

# **COMPETITION COMMISSION OF PAKISTAN**

## **ENQUIRY REPORT**

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(Under the provisions of Section 37(2) of the Competition Act, 2010)

**IN THE MATTER OF COMPLAINT FILED BY M/S WYETH PAKISTAN  
LIMITED AGAINST M/S RECKITT BENCKISER PAKISTAN LIMITED  
FOR DECEPTIVE MARKETING PRACTICES**

**BY**

Noman A. Farooqi/ Marryum Pervaiz  
**Dated: 16/10/2012**

## **A. BACKGROUND**

1. M/s Wyeth Pakistan Limited (hereinafter referred to as the ‘**Complainant**’) filed a complaint with the Competition Commission of Pakistan (the ‘**Commission**’), against M/s Reckitt Benckiser Pakistan Limited (hereinafter referred to as the ‘**Respondent**’) for alleged violation of Section 10 of the Competition Act, 2010 (the ‘**Act**’) i.e. deceptive marketing practices.
2. The Complainant alleged that the Respondent while marketing one of its depilatory product (hair removing cream) i.e. ‘*Veet*’ is disseminating misleading and false information to the consumers through print and electronic media that lacks a reasonable basis, related to character, suitability for use, or quality of goods and is capable of harming the business interest of the Complainant. It has been alleged that such conduct amounts to deceptive marketing practices in violation of Section 10 of the Act.
3. Keeping in view the above, the Competent Authority initiated an Enquiry in accordance with sub-section (2) of Section 37 of the Act by appointing Mr. Noman A. Farooqi, Joint Director and Miss Marryum Pervaiz, Assistant Director, as the enquiry officers. The undersigned Enquiry Officers were directed to conduct the enquiry on the issues raised in the complaint and to submit the enquiry report by giving findings and recommendations *inter alia* on the following:
  - (i) Whether the conduct of the Respondent is capable of harming the business interest of the Complainant in violation of Section 10 and in particular Section 10 (2) (a) of the Act?
  - (ii) Whether the Respondent is disseminating false/misleading information to the consumers that is lacking a reasonable basis, related to character, suitability for use, or quality of goods in violation of Section 10 and in particular Section 10 (2) (b) of the Act?

## **B. COMPLAINT, COMMENTS OF THE RESPONDENT & REJOINDER**

4. In this Part of the report, for ease of reference the complaint, comments/reply of the Respondent and the rejoinder filed by the Complainant are discussed in brevity.

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### **I. THE COMPLAINT**

5. The Complainant is a public limited company incorporated in 1949 in Pakistan. It is a subsidiary of one of the world’s leading pharmaceutical companies called ‘Pfizer Inc. based in New York, USA and aside from pharmaceutical products; it

manufactures and markets consumer products as well. One such product is ‘Anne French’, a hair depilatory/ removal cream.

6. It has been stated in the complaint that there are several hair removal products that are available in the market today and there are different ways of removing these unwanted hairs. There are two categories of temporary hair removal (i) depilation and (ii) epilation. Depilation is elimination of hair from the surface of the skin; this may last for several hours to few days. This may be achieved through shaving, trimming and depilatories. Epilation on the other hand is the extraction of the entire hair up to its root, which lasts for several days or weeks. This is achieved through tweezing, waxing, threading and using other mechanical devices known as epilators.
7. It has been submitted that as per the Nielson Pakistan (AC Nielson), which is a leader in providing measurement and information on consumers, consumer behaviour, media, forecasting etc there are different companies manufacturing depilatory products in Pakistan. The major players in the depilatories segment of the market are the Complainant, the Respondent and United Trading Society. Their products are Anne French, *Veet* and EU Supreme. The market also has other smaller regional players; among a few are White (Black Rose), Samsol (by Samsol) and My Cream (by EL Pakistan). The only creams currently marketed across Pakistan are Anne French, *Veet* and EU Supreme. Anne French is the number one (No. 1) depilatory (hair removing cream) in Pakistan in terms of its volume share, which stood at 11.4% as on August 2011. It derives 18.6% value share of the category, making it the 3<sup>rd</sup> largest brand in terms of value. The presentation of the Nielson Pakistan provided by the Complainant is attached as ‘Annex-A’ to this report.
8. It has been stated in the complaint that the Respondent has launched a campaign in print and electronic media regarding its product *Veet* wherein it has been claimed that “**9/10 Women prefer Veet for smooth glowing skin**”. It has also been alleged that *Veet* was also marketed through placing billboards and hoardings in Karachi, Lahore and Islamabad.
9. It has been alleged by the Complainant that the claim made in the marketing campaign of *Veet* is false and misleading; as it attempts to deceive the consumers into thinking that *Veet* as a depilatory cream is the preferred choice of 90% of women. The Complainant has stated that this statement is not true for the following reasons:
  - (a). Not all women use depilatory creams to remove unwanted body hair. The data shows that approximately 21% of women actually use depilatory cream for hair removal, whereas 49.8% use powder and 2.1% use lotion to remove hair;

