

COMPETITION COMMISSION OF PAKISTAN

ENQUIRY REPORT

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

**IN THE MATTER OF COMPLAINT FILED BY M/S NIPPON PAINT PAKISTAN
(PRIVATE) LIMITED, AGAINST M/S NELSON PAINT INDUSTRIES (PRIVATE)
LIMITED FOR ALLEGED DECEPTIVE MARKETING PRACTICES.**

BY

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Faiz-ur-Rehman & Amin Akbar

December 27, 2021

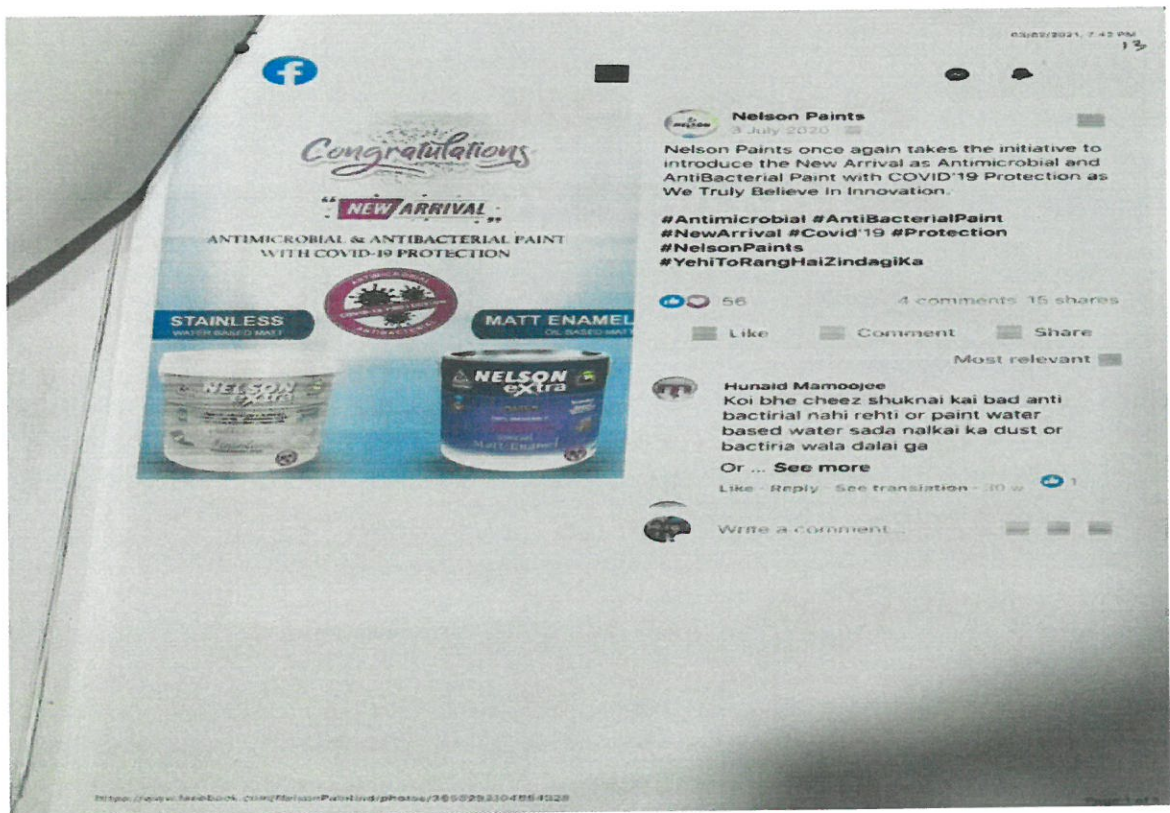
1. BACKGROUND

- 1.1 M/s Nippon Paint Pakistan (Private) Limited (the '**Complainant**'), filed a complaint against M/s Nelson Paint Industries (Private) Limited (the '**Respondent**') with the Competition Commission of Pakistan (the '**Commission**') for alleged violation of Section 10 of the Competition Act 2010 (the '**Act**'), pertaining to Deceptive Marketing Practices.
- 1.2 It was alleged in the complaint that the Respondent is involved in capitalizing on COVID-19 pandemic by falsely advertising certain paint products to offer COVID-19 protection. The Respondent is selling its product under the name "**Nelson Extra Stainless (Covid-19 Protection)**" and "**Nelson Extra Klick Special Mall Enamel (COVID-19 Protection)**" (the '**Product**'), which is unequivocally suggestive of the fact that using the said paint products offer some type of protection from Corona Virus. The Complainant believes that by doing so the Respondent has the ability to affect the consumer buying and has distorted healthy competition in the market.
- 1.3 Based on the preliminary fact finding, the enquiry was initiated dated February 25, 2021 in accordance with sub section (2) of Section 37 of the Act by appointing Mr. Faiz-ur-Rehman, Deputy Director (OFT) and Mr. Amin Akbar, Management Executive (OFT) as enquiry officers (collectively the '**Enquiry Officers**'/ '**Enquiry Committee**'). The Enquiry Committee was directed to conduct the enquiry on the issues raised in the complaint, and to submit the enquiry report by giving its findings and recommendations, *inter alia*, on the following:
 - i. *Whether the Respondent is disseminating false and misleading information to consumers, including the distribution of information lacking a reasonable basis, related to the character, properties, suitability for use, and quality of goods in, prima facie, violation of Section 10(1) in general and in particular, Section 10(2) (b) of the Act.*
 - ii. *Whether the conduct of the Respondent is capable of harming the business interest of the Complainant in, prima facie, violation of Section 10(2)(a) of the Act?*
 - iii. *Whether there is a spillover effect of the conduct of the Respondents?*

