

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 AKZO NOBEL PAKISTAN
LIMITED AGAINST M/S BRIGHTO PAINS (PVT.) LTD ANMD M/S MASTER PAINT
INDUSTRIES (PVT.) LTD.**

BY

 
Riaz Hussain & Amin Akbar

Dated: July 15, 2021

1. BACKGROUND

- 1.1 M/s AkzoNobel Pakistan Limited (the ‘**Complainant**’), through its authorized representatives namely, Mr. Saad Mahmood Rashid, Chief Executive Officer and Mr. Harris Mahmood, Chief Financial Officer, filed a complaint dated October 24, 2019 with the Competition Commission of Pakistan (the “**Commission**”) against M/s Master Paint Industries (Pvt.) Limited (**Respondent No. 1**) and Brighto Paints (Pvt.) Limited (**Respondent No. 2**) (hereinafter collectively referred to as the “**Respondents**”) 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 Respondents are engaged in the distribution of false and misleading information to the consumers. They were misrepresenting themselves to be the safe and healthy paint, and do not disclose material information on the packaging and marketing material of their product that it contains lead and mercury in excess of the allowed limits.
- 1.3 Based on the preliminary fact finding, the Competent Authority initiated an enquiry in accordance with sub section (2) of Section 37 of the Act by appointing Mr. Riaz Hussain, Assistant Director (OFT) and Mr. Amin Akbar, Management Executive (OFT) as enquiry officers (collectively the ‘**Enquiry Officers**’) to conclude the enquiry. 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:

Whether the allegations leveled in the complaint constitute a, prima facie, violation of Section 10 of the Act?

2. THE COMPLAINT:

- 2.1 The Complainant is a public listed company, incorporated and established under the laws of Pakistan with its head office situated in Lahore. The Complainant is principally engaged in the business of *inter-alia*, manufacturing and sale of paints and related products.
- 2.2 The Respondents are also engaged in the business of manufacturing, sale and marketing of paints and related products. Further details of the Respondents are available on their respective websites, i.e., <https://masterpaints.com/> and <https://brightopaints.com/>, respectively.
- 2.3 The Complainant submitted that as a part of its internal stewardship policies and sustainability initiatives, and in compliance of relevant laws the Complainant refrains from the use of any raw materials or produce any products, which may cause acute or long term adverse health effects. Not only this is in accordance with relevant laws and applicable laws but the products are also required to meet the standards prescribed by the Pakistan Standards and Quality Control Authority (**PSQCA**). The Complainant further submitted that in order to ensure compliance of the aforementioned and in light of public safety, it regularly gets both its own products and other similar products in the market tested for such

27 A-A

compliance. Recently, various products of both the Complainant and Respondents were tested by Pakistan Council of Scientific & Industrial Research (PCSIR) on demand of the Complainant, copy of which is attached as ANNEXURE-A)

- 2.4 The Complainant submitted that Respondent No. 1 has been engaged in manufacturing, sales and marketing of décor products including but not limited to Master Superior Synthetic Enamel. The Complainant, in its complaint, has alleged that the Respondent No. 1 clearly misrepresenting itself to be safe and healthy paint with no added lead and mercury content, whereas it has added lead and mercury in its product above the permissible level. According to the PCSIR test report, conducted on February 01, 2018, the Master Superior Synthetic Enamel contains lead and mercury content in excess of the allowed limits. By doing so the Respondent No. 1 has been engaged in distribution of false and misleading information to the consumers, which lacks reasonable basis related to character and quality of the product in violation of Section 10 of the Act.
- 2.5 The Complainant further submitted that upon testing the product “Brighto All Purpose Synthetic Enamel” of Respondent No. 2”, it has been discovered that the product of Respondent No. 2 also contains Lead and Mercury in excess to the permissible levels allowed by PSQCA. Whereas, the Respondent No. 2 has failed to disclose it on the packaging and marketing material of its product that it contains lead and mercury content in excess of the allowed limits. The Complainant has alleged that the failure of Respondent No. 2 to disclose important information would constitute deceptive marketing practices. Through advertisement in such manner, the Respondent No.2 is involved in distribution of misleading information to consumers as it is misrepresenting itself to be safe and healthy paint. Moreover, these statements lack reasonable basis regarding character and quality, and has potential to deceive consumers and harming the business interest of other competitors in the market.
- 2.6 In view of the above, the Complainant submitted that, through advertisement in such manner, the Respondent No. 1&2 are involved distribution of false/misleading information to consumers in violation of Section 10 of the Act.
- 2.7 The Complainant has prayed for the following relief:
- i. The Commission may take strict action against the Respondents for contravention of Section 10 of the Act.
 - ii. Any and all existing actions, agreements and decisions of the Respondents with the object and effect of misleading the consumers, including making of false and untrue statements or failure to disclose correct facts, should be declared null and void.
 - iii. The Respondents may also be immediately restrained from any such further actions, agreements and decisions and may be directed to immediately remove such statements wherever they appear in the marketing campaigns to make suitable disclosure.
 - iv. Any other relief deemed appropriate by the Honorable Commission.

3. RESPONDENTS COMMENTS:

7 A-A

A. Respondent No-1 (M/s Master Paint Industries (Pvt.) Ltd)

- 3.1 The complaint was forwarded to the Respondent No. 1 by the Enquiry Committee for its comments on December 04, 2020. The Respondent requested for extension in time via letter dated December 18, 2020, which was duly granted vide letter dated December 22, 2020. The Respondent submitted its reply dated January 01, 2021.
- 3.2 The Respondent No. 1 submitted that it is a leading paint manufacturing organization that has been developing and supplying a variety of paint based products both locally and internationally since 1975. In these forty five (45) years of operation, the Respondent has diversified its product portfolio to include multiple types of paints, including Master Superior Synthetic Enamel' (the '**Master Enamel**').
- 3.3 The Respondent No. 1 stated that over the course of 45 years of operations, its product Master Enamel and its manufacturing process have been recognized for their premium and outstanding quality and compliance with the applicable laws. The Respondent's other Certifications, endorsements and approvals include those issued by TUV AUSTRIA HELLAS, Pakistan Standard and Quality Control Authority (PSQCA), Pakistan Green Building Council and University of Engineering and Technology. The Respondent No. 1 further stated that it has earned such reputation and acclaim on account of its commitment to developing and supplying premium quality products and consistently improving their standard as and when necessary and in accordance with law. Moreover, the allegations and particularly those of its competitors, which attempts to challenge the quality and standard of the Respondent No. 1's product are utterly baseless and a covert attempt to attack the goodwill and thwart the competitive advantage that it has legitimately earned over the course of 45 years.
- 3.4 The Respondent No. 1 further submitted that it received a letter from Competition Commission of Pakistan (the '**Commission**') dated December 04, 2020 bearing File No: 362/OFT/AKZONOBEL/CCP/2019, intimating that the Complainant had filed a complaint against the Respondent under section 37(2) of the Competition Act, 2010 (the '**Act**') for alleged violation of section 10 of the Act, and the Commission had initiated an enquiry pursuant thereto. The Respondent No. 1 stated that the Complainant submitted a report dated February 01, 2018 (the '**2018 PCSIR Report**') purportedly conducted by Pakistan Council of Scientific & Industrial Research (the '**PCSIR**') on numerous unlabeled samples submitted by the Complainant on November 20, 2017. The 2018 PCSIR Report asserted that of the unlabeled samples submitted by the Complainant to PCSIR are tested to contain a specific amount of Lead (Pb) and Chromium (Cr), which the Complainant has alleged that they belong to the Respondent.
- 3.5 The Respondent No. 1 further highlighted that, it is a settled law that the Commission has not been vested with unbridled and absolute power to conduct enquiries against entities and that its power to do so, has been explicitly limited and circumscribed by the provisions of section 37(2) of the Act, which provides;-

"(2)where the Commission receives from an undertaking or a registered association of consumers a complaint in writing of such facts as appear to

constitute a contravention of the provision of chapter II, it shall, unless it is of the opinion that the application is frivolous or vexatious or based on insufficient facts, or it is not substantiated by prima facie evidence, conduct an enquiry into the matter to which the complaint relates.”

