

IN THE COMPETITION APPELLATE TRIBUNAL2ND Floor, Federal Courts Complex, G-11/1, Islamabademail: registrartribunal@gmail.com

Tel No: 051-9320208, Fax No: 051-9320203

No. 1438 /Reg./CAT/2024Dated: 11-07-2024**Anchor City Gawadar (SMC) Pvt Ltd**

Vs.

Competition Commission of Pakistan**NOTICE****Appeal No.94/2022**

Take notice that under rule 51 of the Competition Appellate Tribunal Rules, 2015, attested copies of the Judgment dated **11-07-2024** is enclosed for information and record.

2. Given under my hand and stamp of the Tribunal, this 11th day of July, 2024.

S.W.

(SAEED AFZAL)

Registrar

REGISTRARCompetition Appellate Tribunal
Government of Pakistan
Islamabad

Anchor City Gawadar (SMC) Pvt Ltd,
having address, Office # C-69,
Block # 13 D-1, Gulshan Iqbal, **Karachi.**

The Eastern Law Firm,
State Life Building No.07, Ground Floor,
Jinnah Avenue F-6, **Islamabad.** **0332-4195260**



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

M/S Meher Gul Rizwan,
Trading as M/S Meher Developers & Construction (pvt) ltd,
House No. 44, Street No. 1, Block E, Naval Anchorage, **Islamabad.**

M/S Meher Developers & Construction (pvt) ltd,
House No. 44, Street No. 1, Block E, Naval Anchorage, **Islamabad.**

Chairman Secretariat
Diary No. 718... EX.t.
Date Received 12-7-24
Date Forwarded 12-7-24

Amended Appeal
BEFORE THE COMPETITION APPELLATE TRIBUNAL OF PAKISTAN, ISLAMABAD

Appeal No. _____/2020

1. M/s Mir Hassan Builders & Developers (Pvt) Limited through Mir Hassan it's Chief Executive Officer, Office No-2, 3d Floor, Batool Arcade, Adjacent MCB Bank, Gulshan-e-Iqbal, 13-B, Main University Road, Karachi,
2. Anchor City Gwadar (SMC-Private) Limited through Mir Hassan it's Chief Executive Officer, Office No.2, 3rd Floor, Batool Arcade, Adjacent MCB Bank, Gulshan-e-Iqbal, 13-B, Main University Road, Karachi.

Appellants

Vs.

1. Competition Commission of Pakistan, through its Registrar, 7th Floor, ISE Tower, 15-B, Jinnah Avenue, Islamabad.
2. M/s Meher Gul Rizwan Trading as M/s Meher Developers & Constructions (Pvt.) Ltd, Office No: 1C, 9D, 9E, Muhammadi Plaza, D-Chowk, Islamabad.
3. M/s Meher Developers & Constructions (Pvt.) Ltd, Office No: 1C, 9D, 9E, Muhammadi Plaza, D-Chowk Islamabad.

Respondents

APPEAL UNDER SECTION 42 OF COMPETITION ACT 2010 AGAINST ORDER DATED 22.11.2019 RECEIVED ON 26-11-2019 PASSED BY THE COMPETITION COMMISSION OF PAKISTAN/RESPONDEDNT NO. 1.

Respectfully Sheweth:-

That the above titled amended appeal is being filed in compliance of orders dated 06-07-2022 & 13-07-2022 of this honorable forum where of the CMA to amend the appeal as specified in the application was accepted by this honorable forum.

The concise facts giving rise to the present appeal are:-

1. That the names and addresses of the parties as given in the caption of the titled appeal are correct and complete for the purpose of service of the notices, etc, as may be issued by this Hon'ble Court from time to time.
2. That the instant ammended appeal is being filed through Mir Hassan CEO/ authorized representative of M/s Mir Hassan Builders & Developers (Pvt) Limited & Anchor City Gwadar (SMC- Private) Limited, which will be hereinafter called as "Appellants", who is well conversant with the fact of the case and is authorized to file the appeal on behalf of the appellant.
3. That the Appellant applied for the registration of company in the name and style of (SMC PRIVATE) limited and after due process of SECP (Availability

CERTIFIED TO BE A TRUE COPY
REGISTRAR
Competition Appellate Tribunal
Islamabad
Dated: 11-07-2024

**BEFORE THE COMPETITION APPELLATE TRIBUNAL,
ISLAMABAD**

**Anchor City Gwadar (SMC-Private) Limited
.... APPELLANT**

VERSUS

**COMPETITION COMMISSION OF PAKISTAN & another
.... RESPONDENTS**

Appeal No: 94/2020

Present: Justice Mazhar Alam Khan Miankhel, Chairperson.
Muhammad Asghar Ch., Member Technical
Raja Saad Sultan, Member Technical

