

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 MEHER DEVELOPERS
& CONSTRUCTIONS (PRIVATE) LIMITED AGAINST M/S MIR HASSAN
BUILDERS & DEVELOPERS (PRIVATE) LIMITED FOR ALLEGED
DECEPTIVE MARKETING PRACTICES**

BY

MARRYUM PERVAIZ/ RIAZ HUSSAIN

Dated: February 06, 2019

1. BACKGROUND

- 1.1 M/s Meher Developers & Constructions (Private) Limited (hereinafter referred to as the ‘**Complainant**’), filed a complaint against M/s Mir Hassan Builders & Developers (Pvt) Ltd, trading as, Anchor City Gwadar (SMC-Private) Limited, (hereinafter referred to as the ‘**Respondent**’) with the Competition Commission of Pakistan (hereinafter referred to as the ‘**Commission**’) for alleged violation of Section 10 of the Competition Act, 2010 (hereinafter referred to as the ‘**Act**’).
- 1.2 The Complainant, which is a registered company with the Securities and Exchange Commission of Pakistan, alleged in its complaint that the Respondent, is doing business in Real Estate sector with the name Anchor City Gwadar, in clear violation of Section 10 of the Act by using deceptively and confusingly similar Complainant’s registered and well known trademark “**ANCHOR**”. Consequently, the Respondent is deliberately deceiving the consumers and attempting to harm the Complainant’s established business interests.
- 1.3 After ascertaining the preliminary facts, the Competent Authority decided to appoint Ms. Marryum Pervaiz, Deputy Director (OFT), later promoted as Joint Director (OFT) and Mr. Riaz Hussain, Assistant Director (OFT) as enquiry officers (hereinafter collectively referred to as the ‘**Enquiry Committee**’). The Enquiry Committee was directed to conduct enquiry into the concerns expressed in the complaint and to submit the enquiry report by giving their findings and recommendations, *inter alia*, on the following:-

“Whether the allegations leveled in the Complaint constitutes a prima facie violation of Section 10 of the Act?”

2. COMPLAINT

- 2.1 The Complainant is an undertaking duly registered with the Securities and Exchange Commission of Pakistan, dated March 12, 2015, under the enabling provisions of Companies Ordinance 1984, having its office House No. 27, Sweet Homes, Gulshan-e-Johar, Block 19, Karachi.
- 2.2 The Complainant, has been carrying out business in Real Estate Sector since 2015 under the name and style of “**ANCHOR TOWN**” The Complainant, in order to protect its name and reputation got registration of trademark/service mark “**ANCHOR TOWN**” in Pakistan with the Intellectual Property Organization (IPO). A copy of trademark certificate is enclosed as **Annex-A**). The Complainant, through its registered trademark, is involved in development and operation of construction business.
- 2.3 It was further submitted by the Complainant that the trademark/service mark was duly registered with the IPO on 24th of March, 2015. The registered trade/service mark was infact in use of the Complainant for the promotion & marketing of its products, services and business since the beginning of 2015.

- 2.4 The Complainant submitted that prior to registration of Complainant's trade/service mark 'Anchor Town' and Device of anchor was duly advertised in the Trade Mark Journal of IPO for inviting opposition and after that the Complainant's trade mark was registered.
- 2.5 Moreover, the Complainant has invested much time, efforts and money in the promotion and marketing of its trade/service mark 'Anchor Town and Device Anchor' which had become well known mark in real estate business and associated exclusively with the Complainant's business.
- 2.6 The Complainant's registered trade/service mark is given hereunder for reference:



- 2.7 The Complainant further submitted that the key essential feature of its trade mark is the word 'Anchor' and device of the Anchor along with device of buildings on its label signifies that it is used in relationship with city /town planning or development.
- 2.8 The Complainant has set up several websites including its main website located at the URL: <http://www.anchortown.com.pk> which promotes as well as offer goods/products/facilities/project and services under the name 'Anchor'.
- 2.9 The Complainant alleged in its complaint that the Respondent has adopted and commenced business using a trade mark/service mark Anchor Town and device of Anchor on label in respect of marketing and development of its real estate business. The trade mark/service mark used by the Respondent is not only deceptively or confusingly similar to that of the Complainant registered trade/service mark but also closely and confusingly similar to the essential features of trade/service mark of the Complainant and it is more than likely to cause confusion and deception amongst the trading community, as well as, the public/consumers at large.

