

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 AGRITECH
LIMITED AGAINST M/S TARA GROUP PAKISTAN FOR
DECEPTIVE MARKETING PRACTICES**

BY

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Dated: 4TH APRIL 2014

A. BACKGROUND

1. M/s Agritech Limited (hereinafter the ‘**Complainant**’) filed a complaint with the Competition Commission of Pakistan (hereinafter the ‘**Commission**’), against Mr. Khalid Hameed, Chief Executive of M/s Tara Group and Mr. Chaudhary Maqsood Ahmed, Director of M/s Tara Group Pakistan (hereinafter the ‘**Respondent**’) for alleged violation of Section 10 of the Competition Act, 2010 (hereinafter the ‘**Act**’) i.e. deceptive marketing practices.
2. The Complainant alleged that the Respondent is using the mark ‘Tara’ for their products and business which is identical to the product name of the Complainant. It has been alleged that by using the trademark ‘Tara’ of the Complainant, the Respondent is creating an impression in the minds of the consumers that the products of the Respondent are actually that of the Complainant and passing off their goods to the consumers as the goods of the Complainant. This act of the Respondent is, thus, also capable of harming the business interest of the Complainant. It has been alleged that such conduct amounts to deceptive marketing practices in violation of Section 10 of the Act.
3. Keeping in view the foregoing, the Competent Authority initiated an Enquiry in accordance with sub-section (2) of Section 37 of the Act by constituting an Enquiry Committee. The Enquiry Committee was directed to conduct the enquiry on the issues raised in the complaint and to submit the enquiry report by giving findings and recommendations *inter alia* on the following:

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

B. COMPLAINT

4. The Complainant claims that it is a fertilizer and chemical manufacturing concern. The company is engaged in the production of urea, phosphate and other allied products through its plants situated at Daudkhel, District Mianwali, and Hazara, District Hazara producing both nitrogenous and phosphatic fertilizers. The Complainant is a major player in the domestic market of Pakistan along with companies such as Engro, Fauji Fertilizer and Fatima Fertilizers etc. The complaint is filed by the Complainant through its duly authorized officer Muhammad Faisal Muzammil, Director of the Complainant.
5. It has been stated in the complaint that Respondent is engaged in the manufacture and supply of crop protection chemicals, micro-fertilizers and certified seeds by setting up of various one-stop shops in the name of ‘Tara Zarai Markaz’. Tara Zarai Markaz are owned/operated by the Respondent’s business called ‘the Tara Group’, making the product similar to complainant’s products.



About Tara

Insecticides

Herbicides

Fungicides

Micronutrient

Insecticides

S #:	Brand Name	Active Ingredient	Formulation
01	ORTHOX	Acephate	75 SP
02	VAPCO	Acetamiprid	20 SL, 20 SP
03	FLYTHRIN	Beta-cyfluthrin	2.5 EC
04	STARFEN	Bifenthrin	10 EC
05	TROFEZON	Buprofezin	25 WP
06	CURAN	Carbofuran	3 G
07	MARSHAL	Cartap Hydrochloride	4 G
08	FOXAL	Chlorfenapyr	360 SC
09	BRISBANE	Chlorpyrifos	40 EC
10	JUPITOR	Clofentazine	10 WP
11	RIPFOS	Cypermethrin+Profenofos	44 EC
12	CRUNCH	Cyromazine	50 SP
13	DURAKILL	Deltamethrin	2.5 EC
14	DELTAMAX	Deltamethrin+Triazophos	36 EC
15	DARWIN	Diafenthiuron	50 SC
16	UNIFOS	Dichlorvos	20 SL, 20 SP
17		Emamectin Benzoate	1.9 EC, 5 WDG
18	BLAZER	Esfenvalerate	5 EC
19	SUNITOL	Fenproprathrin	20 EC
20	RIGNIL	Fipronil	0.4 G, 5 SC
21	RIGNIL PLUS	Hexaflumuron+Fipronil	15 SC
22	CONIFLEX	Imidacloprid	20 SL, 25 WP, 70 WS
23	LANDAX	Indoxacarb	15 SC
24	JUMPER	Lambda-cyhalothrin	2.5 EC
25	LATCH	Lufenuron	5 EC
26	TARA GOLD	Monomethypo	5 G
27	PIROX/PIROX SUPER	Nitenpyram	10SL, 50 SG
28	STORM	Profenophos	50 EC
29	PLONUM	Pymetrozine	25 SC (w/v)
30	SPOTFIX	Pyridabin+Clofentazine	15 EC
31	LANOLEX	Pyriproxyfen	10.8 EC
32	SPINTOX	Spinosad	48 SC
33	THOMSON	Thiamethoxam	25 WDG
34	DEMAND	Triazophos	40 EC
35	TRIX	Trichlorfon	80 SP



