

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
DHL PAKISTAN (PVT.) AGAINST
MR. UZAIR ZAIN-UL-ABIDIN, MR. ASIF IQBAL,
MR. WAQQAS AHMAD MALIK, MR. NAUMAN ANWAR BUTT,
MR. REHAN SHEIKH, RAJA ASIR MUNIR & MR. MALIK M.
PERVAIZ OF ACCS INTERNATIONAL WORLD WIDE
EXPRESS ('RESPONDENTS') FOR DECEPTIVE MARKETING
PRACTICES**

BY

Noman A. Farooqi/ Amir Zaman

Dated: 15/02/2012

1. BACKGROUND

- 1.1. M/s DHL Pakistan (Pvt.) Limited (hereinafter referred to as the ‘**Complainant**’) filed a complaint against Mr. Uzair Zain-ul-Abidin (Uzair), Mr. Asif Iqbal (Asif), Mr. Waqqas Ahmad Malik (Waqqas), Mr. Nauman Anwar Butt (Butt), Mr. Rehan Sheikh (Rehan), Mr. Malik M. Pervaiz (Pervaiz) of ACCS International World Wide Express and Raja Asir Munir (Asir) (hereinafter jointly referred to as the ‘**Respondents**’).
- 1.2. The complainant alleged that the Respondents are disseminating misleading and false information and fraudulently using its trademark, which is capable of harming the business interest of the complainant, and amounts to deceptive marketing practices in violation of Section 10 of the Competition Act, 2010 (the ‘**Act**’)
- 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. Noman A. Farooqi, Joint Director and Mr. Amir Zaman, Junior Executive Officer 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:
 - (i). Whether the Respondents or other undertakings are disseminating false/misleading information to the consumers and are using the trademark of the Complainant fraudulently and without any authorization, which is also capable of harming the business interest of the Complainant?
 - (ii). Findings with respect to violations of Section 10 of the Act (if any) committed by the Respondents or other undertakings regarding the allegations made in the complaint and subject matter of the enquiry.,

2. COMPLAINTS, COMMENTS AND REJOINDERS

The major assertions made in the complaint regarding the operations of the Complainant, the registered trademarks and the revenues, which are identical in all the complaints, are as follows:

- (i). The Complainant is operating in Pakistan since 1982 and today it operates with 49 service points, supported by over 100 vehicles and over 500 employees. The Complainant is mainly engaged in provision of courier services and is not only delivers documents and heavy weight parcels, but is also providing value added and innovative services to its customers.
- (ii). The Complainant is a wholly owned subsidiary of Deutsche Post International B.V. and DHL International GmbH, which owns the trademarks of DHL and DHL logo, depicted below:



- (iii). Neither DHL Pakistan nor the trademark owner, DHL International GmbH nor any other Deutsche Post DHL Group member has granted any right, permission or authorization to the Respondents to use DHL mark or logos in connection or in relation to Respondents business or services or goods.
- (iv). The detail chart depicting the registration of trademarks of the Complainant is 'Annex-A' to this Report. As per the contents of the complaint, the Complainant has spent substantial amount of monies on advertisements and sales promotion and as a result was able to generate heavy revenues for itself, the details whereof are provided herein below:

Year	Revenue Amount in Pak Rupees	Advertisement & Sales Promotion Expenditure in Pak Rupees
2007	2,067,160,352/-	47,155,380/-
2008	2,615,404,727/-	57,047,082/-
2009	2,878,118,669/-	28,676,116/-
2010	3,297,419,285/-	34,233,314/-

- (vi). The allegations made in the complaints against each Respondent in seriatim are as follows:

2.1. IN THE MATTER OF MR. REHAN SHEIKH

2.1.1. The specific allegations against Mr. Rehan Sheikh in the complaint are summarized as follows:

- (i). It was alleged in the Complaint against Mr. Rehan that he is engaged in in the business of courier and/or transport and/or cargo services and is using DHL's stylized and artistically created trademark/logo without the authorization on his outlet /shop/express centre and office premises, facades, nearby boards and hoardings, located in Sialkot and on the stationery, cartons, envelops, packaging, etc. used therein for advertisement/marketing purposes.



(Front view of the shop)

- (ii). Such unauthorized use of complainant’s trademark/logo by Mr. Rehan fraudulent and *malafide* and constitute acts of “*deceptive marketing practices*” within the meaning of Section 10 of the Act.
- (iii). The use of trademark/logo of the complainant by Mr. Rehan, as depicted above, will give an impression to the consumers that his shop might be the authorized dealer or franchise of the Complainant, which is false, and is also capable of harming the business of the Complainant. Such conduct is in violation of Section 10 of the Act;
- (iv). Mr. Rehan distributed/displayed false or misleading information to consumers through the use of DHL logo, who would associate such use on services to be that of the Complainant or made under Complainant or Complainant’s authority. Hence, the above, conduct of Mr. Rehan constitutes deceptive marketing practices in violation of Section 10, in particular clauses (a), (b) & (d) of subsection (2) of Section 10.

2.1.1.1. The complaint along-with its annexures was forwarded to Mr. Rehan for his comments vide letter bearing no. 63/REG/COMP/DHL(2)/CCP/2011 dated 29-09-2011 and reminded vide letter dated 11-10-2011 for submission of the comments.

2.1.1.2. Mr. Rehan, vide his letter dated 14-10-2011 requested for an extension in time of fourteen (14) days to file the comments to the complaint. However, considering the fact that the Respondent was requested on 29-09-2011 to file its comments and that sufficient time was granted to the Respondent to file their comments thereof the requested extension was denied and the Respondent was required to file their comments no later than 10-10-2011.

2.1.2. Mr. Rehan filed the comments to the complaint on 11-10-2011. The contents of the reply were as under:

“We do honor and leap to do not make any activity which is against the violation of act. Actually the DHL logo was

*displayed with the theme: **WE ARE PROVIDING INTERNATIONAL COURIER SERVICES THROUGH, First Flight, Skynet, Aramex, APX & DHL with the prior verbal approval from your authorized local representative working at DHL Sialkot. Moreover, we are providing international services by using DHL through United Kingdom, Singapore & Dubai only.***
*As I got notice from you, we have considered your complaint and the **DHL Logo** have been removed.*
Now your appointed Enquiry Officers can check or visit our office for annexed complaint.”

(Copy of the letter is attached as ‘**Annex- B**’)

2.1.3. The Respondents comments were received by us on 17-10-2011 and the same was forwarded to the Complainant on the same date for their comments, if any, to be submitted no later than 01-11-2011. The Complainant vide their letter dated 29-11-2011 requested for extension in time to file the comments till 20-11-2011 due to his professional work and Eid-ul-Adha. Accordingly, the Complainant was required to file its rejoinder no later that 20-11-2011. Consequently, the rejoinder of the Complainant was filed by the complainant on 17-11-2011.

(i). The Complainant drew the attention of the Commission to the admission made by Mr. Rehan by stating that

“Actually the DHL logo was displayed with the theme: WE ARE PROVIDING INTERNATIONAL COURIER SERVICES THROUGH, First Flight, Skynet, Aramex, APX & DHL with the prior verbal approval from your authorized local representative working at DHL Sialkot.”

(ii). With regard to the aforesaid statement the Complainant stated that Mr. Rehan has clearly admitted the use of DHL logo in an unauthorized manner in relation to its products and services. The Complainant also denied that Respondent has used the DHL logo with the prior approval of the Complainant local representative working in Sialkot.

(iii). The Complainant also submitted the duly sworn in affidavit of the authorized person regarding the abovementioned statement.

2.2. IN THE MATTER OF MR. UZAIR ZAIN-UL-ABIDIN

2.2.1 The allegations against Mr. Uzair Zain-Ul-Abidin in complaint are summarized as follows:

(i). Mr. Uzair is engaged in the business of courier and/or transport and/or cargo services, as the case may be, and is using DHL’s stylized and artistically created logo without any authorization or consent. on his outlet /shop/express centre and office premises, facades, nearby boards and hoardings, located in Lahore and on the stationery, cartons, envelopes, packaging, etc. used therein for advertisement/marketing purposes in the following manner:



- (ii). The unauthorized use of complainant's trademark/logo by Mr. Uzair's gives an impression to the consumers that his outlet is the official outlet of the Complainant, which in fact is false and such practices are also capable

of harming the business interest of the complainant, which is in violation of Section 10 of the Act;

- (iii). Mr. Uzair distributed/displayed false or misleading information to consumers through the use of DHL trademark/logo, who would associate such use on services to be that of the Complainant or made under Complainant or Complainant's authority. Hence, the above, conduct of Mr. Rehan constitutes deceptive marketing practices in violation of Section 10, in particular clauses (a), (b) & (d) of subsection (2) of Section 10.