2. THE COMPLAINT:

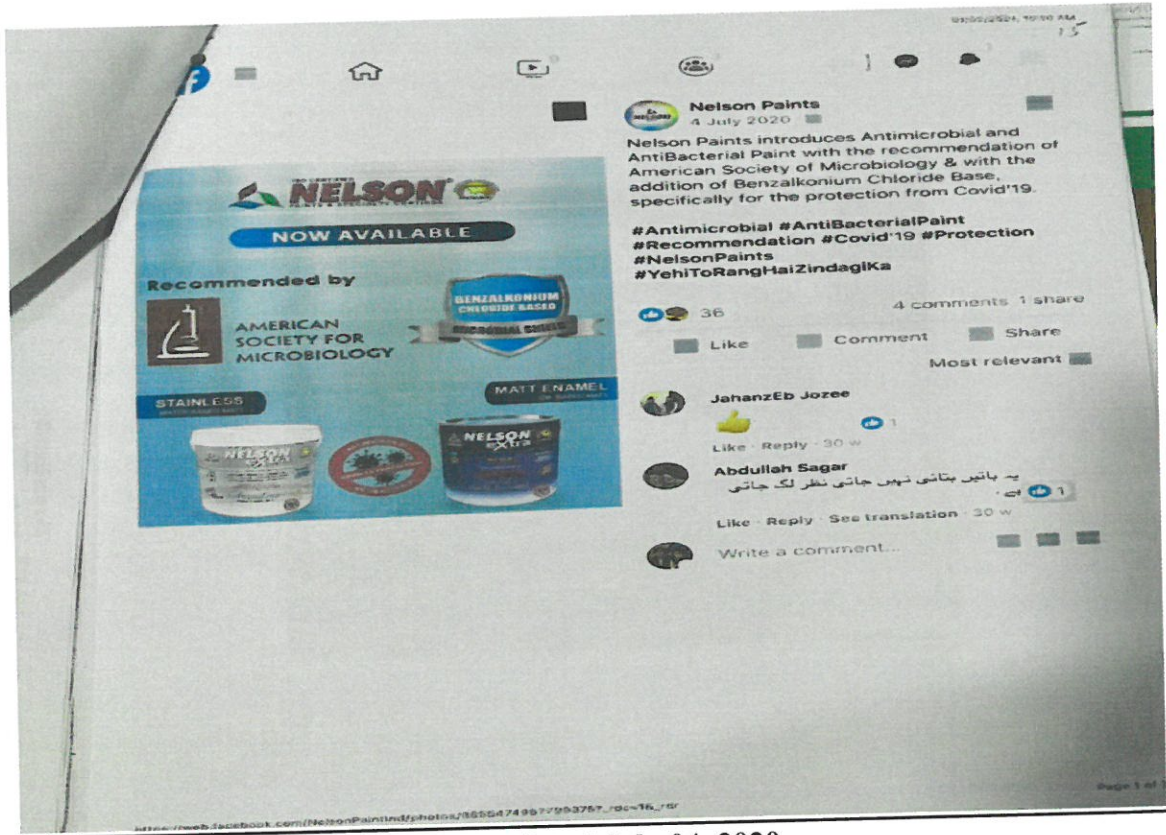
- 2.1 This section summarizes the contentions raised in the complaint:
- 2.2 The Complainant is incorporated as a private limited company, registered and recognized under the law of Pakistan. The Complainant is engaged in the business of manufacturing paint and associated products, and distributing and selling them across Pakistan.

- 2.3 The Complainant submitted that the Respondent is involved in capitalizing on COVID-19 pandemic by falsely advertising certain paint products to offer COVID-19 protection. The Respondent is selling its product under the name of “**Nelson Extra Stainless (Covid-19 Protection)**” and “**Nelson Extra Klick Special Mall Enamel (COVID-19 Protection)**”, which is unequivocally suggestive of the fact that using paint products offer some type of protection from Corona Virus.
- 2.4 The Complainant further submitted that the description of the product is available in a post on the Respondent’s Facebook Page (<https://web.facebook.com/NelsonPaintInd>), dated: 03.07.2020 (<https://www.facebook.com/NelsonPaintInd/photos/3653292104684328>) dated: 04.07.2020 (<https://www.facebook.com/NelsonPaintInd/photos/3655474967799375>). In these posts, the Respondent states that the “Nelson Paints introduces Antimicrobial and Anti-Bacterial Paint with the recommendation of American Society of Microbiology & with the addition of Benzalkonium Chloride Base, specifically for the protection from COVID-19”.



Facebook Post dated July 03, 2020

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Facebook Post dated July 04, 2020

- 2.5 The Complainant in its complaint highlighted that such advertisements must be backed up by credible lab reports or certifications. However, the products mentioned above do not provide such certification/verification or the name of the body that has tested it to verify their claim. Furthermore, the products while claiming to be virus protective, do not detail the guidelines/instructions that elaborate on the duration of protection and the time it takes to disinfect the premises.
- 2.6 The Complainant stated that false and deceptive claims of such nature have a significant impact on public health and safety, consumer confidence, consumer choice and adversely affect the business of competitors in the market, the Complainant being one of them. The Complainant further mentions that numerous clients and dealers have reached the Complainant questioning the veracity of the Respondent's claim.
- 2.7 It was further submitted by the Complainant that the deceptive marketing practice of the Respondent clearly falls within the ambit of Section 10 (2) (a) and (b) of the Competition Act, 2010 (the 'Act'). The claim of having a COVID-19 virus protective paint without credible reports is directly capable of harming the business interests of the Complainant in term of sales, goodwill and consumer trust. Moreover, such deceptive claims also have the tendency to adversely impact the public health and safety especially during these unprecedented times. The Complainant added that the Respondent violates Section 10 (2) (b) of the Act in a way that it is involved in the distribution of false and 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.