About Tara

[Insecticides](#)

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Herbicides

S #:	Brand Name	Active Ingredient	Formulation
01	CLEAN CORE	Acetochlor	50 EC
02	ATRACOMBI	Ametryn+Atrazine	80 WP
03		Atrazine	38 SC
04	BROXTRA	Bromoxynil+MCPA	40 EC
05	PRIMECHLOR	Butachlor	60 EC
06	SKYPE	Clodinafop Propargyl	15 WP
07	METURE	Clopyralid	30SL
08	POMAXTRA	Fenoxaprop-p-ethyl	6.9 EW
09	ONE SHOT	Fluroxypyr-Meptyl+Tribenuron-Methyl	20 WP
10	SHORTCUT	Glyphosate	48 SL
11	UNIMARK	Isoproturon	500 FW / 50 WP
12	JURY	Lactofen	24 EC
13		MCPA	50 EC
14	XTRA CARE	Metolachlor+Pendimethlin+Oxyfluorfen	50 EC
15	RATOL	Metribuzin	70 WP
16	CEKURAN	Nicosulfuron	4 SC
17	SHOTGUN	Nicosulfuron+ Atrazine+Propisochlor	37 OF
18	SHEDDER	Paraquat	20 SL
19	PENDULUM	Pendimethalin	40 SE
20	G-MAX LITE	Quizalofop-p-ethyl	15 EC
21	ATRA GOLD	S-Metolachlor	96 EC



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- [Herbicides](#)
- [Fungicides](#)
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Fungicides

S #:	Brand Name	Active Ingredient	Formulation
01	COOPIX	Copper Oxchloride	50 WP
02	SUPER GUARD	Cymoxanil+Mancozeb	72 WP
03	DORA	Diafenoconazole	25 EC
04	DORA MAX	Dimethomorph+Mancozeb	50 WP
05	SOFIT	Fenoxanil	20 SC
06	OPTION	Flusilazole	40 EC
07	SWEETSPOT	Fosetyl Aluminium	80 WP
08	COURT	Mancozeb	80 WP
09	SWING	Metalaxyl+Mancozeb	72 WP
10	STANDOUT	Sulfur	80 WDG
11	THIOSTAR-M	Thiophanate-methyl	70 WP
12	TRISEEN	Validamycin	13 SL
13	DEMAND	Triazophos	40 EC



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Micronutrient

S #:	Brand Name	Active Ingredient	Formulation
01	BOROSTAR	Copper Oxchloride	Boron
02	LAND MIX	Humic Acid	50%
03	REBORN	Diafenoconazole	Humic Acid Liquid
04	TARAPHOS	Biofertilizer	50 WP
05	GROWFERT	Multinutrient	10%
06	FRUITSET	NAA	1%
07	TARA MIX	NPKtd>	08:08:06
08	ROOT FEED	Organic Matter	60%
09	TARA ZINC	Zinc Sulphate	10%, 33%
10	LAND STAR	Liquid Potash	30%

7. The complaint states that Mr. Chaudhary Maqsood Ahmed (Director Tara Group) worked as a dealer of the Complainant for a period of time. **Copy of the Agreement attached as ANNEX-A.**

8. The Complaint alleges that the Respondent is passing their products as complainant's product to the consumers under the trademark 'Tara'. They further submitted that Complainant was acquired by one Azgard Nine Limited in 2006. The new management launched the brand 'Tara' in December 2006 for its urea, Dap, Map, Mop, SSP etc., products (the '**Products**'). They implemented an aggressive branding strategy to increase the sale and to make 'Tara' a recognizable brand and for this, the Complainant appointed dealers and Agricultural Service Representatives across Pakistan. Since 2006, the complainant is continuously using the trade mark 'Tara'.
9. The complainant's brand/promotional expenses to established 'Tara' as trademark are as follows:

Years 2006 to 2012:

YEAR	EXPENSES (RS)
2006-2007	30,734,208
2007-2008	21,691,215
2009-2010	19,139,809
2010-2011	15,487,274
TOTAL	87,052,506

10. The Complainant further submitted through complaint that they applied for the registration of the trademark/logo 'Tara' to use alone and in conjunction with various other marks in its name. Summary of the applications filed by the Complainant with the Trademarks Registry, Karachi and their current status is as under:

S.No	TRADEMARK	APPLICATION NO.	CLASS	STATUS
1	TARA Dap	228549	5	Registered
2	TARA Urea	228550	5	Registered
3	TARA Mop	248023	1	Registered
4	TARA Map	248024	1	TM-11 filed
5	TARA Urea	228548	1	TM-11 filed
6	TARA	277637	1	Pending
7	TARA	277636	5	Pending
8	TARA Dap	228547	1	Pending
9	TARA Ssp	267778	1	Pending

11. The Complainant alleged that, in the light of above, the use of trademark 'Tara' without Complainant's authority/license is unlawful, illegal, an attempt to mislead and deceive the consumer, and contrary to honest business practices. The

- Respondent in its advertisement on 13 October 2013 intends to open one-stop shop of 'Tara Zarai Markaz' as a purported affiliate of 'The Tara Group'.
12. They drew attention to Section 10 of the Act and alleged that the act of the Respondent not only harms the business interest of the complainant but also intends to deceive the farmer community. Illiterate farmers and even a wary circumspect consumer on seeing a one-stop shop in the name and style of 'Tara Zarai Markaz' while having in mind the reputation of the Complainant's Trademarks would reach the conclusion that the shop is operating as a Complainant's franchise/affiliate/branch and the products offered in 'Tara Zarai Markaz' are the products of the Complainant. As the products of the complainant are easily available in the market, same can be displayed in the shop to make the consumer confused about the identity of the actual owner of the shop. A suit for infringement of Complainant's trademark has also been filed in the district court. However, even in the said suit, there is no injunctive order, which would restrain the Commission to proceed with their complaint under Section 10 of the Act.
 13. The reliefs claimed in the complaint are as follows:
 - (i). To take action under Section 10 of the Act.
 - (ii). Restrains the Respondent and its agent to use the mark/word 'Tara'.
 - (iii). Order the Respondent to immediately remove or erase the Trademark 'Tara'.
 - (iv). Any other relief deemed fit in the circumstances.

C. RESPONDENT'S REPLY:

14. The complaint was forwarded to the Respondent for its comments. The Respondent submitted parawise comments to the complaint vide letter dated 20 February 2013.
15. It was submitted by the Respondent that 'Tara Zarai Markaz' is under the proprietorship of M/s Tara Crop Science (Pvt.) Limited and Respondent 1 & 2 does not hold any proprietorship in their individual capacities.
16. The same suit has been filed by the Complainant in District Court, Lahore, vide civil suit # 525/2012. The Complainant is generating multiple claims on different forum which is barred under the rule of '*Res Sub judice*' contained in Section 10 of Civil Procedure Code, 1908. Further the original proprietor of the sole Trademark 'Tara' is a third party, operating in the name of M/s Aziz Products since 2005. The case regarding Trademark falls in the jurisdiction of Trade Marks Ordinance, 2001 and not under Act. The Complainant has also filed an opposition before the Intellectual Property Organization, Pakistan.
17. It was also submitted by the Respondent that Tara Group consist of different companies, firms and sole proprietorship concerns which include Tara Crop

Science (Pvt.) Ltd, Imperial Agro Science, Tara Farms, Tara Seeds, Tara Imperial Industries (Pvt.) Ltd, Tara Packages and Flojo International which was the first business venture of Tara Group started in the year 2000. The Respondent also incurred considerable amount of expenses on the marketing of brand name 'Tara'. **Copies of incorporation certificates issued by the Securities and Exchange Commission of Pakistan of Tara Crop Sciences (Pvt.) Ltd and Tara Imperial Industries (Pvt.) Ltd dated 31 July 2012 and 01 August 2012 are attached as ANNEX-B & ANNEX-C.**