- 3.6 The Respondent No. 1 submitted that at the outset the Commission is statutorily and legally obliged to formulate an ‘*opinion*’ that the complaint is not frivolous, vexatious, based on insufficient facts or unsubstantiated by, *prima facie*, evidence. The formulation of such ‘*opinion*’ is therefore, a binding and fundamental statutory condition. Which, upon satisfaction, confers jurisdiction on the Commission to invoke its powers under section 37(2) of the Act. It is settled law that such ‘*opinion*’ is legally required to be formulated by a clear application of the Commission’s mind, through careful and reasoned deliberations, after the Commission enumerates reasons in support thereof. Such ‘*opinion*’ cannot be formulated mechanically, nor be predicted on the basis of vague and indefinite information. Admittedly, the Commission has not shared such ‘*opinion*’ with the Respondent via the letter nor demonstrated its satisfaction of the statutory prescription of section 37(2) of the Act in any other form. In the absence thereof, the Commission does not enjoy the requisite jurisdiction to exercise powers under section 37(2) of the Act.
- 3.7 The Respondent No. 1 submitted that even otherwise and without prejudice to the above, not only does the complaint fail to disclose any fact that appears to constitute a contravention of Section 10 of the Act, but additionally advances frivolous and vexatious assertions that are tainted with *malafide* and lack substantiation through any, *prima facie*, evidence or facts. The Respondent further mentioned that none of the conditions precedents of Section 37(2) have been satisfied and the Commission lacks the jurisdiction to exercise its powers thereunder. In this regard the Respondent has submitted that:-
- a) The entirety of the complaint hinges on the Complainant’s baseless allegation and assertion that the 2017 unlabeled samples, which the 2018 PCSIR Report recorded as containing excess Lead and Chromium levels, belongs to the Respondent’s product, i.e. Master Enamel.
 - b) Without conceding its accuracy, it is submitted that the 2018 PCSIR Report denies such assertion, by specifically and explicitly observing that its findings only pertain to the unlabeled samples supplied by the Complainant, in the form of 2017 unlabeled samples. The 2018 PCSIR Report therefore, does not posit that its results bear any nexus with the Respondent. Such nexus is therefore, not a fact but a hollow assertion by the Complainant.
 - c) On the contrary, the purportedly sacrosanct 2018 PCSIR Report specifically states that “... *PCSIR does not accept any responsibility that the item(s) supplied is/are truly representative item(s) of any batch or stock or entire production...*” (the ‘**PCSIR Disclaimer**’). It therefore, categorically denies any and all responsibility of the Complainant’s assertion, which assert a nexus between the 2017 unlabeled samples and the Respondent.



- d) In light of the above, it is abundantly clear that the complaint fails to disclose or present any fact that could constitute a violation of section 10 of the Act.

3.8 The Respondent No. 1 further submitted that, even if the Commission were to construe the Complainant's assertion as a fact, the same is utterly insufficient, not supported by any, *prima facie*, evidence and fails the test laid out in Section 37(2) of the Act. In this regard, the following may be noted:-

- a) The 2018 PCSIR Report explicitly negates its support and/or responsibility for the Complainant's assertion.
- b) Even otherwise, PCSIR itself qualifies the veracity of its results recorded in 2018 PCSIR Report, acknowledges the margin of error inherent thereto and specifically entitles the Complainant in this respect by observing that "*uncertainty of measurements can be provided at request...*".
- c) Admittedly, the Complainant has not shared any such data with the Commission or Respondent No. 1, whether as part of the complaint or otherwise. In the absence thereof, the precision and accuracy of the 2018 PCSIR Report is entirely unclear and qualifies as indefinite information.
- d) Consequently, Complainant's assertions and all other allegations embodied in the complaint are insufficient, not supported by, *prima facie*, evidence and do not enjoy any of the legitimacy nor veracity at law.
- e) The Complainant's assertion and all other allegations raised in the complaint are vague in nature and premised on indefinite information, which thresholds have been judicially determined as insufficient for the purpose of invoking Section 37(2) of the Act.

3.9 The Respondent No. 1 further stated that it is abundantly clear from the record that the complaint is a part of Complainant's intentional design to thwart competition, harm its competitor's business operations and frustrate their respective growths. The Complaint is vexatious, tainted with *mala fides* and cannot be legally entertained under Section 37(2) of the Act. In this regard following points may be noted:-

- a) It is an undeniable fact that the Complainant allegedly submitted multiple 2017 unlabeled samples to PCSIR, as early as November 20, 2017. It did not share any verifiable particulars or references of the said 2017 unlabeled samples with PCSIR, whether in terms of any official document, the complaint or otherwise.
- b) After receiving the 2018 PCSIR Report, the Complainant has waited for a period of one year and eight months before realizing the acting on the urgency to purportedly protect public and/or consumer interest and advance competition within the market by filing the complaint.

- c) The Complainant further failed to inform the Commission that the Respondent No. 1's Master Enamel was duly licensed by the competent authority, the Pakistan Quality Control Standards Authority (the '**PSQCA**') in the year 2017 (the '**Master License**'), which affirmed Master Enamel's compliance of applicable legal standards that regulate the composition and quality of Master Enamel and other similar products (the '**Enamel Standards**').
- d) Additionally, in filing the complaint the Complainant failed to disclose the Commission that the composition of Master Enamel, including the acceptable quantum of its ingredients, are exclusively governed by the Enamel Standards, as determined and prescribed by PSQCA.
- e) The Complainant vide the complaint, has attempted to collaterally and indirectly attack the veracity, legality and vires of the Master License issued and challenge the Enamel standards framed by PSQCA, before the Commission.
- f) The Complainant is attempting to exploit the process of law, and particularly Section 37(2) of the Act, to achieve indirectly what it cannot do directly, by having baseless enquiries initiated against its competitors.

3.10 The Respondent No. 1 stated that, in light of the above, it is abundantly clear that the complaint is vexatious, tainted with *mala fides*, based on insufficient facts that are not backed by any evidence, and does not disclose any fact that appears to constitute a violation of Section 10 of the Act. Any enquiry initiated by the Commission pursuant thereto shall qualify as a roving and fishing enquiry that shall defeat the purpose and mandate of Section 37(2) of the Act.

3.11 The Respondent No. 1 further stated that, it is settled law that the enquiries referred in Section 37(2) of the Act are intrusive in nature, an inconvenience to the relevant parties and further affect their reputation and their business operations. It is for this reason that judicial pronouncements have also recognized and reinforced the statutory prescriptions controlling the Commissions power to initiate such enquiries and reminded the Commission of its legal obligation to satisfy the condition precedents prescribed in Section 37(2) of the Act, prior to performing its statutory functions thereunder. It is submitted that in light of the above and otherwise, the express and binding conditions of Section 37(2) have not been met, the Commission lacks the jurisdiction to exercise its powers thereunder and the complaint filed by the Complainant is liable to be rejected along with costs and penalties against the Complainant.

3.12 The Respondent No. 1 has mentioned that the instant submissions are preliminary in nature and pertains to the addressed issue of the Commission jurisdiction under section 37(2) of the Act, in context of the complaint. The Respondent No. 1 reserves its right to amend, modify and or add to the instant submissions as and when necessary and without prejudice to its right at law, make submissions on merits if and when necessary. Moreover, the instant submissions of the Respondent are being made without prejudice to the rights and remedies available to it under the law.



