

BEFORE THE COMPETITION APPELLATE TRIBUNAL  
COMPETITION COMMISSION OF PAKISTAN

Appeal No. \_\_\_\_\_ of 2018

Ghulam Fareed

-----/Appellant

Versus:-

Competition Commission of Pakistan and another

-----/Respondents

Appeal under section 42 of the Competition Act, 2010

A. Particulars of the Appellant:

Ghulam Fareed son of Niaz Muhammad by caste Querashi (Proprietor Niaz Corporation), Grain Market, Bahawalpur.

B. Particulars of Respondents:

1. Competition Commission of Pakistan

7<sup>th</sup> Floor, ISE Towers, 56-B,

Jinnah Avenue,

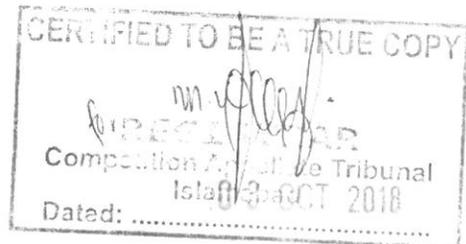
Islamabad.

2. Al-Rehman Oil Mills, opposite Gulistan Textile Mills, Ahmadpur Road,

Bahawalpur through its Managing Partner Muhammad Muneeb Ali son of

Muhammad Rafi Malik, by caste Bhutta resident of House # 1297/B, D-6,

Heasy Industrial Area, Tehsil & District Bahawalpur.



BEFORE THE  
COMPETITION APPELLATE TRIBUNAL, ISLAMABAD

1. GHULAM FAREED, (PROPRIETOR NIAZ CORPORATION),  
GRAIN MARKET, BAHAWALPUR.
2. HAFIZ SAJJAD UR RASHEED, (PROPRIETOR OF BALOCH OIL  
MILLS) GRAIN MARKET, BAHAWALPUR.
3. MUHAMMAD RAMZAN (PROPRIETOR MUSLIM  
CORPORATION), GRAIN MARKET, BAHAWALPUR.
4. RIAZ AHMED, OWNER OF RIAZ OIL MILLS, AHMED  
PUR EAST, BAHAWALPUR.
5. MUHAMMAD WAQAS, PAK OIL MILLS SMALL INDUSTRIES  
ESTATE, BAHAWALPUR.
6. MUHAMMAD NAVEED (PROPRIETOR OF HAMZA  
CORPORATION), GRAIN MARKET BAHAWALPUR.
7. MIAN AKRAM ULLAH, BAHAWALPUR OIL MILLS, KLP  
ROAD, NEAR GULISTAN TEXTILE MILLS, BAHAWALPUR.
8. TANVEER RIAZ, OWNER OF MIAN TRADERS, GHALLA  
MANDI, TEHSIL & DISTT. BAHAWALPUR.
9. M/S AZHAR KARYANA STORE THROUGH MR. AZHAR  
IQBAL, DINGA ROAD, KHARIAN.

.... APPELLANTS

VERSUS

1. COMPETITION COMMISSION OF PAKISTAN
2. AL-REHMAN OIL MILLS, OPPOSITE GULISTAN TEXTILE MILLS,  
AHMAD PUR ROAD, BAHAWALPUR.

...RESPONDENTS

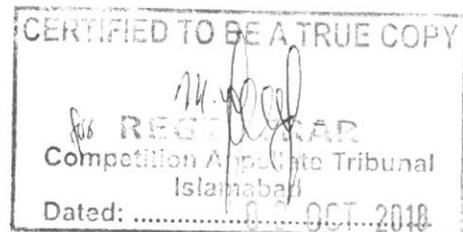
Appeals No. 01/2018, 02/2018, 03/2018, 04/2018, 05/2018,  
06/2018, 07/2018, 08/2018 & 09/2018.

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

For the Appellants: Muhammad Naveed Farhan Advocate,  
representing in Appeals No. 01/2018 to  
06/2018. Mr. Faisal Iqbal Khan Advocate,  
representing in Appeals No. 08/2018 &  
09/2018 and Ch. Shafiq Ur Rehman  
Advocate, representing in Appeal No 07/2018.

For Respondent No-1: Mr. Nouman Ameen Farooqi Advocate along  
with Mr. Arshad Javed Deputy Director and  
Mr. Farhan Shah Assistant Director legal.

