



BEFORE THE
COMPETITION COMMISSION OF PAKISTAN

IN THE MATTER OF COMPLAINT FILED BY M/S DABUR INDIA LIMITED AND
M/S ASIAN CONSUMER CARE PAKISTAN (PVT.) LIMITED AGAINST

M/S F.S. COSMETICS

FOR DECEPTIVE MARKETING PRACTICES

(File No.421/DABUR/OFT/CCP/2022)

Date of Hearings: 23.07.2025 & 06.08.2025

Bench: Mr. Saeed Ahmad Nawaz
Member

Ms. Bushra Naz Malik
Member

Assisted by: Meher Jamy
Assistant Director

Mashal Saqib Zafar
Management Executive

Present on behalf of Complainants:

M/s Dabur India Limited
M/s Asian Consumer Care Pakistan
(Pvt.) Limited

Barrister Asfandyar Khan
Tareen

Present on behalf of Respondent:

M/s F.S. Cosmetics

Muhammad Khalil Haider
Advocate High Court

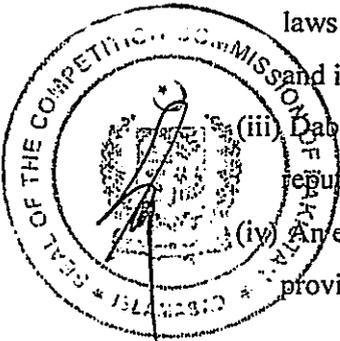


ORDER

1. This Order shall dispose of the proceedings initiated by the Competition Commission of Pakistan (the Commission) vide Show Cause Notice (SCN) No. 01/2025 dated 20.02.2025, issued to M/s F.S. Cosmetics under Section 30 of the Competition Act, 2010 (the Act) for *prima facie* violation of Section 10(1) read with Section 10(2)(a), (b) and (d) of the Act.

FACTUAL BACKGROUND

2. The brief facts of the case are that the Commission received a complaint from M/s Dabur India Limited (**Complainant No. 1**) and M/s Asian Consumer Care Pakistan (Pvt.) Limited (**Complainant No. 2**) on 03.02.2022 against M/s F.S. Cosmetics (**Respondent**). The Complainants alleged that the Respondent had resorted to deceptive marketing by fraudulently using the trademark, product labeling and packaging of their product, namely, Dabur Amla Hair Oil (hereinafter referred to either as **Dabur Amla Hair Oil**, the **Complainants product** or the **relevant product** as appropriate) in contravention of Section 10 of the Act. An enquiry was therefore initiated under Section 37(2) of the Act, and the Enquiry Committee observed that the conduct of the Respondent appears to be in violation of Section 10(1) read with Section 10(2)(a), (b) and (d) of the Act, leading to the initiation of the instant proceedings.
3. The Complainants asserted the following in their complaint:
 - (i) Complainant No. 1 is a public limited company incorporated under the relevant laws of India. It was founded in the year 1884 in Kolkata, India and has the largest herbal and natural product portfolio in the world. It has a range of products including Dabur Amla Hair Oil which is of concern in the present complaint;
 - (ii) Complainant No. 2 is a private limited company incorporated under the existing laws of Pakistan in the year 2006. It is a licensee of Complainant No. 1 in Pakistan and is authorized the permitted use of the relevant product in Pakistan;
 - (iii) Dabur Amla Hair Oil is a registered trademark in Pakistan and enjoys trans-border reputation, thus entitling Complainant No. 1 to its exclusive use in Pakistan;
 - (iv) An entity known as Layla Cosmetics, having its place of business in Lahore, is the provider of the product known as Layla Amla Hair Oil (hereinafter referred to either



as Layla Amla Hair Oil, the Respondent's product or disputed product as appropriate), which is an unregistered trademark in Pakistan. Layla Cosmetics is owned by the Respondent, and one Muhammad Siddique Arif is the sole proprietor of the Respondent;

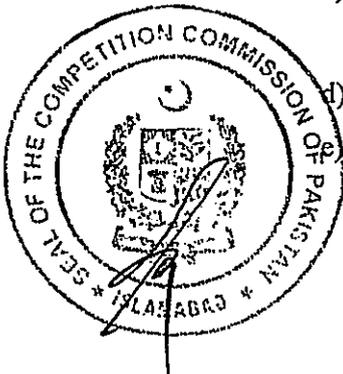
(v) In the marketing and sale of Layla Amla Hair Oil, the Respondent has copied the following features of Dabur Amla Hair Oil:

- a) The size and shape of both the bottles and their cartons, including bottle cap are exactly the same;
- b) The labeling and packaging are ditto;
- c) There is a close resemblance in the font style, color and layout on the label;
- d) The placement of text, product description, model's portrait image, fruit and the tagline on the bottom is identical; and
- e) The trademark is positioned and projected in a manner, causing confusion and difficulty to differentiate between the two products.

(vi) The cause of action arose when the Respondent engaged in the deceptive marketing practice of fraudulently using the trademark, product packaging and labeling of the relevant product. This fact came into the Complainants' notice in December 2021; and

(vii) In copying the features of Dabur Amla Hair Oil, the Respondent has contravened Section 10(1) read with Section 10(2)(d) of the Act, therefore, entitling the Complainants to the following relief:

- a) An order under Section 30(1) of the Act with the declaration that the Respondent has engaged in deceptive marketing practices and has fraudulently copied the trademark, trade dress, get-up, color scheme, packaging and labeling of Dabur Amla Hair Oil;
 - b) A permanent restraint on the Respondent - in the public interest - from using the existing packaging of Layla Amla Hair Oil as the same is capable of causing deception and confusion to the consumers of Dabur Amla Hair Oil;
 - c) A direction to the Respondent to recall Layla Amla Hair Oil from the market and destroy/replace its existing packaging;
 - d) Necessary and appropriate orders under Section 31(c) of the Act; and
- The imposition of the maximum penalty upon the Respondent under Section 38(2)(a) of the Act.



