

COMPETITION COMMISSION OF PAKISTAN

ENQUIRY REPORT

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

**IN THE MATTER OF COMPLAINT FILED BY M/S SIBA TESTING SERVICES
AGAINST M/S SUKKUR TESTING SERVICES (SMC-PRIVATE) LIMITED FOR
DECEPTIVE MARKETING PRACTICES**

BY

Marryum Pervaiz & Riaz Hussain

Dated: January 09, 2020

1 BACKGROUND

- 1.1 M/s SIBA Testing Services (the ‘**Complainant**’) through its legal counsel, M/s KARARA LAW ASSOCIATES, filed a complaint against M/s Sukkur Testing Services (SMC-Private) Limited(STS) (the ‘**Respondent**’) with the Competition Commission of Pakistan (the ‘**Commission**’) for alleged violation of Section 10 of the Competition Act 2010, (the ‘**Act**’), pertaining to deceptive marketing practices.
- 1.2 It was alleged in the complaint that the Complainant is one of the renowned training and testing service center in the Country and the Respondent has copied/imitated its trademark, and by doing so, has violated Section 10 (1) of the Act, in terms of Section 10 (2) (d), which prohibits “*fraudulent use of another’s trademark, firm name, or product labeling or packaging.*”
- 1.3 Keeping in view of the above, the Commission initiated an enquiry in accordance with sub-section (2) of Section 37 of the Act by appointing Ms. Marryum Pervaiz, Joint Director (OFT) and Mr. Riaz Hussain, Assistant Director (OFT) as enquiry officers (collectively the ‘**Enquiry Officers**’). The Enquiry Committee was directed to conduct the enquiry on the issue raised in the complaint and to submit the enquiry report by giving its 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. THE COMPLAINT:

- 2.1 The Complainant is a registered company incorporated under the provisions of Companies Ordinance 1984, in the name and style of SIBA Testing Services, generally known as **STS**, having its head office at Sukkur IBA University, Airport Road Sukkur.
- 2.2 The main objective of the company is to act as an educational training and testing service provider in order to boost representative participation of different segments of the society in education and other entrepreneurial skills, scientific skills, programs acquiring and activities suitable that jobs, can lead scholarships to the development of employment opportunities.
- 2.3 Other objectives of the company include: mobilization of private sector resources within Pakistan in support of sustainable development initiatives at all levels; creating employment opportunities in rural and urban areas; and undertaking awareness measures for the assist application in the promotion of modern, of income, scientific literacy, in order to improve the socio economic condition of the country; providing a context for professional judgment of educational learning through knowledge and skills assessment based on evaluation that promotes fairness and establishing, subsidized centers, institutions and facilities for imparting theoretical and practical knowledge, research and training.

- 2.4 The Complainant is providing training and testing services to universities and corporate clients in public as well as private sector.
- 2.5 The Complainant's registered trade/service mark is given hereunder for reference:



- 2.6 The Complainant has submitted that it has proved to be one of the trustworthy training and testing service providers of the Country, more particularly all the written tests for the recruitment of Judicial Officers, Teachers, Medical Officers and various Government departments have been effectively formulated and conducted by the Complainant and thus, it has become one of the leading educational training and testing service centers in Pakistan.
- 2.7 The Complainant has alleged that the Respondent has made an advertisement in various newspapers, claiming to be Testing Services Provider in the name and style of Sukkur Testing Services (**STS**), which is based in Islamabad. In the advertisement details the candidates were advised to fill the application form available on the website along with the deposit of amount in the branches of HBL Bank, and the last date of form submission was shown as November 26, 2018.
- 2.8 It has been stated that when the Complainant came to know about the similarity in the names and nature of services of the Respondent, he made curtailed inquiries and collected information which he believes to be true that the Respondent has resorted to deceptive marketing practices, by using the name "Sukkur Testing Services (**STS**)", which resembles the Complainant as "**SIBA Testing Service (STS)**", which is damaging the Complainant's reputation. Hence the Respondent is violating Section 10(1) of the Act, in terms of Section 10(2)(d) of the Act, which prohibits fraudulent use of another's trademark, firm name, product labeling or product packaging.
- 2.9 Below is the image of the advertisement material submitted by the Complainant as evidence to prove that the Respondent is fraudulently using the registered trade mark on its advertisement material:

TERMS & CONDITIONS

IMPORTANT NOTES

The Competent authority reserves the right to cancel the recruitment Process at any stage without assigning any reason.

