

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 SOCIETE ANONYME
DES EAUX MINERALES D'EVIAN AGAINST M/S AQUA EVIAN (SMC-PVT)
LIMITED & Mr. MUHAMMAD ZEESHAN
FOR
DECEPTIVE MARKETING PRACTICES

BY

A.A

M.A

AMIN AKBAR & MEHMOONA ALLAUDDIN

Dated: December 23, 2025

1. BACKGROUND:

- 1.1 M/s Societe Anonyme Des Eaux Minerales D'EVIAN (the 'Complainant'), filed a complaint dated August 07, 2023 against M/s Aqua EVIAN (SMC-PVT) Limited (the 'Respondent No. 1') and Mr. Muhammad Zeeshan, Chief Executive Officer of M/s Aqua EVIAN (SMC-PVT.) Limited (the 'Respondent No. 2') (hereinafter collectively referred to as "Respondents") 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 Respondents are using the registered Trademark i.e. EVIAN, Mountain Peaks logo and statement 'Natural Mineral Water', of the Complainant on its own bottled mineral water. The Complainant believes that by doing so the Respondents have the ability to affect consumer buying and distort healthy competition in the market.
- 1.3 Based on the preliminary fact-finding, the enquiry was initiated on February 21, 2024, in accordance with subsection (2) of Section 37 of the Act by appointing Mr. Riaz Hussain, Deputy Director (OFT), and Ms. Ayesha Batool, Research Analyst (OFT), as enquiry officers (collectively the 'Enquiry Officers'/ 'Enquiry Committee'). The Enquiry Committee was reconstituted on May 29, 2024, by replacing Ms. Ayesha Batool with Mr. Amin Akbar, Assistant Director (OFT), as the new enquiry officer. Subsequently, on January 01, 2025, Mr. Riaz Hussain, Deputy Director (OFT) was transferred to Cartel and Trade Abuse department, so the Enquiry Committee was again reconstituted by appointing Ms. Mehmoona Allauddin, Management Executive (OFT), in his place. The line of enquiry to be pursued by the Enquiry Committee worked out as follows:
- i. *Whether the conduct of the Respondents pertains to the fraudulent use of another's trademark, firm name or product labelling or packaging in, prima facie, violation of Section 10 (2)(d) of the Act?*
 - ii. *Whether the conduct of the Respondents is capable of harming the business interest of other undertakings in, prima facie, violation of Section 10 (2)(a) of the Act?*
 - iii. *Whether the Respondents are disseminating false and misleading information to consumers, including the distribution of information lacking a reasonable basis, related to the price, character, method or place of production, properties, suitability for use, or quality of goods, prima facie, in violation of Section 10(1) in general and in particular, Section 10 (2)(b) of the Act.*
 - iv. *Whether there is a spillover effect of the conduct of the Respondents?*

2. THE COMPLAINT:

- 2.1 The Complainant stated that it is a French Societe Anonyme organized and existing under the laws of France having its trade/business address at 11 Avenue du General Dupas, 74500 EVIAN-les-Bains, France. It was created in the year 1859 and developed its business

around the Cachat Spring at EVIAN, in France, by bottling and marketing of mineral water and organizing health cures consisting of drinking the EVIAN water on spot.

- 2.2 The Complainant further stated that it first used the word EVIAN in the year 1859 as an integral part of its company name, later adopting it as a word mark in relation to its mineral water in 1890. It has since used unique colors and style to modify it periodically.
- 2.3 Further, in the year 1898, the Complainant sold 2 million liters of EVIAN mineral water. As of 1901, EVIAN mineral water was exported all over Europe, Middle East and Argentina, with 60,000 units only sold in Egypt. By 1911, more than 12 million bottles were being shipped for sale in pharmacies and grocery stores. In 1954, sales had risen to 100 million liters necessitating additional manufacturing capability. In 1958, production had reached 270 million bottles. The year 1965 saw modernization in Evian's manufacturing, and 5 years later the 537 million liters sold by the Complainant comprised 35% market share. By this time, the Complainant had also introduced packaging of its water in plastic bottles.
- 2.4 Due to the long, extensive, and continuous use of the exclusive and distinctive trademark and tradename EVIAN, the EVIAN mark is solely associated with the Complainant across the globe, and goods under the EVIAN trademark are currently distributed and sold extensively in around 120 countries, including Pakistan. The Complainant has been consistently expanding its operations under the said trademark throughout the world.
- 2.5 Apart from mineral water, the Complainant uses its EVIAN trade mark for its other offerings such as different types of beverages, cosmetics and services (such as 'spa') that it offers.
- 2.6 That the Complainant's well-known and extensively used trademark EVIAN used in relation to the EVIAN marked goods, in particular mineral water, is used in an artistic style with the wordmark EVIAN written in lowercase letters using a bright pink color with pure white background and mountain peaks on top of the word "EVIAN", as depicted below:



- 2.7 The Complainant stated that keeping abreast with the technological advancement of media, it has taken all the possible steps to make information about itself as well as its trademark EVIAN and its goods, in particular mineral water readily available to people across the globe. It has spent considerable amount of time, money and resources towards promotion and advertisement of its trademark to heighten and maintain the popularity of the same. It operates international websites that correspond to different countries in their specific languages. One of the websites operated is www.evian.com. Moreover, the Complainant also has a Facebook page with more than 1,600,000 followers and Instagram account with 145K followers and has a very famous Snapchat account by the name of @EVIANwater. The Complainant's aforementioned website that specifically advertises its trademark and

trade name EVIAN & Mountain Peaks logo (hereinafter 'the logo') is viewed throughout the world by potential/ existing customers and the public at large and has substantially contributed to the widespread popularity of the Complainant's trademark and trade name.

- 2.8 The Complainant mentioned that its logo bearing mineral water received a global ranking of no.4 by Global Data in 2016. In addition, the Euromonitor International Ltd. had certified that its brand of water was number one globally in the Still Natural Mineral Water market in terms of retail value sales in 2016. Google and various other websites listed below also refer to the Complainant when the keyword "EVIAN" is searched.

- i. <https://en.wikipedia.org/wiki/EVIAN>
- ii. <https://www.leaf.tv/articles/facts-about-EVIAN-water/>
- iii. <https://www.quora.com/Why-does-EVIAN-taste-and-feel-different-from-other-waters-in-my-mouth>
- iv. <https://www.quora.com/Whats-the-best-water-to-drink>

- 2.9 The Complainant stated that its goods, in particular mineral water had been selling in Pakistan since 1987. By 1995, the water was being channeled into the retail market through various importing traders, witnessing bumper sales. Evian water was freely available in leading supermarkets, provision stores, medical stores, grocery stores, convenience stores, departmental stores, minimarkets, bakeries, as well as digital channels. The Complainant has also enjoyed clientage of big commercial entities such as P.I.A. Some online sources that sell EVIAN water are listed below:

- i. www.carrefour.pk
- ii. www.daraz.pk
- iii. www.naheed.pk
- iv. www.chase.pk
- v. www.jalalsons.com.pk
- vi. www.tee-emm.com
- vii. www.shoppingbag.pk
- viii. www.esajee.com
- ix. www.alfatah.pk
- x. www.hkarimbuksh.com

- 2.10 As per Complainant, its designated distributor in Pakistan is **Global Royal Trading**, (House, E-25, Near the Gun Shop Block A, Gulshan-E-Jamal, 75300 Karachi, Pakistan as its Pakistani distributor which continues to import, distribute and sell Complainant's EVIAN branded products in Pakistan.

- 2.11 The Evian brand mineral water has acquired a high reputation and goodwill in Pakistan, and any use of a deceptively similar logo by another economic entity without the express consent of the Complainant, would hurt its business interests while infringing consumer rights through misrepresentation.

- 2.12 The logo has been designed, introduced, developed and popularized in Pakistan in relation to the mineral water. Thus use of the same for any other marketed water without the consent of the Complainant can only be with the intent to deceive the public and capitalize on the good will of the Complainant's brand. The level of goodwill associated with the logo may

be gauged by the global sales revenue of Evian water equaling €645 million or (PKR 126 billion).