- (b). Within the category of all women who use depilatory cream for hair removal, 11.4% use Anne French, 8.1% use *Veet* and 9.8% use EU Supreme in terms of volume. Volume measures the number of units sold per annum. The detail of value and volume shares of Anne French and *Veet* in terms of the Nielson Pakistan data is as follows:

	<b>Volume Share</b>	<b>Value Share</b>
<b>Anne French</b>	11.4%	18.1%
<b>Veet</b>	8.1%	26.7%

- (c). Even if the value share is taken, still it cannot be claimed that *Veet* is used by 90% of the women.
10. In view of the above, it has been submitted by the Complainant that the claims made by the Respondent in its marketing campaign of *Veet* are false, misleading and lacks reasonable basis related to character, suitability for use, or quality of goods and same are also capable of harming the business interest of the Complainant, which in fact amounts to deceptive marketing practices in violation of Section 10 of the Act.

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## II. THE COMMENTS/REPLY OF RESPONDENT

11. The complaint alongwith its annexures was forwarded to the Respondent for their comments/reply vide letter dated 09-05-2012. The Respondent requested for an extension in time to file the written reply through their counsel's letter dated 14-05-2012. In response vide letter dated 15-05-2012 the Respondent was granted the extension till 25-05-2012 to file their comments/reply to the complaint. The comments/reply of the Respondent was filed on 25-05-2012 by their counsel.
12. The Respondent is a company registered under the Companies Ordinance, 1984 and is principally engaged in the manufacturing and marketing of consumer household, antiseptic and pharmaceutical products including *Veet*.
13. The Respondent submitted that according to Sec 2(1)(k) of the Act, the relevant market should comprises of all those product and services which are regarded as interchangeable or substitutable by the consumers by the reason of the products, characteristics, prices and intended uses. Therefore, the relevant market for the purpose of the present complaint should be all forms of depilatories not just depilatory creams.
14. The Respondent in its reply submitted that Neilson has conducted a retail audit survey of the depilatory category of the urban market of Pakistan for the period of April 2011 to March 2012. According to this survey depilatory cream enjoys 54.3% of the overall market value share in Pakistan. The market share of major three brands in depilatory category (creams, lotions/Milk/Liquids, powder & others) from April 2011 to March 2012 is as follow:

<b>Depilatory</b>	<b>Value Share</b>	<b>Volume Share</b>
<i>Veet</i>	31.7%	9.2%
Anne French	19.7%	11.8%
EU Supreme	11.7%	6.0%

15. The market share in depilatory creams from April 2011 to March 2012 is as follow:

<b>Depilatory Cream</b>	<b>Value Share</b>	<b>Volume Share</b>
<i>Veet</i>	58.3%	46.2%
EU Supreme	17.1%	20.6%
Anne French	8.6%	11.3%

16. The Respondent submitted that *Veet* enjoys 31.7% of the over all market value share and 9.2% of the overall market volume share in depilatory category whereas in the depilatory cream segment of the market it has 58.3% of value share and 46.2% of volume share during the period April 2011-March 2012. Whereas Anne French a product of the Complainant holds values share of 8.6% and volume share of 11.3% in the depilatory cream segment of the market. Based on the recent data of Nielson *Veet* is No. 1 depilatory cream brand whereas Anne French is the 3<sup>rd</sup> brand in the category in terms of value and volume share in Pakistan. It has also been submitted by the Respondent that the data submitted by the Complainant is outdated and can not be relied upon as it pertains to the last year. Copy of letter of Nielson dated 23-05-2012 containing the aforementioned data is attached as '**Annex-B**'.
17. In the reply the Respondent has relied on the voiceover in the televised advertisement of *Veet*. It has been stated that "*Veet use krnay k baad*", which means that among the consumers of *Veet* cream 9/10 have experienced smooth and glowing skin. Therefore the claim is specific and not generic in nature. The Respondent has also annexed the televised advertisement, which is '**Annex-C**' to this report.
18. It has also been submitted that the print media and outdoor advertising/marketing campaigns are the extractions of TV advertisement therefore it states that "***9/10 Women prefer Veet for smooth and glowing skin***". The claim is neither misleading nor false as has been alleged by the complainant. Further it doesn't state that *Veet* is the preferred choice of 90% women or 90% women use *Veet* as quoted by the Complainant therefore the Complainant is put to strict proof of the same.

