

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 & M/S DIAMOND PAINTS INDUSTRIES (PVT)
LTD AGAINST M/S JOTUN PAKISTAN (PVT) LTD FOR DECEPTIVE
MARKETING PRACTICES**

BY

**Marryum Pervaiz/ Faiz ur Rehman
Dated: March 31, 2014**

1. BACKGROUND:

- 1.1 Akzo Nobel Pakistan Limited (hereinafter referred to as the ‘**Complainant No. 1**’) and M/s Diamond Paints Industries (Pvt) Limited (hereinafter referred to as the ‘**Complainant No. 2**’) filed a complaint with the Competition Commission of Pakistan (the ‘**Commission**’), against M/s Jotun Pakistan (Pvt) Ltd (hereinafter referred to as the ‘**Respondent**’) for alleged violation of Section 10 of the Competition Act, 2010 (the ‘**Act**’) i.e. deceptive marketing practices.
- 1.2 The Complainant 1 alleged that the Respondent while marketing its product i.e. ‘*Jotun Paints*’ through print media advertisements and bill boards is disseminating misleading and false information to the consumers that lacks a reasonable basis, related to character, properties or quality of its product and is capable of harming the business interest of the Complainant No.1. Later on, same contention was also raised by the Complainant No.2 by submitting another complaint against the Respondent. It was alleged that such conduct amounts to deceptive marketing practices in violation of Section 10 of the Act.
- 1.3 Keeping in view the above, the Competent Authority initiated an Enquiry in accordance with the provisions sub-section (2) of Section 37 of the Act by appointing Ms. Marryum Pervaiz, Assistant Director and Mr. Faiz ur Rehman, Junior Executive Officer of (OFT) as joint enquiry officers (the ‘**Enquiry Officers**’). Enquiry Officers were directed to conduct the enquiry on the issues raised in the complaint and to submit the enquiry report by giving their findings and recommendations *inter alia* on the following:
 - (i) Whether the conduct of the Respondent is capable of harming the business interest of the Complainant in violation of Section 10(2)(a) of the Act?
 - (ii) Whether the Respondent is disseminating false/misleading information to the consumers that is lacking a reasonable basis, related to character, properties quality of goods in violation of Section 10(2)(b) of the Act?

2. COMPLAINT:

- 2.1 Complainant No.1 is a Public Company registered under the Companies Ordinance 1984. It is an associated company of the Akzo Nobel Group. AkzoNobel is the largest global paints and Coatings Company and a major producer of specialty chemicals. They supply industries and consumers worldwide with innovative products .Their portfolio includes well known brands such as Dulux, Sikkens, International and Glidden. Their Headquarter is in Amsterdam, Netherlands, with operations in more than eighty (80) countries.
- 2.2 Complainant No.1, carry with the traditions and expertise of one of Pakistan’s oldest and most successful companies; ICI Pakistan Limited. The AkzoNobel Group acquired ICI in 2008 bringing together the innovation, leadership and expertise of both companies. In 2011, the board of directors of ICI Pakistan Limited approved a proposal from its ultimate holding company Akzo Nobel N.V. to restructure its interest in ICI Pakistan Limited by separation of the Paints

Business into a separate legal entity through a scheme of demerger. As of June 1, 2012, they are operating as AkzoNobel Pakistan.

- 2.3 Mr. Jahanzeb Khan the CEO of the Complainant No.1 has filed a complaint with the Commission against the Respondent an associated company of the Jotun Group of Companies with the Commission for alleged violation of Section 10 of the Act, wherein deceptive marketing practices of the Respondent has been pointed out.
- 2.4 In the complaint, it was alleged that the Respondent is using the slogan /Statement '**No. 1 in Paints**' on its entire promotional material and on various shop outlets based in Karachi, Lahore and Islamabad. The same slogan /Statement have also seen on its Bill Boards installed at various locations in the cities of Karachi and Islamabad. In this regard, pictures of their various shop outlets and the Bill Boards along with promotional materials are given hereunder:

Archi Times Vol.29, No.08, August 2013
Full Page Advertisement





JOTUN
No. 1 in Paints

VOL.1-2013

NEWSLETTER

JOTUN TO PHASE OUT LEAD CHROMATES FROM ALL FORMULATIONS

EXPLORE MORE...

