

**UNITED REPUBLIC OF TANZANIA
FAIR COMPETITION COMMISSION**

AT DODOMA

IN THE MATTER OF FAIR COMPETITION COMMISSION

(FCC/CONSUMER/ 02 /2022)

BETWEEN

FAIR COMPETITION COMMISSION-----COMPLAINANT

AND

JACKLINE CONSTANTINE MALLYA ----- 1st RESPONDENT

TANTU BUILDING MATERIAL CO. LTD-----2nd RESPONDENT

URHOME COMPANY LIMITED ----- 3rd RESPONDENT

PROVISIONAL FINDINGS

***(Made under Procedures 21 (3) & (4) of the Consumer Complaint Handling
Procedures, 2022)***

1.0 INTRODUCTION

1.1 Background to the Complaint

The Fair Competition Commission (referred hereinafter as “**the Complainant**” or “**the FCC or the Commission**”) received a letter from Aluminium Africa Limited (ALAF), with reference number **ALAF/GC/2020/01** dated 17th September 2020 bearing the subject “Sellers’ Misleading and Deceptive Conducts on the Nature/or Quality of Roofing Sheets” (**FCC-7**). The letter informed FCC to the existence of corrugated roofing sheets that deceive consumers on the quality, composition, brand and gauge.

On the 22nd and 23rd April 2021, FCC in collaboration with the Tanzania Bureau of Standards (TBS) conducted an investigation into roofing sheets marketed and sold to consumers in Dodoma City. During the investigation, samples were purchased and referred to TBS for laboratory tests.

On 27th August 2021, the FCC received the report from TBS dated 25th August 2021(**FCC-4**). The report indicated that nine (9) out of fourteen (14) samples failed to conform with the requirements of actual thickness (30gauge) presented during the purchase, contrary to Section 18 of the FCA thus being liable under sections 60(1), 58(1) and 59(1) of the FCA.

1.2 The FCC’s Jurisdiction to initiate Complaints

Pursuant to Section 69 (2) (a) of the FCA and Procedure 12 (1) (a) of the Consumer Complaint Handling Procedures, 2022 (the **Consumer Procedure**) any person is given an opportunity to submit a complaint in any form or manner to the Commission. Section 69(2)(a) of the FCA reads:

“Any person may –

a) submit information concerning an alleged prohibited practice to the Commission, in any manner or form.”

Procedure 12 (1) (a) of the Consumer Procedure stipulates as follows:

“Subject to the provisions of the Act, a complaint may be initiated by-

(a) any person submitting information concerning an alleged prohibited practice to the Commission, in any manner or form.”

Much as Section 69 (2) (a) of the FCA and procedure 12 (1) (a) of the Consumer Procedure requires any person to file a complaint before the Commission in any form or manner, procedure 12 (2) of the Consumer Procedures, provides that all complaints initiated under Procedure 12 (1) shall be deemed to have been initiated by the FCC.

1.3 The Provisions of the FCA Alleged to have been Infringed

In this “**Provisional Findings**” (PFs), the allegations constituting this complaint fall under *Section 18 of the FCA* which states as quoted hereunder:

*“18 No person shall engage in conduct that is liable to mislead the public as to the nature, the manufacturing process, **the characteristics, the suitability** for their purpose or the quantity of any goods.” (emphasis added)*

Pursuant to Section 18 of the FCA, persons are prohibited to engage in conduct of supplying goods that are misleading as to the manufacturing process, the characteristics, the suitability for their purpose or the quantity of any goods

After conducting an investigation in the market, the Complainant has established that on 22nd and 23rd April 2021, the 1st, Respondent was found engaging in conduct of supplying roofing sheets manufactured and supplied by the 2nd and 3rd Respondents branded **TANTU** and **GOOD ONE** expressed as 30gauge, the conduct which is liable to mislead the public as to the characteristics and

suitability for the purpose of the roofing sheet, contrary to section 18 of the FCA thus being liable under sections 60(1), 58(1) and 59(1) of the FCA.

The details of the investigation carried out and the facts constituting the complaint are as set out in items **2.0** to **6.0** of this '*Provisional Findings*'.

1.4 The Parties to the Complaint

1.4.1 The Complainant

The Fair Competition Commission (hereinafter referred to as the **Complainant** or the **Commission** or the **FCC**) is a government body established under section 62(1) of the Fair Competition Act No. 8 of 2003 (the FCA) to promote and protect effective competition in markets and preventing unfair and misleading market conduct. Its address of service for the purposes of this PFs is:

Fair Competition Commission,
6th Floor, PSSSF House,
Makole Road,
P. O. Box 2351,
DODOMA.

1.4.2 The Respondent:

1.4.2.1 1st Respondent: Jackline Constantine Mallya

Jackline Constantine Mallya (hereinafter referred to as the 1st Respondent), is a natural person residing in Dodoma and her address for the purpose of service of this Provisional Finding is:

Jackline Constantine Mallya
Jamhuri Street,
P.O.BOX 170,
DODOMA.

**1.4.2.2 2nd Respondent: TANTU BUILDING MATERIAL CO.
LTD**

Tantu Building Material Co. Ltd, (hereinafter referred to as the 2nd Respondent), is a private limited company incorporated in Tanzania under the Companies Act, Cap 212 (RE 2002). The 2nd Respondent's addresses of service, for the purposes of this of this Provisional Finding, is:

Tantu Building Material Co. Ltd,
Tabata Matumbi,
P.O.BOX 19157,
DAR ES SALAAM

1.4.2.3 3rd Respondent: Urhome Company Limited

Urhome Company Limited, (hereinafter referred to as the 3rd Respondent), is a private limited company incorporated in Tanzania under the Companies Act, Cap 212 (RE 2002). The 3rd Respondent's addresses of service, for the purposes of this Provisional Finding is:

Urhome Company Limited,
Sewa Street,
P.O Box 38449,
DAR ES SALAAM.

2.0 THE COMMISSION APPROACH

2.1 The Inquisitorial Approach

The Commission's approach of handling consumer complaint is an "*inquisitorial*" rather than an "*adversarial*" approach. This approach is provided for under Procedure 19 (1) and (2) of the Consumer Procedures, which reads as follows:

"(1) The Commission shall *adopt inquisitorial procedure in conducting the hearings.*"

“(2) Subject to sub-procedure (1), the inquisitorial procedure shall be considered as part of the investigation process.” (Emphasis added).