A-A

A. Respondent No-2 (M/s Brighto Paints (Pvt.) Limited)

- 3.13 The complaint was also forwarded to the Respondent No. 2 for its comments on December 04, 2020. The Respondent No. 2 has submitted its reply dated December 21, 2020.
- 3.14 The Respondent No. 2 submitted that the title complaint is based on false, frivolous and baseless contentions rather it is in fact an ulterior design employed by the Complainant with ill objections to attain dominant position in the market by defaming the competitor through abusing the process of law. The Respondent No. 2 further mentioned that the test report provided with the complaint speaks a lot about the ill motives of the Complainant and the same cannot be relied as the sampling is not done by any independent authority rather the Complainant itself provided the samples to the test performing laboratory and remained under Complainant's control, hence, manipulation of sampling is evident and even otherwise cannot be ruled out. Therefore, in absence of, *prima facie*, and credible evidence on the record, the initiation of enquiry is in violation to the provisions of sub-section (2) of Section (37) of the Act.
- 3.15 Moreover, the Respondent No. 2 further stated that the initiation of enquiry under the provisions of Section 37 sub-clause 2 of the Act without determining the question "Whether the sampling or items supplied by the Complainant undertaking to the test performing laboratory are the true representative items of the answering respondent undertaking or not" is bad under law and against the norm of justice and fair play. Furthermore, the Respondent added that the test performing laboratory PCSIR does not take the responsibility of the test hence, reliance on such invalid report is unsafe rather erroneous.
- 3.16 It has been highlighted by the Respondent No. 2 that the test report provided with the complaint is nullity in the eyes of law being violative to the section 8 and 17 of the PSQCA (Act of VI of 1996) and transgression on the jurisdiction of PSQCA Act, 1996 and renders the test report invalid. Even otherwise, the allegation of deceptive marketing practice could not be attributed or even presumed under Section 10(2) (b) of the Act unless any, *prima facie*, evidence is available and without a valid test the allegations remained a mere frivolous allegation. The Respondent further added that its products are duly tested and approved by PSQCA, and hence in presence of license/certification from PSQCA the allegations of violation of Section 10 of the Act cannot be attributed to the Respondent No. 2 on the basis of unreliable and illegal report. (Copies of Certification/License and production formula is attached as **Annexure-B**).
- 3.17 The Respondent No. 2 has denied the allegations based on unreliable evidence and highlight the self-assumed role of complainant as enforcement officer of laws and quality standard. Hence the allegations of deceptive marketing practices is denied being without any, *prima facie*, and credible evidence.
- 3.18 The Respondent No. 2 highlighted that its product was approved and duly licensed by PSQCA which is, in this case, the only competent authority in this regards. The Respondent No. 2 also shared the formulation of its product, which explicitly confirms the compliance of law, rules and regulations on the part of it.

37 A-A

- 3.19 In light of the submission made before us, the Respondent No. 2 has respectfully prayed for the following:
- a) The instant complaint under reply may kindly be dismissed being false and frivolous and based on untrue statements.
 - b) The Complainant be burdened with heavy penalty for abusing the process of law vide initiating false and frivolous complaint.
 - c) Any other relief that the Commission may deems fit and appropriate may also be awarded.
- 3.20 The substantiation provided by the Respondent No. 2 was not supported with evidence, therefore, the Respondent No. 2, vide letter dated December 30, 2020, was asked provide updated copy license issued by PSQCA and a lab test report which shows the actual presence of Lead and Chromium in the product. The Respondent No. 2 requested for extension in time via letter dated January 07, 2021, which was duly granted vide letter dated January 11, 2021. The Respondent No. 2 submitted the updated PSQCA license via letter dated January 19, 2021 and requested for extension in time for the submission of lab test report. The Extension was granted via letter dated January 20, 2021. The Respondent No. 2 has submitted lab report of PCSIR, dated January 27, 2021.

4. REJOINDER:

A. Rejoinder to the Reply of Respondent No-1

- 4.1 The Respondent No. 1's reply was forwarded to the Complainant for rejoinder vide letter dated January 13, 2021. The Complainant sought extensions three time vide email dated January 19, 2021, January 22, 2021 and email dated February 01, 2021, which were granted accordingly. The said rejoinder was received via letter dated February 08, 2021, the contents of which are summarized below.
- 4.2 The Complainant has vehemently denied the allegation leveled by the Respondent No. 1 that the complaint was to attack its Goodwill or thwart of its competitive advantage. Moreover, the Complainant has all times endeavored to fully comply in letter and spirit with applicable provisions of law. The Complainant has only filed the Complaint along with proof of all allegations contained therein, to ensure that fair market practices prevail and to restrain any anti-competitive and deceptive marketing practices, which have the potential to deceive actual and potential consumers and/or harming the business interest of other undertakings engaged in the business of paints sales in Pakistan.
- 4.3 The Complainant has clarified that it has requested PCSIR to provide results stating the brand name of the respective paints. However, the reports of PCSIR was unlabeled and does not mention any brand name of paints as per the policy of PCSIR. Furthermore, the Complainant stated that it has filed the complaint with the sole intent to restrain any anti-competitive and deceptive marketing practices in the paint sector in Pakistan. This is further evident from the fact that it has sent samples for a number of paint brands operating in Pakistan, but has only filed the complaint against two such brands, who were found to

be in contravention of Section 10 of the Act. Moreover, the Complainant in order to facilitate the Honorable Commission, has also provided a key explaining which sample pertains to which paint brand. The Complainant invited the Commission to conduct such tests again by itself through PCSIR or any other competent body so that the allegations of Respondent No. 1 with regard to the veracity of the test results may be addressed, and if the fresh test results of the products shows that the Lead and Chromium content have been resolved and in turn the Respondent No. 1 has not found involved in the act of deceptive marketing practice as detailed in the complaint, the Complainant would not press its complaint. The Complainant pointed out that the Respondent No. 1 has not provided any evidence to rebut the assertions in the complaint or in support of its own claims. No test results have been provided by the Respondent to controvert the test results provided by the Complainant.

- 4.4 The Complainant further mentioned that the Commission is not under an obligation to share details of how the Commission had satisfied itself with regards to the provision of Section 37(2) of the Act before initiation of enquiry. The Complainant submitted that it has comprehensively detailed all the reasons that how Respondent No. 1 has indulged in deceptive marketing practice and in turn has contravened the Provisions of Section 10 of the Act. The Complainant submitted that since the complaint had been supported with the evidence it cannot be regarded as frivolous or vexatious.
- 4.5 With regards to the disclaimers contained in the PCSIR report, the Complainant declared it as of general nature disclaimers. The Complainant has nowhere contended that the results shared with the Commission were for the entire production/batch of the Respondent No. 1 or that the Complainant had gotten the entire production/batch tested.
- 4.6 The Complainant has agreed with the para 3.8(a) *ibid* to the extent that it had submitted multiple samples to PCSIR for testing in 2017. The Complainant elucidated that these samples were submitted along with the brand names, but the names were not included by PCSIR in their report. Moreover, the Complainant in order to facilitate the Commission has provided a key explaining which sample pertains to which paint brand. The Complainant has further reiterated the para 4.4 above. Furthermore, in reference to para 3.8(b) *ibid* the Complainant has conducted its due diligence and legal consultation prior to submit the complaint.
- 4.7 The Complainant has denied the contentions raised in para 3.8(c) *ibid* by stating that several references have been provided in the complaint pertaining to the standards prescribed by PSQCA. The Complainant further submitted that the mere fact of registration with the PSQCA is irrelevant for the purpose of determining whether the marketing of their products is deceptive and in contravention of the provisions of the Act. In fact, the complainant has itself invoked the jurisdiction of the Commission to inquire into whether the Respondent is meeting the standards prescribed by PSQCA and in turn not indulging in deceptive marketing practices.
- 4.8 The Complainant has denied the content that it had not disclosed all the facts intentionally. Moreover, the Complainant humbly submitted that enquiries into deceptive marketing practices only further competition and do not affect reputation of business undertakings

until an adverse finding is made by the Commission. Furthermore, the competition in the market is only furthered through such enquiries which may lawfully prevent anti-competitive and deceptive marketing practices.