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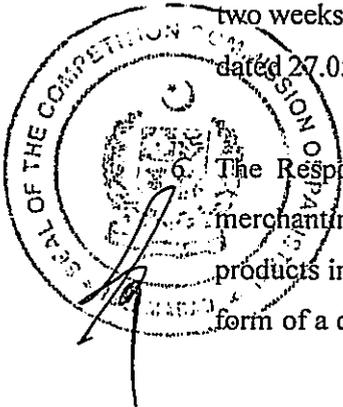
ENQUIRY PROCEEDINGS

4. The Office of Fair Trade examined the complaint and the Competent Authority ordered initiation of an enquiry into the matter on 29.03.2022 under Section 37(2) of the Act. The Enquiry Committee was directed to investigate the allegations leveled in the complaint and submit its Enquiry Report, with its findings and recommendations, on the following issues:

- (i) Whether the Respondent is violating Section 10(1) of the Act, in terms of Section 10(2)(d) of the Act, which prohibits fraudulent use of another's trademark, firm name, or product labeling or packaging?
- (ii) Whether the Respondent is disseminating false or misleading information to consumers, including the distribution of information lacking a reasonable basis, related to the character, properties, suitability for use, and quality of goods in *prima facie* violation of Section 10(1) in general and in particular, Section 10(2)(b) of the Act?
- (iii) Whether the conduct of the Respondent is capable of harming the business interest of the Complainant in, *prima facie*, violation of Section 10(2)(a) of the Act?
- (iv) Whether there is a spillover effect of the conduct of the Respondent?

5. The Respondent was asked to submit its comments on the complaint vide letter dated 29.03.2022, however, no response was received by the due date. Therefore, a reminder was issued on 18.04.2022 and a final reminder was dispatched on 27.04.2022. The CEO of the Respondent informed the Commission vide his letter of 11.05.2022 that the original letter issued by the Enquiry Committee on 29.03.2022 had not been received, hence, a copy of the complaint and a one month extension in the time period for submission of a reply should be granted. A copy of the complaint was dispatched on 11.05.2022 to the Respondent and it was allowed to submit its response by 25.05.2022. On 23.05.2022, a vakalatnama duly executed by the Respondent was submitted to the Commission and a further extension of two weeks was requested for the filing of comments. The request was granted through letter dated 27.05.2022. The comments of the Respondents were finally submitted on 04.06.2022.

6. The Respondent submitted that it was involved in the business of manufacturing and merchandising of high quality cosmetic products since 2010, and in order to introduce quality products in the market it had adopted the unique trademark and house mark 'Layla' in the form of a distinctive style and get-up. It also categorically denied all the allegations of the



Complainants and labeled the complaint as being baseless and without justification, having been filed with *mala fide* intentions and ulterior motives to blackmail and harass the Respondent. The Respondent asserted that the trademark 'Layla' and the color scheme, calligraphy and the overall trade dress of Layla Amla Hair Oil were completely different from the trademark 'Dabur' and the packaging, color scheme, design, get-up and overall trade dress of Dabur Amla Hair Oil.

7. The Enquiry Committee solicited the rejoinder of the Complainants on 08.06.2022 against the comments filed by the Respondent. The Complainants replied through email dated 27.06.2022 and requested that the contents of their complaint should be treated as a rejoinder to the subject comments.

ENQUIRY REPORT

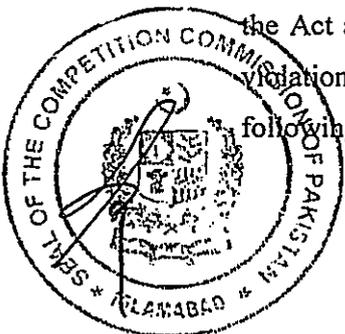
8. The Enquiry Committee examined the complaint, the reply of the Respondent, the materials available on record and finalized the Enquiry Report on 29.11.2022 with the following findings and recommendations:

"6.2 In view of the above, it has been concluded that the act of the Respondent appears to be in violation of Section 10 of the Competition Act 2010, in particular, Section 10(2)(d) which prohibits fraudulent use of another's trademark, firm name, or product labelling or packaging; Section 10(2)(b) which prohibits false or misleading information including information which lacks a reasonable basis related to properties, and place of production (origin) of the product; and its conduct also appears to be capable of harming the business interest of the Complainant in terms of Section 10(2)(a) of the Act.

6.3 It is, therefore, proposed that these, prima facie, violations under the Act, warrant initiation of proceedings against M/s F.S. Cosmetics, under Section 30 of the Act."

SHOW CAUSE NOTICE

9. Pursuant to the Enquiry Report, the Commission initiated proceedings under Section 30 of the Act against the Respondent and on 20.02.2025 issued an SCN to it for, *prima facie*, violations of Section 10(1) read with Section 10(2)(a), (b) and (d) of the Act in the following terms:



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“ ...6. *WHEREAS, in terms of the Enquiry Report in general and paragraphs 5.7 to 5.34 in particular, it has been concluded that the actions of the Respondent Undertaking appears to be in violation of Section 10(1) read with Section 10(2)(d) of the Act, which prohibits fraudulent use of another’s trademark, firm name or product labelling or packaging; and*

7. *WHEREAS, in terms of the Enquiry Report in general and paragraphs 5.36 to 5.42 in particular, it appears that the conduct of the Respondent Undertaking has resulted in violation of Section 10(1) read with Section 10(2)(b) of the Act, as the Respondent Undertaking is disseminating misleading information to the consumers lacking a reasonable basis, in the form of confusing Respondents Undertaking’s trade dress to that of the Complainant’s registered trademark, thereby misleading the consumers as to the properties and quality of the product; and*

8. *WHEREAS, in terms of the Enquiry Report in general and paragraphs 5.43 to 5.48 in particular, it has been established that the Respondent Undertaking’s practice of parasitic copying/copycat packaging/slavish imitation of Complainant’s trade dress, which appreciably harms the consumer’s ability to make an informed decision due to confusing similarities between the Complainants’ product and the Respondent Undertaking’s product, being inherently deceptive is in fact capable of harming the business interest of the Complainants in contravention of Section 10(2)(a) of the Act; and*

9. *WHEREAS, in terms of the Enquiry Report in general and paragraph 5.48 in particular, it appears that the product of the Respondent Undertaking is marketed and sold through various channels of sales including online sales through webpage <http://layla.com.pk/product-category/layla/> in Pakistan. Therefore, the impact of its marketing take place throughout Pakistan and cannot be termed being restricted to any specific territorial boundaries within Pakistan thus have a spillover effect throughout Pakistan;...”*

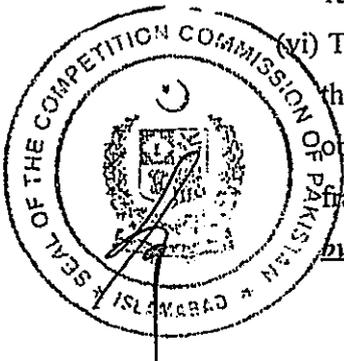
10. The Respondent was called upon to file its reply to the SCN and avail the opportunity of hearing before the Commission through its duly authorized representative. A copy of the Enquiry Report was enclosed with the SCN. The Respondent submitted its written reply to the SCN on 21.03.2025. The Respondent in its reply denied all the allegations of deceptive marketing levelled against it, which had attracted the instant enforcement action under Section 10(2)(a), (b) and (d) of the Act, and lodged certain objections against the Complainants, the complaint and the conduct of the Enquiry Committee.



