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IN THE COMPETITION APPELLATE TRIBUNAL

2nd Floor, Federal Courts Complex, G-11/1, Islamabad.

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No. 1240
Dated: 02-06-2017

From:-

The Registrar
Competition Appellate Tribunal,
Islamabad.

To:-

Raja Asir Munir,
Through Faraz Fazal Sheikh,
Suit # a, 2nd Floor,
Dubai Plaza 6th Road Chowk,
Murree Road, Rawalpindi

DHL Pakistan (PVT) LTD,
A Pakistan, through Muhammad Hanif Idrees,
having its registered Survey No.137,
Jinnah International Airport, Karachi.

Competition Commission of Pakistan,
Government of Pakistan, 7th Floor,
ISE Towers, 55-B Jinnah Avenue,
Islamabad.

Chairperson, Member,
Competition Commission of Pakistan,
Islamabad

SUBJECT:

APPEAL NO. 01/2013 JUDGMENT

Raja Asir Munir VS DHL Pakistan (Pvt.) Ltd and others

Take notice that under rule 51 of The Competition Appellate Tribunal Rules, 2015, attested copy of the Judgment dated 23-05-2017 is attached herewith for information and record.

2. Given under my hand and stamp of the Tribunal, this
2nd day of June, 2017.



M. W. Faraz
REGISTRAR
REGISTRAR
Competition Appellate Tribunal
Government of Pakistan
Islamabad

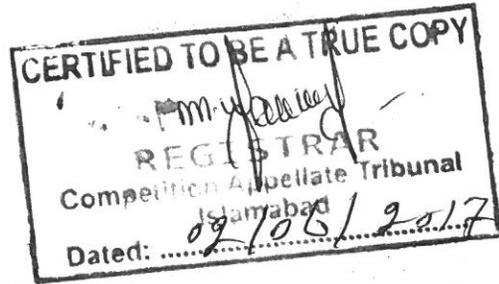
**BEFORE THE HONORABLE APPELLATE TRIBUNAL,
COMPETITION COMMISSION OF PAKISTAN, ISLAMABAD**

RAJA ASIR MUNIR

VS

APPLICANT

1. M/S DHL Pakistan (Pvt) Ltd
2. Competition Commissioner of Pakistan,
Islamabad
3. Chairperson, Member,
Competition Commission of Pakistan
Islamabad



The applicant respectfully submits the following: -

RESPONDENT

M/s "IDHS international courier" proprietor Mr. Raja Asir Munir (the appellant), this business is working since 2011 in the twin city of Rawalpindi and Islamabad. The brief facts leading to this appeal are as under: -

THE BRIEF FACTS:

1. That the appellant is a salaried person up to December 2011 got an office in the locality of Chandni Chowk, Rawalpindi in December 2011, renovated the office in 3 months and started his business in March 2012 with the name and style "DHS Cargo services", soon after it came to know to him that "DHS cargo services" is the name of another business in the same field, the appellant changed his name with "IDHS international courier". Which shows that the appellant is a law knowing and law abiding citizen.
2. Meanwhile a notice received with respect of use of trademark "DHL", its font, color, style, etc. the appellant replied the notice promptly, and attended the hearing before the Commission.
3. Later, an order has been passed by the competition Commission of Pakistan (the Commission) against the appellant vide # 66/REG/COMP/DHL/CCL/2011 dated 21st Dec 2012, being aggrieved by the order of the Commission, the appellant file this appeal before this honorable forum to meet the ends of justice, on the following grounds: -

**BEFORE THE
COMPETITION APPELLATE TRIBUNAL, ISLAMABAD**

1. **RAJA ASIR MUNIR,
IDHS INTERNATIONAL COURIER & CARGO SERVICES,
RAWALPINDI**
 2. **NAUMAN ANWAR BUTT,
DHIL WORLD WIDE EXPRESS, 10-LG,
ROUND MARKET, Y-BLOCK, DHA, LAHORE.**
- APPELLANTS**

VERSUS

1. **M/S DHL PAKISTAN (PVT.) LIMITED,**
2. **COMPETITION COMMISSION OF PAKISTAN**
3. **CHAIRPERSON, MEMBER,
COMPETITION COMMISSION OF PAKISTAN,
ISLAMABAD.**

...RESPONDENTS

Appeals Nos.01/2013 & 02/2013.

