



BEFORE THE COMPETITION COMMISSION OF PAKISTAN
IN COMPLIANCE OF
THE ORDER OF THE HONORABLE LAHORE HIGH COURT (MULTAN
BENCH) LAHORE DATED 02-10-2023 IN INTRA COURT APPEALS NO.
185/2023, 186/2023, 187/2023, ALL TITLED S.M FOOD MAKERS
LIMITED VS. FEDERATION OF PAKISTAN, ETC.

(File No: 338/ISMAIL INDUSTRIES/OFT/CCP/2019)
(File No: 354/ENGLISH BISCUITS/OFT/CCP/2019)
(File No: 325/HILALFOODS/OFT/CCP/2018)

Date of Hearing: 20.12.2023
21.12.2023

Bench

Mr. Saeed Ahmad Nawaz

Mr. Salman Amin

Present on Behalf of:

M/s English Biscuits
Manufacturer

Mr. Hassan Zafar, Advocate High Court

M/s Ismail Industries Limited

Ms. Hania Haroon, Advocate High Court

M/s Hilal Foods (Pvt.) Limited

Mr. Khurram Shehzad Chughtai,
Advocate High Court

M/s Volka Foods International
Limited

Mr. Wasim Khokhar, Advocate High
Court

M/s S.M. Foods Private Limited

Mr. Shafqat Chohan, Advocate Supreme
Court



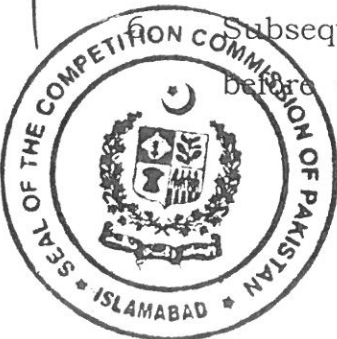
ORDER

1. This order, pursuant to the directions of honorable Lahore High Court (Multan Bench) Lahore in Intra Court Appeals No. 185/2023, 186/2023, and 187/2023 dated 30.05.2023 (Collectively, the '**ICAs**') titled **S.M. Food Makers Limited Vs Federation of Pakistan, etc.**, shall determine the maintainability of the instant proceedings and the jurisdiction of the Competition Commission of Pakistan (hereinafter, the '**Commission**' or the '**CCP**').
2. The instant proceedings were initiated under Section 30 of the Competition Act 2010 (hereinafter, the '**2010 Act**') through the Show Cause Notices No. 03/2020 dated 05.06.2020, 51/2020 and 52/2020 dated 17.06.2020, and 13/2022 dated 20.07.2022 (hereinafter, the '**SCNs**').
3. The SCNs called upon the respondents to explain their position regarding the alleged violations of 2010 Act and offered the opportunity for hearing before the Commission. A copy of the relevant Enquiry Report was enclosed with the SCNs.

BACKGROUND

4. Ismail Industries Limited (**IIL**), English Biscuits Limited (**EBL**), and Hilal Foods Limited (**HFL**) (hereinafter, the '**Complainants**') filed complaints with the Commission under Section 37(2) of the 2010 Act against S.M. Food Makers Limited (**SFML**) and Volka Food Limited (**VFL**) (collectively, the '**Respondents**').
5. The Complaints alleged that the Respondents engaged in deceptive marketing practices which is a *prima facie* violation of Section 10 of the 2010 Act.

Subsequent to the issuance of the SCNs, SFML filed three Writ Petitions before the honorable Lahore High Court (Multan Bench), Lahore.



bearing W.P. Nos. 8667/2020, 8668/2020, and 11669/2023 challenging the legality of the said SCNs.

