



BEFORE THE
COMPETITION COMMISSION OF PAKISTAN
IN THE MATTER OF

SHOW CAUSE NOTICE ISSUED TO

M/S. JOTUN PAKISTAN (PVT) LIMITED FOR DECEPTIVE MARKETING PRACTICES
(F. NO: 120/ICI/JOTUN/OFT/CCP/2012)

Date of Hearing: May 22, 2014
February 26, 2015

Adjudicating Members: Mr. Mueen Batlay
Member
Dr. Shahzad Ansar
Member
Mr. Ikram Ul Haque Qureshi
Member

Present on behalf of:

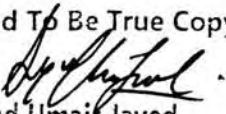
M/s. Jotun Pakistan (Pvt) Limited Mr. Per Arne Langnes, Chief Executive Officer
Mr. Adeel Paracha
Mr. Arsalan Khan, Sales Manager
Mr. Salman Dar, Area Sales Manager

M/s. Diamond Industries (Pvt) Limited Mr. Tariq Munir, Advocate
Mr. Sajjad Ahmed
Dr. Asghar Ali
Mr. Farooq Ahmed

M/s. Akzo Nobel Pakistan Limited Ms. Saira Soofi, Company Secretary
Mr. Imran Qureshi, Business Manager



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Registrar
Competition Commission of Pakistan
Government of Pakistan
Islamabad.



ORDER

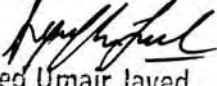
1. This Order shall dispose of the proceedings arising out of Show Cause Notice No. 02/2014 (hereinafter the 'SCN') issued to M/s Jotun Pakistan (Private) Limited (hereinafter 'Respondent') for *prima facie* violation of Section 10 of the Competition Act, 2010 (hereinafter the 'Act') which prohibits deceptive marketing practices.

FACTUAL BACKGROUND

2. M/s. Akzo Nobel Pakistan Limited (hereinafter the 'Complainant No. 1') and M/s Diamond Paints Industries (Private) Limited (hereinafter the 'Complainant No. 2') filed a complaint with the Competition Commission of Pakistan (hereinafter the 'Commission'), against the Respondent for alleged violation of Section 10 of the Act i.e. deceptive marketing practices.
3. Complainant No. 1 alleged that the Respondent, while marketing its product i.e. 'Jotun Paints' through print media advertisements and bill boards, is claiming to be 'No. 1 in Paints' and thereby 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 Complainant No.1. Following this, Complainant No. 2 raised the same contentions against the Respondent by submitting another complaint against the Respondent. It was alleged that such conduct amounts to deceptive marketing practices in terms of Section 10(2)(a) and (b) of the Act and is in violation of Section 10(1) of the Act.
4. The Commission initiated an enquiry pursuant to Section 37(2) of the Act by appointing the enquiry officers to conduct a detailed enquiry on the issues raised in the complaint. The enquiry in the matter was concluded vide report dated 31-03-2014 (hereinafter the 'Enquiry Report'). It was concluded in the Enquiry Report that, *prima facie*, the Respondent has no reasonable basis to make the claim of 'No. 1 Paint' in Pakistan and that the claim was capable of harming the business interest of the Complainants.



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5. During the enquiry process, the Respondent made a commitment to stop using the claim immediately and to remove all marketing material using such a claim for which sufficient time was granted.
6. The Enquiry Report recommended that the Commission may initiate proceedings under Section 30 of the Act for *prima facie* violation of Section 10 of the Act.
7. Based on the *prima facie* findings of the Enquiry Report, proceedings under Section 30 of the Act were initiated against the Respondent by issuing the SCN. The Respondent was required to respond to the SCN in writing within fourteen (14) days from the date of the SCN and to appear before the Commission and avail the opportunity of hearing on 08-05-2014. The SCN, in its relevant parts, alleged as follows:

6. *WHEREAS, in view of the Enquiry Report, it appears that the claim 'No. 1 in Paints in Pakistan' used by the Undertaking in its various marketing campaigns, lacks reasonable basis regarding character, suitability for use, or quality of goods and hence is in, prima facie, violation of clause (b) of subsection (2) of Section 10 read with subsection (1) of Section 10 of the Act;*