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

For the Appellants: Mr. Faraz Fazal Sheikh and Mr.
Haseeb Ali Quddusi Advocates.

For Respondent No-1: Mr. Amjad Hameed Ghouri,
Advocate.

For Respondent No-2&3: Mr. Bulent Sohail, Advocate.

Date of hearing: 13.04.2016, 08.06.2016, 28.09.2016,
26.10.2016, 23.11.2016, 21.12.2016,
11.01.2017, 01.02.2017, 08.03.2017,
11.04.2017, 19.04.2017, 09.05.2017

JUDGMENT

Mr. Ahmed Owais Pirzada, Member Technical.

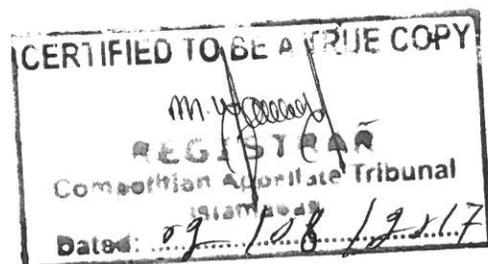
This order shall dispose of the appeals, filed by Raja Asir Munir, IDHS International Courier and Cargo Services, Rawalpindi and Nauman Anwer Butt, DHIL World Wide Express



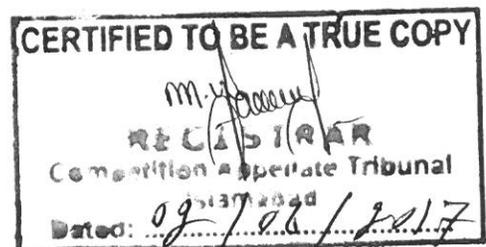
under section 42 of the Competition Act, 2010 against the consolidated order dated 21st December, 2012, passed by the Competition Commission of Pakistan.

2. Briefly the background of the appeals is that the Competition Commission of Pakistan received a complaint from respondent No-1, alleging fraudulent use of its stylized and artistically created logo trademark by the appellants without any permission or authorization or consent of the respondent, which being false, deceptive / misleading and also capable of harming its business, was in violation to the provision of section 10 of the Act. The Commission conducted an inquiry u/s 37 (2) of the Act, concluding that both the appellants used the logo, which were identical in colour and style of the complainant's trademark on the bill board, hording and sign board for advertisement, which prima facie gave an impression that the appellants were authorized dealers of the complainant, which was not correct impression. Hence such use of mark which was identical to the respondent's trademark, prima facie was misleading the consumer and was also capable of harming the business interest of the respondent in violation of section 10 of the Act. The report recommended that the conduct of the appellants warranted initiation of proceedings against them under section 30 of the Act.

3. Based on the prima facie findings of the inquiry report, show cause notices were issued to the appellants on 22nd February, 2012, pursuant to which appellants and all other parties were afforded an opportunity of a detailed hearing. Finally the Competition Commission of Pakistan concluded that the manner in which marks under question were printed and advertised look deceptively similar to that of respondent's trademark. Consequently the appellants were penalized vide order dated 21st December, 2012 which had been impugned in the instant appeals.



