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BEFORE THE HONOURABLE COMPETITION APPELLATE TRIBUNAL,
ISLAMABAD

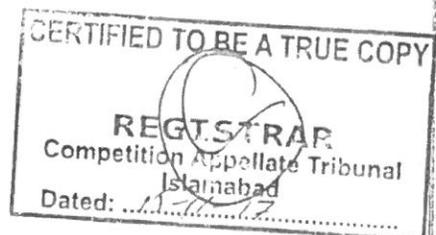
Appeal No. **27** Of 2016

ATLAS HONDA LIMITED
1 Mcleod Road,
Lahore, 5400

APPELLANT

Versus

1. M/S SHAFIQUE SONS
Through its proprietor
Shafique Ahmed Qureshi S/o not known to Appellant
F/571 Khorkhar Mohallah
Hyderabad
2. M/S PAK HERO INDUSTRIES (PVT) LTD
(Through its Managing Director/Chief Executive Officer/Directors)
10-km Raiwind Road
Lahore
Also at Noor Arcade 111
Lytton Road,
Lahore
3. M/S UNITED MOTOR COMPANY
Through its proprietor Pehlaj Rai S/o not known to the Appellant
Plot No A/2, Hali Road, SITE,
Hyderabad, Pakistan
4. COMPETITION COMMISSION OF PAKISTAN
Government of Pakistan
7th Floor, ISE Towers,
55-B Jinnah Avenue
Islamabad



RESPONDENTS

APPEAL UNDER SECTION 42 READ WITH SECTION 10, 10(2)(A) AND
10(2)(D) OF THE COMPETITION ACT 2010

Respectfully submitted;

Being aggrieved and dissatisfied with Order dated June 30th, 2016 passed by the
Honorable Competition Commission of Pakistan

BEFORE THE
COMPETITION APPELLATE TRIBUNAL, ISLAMABAD

ATLAS HONDA LTD

.... APPELLANT

VERSUS

- (1) M/S SHAFIQUE SONS.
- (2) M/S PAK HERO INDUSTRIES (PVT) LTD.
- (3) M/S UNITED MOTORS COMPANY LTD.
- (4) COMPETITION COMMISSION OF PAKISTAN

...RESPONDENTS

Appeal No. 27/2016

Present: Justice (R) Mian Fasih Ul Mulk, Chairman.
Ahmed Owais Pirzada, Member Technical.
Justice (R) Miftah-Ud-Din, Member Technical.

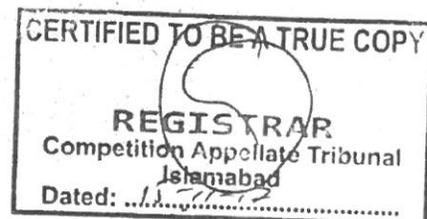
For the appellant: Mr. Ali Kabeer Shah, Advocate.
For Respondent No-1& 2: Mr. Atif Khan, Advocate.
For Respondent No-3: Mr. Nouman Ameen Farooqi, Advocate.
For Respondent No-4: Mr. Sami Ullah Kakar, Advocate.
Date of hearing: 26.10.2016, 08.03.2017, 28.03.2017, 25.04.2017,
17.05.2017, 07.06.2017, 16.06.2017, 13.09.2017,
27.09.2017, 10.10.2017 & 17.10.2017.

JUDGMENT

JUSTICE (R) MIFTAH UD DIN, MEMBER TECHNICAL.

The appellant Atlas Honda Ltd has filed this appeal against the Judgment and order dated 30th June, 2016 passed by the learned Competition Commission of Pakistan, whereby no punishment was awarded to the respondents under section 10 (d) of the Competition Act.

