



BEFORE THE COMPETITION COMMISSION OF PAKISTAN
IN THE MATTER OF SHOW CAUSE NOTICE ISSUED TO M/S MEZAN
BEVERAGES (PRIVATE) LIMITED ON A COMPLAINT FILED BY PEPSI CO, INC.
FOR ALLEGED DECEPTIVE MARKETING PRACTICES

(File No. 319/PEPSICO/OFT/CCP/2018)

Date of Hearings:

01-07-2025
14-10-2025
23-10-2025

Bench

Dr. Kabir Ahmed Sidhu
Chairman

Mr. Salman Amin
Member

Salman Amin
21st Dec 2025

Assisted by:

Moqeen ul Hassan
Legal Advisor

Meher Jamy
Assistant Director

Present on Behalf of the Complainant:

M/s PEPSI Co. Inc.

Ms. Julie Ismail
Advocate High Court
Khursheed Khan & Associates

Present on Behalf of the Respondent:

M/s. Mezan Beverages (Private)
Limited

Mr. Adil Bandial
Advocate High Court
Sajjad Ali & Associates

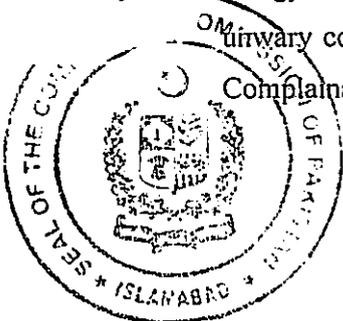


ORDER

1. This order disposes of the proceedings initiated by the Competition Commission of Pakistan (the Commission) under Section 30 of the Competition Act, 2010 (the 2010 Act), arising out of Show Cause Notice No. 30/2021 dated 07.07.2021 (the SCN) issued to M/s Mezan Beverages (Private) Limited, for *prima facie* violation of Section 10 of the 2010 Act.

FACTUAL BACKGROUND

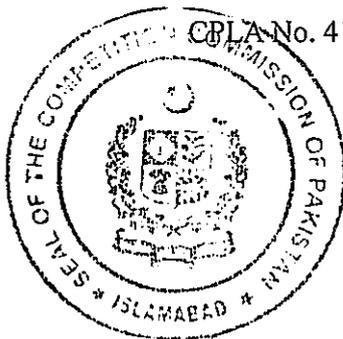
2. On 30.07.2018, Pepsi Co. Inc. (the Complainant), a company existing under the laws of the United States of America, filed a complaint against M/s. Mezan Beverages (Private) Limited (the Respondent) for allegedly engaging in deceptive marketing practices in violation of Section 10 of the 2010 Act.
3. The Complainant asserted that it is a world-famous consumer products company and uses various trademarks, including but not limited to PEPSI, 7UP, Mirinda, Mountain Dew, Aquafina and Sting. One of its well-known regional brands is STING energy drink which has a unique bottle, distinctive logo and color scheme, particularly in bright red color. It further submitted that STING was first adopted by the Complainant's subsidiary in Vietnam in the year 2003, and subsequently its use was extended to numerous countries. In Pakistan, STING energy drink in its characteristic trade dress and packaging was launched in 2009. The Complainant stated that it has spent substantial resources to promote its products, including STING energy drink and created goodwill in the market. Moreover, it owns registrations for a variety of STING trademarks in a number of jurisdictions, including Pakistan.
4. The Complainant alleged that the Respondent, since at least July 2018, has resorted to, and continues to undertake, deceptive marketing practices contrary to the provisions of Section 10 of the 2010 Act, *inter alia*, by using a trade dress and packaging in relation to its STORM energy drink which copies the over-all look/feel/get-up of, and/or is confusingly and/or deceptively similar to, the trade dress and packaging used by the Complainant in Pakistan in relation to its STING energy drink. The adoption of the confusingly and/or deceptively and/or parasitically similar trade dress and packaging by the Respondent in relation to its STORM energy drink is fraudulent and *mala fide* with the intent to confuse, deceive and mislead ordinary consumers; to exploit and unduly benefit from the reputation and goodwill of the Complainant in respect of its STING energy drink; and to disrupt competition in the local



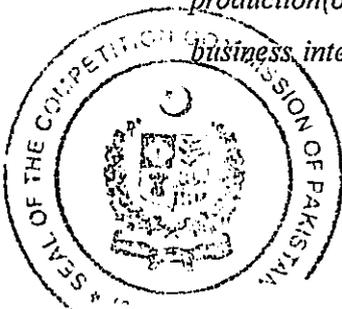
markets. The Complainant also alleged that such copycat and/or parasitic copying is prohibited under the 2010 Act and thus, it prayed for imposing a penalty on the Respondent under Section 38 of the 2010 Act and for restraining the Respondent from engaging in deceptive marketing practices under Section 31(c) of the 2010 Act. The Complainant also prayed for interim relief under Section 32 of the 2010 Act, requiring the Respondent to refrain from deceptive marketing practices in order to prevent further irreparable loss and damage to the business of the Complainant.

ENQUIRY AND FIRST ROUND OF LITIGATION

5. Upon receiving the complaint of the Respondent, the Commission initiated an enquiry under Section 37(2) of the 2010 Act by appointing enquiry officers (the **Enquiry Committee**) to investigate the matter for *prima facie* violations of Section 10 of the 2010 Act and to submit a report for the consideration of the Commission.
6. Thereafter, the Enquiry Committee forwarded the complaint to the Respondent on 30.08.2018 for its comments. The Respondent, however, vide letter dated 17.09.2018 requested for extension in time to file its comments. The Commission accepted the request of the Respondent and granted further time till 15.10.2018.
7. The Respondent filed its reply on 12.10.2018 whereby it informed the Commission that it has filed Writ Petition No. 241159/2018 titled '*Mezan Beverages (Private) Limited v. Federation of Pakistan etc.*' before the Honourable Lahore High Court, Lahore. The petition, *inter alia*, challenged the constitutionality and *vires* of the 2010 Act and questioned the legality of the actions and proceedings initiated thereunder by the Commission against the Respondent.
8. The Honourable Lahore High Court initially granted an injunctive order, staying further proceedings in the matter pending before the Commission; however, subsequently, it dismissed the said petition vide judgment dated 20.10.2020. The Enquiry Committee resumed its enquiry and once again directed the Respondent, vide letter dated 04.02.2021, to furnish its comments regarding the complaint. In response, the Respondent vide its reply dated 15.02.2021 informed that it has challenged the judgment dated 20.10.2020 by way of filing CPLA No. 413-L/2021 before the Honourable Supreme Court of Pakistan.



9. Since there was no injunctive order from the courts, the Enquiry Committee proceeded with the enquiry as per the provisions of the 2010 Act. Hence, once again a reminder was sent to the Respondent on 24.02.2021, allowing it another opportunity to furnish its comments. On 01.03.2021, the Commission received another request for extension of time from the Respondent which was accepted.
10. The Respondent finally filed its reply on 05.03.2021 under protest and without surrendering to the jurisdiction of the Commission to merely remain within legal parameters and to establish its *bona fide*. The Respondent submitted that the Complainant has no *locus standi* to file the complaint and the contravention of Section 10 of the 2010 Act is misconceived. It also stated that the purported claims of the Complainant fall within the ambit of the Trade Marks Ordinance, 2001 (the **TM Ordinance**), and therefore, the Commission lacks jurisdiction. The Respondent denied engaging in acts of deceptive marketing practices and stated that there is no deceptive similarity between the products of the Complainant and the Respondent, hence, there is no merit in the allegations of the Complainant. The Respondent also pointed out that it had discontinued the production and sale of its 500 ml STORM energy drink and, therefore, no cause of action was left to be adjudicated upon by the Commission.
11. Thereafter, the Complainant filed a rejoinder to the reply of the Respondent and stated that the Respondent has misrepresented and distorted the facts and has failed to present a valid defence. It submitted that the Respondent is attempting to mislead the Commission as the subject matter of the complaint is the Respondent's fraudulent use of the Complainant's trademark and the carrying on of deceptive marketing practices.
12. In consideration of the contents of the complaint, reply of the Respondent and all the data available on record, the Enquiry Committee vide enquiry report dated 28.06.2021 (the **Enquiry Report**) concluded at para 5.3 that *'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 labeling or packaging; Section 10(2)(b) which prohibits false or misleading information including information which lacks a reasonable basis related to price, characteristic, properties, suitability of use 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.'* The Enquiry



Committee proposed that these, *prima facie*, violations under the 2010 Act, warrant initiation of proceedings against the Respondent under Section 30 of the 2010 Act.