- 2.8 The Complainant mentioned that in 2020 CLD 1148, the Commission stated that “an advertisement is deceptive, if it contains a misrepresentation or omission that is material to consumer’s decision to buy or use the products/services likely to mislead the consumers acting reasonably under the circumstances to their detriment (emphasis added). Where it is established that such representation has the potential to mislead, there is no legal requirement to prove the actual injury to consumers”. Under this interpretation, the Complainant is of the view that the marketing practices of the Respondent are deceptive and contravene with Section 10 (2) (b) of the Act.
- 2.9 The Complainant humbly prayed that, the Respondent be restrained from placing any advertisement with such false claim in any advertising space and further that all advertisement carrying this deceptive claim be taken down immediately. Further, the Commission to take notice of this violation by the Respondent and initiate proceedings against the Respondent to prevent them from taking actions that constitute deceptive marketing

3. RESPONDENT’S COMMENTS:

- 3.1 The complaint was forwarded to the Respondent for comments on April 09, 2021. The Respondent after the lapse of the deadline demanded for an extension in time limit through letter dated April 20, 2021, which was granted wide letter dated April 22, 2021. The Respondent did not submit any reply, and a reminder was sent dated May 17, 2021.
- 3.2 The Respondent submitted its reply vide letter dated May 25, 2021, which is summarized below.
- 3.3 The Respondent admitted the contents stated in para 2.2 to the extent that the complainant is a company engaged in the business of manufacturing paint, rest of the Para is denied for want of knowledge, the complainant is put to strict proof.
- 3.4 The Respondent did not make any reply for para 2.3 above on the basis that the complainant has no cause of action to file this frivolous application.
- 3.5 The Respondent did not admitted the contents of herein reproduced para 2.4 and stated that it is a well reputed paint manufacturing company, which is producing the best quality paint and has earned goodwill and trust of its customers and the products of the respondents company are popular among the customers and producing quality paints since long. The Respondent has introduced antibacterial paints, which are germ and bacteria resistant paints. In their formulation, Benzalkonium Chloride (quaternary ammonium compound) has been used that is well known for its efficacy against bacteria, fungi, algae, and enveloped viruses. . The products of the Respondent have clearly mentioned that Benzalkonium Chloride (BKC) is the best available disinfecting base in use, this base is also recommended by American Society of Microbiology as one of the effective surface

disinfectant base used in many product lined as well as paint formulation, multiple studies have reported on the virucidal effect of BKC against Corona Virus.

- 3.6 The Respondent vehemently denied the statement made in Para No. 2.5 above by stating that its products are duly tested & verified by Pakistan Council of Scientific and Industrial Research Laboratories Complex, Karachi, Ministry of Science and Technology, Government of Pakistan vide its letter No.ILD/ATR-2020-8772 dated 24-12-2020.
- 3.7 The Respondent stated that the statement made in Para No. 2.6 above are absolutely false and incorrect, hence denied. In fact, the respondent with hard work has created a good name in the market, and the customers prefer its products due to trust earned by the company. That the complainant instead of improving the quality of its products entered into a malicious and vicious campaign against the respondent and has started a campaign in the WhatsApp group of the paint dealers and manufacturers against the respondent, so that the sale of the respondent products may be lowered and the complainant shall take undue advantage in the market. Furthermore, the respondent reserves the rights to initiate proper legal proceedings in the proper courts of law against the complainant. The complainant is misleading this authority due to its personal interest in launching the same product variant but failed due to respondent's early research and development of the products.
- 3.8 The Respondent highlighted that the statement made in Para No. 2.7 above is absolutely false, frivolous and baseless and is a result of jealousy. The respondent believes in fairness and is always manufacturing the best quality paints. The marketing of products with active base (BKC) asserted by US CDC as proven disinfectant, and remains on the FDA's list of approved active ingredient has never been called deceptive marketing practice. The claim of violating any section of the Competition Act 2010 is baseless and frivolous. As far as the impact on public health is concerned, the respondent always take initiatives for latest research and development of their products and got attested according to applicable standard of safety like VOC (Volatile Organic Compound) from PCSIR, ISO 9001: 2015, and latest certification from the Ministry of Science Technology, PSQCA. The complainant is trying to tarnish the image of the respondent firstly by sending fake messages against the respondent in the WhatsApp group of the paint dealers and the persons related to the paint industry, and secondly by filing this false and frivolous complaint for which the respondent reserves the rights to initiate legal proceedings against the complainant in the courts of law.
- 3.9 The Respondent has denied the statement made in Para No. 2.8 above by stating that the judgment referred has no relevance to the facts of this false complaint. Misrepresentation has never been the practice of the respondent, who always tried to provide easy accessible information to consumer, so it is easy to make a decision. The Respondent has not contravened any provision of the Competition Act, in fact it is the complainant, who is contravening the provision of the Competition Act by indulging a propaganda campaign falsely suing deception as a tool against the respondent.
- 3.10 The Respondent mentioned that the statement made in Para No. 2.9 above is absolutely false and incorrect. The respondent is a well reputed paint manufacturer who has earned its

name due to good quality of its products. This complaint is based on incomplete knowledge about the product, and is only a propaganda campaign. The complainant is misusing the Honorable Forum of Competition Commission of Pakistan for its mala fide intention. The complainant is misusing the name of the authority, and has floated messages in the WhatsApp group stating that the authority had already taken action against the respondent. The complainant itself is indulged in deception and is falsely propagating against the respondent.

- 3.11 The respondent mentioned that it reserves the right to reply any new ground or file any documents, which is necessary for the proper adjudication of this false complaint.
- 3.12 The Respondent respectfully prayed that this complaint may kindly be dismissed with costs.

4. REJOINDER:

- 4.1 The reply of the Respondent was forwarded to the Complainant for its comments/rejoinder vide letter dated June 14, 2021. The Complainant requested for an extension in time via letter dated June 23, 2021, which was dully granted via letter dated June 25, 2021.
- 4.2 The Complainant submitted its rejoinder vide letter dated nil, the contents of which are reproduced in the following paras.
- 4.3 The Complainant denied the contents of para 3.5 above by stating that the Respondent's claim in the said para that the compound used by them is Benzalkonium Chloride (BKC), a quaternary ammonium compound, which has antibacterial qualities. The Complainant further mentioned that the Respondent is misleading this Commission by submitting partial and incomplete documents. That while BKC is used as a disinfecting base in hand sanitizers and disinfectants, there has been no testing or product development to assess the efficacy of this compound in paint products or as a long term self-cleaning product. The Respondent claim that the American Society of Microbiology recommends BKC as one of the recommended disinfectant bases having virucidal effect is misplaced for any such assessments have been done for disinfectants such as Lysol or for hand sanitizers. The use and function of such products is completely distinct from the use of paint products and both cannot be equated in the absence of rigorous testing. It is important to note that the Complainant does not fully deny the effects of BKC itself but only its efficacy, use and safety, when used within or in conjunction with paint products. Suffice to say, the Respondent has merely made a claim as to the efficacy of BKC on its own and not in conjunction with its use in paint products. **Annexure –A** attached with the reply submitted by the Respondent is also clear on this. The examples stated are of hand soaps, health care hand washes, surgical scrubs, etc. Furthermore, the main focus of this annexure is the antibacterial nature of BKC, whereas there is no mention of its effectiveness against enveloped coronaviruses. The approved application for BKC includes decorative ponds, agricultural equipment and tools, laundry, disinfectants (hospitals, food industry and consumer products), hair conditioners, microbial soaps. In fact, the conclusions of the