7. While adjudicating the petitions, the honorable Court noted that there were analogous questions of law and facts in the petitions, particularly concerning the jurisdiction of the Commission and its legal authority to issue the SCNs. The honorable Court consolidated the petitions and adjudicated collectively.
8. On 08.05.2023, the honorable Court disposed of the petitions with the following observations and directions:

“5. the petitioners have challenged the impugned show-cause notices issued to them through these petitions and claim that constitutional petition is maintainable. There is no cavil to the proposition of law that constitutional petition could be entertained against a show cause notice if the same has been issued without jurisdiction yet this Court would not dilate upon the said aspect of the matter for the reason that objection to the jurisdiction should, in the first instance, be raised before the forum, whose jurisdiction is under challenge, therefore, the petitioners shall file reply to the afore-mentioned show cause notices / subject matter of this petition within next 30 days by raising all the objections, including the objection relating to jurisdiction, pendency of the matter before other forums, finality not attached to the proceedings, whereby any right in favour of the respondent has been determined, etc. for which the Competition Commission of Pakistan shall also hear the petitioners as well as the respondents concerned and first decide the question of jurisdiction, and all other issues/objections before finalization of the matter...”

6. Needless to mention that Competition laws also provide appeal in the appellate forums, where the concerned authorities can determine all factual controversies and legal issues arising in the matter, therefore, giving any definite finding at this stage without going through the process would not be justified.”

9. Subsequently, the Respondent assailed the above order by filing ICAs before honorable Lahore High Court, Lahore. On 10.10.2023. The honorable Court observed that in light of order of even date passed in



connected Intra Court Appeal No. 185 of 2023, Intra Court Appeals No. 186 and 187 are also **dismissed as withdrawn**. The operative portion of the said order reads as under:

“This Intra Court Appeal (ICA) as well as the connected ICAs bearing Nos. 186 & 187 of 2023 call into question the order dated 08.05.2023 passed by the learned Single Judge in connected writ petitions.

2. After arguing the matter at some length, learned counsel does not press this appeal, as well as connected appeals, however, submits that impugned order may be maintained but Competition Commission of Pakistan be directed to decide the jurisdictional issue as a preliminary issue.

3. In this view of the matter, while maintaining the impugned order, it is directed in legal proceedings pending before the Competition Commission of Pakistan the legal as well jurisdictional issues shall be decided as preliminary issues and then proceed further in the matter in accordance with law.

*4. **Dismissed as withdrawn**.”*

10. In terms of the above order, the honorable Court has essentially directed the Commission to address the issue of its jurisdiction and maintainability of the impugned proceedings as a preliminary matter. Thus, this order will focus solely on determining the Commission's jurisdiction and maintainability of the instant proceedings under the 2010 Act, and the merits of the case may be addressed in a separate order after hearing the parties.

SUBMISSIONS

11. Hearings were held on 20.12.2023 and 21.12.2023 before the Bench and the parties made the submissions herein below:

S.M. Food Makers Limited (SFML)

Counsel for **S.M. Food Makers Limited (SFML)** submitted response only over the jurisdictional and legal issues; and that he



reserves the right to reply to the factual controversies once the Commission issues its order over its jurisdiction. He further submitted that:

- (a) the Enquiry Report dated 28.06.2022, authorized by the Commission, was illegal and lacked jurisdiction as the 2010 Act intends to protect consumers from anti-competitive practices, however, through the current proceedings, exclusivity is being granted to one industry which will potentially lead to market monopolization.
- (b) the trademark law and the 2010 Act cannot be applied simultaneously; the subject of this dispute relates to trademarks which cannot be made the subject matter of competition law. The 2010 Act only deals with the issues of public at large, it cannot adjudicate individual issues of any industry.
- (c) the dominant position under the 2010 Act is the right of the consumer. However, the instant proceedings will create dominant position of an industry.
- (d) the competition law deals with matters pertaining to consumer protection. It was, therefore, the right of the consumer or any association of consumers to file the complaint before the Commission in the instant case. Consumer's rights could neither be claimed, nor any such complaint be lodged by any industrialist before the Commission to further his own interest and benefit.
- (e) the Commission cannot proceed under Section 10(1) read with 10(2)(b) of the 2010 Act without an independent order for each trademark being a different cause of action.
- (f) the Complainants could not claim exclusive use of trademark during the pendency of litigation about the ownership of the disputed trademarks. The Commission cannot initiate proceedings without determination of exclusive use of trademark;



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such an exclusive use can only be determined by Intellectual Property Tribunal instead of any other authority. Further, each trademark is different therefore a bulk claim cannot be made.