2.2.2. The complaint along-with its annexures was forwarded to Mr. Uzair for his comments on 29-09-2011 and he was reminded on 11-10-2011 to file his comments/reply to the complaint. On 14-10-2011 request for extension was made by Mr. Uzair. On 17-10-2011, Mr. Uzair filed the comments to the complaint through Malik Mansoor on 17-10-2011. Summary of his reply is as under:

- (i). That the Complaint was filed just to blackmail and harass him and to deprive him from his lawful rights and all the allegations leveled against the undersigned are false, frivolous and flimsy.
- (ii). That he has never violated any trademark or logo of the Complainant. The logo which is allegedly violated by him as per the complaint is not register one. He is running a small company at Lahore and he can not compete or destroy the image/repute of the Complainant which has its business all over the world as per the Complainant.
- (iii). That this Commission has no jurisdiction to entrain the matter and the Complainant has not *locus standi* to file the complaint as it does not fulfill the requirement of the Act *ibid* which are necessary for the filing of the complaint.
- (iv). On allegations mentioned at Para B of the complaint Mr. Uzair submitted that the allegations are denied being false, frivolous and self concocted. He reiterated that he is not using the logo or trademark of DHL and even otherwise the logo is not registered one. He admitted to the extent that he received the legal notice from the Complainant but he intimated the complainant the he is not using the logo.
- (v). That the allegation on using the business card having DHL logo is denied being false, frivolous and self concocted. He never used the card which is mentioned in Para 3.1 of the Complaint rather it was mechanically maneuvered by the Complainant for the reasons best known to them.
- (vi). He had also denied that he has violated Section 10(2)((b) & (d) of the Act.

2.2.3. The Mr. Uzair's comments/reply was forwarded to the Complainant for their rejoinder if any. The rejoinder was filed by the Complainant on 21-11-2011. The summarized submission in the rejoinder are as follows:

- (i). That Mr. Uzair has made misstatements in its comments to the complaint and has also conceded material facts from this Honorable Commission as to unauthorized use of trademark DHL and DHL logo;
- (ii). That it is strongly denied that the case of the Complainant is any way malafide, based on ulterior motive and the complaint is not maintainable in its present form. Sufficient proof has been submitted along with the complaint and the Complainant is filing an affidavit of its employee, who took the photographs of the Respondent's premises, which have been submitted along with the petition. Affidavit of the employee is attached as 'Annex-C'.
- (iii). That the Complainant also denied that complaint was filed to blackmail or harass Mr. Uzair and to deprive him of his lawful rights. Mr. Uzair has not given any defence. The Complainant only desires that Mr. Uzair should conduct its own lawful business without violating the rights of Complainant and without committing act of deceptive marketing practices which are prohibited by the Act.
- (iv). That the Complainant strongly denied that DHL trademark/logo has not been registered and that the complaint is a mockery of law. The Complainant submitted that it is not necessary that Complainant's trademark or logo should be registered as, undoubtedly; the Complainant is the prior user of the trademark DHL and DHL logo, under the authority of trademark owner. Without prejudice to the above submissions, it is respectfully submitted that the Complainant has already attached with the complaint copies of registration certificates which clearly *prima facie* show that the trademark DHL and DHL logo belong to the Complainant's principal. The Complainant further submitted that trademark applications namely 194353 in class 39 and 194466 in class 36 have become registered and registration certificates have been issued, which are attached.
- (v). That it is vehemently denied that running a small company in Lahore cannot destroy the image/repute of the Complainant. Running of small company or business does not entitle Mr. Uzair to violate the law of the land and is not allowed to commit acts of deceptive marketing practices. Even one instance of dissatisfaction on the part of a customer who may have availed the services of Mr. Uzair, in the belief that he is authorized or associated with the Complainant and whether or not he is a small concern, which in fact he is not, does not entitle or, permit him in any way, to indulge in acts deceptive marketing practices. Moreover, the activities of Mr. Uzair, clearly make out a case of deceptive marketing practices, which squarely fall within the ambit of the Act.
- (vi). That the complaint has been signed and filed by the FCO and Company Secretary, Mr. Muhammad Hanif Idrees who is duly and properly authorized by virtue of a Board Resolution and even otherwise being the Company Secretary he is authorized to file the complaint.
- (vii). That affidavit of Complainant employee who took these photographs and the business cards to show that Mr. Uzair has been using the logo of the Complainant and Complainant has not reason or occasion to mechanically

or otherwise maneuver the making of a card when in actual fact, Mr. Uzair has been distributing the said card as also using Complainant's DHL logo, which is clearly evident from the photographs filed with the complaint.

2.3. IN THE MATTER OF MR. ASIF IQBAL

2.3.1. The allegations made in the complaint against Mr. Asif Iqbal are summarized as follows:

- (i). Mr. Asif Iqbal is engaged in the business of courier and/or transport and/or cargo services, as the case may be, and is using DHL's stylized and artistically created logo without any authorization or consent on his outlet /shop/express centre and office premises, facades, nearby boards and hoardings, located in Faisalabad & Lahore and on the stationery, cartons, envelops, packaging, etc. used therein for advertisement/marketing purposes in the following manner:



- (ii). The unauthorized use of complainant's trademark/logo by Mr. Asif gives an impression to the consumers that his outlet is the official outlet of the Complainant, which in fact is false and such practices are also capable of harming the business interest of the complainant, which is in violation of Section 10 of the Act;
- (iii). Mr. Asif distributed/displayed false or misleading information to consumers through the use of DHL trademark/logo, who would associate such use on services to be that of the Complainant or made under Complainant or Complainant's authority. Hence, the above, conduct of Mr. Rehan constitutes deceptive marketing practices in violation of Section 10, in particular clauses (a), (b) & (d) of subsection (2) of Section 10.

2.3.2. The complaint was forwarded to Mr. Asif for his comments. Mr. Asif filed the comments to the complaint through Mian Abid Hussain, Advocate High Court. Summary of his reply is as under:

- (i). That the Act is not attracted to him because he is not fraudulently using Complainants trademark.

- (ii). That the Complainant mentions name of Mr. Asir Iqbal in the complaint, who is not working at the site therefore, the complaint is not proceed able and based on self presumption.
- (iii). On the facts of the complaint he stated that he is not using the Complainant company logo.
- (iv). On allegations mentioned at Para B of the complaint Mr. Asif submitted that he is not using Complainant logos, DHL's stylized. He is not living at Faisalabad not at Lahore. Whoever working at Lahore not in his knowledge and Complainant has no right to proceed against him in response to another.
- (v). That Complainant's allegations are self presumed, concocted and he is neither using Complainant's logo nor doing competitive work, therefore, Section 10(2) does not attracts to him.
- (vi). That there is no truth in Annexure F to the complaint which is the photograph of outlet because he has no concern with said outlet. Mentioned photograph self made by Complainant and is trying to pressurize and black mail him.

2.3.3. The Respondents comments were forwarded to Complainant for its rejoinder if any. The rejoinder was filed by the Complainant, which is summarized as follows:

- (i). That Mr. Asif has made misstatements in its comments to the complaint and has also conceded material facts from this Honorable Commission as to unauthorized use of trademark DHL and DHL logo. It is strongly denied that Mr. Asif is not working at the site because the complaint was served and received at the office located in Faisalabad of Mr. Asir Iqbal. Even otherwise at best it could be only a mis-description of name which is not fatal to the complainant case.
- (ii). That it is strongly denied that the case of the Complainant is any way malafide, based on ulterior motive and the complaint is not maintainable in its present form. Sufficient proof has been submitted along with the complaint and the Complainant is filing an affidavit of its employee, who took the photographs of the Respondent's premises, which have been submitted along with the petition. Affidavit of the employee is '**Annex-D**'.
- (iii). That it is strongly denied that present complaint has been filed on the premise of assumptions and concocted stories. It is strongly denied that Mr. Asif has never violated the law or that he had not intentionally displayed Complainant's trade mark DHL and DHL logo at his premises. It is also denied that picture/images filed as annexure F to the complaint, as well as depicted in Section B paragraph 1, have no concern with Mr. Asif.

2.4. IN THE MATTER OF MR. NAUMAN ANWAR BUTT

2.4.1. The allegations leveled against Mr. Nauman Anwar Butt in the complaint are summarized as follows:

- (i). Mr. Butt is engaged in the business of courier and/or transport and/or cargo services, as the case may be, and is using DHL's stylized and artistically created logo without any authorization or consent on his outlet /shop/express centre and office premises, facades, nearby boards and hoardings, located in Lahore and on the stationery, cartons, envelops, packaging, etc. used therein for advertisement/marketing purposes in the following manner:



- (ii). The use of a trademark/logo, which is identical in colour and visuals by Mr. Butt, which is capable of confusing the consumers to believe that it's the logo/trademark of the Complainant i.e. DHL and the outlet is the official outlet of the Complainant, which in fact is false and such practices are also capable of harming the business interest of the complainant, which is in violation of Section 10 of the Act;
- (iii). Mr. Butt distributed/displayed false or misleading information to consumers through the use of identical DHL trademark/logo (in colour and style), who would associate such use on services to be that of the Complainant or made under Complainant or Complainant's authority. Hence, the above, conduct of Mr. Rehan constitutes deceptive marketing practices in violation of Section 10, in particular clauses (a), (b) & (d) of subsection (2) of Section 10.

2.4.2. The complaint was forwarded to Mr. Butt for his comments vide 29-09-2011. The comments/reply to the complaint was filed 12-10-2011. Summary of his reply is as under:

- (i). That company's name is DHIL International World Wide Express and not DHL International. That allegations are false, frivolous and without any substance on record. The Complainant has not been properly instituted, signed and verified by competent and duly authorized person. That board

resolution has no signature, names and designation of DHL board of governors/directors which was necessary.