article relied upon by the Respondent clearly demonstrate: (i) the need for further research on the effect of BKC exposure, as part of consumer products to elucidate its toxigenic and long term potential to alter microbial flora in both clinical and environmental context; and (ii) limiting the use and regulating and monitoring chemicals such as BKC's are important to reduce negative impact on humans and environment.

- 4.4 The Complainant denied the contents of herein reproduced para 3.6 by stating that the reports attached with the reply submitted by the Respondent as **Annexure-B** are incomplete, unclear and serve no purpose to justify the Respondent's claim of having a paint product that is allegedly anti-covid. Test Report ILD-ATR-2020-8772 merely tests the anti-bacterial properties of an alleged product (anti-bacterial paint). This test has no nexus or connection with the present complaint, which concerns itself with a specific claim made by the Respondent: that the product they produce offers Covid-19 protection. Considering Covid-19 is caused by enveloped coronaviruses and not bacteria, this test is irrelevant to the present complaint. Similarly, **Annexure C-1** and **C-2** (Test Reports by PCSIR) are also irrelevant, as the parameter tested is not the virucidal effects of paint but the Volatile Organic Compound (VOC) number. The Respondent has failed to clarify what connection, if any, the VOC, has with a paint's virucidal properties. Furthermore, the Respondent has tested the Nelson Oil Base Paint (Enamel) and Nelson Water Base Paint (Emulsion), and not the product on which the present Complaint has been filed.
- 4.5 The Complainant denied the contents of herein reproduced para 3.7 by stating that the Complainant is part of a multinational group of companies and believes in selling products that have been approved after rigorous testing and safety process. The Respondent has made a claim that is false and deceptive, and one that many innocent persons may rely upon to their detriment.
- 4.6 The Complainant denied the contents of Para 3.8 above on the basis that the Respondent is put to strict proof regarding its statement that the **US CDC asserts BKC to be a proven disinfectant and approved active ingredient in paint products**. While the chemical properties of BKC are not being contested, it is its efficacy and the use in the product that is being sold by the Respondent that is under question. **The Respondent has provided no evidence to show that BKC would be an effective long term self-cleaning surface agent when used in paint products, a claim that it openly makes in front of consumers when it claims to be an anti-covid paint**. Moreover, the content of the rest of the above said para are irrelevant and any claims by the Respondent regarding sending out fake messages by the Complainant are denied and the Respondent is put to strict proof regarding those. Furthermore, the Respondent has vehemently denied the content of herein reproduced paras 3.9 and 3.10 by mentioning that the Respondent is put to strict proof regarding its claim that the Complainant is indulging in deception and false propaganda.
- 4.7 The Complainant submitted its comments on the Annexures submitted by the Respondent, which are presented in the following paragraphs.
- 4.8 The Complainant stated that the **Annexure-A**, as mentioned in para 4.3 above are declared to be misleading and partial concealment. The Respondent has only attached pages 1 and

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2 of the information sheet made available by Lonza and concealed pages 3 and 4, which are now being submitted as **Annexure-D**. That as per pages 3 and 4, Lonza clearly claims **BKC to only have anti-bacterial and anti-fungal properties and nowhere does it claim to have any anti-viral properties**. Furthermore, Lonza also clearly states “the applicability of statements made in this document may not be suitable for a finished product. The contents of this document are for information purposes only, and not intended to and do not constitute part of any product specification. Users of this product should make an independent determination as to the appropriate use of this product in a given finished product formulation”. It is precisely the claim of the Complainant that the Respondent has made no scientific determination as to its claim of the paint having anti-covid properties, and seemingly believes that merely adding an **unknown quantity** of BKC makes its product anti-covid.

- 4.9 The Complainant highlighted that the contents of **Annexure-E** are misleading. It is unclear what this snippet of a document claims to be. The abstract clearly states that high quality paint may have biocidal properties, the claim under question in the present Complaint is one of virucidal properties, and thus this Annexure is irrelevant to the present proceedings.
- 4.10 The Complainant stated that the contents of **Annexure-F** are misleading. On page 2 of the Industrial Applications of Benzalkonium Chloride, under the heading Polymer and Coatings, it is clearly stated that quaternary ammonium compounds are widely used as anti-static, emulsifier and preservative in the coatings industry (paints, wood treatment and electronics). With reference to Polymer and Coatings (including paint products), the claim of this handout is limited to preservation and not active virucidal effects. **Rather, there are specific sections in this handout, stating the pharmaceutical, cosmetic and treatment characteristics of BKC, and any mention of BKC as being an additive to paint to create a virucidal effect is glaringly missing.**
- 4.11 The Complainant denied the contents of **Annexure-G**, as the claim made therein is without any heading, source or citation. The Complainant cannot make an effective reply to a document that is without a source or context. Furthermore, the connection of a patent application currently assigned to Sherwin Williams Co is unclear and the Respondent is put to proof to show its relevance to the present Complaint.
- 4.12 The contents of **Annexure-B** reproduced in para 4.4 above are denied by the Complainant on the basis that it had a **Bactericidal Test conducted by PSCIR, when the claim under question in the Complaint is of the paint having virucidal effects, with a focus on Covid-19**. As per the Complainant said annexure is irrelevant to the present proceedings.
- 4.13 The Complainant humbly prayed that in light of the circumstances stated above, the Commission to proceed against the deceptive marketing practices of the Respondent.