- (g) the Complainant has already availed remedies before relevant forum under trademark law therefore, the same complainant cannot avail jurisdiction of the Commission.
- (h) all the trademark registrations are sub-judice before the relevant IP forums hence, it is also possible that the same may be decided in the favor of the Respondent. Therefore, the Commission should not proceed unless trademarks are decided in the favor of the complainants.
- (i) the 2010 Act provides for the consumers to lodge complaints, not private businesses.
- (j) the trademark registration disputes are sub-judice before the relevant IP forums prior to the institution of the subject complaints.
- (k) Upon inquiry by the Bench, the Respondent submitted that they did not disclose the same in their response to SCN.
- (l) the 2010 Act would prevail if the complainants had approached the Commission with the exclusive ownership of disputed trademarks.

M/s Hilal Foods (Pvt.) Limited

13. The Counsel for **M/s Hilal Foods (Pvt.) Limited (HFL)** contended that HFL is demonstrably eligible and competent to file the complaint against the Respondent. He submitted that:

- (a) the Complaint alleges engagement of the Respondent in deceptive marketing practices which is a potential violation of Section 10 of the 2010 Act.

Section 10 of the Act prohibits false or misleading representations and passing off which could harm the competitor by diverting



consumers away from the complainant's products, undermining their brand reputation, creating an uneven playing field, and hindering informed decision making by the consumers.

- (c) the 2010 Act has an overriding effect under section 59 in the matters related to anticompetitive conduct. Such *non-obstante* provisions shall be construed under the guiding principles provided by the Supreme Court of Pakistan in ***Syed Mushahid Shah v Federation of Pakistan, 2017 SCMR 1218.***
- (d) the instant proceedings were not about a dispute regarding any product or its trademark but misleading and deceptive marketing practice. If a trademark was copied it would be a trade dispute and not within the domain of CCP and only IP Tribunal under IPO Law could deal with it but in the current proceedings deceptive marketing practices were being challenged.
- (e) HFL is in the market since ages, developed a product and established their brand. He maintained that CCP was, therefore, bound to protect them and the public from products with deceptive footprint.
- (f) more than four complaints were before the Commission against the respondents as they were not conducting their business in a healthy competitive manner but cashing on established brands to defraud general public and never denied the allegations of deceptive marketing practices leveled against them. The complaint was filed in 2018 and SCN was issued in 2020 and the issue of Commission's jurisdiction was not raised at that point in time.

M/s Ismail Industries Limited (IIL)

14. Counsel for **M/s Ismail Industries Limited (IIL)** argued that if the provisions of section 10 of the Act were attracted then the dispute was in between whom becomes irrelevant. She submitted that:



- (a) in case of anti-competitive behavior and practices the Commission was empowered to conduct enquiries and proceedings and the 2010 Act had overriding effect under section 59 of the said Act.
- (b) the trademark issue and deceptive marketing are distinctive in nature and exclusive jurisdiction of CCP in case of later was upheld by the Apex Court in ***A Rahim Foods (Pvt.) Limited vs. K&N'S Foods (Pvt.) Limited, 2023 CLD 1001.***
- (c) the respondents after having submitted to the jurisdiction of the Commission cannot challenge it subsequently hence, the respondents' conduct was an afterthought to delay the outcome of instant proceedings.

M/s English Biscuits Manufacturer

15. Counsel for **M/s English Biscuits Manufacturer** argued that the Trademark Ordinance 2001 (hereinafter the **2001 Ordinance**) and the 2010 Act were not mutually exclusive. The 2001 Ordinance dealt with grant, use and protection of particular trademarks, while the 2010 Act addressed the issues of broader anticompetitive practices, *such as* those prohibited under Section 10 of the Act. He added that:

- (a) the Commission has exclusive jurisdiction over deceptive marketing practices that undermine competition and distort the market.
- (b) the 2010 Act deals with market competition to prevent harm to competition as no definition of consumer existed in the 2010 Act. While the 2001 Ordinance protected the interests of an undertaking already holding a trademark it could not address the issues in the market as fair trade was not subject of the 2001 Ordinance. The proceedings before CCP have no nexus with any civil suit or case before IP Court as CCP would determine deceptive or misleading practices, if any.