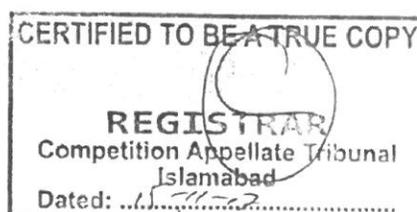
1. The brief facts of the case are that the appellant is a public Limited company engaged in the business of



manufacturing Marketing and distribution of Motorcycles and Allied goods in Pakistan under the brand name of Honda. The respondents are also engaged in the business of manufacturing, assembling and distribution of Motorcycles in Pakistan. The Motorcycles of M/S Shafique Sons, respondent No-1 are marketed under the brand name / trade mark "JINAN". Respondent No-2 M/S Pak Hero Industries (PVT) Ltd is engaged in marketing Motorcycles under the brand name of Pak Hero, while respondent No-3 M/S United Motors Company sells Motorcycles under the brand name of United Seven Star and Shine Star.

2. The appellant filed a complaint with CCP / Respondent No-4, founded on the allegations that respondents have copied its distinct and registered Logo (The Wing device), In such a way that Motorcycles manufactured by the appellant are indistinguishable from those manufactured by the respondents, which act of the respondent is a clear violation of section 10 of the Competition Act, 2010. The complaint of the appellant was inquired into under section 37 (2) of the Competition Act by the learned Competition Commission of Pakistan through an inquiry committee. The inquiry committee concluded the inquiry with the following recommendations.

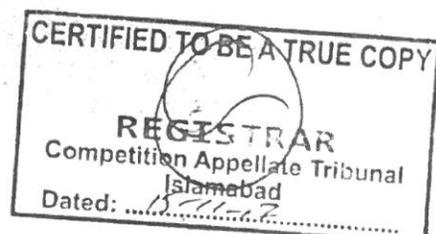
The deceptive marketing practices discussed in the enquiry report have a direct impact on the public at large. It is in the interest of the general public that the undertakings should be stopped to advertise their products / services in an



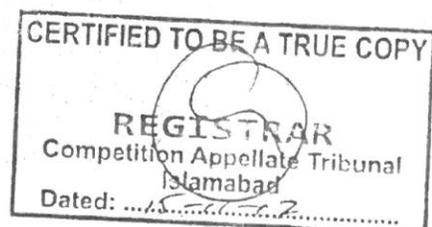
unfair and misleading manner and be encouraged to resort to the advertising practices which are transparent and gives consumers / customers true and correct information. Prima facie violations under the Act in terms of the findings of this enquiry report warrant initiation of proceedings against respondents, under Section 30 of the Act in accordance with law:

3. On the basis of inquiry report, a showcause notice was issued to the respondents. The respondents submitted written replies and comments to the Showcause notice annex with relevant documents. The learned CCP after affording an opportunity of hearing to the parties, passed the impugned order by holding that none of the respondents have engaged in deceptive marketing practices in contravention of section 10 of the Competition Act. Thus the Commission instead of awarding punishment to the respondents, accepted their undertakings to change their logos on all their products and promotional material to avoid in future likelihood of deception. Aggrieved from the same, the appellant has preferred this appeal.

4. Learned counsel for the appellant contended that complaint of appellant that respondents-1 to 3 are committing deceptive marketing practices by fraudulently using the registered trade mark and logo of Wing Device of appellant was inquired into by the legally appointed enquiry committee and on the basis of enquiry report the respondents were prima facie found to have committed deceptive marketing practices under section 10 of the Competition Act and

