

COMPETITION COMMISSION OF PAKISTAN

ENQUIRY REPORT

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

**IN THE MATTER OF COMPLAINT FILED BY M/S. NIPPON PAINT
(PAKISTAN) (PVT) LIMITED AND BUXLY PAINTS LIMITED AGAINST THE
MASTER PAINTS INDUSTRIES (PVT) LIMITED FOR DECEPTIVE
MARKETING PRACTICES.**

BY

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Dated: May 05, 2015

A. BACKGROUND

1. M/S. Nippon Paint Pakistan (Pvt) Limited (NPL) (hereinafter referred to as **Complainant No1**) and M/s Buxly Paints Limited (hereinafter referred to as **Complainant No 2**), collectively referred as '**Complainants**', filed their complaint with the Competition Commission of Pakistan (the **Commission**) against M/s. Master Paints Industries (Pvt) Limited (hereinafter referred to as the **Respondent**) for an alleged violation of Section 10 of the Competition Act, 2010 (the **Act**) i.e. deceptive marketing practices.
2. The Complainants stated that in order to attract customers towards their products different companies adopt sale promotional methods and techniques and keep announcing various schemes from time to time. Such methods and schemes include award of gifts, discounts, scratch cards, lucky draw or airline tickets. Evidently such schemes are introduced for attracting customers towards their products and services. In their view, all such schemes are for the benefit of customers and it also increases competition between different manufacturers of goods and service providers.
3. Thus in order to increase sale demands, NPL has been inserting "TOKENS" of different values in some of their paint containers; NPL has incurred a considerable expenses in advertisement to promote its products.
4. According to the Complainants the Respondent Company is engaged in advertising/distributing false and misleading information to the customers/consumers through electronic and print media which is harming business interest of the Complainants and it also lacks a reasonable basis related to the character, properties, suitability for use and quality of Complainants' goods. A few examples of such advertisements in violation of the provisions of the Act are as under:-

اشتہار نمبر ۱

عورت: بس بہت ہو گیا آج ہر حال میں گھر کا پیٹ کر دانا ہے۔

آدی نمبر ۱: چند وہ گھر کا پیٹ کون سا کروائیں۔

آدی نمبر ۲ (ملازم): ٹوکن والا سر، ٹوکن کے پیسے بھی بچیں گے۔

آدی نمبر ۱: جالا

آدی نمبر ۲ (ملازم): یہ آدھے ٹوکن آپ کے اور یہ آدھے ٹوکن بھی آپ کے۔

آدی نمبر ۳ (آسانی آواز): اوائے ٹوکن گننا بند کر اور اوپر دیکھو۔ اگر قدرتی رنگ بھی ٹوکن والے ہوتے تو کیسا لگتا۔

عورت: دیکھیں ٹوکن والے پیٹ کے رنگ۔

آدی نمبر ۳: ٹوکن والے پیٹ کو اپنی دیواروں، چھتوں اور گھر سے دور رکھیں۔

آدی نمبر ۱: کیونکہ ٹوکن والا ہے تو پیٹ تو نہ ہوانہ۔ لیکن ٹوکن تو بڑی چھوٹی چیز ہے۔

آدی نمبر ۲ (ملازم): چھوٹی چیز ہے لیکن اتنے بڑے گھر کو خراب کر دیتی ہے۔

اشتہار نمبر ۲

آدی نمبر ۱: ارے مٹا (دروازہ کھلنا)

آدی نمبر ۲: لطیف پیٹ ایڈوانزر، ہم کینی کی طرف سے آپ جیسے لوگوں کو مسکا سکا آئیڈیا آئیڈیا مطلب ہے گائیڈ کرنے آتے ہیں کہ کونسی دیور پر کونسا پیٹ ہونا

چاہیے۔ اس کمرے میں سچ کر پر پل، اس کمرے میں بیکار لیو اچھا ہے گا۔

عورت نمبر ۱: مٹا

آدی نمبر ۲: اس کمرے میں منحوس مجڈایا پھر پرانا پنک۔ اس کمرے میں باسی براؤن یا کھسا گرین۔