19. The Respondent has further submitted that Section 10 of the Act, 2010 prohibits deceptive marketing practices and the Complainant has failed to apply the applicable provisions of law to the statement of fact appearing in the complaint as:
- (a). Complainant has failed to establish that the claim is false & misleading and is capable of harming business interest of another undertaking.
  - (b). Complainant has failed to establish that the claim lacks a reasonable basis.
20. The Complainant has submitted that in the case of Reckitt Benckiser and S.C Johnson Pakistan Limited the Commission has deliberated that the following questions are to determine:
- (a). What is the reasonable basis of claim
  - (b). Whether the claim is a general assertion and
  - (c). Where the claim is quantifiable.
21. The claim of Respondent is based on independent market research/survey conducted by Oasis Insights (Pvt.) Ltd., copy of the survey is attached as '**Annex-D**'. The claim doesn't state that 90% women use *Veet* & is not based on the volume and value market share. A survey research was carried out by Oasis by taking sample of female *Veet* users between age bracket of 16 to 35 years and face to face interviews of *Veet* users were conducted by means of questionnaires, which is attached as '**Annex-E**'. On the basis of this survey marketing campaign containing the claim has been launched. The statement of claim in TVC is specific about the users of *Veet* only and is not generic in nature. Claim is quantifiable on the basis of findings of Oasis Insight report. TVC clearly states that "**Veet use krnay k baad**", means if we evaluate the advertisement completely it doesn't give a misleading impression. Therefore, the complaint be rejected/dismissed.

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### **III. REJOINDER**

22. The comments/reply of the Respondent was forwarded to the Complainant vide letter dated 14-05-2012 and were required to file their comments/rejoinder, if any, within seven days of receipt of the letter. Since, the rejoinder was not received till 24-05-2012 i.e. within seven days; therefore, a reminder was issued on 24-05-2012 and was requested to provide the rejoinder, if any, at the earliest. The Rejoinder was filed on 07-06-2012.
23. In the rejoinder, the Complainant submitted that the relevant market should not be all form of depilatories as assumed by the Respondent. There are various ways and means of depilation which can not be a substitute for each other. Accordingly, the relevant market for the purposes of the Compliant is the depilatory cream market. Anne French is and was the volume leader in the depilatory cream market up until the time of the launch of campaign of the Respondent. The more relevant

market share to be considered by the Commission is the volume share not value share.

24. It was also submitted the Respondent has made an artificial distinction between creams and lotions. It is common knowledge that both are forms of liquid, used for depilation, with same method of application. The Respondent has shown that it has a monopoly in terms of Section 2(e) of the Act by quoting 58.3% of the market value share and 46.2% of the market volume share. However, the Respondent has, in terms of Section 3 of the Act, an obligation not to abuse its dominant position. Data pertaining to the previous year 2011 is also relevant to the case as it reflects the progress and position of the brands.
25. In TVC statement appears that “9/10 women prefer Veet” is different from what has been said by the model orally (Veet use karny ka baad). Further the ad includes ‘Skin etni smooth aur glowing kbhi na thi’, which means that after using *Veet* the skin of the consumers becomes even more smooth and glowing than it was before the use of *Veet*. This statement in itself is false and misleading. The Respondent in other marketing material than TVC includes only claim “9/10 women prefer Veet”. It changes the essential and substantial part of the statement by deleting an important portion of the message “Veet use karny k baad” and calls it **an extract**.
26. The Complainant has also referred to the case of P&G where it was written in the ad that ‘upto 100% visible flask with regular use’, but the Commission approach was to analyze the advertisement from the point of view of an ordinary consumer and the gist of the ad was 100% free to get closer. Further the written text was invisible. Therefore, the advertisement aired along with print media campaign was deceptive in terms of section 10 of the Act.
27. The Complainant has further submitted that TV advertisement may not be seen by everyone but billboards are displayed for 24 hours a day and for several days and can be viewed by many consumers. All other advertisement others than TVC shows “9/10 women prefer Veet”.
28. In the Indian version of the TVC, the model in the televised advertisement states “Veet use karne kai bad, mein ne aur 84% cosmopolitan readers ne kaha, skin itni smooth aur glowing kabhi na thi.” They conducted a proper survey from the readers of Cosmopolitan Magazine in India and created the advertisement campaign based on the results of such survey. In Pakistan, the Respondent decided to modify the advertisement in a *mala fide* manner for its own benefits.
29. The Oasis survey for the Respondent has a study background which states that “For Reckitt Benckiser’s upcoming initiative on Veet, they need to generate the research claim that Respondent can use in the ad copy”. This shows that the survey was not an independent market research/study; it intends to justify the advertisement claim only. The survey contains certain statements for *Veet* users

only. Out of thirteen statements, there is not one that is neutral let alone negative. 6 out of 13 thirteen statements were only concerned with or related to smooth skin. The survey cover the age group bracket of 16 to 35 years while depilatory users ranging to 50 years of age. Oasis Insights should have been females in the age bracket 16 – 50, Socio economic classification (SECs) A, B, C and D and women currently using any form of depilatory creams. What is most telling about the bias and one-sided nature of the Survey and Research Finding is the statement on the bottom of page 10 wherein it is stated “***Above results are on overall basis***” (top two agreed boxes) “***amongst 308 current users of Veet.***” It is apparent that speaking to current users and asking them about their currently used brand will almost always solicit a positive response, which by nature is a flawed and negates the entire findings of any genuine market research / study. The Respondent should have clearly and in a legible manner qualified in the TVC Advertisement and print media campaign that the Claim (the False and Misleading Claim which is the subject matter herein) is based on a survey conducted of **308 current users of Veet.**