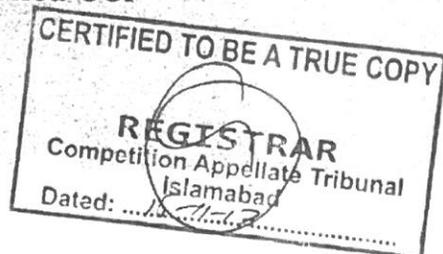


recommended initiation of proceedings under section 30 of the Competition Act against the respondents, but the report of enquiry committee was wrongly and illegally ignored by the learned CCP without any justification. He further submitted that findings of learned CCP regarding use of Trade Mark are self contradictory and that the relevant facts and material available on the record in this connection have been ignored by the learned CCP. He further contended that learned CCP categorically acknowledged that respondents adopted a Mark having striking similarity with that of appellant but even then avoided to award punishment to the respondents by making wrong and incorrect appreciation of law and material available on the record. He further submitted that deceptive marketing practices regarding fraudulent use of Trade Mark of the appellant was fully established on record, therefore, award of punishment to respondent under section 10 (d) of the Competition Act was necessary to promote free and fair competition, enhance economic efficiency and to protect consumers from Anti Competitive behavior. He next argued that allowing sale of respondents products under the imitated Trade Mark in total disregard of the proprietary rights of appellants vested in respect of Trade Mark and registered Wing Device will discourage fair and free competition and subject the consumers to anti-competitive behavior. He lastly argued that acceptance of undertaking of respondents-1 to 3 by learned CCP to change their logos is not at all sufficient remedy to redress the grievance of appellant, therefore, award of punishment to respondents-1 to 3 for fraudulent use of



registered trade mark of appellant is necessary to promote free and fair competition.

5. Learned counsel for respondent No-1 to 3 contended that Judgment in the present case was delivered by the learned CCP on 30.06.2016, therefore, the appellant was required to file this appeal within 60 days under section 42 of Competition Act read with rule 4 of Competition Appellate Tribunal Rules, 2015 but the appellant has filed this appeal on 05.09.2016, without affording any explanation for delay in lodging the appeal, therefore, the appeal of the appellant is apparently barred by limitation. They further submitted that respondents neither engaged in distribution of false and misleading information to consumer, which is capable of harming business interest of appellant nor any other deceptive marketing practices. They further contended that logo adopted by the respondents is entirely different and easily distinguishable from Wing Device logo of appellant, therefore, fraudulent use of appellant's registered Trade Mark by respondents has not been established under section 10 (d) of the Competition Act. They further argued that learned CCP has correctly conducted detailed images comparison exercise by keeping respective logos of appellant and respondent-1 to 3 in juxta-position and concluded that in spite of striking similarity in logos at first glance, when further attention is paid to respective brand names affixed to the logos at the base, the logos and brand name as a whole confirm existence of separate and distinguishable features excluding any possibility of fraud and deception. They lastly argued that learned CCP



after proper appraisal of relevant facts and material available on record has passed the impugned order which warrant no interference by this court in exercise of appellate jurisdiction. The learned counsel for CCP while defending the Judgment order of learned CCP also endorsed the arguments advanced by learned counsel for respondents 1 to 3 and submitted that the appeal of the appellants is without any merit, hence liable to be dismissed.

6. Before taking up the contentions of learned counsel for the parties on the merits of the appeal we would like to first deal with the legal point as to whether the appeal has been filed within statutory period of limitation of sixty days or not. It is evident from the record that the learned CCP has delivered the Judgment in the present case on 30.06.2016 and attested copy of this Judgment was prepared on 04.07.2016 and thereafter dispatched to the appellant, therefore, the appellant was required to submit the present appeal within 60 days of the original period of limitation prescribed under section 42 of Competition Act. The record indicates that the appellant has filed this appeal on Monday i.e, 05.09.2016, as Saturday and Sunday of 3rd and 4th September, 2016 were weekly holidays of the court, therefore, the appeal of the appellant is well within time. Thus the objection of learned counsel for the respondents in this connection is without any substance and the appeal of the appellant is held to have been filed within the statutory period of limitation.