The FCC therefore, plays the role of an inquisitor whereby it endeavours to discover facts while simultaneously examining or investigating the matter and, finally, makes findings based on the inquiry. This means that the Complainant is not passive recipient of information but is primarily responsible for gathering the evidence necessary to resolve the matter.

The meaning of taking an inquisitorial approach was aptly and succinctly explained by the Federal Court of Australia in the case of **SZLPN v Minister for Immigration and Citizenship**¹ that:

“The relevant ordinary meaning of “inquisitorial” is having or exercising the function of an inquisitor, that is to say “one whose official duty it is to inquire, examine or investigate”.

Further to the persuasive authority cited above, the role which the Commission plays when it presides over a complaint was clarified by the Fair Competition Tribunal, in its Ruling in the case of **TBL vs FCC and Another, Consolidated Appeal No. 4 and 5, of 2010, (unreported)** where the Tribunal at page 36 and 37 states:

“unlike a Court, whenever the FCC carries out an investigation or a hearing of a complaint leading to a decision, it does so in its capacity as a regulator and in pursuance of its functions of administering the FCA and enforcing compliance with the FCA. The hearing at [the]

¹ [2010] FCA 202, para 13 (citing *Minister for Immigration and Citizenship v. SZIA* [2009] HCA 39, 259 ALR 429.

FCC is part of the process of investigation and that is as provided in Rule 17 (1) of the Fair Competition Rules, 2018”.

2.2 The Investigation Process

The FCC, in exercising its legal mandate under the FCA, on the 22nd and 23rd of April, 2020 in collaboration with the TBS conducted an investigation into roofing sheets marketed and sold to consumers in Dodoma City pursuant to Procedure 10(2) of the Consumer Procedures. The Complainant considered the complaint and proceeded to further investigate it pursuant to Procedures 12(3), 13 (1), (2) and (3) of the Consumer Procedures.

Pursuant to Procedure 15(1) and (2) of the Consumer Procedures, the Complainant requested and obtained relevant facts in relation to the complaint at hand from the Respondents including swearing of Affidavit.

Further, during the investigation, samples were purchased and submitted to TBS for laboratory tests for the purpose of collecting relevant information to prove the alleged offence.

2.3 Review of the Information Obtained and Issuance of a Statement of the Case

Pursuant to Procedure 12 (3) and 14 (1) of the Consumer Procedures, the reviewing of the information obtained from this investigation has established a *prima facie* case whereby the 1st, 2nd and 3rd Respondents have a case to answer. Subject to Procedure 14 (2) of the Consumer Procedures, the Director responsible for Consumer Protection having opined that the behaviour of the Respondent as evidenced by **FCC -1, 2 and 4** engaging in conduct of supplying roofing sheet branded , **TANTU** and **GOOD ONE** expressed as 30 gauge the conduct which is liable to mislead the public as to characteristics and suitability for the purpose of roofing sheet, caused Statement of the Case on the same to be prepared and served to the 1st, 2nd and 3rd Respondents.

Consequently, pursuant to Procedure 14 (3) of the Consumer Procedures; on 31st August 2022, the Commission issued a **Statement of the Case** setting out the facts of the case and the relevant provisions of the law alleged to have been contravened.

2.4 Facts Constituting the Complaint

The facts constituting this complaint against the Respondent are as set out hereunder:

- (a) **THAT** FCC received a complaint from Aluminium Africa Limited (ALAF), through a letter with Ref. ALAF/GC/2020/01 dated 17th September 2020 bearing a subject "Sellers' Misleading and Deceptive Conducts on the Nature/or Quality of Roofing Sheets "alleging availabilities of corrugated roofing sheets that deceive consumers on their quality, composition, brand and gauge.
- (b) **THAT** on 22nd and 23rd April, 2021 FCC and TBS conducted a joint Market Surveillance and Investigation in Dodoma City for the purpose of Identifying dealers selling misleading roofing sheets.
- (c) **THAT** during the surveillance in paragraph "b" above, 18 pieces of roofing sheets of different brands (*viz* **TANTU** manufactured by the 2nd Respondent and **GOOD ONE** manufactured by the 3rd Respondent) expressed to the complainant as 30gauge, were purchased for the price of TZS 384,000/= (Three Hundred Eighty-Four Thousand Tanzania Shillings) from the 1st Respondent. The copy of the EFD receipt and affidavit of Jackline Constantine Mallya are annexed and marked as **FCC-1** and **FCC-2** respectively as proof of the purchased roofing sheets.

(d) **THAT**, the samples under paragraph (c) above were submitted to TBS for conformity tests as per TBS standards of roofing sheets. The details of among the samples of roofing sheets for each of the said brands referred to TBS are:

(i) Pre-painted IT5 Roofing Sheet- 30G TIRED (GOOD ONE -TILE RED);

(ii) Pre-painted Corrugated Roofing Sheet- 30G T/RED (GOOD ONE);

(iii) Pre-painted Corrugated Roofing Sheet- 30G GREEN (TANTU).

(e) **THAT** on 27th August 2021, the FCC received a letter with reference number DOM/HA.70/85/01B/47 dated 25th August 2021 from TBS with Test Results Report annexed and marked as **FCC-4**.

(f) **THAT** according to TBS test result report the roofing sheets branded, **TANTU** and **GOOD ONE**, did not conform with TBS standards, dimension/gauge and quality as expressed by the 1st Respondent to the Complainant that the roofing sheets purchased were of 30gauge.

(g) **THAT** according to TBS Test Result Report, Pre-painted Corrugated Roofing Sheet- 30G GREEN (TANTU), batch number LF200925 supplied by the 1st, and 2nd, Respondents failed to meet the actual requirement of 30gauge for the Dimensions on base metal thickness parameters.

(h) **THAT** according to TBS Test Result Report pre-painted Corrugated Roofing Sheet- 30G TIRED (GOOD ONE) with no batch number, supplied by the 1st and 3rd Respondents failed to meet the requirement for Thickness, top coating on color + primer, bottom coating on color

and marking on gauge, batch identification, and coating class parameters.