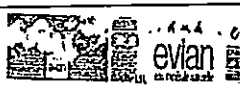
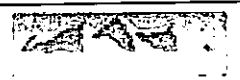
2.13 Particularly with respect to the goodwill and reputation of the logo in Pakistan, the Complainant provides the following reasons:

- a) Goodwill through Pakistani expatriates residing in different parts of North America, Europe, Middle East and Asia Pacific.
- b) Publicity, sale promotions and advertisements through leading international print media available locally, and social media websites readily frequented in the country such as Facebook, Twitter, Instagram and Snapchat.
- c) A 35 year presence in Pakistan backed by advertising through ever ever-increasing trend of news and print media over this period.

2.14 The Complainant also ascribes its reputation and goodwill to the transformation of the world into a so-called 'global village'. With rapid technological advancement, international brands and their logos have gained recognition across the world. Ever increasing trend of Pakistanis traveling abroad has also contributed in this regard.

2.15 To protect its interests, the Complainant has obtained more than 1100 registrations in over 120 territories of the world for its logo in line with the International System for Classification of Goods.

2.16 The Complainant stated that in order to protect its interests and rights in Pakistan, it has also registered and/or applied for registrations under the Trademarks Ordinance 2001, details of which are as under:

Trademark	Reg. No.	Class	Filing Date	Goods
EVIAN	91898	32	02-10-86	Beer, ale and porter, mineral and aerated waters and other non-alcoholic drinks, syrups and other preparations for making beverages.
	127052	32	16-10-94	Natural spring water being goods included in Class 32
	159459	32	13-12-99	Still or aerated waters (mineral or non-mineral water). Fruit or vegetable juice, fruit-or vegetable based drinks, lemonade, tonic water, ginger beer, sorbets (drinks), preparations for making drinks, syrups for drinks, alcohol free fruit or vegetable extracts, alcohol-free drinks comprising a

				minority of dairy produce, alcohol-free drinks comprising a minority of lactic fermenting agents
	423884	32	02-06-16	Table waters; still or aerated waters (mineral or non-mineral water); flavored water; fruit or vegetable juice (beverage); fruit or vegetable based drinks; alcohol-free fruit extracts; soda waters (tonics); syrups and other preparations for making beverages; alcohol-free drinks

2.17 The Complainant submitted that it has always been very vigilant to protect its valuable rights in its trademark and logo and to prevent use thereof in respect of identical or allied or cognate goods to which it is entitled under the statutory law and common law principles, as the case may be. In this respect, relevant forums in countries such as India, China and Korea have made rulings in favor of the Complainant and have rejected applications of third parties and have acknowledged the goodwill and reputation of the Complainant's logo.

2.18 The Complainant is aggrieved that the Respondents are using its logo fraudulently in terms of section 10(2)(d) of the Act. That the said action of the Respondents is misleading towards its customers and end consumers and likely to cause irreparable damage to its business interests in terms of Section 10(2)(a) of the Act, by tarnishing its brand image. Depiction of the Respondents' fraudulent use of Complainant's trademark and trade name EVIAN & Mountain Peaks logo is produced below;



2.19 The Complainant believes that the above logo is an imitation of the name and image embedded in its own logo for which it has exclusive proprietary rights through requisite trademark registration. That despite having so many available options in terms of name and design, the Respondent's move to blatantly emulate its logo is unjustified and a clear act of Deceptive Marketing. Even the placement of the mountains' image above the text in the Respondents logo is done to replicate the Complainant's logo.

2.20 The Complainant apprehends that this similarity of the Respondents' logo could mislead a consumer into believing that either it's the former's Evian water or a new release in the same product line. It becomes more of a concern considering that both types of water have the same distribution channels and sale outlets. Furthermore within those sale outlets, they are placed side by side, on the same shelves and in the same aisles.

2.21 The Complainant believes that the impugned behavior of the Respondent in light of the factors discussed above is indicative of deceptive marketing not just in terms of 10(2)(a) but also 10(2)(b) of the Act.

2.22 The Complainant intimated having filed a suit for trademark infringement and passing off before the Intellectual Property Tribunal and which has in its restraining order stated that:

"Meanwhile, the Defendants are restrained from infringing the plaintiff's registered trademark by producing, supplying, exporting, marketing and selling their water and drink goods by adopting identical trade name/trademark EVIAN, Mountain Peak logo, or EVIAN Pak trademark and domain name, either alone or in any other deceptively similar manner, whatsoever, subject to notice and all legal exceptions with factual objections."