- In case a candidate possesses additional/ extra qualification, be sure that he/she must possess the advertised qualification from Govt. recognized institute in required grade/division in any of above mentioned discipline to become eligible. Otherwise application may be rejected.
- Initially, shortlisted candidates will be called for written test and subsequently further short listing will be done before interview.
- Government Servant/Autonomous/ Semi Autonomous/ Corporation employees must only apply through proper channel otherwise their candidature will not be accepted.
- No further relaxation in maximum age as mentioned above.
- Quotas are applicable as per Federal Government policy rules.
- In case the candidate is applying with a qualification as equivalent to the advertised qualification a certificate from IBCC or Higher Education Commission as the case may be to this effect will also be required to be attached along with application.
- If a candidate is interested to apply for more than one posts, a separate application may be forwarded, otherwise the application will not be entertained.
- No TA/DA will be paid for appearing in any test/interview
- Number of advertised posts may be increased or decreased at the time of final selection.
- Incomplete applications will be rejected.
- Result awaited candidates are not eligible to apply.

HOW TO APPLY

- Application Form and online deposit Slip are available on Sukkur Testing Services Website www.sukkurtestingservices.org.pk
- Please pay the prescribed test/ processing fee through online deposit slip in any of the country-wide online branches of HBL Bank.
- Application without deposit slip will not be entertained.
- Deposited amount is non refundable and non transferable.
- Application submitted by hand will not be entertained.
- STS will not be responsible for the late receipt of application sent through post or by any courier service.
- Candidates are required to send their application to STS Project Office, Islamabad on prescribed Form along with paid online deposit slip (original).

**For Test Date / Time Please
Visit STS Website Regularly**

**Last Date of Forms Submission
Monday 26 November 2018**



STS
Transparency is Our Motto!

For Further Information, Please Contact
+92-51-2318527
Sukkur Testing Services - Pakistan
Office # L-15, Basement, Plot # 72, Afzal Center,
Street # 35,G-10/1, Islamabad.

For Apply: www.sukkurtestingservices.org.pk

2.10 In the view of the above stated circumstances, the Complainant has requested the Commission to take legal action against the Respondent on immediate basis.

3 COMMENTS OF THE RESPONDENT

- 3.1 The complaint along with annexures was forwarded to the Respondent for comments vide letter dated February 14, 2019.
- 3.2 The Respondent, through its legal counsel Mohsin Ghaffar Law Associates, filed its reply vide letter dated March, 2019 which is summarized as under:
- 3.3 The Respondent is a duly registered company which was incorporated under the Companies Act 2017, in the name and style of “Sukkur Testing Services Pakistan (SMC Private Limited) on May 04, 2018. The company is also registered with the FBR.
- 3.4 The complaint has been denied by the Respondent as the company is duly registered. The Respondent has stated that the complaint is incorrect as its company has a different name from the Complainant as the words “SIBA” and “Sukkur” do not have any similarity in any sense.
- 3.5 It has been stated in the reply that if the Complainant feels that there is any similarity, the Respondent does not have any kind of ill intension against the Complainant. Furthermore, the Respondent believes in fair competition and is ready for cooperation. That as far as the question of deceptive practices and the damaging the reputation is concerned, it has been denied as the Respondent does not have any knowledge about the name of the Complainant prior to this complaint.
- 3.6 Under the circumstances, the Respondent prayed that the complaint may very kindly be dismissed in the best interest of justice and any other relief which the Hon’ble Court deems fit and proper may also be awarded in favor of the Respondent.

4. REJOINDER:

- 4.1 The comments/reply of the Respondent was forwarded to Complainant for its comments/rejoinder vide letter dated March 11, 2019. The Complainant submitted its rejoinder on August 29, 2019, the contents of which are reproduced below:
- 4.2 The Complainant alleged that the claim of Respondent of being duly registered and having different name than that of the Complainant's is misconceived and based upon frivolous pleas. It has been submitted that the word "SIBA" and SUKKUR" are different but their acronyms stand same as "STS" that as per the Law of trademarks, the trademark should be capable of distinguishing goods or services of one undertaking from those of other undertaking, hence the same acronym and similarity in monogram reflects the ill intention of the Respondent on the well-established goodwill of the Complainant.
- 4.3 It has been further submitted that the Sukkur Institute of Business Administration (SIBA) started its journey under Sindh Act No. XVIII and is renowned public organization known for imparting quality education to masses in the field of Business Administration, Engineering, I.T, Mathematics and Education. Name of newly formed Sukkur Testing Service (STS) is identical to that of the Complainant, which is creating confusion among the public regarding the quality, merit and excellence of the services provided by the Complainant.
- 4.4 The Complainant respectfully has prayed that the Respondent may be directed to modify its name and logo which should be easily differentiable from the name, trademarks or logo of the Complainant.
- 4.5 The Complainant, vide letter dated October 02, 2019 was asked to submit documentary evidence to prove its prior use of the said trademark. The required documents were submitted by the Complainant vide letter dated October 10, 2019. Images of marketing material containing the trademark (STS) of the Complainant are reproduced below:

ABC Certified The Largest Circulated Sindhi Daily of Pakistan

ہر کے ٹی وقت کراچی، حیدرآباد ۽ سکرمان شایع ٿیندو پهرين سنڌي اخبار

DAILY KAWISIBI روزانه

جلد 28) آچر 06 آگست 2017 ۽ بمطابق 13 ذوالقعد 1438ھ (شمارو 4) قیمت 15 روپيا

STS
SIBA Testing Services

Our client Sukkur Hospital invites the applications with relevant qualifications and experience for the following position:

Chief Executive Officer (CEO)

Qualification:
Masters Degree In Public Health (MPH) / MBBS / FCPS / from a PMDC recognized University/Institute.

Experience & Skills:

1. Minimum 10 years of management experience in healthcare. Minimum 3 years in Senior Management position.
2. Proficiency in computer operations, including word processing.
3. Demonstrates community commitment.
4. Ability to lead at all levels of management related to hospital.
5. Must possess excellent written and verbal communication skills.

Salary Package: Market-based salary package will be offered, depending on qualification and experience of candidate.

Guidelines to Apply:

- Eligible candidates can apply through application form and challan/pay order (Non-refundable) of Rs. 1000/- in favour of "SIBA Testing Service" available at www.iba.suk.edu.pk along with all relevant & complete documents, updated CV and recent photograph latest by **August 22, 2017**.
- Providing fictitious, exaggerated, or misleading information on a job application shall result in rejection of application & termination of employment at any stage.
- Late submission or incomplete application shall not be considered.
- Only short-listed candidate will be contacted for further recruitment process.

SIBA Testing Services

Sukkur IBA University - Airport Road, Sukkur, Ph: 071-5644014-13
UAN: 071 (111-785-422) Fax: 071-5804419

PID (H) 99648/17

Sunday 06 August, 2017

FOUNDED BY QUAID-I-AZAM MOHAMMAD ALI JINNAH

October 30, 2016

DAWN

WWW.DAWN.COM

STS
SIBA Testing Services

Our client Sukkur Hospital invites the applications with relevant qualifications and experience for following position:

Chief Executive Officer (CEO)

Qualification:
Master's Degree in Public Health (MPH) / MBBS / FCPS / from a PMDC recognized University/Institute.

Experience & Skills:

1. Minimum 10 years of management experience in healthcare. Minimum 3 years in Senior Management position.
2. Proficiency in computer operations including word processing.
3. Demonstrates community commitment.
4. Ability to lead at all levels of management related to hospital.
5. Must possess excellent written and verbal communication skills.

Salary Package: Market based salary package will be offered depending on qualification and experience of candidate

Guidelines to Apply:


- Eligible candidate can apply through application form and challan/pay order (Non-refundable) of Rs 1000/- in favour of "SIBA Testing Service" available at www.iba.suk.edu.pk along with all relevant & complete documents, updated CV and recent photograph latest by **November 28, 2016**.
- Providing fictitious, exaggerated, or misleading information on a job application shall result in rejection of application & termination of employment at any stage.
- Late submission or incomplete application shall not be considered.
- Only short-listed candidate will be contacted for further recruitment process.

SIBA Testing Services

Sukkur IBA - Airport Road, Sukkur, Ph: 071-5644014-13
UAN: 071 (111-785-422) Fax: 071-5804419

PID (H) 97994/16

SCHOOL EDUCATION & LITERACY DEPARTMENT
Government of Sindh
CAREER OPPORTUNITIES



On behalf of Public Private Partnership (PPP) Node, School Education & Literacy Department (SEL), Government of Sindh, SIBA Testing Services (STS) invites applications from dynamic, qualified and energetic candidates on merit, purely on contract basis for the following positions:

1. DIRECTOR (FINANCE)

Qualification:
I. MBA (Finance)/CA /ACCA/CFA from an HEC recognized University / Institute.
II. At least five (05) years of relevant experience in Corporate Banking, Investment Banking, Corporate Credit appraisal, Project financing preferably with donor agencies.
III. Work experience related to PPP would be an added advantage.
Age Limit: Between 25 and 45.

