

COMPETITION COMMISSION OF PAKISTAN

ENQUIRY REPORT

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

**ENQUIRY PURSUANT TO SECTION 37(2) OF THE COMPETITION
ACT, 2010, IN THE MATTER OF COMPLAINT FILED BY M/S NIPPON
PAINTS (PAKISTAN) PRIVATE LIMITED AGAINST M/S BERGER
PAINTS PAKISTAN LIMITED.**

BY

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UMER SHEIKH, AMIN AKBAR & MASHAL SAQIB ZAFAR

December 11, 2025

1. BACKGROUND

- 1.1 M/s Nippon Paint Pakistan (Private) Limited (the 'Complainant'), filed a complaint dated December 26, 2024 against M/s Berger Paints Pakistan 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 advertising campaign through television commercials (TVC's) for its product Weather Pro without disclosing the presence of redeemable token inside the said product. The Complainant believes that by doing so, the Respondent has the ability to affect the consumers buying, and has distorted healthy competition in the market.
- 1.3 Based on the preliminary fact finding, an enquiry was initiated dated March 14, 2025, in accordance with sub Section (2) of Section 37 of the Act, by appointing Mr. Amin Akbar, Assistant Director (OFT) and Mr. Muhammad Usama Aziz Khan, Management Executive (OFT) as enquiry officers (collectively the 'Enquiry Committee'). During the course of enquiry, Mr. Muhammad Usama Aziz Khan, Management Executive (OFT) was transferred to another department, and the Enquiry Committee was reconstituted on August 04, 2025, by appointing Ms. Mashal Saqib Zafar, Management Executive (OFT) as enquiry officer, along with Mr. Amin Akbar, Assistant Director (OFT). The Enquiry Committee was reconstituted again, by appointing Mr. Umer Sheikh, Joint Director (OFT) as enquiry officer (collectively the '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 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 stated that it is a multinational company engaged in the business of manufacturing paint and associated products and distributing and selling them across Pakistan. It established business operations in Pakistan in the year 2007 and established a paint manufacturing unit in Kasur in the year 2010. It has invested over USD 35 Million in Pakistan and manufactures more than 20 Million Liters of Paint per annum.
- 2.3 The Complainant stated that it has approached this Learned Commission, as it holds mandate under the Act to ensure free and fair competition in all spheres of commercial and economic activity. In this regard, it is responsible for ensuring economic efficiency, fair competition and protection of consumers. The Complainant further stated that in 2011, the

Commission issued a number of Show Cause Notices (SCNs) to leading Paint Manufacturers for, *prima facie*, violation of Section 10 of the Act for engaging in deceptive marketing practices. The SCNs were issued industry-wide to all paint manufacturers including the present Complainant and Respondent. The SCNs originated from the Commission on the reference and concern expressed by the Consumer Association of Pakistan, which had taken notice of the marketing practice in the paint industry involving the insertion of redeemable tokens in paint packs used for household purposes, falling under decorative paints category. The Commission took notice of the fact that the televised adverts and packaging of the paint packs did not give any indication of the presence of tokens in those packs. The Commission concluded that the practice of omission of material information with respect to tokens in paint packs amounts to misleading consumers, hence, is deceptive and in violation of section 10 the Act. The Commission held so because non-disclosure of tokens primarily targeted painters while the end consumers had to bear the price as they were not made aware of the placement of tokens inside paint packs due to the absence of any formal disclosure on the relevant product.

2.4 Complainant stated that after conducting a number of hearings on this matter and reviewing responses made by paint manufacturers, the Commission passed an order on 13.01.2012 in Show Cause Notices Issued to Paint Manufacturers (FILE NO. 43/REG/OFT/PPMA/CCP/2011). It held that *'In principle all undertakings have agreed to start disclosing the presence of token in paint packs to the consumer and have shown their willingness to comply with the directions of the Commission. Keeping in view the cooperation extended and the assurances given to rectify such practice by the Undertakings, the Commission, owing to its compliance-oriented approach, particularly in OFT matters is not imposing any penalty for the committed violation. However, the undertakings are reprimanded to ensure responsible behavior in the future with respect to the marketing of their products and are directed to comply with the following in letter and in spirit:*

- i. *All advertisements, promotional materials, or instructional manuals pertaining to the paint packs primarily falling in the decorative paints category; manufactured by the Undertakings whether, electronic, printed or otherwise are to be modified to disclose the presence and the price/value of the token on each pack for the consumer, within a period of 60 days starting January 15, 2012.*
- ii. *The disclosure with respect to the token on the paint pack as mentioned at (i) above should be made with the use of bright/conspicuous colors distinct from the color of the packaging of the paint pack and should be printed in clear, bold and legible size.*
- iii. *During 60 days period given at (i) above, the Undertakings will issue four advertisements/public notices of A-4 size, to be published at fifteen days interval in at least two Urdu and two English newspapers of national circulation; making due disclosures to the public regarding the presence and price/value of token and the category of products in which the tokens are found present.*
- iv. *With respect to (iii) above, "public notice" may be published by the undertakings on an individual or collective basis. In case of undertakings which are members of the association, public notice may be given by the association (naming the members*

therein) and in case of non-members a collective advert naming the undertakings therein. The text and content of such advertisement prior to publication shall be cleared by the Registrar office of the Commission.

v. A compliance report with respect to implementation of the aforementioned directions must be filed by the Undertakings no later than March 30, 2012. Continued violation and/or non-adherence to the directions of the Commission, by any of the Undertakings shall entail penal consequences.'

2.5 Furthermore, that the Order dated 13.01.2012 passed by the Commission made it clear that all advertisements, whether electronic print or otherwise are to clearly and visibly display the amount of token in such advertised product, that the Order is to be complied with in letter and spirit and that continued violation and/or non-adherence of to the directions of the Commission shall entail penal consequences.

