

COMPETITION COMMISSION OF PAKISTAN

ENQUIRY REPORT

(Under the provisions of Section 37(2) of the Competition Act, 2010)

**IN THE MATTER OF COMPLAINT FILED BY M/S AL-REHMAN OIL MILLS,
BAHAWALPUR AGAINST M/S NIAZ CORPORATION, MR. MUHAMMAD
NAVEED OF HAMZA CORPORATION, MR. RAMDAN JANI OF MUSLIM
CORPORATION, MR. MIAN TANVEER OF MIAN TRADERS, MR. MIAN
IKRAM OF BAHAWALPUR OIL MILLS, MR. HAFIZ RIAZ OF RIAZ OIL
MILLS, MR. SAJJAD UR RASHEED OF BALOCH OIL MILLS, M/S AZHAR
KIRYANA STORE AND M/S WAQAS OIL MILLS FOR
DECEPTIVE MARKETING PRACTICES**

BY

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Dated: June 21, 2016

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1. BACKGROUND

- 1.1 This report concludes the enquiry initiated by Competition Commission of Pakistan (the ‘**Commission**’) under section 37(2) of the Competition Act, 2010 (the **Act**) pursuant to a formal complaint filed with the Commission by M/s Al-Rehman Oil Mills, Bahawalpur (hereinafter referred to as the ‘**Complainant**’) against the following nine entities namely :
- M/s Niaz Corporation (Niaz Corp.) (**Respondent No 1**)
Mr. Muhammad Naveed of Hamza Corporation (Hamza Corp.) (**Respondent No 2**),
Mr. Ramdan Jani of Muslim Corporation (Muslim Corp.) (**Respondent No 3**)
Mr. Mian Tanveer of Mian Traders (Mian Traders) (**Respondent No 4**)
Mr. Mian Ikram of Bahawalpur Oil Mills (Bahawalpur O.M.) (**Respondent No 5**)
Mr. Hafiz Riaz of Riaz Oil Mills (Riaz O.M.) (**Respondent No 6**)
Mr. Sajjad Ur Rasheed of Baloch Oil Mills (Baloch O.M.) (**Respondent No 7**)
M/s Azhar Kiryana Store (**Respondent No 8**) and
M/s Waqas Oil Mills (Waqas O.M.) (**Respondent No 9**)
- (hereinafter collectively referred to as the ‘**Respondents**’).
- 1.2 It was alleged in the complaint that the Respondents are fraudulently using the Complainant’s registered trade mark ‘*TAIZGAAM*’ which is also capable of harming the business interest and goodwill of the Complainant, amounting to deceptive marketing practices under Section 10 of the Competition act, 2010.
- 1.3 Keeping in view the above, the Competent Authority of the Competition Commission of Pakistan (the ‘**Commission**’) initiated an enquiry in accordance with sub-section (2) of Section 37 of the Act by appointing Mr. Faiz Ur Rehman, Assistant Director, Ms. Urooj Azeem Awan, Management Executive and Ms. Fatima Shah, Management Executive as the enquiry officers. The undersigned enquiry officers were directed to conduct the enquiry on the issues raised in the complaint and to submit the enquiry report by giving findings and recommendations *inter alia* on the following:

Whether the allegations leveled in the complaint constitutes a prima facie violation of Section 10 of the Act.

2. COMPLAINTS, COMMENTS AND REJOINDERS

In their complaint the following major assertions were made by the Complainant with regard to its business operations and the registered trademark:

- i. The Complainant is engaged in the production of animal feed, besides manufacturing cotton seed oil cake and other allied products. The Complainant is running its business under the umbrella of Rafi Group of Companies. The Complainant is also engaged in manufacturing and selling of livestock feed (Winda) and stall food for animals.
- ii. The Complainant has established a well-known and reputable business entity whose products are being sold in various cities throughout Pakistan including Azad Jammu & Kashmir.

- iii. The Complainant spends huge amount of money on advertising and marketing of its product under the registered trade mark “Taizgaam” which has achieved the status of a well-recognized brand among the general public.
- iv. In order to further reinforce its right in the trademark, the Complainant, through its partners, applied for the registration of trademark under Trade Marks Ordinance, 2001. (A copy of the Trademark registration certificate is attached annexed A).

Ser.	Title of Trademark	Registration No.	Class	Registration Date	Date of Effect
1.	‘Taizgaam’ (English & Urdu)	332864	31	07-Oct-2015	21-Jan-2013

- v. The Complainant alleged that the Respondents, in order to get benefit of a registered trademark, have entered into deceptive marketing practices by using its registered trademark ‘Taizgaam’ on packaging and labelling of their products using a similar language, font and color scheme which has created a close resemblance to the Complainant’s packaging material, with the intention to deceive and confuse the customers, thereby causing damage to the goodwill of the Complainant and inflicting financial losses.
- vi. The Complainant’s packaging is given hereunder for reference:

(Front of Bag 1)



(Back of Bag 1)



(Front of Bag 2)



(Back of Bag 2)



(Front of Tag 1)



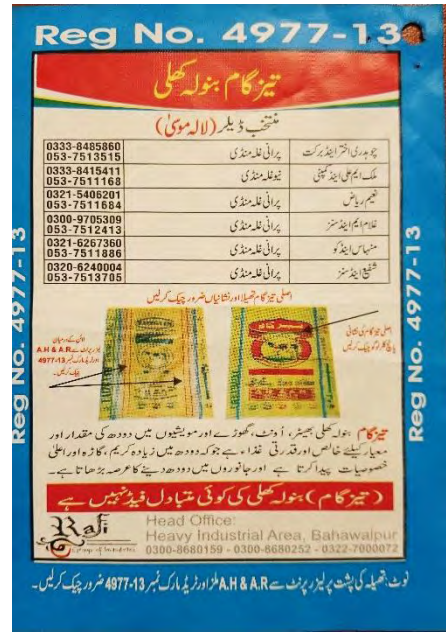
(Back of Tag 1)



(Front of Tag 2)



(Back of Tag 2)



(Front of Tag 3)



(Back of Tag 3)



(Front of Tag 4)



- vii. It was submitted that the use of Complainant's registered trademark without authorization is deceptive and fraudulent, thereby, *prima facie*, violating Section 10 (1) of the Act in terms of Section 10 (2) (d) of the Act.
- viii. The Complainant further alleged that some of the Respondents even used fake resembling phone numbers on the packaging of their products to create similarity between their own and the Complainant's packaging. Moreover, some were also engaged in the practice of using word 'registered' on their packaging without having obtained registration from any respective government department.
- ix. The Complainant, in order to secure its brand identity, published a warning notice in reputable daily newspaper '*Khabrain*' dated 23rd of Feb, 2016 in Islamabad, Lahore and Multan respectively. The contents of the notice warned the Respondent in particular to restrain from using the Complainant's registered trademark '*Taizgaam*'.
- x. Moreover, the Complainant also served legal notices through its lawyer to all the Respondents on their registered addresses, warning the Respondents of legal consequences in case of failure to restrain from using Complainant's registered trademark. However, the Respondents are still engaged in the manufacture and sale of their products using Complainant's registered trademark '*Taizgaam*'.
- xi. The Complainant submitted that the use of confusingly identical trademarks with respect similar products to the same consumer amounts to passing off and taking unfair advantage, which is detrimental to the distinctive character and reputation of the Complainant and its business interest.
- xii. That the act of passing off has the potential to confuse an ordinary consumer into concluding that the counterfeit products offered are that of the Complainant's, thus harming the business of the Complainant.

2.1. IN THE MATTER OF M/S NIAZ CORPORATION (RESPONDENT NO 1)

2.1.1. The specific allegations against M/s Niaz Corporation in the complaint are summarized as follows:

- i. It was alleged in the complaint that M/s Niaz Corp. is involved in the practice of using the exact name, logo, design and language on its products packaging which, *prima facie*, resembled with the packaging of the Complainant's products under the umbrella of brand '*Taizgaam*'. A view of the Respondent's packaging is given hereunder for reference:

(Front of Respondent's Bag)



(Back of Respondent's Bag)



(Front of Respondent's Tag)



(Back of Respondent's Tag)



- ii. It has been alleged that the exact name, logo, design and language has been used by the Respondent without proper authorization from the Complainant.
- iii. Furthermore, the same has been used by the Respondent in order to mislead the general public. It is alleged that the Respondent has even used a fake Trademark Reg. No. i.e. 9477-13 on its packaging in order to deceive customers, which is similar to Complainant's Trademark Application No. 4977-13.

iv. Such unauthorized use of Complainant's trademark/logo by M/s Niaz Corp. appears to be *malafide* and constitutes acts of deceptive marketing practices within the meaning of Section 10 of the Act.

