



**BEFORE THE  
COMPETITION COMMISSION OF PAKISTAN**

**IN THE MATTER OF  
COMPLAINT FILED BY M/S WYETH PAKISTAN LIMITED  
AGAINST RECKITT BENCKISER PAKISTAN LTD. FOR DECEPTIVE  
MARKETING PRACTICES**

(File No. 96/REG/COMP/WYETH/CCP/2012)

Date of Hearing(s): 25-11-2012  
05-12-2012  
25-04-2013

Present: Mr. Mueen Batlay  
**Member**

Dr. Shehzad Ansar  
**Member**

On behalf of

M/s Wyeth Pakistan Limited

Mr. Shehryar Nishat, Legal Director of M/s  
Wyeth Pakistan Limited

M/s Reckitt Benckiser Pakistan Ltd.

Mr. Mehmood Mandviwalla, Ms. Sana  
Iftikhar & Mr. Zafar Khalilq Khan, Advocates  
of Mandviwalla & Zafar

## **ORDER**

1. This Order will dispose of the proceedings arising out of the Show Cause Notice no. 106/2012 (the ‘SCN’) issued to M/s Reckitt Benckiser Pakistan Ltd. (the ‘Respondent’) for *prima facie* violation of Section 10 of the Competition Act, 2010 (the ‘Act’).
2. The SCN was issued pursuant to a complaint filed by M/s Wyeth Pakistan Limited (the ‘Complainant’) with the Competition Commission of Pakistan (the ‘Commission’), against the Respondent for alleged violation of Section 10 of the Act i.e. deceptive marketing practices. It was alleged in the complaint that the Respondent while marketing one of its depilatory product (hair removing cream) i.e. *Veet* is claiming through advertisement that “9/10 Women prefer Veet for smooth glowing skin”. It was alleged that the claim made in the marketing campaign of *Veet* is false and misleading; as it attempts to deceive the consumers into thinking that *Veet* as a depilatory cream is the preferred choice of 90% of women. Its was further stated in the complaint that the aforesaid claim lacks a reasonable basis, related to character, suitability for use, or quality of goods and is capable of harming the business interest of the Complainant and such conduct amounts to deceptive marketing practices in violation of Section 10 of the Act.
3. A formal enquiry in terms of Section 37 (2) of the Act, was initiated which was concluded *vide* Enquiry Report dated 16-10-2012. Based on the *prima facie* findings of the enquiry report SCN was issued to the Respondent on 19-10-2012. It was required to respond to the show cause notice in writing within fourteen (14) days from the date of show cause notice and to appear before the Commission and avail the opportunity of hearing on 08-11-2012. The show cause notice in its relevant part alleged as follows:

4. **WHEREAS**, in terms of the Enquiry Report in general and in particular paragraphs 41 to 50, *prima facie*, the overall net impression of the marketing campaign/ advertisement of the

*Undertaking regarding its product Veet is that Veet is the preferred choice of 90% women or 90% of the women prefer using Veet;*

5. **WHEREAS**, *in terms of the Enquiry Report in general and in Particular paragraphs 53, 54 & 57, the Undertaking has placed reliance on the survey of Oasis Insights (Pvt.) Limited wherein 382 ladies between age bracket of 16 to 35 years and face to face interviews of Veet users were conducted by means of questionnaires, to form the basis of the claim used in the advertisement of Veet i.e. “9/10 Women prefer Veet for smooth glowing skin”. However, upon analysis of the contents of the survey, it appears, that the survey gives a finding that “after using Veet 9/10 women prefer Veet for smooth and glowing skin”;*

6. **WHEREAS**, *in terms of the Enquiry Report in general and in particular paragraphs 55 to 61, prima facie, the print media advertisements, billboards, on shelve materials and second TVC does not contain the qualifier “after using Veet”, and, prima facie the volume share of the Undertaking in the depilatory segment of the market is 46.2% of volume share during the period April 2011-March 2012;*

7. **WHEREAS**, *in terms of the Enquiry Report in general, the Undertaking had earlier filed a complaint with the Commission against M/s S.C. Johnson & sons for a misleading campaign. However, in the present enquiry, it appears that despite of knowing the concern of the Commission, which was highlighted in the meeting held on 01-08-2012, the Undertaking did not acknowledged the same and during the telecast of the 2012 ICC World Twenty20 tournament, the Undertaking’s new TVC was aired frequently which again did not contain the qualifier ‘**Veet use karnay k baad**’;*