- 2.10 It was further alleged that the use of trade mark ‘Anchor’ and ‘device of the Anchor’ in respect of the same or similar business is dishonest and amounts to passing-off Complainant’s product/services. Furthermore, the Respondent has proceeded to adopt and use the mark ‘Anchor’ with mala fide intention to reap undue benefits, value able goodwill of the registered trade/service mark ‘Anchor Town’ which is adversely effecting its business.
- 2.11 The Complainant submitted that the project Anchor Town was developed and designed for Pakistan on international standards of town planning by the Complainant. Thus, the stated use of Anchor City and/or word ‘Anchor’ in respect of town/city/property development or construction business and attached infringement and passing-off the word ‘Anchor’ by the Respondent as Anchor City Gwadar has continuously damaging the reputation and goodwill of the Complainant.
- 2.12 Furthermore, it was alleged that the Respondent has adopted the word ‘Anchor’ and device of Anchor in respect of real estate business with full knowledge the Complainant proprietary and prior rights, reputation and goodwill in respect of the Anchor Town. It is thus clear that the adoption and use of identical and/or confusing and deceptively similar name, mark/logo, containing the word ‘Anchor’ and device of Anchor in respect of the similar business was dishonest, mala fide and illegal which causes loss and damages of the Complainant goodwill and reputation.
- 2.13 The Complainant submitted that the marketing material and trade mark used by the Respondent constitute deceptive marketing practices in term of Section 10 of the Act. Further, usage of the trade/service mark containing the word ‘Anchor’ or device of Anchor has the ability to deceive purchaser/investors of property who could believe that they were purchasing property which was offered by the Complainant. Apart from misleading the consumers, such practices had the ability to harm the Complainant’s business as well as usage of the trade/service mark ‘Anchor’ and device of Anchor by the Respondent amounted to disseminate false and misleading information which is capable of harming the business interest of the Complainant.
- 2.14 In the interest of the fair market practice, the Complainant humbly and respectfully requested the Commission to conduct an enquiry under section 37(2) of the Act and pass necessary order under the enabling provisions of the Act.

3. REPLY OF THE RESPONDENT

- 3.1 The complaint along with its annexures, vide letter dated June 27, 2018, was forwarded to the Respondent for comments. However, till the due date no reply was received by the Respondent therefore, a reminder was sent to the Respondent vide letter dated July 18, 2018. The Respondent submitted its reply vide letter dated August 02, 2018. The contents of the Respondent’s reply are in the following paras.
- 3.2 The Respondent submitted that the usage of word “Anchor” is 150 in numbers all over the Pakistan and many other companies working under the same name and are registered with the Securities and Exchange Commission of Pakistan.

- 3.3 The Respondent requested to the enquiry officer to check the monogram of the Complainant firm name i.e. Meher Developers and Construction and the name of the person who has registered this monogram.
- 3.4 The Respondent further submitted that the matter of Anchor City Gwadar is subjudice in the High Court, it was therefore requested to wait till the decision of Honorable High Court.
- 3.5 The Respondent has submitted the Certificate of Incorporation of Mir Hassan Builders & Developers (Private) Limited with the Securities and Exchange Commission of Pakistan. **(Copy of certificate is attached as Annexure-B)**
- 3.6 The Respondent has also submitted the Certificate of Incorporation of Anchor City Gwadar (S.M.C-Private) Limited. **(Copy of certificate is attached as Annexure-C)**
- 3.7 The Respondent has also submitted the copy of application for registration of trademark in class 36, in respect of Real Estate Business, in the name of M/s Mir Hassan, trading as “Anchor City Gwadar”.

4. REJOINDER

- 4.1 Comments of the Respondent were forwarded to the Complainant on September 12, 2018, for its comments/rejoinder. Accordingly, the Complainant filed its rejoinder on September 14, 2018. The contents of the rejoinder are reproduced below:
- 4.2 The Complainant had taken the trademark of “Anchor” for development and construction of housing project only to avoid misunderstanding amongst the general public. The Complainant believe that the trademark is always a trading style and is a legal license for its housing service as Anchor Town and no other person can do housing project with the same name. If someone is doing same business in same line of industry in spite of knowing that, someone had already registered the same trademark, than he is purposely doing it to camouflage other’s trademark.
- 4.3 The Complainant tried to deliver best international standard project and the Respondent was violating the legal rights and started deceptive marketing of same trademark, which is clearly infringement and passing off its trademark. The Respondent has not registered trademark of “Anchor” for its business and doing business in the name of Anchor City by passing off its trademark “Anchor”.
- 4.4 The Complainant registered its trademark “Anchor Town” in year 2015, however, the Respondent started its business in 2017 by registering its company with Securities and Exchange Commission of Pakistan. Subsequently, three other associated Companies with the name of Anchor Town (Pvt.) Ltd, Anchor City (Pvt.) Ltd and Anchor (Pvt.) Ltd were purposely opened, just to create confusion in general public.
- 4.5 The Complainant further submitted that the registration of the trade/service mark ‘Anchor Town’ (word) and device of Anchor (on label) under registration no. 384313 as of 24th March 2015, in the name of the Complainant was also brought to the knowledge of the Securities and Exchange Commission of Pakistan through letter dated May 18, 2017. Even though, in the subsequent months, three different associated