- (ii). That he has no knowledge about such type of special laws with no intention to deceive any person in the universe in any manner whatsoever.
- (iii). That the complaint has been filed for extraneous purposes and with malafide intention and it amounts to victimization and harassment for respondent as he never violated copy right and trademark of Complainant neither display its board etc.
- (iv). That he seriously controvert and challenge the authenticity, genuineness, admissibility and effectiveness of the picture/image annexure F to the complaint as well as in Para B placed on complaint as the picture/image does not belong to him. That the present complaint is sufficient proof of the Complainant dominating position to exploit his business and illegally deprive him of his rights.
- (v). On allegations mentioned at Para B of the complaint Mr. Butt submitted that he is not using Complainant logos, DHL's stylized. He is not living at Faisalabad not at Lahore. Whoever working at Lahore not in his knowledge and Complainant has not right to proceed against him in response to another.
- (vi). That Complainant's allegations are self presumed, concocted and he is neither using Complainant's logo nor doing competitive work, therefore, Section 10(2) does not attract to him.
- (v). That there is no truth in Annexure F to the complaint, which is the photograph of outlet because he has no concern with said outlet. Mentioned photograph self made by Complainant and is trying to pressurize and black mail him.

2.4.3. The Respondent's comments were forwarded to Complainant for its rejoinder if any. Complainant filed the rejoinder on 21-11-2011. The summary of the rejoinder is as follows:

- (i). That Mr. Butt has made misstatements in its comments to the complaint and has also conceded material facts from this Honorable Commission as to unauthorized use of trademark DHL and DHL logo. With regard to Mr. Butt's submission that his name is DHIL Worldwide Express and not DHL International, it is submitted that Respondent's name has clearly been mentioned in the complaint. Even DHIL is almost same as DHL and that photographs attached to the Complaint clearly shows that logo used by Mr. Butt is clearly discernible as DHL logo, irrespective of alphabets DHIL or DHL.
- (ii). That it is strongly denied that the case of the Complainant is in any way malafide, based on ulterior motive and the complaint is not maintainable in its present form. Sufficient proof has been submitted along with the complaint and the Complainant is filing an affidavit of its employee, who took the photographs of the Respondent's premises, which have been

submitted along with the petition. Affidavit of the employee is enclosed as 'Annex-E'.

- (iii). That the complaint has been signed and filed by the FCO and Company Secretary, Mr. Muhammad Hanif Idrees who is duly and properly authorized by virtue of a Board Resolution and even otherwise being the Company Secretary he is authorized to file the complaint. It is further strongly denied that that the resolution of the Board of Directors appended with the complaint is any way illegal, unlawful or that it has no legality in the eyes of the law. Board Resolution is an internal matter of the company and Mr. Butt is not in a position to raise any question about that. Mr. Butt is confusing the process/procedure for filing of the present Complaint with the process and the procedure that has been provided in the CPC 1908, because Competition Act, 2010 is a special law and has its own procedure and requirements. Mr. Butt is trying to raise issues irrelevant to the main dispute to divert the attention of the Commission. It is further submitted that the citation 'PLD 1971 Supreme Court page 550' is not applicable to the present case. Even otherwise requirement of Board Resolution is fulfilled. In this respect the Honorable Supreme Court case 'Imtiaz Ahmed v/s Ghulam Ali – PLD 63 SC 382' is relevant, which was the foundational judgment. The Honorable Supreme Court has continued to progress the law and there are innumerable judgments where it has been held that dispute between the parties should be decided on merits and technicalities or technical obstruction have to be avoided.
- (iv). That it is strongly denied that Mr. Butt has no knowledge of special laws (Competition Law) and they do not have any intention to deceive any person in any manner. Mr. Butt is very well aware of its activities and has willfully used the trademark DHL and DHL logo in an effort to attract customers to it self and to deceive them. It is further denied that Complainant has launched any unjust attack against Mr. Butt which is in any way misuse of its dominant position. The Complainant object is that in carrying out its business, the Respondent must not directly or indirectly use Complainant's trademark DHL and DHL logo. Furthermore, the pictures/images filed as annexure 'F' to the complaint, are genuine and authentic.
- (v). That Mr. Butt is not in a position to deny the claim brought about by the Complainant. It is vehemently denied that the Complainant is making any wrongful use of Complainant dominating position. Complainant only desires that Mr. Butt should conduct its own lawful business without violation the rights of the Complainant and without committing acts which are prohibited by the Act. Even if the Respondent is a small business or not incorporate concern does not entitle him to violate the law of the land and is not allowed to commit acts of deceptive marketing practices.
- (vi). That its is strongly denied that Mr. Butt never distributed false or misleading information regarding the fact that he is authorized/permitted by the Complainant/Complainant principal/trademark owner or that Mr. Butt never showed that his business/services are authorized and not in a position to harm the business interest of the Complainant. He has

prominently displayed the trademark DHL and DHL logo, which only the Complainant is entitled to use in Pakistan.

- (vii). That it is strongly denied that Mr. Butt never used/distributed/displayed Complainant's logo in order to deceive customers. It is further strongly denied that Mr. Butt never carried on a courier, transport, cargo services using Complainant stylized and artistically created logo on its office, premises, nearby boards and hoarding, stationery, cartons, envelops, packing etc.

2.5. IN THE MATTER OF MR. RAJA ASIR MUNIR

2.5.1. The allegations leveled against Mr. Raja Asir Munir in the complaint are summarized as follows:

- (i). Mr. Asir is engaged in the business of courier and/or transport and/or cargo services, as the case may be, and is using DHL's stylized and artistically created logo without any authorization or consent on his outlet /shop/express centre and office premises, facades, nearby boards and hoardings, located in Rawalpindi and on the stationery, cartons, envelops, packaging, etc. used therein for advertisement/marketing purposes in the following manner:



- (ii). The use of a trademark/logo, which is identical in colour and visuals by Mr. Asir, which is capable of confusing the consumers to believe that it's the logo/trademark of the Complainant i.e. DHL and the outlet is the official outlet of the Complainant, which in fact is false and such practices are also capable of harming the business interest of the complainant, which is in violation of Section 10 of the Act;
- (iii). Mr. Asir distributed/displayed false or misleading information to consumers through the use of identical DHL trademark/logo (in colour and style), who would associate such use on services to be that of the Complainant or made under Complainant or Complainant's authority. Hence, the above, conduct of Mr. Rehan constitutes deceptive marketing practices in violation of Section 10, in particular clauses (a), (b) & (d) of subsection (2) of Section 10.

2.5.2. The complaint was forwarded to the Mr. Asir for his comments/reply on 27-10-2011. Mr. Asir filed the comments to the complaint on 23-11-2011. Summary of his reply is as under:

- (i). He submitted that he has launched his business under the name and style "IDHS International Courier." He has equal rights to do business full and equal enjoyment of the goods, services, facilities, privileges, advantages and accommodations of any place of public accommodation.
- (ii). His company name "IDHS International Courier" is not similar enough with "DHL" to cause confusion. Customers will easily be able to identify from which sources "IDHS International Courier" or "DHL" services are coming from or to cause customers confusion. He further submitted that he has not committed any violation of Section 10 of the Act. He has only carrying on identical business same as other courier service providing companies in Pakistan.

2.5.3. The comments of the Mr. Asir were forwarded to the Complainant, requiring it to file its comments/rejoinder if any in this regard. The rejoinder filed by the Complainant is summarized as follows:

- (i). That Mr. Asir has made mis-statements in its comments/reply to the titled Complaint and has also concealed material facts from this Honorable Commission. Regarding his submission that he has an equal right to do business under the name and style of IDHS International courier and that this right is given to him by the Constitution of Islamic Republic of Pakistan in the manner and context states is not relevant here. It is respectfully submitted that the Complainant supports free but fair competition.
- (ii). Furthermore, to Mr. Asir's submission that it is unlawful to refuse service to certain classes of people and not unlawful to provide services to middle class area the Complainant submitted that it only desires that Mr. Asir should conduct his lawful business without committing any deceptive marketing practices which are prohibited by the Act and it must not use DHL or DHL logo or any confusing similar variation thereof. With regard to use of name IDHS, it is clearly evident from the photographs that it is discernible as DHL logo irrespective of the fact whether his logo comprises of the alphabets IDHS, DHS or DHL.
- (iii). The Complainant requested acts and activities of Mr. Asir clearly make out a case of deceptive marketing practice, which squarely falls within the ambit of the Act. The Complainant has also denied that he has not use DHL logo or has not committed any violation of the law.

2.6. IN THE MATTER OF MR. MALIK M. PERVAIZ

2.6.1. The allegations made in the complaint against Mr. Malik M. Pervaiz are summarized as follows:

- (i). Mr. Pervaiz is engaged in the business of courier and/or transport and/or cargo services, as the case may be, and is using DHL's stylized and artistically created logo without any authorization or consent on his outlet /shop/express centre and office premises, facades, nearby boards and hoardings, located in Lahore and on the stationery, cartons, envelops, packaging, etc. used therein for advertisement/marketing purposes in the following manner:



- (ii). The unauthorized use of complainant's trademark/logo by Mr. Pervaiz gives an impression to the consumers that his outlet is the official outlet of the Complainant, which in fact is false and such practices are also capable of harming the business interest of the complainant, which is in violation of Section 10 of the Act;
- (iii). Mr. Pervaiz distributed/displayed false or misleading information to consumers through the use of DHL trademark/logo, who would associate such use on services to be that of the Complainant or made under Complainant or Complainant's authority. Hence, the above, conduct of Mr. Pervaiz constitutes deceptive marketing practices in violation of Section 10, in particular clauses (a), (b) & (d) of subsection (2) of Section 10.