2.23 For its complaint filed before the Commission, the Complainant sought relief in the form of the following:

- a. Conducting an inquiry under Regulations 16 and 17 of the Competition (General Enforcement) Regulations, 2007 against the Respondents for committing aforesaid acts constituting Deceptive Marketing Practices.
- b. Initiation of proceedings under Section 30 of the Competition Act, 2010 against the Respondents.
- c. An Order under section 31 (1) (c) (i) to require the Respondents to restore the previous market condition and not to repeat the prohibitions specified in section 10 of the Act.
- d. An Order under section 31 (ii) of the Act for confiscation, forfeiture or destruction of the goods for which the Respondents are or have been fraudulently using the trademark and trademark EVIAN & Mountain Peaks logo in violation of the rights of the Complainant.
- e. Impose a high penalty at rates prescribed in Section 38 of the Act due to Respondents' willful indulgence in Deceptive Marketing Practices.
- f. Any other relief deemed fit by the Commission.

3. CORRESPONDENCE WITH RESPONDENTS:

3.1 After examining the concerns put forth by the Complainant, the Respondents were asked to present their side through letters dated March 08, 2024, March 27, 2024 and April 24, 2024. The Respondents' reply of April 29, 2024 included an undertaking that is reproduced below:

- 1- مظہر حلفاً بیان کرتا ہے کہ مظہر عاقل و بالغ ہے اور جانتا ہے کہ جھوٹ بولنا گناہ و اخلاقاً جرم ہے۔
- 2- مظہر حلفاً بیان کرتا ہے کہ منے ایک عدد برنس Aqua Evian کے نام سے Mineral Water Plant شروع کیا تھا جو کہ مجھے بعد ازاں مجھے پتہ چلا کہ یہ ایک رجسٹرڈ Brand ہے تو میں نے اس نام سے اپنا کاروبار فوری بند کر دیا اور اب میں نے MZ Mineral Water Plant کے نام سے نیا کاروبار شروع کیا ہے۔ اسی نام سے کاروبار کر رہا ہوں۔
- 5- مظہر حلفاً بیان کرتا ہے کہ مظہر نے بیان بالا بقائمی ہوش و حواس غمہ بلا جبر و اکراہ بدو خوردنی کسی نشہ آور شے کے برضا و رغبت خود اثبات عقل تحریر کروا دیا ہے۔
- 6- مظہر حلفاً بیان کرتا ہے کہ بیان بالا مظہر کے علم و یقین سے بالکل صحیح و درست ہے۔ کوئی امر نفی یا پوشیدہ نہ رکھا گیا ہے۔

مورخہ 29-05-2024

4. ANALYSIS:

4.1 As mentioned in para 1.3 above, the mandate of this enquiry is to determine, prima facie;

- i. *Whether the Geographic market of the Respondent's product extend beyond a province and if so whether there is a spillover effect?*
- ii. *Subject to confirmation of the above, whether the*
 1. *conduct of the Respondents amounts to fraudulent use of another's trademark, firm name, product labelling or packaging in, prima facie, violation of Section 10 (2)(d) of the Act?*
 2. *conduct of the Respondents is capable of harming the business interest of other undertakings in, prima facie, violation of Section 10 (2)(a) of the Act?*
 3. *Respondents are disseminating false and misleading information to consumers, including the distribution of information lacking a reasonable basis, related to the price, character, method or place of production, properties, suitability for use, or quality of goods, prima facie, in violation of Section 10(1) in general and in particular, Section 10 (2)(b) of the Act.*

I. **Whether the conduct of the Respondents pertains to the fraudulent use of another's trademark, firm name or product labelling or packaging, prima facie, in violation of Section 10 (2)(d) of the Act.**

4.2 The Complainant has, in its submissions, provided that its bottled natural mineral water is being sold in around 120 countries. Moreover, the Complainant has also established its right to ownership of the trademark and trade name 'Evian' through registration in multiple

jurisdictions, including Pakistan. The trademark is accompanied by the mountain device/ design on the label, which is also duly registered, and the statement 'Natural Mineral Water' beneath it. (The registration certificate from IPO is attached as Annex- A for reference).