ویسے آپ جینٹ کیش کرے گی یا کیش۔

محمد عرفان (کرکٹر): پہلے یہ بتاؤ اس پیٹ میں ٹوکن ہے۔

آدی نمبر ۲: آف کورس ہے جی

آدی نمبر ۱: مٹا

آدی نمبر ۲: مٹا

محمد عرفان (کرکٹر): اتنا تو مجھے بھی پتا ہے کہ ٹوکن والا ہے تو پیٹ تو نہ ہوا۔

آدی نمبر ۱: شاہاش تو تو ماسٹر نکلا

محمد عرفان (کرکٹر): ماسٹر میں نہیں ماسٹر تو یہ نکلا۔

آدی نمبر ۱: اوہ، اس نے کہا بتایا ہے یہ ٹوکن ہے۔

آدی نمبر ۲: یہ دیکھیں

آدی نمبر ۱: یہ بتایا ہوا ہے کہ چھپایا ہوا ہے۔

5. It was alleged that the conduct of the Respondent, *prima facie*, amounts to deceptive marketing practices in terms of Section 10 of the Act.
6. Keeping in view the Commission's mandate under the Act, the Commission after conducting some initial probe, deemed it appropriate to conduct a formal enquiry in the matter. Therefore pursuant to the provisions of sub section (2) of Section 37 of the Act the Commission constituted an enquiry committee with the directions and mandate to undertake a fact finding enquiry and submit its report by giving findings and recommendations *inter alia* on the following issue;

Whether the allegations leveled in the complaint constitutes a prima facie violation of Section 10 of the Act or not?

B. CORRESPONDENCE (COMPLAINTS, COMMENTS, REJOINDERS AND COLLECTION OF INFORMATION FROM OTHER SOURCES)

Following is the detail of correspondence exchanged during the conduct of Enquiry:-

I. COMPLAINT BY THE COMPLAINANTS

7. Both the Complainants are companies incorporated under Companies Ordinance, 1984 and are engaged in manufacturing quality paint products in Pakistan. In order to protect their rights and interests, they have got registered their respective trademarks namely "NIPPON" and "BUXLY" and their trademarks have been promoted through usual media in Pakistan. It was stated that as per local and international practices, Companies often adopt various sale promotion techniques and introduce different schemes in order to attract customers towards their products. Such schemes, *inter alia* include offering various gifts, discounts, scratch cards revealing price for the winners, lucky draws or airline tickets for Umrah and for visit to foreign countries.
8. In line with the aforesaid schemes, the Complainants Companies started inserting "TOKENS" of different values in some of their paint containers and have incurred a huge expense in promoting sale of their products. It has been alleged that the Respondent Company who is also engaged in similar business of paints manufacturing has started advertising and distributing false and misleading information to the customers/consumers through electronic and print media. Such advertisements contain misleading information about their products inserted with "Tokens" that is capable of harming business interest of the Complainants and also lacks a reasonable basis related to the character, properties, suitability for use and quality of Complainants' goods. Such misleading campaign against their products is maliciously intended against the Complainants and even other

manufacturers and merchants of paints who are inserting tokens in the containers of their products.

9. In support of their contentions, the following examples of certain advertisements were quoted.

The advertisement features a chalkboard with the following text written on it:

Common Sense 101
Lesson No : 1
Paints Equation:
MASTER PAINTS = Paint + Quality
Other Paints = Paint + Token
What do You Prefer....Quality or Token...?

Below the chalkboard, the brand name **Master PAINTS** is displayed in large blue letters. Underneath it, the Urdu slogan "ٹوکن کے بغیر صرف ماسٹر پینٹس" is written in blue. Two men are shown: one on the left in a red sweater and one on the right in a black suit with a red bow tie, both with their hands outstretched as if presenting the message.