7. *WHEREAS, in view of the Enquiry Report, it appears that the claim 'No. 1 in Paints in Pakistan' used by the Undertaking in its various marketing campaigns is capable of harming the business interest of the Complainants, which is in, prima facie, violation of clause (a) of subsection (2) of Section 10 read with subsection (1) of Section 10 of the Act;*

8. In response to the SCN, the Respondent filed their written reply vide letter dated 20-5-2014, which is summarized as follows:

(a) *Forum* agreed to comply with the directions of the Commission and has stopped using the claim 'No. 1 Paint' from July 2013;



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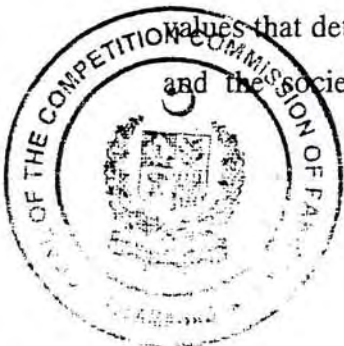
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- (b) Four sign boards at dealers shop, mentioned in the Enquiry Report have not been changed. The delay is regretted and Jotun will make every effort to change those sign boards;
- (c) Three of the sign boards mentioned in paras 5-13 of the Enquiry Report have been changed and documentary proof in this regard was submitted along with the reply.
- (d) FB Area, Karachi shop was not registered with Jotun. We have initiated legal proceedings against that shop and immediately removed the sign board. Documentary evidence in this regard was submitted along with the reply.
- (e) The claim 'No. 1 Paint' appearing in *Archi Times* was not published or placed by Jotun. We approached the paper and in October 2013 it had been changed. The copies of magazine for the months of September 2013 and October 2013 were submitted along with the reply.
- (f) Since July 2013, Jotun is striving to change the billboards and sign boards at roadsides, bus stops etc and most of them have been changed, evidence in this regard was also submitted along with the written reply.


VIOLATIONS OF THE ACT

9. Hearings in the matter were held on 22-5-2014 and 26-2-2015. On behalf of Complainant No. 1, the hearings were attended by Ms. Saira Soofi, Company Secretary and Mr. Imran Qureshi, Business Manager. On behalf of Complainant No. 2, the hearings were attended by Mr. Tariq Munir, Advocate, Dr. Asghar Ali, Mr. Farooq Ahmed and Mr. Sajjad Ahmed. The Respondent was represented by Mr. Per Arne Langnes, Chief Executive Officer, Mr. Adeel Paracha and Mr. Arsalan Khan.

10. The need for an effective system of checks against deception in marketing cannot be overstated. Left unchecked, deceptive marketing practices, by shaping the standards and values that determine acceptable business conduct, can have a negative influence on business and the society as a whole. Deceptive marketing practices have given rise to growing



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concerns within the field of marketing among the general public, consumer welfare bodies and competition agencies. This, in fact, is the very reason behind the establishment of the Office of Fair Trade within the Commission.

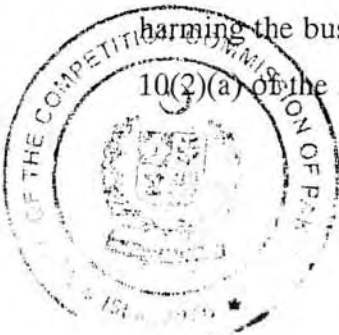
11. The matter at heart of this case is a claim by the Respondent of being the 'No. 1 Paint'. It is a claim that the Complainants believe lacks reasonable basis. When such claims are before the Commission, it is imperative to see whether the advertiser has some recognizable substantiation for the claims made. Reference in this regard is made to the Commission's earlier order, In the matter of Procter and Gamble reported as 2010 CLD 1695 wherein it was laid out that:

33. The concept of having a reasonable basis ... provides that the advertiser must have had some recognizable substantiation for the claims made prior to making it in an advertisement.