2.1.2. The complaint, along with its annexures was forwarded to Niaz Corp. for their comments vide letter dated 27th of April, 2016 and reminded vide letter dated 23rd May, 2016, but neither the communication was acknowledged nor any comments were furnished by the Respondent No 1.

2.2 IN THE MATTER OF MR. MUHAMMAD NAVEED OF M/S HAMZA CORPORATION (RESPONDENT NO 2)

2.2.1. The specific allegations against Mr. Muhammad Naveed of Hamza Corporation in the complaint are summarized as follows:

- i. It was alleged in the complaint that the Respondent is using similar/identical logo, design, label, words and color scheme on the packaging of its products which, *prima facie*, resembles with the packaging of the Complainant's product 'Taizgaam'. A view of the Respondent's packaging is given hereunder for reference:

(Respondent's Tag)



- ii. Moreover, the Complainant alleged that the Respondent had only introduced one differentiation on the packaging i.e. in the name of the brand. The Respondent is using the nomenclature 'Mian Taizgaam' instead of 'Taizgaam'.
- iii. It has been alleged that the similar/identical logo, design, label, words and color scheme has been used by the Respondent without proper authorization from the Complainant.
- iv. Such unauthorized use of Complainant's trademark/logo, packaging design and labelling by Mr. Muhammad Naveed of Hamza Corp. appears to be harming the

business interest of the Complainant through unfair use of a registered trademark, *prima facie*, falling within the ambit of Section 10 of the Act.

- 2.2.2. The complaint, along with its annexures was forwarded to Mr. Muhammad Naveed of Hamza Corp. for their comments vide letter dated 27th of April, 2016 and reminded vide letter dated 23rd May, 2016.
- 2.2.3. A letter was received from Hamza Corporation dated 04th of June, 2016 requesting for extension of 30 days further in time period to submit their comments to the said complaint. The Respondent was granted an extension only until 13th of June, 2016 vide letter dated 06th of June, 2016.
- 2.2.4. However, neither the communication was acknowledged nor any comments were furnished by the Respondent No 2.

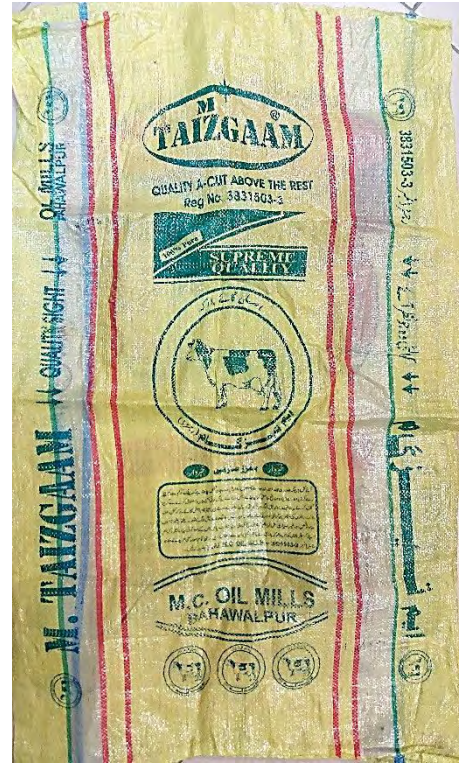
2.3 IN THE MATTER OF MR. RAMDAN JANI OF M/S MUSLIM CORPORATION (RESPONDENT NO 3)

- 2.3.1. The specific allegations against Mr. Ramdan Jani of Muslim Corporation in the complaint are summarized as follows:
 - i. It has been alleged in the complaint that Mr. Ramdan Jani of Hamza Corp. is involved in the manufacturing of livestock feed with the name of '*M Taizgaam*', which bears close resemblance to the registered trademark of the Complainant.
 - ii. It is further alleged that the Respondent is also using similar/identical color scheme, logo, language and design on its packaging, which creates strong resemblance to that of the Complainant's product packaging. A view of the Respondent's packaging is given hereunder for reference:

(Front of Respondent's Bag)



(Back of Respondent's Bag)



(Front of Respondent's Tag 1)



(Back of Respondent's Tag 1)



(Front of Respondent's Tag 2)



(Back of Respondent's Tag 2)



- iii. Furthermore, the Respondent has also labelled its packaging with the word 'Registered' without obtaining any authorization/permission from any respective Government department.
- iv. It has been submitted that the use of a close derivative of trademark 'Taizgaam' in the same product category is a, *prima facie*, fraudulent use of a registered trademark, falling within the ambit of Section 10 of the Act.
- v. Moreover, it is submitted that using the word 'Registered' on package labelling without proper substantiation is misleading to the consumer and is also effecting the business interest of the Complainant.

2.3.2. The complaint, along with its annexures was forwarded to Mr. Ramdan Jani of Muslim Corp. for their comments vide letter dated 27th of April, 2016 and reminded vide letter dated 23rd May, 2016, but neither the communication was acknowledged nor any comments were furnished by the Respondent No 3.

2.4 IN THE MATTER OF MR. MIAN TANVEER OF M/S MIAN TRADERS (RESPONDENT NO 4)

2.4.1. The specific allegations against Mr. Mian Tanveer of Mian Traders in the complaint are summarized as follows:

- i. It has been alleged by the Complainant that Mr. Mian Tanveer is involved in the copying of design, logo, color scheme and language of the packaging of the Complainant's product on the packaging of its own products manufactured under

the business of M/s Mian Traders. A view of the Respondent's packaging is given hereunder for reference:

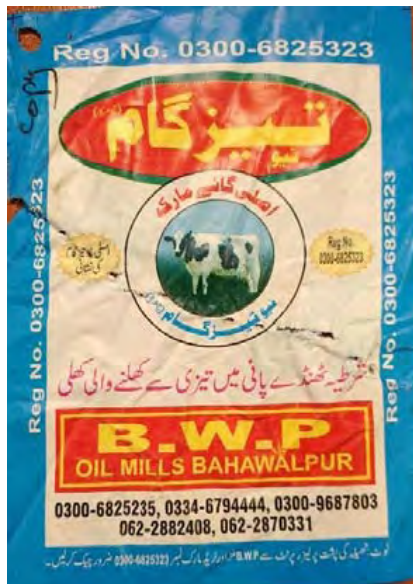
(Front of Respondent's Bag)



(Back of Respondent's Bag)



(Front of Respondent's Tag)



(Back of Respondent's Tag)



- ii. It has been further alleged that the Respondent is using the Complainant's registered trademark 'Taizgaam' as is on its products packaging without authorization/permission from the Complainant.

iii. That the use of Complainant's trademark without authorization misleads consumer and causes harm to the business interest of the Complainant and amounts to deceptive marketing practices under Section 10 of the Act.

2.4.2. The complaint, along with its annexures was forwarded to Mr. Mian Tanveer of M/s Mian Traders for their comments vide letter dated 27th of April, 2016 and reminded vide letter dated 23rd May, 2016, but neither the communication was acknowledged nor any comments were furnished by the Respondent No 4.