2.6.2. The complaint along-with its annexures was forwarded to Mr. Pervaiz for his comments on 29-09-2011. Mr. Pervaiz filed the comments to the complaint on 11-10-2011. Summary of his reply/comments to the complaint are as follows:

- (i). That allegations are false, frivolous and without any substance on record. The Complainant has not been properly instituted, signed and verified by competent and duly authorized person. That board resolution has no signature, names and designation of DHL board of governors/directors which was necessary.
- (ii). That he has no knowledge about such type of special laws with no intention to deceive any person in the universe in any manner whatsoever.
- (iii). That the complaint has been filed for extraneous purposes and with *malafide* intention and is amount to victimization and harassment for

respondent as he never violated copy right and trademark of Complainant neither display its board etc.,

- (iv). That he seriously controvert and challenge the authenticity, genuineness, admissibility and effectiveness of he picture/image annexure F to the complaint as well as inn Para B placed on complaint as the picture/image is not belong to him. That the present complaint is sufficient proof of the Complainant dominating position to exploit his business and illegally deprive him of his rights. In addition, Mr. Pervaiz submitted the following photographs along with his comments:



(Front view and Billboard)

- (v). That he is not incorporated concern nor a registered firm rather a small businessman under sole proprietorship. That he never used/ distributed/ displayed Complainant's registered trade & copy rights, designs, name, product labeling or packing, logo etc.
- (vi). That he never distributed false or misleading information regarding the fact that respondent is authorized/permitted by complainant/ complainant principal/ trademark owner and he is not in a position to harm the business interest of the Complainant.
- (vii). Furthermore, he never offer courier, transport, cargo services, using Complainant stylized and artistically created logo on its office, premises, nearby boards and hoarding, stationary, cartons, envelops, packing etc and if there is any it is maneuvered one.

2.6.3. The Respondent's comments were forwarded to Complainant for his rejoinder if any. The rejoinder was filed by the Complainant on 17-11-2011. The summary of the rejoinder is as follows:

- (i). That Mr. Pervaiz has made misstatements in its comments to the complaint and has also conceded material facts from this Honorable Commission as to unauthorized use of trademark DHL and DHL logo. He has been distributing false or misleading information, namely as if he is authorized/permitted by the Complainant or Complainant's principals or the trademark owner or that his business/services are genuine and authorized, originated from the Complainant or Complainant's principal.
- (ii). That it is strongly denied that the case of the Complainant is any way malafide, based on ulterior motive and the complaint is not maintainable in its present form. Sufficient proof has been submitted along with the complaint and the Complainant is filing an affidavit of its employee, who took the photographs of the Respondent's premises, which have been submitted along with the petition. Affidavit of the employee is 'Annex-F'.
- (iii). That the complaint has been signed and filed by the FCO and Company Secretary, Mr. Muhammad Hanif Idrees who is duly and properly authorized by virtue of a Board Resolution and even otherwise being the Company Secretary he is authorized to file the complaint. It is further strongly denied that that the resolution of the Board of Directors appended with the complaint is any way illegal, unlawful or that it has no legality in the eyes of the law. Board Resolution is an internal matter of the company and Mr. Pervaiz is not in a position to raise any question about that. He is confusing the process/procedure for filing of the present Complaint with the process and the procedure that has been provided in the CPC 1908, because Competition Act, 2010 is a special law and has its own procedure and requirements and is trying to raise issues irrelevant to the main dispute to divert the attention of the Commission.
- (iv). That it is strongly denied that Mr. Pervaiz has no knowledge of special laws (Competition Law) and they do not have any intention to deceive any person in any manner. Mr. Pervaiz is very well aware of its activities and has willfully used the trademark DHL and DHL logo in an effort to attract customers to it self and to deceive them. It is further denied that Complainant has launched any unjust attack against Mr. Butt which is in any way misuse of its dominant position. The Complainant object is that in carrying out its business, the Respondent must not directly or indirectly use Complainant's trademark DHL and DHL logo. Furthermore, the pictures/images filed as annexure 'F' to the complaint, are genuine and authentic.
- (v). That Mr. Pervaiz is not in a position to deny the claim brought about by the Complainant. It is vehemently denied that the Complainant is making any wrongful use of Complainant dominating position. Complainant only desires that Mr. Pervaiz should conduct its own lawful business without violation the rights of the Complainant and without committing acts

which are prohibited by the Act. Even if the Respondent is a small business or not incorporate concern does not entitle him to violate the law of the land and is not allowed to commit acts of deceptive marketing practices.

- (vi). That its is strongly denied that Mr. Pervaiz never distributed false or misleading information regarding the fact that he is authorized/permitted by the Complainant/Complainant principal/ trademark owner or that Mr. Pervaiz never showed that his business/services are authorized and not in a position to harm the business interest of the Complainant. He has prominently displayed the trademark DHL and DHL logo, which only the Complainant is entitled to use in Pakistan.
- (vii). That it is strongly denied that Mr. Pervaiz never used/ distributed/ displayed Complainant's logo in order to deceive customers. It is further strongly denied that Mr. Pervaiz never carried on a courier, transport, cargo services using Complainant stylized and artistically created logo on its office, premises, nearby boards and hoarding, stationery, cartons, envelops, packing etc.
- (viii). That outlet of Mr. Pervaiz at LG 5-C, Shimla Tower, Davis Road had been known to the Complainant and its address has been mentioned on the title of the Complaint. The photographs and affidavit submitted sufficiently prove the unlawful action of Mr. Pervaiz and if he is so honest in its claim then he can give an undertaking to this Commission and to the Complainant that it will never indulge in objectionable activities and never use, directly or indirectly in any manner the trademark DHL and DHL logo in connection or in relation to is business or services. In any event if he has committed the acts of deceptive marketing practices and taken undue advantage and earned unlawful profits this Commission is requested to carry out a thorough enquiry into the unlawful activities of the Respondent and fine them in accordance with law.

2.7. IN THE MATTER OF MR. WAQAS AHMAD MALIK

2.7.1. The allegations leveled in the complaint against Mr. Waqas Ahmad Malik are summarized below:

- (i). Mr. Pervaiz is engaged in the business of courier and/or transport and/or cargo services, as the case may be, and is using DHL's stylized and artistically created logo without any authorization or consent on his outlet /shop/express centre and office premises, facades, nearby boards and hoardings, located in Lahore and on the stationery, cartons, envelops, packaging, etc. used therein for advertisement/marketing purposes in the following manner:



- (ii). The unauthorized use of complainant's trademark/logo by Mr. Waqqas gives an impression to the consumers that his outlet is the official outlet of the Complainant, which in fact is false and such practices are also capable of harming the business interest of the complainant, which is in violation of Section 10 of the Act;
- (iii). Mr. Waqqas distributed/displayed false or misleading information to consumers through the use of DHL trademark/logo, who would associate such use on services to be that of the Complainant or made under Complainant or Complainant's authority. Hence, the above, conduct of Mr. Waqqas constitutes deceptive marketing practices in violation of Section 10, in particular clauses (a), (b) & (d) of subsection (2) of Section 10.

2.7.2. The complaint along-with its annexures was forwarded to Mr. Waqas on 29-09-2011. Mr. Waqas filed the comments to the complaint on 11-10-2011. The comments/reply is summarized below:

- (i). That allegations are false, frivolous and without any substance on record. The Complainant has not been properly instituted, signed and verified by competent and duly authorized person. That board resolution has no signature, names and designation of DHL board of governors/directors which was necessary.
- (ii). That he has no knowledge about such type of special laws with no intention to deceive any person in the universe in any manner whatsoever.
- (iii). That the complaint has been filed for extraneous purposes ad with malafide intention and is amount to victimization and harassment for respondent as he never violated copy right and trademark of Complainant neither display its board etc.,
- (iv). That he seriously controvert and challenge the authenticity, genuineness, admissibility and effectiveness of he picture/image annexure F to the complaint as well as inn Para B placed on complaint as the picture/image is not belong to him. That the present complaint is sufficient proof of the

Complainant's dominating position to exploit his business and illegally deprive him of his rights.

- (v). That he is not incorporated concern nor a registered firm rather a small businessman under sole proprietorship. That he never used/distributed/displayed Complainant's registered trade & copy rights, designs, name, product labeling or packing, logo etc.,
- (vi). That he never distributed false or misleading information regarding the fact that respondent is authorized/permitted by complainant/complainant principal/trademark owner and he is not in a position to harm the business interest of the Complainant.
- (vii). Furthermore, he never offer courier, transport, cargo services, using Complainant stylized and artistically created logo on its office, premises, nearby boards and hoarding, stationary, cartons, envelops, packing etc and if there is any it is maneuvered one.
- (viii). Lastly, it was submitted that he owns and run an outlet at G-29, Simla Towers, Davis Road, Lahore and existence of any other outlet is denied. He also submitted pictures of his outlet which are depicted below:



2.7.3. The Respondent's comments were forwarded to the Complainant for his rejoinder. The rejoinder was filed on 17-11-2011. The summary of the rejoinder is as follows:

- (i). That Mr. Waqas has made misstatements in its comments to the complaint and has also conceded material facts from this Honorable Commission as to unauthorized use of trademark DHL and DHL logo. He has been distributing false or misleading information, namely as if he is authorized/permitted by the Complainant or Complainant's principals or the trademark owner or that his business/services are genuine and authorized, originated from the Complainant or Complainant's principal.
- (ii). That it is strongly denied that the case of the Complainant is any way malafide, based on ulterior motive and the complaint is not maintainable in its present form. Sufficient proof has been submitted along with the complaint and the Complainant is filing an affidavit of its employee, who took the photographs of the Respondent's premises, which have been submitted along with the petition.
- (iii). That the complaint has been signed and filed by the FCO and Company Secretary, Mr. Muhammad Hanif Idrees who is duly and properly authorized by virtue of a Board Resolution and even otherwise being the Company Secretary he is authorized to file the complaint. It is further strongly denied that that the resolution of the Board of Directors appended with the complaint is any way illegal, unlawful or that it has no legality in the eyes of the law. Board Resolution is an internal matter of the company and Mr. Waqas is not in a position to raise any question about that. He is confusing the process/procedure for filing of the present Complaint with the process and the procedure that has been provided in the CPC 1908, because Competition Act, 2010 is a special law and has its own procedure and requirements and is trying to raise issues irrelevant to the main dispute to divert the attention of the Commission.
- (iv). That it is strongly denied that Mr. Waqas has no knowledge of special laws (Competition Law) and they do not have any intention to deceive any person in any manner. Mr. Waqas is very well aware of its activities and has willfully used the trademark DHL and DHL logo in an effort to attract customers to it self and to deceive them. It is further denied that Complainant has launched any unjust attack against Mr. Butt which is in any way misuse of its dominant position. The Complainant object is that in carrying out its business, the Respondent must not directly or indirectly use Complainant's trademark DHL and DHL logo. Furthermore, the pictures/images filed as annexure 'F' to the complaint, are genuine and authentic.
- (v). That Mr. Waqas is not in a position to deny the claim brought about by the Complainant. It is vehemently denied that the Complainant is making any wrongful use of Complainant dominating position. Complainant only desires that Mr. Waqas should conduct its own lawful business without violation the rights of the Complainant and without committing acts which are prohibited by the Act. Even if the Respondent is a small business or not incorporate concern does not entitle him to violate the law of the land and is not allowed to commit acts of deceptive marketing practices.

- (vi). That its is strongly denied that Mr. Waqas never distributed false or misleading information regarding the fact that he is authorized/permited by the Complainant/ Complainant principal/ trademark owner or that Mr. Waqas never showed that his business/services are authorized and not in a position to harm the business interest of the Complainant. He has prominently displayed the trademark DHL and DHL logo, which only the Complainant is entitled to use in Pakistan.
- (vii). That it is strongly denied that Mr. Waqas never used/ distributed/ displayed Complainant's logo in order to deceive customers. It is further strongly denied that Mr. Waqas never carried on a courier, transport, cargo services using Complainant stylized and artistically created logo on its office, premises, nearby boards and hoarding, stationery, cartons, envelops, packing etc.

3. ANALYSIS

As mentioned in Para 1.3. *ibid* the undersigned enquiry officers are directed to conduct the enquiry on the issues raised in the complaint and to submit the enquiry report by giving their findings and recommendations on the TORs. In the preceding paragraphs the facts and evidence against each responded is discussed in order to reach the conclusion regarding the issues in hand.

3.1. IN THE MATTER OF MR. REHAN SHEIKH

- 3.1.1. As mentioned in Para 2.1 above, the basic allegation against Mr. Rehan is that he has opened outlet in the city of Sialkot and carrying out the said services and business clearly and openly using the DHL logo as aforesaid. Such use is unauthorized, fraudulent and *malafide* and constitute acts of “*deceptive marketing practices*” within the meaning of Section 10 of the Act.
- 3.1.2. On the other hand, Mr. Rehan in response to the Complaints submitted his comments/reply which is annexed as ‘**Annex-B**’. The picture of the outlet is also mentioned in Para 2.1.1., which clearly shows the artistically created trademark of the Complainant on the billboard of the shop. In addition to the trademark, the colour scheme of the billboard and the style is also the same as that of the trade mark of the Complainant.
- 3.1.3. As per the comments of Mr. Rehan “*the DHL logo was displayed with the theme: **WE ARE PROVIDING INTERNATIONAL COURIER SERVICES THROUGH**, First Flight, Skynet, Aramex, APX & DHL with the prior verbal approval from your authorized local representative working at DHL Sialkot. Moreover, we are providing international services by using DHL through United Kingdom, Singapore & Dubai only.*” In addition to the above, he also submitted that “*As I got notice from you, we have considered your complaint and the **DHL Logo** have been removed.*”
- 3.1.4. In response to the above comments/reply, the Complainant through rejoinder submitted that Mr. Rehan has clearly admitted the use of DHL logo in an unauthorized manner in relation to its products and services and denied that Respondent has used the DHL logo with the prior approval of the Complainant

local representative working in Sialkot. The respondent also submitted duly sworn in affidavit of the authorized representative of the Complainant.

- 3.1.5. From the facts discussed above, we are also conscious of the fact that Mr. Rehan was using the DHL trademark on its billboard and again with an aim to get the business on the name of DHL which is evident from 'Annex-B' that the DHL trademark was used with the theme "WE ARE PROVIDING INTERNATIONAL COURIER SERVICES THROUGH, First Flight, Skynet, Aramex, APX & DHL". Furthermore regarding the approval of the local representative of the DHL Sialkot; neither any document/evidence was produced nor has the name of the authorized representative who purportedly authorized the use of DHL trademark been provided. Furthermore, it has been admitted by him that subsequent to receipt of the complaint, he has removed the DHL trademark from the billboard. The act of removing of DHL trademark in itself is sufficient that earlier the same was not used under any authorization.
- 3.1.6. From the above, it appears that the purpose of the using the DHL trademark by Mr. Rehan on the billboard was to take the benefit of the goodwill attached to it and attract consumers, whereas no authority was conferred by the Complainant on Mr. Rehan to use its trademark. Therefore, the act of using the trademark of the Complainant by Mr. Rehan on the billboard of his shop located in Sialkot, *prima facie*, was without any authorization, misleading in nature and capable of harming the business interest of the Complainant in violation of Section 10 of the Act.

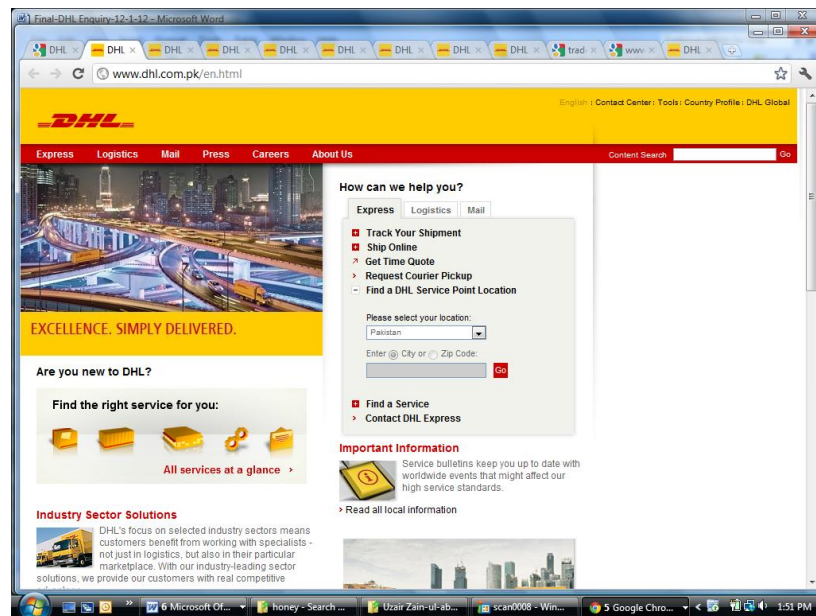
3.2. IN THE MATTER OF MR. UZAIR ZAIN-UL-ABIDIN

- 3.2.1. As mentioned in Para 2.2 above, the primary allegation against Mr. Uzair is that he has opened the outlets in the city of Lahore and carrying out the business of courier services clearly and openly using the DHL trademarks. The pictures of the outlets of the Mr. Uzair along with his visiting card clearly bearing the mobile and landline phone numbers are depicted in Para 2.2 above. It has been alleged that such use is unauthorized, fraudulent and malafide and constitute acts of "deceptive marketing practices" within the meaning of Section 10 of the Act.
- 3.2.2. In response, Mr. Uzair submitted his comments/reply to the complaint, the summary whereof is mentioned in Para 2.2.2., above. In principle Mr. Uzair has denied that he is using the trademark of DHL and has also asserted that the trademark of the DHL is not registered. With reference to the visiting card he asserted that he never used the card. In addition to the above, Mr. Uzair also asserted that the complaint is ill motivated, being filed to harass him, to deprive him from his lawful rights and for the reasons best known to the Complainant.
- 3.2.3. In response to the comments/reply of Mr. Uzair, the Complainant filed a rejoinder which was supported with a duly sworn in affidavit. Regarding the use of DHL trademark by Mr. Uzair, it was submitted that the images provided by them are self explanatory and the authorized representative who has taken the pictures his affidavit is provided. Regarding the assertions that the mechanical maneuvering of the visiting card and depriving Mr. Uzair of his legal rights and harassment, the Complainant has submitted that Mr. Uzair should conduct its own lawful business without violating the rights of Complainant and without committing act of deceptive marketing practices which are prohibited by the Act.

