

# **COMPETITION COMMISSION OF PAKISTAN**

## **ENQUIRY REPORT**

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

**IN THE MATTER OF COMPLAINT FILED BY M/S STARBUCKS  
CORPORATION AGAINST M/S OPTIONS INTERNATIONAL (SMC-PVT)  
LIMITED FOR ALLEGED DECEPTIVE MARKETING PRACTICES**

**BY**

**FAIZ-UR-REHMAN/RIAZ HUSSAIN/FATIMA SHAH**

**DATED: March 09, 2018**

## 1. BACKGROUND

- 1.1 M/s STARBUCKS Corporation (hereinafter referred to as the ‘**Complainant**’), through its authorized representative, M/s Vellani and Vellani Advocates, Karachi, filed a complaint against M/s Option Coffee & More, and the restaurant, M/s Options An Exotic Restaurant – jointly owned and operated by M/s Options International (SMC-Pvt.) Limited, (hereinafter collectively referred to as the ‘**Respondent**’) with the Competition Commission of Pakistan (hereinafter referred to as the ‘**Commission**’) for alleged violation of Section 10 of the Competition Act, 2010 (hereinafter referred to as the ‘**Act**’).
- 1.2 The Complainant, which is a foreign Corporation registered under the laws of the state of Washington, United States of America, alleged in its complaint that the Respondent, namely Option International (SMC-Pvt) Limited, a single member private company incorporated in Pakistan, is running a café and a restaurant by the names (i) Options Coffee and More and (ii) Options An Exotic Restaurant in New Garden Town, Lahore, in clear violation of Section 10 of the Act by making false and misleading claims that Options is an International Corporation selling/serving “STARBUCKS” Coffee in Pakistan. It has been submitted that the claim is misleading as the Respondent is involved in unauthorized/unlicensed use of the Complainant’s registered and well known trademark “STARBUCKS” word-mark, the “STARBUCKS COFFEE”. Consequently, the Respondent is deliberately deceiving the consumers and attempting to harm the Complainant’s worldwide established business interests.
- 1.3 After ascertaining the preliminary facts, the Commission decided to appoint Mr. Faiz ur Rehman, Assistant Director, Mr. Riaz Hussain, Assistant Director and Ms. Fatima Shah, Management Executive as enquiry officers (hereinafter collectively referred to as the ‘**Enquiry Committee**’). The Enquiry Committee was directed to conduct enquiry into the concerns expressed in the complaint and to submit the enquiry report by giving their 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. COMPLAINT

- 2.1 This section summarizes contentions raised in the complaint.

### **A. Statement of Facts:**

- 2.2 The Complainant, its predecessors-in-interest and their affiliated companies have been carrying out the world’s largest coffeehouse chain since 1971 under the name and style of “STARBUCKS” (hereinafter referred to as the ‘**STARBUCKS Business**’). The STARBUCKS Business, in order to protect its name and reputation has also gotten the

trademark “STARBUCKS COFFEE” registered in the country of origin as well as in Pakistan with the Intellectual Property Organization (IPO). A few copies of trademark certificates and the list of the remaining registered trademarks has been annexed as **Annexure – A**. The Complainant, through its registered trademark and their variations, is concerned with the development and operation of coffeehouses. It also offers a wide range of products to its customers which include more than 30 blends of coffees, handcrafted beverages, fresh foods, coffee and tea-brewing equipment etc.

- 2.3 The Complainant submitted that the STARBUCKS Business was being operated either through an international network of authorized operators, licensees and franchisees or through wholly owned STARBUCKS stores, all operating under and using the various variations of the registered STARBUCKS trademarks, service marks, logos, etc. (hereinafter referred to as the ‘**STARBUCKS MARKS**’). It was further submitted that since 1971, the STARBUCKS MARKS have been developed and were being used by the Complainant in relation to its business which were easily recognizable by the consumers in the USA as well as worldwide. That besides the trade dress, getup, décor, and color scheme, its signage, furniture, menus, flyers and distinctive uniform worn by the staff were also some of the specific features of the STARBUCKS Business.
- 2.4 It was further submitted that the Complainant, through an international network of authorized operators, licensees and franchisees, engaged in substantial, sales promotion and advertising of its business and products under the STARBUCKS MARKS on international level and as a result, the Complainant had been able to achieve substantial fame and extreme popularity throughout the world. That the Complainant spent a substantial amount on sales and advertisements of its products and services bearing STARBUCKS MARKS across the world. That it was the registered proprietor of the STARBUCKS MARKS in respect of a variety of goods in Pakistan and many countries around the world. Thus, the Complainant being the exclusive proprietor of STARBUCKS Business, the STARBUCKS MARKS and the goodwill associated therewith, the use of STARBUCKS MARKS or any imitation thereof by any person without authorization was a misleading and deceitful attempt to confuse the consumers and general public.

#### **B. Summary of Contraventions:**

- 2.5 It was alleged that the Respondent marketed, advertised, sold and offered to sell “STARBUCKS coffee”. Furthermore, it blatantly displayed the STARBUCKS MARKS not only on the main signage board of its cafés, but also on the packaging materials, menus, flyers and other printed materials used by it, its website, [www.options.pk](http://www.options.pk), and Facebook page, [www.facebook.com/OptionsCoffeeandMore](http://www.facebook.com/OptionsCoffeeandMore), without any express or implied license and/or authorization from the Complainant.
- 2.6 Moreover, while on one hand the Respondent claimed to sell STARBUCKS coffee, on the other hand, the Respondent clearly admitted that it was not an authorized franchisee of the

Complainant. Therefore, in the absence of any contractual arrangement with the Complainant, the Respondent had no legitimate basis to claim that it sold STARBUCKS coffee and/or use the STARBUCKS MARKS.

- 2.7 It was also alleged by the Complainant that the Respondent claimed to (i) import and use original STARBUCKS coffee beans; (ii) grind the beans at the same pace while using the same machines and using all the same imported ingredients; (iii) get the coffee made by STARBUCKS trained staff at the same temperature; and (iv) assure that the consumer would find the same taste as they would have found at any STARBUCKS café located in Dubai, London or New York. Hence, such claims were outrageous and through them, the Respondent intended to confuse and deceive the unwary consumer and take unfair advantage of the reputation and goodwill of STARBUCKS Business and STARBUCKS MARKS.
- 2.8 It was further alleged that the Respondent was, and never had been, authorized by the Complainant. While the Respondent falsely and deceitfully claimed to sell/serve STARBUCKS coffee in Pakistan, it did not have any contractual arrangement with the Complainant to sell/serve “STARBUCKS coffee” or otherwise to conduct the STARBUCKS Business or use the STARBUCKS MARKS in Pakistan.
- 2.9 The Complainant submitted that for the reasons given above, the Respondent’s claimed that it sold/served “STARBUCKS Coffee” was “false” and “misleading” as envisaged in the provisions of clause (a) of sub-section (2) of the Section 10 of the Act. The Respondent’s claims, reproduced in para 2.7 *ibid*, were contrary to the facts and not in accordance with the reality. Furthermore, such claims by the Respondent were capable of giving the wrong impression and was likely to mislead and misguide the average consumer into believing that the Respondent was authorized by the Complainant (which the Respondent was not) that the coffee sold by Respondent, had been prepared in accordance with the prescribed operating procedures and quality control standards of the Complainant (which was not possible in the absence of any authorization from the Complainant) and as such, would affect the economic decision making of the average consumer.
- 2.10 Moreover, it was alleged that the Respondent had never sought or received any permission from the Complainant to use the STARBUCKS MARKS. It was clear that the Respondent’s use of the STARBUCKS MARKS was unauthorized and illegal and was being done in full knowledge of the former, whereas the STARBUCKS MARKS and the substantial reputation and goodwill of the Complainant in respect thereof are exclusive rights of the Complainant. In fact, the Respondent was manifestly attempting to capitalize on the unrivalled reputation and goodwill which the Complainant enjoyed worldwide in respect of STARBUCKS Business and STARBUCKS MARKS. Resultantly, the use of STARBUCKS MARKS by the Respondent clearly amounted to “fraudulent” use of the Complainant’s STARBUCKS MARKS, which, *prima facie*, constituted an act of deceptive marketing practice, as strictly prohibited under Section 10 of the Act.



- 2.11 The Respondent's unauthorized use of the STARBUCKS MARKS constituted the actionable wrongs of infringements, passing-off and unfair competition, which could cause confusion and deception in the minds of the unwary customers by conveying the false impression that the Respondent's business and/or its use of the STARBUCKS MARKS was authorized by the Complainant or was in conformity with the standards, methods and procedures prescribed by the Complainant for itself and for its authorized operators, licensees and franchisees. Furthermore, for the purposes of deceptive marketing, it was observed by this Honorable Commission in its previous orders, particularly in the order passed against M/s China Mobile Pak Ltd and M/s Pakistan Telecom Mobile Ltd, that the *"actual deception need not be shown to carry the burden of proof. It is sufficient to establish that advertisement has the tendency to deceive and capacity to mislead"*.
- 2.12 The Respondent's conduct was, therefore, capable of tarnishing the goodwill and reputation of the STARBUCKS Business (the reputation and goodwill which, over many years, had accrued in favor of the Complainant worldwide, primarily due to adherence to strict operating procedures and quality control standards) and deprived the Complainant of its ability to ensure compliance with prescribed operating procedures and quality control standards, which form the core of the STARBUCKS Business.
- 2.13 Furthermore, it was alleged that the Respondent had undertaken and continued to undertake the above discussed actions and practices with full knowledge of the Complainant in respect of STARBUCKS Business and STARBUCKS MARKS. In fact, the actions and practices of the Respondent clearly demonstrated that the Respondent's ulterior motive of misleading and deceiving the unwary consumer to make a transactional decision which consumer would not have otherwise taken, was done to secure a business advantage for itself in the local market.
- 2.14 The Complainant submitted that as observed by this Honorable Commission in its order based on the complaint filed by M/s Atlas Honda Ltd, *"the likelihood of confusion on part of the targeted consumers as well as free riding on the goodwill attached to another's trade mark is central to determination of the existence of a deceptive marketing practice and such likelihood is presumed in the case of an identical trademark or logo"*. In view of the foregoing, it could be concluded that each of the discussed actions and practices of the Respondent was indicative of their intent to take unfair advantage of and ride on the Complainant's reputation and goodwill in respect of the STARBUCKS Business and STARBUCKS MARKS.
- 2.15 It was finally alleged that the above discussed practices had been enabling the Respondent to earn profits which they were not entitled to, unjustly enriching the Respondent at the expense of the Complainant. Therefore, in view of the Complainant, the Respondent was clearly violating Section 10 of the Act.

### **C. Prayers:**

2.16 In the interest of the fair market practice, the Complainant humbly and respectfully requested the Commission to conduct an enquiry under section 37(2) of the Act, read with Regulation 16 of Competition Commission (General Enforcement) Regulations, 2007, against the Respondent for engaging in deceptive marketing practices and to initiate formal proceedings against the Respondent under Section 30 of the Act, read with Regulation 22 of Competition Commission (General Enforcement) Regulations 2007.

### **D. Reliefs:**

2.17 The Complainant also requested the Honorable Commission to grant the following reliefs:-

- (i) Pass an order under Section 31(c) of the Act requiring the Respondent to refrain from deceptive marketing practices, that is to stop portraying itself (either directly or indirectly) as operating under authorization of the Complainant and/or an authorized seller of “STARBUCKS coffee”;
- (ii) Pass an order under Section 31(c) of the Act requiring the Respondent to refrain from deceptive marketing practices, that is to cease use of STARBUCKS MARKS or any other mark/design/label confusingly similar thereto;
- (iii) Impose penalties on the Respondent under Section 38 of the Act;
- (iv) Pass an interim order under Section 32 of the Act requiring the Respondent to refrain from deceptive marketing practices in order to prevent further irreparable loss and damage to business and goodwill of the Complainant; and
- (v) Give such other interim and/or final relief as the Honorable Commission deemed fit.