5. ANALYSIS:

5.1 As mentioned in para 1.4 above, the mandate of this enquiry is to find out whether, *prima facie*:

- a) The Respondent's conduct *is capable of harming the business interest* of the Complainant in violation of Section 10 (1) of the Act, in terms of Section 10 (2) (a) of the Act; and/or
- b) The Respondent's conduct pertains to *the distribution of false or misleading information to consumers related to character, place of production, properties and quality of goods*, in violation of Section 10 (1) of the Act, in terms of Section 10 (2) (b) of the Act?
- c) The Respondent's conduct of anti-competitive behavior is spilling over the territorial limits of other provinces or not?

5.2 Before analyzing the facts, it is important to understand the difference between false and misleading information. The Commission, in its order held against **M/s CMPak Limited**¹ has defined "False" and "Misleading" information as deceptive marketing practices in the following manners:

False Information:

'False information' can be said to include: 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.

Misleading Information:

*"Whereas '**misleading information**' may essentially include 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 extent."*

5.3 In order to determine instance of deception in the claims, the main focus of the Enquiry Committee, as per the general practice, is to evaluate its "net general impression". It was held in the Zong Order **(2010 CLD 1478)** "the approach of the Commission is to evaluate

¹ <http://cc.gov.pk/images/Downloads/ZONG%20-%20Order%20-%2029-09-09%20.pdf>

complete advertisements and an opinion regarding deception is to be formulated on the basis of the net general impression conveyed by them and not on isolated excerpts.²

- 5.4 The Canadian Competition Commission, according to its Competition Act, states: "To determine whether a representation is false or misleading, the courts consider the "general impression" it conveys, as well as its literal meaning."³
- 5.5 Moreover, we 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.
- 5.6 A case of Standard Oil of Calif, 84 F.T.C 1401 (1974) at pg. 1471 by the FTC puts light on how to evaluate the overall impression and impact of an advertisement.

"[i]n evaluating advertising representations, we are required to look at the complete advertisement and formulate our opinions on them on the basis of the net general impression conveyed by them and not on isolated excerpts."⁴

- 5.7 Prior to proceed further the point under discussion is to understand what is: Virus, Bacteria, Antimicrobial, Antibacterial, Antiviral, Benzalkonium Chloriden (BAC or BKC) and Coronavirus.

A virus is a small collection of genetic code, either DNA or RNA, surrounded by a protein coat. A virus cannot replicate alone. Viruses must infect cells and use components of the host cell to make copies of themselves. Often, they kill the host cell in the process, and cause damage to the host organism. Viruses have been found everywhere on Earth. Researchers estimate that viruses outnumber bacteria by 10 to 1. Because viruses don't have the same components as bacteria, they cannot be killed by antibiotics; only antiviral medications or vaccines can eliminate or reduce the severity of viral diseases, including AIDS, COVID-19, measles and smallpox⁵.

"Bacteria are unicellular organisms belonging to the prokaryotic group where the organisms lack a few organelles and a true nucleus⁶".

"Antimicrobial: Destroying or inhibiting the growth of microorganisms and especially pathogenic microorganisms. Antimicrobial technology can be defined as a substance that works to destroy or inhibit the growth and reproduction of bacteria, mold and mildew⁷."

² <https://www.cc.gov.pk/images/Downloads/ZONG%20-%20Order%20-%202029-09-09%20.pdf>

³ <http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03133.html>

⁴ https://www.ftc.gov/sites/default/files/documents/commission_decision_volumes/volume-84/ftc_volume_decision_84_july_-_december_1974pages_1401-1493.pdf

⁵ <https://www.genome.gov/genetics-glossary/Virus>

⁶ <https://byjus.com/biology/bacteria/#definition>

⁷ <https://www.microban.com/antimicrobial-solutions/overview/defining-antimicrobial-technology>

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“Antibacterial: Anything that destroys bacteria or suppresses their growth or their ability to reproduce⁸”.

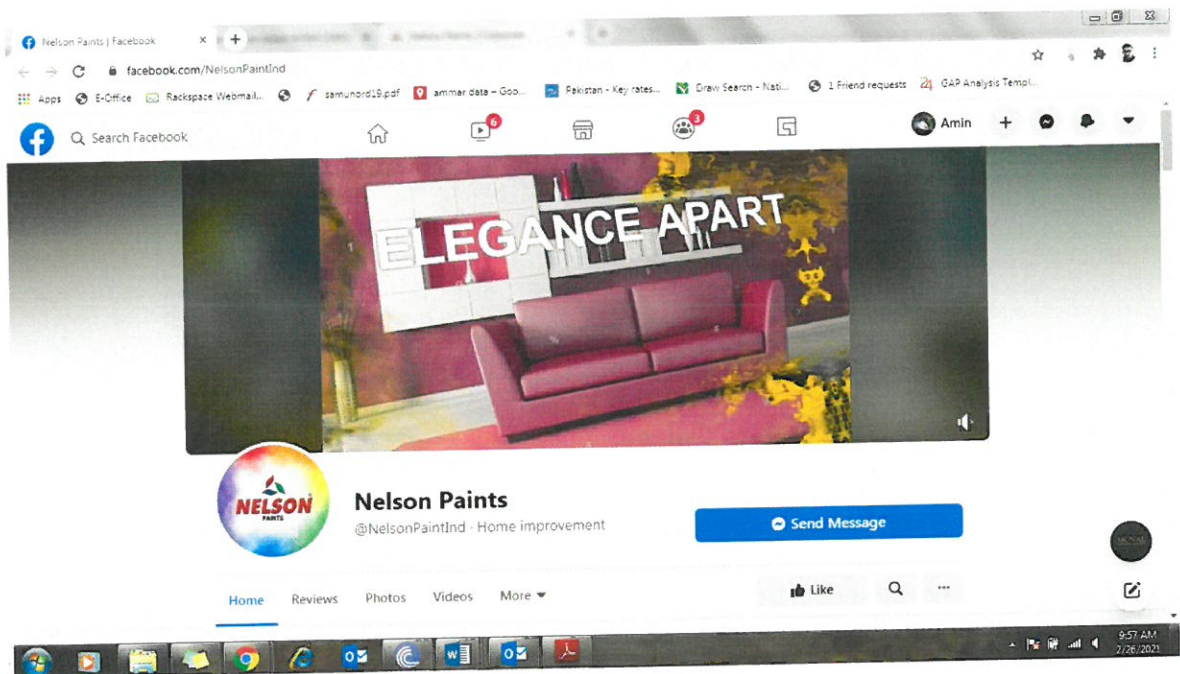
Antiviral: “drugs, including interferon, which stimulate cellular defenses against viruses, reducing cell dna synthesis and making cells more resistant to viral genes, enhancing cellular immune responses or suppressing their replication⁹”.