For the Appellant: Syed Pervaiz Zahoor, Hafiz Munawar Iqbal, Sardar
Abdul Wahab, Sajjad Javed,

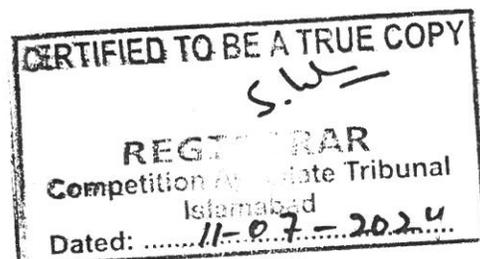
For Respondents: Mr. Hassan Ahsan Mian & Haider Imtiaz, Law
Officer, Rizwan Wilayat.

Dates of hearing: 06.04.2022, 07.06.2022, 22.06.2022,
30.06.2022, 06.07.2022, 13.07.2022, 14.07.2022,
25.10.2022, 20.12.2022, 01.03.2023, 10.05.2023,
06.06.2023, 24.01.2024 & 13.03.2024.

JUDGMENT

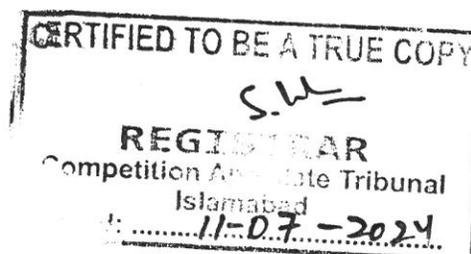
Raja Saad Sultan, Member Technical.

1. Through the instant appeal **under Section 42 of Competition Act, 2010**, the appellant, Anchor City Gwadar (SMC-Private) Limited, impugns the order dated 22-11-2019, passed by the learned Competition Commission of Pakistan (“**Commission**”) for the contravention of Section 10 of the Act, whereby a penalty of Rs. 50 million was imposed on the appellant. The appellants were also directed to publish clarification in two English and two Urdu newspapers stating, that their project is not related to the Complainant, and to submit compliance report before the commission.
2. Brief facts of the case are that the complaint against the appellant was filed by Mr. Mehar Gul Rizwan (Anchor Town) (“**Complainant**”). The Complainant alleged that the appellant has started real estate business with the name of Anchor City Gwadar, which is similar to the complainants registered trademark “Anchor” and are therefore involved in deceptive marketing practices in contravention of **Section 10 of the Act**.
3. An enquiry was initiated under **Section 37(2) of the Act**, to investigate the matter, which concluded that, “*the Respondent, by fraudulently using the registered trademark, has enjoyed the goodwill and*



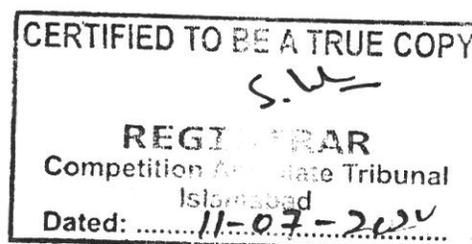
reputation associated with it. Therefore, the Respondent has, prima facie entered into deceptive marketing practices in terms of **Section 10 (1) of the Act in general and Section 10 (2) (a) (b) in particular**".

4. In view of the enquiry report, proceedings were initiated against the appellant under **Section 30 of the Act** for the alleged violation of **Section 10 of the Competition Act, 2010** and a show cause notice dated 09-07-2019 was issued to the appellant.
5. The learned Counsel for the appellant submitted that the Complainant is neither an undertaking nor consumer, therefore the Commission had no jurisdiction to proceed with the complaint. He submits that the appellant was registered with SECP on 09-11-2017 and also applied for the registration of their trade mark in **clause 36 of the fourth Schedule of the Trade Mark Rules 2004** vide application No: 447836 before the Intellectual Property Organization. He further submits that **clause 36** relates to insurance, financial affairs, monetary affairs and real estate affairs. Whereas, the complainant's trade mark was registered in **clause 37 of the fourth Schedule of the Trade Mark Rules, 2004**, which relates to building construction, repair and installation services. He contends that the complainant's registration in clause 37 does not include real estate. He argues that the complainant later on tried to improve their case and registered a new company with SECP in the name of MGR Anchor town and also applied for its trade mark registration in clause 36. He argued that the complaint was filed during the pendency of Civil Suit (2165/2017) filed before the Sindh High Court, which is still pending. He lastly submits that the impugned order was passed ex -parte, which is against the rule of Audi alteram partem. He placed reliance on PLD 1999 SC 1126. Learned Counsel for the appellant, therefore prayed for the appeal to be allowed.
6. Learned Counsel for the Commission, inter alia, argued that a show cause notice was issued to the appellant for hearing in the matter on 25-07-2019. He submits that on the date of hearing an authority letter was filed by the appellant in favour of Mr. Hassan Ali S/O Syed Zill-e-Hasnain to represent the appellant. However, no one appeared on the next date of hearing and the matter was proceeded ex-parte on the basis of available record. He further argued that since the complainant's trade mark was registered under the Trademarks Ordinance 2001, therefore the Commission was competent to protect the fraudulent use of trademark