2.5 IN THE MATTER OF MR. MIAN IKRAM OF M/S BAHAWALPUR OIL MILLS (RESPONDENT NO 5)

2.5.1. The specific allegations against Mr. Mian Ikram of M/s Bahawalpur Oil Mills in the complaint are summarized as follows:

- i. It was alleged in the complaint that the Respondent is using the similar/identical style, color scheme, design and logo on the packaging of its products which, *prima facie*, resembles with the packaging of the Complainant's product 'Taizgaam'. A view of the Respondent's packaging is given hereunder for reference:

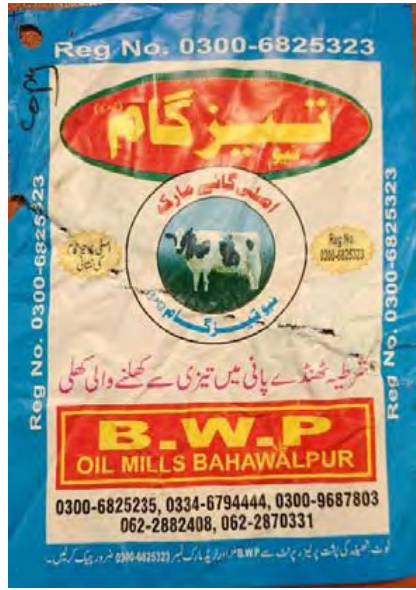
(Front of Respondent's Bag)



(Back of Respondent's Bag)



(Front of Respondent's Tag 1)



(Back of Respondent's Tag 1)



(Front of Respondent's Tag 2)



(Back of Respondent's Tag 2)



- ii. Furthermore, the Respondent is using a trademark which is similar/identical to that of the Complainant i.e. 'New Taizgaam'.
- iii. That the unauthorized use of a close derivative of the Complainant's trademark is capable of inflicting harm upon the goodwill of the Complainant.
- iv. Moreover, the use of similar/identical packaging has the potential of misleading consumers, thereby causing financial losses to the Complainant, which amounts to deceptive marketing practices under Section 10 of the Act.

2.5.2. The complaint, along with its annexures was forwarded to Mr. Mian Ikram of M/s Bahawalpur Oil Mills for their comments vide letter dated 27th of April, 2016 and reminded vide letter dated 23rd May, 2016, but neither the communication was acknowledged nor any comments were furnished by the Respondent No 5.

2.6 **IN THE MATTER OF MR. HAFIZ RIAZ OF M/S RIAZ OIL MILLS (RESPONDENT NO 6)**

2.6.1. The specific allegations against Mr. Hafiz Riaz of M/s Riaz Oil Mills in the complaint are summarized as follows:

- i. It was alleged in the complaint that the Respondent is using, on its products' packaging, identical labelling style, color format and design to that of the Complainant's packaging of 'Taizgaam'. A view of the Respondent's packaging is given hereunder for reference:

(Front of Respondent's Bag)



(Back of Respondent's Bag)



- ii. That the Respondent is involved in such a deceptive practice with the intention to deceive the general public into confusing it with the Complainant's product.
- iii. Furthermore, it has been alleged that the unauthorized use of Complainant's registered trademark 'Taizgaam' by the Respondent is damaging the goodwill of the Complainant and inflicting financial losses.

2.6.2. The complaint, along with its annexures was forwarded to Mr. Hafiz Riaz of M/s Riaz Oil Mills for their comments vide letter dated 27th of April, 2016 on the official address provided by the Complainant within the complaint. However, the same was returned to the office of the Commission by the registered courier service with the remarks that the office of the Respondent has been changed/shifted.

2.6.3. The Respondent was then contacted through telephone via contact number provided within the complaint to enquire about the valid address. The Respondent provided a

new address for correspondence upon which the complaint was forwarded vide letter dated 23rd of May, 2016 for comments.

2.6.4. However, neither the communication was acknowledged nor any comments were furnished by the Respondent No 6.

2.7 IN THE MATTER OF MR. SAJJAD UR RASHID OF M/S BALOCH OIL MILLS (RESPONDENT NO 7)

2.7.1. The specific allegations against Mr. Sajjad Ur Rashid of M/s Baloch Oil Mills in the complaint are summarized as follows:

- i. It was alleged in the complaint that the Respondent is in the practice of using fake registration number i.e. '9477-13' on the packaging of its product, which is similar to/resembles the number used by the Complainant on its packaging, representing the acknowledgement received by the Complainant from the Intellectual Property Organization of Pakistan for the application of registration of its trademark 'Taizgaam'.
- ii. It was further alleged that the Respondent is using style, logo and color scheme on its packaging which is similar/identical to that of the Complainant's packaging. A view of the Respondent's packaging is given hereunder for reference:

(Front of Respondent's Bag)



(Back of Respondent's Bag)



(Front of Respondent's Tag)



(Back of Respondent's Tag)



iii. However, the Respondent has added word 'Blouch' to trademark 'Taizgaam', using 'Blouch Taizgaam' as a whole on its packaging, which is deceptively similar to that of the Complainant's registered trademark.

iv. That the use of such, without authorization from the Complainant is an act of deceptive marketing practice, falling within the ambit of Section 10 of the Act.

2.7.2. The complaint, along with its annexures was forwarded to Mr. Sajjad Ur Rashid of M/s Baloch Oil Mills for their comments vide letter dated 27th of April, 2016, on the official address provided by the Complainant within the complaint. However, the same was returned to the office of the Commission by the registered courier service with remarks that the office of the Respondent has been changed/shifted.

2.7.3. The Respondent was then contacted through telephone via contact number provided within the complaint to enquire about the valid address. The Respondent denied change of address and requested that the complaint be resent on the same address with mention of its contact number on the envelope.

2.7.4. The complaint was resent to the Respondent vide letter dated 23rd of May, 2016 on the same address for comments along with mention of contact number on the envelope. However, the complaint was returned again to the office of the Commission by the registered courier with the remarks that the contact number is invalid and that the office address has been changed/shifted.

2.8 IN THE MATTER OF M/S AZHAR KARYANA STORE (RESPONDENT NO 8)

2.8.1. The specific allegations against M/s Azhar Karyana Store in the complaint are summarized as follows:

- i. It was alleged in the complaint that the Respondent is acting as a sales point for all the resembling, fake, forged and counterfeit products made in the name of/similar to Complainant's registered trademark '*Taizgaam*'.
- ii. That the registered trademark of the Complainant is illegally being used on the packaging of these products in order to deceive general public.
- iii. It was further alleged that the Respondent is also involved in the sale of similar product in its own name by the trade name of '*M Taizgaam*', which is deceptively similar to and a close derivative of the Complainant's registered trademark. A view of the Respondent's packaging is given hereunder for reference:

(Front of Respondent's Tag)



- iv. Furthermore, the Respondent is involved in using identical language, design and logo on the packaging of its product to that of the Complainants', which amounts to deceptive marketing practices under Section 10 of the Act.
- 2.8.2. The complaint, along with its annexures was forwarded to M/s Azhar Karyana Store for their comments vide letter dated 27th of April, 2016.
- 2.8.3. A reply was received from the Respondent by the undersigned submitting:
- i. That the Respondent has no concern with the manufacturing of products bearing the name '*Taizgaam*'.
 - ii. That it is not the Respondent's responsibility if any individual or undertaking is manufacturing such products in the name of M/s Azhar Karyana Store (Respondent).

- iii. That there is no evidence of making and sale of products bearing name 'Taizgaam' since 07th of October, 2015.
- iv. That the complaint carries no weightage and may be vacated.

2.8.4. The reply of the Respondent was forwarded to the Complainant for rejoinder vide letter dated 27th of May, 2016.

2.8.5. The Complainant submitted its rejoinder vide letter dated 30th of June, 2016, wherein which was reiterated that the Respondent is a sales point, involved in the sale of resembling, fake, forged and counterfeit products bearing the name of 'Taizgaam'. It was further reiterated that the Respondent is engaged in the act of selling its product in packaging similar to that of the Complainant's bearing a closely resembling trademark i.e. 'M Taizgaam'.

2.9 IN THE MATTER OF M/S WAQAS OIL MILLS (RESPONDENT NO 9)

2.9.1. The specific allegations against M/s Waqas Oil Mills in the complaint are summarized as follows:

- i. It was alleged in the complaint that the Respondent is engaged in the manufacturing and sale of a product similar to that of the Complainant with the name 'Pak Taizgaam', which is also similar to the Complainant's registered trademark 'Taizgaam'. A view of the Respondent's packaging is given hereunder for reference:

(Front of Respondent's Bag)



(Back of Respondent's Bag)



- ii. That the Respondent is using similar trade names with malafide intention to deceive the general public.

- iii. It was alleged that use of Complainant's registered trademark without authorization falls within the ambit of deceptive marketing practices under Section 10 of the Act.
- 2.9.2. The complaint, along with its annexures was forwarded to M/s Waqas Oil Mills for their comments vide letter dated 27th of April, 2016 and reminded vide letter dated 23rd May, 2016.
- 2.9.3. A letter was received from Waqas Oil Mills dated 04th of June, 2016 requesting for extension of approximately 30 days further in time period to submit their comments to the said complaint. The Respondent was granted an extension only until 13th of June, 2016 vide letter dated 06th of June, 2016.
- 2.9.4. However, neither the communication was acknowledged nor any comments were furnished by the Respondent No 9.