## **3. CORRESPONDENCE WITH THE RESPONDENT AND THE COMPLAINANT**

### **I. REPLY OF THE RESPONDENT**

3.1. The complaint, vide letter dated November 14, 2017, was forwarded to the Respondent for comments. The Respondent submitted its reply vide letter dated November 25, 2017, the contents of which are in the following paras.

- i. The Respondent is a registered company and owns the brands namely Options Coffee & More, Options-An Exotic Restaurant and Options Bakers & Delights.

- ii. The Respondent and all of its brands did not sell STARBUCKS coffee or other products of the Complainant and neither claimed that any of their brands was a franchise of the Complainant.
- iii. The Respondent had no intention of selling STARBUCKS Coffee or other products belonging to the Complainant in future.
- iv. In order to confirm the above stated facts, the Respondent invited members of the Commission to visit their outlets in person.

## **II. REJOINDER OF THE COMPLAINANT**

- 3.2. Comments of the Respondent were forwarded to the Complainant on November 28, 2017, for its comments/rejoinder, if any. Accordingly, the Complainant filed its rejoinder on November 29, 2017. The contents of the rejoinder are reproduced below:
  - i. The Chief Executive Officer of the Respondent, Dr. Kaiser had informed the Commission that the Respondent had ceased the use of the Complainant's STARBUCKS MARKS and had also refrained from selling STARBUCKS Coffee. However, in order to verify the above stated claims made by Dr. Kaiser, an independent investigation was planned by the Complainant, the findings of which were to be shared with the Commission.
  - ii. While in the meantime, the Complainant had visited the website of Options Coffee, <http://options.pk/backup-coffee-shop> and it was discovered that the website continued to display the Complainant's STARBUCKS MARKS. Furthermore, the Respondent also continued to list "STARBUCKS COFFEE" as one of their unique features. A disc, containing images of Respondent's website, downloaded on the date of the letter was also enclosed with rejoinder.
  - iii. Dr. Kaiser was trying to mislead the Commission by distorting facts and giving a false representation. Sufficient evidences had been provided along with the complaint to show that the Respondent had resorted to deceptive marketing practices by making fraudulent use of the Complainant's STARBUCKS MARKS and by claiming to sell STARBUCKS coffee. This was being done without authorization or permission from the Complainant and visit to the website also revealed that the Respondent continued to carry out the deceptive marketing practices.
  - iv. The Complainant had hired a professional investigator to verify the claim that the Respondent did not, nor intended to, sell STARBUCKS Coffee or other products of the Complainant or claimed that they were their franchise.
- 3.3. The Complainant, vide letter dated December 06, 2017, also requested for extension in time period of 10 days to file a more detailed response to the Respondent's letter dated November 25, 2017, along with its own investigation report. Accordingly, the extension was granted vide letter dated December 07, 2017, to the Complainant.

3.4. The remaining rejoinder was filed by the Complainant on December 22, 2017. The submissions of the respective rejoinder are summarized below:

- i. That each and every claim, averment and denial made as well as the contentions raised in the Respondent's comments were vehemently denied as being false and misleading.
- ii. The Respondent had blatantly resorted to deceptive marketing practices by distributing false and misleading information that they sold/served "STARBUCKS Coffee" and furthermore, by making fraudulent use of the Complainant's STARBUCKS MARKS. Sufficient evidences had been provided to the Respondent to show and establish beyond any reasonable doubt that it had misrepresented to the general public that the latter sold STARBUCKS Coffee.
- iii. It had also made unauthorized use of the STARBUCKS MARKS.
- iv. Contrary to the written commitments given by the Respondent, it continued to mislead the general public by claiming that it sold "STARBUCKS Coffee" through its website <http://options.pk/backup-coffee-shop>.
- v. The above mentioned website continued to display the Complainant's STARBUCKS MARKS and listed "STARBUCKS Coffee" as one of the "UNIQUE FEATURES" of the Respondent. The captured images of the Respondent's website are depicted below:

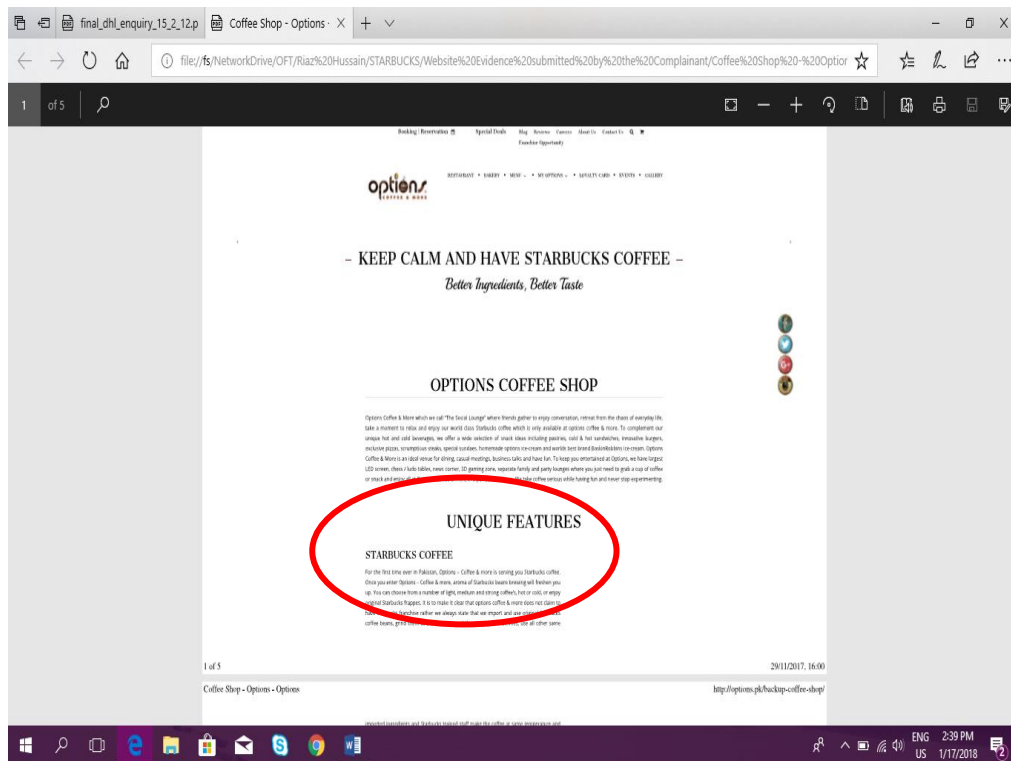
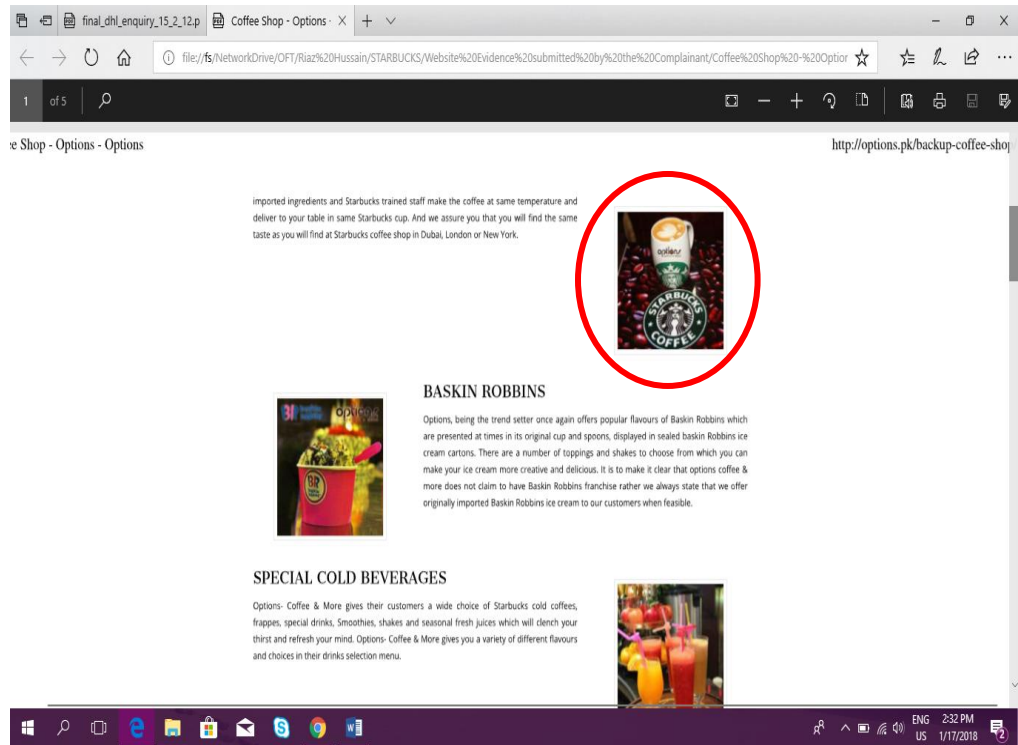


Figure.1



**Figure. 2**

- vi. Moreover, the Respondent continued to serve coffee in disposable cups carrying STARBUCKS MARKS, display them on the menu cards and claim that it sold/served “STARBUCKS Coffee” through its Facebook page, <http://www.facebook.com/optionsCoffeeandMore>.



**Figure. 3**



Figure. 4

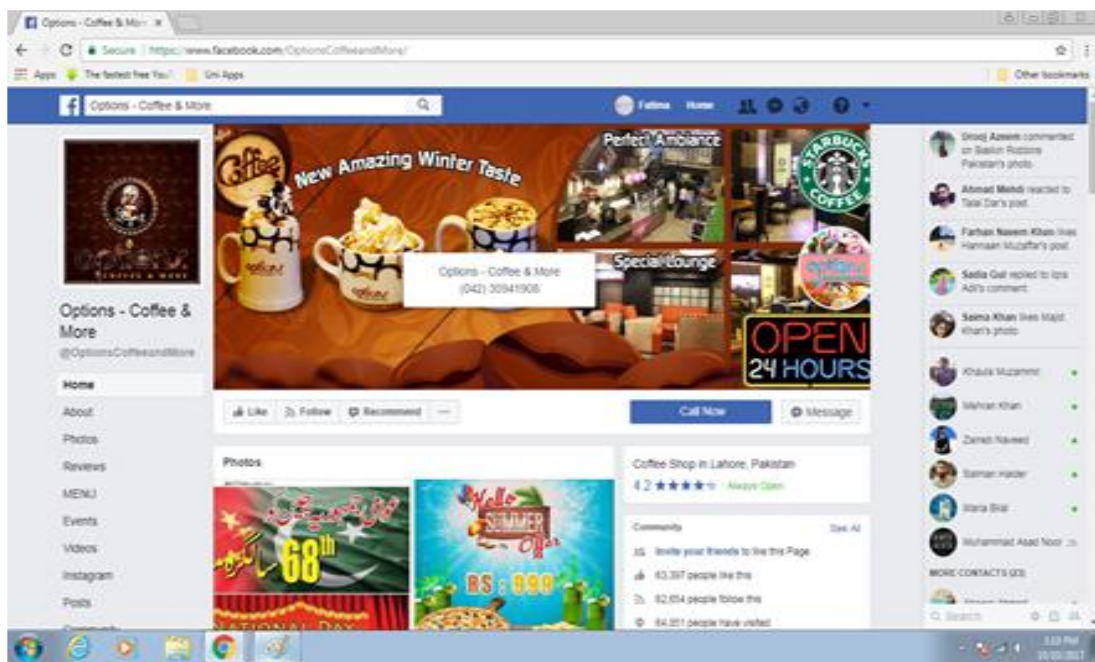


Figure. 5

vii. Any claim, statement or averment made or to be made contrary to what was stated in the rejoinders or in the complaint was thereby expressly denied and the Complainant reserved the right to reply to any case set up by the Respondent.