Companies were registered with the SECP in the name of Anchor Town (Pvt.) Ltd, Anchor City (Pvt.) Ltd and Anchor (Pvt.).

- 4.6 The Complainant requested the Commission to take strict action against the Respondent who had involved in passing off and fraudulently using the Complainant's registered trade/service mark and impose penalties on it.

5. RESEARCH CONDUCTED BY THE ENQUIRY COMMITTEE

- 5.1 The Enquiry Committee conducted online research to find out other relevant undertakings with the name of word 'Anchor'. It has been observed that the project, i.e. Anchor City Gwadar, has been advertised by the Respondent through a marketing company namely, Gwadar Development Associate (GDA Marketing).
- 5.2 It was further observed during online research that office of the Anchor City, Gwadar is also located at Batool Arcade, 3rd Floor, Gulshan-e-Iqbal, Block 13-B, Main University Road Karachi. Therefore, the Enquiry Committee decided to visit the premises of the Respondent's office as well as two other offices namely Anchor City Gwadar and M/s GDA Marketing (Pvt) Ltd.
- 5.3 In order to collect further reasonable evidence and to verify on ground situation of the project and to confirm the allegations leveled by the Complainant, an independent market survey was conducted by the Enquiry Committee. One member of the Enquiry Committee visited the head office of the Respondent on December 06, 2018.
- 5.4 On December 06, 2018 at 4:00pm, the Enquiry Officer visited the premises of the Respondent located at Office No. C-69, Block 13-D/1, Gulshan-e-Iqbal, Karachi. However, upon arrival, it was revealed that the Respondent relocated on another place in the same city.
- 5.5 On the same day, the member of the Enquiry Committee visited the office GDA Marketing (Pvt) Ltd and Anchor City, Gwadar, located on the same address, and collected the available marketing material. The office of GDA Marketing was located at Batool Arcade, 3rd Floor, up to MCB Bank, Gulshan-e-Iqbal, Block 13-B, Main University Road, Karachi. The image of the entrance of GDA Marketing is given below:





5.6 The images of the marketing material collected by the Enquiry Officer is given below:

Anchor City Swadan (Pvt) Limited

Payment Schedule

MODE OF PAYMENT	125 Sq. Yds. (25x45)	150 Sq. Yds. (25x55)	200 Sq. Yds. (36x50)	400 Sq. Yds. (48x75)
Booking	90,000/-	1,00,000/-	1,60,000/-	2,80,000/-
Confirmation	90,000/-	1,00,000/-	1,60,000/-	2,80,000/-
Allocation	90,000/-	1,00,000/-	1,60,000/-	2,80,000/-
State of Work on Site	90,000/-	1,00,000/-	1,60,000/-	2,80,000/-
Monthly Instalments	36x10,000 (3,60,000)	36x12,000 (4,32,000)	36x16,000 (5,76,000)	36x32,000 (11,52,000)
Half Yearly Instalments	6x30,000 (1,80,000)	6x40,000 (2,40,000)	6x50,000 (3,00,000)	6x1,00,000 (6,00,000)
On Possession	1,00,000/-	1,25,000/-	84,000/-	3,38,000/-
Total Cost	10,00,000/-	12,00,000/-	16,00,000/-	32,00,000/-