18. The Complainant has adopted the brand name of 'Tara Group' and trying to deceive the Honorable Commission and public at large, whereas, the true and genuine user of the trading and brand name 'Tara' is Tara Group Pakistan and its affiliated companies/firms.
19. Both the registered companies of Respondent are involved in the production of pesticides whereas the Complainant only produces macro fertilizer. The products of Respondent and the Complainant are different from each other and therefore there is no question of confusion or deception among the products. M/s Tara Crop Sciences (Pvt.) Ltd has acquired various distributorship registrations with the Directorate General Agriculture.
20. Respondents are the Directors of both registered companies and have established their business under the name and style of 'Tara Zaarai Markaz' and have opened outlets/franchise throughout the country.
21. The Respondent while submitting the para-wise comments to the complaint alleged that the authorization of Mr. Muhammad Faisal Muzzamal was only signed by the company secretary and not by the Board of Directors. Further the Respondents are not engaged in the said activities and 'Tara Zarai Markaz' is the franchise of 'Tara Crop Science (Pvt.) Ltd'. The alleged agreement is with M/s Maqsood & Co who is not the part of Tara Group.
22. The Respondent clarified that the use of word 'Tara' has not caused any deception amongst the customers as the words is used with other words like Tara Dap and Tara Map by the Complainant. The use of word Tara with the combination of other words does not give exclusive right to the complainant to use the same. The marketing and promotional expenses submitted by the Complainant are not supported by any documentary evidence.
23. Tara Zarai Markaz is the Franchise of M/s Tara Crop Science (Pvt.) Ltd and it bears the logo and name of M/s Tara Group that is enough to convey the customers that the products in it does not belongs to the complainant. Picture of the shop is as under:



24. The Respondent alleged that Trademark applications registered and accepted are of the words 'Tara' in conjunction with other words which doesn't allow the complainant to exert right on the word 'Tara'. They again emphasized that the sole word 'Tara' is registered in favor of a third party. They have not committed any practice of distributing misleading information as M/s Tara Crop Sciences (Private) Limited is clearly distinguishable from the Complainant sub mark and it is evidently displayed on its products as well as the one stop shops.
25. The Respondent has not entered into deceptive marketing practices by opening one-stop shops as the farmer community is well aware about crop protection products and techniques. As various one-stop shops are already available in the market, no deception or confusion can arise by virtue of genuine use of business name.
26. The Respondent denied various assertions of the complainant and submitted again that the businesses of both Complainant and Respondent are different so there are no chances of any confusion.
27. The Respondent prayed for the dismissal of the Complaint as the same is pending before the Honorable District Court, Lahore and requested the Commission to direct the Complainant to pay for the damages caused the Respondent and M/s Tara Group. In addition to this they also requested the Commission to bar the Complainant from filing any complaint in future with the Honorable Commission.

D. REJOINDER BY THE COMPLAINANT:

28. The Complainant in the rejoinder has denied the assertions made by the Respondents in their reply and has submitted that their reply is mutually destructive. The Respondent in its reply has made confusions regarding the ownership of trademark 'Tara' and 'Tara Zarai Markaz' at many stages. The Respondent submitted that Tara Group consists of an emerging group of companies however, no document has been appended to establish the legal status of Tara Group. All certificates are in the name of individual entities showing that Tara Group is not a legal business name but a trademark that has been used by the Respondent to make confusions in the mind of ordinary customer.
29. The word Tara Group appeared only in the advertisements with the fraudulent intention to use it as a Trademark. Respondent 1 & 2 also caused the incorporation of Respondent 3 with the intention to deceive.
30. The complainant brought attention to the NTN certificate presented by the counsel for the Respondent with the printing date of 29 June 2010 copy whereof is attached as 'ANNEX-D'. The NTN certificate was issued in favor of Mr. Shahid Mehmood and lists his businesses' names that also include Tara Packages (apparently added on 29 June 2010 that happens to be the date of printing of the NTN certificate after addition of last business name). Thus, the NTN certificate, in fact, shows that the business name Tara Packages was registered with the tax authorities on 29 June 2010, much later than 2006, the time when the Complainant started using the trademark 'Tara'. However the document of Form 'C' regarding Tara Packages registration shows the date of registration as 01 June 2012. Copy is attached as 'ANNEX-E'.
31. They further alleged that the date of incorporation of 'Tara Crop Sciences' is critical i.e., 31 July 2012, which established that it has been incorporated to justify the otherwise illegal use of the Complainant's trademark 'Tara' and to cause confusion amongst the ordinary consumers. Copy is already attached as 'ANNEX-B'.
32. The complainant submitted that the remedies available by him under Section 10 of the Act is additional to the remedy envisaged in Section 40 of the Trademarks Ordinance, 2001 (hereinafter the '**TM Ordinance**') and is supported by Section 39 (3) of the TM Ordinance. Furthermore, Section 10 of the Code of Civil Procedure, 1908, is not applicable to the subject matter. The Complainant also denied assertion that the original proprietor of the trade mark 'Tara' is a third party M/s Aziz Product, as the alleged registration falls in class 31 of the TM Ordinance and has no applicability to the subject situation. Further the complainant reiterated that the Commission has full jurisdiction over the case submitted by him and the use of the word 'Tara' in a trademark by the Respondents has been done with the ulterior intent to cause deception and confusion amongst the consumers and to cause loss to the Complainant.

