

**IN THE COMPETITION APPELLATE TRIBUNAL**

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No. 1137 /Reg./CAT/2024  
Dated: 29-05-2024

**M/S OPTIONS INTERNATIONAL (SMC Pvt) Ltd**

**Vs.**

**Competition Commission of Pakistan etc**

**NOTICE**

**Appeal No.45/2023**

Take notice that under rule 51 of the Competition Appellate Tribunal Rules, 2015, attested copies of the Judgment dated **29-05-2024** is enclosed for information and record.

2. Given under my hand and stamp of the Tribunal, this 29<sup>th</sup> day of May, 2024.



*S.W.*  
**(SAEED AFZAL)**  
**Registrar**

**REGISTRAR**  
Competition Appellate Tribunal  
Government of Pakistan  
Islamabad

**M/S Options International (SMC Pvt) Ltd,**  
Through its Chief Executive officer,  
House No. 614, Shaheen Block, Sector B, Bahira Town,  
**Lahore.**

**Vellani & Vellani,**  
Hamid Nawaz Advocate  
148, 18<sup>th</sup> East Street, Phase-I, Defence Officer Authority,  
**Karachi.**

**Abdul Ghafoor Shiekh**  
Advocate High Court  
Legal Master & Co, 2<sup>nd</sup> Floor Salam Chambers,  
Patiala Ground, Link Hall Road, **Lahore.**

✓ **Competition Commission of Pakistan**  
ISE Tower, 7<sup>th</sup> Floor, 55-B, Jinnah Avenue,  
**Islamabad.**

Chairman Secretariat  
Office No... 337... Ext...  
Date Received... 31-5-24...  
Date Forwarded... 31-5-24...

BEFORE THE COMPETITION APPELLATE TRIBUNAL, ISLAMABAD

Appeal No. \_\_\_\_\_/2019

M/S Options International (SMC-Pvt.) Limited) Through Its Chief Executive Officer, Garden Heights Plaza, Plot No.8, Aibak Block, New Garden Town, New Mughal-E-Azam Banquet Hall, Lahore.

APPELLANT

VERSUS

1. The Competition Commission of Pakistan, through Its Registrar, 7<sup>th</sup> Floor WISE Tower, Jinnah Avenue, Islamabad.
2. M/S Starbucks Corporation, USA (doing business as Starbucks coffee company) 2401 Utah Avenue, South Seattle, Washington 98134, USA.

RESPONDENTS

APPEAL UNDER SECTION 42 OF THE COMPETITION ACT.2010 READ WITH ALL OTHER ENABLING PROVISIONS OF LAW AGAINST THE ORDER DATED 19-12-2018 PASSED BY THE LEARNED COMPETITION COMMISSION OF PAKISTAN.

Respectfully Sheweth:-

I. JURISDICTION OF THE COMPETITION APPELLATE TRIBUNAL.

The appellant above named submits that the order dated 19-12-2018 ("Impugned order") against which this appeal is being preferred and filed, was passed by the respondent No.1/Competition Commission of Pakistan, whereby heavy penalty/fine of Rs: 5 Million was imposed upon the appellant. Therefore, the appellant is assailing the impugned order dated 19-

CERTIFIED TO BE A TRUE COPY  
S. W.  
REGISTRAR  
Competition Appellate Tribunal  
Islamabad  
Dated: 20/12/2019

IN THE COMPETITION APPELLATE TRIBUNAL,  
ISLAMABAD

Appeal No. 45 of 2023

M/s Options International (SMC Pvt.) Limited

.....Appellant

Versus

The Competition Commission of Pakistan and another

.....Respondents

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

**For the Appellants :** Mr. Abdul Ghafoor Sheikh

**For Respondent No.1:** Mr. Hassan Ahsan Mian, Law Officer for  
CCP

**For Respondent No.2:** Sana Sheikh Fikree, advocate

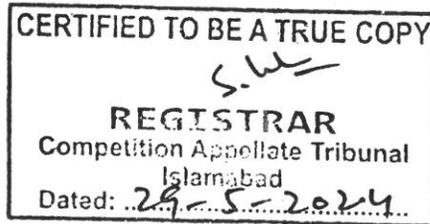
**Date of hearing:** 05.03.2024

**JUDGMENT**

**Justice Mazhar Alam Khan Miankhel, Chairperson**

The appellant M/s Options International (SMC-Pvt Limited) through its chief executive (**Appellant**) has impugned the order dated 19.12.2018 of the Competition commission of Pakistan (**The Commission**) through instant appeal.