2.6 That after the issuance of the Order dated 13.01.2012, the Commission received reference and concerns from the Consumer Association of Pakistan regarding non-compliance of the mentioned Order. The Commission conducted a market survey, and found 11 manufacturers, including the Respondent, non-complaint. While addressing each manufacturer independently, the Commission concluded that the Respondent failed to comply with the Order dated 13.01.2012. However, after the Commission observed that all manufacturers had finally complied with the directions issued by the Commission, no penalties were imposed on the manufacturers in its Order dated 13.10.2021. Albeit, the Commission concluded by stating ...In this regard the Bench deems it appropriate to make it clear that should any concerns in respect of similar practices in the Paints Industry be brought to the cognizance of the Commission, stern and definitive actions will follow under the aforementioned prerogatives of the Commission.

2.7 The Complainant stated that the Respondent, which is also a paint manufacturer, was part of the proceedings in 2011 and 2021 wherein the Order dated 13.01.2012 and Order dated 13.10.2021 were respectively passed, and as such is well aware of the directions of the Commission regarding mandatory disclosures of tokens in paint bags.

2.8 The Complainant added that the Respondent has recently launched a nationwide advertisement campaign of its product named "Weather Pro" through television commercials (TVCs) that have significant following. The advertisements are in stark violation of Section 10 of the Act and the Commission's Order dated 13.01.2012, as either no disclosure is made regarding the presence and value of the token or the disclosure is made in an obscure manner defeating the purpose of such disclosure.

2.9 The Complainant stated that the Respondent has run this advertising campaign on several television channels with national outreach and significant viewership. It is also important to note that these advertisements have been running in prime-time slots of these television channels as evidenced in the videos available on below mentioned URLs:
<https://www.youtube.com/watch?v=HOkjURpdnTY>.
https://www.youtube.com/watch?v=4UJN_hicmik
<https://www.youtube.com/watch?v=VklwZrf7Y-o>.

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- 2.10 The Complainant stated that in addition to the above said TVC, the Respondent has also posted advertisements on its social media websites (Facebook and Instagram) regarding its products Weather Pro, Weather Coat, Max Pro Matt Emulsion and Elegance Matt Emulsion. These advertisements (video and pictures) also violate Section 10 of the Act, as they make no proper disclosure about the presence and value of the token inside the products.
- 2.11 The Complainant stated further that the Respondent has failed to disclose the presence of redeemable tokens in the above stated advertising campaign despite the fact that the buckets of its products namely, Weather Pro, Weather Coat, Max Pro Matt Emulsion and Elegance Matt Emulsion all contain disclaimers of redeemable tokens. This is a conclusive proof that the products advertised through the above mentioned TVC and social media advertisements contain redeemable tokens, which have not been disclosed in accordance with the directions of the Commission as passed in the Order dated 13.01.2012.
- 2.12 The Complainant stated that the actions of the Respondents are, *prima facie*, violative of Section 10 of the Act, as interpreted by the Commission and the Order dated 13.01.2012 passed by the Commission. It is impertinent to reiterate that the Order dated 13.01.2012 was passed by the Commission after hearing paint manufacturers including the Respondent, and all parties agreed to abide by and comply with the Commission's order(s). The Respondent's willful actions demand that a penalty be imposed by the Commission.
- 2.13 The Complainant stated that the Commission has held in Para 47 of the Order dated 13.01.2012 that non-disclosure of tokens in paint products is deceptive, as it creates ambiguity and lacks a reasonable basis as to the price borne by the consumer. The Commission explained that this practice of non-disclosure would have an adverse effect of unfair competitive advantage to paint companies offering higher token values without disclosing them to the consumers who bears the price, as painters would have an incentive to purchase paints containing higher token values without regard to other values such as quality and durability. The Commission concluded that the practice of omission of material information with respect to tokens in paint packs amounts to misleading consumers, hence, is deceptive and in violation of Section 10 of the Act.
- 2.14 The Complainant added that the Commission made it abundantly clear in 2020 CLD 1148 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 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, it can be construed that the marketing practice of the Respondent is deceptive and contravenes Section 10 (2) (b) of the Act.
- 2.15 The Complainant highlighted that the Commission has recently held in **The Matter of Show Cause Notice Issued to M/S Diamond Paint Industries (Pvt.) Limited (File No.415/OFT/Diamond Paints/CCP/2021/1355) para 19.2** that the term misleading

information as used in Section 10(2) (b) of the Act includes any omission of material information. The Commission also stated that proper disclosure of tokens qualifies as material information. As such, the non-disclosure of redeemable tokens amounts to deceptive marketing practices under Section 10 (2) (b) of the Act. This is in line with the conclusion of the Commission in the para 47 of the Order dated 13.01.2012 that the practice of omission of material information with respect to the tokens in paint packs amounts to misleading consumers, hence, is deceptive and in violation of Section 10 of the Act.

- 2.16 The Complainant mentioned that a bare perusal of the directions contained in the Order dated 13.01.2012 makes it clear that all market players in the paint industry were required to disclose the presence and the price/value of redeemable tokens in all of their advertisements, promotional materials, and instructional manuals. This requirement extends to every advertisement on all advertisement channels. Thus, the directions issued by the Commission are not limited to select advertisements alone. The Respondent, therefore, cannot restrict or limit its duty of disclosure to a limited number of advertisements, as the obligation applies uniformly across all promotional content. This was clarified by the Commission in Order dated 16.10.2024 passed in The Matter of Show Cause Notice Issued to M/S Diamond Paint Industries (Pvt.) Limited (File No.415/OFT/Diamond Paints/CCP/2021/1355).
- 2.17 The Complainant added that the Commission has also recently clarified the directions in the Order dated 13.01.2012 regarding mandatory disclosure of presence and price/value of redeemable tokens and held that the requirement of mandatory disclosure of tokens is not limited to a specific time frame but extends indefinitely into the future.
- 2.18 The Complainant stated that the TVCs serve as the first contact between a seller and a buyer, and the influence of TVCs on the mind of consumers/buyers cannot be downplayed. Disclosures at this initial stage are crucial, as they shape consumer expectations and establish transparency from the outset. Failure to disclose important information in this first contact misleads the consumer and undermines informed decision-making. Deception in this initial interaction cannot be remedied by later truths, as the consumer's perception may already be unfairly influenced. It was held in *Cliffdale Associates, Inc.*, 103 F.T.C. 110, (1984) that "when the first contact between a seller and a buyer occurs through a deceptive practice, the law may be violated even if the truth is subsequently made known to the purchaser." This position was affirmed by the Commission in para 40-43 of the Order dated 13.01.2012 and as such the Respondent cannot sidestep the duty of mandatory disclosure in its advertisement campaigns. Additionally, the Commission has held that the directions issued by the Commission apply to all advertisements regardless of whether they are the first or second point of contact.
- 2.19 The Complainant stated further that the Commission also affirmed in the Order dated 13.01.2012, the position held in *International Harvester Co.*, 104 F.T.C. 949 at pg. 1058 that "it can be deceptive to tell only half the truth, and to omit the rest. This may occur where a seller fails to disclose qualifying information necessary to prevent one of his affirmative.....It can also be deceptive for a seller to simply remain silent, if he does so under the circumstances that constitutes an implied but false representation." The