3. ANALYSIS

- 3.1. The mandate of this enquiry report is to determine whether, as per the allegations made by the Complainant, the Respondents are in violation of Section 10 (1), read with Section 10 2 (d) of the Act i.e.

(d) fraudulent use of another's trademark, firm name, or product labelling or packaging;

This, if proven, would also lead towards violation of Section 10 (1), read with Section 10 2 (a) and (b) of the Act i.e.

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

(b) the distribution of false or misleading information to consumers, including the distribution of information lacking a reasonable basis, related to the price, character, method or place of production, properties, suitability for use, or quality of goods;

- 3.2. For this purpose, it is first necessary to understand a few concepts and laws pertinent to Intellectual Property Rights (IPR). IP refers to any form of 'creative/artistic works' or 'intellect' created by the owner of that 'creative work' who is then assigned, by law, a monopoly for its use. The protection provided to the owners of such IP, are therefore, referred to as intellectual property rights (IPRs). IPRs are protected through copyrights, patents, industrial design rights, trademarks, and trade dress allotted to the creators and owners of IP. Examples of such artistic works could be found in music and literature; various discoveries and inventions; words, phrases, symbols, and packaging designs used for the purpose of recognition and marketing. All such innovative and unique works are protected via issuing IPRs.

- 3.3. In this reference, for the purpose of this enquiry, it is essential to understand in detail the meaning of the concepts of ‘trademark’ and ‘trade dress’. According to Trademark Act, 1940, trademark has been defined as, “(l) *“trade mark” means a mark used or proposed to be used in relation to goods for the purpose of indicating or so as to indicate a connection in the course of trade between the goods and some person having the right, either as proprietor or as registered user, to use the mark whether with or without any indication of the identity of that person*”;¹, where a mark is defined as, “(f) *“mark” includes a device, brand, heading, label, any combination thereof*”;². Therefore, a trademark is a distinguishable sign, design or expression which differentiates goods and services of the producer from that of its competitors.
- 3.4. International Trademark Association defines trade dress as, “*Trade dress is 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, color and texture, to the extent that such elements are not functional. In many countries, trade dress is referred to as ‘get-up’ or ‘product design’.*”³
- 3.5. Trademark Ordinance, 2001, via Section 40, discusses in detail the conducts which may result in trademark (IP) infringement⁴. Furthermore, Section 10 (2) (d) of the Act also prohibits fraudulent use of another’s trademark, firm name, or product labelling or packaging.
- 3.6. On the basis of information presented above, the conduct of the Respondents in light of submissions made by the Complainant, it will be determined whether the Respondents have been in violation of Section 10 of the Act. As mentioned earlier, all the Respondents except M/s Azhar Karyana Store failed to send any reply/clarifications to defend their position. Thus, the analysis of the trademark and trade dress is being made by evaluating the submissions made by the Complainant.
- 3.7. The Complainant’s marketing material under consideration includes four rectangular product tags. One with red border and logo in the shape of a hexagon. The shape is filled with dark green color, it has a red outline, and “*Taizgaam*” is written in yellow font color.⁵ The other tag has light blue border with an oval shaped logo.⁶ The shape is filled with red, it has a dark green outline, and “*Taizgaam*” written in yellow font color. The third tag also has a red border and logo is formed such that “*Taizgaam*” is written in a concave shape in red font color, the shape is filled with light green color and has a dark green outline.⁷ The fourth tag is also a red rectangular tag with concave

¹ http://www.acif.org.pk/Files/TradeMarkAct_1940.pdf

² http://www.acif.org.pk/Files/TradeMarkAct_1940.pdf

³ <http://www.inta.org/TrademarkBasics/FactSheets/Pages/Trade-Dress.aspx>

⁴ http://www.acif.org.pk/Files/TradeMark_Ordinance%202001.pdf

⁵ Ibid Page 7, Tag 4

⁶ Ibid Page 7, Tag 2

⁷ Ibid Page 6, Tag 1

sides.⁸ This tag has “*Taizgaam*” written in Urdu on top, with the product label design, i.e. a circular shape with a picture of a cow and specific text written within the border, and “*Taizgaam*” written in English at the bottom. The product is usually sold in polythene sacks with a base of yellow color and trade dress design similar to that of the tags. For ease of reference, the Complainant’s “*Taizgaam*” logo, its shape, font type, size, and colors symbolized will be denoted as trademark in this enquiry report. Whereas, the color combination, images, shapes, texts and their locations on the packaging will be referred to as ‘trade dress’ in this enquiry report.

I. IN THE MATTER OF M/S NIAZ CORPORATION (RESPONDENT NO 1)

3.8. As mentioned in para 2.1.1, the specific allegations against M/s Niaz Corporation is that they are, *prima facie*, involved in the practice of using exact name, logo, design and language on its products packaging. A view of the Complainant and Respondents’ packaging is mentioned below:

(Complainant’s Packaging)



(Respondent’s Packaging)



⁸ Ibid Page 7, Tag 3

(Complainant's Tag)



(Respondent's Tag)



3.9. The marketing material of the Respondent has been compared with that of the Complainant's and following observations have been made:

a) **Product Tags:**

- i. Both tags are of similar size and in rectangular shape. Both of them have light blue borders of same width on all sides of the tag with their respective registration numbers written on the top and both sides. The Respondent has also put its registration no. on the bottom whereas the Complainant has an instruction printed in that location.
- ii. Both products are using the exact similar trademarks i.e. 'Taizgaam' with the tag of "registered", in the same language and with the same logo. The name is written in the same font and font size and the same colors are used for representation i.e. the shape is filled with red, it has a dark green outline, and "Taizgaam" written in yellow font color.
- iii. Both of them have the same label design in same colors, i.e. a picture of a cow standing on grass in a circular double outlined shape. However, there is a very slight difference in the shade of the color green of the grass and the posture of the cow. The design has the same text written in the same locations and colors.
- iv. Both the tags have two similar shapes on the left and right side of the circular design with the same message in the left shape and the registration no. in the right shape. Both shapes are in the same color and size with the text written in the same font type, color, and size. However, there is a slight difference in the registration numbers given on both tags. The Complainant's tag has the registration no. 4977-13 whereas the registration no. mentioned by the Respondent is 9477-13, which are confusingly similar numbers. Since no response was received from the Respondent, the trademark registration number could not be verified whereas the Complainant had submitted cogent evidence for verification of its trademark.
- v. Both tags have the exact same instruction written in the same location (under the circular design), color, and font type and size.
- vi. Both the undertakings have printed the same firm name below the instructions referred to in clause v, i.e. A.H. & A.R Oil Mills Bahawalpur in the same

rectangular shape and using the exact same font type, color and size and color combination of the whole shape, i.e. red and yellow. Substantial proof was submitted by the Complainant to verify that it is the authorized owner of this firm and operates using this firm name.

- vii. Below this shape, various phone numbers are printed in the same manner. However, the phone numbers are different.

b) Product Bag:

- i. Both undertakings have sacks of same size, shape, and color (yellow base).
- ii. As mentioned before, there is a slight difference in registration numbers where the registration number was not verified by the Respondent.
- iii. Both sacks have the trademark, logo, label design, text, tagline, various instructions, registration number (same location, different number), firm name, phone numbers, and other various creative works in the same colors, font type, size, and color, and meaning, front and back. However, in the location where phone numbers are placed, different phone numbers have been printed by both undertakings. Furthermore, the Complainant has “*Rafi*” printed on the left side of the phone numbers whereas the Respondent has “*Niaz*” written on the left side of phone numbers.

- 3.10. In view of the above, it is evident that the use of Complainant’s registered trademark and infringement of trade dress by M/s Niaz Corporation is without any authorization, misleading in nature and capable of harming the business interests of the Complainant. Apart from the above, distributing information lacking a reasonable basis relating to price, character, properties, suitability for use and quality of goods is also in violation of Section 10 of the Act.