- 4.3 Whereas, the Respondent No. 1 is a private limited company duly registered with the SECP on June 12, 2023 as "Aqua Evian (SMC-Pvt.) Limited", having an office at Daluwali Village Heer, Sialkot. The Respondent No. 2 is the Chief Executive Officer of M/s Aqua Evian (SMC-Pvt.) Limited and engaged in the business of bottled drinking water. The Respondent No. 1 is operating under company registration number 0232121 and principally engaged in manufacturing, selling, and marketing of drinking bottled water.
- 4.4 As mentioned in para 2.1 *ibid*, the Complainant company was created in the year 1859 and developed its business around the Cachet Spring at Evian, in France, by bottling and marketing of mineral water in the name of "evian". Whereas, the Respondent No. 1 was created in the year 2023, therefore, it can be inferred that the Complainant is a prior established company than the Respondents with a renowned brand 'evian'. The Complainant has invested credible time in the establishment of its trademark before the registration of the Respondents' firm. Furthermore, as per the documentary evidence, the Respondents operate in Pakistan only whereas the Complainant has business activities inside as well as outside Pakistan. Thus, *prima facie* depicting that the Complainant is a well-known company with an established brand name and presence in the relevant industry.
- 4.5 The Complainant submitted that the Respondents' firm name and trademark "AQUA EVIAN" have been obtained by merely adding the word AQUA before the word "evian" which is a well-known trademark and tradename of the Complainant.
- 4.6 The Complainant further submits that the Respondents' fraudulent use of another's trademark and firm name (trade name), i.e., the Complainant's trademark and trade name evian and Mountain Peaks logo on their products would inevitably result in misleading the consumers and a potential purchaser would be much more likely to purchase the Respondents' "AQUA EVIAN" product using the imitated trademark, trade name/company name and mountain peaks log considering it to be same or another range of product of the Complainant.
- 4.7 Goodwill, misrepresentation, and damage are three essential elements of a passing-off action under the law that need to be established by the Complainant. In the instant matter, the Complainant's trademark has acquired a high reputation and goodwill around the globe. In addition, the Complainant's trademark has also acquired substantial goodwill and reputation in Pakistan for the past several years due to many reasons, including; (i). the availability of the Complainant's products in various European and Asian countries where a large number of Pakistani population live and work; (ii) publicity, sales promotional activities, and advertisements published in leading international print media circulated and made available in Pakistan; and (iii) availability and sale of the Complainant's products bearing its trademark in Pakistan for almost 35 years.

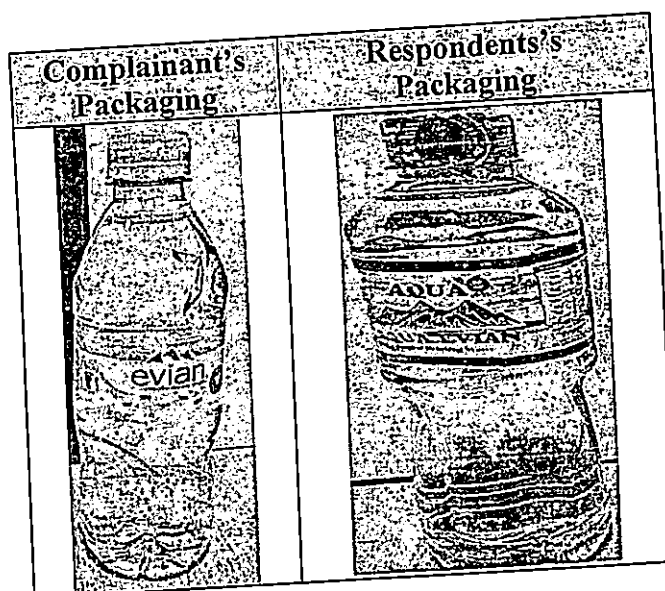
- 4.8 Using “AQUA EVIAN” (which translates to “Evian Water” in Portuguese or Spanish style) could mislead consumers into thinking it is an official Evian product or somehow affiliated with the original brand. The reason is that adding the word “AQUA” before “EVIAN” which is a famous brand name, may imply origin or endorsement. therefore, concerning the elements of confusion and deception amongst the general public caused by the Respondents’ trademark and trade name due to the similar business area, both products’ target market is analyzed.
- 4.9 A comparison of the submitted and available marketing material related to the trademark is performed to identify the misrepresentation in this regard.