- (c) the 2010 Act allows any 'aggrieved person' to file a complaint with the Commission. This expression includes competitors, like the Complainant, who suffered direct harm from deceptive marketing practices resorted to by any other undertaking. Such practices could mislead consumers into believing that certain product was affiliated with the Complainant and potentially violated Section 10 of the 2010 Act, causing harm to both competitors and consumers.

M/s Volka Foods International Limited

16. The counsel for **M/s Volka Foods International Limited** adopted the arguments put forward by the counsel for M/s SM Foods Private Limited.

ANALYSIS

17. Keeping in view the oral and written submission made by the parties concerned, the material / evidence placed on the record and the applicable law in the matter, the following issue is framed for the purpose of deliberation and determination:

“whether the CCP has jurisdiction over the subject matter and whether the SCNs have been legally issued by the CCP in the instant matter?”

18. At the outset, it is observed that the Respondent(s) have submitted to the jurisdiction of the Commission by participating in the enquiry process.
19. Every citizen is entitled to conduct any lawful trade, commerce or industry in a competitive environment as a fundamental right under Article 18 of the Constitution of Pakistan 1973 subject to such qualifications as prescribed by the law.



20. Similarly, Article 151 of the Constitution provides for free trade and commerce throughout Pakistan save as provided by law. According to Entry No. 27 to the Federal Legislative List, PART I, the Parliament is mandated to enact law to regulate inter-provincial trade and commerce. Similarly, pursuant to Entry No. 25, Parliament makes law to regulate trademarks and merchandise marks as well.
21. A Provincial Assembly or a Provincial Government shall not have power to-
- (a) make any law, or take any executive action, prohibiting or restricting the entry into, or the export from, the Province of goods of any class or description, or
 - (b) impose a tax which, as between goods manufactured or produced in the Province and similar goods not so manufactured or produced, discriminates in favour of the former goods or which, in the case of goods manufactured or produced outside the Province discriminates between goods manufactured or produced in any area in Pakistan and similar goods manufactured or produced in any other area in Pakistan.
22. In light of the above, the 2010 Act was enacted to provide for free competition in all spheres of commercial and economic activity to enhance economic efficiency and to protect consumers from anticompetitive behavior.
23. In particular, clauses (a) and (b) of the proviso of Article 18 of the Constitution provide for the regulation of any trade or profession by a licensing system or the regulation of trade, commerce or industry in the interest of free competition.
24. The regulation by a licensing system has been entrusted to different sector regulators such as SECP, PTA and OGRA. However, the regulation of trade, commerce or industry in the interest of free competition, as envisaged under clause b of the proviso of Article 18, is exclusively vested in the Commission since its inception with the primary and sole object 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.



25. It is evident from the Preamble of the 2010 Act that the Commission was established to maintain and enhance competition and matters therewith or incidental thereto in order to ensure free competition in all spheres of commercial and economic activity to enhance economic efficiency and to protect consumers from anti-competitive behavior. The preamble to the 2010 Act reads as follows:

“WHEREAS it is expedient to make provisions to ensure free competition in all spheres of commercial and economic activity to enhance economic efficiency and to protect consumers from anti-competitive behavior and to provide for the establishment of the Competition Commission of Pakistan to maintain and enhance competition; and for matters connected therewith or incidental thereto;”

26. The Commission, therefore, has the jurisdiction and powers to initiate enquiries and proceedings under section 28 read with Section 30, 31, 33, 34 and impose penalties under section 38 in the matters related to prohibitions under Chapter II of the 2010 Act.

27. Moreover, Section 1(3) of the 2010 Act explicitly provides for the Commission’s jurisdiction and application of law as follows:

“1(3) It shall apply to all undertakings and all actions or matters that take place in Pakistan and distort competition within Pakistan.”

28. 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 Commission has the authority to investigate and enforce these prohibitions across Pakistan when and wherever an anticompetitive practice occurs.

29. Given that the instant proceedings stem from alleged breaches of Section 10(2)(d) of the 2010 Act, the text of Section 10 is reproduced hereunder for reference:



“10. **Deceptive Marketing Practices.** (1) No Undertaking shall enter into deceptive marketing practices.