under Section 10 (2) (d) of the Competition Act. He placed reliance on the Judgment of Honorable Supreme Court in **Civil Appeal No. 2117/2017 titled as Society of Accounting Education Vs. CFA etc.** Learned Counsel therefore prayed that the instant appeal may be dismissed.

7. Arguments advanced by the learned Counsel for the parties have been heard and the documents placed on record perused.
8. Perusal of the enquiry report indicates that the Appellant were asked to provide the relevant information vide letter dated 27-06-2018 and a reminder was also sent on 18-07-2018. The reply was submitted by the appellant vide letter dated 02-08-2018.
9. The learned Competition Commission of Pakistan based on the findings of Enquiry Committee initiated the proceedings under **Section 30 of the Act**, and issued a show cause notice dated 09-07-2019 to the Appellant, to which no reply was filed by the Appellant.
10. The issues framed by the Commission for their consideration were as follows;
 - i. *“Whether the Commission can proceed in the matter where proceedings under Trade Marks Ordinance,2001 are pending before any tribunal or Court of law?”*
 - ii. *“Whether Respondent has resorted to the deceptive marketing practices in violation of Section 10 of the Act? Which would include a sequential determination of the following:*
 - (a) *Whether Anchor Town and the symbol device of Anchor is the registered trademark of the complainant;*
 - (b) *Whether the trade mark of the appellant is being used by the Respondent for marketing and promotion of its real estate development business.*
 - (c) *If yes, whether the use of the Anchor name and symbol of device of anchor by the Respondent constitutes a deceptive marketing practice in terms of Section 10 of the Act.”*
11. The pertinent issue relates to the jurisdiction the of the Commission. The **Competition Act,2010** is the only special law, which provides for free competition in all spheres of commercial and economic activity to enhance economic efficiency and to protect consumers from anti-competitive behavior. The proceedings under Section 10(2) (d) of the Competition Act are distinct and provides the Commission with the jurisdiction over matters involving trade mark deception. The Commission has relied on the judgment of Honorable Supreme Court in **Civil Appeal No. 2117/2017 titled as Society of Accounting Education Vs. CFA etc.** However, this judgment is distinguishable from the facts of the instant appeal. In the

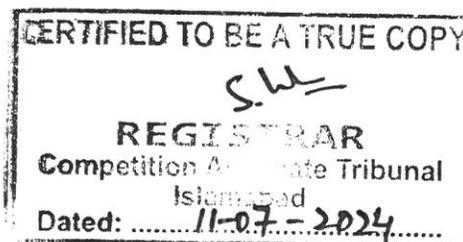


matter at hand, an important fact, which needs consideration is that, the complainant's trade mark was not validly registered and a litigation under the Trade Marks Ordinance, 2001 was pending adjudication before the Sindh High Court. The Commission lacks the authority under the Act to determine the ownership of trade mark. The Commission has only mandate, where there is a fraudulent use of another's trademark as enshrined in **Section 10 (2) (d) of the Act**. However, where there is a dispute as to the proprietorship of a trade mark, which is pending adjudication, it is difficult for the Commission to decide, who is actually using another's trade mark fraudulently. Therefore, the Commission had no jurisdiction in the instant matter to proceed with the complaint.

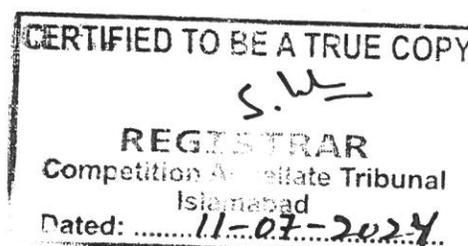
12. Perusal of record indicates that a show cause notice was issued to the appellant. The reply to show cause notice was not filed, however an authority letter was filed before the commission in favour of Mr. Hassan Ali S/O Syed Zill-e-Hasnain to represent the appellant. Impugned order indicates that the representative of the appellant had appeared before the Commission on hearing dated 25-07-2019 and informed the Commission that a Civil Suit under the Trade Marks Ordinance, 2001 is pending adjudication before the Honorable Sindh High Court. In view of this, the appellants contention that they were not afforded an opportunity of hearing and the matter was proceeded ex-parte does not hold any merit. Reliance is placed on case reported as **(2019 CLC 1141)**.