30. Finally in the rejoinder the Complainant reiterated the prayer made in the complaint.

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#### **IV. MEETING WITH PARTIES AND SUBSEQUENT REPLIES**

31. Subsequent to receipt of all the comments and rejoinders by the parties, a meeting was schedule with the Parties on 01-08-2012. Mr. Mehmood Mandviwalla, Ms. Sana Iftikhar and Mr. Umer Khan attended the meeting on behalf of the Respondent and Mr. Shehryar Nashat and Mr. Yahya Ghaznavi attended the meeting on behalf of the Complainant.
32. In the meeting, the representative of the Respondent mainly reiterated the stance taken by them in response to the Complaint, which is mentioned in detail in Paras 11 to 21 above. Mr. Mehmood also stated that their campaign was launched in April, 2012 and ended in May, 2012 and their product i.e. Veet was showing continues growth over the last 18 months in terms of value and volume share in the respective market. It means that the product was continuously showing a rapid growth, whereas the advertising campaign containing the claim ‘9/10’ was launched in April, 2012. Further the campaign did not intend to harm the business interest of any competitor in particular the complainant. He added that the claim of ‘9/10 women prefer veet’ was followed by the words ‘*Veet use krny k baad*’, which means that the advertisement has conveyed that the claim of ‘9/10’ was taken among the users of Veet only and this claim was supported by their own survey of Oasis. We asked the representatives of the Respondent that the questions contained in the survey of Oasis basically wants to imply that 90% of the women who had earlier used *Veet* prefer it. Mr. Umer Khan agreed with our view. The undersigned enquiry officers pointed out that the words ‘*Veet Use Karnay K Baad*’ are only used in the TVC and the words are not mentioned in any of the billboard or the print media



advertisement or even on the on shelf displays. In response Mr. Mehmood stated that the print advertisement is only what has been telecasted in TVC. Upon the objection again raised by the undersigned enquiry officers, he stated that in order to address the concerns of the Commission, they will modify the advertisement.

33. Mr. Shaharyar Nashat has stated that the Respondent has found sufficient time to extend the marketing campaign. The campaign was launched in April, 2012 and till now the Respondent was using the same language in the advertisement. The phrase '*Veet use krny k baad*' never caught the viewer's attention as it was not even displayed in the advertisement in writing. On the other hand the campaign of billboards and shelves material did not include this phrase i.e; '*Veet use krny k baad*' so the over all impact of the campaign was that '*9/10 women prefer Veet*'. Mr. Shaharyar has submitted that from April 2012 till now the Respondent was continuously marketing their product in the *mala fide* way which highly damaged the market repute of the complainant. He was requested to provide the relevant data to support his contention.
34. In support of the contentions given by the representatives of the respondent, a letter was received by the enquiry officers dated: 09-08-2012. The respondent has provided the AC Nielson data reflecting the value share and volume share of both respondent and complainant products from Sept 2010 to April 2012. With respect to the shelves advertising it was submitted that they had not provided any material to the market after May 15, 2012. However if the Commission desires, they can consider adding a disclaimer such as 'based on research conducted amongst Veet users. They further added that they intend to continue the 9/10 Veet television campaign in its present form. Copy of the data provided by the Respondent is attached as **Annex-F**.
35. The complainant with reference to the meeting has submitted a letter dated: 13-08-2012, showing the latest market data of depilatory industry based on research conducted by A.C. Nielson. The data reveals an exponential rise in the sales value of Veet as compare to the increase in Anne French's value. The complainant alleged that this abnormal increase in sales during April till June, 2012 is due to the false and deceptive campaign carried out by the Respondent. Copy of the data provided by the Respondent is attached as **Annex-G**.

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## V. ADVERTISEMENTS SUBSEQUENT TO THE MEETING

36. Subsequent to the meeting, and receipt of the abovesaid letters whereby the market trends and sales was provided by the parties it was observed that the Respondent has launched its new brand '*Veet hair removing Lotion*'. The promo brochure of the lotion stated that '*9/10 women prefer veet for smooth and glowing skin*'. The claim is supported by another statement written vertically on the right side of the brochure '*Based on OASIS research amongst 300 consumers who tried Veet*', it is worth mentioning that the vertical text is not that clear and readable.