8. **WHEREAS**, *in terms of the Enquiry Report in general and in particular, paragraphs 51-62, it appears that the Undertaking by not using the words “**Veet use karnay k baad**” in its marketing campaign and only using the claim “**9/10 women prefer Veet for smooth glowing skin**” in its marketing campaign for its product Veet is prima facie disseminating false/misleading information to the consumers that is lacking a reasonable basis, related to character, suitability for use, or quality of goods in violation of Section 10 and in particular Section 10(2)(b) of the Act;*

9. **WHEREAS**, *in terms of the Enquiry report in general and in particular, paragraphs 63 to 68, it appears that the conduct of*

*the Undertaking i.e. making the claim “9/10 Women prefer Veet for smooth and glowing skin” and not using the qualifier i.e. “Veet use karnay k baad” in its marketing campaign of Veet, prima facie, is capable of harming the business interest of the Complainant in violation of Section 10 and in particular Section 10(2)(a) of the Act;*

4. The Complainant vide letter dated 24-10-2012 made a request for rescheduling of hearing to 29-11-2012 and also requested for an issuance of interim order directing the Respondent from cease and desist from using the deceptive marketing campaign and advertisement material regarding their product *Veet* on T.V., gondolas and shelf talkers, in store point of sale material and general posters and remove those that contain such deceptive marketing practices to ensure that no serious or irreparable damage may occur. The Counsel for the Respondent also made a request for rescheduling of the hearing. Accordingly, the Commission re-scheduled the hearing from 08-11-2012 to 29-11-2012 and informed the parties through hearing notices dated 02-11-2012.

5. The Respondent submitted its written response vide letter dated 6-11-2012, the salient features of the written reply are as follows:

(i). The Respondent conducted the advertising campaign in respect of *Veet* on first TVC wherein, the Indian actress Katrina Kaif, at 00:18 to 00:20 states as follows:

ویٹ استعمال کرنے کے بعد میں نے اور 9/10 لڑکیوں نے کہا کہ جلد اتنی smooth اور glowing کبھی نہ تھی۔

This claim is based on the findings of the research conducted by Oasis Insights (Private) Limited (the ‘**Oasis Insights**’). The statement of claim in TVC is specific about the users of *Veet* only

(ii). The print media and outdoor advertising/marketing campaigns usually supplement and support the television advertising and therefore, most print media and outdoor advertising/ marketing campaigns are extractions of television advertisements. Accordingly, based on the first TVC, the

Respondent then launched a marketing campaign (which has been discontinued) in the form of print media and outdoor advertisement.

- (iii). The claim is neither misleading nor false as has been alleged by the complainant. Further it doesn't state that *Veet* is the preferred choice of 90% women or 90% women use *Veet* as quoted by the Complainant therefore the Complainant is put to strict proof of the same.
- (iv). The Respondent has not only taken all steps to withdraw the print media advertisement, billboards and on shelve materials but has ensured that all print media advertisements, billboards and on shelve materials contain the qualifier **veet use** / **After using Veet** along with the disclaimer.
- (v). Based on the Order of the Commission in the matter of **Proctor & Gamble Pakistan (Private) Limited** reported as **2010 CLD 1696**, in order to determine the net general impression of the claim, the claim cannot be evaluated as an "isolated excerpts" and therefore, it is submitted that the same must be evaluated in light of and in conjunction with the TVCs' and the findings of Oasis Insight.
- (vi). In light of the TVC's and the findings of Oasis Insights, the net general impression conveyed by the claim is *not* that *Veet* is preferred choice of 90% women, and/or 90% women use *Veet*, and/or *Veet* is preferred choice of women in 'Pakistan'. The Respondent, in any case, has ensured that the claim is supported by the qualifier **veet use** / **After using Veet**, and a disclaimer. The Respondent's advertising campaign ran from April 3<sup>rd</sup> to May 15<sup>th</sup>, and can confirm that any future campaign will state **veet use** / **After using Veet** along with requisite disclaimer. Regarding the new TVC, the Respondent has discontinued the

same and will only be airing the new TVC with the claim

ویٹ استعمال کرنے کے بعد میں نے اور 9/10 لڑکیوں نے کہا کہ جلد اتنی smooth اور glowing کبھی نہ تھی۔

to indicate the reasonable basis that the claim is based on market research conducted amongst women using Veet. In light of the above, the entire Complaint is rendered infructuous.