II. IN THE MATTER OF MR. MUHAMMAD NAVEED OF M/S HAMZA CORPORATION (RESPONDENT NO 2)

- 3.11. As stated in para 2.2.1 the specific allegations made against Mr. Muhammad Naveed of M/s Hamza Corporation is that they are using similar/identical logo, design, label, words and color scheme on the packaging of its products which, *prima facie*, resembles with the packaging of the Complainant’s product ‘*Taizgaam*’. Moreover, the Complainant alleged that the Respondent had only introduced one differentiation on the packaging i.e. in the name of the brand. The Respondent is using the nomenclature ‘*Mian Taizgaam*’ instead of ‘*Taizgaam*’. A view of the Complainant and Respondent’s packaging is given hereunder for reference:

(Complainant's Tag)



(Respondent's Tag)



3.12. The marketing material of the Respondent has been compared with that of the Complainant's and following observations have been made:

a) **Product Tags:**

- i. Both tags are of similar size and in rectangular shape. Both of them have red borders of same width on all sides of the tag with their respective registration numbers written on the top and both sides. The Respondent has also put its registration no. on the bottom whereas the Complainant has an instruction printed in that location.
- ii. Both products are using similar trademarks. The Complainant's product is called 'Taizgaam' whereas the Respondent's product is called "Mian Taizgaam". The term "Mian" is written in a slightly smaller font, however, it is still prominent. Both tags have "registered" written next to their trademark. The name is written in the same font and font size however, red font color is used instead of yellow.
- iii. The shape of the logo is similar as well. "Taizgaam" is written in a concave shape in red font color, the shape is filled with light green color and has a dark green outline.
- iv. Both of them have the same label design in same colors, i.e. a picture of a cow standing on grass in a circular double outlined shape. The design has the same text written in the same locations however, only red color is used by the Respondent whereas the Complainant has used red and blue.
- v. In this packaging as well, the shapes on the left and right side of the circular design on the Complainant's other label design are written within the concave shape. They have the same message in the left shape and the registration no. in the right shape. Both shapes are in the same color and size with the text written in the same font type, color, and size. However, there is a difference in the registration numbers given on both tags. The Complainant's tag has the registration no. 4977-13 whereas the registration no. used by the Respondent is 3829699-3. However, since no response was received from the Respondent, the trademark registration number could not be verified whereas the Complainant had submitted cogent evidence for verification of its trademark.

- vi. Both tags have the exact same instruction written in the same location (under the circular design), color, and font type and size.
- vii. The Respondent has also printed the firm name below the instructions referred to in clause vi. The Respondent has used the firm name M.H. Oil Industries Bahawalpur in the same rectangular shape and has used the exact same font type, and color.
- viii. Below this shape, a different phone number is printed.

3.13. In view of the above, it is evident that the use of Complainant's registered trademark and infringement of trade dress by M/s Hamza Corporation is without any authorization, misleading in nature and capable of harming the business interests of the Complainant. Apart from the above, distributing information lacking a reasonable basis relating to price, character, properties, suitability for use and quality of goods is also in violation of Section 10 of the Act.

III. IN THE MATTER OF MR. RAMDAN JANI OF M/S MUSLIM CORPORATION (RESPONDENT NO 3)

3.14. As mentioned in para 2.3.1 , the specific allegation against Mr. Ramdan Jani of M/s Muslim Corporation is that they are involved in the manufacturing of livestock feed with the name of 'M Taizgaam', which bears close resemblance to the registered trademark of the Complainant. It was further alleged that the Respondent is also using similar/identical color scheme, logo, language and design on its packaging, which creates strong resemblance to that of the Complainant's product packaging. A view of the Complainant and Respondent's packaging is given hereunder for reference:

(Complainant's Packaging)



(Respondent's Packaging)



(Complainant's Tag)



(Respondent's Tag)



3.15. Following comparisons are made while comparing the marketing material of the Respondent and the Complainant:

a) **Product Tags:**

- i. Both tags are of similar size and in rectangular shape. Both of them have red borders of same width on all sides of the tag. The Respondent's tag has the registration number 3831503-3 printed on all four sides which has not been verified by the Respondent.
- ii. Both products are using almost similar trademarks i.e. 'Taizgaam'. Furthermore, the representation of the trademark and logo is identical to that of the Complainant's.
- iii. Both of them have the same label design in the same colors, i.e. a picture of a cow standing on grass in a circular double outlined shape. The design has the same text written in the same locations and colors.
- iv. The Respondent's tag has similar shapes on both sides in the location similar to that of the Respondent's, i.e. within the concave shape. The shape is in the same color and size with the same text written in the identical font type, color, and size.
- v. Both tags have the exact same instruction written in the same location (under the circular design), color, and font type and size.
- vi. Both the undertakings have printed the firm name below the instructions referred to in clause v. The Respondent has used a different firm name i.e., M.C. Oil Mills written inside the same rectangular shape while using the exact same font type and size.
- vii. Below this shape, expanded firm name, Muslim Corporation Bahawalpur, is written with various different phone numbers printed in the same manner.

b) **Product Bag:**

- i. Both undertakings have sacks in the same size, shape, and color (yellow base).

- ii. However, The Complainant has printed the name 'Taizgaam' whereas the Respondent has printed the "M Taizgaam". The term "M" is written in a very small and negligible font size.
- iii. Both sacks have the trademark, logo, label design, text, tagline, various instructions, registration number (same location, different number), phone numbers, and other various creative works in the same colors, font type, size, and color, and meaning, front and back.
- iv. However, different relevant firm names have been printed. Furthermore, the Complainant has "Rafi" printed on the left side of the phone numbers whereas the Respondent has "Jani" written on the left side of phone numbers.

3.16. In view of the above, it is evident that the use of Complainant's registered trademark and infringement of trade dress by M/s Muslim Corporation is without any authorization, misleading in nature and capable of harming the business interests of the Complainant. Apart from the above, distributing information lacking a reasonable basis relating to price, character, properties, suitability for use and quality of goods is also in violation of Section 10 of the Act.

IV. IN THE MATTER OF MR. MIAN TANVEER OF M/S MIAN TRADERS (RESPONDENT NO 4)

3.17. As mentioned in para 2.4.1 the basic allegations against M/s Mian Traders is that they are involved in the copying of design, logo, color scheme and language of the packaging of the Complainant's product on the packaging of its own products manufactured under the business of M/s Mian Traders. A view of the Complainant's and Respondent's packaging is given hereunder for reference:

(Complainant's Packaging)



(Respondent's Packaging)



(Complainant's Tag)



(Respondent's Tag)



3.18. The marketing material of the Complainant were compared with that of the Respondent's and the following observations were made:

a) **Product Tags:**

- i. Both tags are of similar size and in rectangular shape. Both of them have light blue borders of same width on all sides of the tag with their respective registration numbers written on the top and both sides. Both of them have printed an instruction on the bottom border.
- ii. Both products are using almost similar trademarks i.e. 'Taizgaam'. The Complainant's product is called 'Taizgaam' whereas the Respondent's product is called "New Taizgaam". The term "New" is written in a very small and negligible font size. The name is written in the same font and font size and the same colors are used for representation i.e. the shape is filled with red, it has a dark green outline, and "Taizgaam" written in yellow font color.
- iii. Both of them have the same label design in same colors, i.e. a picture of a cow standing on grass in a circular double outlined shape. The design has the same text written in the same locations and colors.
- iv. Both the tags have two similar shapes on the left and right side of the circular design with the same message in the left shape and the registration no. in the right shape. Both shapes are in the same color and size with the text written in the same font type, color, and size. However, there is a slight difference in the registration numbers given on both tags. The Complainant's tag has the registration no. 4977-13 whereas the registration no. used by the Respondent is 0300-6825323, which is also the Respondent's phone number. The response from the Respondent was not received and hence, the trademark registration number could not be verified either.
- v. Both tags have the exact same instruction written in the same location (under the circular design), color, and font type and size.
- vi. Both the undertakings have printed their own firm names below the instructions referred to in clause v, i.e. A.H. & A.R Oil Mills Bahawalpur by the Complainant whereas, B.W.P Oil Mills Bahawalpur by the Respondent in the

same rectangular shape and using the exact same font type, color and size and color combination of the whole shape, i.e. red and yellow.

vii. Below this shape, various phone numbers are printed in the same manner.

b) Product Bag:

- i. Both undertakings have sacks of same size, shape, and color (yellow base).
- ii. As mentioned before, different relevant registration numbers and firm names were printed in the same locations and in the same manner.
- iii. Both sacks have the trademark, logo, label design, text, tagline, various instructions, registration number (same location, different number), firm name, phone numbers, and other various creative works in the same colors, font type, size, and color, and meaning, front and back.
- iv. However, in the location where phone numbers are placed, different phone numbers have been printed by both undertakings. Furthermore, the Complainant has “*Rafi*” printed on the left side of the phone numbers whereas the Respondent has “*B.W.P*” written on the left side of phone numbers.