At the bottom center, there is a small graphic with social media icons and the text:

Best Color Advisory Service
At Your Door Step
Just Call:
111-333-465

Below this, the company name **MASTER PAINT INDUSTRIES (PVT) LTD.** is listed, along with contact information: "For further information: Web: masterpaints.com facebook /masterpaints".

COMING SOON TO YOUR TV SCREENS

BEWARE OF THIS MAN!

Token zada advisors
ko apnay gharon aur
daftron se dur rakhain!

A PUBLIC SERVICE MESSAGE BY



Paint ki zarurat mein sirf
MASTER PAINTS
he ismal krain.

For further information:
www.masterpaints.com
facebook.com/masterpaints



II. COMMENTS/REPLY OF THE RESPONDENT

10. Copy of the complaint alongwith its annexures were forwarded to the Respondent vide Commission's letter dated 22-04-2014 for seeking their comments. The Respondent vide their letter dated 10-5-2014 has submitted that they believe in fair competition and on the basis of their sale on merit/quality of products "Master" is the only paint manufacturing company which never indulge in un-ethical and undisclosed practices of inserting "Tokens" in containers to influence the painters to promote their business/sale. In fact, those who cannot compete in quality, they use the crutches of "Token". By doing so, they deprive the consumers from their right to have free advice on quality paints. As the painters are economically weakest of all in the sale chain of paint market, the paint manufacturers try to take advantage of the poor innocent man by offering him cash temptation. This causes the painters to give biased opinion while his advice to the customers. In fact the invention of "Token" is against the spirit of fair competition. It was highlighted that the Multinational Paint Companies do not put token in any other country of the world and strictly abide by all the rules and regulations of good business practices in other countries but in Pakistan they are involved in "Token Scam" openly and freely.
11. They alleged that the evil of token is more harmful for the paint consumers. The Respondent questioned that if putting token is their right in Pakistan then why it is unlawful in other countries. By following such practices many unregistered and unknown brands have entered the market and they have got a reasonable share in the market due to the higher value of "Token" in their paint packs. It was further pointed out that since the "Tokens" are being accepted and paid to the bearer of the instrument and they do not have any expiry date like certain regulated negotiable instruments e.g. Bank Cheques are expired after six months but "Tokens" have no expiry, this work as perpetual currency like Bearer Bonds. Thus "Token" schemes in use are in violation of Section 35 of the State Bank of Pakistan Act, 1956.
12. The Respondent pointed out that it is suffering a lot from evils of "Token" because the "Token" has become the leading factor of sale in the Paint Market of Pakistan instead of quality paint. Under the circumstances, they have devised a policy to approach the customers through media campaign to enable them to make their decision on quality/merit rather than "Token".
13. The Respondent while pleading to discourage the concept of Token Scheme claimed that they are left with two options (i) either to join the Token mafia or (ii) to quit the paint business altogether. However, in order to minimize the evils of "Token".they designed a marketing campaign to create maximum awareness to the consumers. They are of the view that the campaign started by the Respondent has worked and now the consumers have started rejecting "Token Policy".

14. They submitted that in this regard, the Commission also took cognizance of undisclosed tactics by the paint Manufacturers and through its order dated 21-10-2011 issued the following directions for future compliance.
15. All advertisements promotional materials or instructional manuals pertaining to the paint pack 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 from January 15, 2012.
16. The disclosure with respect to the token on the paint pack as mentioned above should be made with the use of bright/conspicuous colours distinct from the colour of the packaging of the paint pack and should be printed in clear, bold and eligible size.
17. During 60 days period given 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 disclosure to the public regarding the presence and price/value of token and the category of products in which these tokens are found present.
18. Apart from the above, the Respondent furnished the following comments with regard to their specific statements made through various advertisements in the media:-

“Token Wala Hey to Paint to na Howa na”