37. During the telecast of the 2012 ICC World Twenty20 tournament, the Respondents new advertisement was aired. A copy of the CD containing advertisement is attached as **Annex-H**. The transcript of the advertisement is as follows:

آپ کو بتاؤں ایک خوشی کی خبر۔ پیش ہے نیا **veet hair removal lotion**  
jasmine اور lotus milk کی خوبیوں کے ساتھ۔ جو عام hair removal lotion کے  
مقابلے میں بنائے آچکی skin کو **smooth اور glowing**۔  
اس لئے میری اور 9 out of 10 لڑکیوں کی پسند **veet** اب hair removal lotion میں  
بھی۔

**veet what beauty feels like.....!**

38. The above statement clearly shows that in the advertisement the words '*Veet use karnay k baad*' which were available in the earlier advertisement are missing. In the advertisement there is no mention of any survey or research study, which could have made basis for such claim. It is also worth mentioning that aforesaid advertisement was televised during the 2012 ICC World twenty20 (18-09-2012 to 07-10-2012) frequently, getting the maximum benefit from the viewership of the said tournament.
39. The Complainant vide its letter dated 24-09-2012, submitted that the Respondents have infact mislead the Commission and rather than addressing the concern of the Commission, they have deleted the words '*Veet Use Karnay k Baad*'. This qualifier was present in the earlier TVC, which has been omitted now and the new advertisement has been frequently aired.

## **C. ANALYSIS**

40. As mentioned in Para 3 *ibid* the undersigned enquiry officers were directed to conduct the enquiry on the issues raised in the complaint and to submit the enquiry report by giving the findings and recommendations *inter alia* on the T.O.Rs.

### **I. OVERALL NET IMPRESSION OF THE MARKETING CAMPAIGN / ADVERTISEMENT**

41. The basic allegation under the complaint is that the Claim "**9/10 Women prefer Veet for smooth glowing skin**" made by the Respondent is not only misleading

and false but it also lacks a reasonable basis and is capable of harming the business interest of the Complainant.

42. In order to address the issues in hand, it is imperative for us to first understand the overall net impression of the marketing campaign/advertisements. In this regard, we must keep in mind the principle laid down by the Commission in the matter of Zong & Ufone (2010 CLD 1478) that the advertisement has to be viewed as a whole without emphasizing isolated words or phrases apart from their context. The said marketing campaign of *Veet* was launched in the beginning of the month of March 2012. The advertisement appearing in the print media is attached as Annex-I & Annex-J.
43. In the marketing campaign of *Veet* the Respondents had placed huge billboards and hoardings on conspicuous places of major cities such as Islamabad, Karachi and Lahore. The images of the billboards and the hoardings on the display are attached as 'Annex-K'.
44. The undersigned enquiry officers have also visited some departmental stores where *Veet* is on shelf display. The marketing material regarding the shelf displays are attached as Annex-L and Annex-L1.
45. In the marketing campaign alongside the aforementioned mediums, a commercial was also televised; the voice over of the said TVC is as follows:

کسی اور چیز کی کیا ضرورت --- جب skin ہو اتنی خوبصورت --- موسیقی  
ویٹ استعمال کرنے کے بعد میں نے اور 9/10 لڑکیوں نے کہا کہ جلد اتنی smooth اور glowing کبھی نہ تھی۔  
ویٹ میں ہے lotus milk اور jasmine کی خوبیوں کے ساتھ special skin care ingredients.  
ویٹ --- what beauty feels like

46. As mentioned in Para 36 to 38 above another advertisement was also launched wherein the words '*Veet use karnay k baad*' have been omitted. The Complainant has alleged that through the advertisements the Respondent is basically publicizing that *Veet* as a depilatory cream is the preferred choice of 90% of women. On the other hand the Respondent heavily relies on the voiceover of the first TVC which states that "*Veet use karnay k baad main nay aur 9/10 larkiun nay kaha k skin itni smooth aur glowing kabhi na thi*" and claims that the overall net impression of the advertisement is not what the Complainant has alleged and it is obvious from the voiceover of the TVC which gives the clear impression. The Respondent has also submitted that the print media advertisement and other marketing material only reproduces what is stated in the TVC.

47. We have reviewed the entire marketing campaign, which not only includes the TVC but also includes the print media advertisement, billboard/ hoardings which are displayed at conspicuous places and the on shelf marketing materials. Therefore, we are of the view that in the present case the entire marketing campaign has to be taken into account while considering the overall net impression. Moreover, TVC cannot be interpreted in isolation with the print media and other relevant marketing material as not all the consumers would watch the TVC. While inferring the net overall impression of the marketing campaign another aspect which must be kept into mind is that the advertisement has to be inferred from the point of view of 'ordinary consumer' which has clearly been defined by the Commission *2010 CLD 1473* and who is not the same as the 'ordinary prudent man' concept evolved under contract law.
48. Perusal of the print media advertisements, billboards/hoardings and the on shelf marketing material reveals that only "***9/10 Women prefer Veet for smooth glowing skin***" has been used. This statement connotes and gives an impression to the consumer that 90% of the women prefer using *Veet*. The voiceover in the first TVC states that "***Veet use karnay k baad main nay aur 9/10 larkiun nay kaha k skin itni smooth aur glowing kabhi na thi***". However, when the visuals of the first TVC are clearly observed then again the images which appears on the screen while the voiceover has done is in fact the same tagline i.e. "***9/10 Women prefer Veet for smooth glowing skin***". However, in the second TVC which is aired during 2012 ICC world Twenty20 the words '***Veet use karnay k baad***' have been omitted.
49. In view of the above, and on the basis of the marketing material used for the campaign of *Veet* by the Respondent, the overall net impression of the marketing campaign/ advertisement is that 90% of the women prefer using *Veet*.
50. Having concluded regarding the overall net general impression of the marketing campaign/ advertisement we must now proceed to address the T.O.Rs referred to us. However, we are of the view that we first address the T.O.R No. (ii) and then address the T.O.R. No. (i).