Respondent's failure to disclose the presence and price/value of redeemable tokens in its TVCs and social media advertisements exemplifies this deceptive practice. By withholding this critical information, the Respondent misleads consumers regarding the value and terms of its offers, leading to a misrepresentation that remains uncorrected by later disclosures. This non-disclosure undermines informed consumer choice and violates the duty of full transparency mandated by the Commission.

- 2.20 The Complainant stated that the Respondent has included a non-descriptive disclosure in the above mentioned TVC but the said disclosure suffers from several legal infirmities. Firstly, it is non-descriptive and fails to inform a consumer that the product being advertised may contain redeemable tokens. Secondly, the disclosure is made in fine print and is therefore hidden behind the logo of the TV channel running the TVC. The Commission has held In The Matter Of M/S China Mobile Pak Limited (File No. 2(1)/Dir. (L)/CCP/2008) & M/S Pakistan Telecom Mobile Limited (File No.2 (6)/Dir. (L)/CCP/2008), para 36 that fine print disclaimers are inadequate to correct the deceptive impressions. In fact, such disclaimers are, in themselves, a deceptive measure. Thirdly, the disclosure falls short of the parameter established for disclosures by the Commission In The Matter of Show Cause Notice issued to M/s Proctor & Gamble Pakistan (Pvt.) Limited for Deceptive Marketing Practices, 2017 CLD 1609, para 40, under which disclaimer and disclosure must be clear and conspicuous and placed as close as possible with the advertising claim.
- 2.21 The Complainant stated that where consumers remain unaware of hidden monetary incentives like redeemable tokens due to inadequate or non-existent disclosures, they are vulnerable to intermediaries such as painters and contractors. In this manner non-disclosure of tokens creates deception where manufacturers which offer tokens without disclosure gain an advantage, i.e. intermediaries may recommend their products to unaware consumers, notwithstanding other aspects such as quality or price. This practice thus harms consumers and hurts competition while allowing the manufacturer to directly accrue the economic benefits at the cost of consumers and market competition.
- 2.22 The Complainant stated more, that the Commission has held In the Matter of Show Cause Notice Issued to Tara Crop Sciences (Pvt.) Limited, 2016 CLD 105, para 45, that the provisions of Section 10 (2) (b) relate to consumer protection and do not require potential of harm to be actionable, rather, any dissemination of false or misleading information to consumers which lacks reasonable basis, constitutes a violation of the Act.
- 2.23 The Complainant stated that the omission of material information in the TVC undermines the spirit of law and render the TVC and advertisements on social media incomplete, without reasonable basis and eventually, deceptive and misleading within the meaning of Section 10 (2)(b) of the Act. The Order dated 13.01.2012 explicitly mandated that the inclusion of token without proper disclosure would be deemed to have lacking a reasonable basis with regard to prices, and thus fall under Section 10 (2)(b) of the Act. Therefore, by intentionally omitting any disclosures as to redeemable tokens in the TVC and advertisements on social media, the Respondent has violated Section 10 of the Act and the Order dated 13.01.2012.

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2.24 The Complainant prayed that the Competition Commission of Pakistan take notice of this violation by the Respondent, and initiate proceedings against the Respondent to prevent them from deceptive marketing. It is also humbly prayed that the Commission take appropriate action against the Respondent for violating the directions passed in Order dated 13.01.2012 passed by the Commission and take all appropriate measures, as determined by the Commission, for the enforcement of the Order.

3. RESPONDENT'S COMMENTS:

- 3.1 The complaint was forwarded to the Respondent for comments on June 12, 2025. The Respondent requested for an extension in time limit through letter dated June 20, 2025, which was granted wide letter dated June 26, 2025. The Respondent submitted its reply on July 08, 2025, which is summarized below.
- 3.2 The Respondent submitted that it was established two centuries ago and now it has grown to become one of the leading paints manufacturers in Pakistan. It has the most comprehensive product range for various paint market segments at different price points. The Respondent has earned the admiration and trust of its customers by virtue of its superior technology, product quality and a very high level of customized services.
- 3.3 The Complaint under reply is false, frivolous and baseless, and has been filed with mala fide and unclean hands to defame the Respondent and its products, "Weather Pro, Weather Coat Glow 365, Max Pro Matt Emulsion and Elegance Matt Emulsion". The Complainant has approached this learned Commission with unclean hands. Contrary to the allegations made against the Respondent, the Complainant itself is in violation of Section 10 of the Act.
- 3.4 The Complainant's advertising campaign for its products named "*Weather Bond Advance, Spot-less, ACS wall putty, Platone high gloss enamel, Easy wash, Perfect – interior emulsion, Weather Bond, Flexi seal, HI-Bond Acrylic putty, Vinilex 5100 wall sealer*", disseminated through television commercials (TVCs), social media platforms, and other mediums, constitutes a clear and direct breach of Section 10 of the Act, as well as the Commission's Order dated 13-01-2012.
- 3.5 The Complainant has broadcast the impugned contents/advertisement across various national television channels and social media networks, ensuring extensive outreach and viewership. The contents/advertisements remain accessible online through YouTube and can be viewed on the below mentioned YouTube Links:
- (a) <https://www.youtube.com/shorts/bPIFct5oe1I>
 - (b) <https://www.youtube.com/shorts/BEUGobK7QFs>
 - (c) <https://www.youtube.com/shorts/uqU9Jm96-Kw>
 - (d) <https://www.youtube.com/shorts/0XodVCL0Ulc>
 - (e) <https://www.youtube.com/shorts/2xwXaUqVwK8>
 - (f) <https://www.youtube.com/shorts/BWdXvx0MIB8>
 - (g) <https://www.youtube.com/shorts/6DS0XeUiBsg>
 - (h) <https://www.youtube.com/shorts/c5TeTJYqRRs>