PAINT APPLICATORS TRAINING IN BADIN

JOTUN PARTICIPATING IN DAWN FESTIVE 2013 KARACHI LAHORE ISLAMABAD

JOTUN COLOUR ADVISOR

PRESS RELEASE. Consistent with Jotun's environmental initiative (Jotun GreenSteps) the company has announced plans to phase out lead chromates, a toxic chemical compound from all paint and coatings formulations worldwide.

Jotun is scheduled to phase out lead chromates in 2014, by that Jotun will not only apply with new EU REACH regulations but also take a global position when Lead Chromates are phased out from all formulations for all product categories.

Jotun GreenSteps, a programme launched by the company in 2011 to improve Jotun's environmental performance over a broad range of areas, including Hazardous Materials, Carbon Footprint, Reducing VOC Emissions (Volatile Organic Compounds), Energy Consumption and Waste.

In addition to investing more resources to produce safer, more environmentally responsible paints and coatings, Jotun is exploring new ways of managing pigments and colours to achieve better results. The global phase out of lead chromates is an important step in strengthening Jotun's reputation as an environmentally responsible company.



REACHING HALF-CENTURY OF MULTICOLOR SHOWROOMS IN PAKISTAN

Jotun started its operations on south coast from Karachi then Hyderabad driving towards Tando Adam.

Jotun is travelling towards new heights opening new showrooms in big and small cities of Pakistan.

Now Jotun opened outlet in Badin and luckily this outlet became the 50th showroom of Jotun Pakistan.

This ceremony was held in first week of December 2012 cool crisp afternoon of winter in Badin.

General Manager Jotun Pakistan Per Arme Travelled to Badin for

inauguration along with Syed Ather General Manager (Commercial) and Marketing Manager Adeel Paracha.

Not to be ignored man behind this picture Ateeq ur Rehman Sales Officer whose efforts and effective approach convinced the owner to be a part of Jotun Family Mr. Jibran owner of J.B Colour in Badin.

Mr. Jibran Shifted to building material outlet and joined hands with Jotun to develop a One - Stop Shop in rural area.

Lunch was arranged with large gathering of applicators and consumers already using Jotun and were over whelmed to have Jotun Brand in their area to serve them.

Mr. Jibran was honored with Quiranic Shield for being the 50th Family member of Jotun. Jotun Team was served with traditional gift of Sindhi AJRAK.



www.jotun.com
infopk@jotun.com

Gulshan e Iqbal Lahore

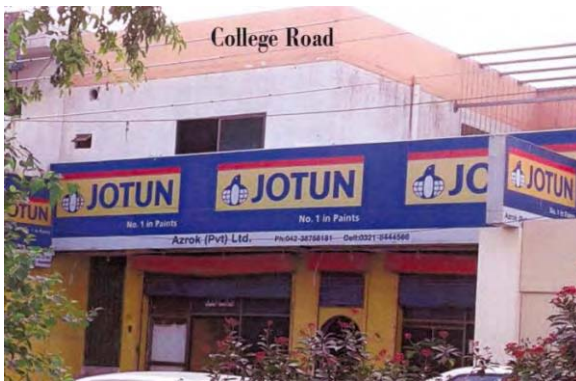
Billboard: Near Hassan Square,
Gulshan-e-Iqbal Karachi



Bus Shelter: Near Beaconhouse Campus, Phase III,
DHA, Lahore



2.5 Their Shop boards in various cities also contain the similar deceptive claim. Some of them are as under:



College Road Lahore



DHA Karachi Shopboard



Islamabad Shopboard

- 2.6 The Respondent also placed its promotional material with the same claim of being '**No. 1 in Paints**' on a promotional stall at Dawn life style exhibition held on 5th and 6th of January 2013. Coverage of the same is as under:



Stall at DAWN Lifestyles Exhibition - Lahore

- 2.7 Complainant No.1 further requested the Commission to conduct an independent survey and enquiry in this matter as the use of the claim '**No 1 in Paints**' by the Respondent is not only a vague and false statement but is also unethical, which is capable of harming the business interests of other undertakings engaged in the Paint Manufacturing Business. They alleged that the claim of being '**No. 1 in Paints**' by the Respondent lacks reasonable basis as to character, properties or quality of product of the Respondent and it has the potential to deceive the innocent consumer. A letter was written to ICI Pakistan Limited dated: January 24, 2013, acknowledging the receipt of the Complainant No.1.
- 2.8 Another complaint was also filed by the Complainant No. 2 against the same Respondent through Mr Imran Anjum Alvi, Advocate.. It was stated that the Respondent is involved in deceptive marketing practices in violation of Section 10 of the Competition Act, 2010.