SUBMISSIONS OF THE COMPLAINANT

11. The matter was heard on 23.07.2025 and Barrister Asfandyar Khan Tareen, the learned counsel for the Complainants, addressed the Bench. He primarily reiterated the submissions made in the complaint as summarized below:

- (i) Dabur Amla Hair Oil is the market leader in the relevant market of Amla Hair Oil with a 61% market share;
- (ii) According to the Complainants internal surveys, women are the principal buyers and users of Dabur Amla Hair Oil;
- (iii) The Respondent has engaged in free riding and parasitic copying by using the main presentational features of Dabur Amla Hair Oil i.e., its shape, packaging, color combination and graphic arrangement of the registered trademark. In this respect, learned counsel relied on *In the Matter of A. Rahim Foods (Private) Limited for Deceptive Marketing Practices* (2016 CLD 1128);
- (iv) The claim of deceptive packaging and passing-off will stand established if the Bench compares the trade dress, get-up, font, color theme and overall impression of the packaging of the relevant product and the disputed product. Reliance was placed on the cases of *Allenora Beauty Salon vs. Mrs. Ourat-ul-Ain Mansoor* (2016 CLD 1062), *Hamdard Laboratories vs. Muhammad Fahim* (2016 CLD 2144) and *In the Matter of Messrs Shainal Al-Syed Foods for Deceptive Marketing Practices* (2018 CLD 1115);
- (v) The visual observation of the pictorial presentation of the relevant product and the disputed product illustrates that an ordinary consumer would, at first instance, be deceived as to the origin of the two products at the time of exercising the choice of purchase. Counsel referred to the decisions rendered *In the Matter of Show Cause Notices to Mr. Nimko Corner M/s Karachi Nimco on Complaint filed by M/s Nimco Corner* (2020 CLD 277), *In the Matter of Neucon Pakistan Ltd* (2019 CLD 37) and *In the Matter of Complaint filed by Shajarpak (Pvt.) Limited* (2018 CLD 1380) to support his contention; and
- (vi) The subjective intent of the Respondent is irrelevant to the assessment of whether the Respondent has fraudulently used the Complainants trademark. Instead, the objective manifestation of the Respondent's intent will be looked at to establish fraudulent use. In this regard, counsel quoted from *In the Matter of Complaint filed by M/s DHL Pakistan (Pvt.) Ltd* (2013 CLD 1014) and *In the Matter of Show*



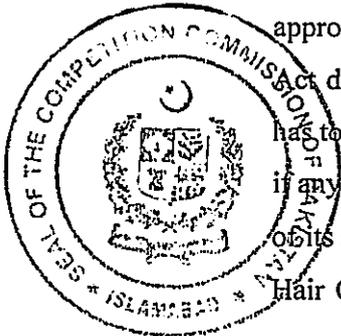
Cause Notice issued to Messrs Al Hafeez Oil Industries Messrs Muslim Corporation on Complaint filed by Messrs Nawaba Oil Industries (2021 CLD 1266).

12. In order to establish the Complainants asserted rights in the shape, packaging, color combination and graphic arrangement of the registered trademark, the Bench directed Barrister Tareen to address the following questions:

- (i) What precisely constitutes the trademark of Dabur Amla Hair Oil, distinct from its competitors?
- (ii) Owing to the differences in the cartons of Dabur Amla Hair Oil and Layla Amla Hair Oil, how will ordinary consumers be deceived about their specific identities?
- (iii) Whether the selective prosecution initiated by the Complainant against Layla, a minor competitor, is tantamount to creating entry barriers in the market of Amla Hair Oil?

13. Barrister Asfandyar Khan Tareen, learned counsel for the Complainants, submitted his question-wise response in written on 02.08.2025. His reply was as follows:

- (i) The entire trade dress on the carton and label of the bottle constitutes the trademark of Dabur. This trademark has remained the same in Pakistan over the years, with the carton and bottle staying dark green. Moreover, the trade dress of Dabur Amla Hair Oil is different from its competitors, with the packaging and plastic bottle being unique;
- (ii) Applying the legal test of confusing similarity and looking at the net impression, it can be safely concluded that Dabur Amla Hair Oil and Layla Amla Hair Oil are not different to the naked eye. Both bottles have a similar cap, neck and shape while the cartons have a similar font and the same layout; and
- (iii) The Complainants have not engaged in any sort of selective prosecution and have approached the Commission strictly in accordance with the law as Section 10 of the Act does not distinguish between a minor or major competitor. The Commission has to decide each case according to its own facts and circumstances and determine if any deceptive marketing practice has been adopted by an undertaking, regardless of its size. Furthermore, the Complainants did not pursue action against Bio Amla Hair Oil, the second biggest market player, as it entered the Pakistani market in

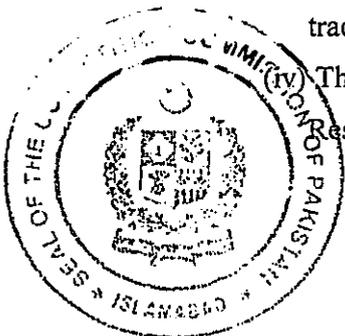


1982 (much before Dabur Amla Hair Oil) and gained its own brand loyalty. Additionally, Bio Amla Hair Oil is not a competitor because it caters to the lower end of the target group with a low quality perception and has had no association with top celebrities. Conversely, Dabur Amla Hair Oil has premium appeal as it provides quality that other competitors do not and has always been endorsed by the top celebrities in Pakistan.

