

# INFORGRAPHICS

In the Matter of Show Cause Notices issued to  
**Berger Paints Pakistan**  
on complaint filed by  
**Diamond Paint industries**



Competition Commission  
of Pakistan

www.cc.gov.pk

## BACKGROUND ISSUE AND COMPLAINT



- Diamond Paint in its formal complaint against Berger Paints alleged that it had engaged in deceptive marketing practices by making false and misleading claim regarding its product i.e. Berger Super Emulsion as 'No.1 Emulsion in Pakistan', without any supporting independent research or report.
- The complaint further alleged that the false/misleading claim has the potential to mislead the ordinary consumer and also likely to cause harm to the Respondent's competitors which is prima facie in violation of Section 10(2)(a), (b) and (c) of the Act.

## FINDINGS OF ENQUIRY REPORT



- The conduct of the Berger Paints is, through claim of 'Burger No.1 Super Emulsion' on the paint bucket and shade card/brochure of its emulsion paint, capable of harming the business interest of the complainant and other undertakings, prima facie, in violation of Section 10(2)(a) of the Act.
- It is also concluded that the Berger Paints is found to be disseminating misleading information to consumers lacking a reasonable basis related to the character, properties and quality of its product, prima facie, a violation of Section 10(2)(b) of the Act.
- Taking into consideration the Enquiry Committee's findings and recommendations, the Commission issued show cause notices to the respondents and held hearings in the matter.

## APPLICATION UNDER REGULATION 30



- During the hearing, Berger Paints also filed an application under Regulation 30 of the Competition (General Enforcement) Regulations (GER) 2007 and submitted that it wishes to avail the remedy as provided under Regulation 30.

## ISSUES FRAME BY THE BENCH



- Whether the Respondent has resorted to deceptive marketing practices by distributing false and misleading information in violation of Section 10 (1) read with Section 10(2)(a) & (b) of the Act?



### DATE OF ORDER

1 December 2022



### BENCH MEMBERS

Rahat Kaunain Hassan  
(Chairperson)  
Mujtaba Ahmad Lodhi  
(Member)



### SECTOR/MARKET

Paint Manufacturers



### NATURE AND SECTION VIOLATION

Deceptive Marketing  
Practices in violation of  
Section 10 of the  
Competition Act, 2010



### COMPLAINANT

Nippon Paints Pakistan

## FINDINGS OF THE BENCH



- The impugned claim and logo 'Burger No.1 Super Emulsion' is capable of misleading the ordinary consumer that Respondent's emulsion is No.1 in the emulsion paint market or that the product is better in ranking as a whole from the other competitors in the market.
- No independent study or research to support the nexus for claiming it to be 'No.1' has been placed on record by the Respondent.
- The Bench clarified that the Commission is not solely concerned with the status of registration of the trademark logo but whether the representation of the Respondent's logo while advertising its product is deceptive in any manner. Even if the undertaking had a registered trademark, it would still not absolve any party from complying with the provisions of Section 10 of the Act.
- The misleading information, in turn, was found to be certainly capable of harming the business interests of other undertakings and distribution of the same constituted a violation of Section 10(2) (a) & (b) of the Act by the Respondent.

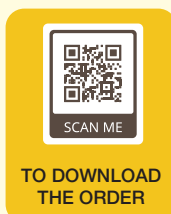
## COMMITMENT & COMPLIANCE

- The Respondent had shown compliance through the commitments filed under Regulation 30 of GER 2007 and had ceased to advertise the impugned logo and also removed it from all print and electronic media as per the documents submitted by the Respondent.
- The Bench was satisfied with the compliance of Regulation 30 of GER 2007 and accepted the commitments filed by the Respondent.



## REMEDIES & PENALTY

- The Bench had decided not to impose any penalty on the Respondent due to the commitments submitted by the Respondent and the compliance oriented approach shown by the Respondent.



## DIRECTIONS

- The Bench observed that any alleged practice of a similar nature, i.e., using the term 'No.1', by any of the players in the relevant market, in a form or manner which is misleading or deceptive, needs to be stopped and/or rectified forthwith by all undertakings concerned.
- To avoid any contravention of Section 10 of the Act, any specific and quantifiable claim, similar to the subject matter, ought to be substantiated by some independent and/or recognizable source.
- The Commission, through its relevant department, may initiate a report in this regard, with respect to the relevant market and segment concerned, flagging similar violation(s), for the Commission to proceed in accordance with law.