2. DIRECTOR (LEGAL)

Qualification:
I. Bachelors degree in law (LL.B) from an HEC recognized University / Institute or equivalent.
II. At least five (05) years of relevant experience in a reputable Law firm or legal advisory.
III. Work experience related to PPPs would be an added advantage.
Age Limit: Between 25 and 45.

3. ASSISTANT DIRECTOR (FINANCE)

Qualification:
I. MBA (Finance) /CA /ACCA/ CFA from an HEC recognized University / Institute or equivalent.
II. At least two (02) years of relevant experience in Corporate Banking, Investment Banking, Corporate Credit appraisal, Investment Research, Project Financing preferably with donor agencies.
Age Limit: Between 24 and 35.

4. FIELD SUPPORT OFFICER

Qualification:
I. Masters degree in management / education / public administration or related field from an HEC recognized University / Institute.
II. At least two (02) years relevant experience in field operations in a reputable firm in the private sector or government sector.
Age Limit: Between 24 and 35

GUIDELINES TO APPLY: Detailed Job description available at: www.iba-suk.edu.pk

i. Please send your application on prescribed format along with two recent colour photograph, complete CV, relevant documents with challan (non-refundable) of Rs. 1000/- latest by **October 24, 2017** on the above given address. (Application form & challan available at: www.iba-suk.edu.pk)
ii. Government Employee must apply through proper channel or submit NOC along with job application. **Incomplete application in terms of any missing document(s) e.g. experience letters, NOC, challan shall not be entertained and shall stand rejected.**
iii. Providing fictitious, exaggerated, or misleading information on a job application shall result in rejection of application & termination of employment at any stage.
iv. The Competent Authority reserves the right to accept or reject any or all the applications without assigning any reason and cancel recruitment to any post(s).

SIBA Testing Services

Sukkur IBA University, Airport Road, Sukkur. Ph: 071-5644122, 5644130
UAN: 071 (111-785-422) Fax: 071-5804419
PID (H) 99919/17

Note: Kindly mark the position on the envelope.

5. ANALYSIS AND CONCLUSION:

5.1 As already mentioned in para 1.3 supra, the mandate of this enquiry is as follows:

Whether the allegations leveled against the Respondent under the complaint constitutes a prima facie violation of Section 10 of the Act?

- 5.2 In the preceding paragraphs the facts and evidence submitted by the Complainant and the Respondent have been analyzed in order to reach a conclusion regarding the issues at hand, that is, whether the Respondent has violated Section 10 of the Act by engaging in deceptive marketing practices by using the same trade name, trademark and logo as that of the Complainant's.
- 5.3 The Complainant in the instant matter has primarily alleged that the use of firm name, i.e., 'Sukkur Testing Services' and trademark "STS" along with the monogram design without Complainant's authority is unlawful, illegal, misleading and deceptive as well as contrary to honest business practices.
- 5.4 It has also been alleged in the complaint that the act of the Respondent of using the similar firm name and trademark as that of the Complainant is capable of harming the business interest of the Complainant and is aimed at deceiving the general public.
- 5.5 In support the Complainant has provided the evidence regarding the registration of firm name and use of the alleged trademark since 2016-2018. In addition the Complainant has also provided details of the trademark application and its status with the Trade Mark Registry, Intellectual Property Organization (IPO), Government of Pakistan.

- 5.6 On the other hand, the Respondent has denied all the allegations of the Complainant and submitted that the use of the letters “**STS**” has not caused any deception among the customers as the words “**SIBA Testing Services**” and “**Sukkur Testing Services**” do not have any similarity in any sense.
- 5.7 The Respondent has submitted that it has not entered into deceptive marketing practices by using the firm name “Sukkur Testing Services” and the trademark “**STS**”, as both do not have any similarity in any sense. As various testing service providers are already present in the market, no deception or confusion can arise by virtue of genuine use of business name.
- 5.8 Before proceeding further, it is pertinent to determine the intention of the advertisement in question which pertains to the use of the firm name “Sukkur Testing Services” and trademark “**STS**”. Although instances that may amount to deceptive marketing practices have been provided under Section 10 of the Act, the definition of the term ‘misleading advertisement’ is not specifically provided under the Act. As Section 10 of the Act defines deceptive practices as “false and misleading” statements, the Commission has defined the term misleading in the following manner¹:

*“Whereas **‘misleading information’** may essentially include oral or written statements or representations that are; (a) capable of giving wrong impression or idea, (b) likely to lead into error of conduct, thought, or judgment, (c) tends to misinform or misguide owing to vagueness or any omission, (d) may or may not be deliberate or conscious and (e) in contrast to false information, it has less onerous connotation and is somewhat open to interpretation as the circumstances and conduct of a party may be treated as relevant to a certain extent.”*