PROCEEDINGS UNDER SECTION 30 AND SECOND ROUND OF LITIGATION

13. Based on the conclusions and recommendations of the Enquiry Committee, the Commission decided to initiate proceedings against the Respondent under Section 30 of the 2010 Act. The Commission, therefore, issued the SCN to the Respondent for, *prima facie*, violation of Section 10 of the 2010 Act wherein the Commission provided a gist of reasons for initiating proceedings against the Respondent. The relevant excerpts of the SCN are reproduced herein below for quick reference:

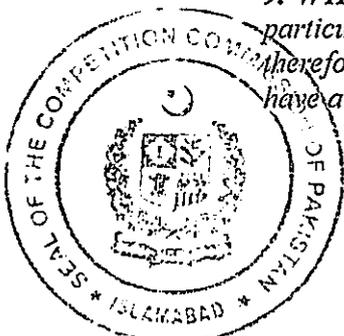
"... 5. WHEREAS, in terms of the Enquiry Report in general and paragraphs 2.11 to 2.25 in particular, it has been alleged by the Complainant, that the Undertaking has copied the overall impression/look/feel and misappropriated the distinctive/aesthetic design element of packaging and trade dress of Complainant's product "Sting", during the course of marketing/advertisement of its product "Storm" energy drink which can confuse and deceive unwary consumers and take unfair advantage of the reputation and good-will of the Complainant's energy drink, which prima facie constitutes violation of Section 10(1) of the Act; and

6. WHEREAS, in terms of the Enquiry Report in general and paragraphs 4.10 to 4.49 in particular, it appears that the Undertaking has fraudulently used the copyrighted trade dress and packaging labelling of Complainant's product "Sting" which misleads and/or deceives the consumer regarding the origin of the product, which, prima facie, constitutes a violation of Section 10(1), in terms of Section 10(2)(d) of the Act; and

7. WHEREAS, in terms of the Enquiry Report in general and paragraphs 4.54 to 4.64 in particular, it appears that the Undertaking is disseminating misleading information to consumers lacking reasonable basis in the form of confusing similarities of Undertakings trade dress to that of the Complainant's, thereby misleading the consumers, which, prima facie, constitutes a violation of Section 10(1) in terms of Section 10(2)(b) of the Act; and

8. WHEREAS, in terms of the Enquiry Report in general and paragraphs 4.65 to 4.73 in particular, it appears that the Undertaking's parasitic copying of Complainant's trade dress, which influences the consumers decision due to confusing similarities between the two products, is capable of harming the business interest of the Complainant, which, prima facie, constitutes a violation of Section 10(1) in terms of Section 10(2)(a) of the Act; and

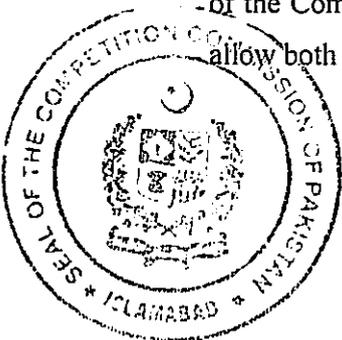
9. WHEREAS, in terms of Enquiry Report in general and paragraph 4.74 in particular, the product "Storm" has been marketed and sold throughout Pakistan, therefore, given the inter-provincial movement, any anticompetitive effects would have a spillover effect throughout Pakistan;"



14. The Commission also directed the Respondent to file its written reply to the SCN within fourteen (14) days of its receipt and to avail the opportunity of being heard. However, instead of responding to the SCN or availing the opportunity given for hearing, the Respondent initiated a second round of litigation. It challenged the SCN and the Enquiry Report by filing Writ Petition No. 48527/2021 dated 02.08.2021 titled Meezan Beverages (Pvt.) Limited vs. Competition Commission of Pakistan and two others before the Honourable Lahore High Court, Lahore. The Court vide order dated 03.08.2021 suspended the operation of the SCN and consequently, the proceedings before the Commission were stayed. However, the Court ultimately dismissed the petition vide order dated 26.06.2024, holding that the Commission had complied with the requirements of Section 37 of the 2010 Act and had jurisdiction to hear the complaint. The Court observed as follows:

"19. It is now well entrenched in our jurisprudence that the constitutional jurisdiction of this Court as a normal rule cannot be invoked on mere suspicion or apprehension when no substantive right is infringed and the aggrieved party has the right to advance its defense in response to a notice. The challenge to a show cause notice in writ jurisdiction at premature stage and tendency to bypass the remedy provided under the concerned statute amount to fetter the rights conferred on statutory functionaries specially constituted for the purpose to initially decide the matter. The objections of the Petitioner would have been decided by the CCP during proceedings under the SCN but such an occasion did not arise due to the filing of the instant Petition. As such, the Petitioner did not approach this Court with clean hands and resorted to uncalled for litigation, thereby, obstructing the CCP as regulator empowered under the law to undertake and perform its routine functions and duties. Reliance is placed on case titled, "Commissioner Inland Revenue and others v. Jahangir Khan Tareen and others" (2022 SCMR 92). Therefore, the titled Petition was not maintainable on this score as well."

15. Being aggrieved of the judgment of the Lahore High Court, the Respondent filed an Intra Court Appeal No. 58490/2024 which was also dismissed by the Court vide order dated 21.01.2025. As a result, proceedings before the Commission were resumed and a Hearing Notice was issued to the Respondent on 26.05.2025 directing it to file its written response to the SCN. The Respondent in its reply of 14.06.2025 denied engaging in acts of deceptive marketing and stated that there is no confusing similarity between the products of the Complainant and the Respondent. Thereafter, hearing was fixed in the matter to allow both the Complainant and the Respondent the opportunity to present their stance.



SUBMISSIONS OF THE COMPLAINANT

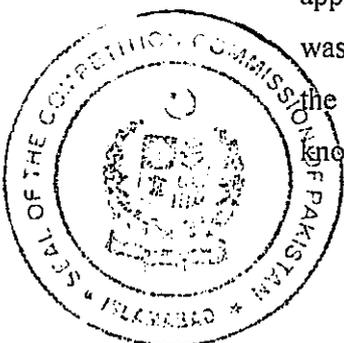
16. The Complainant made the following submissions before the Bench:

- (i) The Respondent's product has adopted the overall trade dress of the Complainant's product, including a bold, slanted white lettering for the mark 'STORM', aggressive tribal motifs (with a lightning bolt replacing the scorpion) and a red-dominant background and black accents. Moreover, the marks 'STING' and 'STORM' have phonetic and structural proximity, with both beginning with the letter 'S' and ending with a strong consonant sound ('G' and 'M', respectively). As a result, both words evoke high energy and aggressive concepts associated with action and force. Such overall similarity in branding elements is not coincidental but indicative of deliberate misappropriation. Therefore, the Respondent's reliance on isolated analysis of the logos/labels to distract from its mimicry is a misleading strategy intended to obfuscate the evident imitation of STING's distinctive identity.
- (ii) The Enquiry Report and the SCN identified a clear case of deceptive marketing against the Respondent. The language and conclusions of the Enquiry Committee, including its observations on the parasitic replication of the STING label and brand identity, underscore the deliberate and misleading nature of the Respondent's conduct. This form of parasitic copying - that is, imitating the overall look and feel of a successful brand while avoiding exact duplication - is a recognised form of deceptive marketing and has repeatedly been held so by the Commission in its previous decisions.
- (iii) The Respondent's reliance on its trademark registration and the failure of the Complainant to oppose its registration application are tactics intended to distract from the core legal issue: whether the Respondent's branding misleads consumers and unjustly capitalizes on the Complainant's market reputation. The law is settled that trademark registration does not confer immunity from accountability under competition law, and the presence or absence of opposition is irrelevant where conduct amounts to deceptive marketing within the meaning of Section 10 of the 2010 Act. Moreover, it is pertinent to mention that the Complainant has separately initiated invalidation proceedings before the relevant forum under Section 80 of

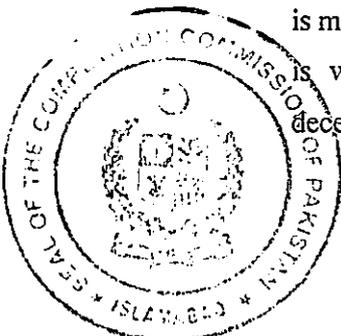


the TM Ordinance on the grounds that the Respondent obtained registration in breach of Sections 14 and 17 of the TM Ordinance.

- (iv) The Respondent's vague reference during oral submissions to an "*alleged Canadian decision*" as a 'trump card' for its registered rights is legally untenable, factually incorrect and strategically misleading. No case name, factual background, or judicial reasoning was provided, rendering the assertion entirely speculative and devoid of probative value. Moreover, even if the Respondent intended to rely on Canadian law, the governing precedent runs contrary to their claim. In *Masterpiece Inc. v. Alavida Lifestyles Inc.* 2011 SCC 27, the Supreme Court of Canada unequivocally held that a registered trademark does not override prior rights in a confusingly similar unregistered mark. It clarified that an action for passing off can be brought even if the defendant is the registered owner of a trademark. Finally, the Respondent's invocation of an unnamed foreign decision, even if it were accurately identified, would remain irrelevant to the statutory framework of the Commission, which independently regulates deceptive conduct in the marketplace.
- (v) The broader pattern of the Respondent's conduct is highly relevant to the assessment of intent and bad faith under Section 10 of the 2010 Act. It is imperative that the Commission take into account the Respondent's consistent course of parasitic conduct, as evidenced by multiple imitation marks filed before the Trade Marks Registry and the Copyright Office. These include applications for marks such as 5UP, DARE NEXT, and MOUNT DARE, which closely mimic the Complainant's internationally recognised trademarks including 7UP and MOUNTAIN DEW. Formal oppositions have been initiated by the Complainant in respect of each of these marks and are presently pending before the relevant forums. While these imitation marks are not directly at issue in the present complaint, they are highly relevant to the determination of intent and commercial strategy. The evidence establishes a clear and deliberate pattern of brand appropriation, confirming that the Respondent's adoption of the STORM branding was neither accidental nor isolated, but part of a broader scheme to benefit from the market recognition and goodwill associated with the Complainant's well-known brands.



