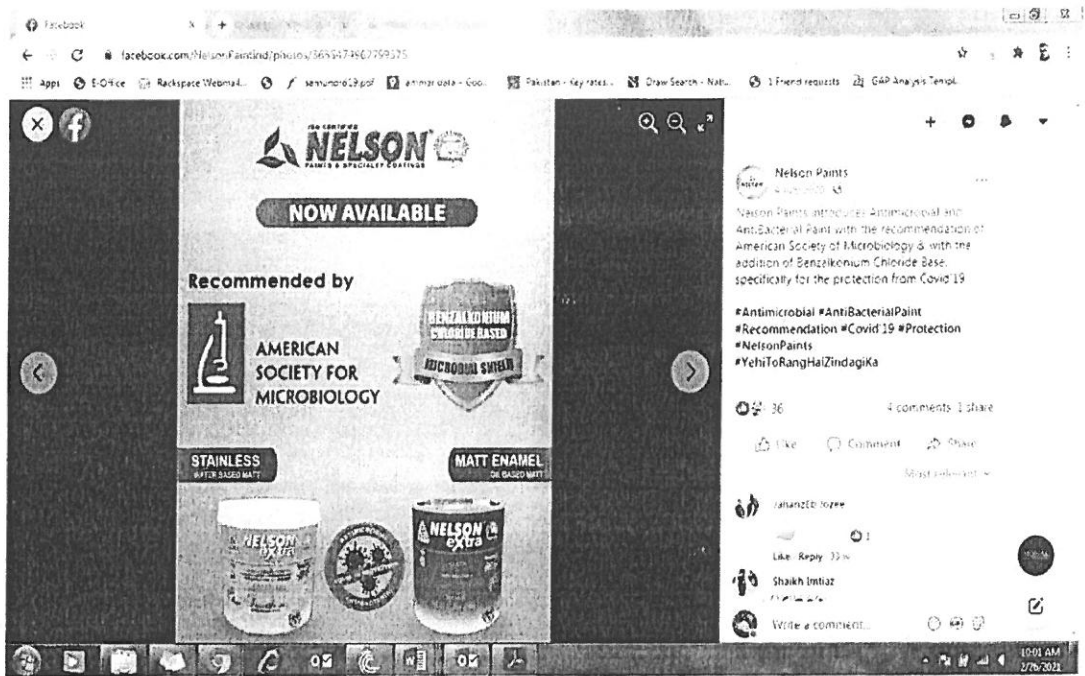
in the market. Therefore, the Respondent had got no boost in its sales due to the alleged advertisement and no harm was inflicted to the Complainant. In addition to that, the Respondent expressed its compliance-oriented approach and commitments to abide by directions or guidelines of the Commission.

ANALYSIS

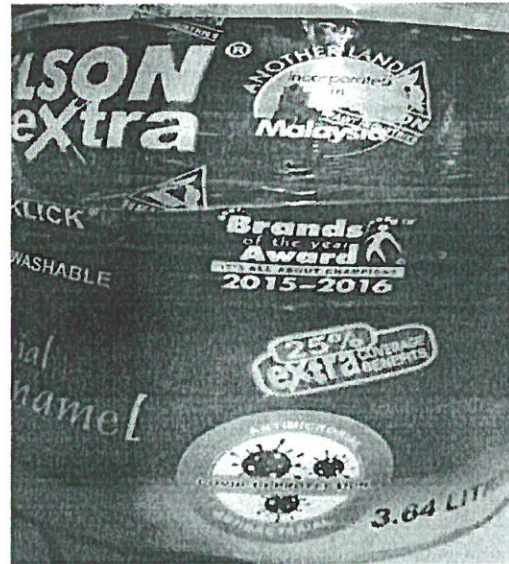
8. We have heard the parties at length and perused the record.
9. Primary issues at hand are:
 - i. **Whether the Respondent violated Section 10(2)(b) of the Act by disseminating false and misleading information to the consumers with respect to the characteristics of the Product?**
 - ii. **Whether the Respondent also violated Section 10(2)(a) of the Act by harming the business interest of the Complainant?**
10. For ease of reference, the relevant advertising material related to the product packaging of the Respondent is reproduced below:



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11. We find merit in the findings of the ER that the Respondent has made absolute claims that its Products protect against Covid-19 and that the said marketing material gives the overall general impression to ordinary consumers that using their paint products provides protection from Covid-19. The Respondent has also not denied the same.