- (i) **THAT**, based on the contents of paragraphs (f), (g) and (h) hereinabove the roofing sheet manufactured and supplied by the 1st, 2nd and 3rd Respondents are misleading to consumers and the general public.
- (j) **THAT**, the FCC in exercising its powers vested under section 65(2)(g) of the FCA read together with procedure 12(3) the Consumer Procedures, 2022 conducted an in-depth investigation on the matter; and having collected relevant information, the facts establish that the 1st, 2nd, and 3rd Respondents contravened the provisions of the FCA, to wit;

*Engaging in the conduct of supplying roofing sheet branded, **TANTU and GOOD ONE** expressed as 30gauge, the conduct which is liable to mislead the public as to the characteristics and suitability for the purpose of the roofing sheet contrary to section 18 of the FCA thus being liable under sections 60(1), 58(1) and 59(1) of the FCA.*

3.0 LEGAL ANALYSIS TO PROVE THE OFFENCE

3.1 Establishment of Offence

The Complainant alleges that, the 1st, 2nd and 3rd Respondents have contravened Section 18 of the FCA thus being liable under sections 60(1), 58(1) and 59(1) of the FCA. The contravention above is as articulated herein below:

3.1.1. 1st Count (for the 1st and 2nd Respondents)

3.1.1.1. Statement of Offence

Engaging in conduct that is liable to mislead the public as to the characteristics and suitability for the purpose of goods contrary to section 18 of the FCA thus being liable under sections 60(1), 58(1) and 59(1) of the FCA.

3.1.1.2. Particulars of offence

On the 22nd and 23rd April, 2021 the 1st Respondent engaged in the conduct of supplying roofing sheet branded **TANTU** (manufactured and supplied to the 1st Respondent by the 2nd Respondent) presented as 30gauge, the conduct which is liable to mislead the public as to the characteristics and suitability for the purpose of the roofing sheet.

3.1.2 2nd Count (for the 1st and 3rd Respondents)

3.1.2.1. Statement of Offence

Engaging in conduct that is liable to mislead the public as to the characteristics and suitability for the purpose of goods contrary to section 18 of the FCA thus being liable under sections 60(1), 58(1) and 59(1) of the FCA.

3.1.2.2. Particulars of offence

On the 22nd and 23rd April, 2021 the 1st Respondent engaged in the conduct of supplying roofing sheet branded **GOOD ONE** (manufactured and supplied to the 1st Respondent by the 3rd Respondent) presented as 30gauge, the conduct which is liable to mislead the public as to the characteristics and suitability for the purpose of the roofing sheet.

In order to fully establish the Respondent's infraction of *Section 18 of the FCA thus being liable under sections 60(1), 58(1) and 59(1) of the FCA*, the Complainant will address the following four issues;

- (a) Whether the 1st, 2nd and 3rd Respondents engaged in the conduct of supplying roofing sheet branded, **TANTU and GOOD ONE** presented as 30gauge;
- (b) Whether the roofing sheets supplied by the 1st, 2nd and 3rd Respondents conformed the requirements of 30gauge;
- (c) Whether there has been misleading to the public as to the characteristics and suitability for the purposes of roofing sheet with 30gauge; and
- (d) Whether the Complainant acted within the statutorily provided time.

3.2 Proof of the Offence

3.2.1 Whether the 1st, 2nd and 3rd Respondents engaged in the conduct of supplying roofing sheet branded, *TANTU and GOOD ONE* presented as 30gauge.

Based on the **FCC-2** (the affidavit deponed by one Jackline Constantine Mallya), the deponent avers that, she sold eighteen (18) various brands of pieces of roofing sheets including, **TANTU** and **GOOD ONE** to the Complainant at the total price of Three Hundred Eighty-four Thousand Tanzania shillings (TSH. 384,000/=) and that upon selling the deponent issued the receipt number 11794. The copy of the said receipt is indicated by **FCC-1**. The receipt issued and the amount paid by the complainant were in respect of the 30gauge roofing sheets.

Besides, some of the roofing sheet such as Pre-Painted Corrugated Roofing Sheet- 30G GREEN (branded TANTU) butch number LF 200925 and Pre-Painted Corrugated Roofing Sheet- 30G (GOOD ONE TILE RED) batch number EG2021-0105, manufactured by the 2nd and 3rd Respondents respectively and supplied by the 1st, 2nd and 3rd Respondents were marked as 30gauge. The same markings are evidenced under FCC4(ML/03446/2021 at page 2 and ML/03474/2021, page 2).

Further, based on the fact that the 1st Respondent does not manufacture roofing sheets branded, **TANTU** and **GOOD ONE** it is right to hold that, the 2nd and 3rd Respondents supplied the roofing sheet branded, **TANTU** and **GOOD ONE** Presented as 30gauge to the 1st Respondent.

Based on the above analogy, the Complainant is satisfied with high preponderance of probability that, the 1st, 2nd, and 3rd Respondents engaged in the conduct of supplying roofing sheet presented as 30gauge, branded, TANTU and GOOD ONE.

3.2.2 Whether the roofing sheets supplied by the 1st, 2nd and 3rd Respondents conformed the requirements of 30gauge.

Pursuant to section 20 of the Standard Act Cap.130 the minister responsible is empowered to declare a standard for any commodity or for the manufacturing, production, processing or treatment to be a compulsory standard. Production and processing or treatment of the roofing sheet follow under the category of compulsory standard TZS 1477:2020. Section 20(6) of Cap.130 provides that, a person shall not sell the commodity to which the standard it relates unless it complies with the standard or has been manufactured, produced, processed or treated in accordance with that standard.

Based on the TBS test report **FCC-4** (ML/03474/2021 particularly at page 2), in order for the roofing sheet to qualify as 30 gauge under compulsory standard TZS 1477:2020, its dimension base metal thickness(mm) should attain the minimum requirement of $0.25 \pm 10\%$ (30G) (*Migongo Mipana*), which means that for the roofing sheet to qualify as 30gauge it must attain the minimum requirement of the dimension base metal thickness ranging from 0.225mm to 0.275mm.

But based on **FCC-4**(ML/03474/2021, page 2), the 2nd respondent's roofing sheet dimension base metal thickness (mm) is 0.195mm. This means, Pre-Painted Corrugated Roofing Sheet- 30G GREEN (TANTU) butch number LF 200925, Manufactured by the 2nd Respondent and supplied by the 1st and 2nd Respondents, did not conform to the requirement of 30gauge as presented to the complainant. That is to say, the roofing sheet manufactured and supplied by the 2nd Respondent did not attain the minimum base thickness ranging from 0.225mm to 0.275mm.

Further, based on **FCC-4** (ML/03535/2021 particularly at page 2), the roofing sheet to qualify as 30 gauge under compulsory standard TZS 1477:2020, its dimension thickness(mm) must attain the minimum requirement of $0.25+10\%$ (30G), which means that for the roofing sheet to qualify as 30gauge it must attain the minimum requirement of the Dimension thickness ranging from 0.225mm to 0.275mm.