### III. SURREJOINDER OF THE RESPONDENT

- 3.5. The detailed rejoinder along with all annexures was forwarded to the Respondent vide letter dated December 27, 2017, for its further comments, if any. The Respondent vide its letter dated January 03, 2018, requested for extension in time to file the comments till January 17, 2018. Accordingly, the Respondent was required to file its comments no later than January 15, 2018. Consequently, the comments of the Respondent were received on January 16, 2018. The contents of the comments filed by the Respondent are as follows:
- i. The Complainant was definitely being misled by someone who was providing it the evidence from year 2014. Furthermore, the alleged proof was not attested and hence, had no legal value, making them non-verifiable and non-admissible.
  - ii. The Complainant, again, was either being misled or trying to mislead the Honorable Members of the Commission. The given web link neither existed nor would any business use such a link as no one would ever use the word “back-up” in their link. Such a claim could only be made by someone with no knowledge of web marketing and search engine optimization (SEO) for which websites were designed for.
  - iii. Furthermore, alleged annexures including the images of disposable cups were not true and carried non admissible documents status. The said alleged cups were neither in the use of the Respondent, nor did the attached receipt belong to it.
  - iv. The Respondent in its previous reply had shown most positive gesture by requesting the Honorable Members of the Commission to visit the Respondent’s outlets. The Complainant, instead of accepting and appreciating such a transparent offer, again tried to mislead the Commission.
  - v. Back in year 2014, the Respondent hired a coffee shop manager who used to work for the Complainant in Dubai and Doha. The said manager started buying some coffee beans and sauces from STARBUCKS Dubai and started trying to sell them by using our platform. He started to mislead everyone by telling various stories about the Complainant’s brand. His stories were confronted by the management of the Respondent after which he was fired.
  - vi. Neither did the Respondent sell STARBUCKS coffee, nor did it have any intentions to sell it. In fact, it did not even make a business sense to use, sell or promote something which it did not sell.
  - vii. The Respondent personally requested to the Complainant that if they found any link/statement regarding STARBUCKS on the former’s website and Facebook pages, they could share them with the Respondent. The management would ensure that they are removed.
  - viii. The Complainant was welcomed to visit and verify the alleged contents of the complaint.
- 3.6. In light of the above, the Respondent requested to the Commission for dismissal of the complaint and to not allow the Complainant to waste more time. However, if the Complainant further wanted to continue making allegation on the basis of such fabricated

documents, they were required to send an affidavit on behalf of the Complainant that the documents used by the Complainant were not fabricated, while taking full responsibility if proven otherwise.

- 3.7. The Respondent finally submitted that it was ready to prove that the documents were fabricated and the Complainant was trying to mislead the Commission. That the Respondent had a right to file a defamation and harassment case against the Complainant in the applicable court of law.

#### 4. MARKET SURVEY

- 4.1. An independent market survey was also conducted by the Enquiry Committee from November 07, 2017, to November 08, 2017, in order to ascertain the allegations levelled by the Complainant against the Respondent. It has been discovered during the process of enquiry that the Respondent not only has its operations in Lahore, but has also opened eateries based on similar themes in Faisalabad. Both the identified eateries were, therefore, visited by the Enquiry Committee for the purpose of this survey. The relevant market survey report is annexed herewith as **Annexure – B**.

#### 5. ANALYSIS

- 5.1. As mentioned in Para 1.3. *ibid*, the mandate of this enquiry is to determine whether the allegations leveled in the complaint amount to, *prima facie*, violation of Section 10 of the Act in general;
  - a. And Section 10(1) in particular, which prohibits undertakings from engaging in deceptive marketing practices;
  - b. And Section 10(2)(b) in particular, through “*distribution of false [and] misleading information to consumers, including the distribution of information lacking a reasonable basis, related to the properties, characteristics, and place of production of services.*”;
  - c. And Section 10(2)(d) in particular, through “*fraudulent use of another’s trademark*”
- 5.2. In order to determine the above, various matters pertinent to significance of trademarks and their association with Section 10 of the Act would subsequently be discussed.
- 5.3. A word, phrase, symbol, and/or design which is used to classify and distinguish goods and services in general and from those of its competitors is known as a trade or service



mark. The term, “*mark*” has been defined in Section 2(xxiv) of the Trade Marks Ordinance, 2001 (the ‘**Ordinance**’)<sup>1</sup> as:

*(xxiv) "mark" includes, in particular, a device, brand, heading, label, ticket, name including person name, signature, word, letter, numeral, figurative elements, colour, sound or and combination thereof ;*

In addition, Section 2(xlvii) of the Ordinance defines the term “*trade mark*” as:

*(xlvii) "trade mark" means any mark capable of being represented graphically which is capable of distinguishing goods or services of one undertaking from those of other undertakings;*

- 5.4. Such uniquely developed trade or service marks are created and adopted by undertakings to assist consumers in quick identification of their brands of varied products. One of the major purposes of these trade/service marks is also to separate them from those of its competitors. These creative works then represent a certain perception about the respective products in terms of the status, price, unique characteristics, method or place of production/origin of service providers, properties, quality, etc., of the relevant goods and services. Consequently, they also become one of the most important aspects of the undertaking’s goodwill.
- 5.5. Therefore, in order to form their unique identity, firms invest significantly in creating and promoting their brands through the medium of trademarks. These creative works, hence, become a prominent aspect of the brand image and goodwill of their owners, as they not only represent the producers/providers of these products, but also symbolize the unique features and quality of the said products.
- 5.6. These creative works are also termed as intellectual property of their owners. However, in order to gain exclusive rights for their use, they have to be registered with the relevant authorities, such as the Intellectual Property Organization (IPO) of Pakistan. By registering intellectual property such as trade/service mark, intellectual property rights extend monopolistic use of the registered trade/service mark to its owners.
- 5.7. Furthermore, owing to its properties, significant efforts have been made across the world, including Pakistan, to protect such property rights. Whereas infringement of these rights constitutes a clear violation of law including Section 10 of the Act, which prohibits “*fraudulent use of another’s trademark, firm name, or product labelling or packaging.*”
- 5.8. Protection of such property rights, therefore, have twofold benefits. Firstly, they prevent consumer injury caused as a result of trademark infringement. Reason being that trademark infringement may induce a consumer into buying a product which they may otherwise have not bought. Such a situation may arise as a consequence of confusing one product with some other similar product containing the identical or similar

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<sup>1</sup> [http://www.ipo.gov.pk/uploads/CMS/Trade\\_Mark\\_Ordinance\\_2001.pdf](http://www.ipo.gov.pk/uploads/CMS/Trade_Mark_Ordinance_2001.pdf)

trademark and/or packaging. Secondly, these laws also ensure protection of property rights of the owners of these trademarks who invest significantly into their creation and promotion in order to establish a certain brand image and goodwill. Through such actions, fair competition is also protected and promoted.

5.9. In this reference, the Commission in its order, “*In the matter of show cause notice issued to M/s Society of Accounting Education for deceptive marketing practices*”<sup>2</sup> held that,

*“...It is clear that the use of trade/service mark by the Respondent has the ability to deceive ordinary consumer (such as students) by giving them false or misleading impression that the Respondent is affiliated with, or has expressly been authorized by the Complainant to carry out its programs in Pakistan or that it is otherwise offering a similar qualification as the Complainant.*

*24. On the one hand, such usage of trade/service mark has the ability to deceive the students who may well believe that they are undertaking CFA program and qualification which is offered by the Complainant. Apart from misleading the consumer, these practices have the ability to the harm business interests of the Complainant as well.”*

5.10. Consequently, it can be concluded that the Commission also observes that trade/service mark infringement must be prevented to avoid consumer injury. Furthermore, their curtailment is necessary to safeguard the overall brand equity of an undertaking as trade/service marks not only affect the perception and good will of the product, but also have a significant impact on its sales. Therefore, in order to protect consumers from anti-competitive behavior and to make provisions to ensure free and fair competition in the market, intellectual property rights must be protected and Section 10 of the Act must be enforced, in this case particularly through the mandate outlined in para 5.1 *ibid*.

5.11. Subsequently, the facts of the matter under consideration in this enquiry report, i.e., submissions of the Complainant and the Respondent as well as the material discovered during the process of market survey conducted by the Enquiry Committee, will be analyzed in light of the foregoing discussion to determine whether Section 10 has been, *prima facie*, violated by the Respondent or not.

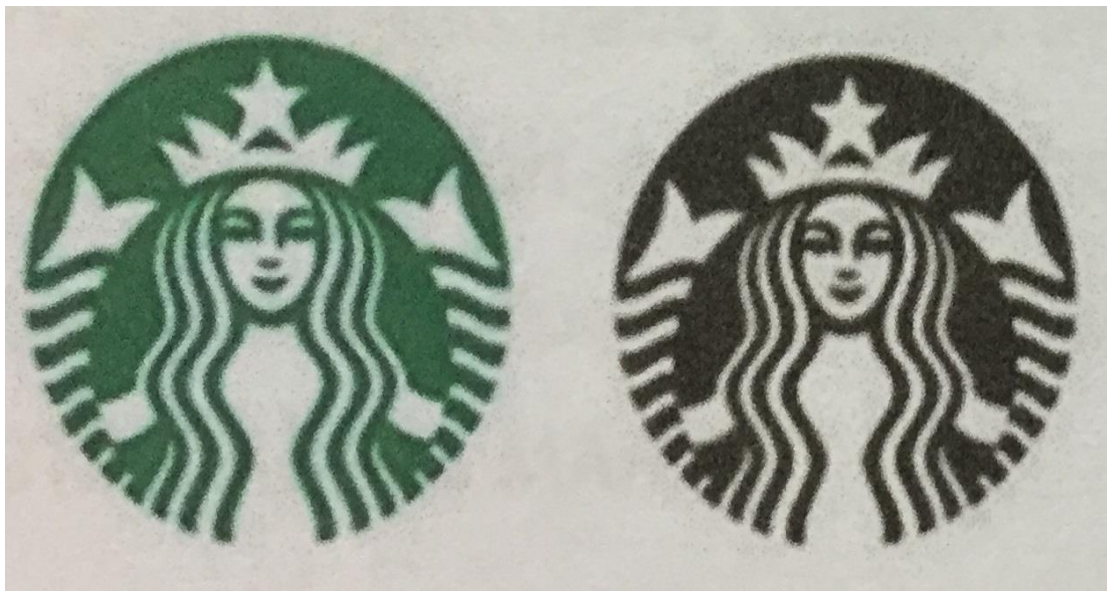
5.12. As the primary concern of this enquiry is to verify whether the Respondent has been involved in fraudulent use of the Complainant’s registered trade/service mark, ample evidence has been submitted by the Complainant to demonstrate that the STARBUCKS MARKS have been registered in various classes, i.e., 30, 32, 35, 42, and 43, not only in Pakistan, but also in other 75 countries where the STARBUCKS Business has licensed or franchised operations. The classes in which trade/service mark has been registered encompass the businesses of, *inter alia*, “*Services for providing food and drink; temporary accommodation*”. Furthermore, the Complainant has also submitted that it