- 2.9 It was submitted that Complainant No.2 is a leading manufacturer in the country and it has been noticed through the hoardings, print media and boards that the Respondent is claiming to be “*No.1 in Paints*”. The claim has been made without any authentic research report or any solid reason for being superior in quality or sales. Since their advertisement lacks reasonable basis, the Respondent is disseminating deceptive information through their advertisements. The advertisements so issued give a firm impression that other paints are inferior in quality and by this way, they are misleading the consumers. Their claim of being ‘*No.1 in Paints*’ is absolutely false and incorrect which is creating confusion among the consumers.
- 2.10 The advertisements by the Respondent has over stepped all the permissible limits of denigration of rival’s products and cross all the lines of responsibility and logic to capture the paint market. A consumer of average prudence can easily be misled by the advertisements so issued and their contents. A disparagement of another’s goods becomes an unfair trade practice, if there is use of false and misleading facts .Their advertisements are further misleading and false as chemical composition of all the paints are invariably the same.
- 2.11 As regards, the market share of paints, there is no reliable data available to substantiate that Respondent is No.1 Paint manufacturer in the market. The advertisement tantamount to dilution of competitors by effecting free choice of consumers and an act of unfair competition against all the other competitors which is an unfair trade practice.
- 2.12 In view of the above, it was requested that taking all the facts and circumstances into account, the Respondent may be directed to stop the use of their advertisement in its current form and to refrain from using the phrase ‘*No.1 in Paints*’ unless substantiated by cogent evidence. They also requested the Commission to pass appropriate directions and also to impose penalty on the Respondent for their involvement in deceptive marketing practices.

3. SUBMISSION OF THE RESPONDENT AND OTHER RELEVANT CORRESPONDENCE:

- 3.1 The Respondent is a private company and associated entity of Jotun Group of Companies engaged in the Business of Paint Manufacturing. On receipt of the complaint it was forwarded to them on January 24, 2013, for seeking comments/reply to substantiate their claim of being ‘*No.1 in Paints*’. The Respondent was directed to file its para wise comments on the complaint and to substantiate the claim with the support of some study or survey till February 07, 2013.
- 3.2 The Respondent requested on February 14, 2013 seeking for an extension in the time to file the comments/reply till the end of February. On February 20, 2013, another letter was written to them wherein the requisite extension in time was granted till February 28, 2013.