But based on the same reports TBS test report **FCC-4**(ML/03535/2021 at page 2), the results of the 3rd respondent's roofing sheets have a dimension thickness(mm) of 0.21mm. This means that, Pre-painted Corrugated Roofing Sheet- 30G T/RED (GOOD ONE) with no Batch Number manufactured by the 3rd Respondent, supplied by the 1st and 3rd Respondents, presented as 30 gauge did not meet such requirements to qualify as 30gauge, that is to say the roofing sheets manufactured and supplied by the 1st Respondent did not attain the minimum thickness dimension range of 0.225mm to 0.275mm.

Furthermore, based on **FCC-4**(ML/03535/2021 and ML/03446/2021 at page 2) the 3rd Respondent's roofing sheet, Pre-painted IT5 Roofing Sheet- 30G TIRED (GOOD ONE -TILE RED) batch number EG2021-0105 and Pre-Painted Corrugated Roofing Sheet- 30G T/RED (GOOD ONE) with no Batch Number manufactured by the 3rd Respondent, supplied by the 1st and 3rd Respondents

did not conform the minimum requirements of Top coating colour primer properties, Bottom coating colour properties, Gauge marking, manufacturer's name/trade mark, batch identifications, Coating class markings as required under compulsory standard TZS 1477:2020. The non-attainment to such requirements are indicated in the table below;

(1) Pre-Painted Corrugated Roofing Sheet-30G T/RED (GOOD ONE) with no Batch Number, provided under **FCC-4**(ML/ML/03535/2021 page 2.)

S/N	Test/Characteristics	TBS Minimum requirement vis-à-vis attainment of 1 st Respondent's roofing sheets	
		Requirements	1 st respondent's attainment
01	Top coating colour primer properties	0.014mm	0.0111mm
02	Bottom coating colour properties	0.007mm	0.0029mm
03	Manufacture 's name/trade mark	To be permanent and indelibly marked	Not marked
04	Gauge marking	To be permanent and indelibly marked	Not marked
05	Batch identification	To be permanent and indelibly marked	Not marked
06	Coating class markings	To be permanent and indelibly marked	Not marked

(2) Pre-Painted Corrugated Roofing Sheet- 30G (GOOD ONE TILE RED) batch number EG2021-0105 provided under **FCC-4**(ML/ML/03446/2021 page 2)

S/N	Test/Characteristics	TBS Minimum requirement vis-à-vis attainment of 1 st Respondent's roofing sheets	
		Requirements	1 st respondent's attainment
01	Top coating substrate	0.0095mm	0.0080mm
02	Bottom coating substrate	0.0095mm	0.0071mm
03	Bottom coating colour properties	0.0070mm	0.0051mm

Based on the above submission the Complainant is satisfied with high preponderance of probability that the roofing sheets supplied by the 1st, 2nd and 3rd Respondents did not only conform to the requirements of 30gauge as to the characteristics and suitability for the purposes but also to overall compulsory standard TBS 1477:2020.

3.2.3 Whether there has been misleading to the public as to the characteristics and suitability for the purposes of roofing sheet with 30gauge.

Misleading or deceptive conduct is when a business makes claims or representations that are likely to create a false impression in consumers as to the price, value or quality of goods or services on offer.² It's against the law for businesses to make misleading representations about their goods or services. This means businesses are not allowed to make statements that are incorrect or likely to create a false impression. In the case of *Butcher v Lachlan Elder Realty Pty Ltd*³ and *Parkdale Custom Built Furniture Pty Ltd v Puxu Pty Ltd*⁴ it was

² <https://www.fairtrading.nsw.gov.au/buying-products-and-services/advertising-and-pricing/misleading-or-deceptive-conduct> accessed on 29th September 2022.

³ (2004) 218 CLR 592 at [111].

⁴ (1982) 149 CLR 191.

stated that misleading conduct occurs when a person leads another into error. The test for an information or conduct to lead a person into an error was provided in the case of **ACCC v TPG Internet**⁵ in which the court stated that the information provided by the defendant is tested by reference to the reaction of hypothetical ordinary, reasonable readers as to what was the dominant message conveyed to them.

In the case of **Campbell v Backoffice Investments Pty Ltd**⁶ the court held that, it is enough for relief to be granted on the statement with a tendency to lead persons into error and It is not necessary for the court to find that it is more likely than not that persons were led into error. In addition, in the case of **Global Sportsman Pty Ltd v Mirror Newspapers Pty Ltd**,⁷ the court stressed that it is enough that there is a real possibility of the person being misled or deceived.⁸

Based on **FCC-1** and **FCC-2** (the affidavit deposed by one Jackline Constantine Mallya that was issued to the complainant, it clearly justifies that the roofing sheet purchased by the Complainant *branded TANTU and GOOD ONE* were expressed and sold at the price of 30gauge. Again based on some roofing sheet purchased by the complainant, such as Pre-Painted Corrugated Roofing Sheet- 30G GREEN (branded TANTU) butch number LF 200925 and Pre-Painted Corrugated Roofing Sheet- 30G (GOOD ONE TILE RED) batch number EG2021-0105, manufactured by the 2nd and 3rd Respondents respectively and supplied by the 1st, 2nd and 3rd Respondents which were marked as 30gauge and the markings are also

⁵ (2013) 250 CLR 640 at [20], [40], [45] (French CJ, Crennan, Bell and Keane JJ); *Campomar Sociedad, Limitada v Nike International Ltd* (2000) 202 CLR 45 at [102]-[103]

⁶ *Campbell v Backoffice Investments Pty Ltd* (2009) 238 CLR 304 at [25] (French CJ); *ACCC v TPG Internet* (2013) 250 CLR 640 at [48], [49], [51], [53] (French CJ, Crennan, Bell and Keane JJ)

⁷ (1984) 2 FCR 82

⁸ *Global Sportsman Pty Ltd v Mirror Newspapers Pty Ltd* (1984) 2 FCR 82 at 87 (Bowen CJ, Lockhart and Fitzgerald JJ); *Miller & Associates Insurance Broking Pty Ltd v BMW Australia Finance Ltd* (2010) 241 CLR 357 at [15] (French CJ); *Noone, Director of Consumer Affairs Victoria v Operation Smile (Australia) Inc* (2012) 38 VR 569 at [60] (Nettle JA).

evidenced under **FCC4**(ML/03446/2021 at page 2 and ML/03474/2021, page 2) it is clear that the roofing sheets were presented as 30gauge.