E. MEETING WITH THE PARTIES:

33. Upon their request, a meeting of the representatives of the parties was also conducted with the enquiry officers on 17 December 2013. The meeting was attended by Mr. Wasif Majeed on behalf of the Complainant and Mr. Haseeb Zafar represented the Respondents.
34. The representatives reiterated all the points taken in their respective replies already submitted before the Enquiry Officers. However, much stress has been laid by the Respondent on the principle enshrined under Section 10 of the Code of Civil Procedure, 1908 i.e. *res subjudice*.
35. Subsequent to the enquiry the council of the Complainant was asked to provide the following:
- (i). Copies of the form submitted to the trademark registry for the change of name of the Complainant from Pak-American Fertilizer limited to Agritech.
 - (ii). Certified copies of preliminary and final report of the local Commission and order sheet to this effect in the suit pending before the district court Lahore.
36. Whether as the council of the Respondent was also requested to provide the following information to the enquiry officers vide letter dated 2 January 2014
- (i). The documentary evidence of the use of trade name/ trade mark 'Tara' by your client/Respondent from 2006 onward and
 - (ii). The documentary evidence of registration of trademark 'Tara' in Class 5 in favor of Respondent.
37. After this meeting, the complainant provided the following information:
- (a) The complainant enclosed forms in respect of trademark applications of its products. They claimed that the form for change of name of all the applications was filed on 20 January 2010 soon after approval to this effect was obtained by Securities and Exchange Commission of Pakistan.
 - (b) For the second category document they have submitted order dated 30 July 2013 for appointment of local commission, final report of the Commission and order sheet. Copies whereof are attached as 'ANNEX-F1' to 'ANNEX-F3'.
38. The Respondent, in the reply, has submitted that:
- (a) The Complainant alleged that the respondent opted the disputed trademark in the year 2012. However, the documentary evidence reveals the fact that

the Respondent is using the mark 'Tara' since 2002 as indicated in the NTN certificate issued by FBR on 25 September 2002.

- (b) The Respondent has also published the advertisement of 'Tara Seeds' in Maayaar Magazine in the month of December 2005 & November 2006. They also submitted that the Respondent has made agreement for grant of franchise with its franchisees with the explicit terms & condition that no product of the Complainant will be sold on franchise outlet except manufactured by the respondent companies. They also provided the copy of one such agreement.
- (c) The Respondent also rectified the error by filing TM-16 for change of proposed to use to date of use as 2002 before the Trade Mark registry. They provided the copy of TM-16 and payment proof also.
- (d) With regard to the second question they submitted that the Respondent has also filed number of trademark applications in the year 2008 & 2009 including in class 5. They provided the detail as a proof that they have association with the word 'Tara' before 2012.

F. ANALYSIS & FINDINGS:

39. As already mentioned in para 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?

40. However, since much stress has been laid down on the principle of *res subjudice* therefore, we also deemed it appropriate to discuss the issue of *res subjudice* before proceeding on with the basic issue of *prima facie* violation of Section 10 of the Act.

I. WHETHER THE PROVISIONS OF SECTION 10 OF C.P.C. ARE ATTRACTED IN THE INSTANT MATTER?

41. It is pertinent to mention here that the Complainant had also instituted a Civil Suit in the District Court, Lahore being Civil Suit No. 525/ 2012 on 16 November 2012 against the Respondent for infringement of the trademark under the provisions of TM Ordinance, wherein interim injunction was granted in favour of the Complainant and against the Respondent regarding the use of mark 'TARA'. Copies of the Plaint in the Civil Suit and the Injunctive Order are attached as 'ANNEX-G' and 'ANNEX-H'.