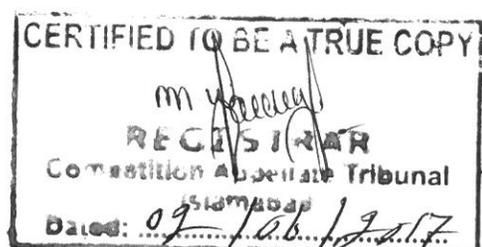
4. In their appeals the appellants stated that the impugned order dated 21st December, 2012, passed by Competition Commission of Pakistan was illegal, against the law and facts of the case on record and passed arbitrarily. It was stated that neither font, colour did have any resemblance with the respondent's trademark nor style has any similarity with the styled trademark of the respondent. It was further stated that the impugned order was without jurisdiction and not sustainable in the eyes of law. The appellants stated in their appeals that the inquiry report and even the order passed had failed to bear out any misleading information being passed by the appellants or any impression which was basically different from actual one, in clear term there was no deception in using the word IDHS international couriers. The appellants stated in their appeals that from the plain language of section 10 (b) of the Competition Act, it was apparent that the lawmakers divided the allegation into distribution of false or misleading information and distribution of information lacking a reasonable basis related to character, method or place of production, properties, suitability for use or quality of goods while in the instant case there was no distribution of any false or misleading information and no such information was passed on to the customers regarding the DHL World Wide Express, which affected the price, character, method or place of production, properties, suitability for use or concern the qualities of goods. The appellants took the position that the complaint was not properly instituted, signed and verified by the competent and authorized person. PLD 1971 Supreme Court page 550 was referred in this behalf. Further, the complaint, which was filed with wrong name of the appellant's company, was not having affidavit with it before the Competition Commission of Pakistan. It was stated that the appellants were neither using the trademark nor distributing false or misleading information regarding the fact that the appellants were authorized / permitted by the respondent. It was further stated



that very important questions of law and facts were involved in the matter which could not be adjudicated upon without recording the evidence of both the parties.

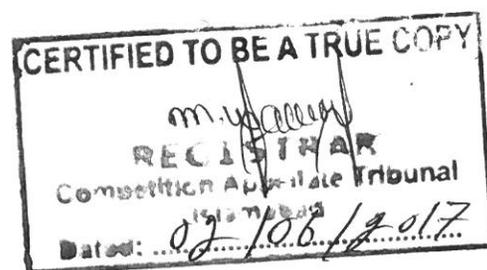
5. Learned counsel for IDHS while reiterating the position taken in the appeal stated that "IDHS international couriers" was a trademark having trademark No-333053 and applied copy right registration with the department concerned. The trademark authority and the copy right authority under the relevant legislation have power upon the case where DHL World Wide Express registered its trademark and copyrights, therefore, the order in the given circumstances was without jurisdiction. Learned counsel further stated that the appellant never accepted, received, dispatched or delivered the goods with the name of respondent. Further, the appellant never presented himself as agent, distributor or employee of the respondent. The learned counsel stated that the appellant neither developed a web page, letter head, visiting cards, pamphlets, brushers, leaflets, booklets, e-mail ID by the name of respondent nor found in any correspondence or communications with the name of respondent with any third party. Thus the inquiry report, show cause notice and the subsequent order was without any basis lacking material evidence and liable to be set aside in the interest of justice.

6. Learned counsel for DHIL World Wide Express filed an application for permission to file amended appeal, stating that after impleading the Competition Commission of Pakistan as a party, appeal needed some amendment to present the case of appellant before this Tribunal. During the proceedings on 23.05.2017 learned counsel was allowed to put before this Tribunal any further argument he desired to put in the appeal. Learned counsel was further informed that by impleading Competition Commission of Pakistan as a party in the matter, the appeal stood automatically amended to that extent. The



learned counsel for appellant expressing satisfaction in this regard explained the position taken in the appeal further stating that the Resolution of the Board of Directors appended with the complaint permitting the institution of the complaint through the said authorized person was illegal, unlawful having no legality in the eyes of law. The Board Resolution was not signed and names and designations of DHL Board of Directors were neither obtained nor filed with the complaint even not filing power of attorney in the matter. The learned counsel after getting permission to give some new grounds in addition to what was given in the appeal argued that the office referred in the inquiry was vacated by the appellant much earlier than the inquiry ordered in this behalf. He referred an agreement which according to him was signed by the owner of the said office with some other party. However, learned counsel failed to satisfy this Tribunal that why such kind of evidence couldn't be produced before the Competition Commission of Pakistan. On a question, the learned counsel could not satisfy the Tribunal that why the mark-DHIL was used by the appellant which had resemblance with the mark DHL of the respondent. Learned counsel took the plea that he was involved in this business with the consent of the respondent No-1 and was duly authorized to collect Parcels, envelopes on behalf of DHL as his agent, however, he couldn't produce any evidence in this regard which could strengthen the aforesaid position.