For Respondent No-2: Muhammad Muneeb Ali, Managing Partner  
along with Syed Muhammad Junaid Mumtaz  
Advocate.



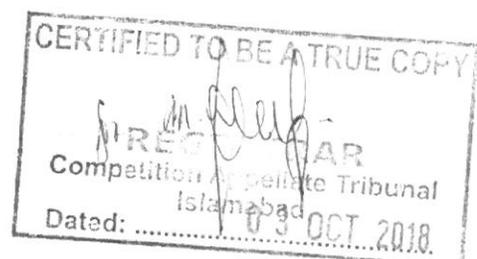
## JUDGMENT

**Ahmed Owais Pirzada, Member Technical.**

Ghulam Fareed (Proprietor Niaz Corporation), Grain Market, Bahawalpur, appellant in Appeal No-01/2018 and other appellants at Sr. No. 2 to 9 have filed appeal Nos. 02/2018 to 09/2018, against the Judgment and order dated 29-12-2017, passed by learned Competition Commission of Pakistan.

02. The brief background of presentation of above appeals are that respondent No.2 Al-Rehman Oil Mills, lodged a complaint against appellants that they are using the registered Trade Mark "TAIZGAAM" without any permission and legal justification, therefore, the appellants are guilty of deceptive marketing practices under section 10 of the Competition Act, 2010. The complaint of respondent No.2 was inquired into under section 37 (2) of the Competition Act, 2010 and on the basis of inquiry report, show cause notices were issued to appellants. After obtaining the comments of Appellants, the learned Competition Commission of Pakistan heard the arguments of counsel for the parties and awarded penalty of Rs.300,000/- to each of the appellants under section 10 (1) Competition Act through the impugned Judgment and order. Aggrieved from the same all the appellants have preferred these appeals. As a common question of law and facts are involved in all nine appeals, therefore, they are disposed off through present single Judgment.

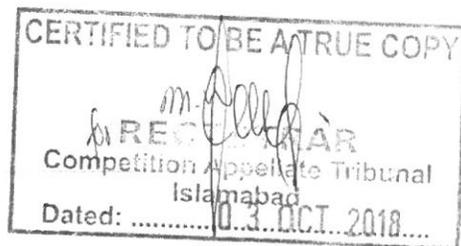
03. The appellants at Sr. No. 1 to 6, have stated in their appeals that the word "TAIZGAAM" is originally created and used by the appellants before the registration of this Trade Mark by the respondent No-02. It has further been stated that this important and exclusive point of determination has not been considered by Competition Commission of Pakistan, while deciding the matter. It has been argued that like "COLA", the word "TAIZGAAM" could be used by the animal food manufacturers in addition to their



distinctive names. It has been submitted that the word "TAIZGAAM" was always used with other distinctive names by the appellants for their independent recognition. It has been stated that the appellants were never associated while holding inquiry by the Competition Commission of Pakistan. It has further been stated that the colour scheme and the animal picture, which could be indentified and understood by a naked eye and the Trade mark of respondent No-II are fairly different from the one, used by the appellants. It has been pleaded that the Competition Commission of Pakistan has not decided the case in accordance with law and the impugned order has been passed in hasty manner without applying the judicious and administrative mind on the subject. It has been prayed that the impugned order of the Competition Commission of Pakistan may be declared illegal, unlawful and without lawful authority.

04. The appellants in their appeals at Sr. No. 7 & 8, in addition to the aforesaid grounds, have stated that their contentions through written reply, filed by them, were not made part of the court file by the Competition Commission of Pakistan. It has further been stated that the Commission has held the appellants guilty of violation of Section 10 (2) (a) of Competition Act, 2010 despite having found undeniable defence that the products being marketed by the appellants were carrying the name of appellant's contact numbers and other information relating to them. It has been pleaded that the Competition Commission of Pakistan failed to establish any single evidence, holding the appellants for guilty of use the Trade mark of Respondent No-II. It has been prayed that the impugned order, passed by Competition Commission of Pakistan may be set aside.