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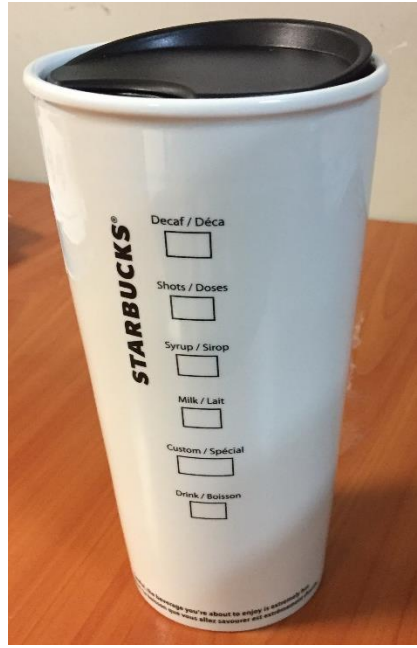
<sup>2</sup> [http://cc.gov.pk/images/Downloads/cfa\\_soae\\_order.pdf](http://cc.gov.pk/images/Downloads/cfa_soae_order.pdf), Pg. 10, paras 23 and 24.

has invested approximately USD 1, 694, 4000 to advertise and promote its business between 2010 and 2016 which represents a significant amount of money. Therefore, it can be concluded, that the Complainant has in fact invested substantial amount of resources to protect and promote its brand and goodwill around the world. Certain images of the STARBUCKS MARKS and the Complainant's merchandise/packaging containing the STARBUCKS MARKS are reproduced below:

### STARBUCKS MARKS



## PRODUCTS CONTAINING STARBUCKS MARKS







5.13. Furthermore, sufficient evidence, such as excerpts of the Respondent's official website, Facebook page, pictures of the eateries, menus, disposable coffee cups, etc., has also been submitted by the Complainant to prove that the Respondent was involved in fraudulent use of the STARBUCKS MARKS. Even though the Complainant's allegations were out rightly denied by the Respondent, the said allegations of the Complainant were also confirmed by the Enquiry Committee. The Enquiry Committee analyzed all the marketing material of the Respondent on various mediums and also conducted a market survey of the various eateries operated by it. During the process of the enquiry, the Complainant had claimed that the Respondent was never given the authorization to use or sell its products. Hence, it can be concluded that the Respondent, at no point in time, had the authorization to use STARBUCKS MARKS and sell the Complainant's products. It is also pertinent to mention that the Respondent not only failed to provide the proof of same to the Enquiry committee, but in fact, out rightly rejected the use of anything related to the Complainant's STARBUCKS brand. Certain marketing material of the Respondent is reproduced below:



## OPTIONS COFFEE SHOP

Options Coffee & More which we call "The Social Lounge" where friends gather to enjoy conversation, retreat from the chaos of everyday life, take a moment to relax and enjoy our world class Starbucks coffee which is only available at options coffee & more. To complement our unique hot and cold beverages, we offer a wide selection of snack ideas including pastries, cold & hot sandwiches, innovative burgers, exclusive pizzas, scrumptious steaks, special sundaes, homemade options ice-cream and worlds best brand BaskinRobbins ice-cream. Options Coffee & More is an ideal venue for dining, casual meetings, business talks and have fun. To keep you entertained at Options, we have largest LED screen, chess / ludo tables, news corner, 3D gaming zone, separate family and party lounges where you just need to grab a cup of coffee or snack and enjoy all at Options- Coffee & more in a perfect ambiance. We take coffee serious while having fun and never stop experimenting.

### UNIQUE FEATURES

#### STARBUCKS COFFEE

For the first time ever in Pakistan, Options - Coffee & more is serving you Starbucks coffee. Once you enter Options - Coffee & more, aroma of Starbucks beans brewing will freshen you up. You can choose from a number of light, medium and strong coffee's, hot or cold, or enjoy original Starbucks frappes. It is to make it clear that options coffee & more does not claim to have Starbucks franchise rather we always state that we import and use original Starbucks coffee beans, grind them at the same pace while using same machines, use all other same imported ingredients and Starbucks trained staff make the coffee at same temperature and deliver to your table in same Starbucks cup. And we assure you that you will find the same taste as you will find at Starbucks coffee shop in Dubai, London or New York.



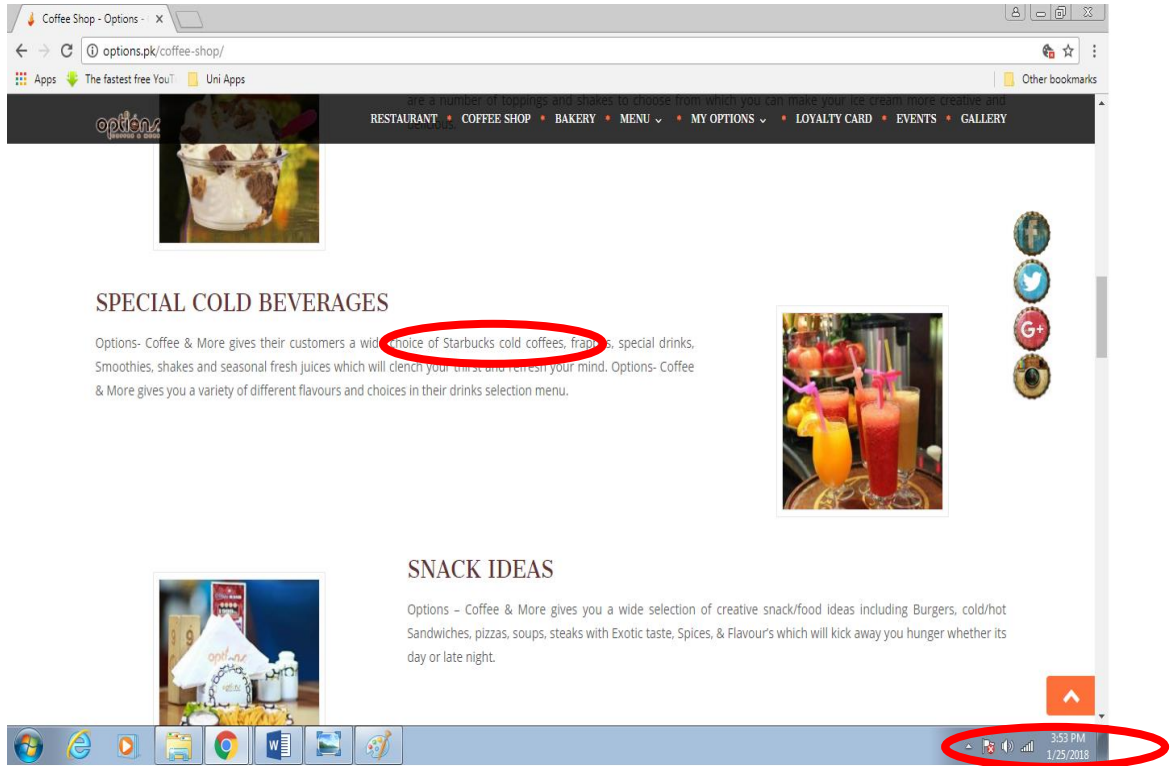
#### BASKIN ROBBINS

Options, being the trend setter once again offers popular flavours of Baskin Robbins which are presented at times in its original cup and spoons, displayed in sealed baskin Robbins ice cream cartons. There are a number of toppings and shakes to choose from which you can make your ice cream more creative and delicious. It is to make it clear that options coffee & more does not claim to have Baskin Robbins franchise rather we always state that we offer originally imported Baskin Robbins ice cream to our customers when feasible.

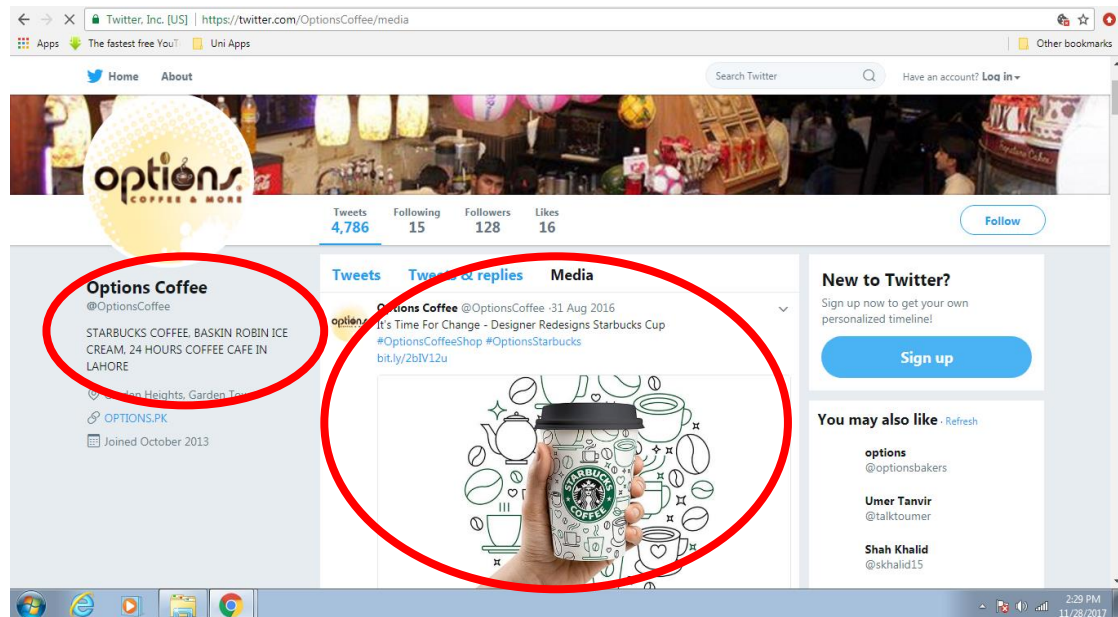


### Image No. 01 – Respondent’s Website

- 5.14. It should be noted that after initiation of this enquiry, the Respondent has made changes to its website, however, certain portions still display unauthorized use of the STARBUCKS MARKS for its own promotion. It can be seen from the images above that the Respondent is making an effort to attract customers by free-riding on the Complainant’s brand image and good will and is calling this service as one of the “UNIQUE FEATURES” of its eatery.