3.19. In view of the above, it is evident that the use of Complainant’s registered trademark and infringement of trade dress by M/s Mian Traders is without any authorization, misleading in nature and capable of harming the business interests of the Complainant. Apart from the above, distributing information lacking a reasonable basis relating to price, character, properties, suitability for use and quality of goods is also in violation of Section 10 of the Act.

V. IN THE MATTER OF MR. MIAN IKRAM OF M/S BAHAWALPUR OIL MILLS (RESPONDENT NO 5)

3.20. In the absence of response received from the Respondent, only the Complainant’s submissions were examined.

(Complainant’s Packaging)



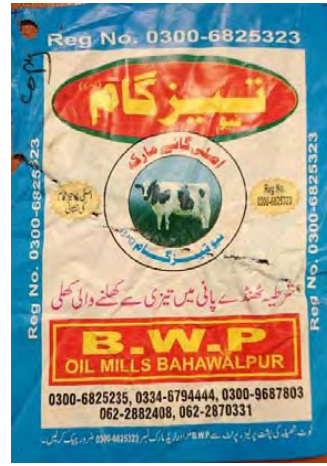
(Respondent’s Packaging)



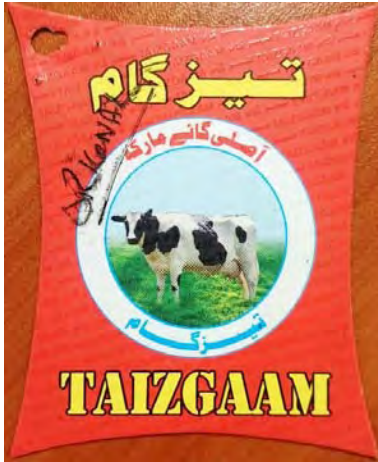
(Complainant's Tag 1)



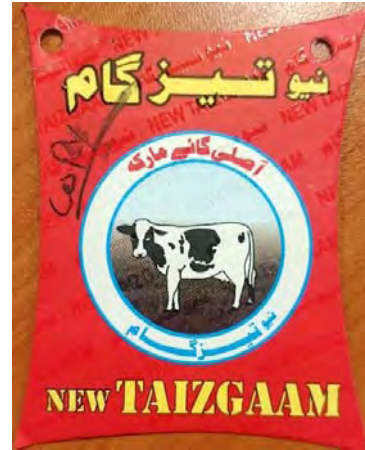
(Respondent's Tag 1)



(Complainant's Tag 2)



(Respondent's Tag 2)



3.21. Following analysis is made subsequent to the comparison of Complainant's and Respondent's marketing material.

a) **Product Tag:**

Analyzing product tag 2 first, it is observed that:

- i. Both the tags are in identical shape and colors.
- ii. Placement of the trademark, "Taizgaam", has been done in the exact same manner, i.e., "Taizgaam" is written in Urdu at the top of the tag whereas, "Taizgaam" is written in English at the bottom of the tag in the exact same font type, size, and color. Only a slight variation has been made to the product name. The Respondent has added the term "New" to "Taizgaam" in the same font type and color but has been written in a much smaller font size.
- iii. Between the trademark on top and bottom of the tag, both the tags have product label design, i.e. a bordered circular shape with a picture of a cow and specific text written within the border.

It was further observed that the evidence submitted pertinent to Mr. Mian Ikram of M/s Bahawalpur Oil Mills other than tag 2, was exactly identical to the evidence

submitted for Mr. Mian Tanveer of M/s Mian Traders. Therefore, similar analysis carried out in paras 3.18 and 3.19 would apply to this Respondent as well.

VI. IN THE MATTER OF MR. HAFIZ RIAZ OF M/S RIAZ OIL MILLS (RESPONDENT NO 6)

3.22. As mentioned in para 2.6.1 the specific allegations made against M/s Riaz Oil Mill are that they are using, on its products' packaging, identical labelling style, color format and design to that of the Complainant's packaging of 'Taizgaam'. A view of the Complainant's and Respondent's packaging is given hereunder for reference:

(Complainant's Packaging)



(Respondent's Packaging)



3.23. This Respondent is selling the product using the trademark "Geo Taizgaam", where the term "Geo" is written in a smaller font size. The registration number used by this Respondent is 3816211-3 which has not been verified by the Respondent yet. Only product sacks of the Respondent were submitted, the analysis of which is presented below:

a) Product Bag:

- i. Both undertakings have sacks of same size, shape, and color (yellow base).
- ii. Relevant registration numbers and firm names, i.e. A.H. & A.R Oil Mills Bahawalpur by the Complainant whereas, Riaz Oil Mills Bahawalpur by the Respondent were printed in the same locations and in the same manner.
- iii. There is a slight difference in the label design i.e. the circle with the image of one cow in the Complainant's packaging instead has two cows facing each other on this sack.
- iv. Both sacks have the trademark, logo, text, tagline, various instructions, registration numbers (same location, different number), relevant phone

numbers, and other various creative works in the same colors, font type, size, and color, in the front and back.

- v. The location where phone numbers are placed, the Complainant has "Rafi" printed on the left side of the phone numbers whereas the Respondent has only printed its phone numbers.

3.24. In view of the above, it is evident that the use of Complainant's registered trademark and infringement of trade dress by M/s Riaz Oil Mill is without any authorization, misleading in nature and capable of harming the business interests of the Complainant. Apart from the above, distributing information lacking a reasonable basis relating to price, character, properties, suitability for use and quality of goods is also in violation of Section 10 of the Act.

VII. IN THE MATTER OF MR. SAJJAD UR RASHID OF M/S BALOCH OIL MILLS (RESPONDENT NO 7)

3.25. As mentioned in para 2.7.1 the specific allegations made against M/s Baloch Oil Mills is that they are in the practice of using fake registration number i.e. '9477-13' on the packaging of its product, which is similar to/resembles the number used by the Complainant on its packaging, representing the acknowledgement received by the Complainant from the Intellectual Property Organization of Pakistan for the registration of its trademark 'Taizgaam'. It was further alleged that the Respondent is using style, logo and color scheme on its packaging which is similar/identical to that of the Complainant's packaging. A view of the Complainants and Respondent's packaging is given hereunder for reference:

(Complainant's Packaging)



(Respondent's Packaging)



(Complainant's Tag)



(Respondent's Tag)



3.26. The marketing material of the Complainant were compared with that of the Respondent and the following observations were made:

a) **Product Tags:**

- i. Both tags are of similar size and in rectangular shape. Both of them have red borders of same width on all sides of the tag with their respective registration numbers written on the top and both sides. The Respondent has added some instructions on the left and right side of borders as well. The Complainant has some instructions printed on the bottom border whereas the Respondent has four label designs in small size printed in that location.
- ii. Both products are using almost similar trademarks i.e. 'Taizgaam'. The Complainant's product is called 'Taizgaam' whereas the Respondent's product is called "Blouch Taizgaam". The term "Blouch" is written in a very small and negligible font size. The name is written in the same font and font size and the same colors are used for representation i.e. the hexagon shape is filled with dark green, it has a red outline, and "Taizgaam" written in yellow font color.
- iii. Both of them have the same label design in same colors, i.e. a picture of a cow standing on grass in a circular double outlined shape. The design has the same text written in the same locations and colors.
- iv. Both the tags have two similar shapes on the left and right side of the circular design with the same message in the left shape and the registration no. in the right shape. Both shapes are in the same color and size with the text written in the same font type, color, and size. However, there is a slight difference in the registration numbers given on both tags. The Complainant's tag has the registration no. 4977-13 whereas the registration no. used by the Respondent is 9477-13. As the Respondent did not respond, hence, the trademark registration number could not be verified.
- v. Both tags have the exact same instructions written in the same location (under the circular design), color, and font type and size.
- vi. Both the undertakings have printed their own firm names below the instructions referred to in clause v, i.e. A.H. & A.R Oil Mills Bahawalpur by the Complainant whereas, Blouch Oil Mills Bahawalpur by the Respondent in the same rectangular shape and color combination of the whole shape, i.e. green

and yellow. However, the Respondent has written its firm name in Urdu whereas the Complainant's firm name has been written in English.

vii. Below this shape, various phone numbers are printed in the same manner.

b) Product Bag:

- i. Both undertakings have sacks of same size, shape, and color (yellow base).
- ii. As mentioned before, different relevant registration numbers and firm names were printed in the same locations and in the same manner.
- iii. Both sacks have the trademark, logo, label design, text, tagline, various instructions, registration number (same location, different number), firm names, phone numbers, and other various creative works in the same colors, font type, size, and color, and meaning, front and back.
- iv. However, in the location where phone numbers are placed, different phone numbers have been printed by both undertakings. Furthermore, the Respondent has "Blouch" written on the left side of phone numbers.