- 4.9 The Complainant respectfully submitted that the Respondent No. 1 by its own admission, has only provided preliminary submissions on jurisdiction of the Commission and has not addressed the complaint on merits. Other than mere statements, the Respondent No. 1 has not provided any evidence to rebut the assertions in the complaint or in support of its own claims.
- 4.10 The Complainant humbly prayed that the prayers of the Complaint requested for in the para 2.8 *ibid* may kindly be granted in terms thereof. Any other relief deemed fit by this Honorable Commission may also be allowed.

B. Rejoinder to the Reply of Respondent No-2

- 4.11 The reply of Respondent No. 2 was forwarded to the Complainant for its rejoinder, if any, vide letter dated January 28, 2021. The Complainant vide email dated February 01, 2021 has requested for extension in time, which was dully granted via email dated February 01, 2021. The said rejoinder was received via letter dated February 08, 2021, the contents of which are summarized below.
- 4.12 The Complainant has denied the allegation that it has tried to attain a dominant position in the market and/or to defame Respondent No. 2 by lodging false, frivolous, and baseless contentions. Moreover, while endeavored to fully comply with applicable provisions of law, the Complainant has only filed the Complaint along with proof of all allegations contained therein, to ensure that fair market practices prevail and to restrain any anti-competitive and deceptive marketing practices which have the potential to deceive actual and potential consumers and/or harming the business interest of other undertakings engaged in the business of paints in Pakistan.
- 4.13 The Complainant has denied the allegation that it had itself acted as an enforcement officer and conducted testing from laboratory. Moreover, the Complainant clarified that random samples were obtained and forwarded to PCSIR, a reputable Government Organization, for testing. The Complainant reiterated that its sole intent was to restrain any anti-competitive and deceptive marketing practices in the paint sector in Pakistan. This is further evident from the fact that it had sent samples for a number of paint brands operating in Pakistan, but had only filed the complaint against two such brands/undertakings, who were found to be in contravention of Section 10 of the Act. The Complainant has invited the Commission to conduct such tests again by itself through PCSIR or any other competent body so that the allegations of Respondent No. 2 with regard to the veracity of the test results submitted by the Complainant may be addressed, and if the fresh test results of the products shows that the Lead and Chromium content have been resolved and in turn the Respondent No. 2 has not been found involved in the act of deceptive marketing practice as detailed in the complaint, the Complainant would not press its complaint.

37 A-A

- 4.14 With regards to the disclaimers contained in the PCSIR report, the Complainant declared it as of general nature disclaimers. The Complainant further submitted that the mere fact of registration with the PSQCA is irrelevant for the purpose of determining whether the marketing of their products is deceptive and in contravention of the provisions of the Act. In fact, the complainant has itself invoked the jurisdiction of the Commission to inquire into whether the Respondent is meeting the standards prescribed by PSQCA and in turn not indulging in deceptive marketing practices.
- 4.15 The Complainant submitted that it had appended ample evidence with the complaint and also invited the Commission to may conduct a test of paint samples for its satisfaction. Furthermore, the Complainant mentioned that the Respondent has attached the recipe of its product with its reply, however, the copy of the reply received by the Complainant does not appear to have any such recipe attached. Therefore, the contention of the Respondent that the recipe of its product explicitly confirms the compliance of law, rules, and regulations on part of the answering Respondent is also denied.
- 4.16 The Complainant humbly requested for grant of relief and reiterated its prayers of the complaint reproduced in para 2.8 *ibid*. Any other relief deemed fit by this Honorable Commission may also be allowed.

5. ANALYSIS:

- 5.1 As mentioned in para 1.4 above, the mandate of this enquiry is to determine whether, *prima facie*;

The allegations leveled in the complaint constitute a violation of Section 10 of the Act?

- 5.2 Before moving forward, it is also necessary to establish as to what constitutes as violation of Section 10 of the Act. 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*

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

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 The above reference suggests that any information distributed via marketing campaign can mislead consumers if it is vague in any way or has omitted certain material information, even if such a conduct is not deliberate. Consequently, distribution of misleading information is capable of giving a wrong impression with respect to a good or service which could induce a consumer into distorted decision making, hence, causing consumer injury. Therefore, if the Respondent's conduct is proven misleading, it would amount to deceptive marketing practices in terms of Section 10 of the Act.

A. WHETHER, PRIMA FACIE, THE RESPONDENTS ARE INVOLVED IN DECEPTIVE MARKETING PRACTICES IN VIOLATION OF SECTION 10 OF THE ACT.

- 5.4 Before analyzing the facts of the matter, it is important to mention here that the Commission does not engage in ensuring maintenance of quality, safety or other standards. However, the Commission is empowered under Section 10 of the Act to stop undertakings involved, inter alia, in deceiving consumers by making false or misleading claims through various means. For ease of reference, the mandate of the Commission, under Section 10 of the Act, is reproduced below:

"Deceptive marketing practices. (1) *No undertaking shall enter into deceptive marketing practices.*

(2) *the deceptive marketing practices shall be deemed to have been resorted to or continued if an undertaking resorts to:*

(a) *the distribution of false or misleading information that is capable of harming the business interests of another undertaking;*

(b) *the distribution of false or 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;*

(c) *False or misleading comparison of goods in process of advertisement;*

(d) *Fraudulent use of another's trademark, firm name, labeling or packaging.*

- 5.5 The Commission has defined the term "false" in the Zong Order and the same was reproduced in the Paints order which went to establish that "*an advertisement is deceptive if it has the elements of being misleading, capable of misleading, capable of giving the wrong impression or idea and tends to misinform or misguiding owing to vagueness or any omission.*"

7

A-A

- 5.6 The basic allegation under the complaint is that the Respondents are engaged in distribution of misleading information to consumers as they are misrepresenting themselves to be the safe and healthy paint manufacturers and are failed to disclose on the packaging and marketing material of its product that it contains lead and mercury content in excess of the allowed limits.
- 5.7 In this context, the Complainant submitted a test report of two enamel paints, conducted by PCSIR on February 01, 2018, on demand of Complainant (reference **Annexure-A**). For the purpose of analysis, it is necessary to first evaluate the marketing material submitted by the Complainant. As mentioned earlier, submission to the Complainants pertaining to marketing material comprised upon packaging of the Respondents' products. Some of the marketing material submitted by the Complainant is displayed below:



Shade Card (Respondent No. 1)

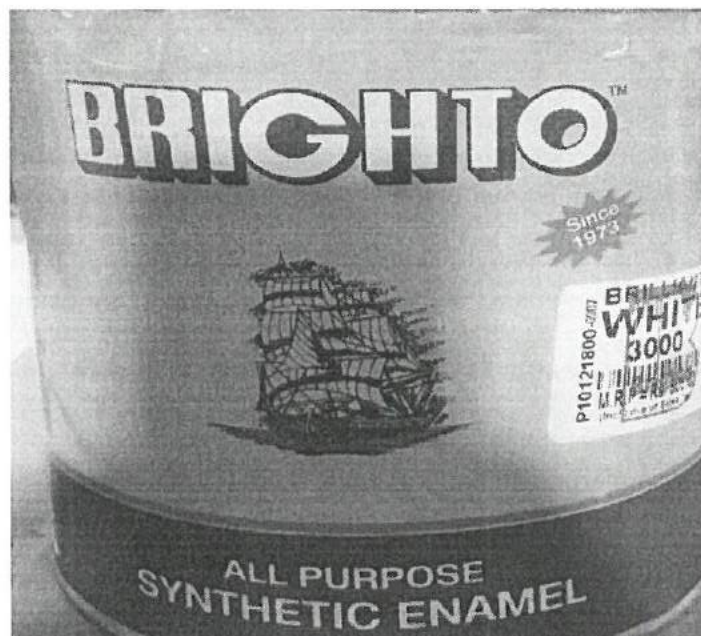


Respondent No. 1's Product Packaging (Front Side)

Handwritten marks: a blue scribble and the letters 'A-A' in blue ink.