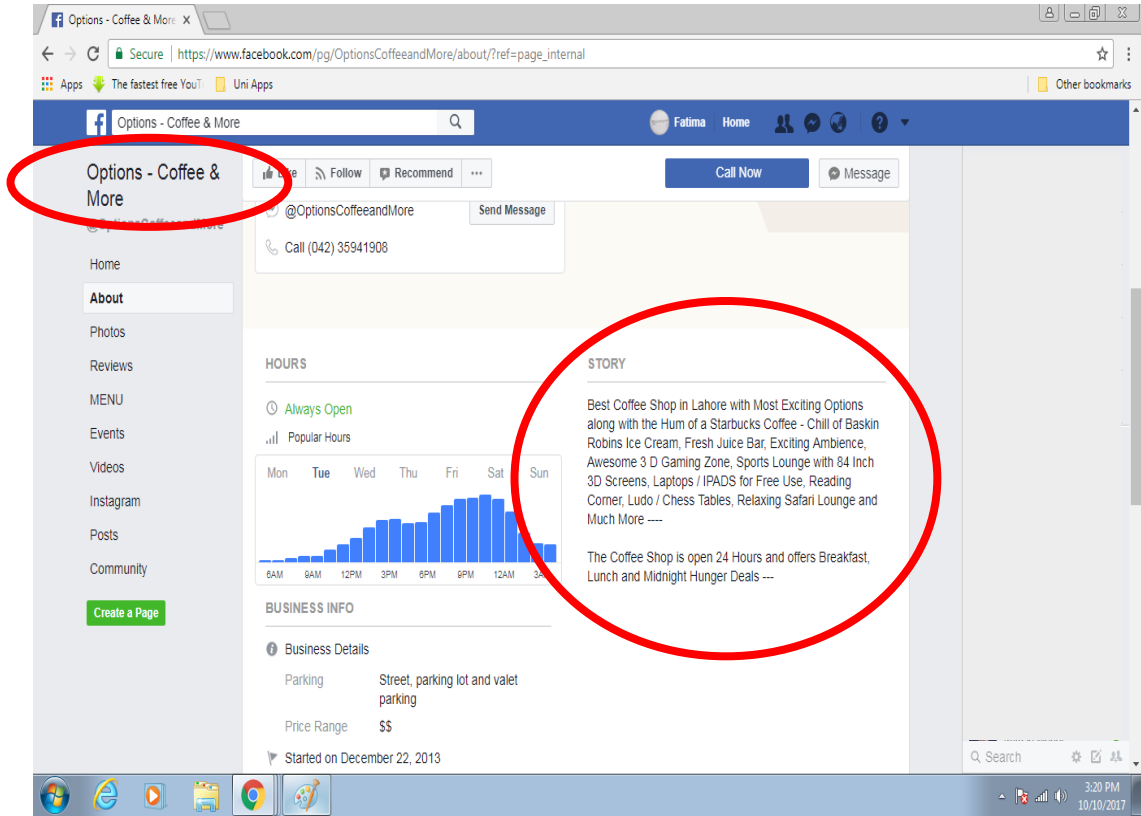


**Image No. 02 – Latest Screenshot of the Respondent’s Edited Website on January 25, 2018**

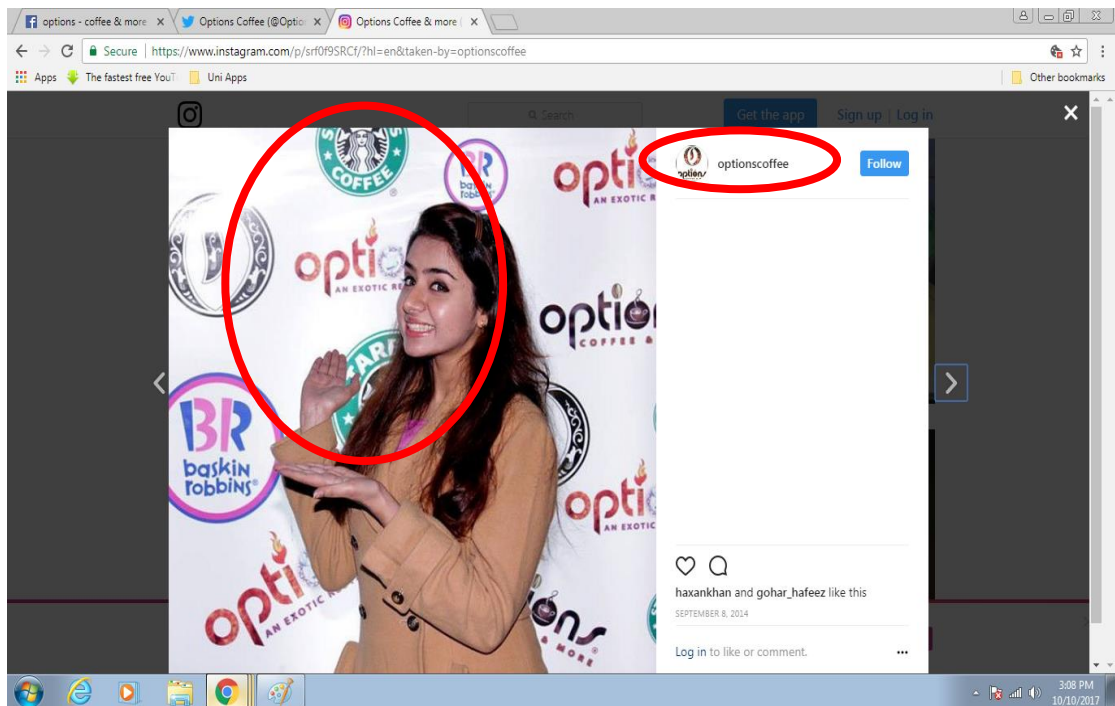


**Image No. 03 – Respondent’s Twitter Account**





**Image No. 04 – Respondent’s Facebook Page**



**Image No. 05 – Respondent’s Facebook Page (Respondent’s Opening)**

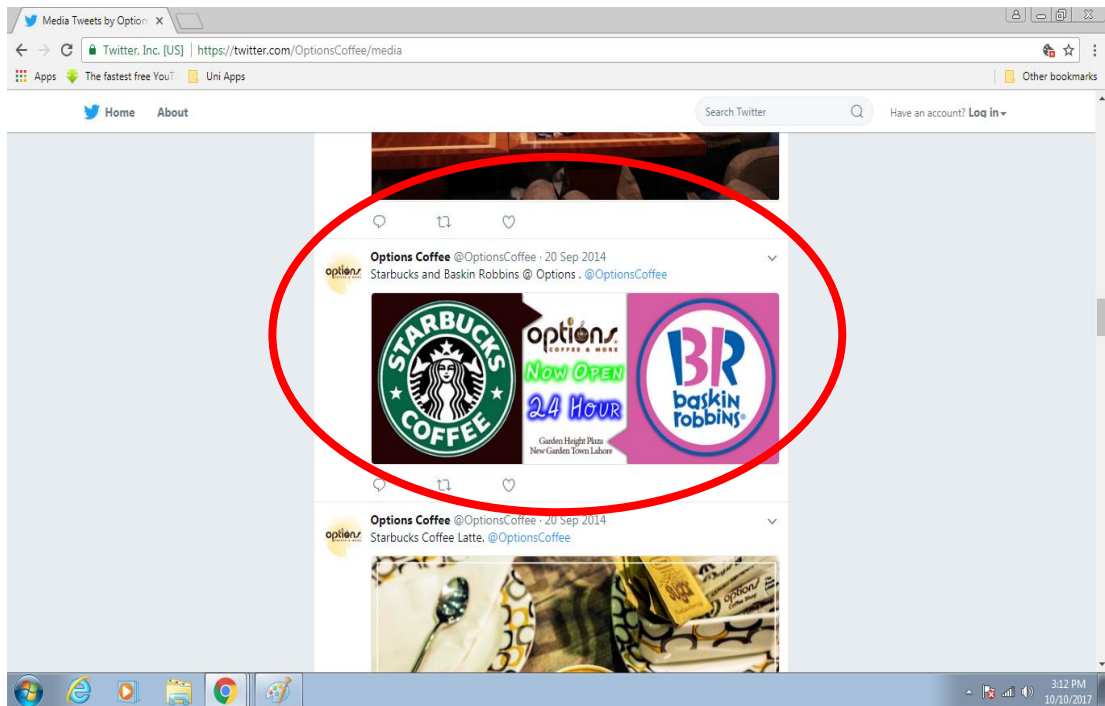


Image No. 06 – Respondent’s Facebook Page



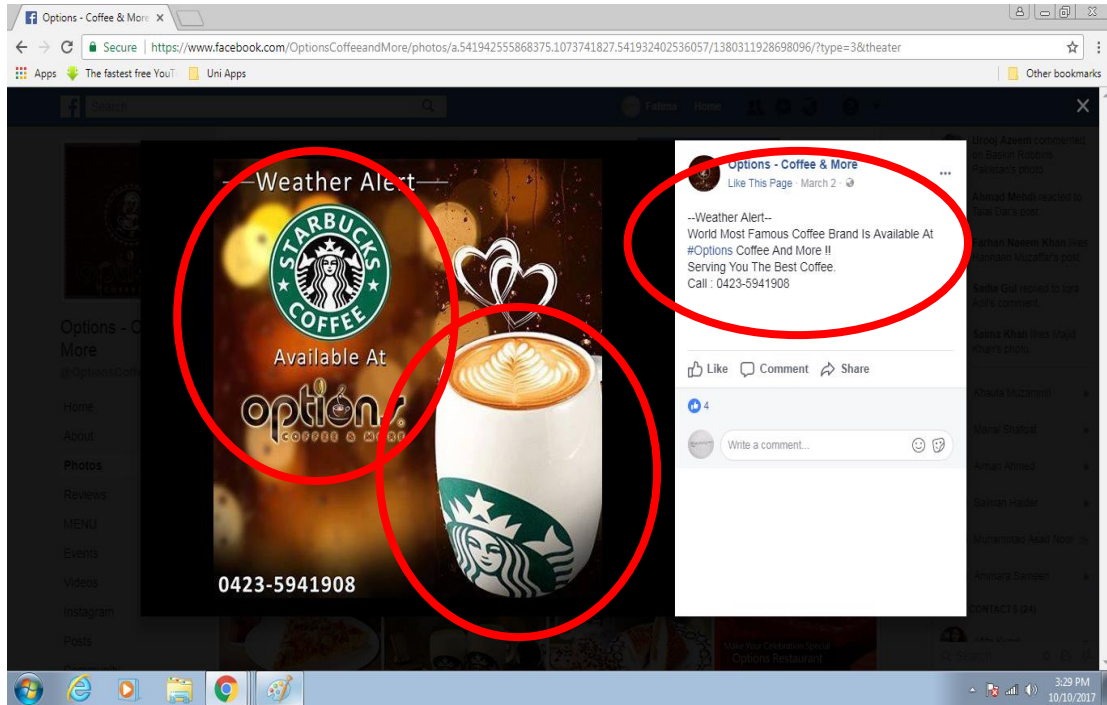
Image No. 07 – Respondent’s Facebook Page



Image No. 08 – Respondent’s Facebook Page



Image No. 09 – Respondent’s Facebook Page



**Image No. 10 – Respondent’s Facebook Page**

- 5.15. It can, therefore, be clearly viewed by the images above that the Respondent, by making claims like “*World’s Most Famous Coffee Brand*”, “*STARBUCKS COFFEE, Available at Options Coffee & More*”, etc., is blatantly using the Complainant’s registered trade/service mark without obtaining due authorization to increase its sales.
- 5.16. In addition, various observations were also made during the process of the market survey conducted by the Enquiry Committee and by perusal of the submissions of the investigation conducted by the Complainant. Various images collected by the Enquiry Committee are reproduced below:





**Image. No. 11 – View of the Respondent’s Faisalabad Restaurant from Outside the Building**



**Image No. 12**



**Image No. 13**

- 5.17. The Enquiry Committee reached the premises of the Respondent's restaurant in Faisalabad around 1:30 PM on November 07, 2017. However, upon arrival it was found that the outlet had been closed for a month due to certain issues between the building owner, where the outlet was located, and the Respondent. Therefore, the Enquiry Committee was unable to inspect the restaurant from inside. Nonetheless, the exterior of the restaurant and its surrounding areas were thoroughly examined and the Complainant's registered logo was found to be used by the Respondent.
- 5.18. The encircled areas in images No. 11, 12, and 13 exhibit clearly the unauthorized use of the Complainant's logo by the Respondent. Images No. 11 and 12 further demonstrate the use of the STARBUCKS MARKS by the Respondent as they can be seen in close proximity of its own signboard with the name, "Options" on it. Image No. 13 shows a picture of the interior right next to the STARBUCKS MARKS and the Respondent's own signboard. The encircled portion displays the use of logos of two brands, i.e., STARBUCKS and Baskin-Robins (an international chain of ice cream) by the Respondent.
- 5.19. The Enquiry Committee visited the Respondent's eateries in Lahore on November 08, 2017, around 1:45 PM. Images No. 14 to 16 show a blatant use of the STARBUCKS MARKS by the Respondent at its restaurant in Lahore. The Respondent's brand name, 'Options', can be seen clearly on various signboards. The use of STARBUCKS MARKS in various areas have been encircled for ease of reference.