42. On the other hand, the complaint filed with the Commission pertains to the specific violation of Section 10 of the Act i.e. the deceptive marketing practices

- rather an infringement of trademark. Hence, primarily the scope of proceedings and the reliefs claimed in both the matters are under different statutes.
43. We are conscious of the fact that the provisions of Section 10 of C.P.C. are applicable where the proceedings are pending and adjudicated upon by the courts of competent jurisdiction; however, the superior courts have invariably held that where the matter is not pending adjudication before the courts of concurrent jurisdiction the provisions of Section 10 are not applicable.
44. It is worth mentioning that in the case reported as **1999 YLR 1112** titled *Industrial Development Bank of Pakistan vs. M/s Azeem Foods Limited*, a similar proposition was discussed. The principle enunciated by the Hon 'able High Court in the afore referred case is that provisions of Section 10 of C.P.C. are not attracted in the position where subsequent proceedings are special proceedings which are not in a nature of Civil Suit, rather a special proceedings under a special law for a particular violation of the provision of a special statutes.
45. It is also worth mentioning that under the provisions of the TM Ordinance in particular the provisions of subsection (3) of Section 39 of the TM Ordinance, the proprietor of a trademark is permitted to obtain relief under any other law for the time being in force in addition to availing the remedy under the TM Ordinance. The provisions of subsection (3) of Section 39 are reproduced herein below:
- 39. (3) Without prejudice of the right of the proprietor of a registered trade mark to obtain any relief under any other law for the time being in force, the proprietor shall also have the right to obtain relief under this ordinance if the trade mark is infringed.***
46. Bare perusal of the above provisions makes it abundantly clear that the law itself permits the proprietor of the trademark to avail various remedies under different laws including the remedy under the TM Ordinance.
47. Furthermore under the provisions of Section 59 of the Act, the Commission has exclusive jurisdiction to take cognizance of the matters provided and prohibitions provided under thereof.
48. In view of the above stated position, we, the enquiry officers, are of the *prima facie* view that the provisions of Section 10 of the Code of Civil Procedure, 1908 (*res subjudice*) are not attracted to the proceedings under the Act for violations of provisions of the Act.

II. WHETHER THE ALLEGATIONS LEVELED AGAINST THE RESPONDENT UNDER THE COMPLAINT CONSTITUTES A *PRIMA FACIE* VIOLATION OF SECTION 10 OF THE ACT?

49. The Complainant in the instant matter has primarily alleged the use of trademark 'Tara' without Complainant's authority/license is unlawful, illegal and is misleading and deceptive as well as contrary to honest business practices.
50. It has also been alleged in the complaint that the act of the Respondent of using the trademark of the Complainant i.e., 'Tara' is capable of harming the business interest of the Complainant and is aimed at deceiving the unwary consumers which in the instant case are farmer community which, in general, is illiterate. It has also been submitted by the Complainant that even a knowledgeable consumer, on seeing a one-stop shop in the name and style of 'TARA ZARAI MARKAZ' having in mind the reputation of the Complainant's trademarks, would reach the conclusion that the shop is operating as a Complainant's franchise/affiliate/branch and the products offered in 'TARA ZARAI MARKAZ' are the products of the Complainant. As the products of the complainant are easily available in the market, these can be displayed in the shop and confuse the consumer about the identity of the actual owner of the shop.
51. In support the Complainant has provided the evidence regarding the brand promotion and marketing expenses from the year 2006 to 2011 which amounts to Rs. 87,052,506/-. In addition the Complainant has also provided details of the trademark applications and their status.
52. On the other hand, the Respondent has denied all the allegations of the Complainant and submitted that the use of word 'Tara' has not caused any deception amongst the customers as the words is used with other words like Tara Dap and Tara Map by the Complainant. The use of word Tara with the combination of other words does not give exclusive right to the Complainant to use the same. The marketing and promotional expenses submitted by the Complainant are not supported by any documentary evidence. It was also submitted by the Respondent that 'TARA ZARAI MARKAZ' is the Franchise of M/s Tara Crop Science (Pvt.) Ltd and it bears the logo and name of M/s Tara Group that is enough to convey the customers that the products in it does not belongs to the Complainant.
53. The Respondent submitted that they have not entered into deceptive marketing practices by opening one stop-shop as the farmer community is well aware about crop protection products and techniques. As various one-stop shops are already present in the market, no deception or confusion can arise by virtue of genuine use of business name.
54. Before proceeding further, it is important to determine the intention of the advertisement in question which pertains to the franchise system of 'Tara Zarai

Markaz'. 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. The term 'misleading advertisement' is defined under the provisions of clause (xxv) of Section 2 of the TM Ordinance in the following words:

“misleading advertising” means any advertising which in any way including its presentation, deceives or its likely to deceive the persons to whom it is addressed or whom it reaches and which by reason of its deceptive nature, is likely to affect their behavior or which, for those reasons injures or is likely to injure a competitor.