3.27. In view of the above, it is evident that the use of Complainant's registered trademark and infringement of trade dress by M/s Baloch Oil Mills is without any authorization, misleading in nature and capable of harming the business interests of the Complainant. Apart from the above, distributing information lacking a reasonable basis relating to price, character, properties, suitability for use and quality of goods is also in violation of Section 10 of the Act.

VIII. IN THE MATTER OF M/S AZHAR KARYANA STORE (RESPONDENT NO 8)

3.28. As mentioned in para 2.8.1 the specific allegations made against M/s Azhar Karyana Store is that they are acting as a sales point for all the resembling, fake, forged and counterfeit products made in the name of/similar to Complainant's registered trademark 'Taizgaam'. It was further alleged that the Respondent is also involved in the sale of similar product in its own name by the trade name of 'M Taizgaam', which is deceptively similar to and a close derivative of the Complainant's registered trademark. A view of the Complainant's and Respondent's packaging is given hereunder for reference:

(Complainant's Tag)



(Respondent's Tag)



3.29. Only blue product tag was submitted, the analysis of which is presented below:

a) Product Tag:

- i. Both tags are of similar size and in rectangular shape. Both of them have light blue borders of same width on all sides of the tag with their respective registration numbers written on the top and both sides. Both of them have some instructions printed on the bottom border.
- ii. Both products are using almost similar trademarks i.e. 'Taizgaam' with the tag of "registered". The Complainant's product is called 'Taizgaam' whereas the Respondent's product is called "M Taizgaam". The alphabet "M" is written in a very small and negligible font size. The rest of the logo is exactly the same.
- iii. Both of them have the same label design in same colors, i.e. a picture of a cow standing on grass in a circular double outlined shape. The design has the same text written in the same locations and colors.
- iv. Both the tags have two similar shapes on the left and right side of the circular design with the same message in the left shape and the registration no. in the right shape. Both shapes are in the same color and size with the text written in the same font type, color, and size. However, the registration numbers are different. The Complainant's tag has the registration no. 4977-13 whereas the registration no. used by the Respondent is 38315003-3. As the Respondent did not respond, the trademark registration number has not been verified.
- v. Both tags have the exact same instruction written in the same location (under the circular design), color, and font type and size.
- vi. Both the undertakings have printed the firm names below the instructions referred to in clause v. The Respondent has used a different firm name i.e., M.C. Oil Mills written inside the same rectangular shape while using the exact same font type and size.
- vii. Below this shape, expanded firm name, Muslim Corporation Bahawalpur, is written with various differentiated phone numbers printed in the same manner.
- viii. In this tag, however, below the phone numbers, the Respondent has put another firm name i.e. Azhar Karyana Store, in the same manner with a different address and phone numbers below the name tag.

3.30. It has been observed that the Respondent has actually copied the tag of Mr. Ramdan Jani of M/s Muslim Corporation and has only added its own name tag and contact information at the end just to create confusion with malafide intention. The actions of the Respondent, therefore, also fall within the ambit of, *prima facie*, violation of Section 10 of the Act.

IX. IN THE MATTER OF M/S WAQAS OIL MILLS (RESPONDENT NO 9)

3.31. As mentioned in para 2.9.1 the specific allegations made against M/s Waqas Oil Mills is that they are engaged in the manufacturing and sale of a product similar to that of the Complainant with the name 'Pak Taizgaam', which is also similar to the Complainant's registered trademark 'Taizgaam'. A view of the Respondent's packaging besides Complainant's packaging is given hereunder for reference:

(Complainant's Packaging)



(Respondent's Packaging)



3.32. Only images of product sacks were submitted by the Respondent. Following observations were made after the comparison:

a) **Product Bag:**

- i. The Respondent is operating by the product name “Pak Taizgaam”, with “Pak” written in a slightly smaller font size.
- ii. Both undertakings have sacks of same size, shape, and color (yellow base).
- iii. As mentioned before, different relevant registration numbers and firm names were printed in the same locations and in the same manner. The Respondent is using the registration number 3616291-4.
- iv. The Respondent has modified the label design a little. The circle with the image of one cow in the Complainant's packaging instead has two cows opposing each other on the Respondent's sack.
- v. Both sacks have the trademark, logo, text, tagline, various instructions, registration number (same location, different number), and other various creative works in the same colors, font type, size, and color, and meaning, front and back.
- vi. The Respondent has printed its firm name in the same place as the Complainant. The Respondent has used its firm name, Pak Oil Mills Small Industries Bahawalpur.
- vii. In the location where phone numbers are placed, different phone numbers have been printed by both undertakings. However, the Respondent has not written anything on the left side of the phone numbers.

3.33. In view of the above, it is evident that the use of Complainant's registered trademark and infringement of trade dress by M/s Waqas Oil Mills is without any authorization, misleading in nature and capable of harming the business interests of the Complainant.

Apart from the above, distributing information lacking a reasonable basis relating to price, character, properties, suitability for use and quality of goods is also in violation of Section 10 of the Act.

4. CONCLUSION AND FINDINGS

- 4.1. This enquiry report aimed at examining whether the allegations of the Complainant, that the Respondents are fraudulently using the Complainant's trademark, firm name, or product labeling or packaging, are valid or not. Since the Respondents failed to produce their defense, the submissions of the Complainant were thoroughly analyzed to draw the conclusion.
- 4.2. The Complainant applied for the registration of trademark with the title, "*Taizgaam*" in English and Urdu, under Trade Marks Ordinance, 2001. The copy of the trademark registration certificate was submitted which supported their claim. The registration was applied for in 2013 with the application number, 4977-13. The use of trademark was allowed with effect from January 21, 2013. It may, however, be noted that the Complainant has been printing its application number, 4977-13, as its registration number on its marketing material. The Complainant's application was accepted on October 07, 2015, with registration number 332864. Nonetheless, as far as the trademark is concerned, the trademark registration certificate proves that the Complainant is the first and rightful owner of the subject trademark.
- 4.3. As none of the Respondents presented any evidence to challenge the Complainant's claim, the Complainant's claim is therefore reinforced. It can thus be certainly concluded that the Respondents are involved in trademark infringement. Some Respondents have modified the trademark by adding terms such as "*M*", "*Mian*", "*Pak*", etc to it. However, it should be noted that "*Taizgaam*" is an Urdu term which, when translated into English, means "*Fast Speed*". Since the term, "*Fast Speed*", is a unique name for the product and is not associated specifically with the product, i.e. animal feed in any manner, it cannot be claimed to have been adopted by the Respondents as a generic term. This further reinforces the fact that the trademark, "*Taizgaam*" is the Complainant's unique and registered trademark that it has chosen artistically and innovatively for its product and the Respondents, even by making small variations to the title, are still involved in trademark infringement.
- 4.4. The only association that might have been generated of animal feed with "*Taizgaam*" could be due to the goodwill that has been created amongst the consumers regarding its product by the Complainant. Therefore, even if a few Respondents are using slightly altered versions of the original name which has very close resemblance with the original name, the use of the term "*Taizgaam*" is still a violation of IPR. Consequently, this behavior of Respondents is evidently capable of deceiving the consumers who are looking for the brand "*Taizgaam*", which in turn would also result in causing damage to the business interest of the Complainant.