Benzalkonium Chloriden (BAC or BKC): “a white or yellowish white mixture of chloride salts obtained as a bitter aromatic powder or gelatinous pieces that is used as an antiseptic and germicide¹⁰”.

Coronaviruses are a family of viruses that can cause respiratory illness in humans. They are called “corona” because of crown-like spikes on the surface of the virus. Severe acute respiratory syndrome (SARS), Middle East respiratory syndrome (MERS) and the common cold are examples of coronaviruses that cause illness in humans¹¹.

- 5.8 In pursuit of the above, the Enquiry Committee will examine the varied portions of marketing material of the Respondent on its Facebook page, submitted by the Complainant. Furthermore, the Enquiry Committee conducted a market survey and purchased both the products of the Respondent. Below are the screenshots of the marketing campaign made by the Respondent on its Facebook page, which is taken by the Enquiry committee after the initiation of the enquiry.

Facebook page of the Respondent



⁸ <https://www.medicinenet.com/antibacterial/definition.htm>

⁹ <https://www.biologyonline.com/dictionary/antiviral>

¹⁰ <https://www.merriam-webster.com/medical/benzalkonium%20chloride>

¹¹ <https://my.clevelandclinic.org/health/diseases/21214-coronavirus-covid-19>

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Nelson Extra Stainless (Covid-19 Protection)

The image shows a Facebook post from Nelson Paints dated 3 July 2020. The main content is a promotional graphic for 'NEW ARRIVAL' 'ANTIMICROBIAL & ANTIBACTERIAL PAINT WITH COVID-19 PROTECTION'. The graphic features two paint cans: 'STAINLESS WATER BASED MATT' and 'MATT ENAMEL OIL BASED MATT'. A central circular logo indicates 'ANTIMICROBIAL COVID-19 PROTECTION ANTIBACTERIAL'. The text on the graphic reads: 'Congratulations NEW ARRIVAL ANTIMICROBIAL & ANTIBACTERIAL PAINT WITH COVID-19 PROTECTION STAINLESS WATER BASED MATT MATT ENAMEL OIL BASED MATT'.

Nelson Paints
3 July 2020

Nelson Paints once again takes the initiative to introduce the New Arrival as Antimicrobial and AntiBacterial Paint with COVID 19 Protection as We Truly Believe In Innovation.

#Antimicrobial #AntiBacterialPaint
#NewArrival #Covid 19 #Protection
#NelsonPaints
#YehiToRangHaiZindagiKa

56 4 comments 15 shares

Like Comment Share

Most relevant

Hunaid Mamoojee
Koi bhe cheez shuknai kai band anti bacterial nahi rehti or paint water based water sada nalkai ka dust or bacteria wala dalai ga
Or
Matt mein kerosene oil dalai na in

Write a comment...

9:59 AM
2/26/2021

Nelson Extra Klick Special Mall Enamel (COVID-19 Protection)

The image shows a Facebook post from Nelson Paints dated 4 July 2020. The main content is a promotional graphic for 'NOW AVAILABLE' 'ANTIMICROBIAL & ANTIBACTERIAL PAINT WITH COVID-19 PROTECTION'. The graphic features two paint cans: 'STAINLESS WATER BASED MATT' and 'MATT ENAMEL OIL BASED MATT'. A central circular logo indicates 'ANTIMICROBIAL COVID-19 PROTECTION ANTIBACTERIAL'. The text on the graphic reads: 'ISO CERTIFIED NELSON PAINTS & SPECIALTY COATINGS NOW AVAILABLE Recommended by AMERICAN SOCIETY FOR MICROBIOLOGY BENZALKONIUM CHLORIDE BASED MICROBIAL SHIELD STAINLESS WATER BASED MATT MATT ENAMEL OIL BASED MATT'.

Nelson Paints
4 July 2020

Nelson Paints introduces Antimicrobial and AntiBacterial Paint with the recommendation of American Society of Microbiology & with the addition of Benzalkonium Chloride Base, specifically for the protection from Covid 19.

#Antimicrobial #AntiBacterialPaint
#Recommendation #Covid 19 #Protection
#NelsonPaints
#YehiToRangHaiZindagiKa

36 4 comments 1 share

Like Comment Share

Most relevant

JahanZEb Jozee
Like Reply 33 w

Shalkh Intiaz

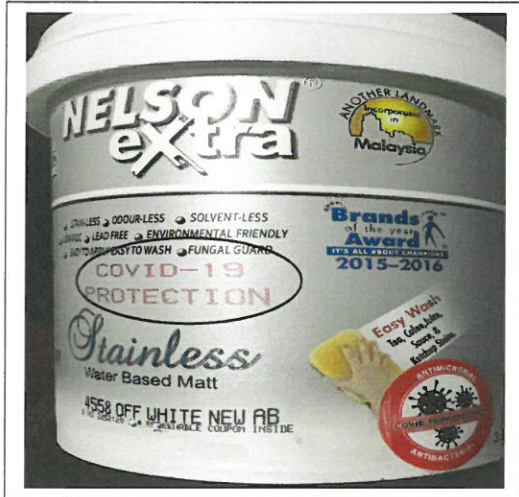
Write a comment...