12. The Respondent has not provided any recognizable substantiation for making the said claim. The only contention made by the Respondent in this regard is that the claim 'No. 1 Paint' is true for a middle eastern country. This contention, on its own, is untenable as we are dealing with the market in Pakistan. This additional information has not been made available to the consumers. The Respondent has not provided any survey results or other data to support its claim of being the 'No. 1 Paint' in Pakistan. Importantly, it has not denied the findings of the Enquiry Report that the claim is *prima facie* deceptive in nature. In fact it committed before the enquiry officers to remove and replace all the marketing materials bearing the claim.

13. There is, therefore, no doubt that the Respondent's claim of being the 'No. 1 Paint' lacks a reasonable basis and is, hence, false and misleading information distributed in violation of Section 10(1) of the Act read with Section 10(2)(b) of the Act.

14. The second question before the Commission is whether the claim 'No. 1 Paints' is capable of harming the business interests of Respondent's competitors. To prove conduct under Section 10(2)(a) of the Act, it is not necessary to show actual harm to competitors. It is sufficient to



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23/01/2010

Director

Secretary

Office of the Director

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show the existence of a deceptive marketing practice that has the potential to harm the business interests of the competitors. Among such deceptive marketing practices is the distribution of claims lacking reasonable basis that are essentially designed and used to gain an unfair advantage over competitors. The unsubstantiated claim of being the 'No. 1 Paint' in Pakistan is capable of creating, unfairly, a positive consumer perception in favor of the Respondent which, in turn, is capable of harming the image, goodwill, sales, and other business interests of competitors in the market.

15. In light of the above, the Respondent's unsubstantiated claim of being the 'No. 1 Paint' in Pakistan is false and misleading information capable of harming the business interest of its competitors, distributed in violation of Section 10(1) read with Section 10(2)(a) of the Act.

COMMITMENTS & COMPLIANCE

16. During the hearing held on the 22-5-2014, the Complainants stated that the Respondent had failed to honor their commitments completely, given during the enquiry process, within the agreed timeframe. They further requested the Commission to take strict action against the Respondent for violating Section 10 of the Act.

17. The Respondents, on the other hand, submitted that they were making all efforts to implement their commitments. It was further submitted that most of the marketing material is beyond their reach and they are unaware of its existence, however, they are still communicating with all their dealers, retailers and suppliers to return the old material containing the claim 'No. 1 Paint.' The Respondent further submitted that many of the billboards/sign boards have been changed or replaced.

18. During the first hearing held on the 22-5-2014, the Commission inquired as to whether the Complainants had any reservations with regard to the commitments made by the Respondent. The Complainants submitted that they had no objection to the commitments provided that the Respondent does not use the claim in question in the future and undertakes not to indulge in deceptive marketing campaigns in violation of Section 10 of the Act.



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19. The Respondents filed their compliance report on the 5-6-2014. During the hearing held on the 26-2-2015, the Complainants expressed their satisfaction regarding compliance efforts undertaken by the Respondent.

REMEDIES

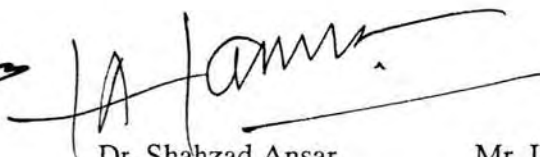
20. The Commission hereby orders the Respondent to refrain from indulging in deceptive marketing practices in the future. The Respondent shall continue to abstain from making the subject claim in the present form in all its marketing campaigns.

21. Keeping in mind the positive attitude shown, the commitments made, and the compliance done by the Respondent, we are only imposing a token penalty of PKR 10,00,000/- (Pakistani Rupees One Million Only) on the Respondent for violating Section 10(1) of the Act read with Section 10(2)(a) and (b) of the Act, with the warning that future violations may attract stricter penal consequences.

22. In terms of the above, the Show Cause Notice No. 2/2014 issued to the Respondent is disposed of.



Mr. Mueen Batlay
Member



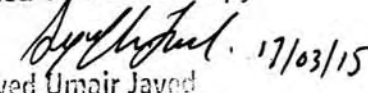
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