- 4.5. Moreover, the Respondents are not only copying the Complainant's trademark, but they are also completely imitating its trade dress. The product tags and sacks created by the Respondents are almost identical to that of the Complainant's. The only alterations made by the Respondents are their slightly modified titles, i.e., adding the terms "M", "Pak", etc., in smaller font sizes, replacing the Complainant's firm name with their own, using different registration numbers which were not verified by the Respondents, and printing their own phone numbers instead of the Complainant's. In case of M/s Niaz Corporation, the Respondent has even used the Complainant's firm name and only slightly different registration no. i.e. 9477-13 instead of 4977-13 of the Complainant's.
- 4.6. The Respondents are using completely identical packaging size, color combinations, logo design, label design, text, font type, size and colors, instructions, tagline, etc. Analyzing it as a whole, the Respondents are using a similar/identical trade dress and same or slightly differentiated trademark, "Taizgaam", due to which their products appear similar to that of the Complainant's product.
- 4.7. Furthermore, making slight variations in the trademark, logo, and trade dress etc., is not sufficient to avoid consumer deception. Since the overall look, as well as the trademark used by the Respondents are similar, the slightly differentiated trademark is still capable of misleading the consumers into buying the Respondent's products instead of that of the Complainant's. According to UK Regulations, Unfair Commercial Practices Directive⁹, misleading practices include:

Creating confusion with competitors' products

7.10 Commercial practices are also prohibited as misleading actions if they:

- *market a product in a way which creates confusion with any products, trademarks, trade names or other distinguishing marks of a competitor, and*
- *the average consumer takes, or is likely to take, a different decision as a result*

- 4.8. As mentioned earlier, with the extreme similarities between the Complainant's packaging and that of the Respondents, the likelihood of consumer deception is still quite large. In this reference, it is also pertinent to understand the concepts of "Parasitic Copying" or "Copycat Packaging". The European Union in its "Directive 2005/29/Ec on Unfair Commercial Practices"¹⁰ has highlighted following aspects pertinent to marketing practices that may result in duping the customers into making unintentional incorrect trade decisions:

2.4.4. Confusing marketing

The Directive prevents traders from providing false information on, inter alia: Under the Directive, a commercial practice will also be regarded as misleading if it involves

⁹ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/284442/oft1008.pdf

¹⁰ http://ec.europa.eu/justice/consumer-marketing/files/ucp_guidance_en.pdf

any marketing of a product, including comparative advertising, which creates confusion with any products, trademarks, trade names or other distinguishing marks of a competitor and, as a result, distorts the economic behavior of the average consumer.

..... "Copycat packaging" refers to the practice of designing the packaging of a product (or its "trade dress" or "get up") to give it the general "look and feel" of a competing well-known brand (typically the market leader). Copycat packaging is distinct from counterfeiting as normally it does not involve copying trademarks.

The risk posed by copycat packaging is consumer confusion, and, consequently, the distortion of their commercial behavior.

- 4.9. As discussed above, even if it is assumed that the Respondents in this case chose a slightly modified trademark, the rest of the packaging is so similar to the original packaging of the Complainant that the consumer would easily accept one for the other. Therefore, keeping in view the above, the Respondents are also involved in copycat or parasitic packaging by using the exact same trade dress as that of the Complainant's.
- 4.10. Furthermore, following practices are considered unfair as per Unfair Commercial Practices Directive, 2005¹¹:

Promoting a product similar to a product made by a particular manufacturer in such a manner as to deliberately mislead the consumer into believing that the product is made by that same manufacturer when it is not.

As discussed earlier, considering the above directions, the Respondents are in violation of Section 10 of the Act.

- 4.11. Moreover, a research conducted on consumer behavior also suggests that consumers usually shop mechanically as they have a limited ability to focus. The consumers try to rely on shape and color as simple search mechanisms¹². Hence, the purchasing decisions of consumers are based on first impressions of the product exterior. They do not engage in a deep scrutiny of the required products, rather make their decisions based on the overall look of the product.
- 4.12. Therefore, it is safe to assume that due to such major similarities, the minute changes made by the Respondents would not even be noticed by a reasonable/discerning consumer at a cursory glance let alone an ordinary consumer. Consequently, by creating such negligible variances in the product name, packaging, etc., the actions of the Respondents are still likely to cause consumer injury which is not permissible under Section 10 of the Act. It should still be noted that especially by using the Complainant's trademark, there is clear violation of Section 10 of the Act in terms of Section 10 2 (d) of the Act.

¹¹ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/284442/oft1008.pdf

¹² https://www.law.ox.ac.uk/sites/files/oxlaw/tony_durham_symposium_2012.pdf

- 4.13. Therefore, it is clear that the Respondents, by imitating not only the Complainant's trademark, but also its trade dress, are trying to dupe consumers into buying their goods instead of that of the Complainant's. Furthermore, the consumers of this product are more likely to be farmers who are usually illiterate and hence, they are unlikely to thoroughly analyze the product's packaging before purchasing it. Therefore, there is a higher probability of consumer deception in this case.
- 4.14. The Respondents, by copying the Complainant's trademark and trade dress have clearly tried to deceive consumers into buying their products without having to invest time, effort, or money into creating their own brand name or goodwill. Furthermore, all the letters were received by the Respondents, however, no response was received from them. Such behavior of the Respondents may be interpreted as their acceptance of their culpability as they had no clarifications to submit or defend their positions. Realizing the importance of IPRs and the efforts associated with them, the Commission in its order *In The Matter of Complaint Filed By M/S. DHL Pakistan (Pvt.) Ltd*¹³, also held that;

“47. Regarding the second limb of the issue dealing with fraudulent use of Complainant's trademark, it is important to recognize that part of any business's identity is the goodwill it has established with consumers, while part of a product's identity is the reputation it has earned for quality and value. In a larger sense, trademarks promote initiative and enterprise worldwide by rewarding the owners of trademarks with recognition and financial profit. Trademark protection also hinders the efforts of unfair competitors, such as counterfeiters, to use similar distinctive signs to market inferior or different products or services. This enables people with skill and enterprise to produce and market goods and services in fair conditions, thereby facilitating international trade.”

Therefore, it is necessary to protect IPRs and goodwill of such undertakings who have invested great amount of time, energy, and effort into creating their own distinction in the market. Furthermore, protection of IPRs is also essential to encourage and safeguard fair competition in the market.

- 4.15. Moreover, the Respondents have also printed various trademark registration numbers on their respective packaging. However, as discussed earlier, no response was submitted by any of the Respondents which could prove that they were the true owners of the trademarks and not the Complainant. Consequently, no proof has been submitted by any of them regarding the validity of their supposed registration numbers either. This action of the Respondents further leads to violation of Section 10 (1) read with Section 10 (2) (b) of the Act as the Respondents are involved in distribution of false and misleading information to consumers by claiming to have registered trademarks via printing a fake registration number.
- 4.16. In view of the position stated in the preceding paras, it appears that the Respondents are using the registered trademark of the Complainant without obtaining the authorization of the Complainant. Therefore the Respondents have, *prima facie*,

¹³ http://www.cc.gov.pk/images/Downloads/dhl_pakistan.pdf

entered into deceptive marketing practices in terms of the provisions of Section 10 (2)(a), (b), and (d) of the Act. It is evident that the distribution of misleading information always attracts the consumers to purchase the products of low quality which provides the undertakings competitive edge over the competitors. Thus in the interest of general public at large, and ordinary consumer in specific, the undertakings which are involved in misleading and unfair trade practices must be discouraged from selling their inferior products in a deceptive manner and they should also be directed to adopt such practices which are transparent and provide the consumers/ customers true and correct information about their products.

5. RECOMMENDATIONS

- 5.1. The deceptive marketing practices have a direct impact on the public at large and therefore, it is in the interest of the general public and fair competition in the market that the undertakings should be stopped from marketing their products in an unfair and misleading manner and be encouraged to resort to marketing practices which are transparent and give consumers/customers true and correct information. Therefore, in light of the above mentioned findings, it is recommended that the Commission may consider initiating proceedings against M/S Niaz Corporation, Mr. Muhammad Naveed of Hamza Corporation, Mr. Ramdan Jani of Muslim Corporation, Mr. Mian Tanveer of Mian Traders, Mr. Mian Ikram of Bahawalpur Oil Mills, Mr. Hafiz Riaz of Riaz Oil Mills, Mr. Sajjad Ur Rasheed of Baloch Oil Mills, M/S Azhar Kiryana Store and M/S Waqas Oil Mills under Section 30 of the Act.

Faiz Ur Rehman
(Enquiry Officer)

Urooj Azeem Awan
(Enquiry Officer)

Fatima Shah
(Enquiry Officer)