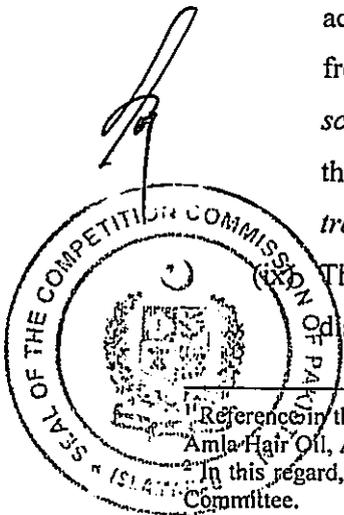
SUBMISSIONS OF THE RESPONDENT

14. Mr. Muhammad Khalil Haider, the learned counsel for the Respondent, presented his arguments before the Bench on 06.08.2025. In his submissions, he extensively relied on the points made in his written reply. The gist of his pleadings and arguments is as follows:

- (i) The Complainants have filed the instant complaint with *mala fide* intentions to harass and blackmail the Respondent and to stifle fair competition in the market. Consequently, the Respondent had been forced to stop the marketing and sale of Layla Amla Hair Oil. He, therefore, urged the Commission to protect small market players from being driven out of the market by big businesses;
 - (ii) There is no deceptive marketing as the Respondent has adopted the distinctive trademark 'Layla' along with a different color scheme, calligraphy and portrait images of a woman and fruit in a very dissimilar artistic work for its Layla Amla Hair Oil. Moreover, in the disputed product the words 'Layla Amla' are written in gold while the words 'Hair Oil' are written in white. On the other hand, the entire phrase 'Dabur Amla Hair Oil' is written in gold;
 - (iii) The disputed product's packaging prominently displays the distinctive mark 'Layla' on the front making it clearly visible and identifiable to the ordinary consumer. Similarly, the mark 'Layla' is visually and phonetically dissimilar from the mark 'Dabur'. The remaining features of the packaging, namely, 'Amla Hair Oil', model's portrait image, color scheme and overall trade dress are entirely different from the Complainants' product, and in any event these are common to trade so the Complainants' cannot claim exclusive rights therein;
- The Complainants' product uses a dark green color for packaging whereas the Respondent's product uses a dark black color for its packaging;



- (v) The Enquiry Committee failed to appreciate that various companies around the world are using the same shape, design and size for their Amla Hair Oil products packaging and interior decor.¹ In this respect, counsel produced the bottles and packaging of Dabur Amla Hair Oil, Layla Amla Hair Oil and Bio Amla Hair Oil before the Bench and compared their presentation to show that the packaging of all three products was common to trade and not the exclusive trademark of any one undertaking registered under the Registered Designs Ordinance, 2000 (2000 Ordinance). He also submitted that the packaging of Bio Amla Hair Oil was strikingly similar to that of Dabur Amla Hair Oil but no action had been initiated against it by the Complainants, and instead a small new entrant, Layla, was being targeted;
- (vi) The Complainants case is barred by Section 14 (Absolute grounds for refusal of registration) and Section 21 (Registration subject to disclaimer) of the Trade Marks Ordinance, 2001 (2001 Ordinance), rendering it equally barred under Section 10 of the Act;
- (vii) The Enquiry Committee exceeded its mandate by giving its conclusions on issues beyond the scope of the Act e.g., *'whether the size and shape of the bottles and their cartons, including bottle caps fall within the ambit of trademark?'* and *'whether the labelling and packaging are ditto including font style, color scheme and model's portrait image?'* These questions fall within the exclusive domain of Trademark Law and the competent authority to determine the same is the Registrar of Trade Marks;
- (viii) The Enquiry Committee took contradictory positions. On one hand the Committee accepted that another product of the Respondent *'OK Amla Hair Oil'* is different from *'Dabur Amla Hair Oil'* due to its *'distinctive trademark with different color scheme, graphics, images and amla fruit with distinctive artistic work'*, while on the other hand it held that *'Layla Amla Hair Oil'* *'has been marketed with similar trademark as that of the Complainant'*;



The Enquiry Committee examined the display of both the relevant product and the disputed product in the market² and conducted a consumer survey which is not in

Reference in the written reply was made to Nisa Amla Hair Oil, Bio Amla Hair Oil, Tara Amla Hair Oil, SBS Amla Hair Oil, Al-Taiba Amla Hair Oil.

In this regard, an image of the two products displayed side by side in a shop has been used by the Enquiry Committee.

accord with the best practices.³ Such a survey also went beyond the lawful authority of the Committee as it had no power to arrange and create new evidence. Therefore, by conducting the consumer survey the Committee had become a party to the proceedings necessitating a fresh enquiry into the matter; and

- (x) The onus lay on the Complainants to establish that its trademark '*Dabur Amla Hair Oil*' was a well-known trademark in terms of Section 86 of the 2001 Ordinance.

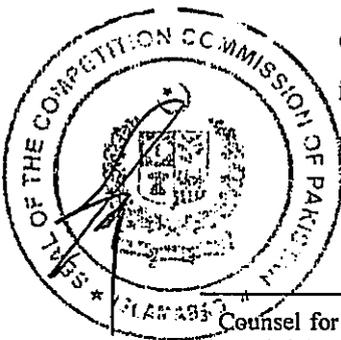
15. In his rejoinder to the submissions of the Respondent, the counsel for the Complainants pressed two points, namely:

- (i) Although the packaging of Dabur Amla Hair Oil is not registered under the 2000 Ordinance, the design on the carton and the label is still protected owing to the product being registered; and
- (ii) The Complainants will be satisfied if the Respondent agrees to change the packaging of Layla Amla Hair Oil as they have no interest in a penalty being imposed on the Respondent for deceptive marketing.

ISSUES

16. The Bench carefully examined the contents of the complaint, the Enquiry Report and the submissions of the Complainants and the Respondent (written replies/comments and verbal arguments presented) and framed the following issues for determination:

- I. Whether the Commission has jurisdiction over the subject-matter of the complaint?**
- II. Whether the Respondent has violated Section 10(1) read with Section 10(2)(d) of the Act by fraudulently copying the trademark, product labeling and packaging of Dabur Amla Hair Oil?**
- III. Whether the Respondent has violated Section 10(1) read with Section 10(2)(b) of the Act by disseminating false or misleading information to consumers, including the distribution of information lacking a reasonable basis related to the character, properties, suitability for use and quality of Layla Amla Hair Oil?**



Counsel for the Respondent relied on a decision of the High Court of Justice - Chancery Division issued in *Imperial Group Plc v. Phillip Morris Limited* [1984] RPC 293 to set out the best practices.

IV. Whether the conduct of the Respondent has violated Section 10(1) read with Section 10(2)(a) of the Act for being capable of harming the business interests of the Complainants?

ANALYSIS

ISSUE I: Whether the Commission has jurisdiction over the subject-matter of the complaint?

17. In its written comments/replies and verbal submissions before the Bench, the Respondent asserted that since the present dispute related to trademark infringement, it should be heard by the Intellectual Property Tribunal instead of the Commission. The Complainants contested this assertion on the grounds that the matter before the Bench related to the practice of deceptive marketing, and not trademark infringement, therefore the Commission was exclusively empowered under the Act to adjudicate upon the complaint.