MODE OF PAYMENT	100 Sq. Yds. (30x30)	200 Sq. Yds. (31x57.4)	400 Sq. Yds. (48x75)
Booking	1,20,000/-	2,40,000/-	5,00,000/-
Confirmation	1,20,000/-	2,40,000/-	5,00,000/-
Allocation	1,20,000/-	2,40,000/-	5,00,000/-
State of Work on Site	1,20,000/-	2,40,000/-	5,00,000/-
Monthly Instalments	36x14,000 (5,04,000)	36x28,000 (10,08,000)	36x56,000 (20,16,000)
Half Yearly Instalments	6x50,000 (3,00,000)	6x1,00,000 (6,00,000)	6x2,00,000 (12,00,000)
On Possession	1,18,000/-	2,32,000/-	3,84,000/-
Total Cost	14,00,000/-	28,00,000/-	58,00,000/-

Terms and Conditions:

- Any Order / Demand Draft in favour of "Anchor City Swadan (Pvt) Limited"
- The allocation of unit shall remain provision until full & final payment is received by the developers.
- Developer's charges, documentation charges for loan, connection charges for Gas and Electricity will be charged extra as and when demanded.
- All other charges will be payable within 150 days from the date of booking.

Extra Charges:

- Confer: 10%
- Main Road Facing: 10%
- Park Facing: 5%

10% Discount on full payment

Read, Understood & Signed

C.N.I.C.#

Name:

Plot:

Street No.:

Type:

Category:

Total Cost:

Date:

Mr. Saad Raifut
0300-2697708

ANCHOR CITY
GWADAR

ANCHOR CITY
GWADAR اینگرسیٹی
(SMC-Private) Limited

400 گز کے رہائشی پلاٹس 200.150.125 اور
400 گز کے کمپس پلاٹس 200.100

Head Office: Baitul Arkan, 3rd Floor, upto MBC Bank, Gushan-4-Isbal, Block 13-B, Main University Road, Karachi. Ph: 021-3489925-7-8, Fax: 021-3482055. WhatsApp: 0321-2714208

Islamabad: Office 4-A, First Floor, Panorama Plaza, Near Mezan Bank, G-11 Market, Islamabad. Cell: 0334-0960321, 0333-6963240

Lahore Office: 311-K-Block, DHA Phase-1, Near Allah CNB, Ramo, Street Road, Lahore. Ph: 042-35744466, 35743414. Cell: 0321-8874330

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0301-3458458

A Proud of MH Marketing by GDA

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Email: info@gdamarketing.com

Month of Payment	20% of Sale Price	30% of Sale Price	50% of Sale Price
On Possession	1,00,000/-	1,50,000/-	2,00,000/-
Head Taxes	50,000/-	75,000/-	1,00,000/-
Monthly Installments	1,00,000/-	1,50,000/-	2,00,000/-
Sale of Plot on Site	1,00,000/-	1,50,000/-	2,00,000/-
Other Charges	50,000/-	75,000/-	1,00,000/-
Total Cost	3,00,000/-	4,50,000/-	6,00,000/-

5.7 The abovementioned images demonstrate the use of trade name ‘Anchor City Gwadar’ and the device of ‘Anchor’ on marketing material of the Respondent collected by the Enquiry Officer during his/her market survey. It is clearly mentioned on the application form and brochure of payment schedule that the project is owned and operated by the Respondent i.e., Mir Hassan Builders & Developers (Private) Limited.

6. ANALYSIS

- 6.1 As mentioned in Para 1.3. *ibid*, the mandate of this enquiry is to determine whether the allegations leveled in the complaint amount to, *prima facie*, violation of Section 10 of the Act in general;
- And Section 10(1) in particular, which prohibits undertakings from engaging in deceptive marketing practices;
 - And Section 10(2)(b) in particular, through “*distribution of false or misleading information to consumers, including the distribution of information lacking a reasonable basis, related to the character, properties and place of production or services.*”;
 - And Section 10(2)(d) in particular, through “*fraudulent use of another’s trademark*”
- 6.2 In order to determine the above, various matters pertinent to significance of trademarks and their association with Section 10 of the Act would subsequently be discussed.

6.3 A word, phrase, symbol, and/or design which is used to classify and distinguish goods and services in general and from those of its competitors is known as a trade or service mark. The term, “*mark*” has been defined in Section 2(xxiv) of the Trade Marks Ordinance, 2001 (the ‘**Ordinance**’)¹ as:

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

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

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

6.4 Such uniquely developed trade or service marks are created and adopted by undertakings to assist consumers in quick identification of their brands of varied products. One of the major purposes of these trade/service marks is also to separate them from those of its competitors. These creative works then represent a certain perception about the respective products in terms of the status, price, unique characteristics, method or place of production/origin of service providers, properties, quality, etc., of the relevant goods and services. Consequently, they also become one of the most important aspects of the undertaking’s goodwill.