But based on **FCC- 4 (TBS test result report)** it is confirmed that the roofing sheets branded **TANTU**, and **GOOD ONE** did not meet requirement of 30 gauge as to the *characteristics, suitability and actual thickness*.

Pursuant to TBS test result report (**FCC-4**) page 2 items 10 and 14 of the Letter (Ref. NO. DOM/HA.70/85/01B/47) with test report **FCC- 4** provides that:

S/N	Report number	Status
10	CC/DOM 2047 Pre-painted Corrugated Roofing Sheet- 30G GREEN (TANTU)	Failed to meet the requirement for "Dimensions on base metal thickness parameters"
14	CC/DOM 2052 pre-painted Corrugated Roofing Sheet- 30G TIRED (GOOD ONE)	Failed to meet the requirement for "Thickness, top coating On color + primer, bottom coating on color and marking on gauge, batch identification and coating class parameters"

Further, FCC-4), ML/03474/2021 particularly, page 2 provide that the roofing sheet to qualify as 30 gauge under compulsory standard TZS 1477:2020, its dimension base metal thickness(mm) should attain the minimum requirement of $0.25 \pm 10\%$ (30G), which means that for the roofing sheet to qualify as 30gauge it must attain the minimum requirement of the dimension base metal thickness ranging from 0.225mm to 0.275mm. But based on FCC-4(ML/03474/2021, page 2), the 2nd respondent's roofing sheet dimension base metal thickness (mm) is 0.195mm. This means, Pre-Painted Corrugated Roofing Sheet- 30G GREEN (TANTU) butch number LF 200925, Manufactured by the 2nd Respondent and supplied by the 1st and 2nd Respondents, did not conform to the requirement of

30gauge as presented to the complainant. That is to say, the roofing sheet manufactured and supplied by the 2nd Respondent did not attain the minimum base thickness ranging from 0.225mm to 0.275mm.

Besides, based on FCC-4 (ML/03535/2021) at page 2, the roofing sheet to qualify as 30 gauge under compulsory standard TZS 1477:2020, its dimension thickness(mm) must attain the minimum requirement of $0.25+10\%(30G)$, which means that for the roofing sheet to qualify as 30gauge it must attain the minimum requirement of the Dimension thickness ranging from 0.225mm to 0.275mm. But based on the same FCC-4 (ML/03535/2021 at page 2), the results of the 3rd respondent's roofing sheets have a dimension thickness(mm) of 0.21mm. This means that, Pre-painted Corrugated Roofing Sheet- 30G T/RED (GOOD ONE) with no Batch Number manufactured by the 3rd Respondent, supplied by the 1st and 3rd Respondents, presented as 30 gauge did not meet such requirements to qualify as 30gauge, that is to say the roofing sheets manufactured and supplied by the 1st Respondent did not attain the minimum thickness dimension range of 0.225mm to 0.275mm.

Moreover, based on the fact that the 1st, 2nd and 3rd Respondents supply the roofing sheet to the general public, the expression made to the complainant (via FCC-1 and FCC-2) and the marking on some roofing sheet purchased by the complainant, such as Pre-Painted Corrugated Roofing Sheet- 30G GREEN (branded TANTU) butch number LF 200925 and Pre-Painted Corrugated Roofing Sheet- 30G (GOOD ONE TILE RED) batch number EG2021-0105, that the roofing sheets supplied are of 30gauge are expression liable to mislead the public as to the Characteristics and suitability for the purposes of roofing sheets.

In view of the above analysis, having considered FCC-1, FCC-2, and FCC-4 the Complainant has established with high preponderances of probability that, the roofing sheet branded *TANTU*, and *GOOD ONE* (presented as

30gauge), supplied by the 1st, 2nd and 3rd Respondents are liable to mislead the public as to the characteristics and suitability for the purpose of actual roofing sheet of 30gauge.

3.2.4 Whether the Complainant acted within the statutorily provided time.

Section 60 (8) of the FCA requires the Complainant to act upon an offence at any time within six years after the commission of the offence. In this Complaint, the Complainant alleges that on 22nd and 23rd April, the 1st, Respondent engaged in the conduct of supplying roofing sheets manufactured and supplied to the 1st Respondent by the 2nd and 3rd Respondents branded **TANTU** and **GOOD ONE**, presented as 30gauge, the conduct which is liable to mislead the public as to the characteristics and suitability for the purpose roofing sheet contrary to section 18 of the FCA thus being liable under sections 60(1), 58(1) and 59(1) of the FCA.

In acting upon the alleged offence, the Complainant initiated an investigation by writing the letter requesting TBS to form a joint investigation team (**See FCC-5**). Therefore, the Investigation on this matter commenced on 12th April, 2021. The period the alleged offence was committed is well within the statutory time provided under the FCA.

By virtue of the said letter and its content, the Complainant hereby confirms acting upon the alleged offence within 6years as provided under Section 60 (8) of the FCA.

4.0 PROOF OF ESTABLISHMENT OF THE OFFENCE

Based on the foregoing facts in items **3.1, 3.2, 3.2.1, 3.2.2, 3.2.3 and 3.2.4** the Complainant has established on high preponderances of probability that the 1st and 2nd Respondents are jointly and severally liable for the offence of engaging

in conduct of supplying roofing sheets branded **TANTU and GOOD ONE** (presented as 30gauge), the conduct which is liable to mislead the public as to the characteristics and suitability for the purpose of roofing sheet, contrary to section 18 of the FCA thus being liable under sections 60(1), 58(1) and 59(1) of the FCA.

5.0 PROPOSED PROVISIONAL ACTIONS AND REASONS THEREOF

5.1 Proposed provisional actions

- a)** Pursuant to section 58 (1) and (3) of the FCA, the 1st, 2nd and 3rd Respondents be issued with a Compliance Order requiring them to refrain from any future conduct which is against the FCA.
- b)** Pursuant to section 58 (1) and (6) of the FCA, the 1st, 2nd and 3rd Respondents be issued with a Compliance Order requiring them to publish in 2 widely circulating Newspapers (1 Swahili and 1 English) a ¼ page Public Notice bearing the contents of paragraph 5.1 (a) hereinabove.
- c)** The contents of the said Public Notice in paragraph 5.1 (b) hereinabove shall be agreed upon by the Complainant and the 1st, 2nd and 3rd Respondents and published by the Complainant at the expense of the said 1st, 2nd and 3rd Respondents.
- d)** Pursuant to section 58 (1) and (6) of the FCA read together with section 76 (2) and Procedure 22 (7) of the Consumer Procedures; the 1st, 2nd and 3rd Respondents jointly and severally, shall within seven (7) days from the date of issuance of these Provisional Findings; produce and submit to the Complainant, a Non-confidential version of these Provisional Findings intended for use by the interested Third Parties to the instant matter. Upon expiry of the said seven days without response from the 1st, 2nd and 3rd

Respondents jointly and severally; the Complainant shall proceed to issue the Provisional Findings as they are, without the annexed documents.