18. Having heard the parties, we find ourselves unable to agree with the contention of the Respondent. In the complaint before us, we are not concerned with the validity or the ownership of the trademarks registered by either the Complainants or the Respondent. Rather, our focus is purely on whether the Respondent has engaged in deceptive marketing thereby violating Section 10 of the Act. Even in cases which may be covered by the provisions of both the Act and the 2001 Ordinance, the Act shall prevail because of its overriding effect over any other law. Section 59 of the Act explicitly states the intention of the Legislature that the Act is to take priority over any other law on the same subject-matter.

For ease of reference, Section 59 is reproduced below:

“59. Act to override other laws. __ The provisions of this Act shall have effect notwithstanding anything to the contrary contained in any other law for the time being in force.”

19. Moreover, the Act is a special law encompassing all spheres of commercial and economic activities across Pakistan on the subject of competition. In legal theory and practice, *lex specialis derogat legi generali*, which means that where two laws govern the same factual situation, a law governing a specific subject-matter (*lex specialis*) overrides a law which governs general matters on the same subject (*lex generalis*). Even so, an examination of the provisions of the Intellectual Property Organization of Pakistan Act, 2012 (2012 Act)



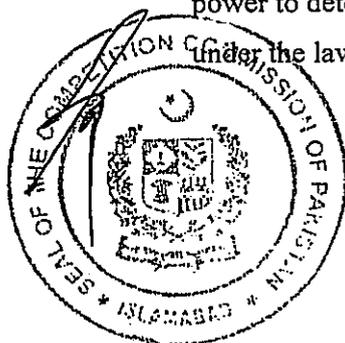
reveals that there is no overlapping of jurisdiction between the Intellectual Property Tribunal and the Commission in matters related to deceptive marketing, especially concerning the issue of trade dress (passing off), and so no question of parallel jurisdiction arises. In fact, the preamble of the 2012 Act acknowledges that intellectual property rights are supported by other laws apart from the 2001 Ordinance and the 2012 Act, and this necessarily includes the Act.

20. The view of the Bench also finds support from the judgment of the Hon'ble Supreme Court of Pakistan rendered *In the Matter of Society of Accounting Education (SOAE) vs. CFA Institute, Lahore* (Civil Appeal No. 2117 of 2017), wherein the Court observed that:

"4. It is not disputed that the mark 'CFA' is a registered trademark. It is also not disputed that the Respondent had filed a suit seeking permanent injunction against infringement of the trademark. The learned counsel for the appellant has argued that the proceedings before the Commission were not competent because the Respondent has filed a suit regarding the same matter. This argument is misconceived because the complaint and, pursuant thereto, the proceedings under the Act of 2010 were regarding engagement of the appellant in the deceptive marketing practices by using the complainant's trademark or its variations for misleading the consumers and distorting the competition. The suit filed by the respondent was distinct and the proceedings relating thereto had no nexus with the complaint filed under the Act of 2010. Moreover the proceedings under the Act of 2010 being distinct were not barred in case of filing a suit for infringement of a registered trademark. The Commission and the Tribunal have rendered well-reasoned judgements which do not suffer from any legal infirmity. The use of registered trademark and its variations by the appellant has not been denied. The appeal is, therefore, without merit and it is accordingly dismissed."

(Emphasis supplied)

21. The above discussion makes it abundantly clear that disputes in the nature of deceptive marketing fall exclusively within the ambit of the Commission, even if the underlying breach concerns the use of another's trademark. This is because the Legislature by providing an overriding clause in the Act has entrusted the Commission with the exclusive power to determine the same. Resultantly, the Bench holds that it is the appropriate forum under the law to adjudicate on the merits of the complaint filed by the Complainants.



b

ISSUE II: Whether the Respondent has violated Section 10(1) read with Section 10(2)(d) of the Act by fraudulently copying the trademark, product labeling and packaging of Dabur Amla Hair Oil?

22. The primary area of contention in the present matter is the apparent violation of Section 10(2)(d) of the Act. Section 10(1) read with Section 10(2)(d) of the Act reads as under:

“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 [i]f an Undertaking resorts to ___

*...
(d) fraudulent use of another’s trademark, firm name, or product labeling or packaging.”*

23. We have carefully considered the arguments and perused the material available on record to determine whether the Respondent has fraudulently used the trademark, product labeling and packaging of Dabur Amla Hair Oil. The issue of parasitic copying/copycat packaging has been frequently coming up before the Commission, with the most significant case being *In the Matter of A. Rahim Foods (Private) Limited for Deceptive Marketing Practices* (2016 CLD 1128). In that case, K&N’s Food (Pvt.) Limited accused A. Rahim Foods (Private) Limited, *inter alia*, of copying its product labeling and packaging of frozen and/or processed meat products, in violation of Section 10(2)(d) of the Act. In determining whether the allegation against A. Rahim Foods (Private) Limited was made out, the Commission explained in detail the concept of parasitic copying/copycat packaging:

“15. ... ‘parasitic copying’ or ‘copycat packaging’ is the practice of designing the packaging of a product in a way that gives it the general look and feel of a competing, well-known brand (typically the market leader). Copycat packaging is distinct from counterfeiting, since normally it does not infringe intellectual property rights. The risk posed by copycat packaging is consumer confusion, and consequently, distortion of their commercial behaviour.

*...
17. In order to set a benchmark for the Commission’s consideration and consequent adjudication of cases, such as the instant one, of an alleged potential contravention of Section 10(1) in terms of Section 10(2)(d) of the Act, the Commission would like to make the following further observations relating to the now prevalent practice of copycat packaging’/ “parasitic copying”/“slavish imitation”, as well as its purpose and effect and more importantly its direct*



correlation to the "fraudulent use" of another's "product labeling or packaging":

...

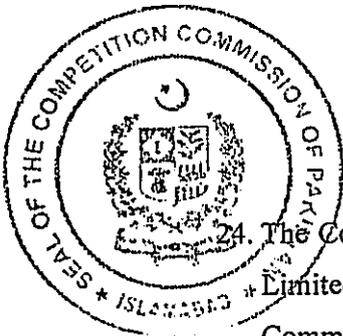
b) Such purpose or object of parasitic copycat packaging is driven and derived from the viewpoint and perspective of the consumer. A potential purchaser is much more likely to mistake and perceive products which employ parasitic copying to be better quality than they in fact are or as equivalent to the aggrieved competitor or market leader (whose packaging has been copied). Hence, a consumer is more likely to purchase such a product, rather than if the packaging was clearly distinctive and distinguishable.