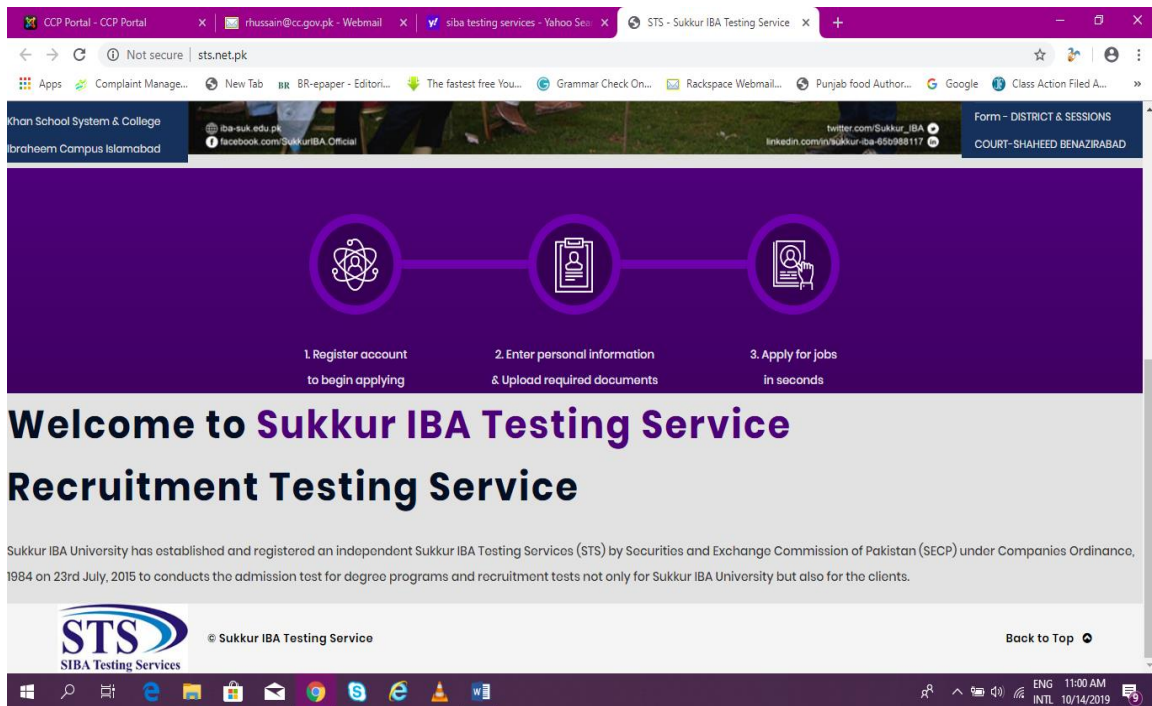
- 5.9 Based on the above definition, when the overall impression of the advertisement is noted, it appears that the general public would assume that the “Sukkur Testing Services” might have some affiliation with the Complainant as their services, i.e., testing services are not only same in nature, but also bear the acronym “**STS**” as a mark on them.
- 5.10 It is pertinent mention here that the Legal Counsel of the Respondent has submitted that the word “**SIBA**” and “**SUKKUR**” does not have any similarity in any sense, hence, the claim of the Complainant was based on malice. However, if the Complainant still feels any similarity, the Respondent believes in fair competition and is ready for cooperation to satisfy the Complainant.
- 5.11 It is also pertinent to point out that part of a business’s identity is the goodwill it has established with consumers/customers, while part of a product’s identity is the reputation it has earned for quality and value. As a result, businesses expend considerable resources to identify their goods/services, distinguish their services, and cultivate goodwill. It is also pertinent to point out that goodwill and reputation is business’s identity and

¹ <http://cc.gov.pk/images/Downloads/ZONG%20-%20Order%20-%202029-09-09%20.pdf>

product's identity respectively both established with customers/consumers for quality and value.