- (i) https://www.youtube.com/shorts/_xlb7kHgZ1s
- (j) <https://www.youtube.com/shorts/rPUxEsxBsKw>
- (k) <https://www.youtube.com/watch?v=4i2QyK9nSRk>

- 3.6 Therefore, the Complainant, through the contradictory nature of the allegations made in the Complaint, is effectively blowing hot and cold at the same time. Such conduct renders the Complaint liable to dismissal on this ground alone. The Respondent respectfully submits that the Complaint, being tainted with bad faith and legal infirmity, merits outright rejection. The Respondent further reserves its right to initiate appropriate proceedings before this learned Commission concerning the Complainant's non-compliant advertising practices and to avail all other remedies available under the law.
- 3.7 That the Complaint is not based on true facts and has been filed to harass and black mail the Respondent. The Complainant on its failure to compete with the Respondent in the open market has filed this false and frivolous complaint which is liable to be dismissed. The Complainant has deliberately attempted to create a false and misleading impression that the Respondent has either failed to disclose the presence and value of the promotional token associated with its products or has made such disclosure in vague or non-transparent manner. The Respondent categorically and vehemently denies these assertions as factually incorrect, misleading, and entirely baseless.
- 3.8 The Complainant is attempting to create a false impression before this Hon'ble Commission by alleging that the Respondent's disclosure regarding promotional tokens is made in an obscure manner, thereby misleading viewers or consumers. This allegation is wholly incorrect and unfounded. The Respondent, operating under the well-established brand name "Berger," is a leading entity in the sale of such products and adheres strictly to applicable legal and ethical advertising standards according to Section 10 of the Act, as well as the Commission's Order dated 13-01-2012.
- 3.9 It is a well-established principle of law that an advertisement must be considered in its entirety when assessing whether it is misleading or false. The evaluation must focus on the net general impression conveyed to the average consumer and the likelihood of deception arising therefrom. For a finding of deception, it must be demonstrated that there exists a practice likely to mislead consumers, and that such deception is material in nature. In the present case, the value of the promotional token displayed on the product cans does not mislead consumers nor does it create any false or deceptive general impression.
- 3.10 We always fulfill our legal responsibilities and launch our product campaigns in accordance with Section 10 of the Act and the Commission's Order dated 13-01-2012. We strive to advertise our products with clear mention of the token value on the buckets and include appropriate disclaimers on the packaging. Without conceding anything, it is humbly submitted that if this Hon'ble Commission finds that the Respondent has advertised its products, namely "Weather Pro," "Weather Coat Glow 365," "Max Pro Matt Emulsion," and "Elegance Matt Emulsion" without proper disclosure regarding the presence and value of the token, or if such disclosure has been made in an obscure manner, or in violation of any applicable provisions, the Respondent is willing to make the

necessary changes to its product advertisements, or modify them in accordance with the instructions or directions of this Hon'able Commission.

- 3.11 It is also respectfully submitted that the Hon'able Commission may consider issuing clear and specific guidelines relating to digital marketing, as it has been observed that certain companies are not fully complying with Section 10 of the Act and the Commission's Order dated 13-01-2012 in their true letter and spirit.
- 3.12 The Commission is competent to initiate proceedings only when any violation of the Act or any Rules, Regulations made thereunder has been committed, which is missing in the present case, hence, the jurisdiction of the learned Commission under the Act is denied in the peculiar facts and circumstances of the present case as the Complaint does not disclose basic ingredients of Section 10 of the Act.
- 3.13 The Respondent admitted that in 2011, Commission issued industry-wide Show Cause Notices (SCNs), including to the present Respondent, in connection with alleged violations of Section 10 of the Act pertaining to deceptive marketing practices in the paint industry. The Respondent also acknowledges the Commission's observations that the packaging and advertisements at that time lacked adequate disclosure regarding the presence of such tokens. However, the Respondent submits that it has since taken substantial corrective measures to ensure full compliance with the Commission's guidelines and the provisions of the Act.
- 3.14 The Respondent respectfully submits that it does not dispute the proceedings or the findings of the Hon'able Commission. It is admitted that, following a series of hearings and review of responses from various paint manufacturers, the Commission passed an order dated 13.01.2012 in Show Cause Notices Issued to Paint Manufacturers.
- 3.15 The Respondent acknowledges that the Order recorded the collective willingness of all undertakings, including the Respondent, to disclose the presence and value of tokens in paint packs, and to fully comply with the directions of the Commission. The Respondent further concurs with the Commission's decision to adopt a compliance-oriented approach and not impose a penalty at that time, while also issuing a reprimand and specific directions to ensure responsible future conduct. The Respondent affirms that it took all necessary measures in accordance with the directives contained in the said Order, including:
- i. Updating all relevant advertisements, promotional materials, and instructional manuals to disclose the presence and value of the token on decorative paint packs within the stipulated 60-day period;
 - ii. Ensuring such disclosures were made using conspicuous and legible formats as specified;
 - iii. Publishing public notices at required intervals in the prescribed newspapers;
 - iv. Coordinating, where appropriate, with the relevant industry association for collective publication of notices;
 - v. Submitting a compliance report to the Commission on or before March 30, 2012.