- (vii). The second TVC, which was a variant of the first TVC, contained the following disclaimer: “*isi liye meri aur 9 out of 10 larkio ki pasand Veet....*” with the following disclaimer **“Based on market research conducted amongst women using Veet.”** This disclaimer is in line with the Commission’s concerns. Further, immediately after the hearing by the Enquiry Officers, the Respondent ensured that the 2<sup>nd</sup> TVC contains the disclaimer, so that neither the first, nor the second TVC are false and misleading.
- (viii). Following the Commissions directions to both the Respondent and the Complainant to furnish volume share and market share of their respective brands, the Respondent had submitted to the Commission a letter issued by AC Nielsen Pakistan (Pvt.) Ltd, detailing the volume share and value share of *Veet* from September 2010 to March 2012, showing consistent growth in the volume and market share of *Veet* ever since the product was launched by the Respondent in September 2010, whereas the first TVC and marketing campaign were launched by the Respondent in April 2012.
- (ix). The Complainant has failed to establish that the TVC’s or the marketing campaign based thereon (which has since been discontinued) is capable of harming the business interests of the Complainant, and accordingly the TVC’s are not capable of harming the business interests of other undertakings.

6. On 26-11-2012, hearing in the matter was rescheduled as the application for interim relief under Section 32 of the Act was filed by the Complainant. Accordingly, hearing notice regarding the scheduling of the hearing on the said application was issued to both the Complainant and the Respondent informing that the hearing in the matter on the said application has been scheduled for 05-12-2012.
  
7. On 05-12-2012, the Mr. Shaharyar Nishat, Legal Director of the Complainant and Mr. Mahmood Mandviwala, Advocate, Mr. Umar Khan, Marketing Manager, of the Respondent represented the parties before the Commission. Mr. Shehryar Nishat submitted that no detailed market study had been conducted by the Respondent prior to making the claim that 9 out of 10 women prefer using the hair removal cream *Veet*. The only data available was that collected by Oasis Insights. He further stated that the claim *should* have been “9 out of ten women who use Veet... [Prefer it over the other hair removal creams]”. He further referred to the Commission’s Order in the matter of *Proctor & Gamble Pakistan (Private) Limited* reported as **2010 CLD 1696**, wherein it was stated that an advertisement is to be viewed as a whole, rather than its parts in isolation and the overall net general impression of the advertising campaign is that the 90% of the women prefer using *Veet*. He also submitted that despite of the voice over in the TVC the big flashy characters appearing in the advertisement does not disclose that the claim in question has been made by conducting the survey of the *Veet* users. He further argued that in the print media advertisements, billboards and the on shelf material, it is not mentioned anywhere that the claim is about the *Veet* users infact in all the advertisements the claim which is being used is “**9/10 Women prefer Veet for smooth and glowing skin**”. He further submitted that during the telecast of *2012 ICC World Twenty20 tournament*, the new TVC was shown frequently and the said advertisement did not contain any qualifier. It was concluded by him by stating that the current misleading advertisements are badly hurting the sales of the Complainant and during the pendency of the matter, the Respondent may be directed not to run the said TVC in the present form.

8. Mr. Mahmood Mandviwala, on behalf of the Respondent, submitted that, at the enquiry stage, it was agreed that the Respondents would edit the advertisement, which the Respondents did. At the time that the Respondents submitted their reply, the advertisements for the Product contained a qualifier, as per directions of the Commission. The current advertisement, he submitted, contained the qualifier **“based on a study conducted on Veet users”**. He stated that in light of the above, the application becomes infructuous as all shelves and Television Commercials (“TVC”) have already been changed, accordingly
  
9. We observe that in the “Fresher Juice” Case decided by the Commission, a lot of the packaging material with the disputed claim had already made its way in to the market. Changing the product packaging took, approximately, from four to six months, and was made possible only when new packaging material was ordered by the undertaking. It was also observed that the present case involved a wide and sweeping claim, whereas the qualifier was not legible (being in blue on black background). Such a qualifier did nothing to take away from the claim, and such a claim should be followed by a more legible disclaimer to clarify the contents of the marketing campaign. The Respondent submitted that the Show Cause Notice alleged non-display of qualifier, which the Respondent had addressed. The representative of the Complainant strongly contradicted the stance taken by the Respondents. It was asserted by him that in the earlier campaign there was no qualifier in the print media advertisement and even in the new TVC the qualifier is not visible and/or legible. He further submitted that in many major stores the marketing material has not been removed and is still the same. Hence, the advertisements in the present form may be stopped. The hearing was concluded regarding the Application under Section 32 of the Act for Interim Orders.
  