- 3.3 The Respondent, while denying the allegations of misrepresentation by the Complainants submitted vide their letter dated February 28, 2013, that usage of the slogan/statement being '**No.1 in Paints**' is neither misleading nor it is their intention to mislead the consumers as the statement is not specific to only Pakistan. It also does not compare Respondent's Market Position to any other Paint manufacturer. Thus statement is neither deceptive nor harmful in any way to any potential consumer or competitor as it does not claim any thing tangible. The statement is an advertisement tag line that is being used by the Jotun Group in various regional markets since 1997. This statement is simply used to signify the Jotun Groups commitment to excellence, when it comes to paints. It also voices the worldwide perception of the superior quality of Jotun Group's Paints. Besides Respondent is the largest supplier of Paints in the Middle East and in North Africa Region (MEIA). The aforementioned reasons provide the Respondent a reasonable basis to use the statement as its tag line, without harming the business interests of other undertakings in the paint manufacturing business.
- 3.4 It was also submitted that the statement does not make any claim specific to Pakistan or with reference to any of its competitor in Pakistan. In light of their reply, it was requested that the complaint filed by Complainant No.1 be dismissed and the Respondent be allowed to continue the use of statement as it is not misleading and also it does not affect the business interests of other undertakings in Pakistan.
- 3.5 The Respondent was further asked vide letter dated: May 09, 2013, to provide some research studies consumer's survey or certification award from a reliable source to substantiate their claim of being '**No. 1 in Paints**'.
- 3.6 In response, the Respondent requested some extension for supply of the requisite information which was granted to them. Subsequent to that, the Respondent vide their letter dated June 24, 2013, informed that it has been decided to name the competitor in the overview of sales of dry paints in Pakistan. Their decision was based on the understanding that the information shared with the commission's dealing officer was on a highly confidential basis, but is being disclosed so as to allow Respondent to prove its claim that it is the largest supplier of Dry Paints in Pakistan.
- 3.7 It was further submitted that in principle Respondent was reluctant to name competitors or compare its products with those of other competitors for the sake of providing negative information in the market. However the Respondent decided to share this information to demonstrate Respondent's market share in Dry Paints which is higher than that of any of its individual competitors comprising of Diamond Paints, Berger/Oxyplast, Prime Powder Coatings and KCC. It was also reiterated that advertisement line does not intend to mislead the consumers or make any absolute claim; it was simply to demonstrate in MEIA region for which the Respondent is an integral part (Annex-A).

- 3.8 In response to the Respondent reply it was held that '**No.1 in Paints**' is an absolute claim and not just a mere statement of puffery, reliance in this regard was placed on Commission's previous order dated January 20, 2013, in the matter of a complaint filed by Reckitt Benckiser against Begon for advertising '**No.1 in Pakisan**'.
- 3.9 The concept of puffery was also explained and it was pointed out that a statement is considered puffery if the claim is extremely unlikely to induce consumer reliance, ultimately the difference between a statement of fact and mere puffery rests in the generality of the claim. Thus a statement that is quantifiable that makes a claim as to the specific or absolute characteristic of a product may be an actionable statement of facts.
- 3.10 The IRL Middle East and Africa report 2007 that attempt to substantiate the claim '**No.1 in Paints**' includes countries like Bahrain, Israel Jordan Lebanon and many more. It is evident that Pakistan has not been included in the said studies which are limited to analyze industry statistics in Middle East and African countries.
- 3.11 Further, based on documents titled 'Summary Market Share Pakistan 2013', 'Market Position MENA 2012', and Market share data powder / dry paints 2013 (Annex-B1, B2 & B3), appears that the market share of Respondent is largest in Dry Paints category only and does not extend to the Wet Paints Category.
- 3.12 In view of the above, the claim of '**No.1 in Paints**' could not be substantiated by the Respondent. Thus it lacks reasonable basis, *prima facie* a violation of the Competition Act, 2010. The Respondent was therefore directed to remove the absolute claim '**No.1 Paints**'.
- 3.13 The Respondent however, reiterates that the advertisement tagline of '**No.1 in Paints**' is not intend to mislead the customers or to make any absolute claims. In their letter dated: July 10, 2013, they showed their desire to comply with all the relevant laws of the country. The Respondent submitted that they are willing to amend the existing tagline. They requested the Commission to allow them the time till January 2014 to re-brand the marketing/promotional items which were issued only on yearly basis such as calendars, diaries and color cards etc.
- 3.14 Considering the request of the Respondent an email was sent to them dated: July 10, 2013, in which they were asked to give a firm commitment with regard to removal of their claim '**No.1 in Paints**' from all their packaging, shade cards, billboards and televised adverts. They were asked to send their reply by no later than July 12, 2013.
- 3.15 In response, the Respondent replied through an email dated: July 11, 2013, and stated that it will take time to consume, redesign and reorder the objectionable packaging. They further requested that it will not be possible for them to complete the exercise till July 12, 2013, as the timeline given to them is too short.