**Image No. 14 – Boards at the Restaurant’s Entrance (Lahore)**

- 5.20. The encircled area in Image No. 14, displaying a smaller signboard at the entrance of the Respondent states, “*come enjoy STARBUCKS Coffee*”, written right above a mug of coffee which also has STARBUCKS MARKS on it. The encircled portions in the above images also display various ladies drinking coffee in STARBUCKS mugs through which it appears that the Respondent is marketing availability and popular use of STARBUCKS Coffee at its coffee shop, M/s Options Coffee & More.





Image No. 15 – Boards at the Restaurant’s Entrance



Image No. 16



- 5.21. It can be further observed in images no. 15 and 16 that the Respondent is involved in an extensive use of the STARBUCKS MARKS. Moreover, it has also created a small hangout spot outside its coffee shop with two large posters of international brands of food chain, i.e. STARBUCKS and Baskin-Robins.
- 5.22. Furthermore, the Enquiry Committee also experienced the overall services provided by the Respondent, the details of which are discussed below along with relevant images.



**Image No. 17 – Inside the Restaurant**

- 5.23. Images No. 17 exhibits the first view after entering the restaurant. The extensive use of STARBUCKS MARKS at the main order/payment counter by the Respondent can be seen in the above images. The encircled areas demonstrate the use of STARBUCKS MARKS by the Respondent for its interior decoration as well as on coffee mugs in which the coffee is served.

5.24. Below are the pictures of the menu card containing STARBUCKS MARKS:



Image No. 18



Image No. 19



Image No. 20



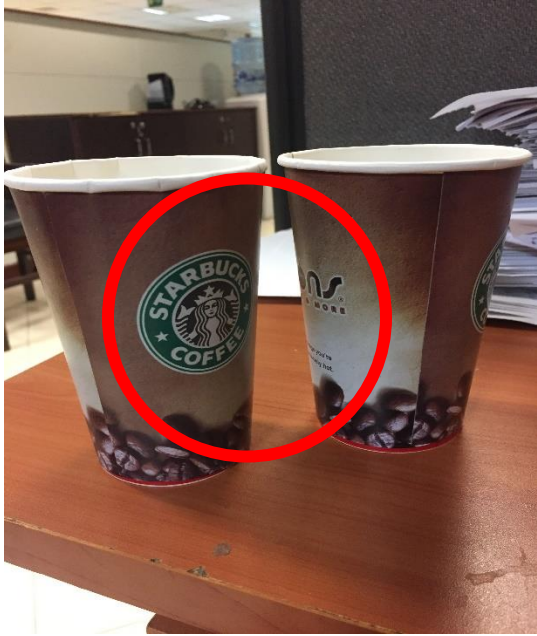
5.25. Below are the pictures of coffee served to the Enquiry Committee at the Respondent's restaurant:



**Image No. 21**



**Image No. 22**



**Image No. 23 – Disposable Takeaway Cup**



**Image No. 24 – Rack of Travel Mugs for Sale**

- 5.26. It was also discovered during the process of the market survey that the Respondent was also involved in sale of Complainant's merchandize, i.e., its coffee beans and travel mugs. Image No. 24 demonstrates the travel mugs that have been displayed for sale by the Respondent. However, there is no proof whether the Respondent was given the authority to conduct such sales.
- 5.27. Hence, it can be easily established from the evidence collected during the process of this enquiry that even though the Respondent has been continuously denying the allegations levelled against it, it has in fact been infringing upon the intellectual property rights of the Complainant by using the registered STARBUCKS MARKS. Moreover, it can be clearly observed that the Respondent is doing so deliberately and with the *mala fide* intention of gaining benefit from the widely established and recognized goodwill and brand name of the Complainant. Hence, it can be concluded from the above discussion that the Respondent is involved in "*fraudulent use of another's trademark*" in *prima facie* violation of Section 10(1) of the Act in general and Section 10(2)(d) of the Act in particular.
- 5.28. It is admitted that the Respondent has made a declaration on its website pertinent to the fact that it is not an authorized franchise of the Complainant, however, as mentioned in para 2.7 *ibid*, the Respondent has made certain additional claims along with the said declaration stating that the Respondent:
- (i) imports and uses original STARBUCKS coffee beans;
  - (ii) grinds the beans at the same pace while using the same machines and using all the same imported ingredients;
  - (iii) gets the coffee made by STARBUCKS trained staff at the same temperature; and
  - (iv) assures that the consumer finds the same taste as they will find at any STARBUCKS café located in Dubai, London or New York.

Whereas various important observations have been made in this regard:

- The declaration is present only on the Respondent's website. Providing the declaration only on the website does not suffice the requirement of making the truth known to the consumers, as not everyone views the websites of such businesses. People mostly view Facebook and Twitter pages for the purpose of exploring and selecting a place to dine in, whereas no such clarifications have been provided to the viewers on those forums and hence, very limited number of people would have accessed the said information.
- Even if the Respondent has made the declaration that it is not an authorized franchise of the Complainant, it still does not have the authority to use this brand for its own sales purposes and therefore, makes this conduct fraudulent.
- Moreover, very high sounded claims have been made by the Respondent right next to this declaration, such as the Respondent serves STARBUCKS coffee made in the same machines, by using the same method of production (coffee made at the

same pace, temperature and by STARBUCKS trained staff), and consequently, the customer will have the same experience as that of the actual STARBUCKS coffee. These are extremely exaggerated claims which firstly, have been denied by the Respondent through its replies and secondly, are false as no evidence was submitted pertinent to the use of STARBUCKS coffee beans made at same pace and temperature by the STARBUCKS trained staff and hence, remain unsubstantiated.

- All these claims are further reinforced by the fact that nowhere else in its marketing material does the Respondent make this declaration and keeps emphasizing and promoting the fact that it is serving the original STARBUCKS Coffee through which the customers can have the authentic STARBUCKS experience.

5.29. Therefore, the Respondent is not only involved in fraudulent use of the Complainant's trademark, but it is also involved in "*distribution of false and misleading information to consumers, including the distribution of information lacking a reasonable basis related to character, method or place of production, and quality of goods (services)*" in *prima facie* violation of Section 10(1) of the Act in terms of sub-Section 10(2)(b).

5.30. It is also important to note that by claiming to be serving one of the most famous brands of coffee at its coffee shop, the Respondent is trying to attract significant number of customers to visit and dine in at its restaurant rather than dining somewhere else. Whereas considering the competitive environment in this particular market, the customers might not have gone to the Respondent's coffee shop and would have gone somewhere else, provided it was not claiming to be serving STARBUCKS Coffee, resulting in illicit capitalization of the Complainant's goodwill.

## **6. CONCLUSION AND RECOMMENDATIONS**

6.1. In view of the foregoing, following conclusions have been made by the Enquiry Committee:

- i. Even though the Respondent has vehemently denied all allegations, it has been evidently found to be "*fraudulently using another undertaking's (Complainant's) trademark*" in *prima facie* violation of Section 10(1) of the Act, in terms of sub-Section 10(2)(d) of the Act;
- ii. The Respondent has also been making very high sounded claims without a reasonable basis, such as the Respondent serves STARBUCKS coffee made in the STARBUCKS machines, using the same method of production, i.e., coffee made at the same pace, temperature and by STARBUCKS trained staff and so, giving the customers the authentic STARBUCKS experience without a reasonable basis. Consequently, rendering it to be involved in "*distribution of false and misleading information to consumers, including the distribution of information lacking a*

*reasonable basis related to character, method or place of production, and quality of goods (services)*” in *prima facie* violation of Section 10(1) of the Act, in terms of sub-Section 10(2)(b) of the Act.

- 6.2. In light of the above, it has been determined that deceptive marketing practices, as discussed above, have a direct impact on the public at large. Therefore, to promote and protect fair competition in the market and interest of the general public, it is crucial to ensure that when undertakings resort to marketing their products in a fraudulent and misleading manner, their conduct is curtailed. Therefore, in view of the above mentioned findings, it is recommended that the Commission may consider initiating proceedings against M/s Options International (SMC-Pvt.) Limited – owners and operators of M/s Option Coffee & More and M/s Options – An Exotic Restaurant under Section 30 of the Act.

(Faiz-ur-Rehman)  
Assistant Director  
Enquiry Officer

(Riaz Hussain)  
Assistant Director  
Enquiry Officer

(Fatima Shah)  
Management Executive  
Enquiry Officer





# GOVERNMENT OF PAKISTAN



## THE TRADE MARKS REGISTRY, KARACHI

Trade Marks Ordinance 2001

CERTIFICATE of Registration of Trade Mark. Section 33(4)

Trade Mark No. 255513

Dated 09/09/2008

Certified that the Trade Mark, of which a representation is annexed hereto has been registered in the name of STARBUCKS CORPORATION (doing business as STARBUCKS COFFEE COMPANY), (whose legal address is 2401 Utah Avenue South, Seattle, Washington 98134, United States of America)

in class 16

under No 255513

as of the date 09/09/2008

in respect of

Publications and printed materials, namely, newsletters and magazines featuring information about coffee and coffee drinkers, paper filters for coffee makers, playing cards, photo albums, art paper, drawing pencils, artists' brushes, pens, pencils, ball point pens, bookmarks, pencil boxes, stationery boxes, pen cases, pencil cases, stationery, posters.

Sealed at my direction, this

12 NOV 2013

day of



Note: Original representation of Mark may please be seen on left or as Annexed

*(Signature)*  
(SYED NASRULLAH)  
Deputy Registrar of Trade Marks

Registration is for 10 years from the date first above-mentioned and may then be renewed for a period of 10 years, and also at the expiration of each period of 10 years thereafter. (See Section 35 of the Trade Marks Ordinance 2001 and rules 45-39 (2) (b) of the Trade Marks Rules, 2004)

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





# GOVERNMENT OF PAKISTAN



## THE TRADE MARKS REGISTRY, KARACHI

Trade Marks Ordinance 2001

CERTIFICATE of Registration of Trade Mark. Section 33(4)

Trade Mark No. 255496

Dated 09/09/2008

Certified that the Trade Mark, of which a representation is annexed hereto has been registered in the name of STARBUCKS CORPORATION (doing business as STARBUCKS COFFEE COMPANY), (whose legal address is 2401 Utah Avenue South, Seattle, Washington 98134, United States of America)

in class 18 under No 255496

as of the date 09/09/2008

in respect of Wallets, billfolds, tote bags, purses, briefcases, book bags, briefcase-type portfolios, valises and umbrellas, all made of cloth plastic or leather, key fobs of leather.

Sealed at my direction, this

12 NOV 2008

day of



Note: Original representation of Mark may please be seen on left or as Annexed

*(Signature)*  
(SYED NASRULLAH)  
Deputy Registrar of Trade Marks

Registration is for 10 years from the date first above-mentioned and may then be renewed for a period of 10 years, and also at the expiration of each period of 10 years thereafter. (See Section 35 of the Trade Marks Ordinance 2001 and rules 45-39 (2) (b) of the Trade Marks Rules, 2004)

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





**GOVERNMENT OF PAKISTAN**  
**THE TRADE MARKS REGISTRY, KARACHI**

Trade Marks Ordinance 2001  
 CERTIFICATE of Registration of Trade Mark. Section 33(4)

Trade Mark No. 255497

Dated 09/09/2008

Certified that the Trade Mark, of which a representation is annexed hereto has been registered in the name of STARBUCKS CORPORATION (doing business as STARBUCKS COFFEE COMPANY) (whose legal address is 2401 Utah Avenue South, Seattle, Washington 98134, U.S.A.)

in class 28 under No 255497

as of the date 09/09/2008

in respect of 28 Toys, namely, teddy bears, stuffed toys, plush toys, dolls and accessories therefor, Christmas ornaments, yo-yos.