**II. WHETHER THE RESPONDENT IS DISSEMINATING INFORMATION TO THE CONSUMERS WHICH LACKS REASONABLE BASIS RELATED TO THE CHARACTER, SUITABILITY FOR USE OR QUALITY OF ITS PRODUCT VEET**

51. It has been alleged by the Complainant that the claim "***9/10 Women prefer Veet for smooth glowing skin***" which is made in the marketing campaign of *Veet* is false and misleading; as it attempts to deceive the consumers into thinking that *Veet* as a depilatory cream is the preferred choice of 90% of women. The Complainant has stated that this statement is not true for the following reasons:

- (a). The data shows that approximately 21% of women actually use depilatory cream for hair removal, whereas 49.8% use powder and 2.1% use lotion to remove hair;
- (b). Within the category of all women who use depilatory cream for hair removal, 11.4% use Anne French, 8.1% use *Veet* and 9.8% use EU Supreme in terms of volume. Volume measures the number of units sold per annum;
- (c). Even if the value share is taken, still it cannot be claimed that *Veet* is used by 90% of the women.
52. On the other hand, the Respondent contends that *Veet* enjoys 31.7% of the overall market value share and 9.2% of the overall market volume share in depilatory category whereas in the depilatory cream segment of the market it has 58.3% of value share and 46.2% of volume share during the period April 2011-March 2012. Whereas Anne French a product of the Complainant holds value share of 8.6% and volume share of 11.3% in the depilatory cream segment of the market. Based on the recent data of Nielson *Veet* is No. 1 depilatory cream brand whereas Anne French is the 3<sup>rd</sup> brand in the category in terms of value and volume share in Pakistan. It has also been submitted by the Respondent that the data submitted by the Complainant is outdated and can not be relied upon as it pertains to the last year.
53. The Respondent has also relied on the voiceover of the first TVC i.e. “**Veet use krnay k baad**”, which means that among the consumers of *Veet* cream 9/10 have experienced smooth and glowing skin. The claim doesn't state that 90% women use *Veet* & is not based on the volume and value market share. A survey research was carried out by Oasis by taking sample of female *Veet* users between age bracket of 16 to 35 years and face to face interviews of *Veet* users were conducted by means of questionnaires (**Annex-E**). On the basis of this survey marketing campaign containing the claim has been launched. The statement of claim in the first TVC is specific about the users of *Veet* only and is not generic in nature. Claim is quantifiable on the basis of findings of Oasis Insight report.
54. The Complainant in its Rejoinder has rebutted the assertions made by the Respondent. It has been stated that in first TVC the text appearing on the screen while the voiceover is done is different from what has been said by the model orally (**Veet use karny ka baad**). The Respondent in print and other marketing material and the second TVC includes only “**9/10 women prefer Veet for smooth glowing skin**”. It changes the essential and substantial part of the statement by deleting an important portion of the message “**Veet use karny k baad**” and calls it **an extract**. The Complainant has further submitted that TV advertisement may not be seen by everyone but billboards/hoardings and on shelf marketing material are displayed for 24 hours a day and for several days and can be viewed

- by many consumers. All other advertisement others than TVC shows “9/10 women prefer Veet for smooth glowing skin”.
55. The Complainant has also referred to the case of P&G where it was written in the ad that ‘upto 100% visible flask with regular use’, but the Commission approach was to analyze the advertisement from the point of view of an ordinary consumer and the gist of the ad was 100% free to get closer. Further the written text was invisible. Therefore, the advertisement aired along with print media campaign was deceptive in terms of section 10 of the Act.
56. The Complainant has also submitted in its rejoinder that in the Indian version of the TVC, the model in the televised advertisement states “Veet use karne kai bad, mein ne aur 84% cosmopolitan reader’s ne kaha, skin itni smooth aur glowing kabhi na thi.” They conducted a proper survey from the readers of Cosmopolitan Magazine in India and created the advertisement campaign based on the results of such survey. In Pakistan, the Respondent decided to modify the advertisement in a *mala fide* manner for its own benefit.
57. We have gone through the documents and submissions made by the parties in writing and on the record. We find weight in the submissions of the Complainant as the overall net impression of the marketing campaign/ advertisement is that 90% of the women prefer *Veet*. However, the Respondent’s reliance on the Survey of Oasis seems a bit out of place as the statements made in the print media does not gives the impression that 9/10 women who have already used *Veet* would prefer it for smooth and glowing skin, further in the survey conducted by Oasis only 382 ladies were interview and on the basis of 382 interviews, a very strong statement cannot be passed which gives an impression that 90% of the women prefer *Veet*.
58. We also appreciate that the Complainant’s reliance on the case of Proctor & Gamble Pakistan 2010 CLD 1695. As in the said case also certain qualifying statements were not mentioned in the advertisement and hence the advertisement was declared to be in violation of Section 10 of the Act. It would have been interesting had the volume share of *Veet* been 90% in the depilatory cream segment of the market. However, from the data provided by the Complainant or even the data provided by the Respondent, the volume share of *Veet* is not 90% in the depilatory cream segment of the market.
59. We also note that the Complainant has raised an important point while comparing the advertisement of the same product i.e. *Veet* in two different countries i.e. Pakistan and India. This approach was adopted by the Commission in the matter of Proctor & Gamble Pakistan 2010 CLD 1695. However, we have not been provided the copy of the advertisement by the Complainant. Since, we were of the view that a copy thereof would have been helpful for us in reaching to a conclusion in this regard, therefore, we on our own have done a research and have found the advertisement appearing in the print media of India. A perusal of the