- 3.16 The Respondent has ensured, and continues to ensure, that all advertisements whether electronic, print, or otherwise—clearly and visibly display the amount of token in the advertised product, as directed. The Defendant further states that there has been no violation or non-adherence to the said Order since its issuance, and remains committed to upholding its directions diligently.
- 3.17 The Respondent respectfully submits that it is aware of the concerns raised by the Consumer Association of Pakistan, and the subsequent market survey conducted by the Commission, which included the Respondent among the manufacturers initially found non-compliant with the Order dated 13.01.2012. However, the Respondent wishes to highlight that it took prompt and effective measures to rectify the situation and ensured full compliance with the directions issued by the Commission. The fact that no penalties were imposed in the Commission's Order dated 13.10.2021 is a reflection of the Respondent's sincere efforts and cooperation in achieving full compliance.
- 3.18 The Respondent stated that each and every averment contained in the complaint is denied being misleading and false. The advertisement campaign of the Respondent's product "*Weather Pro*", including its television commercials (TVCs), is fully compliant with the requirements of Section 10 of the Act, as well as the directions issued by the Commission in its Order dated 13.01.2012. The Defendant ensures that all disclosures regarding the presence and value of tokens are made clearly, visibly, and in a manner that serves the purpose of transparency as intended by the Order. At no point has the Respondent obscured or omitted any material information in its advertisements, and any claim to the contrary is baseless and denied.
- 3.19 That each and every averment contained in para under reply is denied being misleading and false. The Defendant admits that its television commercial (TVC) for the product "*Weather Pro*", has been broadcasted on various television channels with national outreach and during prime-time slots, and that the same is also available on online platforms such as YouTube etc. However, the Respondent categorically denies that the said advertisements are in violation of any provision of the Act, including Section 10, or the Order dated 13.01.2012 issued by the Commission. The Respondent affirms that all such advertisements have been produced and aired with due diligence and in full compliance with applicable legal requirements, including clear and visible disclosure of token presence and value, where applicable. Any assertion to the contrary is misconceived and is denied in its entirety.
- 3.20 The Respondent also categorically denies the allegation that its social media advertisements violate Section 10 of the Act, by stating that:
- With respect to the product *Weather Pro* and *Max Pro Matt Emulsion*, the advertisements clearly disclose the presence and value of the token, in compliance with the Order dated 13.01.2012.

- Regarding *Weather Coat Glow 365*, the Respondent clarifies that this product does not contain any token and therefore, there was no requirement to make any disclosure regarding the presence or value of a token.
- As for *Elegance Matt Emulsion*, the Respondent acknowledges that, due to an unintentional oversight, few digital posts on Facebook and Instagram were uploaded without having token disclosure. However, as soon as this was brought to the Respondent's attention, prompt corrective measures were taken and the necessary disclosures have since been clearly and visibly mentioned in the social media posts.

- 3.21 The Respondent categorically denies the allegation that it has failed to disclose the presence of redeemable tokens in its advertising campaign in violation of the Commission's Order dated 13.01.2012. Accordingly, the assertion that the advertisements constitute conclusive proof of non-disclosure is incorrect and without merit.
- 3.22 The Respondent further denies any willful non-compliance and asserts that all advertising and packaging practices have been undertaken in good faith and in accordance with the applicable legal and regulatory framework. As previously submitted, any inadvertent omission in packaging has been promptly rectified upon discovery. Therefore, the suggestion that a penalty should be imposed is wholly unwarranted, misconceived, and unsupported by facts.
- 3.23 The Respondent acknowledges the findings of the Commission as recorded in paragraph 47 of the Order dated 13.01.2012, which emphasize the importance of clear and visible disclosure of token values in paint products to avoid consumer deception and maintain a level playing field in the market. Where any oversight has occurred specifically in the case of *Elegance Matt Emulsion*—the same was purely inadvertent and was promptly rectified upon identification, reflecting the Respondent's bona fide intention to comply fully with the Commission's Order.
- 3.24 The Respondent respectfully acknowledges the Commission's interpretation of deceptive marketing as set out in 2020 CLD 1148, wherein it was held that an advertisement may be deemed deceptive if it contains a misrepresentation or omission that is material to a consumer's purchasing decision and likely to mislead a reasonable consumer, even without proof of actual injury. However, the Respondent categorically denies that its marketing practices fall within the scope of this interpretation or that they contravene Section 10(2) (b) of the Act.
- 3.25 The Respondent acknowledges the Commission's directions in the Order dated 13.01.2012 and the subsequent clarification in the Order dated 16.10.2024 in *The Matter of Show Cause Notice Issued to M/S Diamond Paint Industries (Pvt.) Limited*, which require disclosure of the presence and value of redeemable tokens in all advertisements, promotional materials, and related content across all channels. The Respondent respectfully submits that it has understood and accepted this obligation and has taken necessary steps to ensure compliance across all its promotional content, including television commercials, social media advertisements, packaging, and instructional

materials, wherever applicable. The Respondent further submits that any non-compliance was purely inadvertent and promptly corrected upon discovery.