- 3.2.4. After reviewing the documents and contents of the replies and contents filed before us, we appreciate that in the reply Mr. Uzair has not denied that the pictures filed along with the complaint are not of his outlets. However, the main stress has been 'the trademark of DHL is not the registered one'. However, Mr. Uzair has neither denied the authenticity of the photographs submitted by the Complainant nor asserted the claim that the photographs are not of his outlets. In addition to the above, one of the undersigned officers also visited the outlet located at PECO road and affirm that the DHL trademark has been displayed at the billboard.
- 3.2.5. It is pertinent to point out that the DHL trademark used by Mr. Uzair was filed with the Registrar of trademarks on 19-04-2004 under application no. 194347. The trademark under the application no. 194347 is as follows:



Moreover, the website of DHL has also been viewed by us, the print screen of which is as under:



(Screen shot of the Complainant's website taken on 13-01-2012)

Perusal of the print screen further reveals that a simple DHL logo has been used on its website, which in isolation is as follows:



The above mentioned logo has been used by DHL across the globe and well recognized all over the world. This logo is one of the most popular brand

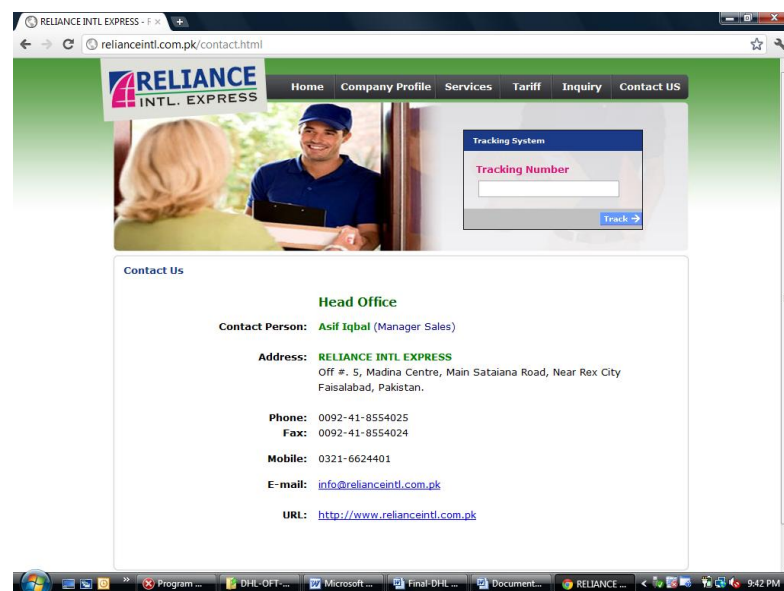
identities in the world. The above logo represents swiftness and speed in provision of services by the Complainant.

- 3.2.6. When the images depicted above are compared with the images of the billboards displayed at the shops of Mr. Uzair, it appears that the trademark under application no. 194347 of the Complainant has been used thereon.
- 3.2.7. Regarding the registration aspect of the trademark under question, we are of the view that where an application is pending and no proof regarding objections being filed or a separate application being filed has been submitted to the contrary; unauthorized use of such trademark would also constitute a *prima facie* violation of Section 10; as in terms of Section 33(3) of the Trade Marks Ordinance, 2001 (the 'TMO') clearly provides that the certificate of registration of trademark would bear the date of application and the rights under that certificate would also take effect from the date of filing of application.
- 3.2.8. Regarding the 'authorization' from the complainant for use of its trademarks, no assertion has been made by Mr. Uzair and the Complainant has categorically denied that they have not given any authorization to Mr. Uzair regarding the use of DHL trademark. Furthermore, we appreciate 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. Therefore, the goods so sold or services so provided under a specific trademark would create goodwill in the mind of wary person and that the goodwill owned by the trademark owner on account of the use of similar trademark by the other undertaking may mislead the consumers regarding the original owner but is also capable of causing a substantial damage to the trademark owner's business and goodwill.
- 3.2.9. In view of the above, it appears that the act of using the trademark of the Complainant by Mr. Uzair Zain-ul-Abidin, *prima facie*, was without any authorization, misleading and capable of harming the business interest of the Complainant in violation of Section 10 of the Act.

3.3. IN THE MATTER OF MR. ASIR IQBAL/ASIF IQBAL

- 3.3.1. As mentioned in Para 2.3 above, the primary allegation against Mr. Aisf Iqbal is that he has opened the outlets in the city of Lahore and Faisalabad and carrying out the business of courier services clearly and openly using the DHL trademarks. Such use is unauthorized, fraudulent and malafide and constitute acts of "deceptive marketing practices" within the meaning of Section 10 of the Act.
- 3.3.2. In response Mr. Asif Iqbal submitted his comments/reply through Mian Abid Hussain, Advocate High Court. Mainly it was submitted that he is not 'Asir Iqbal' and he is not using the DHL stylized logo. It was further submitted that the outlet mentioned at Lahore does not belong to him. It was asserted by Mr. Asif that Complainant's allegations are self presumed, concocted and he is neither using Complainant's logo nor doing competitive work, therefore, Section 10(2) does not attracts to him. It was further asserted that there is no truth in the photograph of the outlet annexed with the complaint because he has no concern with said outlet. Mentioned photograph self made by Complainant and is trying to pressurize and black mail him.

- 3.3.3. The Complainant in its rejoinder rebutted the comments made by Mr. Asif. The Complainant strongly denied that Mr. Asif is not working at the site because the complaint was served and received at the office located in Faisalabad. Even otherwise at best it could be only a misdescription of name which is not fatal to the complainant case. The Complainant also strongly denied that the case of the Complainant is any way malafide, based on ulterior motive and the complaint is not maintainable in its present form. It was asserted that sufficient proof has been submitted along with the complaint and the Complainant is filing an affidavit of its employee, who took the photographs of the Respondent's premises, which have been submitted along with the petition.
- 3.3.4. During the enquiry we came across with the website of Mr. Asif which is <http://relianceintl.com.pk/> the print screen image of the website page is as follows:



(Screen shot taken on 17-01-2012)

- 3.3.5. Interestingly, the above print screen not only bears the contact details of the Mr. Asif but the logo of '*Reliance Intl. Express*' appearing on one of the pictures mentioned under Para 2.3. above. This *prima facie* establishes the fact that the billboard wherein the trademark of DHL and logo of Reliance has been used belongs to Mr. Asif. Moreover, the DHL trademark used in the billboard of Mr. Asif is the same logo which is being used on the website of the Complainant which also supports the view that *prima facie* the DHL trademark is being used by Mr. Asif.
- 3.3.6. Regarding the assertion that the allegations made against Mr. Asif are with *malafide* intentions and with ulterior motives. No proof in this regard has been submitted by Mr. Asif. We also were unable to locate as to what possible ulterior motive could be behind the allegations made in the complaint but only obedience of law?
- 3.3.7. Furthermore, we appreciate 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. Therefore, the goods so sold or services so

provided under a specific trademark would create goodwill in the mind of a consumer and that the goodwill owned by the trademark owner on account of the use of similar trademark by the other undertaking may mislead the consumers regarding the original owner but is also capable of causing a substantial damage to the trademark owner's business and goodwill.

- 3.3.8. In view of the above, the use of Complainant's trademark by Mr. Asif, *priam facie*, is without any authorization, misleading in nature and capable of harming the business interest of the Complainant and in violation of Section 10 of the Act.

3.4. IN THE MATTER OF MR. NAUMAN ANWAR BUTT

- 3.4.1. In the Complaint against Mr. Nauman Anwar Butt the primary allegation is that he is using the trademark of the Complainant without any authorization. Mr. Butt through his comments/reply submitted that he has no knowledge about such type of special laws and the act of thereof was with no intention to deceive any person in the universe in any manner whatsoever. He also submitted that the complaint has been filed for extraneous purposes and with *mala fide* intention and is amount to victimization and harassment of Mr. Butt as he never violated copy right and trademark of Complainant neither display its board etc. He further challenged the authenticity of the pictures submitted by the Complainant. It was also submitted by Mr. Butt that he is not doing any competitive business.
- 3.4.2. The Complainant in the rejoinder submitted that Mr. Butt's name has clearly been mentioned in the complaint. Even DHIL is almost same as DHL and that photographs attached to the Complaint clearly shows that logo used by Mr. Butt is clearly discernible as DHL logo, irrespective of alphabets DHIL or DHL. Regarding the extraneous purposes and malafide intentions it was submitted object of the complaint is that in carrying out its business, Mr. Butt must not directly or indirectly use Complainant's trademark DHL and DHL logo. Furthermore, the pictures/images filed as annexure 'F' to the complaint, are genuine and authentic. In support the complainant filed duly sworn in affidavit of its employee. Further it was submitted that Mr. Butt is very well aware of its activities and has wilfully used the trademark DHL and DHL logo in an effort to attract customers to it self and to deceive them.
- 3.4.3. It is worth mentioning that the complaint was sent on the address provided by the Complainant and on the outlet as mentioned in the picture. The same was received and replied by Mr. Butt. Regarding his knowledge about any special law i.e. the Act, we are of the view that the law once published in the official gazette is deemed to be in the knowledge of every person and citizen and is bound to be followed. We also note that the reply of Mr. Butt is not supported with duly sworn in affidavit, whereas the rejoinder and the complaint are supported with duly sworn in affidavits, which in any event are more authentic. We also note that Mr. Butt is also doing the competing business and has not provided any evidence or proof contrary to the allegations made in the complaint.
- 3.4.4. Furthermore, we appreciate 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. Therefore, the goods so sold or services so provided under a specific trademark would create goodwill in the mind of the

consumers and that the goodwill owned by the trademark owner on account of the use of similar trademark by the other undertaking may mislead the consumers regarding the original owner but is also capable of causing a substantial damage to the trademark owner's business and goodwill.