- 5.12 The undertakings usually use four principal devices to distinguish themselves including trade names, trademark, service marks, and trade dress. Trade names are used to identify corporations, partnerships, sole proprietorships, and other business entities. Broadly speaking, a trademark is a sign that individualizes the goods/services of a given enterprise and distinguish them from the goods/services of others. It can be in the form of words, designs, letters, numerals, or packaging slogans, devices symbols, etc. (Service marks are attached to goods through tags and labels. Service marks are generally displayed through advertising.) As the names suggests, service marks identify services rather than goods. 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.
- 5.13 Undertakings develop a relationship with their customers/consumers by building up their reputation and expending considerable efforts and resources in branding, i.e., making the goods/services distinct from those of other competitors. Therefore, the goods so sold or services so provided would create a goodwill in the mind of the public. The use of similar trademarks and or firm name by other undertakings would cause substantial damage to the trademark owner's business and goodwill.
- 5.14 Commercial reputation is actually a very broad concept which refers to the entire reputation of any marks of goods or services provided by business operators, usually including registered trademarks, (well-known) unregistered trademark; unique company names, person names, product names, packages, decorations; origin of products/services, internet domains, and so on. Usually, use of a commodity/service without authorization, or counterfeiting or using those similar to another's branded commodity and misleading the consumers would ultimately have a direct impact on the business of the undertaking whose mark is being used without authorization and also on the consumers who may be deceived to purchase the inferior goods or get and inferior services.
- 5.15 There is no doubt that the Complainant is engaged mainly in the business of providing testing services to the students and job seekers. The Complainant provides the testing services with the name "Sukkur IBA Testing Services". Use of the Complainant's firm name is depicted below²:

² <http://sts.net.pk/>



5.16 It is also pertinent to mention here that the Complainant was registered under the Companies Ordinance 1984, dated July 23, 2015 in the name and style of “**SIBA Testing Services**”, having its head office at Sukkur IBA University, Sukkur (**Copy of the incorporation certificate is attached as Annexure-A**).

5.17 It has been mentioned in the Memorandum of Association of the Complainant that:

- i. *The name of the Company is “SIBA Testing Services”.*
- ii. *The Registered office of the Company will be situated in the Province of Sindh, Pakistan.*
- iii. *The objective for which the Company, was incorporated, are as follows:*
 - (1) *To act as an educational training and testing service center in order to foster representative participation of various segments of the society in educational and other awareness related programs and activities that can lead to the development of necessary entrepreneurial skills, acquiring suitable jobs, scholarships and promotion of employment opportunities.*
 - (2) *To undertake and execute scientific and technical tests of all kinds of generally to promote such scientific and technical studies, researches, holding of lectures, exhibitions, classes and conferences calculated directly and indirectly to advance the cause of education and learning including distance learning in all aspects of rural and urban development.*
 - (3) *To provide a context for professional judgement of educational learning through knowledge and skills assessment based on evaluation standards that promote quality fairness and technical appropriateness.*

(4) To establish, maintain, conduct or otherwise subsidize centers, institutes and facilities for imparting of theoretical and practical knowledge, research, experiments and training.

(5) To promote greater access to educational opportunities through various awareness raising measures and ensuring fairness and opportunity for all learners.

(6) Etc., etc

5.18 The Complainant, to achieve its objectives, started its business operations in July 2015 with the name of “SIBA Testing Services” and created a unique trademark “STS” to distinguish it from those of other businesses.

5.19 The Complainant is a subsidiary of Sukkur IBA and the word ‘SIBA’ is an abbreviation of ‘Sukkur Institute of Business Administration’. Sukkur IBA is a well-known educational institution in Pakistan with great reputation among the general public. The Complainant created its trademark, ‘STS’, by adopting the word ‘S’ from its corporate name SIBA, ‘T’ from Testing, and word ‘S’ from Services, respectively.

5.20 It has also been observed that the Respondent has not even applied for trademark registration in any class with the Trade Mark Registry, Government of Pakistan. Whereas, the Complainant applied for trademark registration in the name and style of “SIBA Testing Services” vide application dated February 22, 2019 (Copy of trademark application is attached as Annexure-B).

5.21 It should be noted that the Respondent was registered under the Companies Act, 2017 (XIX of 2017), in the name and style of “Sukkur Testing Services Pakistan (SMC-Private Limited)” on May 04, 2018 (Copy of the incorporation certificate is attached as Annexure-C). Use of the Respondent’s firm name and trademark is depicted below:

IMPORTANT NOTES
The Competent authority reserves the right to cancel the recruitment Process at any stage without assigning any reason.