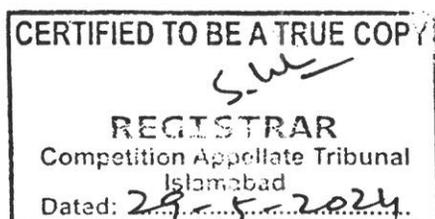
2. The Proceedings before the Commission were initiated on the complaint dated 31.08.2017 filed by one Sana Sheikh Fikree, authorized representative of Starbucks Corporation (**The complainant**) respondent No.2. The Commission after considering the complaint, referred the same to the Enquiry Committee under sub Section 2 of Section 37 of the Competition Act, 2010 (**the Act**). The Enquiry Committee after submitting its exhaustive report based on sufficient material opined that the contravention of the provisions



of the Act by the appellant has been established. The Commission after going through the report, issued show cause notice to the appellant by referring to all such contraventions of the provisions of the Act. The same was accordingly replied by the appellant. The Commission then initiated the proceedings against the appellant under Section 30 of the Act. The appellant during the proceedings was unable to deny the evidence and the material so brought on the record by the Enquiry Committee for which he submitted an undertaking before the Commission by committing that he would not use the logo / trademark of **the Starbucks Marks** in future and will remove all such materials containing the name and logo of Starbucks. The Commission on conclusion of its proceedings found the involvement of appellant in contravention of the provisions of the Act and thereby penalized him for Rs.5,000,000/- (Rupees Five Million Only) and in case of non-compliance, the appellant was made liable to pay an additional penalty amounting to PKR. 100,000/- (Rupees one hundred thousand) per day and directed him to submit a compliance report in the light of directions given in the impugned order.

3. The appellant feeling himself aggrieved has filed instant appeal.

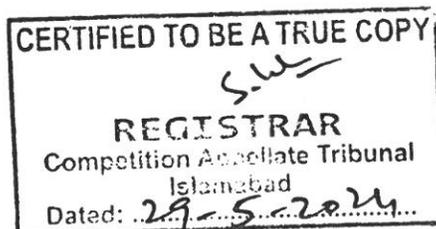
4. The learned counsel for the appellant at the very outset submitted that the impugned order of the respondent No-1 is wrong, against the law, facts and based on no evidence. He further argued that the **Starbucks Marks** has no business of its own in Pakistan, so the **Starbucks Marks** had no Locus Standi to file the complaint nor the Commission had the jurisdiction to entertain such like complaint. The next argument of the learned counsel for the appellant was that the Commission has based its decision solely on the Enquiry report which amounts to denial of fair trial to the appellant and is against the Fundamental rights guaranteed under the Constitution of Islamic Republic of Pakistan. He further argued that the complainant was unable to produce any piece of evidence reflecting his loss of business and deception. He further argued that



the penalty so imposed by the Commission does not correspond with the alleged contravention and is on a very higher pedestal which requires reduction.

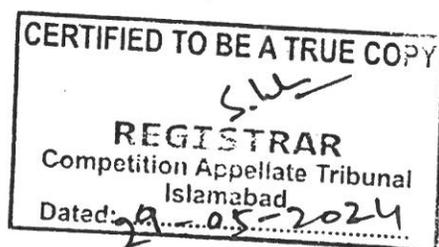
5. The learned law officer assisted by the learned counsel for the respondent No.2 supported the impugned order by submitting that during the proceedings, the material evidence, no doubt, was the enquiry report but the same is full of un-deniable evidence and the same has even not been rebutted. Further submitted that the appellant has given an under taking and made a commitment, before the Commission. In presence of such a commitment the appellant is estopped to question the proceeding and even the filing of appeal except on the question of quantum of penalty. The learned Law officer while rebutting the argument of learned counsel for the appellant submitted that it is established on the record that the appellant has contravened the provisions of the Section 10 of the Act and was rightly penalized by the Commission after giving him a proper chance of defense which clarifies that there is no question of denial of fair trial. He lastly argued that the quantum of penalty corresponds to the gravity of contravention and as such the penalty so imposed calls for no intervention and asked for dismissal of appeal.