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

- (a) the distribution of false or misleading information that is capable of harming business interests of another undertaking;
- (b) the distribution of false or misleading information to consumers, including the distribution of information lacking a reasonable basis, related to the price, character, method or place of production, properties, suitability for use, or quality of goods;
- (c) false or misleading comparison of goods in the process of advertising; or
- (d) **fraudulent use of another’s trademark, firm name, or product labelling or packaging.**”

30. Clause (b) of the proviso of Article 18 of the Constitution, if read with Federal Legislative List, PART I Entry No. 25 and 27, funnels down to 2010 Act Section 10 (2)(d) that codifies prohibition on **Fraudulent usage of another’s trademark, firm name, labeling or packaging designs** through an Act of the Parliament.

31. If an undertaking fraudulently uses another’s trademark, firm name, or trade dress (labeling or packaging designs) for marketing purposes, it will constitute deception under Section 10(2)(d) of the 2010 Act.

32. This deception may lead to consumer confusion regarding the lookalike products of the competitors, confuse the consumers in their buying decisions, and impede the business of competing undertakings, thereby distorting competition.

33. The provisions of the 2010 Act have an overriding effect in the matters covered therein under and in accordance with Section 59 of the Act

which reads as follows:

“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.”

34. The language of Section 59 of the Act unequivocally indicates the intention of the Legislature (Majlis-e-Shoora) that the 2010 Act has an overriding effect over any other law on the same subject-matter. Hence, Section 59 of the 2010 Act is a *non-obstante* clause. The expression '*notwithstanding anything to the contrary contained in any other law for the time being in force*' is meant to give precedence to the provisions of the Act over any other Act or Rules which were in force at the time of enactment of the 2010 Act. The provision of 2010 Act will therefore have an overriding effect over the conflicting or comparative provisions of laws of any other administrative or regulatory bodies specifically with respect to the subject matter covered under the 2010 Act.
35. The 2010 Act is, thus, a *lex specialis*, a special law encompassing all spheres of commercial and economic activity across Pakistan on the subject of competition. In legal theory and practice, *lex specialis derogat legi generali*, means 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*). In this case, the Bench relies on the Honourable Supreme Court of Pakistan judgement in *Syed Mushahid Shah v Federation of Pakistan*, 2017 SCMR 1218; in para 10, the Apex Court held:

“It is a settled canon of interpretation that where there is a conflict between a special law and a general law, the former will prevail over the latter.”

In para 13, the Supreme Court further elaborates:

“when there are two special laws both of which contain overriding clauses, in the case of conflict between the two laws generally the statute later in time will prevail over the statute prior in time. ... this presumption is not automatic: instead a host of other factors including the object, purpose and policy of both



statutes and the legislature's intention, as expressed by the language employed therein, need to be considered in order to determine which of the two special laws is to prevail."

36. The instant proceedings were initiated after a complaint was filed under Section 37(2) of the 2010 Act. The Complainant alleged that the Respondents had contravened Section 10 of the 2010 Act by distributing false or misleading information through fraudulent use of their trademark, packaging, label design and/or color scheme conventionally known as passing off.
37. An identical question regarding Commission's jurisdiction and inquisitorial powers was referred to the Commission by ***the Honorable Lahore High Court, Lahore in W.P. No. 26929 of 2015*** in the matter of ***Determination of CCP's Jurisdiction in accordance with the Order of the Court*** and the Commission clarified vide its Order dated 09.11.2015 that:

"...under the scheme of the 2010 Act, the Commission has been vested with specific enforcement powers. This includes the power to conduct inquiries, the power to initiate adjudicatory proceedings, and the power to make required order to restore competition and impose financial penalties. Each denotes a particular stage in the enforcement process. An enquiry, for example, is conducted to determine, factually, whether any prima facie violation of the Act has taken place."

38. Without delving into the intricacies of the 2001 Ordinance and the functions of the Intellectual Property Organization (IPO), the Commission is of the view that it neither decides nor provides guidance on the allocation, availability or dispute about the ownership of trademarks. Its mandate, *inter alia*, is to act against deceptive marketing practices as Section 10(2)(d) of the 2010 Act exclusively deals with fraudulent use of another's trademark, firm name, packaging, or labeling.