Table 1: Comparison of Trademarks

	Complainant’s Trademark	Respondents’ Trademark
Trademark/logo		
Trademark colors	Two colors: Pink and Black color	One color: Dark Blue
Style	Different font case is used (Small Letters)	Capital Letters used
Logo Design	Three mountain peaks used	A combination of various peaks
Slogan/Tagline	<i>Natural Mineral Water</i>	Bottled Drinking Water

- 4.10 The preliminary assessment for determination of any possibility with respect to passing off is that the trademark and trade dress should be such that the ordinary consumer, as defined by the Commission in its Orders, may believe the product to be of a certain brand, without realizing that it might be an imitated product. Reference in this respect is drawn to National Foods case. Therefore, the Enquiry Committee will analyze the trademark as well as trade dress accordingly
- 4.11 From the above tabular comparison, it is evident that both trademarks use different font styles, font cases, color schemes, and slogans. Specifically, the visual appeal of the Complainant’s logo/trademark noticeably segregates the use of three separate mountain peaks using black color and style which further highlights the difference. Whereas, The Respondents’ trademark is in dark blue color with capital letters presentation. The Respondents have also used the word ‘AQUA’ in addition to the word ‘EVIAN’ in its trademark to distinguish it from the Complainant one. It is pertinent to mention here that the Respondents have not obtained trademark registration from the Intellectual Property Organization (IPO).

Table 2: Comparison of Packaging



- 4.12 From the bare view of the above images, it can be observed that both label and design are noticeably different from each other. The trademarks on the packaging are also significantly different from one another. As mentioned above, the Respondents have added the word "AQUA" with the trademark 'EVIAN' to distinguish itself from the Complainant. Moreover, the combined use of mountain peaks on the labeling design with a dark blue color enables the Respondents' packaging to create a reasonable difference between the two trademarks. To determine the confusing or deceptive similarity from the point of view of an unwary ordinary consumer, the leading characteristics, not the minute details, of the two marks, names or get-ups (labeling or packaging) are to be considered. The main or presentational features of the Complainant's trademark are the word 'evian', written in small letters and three mountain peaks with black color. Whereas, the Respondents' trademark is sufficiently different from the Complainant's one.
- 4.13 The Respondent has used the word "AQUA" in blue capital letters prominently positioned above the mountain peak device. The presence of the word "AQUA" both above and below the mountain peak logo constitutes a distinguishing feature that differentiates the Respondent's product from the Complainant's product, which does not contain any textual element above the mountain peak device.
- 4.14 The shape and overall design of the Respondent's bottle are substantially dissimilar from those of the Complainant's water bottle. Additionally, the label color scheme and bottle cap design further distinguish the Respondent's product. These cumulative differences render the Respondent's bottle clearly distinguishable from that of the Complainant, thereby eliminating any likelihood of consumer deception, even if both products are displayed side by side on a retail shelf, which, in any event, has not been established in the present case
- 4.15 The Complainant stated that its product is widely available in various types of stores across Pakistan, including supermarkets, provision stores, medical stores, grocery stores, mini markets, and departmental stores. The Complainant's product evian positions itself as a

- 4.19 The Complainant, in its complaint, has submitted that a fraudulent adoption of another's trademark is in clear contravention of the Act. In fact, the said adoption by the Respondents is to cause grave injury to the Complainant's established reputation in the market and to grab the general public's attention to create undue damage for its offerings. Hence the unauthorized and blatant use of the Complainant's trademark/trade name by the Respondents is in violation of Section 10 of the Act and clearly has the potential to further harm the business interest of the Complainant in violation of Section 10(2)(a) of the Act.
- 4.20 The Complainant relied upon the precedents laid down by the Commission that a mere potential harm to the business interests of the Complainant suffices to constitute a violation of the provision of Section 10(2)(a) of the Act (2022 CLD 1343).
- 4.21 To determine the impact of the Respondents' alleged misrepresentation through the use of a similar trademark 'Evian and Mountain Peaks Logo', the Complainant was requested to provide evidence of lost sales. However, the Complainant failed to provide evidence of the actual sales lost during the period. In terms of goodwill, the Complainant also did not provide evidence of dilution to its goodwill as the Complainant did not provide evidence to establish the inferior quality of the Respondents' product.
- 4.22 In the instant matter, misrepresentation on part of the Respondents has not been established, and the Complainant has also failed to provide evidence of any harm caused by the Respondents' use of trademark "AQUA EVIAN". Furthermore, the Respondents' distribution network is limited only to Sialkot city, whereas the Complainant has a global presence. Given this limited market reach, along with completely different product packaging, the Respondents' distribution network does not appear capable of causing any harm to the business interests of the Complainant. Therefore, the case of deceptive marketing practices in terms of Section 10(2)(a) of the Act has not been made out.