6. We have heard the learned counsel for the parties and have gone through the available record. The record of the case reveals that the appellant has been penalized for contravention of Section 10 of the Act on the basis of a complaint filed by respondent No.2 M/s Starbucks Corporation USA "Starbucks" for unlawful and un-authorized use of its logo/trade mark. The learned counsel for the appellant though tried to make out a case that he is not using the trade mark of the **Starbucks Marks** and had also submitted that if the **Starbucks Marks** had any objection, he was ready to remove the same. Before proceeding further, we would like to mention that it is an admitted fact that the logo/trademark of the **Starbucks Marks** has validly been registered in Pakistan but on the other side the Starbucks has no business of its own in Pakistan. There is no



denial of the fact that the products with the name and style of the **Starbucks Marks** were being used in Pakistan by the appellant at its different outlets. The record of the case makes it clear that though appellant is a registered limited company with the Security Exchange Commission of Pakistan and also a taxpayer but the different advertisements and face book pages of the appellant, pictures of which are available on the file would make it clear that besides its own name, Options International / Options Coffee Shop, the name of the **Starbucks Marks** has boldly been used on its website and in the advertisements. The record reflects that the **Starbucks Marks** on the signboards of its coffee house and restaurant including on the packaging material, menus, flyers and other promotional material were used. This can only be done when there is proper authorization but we were unable to see any such permission and authorization by the **Starbucks Marks** on the record. The argument of the learned counsel for respondents also gets support from the record that the appellant has admitted the un-lawful and un-authorized use of the name of the **Starbucks Marks** and by realizing its fault, had also filed an undertaking dated 11.09.2018 before the **Commission** that he would not use the name and registered trade mark of the **Starbucks Marks** in future. The contents of said undertaking are available in the reply statement filed by respondent No.2, the **Starbucks Marks**. A look at the said undertaking before the **Commission** would make it further clear that the appellant in contravention of the provision of Section 10 of the Act has unlawfully, unauthorizedly used the name and trademark of the Starbucks for which he was not authorized to do so and this very act alone of the appellant is sufficient to hold that the appellant has contravened the provision of Section 10 the Act and has rightly been penalized for his wrongdoings.

7. The learned counsel for the appellant also tried to make out a case that since the **Starbucks Marks** has no commercial existence in Pakistan, has no locus standi to file the complaint and



the Commission has no jurisdiction to entertain the complaint. The argument so advanced, on the face of it has got no force at all. No doubt that the **Starbucks Marks** has no business set up of its own in Pakistan but its trademark and the logo has been registered with the Registrar Trade Marks under the Trade Mark Ordinance, 2001. This registration has given the proprietary rights to the **Starbucks Marks** for the use of said Trade Mark. No one else can use, in any capacity, the said Trade Mark unless permitted by the **Starbucks Marks**. The Competition Act, 2010 has not imposed any such embargo on an undertaking having no commercial activity in Pakistan, to approach the Commission for safeguarding its rights. The very definition of the word 'undertaking' is so wide that any one irrespective of the fact whether or not such entity is incorporated in or has any commercial activity and presence in Pakistan has every right to protect its business or unlawful use of its name, logo or trade mark by the persons having no lawful authority for such use under the Act. As such unlawful use falls within the contravention of section 10 of the Act besides an action under the Trade Mark Ordinance, 2001. (The Ordinance, 2001). The Section 86 of the Ordinance, 2001 further protects and clarifies the situation. For a ready reference the Section 86 of the Ordinance, 2001 is reproduced herein below:-

**"86. Protection of well-known trade mark. — (1)** Reference in this Ordinance to a trade mark which is entitled to protection as well-known trade mark shall be to a mark which is so entitled under the Paris Convention and which is well-known in Pakistan as being the mark of a person who—

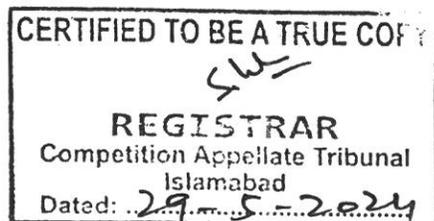
(a) is a national of a Convention country; or

(b) is domiciled in, or has a real and effective industrial or commercial establishment in; a Convention country,

whether or not that person carries on business, or has any goodwill, in Pakistan and references to the proprietor of such a mark shall be construed accordingly.