7. The contentions of learned counsel for the appellant that the learned CCP has wrongly and illegally ignored the recommendations of enquiry committee is without substance



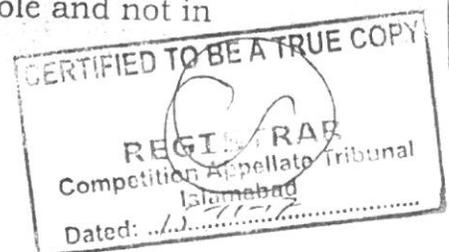
because the recommendations of enquiry committee are tentative in nature, hence have got no binding force. The conduction of enquiry under section 37(2) of Competition Act is a legal requirement for investigating a complaint in order to proceed further in the matter, which has been done in the present case by issuing show cause notices to the respondents on the basis of enquiry report. Enquiry report by itself is not sufficient for determination of guilt or liability of the respondents. The enquiry report infact is a preliminary investigation and fact finding mission subject to review by the learned CCP in adjudicative proceedings pursuant to the issuance of show cause notice on the basis of preliminary investigation. Under the law of evidence, the findings of enquiry committee are not binding on the learned CCP as the same are mere investigative in nature and not a substantive piece of evidence to be relied upon. Admittedly, neither the signatories of the enquiry report have been examined before the Commission nor any opportunity of cross examination on the aforesaid report has been afforded to the respondents, therefore, the same cannot be read as substantive piece of evidence against the respondents, hence the learned CCP has rightly ignored the same.

8. The contentions of learned counsel for the appellant that the findings of learned CCP are contradictory in nature cannot be accepted for the reason that the learned CCP through an elaborate and detail comparison of images of wing device of appellant and objected logo of respondent with respective brand names has come to the conclusion that inspite of striking similarity at the first glance, the respective



logos of the parties are sufficiently distinguishable from each other and there is not at all any possibility or likelihood of fraud and deception to mislead or confuse the customers. Similarly, during the course of proceedings before learned CCP, the appellant has not produced any consumer in support of his claim that the consumers have been deceived by the respondents by using the imitated logo of the appellant.

9. Before awarding punishment for deceptive market practices including fraudulent use of registered Trade Mark, the Commission shall be satisfied firstly that there is complete absence of distinctive features between the Trade Mark logos of appellant and respondents, and secondly that striking similarities that exist are misleading enough to cause confusion in the minds of the consumers and thirdly that the end result is unjust enrichment of the respondents at the expenses of and to the detriment of the appellant. The record shows that none of the above mentioned pre-conditions have been fully established against the respondents through conclusive evidence to justify conviction u/s 10 2(d) of the Competition Act. The learned CCP after proper comparison of relevant images of the logos of the appellant and respondents has rightly come to the conclusion that the logo and brand name seen as a whole confirm the existence of separate and distinctive features hence there is no significant likelihood of deception. The learned CCP has observed that from a competition view point, such as the completely distinct color scheme, overall layout and tag lines of the respective marketing campaigns of the parties, the possibility of fraud and deception is completely ruled out. Similarly, Trademark logos and brand names of the parties are to be viewed as a whole and not in



isolation, in bits and pieces to gather an impression. The product in question i.e, Motorcycles are not consumers goods available for sale to the public at large but to a special segment or public, who are well inform of their choices before purchase. Moreover, purchase of Motor Cycles is costly investment and would reasonably involve active application of mind before making a transaction. The transaction to purchase Motorcycle cannot be made everywhere, but through specialized distribution channels, exclusive authorized dealers and identifiable channels. Thus the sales outlets for different market players in Motorcycle market are different, separate and distinguishable, excluding the possibility of fraud, deception or confusion in the minds of consumers. Thus we hold that learned CCP after proper appraisal of material available on record has rightly avoided to award any punishment to respondents and accepted the commitments and undertakings of respondents to modify their logos to avoid likelihood of future deception.

10. Resultantly we hold that the appeal of the appellant is without any substance, hence dismissed. Parties to bear their own costs.

Announced in open court
17.10.2017


Justice Mian Fasih Ul Mulk,
Chairman


Justice Miftah-Ud-Din
Member Technical


Ahmed Owais Pirzada
Member Technical

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Competition Appellate Tribunal
Islamabad
Date: 15/11/17