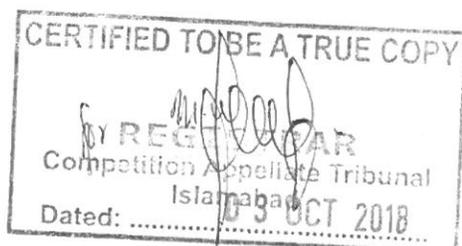
05. The appellant mentioned at Sr. No. 9 in his appeal has stated, in addition to the aforesaid grounds, that the written commitment, filed by the appellant on the direction of the Competition Commission of Pakistan has completely been ignored by the Competition Commission while deciding the matter. It has



further been stated that the respondent No-I has failed to appreciate this fact that the appellant has stopped selling the products prior to issuance of Show cause notice. It has been submitted that the impugned order violates the provision of section 24-A of the General Clauses Act 1897 as it lacks reasons and non-consideration of submissions and documents furnished by the appellant. It has been argued that the impugned order also violates right to trade and business as enshrined under Article 18 of the Constitution. It has been prayed that the impugned order of Competition Commission of Pakistan may be set aside.

06. During the course of hearing, the learned counsel for the appellants have repeated their arguments, mentioned in their appeals, further arguing that despite their willingness to abide by the law and the directions of the Competition Commission of Pakistan not to use the logo of the respondent No-II, the Commission has imposed penalty of Rs. 300,000/- on all the appellants vide order dated 29.12.2017, which is unjustified. The learned counsel has pleaded that in the circumstances stated above and keeping in view the grounds mentioned in their appeals, the impugned order of the Commission may be set aside.

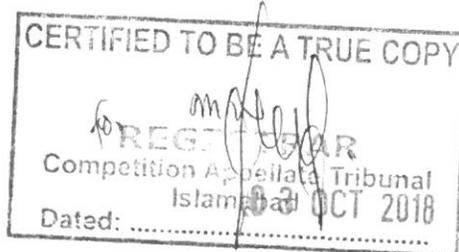
07. The learned counsel for respondent No-II has stated that almost all the appellants, during the course of hearing before Competition Commission of Pakistan have expressed their willingness to abide by the discipline decorum prescribed under section 10 (1) of the Competition Act, 2010. However, the appellants have been violating the aforesaid provision of the law and are involved in deceptive marketing practices by using registered Trade mark of the respondent on packaging and labeling of their products that akin along with the font and colour scheme of the respondent. It has further been stated that the respondent has got registered the name 'TAIZGAAM' on 7<sup>th</sup> October, 2015, bearing registration No-332864, however in the presence of stay order, issued by this Tribunal against the order of the Competition Commission of Pakistan, it is not possible for the



respondent to proceed against the appellants under section 10(1) of the Competition Act, 2010 and in pursuance of Competition Commission order dated 29.12.2017. It has been stated that the impugned order of the Commission provides that in case of failure to comply with the direction of the Commission, the appellants shall be further liable to a penalty of Rs. 100,000/- (one hundred thousand) per day from the date of impugned order. It has been prayed that the appeals, filed by the appellants may kindly be dismissed, so that the respondent could approach Competition Commission of Pakistan to get its order implemented.

08. The learned counsel for respondent No-I has stated that clear contraventions of section 10-A of the Act stand established against all the appellants, however in light of the willingness of the majority of the appellants during the course of hearing to act in accordance with the directions of the Commission, the Commission has already taken lenient view, imposing penalty of Rs. 300,000/- (three hundred thousand) on all appellants, which according to learned counsel is symbolic, keeping in view the volume of their business during the period. It has been pleaded that the impugned order of the Competition Commission of Pakistan may be maintained, dismissing all appeals filed in this regard, further directing the appellants to strictly abide by section 10 (1) of the Competition Act, 2010.

09. During the proceedings before this Tribunal, all the appellants and respondent No-II are of the view that the Appellate Tribunal may give waiver of the penalty, imposed by Competition Commission of Pakistan on all the appellants, passing directions that violation of section 10 (1) be checked strictly and in case violation is seen, the appellants shall be made liable to a penalty of Rs. 100,000/- (one hundred thousand) per day from the date of impugned order of the Competition Commission of Pakistan till actual compliance further initiating criminal proceedings under sub section 5 of section 38 of the Act. The learned counsel for the Commission has however, expressed his reservation in this behalf,

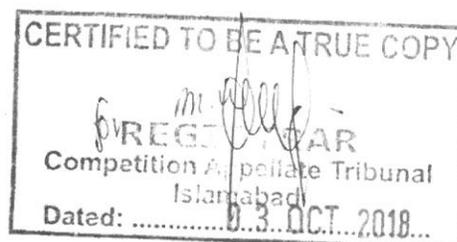


requesting that the appeals may be dismissed and the impugned order passed by the Competition Commission of Pakistan may be endorsed completely.