- e) Pursuant to section 60 (1) read together with section 58 (9) of the FCA and Procedure 30 of the Consumer Procedures, the Commission intends to require the following:
- (i) The 1st Respondent to pay a monetary administrative fine amounting to TZS 390,572,642/= which is equal to 5 percent of annual turnover (TZS 7,811,452,842.65) of the 1st Respondent as per the Tanzania Revenue Authority Electronic Fiscal Device Management System (EFDMS) sales for the year ended 31st December 2021.
 - (ii) The 2nd Respondent to pay a monetary administrative fine amounting to **TZS 1,072,353,097.95** which is equal to **5 percent** of annual turnover (TZS **21,447,061,959**) of the 2nd Respondent as per audited Financial Statements for the year ended 31st December 2021.
 - (iii) The 3rd Respondent to pay a monetary administrative fine amounting to TZS **9,089,242,800/=** which is equal to **5 percent** of annual turnover (TZS **181,784,856,000/=**) of the 3rd Respondent as per audited Financial Statements of the year ended September 2021.
- f) Any other orders which the Commission may deem fit and proper to impose.

5.2 Reasons for the actions

In imposing fines stipulated in item **5.1 (e)** above, the Complainant considered Procedure 30 of the Consumer Procedures, and is of the view that substantial sanctions are warranted in this case, due to the following:

The Nature and Extent of Non-Compliance or Violation

That pursuant to **Procedure 30 (a)** of the Consumer Procedures, the Complainant has found out that the conduct of the 1st, 2nd and 3rd Respondents of engaging in supplying roofing sheet branded **TANTU and GOOD ONE** (presented as 30gauge while not), contrary to Section 18 of the FCA *is* of high gravity owing to the fact that, infringements under section 18 of the FCA touches infringement of consumers' rights to sustainable shelter.

Considering the gravity of the offence and in the absence of aggravating factors provided under Procedure 32 of the Consumer Procedures, a fine of **5%** of annual turnover has been proposed.

6.0 THE RESPONDENTS' RIGHT OF RESPONSE, RIGHT TO BE HEARD ORALLY AND RIGHT TO SETTLEMENT

(i) The Respondents' Right of Response

Pursuant to Procedure 22 (1) of the Consumer Procedures, the 1st, 2nd and 3rd Respondents have the right to submit a written submission in reply to these provisional findings within **21 days** from the date of receipt of these provisional findings.

(ii) The Respondents' Right to be Heard Orally

Pursuant to Procedure 24 of the Consumer Procedures, the 1st, 2nd and 3rd Respondents shall, upon application, **not later than 14 days** after the prescribed date of submission of a written representation, have a right to make oral representation on matters in these provisional findings.

(iii) The Respondents' Right to Settlement

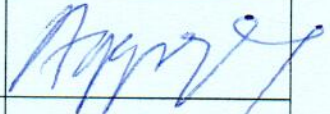

Pursuant to Procedure 21 (5) read together with Procedure 23 (3) of the Consumer Procedures, the 1st, 2nd and 3rd Respondents **may, however, apply**

for Settlement after receiving these Provisional Findings and **before** Final Findings are given by the Commission.

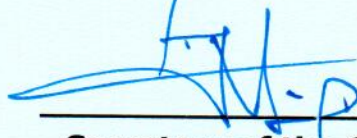
The Commission hereby issues these provisional findings to all Respondents.

Signed, dated, sealed and issued on this ^{6th} day of February 2023.

We, the undersigned Members of the Commission have so **DECIDED** and **ORDERED**.

S/N	NAME	DESIGNATION	SIGNATURE
1.	Dr. Aggrey K. Mlimuka	Chairman	
2.	Dr. Godwin O. Osoro	Commissioner	
3.	Mr. Jenard L. Bahati	Commissioner	
4	Mr. William E. Erio	Commissioner	

Dated and delivered at Dodoma under my hand and Seal of the Commission on this ^{6th} day of February 2023.



Secretary of the Commission

To be served upon the Respondents by Order of the Commission

SEAL OF THE COMMISSION

TO BE SERVED UPON:

1st Respondent

Jackline Constantine Mallya
Jamhuri Street,
P.O.BOX 170,
DODOMA.

2nd Respondent

Tantu Building Material Co. Ltd,
Tabata Matumbi,
P.O.BOX 19157
DAR ES SALAAM.

Sou 3/3/2023
SHADRAC MSHATA

3rd Respondent

Umome Company Limited,
Sewa Street,
P.O Box 38449,
DAR ES SALAAM.



FCC-1

FCC-1

START OF LEGAL RECEIPT
BLACKLINE CONSTANTINE SALLVA
P.O. BOX 170 DODOMA
MOB: 0756 557 512
STREET: JAMHURI STADIUM
DODOMA
TIN 108826894
URN 400334822
SERIAL NUMBER 03T2442020686
UIN 01181F
14070151210002689403T2442020686
TAX OFFICE DODOMA

CUSTOMER NAME
CUSTOMER ID TYPE BUYER'S TIN
CUSTOMER ID 106055661

RECEIPT NUMBER 11794
ZNo 3/0003
DATE 22-04-2021 TIME 11:18:29
ECR: 01 OP: 01

HARDWARE 384'000.00 A

TOTAL EXCLUSIVE OF TAX 325'423.73

TAX A-18.00% 58'576.27

TOTAL TAX 58'576.27

TOTAL INCLUSIVE OF TAX 384'000.00

CASH 384'000.00
ITEMS NUMBER 1

RECEIPT VERIFICATION CODE
7JORKY11794



[Handwritten signature]

FCC-2

JAMHURI YA MUUNGANO WA TANZANIA

SHERIA YA VIAPO NA MATAMKO, 1966.

THE OATHS (JUDICIAL PROCEEDINGS) AND STATUTORY

DECLARATIONS ACT 1966

KIAPO CHA JACKLINE C. MALLA.