19. They submitted that, the statement made in our add in question is an idiomatic expression, and not in any way be construed or conclude in the literal meaning because an idiomatic expression should not readily be analyzable from its grammatical construction or from the meaning of its component parts. As the overall meaning is not the regular sum of the meanings of its components, so no one should try to deduce it from the usual grammatical rules of a language. Like when someone say “beating around the bush” it means to hint or discuss obliquely, nobody is literally beating any person or thing, and the bush is a metaphor, or when we use “All brawn and no brain” we never mean that a person has just body no brain in physical, because still the brain is there, or when someone say that “he is headless guy” it never mean that someone is walking around without head.
20. Every language has its own way of expression accordingly if we translate an idiomatic expression in other language either the statement meaning is changed or it is meaningless.
21. Like in Urdu when we say “Wo Mard Nahi jis ki Aik Zuban Nahi”. It never claims that someone is not a Man/Human at all, it mean one should be firm of his commitments.

22. Therefore our idiomatic expression should be taken in its true spirit and context where we want to say that it should be paint only when you go for paint and token should not be important that the paint itself and token is bringing corruption in paint market.
23. Hence the Complainants should not take our idiomatic expression in its literal meaning to generate cause of complaint against us. Moreover as per order of the commission Nippon and Buxely are bound to propagate the presence of token in their products, and by not doing so they are at fault. Hence they have no ground to complaint against anti token public service message.

“Keep the Paint Containing Token Away from your walls, ceilings and homes”

24. They alleged that, the statement in question is the part of their TVC for the awareness of consumer because when consumers buy paint which has token, that consumer suffers monetary loss, due to the non-disclosure of the token by the manufacturer.
25. Hence rather than targeting any competitor, the objective of their marketing Campaign was to give awareness to the consumer, which is the right of consumer to know the facts that are causing him to pay more for the paint that contains Token.

Master Paints = Paint + Quality

26. They submitted that, Master Paints like any other Advertiser design and place its Print Media Adds to attract and induce the consumers to buy its products. It is a globally established/acknowledged right of the advertiser to promote his product like in cooking oil adds they claim that the “Food become more delicious when it is cooked in their cooking oil”. Like winter clothing company claims their garments are more warmer. Accordingly every advertiser wants to show his product is superior as of his competitor in the ordinary course of advertisement.

Other Paints = Paint + Token..

27. For this they alleged that, Master Paint is the only company which is 100% token free and all other 99.99% companies are indulged in token scam. Master Paints is educating the Consumers that Paint Manufactures expect Master paints are inserting token in their products we found it as favour to them. As Master Paints is not inserting token and even nobody is pressurizing us to insert token. On the other hand if token is good, then they should immediately start advertising it, and if someone else speaks about their marketing tool then they should rather feel happy. From their complaint it appears that by educating consumers about token, Master Paints is revealing their hifi secret, which off course is not the case, because they claim it as their marketing tool.

Token Kay Beghair sirf Master Paints – (without token only Master Paints)

28. The Respondent submitted that, Nippon and Buxly should clear their mind and should not be Topsy Turvy, at one point they claim token as the best marketing and promotional tools and criticize us for negative campaign against token and on the other hand they want to have a share in token free pride, that is being claimed by Master Paints, by telling us that there are certain products of Nippon and Buxly which are token free. Master Paint is using Tag line “Token Kay Beghair sirf Master Paints as a whole, as an organization/company which has 100% token free products.
29. They stated that, Master Paints claim it as a whole not on product level/base, however still we won’t be having any objection if Nippon and Buxly want to use the word “Token key Beghair” on their token free product.
30. The Respondent also furnished their detailed comments on statements of the Complainants who were considering “Token Scheme” like the following other sale promotional Schemes/methods being used by the other manufacturers in the market.
31. They submitted that a gift scheme is the one where companies offer a gift when you buy their company products. Like free gift of toothbrush if you buy toothpaste. Hence token cannot be compared to prevalent gift system.
32. Under discount scheme companies offer direct discount on purchase of their items, and even for minor discount of 10 or 20 Rupees, they run heavy media campaign. Consumers get the benefits of such discount at the time of purchase instantly. Hence the token cannot be compare to these discount schemes because consumer doesn’t get any benefit at the time of purchase.
33. Companies offer scratch card along with their products to the consumers at the time of purchase, consumers scratch the card, if lucky he get the price. However in case of token, there is nothing to scratch and contrary to luck based system, every token has the same value there is no loser.
34. Companies offer lucky draw coupon to be filled by the buyers at the time of purchase, tell them the time and procedure of draw. Whereas in Token System, there is nothing that can match the lucky draw system.
35. Banks offer a reward programme to credit card owners in shape of accumulation of points after each use of the card for payment of product or services, banks keep all the record of payments and hence their point system is verifiable.
36. Same lies here, to claim and compare Nippon and Buxly should have submitted how they are keeping tracks record of their consumers purchases to reward their products with these point system.