- (vi) The Respondent has attempted to deflect liability by referring to the alleged use of similar packaging or branding by third parties. This line of argument is legally untenable and factually irrelevant. The focus of the present proceedings is solely on the conduct of the Respondent and whether it has violated Section 10 of the 2010 Act through deceptive marketing, misleading representation and parasitic copying. The existence or actions of other potential infringers, even if true, do not and cannot absolve the Respondent from its own deceptive conduct. The Respondent's liability must be assessed independently, on the basis of its own infringing conduct and the record before the Commission.
- (vii) The Respondent's counsel repeatedly attempted to cast the dispute as a contest between a 'small local enterprise' and a 'giant multinational corporation', suggesting that the Complainant's actions amount to market domination. This narrative was further supplemented by vague and misleading references to differences in product pricing, implying that the Respondent caters to a more affordable segment of the market and therefore operates in a distinct commercial space. These arguments, while rhetorically appealing, are legally untenable and factually inaccurate. The law does not protect those who seek to build market presence through dishonest means. The size, pricing strategy, or corporate profile of a party is irrelevant to the determination under Section 10 of the 2010 Act. If anything, the deliberate copying of a more established product's trade dress - particularly when coupled with a lower price - heightens the risk of consumer deception, especially in retail environments where buying decisions are often made quickly and visually.
- (viii) The Respondent's assertion that the Complainant ought to have proceeded under the TM Ordinance rather than bringing the present proceedings before the Commission is misplaced and legally untenable. It is well-established that remedies under different laws - including competition law and trademark law - are complementary, and parties are legally entitled to pursue whichever remedy is most appropriate to the nature of the violation. The core issue before this forum is whether the Respondent's branding and packaging practices amount to deceptive marketing within the meaning of Section 10 of the 2010 Act. That



question must be determined on its own merits - based on evidence of imitation, consumer perception, and market effect - without being derailed by objections as to alternative forums.

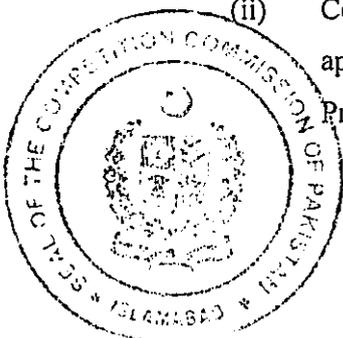
- (ix) The Respondent's assertion regarding the pendency of a CPLA before the Honourable Supreme Court of Pakistan is noted. However, mere pendency of an appeal does not operate as a stay or bar the Commission from proceeding, especially when no interim relief has been granted. The Commission is statutorily empowered to act independently in accordance with its mandate under the 2010 Act.
- (x) The allegation that the Commission has acted without satisfying statutory preconditions under Section 37(2) and 37(4) of the 2010 Act is entirely incorrect. The Commission undertook a preliminary assessment and an independent enquiry which culminated in the Enquiry Report. The SCN was thereafter issued with cogent reasons and specific allegations of deceptive marketing under Section 10(1) of the 2010 Act read with sub-Sections 10(2)(a), 10(2)(b), and 10(2)(d).
- (xi) The Commission has exercised jurisdiction pursuant to the directions of the Honourable Lahore High Court and after due enquiry. Thus, the allegations of 'illegally assumed jurisdiction' are unfounded since this issue has already been adjudicated in favour of the Commission.

SUBMISSIONS OF THE RESPONDENT

17. The Respondent submitted the following before the Bench:

- (i) The Respondent is engaged in the business of manufacturing/production and sale of aerated water, carbonated drinks and beverages, mineral water, juices and energy drinks, *inter alia*, under the brand names of STORM, Cola Next, Pure Next, RANGO ORANGE, FIZ ZUP, DARE NEXT in Pakistan.

- (ii) Conscious of protecting its legal rights and interests, the Respondent diligently applied to the Intellectual Property Organization constituted under the Intellectual Property Organization of Pakistan Act, 2012 (the IPO Act) for registration of its

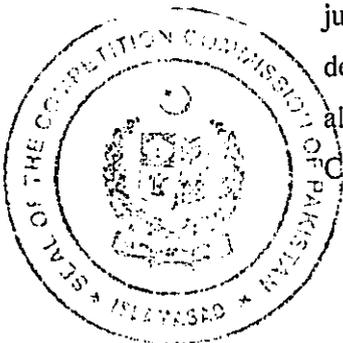


trademark STORM with respect to its product Storm (the Storm Product) vide Trademark Registration Application dated 11.09.2015 (the Mezan Trademark Registration Application). It is a matter of record that as per and in accordance with the TM Ordinance, the Intellectual Property Organization (the IPO) advertised Mezan's trademark in Trade Mark Journal No. 794 for the month of March 2017 (the Advertisement).

- (iii) After a lapse of several years, vide Letter dated 22.02.2021 the IPO explicitly observed that no opposition has been filed against the trademark of the Respondent. In the absence of any oppositions/objections to registration from the public or the Respondent's competitors, and upon being satisfied that the Mezan Trademark Registration Application complied with the statutory thresholds for registration prescribed in the TM Ordinance, the IPO registered Mezan's STORM trademark in Class 32 under No. 397388. Pursuant thereto it issued a certificate of registration under Section 33(4) of the TM Ordinance dated 13.03.2021 (the Mezan Trademark Certificate), effective from 11.09.2015.
- (iv) The Complainant filed a complaint before the Commission raising a legally and factually untenable, unfounded and unlawful allegation that the Respondent's use of its duly registered STORM trademark qualified as fraudulent use of another's trademark under Section 10 of the 2010 Act. In particular, it was alleged that the STORM trademark includes a design in the color combination of black and white, which in its entirety is parasitically similar to the Complainant's registered mark 'STING'. Therefore, the Respondent's act of copying the mark 'STING' constitutes a fraudulent use of the Complainant's trademark, name, product labelling and/or packaging under Section 10 of the 2010 Act. In this respect, the Complainant further asserted that with the STORM trademark being an 'offending' label design, the Complainant reserved its right to approach the competent authority under the TM Ordinance for redressal of its grievance for such infringement. It is imperative to appreciate that the Complainant's allegation of deceptive marketing rests on the assertion of similarity between its trademark and the Respondent's trademark. All other features, when considered independent of the trademark, are generic features which are common to almost all manufacturers of beverages, in Pakistan and abroad.



- (v) It bears noting that the Complainant never filed an opposition to Mezan's Trademark Registration Application, despite issuance of the Advertisement and being aware of its pendency. It also bears noting that the Complainant never challenged STORM's trademark registration in terms of the Mezan Trademark Certificate. Furthermore, despite its caveat, the Complainant has still not approached the competent authority under the TM Ordinance to challenge Mezan's STORM trademark registration, which establishes the trademark as unique and distinct from the Complainant's STING trademark. Mezan's STORM Trademark remains duly registered under the TM Ordinance and continues to hold the field.
- (vi) Thus, vide the instant complaint the Complainant is attempting to negate the legal rights and protections flowing from Mezan's STORM trademark registration under the TM Ordinance by exploiting the Commission's jurisdiction to secure a finding that the Respondent's duly registered STORM trademark has features which are similar to the Complainant's STING trademark. The complaint is clearly a misplaced collateral attack that the Complainant has prematurely filed before the Commission as an obvious after-thought and with a view to grossly misuse and abuse the statutory mandate of the 2010 Act and the Commission's statutory functions circumscribed thereunder. The complaint therefore ought to have been rejected in accordance with the mandate of Section 37 of the 2010 Act.
- (vii) The Commission, however, still considered it reasonable and prudent to initiate proceedings under Section 37 of the 2010 Act. In this respect, it served on the Respondent a notice dated 30.08.2018 under Section 37(2) of the 2010 Act for alleged violation of Section 10 of the 2010 Act. The Respondent immediately challenged the Section 37 notice vide Writ Petition No. 241159/2018 titled '*Mezan Beverages (Private) Limited versus Federation of Pakistan and others.*' The said petition was decided by the Honourable Lahore High Court in terms of judgment dated 20.10.2020. Vide that judgment, the Commission was directed to decide any objections to its jurisdiction at the first instance. The Respondent, along with the Commission and several others, appealed the judgment in terms of CPLA No. 413-L/2021, titled '*Mezan Beverages (Private) Limited versus*

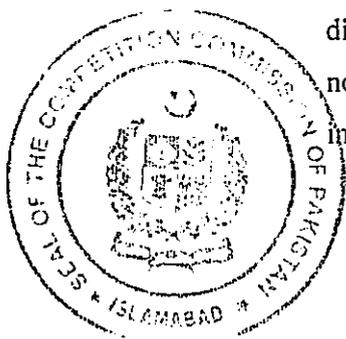


Federation of Pakistan and others', which is currently pending adjudication before the Honourable Supreme Court of Pakistan.

(viii) Vide the SCN, the Commission explicitly adopted the Enquiry Committee's findings as an integral part of the SCN. In the said findings, it was posited that the Respondent has, *inter alia*, identically copied the Complainant's distinctive trademark logo design for its product STORM. It was, therefore, further asserted that the Respondent appears to be in violation of Section 10 of the 2010 Act, in particular Section 10(2)(d), and that such violations warrant initiation of proceedings against the Respondent under Section 30 of the 2010 Act. It was then concluded, *inter alia*, that the Respondent's unauthorized use of the logo design constitutes a violation of Section 10(2)(d) of the 2010 Act.