39. According to the definition provided in Black's Law Dictionary 6th Edition, "general law relates to a subject of general nature, or that affects all people of state, or all of a particular class". Whereas, special law means a law "when it is different from others of the same general kind or designed for particular purpose, or limited in range or confined to a prescribed field of action or operation". Whereas functions and powers of the Commission u/s 28 of the 2010 Act are exclusive and specific Intellectual Property Organization of Pakistan Act 2012 (the 2012 Act) in its preamble recognized its dependence on other laws as follows:

"An Act to provide for the establishment of Intellectual Property Organization of Pakistan.

*WHEREAS Intellectual Property Rights including copyrights, trademarks, patents, designs, lay-out designs of integrated circuits, trade secrets and other intellectual property laws; **supported by other laws (emphasis added)** are powerful tools for economic growth. The protection of these and similar intellectual property rights of the citizens is essential to foster creative thinking, stimulate creativity, provide incentives for technological innovations, and attract investment;"*

40. "Intellectual Property" as defined by Section 2(g) of the 2012 Act "includes a trademark, patent, industrial design, layout-design (topographies) of integrated circuits, copyright and related rights and all other ancillary rights" and "Intellectual Property Laws" in terms of Section 2(h) "means the laws specified in the Schedule." Section 13(xx) of the 2012 Act empowers the IPO to "refer matters and complaints, related to offences under the laws specified in the Schedule, to the concerned law enforcement agencies and authorities as may be necessary for the purposes of this Act;". The Intellectual Property Laws administered by the organization include the following:

THE SCHEDULE

[See Section 2(h)]

(1) The Trade Marks Ordinance, 2001(XIX of 2001).



- (2) The Copyright Ordinance, 1962 (XXXIV of 1962).
- (3) The Patents Ordinance, 2000 (LXI of 2000).
- (4) The Registered Designs Ordinance, 2000 (XLV of 2000).
- (5) The Registered Layout-Designs of Integrated Circuits Ordinance, 2000 (XLIX of 2000).
- (6) Sections 478,479,480,481,482,483,485,486,487,488 and 489 of Pakistan Penal Code (Act XLV of 1860)

41. The examination of the above provisions of the Act of 2012 read with the Schedule to the Act reveals that there is no overlapping jurisdiction in the matters related to deceptive marketing especially concerning the issue of trade dress (passing off) between the IPO and Commission so there is no question of pari materia or parallel jurisdiction. The 2010 Act is a special law that deals with commercial and economic activities of businesses and commercial entities involved in production or distribution of goods or services with the view to increase economic efficiency, ensure fair competition and protect consumers from anticompetitive practices. The Act provides a scheme of anticompetitive prohibitions with a mechanism for their enforcement. Hence, the Act of 2010 is the specific law (*lex specialis*) while the Act of 2012 is general law (*legi generali*) in the matters of deceptive passing off and special law prevails over the general law (*lex specialis derogat legi generali*).

42. In its order ***In the Matter of Proceedings under Section 30 the Competition Act 2010 pursuant to the order dated 21-02-2013 of the honorable Supreme Court of Pakistan in C.P.L.A. No. 102-L/2013,***

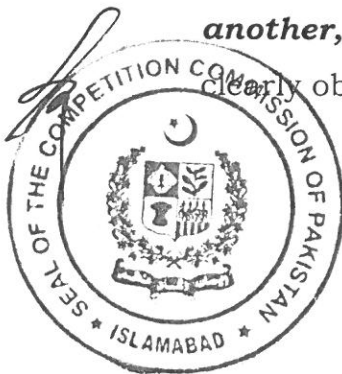
the Commission has extensively explained the application of the 2010 Act in the following words:

“36. ..., the issue of jurisdiction can be best understood with reference to which law is relevant and applicable to an entity in a given context.
 ...consider an entity engaged in the LPG sector; as far as this entity’s regulation regarding, incorporation,