III. Rejoinder by the Complainant

37. The comments of the Respondent was forwarded to the Complainants for submitting their rejoinders. The rejoinders received from both the Respondents are almost identical in contents and natures and are summarized below:
38. It was submitted that the Respondent has failed to prove any defense against the allegations/issues raised in the complaint, instead of submitting parawise comments to the specific allegations a simple reform in letter form discussing irrelevant issues has been sent along with few print outs or copy of leaflets which have neither any reference nor these are relevant to the allegations.
39. The Complainant submitted that the Respondent has made frequent repetitions and material contents of the reply have not been denied specifically .Thus, in fact it is an admission of Complainants case.
40. The Respondent have failed to provide any justification and defense against clear breach of violation of 10(2)(b) of the Act by distributing false and misleading information to the consumers through advertisements. Besides no proof was submitted to establish the point that paints using tokens for promotions are of inferior quality and even not paint at all.
41. They alleged that under Order 8 Rule 3 and 5 of CPC the Respondent was required to deal specifically with each allegations of fact which they did not admit and if not denied shall be taken as admitted. In fact issue in hand is the deceptive marketing practices of the Respondent and not the business practices of the Respondent. The insertion of token especially in paint containers is a phenomenon not restricted to Pakistan. It is being used as promotional incentive in countries all around the world (India Pakistan and Bangladesh).
42. Since the matter under consideration has already been solved by the Commission the Complainants have duly reported compliance with the order dated 21-10-2011 passed by the Commission.
43. It was pointed out that the practice of inserting tokens has been accepted by the Commission as market practice as long as the information regarding the token disclosure has been made as per Commission's guidelines.
44. Though the Respondent reproduced section 35 of the state bank of Pakistan Act 1956 but it failed to explain as to how the use of token as a sale promotion scheme could stand in violation of the above quoted provisions of law.
45. The Respondent is also under the false impression that it is the only undertaking which is producing high quality packs and all other manufacturers are producing inferior quality paints, it appears to be a baseless belief.

46. It is also incorrect that the Respondent had designed the marketing campaign to give maximum awareness to the consumers about the presence of token in paint cans and when their message reached the consumers they got awareness of the so called token scheme and they rejected the token scheme. In fact the Respondent is continuously misleading and deceiving the consumers into believing that Respondents paint is good quality and others that insert token as promotional tool do not produce good quality paints.
47. As directed by the commission the Complainants have duly disclosed the value of coupons on all the products packaging. Similarly necessary advertisements for public information were also published in four nationwide newspapers.
48. It is also misleading and false claim that the statement made in Respondents advertisement is an idiomatic expression .it should not be in any way be construed in the literal meaning because an idiomatic expression should not readily be analyzed from its grammatical construction as incorrectly averred by the Respondent.

C. **ANALYSIS/FINDINGS:**

Whether the conduct of the Respondent is, prima facie, deceptive under Section 10 (c) of the Act or not?