12. The Respondent relied on the Lab Test Reports and other documents related to the efficacy of BKC. We have seen these documents and agree with the findings of the Enquiry Committee that the same only pertain to the efficacy of BKC against bacteria and microbes, but not against viruses, particularly against Covid-19. Furthermore, the testing seems to be to the extent of three types of bacteria only and the documents relied upon do not adequately mention the effective role of BKC in paint products, hence, it does not substantiate the alleged claim, i.e., protection from Covid-19.

13. The Commission has recently held in the Strepsils Matter concerning Show Cause Notice issued to M/s. Reckitt Benckiser Pakistan Ltd on the Complaint filed by M/s. Square Distribution & Marketing System (Pvt.) Ltd dated 9 February 2021 (the "Strepsil Order") that *"plain reading of the statutory text of sub-clauses (a) and (b) reveals that sub-clause (a) appears to be safeguarding business-to-business interest, in contrast to sub-clause (b) that safeguards only consumers' interest. Absence of the term 'consumer' in sub-clause (a) means that may have nothing to do with the dissemination of false or misleading information to ordinary consumers. Therefore, the two provisions can be construed as independent of each other."* Nonetheless, the representation in the marketing of the Products and the dissemination of the same to the public to say the least is potentially misleading for the consumers and leads to the erroneous belief that it provides Covid-19 protection. The marketing practices of the Respondent, when

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taken holistically, are to the prejudice and injury, not only of the consumers, but, also to other businesses. Accordingly, the Respondent has violated Section 10(2)(b) along with Section 10(2)(a) of the Act.

14. Although the Respondent has shown a compliance oriented approach and has submitted its commitment which was received by the Commission on Nov 30, 2022 inter alia stating, that it *“has already stopped its production and make firm commitment that the company will not produce/manufacture the questioned product in future and will fully abide by all the guidelines provided b honorable Competition Commission of Pakistan in this regard”*, we find that the instant matter/claim relates to the health and safety of the ordinary consumer. The Commission in this regard has dealt with such matters strictly. We emphasize that undertakings making any health and safety claims are under a higher duty of care and such claims must be substantiated using competent and reliable scientific evidence that is sufficient in quality and is based on standards accepted generally by experts in the relevant area. Although the Respondent has contended that the sales of the Product were minimal, however, we note from the record that a significant portion of such sales were made to a hospital located in Karachi. Further concern stems from the findings of the ER in para 5.16 and 5.17 where other studies have shown BKC to have toxic elements that may cause respiratory issues. Thus, these material disclosures were not made and the selective reliance on reports/documents submitted by the Respondent has no connection to the impugned claim.

15. In addition to the commitments, it is noted that the duration of the infringement is approximately 09 months. It was also submitted that 1/3rd of the quantity produced i.e. 100 gallons was sold to a hospital in Karachi on 50% discount- purportedly as a Corporate Social Responsibility (CSR) initiative. We note from Pakistan Credit Rating Agency’s 2020 Sector Report on the Paint Industry in Pakistan that the paint industry in Pakistan has a total estimated market size of PKR 50 billion and a Cumulative Annual Growth Rate of 5% in the past 5 years¹. The Respondent is also a major local player in the industry². In the past the Commission has time and time again issued various Orders against various paint manufacturers for deceptive marketing practices and the law is clear on the matter. At this stage, there should be a greater onus on such paint manufacturers to ensure compliance with the provisions of the Act.

16. Therefore, in the overall context of this case and keeping in view the fining guidelines, we are inclined to take a lenient view. However, we deem it appropriate to impose at least a token



¹ https://www.pacra.com/sector_research/publications//Paint03May20_1612420854.pdf

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penalty, to deter firms/entities from engaging in deceptive marketing practices importantly, where it relates to health or safety claims. While we are restricting the token penalty to a fixed amount of Rs. One (01) million only, the Respondents are strongly reprimanded not to repeat such conduct and are held liable to pay the token penalty within 30 days of the issuance of this order.