- 3.26 The Respondent affirms its full commitment to comply with this ongoing obligation and undertakes to ensure that all current and future advertisements, promotional materials, and packaging will continue to contain clear and accurate disclosures regarding redeemable tokens, in accordance with the Commission's directions.
- 3.27 The Respondent acknowledges the importance of television commercials (TVCs) as a significant point of contact between sellers and consumers and concurs that transparency and clear disclosures at this stage are essential to informed consumer decision-making. However, the Respondent respectfully denies any failure to meet the duty of mandatory disclosure in its advertisement campaigns. The Respondent asserts that all TVCs and other promotional materials for its products containing redeemable tokens have been designed and broadcast with due regard to the Commission's directives, providing clear and conspicuous disclosure of the presence and value of tokens where applicable.
- 3.28 The Respondent has neither omitted material information nor has misled consumers in any of its television commercials (TVCs), social media advertisements, or other promotional content. Where redeemable tokens are present in its products. Accordingly, the assertion that the Respondent's conduct constitutes a deceptive practice is denied in its entirety.
- 3.29 The Respondent respectfully denies that the disclosure included in its television commercial (TVC) is legally deficient or deceptive in any manner. The Respondent submits that the disclosure does, in fact, inform consumers about the presence and value of redeemable tokens in the product being advertised and is neither vague nor misleading. The allegation that the disclosure is hidden behind a TV channel logo or is made in excessively fine print is unfounded. Reasonable care has been taken to ensure that the disclosure is visible, legible, and accessible to consumers during the airing of the commercial.
- 3.30 The Respondent respectfully denies that its practices result in consumer deception or confer any unfair competitive advantage through non-disclosure of redeemable tokens. The Respondent fully understands the concern raised regarding the potential influence of intermediaries—such as painters and contractors—on consumer purchasing decisions when monetary incentives like tokens are not adequately disclosed.
- 3.31 The Respondent respectfully denies the allegation that it has omitted material information in its television commercials (TVCs) or social media advertisements in a manner that would render them deceptive, misleading, or in violation of Section 10(2)(b) of the Act or the Commission's Order dated 13.01.2012. The Respondent therefore denies that there has been any intentional omission or attempt to mislead consumers, and reaffirms its commitment to ensuring full compliance with the provisions of Act.
- 3.32 It is respectfully prayed that the enquiry be closed and Complaint under reply may kindly be dismissed. The Complainant may be asked to explain their non-conformances and

appropriate may be taken against them. Any other relief which this learned Court deems just and appropriate may also be granted to the Respondent.

4 REJOINDER:

- 4.1 The reply of the Respondent was forwarded to the Complainant for its comments/rejoinder vide letter dated July 22, 2025. The Respondent via email dated September 05, 2025, stated that they will not be submitting any rejoinder.

5 ANALYSIS:

- 5.1 As mentioned in para 1.3 above, the mandate of this enquiry is to find out:
- 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 Section 10(2) (b) of the Act in particular.*
 - ii. *Whether there is a spillover effect of the conduct of the Respondents?*
- 5.2 Before proceeding forward, it is pertinent to discuss a few important concepts established by the Commission regarding what constitutes as a violation of Section 10 of the Act.
- 5.3 The Commission, in its Order held against M/s CMPak Limited¹ has defined "Misleading" information as deceptive marketing practices in the following manners:

"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."

- 5.4 The above reference suggests that dissemination of information, which is vague in any way, or has omitted certain material information, is capable of misleading consumers, even if such a conduct is not deliberate. Therefore, distribution of misleading information has the capability of giving a wrong and misleading impression with respect to a good or service which could induce a consumer into distorted decision making, hence, causing consumer injury.
- 5.5 Furthermore, the Commission, in the Reckitt Benckiser Pakistan Ltd. Order, 2015, relied on the Cliffdale Associates, Inc., 103 F.T.C. 110, (1984), which read:

¹ <http://cc.gov.pk/images/Downloads/ZONG%20-%20Order%20-%202029-09-09%20.pdf>

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"Oral statements, label disclosures or point-of-sale material will not necessarily correct a deceptive representation or omission. Thus, when the first contact between a seller and a buyer occurs through a deceptive practice, the law may be violated even if the truth is subsequently made known to the purchaser."

5.6 In light of this, all disclosures and material information must be made at the instance of first contact between the seller and the buyer. Moreover, making subsequent disclosures, despite the disclosures being made prior to making the final purchase, may not relieve the seller from the burden of deceptive marketing practices.

5.7 In the Order of the Commission against Paint Manufacturers, 2012, it was also held that:

"Where disclosures have not been adequately made, a reasonable nexus between the retail price of the product and the cash obtained from trading in the token after purchase cannot be established. The painter, contractor, end consumers are all consumers, but in the absence of any form of communication/indication of the presence of the token, the consumer who directly incurs the price of the paint inclusive of the price of the token is the one who suffers the eventual harm if the benefit of the token is reaped by another consumer along the supply chain. Hence, deception lies in failure to disclose the presence along with the value of the token card by the undertakings."

And;

"All advertisements, promotional materials, or instructional manuals pertaining to the paint packs primarily falling in the decorative paints category; manufactured by the Undertakings whether electronic, printed or otherwise are to be modified to disclose the presence and the price/value of the token on each pack for the consumer,..."

5.8 Moreover, it is important to bring into consideration that the Complainant has heavily relied upon the Paint Manufacturers Order of 2012, citing non-compliance of the referred Order by the Respondent. It is essential to highlight that after issuance of the Order, the Respondent was one of the eleven manufacturers, who remained non-compliant with the Order. The Commission once again, upon compliance by all manufactures with the directions issued by the Commission, did not impose any penalty on the manufactures (including the Respondent) in the 2021 Order.

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.**

5.9 The primary allegation made in the complaint is that the Respondent is engaged in distribution of misleading information to consumers by not disclosing the presence of TOKEN or making the disclosure in an obscure manner, defeating the purpose of such disclosure, inside its products namely, Weather Pro, Weather Coat, Max Pro Matt Emulsion and Elegance Matt Emulsion. This advertisement is made through TVCs, and social media websites, as reproduced in para 1.2 & 2.10 above.