- 3.4.5. Although we note that the logo used on the billboard of Mr. Asir's outlet are not in fact the trademarks of the Complainant; however, it appears that the logo which is being used is almost identical in colour and style to that of the Complainant's trade mark, which may confuse the consumers with that of the Complainant's outlet.
- 3.4.6. In view of the above, it appears that Mr. Butt is using a logo which is identical in colour, style and font with the trademark of the Complainant which *prima facie* is misleading in nature and capable of harming the business interest of the Complainant in violation of Section 10 of the Act.

3.5. IN THE MATTER OF RAJA ASIR MUNIR

- 3.5.1. The primary allegation against Mr. Asir Munir is that he is using the trademark of the Complainant without any authorization in violation of Section 10. Mr. Asir Munir in his comments/reply submitted that he has launched his business under the name and style "IDHS International Courier" and he has equal rights to do business full and equal enjoyment of the goods, services, facilities, privileges, advantages and accommodations of any place of public accommodation. He also submitted that his company's name "IDHS International Courier" is not similar enough with "DHL" to cause confusion. Customers will easily be able to identify from which sources "IDHS International Courier" or "DHL" services are coming from or to cause customers confusion. He further submitted that he has not committed any violation of Section 10 of the Act. He has only carrying on identical business same as other courier service providing companies in Pakistan.
- 3.5.2. The Complainant in its rejoinder has submitted that it is clearly evident from the photographs that it is discernible as DHL logo irrespective of the fact whether his logo comprises of the alphabets IDHS, DHS or DHL. The Complainant further submitted that Mr. Asir must not use DHL or DHL logo or any confusing similar variation thereof.
- 3.5.3. Although we note that the logo used on the billboard of Mr. Asir's outlet are not in fact the trademarks of the Complainant; however, it appears that the logo which is being used is almost identical in colour and style to that of the Complainant's trade mark, which may confuse the consumers with that of the Complainant's outlet.
- 3.5.4. In view of the above, it appears that Mr. Asir is using a logo which is identical in colour, style and font with the trademark of the Complainant which *prima facie* is misleading in nature and capable of harming the business interest of the Complainant in violation of Section 10 of the Act.

3.6. IN THE MATTER OF MR. MALIK M. PERVAIZ

- 3.6.1. As mentioned in Para 2.6. above, Mr. Malik Pervaiz is using the trademark of the Complainant without any authorization and in violation of Section 10 of the Act. Mr. Malik vide his comments/reply denied all the allegations made against him for being false frivolous and without any substance on the record. It was also submitted that he doesn't have any knowledge about such special law i.e. the Act and the complaint has been filed for extraneous purposes and amounts to victimization and harassment of Mr. Pervaiz. He challenged the authenticity, genuineness, admissibility and effectiveness of the picture/image of his outlet and rebutted. He also submitted some pictures on his own.
- 3.6.2. On the other hand the Complainant through the rejoinder which was supported with a duly sworn in affidavit rebutted all the allegations of *malafide* and ulterior motives leveled against it. It was submitted that the complaint has been signed and filed by the FCO and Company Secretary, Mr. Muhammad Hanif Idrees who is duly and properly authorized by virtue of a Board Resolution and even otherwise being the Company Secretary he is authorized to file the complaint. The Complainant further denied that Mr. Pervaiz has no knowledge of special laws (Competition Law) and they do not have any intention to deceive any person in any manner. Mr. Pervaiz is very well aware of its activities and has wilfully used the trademark DHL and DHL logo in an effort to attract customers to it self and to deceive them. The Complainant vehemently denied that it is making any wrongful use of Complainant dominating position. Complainant only desires that Mr. Pervaiz should conduct its own lawful business without violation the rights of the Complainant and without committing acts which are prohibited by the Act. Further the Complainant submitted that no authorization was given to Mr. Pervaiz for use of DHL trademark and by using the trademark of the Complainant Mr. Pervaiz has resorted to deceptive marketing practices in violation of Section 10 of the Act.
- 3.6.3. It is pertinent to point out that when the pictures provided by the Complainant and Mr. Pervaiz are compared with each other, there remains no doubt that both are of the same premises. In any event in the picture provided by the Complainant posters containing DHL trademark are placed on the inside wall of Mr. Pervaiz's outlet; however, in the picture provided by Mr. Pervaiz those posters have been removed and a clear wall is shown. The possibility that Mr. Pervaiz removed the posters prior to taking the picture cannot be ruled out. Moreover, the complaint as well as the rejoinder filed by the Complainant is supported with a duly sworn in affidavit, however, no affidavit has been filed by the Mr. Pervaiz with his complaint.
- 3.6.4. The trademark on the posters visible in the pictures of Mr. Pervaiz's outlet, provided by the Complainant is very similar to the trademark used by the Complainant on its website and on its service centres. The Complainant has categorically denied that no authorization was given to Mr. Pervaiz for use of complainant's trademark. In addition, we are unable to understand what possible ulterior motives the complainant could derive while protecting their rights under law and pointing out a violation of law i.e. alleged deceptive marketing practices. As it has mentioned in Para 4.1.1 to 4.1.4 above 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. Therefore, the goods so sold or services so provided would create goodwill in the mind of wary person and that the goodwill owned by the trademark owner on account of the use of similar trademark by the other undertaking would cause a substantial damage to the trademark owner's business and goodwill." Therefore, use of complainant's trademark, which is well known and identified by the consumers, by Mr. Pervaiz or any other person may mislead the consumers towards the perception that the outlet is that of the complainant.

- 3.6.5. Keeping in view the above, it appears that the use of Complainant's trademark by Mr. Pervaiz, *prima facie*, is without any authorization, and is also misleading and capable of harming the business interest of the Complainant in violation of Section 10 of the Act.

3.7. IN THE MATTER OF MR. WAQAS AHMAD MALIK

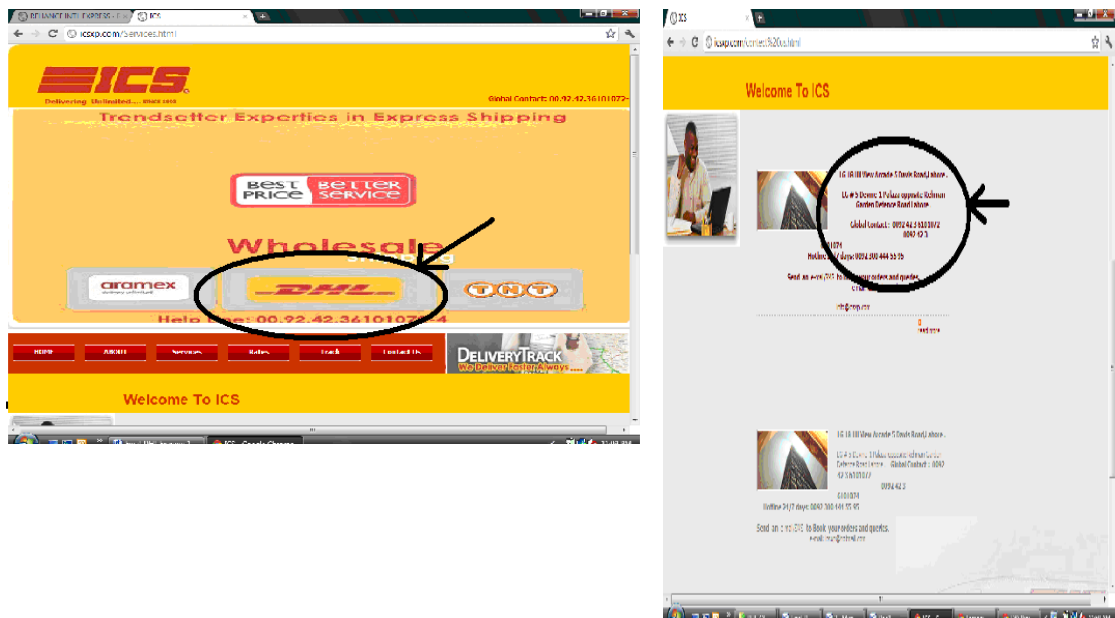
- 3.7.1. As mentioned in Para 2.7 above, the allegations against Mr. Waqas Ahmad Malik are that of unauthorized use of trade mark and misleading the consumers by such unauthorized use, which is also capable of harming the business interest of the Complainant.
- 3.7.2. Mr. Waqas in response to the allegations made, submitted that the allegations are false frivolous and the complaint has been filed for extraneous purposes ad with malafide intention and is amount to victimization and harassment for respondent as he never violated copy right and trademark of Complainant neither display its board etc.. It was further submitted that he seriously controvert and challenge the authenticity, genuineness, admissibility and effectiveness of he picture/image provided by the Complainant as 'annexure F' to the complaint as well as in Para B placed on complaint as the picture/image does not belong to him. It was alleged on part of Mr. Waqas that the present complaint is sufficient proof of the Complainant's dominating position to exploit his business and illegally deprive him of his rights. He further submitted that he never offer courier, transport, cargo services, using Complainant stylized and artistically created logo on its office, premises, nearby boards and hoarding, stationary, cartons, envelops, packing etc and if there is any it is manoeuvred one. Mr. Waqas also submitted the pictures of his outlet which are depicted in Para 2.7.2. (viii) above.
- 3.7.3. On the other hand the Complainant through the rejoinder which was supported with a duly sworn in affidavit rebutted all the allegations of malafide and ulterior motives leveled against it. It was submitted that the complaint has been singed and filed by the FCO and Company Secretary, Mr. Muhammad Hanif Idrees who is duly and properly authorized by virtue of a Board Resolution and even otherwise being the Company Secretary he is authorized to file the complaint. The Complainant further denied that Mr. Waqas has no knowledge of special laws (Competition Law) and they do not have any intention to deceive any person in any manner. Mr. Waqas is very well aware of its activities and has wilfully used the trademark DHL and DHL logo in an effort to attract customers to it self and to deceive them. The Complainant vehemently denied that it is making any wrongful use of Complainant dominating position. Complainant only desires that Mr. Waqas should conduct its own lawful business without violation the rights of the Complainant and without committing acts which are prohibited by the Act. Further the Complainant submitted that no authorization was given to Mr. Waqas

for use of DHL trademark and by using the trademark of the Complainant Mr. Waqas has resorted to deceptive marketing practices in violation of Section 10 of the Act.