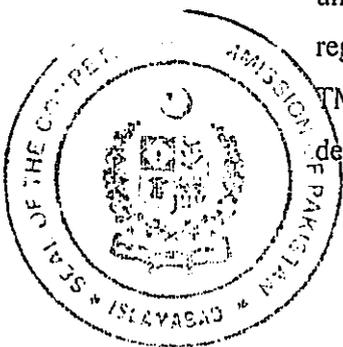
(ix) The Commission is legally obliged to exercise its statutory mandate strictly within the parameters prescribed in the 2010 Act, as interpreted by the Superior Courts of Pakistan. Admittedly, the instant proceedings under Section 30 of the 2010 Act arose pursuant to the statutory mandate of Section 37(2) thereof. In this respect, Section 37(2) regulates the Commission's jurisdiction and in particular, frames statutory controls which ensure that it exercises its jurisdiction properly, fairly, judiciously and after considering and accounting for all relevant facts and circumstances. It is the Respondent's position that the delegated officers of the Commission exercised the statutory discretion and jurisdiction under and in terms of Section 37(2) of the 2010 Act improperly, irrationally and without considering, deliberating over and accounting for all the facts and circumstances relevant to the matter raised in the complaint. Had the delegated officers of the Commission done the needful, they would have formulated the view that the facts relevant to the SCN do not appear to constitute a violation of Chapter II of the 2010 Act, and in fact, the complaint is frivolous, vexatious, not substantiated by *prima facie* evidence and ought to be dismissed *in limine*.

(x) The opinion of the delegated officers of the Commission that the complaint discloses facts which constitute a violation of Chapter II of the 2010 Act, and is not frivolous, vexatious, and is substantiated by *prima facie* evidence, is an improper and illegal exercise of discretion and jurisdiction. It fails to account for,



inter alia, the legal rights associated with and flowing from the registration of the STORM trademark, the fact that such registration held the field when the SCN was issued and remains in field and that the Complainant admittedly took no action to agitate the purported infringement before the competent forum. The exercise of jurisdiction to entertain the frivolous and vexatious complaint and mechanically accept the Enquiry Committee's findings is arbitrary, not supported by cogent reasons, and holds no force at law.

- (xi) The delegated officers of the Commission have improperly exercised their jurisdiction under Section 37 of the 2010 Act to opine on matters exclusively falling within the domain of the Intellectual Property Tribunal. The fundamental premise of the Commission's exercise of jurisdiction (under Section 37 of the 2010 Act for alleged violation of Section 10(2)(d)) is the Complainant's allegation that the Respondent has purportedly committed trademark infringement which creates a parasitic and deceptive similarity between the STING logo/label and the STORM logo/label, which is an offence under the TM Ordinance. This is evident not just from the complaint, but from the express and explicit observations recorded in the Enquiry Committee's findings.
- (xii) The STORM trademark was registered under the TM Ordinance prior to the Enquiry Report, and prior to the Commission purportedly adopting its contents as part of the SCN. The STORM logo/design was registered after the Registrar Trademarks was satisfied that it met and satisfied the applicable statutory thresholds and did not offend any other party's trademark. The Respondent's logo/trademark has never been revoked nor declared invalid and is binding against the public at large, including the Commission. STORM's logo/label registration under the TM Ordinance is a positive declaration at law regarding various matters, by a competent forum, statutorily vested with the requisite power and jurisdiction at law, which holds the field. Such declaration can only be offset by a contrary factual finding if and when the Respondent's STORM logo/label registration under the TM Ordinance is declared invalid on the ground that the trade mark was registered in breach of Section 14 or any other provision under Section 80 of the TM Ordinance or it is revoked under Section 73 of the TM Ordinance. The decision of the delegated officers of the Commission to exercise jurisdiction under



Section 37 of the 2010 Act and to determine parasitic and deceptive similarity between the STORM and STING trademarks is a determination of trademark infringement. Therefore, such decision of the delegated officers of the Commission is improper and illegal.

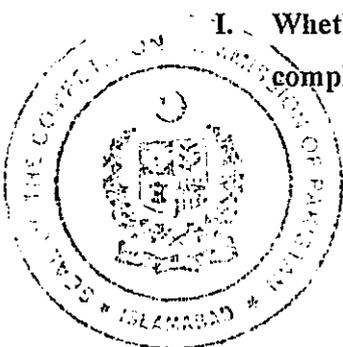
- (xiii) While reserving its right to make submissions on the merits of the complaint, it was categorically denied that the Complainant's product, trade dress, overall look or feel, and its trademark STING are parasitically similar to STORM in terms of logo, design or other significant features.
- (xiv) The proceedings conducted under the SCN should graciously be stayed till a final decision on the CPLA filed against the judgment of the Honourable Lahore High Court, Lahore in Writ Petition No. 48527/2021 is issued, or till the first hearing is held in the matter by the Honourable Supreme Court of Pakistan. Alternatively, and without prejudice to the above, it was prayed that the SCN be disposed of.

18. Following the conclusion of the hearings, the Respondent, through its letter dated 05.11.2025, reiterated its position, arguing that by filing the complaint before the Commission the Complainant effectively seeks to challenge and overturn its trademark registration. The Respondent further submitted that if the Commission intends to make any findings regarding the physical similarities or dissimilarities between the two registered trademarks, both parties, particularly the Respondent, should be afforded an opportunity to present arguments on this issue.

ISSUES

19. Keeping in view the oral and written submissions of the Complainant and the Respondent, the material/evidence placed on the record and the applicable law in the matter, the following issues are framed for the purpose of deliberation, consideration and determination of the Bench:

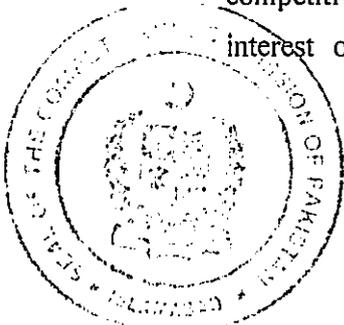
I. Whether the Commission has jurisdiction over the subject matter of the instant complaint?



- II. Whether the Commission has jurisdiction to proceed under Section 10(2)(d) of the 2010 Act in a case where both the Complainant and the Respondent hold registered trademarks?
- III. Whether the Respondent has engaged in deceptive marketing practices by fraudulently using the Complainant's trademark, trade dress, product labeling or packaging in violation of Section 10(1) read with Section 10(2)(d) of the 2010 Act?
- IV. Whether the Respondent has engaged in deceptive marketing practices by distributing false and misleading information in violation of Section 10(1) read with Section 10(2)(b) of the 2010 Act?
- V. Whether the false and misleading information distributed by the Respondent was capable of harming the business interests of any other undertaking(s) in terms of Section 10(1) read with Section 10(2)(a) of the 2010 Act?

ANALYSIS

- I. Whether the Commission has jurisdiction over the subject matter of the instant complaint?
20. The Respondent asserted that it holds a registered trademark 'STORM' under the TM Ordinance and in this regard the IPO has issued a registration certificate dated 13.03.2021, which is effective from 11.09.2015. On this basis, the Respondent contended that the dispute falls exclusively within the jurisdiction of the Intellectual Property Tribunal and not within the purview of the Commission.
21. The Bench has thoroughly examined the contention of the Respondent on the jurisdictional issue, however, it does not agree with the same. In this regard, the Bench notes that as explicitly enunciated in the Preamble of the 2010 Act, the primary object of the Commission is to provide for free competition in all spheres of commercial and economic activity, to enhance economic efficiency and to protect consumers from anti-competitive behavior. Accordingly, the role of regulating a commercial matter in the interest of free and fair competition is exclusively vested with the Commission. The

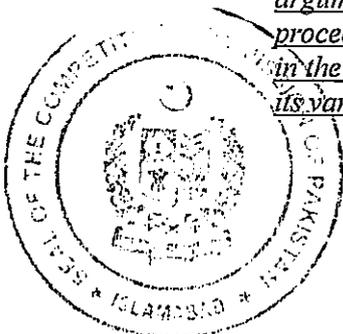


Commission, therefore, has the jurisdiction and can accordingly exercise its power to initiate enquiries and proceedings under Section 28 read with Sections 37 and 30 of the 2010 Act and impose penalties under Section 38 in the matters related to prohibitions under Chapter II of the 2010 Act. Moreover, Section 1(3) of the 2010 Act explicitly provides for the Commission's jurisdiction and application of law as follows:

"It shall apply to all undertakings and all actions or matters that take place in Pakistan and distort competition within Pakistan."

22. Chapter II of the 2010 Act outlines the prohibitions pertaining to Abuse of Dominant Position (Section 3), Prohibited Agreements (Section 4), Deceptive Marketing Practices (Section 10) and Approval of Mergers (Section 11). The instant proceedings arise from alleged breaches of Section 10(2)(d) of the 2010 Act. The Complainant has alleged that the Respondent has contravened the said sub-Section through the fraudulent use of its trademark, packaging and label design. The Bench notes that under this sub-Section it neither decides nor provides guidance on the allocation, availability or dispute about the ownership of trademarks which is the domain of the IPO, rather its mandate is to act against deceptive marketing practices to protect free and fair competition. On the other hand, the IPO under the IPO Act deals with the interpretation and enforcement of Intellectual Property Rights including copyrights, trademarks, patents, designs and other intellectual property laws. Therefore, there is no overlapping of jurisdiction between the IPO and the Commission in a complaint filed before the Commission about an alleged deceptive marketing act of an undertaking.
23. The view of the Bench also finds support from the judgment of the Honourable Supreme Court of Pakistan rendered *In the Matter of Society of Accounting Education (SOAE) v. 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."