Sealed at my direction, this 21 MAY 2013 day of



Note: Original representation of Mark may please be seen on right or as Annexed

(SHAKIL AHMED ABBASI)

Registrar of Trade Marks

Registration is for 10 years from the date first above-mentioned and may then be renewed for a period of 10 years, and also at the expiration of each period of 10 years thereafter. (See Section 35 of the Trade Marks Ordinance 2001 and rules 45-39 (2) (b) of the Trade Marks Rules, 2004)

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





# GOVERNMENT OF PAKISTAN



## THE TRADE MARKS REGISTRY, KARACHI

Trade Marks Ordinance 2001

CERTIFICATE of Registration of Trade Mark. Section 33(4)

Trade Mark No. 255498

Dated: 09/09/2008

Certified that the Trade Mark, of which a representation is annexed hereto has been registered in the name of STARBUCKS CORPORATION (doing business as STARBUCKS COFFEE COMPANY) (whose legal address is 2401 Utah Avenue South, Seattle, Washington 98134, United States of America)

in class 29

under no. 255498

as of the date 09/09/2008

in respect of Milk, flavored milk, milkshakes and milk based beverages; fruit jams, sauces, jellies, spreads, curds and preserves

Sealed at my direction, this 24 FEB 2014

day of



Note: Original representation of Mark may please be seen on right or as Annexed

(ABDUL QADIR ORAKZAI)  
Registrar of Trade Marks

Registration is for 10 years from the date first above-mentioned and may then be renewed for a period of 10 years, and also at the expiration of each period of 10 years thereafter. (See Section 35 of the Trade Marks Ordinance 2001 and rules 45-39 (2) (b) of the Trade Marks Rules, 2004)

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





**GOVERNMENT OF PAKISTAN**  
**THE TRADE MARKS REGISTRY, KARACHI**

Trade Marks Ordinance 2001

CERTIFICATE of Registration of Trade Mark. Section 33(4)

Trade Mark No. 255507

Dated 09/09/2008

Certified that the Trade Mark, of which a representation is annexed hereto has been registered in the name of STARBUCKS CORPORATION (doing business as STARBUCKS COFFEE COMPANY ) (whose legal address is 2401 Utah Avenue South, Seattle, Washington 98134, U.S.A.)

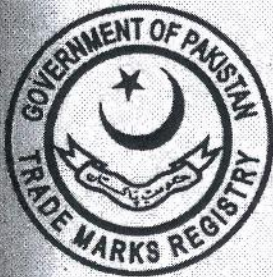
In class 35

under No 255507

as of the date 09/09/2008

In respect of See back page

Sealed at my direction, this **21 MAY 2013** day of  
 DISCLAIMER: REGISTRATION OF THIS TRADE MARK SHALL GIVE NO RIGHT TO THE EXCLUSIVE USE OF WORD "COFFEE" SEPARATELY AND APART FROM THE MARK AS A WHOLE.



**STARBUCKS COFFEE** STARBUCKS COFFEE

Note: Original representation of Mark may please be seen on right or as Annexed

(SHAKIL AHMED ABBASI)

Registrar of Trade Marks








Registration is for 10 years from the date first above-mentioned and may then be renewed for a period of 10 years, and also at the expiration of each period of 10 years thereafter. (See Section 35 of the Trade Marks Ordinance 2001 and rules 45-39 (2) (b) of the Trade Marks Rules, 2004)










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





ANNEXURE 'I'

**PAKISTAN TRADEMARK REGISTRATIONS (Selected)**  
Copies of the Trademark Registrations and/or Renewals attached

COUNTRY	SBUX NO.	TRADEMARK	CLASS	REG. NO	REG. / REN. DATE
Pakistan	PK001	STARBUCKS	30	143422	4/6/2016
Pakistan	PK001-TAZ	TAZO	30	225744	5/20/2013
Pakistan	PK002	STARBUCKS	16	161003	2/2/2007
Pakistan	PK002-TAZ	TAZO	32	225743	1/31/2013
Pakistan	PK003		30	143557	5/24/2004
Pakistan	PK004		16	161004	2/28/2007
Pakistan	PK005	FRAPPUCCINO	30	149645	4/16/2004
Pakistan	PK006	FRAPPUCCINO	32	149644	4/16/2004
Pakistan	PK007	STARBUCKS	32	197314	4/22/2008
Pakistan	PK008	STARBUCKS	35	197315	8/8/2008
Pakistan	PK009	STARBUCKS	43	197316	1/31/2013
Pakistan	PK010		30	197317	4/22/2008
Pakistan	PK011		32	197320	4/22/2008
Pakistan	PK012		35	197319	8/8/2008
Pakistan	PK013		43	197313	12/7/2012
Pakistan	PK014	FRAPPUCCINO	29	197318	11/6/2007
Pakistan	PK015	STARBUCKS	7	206065	4/22/2008
Pakistan	PK016	STARBUCKS	11	206063	4/22/2008
Pakistan	PK017	STARBUCKS	21	206069	6/23/2008
Pakistan	PK018	STARBUCKS	25	206070	4/22/2008
Pakistan	PK019		7	206071	5/16/2008

Pakistan	PK020		11	206072	5/17/2008
Pakistan	PK021		21	206066	5/16/2008
Pakistan	PK022		25	206067	5/17/2008
Pakistan	PK023	FRAPPUCCINO	25	206073	5/16/2008
Pakistan	PK024	FRAPPUCCINO	43	206064	2/15/2011
Pakistan	PK025	STARBUCKS	9	255499	8/24/2012
Pakistan	PK026	STARBUCKS	14	255500	8/17/2012
Pakistan	PK027	STARBUCKS	16	255501	7/17/2013
Pakistan	PK028	STARBUCKS	18	255502	2/27/2014
Pakistan	PK029	STARBUCKS	28	255503	7/21/2014
Pakistan	PK031		9	255509	9/4/2012
Pakistan	PK032		14	255510	8/30/2012
Pakistan	PK033		16	255513	11/12/2013
Pakistan	PK034		18	255496	11/12/2013
Pakistan	PK035		28	255497	5/21/2013
Pakistan	PK036		29	255498	2/24/2014
Pakistan	PK037	<b>STARBUCKS COFFEE</b>	35	255507	5/21/2013
Pakistan	PK038	<b>STARBUCKS COFFEE</b>	43	255508	5/21/2013
Pakistan	PK039	AFRICA KITAMU	30	255491	11/7/2014
Pakistan	PK040	CAFE ESTIMA BLEND	30	255495	11/15/2012
Pakistan	PK041	CAFFE VERONA	30	255490	2/28/2013
Pakistan	PK042	GAZEBO BLEND	30	255492	9/13/2013
Pakistan	PK043	GOLD COAST BLEND	30	255493	4/6/2015
Pakistan	PK044	GUATEMALA CASI CIELO	30	255494	6/8/2015



Pakistan	PK045	STARBUCKS BARISTA	7	255505	1/26/2015
Pakistan	PK046	STARBUCKS BARISTA	9	255506	9/4/2012
Pakistan	PK047	CREAMICE	29	255511	11/12/2014
Pakistan	PK048	CREAMICE	30	255512	1/23/2015
Pakistan	PK049	CREAMICE	32	255489	10/20/2014
Pakistan	PK050	STARBUCKS BARISTA	11	256662	1/23/2015
Pakistan	PK051	STARBUCKS VIA	30	271004	9/20/2013
Pakistan	PK052	READY BREW	30	271554	6/24/2013
Pakistan	PK053		30	298973	11/20/2014
Pakistan	PK055		43	298977	9/12/2014
Pakistan	PK056	<i>Frappuccino</i>	30	306952	10/20/2014
Pakistan	PK057	<i>Frappuccino</i>	32	306953	9/10/2014

**COMPETITION COMMISSION OF PAKISTAN**  
GOVERNMENT OF PAKISTAN  
(Office of Fair Trade)  
282/STARBUCKS/COMPLAINT/CCP/OFT 2017

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**MARKET SURVEY REPORT**

**Subject: MARKET SURVEY CONDUCTED IN THE MATTER OF COMPLAINT FILED BY M/S STARBUCKS CORPORATION UNDER SECTION 10 OF THE COMPETITION ACT, 2010 AGAINST M/S OPTIONS INTERNATIONAL (SMC-PVT) LIMITED**

**1. Background:**

A complaint was filed by M/s STARBUCKS Corporations (the ‘**Complainant**’) with the Competition Commission of Pakistan (the ‘**Commission**’) against M/s Options International (SMC-PVT) Limited (the ‘**Undertaking**’) for alleged violation of Section 10 of the Competition Act, 2010 (the ‘**Act**’), i.e., Deceptive Marketing Practices. The Complainant alleged in the complaint that the Undertaking, through its café M/s Options Coffee & More and restaurant M/s Options – An Exotic Restaurant, located in Lahore, was making false and misleading claims stating that it sells and serves “*original STARBUCKS coffee*”. It further alleged that the Undertaking was also fraudulently using the registered trademarks of the Complainant, including the ‘STARBUCKS’ word, its design and logos, etc., without its due authorization, in violation of Section 10 of the Act.

Pursuant to the complaint, the Commission initiated a formal enquiry against the Undertaking u/s 37/2 of the Act by appointing Mr. Faiz-ur-Rehman (Assistant Director), Mr. Riaz Hussain (Assistant Director), and Ms. Fatima Shah (Management Executive) as the Enquiry Committee to conduct an enquiry on the subject complaint.

For the purpose of evidence collection on the matter under consideration, certain officers of the Enquiry Committee visited the two cafés/restaurants in Faisalabad and Lahore on November 07, 2017, and November 08, 2017, respectively. The details of the visit are reproduced below.

**2. Investigation Team:**

The list of officers that were nominated for the said undercover investigations of both eateries, Options Coffee & More and restaurant Options – An Exotic Restaurant, located in Faisalabad and Lahore, is provided below:

- i. Mr. Riaz Hussain, Assistant Director (OFT)
- ii. Ms. Fatima Shah, Management Executive (OFT)



### **3. Location of the Restaurants:**

Below are the addresses of the said restaurants:

**(i) Faisalabad – November 07, 2017:**

Options Coffee & More/Options – An Exotic Restaurant  
Do Burj Plaza, Koh-e-Noor,  
Near Al-Fateh Store,  
Jaranwala Road, Faisalabad.  
(041) 8714909

**(ii) Lahore – November 08, 2017:**

Options Coffee & More/Options – An Exotic Restaurant  
Garden Heights Plaza,  
Plot No. 08, Aibak Block,  
New Garden Town (Barkat Market),  
Near Mughal-e-Azam Banquet Hall, Lahore.  
(042) 35941909

### **4. The Survey:**

An undercover investigation was conducted by the aforementioned officers. The observations made and the evidence collected are discussed in detail below:

**(i) Options Coffee & More/Options – An Exotic Restaurant – Faisalabad:  
*Date and Time of Visit: November 07, 2017 at 1:30 PM***

The investigation team reached the premises of the Undertaking's restaurant in Faisalabad around 1:30 PM on November 07, 2017. However, it was discovered upon arrival that the outlet had been closed for a month due to certain issues between the building owner, where the outlet was located, and the Undertaking. Therefore, the investigation team was unable to go inside the restaurant to collect evidence in detail.