filing of accounts, issuing of prospectus etc., is concerned, the relevant law will be the companies legislation and the sector specific regulator i.e., Securities and Exchange Commission of Pakistan will have jurisdiction. In relation to this entity's filing of tax returns, the Federal Board of Revenue will be the relevant regulatory body and the relevant law will be the tax code of Pakistan. Similarly, any trademarks or intellectual property of the concerned undertaking will be subject to the intellectual property laws and the relevant regulatory body shall be the Intellectual Property Organization. Similarly, in relation to its licensing requirements and other related matters, the relevant law will be the licensing legislation in LPG sector and OGRA will be relevant regulator. Accordingly, if and when this entity indulges in practices or enters into agreements that allegedly prevents, restricts or reduces competition within the relevant market then the relevant and the applicable law will be the competition related legislation. In our considered view that the instant matter involves an issue of competition which falls expressly within the purview of the [2010 Act], we feel it ought to be abundantly clear that the matter falls squarely within the jurisdiction of the Commission and the concerned enforcement agency in our considered view can be no other than the Competition Commission of Pakistan (2012 CLD 767).”

43. The above view of the Commission is upheld in the judgments of the honorable Supreme Court of Pakistan. ***In the matter of Society of Accounting Education (SOAE) vs. CFA Institute, Lahore and another, Civil Appeal No. 2117 of 2017***, the honorable Court has



clearly 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."

44. It is very pertinent to once again note that Section 10(2)(d) of the 2010 Act deals with more than just fraudulent use of another's trademark; it also deals with fraudulent use of another's firm name, product labelling, or product packaging.
45. Even where a trademark is not registered, the Commission can still exercise its jurisdiction under Section 10(2)(d) of the Act as endorsed



by the Supreme Court in the case of **A Rahim Foods (Pvt.) Limited vs. K&NS Foods (Pvt.) Limited, 2023 CLD 1001**. In para 16 of the aforesaid the court observed:

"The question, whether registration of trademark (or for that matter, registration of firm name, or product labelling or packaging) is necessary for the applicability of the provisions of section 10(2)(d) of the Act, is not difficult, as neither the common law action of passing-off requires such registration nor does the language of section 10(2)(d) provide for any such requirement. The statutory law and common law stand together on this point. One must remember, in this regard, the difference between the objectives of a passing-off action and a trademark-infringement action. A passing-off action essentially aims to protect 'property in goods' on account of its reputation (goodwill), not the trademark thereof, whereas the trademark-infringement action is

meant to protect 'property of trademark' as a trademark itself is a property."

46. The argument of the learned counsels for the respondents that the issues of the present proceedings were essentially private disputes between the parties and well beyond the scope of the 2010 Act as no public interests or consumer protection was involved, is illogical and without any merit.
47. It is essential to clarify here that the enquiry in the instant matter was initiated to determine whether there had been a violation of Section 10(2)(d) of the 2010 Act in terms of 'deceptive marketing practices' and not to settle disputes related to validity or ownership of the trademarks or safeguard any specific holder's rights.
48. The 2010 Act is a special law on the subject, and the Commission's consistent application of Section 10 through various orders underscores its approach to addressing specific marketing practices falling within its jurisdiction.
49. The Bench is, therefore, of the considered opinion that there is no overlap or conflict between the provisions of Section 10 or the enforcement authority of the Commission under the 2010 Act and those of intellectual property laws administered by Intellectual Property Organization of Pakistan.
50. The Respondents have also not brought forward any judicial pronouncements whereby the Commission is barred, restrained, or restricted from exercising its jurisdiction in the instant matter. Despite asking, the Respondents have not been able to put on record any sub judice matter which would have restraining impact on the instant proceeding before the Commission or any limitation for the Commission not to perform the functions as per the powers, vested under Section 28 of the 2010 Act.



51. The Bench after careful perusal of arguments of the learned counsels for the parties and their written submissions, holds that the

Commission has exclusive jurisdiction to prevent and prohibit anticompetitive practices and restore market competition whenever any distortion is introduced in violation of prohibitions prescribed in Section 10 in particular Section 10(2)(d).

52. It is accordingly held that the instant proceedings were lawfully initiated within the Commission's jurisdiction and authority under the 2010 Act. The Bench shall, therefore, proceed with the instant proceedings on their merits in accordance with the provisions of the 2010 Act.
53. The Office of the Registrar is instructed to schedule a hearing for proceedings on merit and to dispatch notices to the relevant parties, accordingly.
54. It is so ordered.


Saeed Ahmad Nawaz
(Member)


Salman Amin
(Member)



ISLAMABAD, THE 26th DAY OF AUGUST 2024.