(Emphasis Supplied)

24. Moreover, the decision of the Honourable Lahore High Court, Lahore dated 26.06.2024, passed in Writ Petition No. 48527/2021, titled Meezan Beverages (Pvt.) Limited vs. Competition Commission of Pakistan and two others in particular its paragraph 18 is also of relevance which is reproduced herein below:

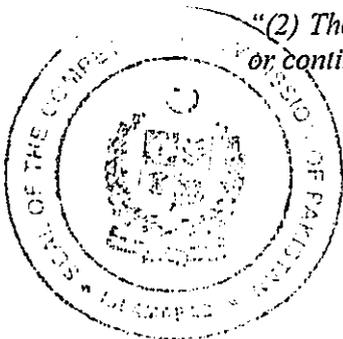
18. Putting the Act in juxtaposition to the IPO Act, a simple and straight forward conclusion is evident that both the enactments have conspicuously distinct purpose, scope, and mandate....violations of Section 10 of the Act in terms of 'deceptive marketing practices' under the Act has different ingredients than 'infringement of intellectual property rights' under the 'intellectual property laws', although an impugned action may entail concurrent proceedings within the distinct scope, mandate and ambit of the Act and the IPO Act...Hence, the argument that exclusive jurisdiction of the Tribunal to adjudicate claims of infringement of intellectual property laws and offences under the IPO Act being a subsequent enactment impliedly excludes jurisdiction of the CCP in terms of deceptive marketing practices under Section 10 of the Act is completely misconceived since jurisdiction of the CCP under the Act and the IPO or the Tribunal under the IPO Act are distinct and separate in terms of ambit and scope of such laws and does not amount to any inconsistency or conflict of jurisdiction. Therefore, the objection that the impugned SCN has been issued by the CCP without jurisdiction is discarded, accordingly."

25. In light of the above, the Bench is of the view that the contention of the Respondent carries no weight, and the Commission has exclusive jurisdiction with regards to the instant complaint, wherein a particular section of the 2010 Act has been invoked.

II. Whether the Commission has jurisdiction to proceed under Section 10(2)(d) of the 2010 Act in a case where both the Complainant and the Respondent hold registered trademarks?

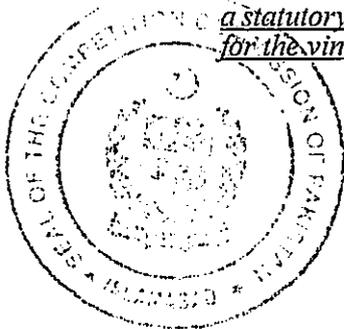
26. It is a matter of fact that both the Complainant and the Respondent have a registered mark for their respective products. The Bench shall, therefore, proceed to examine whether it ought to exercise jurisdiction in the instant complaint and will begin with scrutinizing the legislative intent behind Section 10(2)(d) of the 2010 Act. Section 10(2)(d) provides:

"(2) The deceptive marketing practices shall be deemed to have been resorted to or continued if an undertaking resorts to ...



(d) the fraudulent use of another's trademark, firm name, or product labeling or packaging."

27. To better understand the scope and purpose of Section 10(2)(d), the Bench shall draw guidance from the decision of the Honourable Supreme Court in the case of *A. Rahim Foods (Pvt.) Ltd. v. K&N's Foods (Pvt.) Ltd.* 2023 CLD 1001. The Apex Court held that Section 10(2)(d) codifies the common law tort of passing off. It also noted at para 16 of the judgment that neither the common law action of passing off requires registration of trademark nor does the language of Section 10(2)(d) provides for any such requirement. Section 10(2)(d) is to be understood and applied in line with the common law principles of passing off that are completely different from the principles governing trademark infringement since both actions protect different rights. Passing off protects reputation/goodwill generated by the goods while trade mark infringement protects the trademark itself.
28. The Court further observed that the phrase 'fraudulent use' in the wording of the aforesaid Section is to be understood in the ordinary sense as intentional and dishonest use, which may be inferred from the surrounding circumstances. Moreover, the word 'use' in Section 10(2)(d) is not and cannot be limited to exact replicas, but includes confusingly or deceptively similar marks, names, labeling, or packaging. The interpretation of the Honourable Supreme Court aligns with the established jurisprudence on passing off actions under common law, where misrepresentation and likelihood of confusion are judged from the perspective of an ordinary consumer.
29. To address the differentiation between a claim for passing off and a trade mark infringement, reference is made to the judgment of the Indian Supreme Court in *Durga Dutt Sharma v. N.P. Laboratories* AIR 1965 SC 980, wherein it was held as follows:
- "An action for passing off is a Common law remedy, being in substance an action for deceit, that is, a passing off by a person of his own goods as those of another. But that is not the gist of an action of infringement. The action for infringement is a statutory remedy conferred on the registered proprietor of a registered trade mark for the vindication of the exclusive right to use the trade mark."*
(Emphasis supplied)



30. Moreover, in the case of Mehran Ghee Mills (Pvt) Limited and others v. Chiltan Ghee Mills Limited 2001 SCMR 967, the Honourable Supreme Court of Pakistan, while dealing with a passing off action, held as follows:

"As regards passing off action, it is noted that the principle underlying the passing off action is that it is 'unlawful for a trader to pass off his goods, as the goods of another'. Passing off action may be independent as it may be coupled with [trademark] infringement. It is maintainable irrespective of the fact that the trademark is registered or unregistered."

(Emphasis supplied)

31. In light of the above, it becomes clear that the existence of trademark registration does not immunize a party from liability under competition law where it engages in parasitic copying or deceptive trade dress that could mislead consumers. This was also clarified in the case of Telephone Soap v. Lever Brothers 1994 CLC 2135, wherein the Honourable Lahore High Court held as follows:

"Mere fact that the trade mark of the appellant had also been registered under the Trade Marks Act, would not entitle him to use the same if it amounted to infringement of the trade mark of the plaintiff. I have also examined the raps of both the soaps manufactured by the parties and find that though there may be voice difference and picture of Telephone appears in the trade mark of the appellant but the dispute has to be decided considering over all get up of both the trade marks. When examined I also find that prima facie there is close similarity as regards colour scheme and other features of both the trade marks, therefore, it was rightly held that prima facie case existed in favour of the respondent and it was respondent who was to suffer irreparable loss in case the appellant was not restrained from infringing the trade mark of the respondent and passing his goods as goods of the respondent during the pendency of the suit as the loss which has to occur to the business reputation of the respondent was not measurable in terms of money."

(Emphasis supplied)

32. Now during the course of hearing, counsel for the Respondent placed reliance on the Canadian case Travelway Group International Inc. v. Group III International Ltd. & Others [2021] 1 F.C.R., wherein it was observed that registration of a trademark constitutes a complete defence against an action for passing off. The Bench notes, that such foreign judgments have to be closely assessed in light of Pakistan's statutory framework, judicial precedents and proceeding underway. Reliance is also placed on Ashba Kamran v. Federation of Pakistan 2024 PLC (C.S.) 1325 at para 17. The Bench therefore, would not follow the Canadian precedent in this respect.

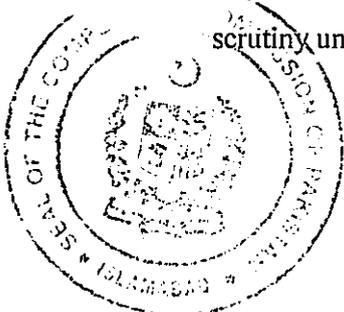


33. Moreover, the Bench observes that in the instant case the Complainant's product STING has been marketed and sold in Pakistan since 2009. This constitutes clear evidence of long-standing and continuous commercial use. Such use gives rise to enforceable prior user rights in trade dress, packaging and branding elements, since these were adopted much earlier than the Respondent's product STORM, whose trademark was registered in 2021 (with effect from 2015). Therefore, the Respondent's registration of the STORM trademark does not and cannot shield it from liability for market conduct that causes deception and consumer confusion. In this regard, reliance is placed on the case of M/s. Durafoam Enterprises (Pvt) Ltd. v. M/s. Vohra Enterprises 2002 CLD 1639, where the Honourable High Court of Sindh held as follows:

"... In the foregoing background in presence of a registered trade mark in favour of the plaintiffs, plaintiffs' right to use such mark is indeed recognized under the Trade Marks Act but exclusivity to use such mark is not absolute but qualified. Rights of prior user as recognized under section 25 of the Act, are equally protected. However, in view of section 25, right of prior user is preferential and superior right of course subject to proof, as against the right of registered holder of contentious mark recognized under section 21 thereof. Right of prior user is valuable and superior right than the right of registered holder of contentious mark. Right of prior user in terms of section 25 is not dependant on registration. In a defensive action defendant has to satisfy the Court that the defendant is using such mark extensively prior to the use by the registered proprietor. As discussed above the defendants have prima facie demonstrated that they are prior user of contentious mark "Mujahid Foam". Defendants have produced advertisement material which are published and printed material which shows advertisement in newspaper and so also on Television much anterior to the adoption of contentious mark by the plaintiff as discussed above, therefore, in my humble opinion defendants have successfully demonstrated that they are prior user and are entitled to protection as recognized under section 25 of the Act."