49. The Respondent has submitted that those who cannot compete in quality, they use the crutches of Token. It is clear from this statement that according to the Respondent the undertakings using the Token in their paint packs cannot compete with them on quality. The Respondent in order to strengthen its assertion has started media campaign. The relevant anti token statement used in their campaign are as following:

Token Wala Hey to Paint to na Howa na”

Keep the Paint Containing Token Away from your walls, ceilings and homes

Master Paints = Paint + Quality

Other Paints = Paint + Token

50. The Respondent regarding the first statements has submitted that it was an idiomatic expression so it should not be taken in its literal meaning. Similarly for other statements they emphasized that they were for the awareness of the consumer and to assure the quality of their product. They were of the view that every advertiser wants to show that his product is superior as of his competitor in the ordinary course of advertisement.
51. However, if we look at the statements used by the Respondent, they not only emphasizing the quality of their product but are also making a clear assertion that other manufacturer are making paints without quality. This can clearly be seen in the statements:

Master Paints = Paint + Quality

Other Paints = Paint + Token

52. The word quality has been replaced by the word Token. In fact the Respondent through his marketing campaign is not only promoting his own product but is also conveying a message that other paint manufacturers are making paint without quality but with Token. Whereas the Respondent is making a quality paint. By this the Respondent is making a, *prima facie*, false comparison of their paint with other paint manufacturer in the market. As they believe that their paint is superior in quality than other paint. It is presumed that the Respondent has tested their product with the product of the competitors to assure the quality claim. The marketing campaign by the Respondent clearly shows the comparison of their product with the product of the competitors in terms of quality. However, the Respondent failed to provide any test/ research report in this regard. In this way the Respondent provides a misleading comparison of goods in the process of advertisement which is prohibited under Section 10 (1) in general and in particular Section 10 (2) (c) of the Act.

Whether the conduct of the Respondent is, *prima facie*, deceptive under Section 10 (a)& (b) of the Act or not?

53. After analyzing the comments submitted by the Complainant and the Respondent, it has been observed that the Complainants are offering Tokens into their paint boxes in order to attract customers towards their products. While the Respondent has claimed that they are the only paint manufacturing company which does not insert Tokens in containers. The Respondent through a media campaign is claiming to provide quality in paints more than the competitors.
54. We have seen in many cases concluded by the Commission that the overall net general impression of the advertisement is important. Here the ordinary consumer after going through the marketing campaign of the Respondent gets an impression that only the paint without Token is providing quality. Whereas, the paints with Token is extremely harmful for the house. This intention of the Respondent can be seen clearly in the statement:

*Token walay paint ko apni dewaroon, chatoon au r ghar se dor rakhien
kynk token wala hai tu paint tu na hoa na....Leykin Token tu bari choti cheez hai..
Choti cheez hai leykin etny baray ghr ko kharab kr deti hai.....*

55. The overall impression that an ordinary consumer will get from the aforementioned advertisement is that Token paints are very harmful for the houses whereas the Respondent is providing a quality product. The Respondent however failed to provide a reasonable basis of this claim that how other paints containing Token can be so harmful for the houses.

56. The Respondent stated that it is suffering a lot from evils of “Token” because the “Token” has become the leading factor of sale in the Paint Market of Pakistan instead of quality paint. However they did not provide any information that what kind of loss they have been suffered.
57. In this way the Respondent not only provides a misleading information to the consumers that lacks a reasonable basis related to character, properties, suitability of use and quality of paints but is also capable of harming the business interest of other competitors and is prohibited under Section 10 (1) in general and in particular Section 10 (2) (a) & (b) of the Act.
58. The Respondent has also made an assertion that the Complainants are not disclosing the amount of Token on their paint pack as directed earlier by the Commission. Before going to analyze this assertion, it is important to mention that Commission's in its order dated: January 13, 2012, had not ceased the practice of placing Token in paints pack. The undertakings were allowed to place the Token in their paint packs however the undertakings were compelled to make proper disclosure on the packaging of the paint packs. It was also revealed that it is the responsibility of the undertakings to disclose information about tokens and take necessary measures to ensure that the benefit is accrued to the consumer. Extracts of Commission's order are reproduced for ease of reference:

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 can not 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. In the Zong order the Commission held that:

“We must place a higher onus on the Undertakings in relation to the marketing practices. Therefore, from OFT's perspective, the consumer to whom such information is disseminated has to be the „ordinary consumer" who is the usual, common or foreseeable user or buyer of the product...It must be borne in mind that one of the objectives of the Ordinance is to protect consumers from anti-competitive practices; hence, the beneficiary of the law is the consumer”

Accordingly, there is a duty on the undertakings to disclose information about tokens and take necessary measures to ensure that the benefit is accrued to the consumer otherwise it would unreasonably place a higher onus on the consumer rather than the undertaking which would be contrary to the intent of the law.