- In case a candidate possesses additional/ extra qualification, be sure that he/she must possess the advertised qualification from Govt. recognized institute in required grade/division in any of above mentioned discipline to become eligible. Otherwise application may be rejected.
- Initially, shortlisted candidates will be called for written test and subsequently further short listing will be done before interview.
- Government Servant/Autonomous/ Semi Autonomous/ Corporation employees must only apply through proper channel otherwise their candidature will not be accepted.
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- Please pay the prescribed test/ processing fee through online deposit slip in any of the country-wide online branches of HBL Bank.
- Application without deposit slip will not be entertained.
- Deposited amount is non refundable and non transferable.
- Application submitted by hand will not be entertained.
- STS will not be responsible for the late receipt of application sent through post or by any courier service.
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For Test Date / Time Please Visit STS website Regularly

Last Date of Forms Submission Monday 26 November 2018

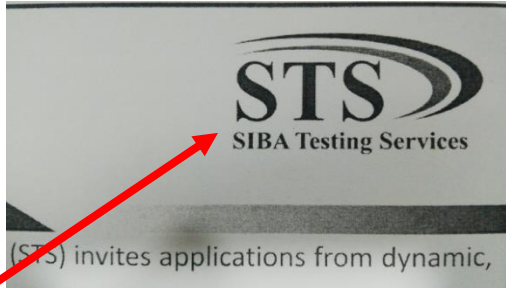
STS
Transparency Is Our Motto!

For Further Information, Please Contact
+92-51-2318527
Sukkur Testing Services - Pakistan
Office # L-15, Basement, Plot # 72, Afzal Center,
Street # 35,G-10/1, Islamabad.

For Apply: www.sukkurtestingservices.org.pk

- 5.22 It has been mentioned in the Memorandum of Association of the Respondent's company that:
1. *The name of the Company is Sukkur Testing Services (SMC-Private) Limited*
 2. *The registered office of the Company will be situated in Islamabad Capital Territory (I.C.T).*
 3. *It shall 'provide services of human resource selection and development and conduct screening tests of human resource for different organizations/entities and educational institutions and to provide services of human resource planning, forecasting, hiring and training'.*
- 5.23 The Complainant has alleged in the complaint that the Respondent has been intentionally using the tradename – Sukkur Testing Services – to form the trademark “**STS**”, that too in a similar style and design as that of the Complainant's. Whereas the Respondent submitted that the name of the Complainant is “SIBA Testing Services”, which is entirely different from the Respondent's tradename, i.e., “Sukkur Testing Services” and that the Respondent had never heard about the name of the Complainant prior to this complaint. However, it should be noted that as per the certification of incorporation, the Respondent is an Islamabad based company and it also got its registration with the Company Registrar Office, Islamabad. The primary question which, therefore, arises here is that why did the Respondent choose the name, “**Sukkur** Testing Services”, abbreviated as “**STS**” (the latter – STS – being a well-connected and renowned educational/testing institute in Pakistan) for its Islamabad based testing service institute?
- 5.24 Moreover, as discussed in para 5.19 *ibid*, the word “**SIBA**” is an abbreviation of “Sukkur Institute of Business Administration”, which is a well-known educational institute in Sukkur city. Subsequently, it is unlikely that the Respondent was not aware about Sukkur IBA and its subsidiary SIBA Testing Services, which was incorporated in the year 2016, two years prior to the incorporation of the Respondent. Consequently, in light of the above discussion, we are of the view that the Respondent was also well aware about the reputation/goodwill associated with the name Sukkur IBA, and therefore, *prima facie*, the Respondent chose the name “Sukkur Testing Services” for its testing institute, so that it may be able to use the abbreviated trademark “**STS**” and enjoy the goodwill of Sukkur IBA and SIBA Testing Services. Otherwise, there appears to be no justification for choosing the word ‘**Sukkur**’ as a prefix by the Respondent for its Islamabad based firm. Moreover, it is further important to note that the Respondent has also adopted the trademark ‘**STS**’ in the same manner and style as that of the Complainant. Images of trademark used by the Complainant and Respondent are depicted below;

Complainant's Trademark



Respondent's Trademark



- 5.25 We notice that in the mark used by the Complainant on its website and other marketing material, a dual line half ellipse is also used in addition to the word ‘STS’ written in English language and similarly, the Respondent has also used the same lining arrangement along with word ‘STS’. As mentioned in para 4.5 *ibid.* the Complainant has been in the use of alleged trademark ‘STS’ since 2016, even before the incorporation of the Respondent. It is important to note that the Respondent was incorporated on May 04, 2018 and the alleged trademark has been used since November, 2018, whereas the Complainant was using the alleged trademark ‘STS’ since the year 2016, almost two years prior to incorporation of the Respondent. Resultantly, in light of the above findings as well as the documents made available to us, we are of the, *prima facie*, view that the Complainant is a prior user of the mark “STS”. It is relevant to refer the definition of ‘trademark’ as provided under the provisions of clause (xlvii) of Section 2 of Trade Mark Ordinance, 2001, which is reproduced herein below for ease of reference:

“trademark means any mark capable of being represented graphically which is capable of distinguishing goods or services of one undertaking from those of other undertaking”

- 5.26 In addition to the above, it will also be relevant to refer to the definition of the ‘mark’ which is defined under clause (xxiv) of Section 2 of the Trade Mark Ordinance, 2001 and for ease of reference is reproduced below:

“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;

- 5.27 Therefore, it appears that the Respondent is making an attempt to use the trademark, logos and closely resembling symbols in its company name and marketing campaign which were in fact in use by the Complainant almost 3 years prior to the Respondent. Consequently, such conduct *prima facie* is likely to give a misleading impression to the consumers/customers regarding the affiliation between the two undertakings, i.e., the Respondent and the Complainant, under the name and style of ‘STS’.

- 5.28 In this regard, we note that when an undertaking decides to start a business with a particular name and style or with a particular trademark or copyright, he/they are duty bound to ascertain and ensure that the name and style or the trademark or copyright

which they intend to use, is not being used by any other undertaking. If such caution is not exercised and business activity is started, then, subsequent marketing campaigns are also launched under the said name and style/trademark/copyright and such violations *inter alia* include deceptive marketing practices, infringement and/or passing-off. Resultantly, the entire responsibility as to the consequences shall rest on the undertaking, who uses the same or similar name and style, trademark or copyright that was already in the use of or was already owned by the other undertaking.

- 5.29 Further, regarding the registration aspect of the trademark in question, we are of the view that where an application is pending, the unauthorized use of such a trademark would also constitute a, *prima facie*, violation of Section 10 of the Act as in terms of Section 33(3) of the Trade Mark Ordinance, 2001, 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. As mentioned in para 5.20 *ibid.* that the Respondent did not even applied for trademark registration in any class with the Trade Mark Registry, IPO. Whereas, the Complainant on February 22, 2019, applied for registration of trademark in class 41 of Trade Mark Registry, IPO.
- 5.30 Keeping in view the above, it appears that the Respondent has involved in fraudulent use of the Complainant's trademark, who is the prior user of the trademark, 'STS', and who has invested considerable money and efforts in establishing the mark 'STS' as well a rapport with the consumers/customers.
- 5.31 In view of the above, we are of the view that the allegations leveled against the Respondent under the complaint constitute a, *prima facie*, violation of Section 10(1) in terms of Section 10(2)(d) of the Act.
- 5.32 Considering the fact that the Respondent is fraudulently using the Complainant's trade mark and logo of a renowned training and testing services provider , that too in the same line of business, i.e., training and testing services, and are implying by means of advertisement material that it has some affiliation with the Sukkur IBA, it can be concluded that the Respondent is also engaged in "*distribution of false [and] misleading information to consumers, including the distribution of information lacking a reasonable basis, related to the place of production in terms of origin of services and quality of services*". This conduct of Respondent falls under, *prima facie*, violation of Section 10(1), read with sub-section 2(b) of the Act.
- 5.33 The overall conduct of the Respondent, i.e., fraudulent use of another's trademark and similar firm name, in *prima facie* violation of Section 10(2)(d) of the Act, is capable of harming the business interest of the Complainant by stealing its rightful customers, negatively affecting its sales and profits, and damaging its good will. Resultantly, as the Respondent's conduct is capable of harming the business interest of the Complainant, the Respondent appears to be in *prima facie* violation of Section 10(2)(a) of the Act.

6. RECOMMENDATIONS:

- 6.1. This enquiry report was aimed at examining the allegations of the Complainant. In view of the position stated in the preceding paras, it appears that the Respondent is fraudulently using the trademark and a firm name similar to the Complainant. As a result, the Respondent has, *prima facie*, entered into deceptive marketing practices in terms of the provisions of Section 10 of the Act.
- 6.2. As distribution of false and misleading information and IP infringement attracts the consumers into purchasing goods and/or hiring services they might otherwise have not opted for gives the fraudulent undertakings an unfair advantage over the fair competitors and also harms their business. Thus, in the interest of general public at large, and ordinary consumer in specific, the undertakings which are involved in misleading and unfair trade practices must be discouraged from selling their inferior products/services in a deceptive manner and they should also be directed to adopt such practices which are transparent and provide the consumers/customers true and correct information about their products/services.
- 6.3. Therefore, in light of the above mentioned findings, it is recommended that the Commission may consider initiating proceedings against M/s Sukkur Testing Services (SMC-Private) Limited, under Section 30 of the Act.

Marryum Pervaiz
Joint Director
(Enquiry Officer)

Riaz Hussain
Assistant Director
(Enquiry Officer)