...

d) In furtherance to the interpretation and applicability of the term "fraudulent use" of product labeling and packaging" within the scope of Section 10(2)(d) of the Act, it may be noted that fraud itself consists of some deceitful practice or willful device to obtain an unjust advantage and which deprives another of a right or causes another injury. The Commission, entrusted with the task of adjudicating upon a potential contravention under this provision of the Act, remains mindful of the much wider context and purpose of the said prohibition. The Commission shall, therefore, be satisfied that the evidence adduced before it is conclusive, if the strikingly similar packaging and labeling is misleading enough to cause confusion in the minds of the average consumer of a commodity, with the end result of an unjust advantage accruing to the copycat at the expense of and to the detriment of the complainant.

f) The Commission considers it appropriate to examine the packaging and product labeling appearance of a finished product as a whole which may collectively include visually confusing resemblances in elements of colour scheme, layout style, design, images, labels, font usage etc., instead of each individual similarity in isolation, to come to its determination as to a contravention under Section 10(2)(d) of the Act. It may also be noted that the Commission takes into account the surrounding circumstances which may be different in each particular case, as being peculiar to the parties, products, consumers and the relevant market."

(Emphasis supplied)



24. The Commission, on the basis of the material before it, found A. Rahim Foods (Private) Limited guilty of contravening Section 10(2)(d) of the Act. This decision of the Commission was upheld by the Hon'ble Supreme Court of Pakistan in its judgment

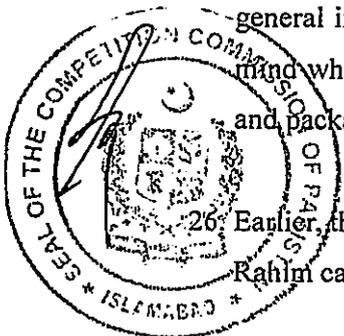
delivered in A. Rahim Foods (Pvt.) Limited vs. K&N's Food (Pvt.) Limited (PLD 2023 SC 516), wherein it observed:

“15. So far as the criterion to determine the confusing similarity is concerned, the same is well-established in our jurisdiction in passing-off and trademark-infringement actions, which also applies in deciding disputes under Section 10(2)(d) of the Act. It is whether an unwary ordinary purchaser is likely to be confused or deceived into purchasing the article of the defendant carrying the contentious mark, name or get-up as that of the plaintiff (complainant). The criterion is thus that of such an ordinary purchaser ‘who knows more or less the peculiar characteristics of the article he wants; he has in his mind’s eye a general idea of the appearance of the article and he looks at the article not closely, but sufficiently to take its general appearance’. It is not that of a careful purchaser neither is it of a ‘moron in a hurry’. The purchaser is unwary in the sense that he does not when he buys the article ‘look carefully to see what the particular mark or name upon it is’ but not that he does not even know the peculiar characteristic of the article he wants to buy. An ordinary customer is not supposed to precisely remember every detail of the mark, name or get-up of the article he intends to buy. The standard is therefore also described as that of a purchaser of average intelligence and imperfect recollection. Further, to determine the confusing or deceptive similarity from the point of view of an unwary ordinary purchaser, the leading characteristics, not the minute details, of the two marks, names or get-ups (labelling or packaging) are to be considered. As the competing marks, names or get-ups when placed side by side, may exhibit many differences yet the overall impression left by their leading characteristics on the mind of an unwary purchaser may be the same. An unwary ordinary purchaser acquainted with the one and not having the two side by side for comparison, may well be confused or deceived by the overall impression of the second, into a belief that he is buying the article which bears the same mark, name or get-up as that with which he is acquainted.”

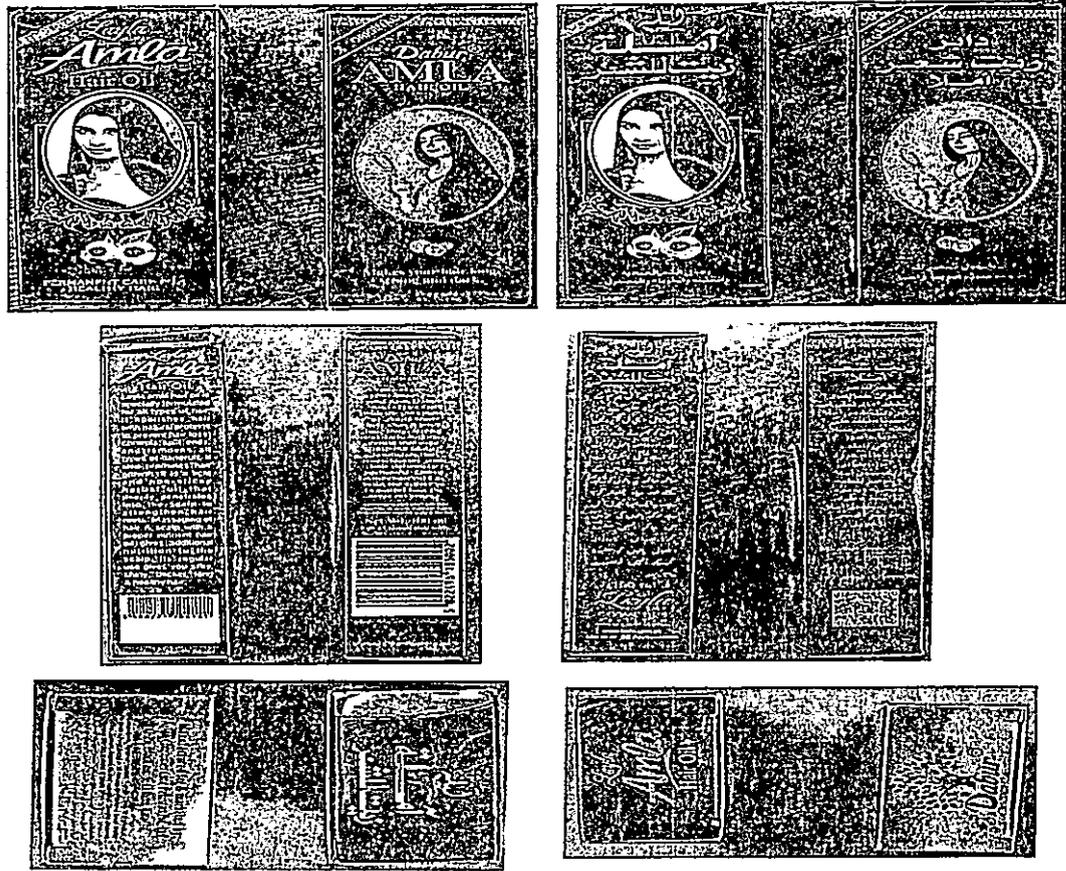
(Emphasis supplied)

25. What becomes clear from the dictum of law laid down by the Commission, and upheld by the Hon’ble Supreme Court of Pakistan, concerning the mischief under Section 10(1) read with Section 10(2)(d) of the Act is that it is the whole packaging of a product and the net general impression left by it on the mind of an ordinary consumer that must be borne in mind when deciding whether an undertaking has copied the trademark, product labeling and packaging of another undertaking’s product.