10. Subsequent to the hearing, the Counsel for the Respondent contacted and informed the office of the Registrar of the Commission that they are in the process of negotiations with the Complainant and soon an application will be filed by



them in this regard. The Respondent was informed that, if as a result of the negotiation, the parties reaches to a settlement, the same may be filed with the Commission under the provisions of Regulations 30 of the Competition Commission (General Enforcement) Regulations, 2007 (the 'GER'). Since, the parties informed the Office of the Registrar of the Commission that they are negotiating and are also making an effort to address the concerns of the Commission, therefore, the proceedings were stayed and the Parties were encouraged to approach the Commission with viable commitments addressing the concerns of the Commission. The parties, filed the application on 25-02-2013 under Regulation 30 of the GER with the Commission and submitted the following commitments:

- (a) *That the Respondent will advertise its product 'Veet' with the requisite qualifier in its TVC's both verbally and visually.*
- (b) *That all TVC's of the Respondent will contain the words **veet use** کرنے کے بعد / After using Veet that are spoken by the model in the advertisement. In addition to the said statement, the advertisement will also contain a disclaimer stating 'based on market research conducted amongst women using Veet'.*
- (c) *That all future marketing campaigns will be in compliance with the observations of the Hon' able Commission.*

11. Along with the said application, a letter from the Complainant was also accompanied which stated that they are satisfied with the commitments made and withdraw their complaint in this regard. Accordingly, on the application filed by the Respondent a hearing was scheduled from 03-04-2013 and the parties were informed vide Hearing Notices dated 25-03-2013. The Complainant vide its letter dated 03-04-2013 stated that due to some emergent matter he could not travel to Islamabad to attend the hearing before the Commission, therefore, the hearing may be rescheduled. The Commission considering the request of the

Complainant, hearing was rescheduled for 25-04-2013 vide Hearing Notice dated 04-04-2013.

12. On 25-04-2013, the Complainant was represented by Mr. Shehryar Nishta and the Respondent was represented by Mr. Zafar Khaliq Khan Advocate. Mr. Shehryar Nishat submitted that the management of both the undertakings had met and had agreed to resolve the issue. The Respondent had agreed to include a qualifier in the advertisements. He further submitted that they were approached by the Respondents in November 2012 soon after the hearing on the application under Section 32 for interim Orders in order to reach a compromise in the matter. He added that the Respondents assured the Complainant that the TVC would be discontinued, which was done so in December 2012. The new TVC, he submitted, runs with the qualifier.
13. The representative of the Respondent submitted that since the Complainant and Respondent were in agreement, in law, the matter had come to an end and proceedings were closed. This was especially so in cases where the Complainant was satisfied. The Complainant stated that they were satisfied with the Respondents commitment, and were therefore withdrawing the complaint. Hearing was concluded.
14. In view of the above, the conciliatory and compliance oriented approach of the counsels appearing before us in the matter needs to be appreciated. However, we cannot overlook the fact that such steps could have been taken by the Respondent during the enquiry stage. It needs to be appreciated that the goal of the Commission is to protect the interest of the consumer, particularly, in fast-moving consumer goods sector. Although the Respondent had already filed commitments and the Complainant had made the request for withdrawal of the Complaint, we still deem it appropriate and important to address following issues that have emerged from these proceedings for the purpose of clarity:

- (i). Whether the marketing campaign of the Respondent regarding its product Veet is in violation of the Section 10 of the Act?
- (ii). Whether the Commitments filed by the Respondent adequately addresses the concerns of the Commission?
15. With reference to the first issue the Counsel for the Respondent has submitted that the claim made is not deceptive as the TVC contains a qualifier / disclaimer in the advertisement. He further contended that the claim was based on the research conducted by Oasis Insight of the Veet users. Even during the first hearing the Counsel for the Respondent has laid much emphasis on the TVC and also submitted that the print media advertisements as well as the billboards are merely an excerpt of the TVC. On the other hand the representative of the Complainant contested in the first hearing that the disclaimer shown in the TVC is not visible and the print media advertisement does not contain any disclaimer at all.
16. We are mindful of the fact that the Respondent has not used the words *veet use* / After using Veet in its marketing campaign, in particular, the print media advertisement, and also in the on shelf or billboards and only used the claim “**9/10 women prefer Veet for smooth glowing skin**” in its marketing campaign for its product Veet. We have gone through the material available on the record and the submissions made by the parties in this regard. It is important to highlight that in the instant matter the basic question is whether the claim has a reasonable basis or not. In one of earlier Orders of the Commission *In the matter of Procter and Gamble reported as 2010 CLD 1695*, the concept of “reasonable basis” has been recognized in following terms:

*“The concept of having a reasonable basis is an established concept in USA and was introduced after much deliberations and public comments through Policy Statement Regarding Advertising Substantiation. It provides that, the advertiser must have had some*

*recognizable substantiation for the claims made prior to making it in an advertisement.”*

17. Although, we note that the Respondent has emphasized that their claim is based on the research conducted by Oasis Insight, however, when the claim i.e. “**9/10 women prefer Veet for smooth glowing skin**” is seen without the disclaimer, the ordinary consumer would not think that the claim is made based on the research conducted on the Veet users. Moreover, regarding the disclaimer used in the second TVC, we note that disclaimer i.e. *veet use کرنے کے بعد* / **After using Veet** is small and not that legible and it is also not used in the print media advertisements. In one of our earlier order of **China Mobile Pak Limited and M/s Pakistan Telecom Mobile Limited reported as 2010 CLD 1478** has held that “*‘fine print disclaimer, are inadequate to correct the deceptive impressions’. In fact, such disclaimers are, in themselves, a deceptive measure.*”

18. Admittedly, the Respondent through their application dated 25-02-2013 under Regulation 30 of the GER, made the commitment to include the words *veet use کرنے کے بعد* / **After using Veet** in their future advertisement and also to use the disclaimer i.e. “*based on market research conducted amongst women using Veet*”. It needs to be appreciated that, for the purposes of deceptive marketing, actual deception need not be shown to carry the burden of proof. It is sufficient to establish that the advertisement has the tendency to deceive and capacity to mislead. This also includes where the undertaking concerned disseminate only half the truth, and omit the rest. This may occur where a seller fails to disclose qualifying information necessary to prevent one of his affirmative statements from creating a misleading impression which may lead to making of a transactional decision by the consumer. Reference in this regard has to be made to one of the earlier Orders of the Commission of **China Mobile Pak Limited and M/s Pakistan Telecom Mobile Limited reported as 2010 CLD 1478**, wherein the

Commission relied on the *International Harvester Co., 104 F.T.C. 949 at pg. 1058*, wherein it was held that,

*“[i]t can be deceptive to tell only half the truth, and to omit the rest. This may occur where a seller fails to disclose qualifying information necessary to prevent one of his affirmative statements from creating a misleading impression...”*

...

*“It can also be deceptive for a seller to simply remain silent, if he does so under circumstances that constitutes an implied but false representation.”*

19. In light of the above, we are of the considered view that omission of mentioning clear and legible disclaimer i.e. *veet use کرنے کے بعد* / *After using Veet* coupled with *“based on the survey conducted by Oasis Insight on the Veet Users”*, is omission of material information from the advertisement and the impression conveyed through the advertisement in the absence of such disclaimer is deceptive in terms of Section 10 of the Act. Reference is made to *Cliffdale Associates, Inc., 103 F.T.C. 110, (1984)* wherein it was held:

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

20. Based on the above, We have no doubt in coming to the conclusion that the claim **“9/10 women prefer Veet for smooth glowing skin”** in the absence of clear and legible disclaimer that *“based on the survey conducted by Oasis Insight on the Veet Users”* is deceptive and misleading in terms of Section 10 of the Act.

21. Regarding the issue no. (ii) above; we note that the Respondent has made the commitments regarding the TVC, however, no commitment is made with reference to the print media advertisement. While it is pertinent to highlight that in the instant matter the disclaimer was missing in the print media advertisements, on shelf materials and the billboards. Further, there is also no mention that the disclaimer shall be clearly visible to the ordinary consumer. Therefore, we hereby direct the Respondent that in future all the advertisement must have a reasonable basis and if any disclaimer is required the same must be included in all the marketing material in a clearly legible manner which is visible to the ordinary consumer.
22. We cannot ignore that fact that the Respondent as per its commitment has stopped its marketing campaign under review and has also withdrawn all the materials regarding the marketing campaign under review from the public domain. However, in the circumstances of the matter we deem it appropriate to direct the Respondent to file a compliance report regarding the withdrawal of all the marketing materials of the *Veet* marketing campaign, called into question under these proceedings, from the public domain in terms of the commitments made before the Commission within two weeks from the date of the Order. The Respondent is reprimanded not to indulge in deceptive marketing practices in future as it shall entail penal consequences and it shall continue to refrain from making the subject claims in the present form in their advertisements or marketing campaigns.
23. In terms of the above, the show cause notice no. 106/2012 issued to the Respondent is disposed of.

(MUEEN BATLAY)  
MEMBER

(DR. SHAHZAD ANSAR)  
MEMBER

**ISLAMABAD THE 8<sup>th</sup> JANUARY 2015**