55. Based on the above definition, when the overall impression of the advertisement is noted, it appears that the farmers would assume that the 'TARA ZARAI MARKAZ' might have some affiliation with the Complainant as their products i.e., fertilizers are not only available in the market but also bears the name 'TARA' as a mark on them.
56. It is pertinent to mention here that the Legal Counsel appearing on behalf of Respondent has clearly suggested that M/s Tara Crop Sciences (Private) Limited (hereinafter referred to as the '**Tara Crop Sciences**') introduced an Exclusive Franchise Network under the name 'TARA ZARAI MARKAZ' in the year 2013 through which a system of one-stop shops have been established with the concept of all agricultural inputs available under one roof, which *inter alia* include insecticides, herbicides, fungicides, micronutrients, and various other types of seeds and fertilizers. Through the franchise network of TARA ZARAI MARKAZ, Tara Crop Sciences is also engaged in providing services to farmer's door step, surveys and recommendations, and to develop farms field demonstrations.
57. 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 expend considerable resources to identify their goods, distinguish their services, and cultivate goodwill.
58. 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). 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.

59. Undertakings develop a relationship with their customers/consumers by building up their reputation and expending considerable effort and resources in branding i.e., 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 knowledgeable people. The use of similar trademarks by other undertakings would cause substantial damage to the trademark owner’s business and goodwill. 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 trademarks; unique company names, person names, product names, packages, decorations; origin of products, internet domains, and so on. Usually, the 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 used without authorization and also on the consumers who may be deceived to purchase the inferior good or get an inferior service.
60. There is no doubt that the Complainant is engaged mainly in the business of manufacturing and marketing of fertilizers (Urea and DAP) and is also one of the largest manufacturer of Single Super Phosphate (SSP) manufacturing plant in Pakistan. The Complainant sells their urea products with the names ‘TARA UREA’, ‘TARA DAP’ and TARA SUPER’. The images used by the Complainant over its product are as follows:



61. On the other hand the logo and the mark used by the Respondent in particular by the Tara Crop Sciences in their Franchise Network of TARA ZARAI MARKAZ are TARA GROUP and TARA ZARAI MARKAZ, which are as follows:



62. On the website of TARA Group i.e. www.taragroup.com.pk, it has been mentioned that Tara Crop Sciences under their Franchise Network with the name “TARA ZARI MARKAZ”, has been established with the concept of all agricultural inputs available under one roof. It is also worth mentioning that the Respondent has not produced any document regarding its existence or use of the name TARA prior to 2010.
63. It is also pertinent to mention here that the franchise network of TARA ZARAI MARKAZ has been launched in the year 2013 and the Tara Crop Sciences who is responsible for launching and establishing the said exclusive franchise network was incorporated on 31 July 2012 as per the certificate of incorporation annexed as ‘ANNEX-B’ to this report. However, the brands and the trademark of the Complainant are in existence since 2006 i.e. at least six years prior to even incorporation of the Tara Crop Sciences.
64. Although the Respondent has referred to the TM-16 and also submitted a copy of TM-16 regarding the use of the mark ‘TARA’ however, the date of filing of the TM-16 is in March 2013, which is much after the filing of the complaint with the Commission and also subsequent to the filing of the written reply by the Respondent with the Commission.
65. It is also worth mentioning that the applied logo of the TARA ZARAI MARKAZ is not the one which is being used by Tara Crop Sciences on their billboards and franchise hoardings, rather a star logo and the words TARA has been used in prominence which gives a misleading impression about the affiliation of the Tara Crop Sciences’ exclusive Franchise System of TARA ZARAI MARKAZ with the Complainant.
66. Regarding the income tax registration certificate, it is noted that the same pertains to registration of Mr. Shahid Mehmood as tax payer and the business listed therein does not provide the date of their establishment or operation. However, the date of printing on the certificate indicates that the status is as of 29 June 2010 rather than prior to 2006. The copies of the advertisements of TARA ZARAI MARKAZ provided by the counsel for the Respondent also does not seem to be much supporting the case of the Respondent as they pertains to ‘Tara Seeds’ with

a green leaf mark. However, the same does not in any way include the ‘star’ in the logo, which is used by the Complainant on its products.

