

11



**BEFORE THE HONOURABLE COMPETITION APPELATE TRIBUNAL,
ISLAMABAD.**

Appeal No. 05 /2017

Society of Accounting Education (SOAE), having registered Office at E-146/2, Street No.6, Yasrab Colony, Walton Road, Lahore, through its Secretary.

Appellant

Versus

1. CFA Institute,

A non-stock corporation organized and existing under the laws of the Commonwealth of Virginia, United States of America, 560 Ray C. Hunt Drive, Charlottesville, Virginia 22903, USA through its authorized Signatory Mr. Muhammad Aslam son of Fatch Muhammad resident of house No20 Rahat Park, Samanabad, Lahore.

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

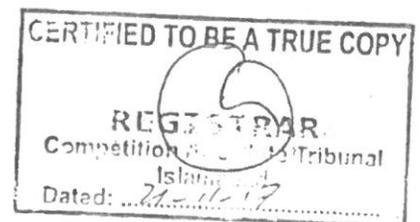
Respondents

**APPEAL UNDER SECTION 42 OF THE COMPETITION
COMMISSION OF PAKISTAN ACT, 2010, AGAINST ORDER
DATED 14.12.2016 PASSED BY RESPONDENT NO.2.**

Respectfully Sheweth:

A. JURISDICTION AND LIMITATION:

1. That instant appeal is being preferred from order dated 14.12.2016 passed by learned respondent No.2 upon complaint filed by respondent No.1. Copy of the impugned order is attached hereto as Annexure-A.
2. That subject appeal falls within jurisdiction of this Hon'able Tribunal.



12

**BEFORE THE
COMPETITION APPELLATE TRIBUNAL, ISLAMABAD**

SOCIETY OF ACCOUNTING EDUCATION

.... APPELLANT

VERSUS

- 1) CFA INSTITUTE
- 2) COMPETITION COMMISSION OF PAKISTAN

...RESPONDENTS

Appeal No. 05/2017

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

For the Appellant: Qazi Imran Zahid, Advocate

For the Respondent No-1: Mr. Hassan Irfan Khan, along-with
Mudassar Hassan Advocate

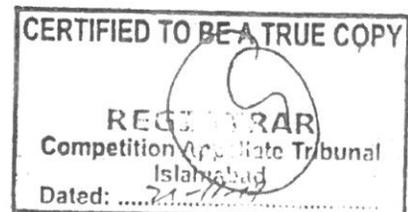
For the Respondent No-2: Barrister Saeed Ur Rehman.

Date of hearing: 14.03.2017, 16.05.2017, 13.09.2017,
27.09.2017, 24.10.2017.

JUDGMENT

 Justice (R) Miftah-Ud-Din, Member Technical.

The appellant Society of Accounting Education has filed this appeal against order dated 14-12-2016 passed by learned Competition Commission of Pakistan, whereby penalty for four violations under section 10 of the Competition Act to pay penalty of Rs.0.5 Million, for each violation, total amounting to Rs.2 Million has been awarded.

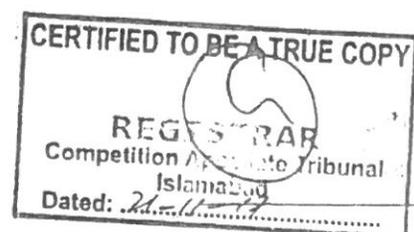


1. The brief facts of the case are that respondent No.1 CFA is an Institute which is a non-stock corporation organized under the laws of Virginia, United States of America, is engaged in imparting education and training to students and professionals in the field of investment and financial analysis duly registered under the Societies Registration Act, 1860 of Pakistan.

2. Respondent No.1 has filed a complaint with learned CCP, founded on the allegation that the appellant is using the respondent's No.1 Trade Mark 'CFA' to deceive public and to promote its business. It further alleged that the Respondent had resorted to the dissemination of false or misleading information, which is capable of harming the business interest of the Complainant. Moreover, it alleged that the Respondent had been distributing false or misleading information by unauthorized use of imitated marks as CFA, ACFA, FCFA, DCFA as if the Respondent was authorized / permitted by the Complainant to use the mark 'CFA' by the Complainant as such.