- 3.16 The Respondent submitted that they are willing to modify the advertisement as per the following schedule:
- Roadside billboards and hoardings will not contain the claim by the end of July 31, 2013.
 - No TV advertisement is currently running, for future TVC, it will not contain the claim.
 - Print advertisement such as magazines circulated after August 15, 2013, will not contain the claim.
 - All packaging material will be examined and in case it requires any modification same will be done by November 15, 2013.
 - All shop sign boards will be modified till end of November 2013.
 - New Year calendars, diaries, color cards that are distributed on yearly basis will not carry the claim.
- 3.17 The enquiry officers appreciated the compliance oriented approach of the Respondent and time period as requested by them was allowed to them.
- 3.18 Another letter was also received from the Complainant No.1 on September 12, 2013, alleging that the Respondent has failed to comply with the commitments till August, 2013. They highlighted that the whole compliance report appears to be on low side.
- 3.19 The Respondent through letter dated: October 04, 2013, was reminded about the commitments as approved by the enquiry officers. They were advised to comply with the direction given to them
- 3.20 The Respondent vide their letter dated October 23, 2013 ensured that their commitment will be followed strictly and compliance report will be submitted. It was pointed out that perhaps the Complainant No.1 has made reliance on the previous material. In this regard, they clarified that:
- Archi Times for August 2013 was printed in July 2013 and the Respondent has changed it in the next volume of September, 2013.
 - Changing board on Bus stop is a time taking process and a few remained unchanged but now they have changed all of them.
 - All the old hoardings have also been removed.
- 3.21 In October 21, 2013, another complaint was received by the Commission from Complainant No.2 against the same claim of being '*No.1 in Paints*' by the Respondent. (Complaint already discussed in detail in para 2.8 to 2.12 above).

4. DECEPTIVE CLAIM BY THE RESPONDENT:

- 4.1 The basic allegation under the complaint is the claim of '**No.1 in Paint**' made by the Respondent which is not only misleading and false but it also lacks a reasonable basis and is capable of harming the business interest of the Complainant.
- 4.2 Before going to analyze the issue there is a need to recall the provisions of Section 10 of the Act which for the ease of reference is reproduced as below:

Section 10. 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 the process of advertising; or

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

5. ANALYSIS:

- 5.1 The complaint against a, *prima facie*, deceptive act of the Respondent was submitted by two undertakings at different times. It was alleged by Complainant No.1 that the Respondent is using the slogan /Statement '**No.1 in Paints**' on its entire promotional material and on various shop outlets based in Karachi, Lahore and Islamabad. The same slogan /Statement have also been seen on its Bill Boards installed at various locations in the cities of Karachi and Islamabad. In this regard, various pictures of shop outlets and the Bill Boards along with promotional material were submitted by them.
- 5.2 Whereas Complainant No.2 submitted that the claim has been made without any authentic research report or any solid reason for being superior in quality or sales. A consumer of average prudence can easily be misled by the advertisement and its contents. A disparagement of another's goods becomes an unfair trade practice, if there is use of false and misleading facts.
- 5.3 Both the Complainants submitted that the claim of being '**No.1 in Paints**' is not only capable of harming the business interests of other undertakings engaged in

the Paint Manufacturing Business. But it also lacks reasonable basis as to character, properties or quality of paint of the Respondent and it has the potential to deceive the innocent consumer.

- 5.4 The Respondent when asked initially denied all assertions of the Complainant No.1 & 2. They submitted that the usage of the slogan/statement '**No.1 in Paints**' is neither misleading nor it is their intention to mislead as the statement is not specific to Pakistan, nor it compares Respondents Market Position to any other Paint manufacturer, this statement is also neither deceptive nor harmful in any way to any potential consumer or competitor as it does not claim any thing tangible.
- 5.5 They submitted that the Respondent is using the claim since 1997 and the statement of being '**No.1 in Paints**' does not make any claim specific to Pakistan or with reference to any of its competitors in Pakistan.
- 5.6 In order to substantiate the claim of being '**No.1 in Paints**' the Respondent made reliance on the IRL Middle East and Africa report 2007 (Annex-A). They also submitted documents titled "Summary Market Share Pakistan 2013",- "Market Position MENA 2012", and Market share data dry paints 2013 (Annex-B1, B2 & B3).
- 5.7 After analyzing all the documents, it was observed that none of them was relevant to substantiate the claim of Respondent to be '**No.1 in Paints**' in Pakistan. The data of IRL Middle East and Africa report 2007 pertained to previous years. Further it has no relevance to use the claim of '**No.1 in paints**', specially in Pakistan as the list of countries shown in the report did not include Pakistan. The other three reports although belong to the current years, yet they focused only on the market share and market position of Dry paints in Pakistan and other countries. The reports for the market share and market position, already attached as Annex- B1 & B2 are elaborated here again for clarity:



Summary Market Share Pakistan 2013 (Dry Paints Pakistan)

PKR Mill
Sales value of Jotun and its Market share

Companies	2011	%	2012	%	2013 (Jan-Apr)	%
Jotun	740	58%	778	59%	230	58%
Competitor 1	272	21%	294	22%	110	28%
Competitor 2	181	14%	123	9%	34	9%
Competitor 3	82	6%	83	6%	15	4%
Competitor 4 (pipe)	-	0%	35	3%	0	0%
Others		0%		0%	5	1%
Total	1,275	100%	1,313	100%	394	100%

Market Position MENA 2012

	Powder/Dry Paint	Decorative	Protective	Marine
	Position	Position	Position	Position
Saudi	2	1	3	2
Egypt	-	4	1	1
Oman	1	1	1	1
UAE	1	1	1	3
Bahrain	1	2	3	1
Kuwait	1	2	2	3
Qatar	1	1	4	-
Pakistan	1	-	5	-
Jordan	-	3	2	-

PA Langnes/ Market Position / 2012



5.8 It is evident from the above reports along with the report of ‘Market share data powder/ Dry paint 2013’ (Annex-B3), which reflect a vague data that lack reliability and clarity. While describing the Market share of the Respondent with respect of other competitors, the Respondent does not even include the names of the competitors in the report. The reports were provided on the letter head of the Respondent itself and were not the third party survey/ opinion on dry paints category. These reports were not only unclear but they also lack relevance with the use of the claim ‘**No.1 in Paints**’ in Pakistan. The Respondent failed to provide the market value and volume share of Respondent with respect to other competitors in all the categories of Paints (dry paint + wet paint) in Pakistan.

5.9 It is pertinent to mention here that Commission appreciates compliance from the undertaking. The Respondent requested for certain time period to dispose off the claim of being ‘**No.1 in Paints**’ from all the advertising material. Sufficient time period was provided to them as already discussed in paragraph (3.17) above. For ease of reference, the time lines are elaborated again here:

- Roadside billboards and hoardings will not contain the claim by the end of July 31, 2013.
- No TV advertisement is currently running, for future TVC, it will not contain the claim.

- Print advertisement such as magazines circulated after August 15, 2013, will not contain the claim.
- All packaging material will be examined and in case it requires any modification same will be done by November 15, 2013.
- All shop sign boards will be modified till end of November 2013.
- New Year calendars, diaries, color cards that are distributed on yearly basis will not carry the claim.

5.10 It was brought into the knowledge of the enquiry officers that the Respondent is not complying with the time provided to them. For this purpose, the enquiry officers have made an initial research by checking the printed advertisements of the Respondent in Archi magazine. The time period to stop the printing advertisement was August 15, 2013.

5.11 It is important to mention here that the Respondent reassured in its reply dated October 23, 2013, that the magazine for August 2013 was printed in July 2013 but the Respondent will change the advertisement in the next volume of September, 2013. The Respondents advertisement in Archi Times for the month of September, 2013 is as under:

VOL 29, No. 09, ISSN No. 2073-9001, September, 2013



- 5.12 Regardless of providing a sufficient time to the Respondent, the Respondent failed to comply with the time provided to stop the magazine advertisements. This induced the enquiry officers to think about the timely compliance of Roadside billboards, hoardings and shop sign boards. The timeline given to remove the deceptive claim for Roadside billboards and hoardings was July 31, 2013 and for sign boards it was end of November 2013. The enquiry officers decided to conduct a survey by their own to assure the compliance of the Respondent in December, 2013, thus provided the maximum time to the Respondent to remove the claim.
- 5.13 A survey by the enquiry officers was conducted on December 09, 2013. The enquiry officers visited major areas of Lahore and also inquired few places of Karachi. It was observed that Respondent failed to comply with the commitments even in the case of removing the shop signboards. Pictures captured by the enquiry officers on various places are as under:

D-BLOCK, COMMERCIAL AREA, DHA, LAHORE:



COLLEGE ROAD, LAHORE:



A-II, TOWNSHIP, LAHORE



BLOCK-5, F.B AREACHOWRANGI, KARACHI:



- 5.14 It is evident from the above captioned pictures of shop signboards that the Respondent has a reluctant attitude towards the directions given to them by the enquiry officers. It is pertinent to mention here that the time to remove the claim of being '**No.1 in Paints**' from the shop signboards, till the end of November, 2013 was requested by the Respondent itself. Despite providing them a sufficient time period of their own choice, they failed to remove the claim from their shop signboards.
- 5.15 New Year calendars, diaries, color cards and other packaging material were never submitted to the enquiry officers for verification after necessary amendment.
- 5.16 It is also noted that the claim of being '**No.1 in Paints**' is not a general assertion. It is an absolute claim that requires a reasonable basis. Reliance has been made on the order of the Commission in the matter of complaint filed by Reckitt Benkiser Pakistan Ltd against M/s Johnson & Son Pakistan Ltd which can be viewed on the link below:

http://www.cc.gov.pk/images/Downloads/reckitt_final_order_20_01_2012.pdf

We note that the claim 'No.1 in Pakistan' is not a general assertion. The examples quoted by the Respondent further strengthens our view as the statement 'Best in Town' or 'Best of the Best' are more general in nature and cannot be quantified. However, the statement 'No.1 in Pakistan'

is a quantifiable and specific statement, which describes specific characteristic. We cannot accept that either 'No. 1' or 'Pakistan' in any manner conveys a general impression towards the consumers.

- 5.17 It also appears from paragraph (5.6) to (5.8) above, that the Respondent has no reasonable basis to make the, *prima facie*, deceptive claim of being '**No.1 in Paints**'.
- 5.18 The intend of having the provision of Sec 10 (2) (b) with respect to have a reasonable basis is that the advertiser must have had some recognizable/ admissible/ valid substantiation for the claims made in their marketing campaign prior to the dissemination of the advertisement/ marketing campaign to the consumer. To the contrary, in the absence of such substantiation, the claims made in the advertisements/ marketing campaigns would, *prima facie*, be deceptive or misleading.
- 5.19 The Respondent is using an absolute claim of being '**No.1 in Paints**' without a reasonable basis. Further they also failed to comply with the time line provided to them by the enquiry officers to remove the claim from all types of advertising material hence entered in the, *prima facie*, violation of Sec 10 (1) & Section 10 (2) (a) & (b) of the Act.

6. CONCLUSION AND RECOMMENDATIONS:

- 6.1 Having examined the information collected through exchange of correspondence and also during the enquiry, we are of the considered opinion that the Respondent has no justification to claim of being '**No.1 Paint**' in Pakistan. Thus the Respondent paint manufacturers were provided reasonable time period to remove their claim from their advertising material but they failed to report compliance.
- 6.2 It is an established fact that the Respondent through their slogan of being '**No.1 Paints**' has, *prima facie*, entered into deceptive marketing practices in terms of Section 10 (1) of the Act. Further, it is also involved in distributing false and misleading information that is capable of harming the business interest of other undertakings in terms of Section 10 (2) (a). Besides, distribution of information to consumers that lacks reasonable basis about the character, properties and quality of its product also attract the provision of Section 10 (2) (b) of the Act.
- 6.3 Since deceptive marketing practices have a direct impact on the public interest, it is imperative that undertakings should impart correct information about the products to their customers. It is obvious that misleading information always attract the consumers to purchase the products of low quality which provide the undertaking a competitive edge over the competitors. Thus, in order to protect public interest, the undertaking should be discouraged for selling their products in a deceptive manner and be directed to adopt such practices which are transparent and give consumers/customers true and correct information about their products. Under the

circumstances, it is recommended that a show cause notice may be served to the Respondent for violating the provisions of Section 10(1) & Section 10 (2) (a) (b) of the Act.

Marryum Pervaiz
Assistant Director
Enquiry Officer

Faiz ur Rehman
Junior Executive Officer
Enquiry Officer