13. It is evident from the record that after show cause notice an opportunity of hearing was also afforded to the appellant. Therefore, we are of the view that an opportunity of fair trial and due process, in terms of **Article 10-A of the Constitution of Islamic Republic of Pakistan, 1973** has been given to the appellant.

14. Record indicates that the appellant was registered with the **Securities and Exchange Commission of Pakistan (SECP)** with the name of Anchor City Gwadar on, 09-11-2017 and applied for its trade mark registration with the trade mark "Anchor City Gwadar" in **clause 36 of the Fourth Schedule of the Trade Marks Rules, 2004** vide application dated 06-11-2017. The appellants trade mark was accepted on 29-02-2024 for the publication in Trade Marks Journal for inviting oppositions if any.



15. Although the appellant had applied for the trade mark name under the relevant clause in the year 2017, however the fact remains that their trade mark was not registered at the time the complaint was filed.
16. Previously the complainant's trade mark "Anchor Town" was registered in **clause 37** of the **Fourth Schedule of the Trade Marks Rules, 2004** in the name of Meher Developers & Construction PVT. LTD. However, the complainant registered a new company with SECP with the name of MGR Anchor Town (Private) Limited in the year 2021, and also applied for its trade mark registration in **clause 36**, with the trade mark "Anchor Town" which was accepted on 03-11-2022 for its publication in Trade Marks journal for inviting any oppositions.
17. The Trade Mark Rules, 2004 prescribed the procedure for the registration of a trade mark. **Rule 11 of the Trade Marks Rules, 2004** provides,
11. "Classification of goods and services: For the purposes of the registration of a trade mark and of these rules, goods and services shall be classified in the manner specified in the Fourth Schedule, which sets out the current version of the classes of the International Classification of goods and services".
18. A bare reading of Clauses of the **Fourth Schedule of the Trade Marks Rules, 2004** provides that,
- Clause 36. Insurance, financial affairs, monetary affairs, real estate affairs.*
- Clause 37. building construction, repair, installation services.*
19. In view of the above, its clear that at the time of filing of complaint before the Commission the complainant's trade mark was registered in **Clause 37 of the Fourth Schedule of the Trade Marks Rules, 2004**, which does not cover real estate affairs. **Rule 13 of the Trade Marks Rules, 2004** provides that,
13. "Application to be confined to one class: Every application for the registration of a trade mark shall be in respect of goods or services included in one class only of the Fourth Schedule".
- Rule 14 Staes:** "An application for the registration of the same trade mark in different classes shall be treated as separate and distinct applications, and in all cases where a trade mark is registered under the same official number for goods or services in more than one class, whether on conversion of the specification under rule 71 or otherwise, the registration in respect of goods or services included in each separate class shall be deemed to be a separate registration for all the purposes of the Ordinance".



20. Therefore, it is evident from the record that at the time of complaint, the complainant's trade mark was not registered under clause 36 of the Fourth Schedule of the Trade Marks Rules, 2004. **Section 39(5) of the Trade Marks Ordinance, 2001** "provides that no infringement proceedings shall be conducted before the date on which the trade mark is in fact registered". (2006 YLR 1407).
21. The appellant had applied for the trade mark name under the relevant clause in the year 2017, however the fact remains that their trade mark was also not registered at the time of complaint. In these circumstances, we are of the view that the appellant did not engage in deceptive marketing practice, as there was no infringement of a registered trademark.
22. In view of the available record and a bare reading of the **Trade Marks Ordinance, 2001, read with Trade Marks Rules, 2004**, when the complaint was filed, the complainant was not the proprietor of a registered trademark, validly registered in the relevant clause of the Fourth Schedule of the Trade Marks Rules, 2004. Therefore, since the trade mark was not registered in the relevant clause, the issue of fraudulent use of another's trademark does not arise. Both the complainant and the appellant were on equal footing at the time of the complaint before the Commission.
23. We are of the considered view, that the Commission's order suffers from legal infirmity. Therefore, the instant appeal is allowed.

-sd-

Chairperson

-sd-

Member Technical-I

-sd-

Member Technical-II

Announced in open court

11.07.2024

Approved For Reporting

-sd-

Member Technical-II