- advertisement left us with no option but to agree with the submissions made by the Complainant in this regard.
60. We have also conducted a research to find out advertisement of similar nature in other jurisdiction and came across one advertisement of *Veet* with the text **“83% women who tried Veet said, “My skin never felt so smooth after hair removal”**. The said advertisement is attached as ‘**Annex-M**’.
  61. We are unable to understand as to why the qualifier **“Veet use karnay k baad”** was not used in the print media advertisements and was also omitted in the second TVC, in the visuals of the TVC and on the billboards or the on shelve marketing materials, which is viewed by larger segment of the consumers as compared to the TVC. We note that in the absence of such a qualifier, the marketing campaign would lead the consumers to believe that 9/10 or in view of the overall net impression 90% of the women prefer *Veet*.
  62. In view of the above, we are constrained to conclude that the Respondent through the claim **“9/10 women prefer Veet for smooth glowing skin”** used in its marketing material for its product *Veet* is, *prima facie*, disseminating false/misleading information to the consumers that is lacking a reasonable basis, related to character, suitability for use, or quality of goods in violation of Section 10(2)(b) of the Act.

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### **III. WHETHER THE CONDUCT OF THE RESPONDENT IS CAPABLE OF HARMING THE BUSINESS INTEREST OF THE COMPLAINANT**

63. It has also been alleged by the Complainant that the claims made by the Respondent in its marketing campaign of *Veet* are false, misleading and lacks reasonable basis related to character, suitability for use, or quality of goods and same is capable of harming the business interest of the Complainant, which in fact amounts to deceptive marketing practices in violation of Section 10 of the Act.
64. On the other hand the Respondent has stated that the print media and outdoor advertising/marketing campaigns are the extractions of first TV advertisement therefore it states that **“9/10 Women prefer Veet for smooth and glowing skin”**. The claim is neither misleading nor false as has been alleged by the complainant. Further it doesn't state that *Veet* is the preferred choice of 90% women or 90% women use *Veet* as quoted by the Complainant therefore the Complainant is put to strict proof of the same. Here it would be relevant to add that during the meeting with the Parties on 01-08-2012, the representatives of the Respondent was specifically asked about the claim i.e. whether 9/10 women prefer *Veet* means 90% of the women, to which he agreed.
65. We also note that the Respondent has not used the qualifier in its other marketing material and did not mention **“Veet use karnay k baad”** in their second

- advertisement TVC, which would have given a clear picture by eliminating any chance of misleading. Further in light of the discussion in Paras 51 to 62 *ibid.* the claim “**9/10 Women prefer Veet for smooth and glowing skin**” which gives an overall net impression that 90% women prefer *Veet*, *prima facie*, appears to be false and misleading in nature and is in violation of Section 10 of the Act. At this stage we must point out that Section 10(2)(a) of the Act is applied towards all the other competing undertakings. Any undertaking by making any claim which is either false, misleading or lacking a reasonable basis would give the said undertaking a competitive edge over other undertakings and would ultimately result in higher sales.
66. Furthermore, the language of Section 10(2)(a) of the Act and the principle laid down by the Commission in its **Zong & Ufone Order 2010 CLD 1478**, the actual deception and the actual loss need not to be shown, it is sufficient to establish that the advertisement has the tendency/potential to deceive and the capacity to mislead. The Respondent’s claim in the advertisement does possess the tendency to mislead the consumers and induce them to take a transactional decision based upon the claim made in the Advertisement i.e. “**9/10 Women prefer Veet for smooth and glowing skin**” which gives an impression that 90% of the women prefer *Veet*. It appears that the Respondent by making such claims are, *prima facie*, making an effort to induce the consumers to believe that *Veet* is the most popular depilatory product for hair removal.
67. Another factor which we cannot ignore is that the data submitted by the Complainant despite of it being old shows that the product of Complainant had a major volume share in the year 2011 (**Annex-A&G**) as compared to *Veet*, however, in the most recent data submitted by Respondent the volume share in the depilatory cream segment of the market of the Respondent has increased (**Annex-B&F**). It is immaterial which data is taken into consideration as none represents that the volume share of *Veet* is 90%. Further, from the increase in volume share of the Respondent in the depilatory segment of the market, *prima facie*, gives an impression that the increase in sales i.e. volume share might be due to the marketing campaign in question.
68. Keeping in view the above we are of the view that the conduct of the Respondent i.e. making of claim “**9/10 Women prefer Veet for smooth and glowing skin**” and not using the qualifier i.e. “**Veet use karnay k baad**” in its marketing campaign of *Veet* is, *prima facie*, capable of harming the business interest of the Complainant, which is a violation in terms of Section 10 and in particular Sec10(2)(a) of the Act.