III. Whether prima facie Respondents are involved in the distribution of false or misleading information to consumers related to price, character, method or place of production, properties, suitability for use and quality of goods, prima facie, in violation of Section 10 (2) (b) of the Act.

- 4.23 The unauthorized use of the Complainant's registered trademark, product packaging and labeling by the Respondents has a two-fold effect on the Complainant's product.
- 4.24 The sale and marketing of lookalikes comes to effect after misleading information has been disseminated to the customer, leading to generating a wrong impression and potential of error in judgment.
- 4.25 Based on the information provided by both parties, it is clear that the Complainant's product existed before the Respondents' product. To determine whether there has been any parasitic copying or copycat packaging of trade dress, it is important to compare elements of both the Complainant's and Respondents' packaging to identify any similarities. Upon reviewing the

packaging submitted by the Complainant, it appears that both products' packaging is different and no passing-off has occurred.

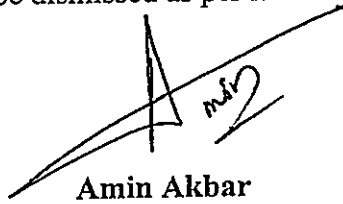
- 4.26 In order to determine instances of deception in any marketing material, the main focus of the Enquiry Committee, as per the general practice, is to evaluate its "net general impression". The Commission relied upon the principle of net general impression and stated that: *"To determine whether a representation is false or misleading, the courts consider the 'general impression' it conveys, as well as its literal meaning."*¹
- 4.27 As established by the Enquiry Committee in para 4.09-4.14, the Respondents' overall impression of the product labeling and packaging is significantly different from that of the Complainants' registered trademark, product labeling, and packaging. Therefore, consumer deception is very unlikely, hence, no violation of Section 10(2)(b) of the Act has been established.

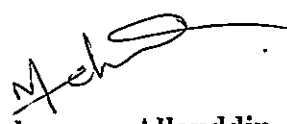
IV. Whether there is a spillover effect of the Respondents' conduct?

- 4.28 The Respondents distribution channels are confined to the town of Sialkot. There is no evidence at hand to suggest that this product is sold or resold beyond the confines of Sialkot. With no evidence of inter-district and inter-provincial distribution/sales, it can be safely assumed that there is no Spillover.

5. CONCLUSION AND RECOMMENDATIONS:

- 5.1 Based on the information available on record and the submissions made before the Enquiry Committee, it is concluded that the *prima facie*, the allegation against the Respondents, under Section 10 of the Act, has not been made out as the Respondents' trade name and trademark are significantly different from that of the Complainant's. Furthermore, there are significant differences in the target market of both the products. Therefore, it is safely concluded that the chances of confusion or deception among the general public are unlikely.
- 5.2 Thus, the Respondents' actions are not found to be, *prima facie*, in violation of Section 10 (1) in general and Section 10.(2) (a) (b) & (d) in particular of the Act.
- 5.3 It is, therefore, recommended that the complaint against M/s Aqua Evian (SMC-Pvt.) Limited and Mr. Muhammad Zeeshan, Chief Executive Officer of M/s Aqua EVIAN (SMC-PVT.) Limited be dismissed as per law.


Amin Akbar
Assistant Director (OFT)
(Enquiry Officer)


Mehmoona Allauddin
Management Executive (OFT)
(Enquiry Officer)

¹ <http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03133.html>