10:31 AM
2/26/2021

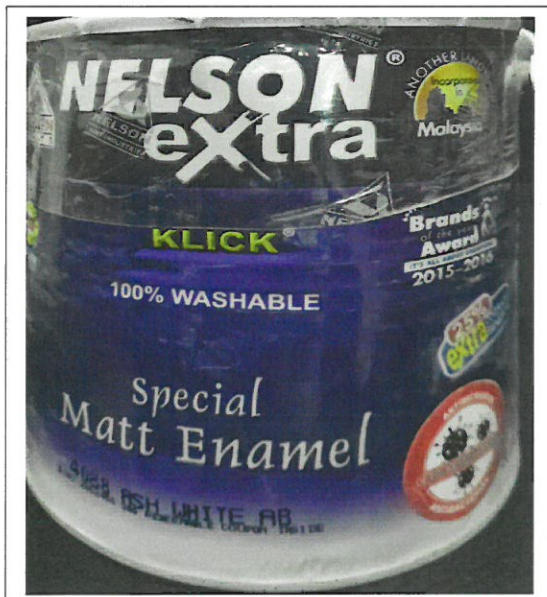
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5.9 Images of the Product packaging available in the market are given below:

Nelson Extra Stainless (Covid-19 Protection)



Nelson Extra Klick Special Matt Enamel (COVID-19 Protection)



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- 5.10 The basic allegation levelled by the Complainant in the complaint is that the Respondent is involved in capitalizing on COVID-19 pandemic by falsely advertising certain paint products to offer COVID-19 protection. The Respondent is selling its products under the name "Nelson Extra Stainless (Covid-19 Protection)" and "Nelson Extra Klick Special Mall Enamel (COVID-19 Protection)", which is unambiguously suggestive of the fact that using paint products offer some type of protection from Corona Virus. The main allegation in the complaint is the claims/advertisements made by the Respondent through Facebook.
- 5.11 The analysis, therefore, will focus on whether the Respondent's advertisement, when viewed as a whole, contained claims that may be either false, misleading, or both. Further, in view of the contents of the complaint, the Respondent's reply, and the Complainant's Rejoinder, the Enquiry Committee is of the view that the matter at hand revolves around the principal allegation made by the Complainant: Can the Respondent provide reasonable basis in the form of credible lab reports proving that "Nelson Extra Stainless provides (Covid-19 Protection)" and "Nelson Extra Klick Special Mall Enamel provides (COVID-19 Protection)." In other words, has the Respondent tested its actual products manufactured, produced and/or sold in Pakistan against the Covid-19 virus, and if so, do the results of the tests conducted by an independent third party on the Respondent's products provide reasonable and recognizable substantiation for the claims made by the Respondent? Apart from this, further allegations made by the Complainant in the para 2.5 above will also be analyzed.
- 5.12 The absolute claims made by the Respondent in the Facebook advertisement are the following :
- *Antimicrobial and Antibacterial Paint with Covid -19 Protection*
 - *Benzalkonium Chloride Based*
 - *Microbial Sheild*
 - *Recommended by American Society of Microbiology.*
- 5.13 The Respondent was asked to provide documentary evidence to substantiate its claims. The Respondent in response stated that it has introduced antibacterial paints, which are germ and bacteria resisted paints using Benzalkonium Chloride (quaternary ammonium compound), which is well known for its efficacy against bacteria, fungi, algae, and enveloped viruses, which were recommended by American Society of Microbiology. The products of the Respondent has clearly mentioned that Benzalkonium Chloride is the best available disinfecting base in use, this base is also recommended by American Society of Microbiology as one of the effective surface disinfectant base used in many product lined as well as paint formulation, multiple studies have reported on the virucidal effect of BKC against Corona Virus.
- 5.14 The Respondent further stated that both of its products are duly tested & verified by Pakistan Council of Scientific and industrial research laboratories Complex, Karachi, Ministry of Science and Technology Government of Pakistan vide its letter No.ILD/ATR-2020-8772 dated 24-12-2020.

- 5.15 While evaluating the marketing material referred above, the Respondent is giving an overall general impression that using their paint products provides protection from Corona Virus. The Respondent, in order to attract consumers have made certain claims without any proper exercise of testing its products from an independent third party lab. Such claims cannot be made or allowed in the absence of any documentary evidence in support of their claims. It is reiterated that the Respondent have been given multiple opportunities to share any unbiased principle document from which they could establish the efficacy of their paint products against Corona Virus. But the Respondents failed to supply any such information.
- 5.16 Furthermore, the Enquiry Committee opined after the perusal of the documents, particularly **Annexure –A**, submitted by the Respondent that BKC is used as a disinfecting base in hand sanitizers and disinfectants. There has been no testing or product development to assess the efficacy of this compound in paint products or as a long term self-cleaning product. The American Society of Microbiology recommends BKC as a disinfectant bases having virucidal effect, as stated by the Respondent is misleading because such evaluations have been performed on disinfectants (such as Lysol) or hand sanitizers. The function of BKC hand sanitizers, antimicrobial soaps and disinfectants are entirely different from its use in paint products. Having stated that the role of BKC is not fully rejected, but only its effectiveness, usage and safety when used in or with paint products. Moreover, the Respondent has not precisely mentioned the effective role of BKC in paint products. Illustrations stated are of hand soaps, health care hand washes, surgical scrubs, disinfectants and laundry. In addition, primary focus of this appendix is the antibacterial properties of BKC, without mentioning its effectiveness against coronaviruses. Furthermore, according to the said article, BKC are known to cause skin irritation, eye irritation, allergic contact dermatitis and oral inhalation toxicity. Moreover, the American Society for Microbiology proposed restrictions for the use of BKC in consumer products. In the end, it is stated in the article that there is a need for further research on the effect of BKC exposure, as part of consumer products to elucidate its toxigenic and long term potential to alter microbial flora in both clinical and environmental context, and limiting the use and regulating and monitoring chemicals such as BKC's are important to reduce negative impacts on humans and environment.
- 5.17 It is also relevant to mention here that according to a recent study on the **Assessment of respiratory and systemic toxicity of Benzalkonium chloride**, it has been observed that *“BAC has been increasingly used as a component in humidifier disinfectants in Korea, raising a serious health concern. Moreover, it poses significant health hazards to workers handling the chemical because of direct exposure¹²”*.
- 5.18 Moreover, upon analyzing the Test Report ILD-ATR-2020-8772, it is pointed out that it only tests the anti-bacterial properties of the alleged products. This test does not show that the product offers Covid-19 protection. Keeping in view that Covid-19 is caused by enveloped coronaviruses and not bacteria, the test is not relevant. Likewise **Annexure C1 & C2** are also not relevant as the parameter tested is not the virucidal effects of paint but the Volatile Organic Compound (VOC) number. Therefore, the Respondent failed to