26. Earlier, the Commission in cases of a similar nature has applied the test laid down in the A. Rahim case to find violations of Section 10(2)(d) of the Act where the color scheme, fonts,

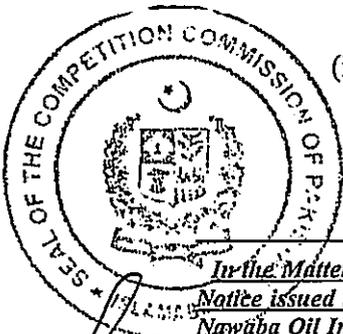


graphics and logo/tradename of the products in question were same/similar.⁴ Therefore, to assess the present case on the said test, a hexagonal view of both the relevant product and the disputed product is provided below for reference:



27. An examination of the two products does not disclose any confusing similarity in the packaging of the two products because:

- (i) Trade-name/logo: it is not disputed by the Complainants and acknowledged in the Enquiry Report that the names 'Dabur' and 'Layla' are visually and phonetically different;
- (ii) Color scheme: the carton of Dabur Amla Hair Oil is dark green whereas Layla Amla Hair Oil is in dark black;



In the Matter of Kennol Petroleum (Pvt.) Limited (2022 CLD 859) at para 22; *In the Matter of Show Cause Notice issued to Messrs Al Hafeez Oil Industries Messrs Muslim Corporation on Complaint filed by Messrs Nawāba Oil Industries* (2021 CLD 1266) at para 22; *In the Matter of Neucan Pakistan Ltd* (2019 CLD 37) at paras 19 and 23; *In the Matter of Messrs Shainal Al-Syed Foods for Deceptive Marketing Practices* (2018 CLD 1115) at paras 28 and 31; *In the Matter of Taizgam Feed Manufacturers on Complaint filed by Messrs Al-Rehman Oil Mills* (2018 CLD 682) at paras 36-44.

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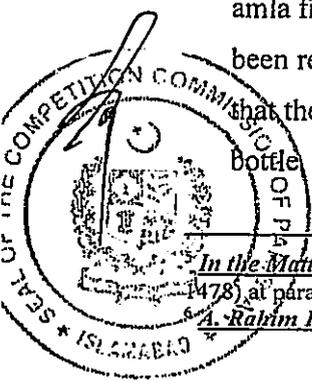
- (iii) Fonts: both products use different fonts and writing styles on the cartons and bottles;
- (iv) Graphics: a different model angled towards the customer has been used on the disputed product with a silver-greenish color background, whereas in the relevant product the model is positioned away from the customer and is looking into a mirror against a blue backdrop; and
- (v) Fruit pictures: the pictures of amla on the two cartons are distinctly different.

28. While the Commission has held that an ordinary consumer is not someone who is essentially reasonable or prudent,⁵ the Hon'ble Supreme Court of Pakistan has observed that an ordinary consumer is a person of average intelligence and imperfect recollection.⁶ However, the Supreme Court has also clarified that the ordinary consumer must at least have a general idea of the appearance of the article he wants to buy and must know its peculiar characteristics. It is evident from a comparison of Dabur Amla Hair Oil and Layla Amla Hair Oil that the two products are not similar as material differences exist in their leading characteristics i.e., color scheme, fonts, graphics and logo/tradename.

29. Moreover, since the trade dress of the Complainants is not registered under the 2000 Ordinance, their learned counsel asserted that the design on the carton and the label was still protected owing to the product being registered. The Bench, therefore, carefully examined the original Certificate of Registration bearing Trade Mark No. 114301 dated 04.02.1992 submitted by the Complainants (certificate is reproduced below). Its scrutiny reveals that on the date of Dabur Amla Hair Oil's first ever registration in Pakistan, the product was packaged in a manner materially different from how it is packaged in the present day. So in 1992, the packaging on the carton did not contain either the word 'Amla' or the image of the amla fruit. In fact, subsequent renewals of the product's registration show that the word 'Amla' was only added to the packaging in the year 2014, whereas the amla fruit has never been incorporated in the packaging. Moreover, the carton has also not been registered in its dark green color. In such circumstances, the Complainants assertion that their trademark has remained the same in Pakistan over the years, with the carton and bottle staying dark green is not substantiated by the evidence on record. These

⁵ *In the Matter of Messrs China Mobile Pak Limited and Messrs Pakistan Telecom Mobile Limited* (2010 CLD 1478) at para 32

⁶ *A. Rahim Foods (Pvt.) Limited vs. K&N's Food (Pvt.) Limited* (PLD 2023 SC 516) at para 15



discrepancies thus act as the final blow in the Complainants case against the Respondent for deceptive marketing.

FORM 63

66543



GOVERNMENT OF PAKISTAN
THE TRADE MARKS REGISTRY, KARACHI

CERTIFICATE of Registration of Trade Mark. Section 16(2), Rule 44.

Trade Mark No. 114301 Date 4.2.1992.

Certified that the Trade Mark, of which a representation is annexed hereto, has been registered in the name of DABUR INDIA LIMITED, 8/3, Asaf Ali Road, New Delhi - 110 002, India.

In class 03 under No. 114301

as of the date 4th February, 19 92.

in respect of Hair oil, being goods included in class 3.

Sealed at my direction, this 30th day of June, 1999.



[Signature]
 Trade Marks Registry.



[Signature]
 (NUSRAT I. JAKSHED)
 Registrar of Trade Marks.

Registration is for 7 years from the date first above-mentioned and may then be renewed for a period of 15 years, and also at the expiration of each period of 15 years thereafter. (See Section 18 of the Trade Marks Act, 1940 and rules 44-45 of the Revised Trade Marks Rules 1963).

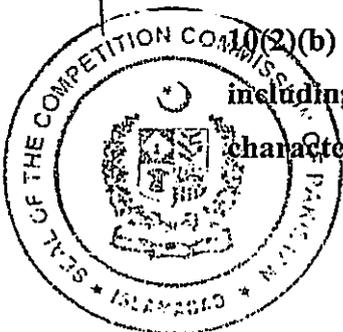
This certificate is not for use in legal proceedings or for obtaining registration abroad.