10. We have gone through the appeals, filed by the appellants and heard the learned counsel for the appellants and respondents quite in detail. Section 10 (1) of the Competition Act, 2010 provides that;

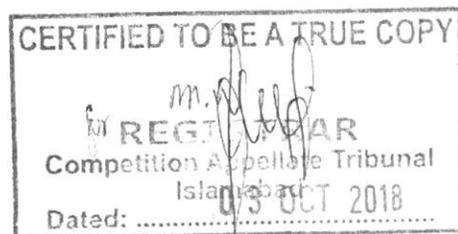
“no undertaking shall enter into deceptive marketing practices, which includes false or misleading comparison of goods in the process of advertising ; or fraudulent use of another’s Trade Mark, firm name or product labeling or packaging”.

The preamble of this Act also provides free competition in all spheres of commercial and economic activity to enhance economic efficiency and to protect consumers from anti-competitive behavior. The spirit of the Competition Act clearly indicates that the objective of the law is to ensure fair business practices. During the proceedings before this Tribunal, the appellants have expressed their willingness to act in accordance with the directions of the Commission. The appellants have once again made a commitment before this Tribunal that they will not only abide by Section 10 (1) of the Competition Act, 2010 but also follow the directions of the Competition Commission of Pakistan mentioned in the order impugned before this Tribunal. We understand that the objective of the Competition Law in this particular case is achieved and the complainant who is respondent No-2 before us is completely comfortable if the appellants abide by the provisions of Section 10 (1) of the Competition Act, 2010 and in case of failure to comply with, they would be liable to a penalty of Rs. 100,000/- (one hundred thousand) per day from the date of impugned order till actual compliance and initiation of criminal proceedings under section 5 of section 38 of the Act before a court of competent jurisdiction.



The appellants have also submitted that they are abiding by the aforesaid section of the Act and directions of the Commission. They have further admitted that in case, anyone of the appellants found guilty of not complying with the directions of the Commission and spirit of section 10 (1) of the Competition Act, 2010, shall be liable to a penalty of Rs. 100,000/- (one hundred thousand) per day from the date of impugned order till actual compliance.

11. From the above discussion, we have come to the conclusion that there is no evidence to the effect that the appellants have deliberately used the Trade mark "TAIZGAAM" to harm the business interest of Respondent No-02. It is evident from the record that the appellants were using this Trade mark since long even prior to registration of this Trade mark in the year 2015 in favour of Respondent No-02. After getting knowledge of registered Trade mark, all the appellants have undertaken not to use the aforesaid Trade mark anymore. The reformatory and regulatory object of avoiding deceptive marketing practices has already been achieved through undertaking given by appellants not to use the aforesaid Trademark. The quantum of award of penalty depends upon wrong and illegal gains achieved by appellants through use of aforesaid Trademark with corresponding loss in business to respondent No-02. These disputed and controversial question of facts require recording of pro and contra evidence but neither any issue has been framed in this connection nor Respondent No-02 has supported the contents of his complaint through an affidavit or statement before the Commission. The complainant has neither recorded his statement on oath in support of his complaint in order to afford an opportunity to the appellants to cross examine him in respect of the complaint. Similarly, no notice to admit documents or certified copies available on record has been issued by learned Competition Commission of Pakistan to the appellants. In absence of any oral or other reliable documentary evidence on



record, the learned CCP was not justified to impose penalty on the appellants. The appeal is, therefore, partly allowed and order of Competition Commission of Pakistan regarding penalty is set-aside, while the remaining order of Competition Commission is maintained.

Announced in open court  
12.09.2018

~~Signature~~

Justice (R)  
Mian Fasih Ul Mulk,  
Chairperson

~~Signature~~  
Ahmed Owais Pirzada  
Member Technical

~~Signature~~

Justice (R) Miftah-Ud-Din  
Member Technical

CERTIFIED TO BE A TRUE COPY  
REGISTRAR  
Competition Appellate Tribunal  
Islamabad  
Dated: 10 OCT 2018

Application No.	454
Dated	25-09-18
Appellant	US
No. of pages	09
Copying Fee	600/-
Search Fee	/
Urgent Fee	
Cost Fee	600/-
Date of disposal of case	10 OCT 2018
Date of filing	03-10-18
Registrar	Miftah-Ud-Din