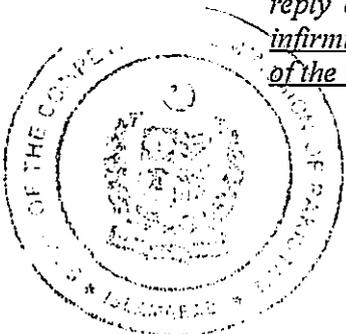
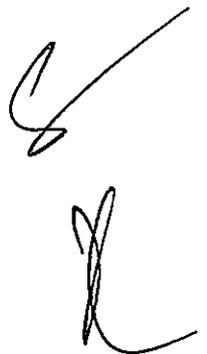
(Emphasis supplied)

34. Similarly, the High Court of Sindh in the case of AlleNora Beauty Salon and Parlour v. Mrs. Ourat-ul-ain Mansoor 2016 CLD 1062 held that 'whenver rights in a trade mark (whether registered or not), are attacked, the wheel of the legal system will spin in the direction of protecting the honest and first adopter in order to safeguard his hard-earned reputation and as well as to save customers from such disguise.' Accordingly, the Bench holds that the Respondent's reliance on trademark registration does not absolve it from scrutiny under the 2010 Act.



35. Therefore, in light of the above discussion the Bench finds that the Commission remains fully empowered to examine whether the Respondent's packaging, trade dress, or labeling amounts to fraudulent use or parasitic copying, giving rise to consumer confusion and unfair market advantage, irrespective of the fact that both the Complainant and the Respondent hold registered trademarks.
36. The Respondent also contended that the Commission's officers exercised jurisdiction under Section 37(2) and (4) improperly and mechanically, without applying a judicious mind or offering reasoned justification for initiating the enquiry and issuing the SCN. The Bench finds no merit in these assertions. The complaint was supported by substantial material, including visual comparisons of the STORM and STING products, evidencing striking similarities in trade dress, packaging, labeling and overall presentation. These facts were examined by the Enquiry Committee, which conducted a reasoned and fact-based review of the allegations and concluded that the Respondent is *prima facie* engaged in deceptive marketing practices in violation of Section 10 of the 2010 Act. The Commission also applied its judicious mind to the allegations, reviewing the supporting documents and the findings of the Enquiry Report, before forming the opinion that evidence existed for issuance of the SCN. Accordingly, the procedure laid down in Section 37 of the 2010 Act was duly followed and the decision to initiate an enquiry and issue the SCN was consistent with the statutory framework. In this respect, the decision of the Honourable Lahore High Court, Lahore dated 26.06.2024, passed in Writ Petition No. 48527/2021, titled Meezan Beverages (Pvt.) Limited vs. Competition Commission of Pakistan and two others also supports the Bench's view as the Court expressly noted in the said order that:

"In the instant case, gist of the reasons or nature of allegations i.e. 'deceptive marketing practices' constituting violation of Section 10 of the Act was stated in the body of the impugned Notice under Section 37(2) of the Act and the complete complaint of the Complainant along with its annexures was appended therewith, the contents whereof, surely constituted and conveyed all the reasons on the basis of which the CCP considered it expedient to conduct an enquiry as the latter did not found it frivolous or vexatious or based on insufficient facts, or not substantiated by prima facie evidence. As such, the test developed in Dalda Foods case (supra) in terms of requirements of Section 37 of the Act was fully met. Moreover, in the impugned SCN, detailed reasons were incorporated and right of reply coupled with hearing was duly accorded. Hence, there is no procedural infirmity or irregularity regarding issuance of impugned Notice and SCN on part of the CCP."



(Emphasis supplied)

37. Having addressed the preliminary objections raised by the Respondent, the Bench shall now revert to the core allegation, whether the Respondent's adoption and use of the trade dress, labeling, and packaging of its 'STORM' energy drink is deceptively similar to the Complainant's 'STING' energy drink and, therefore, constitutes deceptive marketing under Section 10 of the 2010 Act.

III. Whether the Respondent has engaged in deceptive marketing practices by fraudulently using the Complainant's trademark, trade dress, product labeling or packaging in violation of Section 10(1) read with Section 10(2)(d) of the 2010 Act?

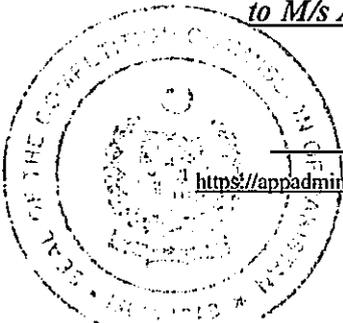
38. The core issue in the instant case is regarding the Respondent's alleged imitation of the Complainant's distinctive trade dress, which attracts the provisions of Section 10(2)(d) of the 2010 Act. This provision prohibits the fraudulent use of another's trademark, firm name, or product labeling or packaging. For ease of reference, Section 10(2)(d) is reproduced hereinbelow:

"10. Deceptive marketing practices. ...

(2) The deceptive marketing practices shall be deemed to have been resorted to or continued if an undertaking resorts to:

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

39. The Commission considers it necessary, before conducting a factual comparison between the Complainant's STING energy drink logo and bottle design and the impugned branding used by the Respondent, to elaborate on the underlying legal principles and the interpretation of the term 'fraudulent use of another's trademark' in the context of Section 10(2)(d) of the 2010 Act. The Commission has previously discussed and applied this provision in various determinations, notably *In the Matter of Show Cause Notice Issued to M/s ACE Group of Industries¹* (the ACE Order) and *In the Matter of Complaint*



https://appadminccp.cc.gov.pk/ccporders/976b23d6-de41-4ef1-910f-57973dca7308_bmw_harley_davidson_final_order.pdf

filed by M/s DHL Pakistan (Pvt.) Limited² (the DHL Order). In the DHL Order, the Commission observed as follows:

"...the interpretation of fraudulent use of trade mark has to be in the context of deceptive marketing and would thus have a broader scope. Rather than making it too complex by focusing on subjective "intentions" of the Respondents, in our considered view, it is best if we adopt simplistic approach i.e. if it can be demonstrated that the Respondents by use of the trade mark, intended to deceive the customer/consumer to gain an advantage. Keeping in view the nature of contravention, it is not the subjective intent but the objective manifestation of that intent that will establish the fraudulent use".

(Emphasis supplied)

40. Moreover, the Commission In the Matter of Show Cause Notice Issued to M/s A. Rahim Foods 2016 CLD 1128 (the K&Ns Order) observed that:

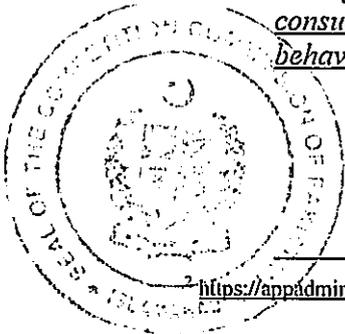
"...fraud itself consists of some deceitful practice or willful device to obtain an unjust advantage and which deprives another of a right or causes another injury. The Commission, entrusted with the task of adjudicating upon a potential contravention under this provision of the Act, remains mindful 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 average consumer of a commodity..."

(Emphasis supplied)

41. It is also pertinent to consider the issue of parasitic copying with regard to consumer deception in view of 10(2)(d) of the 2010 Act. As discussed by the Commission in the K&Ns Order, although the term 'parasitic copying' is not defined under the 2010 Act, it is imperative to discuss the concept with respect to Section 10(2)(d) of the 2010 Act owing to the element of deceit it entails, resulting in potential detriment to consumers. In the K&Ns Order, 'parasitic copying' or 'copycat packaging' was defined by the Commission as follows:

"...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 of behaviour."

(Emphasis supplied)



42. The Commission in the K&Ns Order established that there exists an element of 'willful deceitfulness' along with 'free-riding' and 'passing off' in cases of both parasitic copying and a contravention of Section 10(2)(d) of the 2010 Act. The Commission also held that, *'where there is evidence that an undertaking is guilty of parasitic copycat packaging, having the obvious foreseeable effect of misleading and causing deceitful confusion in the mind of the ordinary consumer; a violation in terms of Section 10(2)(d) will be made out.'*

43. A marketing practice is deemed to be materially deceptive for the purposes of Section 10(2)(d) of the 2010 Act if it involves the marketing of a product which creates confusion with any other product, trademark, trade name or other distinguishing mark of a widely-known competitor, causing a consumer to wrongly believe that the product is made by the same known competitor. In this context, the Respondent's use of packaging, labeling, and overall trade dress of its product STORM similar to the Complainant's product STING, raises serious concerns of parasitic copying and fraudulent use of another's product labeling or packaging. As emphasized in the Commission's prior determinations, including ACE, DHL, and K&Ns orders, such imitation, even if falling short of direct counterfeiting, may still result in consumer confusion and constitute willful deceit intended to exploit the reputation and goodwill of an established brand.

44. It is also imperative to discuss here the concepts of 'trademark' and 'trade dress' in relation to Section 10(2)(d) of the 2010 Act. The term trademark is defined in the TM Ordinance as *'...any mark capable of being represented graphically which is capable of distinguishing goods or services of one undertaking from those of other undertakings'*; whereas as per the TM Ordinance, *'mark includes, in particular, a device, brand, heading, label, ticket, name including person name, signature, word, letter, numeral, figurative elements, colour, sound or combination thereof.'* Further, the term trade dress has been explained in the Enquiry Report as:

"...the overall commercial image (look and feel) of a product that indicates or identifies the source of the product and distinguishes it from those of others. It may include the design or shape/configuration of a product; product labeling and packaging; and even the décor or environment in which services are provided. Trade dress can consist of such elements as size, shape, colour and texture, to the



extent that such elements are not functional. In many countries label, any combination trade dress is referred to as 'get-up' or product design."