Mimi, Jackline C. Malla, mtu mzima, ambaye dini yangu ni Athor, wa mtaa wa Uthek, Dodoma mji, Dodoma, nikiwa na akili timamu bila kulazimishwa na mtu yeyote, **NINAAPA** kama ifuatavyo:

1. Mimi ndiye mtoa kiapo hiki, nina hakika kabisa juu ya maelezo yote nitakayoyasema hapa chini kuwa ni ya kweli na kweli tupu;
2. Kwamba, mimi ni mmiliki /muuzaji wa biashara ya kuuza vifaa vya ujenzi katika maeneo ya Jamhuri - Dodoma.
3. Kwamba, pamoja na bidhaa na vifaa vingine, pia nimekuwa nikijishughulisha na uuzaji wa jumla na rejareja wa mabati yanayozalishwa na viwanda mbalimbali vya ndani na nje yakiwemo ya: Sunda, Good one.
4. Kwamba, majira ya kati ya saa tano asubuhi na saa sita mchana nkiwa dukani niliuzua mabati kwa Tume ya Ushindani (FCC), yenye namba ya utambulisho wa milipa kodi (TIN) 106055661. Aina ya mabati nilimuuzia ni:

CR - Sunda, Good one, niantu
IT - Sunda, Good one
Bati za kiboko reject

5. Kwamba, nilimuuzia mteja (FCC) jumla ya mabati
 — Bati kamina (18) kwa thamani ya TZS
 name 384,000
6. Kwamba taarifa zilizopo baada ya kuuza bati tajwa katika aya za 4 na 5
 na 6 nilimpatia mteja tajwa stakabadhi ya malipo yenye stakabadhi
 namba 11794 Nakala ya stakabadhi
 imeambatanishwa pamoja na kiapo hiki kama **Kiambatanisho FCC-1**.
7. Kwamba, baadaye kidogo mteja(FCC) huyu alikuja na wenzake na
 aliwatambulisha kwangu kama ni maafisa kutokana Tume ya Ushindani
 (FCC) ambao walijitambulisha na kueleza kuwa wapo katika kutekeleza
 majukumu yao kwa mujibu wa Sheria ya Ushindani 2003.
8. Kwamba, walinielea kuwa oparesheni yao imejikita katika bidhaa za
 mabati;
9. Kwamba, kwa kiapo hiki ninathibitisha kuwa nimewauzia FCC mabati
 yenye taarifa kama zilivyoielezwa katika aya za hapo juu.

UTHIBITISHO

Mimi *Jackline Mallya* ninathibitisha kwamba maelezo yote niliyosema hapo juu katika
 aya za 1, 2, 3, 4, 5, 6, 7, 8 na 9 ni kweli kulingana na ufahamu wangu na namna
 niujuavyo mimi.

Imethibitishwa hapa Dodoma leo tarehe 22 Aprili, 2021.

Jackline Mallya
 MUAPAJI

Jackline Mallya
 MUAPAJI

AMEAPA hapa Dodoma ndugu
Jackline Mallya ambaye
 ametambulishwa kwangu na
 ambaye
 namfahamu, leo tarehe 22 Aprili,
 2021.

MBELE YANGU:

Jina: *Wambie James Malata*

Saini: *[Signature]*

Anuani: *7883, D Sm*

Tarehe: *22/04/2021*

Wadhifa: KAMISHNA WA VIAPO



Jackline Mallya



Ref. No: ALAF/GC/2020/01

17th September 2020

Director General,
Fair Competition Commission,
6th Floor, PSSSF House,
Makole Road,
P. O. BOX 2351,
Dodoma.

Dear Sir/Madam,

RE: SELLERS' MISLEADING AND DECEPTIVE CONDUCTS ON THE NATURE AND/OR QUALITY OF ROOFING SHEETS.

Please refer to the above captioned subject matter.

We are writing you to communicate and register our concerns and complaint relating to the conduct of some of unscrupulous Sellers'/ Suppliers' of roofing sheets tempering with ALAF's products and brands with intent to deceive customers/consumers through their online advertisements.

In one instance, we came across the attached advertisement via facebook platform, upon making thorough investigation we noted the following;

- (a) The given Sellers are located at Buguruni area in Dar es salaam.
- (b) They are selling ALAF's SimbaDumu sheets with 32 gauge as 30 gauge.
- (c) They have erased some of the marks that are normally attached to our SIMBADUMU 30 gauge sheets.
- (d) They are selling at a price which is lower than the one which is offered and/or supposed to be offered at the market.

The above conduct by the given Sellers are misleading and deceiving consumers of our products. We are also informed, but we are yet to investigate, that there are more Sellers/Suppliers with similar malpractices around Buguruni areas and areas around our factory premises.

In view of this, we kindly request for urgent intervention of your good office on the matter, so that appropriate measures and penalty be taken against those found guilty, in order to deter such deceptive practices which highly affects the rights of consumers as well as our brand image in the market.