(2) For the, purposes of this Ordinance, the Tribunal while determining whether a trade mark is well-known, without having to require registration or actual use in the form of sales of goods or services under the trade mark in

— Sol —



*Pakistan, shall consider the following factors as relevant criteria for establishing the well known status of the trade mark, namely:---*

- (i) the amount of Pakistan or worldwide recognition of the trade mark;*
- (ii) the degree of inherent or acquired distinctiveness of the trade mark;*
- (iii) the Pakistan or worldwide duration of the use and advertising of the trade mark;*
- (iv) the Pakistan or worldwide commercial value attributed to the trade mark;*
- (v) the Pakistan or worldwide geographical scope of the use and advertising of the trade mark;*
- (vi) the Pakistan or worldwide quality and image that the trade mark has acquired; and*
- (vii) the Pakistan or worldwide exclusivity of use and registration attained by the trade mark and the presence or absence of identical or deceptively similar third party trade marks validly registered or used in relation to identical or similar goods and services.*

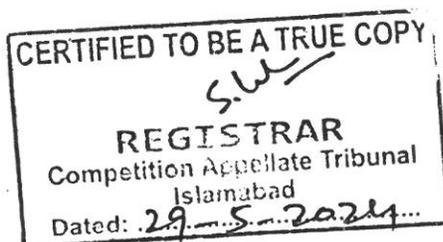
*(3) The owner of a trade mark which is entitled to protection under the Paris Convention as a well-known trade mark shall be entitled to restrain by injunction the use in Pakistan of a trade mark which, or the essential part of which, is identical or deceptively similar to the well known trade mark \_\_\_*

*(a) in relation to identical or similar goods or services, where the use is likely to cause confusion; or*

*(b) where such use causes dilution of the distinctive quality of the well known trade mark.*

*(4) Rights conferred under sub-section (3) shall be subject to the provisions of section 81 and nothing in the said sub-section shall affect the continuation of any bona fide use of a trade mark begun before the commencement of this Ordinance."*

A look at the above provision of law would reflect that a complete answer to the argument of learned counsel for the appellant is given in detail in this provision of law. Similarly, the provisions of sub-Section (1) of Section (10) of the Competition Act which prohibits all



the undertakings from entering into deceptive marketing practices without making any distinction between a foreign company not registered or operating in Pakistan. In such like situation any undertaking, whether based in Pakistan or not for the purposes of Section 10 of the Act and regulation 16 and 17 of the 2007 Regulations can file a complaint to protect its legal rights beside an action under the Ordinance of 2001 or any other law. For ready reference, the definition of undertaking provided in Section 2(1)(q) and Section 10 of the Act are reproduced herein below:-

### Section 2. Definitions

Section 2(1)(q) "**Undertaking**" means any natural or legal person, governmental body including a regulatory authority, body corporate, partnership, association, trust or other entity in any way engaged, directly or indirectly, in the production, supply, distribution of goods or provision or control of services and shall include an association or undertakings; and

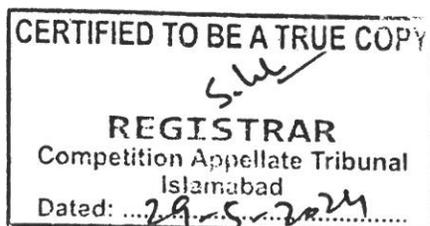
### Section 10

**Deceptive marketing practices.** (1) No undertaking shall enter into deceptive marketing practices.

(2) The deceptive marketing practices shall be deemed to have been resorted to or continued of any Undertaking resorts to—

- (a) The distribution of false or misleading information that is capable of harming the business interests of another undertaking;
- (b) The distribution of false or misleading information to consumers, including the distribution of information lacking a reasonable basis, related to the price, character, method or place of production, properties, suitability for use, or quality of goods;
- (c) False or misleading comparison of goods in the process of advertising; or
- (d) Fraudulent use of another's trade mark, firm name, or product labeling or packaging

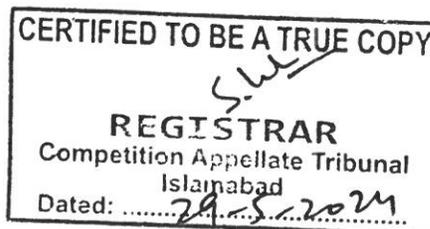
A look at the above provisions of law makes it very much clear that no such restrictions appear in the law to place an embargo on any



undertaking, having no business in Pakistan, to seek protection of its interest being violated in Pakistan. The Laws of Pakistan provide different options and it is for the undertaking to select the one of its choice. Similarly, the Commission has the jurisdiction to entertain such complaints.