45. The Bench also finds it pertinent to refer here the judgment of the Honourable Supreme Court of Pakistan rendered in A. Rahim Foods (*supra*) wherein it was observed:

"The word 'use' in the phrase of Section 10(2)(d), that is, 'fraudulent use of another's trademark, firm name, or product labelling or packaging', also requires elaboration: whether it only relates to the use of the same trademark, firm name, or product labelling or packaging, or it includes the use of the similar trademark, firm name, or product labelling or packaging and whether it covers the 'parasitic copying' of another's trademark, firm name, or product labelling or packaging. Since Section 10(2)(d) of the Act has codified the common law on passing-off action, we need to see how the use of another's trademark, firm name, or product labelling or packaging is understood and applied in such common law action and whether the language of Section 10(2)(d) suggest any change.

...

As 'nobody has any right to represent his goods as the goods of somebody else', it is unlawful for a trader to pass off his goods as the goods of another by using the same or confusingly similar mark, name, or get-up. In a passing-off action, 'the point to be decided', as said by Lord Parker, 'is whether, having regard to all the circumstances of the case, the use by the defendant in connection with the goods of the mark, name, or get-up in question impliedly represents such goods to be the goods of the plaintiff'. There is nothing in the language of Section 10(2)(d) of the Act that the meaning of the word use has been restricted therein to the use of the same trademark, firm name, or product labelling or packaging. We, therefore, hold that the word "use" in Section 10(2)(d) of the Act includes the use of trademark, firm name, or product labelling or packaging which is confusingly similar (also referred to as deceptively similar) to that of another undertaking.

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

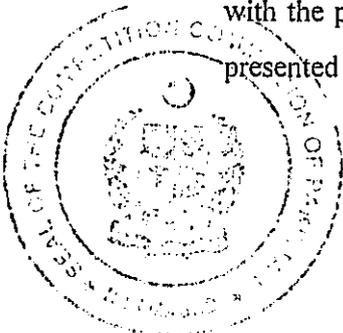


the mark, name or get-up of the article he intends to buy. The standard is therefore also described as that of a purchaser of average intelligence and imperfect recollection. Further, to determine the confusing or deceptive similarity from the point of view of an unwary ordinary purchaser, the leading 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)

46. The following points become apparent from the dicta of the Honourable Supreme Court:
- (i) It is the overall packaging of a product and the impression left by it on 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.
 - (ii) An ordinary consumer is expected to know the peculiar characteristics of the product that he wishes to purchase but he cannot be expected to remember every detail of the mark, name or get-up at each time of purchase.
 - (iii) For the purposes of Section 10(2)(d) of the 2010 Act, it suffices that the trademark, product labeling and packaging are confusingly/deceptively similar to another undertaking's trademark, product labeling and packaging. They need not be identical but can have apparent similarities for an ordinary consumer.

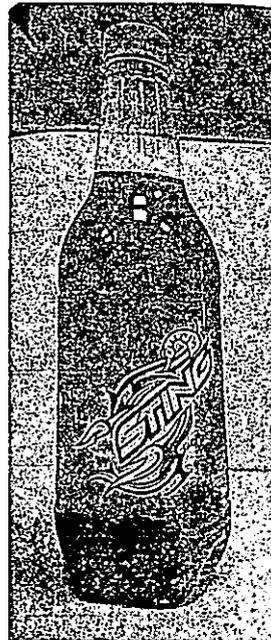
47. The Bench now proceeds to apply the above legal principles to the facts of the case and assess the conduct of the Respondent in relation to Section 10(2)(d) of the 2010 Act. In this respect, a pictorial comparison of the Complainant's trademark and trade dress along with the product packaging of the Respondent, and the analysis of the Commission is presented below:



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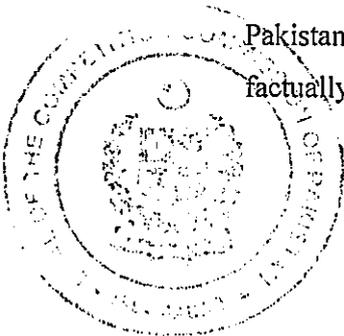


Mezan's Product STORM



Pepsi's Product STING

48. While examining the packaging and trade dress of the Complainant's STING energy drink alongside that of the Respondent's STORM energy drink, the Bench observes that there are striking visual similarities between the two products. Both beverages feature a dynamic visual logos, along with identical ingredients labels with a similar vivid color drink inside. Moreover, both drinks are sold in plastic bottles of near-identical shape and size.
49. First of all, the Bench shall discuss the similarity between the color of both beverages. In this regard, the Bench is guided by and concurs with the judgment of the Honourable High Court of Sindh in the case of *Messrs Golden Thread Industries v. J & P Coats Limited Company* 2013 CLD 1945, where the court observed at para 9 that '*a particular colour scheme plays a vital part in the identification of a product and it is particularly so when such product is used mainly by illiterate persons.*' It is pertinent to mention here that the Bench has already noted in this Order that the Complainant's product entered the market long before the Respondent's product and so its STING energy drink acquired a reputation and distinctiveness in the relevant market due to its bright red color. To justify the use of the same red color, the Respondent made an assertion that energy drinks in Pakistan are uniformly red in color, however, the Bench finds the aforesaid assertion factually incorrect. A simple review of energy drinks available in the local market



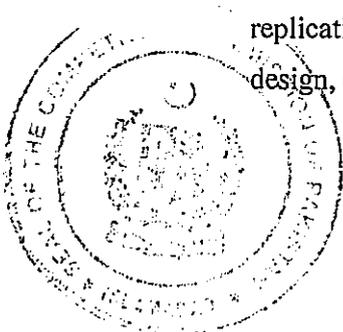
demonstrates that various brands use a wide range of colors for the liquid. For example, Gatorade commonly uses blue, yellow, orange, and white; Sting is also available in blue and gold variations; Prime offers blue, pink, orange, green and white; and Red Bull frequently uses a distinct color. Therefore, the assertion of the Respondent lacks merit as it is not convincingly supported by relevant market evidence.

50. Furthermore, the Bench notes the striking resemblance in the design and color scheme of the logos, as depicted in the table below:

Feature	STING (Complainant)	STORM (Respondent)
Brand Word	'STING' in bold, angled white letters	'STORM' in bold, angled white letters
Graphic Style	Tribal scorpion motif, dynamic black-red elements	Tribal-style black-red elements, lightning bolt
Color Scheme	Red-dominated background with black-white contrast	Red-dominated background with black-white contrast
Tagline/Message	'ENERGY DRINK' emphasized	'ENERGY DRINK' + 'FUEL UP YOUR ENERGY'
Placement on Label	Central placement, dominant visual feature	Central placement, dominant visual feature

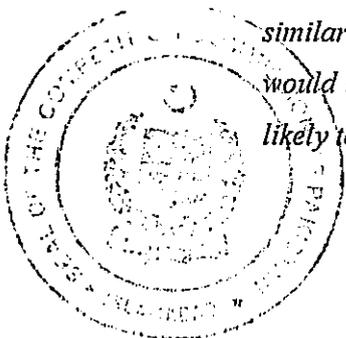
The above table and the pictorial comparison of the two products show that the logos of both products display conspicuous, diagonally-oriented brand names (i.e. 'STING' and 'STORM') in bold, white, stylized font against a red background, accompanied by black-and-white tribal or electric graphic elements. It is observed that the individual brand names, their style, placement, and presentation on the bottles mimic one another to such a degree that they may mislead or confuse an ordinary consumer at the point of sale. The use of similar color gradients and graphic motifs contributes to the overall impression of imitation of the logo of the Complainant for an ordinary consumer.

51. Moreover, the bottle shape of the Respondent's STORM energy drink has been observed to be identical or closely similar to the Complainant's STING energy drink. Both bottles feature punted bottoms and are made of transparent material, which contribute to a shared aesthetic and structural appearance. While it is acknowledged that the Complainant may not possess exclusive rights over the punted bottle design, however, when the deliberate replication of this feature is considered along with the striking similarity in the label design, color layout, and placement of graphical elements reveal the Respondent's intent



to imitate the overall look and feel of the Complainant's product. Such imitation strengthens the inference that the Respondent has engaged in parasitic copying and fraudulent use of the Complainant's trade dress to benefit from the Complainant's established market goodwill and to deceive ordinary consumers.