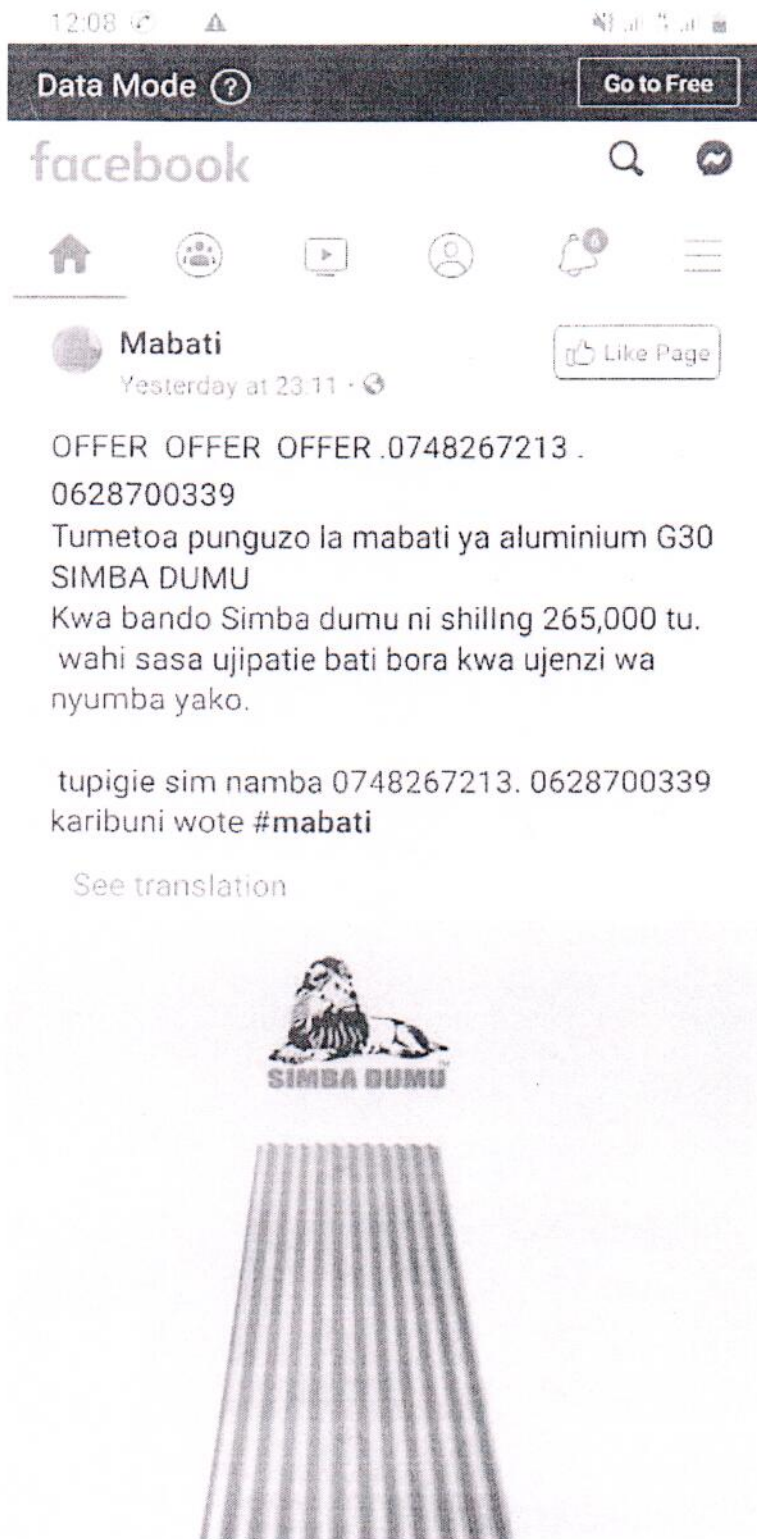
Thank you for your due support and cooperation.

Yours Sincerely,

Nelson Kassanga
Legal and Compliance Manager

Page 1 of 1

FCC-7



**TANZANIA BUREAU OF STANDARDS**

P O Box 9524, Dar es Salaam

Tel: +255222450206/+255222450949/+255222450298

Fax: +255222450959

E-mail: info@tbs.go.tz

Physical Address: Junction Morogoro/Sam Nujoma Rds, Ubungo

DATE
2021-08-09TH 08
TBS Code No.
CC/DOM 2051

Page 1 of 3

Member of the International Organization for Standardization (ISO), Codex Alimentarius Commission (WHO/FAO), Agent for ISO and other National Standards Bodies

TEST REPORT
ML/03446/2021

This report is issued in accordance with Section 4 (1) (c) of the Standards Act No. 2 of 2009.
The report shall not be published, other than in full, without prior written approval of the Director General, TBS.

Client: GOOD ONE TANZANIA LTD

Client address: MBOZI RD, DAR ES SALAAM, TANZANIA, DAR-ES-SALAAM

Sample: 2 PIECES@1.5M OF PREPAINTED IT5 ROOFING SHEET-30G(GOOD ONE-TILE RED)

Site and position sampled: JACKY'S SHOP DODOMA

Sampling plan: RANDOM

Date of sampling: 2021-04-22

Date received: 2021-06-04

Date started: 2021-08-08

Date finished: 2021-08-09

Specification: TZS 1477: 2020 (3RD ED)

Test method: AS INDICATED IN THE TABLE OF RESULTS

1.0 INTRODUCTION

A sample of 2pcs@1.5 m of pre-painted IT5 roofing sheet 30G (GOOD ONE-tile red) was submitted to the TBS mechanical Laboratory for testing whether it conforms to **TZS 1477:2020** Specification. The sample was given TBS Code No. **CC/DOM 2051**.

2.0 TEST RESULTS

The sample was tested as per specified standard method and the given results pertain only to the sample submitted to the TBS Mechanical Laboratory for testing.



TANZANIA BUREAU OF STANDARDS
P O Box 9524, Dar es Salaam
Tel: +255222450206/+255222450949/+255222450298
Fax: +255222450959
E-mail: info@tbs.go.tz – Physical Address: Junction Morogoro/Sam Nujoma Rds, Ubungo.

DATE
2021-08-09

TH 08
TBS Code No.
CC/DOM 2051

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Member of the International Organization for Standardization (ISO), Codex Alimentarius Commission (WHO/FAO), Agent for ISO and other National Standards Bodies

TEST REPORT ML/03446/2021

TABLE OF RESULTS

S/N	Test/Characteristics	Test methods	Requirements	Results	Pass/Fail
1	Tensile strength (N/mm ²)	TZS 1477:2020	Min 300	564	Pass
2	Dimensions				
3	Thickness (mm)		(0.215-0.265) 30G	0.22	Pass
	Coating properties (mm)				
	Top coating.				
	➤ Substrate		Min 0.0095	0.0080	Fail
	➤ Color +primer		Min 0.0140	0.0213	Pass
	Bottom coating				
	➤ Substrate		Min 0.0095	0.0071	Fail
	➤ Color		Min 0.0070	0.0051	Fail
	- Water resistance		To show no deterioration	Complied	Pass
	- Solvent resistance		To show no deterioration when rubbed with solvent	Complied	Pass
	- Coating flexibility		To show no crack/deformation when bent through 90°	Complied	Pass
4	Markings		-To be permanent and indelibly - To be marked with the following	Complied	Pass
			➤ Manufacturer's name/trade mark	GOOD ONE	Pass
			➤ Gauge	30G	Pass
			➤ Batch identification	EG2021-0105	Pass
			➤ Coating class	AZ85	Pass



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TEST REPORT ML/03446/2021

3.0 REMARKS

The sample does not conform to **TZS 1477:2020** for top coating (substrate) and bottom coatings parameters. The sample was subjected to destructive test.

Reported by:

Verified by:

Approved by:

Prosper Mpalanzi

Hemed Hamim

Ramadhan Swalehe Shija

Analyst

Checker

Head of Laboratory