7. Conversely, learned counsel for respondent No 1, M/s DHL Pvt Ltd, while appearing before this Tribunal stated that the actual position regarding the issue involved in the matter was discussed in Paras-43 and 44 of the impugned order, which was passed after getting a detailed inquiry and hearing the appellants in detail. He reiterated the aforesaid position and stated that trademark Law had its own sphere and its own implementation whereas Competition Law inter-alia was



mandated to inhabit deceptive marketing practices also for the sake of free competition. He argued that it had become evident from the contents of inquiry report, pictures of the spot and comparison of the marks used by the appellants having deceptive similarity with the respondent's mark that the appellants were involved in deceptive marketing practices. Learned counsel stated that while passing the impugned order, a detail hearing was also held by the Commission in which every opportunity was afforded to all the respondents including the appellants to clear their positions. Learned counsel argued that the detailed reasoning to establish the element of deception regarding the activities of the appellants were discussed in the impugned order which being in accordance with provisions of Competition Law cannot be distinguished or defended by misinterpreting it through any different meanings. The element of deceptive marketing practice was established from the concrete evidence, admitted and available on record in form of pictures and mark which cannot be assessed on the whims and wills of the appellants. It was stated by the learned counsel that all relevant questions in the given facts of the case to decide the element of deceptive marketing practices, on touchstone of relevant law were addressed explicitly in the impugned order where after there was hardly any need of deciding the matter on the basis of questions formulated in grounds of appeal. It was prayed that the instant appeal might graciously be dismissed.

8. Learned counsel for respondent No-2, Competition Commission of Pakistan while endorsing the arguments, advanced by learned counsel for respondent No-1 stated that the facts available on record as well as findings of learned Competition Commission of Pakistan clearly showed that the appellant had used its alleged DHS or IDHS logo in a manner almost identical to that of DHL logo as well as the identical

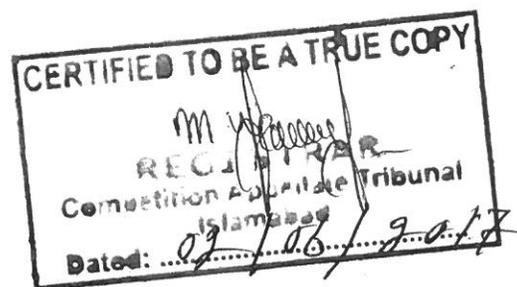


failed to come up with the logical reasoning or justification for adoption of its impugned mark "DHS" either / or allegedly IDHS, whereas DHL were incorporated by three friends, Adren Dalsey, Larry Hillblom and Robert Lynn, having DHL as an essential part of the company name and also used as trademark. Learned counsel further denied that the order of the Commission was bad in the eyes of law and the same could be contrary to the facts, baseless, unjustified and without jurisdiction or to be quashed straightaway under the law. Learned counsel stated that the appellants failed to explain as to why and how the order of the learned Competition Commission was bad in the eyes of law and how it was allegedly contrary to the facts, baseless, unjustified and without jurisdiction and why the same could be quashed under the law. Such statements without any cogent arguments and corroborative case law remained inconsequential to the titled appeal. Learned counsel argued that the appellant unauthorizedly continued to use the respondent's/DHL stylized or artistically created logo without any reasonable justification. Learned counsel denied that from the plain language of section 10(b), it was apparent that the lawmakers divided the allegations into, distribution of false or misleading information and distribution of information lacking a reasonable basis related to character, method or place of production, properties, suitability for use or quality of goods. It was further denied that in the instant case there wasn't any information passed on to the customers regarding "DHL" which affect the price, character, method or place of production, properties, suitability for use or concern the qualities of goods. The learned counsel stated that the inquiry report and the subsequent order was also not silent on the subject of any material evidence which verified that the appellants were using the name of respondent No-1 which distrusted his market.