¹² <https://particleandfibretoxicology.biomedcentral.com/articles/10.1186/s12989-020-0339-8>

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clarify the nexus between VOC and the antiviral properties of the paint. In addition, the respondent tested Nelson Oil Base Paint (Enamel) and Nelson Water Base Paint (Emulsion), but not the products under discussion.

- 5.19 As for the Respondent's statement that the US CDC asserts BKC to be a proven disinfectant and approved active ingredient in paint products. In this regard, it is highlighted that the Respondent has provided no evidence to show that BKC would be an effective long term self-cleaning surface agent when they use it in paint products.
- 5.20 Upon analyzing the Annexures, the Enquiry Committee agrees with the Complainant that the Respondent in **Annexure-A** has only attached pages 1 and 2 of the information sheet made available by Lonza¹³ and concealed pages 3 and 4, which the Complainant later submitted as **Annexure-D**. As per pages 3 and 4, Lonza clearly claims BKC to only have anti-bacterial and anti-fungal properties and nowhere does it claim to have any anti-viral properties. Furthermore, Lonza also clearly states "the applicability of statements made in this document may not be suitable for a finished product. The contents of this document are for information purposes only, and not intended to and do not constitute part of any product specification. Users of this product should make an independent determination as to the appropriate use of this product in a given finished product formulation". Furthermore, Lonza has also prohibited the republication of the statements made in the document. Despite the fact the Respondent has used it for reference.
- 5.21 It is also relevant to mention here that the Respondent did not provide any documentary evidence proving that: a) BKC is part of its products, and b) the said paints contain anti-covid properties. In the absence of any reliable documentary evidence, it is difficult to draw a conclusion that the use of BKC in paint products contain any such benefits or not.
- 5.22 Additionally, on page 2 of the Industrial Applications of Benzalkonium Chloride, under the heading Polymer and Coatings, it is clearly stated that quaternary ammonium compounds are widely used as anti-static, emulsifier and preservative in the coatings industry (paints, wood treatment and electronics). With reference to Polymer and Coatings (including paint products) the claim of this handout is limited to preservation and not active virucidal effects. Rather, there are specific sections in this handout the pharmaceutical, cosmetic and treatment characteristics of BKC are laid down and any mention of BKC as being an additive to paint to create a virucidal effect is glaringly missing. Hence, the Contents of **Annexure-F** are also misleading.
- 5.23 Even if for arguments' sake, we agree that the products have antibacterial and anti-microbial properties, it is observed that there will be no direct human interaction with the products unlike hand sanitizers and soaps because the paint is going to be applied on the wall. Furthermore, one cannot be assured of the fact that for how long the protection is going to last on the wall. In the absence of such vital information, the claims appear to be on weak footings, hence misleading.

¹³ Lonza Group is a Swiss multinational chemicals and biotechnology company, headquartered in Basel, with major facilities in Europe, North America and South Asia.

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- 5.24 Thus, in light of the above, it can be concluded that the Respondent is apparently involved in the distribution of false and misleading information to the consumers that lacks a reasonable basis related to character, properties and suitability for use, *prima facie*, in violation of Section 10 (1) of the Act in general and 10(2)(b) in particular.
- 5.25 The products, while claiming to be virus protective, do not provide details or any guidelines/instructions that may elaborate about the said protection. Therefore, the Respondent was directed to substantiate the claims with reference to the following crucial information:
- a) the time the products in question take to disinfect the premises; and
 - b) the duration of protection.
- 5.26 But despite repeated reminders, the Respondent could not apparently substantiate the above said claims. In the absence of any documentary proof, such vital information falls in the category of non-disclosure of 'material' information, which *prima facie* violates provisions of Section 10(2)(b) of the Act.
- 5.27 In light of the above discussions, it is evident that the false and misleading advertisement would give the Respondent a competitive edge over other undertakings and would ultimately result in higher sales. Furthermore, the false and misleading advertisement made by the Respondent has the ability to influence consumers' decision making process while choosing between different alternatives at the time of purchase. This deviation in decision making based on a false and misleading advertisement is, hence, also capable of harming the business interests of other undertakings.
- 5.28 In view of the above, it is established that releasing an advertisement, on the basis of distribution of false and misleading information that is capable of harming the business interests of other Undertakings; and distribution of false and misleading information to the consumers that is lacking a reasonable basis, related to price, characteristics, properties attracts the provisions of Section 10(1) of the Act in general and Section 10(2)(a) and 10(2)(b) of the Act in particular.
- 5.29 As regards the effect of anti-competitive behavior spilling over territorial limits of other provinces is concerned, it is highlighted that the Respondent advertised through social media platform i.e. Facebook. Hence the scope of the advertisement was not restricted to a particular area or province. In fact, the product is available to the users around the country. The advertisement had a nationwide effect because the customers can access the Facebook from any province.
- 5.30 In view of the above, it can be established that the effect of anticompetitive behavior is spilling over the territorial limits of provinces.

6. CONCLUSION AND RECOMMENDATIONS

- 6.1 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 a 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 behavior 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.
- 6.3 The, *prima facie*, violations discussed above in terms of the findings of the Enquiry Report warrant initiation of proceedings against M/s Nelson Paint Industries (Private) Limited under Section 30 of the Act.



Faiz ur Rehman
Deputy Director
(Enquiry Officer)



Amin Akbar
Management Executive
(Enquiry Officer)