67. On the other hand, the Complainant has produced evidence from 2006 regarding the use of the mark/name ‘TARA’. The Complainant has also produced the documents regarding the expenditures occurred with reference to the branding and launching of TARA and it also has existence in the market of fertilizer, which is the single most important and significant market of agricultural based products and the consumers in the said market are farmers.
68. We notice that in the mark used by the Complainant over its products a star is also used in addition to the word TARA written in Urdu and similarly the Tara Crop Sciences has also used the star in its marketing campaign of the TARA ZARAI MARKAZ. From the documents made available to us, we are of the *prima facie* view that the Complainant is a prior user of the mark ‘TARA’. It is relevant to refer to the definition of ‘trademark’ as provided under the provisions of clause (xlvi) of Section 2 of the TM Ordinance, 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 undertakings”

69. In addition, to the above, it will also be relevant to refer to the definition of the ‘mark’, which is defined under clause (xxiv) Section 2 of the TM Ordinance, and for ease of reference is reproduced herein 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;

70. It is also pertinent to highlight that in the Local Commission Report, annexed as ‘ANNEX-F3’ to this Report, it has been categorically states, that when the consumers asks the staff deputed at TARA ZARAI MARKAZ exclusive Franchise network about the affiliation, the franchise owners inform them that its ‘TARA UREA GROUP’ products”. It appears that the Tara Crop Sciences through its exclusive franchise network under the name and style of ‘TARA ZARI MARKAZ’ is making an attempt to use the trademark, logos and closely resembling symbols in their company names and in their marketing campaign at a much subsequent and belated stage i.e. almost after seven (7) years from the date of existence of ‘TARA’ mark and its use thereof by the Complainant, which *prima facie* gives a misleading impression to the consumers regarding the

affiliation of the Tara Crop Sciences' exclusive franchise network under the name and style of TARA ZARAI MARKAZ with the Complainant.

71. In this regard, we note that when an undertaking decides to start the 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 intent to use, is not being used by any other undertaking. If such caution is not exercised and business activity is started and subsequent marketing campaigns are also launched under the said name and style or the trademark or copyright and any violation which *inter alia* includes the deceptive marketing practices, infringement and/or passing off is caused, 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.
72. 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; as in terms of Section 33(3) of the TM Ordinance 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.
73. Keeping in view the above, it appears that Tara Crop Sciences through its exclusive franchise network i.e. TARA ZARAI MARKAZ has infringed upon the rights of the Complainant who is a prior user of the trademark 'TARA', and who has invested considerable money and effort in establishing the brand 'TARA' and creating and establishing a rapport with the consumers i.e., the farmers regarding its products.
74. It also appears that the consumers on seeing a one-stop shop / franchise outlet i.e. 'TARA ZARAI MARKAZ' while having in mind the reputation of the Complainant's trademarks would reach the conclusion that the shop is operating as a Complainant's franchise/affiliate/branch and the products offered in 'TARA ZARAI MARKAZ' are the products of the Complainant. As the products of the Complainant are easily available in the market, same can be displayed in the shop to make the consumer confused about the identity of the actual owner of the shop.
75. We also note that trademark rights are a lifeline of businesses and any unauthorized use of owner's trademark by third parties results in un-quantifiable loss and damage to their goodwill and business, which is irreparable in nature.
76. 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 of the Act i.e. the deceptive marketing practices.

G. RECOMMENDATIONS:

77. The deceptive marketing practices 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 Tara Crop Sciences, under Section 30 of the Act in accordance with law.

Noman A. Farooqi
Senior Joint Director
Enquiry Officer

Noman Laiq
Joint Director
Enquiry Officer

Marryum Pervaiz
Assistant Director
Enquiry Officer

ANNEXURES

Sr. No.	Description of Document	Annexure
01.	Copy of the Dealership Agreement with Ch. Maqsood Ahmed, Director Finance at M/s Tara Group Pakistan	A
02.	Copy of the Certificate of Incorporation of M/s Tara Crop Sciences (Private) Limited dated 31-07-2012	B
03.	Copy of the Certificate of Incorporation of M/s Tara Imperial Industries (Private) Limited dated 01 August 2012	C
04.	Copy of the NTN Certificate dated 29 June 2010	D
05.	Copy of the Form 'C' regarding registration of TARA Packages dated 20-06-2010	E
05.	Copy of the Order dated 30-07-2013 of District Court Lahore regarding appointment of Local Commission	F1
06.	Copy of the Interim Report of the Local Commission	F2
07.	Copy of the Final Report of the Local Commission	F3
08.	Copy of the Complaint filed by the Complainant before District Court Lahore	G
09.	Copy of the ad-interim injunctive Order in the case filed by the Complainant	H