CERTIFIED TO BE A TRUE COPY
M. Y. Ghani
REGISTRAR
Competition Appellate Tribunal
Islamabad
Dated: 02/06/2017

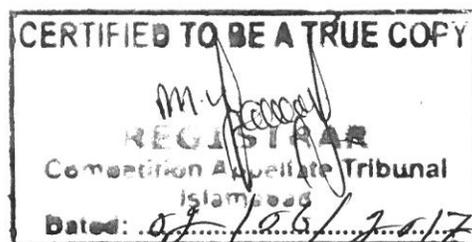
9. The appeals filed in this regard have been perused and learned counsels for the appellants have been heard. The learned counsels for the respondents have also been heard and the Para-wise comments submitted in this behalf have been gone through. The impugned order of the Competition Commission of Pakistan has been perused as well. After completing the aforesaid exercise we are of the view that the following issues are to be examined for orders.

- (i) Whether the complaint was competently filed through a duly authorized person?
- (ii) Whether the Respondents have acted in contravention of the provision of subsection (1) of Section 10 of the Act:
 - (a) are disseminating false/misleading information to the consumers lacking reasonable basis regarding inter alia in terms of clause (b) of subsection (2) of Section 10 of the Act.
 - (b) are fraudulently using the trademark of the Complainant in violation of clause (d) of subsection (2) of Section 10 and
 - (c) such practice is capable of harming the business interest of the Complainant in violation of clause (a) of subsection (2) of Section 10 of the Act?
- (iii) Whether the order of the Competition Commission is bad in the eyes of law and without jurisdiction.



10. The issue that whether the complaint has competently been filed through a duly authorized person has thoroughly been examined by the Competition Commission of Pakistan, however since this issue has been raised again by the appellants, therefore, we have also looked into it. The perusal of record reveals that Mr. Nouman Anwer Butt has raised the issue that the complaint has not been filed by a competent person. He has argued that the Board Resolution does not contain the name and designation of Board of Director. He placed reliance on PLD 1971 Supreme Court 550. However, it has been noted that the complaint has been filed by the Company Secretary namely Mr. Muhammad Haneef Idrees, which is not only bearing the signatures but also bears the seal of the respondent's undertaking. A certified true copy of Board Resolution No-12/2011 by circulation passed on 17th August 2011 has also been annexed with the complaint. In the said Board Resolution along with Company Secretary, Mr. Sarfaraz Sadiqui, Chief Executive Officer of the company has also been authorized on behalf of company in the matter to take all necessary measures, required in this regard before the Competition Commission of Pakistan and all courts, arbitrators, Tribunal, Forum or Administrative Authority in relation to the said matter. The power of attorney of the counsel has also been duly signed by Mr. Muhammad Haneef Idrees, Company Secretary of the complainant who is duly authorized in this regard. On the other hand, Mr. Nouman Anwer Butt has failed to provide anything to the contrary in support of his contention. In these circumstances we do not find any justification to interfere in the aforesaid issues, already settled by the Competition Commission of Pakistan.

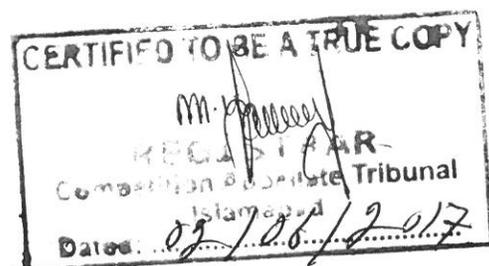
11. As regards the contravention of the provision of the section 10 of the Act, one needs to be conscious that the



interpretation of fraudulent use of trademark has to be in the context of deceptive marketing and would thus have a broader scope.