Respondent No. 1's Product Packaging (Back Side)



Respondent No. 2's Product Packaging (Front Side)

7 AA



Respondent No. 2's Product Packaging (Back Side)

- 5.8 It can be observed from the pictures reproduced above that shade card and product packaging of Respondent No. 1 contains two statements, i.e. “No added Lead or Mercury” and/or “Super Gloss Synthetic Enamel for a Healthy and Safe Environment (shade card)”. The Complainant, in its complaint, has alleged that by using these two statements, the Respondent No. 1 clearly misrepresenting itself to be safe and healthy paint with no added lead and mercury content, whereas it has added lead and mercury in its product above the permissible level.
- 5.9 The product packaging of Respondent No. 2 contains only general information pertaining to technical information, product application, quality and characteristics. The Respondent No. 2 has not made any claim on its product packaging.
- 5.10 As mentioned earlier, the Complainant had submitted test report from PCSIR, dated February 01, 2018, according to which products of both the Respondents were contaminated with high level of Lead (Pb) and Chromium (Cr). This information was shared with Respondents for their comments, who have denied the authenticity of PCSIR report on the following grounds:
- That unlabeled samples were provided by the Complainant to the laboratory for test;
 - That the sampling procedure may be biased;
 - Veracity of test result;
 - That the PCSIR does not accept any responsibility that the item(s) supplied is/are truly representative item(s) of any batch or stock or entire production...;
 - That precision and accuracy of results is entirely unclear and qualifies as an indefinite information

- vi. That the complaint was filed with, mala fide, intent to harm business interest of Respondents;
- 5.11 The Respondent No. 1 has denied the allegations leveled in the complaint and raised objections on the evidence submitted by the Complainant in this regard. The Respondent No. 1 submitted that the sampling for testing was done by the Complainant on its own and remained under its own control hence, manipulation of sampling cannot be ruled out. Moreover, even the test performing laboratory "PCSIR" does not take responsibility of the test hence reliance on such invalid reports is unsafe rather erroneous.
- 5.12 The Respondent No. 2 has also denied the allegation of deceptive marketing practices leveled by the Complainant, based on PCSIR test results. The Respondent No.2 has also raised similar objection reproduced in para 5.9 above. The Respondent No. 2 has submitted that its products fall under compulsory mark scheme of PSQCA. Therefore, the Authority has checked, approved and allowed it to use PSQCA Mark after granting License. The Respondent No. 2 further submitted that in the presence of PSQCA License, attribution of misrepresentation is not only without evidence rather falsified.
- 5.13 The Complainant, in its rebuttal/rejoinder, has submitted that they had requested PCSIR to provide results stating the brand name of the respective paint. However, the report of PCSIR was unlabeled and does not mention any brand name of paints as per the policy of PCSIR. However, to facilitate the Commission, the Complainant has provided a sample key to identify brand-wise samples of paints. Nevertheless, the objections of both the Respondents cannot be overruled, straight forwardly.
- 5.14 With regard to the disclaimer given on PCSIR test report, the Complainant submitted that such disclaimers are of general nature. However, it has been observed that the same disclaimer does not appear on a test report conducted by the same laboratory on demand of Respondent No. 2. In light of the above, it can be concluded that the test performing laboratory "PCSIR" takes responsibility for the test, where it received labeled samples or the samples collets by it on its own. Since the samples were under the control of the Complainant, therefore, the aspect of manipulation cannot be ruled out. Moreover, the PCSIR test results were pertained to presence of Lead (Pb) and Chromium (Cr) whereas, the Respondent No. 1 has made a statement as "*No added Lead or Mercury*". The Respondent No. 1 has not made any claim/statement regarding "Chromium" content. It is also important to note that the products of Respondent No. 1 were not tested for mercury content. Therefore, complete reliance on such laboratory test and results thereof has a possibility of making a skewed decision regarding the claims made. Therefore, the Enquiry Officers are not going to completely rely upon the test report submitted by the Complainant. Hence, they consider other prospects as highlighted by the Respondents.
- 5.15 As mentioned above, the Complainant admitted that it has invoked the jurisdiction of the Commission to enquire into exactly whether the Respondents are meeting the standards prescribed by PSQCA, and in turn not indulging in deceptive marketing practices. The Enquiry Committee is of the view that the Commission is not mandated to ensure/maintain quality and standards of various consumer goods. There are various other institutions that

are legally responsible to maintain/ensure quality and standards of different consumer goods.

RESPECTIVE AUTHORITY FOR STANDARDIZATION AND QUALITY CONTROL:

- 5.16 In Pakistan number of authorities, at provincial level, are working to ensure quality, safety and standards of different products. At national level, having realized the importance and development of Metrology, Standards, Testing and Quality (MSTQ) infrastructure that provide an essential block for industrial development in the country, the Government of Pakistan has established the Pakistan Standards and Quality Control Authority (PSQCA) (hereinafter referred to as the “Authority”) by Act-VI of 1996 to provide one window services for standardization and Conformity Assessment.
- 5.17 The main function of the Authority is to foster and promote standards and conformity assessment as means of advancing the national economy. The Authority is empowered under the Act² to/for:
- (ii) *Inspection and testing of products and services for their quality, specification and characteristics, during use and for import and export purposes;*
 - (vi) *providing for the quality labeling standards which shall specify ingredients, performance, specification, usage, methods and other relevant quality control matters ;*
 - (x) *to stop manufacture, storage and sale of such products which do not conform to the Pakistan or any other country’s standards recognized by the Authority;*
 - (xi) *inspection and taking of samples of any material or product for examination as to whether any article or process in relation to which any of Authority mark has been used conforms to the Pakistan standard or a standard of any other country recognized by the Authority or whether any of the Authority mark has been improperly used in relation to any article or process with or without license or certificate;*
- 5.18 The above reference suggests that the Authority has licensed the articles manufactured in Pakistan both for domestic use or used for exports. Moreover, to conform to the Pakistan Standards or a standard of any other country recognized by the Authority, continuous inspection and taking of samples of any material or product for examination, is conducted.
- 5.19 The Standard Development Center (SDC) was established in 1951 with a mandate to formulate Pakistan Standards and check the quality of products. After establishment of PSQCA through an Act VI of 1996, Pakistan Standards Institutes (PSI) was dissolved and renamed as Standards Development Center (SDC). Further SDC was bifurcated into standardization (for formulation of standards) and Conformity Assessment (CA- to regulate the quality of products and certifications).

² <http://updated.psqca.com.pk/about-us/psqcs-act-1996/>

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- 5.20 The Pakistan Conformity Rules 2011 were formulated based on ISO 17065 and ISO 17067 Standards. CA working as a third party certification body. Industries are allowed to use PS Mark for their certified products to gain the confidence of consumers at local as well as at export stage.
- 5.21 CA-PSQCA regulates the quality of mandatory products notified by the Federal Government of Pakistan as Technical Regulation (105 products so far). The Technical Regulations are based on national and/international standards as Good Regulatory Practices (GRP) as per WTO – TBD (Technical Barriers to Trade) guidelines.
- 5.22 CA has introduced various schemes for conformity assessment such as:
- Certification Marks (CM) license scheme:** for the local manufacturers of mandatory product. In this scheme local manufacturers got license for their product notified by the Federal Government as Technical Regulations.
- Voluntary Conformity Assessment (VCA):** license scheme for local manufacturers of non-mandatory products.
- Foreign Manufacturing License (FML):** scheme for the foreign manufacturers of mandatory/non-mandatory products against Pakistan Standards-Pakistan Technical Regulation for ease of doing business and entry of their products in Pakistan.
- 5.23 The products of both the Complainant and Respondent fall under the category of mandatory products notified by the Federal Government of Pakistan as Technical Regulation. List of the items under Compulsory Certification mark Scheme for import and home market is attached as (**Annexure-C**).
- 5.24 The Directorate of Standards, SDC-PSQCA is responsible for the development of Pakistan Standards to emphasize and contribute for enhancing the national economy and international competitiveness. Pakistan Standard was adopted by the PSQCA on February 28, 2017 after the draft finalized by the paints and allied material technical committee was approved by the National Standard Committee for Chemical. PS: 616 & 617 – 2017 deals with exterior and interior enamel paints. The Requirements for enamel paint (undercoating, finishing color) are given below:

7 A-A

PS: 616 & 617/2017 (1st R)

4. REQUIREMENTS

The product shall also comply with the requirements specified in the Table-1

**TABLE - 1
REQUIREMENTS FOR ENAMEL PAINT (UNDERCOATING, FINISHING COLOUR)**

Parameter	Performance Requirements		Test Method
	Primer	Finish	
Consistency	(1) 20-30 sec F-4 Cup (4:1) at 25 °C ± 1 (2) 7-11 poise min at temperature 25 °C	(1) 240-450 sec F-4 Cup at 25 °C ± 1 (2) 7-11 poise at temperature 25 °C	(1) ISO 2431:2011: Paints and varnishes – Determination of flow time by use of flow cups (2) (a) ISO 2884-1:1999: Paints and varnishes – Determination of viscosity using rotary viscometers – Part 1: Cone and plate viscometer operated at a high rate of shear (b) ISO 2884-2:2003: Paints and varnishes – Determination of viscosity using rotary viscometers – Part 2: Disc or ball viscometer operated at a specified speed
Drying time, max at 25 °C and 60-65% RH (1) Surface Dry (2) Hard Dry	4 hours 12 hours	6 hours 24 hours	(1) ISO 9117-1:2009: Paints and varnishes – Drying tests – Part 1: Determination of through-dry state and through-dry time (2) ISO 9117-2:2010: Paints and varnishes – Drying tests – Part 2: Surface-drying test using ballpoint (3) Drying time, set to touch, dust free etc. Refer to ASTM Designation: D 1640 Physical evaluation
Finish (1) Undercoating (2) Finishing Opacity	Smooth and matt 2-3 coats	Smooth & matt/glossy 2-4 coats (80-120 micron)	Dry opacity: On a black-white Lergota chart, Form 2A, Opacity, draw down a film of the sample covering both black and white portions of the chart. Unless otherwise specified, use a 10 mil gap draw-down blade. Dry the specimen 24 hours at 25°C. Using a suitably calibrated filter photometer conforming to ASTM Designation: D 3347, measure alternately the 45°0' daylight luminous directional reflectance of the specimen over the white and black portions of the chart. Calculate dry opacity as follows: Dry Opacity = Reflectance over black / Reflectance over white Similar results may be obtained from spectrophotometers conforming to ASTM Recommended Practice L 308

PS: 616 & 617/2017 (1st R)

Gloss	Matt-0-30 at angle of 60°	Matt-0-30 at angle of 60° Glossy- 80% min. at angle of 60°	ISO 2813:2014: Paints and varnishes – Determination of gloss value at 20 degrees, 60 degrees and 85 degrees
Color (1) Undercoating (2) Finishing	On choice	On choice	Physical evaluation
Scratch Hardness	Not applicable/practicable for enamel primer	Not applicable/practicable for enamel finishing	ISO 15184:2012: Paints and varnishes – Determination of 5Hn hardness by pencil test ASTM D 3363 – Standard Test Method for Film Hardness by Pencil Test (1) ISO DTR 19402: Paints and varnishes – Adhesion of coatings (2) Flexibility: Follow ASTM Designation: D 522, Method B (3) Adhesion: Follow ASTM Designation: D 3359, Method A or ASTM Designation: D 4541 (1) ASTM D 86 – Standard Test Method for Flash Point by Tag Closed Cup Tester (2) ASTM D 3278 – Standard Test Method for Flash Point by Small Scale Closed Cup Apparatus
Flexibility & Adhesion	Not applicable/practicable for enamel primer	Not applicable/practicable for enamel finishing	
Flash Point	-4C	-4C	
Heavy Metal 1. Lead (Pb), max 2. Chromium (Cr), max 3. Cadmium (Cd), max Weight per Liter	100 ppm 100 ppm 100 ppm 1.2-1.6 kg per liter	100 ppm 100 ppm 100 ppm 0.90 - 1.40 kg per liter	AOAC 974.02 ASTM 1645, 1613, ASTM E1613-04 by AAS, USEPA 6010, USEPA 6020, USEPA 3052
Shelf Life	Normally 2 years. Keep in shade. As agreed with the purchaser	Normally 2 years. Keep in shade. As agreed with the purchaser	

5. PACKING AND MARKING

5.1 Packing— unless otherwise agreed between the purchaser and the supplier, the paint shall be packed in metal containers.

5.2 Marking— Each container shall be marked with the following:

- Name and class of material
- Name and address of the manufacture and/or his recognized trade-mark, if any;
- Volume of the material

The permissible limit of heavy metals, i.e. Lead and Chromium as per PSQCA standards are highlighted above. The enlarge view of encircled area is given below:

Heavy Metal			AOAC 974.02 ASTM 1645, 1613, ASTM E1613-04 by AAS, USEPA 6010, USEPA 6020, USEPA 3052
1. Lead (Pb), max	100 ppm	100 ppm	
2. Chromium (Cr), max	100 ppm	100 ppm	
3. Cadmium (Cd), max	100 ppm	100 ppm	

5.25 It is clearly evident from the above, that the minimum requirement for lead and chromium as per the PSQCA standard is 100 ppm (parts per million or milligrams per liter (mg/L)).

The PSQCA also conducted periodical inspections to enforce the standards, which are required to be brought under Compulsory Certification Marks License. Under the Compulsory Certification Marks License, the Authority has provided two months to the manufacturing units for obtaining C.M License from PSQCA. The procedures of general sampling and periodical inspections are also provided by the Authority³ as:

General Sampling Procedure (If not specified)

The random samples shall consist of three sets. The first Set bearing the seal of the Inspector should be left with the manufacturing unit and second set also bearing Inspector seal shall be sent by the manufacturing units for tests to independent Laboratories as directed by the Inspector. The third set bearing the seals of both the manufacturer and the Inspector shall constitute the reference sample to be used in case of dispute and shall be under the custody of SDC.

Periodical Inspections

SDC in addition to preliminary inspection shall also arrange at least two periodical inspections of each license, besides taking random samples from open market, godowns or otherwise for continuous checking the quality of the product whether it may be sold in the open market or manufactured within the factory. By these checks SDC ensures that the manufacturer may establish a set up quality control system for the production of quality end products.

5.26 The process of product certification has been defined by the Authority as:

- ✦ *Application – Scrutiny and registration (2 man days)*
- ✦ *Preliminary factory evaluation*
 - *Sample collection (1 day)*
 - *Testing of samples – In factory (1 – 2 days) and laboratories (7 days)*
 - *Grant of Certification Marks (CM) Licence (30 days)*
- ✦ *Surveillance*
- ✦ *Periodic factory visits (on quarterly basis)*
- ✦ *Factory sample testing (on quarterly basis)*
- ✦ *Market sample testing (on quarterly basis)*
- ✦ *Review of Licence*
- ✦ *Renewal*
- ✦ *Expiry/cancellation/Suspension/Withdrawal as the case may be.*

5.27 In addition to the above, the marking standards are also provided under PS: 616 & 617/2017, which states:

5.2 Marking—*Each container shall be marked with the following:*

- a) Name and class of material;*
- b) Name and address of manufacturer and/or his recognized trade-mark, if any;*
- c) Volume of material;*

³ <http://updated.psqca.com.pk/confirmity-assessment-ca/enforcement-of-standards/>

7 A.A

- d) Batch No. lot No. in code otherwise; and
- e) Month and year manufacture;
- f) Container may also be marked with the PSQCA Certification Mark.

5.28 The product of Respondent No. 1 (Master Enamel) was duly licensed by the relevant authority, i.e. PSQCA in the year 2017 which affirms Master Enamel's compliance of applicable legal standards that regulate the composition and quality of said product. Copy of PSQCA License for the period September 2017 to September 2018 is reproduced below:

Number: 009845

Pakistan Standards and Quality Control Authority

License for the use of the Pakistan Standard Mark

Agreement No. 1070/X-1934

License No. CML/71-1070/2017

M/P. Master Paint Industries (Pvt.) Ltd.