52. Therefore, from what has been discussed above, the Bench is satisfied that the evidence adduced before it is conclusive enough to hold that the strikingly similar packaging, labeling, and bottle design of the Respondent's STORM energy drink with the Complainant's STING energy drink are sufficient to cause confusion in the minds of an ordinary consumer. From the use of a similar transparent punted bottle, to the mirrored layout of the label, replication of the ingredient list and its presentation, the color of the drink, and overall visual impression, the Respondent's product creates a deceptive association with the Complainant's well-known brand. Such imitation results in an unjust commercial advantage to the Respondent at the expense of the Complainant's brand equity and market reputation.
53. In arriving at this conclusion, the Bench is guided by the well-established principle of net general impression, which requires an assessment of the overall get-up, packaging, and trade dress of a product rather than focusing on isolated elements. This principle has been consistently upheld by the Superior Courts of Pakistan in multiple decisions. For instance, the Honourable Supreme Court of Pakistan in Western Brand Tea v. Tapal Tea PLD 2001 SC 14, observed that '*a bare visual look at the competing wrappers reflected a striking resemblance likely to mislead consumers, particularly those who are illiterate or less discerning, thereby harming the respondent's market presence.*' Similarly, the High Court of Sindh in Rexona v. Majid Soap Works PLD 1956 Sindh 1 held that '*where the get-up is so similar, it is not necessary there should be evidence that anyone has in fact been deceived... It is enough if the plaintiff satisfies the Court that the defendant sells his goods marked in a manner so as to lead purchasers to believe or create a probability of so believing that they are buying the goods of the plaintiff.*' Likewise in case of Welcome Foundation v. Karachi Chemical 2000 YLR 1376, the Court emphasized that '*in order to come to the conclusion whether one mark is deceptively similar to another, the broad and essential features of the two are to be considered... It would be enough if the impugned mark bears such an overall similarity... as would be likely to mislead a person usually dealing with one to accept the other.*'



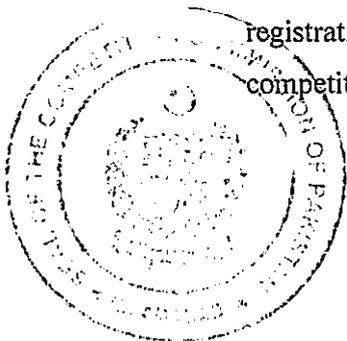
54. These settled judicial pronouncements make it clear that deceptive similarity is judged by the overall impression left on the minds of an ordinary consumer, not by minor or technical differences in packaging or design. Hence, the imitation of the Complainant's STING energy drink by the Respondent through the STORM energy drink packaging clearly demonstrates an attempt to replicate the general look and feel of a well-established brand. Such mimicry is not merely coincidental but constitutes willful deceitfulness intended to mislead consumers and to unfairly benefit from the Complainant's goodwill.

55. The Respondent during the course of hearing attempted to deflect liability by arguing that its marketing strategy was in line with common industry practices, asserting that similar colors and promotional strategies are widely used by other beverage brands. However, the Bench is of the view that the widespread nature of a deceptive practice within an industry is not an argument that absolves an undertaking of its legal obligations. The Commission has consistently maintained that deceptive marketing practices remain unlawful, irrespective of their prevalence or perceived acceptance in the market. *In the Matter of Paint Manufacturers 2012 CLD 808*, the Commission observed that:

"Industry-wide deceptive practices do not absolve an undertaking of its individual responsibility under the law. Transparency in advertising is a fundamental requirement regardless of common industry norms."

A similar view was adopted by the Commission in the case of *M/s Nishat Hyundai Motor Private Limited 2025 CLD 1276*. Therefore, the Bench finds that the Respondent's reliance on common industry practices does not constitute a valid defense. Regardless of whether other market players engage in similar conduct, each undertaking is required to adhere to fair marketing principles.

56. The Bench further observes that the Respondent has falsely represented its trademark as a 'registered trademark' in its marketing materials, product packaging, and promotional campaigns, despite the fact that no valid registration existed on the Trade Marks Register in its name on the relevant dates of marketing. Such misrepresentation is misleading to both consumers and competitors, as it creates a false impression of legal protection and exclusivity of a trade mark. By wrongfully affixing the ® symbol and claiming registration, the Respondent has engaged in a deceptive conduct that distorts fair competition and amounts to an unfair trade practice under the law.



57. The Bench further notes that, during the enquiry proceedings, the Respondent vide its response dated 05-03-2021 contended that its 500 ml STORM bottle, alleged to be similar to the Complainant's 500 ml STING bottle had been replaced by a 345 ml bottle and production of 500ml has been stopped since 02-08-2018. The Respondent also contended that the new bottles featured entirely new packaging, design, logo, and size. However, in order to verify this assertion the Enquiry Committee examined the Respondent's official website on 27.05.2021, immediately prior to the conclusion of the enquiry proceedings. The website review revealed that although the Respondent had introduced the 345ml bottle, the design, and colour scheme of the logo/Trademark on the 345ml STORM bottle were the same as used for the impugned 500ml bottle. This contradiction demonstrates that the Respondent's plea of discontinuation of the fraudulent use of the logo/Trademark was not supported by the facts. In view of aforesaid, the Bench finds that the Respondent's claim lacks evidentiary support and accordingly rejects it.

58. Therefore, in light of the foregoing analysis, comparative assessment, and the settled legal principles, the Bench holds that the Respondent's adoption of the 'STING' energy drink packaging and branding constitutes a fraudulent use of the Complainant's trademark and overall product get-up. The substantial visual similarity in the bottle design, color scheme, and overall presentation is likely to mislead or confuse an ordinary consumer into believing that the two products are of the same make. Such imitation by the Respondent not only undermines the distinctiveness and goodwill built by the Complainant but also amounts to deceptive marketing practices prohibited under Section 10(2)(d) of the 2010 Act. Hence, the Respondent has acted in contravention of Section 10(1) read with Section 10(2)(d) of the 2010 Act.

IV. Whether the Respondent has engaged in deceptive marketing practices by distributing false and misleading information in violation of Section 10(1) read with Section 10(2)(b) of the 2010 Act?

59. Section 10(2)(b) of the 2010 Act prohibits undertakings from distributing false or misleading information to consumers, including representations that lack a reasonable basis concerning the price, character, method or place of production, properties, suitability for use, or quality of goods. The Bench has carefully examined the Enquiry Report's observations on the alleged violation of Section 10(2)(b) of the 2010 Act. No



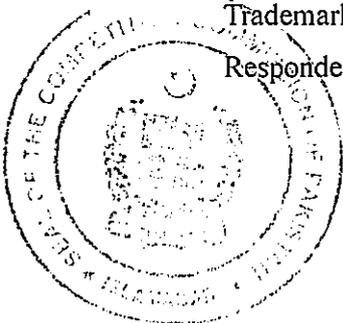
reasoning has been put forward by the Enquiry Committee as to how the Respondent's imitation of the Complainant's product automatically amounts to the '*distribution of false or misleading information... lacking a reasonable basis*' for the purposes of establishing a violation under Section 10(1) read with Section 10(2)(b) of the 2010 Act. Thus, the Enquiry Committee has failed to examine in any detail the elements of Section 10(2)(b) that must be met in each case before charging any undertaking with the said sub-Section. In this regard, it is also important to note that in its complaint, the Complainant has not alleged any violation of Section 10(2)(b) by the Respondent. Resultantly, for the reasons enumerated above, the Bench finds no merit in the allegation of Section 10(2)(b) made against the Respondent.

V. Whether the false and misleading information distributed by the Respondent was capable of harming the business interests of any other undertaking(s) in terms of Section 10(1) read with Section 10(2)(a) of the 2010 Act?

60. The Bench has carefully considered the findings of the Enquiry Committee in relation to the alleged violation of Section 10(2)(a) of the 2010 Act, which prohibits the dissemination of false or misleading information that is capable of harming the business interests of another undertaking. The Enquiry Report has merely relied on the Respondent's violation of Section 10(2)(d) of the 2010 Act to hold that it has also infringed Section 10(2)(a), without establishing a breach of Section 10(2)(a) on its own. The Enquiry Committee's assessment in this regard is, therefore, largely superficial. Accordingly, the Bench is not inclined to give any finding against the Respondent under Section 10(2)(a) of the 2010 Act.

DECISION AND PENALTY

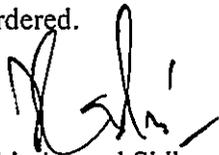
61. While imposing financial penalties, the Commission is guided by its Guidelines on Imposition of Financial Penalties (Fining Guidelines), which emphasize that the objective of any fine is to ensure deterrence and to reflect the seriousness of the infringement. In the present case, the Bench has carefully assessed the gravity of the violation, particularly the Respondent's deliberate fraudulent use of the Complainant's Trademark, product packaging, labeling, bottle shape and overall trade dress. The Respondent's conduct was aimed at creating consumer confusion and unjustly



capitalizing on the goodwill and market presence of the STING energy drink. Thus, the overall assessment of the seriousness and intent behind the infringement justifies the imposition of a financial penalty on the Respondent to serve both corrective and deterrent purposes under the law.

62. The Bench, after carefully considering the findings of the Enquiry Report, the submissions and materials provided by the Complainant and the Respondent, the overall impact/presentation of the STORM energy drink, and the legislative intent of Section 10 of the 2010 Act, hereby imposes a penalty of PKR 150,000,000/- (Rupees One Hundred and Fifty Million only) for violation of Section 10(1) of the 2010 Act read with Section 10(2)(d).
63. The Respondent shall deposit the penalty amount within sixty (60) days from the date of this Order. Failure to comply shall render the Respondent liable to a further penalty of PKR 100,000/- (Rupees One Hundred Thousand only) per day from the date of issuance of this Order and initiation of criminal proceedings against the Respondent pursuant to Section 38 of the 2010 Act before the court of competent jurisdiction.
64. Further, the Respondent shall immediately cease and desist from using, adopting, or otherwise advertising a trade dress which is either identical or confusingly similar to the trade dress of the Complainant's STING energy drink, in any manner whatsoever, in respect of its STORM energy drink so as to be easily distinguishable from the Complainant's product. A compliance report in this regard shall be filed with the Registrar Office within thirty (30) days from the date of this Order.
65. In terms of the above, SCN No. 30/2021 is hereby disposed of.

66. It is so ordered.



Dr. Kabir Ahmed Sidhu
Member



Salman Amin
Member

ISLAMABAD, THE ^{31ST} DAY OF DECEMBER, 2025.