17. The Respondent is further directed to withdraw any or all batches of the Products that may have been sold or are still available in stock with the Respondent or its distributors. Furthermore, the Respondent is hereby directed that it shall duly inform its distributors or direct buyers of the subject Products including, the Indus Hospital Karachi regarding inefficacy of the subject claims pursuant to this order of the Commission.

18. A report confirming compliance with directions in paragraphs 16 and 17 above shall be submitted within 30 days of the issuance of this order.

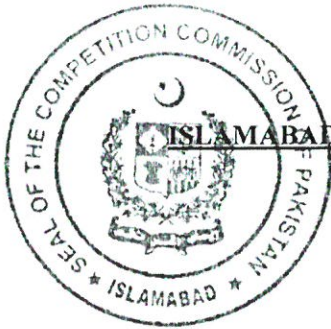
19. Ordered accordingly.


(Rahat Kaunain Hassan)

Chairperson


(Mujtaba Ahmad Lodhi)

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ISLAMABAD, THE 1st DAY OF DECEMBER 2022.



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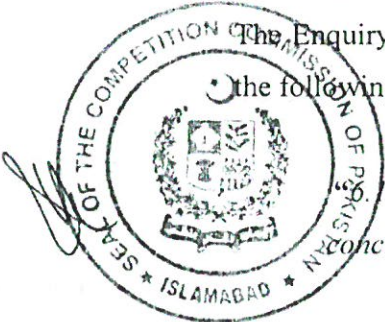
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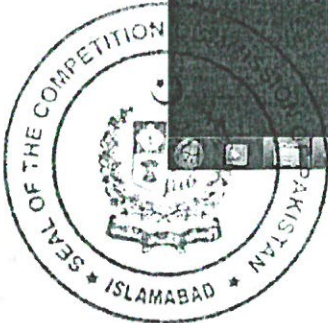
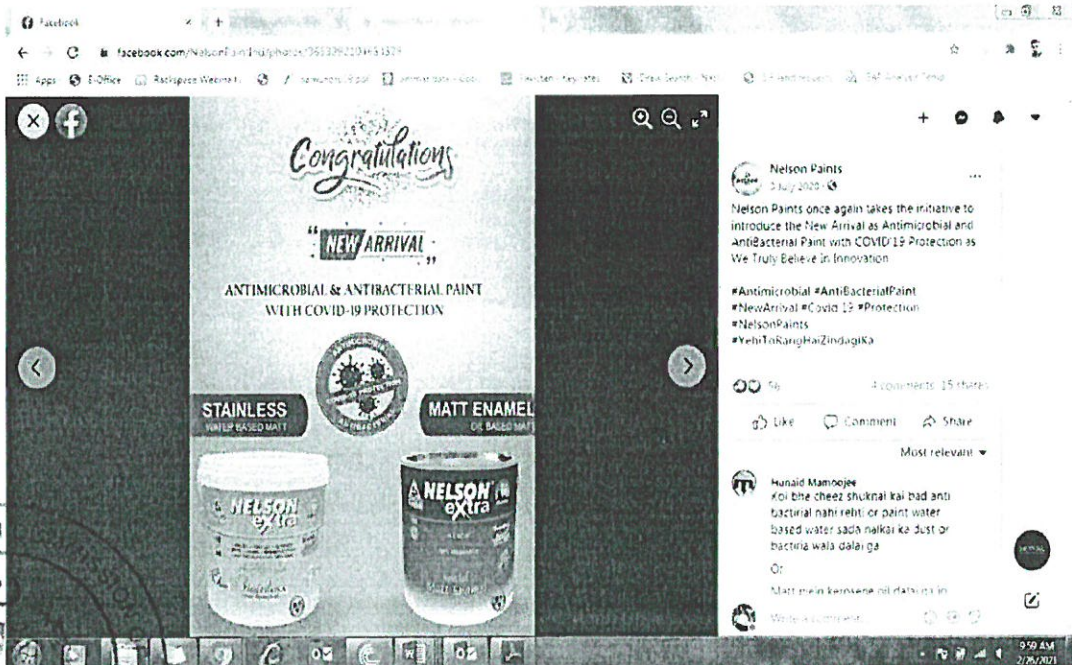
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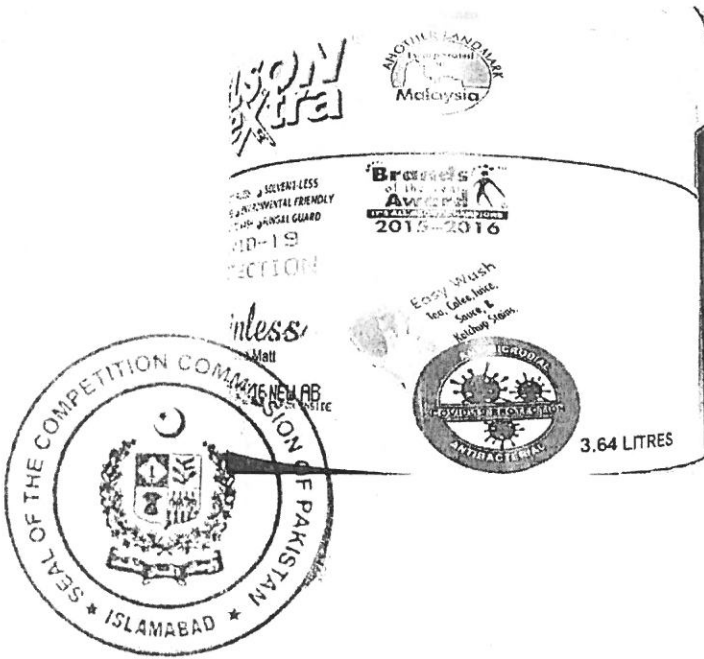
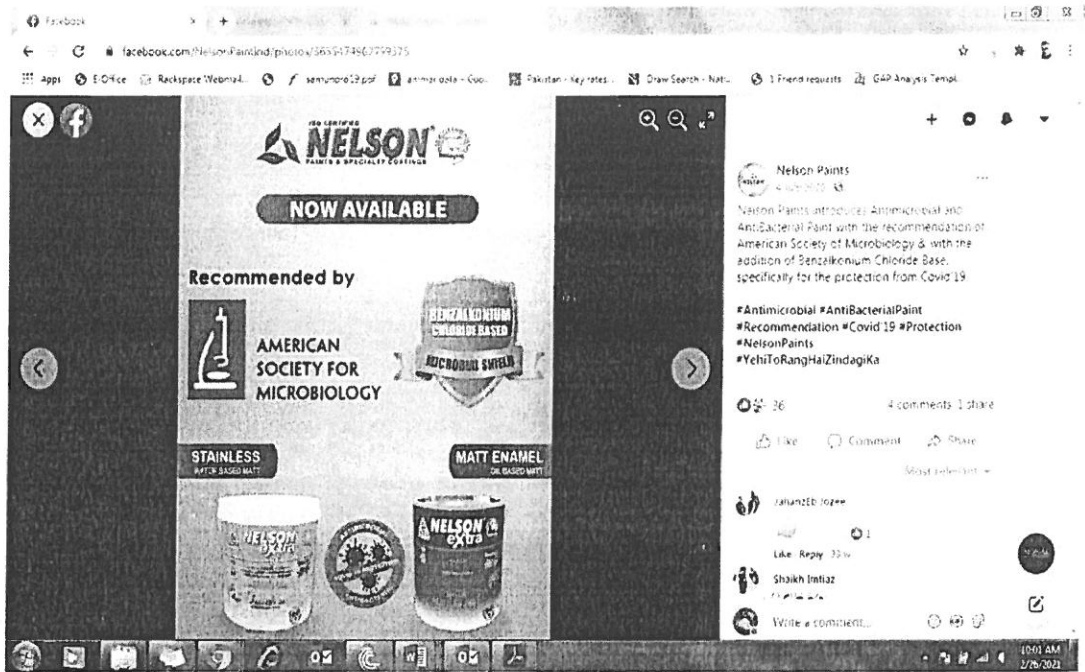


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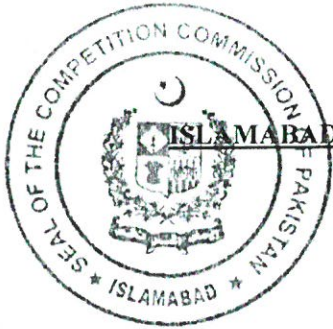
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(Rahat Kaunain Hassan)

Chairperson


(Mujtaba Ahmad Lodhi)

Member



ISLAMABAD, THE 1st DAY OF DECEMBER 2022.