3.7.4. One of the enquiry officer also visited the outlet the pictures whereof were provided alongwith the complaint. A brochure was also procured from that outlet which is depicted below:



In addition to the above, the website images of the company running the outlet the pictures whereof have been provided are as follows:



3.7.6. Upon comparison of the above images, we are of the view that the images provided by the Complainant relates to another company under the name Courier & Cargo 'ICS' World wide Express. However, Mr. Waqas is running the business under the name and style of 'World Courier & Cargo – World Wide Express'. Moreover, the addresses of both the outlets are also different i.e. the outlet of Mr. Waqas is located at 'G-29, Shimla Towers, 5-Davis Road, Lahore, which is the address provided in the complaint as well; however, the pictures provided with the complaint relate to the outlet situated at LG 18 Hil View Arcade 5 Davis

Road, Lahore. Furthermore, the telephone numbers visible on the billboards of both the outlets are also different. Upon closely viewing the entrance view picture provided by Mr. Waqas and the Complainant, it appears that both the outlets are different and are not one in the same.

- 3.7.7. Although, the pictures of the outlet provided by the Complainant are not of Mr. Waqas; however, it appears that the outlet in question of the Company ICS Express Worldwide is using the trademark of the Complainant without any authorization not only on the billboards of the outlet but also on the website of the company. Such acts are misleading in nature and also capable of harming the business interest of the Complainant and, in *prima facie* violation of Section 10 of the Act.
- 3.7.8. However, keeping in view the above discussion, it appears that no *prima facie* violation of the Act against Mr. Waqas is made out.

4. CONCLUSIONS/FINDINGS

- 4.1. Based on the information available on record and the submissions made before us, we the undersigned enquiry officers have reached the following conclusions:
 - 4.1.1. In the matter of Mr. Rehan Sheikh, the use of complainant's trademark on the billboards/ hoardings/ signboards of his shop located in Sialkot for advertisement purposes, *prima facie*, give an impression that said shop is the authorized service centre of the Complainant. However, in view of the facts stated above, it appears that no authorization has been obtained from the complainant for such use; hence such use of Complainant's trademark, *prima facie*, is false/misleading and/or fraudulent and also capable of harming the business interest of the Complainant in violation of Section 10 of the Act;
 - 4.1.2. In the matter of Mr. Uzair Zain-ul-Abidin, the use of Complainant's trademark by him on his visiting card, billboards/ hoardings/ signboards of the shops located in Lahore for advertisement purposes, *prima facie*, gives an impression that said shops are the authorized service centers of the Complainant. However, in view of the facts stated above, it appears that no authorization has been obtained by Mr. Uzair Zain-ul-Abidin from the Complainant for such use; hence such use of Complainant's trademark, *prima facie*, is false/misleading and/or fraudulent and also capable of harming the business interest of the Complainant in violation of Section 10 of the Act;
 - 4.1.3. In the matter of Mr. Asif Iqbal, the use of Complainant's trademark by him on the billboards/ hoardings/ signboards of the shops located in Faisalabad and Lahore for advertisement purposes, *prima facie*, gives an impression that said shops are the authorized service centers of the Complainant. However, in view of the facts stated above, it appears that no authorization has been obtained by Mr. Asif Iqbal from the Complainant for such use; hence such use of Complainant's trademark, *prima facie*, is false/misleading and/or fraudulent and also capable of harming the business interest of the Complainant in violation of Section 10 of the Act;
 - 4.1.4. In the matter of Mr. Nauman Anwer Butt, the use of logo identical in colour and style of the Complainant's trademark on the billboard/ hoardings/ signboards of

the shop located in Lahore for advertisement purposes, *prima facie* gives an impression that said shop is the authorized service center of the Complainant, which infact is not correct impression. Hence, such use of mark which is identical to the Complainant's trademark, *prima facie*, is misleading the consumers and is also capable of harming the business interest of the Complainant in violation of Section 10of the Act.

4.1.5. In the matter of Raja Asir Munir, the use of logo which is identical in colour and style of the Complainant's trademark on the billboard/ hoardings/ signboards of the shops located in Rawalpindi for advertisement purposes, *prima facie*, gives an impression that said shops are the authorized service center of the Complainant, which infact is not correct impression. Hence, such use of mark which is identical to the Complainant's trademark, *prima facie*, is misleading the consumers and is also capable of harming the business interest of the Complainant in violation of Section 10of the Act.

4.1.6. In the matter of Malik M. Pervaiz, the use of Complainant's trademark by him on the billboards/ hoardings/ signboards and the glass wall of the shop located in Lahore for advertisement purposes, *prima facie*, give an impression that said shop is the authorized service centers of the Complainant. However, in view of the facts stated above, it appears that no authorization has been obtained by Mr. Malik M. Pervaiz from the Complainant for such use; hence such use of Complainant's trademark, *prima facie*, is false/misleading and/or fraudulent and also capable of harming the business interest of the Complainant in violation of Section 10 of the Act;

4.1.7. In the matter of Waqass Ahmad Malik, *prima facie*, the allegations made against Mr. Waqas Ahmad Malik have not been made out as, the pictures provided by the Complainant are of a different outlet, whose address, company name and contact details does not match with that of Mr. Waqas Ahmad Malik.

4.1.8. It has been noticed during the enquiry that the ICS Express Worldwide is using Complainant's trademark for advertisement purposes on the billboard/hoarding of its outlet located at LG 18, Hil View Arcade, 5 Davis Road, Lahore, and also on its website www.icsxp.com, *prima facie*, giving an impression that the said shop is the authorized service center of the Complainant. However, in view of the facts stated above, it appears that no authorization has been given by the Complainant for such use of its trademark. Hence, such use of Complainant's trademark, *prima facie*, is false/misleading and/or fraudulent and also capable of harming the business interest of the Complainant in violation of Section 10 of the Act.

4.2. It is pertinent to point out that part of a 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. As a result, businesses spend tremendous amounts of resources to identify their goods, distinguish their services, and cultivate good will.

4.2.1. The four principal devices undertakings used to distinguish themselves are trade names, trademarks, service marks, and trade dress. (i). Trade names are used to identify corporations, partnerships, sole proprietorships, and other business

entities, (ii). Broadly speaking, a trademark is a sign that individualizes the goods/services of a given enterprise and distinguishes them from the goods/services of others. It can be in the form of words, designs, letters, numerals or packaging, slogans, devices, symbols, etc., (iii). Whereas service marks are attached to goods through tags and labels, service marks are generally displayed through advertising. As their name suggests, service marks identify services rather than goods, and (iv) Trade dress refers to a product's physical appearance, including its size, shape, texture, and design. Trade dress can also include the manner in which a product is packaged, wrapped, presented, or promoted.

- 4.2.2. The undertakings develop a relationship with its customers/consumers by building up its reputation and spend a lot now a day in making the goods and/or services distinct from that of other competitors. Therefore, the goods so sold or services so provided would create goodwill in the mind of wary person and the goodwill owned by the trademark owner on account of the use of similar trademark by the other undertaking would cause a substantial damage to the trademark owner's business and goodwill. Commercial reputation is actually a very broad concept which refers to all reputation related to any marks of goods or services provided by business operators, usually including registered trademarks, (well-known) unregistered trademarks; unique company names, person names, product names, packages, decorations; origin of products, internet domains, and so on. Usually, using for a commodity/service without authorization any of these unique marks or names of another's famous commodity, or counterfeiting or using similar ones of another's famous commodity, thereby misleading the consumers would ultimately have a direct impact on the business of the undertaking whose mark is used without authorization and also on the consumers who may be deceived to purchase the inferior good or get an inferior service.
- 4.3. The deceptive marketing practices as discussed in this enquiry report have a direct impact on the public at large. It is in the interest of the general public that the undertakings should be stopped to advertise their products/services in an unfair and misleading manner and be encouraged to resort to the advertising practices which are transparent and gives consumers/customers true and correct information. *Prima facie* violations under the Act in terms of the findings of this enquiry report warrant initiation of proceedings against Mr. Rehan Sheikh, Mr. Uzair Zain-ul-Abidin, Mr. Asif Iqbal, Mr. Nauman Anwar Butt, Raja Asir Munir, Mr. Malik M. Pervaiz and the CEO/Proprietor of ICS Express World Wide, under Section 30 of the Act and the complaint against Mr. Waqqas Ahmad Malik may be dismissed in accordance with law.

Noman A. Farooqi
Joint Director
Enquiry Officer

Amir Zaman
Junior Executive Officer
Enquiry Officer