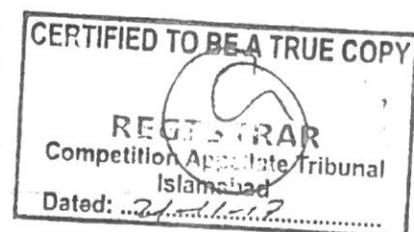
3. The complaint of respondent No.1 was inquired into by learned Competition Commission of Pakistan under section 37 (2) of the Competition Act and on the basis of enquiry report, show-cause notice was issued to appellant. After giving opportunity to give reply to show cause notice and to produce evidence on the issues framed, the learned CCP heard the arguments of learned counsel for the parties and vide Judgment and order dated 14th December 2016, awarded penalty to appellant, total amounting to Rs.2 Million i.e 0.5 Million for each violation under section 10 Competition Act, hence, the appellant has preferred this appeal.

4. Learned counsel for the appellant contended that the respondent No.1 has already instituted a suit before learned Additional Sessions Judge on the same subject matter, therefore,



respondent No.1 has got no right to lodge complaint against appellant on the same subject matter, which is hit by the provisions of Section 10 CPC. He further submitted that after getting knowledge of registered Trade Mark of respondent No.1, the appellant has stopped the using of aforesaid mark and has adopted totally different and indistinguishable mark, therefore, the learned CCP was not justified to award punishment to the appellant. He further contended that after getting knowledge of respondent's Trademark, the appellant immediately changed its Trademark, therefore, the learned CCP should have taken lenient view in the matter while awarding punishment to the appellant. He further submitted that there is no satisfactory and convincing evidence available on record to justify conviction of appellant under section 10 of Competition Act, therefore, the appeal of the appellant may be accepted and order of imposition of penalty by Competition Commission of Pakistan may be set-aside.

5. Learned counsel for respondent No.1 contended that the subject matter before the learned Additional Sessions Judge is regarding use of Trade Mark which is totally different from the present subject matter which exclusively falls within the jurisdiction of learned CCP, therefore, the provisions of section 10 CPC are not applicable in the present case. He further submitted that learned CCP after proper appreciation of relevant material facts on record has passed impugned order which is perfectly in accordance with law and based on correct appreciation of evidence available on record, therefore, the appeal of the appellant is liable to be dismissed. He further contended that inspite of direction issued by learned CCP and decree of permanent injunction passed by learned Intellectual Property Tribunal, Lahore in favour of respondent No-1 against the appellant, the appellant is reluctant to

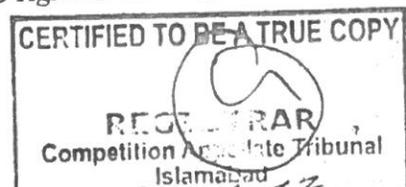


change the imitated Trade mark, hence not entitle to any leniency in award of punishment in the present case.

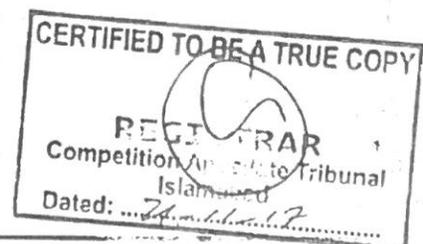
6. Learned counsel for Competition Commission of Pakistan has also endorsed the arguments advanced by learned counsel for respondent NO.1 and defended the judgment of learned CCP. He submitted that the allegations of using the Trade Mark of respondent NO.1, as well as giving false and misleading information and fraudulent and deceptive use of respondent No.1 Trade Mark is fully established on the record, therefore, learned CCP has rightly awarded punishment to the appellant.