License shall be valid from 12-Sep-17 to 12-Sep-18 and renewable as prescribed under the Rules.

Signature: *[Signature]*

Dr. Shahid Afzal
DIRECTOR

Place: Lahore


Date: 18-Sep-17

THE FIRST SCHEDULE		
PS Mark	Article / Process	Pakistan Standard(s)
	Enamel Paint Brands as per Annex A	PS-816/2012:R1

THE SECOND SCHEDULE			
Article / Process	Unit	Marking Fee Per Unit	Mode of Payment
Enamel Paint Brands as per Annex A	Per Factory Price	0.1%	Through Bank Draft Quarterly

5.29 The Respondent No. 2 also submitted test report from PCSIR, dated January 2021, wherein (04) different shades of bright synthetic enamel, i.e. brilliant white, golden brown, signal red and signal green were tested. According to this report, no Lead (Pb) and Chromium (Cr), above allowed limit, were detected in the abovementioned brands. The products of Respondent No. 2 (Brighto Enamel) were also duly licensed by the relevant authority, i.e. PSQCA in the year 2018 which affirms Brighto Enamel's compliance of applicable legal standards. Copy of PSQCA License is reproduced below:

[Handwritten signature]
[Handwritten initials AA]


Pakistan Standards
Pakistan Standards and Quality Control Authority
 Licence for the use of the Pakistan Standard Mark

Government of Pakistan
 Agreement No. 1234/E-1916

Number: 005708
 Licence No. CML/N-1234/2018
 M/s. Brighton Paints (Pvt.) Ltd.
 Address: Plot No. 118/8-KM, Rawalpindi Road, Lahore.
 Licence shall be valid from 9-Apr-18 to 8-Apr-19 and renewable as prescribed under the Rules.

Signature: [Signature]
 Engr. Muhammad Muneer Mirza
DIRECTOR
 Place: Lahore
 Date: 18-Apr-18

THE FIRST SCHEDULE

PS Mark	Article / Process	Pakistan Standard(s)
1	Enamel Paints	SSS-616/2017(R)
2	Brighton Brand	

THE SECOND SCHEDULE

Article / Process	Unit	Marking Fee Per Unit	Mode of Payment
1			
Enamel Paints	Ex-Factory Price	0.1%	Through Bank Draft Quarterly
Brighton Brand			

Units of Mark as per Annex 1
Units of Mark as per Annex 2

- 5.30 During the course of enquiry the Complainant, vide letter June 14, 2021, once again reiterated its abovementioned allegations and submitted a fresh test report from PCSIR wherein excessive limits of Lead (Pb) and Chromium (Cr) content were observed.
- 5.31 Since both the Respondents have maintained valid PSQCA License and as mentioned above the PSQCA is mandated to conduct periodical testing to enforce its standards, therefore, the Enquiry Committee deemed it fit to engage PSQCA. A letter, dated July 01, 2021, was written to the department of Conformity Assessment (CA), Lahore Zone, and requested them to share detailed results of periodical inspections/testing (for the last three years) conducted by the Authority w.r.t. the products of both the Respondents.
- 5.32 The Quality Assurance Cell, CA-Lahore Zone, vide letter dated July 09, 2021, has submitted the details of inspections conducted in the last three years. According to the inspection/test reports, the products of both the Respondent are found in compliance with the applicable standards of PSQCA. Moreover, it has also been observed that content of Lead (Pb), Cadmium and Chromium (Cr) are also found within the permissible/allowed limited, therefore, the statements of Respondent No. 1 have been justified, hence no violation of Section 10 of the Act. Similarly, no excessive limits of Lead (Pb), Cadmium and Chromium (Cr) content have been observed in the products of Respondent No. 2 hence, the allegation of the Complainant has not been proven. Moreover, the marking standards have also been provided by the PSQCA for enamel paints which are reproduced above in para 5.25 *ibid*. The marking standards do not require the disclosure of the ingredients of paint products and the required information has been appropriately disclosed by the Respondent No. 1&2 on their products' packaging.

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5.33 As far as the harmful effects on environment are concerned, it is pertinent to mention here that according to a study⁴ Lead (Pb) is not the only component that is hazardous for health and environment. The excessive amount of Lead component could be harmful, owing to this, its usage beyond the permissible limit is banned for decades. Some other chemicals commonly found in paint have also been linked with significant health and environmental issues, these include Titanium Dioxide, Organic Solvents and Colored Pigments.

5.34 The Complainant, in its complaint, has also submitted that its products are also required to meet the standards prescribed by PSQCA, therefore, to ensure compliance of relevant laws and standards, the Complainant gets its products tested for such compliance. The Complainant, through its rejoinder, has also admitted that it had, itself, invoked the jurisdiction of the Commission to enquire into whether the products of Respondents were in compliance of the standards prescribed by the PSQCA. However, the Commission is not mandated to ensure the compliance of other regulatory authorities, such as PSQCA. The mandate of the Commission, under Section 10 of the Act, is clearly defined in Para 5.4 above, however, it has been reiterated for further clarification and reference as:

***“Deceptive marketing practices.** (1) No undertaking shall enter into deceptive marketing practices.*

(2) the deceptive marketing practices shall be deemed to have been resorted to or continued if an undertaking resorts to:

(a) the distribution of false or misleading information that is capable of harming the business interests of another undertaking;

(b) the distribution of false or 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;

(c) False or misleading comparison of goods in process of advertisement;

(d) Fraudulent use of another's trademark, firm name, labeling or packaging

5.35 The Commission, in the matter of Show Cause Notice issued to M/s Al-Hilal Industries (Pvt.) Limited held that⁵ *“Having analyzed the labeling requirements for fruit juice in different jurisdictions, the Commission is of the view that, while it is beyond the Commission's mandate to enforce labeling requirements”*.

5.36 In light of the facts presented above and the submission of the PSQCA, we the undersigned Enquiry Officers are of the view that the statements/claims of Respondent No. 1 have not been found to be in distribution of false/misleading representation. With regards to Respondent No. 2, there is no specific claim made by it and the allegation of the Complainant is only to the extent of non-disclosure of material information, which in this case, has not been proven as the products of Respondent No. 2 have been found to be in

⁴ <https://doi.org/10.29121/granthaalayah.v3.i9SE.2015.3204>

⁵ https://cc.gov.pk/images/Downloads/fresher_juice_20_06_2012.pdf

 A-A

conformity with the applicable standards of PSQCA. Therefore, in light of the above, it can safely be concluded that no case of deceptive marketing practices against Respondent No. 1& 2 have not been made out. Moreover, in view of the above, and the jurisprudence developed by the Commission, we the undersigned enquiry officers are also of the view that the matter in hand is pertained to the maintainability/enforcing of standards prescribed by PSQCA, which is beyond the mandate of the Commission.

- 5.37 It is also pertinent to mention here that a similar case was dealt with by the United States District, Southern District of New York in the matter of Broad-Tech Electronics Co., Ltd -v- Eaton Electric Holdings LCC, Cooper Lighting LCC, and DOES-1⁶ wherein the District Judge has discouraged the self-policing role of the competitors and rest it with the relevant regulator.

6. RECOMMENDATIONS:

- 6.1 Based on the facts presented above, we the undersigned Enquiry Officers are of the view that the matter pertains to enforcement/compliance of the prescribed standards by PSQCA under the PSQCA Act No. IV of 1996. The Authority had granted a license for the use of Pakistan Standard Mark, ostensibly after following the due process under the respective legislation and also conducted periodical testing to enforce the standards. Therefore, it can be concluded that Respondent No. 1&2 have comfortably met the standards prescribed by PSQCA, and in turn have not indulged in deceptive marketing practices in violation of Section 10 of the Act. It is, therefore, recommended that the complaint against Respondent No. 1&2 may be disposed of in accordance with the law.