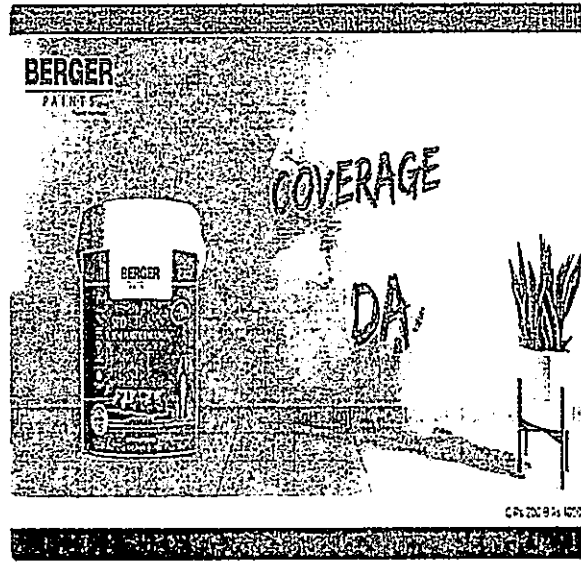
5.10 In this context, the Complainant submitted videos and links of TVC's (accessible online through YouTube), running on prime-time slots on several televisions channels with national outreach and significant viewership as reproduced in para 2.9 above, as well as advertisements, posted by the Respondent on its social media websites as evidence. Screenshots of the TVC and a few of the advertisements, posted by the Respondent on its social media apps, as provided by the Complainant have been displayed below:

TVC



Weatherpro | Berger Paints Pak
Berger Paints Pakistan
6

<https://www.youtube.com/watch?v=HOkjURpdnTY>



SPD | SEMI PLASTIC EMULSION | BERGER PAINTS
Berger Paints Pakistan
39

https://www.youtube.com/watch?app=desktop&v=4UJN_hicmi

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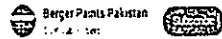
BERGER PAINTS

Trusted Worldwide



www.berger.com.pk

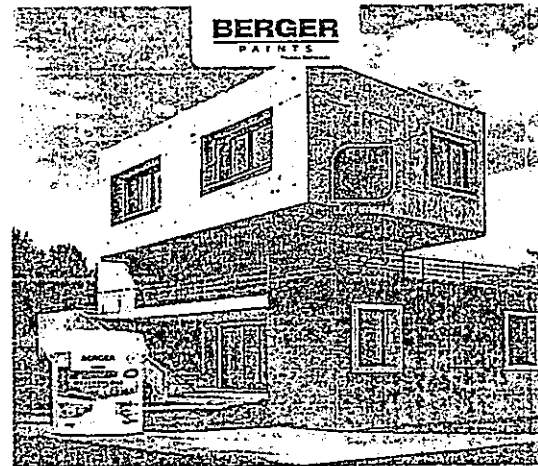
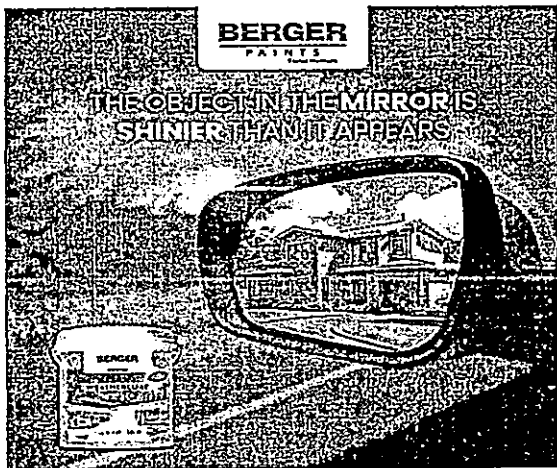
PAIN YOUR IMAGINATION WITH BERGER'S NEW WEATHERCOAT GLOW 365



21 Share Download

<https://www.youtube.com/watch?v=VklwZrI7Y-o>

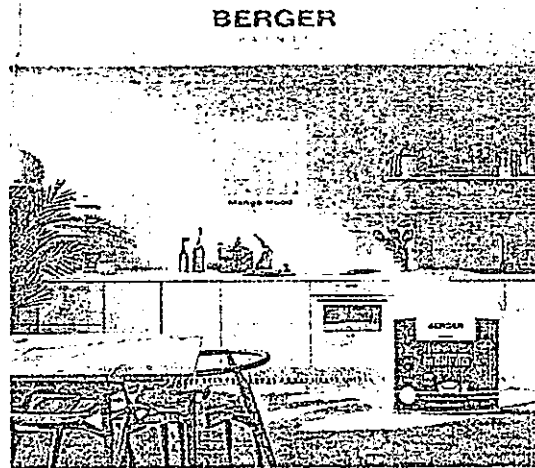
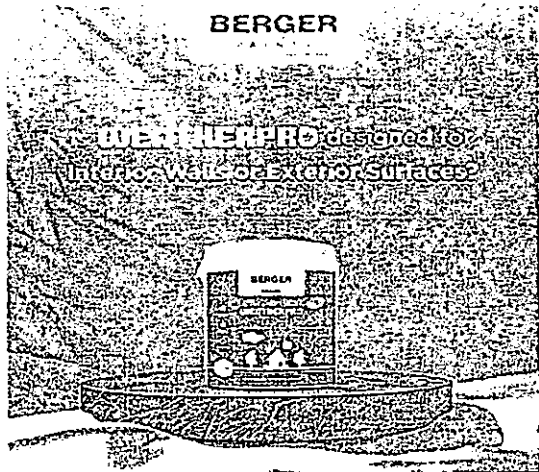
Facebook Links



<https://www.facebook.com/share/16T2B13jiK/?mibextid=wwXIfir>
<https://www.facebook.com/share/16T2B13jiK/?mibextid=wwXIfir>

Instagram Links

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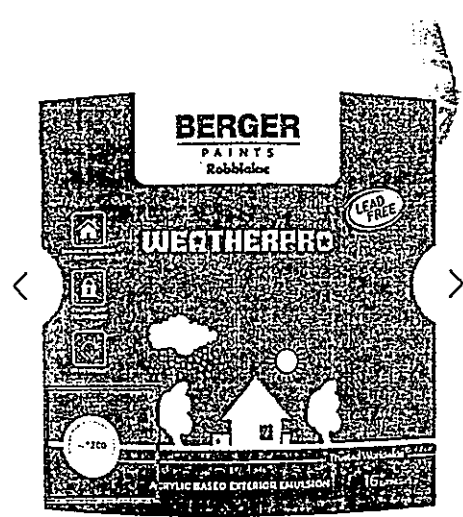