Nonetheless, the exterior of the restaurant and its surrounding areas were thoroughly examined and the Complainant's registered logo was in fact found to be used by the Undertaking. Below are the photographs which display the use of the said logo by the Undertaking.

The encircled areas in the photographs below exhibit the use of the Complainant's logo by the Undertaking.



Photo. No. 01 – View of the Undertaking’s Restaurant from Outside the Building





**Photograph No. 02**



**Photograph No. 03**



**Photograph No. 04**



**Photograph No. 05 – Reception Desk**



**Photo No. 06 – Another View From Outside**



**Photo No. 07 – A View of the Stairs Leading into the Restaurant**



**(ii) Options Coffee & More/Options – An Exotic Restaurant – Lahore:**  
***Date and Time of Visit: November 08, 2017 at 1:45 PM***

The investigation team arrived at the Option Coffee and More/Options-An Exotic Restaurant in Lahore on November 08, 2017, around 1:45 PM. The coffee shop was located on the ground floor, whereas the restaurant was located in the same building at the same location in the basement right below the coffee shop. Since this branch was fully functional, the team was able to conduct the undercover investigation in detail. The images gathered providing coverage of the Undertaking's restaurant and coffee shop in Lahore are provided below. The areas displaying the Undertaking's as well as use of Complainant's logos have been encircled for ease of reference.



**Photo. No. 01 – View of the Undertaking's Restaurant from Outside the Building**



Photograph No. 02

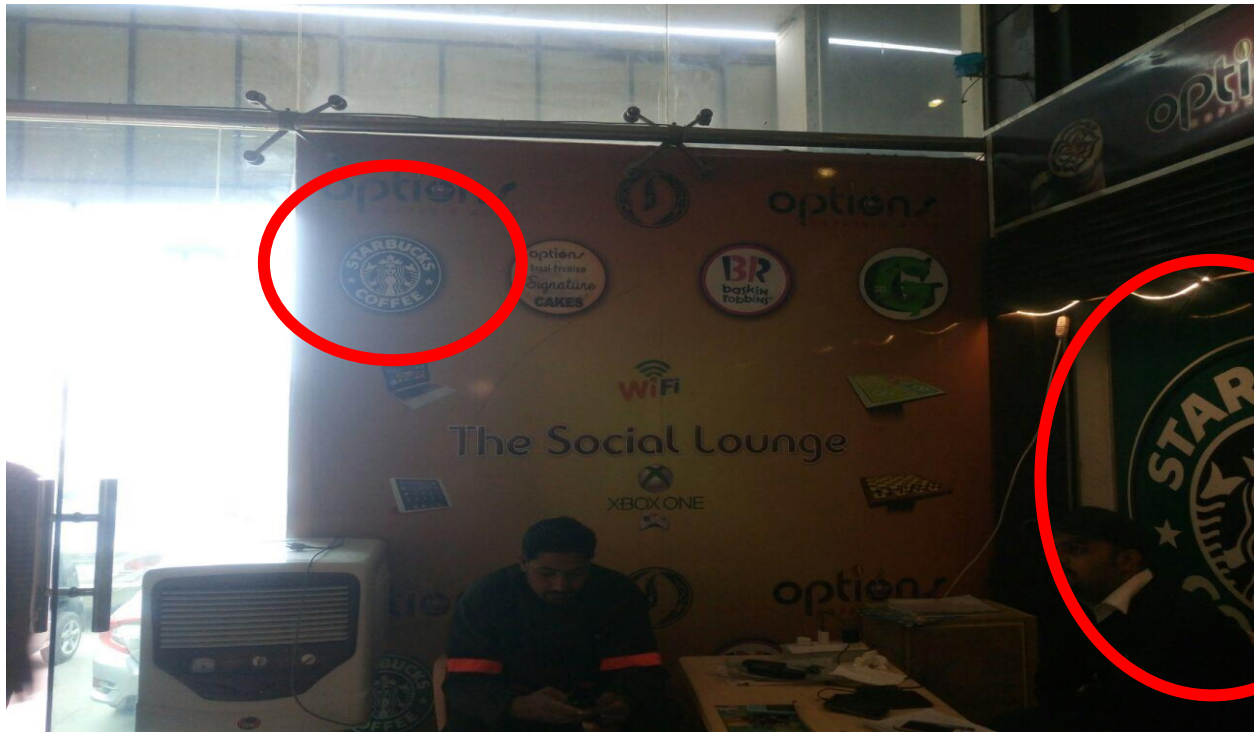




Photograph No. 03



Photograph No. 04 – At the Entrance



**Photograph No. 05**

Furthermore, the investigation team also experienced the overall services provided by the Undertaking, the details of which are discussed below along with relevant images.



**Photograph No. 06**

Photographs No. 06 and 07 exhibit the first view after entering the restaurant.





**Photograph No. 07**

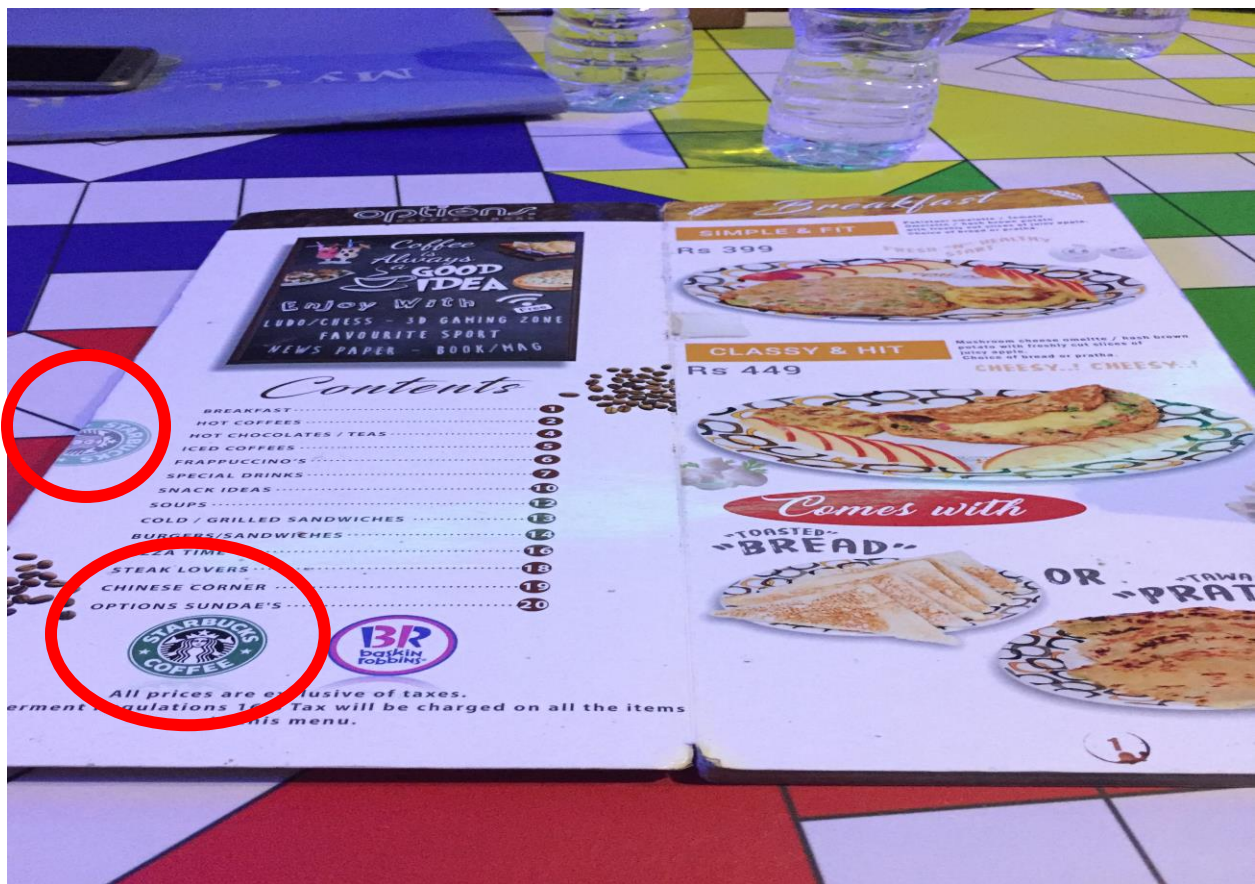
Below are the pictures of the menu card containing the Complainant's logo:



**Photograph No. 08**

It was claimed by the waitress and other employees at the restaurant that all the items pertinent to various kinds of coffee were made with original coffee beans. Certain representatives claimed that the Undertaking had an official contract with the Complainant allowing them the use of their brand of coffee. It was further claimed that upon good performance of the Undertaking, the contract agreement may be converted into a franchise agreement. The said claims have been captured in a video recorded at the premises.

The waiters present at the premises also informed the team that they usually coffee in mugs with the Undertaking's logo on them. However, if requested by the customers, STARBUCKS mugs are used to serve coffee.



Photograph No. 09

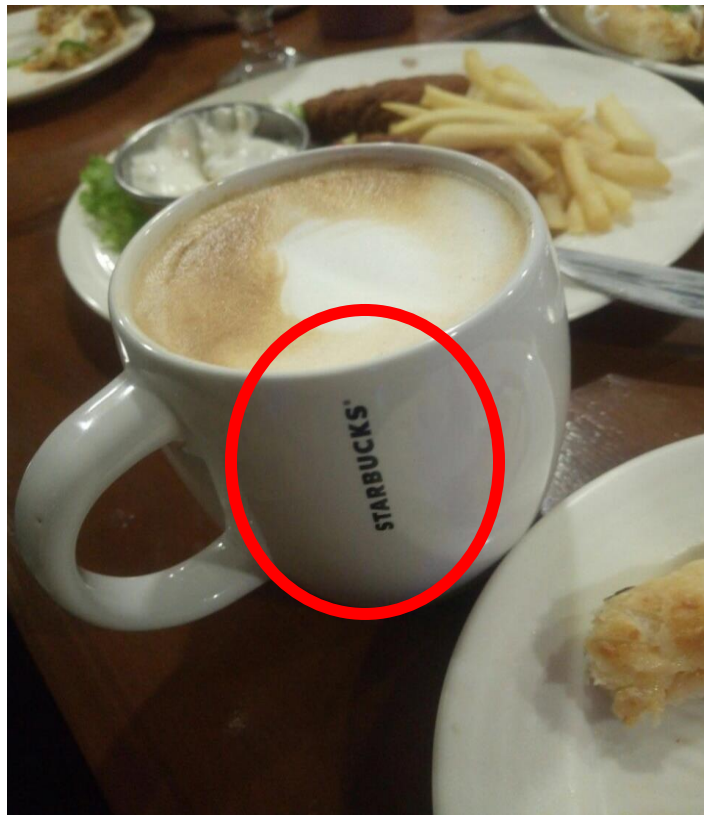




Photograph No. 10



**Photograph No. 11**



**Photograph No. 12**





**Photograph No. 13 – Disposable Takeaway Cup**



**Photograph No. 14 – STARBUCKS Travel Mugs**



**Photograph No. 15 – Rack of STARBUCKS Travel Mugs for Sale**

It was also discovered during the process of investigation that the Undertaking was also involved in sales of Complainant's merchandize, i.e., its coffee beans and travel mugs. Photographs No. 14 and 15 demonstrate the travel mugs that have been displayed for sale by the Undertaking. The relevant information has been captured in detail in the videos as well.



Additional hard evidence collected by the investigation teams includes the 'Disposable Takeaway Mugs' containing logos of the Complainant as well as the Respondent.

(Riaz Hussain)  
Assistant Director

(Fatima Shah)  
Management Executive