59. The Commission in this regard as issued the following directions to the Paint manufacturers:

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 from the 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 these 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's 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.

60. Complainant No 1 was also one of the undertaking for which the directions were issued by the Commission in its aforementioned order. It has been observed that the

Complainant 1 fully comply with the directions given by the Commission in its order. Further the Complainants also provide the evidence in this regard. The allegation of the Respondent thus found incorrect and without any investigation. Evidences provided by the Complainants are reproduced as under:



Rose White 50013 Blossom Pink 50014 Lavender 50018



Green Sensation 50010 Aquamarine 50009 Sea Blue 50020



All colours shown are as close to the actual Nippon Paint colours as modern printing techniques permit.
Rs.100 coupon available in gallon - Rs.400 coupon available in bucket.

Oyster 90008 Court Grey 90011 Champagne 90013



Sea Green 90016 Sky Blue 90020 Signal Green 90027



Cornet Blue 90021 Light Blue 90022 Scarab 90004



Light Purple 90023 Blue 90009 Royal Blue 90015



Ash White 90029 Pumice 90010 Smoke Grey 90014

All colours shown are as close to the actual Nippon Paint colours as modern printing techniques permit.
Rs.50 coupon available in gallon - Rs.200 coupon available in bucket.

Pink Violet 80015 Moon Flower 80007 Mallow 80019



Lilac 80011 Blue Ice 80025 Parasol 80023



Light Blue 80012 Sea Blue 80018 Ravi Blue 80021



Light Lime 80026 Lime Fizz 80024 Spring Leaf 80013



Elegance 80010 Whisper 80009 Goose Wing 80020

All colours shown are as close to the actual Nippon Paint colours as modern printing techniques permit.
Rs.75 coupon available in gallon - Rs.300 coupon available in bucket.

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D. CONCLUSION

61. Based on the information available on record and the arguments/ material submitted by the Complainants and the Respondent during the enquiry, we the authorized officers have reached to the conclusion that the conduct of the Respondent making the claim through advertisements in the print and electronic media is not justified, particularly when it has been declared by the Commission that adoption of “Token Scheme” for sale promotion of paint manufactures is not unlawful and prejudice to the interest of other manufacturers when presence of token is properly disclosed for public/consumer’s knowledge.
62. The Respondent also failed to justify the comparison that they are the only undertaking making quality paints and paints with Token are harmful in use and the consumers should keep them away from the walls. The Respondent in this way distributes false and misleading information among the consumers which lacks reasonable basis related to character, properties, suitability of use and quality of paint thus, *prima facie*, entered in deceptive marketing practices in terms of Section 10 (1) in general and in particular Section 10 (2) (a), (b) & (c) of the Act.

E. RECOMMENDATION:

63. The deceptive marketing practices have a direct impact on the public at large. The undertakings should disclose correct information regarding their product to the consumers. False and misleading advertisements induce the consumers to purchase the product and hence it gives the undertaking a competitive edge over other competing undertakings. Hence, it is in the interest of the public that the undertakings should be stopped from advertising their products in a deceptive manner and be encouraged to resort to advertising practices that are transparent and give consumers/customers true and correct information about the products, rather than making misleading and false claims. It is recommended that a show cause notice be served to the Respondent for, *prima facie*, violation of Section 10 (1) and Section 10(2) (a) (b) and (c) of the Act.

Faiz ur Rehman
Junior Executive Officer
Enquiry Officer

Marryum Pervaiz
Deputy Director
Enquiry Officer