<https://www.instagram.com/p/DBv9ZYnSbsy/?igsh=bjlvZXRlNmwyenQ3>

https://www.instagram.com/p/DBOG0VFIInIJ/?img_index=3&igsh=NDZmenoxb3o3aTJ0

5.11 The Respondent in its reply has denied the allegations, and stated that it adheres strictly to all legal and ethical advertising standards applicable, according to Section 10, including the Commission's Order dated 13.01.2012. The Respondent provided pictures of its paint buckets as evidence, demonstrating full disclosure of presence of promotional tokens. After analyzing the said evidence, which includes adequate disclosures of the presence of redeemable token on the paint buckets, It is evident that the Respondent disclosed the presence of redeemable tokens inside the paint bucket, on some of its paint buckets, as displayed below:

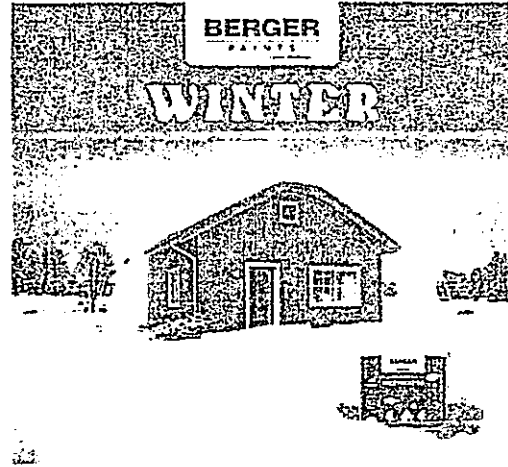
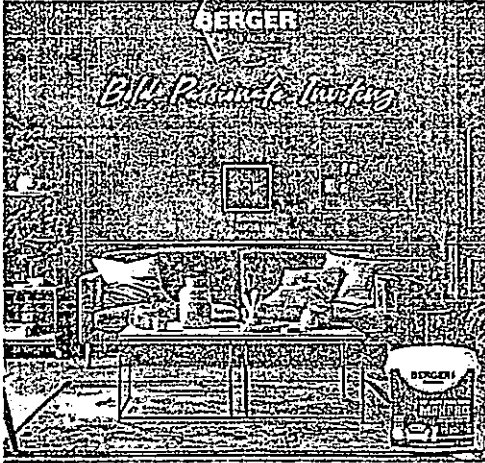
Paint Gallon



U.S. A.A. M.S.Z

(<https://www.berger.com.pk/>)

5.12 However, if we analyze the advertisements and TVC's by the Respondent, they do not provide clearly visible and adequate disclosures of the presence of tokens, being non-compliant with the directions of the Commission's previous Order(s). Evidence of the same is displayed below:



(<https://www.berger.com.pk/>)

5.13 The TVCs and advertisements clearly do not disclose the presence and value of the token. Although, the presence of token has been duly disclosed on the paint packs of Weather Pro.

5.14 The TVCs and advertisements on social media in this matter is the first point of contact between the seller and the buyer. The buyer is receiving the information of presence of a new product in the market via TVC and social media first.

5.15 In the instant matter, the paint pack appears to be secondary point of contact between the buyer and the seller. Whereas, there is a likelihood that the buyer may or may not have direct contact with the paint pack/bucket at all.

5.16 It is important to mention here that the non-disclosure of the presence of tokens only relates to the price of the product and does not have any impact on the quality, quantity, characteristics, properties, origin and suitability of use of the product.


5.17 Thus, *in light of the above, it can be concluded that the Respondent, through the non-disclosure/ inadequate disclosure of presence of tokens in its product Weather Pro, on TVC and social media, is, prima facie, engaged in the distribution of misleading information to the consumers that lacks a reasonable basis related to price of goods, prima facie, in violation of Section 10 (1) of the Act in general and 10(2)(b) in particular.*

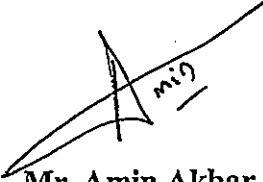
A. Whether there is a spillover effect of the conduct of the Respondents?


- 5.18 As regards the effect of anti-competitive behavior spilling over territorial limits of other provinces is concerned, it is highlighted that the Respondent has run TVCs on several television channels, as well as advertisements on social media websites such as Facebook and Instagram, which have significant viewership, having national outreach.
- 5.19 It is also important to note that these advertisements have been running in prime time slots of these television channels. Moreover, the product of the Respondent is also available for sale nationwide.
- 5.20 Hence, the scope of the marketing was not restricted to a particular area or province. 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 analysis, it is concluded that the conduct of the Respondent is, through the non-disclosure of presence of token in its product line i.e. Weather Pro on TVCs and social media websites, engaged in the distribution of misleading information to the consumers that lacks a reasonable basis related to the price of goods, *prima facie*, in violation of Section 10 (1) of the Act in general and 10 (2) (b) in particular.
- 6.2 It is also pertinent to mention that the Respondent had alleged similar instances of non-disclosure on electronic media against the Complainant. However, the Enquiry Committee in the instant matter is not mandated to look into the marketing practices of the Complainant and is limited to the allegations levelled against the Respondent only. The Commission may review the compliance of its earlier Order of 2012 separately.
- 6.3 Therefore, in light of the above-mentioned findings, it is recommended that the Commission may consider initiation of proceedings against M/s Berger Paints (Pakistan) Limited, under Section 30 of the Act for, *prima facie*, violation of Section 10 of the Act.


Mr. Umer Sheikh
Joint Director (OFT)
Enquiry Officer


Mr. Amin Akbar
Assistant Director (OFT)
Enquiry Officer


Ms. Mashal Saqib Zafar
Management Executive (OFT)
Enquiry Officer