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#### IV. THE CONDUCT OF THE RESPONDENTS

69. It has been observed that besides giving an opportunity to the respondent to rectify the previous claim they started marketing another TVC wherein the words



'Veet Use Karnay K Baad' have been omitted. In the previous campaigns the respondent took a plea that the claim of 9/10 was supported by the statement 'Veet use krny k baad', whereas, in their recent advertisement it was omitted by them. The Respondent not only violates the commitment they gave during their meeting with the enquiry officers but also ignored the concern which was highlighted during the meeting held on 01-08-2012.

70. It will not be out of context to state that the Respondent earlier had filed a complaint with the Commission against M/s S.C. Johnson & sons for a misleading campaign. However, in the present enquiry, despite of knowing the concern of the Commission, the Respondent did not acknowledge the concerns and their commitments during the meeting held on 01-08-2012.

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#### IV. COMPENSATION

71. The Complainant has claimed the recovery of the loss so caused to them by the Respondent through the marketing campaign/ advertisement of their product *Veet*. Infact the Complainant has quantified the losses to the tune of Rs. 95 Million.
72. It is pertinent to point out that the Complainant has not submitted any breakup of the losses suffered by them for the use of the claims by the Respondents which, *prima facie*, lacks reasonable basis and the dissemination of information which is, *prima facie*, misleading and false in nature.
73. The Parties may upon determination of the matter, if it receives any favourable Order from the Commission, may proceed in terms of Section 47 (2) of the Act, which is self explanatory and reads as under:

**47. Compensation .—(1)...**

*(2) Nothing in sub-section (1) shall prevent an undertaking from recovering compensation or damages from any other party for any loss or injury suffered on account of the termination of any agreement or employment or the divestment of any share or property or any other action taken in pursuance of any order made under this Act.*

#### D. CONCLUSION/FINDINGS

74. Based on the information available on record and the submissions made in the written replies, we the undersigned enquiry officers have reached the following conclusions:

- (a). In view of the foregoing and in particular Paragraphs 41 to 50 of this report, *prima facie*, the overall net impression of the marketing campaign/ advertisement of the Respondent regarding its product *Veet* is that 90% of the women prefer using *Veet*.
- (b). In view of the foregoing and in particular Paragraphs 51 to 53 above, *prima facie* the volume share of the Respondent in the depilatory segment of the market is 46.2% of volume share during the period April 2011-March 2012;
- (c). In view of the foregoing and in particular Paragraph 51 to 63 above, it appears that the Respondent by not using the words “**Veet use karnay k baad**” in its marketing campaign and only by using the claim “**9/10 women prefer Veet for smooth glowing skin**” in its marketing campaign for its product *Veet*” is, *prima facie*, disseminating false/misleading information to the consumers that is lacking a reasonable basis, related to character, suitability for use, or quality of goods in violation of Section 10 and in particular Section 10(2)(b) of the Act.
- (d). In view of the foregoing and in particular Paragraph 63 to 68 above, it appears that the conduct of the Respondent i.e. making of claim “**9/10 Women prefer Veet for smooth and glowing skin**” and not using the qualifier i.e. “**Veet use karnay k baad**” in its marketing campaign of *Veet*, *prima facie*, is capable of harming the business interest of the Complainant in violation of Section 10 and in particular Section 10(2)(a) of the Act.
75. The deceptive marketing practices have a direct impact on the public at large; as any claim made in the marketing campaign might give the undertakings a competitive edge over other competing undertaking and would have the effect of inducing the consumers making a transactional decision. Hence, it is in the interest of the general public that the undertakings should be stopped to advertise their products in an unfair and misleading manner and be encouraged to resort to the advertising practices which are transparent and gives consumers/customers true and correct information about the products, rather than making misleading and false claims. *Prima facie*, violations under the Act in terms of the conclusions of this enquiry report warrant initiation of proceedings under Section 30 of the Act against the Respondent i.e. M/s Reckitt Benckiser Pakistan Limited in accordance with the law.

**Noman A. Farooqi**  
Joint Director  
Enquiry Officer

**Marryum Pervaiz**  
Assistant Director  
Enquiry Officer