8. As far as argument of the learned counsel for the appellant regarding the denial of a fair trial, on the face of it appears to be baseless. As many a times it has been held by the Commission as well as the Tribunal in many of their orders/judgments that the legal value of the inquiry report is nothing more than a fact finding exercise by the Commission. The material so collected during the inquiry can well be used against a person but before using such material he is put on show cause notice by the Commission which has to be replied under the relevant provision of law and the rules, and then during the proceedings the aggrieved person has got every right to rebut the evidence/material so brought on the record by the inquiry committee. Mere inquiry report legally cannot be the basis of imposing any penalty or taking any action against any person or undertaking. As per the law, the inquiry committee is only constituted to inquire about the truthfulness or otherwise of the complaint. So, the question of non-provision of a fair trial to the appellant, in the circumstances does not arise.

9. Since the contraventions of the law by the appellant on the record have been established, rather the appellant during the proceedings before the Commission had made certain commitments but during the proceedings he also failed to comply with his own commitments and this very fact has also been noted by the Commission in the impugned order in Para 12. When this being the situation we have no hesitation in our mind to hold that the appellant has miserably failed to establish his case. Even the directions issued by the Commission for compliance have also not been fulfilled by the appellant. The Commission by taking a lenient view had imposed a penalty of Rs. 5,000,000/- (Rupees Five Million) on 19.12.2018 but the record reflects that the same has also not been



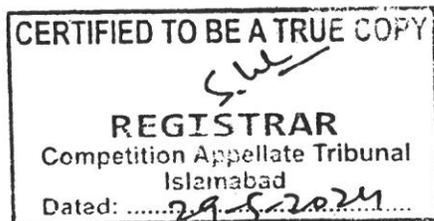
paid by the appellant. Since, it was also noted by the Commission that the appellant was still using some of the images on social media till 15.08.2018 (as noted in para 42 of the order). We in the circumstances enhance the penalty to Rs. 6,000,000 (Rupees Six Million) instead of Rupees 5,000,000/- (Rupees Five Million) under the Rule 25 of the Competition Appellate Tribunal Rules, 2015.

As far as imposition of further penalty under sub-Section 3 of Section 38 of the Act is concerned, we think that it is on a very higher pedestal and no valid reasons and justification has been given by the Commission for imposing such a huge penalty. We are also mindful of the fact that the appellant had filed his appeal within the period of limitation, but the Tribunal at that time was non-functional from 15.02.2019 to 02.12.2021. No doubt the appellant, if had been serious towards his appeal, there were many ways to get the impugned order suspended, but we can observe from the record that the appellant remained relax and the reason for being so relaxed appears to be that no process for the recovery as provided in Section 40 of **the Act** was ever initiated by the **Commission** during this period. We can call this aspect of the case as a contributory negligence of both the parties. Once again this Tribunal remained non-functional from 17.07.2023 to 03.12.2023 and the total period of this non-functionality of the Tribunal (as per calculation of the office) comes to 03 Years, 01 Month and 29 Days, so imposition of this further penalty for this period would also not be justifiable. The functionality period of the Tribunal after the issuance of impugned order of the Commission dated 19.12.2018, comes to 02 years 02 Months and 05 days. We are again sorry to observe that no proceedings under Section 40 of **the Act** were initiated by **the Commission** against the appellant and we are unable to understand the reasons for the same.

For what has been discussed above, we also cannot spare such a delinquent person but to us the further penalty, in the circumstances of the case, should must be based on some rationale.

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We in view of the above would like to impose a further penalty under



sub-section (3) Supra to the tune of Rs.5000/- per day by considering 03.12.2021 to be the date of first such non-compliance for the above noted period and this penalty would continue to be imposed till the payment of the same with **the Commission**.

10. In view of the above discussion this appeal stands dismissed with the above noted modification with no orders as to costs.

— Sd —

Chairperson

— Sd —

Member Technical-I

— Sd —

Member Technical-II

**Announced in open court**  
**29.05.2024**

Approved for reporting

— Sd —

Chairperson