NOTE—Upon any change of ownership of this Trade Mark, or change in address, application should at once be made to register the change.

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30. Accordingly, we do not find that that the Respondent has contravened Section 10(1) read with Section 10(2)(d) of the Act as Layla Amla Hair Oil's trademark, product labeling and packaging is unique and distinct from that of Dabur Amla Hair Oil.

ISSUE III: Whether the Respondent has violated Section 10(1) read with Section 10(2)(b) of the Act by disseminating false or misleading information to consumers, including the distribution of information lacking a reasonable basis related to the character, properties, suitability for use and quality of Layla Amla Hair Oil?



31. In order to determine whether the Respondent has violated Section 10(2)(b) of the Act, the relevant provision is reproduced hereunder:

*“10. Deceptive marketing practices. ___ ...
(2) The deceptive marketing practices shall be deemed to have been resorted to or continued [i]f an Undertaking resorts to ___
...
(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;”*

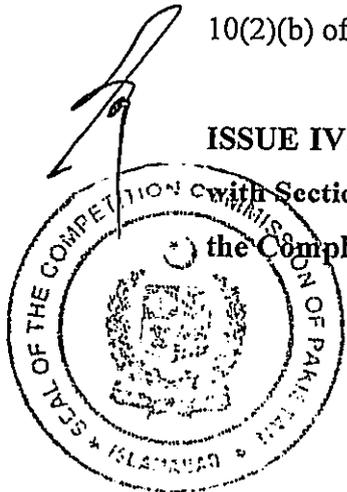
32. In the Enquiry Report, the Enquiry Committee has only briefly touched upon the violation of this provision and has merely noted that:

“5.42 In view of the foregoing, we the undersigned, Enquiry Committee, is of the view that the conduct of the Respondent has resulted in a violation of Section 10(1) read with Section 10(2)(b) of the Act, as the Respondent is disseminating misleading information to consumers lacking a reasonable basis, in form of confusing similarities of Respondent’s trade dress to that of the Complainants’ registered trademark, thereby misleading the consumers as to the properties and quality of the product.”

(Emphasis supplied)

33. The above makes it clear that the Enquiry Committee found the Respondent in breach of Section 10(2)(d) of the Act and, therefore, declared it guilty of violation of Section 10(2)(b) of the Act as well. However, we have not been persuaded by the Enquiry Committee on that count and have cleared the Respondent of the charge of parasitic copying/copycat packaging under Section 10(2)(d) of the Act. Consequently, when the Respondent has not copied the trademark, product labeling and packaging of Dabur Amla Hair Oil, it cannot be held to have been involved in the distribution of false or misleading information relating to the properties, suitability for use and quality of Layla Amla Hair Oil. Resultantly, the charge framed against the Respondent for violating Section 10(1) read with Section 10(2)(b) of the Act is quashed for not being substantiated by any evidence.

ISSUE IV: Whether the conduct of the Respondent has violated Section 10(1) read with Section 10(2)(a) of the Act for being capable of harming the business interests of the Complainants?



34. Lastly, the Bench has to examine whether the Respondent has contravened Section 10(2)(a) of the Act. This provision provides:

“10. Deceptive marketing practices.— ...

(2) The deceptive marketing practices shall be deemed to have been resorted to or continued [i]f an Undertaking resorts to—

(a) the distribution of false or misleading information that is capable of harming the business interests of another undertaking.”

35. The Enquiry Committee after deliberating on this issue observed as follows:

“5.45 The trade dress and packaging of Respondent's Layla Amla Hair Oil is a look alike and mimicry of the trade dress and/or packaging of the Complainants' Product. Consumers mostly base their purchasing actions on their first impressions of the product's trade dress and packaging and do not engage in detailed and considered examination of the product itself or of the concerned trade dress and packaging.

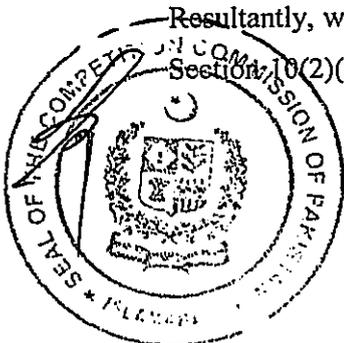
5.46 A use of deceptively similar trade dress and packaging has indicated the Respondent's intent to pass off their amla hair oil to cause confusion; to deceive unwary consumers as to the origin of Respondent's product; and to dupe the unwary consumer to believe that the Respondent's product is related to or connected with Complainants and share same or similar qualities and properties with cheaper price of Rs.200/100ml against the Complainant's product of Rs.210/100ml, which has the potential to cause harm and damage to the Complainants' businesses, reputation and goodwill.

5.47 Based on the above, it can be established that the Respondent's practice of parasitic copying/copycat packaging/slavish imitation of Complainants' trade dress, which appreciably harms the consumer's ability to make an informed decision due to confusing similarities between the Complainants' product and the Respondent's product, being inherently deceptive, is in fact capable of harming the business interest of the Complainant in contravention of clause (a) of subsection (2) of Section 10 of the Act.”

(Emphasis supplied)

36. The Enquiry Committee once again relied on the Respondent's violation of Section 10(2)(d) to hold it liable for violating Section 10(2)(a) of the Act. However, we have already held above that the Respondent has not contravened Section 10(2)(d) of the Act as it has not copied the trademark, product labeling and packaging of Dabur Amla Hair Oil.

Resultantly, when the principal breach has been set aside by us, the consequent breach of Section 10(2)(a) of the Act cannot be sustained. Our decision is further reinforced by the



fact that the Complainants did not accuse the Respondent of being capable of harming their business interests under Section 10(2)(a) of the Act. In any event, there is no evidence on record which indicates even a potential violation of Section 10(2)(a).

DECISION

37. In light of what has been discussed above, we are of the considered view that the Complainants have failed to prove that the Respondent has engaged in deceptive marketing by fraudulently using the trademark, product labeling and packaging of their product. The complaint lacks merit as there exist material differences, noticeable to the naked eye, in the leading characteristics of the two products. Accordingly, we absolve the Respondent of any wrongdoing under the Act, particularly Section 10, and set aside the Enquiry Report and the SCN issued to it. No order is passed as to costs and the parties are left to bear their own expenses.

38. SCN No. 01/2025 is disposed of in the above terms.


Mr. Saeed Ahmad Nawaz
Member


Ms. Bushra Naz Malik
Member



ISLAMABAD, THE 19th DAY OF DEC, 2025