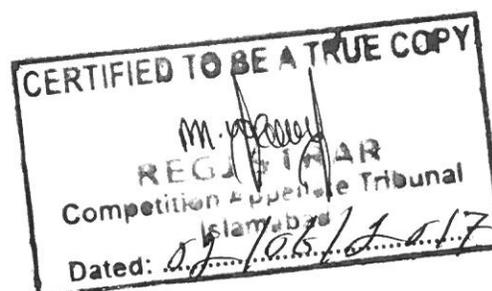
Keeping in view, the nature of contravention, it is not the subjective intent but the objective manifestation of that intent that will establish the fraudulent use. The appellants are although doing the business in their own name i.e IDHS & DHIL yet using a logo which is deceptively similar to the complainant's trademark for which no plausible justification has been placed forward. During the proceedings before this Tribunal, the learned counsels for DHIL and IDHS have been asked to explain the logical reasoning and justification for adoption of marks, IDHS and DHIL, however, both of them could not give any justification which could be considered convincing to have mark almost identical to DHL. On the other hand, a company was incorporated by three friends, Adrian Dalsey, Larry Hillblom and Robert Lynn having DHL as an essential part of company name and also used as trademark. The appellants who are an undertakings within the meaning of Competition Act 2010 have opened outlets and carrying on their business clearly and openly using the DHL logo. Such use is unauthorized and constitutes act of deceptive marketing practices within the meaning of section 10 of the Competition Act, 2010. The Appellants have used their alleged IDHS and DHIL logos in a manner almost identical to that of DHL logo as well as identical colour schemes, design and getup. On comparison, these marks bear such resemblance which is likely to cause confusion and deception. In these circumstances, in our considered view the appellants marks are misleading, deceptive and capable of being taken as a mark of the respondent by an ordinary consumer.

12. Coming to the third issue the appellants have stated that the trademark authority and the copyright



authority are competent to take cognizance with reference to the misuse of the trademark of the respondent. It may, however, be observed that since the appellants have used its DHIL or IDHS logos in a manner almost identical to that of DHL logo as well as used identical color scheme, design and data, therefore, such use is unauthorized and constitutes an act of deceptive marketing practices within the meaning of section 10 of Competition Act, 2010. The Commission thus has necessary jurisdiction in the matter to take cognizance of such violation of the law to pass necessary orders. The impugned order has, therefore, been passed validly and competently by Competition Commission of Pakistan. Further, the appellants have claimed that the impugned order is contrary to the facts, baseless, unjustified and without jurisdiction. However, the appellants could not explain as to why and how the order of the Competition Commission is bad in the eyes of law. It is, therefore, observed that on the basis of such statements without having any cogent reasoning, the contentions of the appellants can't be accepted.

13. In the circumstances, after analyzing the relevant facts and material available on record, we have come to the conclusion that finding recorded by Competition Commission of Pakistan are based on proper appraisal of relevant provisions of Competition Law as well as other material brought on record. The same are, therefore, maintained.



The appeals of the appellants, therefore, being devoid of merits are dismissed, leaving the parties to bear their own costs.

Announced in open court
23.05.2017


Justice (R)
Mian Fasih-Ul-Mulk,
Chairperson

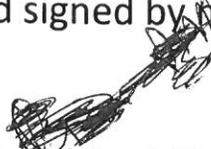

Justice (R) Miftah-Ud-Din
Member Technical


Ahmed Owais Pirzada
Member Technical

CERTIFICATE:

This judgment consists of (12) twelve pages, each dictated, read over, corrected and signed by me.

Application No.	279
Dated	02-06-2017
Applicant	Chairperson cell
No. of Pages	13
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Search Fee	
Urgent Fee	
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Date of Preparation of Copy	02-06-17
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Prepared	M. Noman Gul


Ahmed Owais Pirzada
Member Technical