7. After hearing the learned counsel for the parties and perusal of material available on record we have come to the conclusion that the suit of permanent injunction instituted by respondent No.1 before Intellectual Property Tribunal at Lahore, restraining appellant to use register Trade Mark of respondent No.1 is totally different and distinct relief available to respondent No.1 under Intellectual Property Act. The complaint of respondent No.1 before CCP is regarding deceptive marketing practices of unauthorized and fraudulent use of respondent No.1 registered Trade Mark to deceive and mislead ordinary consumers to harm business interest of respondent No.1, exclusively falls within the jurisdiction of CCP under section 10 of Competition Act. Both remedies availed by respondent No.1 are under different and separate statutory provisions and not at all on the same subject matter, therefore, contention of learned counsel of appellant regarding applicability of section 10 CPC to the present proceedings is totally without any substance.

8. Taking up appeal of the appellant on merits, this fact is proved through worth reliance evidence available on the record that respondent No.1 has exclusive right to use registered Trade Mark



CFA denoting Chartered Financial Analyst. Similarly, the fact that appellant has used the mark FCFA, DCFA, ACFA and CFAC are not only proved on record but also admitted by appellant. The words F, D, A and AC used above respectively stand for fellow, diploma, associate and accounts. These words used by appellant with respondent No.1 registered Trade Mark CFA connotes the idea that these courses are offered by respondent No.1. Thus, the ordinary students of finance and accounting are likely to take false and misleading impression that appellant is affiliated with or expressly been authorized by respondent No.1 to carry out its programs in Pakistan. These acts of appellants apart from giving false and misleading information to consumers, also has the ability to harm the business interest^{of} respondent No.1. For the purpose of deceptive marketing practices, actual deception need not be shown to carry the burden of proof. It is sufficient to establish that the advertisement has the tendency to deceive and capacity to mislead, if it can be demonstrated that imitated Trade Mark used by appellant is intended to deceive the customers to gain an advantage. Resultantly we hold that the learned CCP after proper appraisal of evidence and other material available on record has rightly awarded punishment to the appellant for three violations under section 10 (2) (a), (b) and (d) of Competition Act. The offence under section 10 (2) (c) regarding false or misleading comparison of goods in the process of advertising is not fully established on record. Moreover, the show-cause notice issued by CCP to appellant clearly indicates that the same pertain to offences under section 10 (2), (a), (b) and (d) of Competition Act. No show-cause notice was issued by learned CCP to appellant under section 10 (2) (c) of Competition Act, therefore, the learned CCP was not justified to award penalty to the appellant for fourth violation. The judgment



and order of learned CCP regarding fourth violation is therefore set-aside with the result that the amount of Rs.2 Million penalty awarded to appellant for four violations is reduced to Rs.1.5 Millions.

9. So far as the contention of learned counsel for appellant regarding treating appellant with leniency is concerned, in-spice of decree of permanent junction in favour of respondent No.1 against appellant issued by Intellectual Property Tribunal Lahore, as well as directions issued by CCP in the impugned judgment, the appellant is still adamant to use the imitated Trade Mark on the basis of which it earned monetary gains by enjoying the good will and reputation of respondent No.1 institute, which is admittedly an institute of international repute. Keeping in view, the prevailing conduct of appellant no reasonable ground exists for taking a lenient view in awarding penalty to the appellant.

10. Consequently, we maintain the penalty awarded to the appellant for three violations under section 10 of Competition Act and set-aside the penalty awarded to the appellant under the fourth violation under section 10 of Competition Act. With this modification, the remaining appeal of the appellant is without any merit and dismissed, leaving the parties to bear their own costs.

Announced in open court
24.10.2017

Justice Mian Fasih Ul Mulk,
Chairman

Amir Owais Pirzada
Member Technical

Application No.	357
Dated	17-11-17
Applicant	Q981 Pansan
No. of Pages	07
Copying Fee	124
Search Fee	/
Urgent Fee	/
Total Fee	1201
Date of Preparation of Copy	21-11-17
Filed 21-11-17	

CERTIFIED TO BE A TRUE COPY

REGISTRAR
Competition Appellate Tribunal
Islamabad

Dated: 21-11-17