Riaz Hussain
(Enquiry Officer)



Amin Akbar
(Enquiry Officer)

⁶ <https://www.thetmca.com/files/2017/11/17-cv-05028-KBF-Document-57.pdf>

Pakistan Council of Scientific & Industrial Research
Laboratories Complex, Lahore

FEROZEPUR ROAD, LAHORE 54600 - PAKISTAN

Doc# LLC/QMR/FF/030A Issue Date: Jan 4th 2015 Issue # 01 Rev # 02

TEST REPORT

Report No: ACRC/P&P/941-944/01/2018

Date: 01.02.2018

Name & Address of Customer: M/S. AkzoNobel Pakistan Limited 346-Ferozpur Road, Lahore.
 Request Ref. # & Date: Letter dated November 20, 2017 Sheet No: 1/1
 Description of Sample: Paints No. of Sample(s): Twelve
 ILO Log # & Date: 941-944 dated 24.01.2018 Ref/Code #: PPA-09
 Method used / Specs: i. In House Developed Methods Temp. & Humidity: --
 ii. Atomic Absorption Spectrometry
 Statement of Non-compliance: -- Testing Date: 5th December, 2017 to 1st February, 2018

RESULTS

Results of analyses against the required parameters for the provided samples are as under:

Sr. No.	Sample Identification [As provided by the customer]	Test Parameters	
		Lead (Pb) Concentration* ppm	Chromium (Cr) Concentration* ppm
1.	A1 White Sample 1	Not Detected	Not Detected
2.	A1 White Sample 2	Not Detected	Not Detected
3.	A1 White Sample 3	72.22	Not Detected
4.	B1 Golden Brown Sample 1	Not Detected	Not Detected
5.	B1 Golden Brown Sample 2	27472	1679
6.	B1 Golden Brown Sample 3	4768	Not Detected
7.	S1 Green	Not Detected	Not Detected
8.	S2 Green	126.05	1718.06
9.	S3 Green	530.29	3453.49
10.	R1 Red	0.279	Not Detected
11.	R2 Red	0.857	Not Detected
12.	R3 Red	107.45	Not Detected

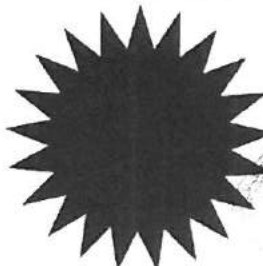
*Lower detection limit of one part per million.

◆-----◆ END ◆-----◆

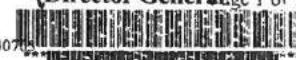
- This test/calibration certificate is based solely on the particular sample(s) supplied by the client and should not be reported in part.
- Sampling has not been performed by the PCSIR Labs and PCSIR does not accept the responsibility that the item(s) supplied is/are truly representative item(s) of any batch or stock or entire production.
- While the PCSIR agrees to take every reasonable precaution to ensure validity of its test results, it assumes no liability there of beyond the amount of the fee charged for the analysis/test.
- The party shall assume full responsibility for the ethical use of the results in the test/calibration certificate and the laboratory shall be held free from any and all claims, which may result from the use of such data by the client or others.
- After completion of the test/calibration the sample, if required, will be retained for one month until negotiated otherwise.
- The contents of this certificate cannot be, in any manner, used for the publicity of the product or any advertisement.
- Uncertainty of measurements can be provided on request.



Counter signature



Prepared by:

Dr. Saira Taj, SSO
Section InchargeAther 01-02-2018
Dr. Abdul Qayyum Ather
Head of the CentreSignature
2-2-18
Director General

Annex. B



Number. 005706

Pakistan Standards and Quality Control Authority

Licence for the use of the Pakistan Standard Mark

Agreement No. 1234/L-1916.

Licence No. CML/N-1234/2018

M/s. Brighto Paints (Pot.) Ltd,

Address: Shahira-E-Nisawaja Riaz Ahmed Sirkka Street No. 448 8-KM Raiwind Road, Lafiore.

Licence shall be valid from 9-Apr-18 to 8-Apr-19 and renewable as prescribed under the Rules.

Signature W. Mirza

Engr. Waseem Ahmed Mirza
DIRECTOR

Place Lafiore

Date: 18-Apr-18

THE FIRST SCHEDULE

PS Mark	Article / Process	Pakistan Standard(s)
1	2	3
	Enamel Paints	PSS: 616/2017(R)
	"Brighto" Brand	
Variants of Brand as per Annex A		

THE SECOND SCHEDULE

Article / Process	Unit	Marking Fee Per Unit	Mode of Payment
1	2	3	4
Enamel Paints "Brighto" Brand	Ex-Factory Price	0.1%	Through Bank Draft Quarterly
Variants of Brand as per Annex A			



Handwritten signature or initials.

Inspired by Nature

BRIGHTO PAINTS (Pvt.) LTD.

PRODUCTION RECIPE

Product Synthetic Enamel 9/12/2019

Shade Signal Red

Sr. No.	Material Description	Formula Ratio in %
1	Resin	72.770
2	dispersant	0.029
3	Red Pigment	4.724
4	M.T.T	17.980
5	Cobalt Drier	0.285
6	Calcium Drier	2.050
7	Strontium Drier	0.680
8	Xylene	0.333
9	Antiskinning	0.149
10	Limonene	1.000
	Total	100.000



Sharah-e- Kh. Riaz Ahmed Sikka
Street # 448, 8-km Raiwind Road
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LIST OF MANDATORY FOOD PRODUCTS

S#	Name of Items	Relevant PS No.
1.	Banaspati Ghee.	PS-221/2010
2.	Refined Maize (Corn) Oil.	PS-1562/2003
3.	Cooking Oil.	PS-2858/2012
4.	Refined Soybean Oil.	PS-1563/2003
5.	Refined Sunflower Oil.	PS-1564/2003
6.	Cotton Seed Oil.	PS-21/2003
7.	Mustard Oil.	PS-25/2003
8.	Palm Oil Edible.	PS-1561/2010
9.	Coconut Oil (Expelled).	PS-99/2010
10.	Margarine.	PS-1653/2012
11.	Biscuits (Excluding Wafers Biscuits).	PS-383/2003
12.	Wafers Biscuits.	PS-614/2011
13.	Natural Mineral Water.	PS-2102/2010
14.	Bottled Drinking Water.	PS-4639/2004
15.	Carbonated Beverage.	PS-1654/2012
16.	Iodized Salt.	PS-1669/2008
17.	Milk Powder (whole and skim)	PS-363/2011
18.	Condensed Milk	PS-364/2013
19.	Tea Black	PS-439/2012
20.	Fruit Squash	PS-506/2010

21.	Marmalade	PS-514/2010
22.	Concentrated Fruit Juice	PS-527/2015
23.	Food for infants and children	PS-1688/2008
24.	Chilli Powder	PS-1742/2010
25.	Orange Juice	PS-1738/2009
26.	Apple Juice	PS-1739/2009
27.	Curry Powder	PS-1741/2010
28.	Turmeric (Ground & Powdered)	PS-1820/2010
29.	Refined Sugar & White Powdered)	PS-1822/2007
30.	Butter	PS-1831/2012
31.	Honey	PS-1934/2012
32.	Jams (Fruit preserve) & Jellies	PS-2096/2010
33.	Flavoured Milk	PS-3189/2012
34.	Synthetic Vinegar	PS-3602/1994
35.	Mayonnaise	PS-3947/2010
36.	Pickles	PS-520/2013
37.	Liquid Tea / Coffee Whitener	PS-5383
38.	Powder Tea / Coffee Whitener	PS-5384
39.	Refined Palm Olein	PS-1600
40.	Packaged Liquid Milk	PS: 5344-2016
41.	Tinplate	PS:4773/2002
42.	Poultry Feed	PS-233/2012

43.	Balanced Feed Mixture for live stock	PS-234/1963
44.	Coffee and its Preparation	PS 763-1991
45.	Fruit Juices & Nectars	PS 4973-2009
46.	Fortified Wheat Flour (Aata)	PS 4872-2017
47.	Olive / Virgin and Refined and for Refined Olive Pomace Oil	PS:5159-2010