6.5 Therefore, in order to form their unique identity, firms invest significantly in creating and promoting their brands through the medium of trademarks. These creative works, hence, become a prominent aspect of the brand image and goodwill of their owners, as they not only represent the producers/providers of these products, but also symbolize the unique features and quality of the said products.

6.6 These creative works are also termed as intellectual property of their owners. However, in order to gain exclusive rights for their use, they have to be registered with the relevant authorities, such as the Intellectual Property Organization (IPO) of Pakistan. By registering intellectual property such as trade/service mark, intellectual property rights extend monopolistic use of the registered trade/service mark to its owners.

6.7 Furthermore, owing to its properties, significant efforts have been made across the country, to protect such property rights. Whereas fraudulently use of these rights constitutes a clear violation of law including Section 10(2) (d) of the Act, which prohibits “*fraudulent use of another’s trademark, firm name, or product labelling or packaging.*”

6.8 Protection of such property rights, therefore, have twofold benefits. Firstly, they prevent consumer injury caused as a result of trademark infringement. Reason being that trademark infringement may induce a consumer into buying a product which they may otherwise have not bought. Such a situation may arise as a consequence of confusing one product with some other similar product containing the identical or similar trademark and/or packaging. Secondly, these laws also ensure protection of property rights of the owners of these trademarks who invest significantly into their

¹ http://www.ipso.gov.pk/uploads/CMS/Trade_Mark_Ordinance_2001.pdf

creation and promotion in order to establish a certain brand image and goodwill. Through such actions, fair competition is also protected and promoted.

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

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

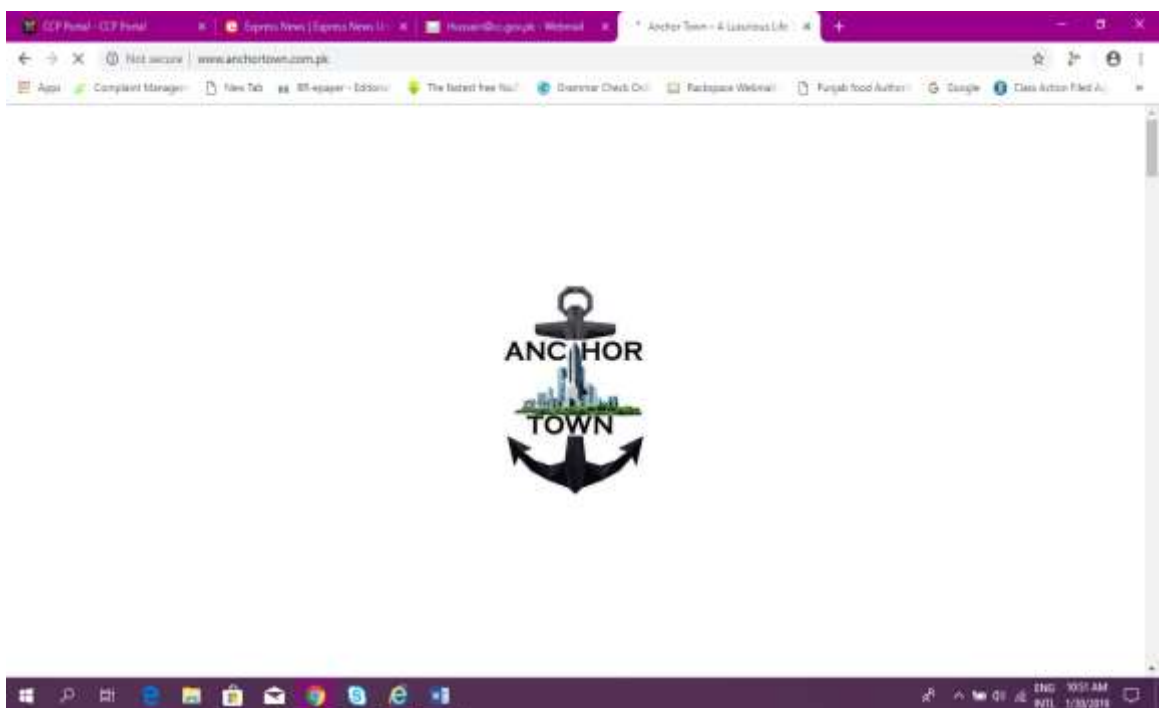
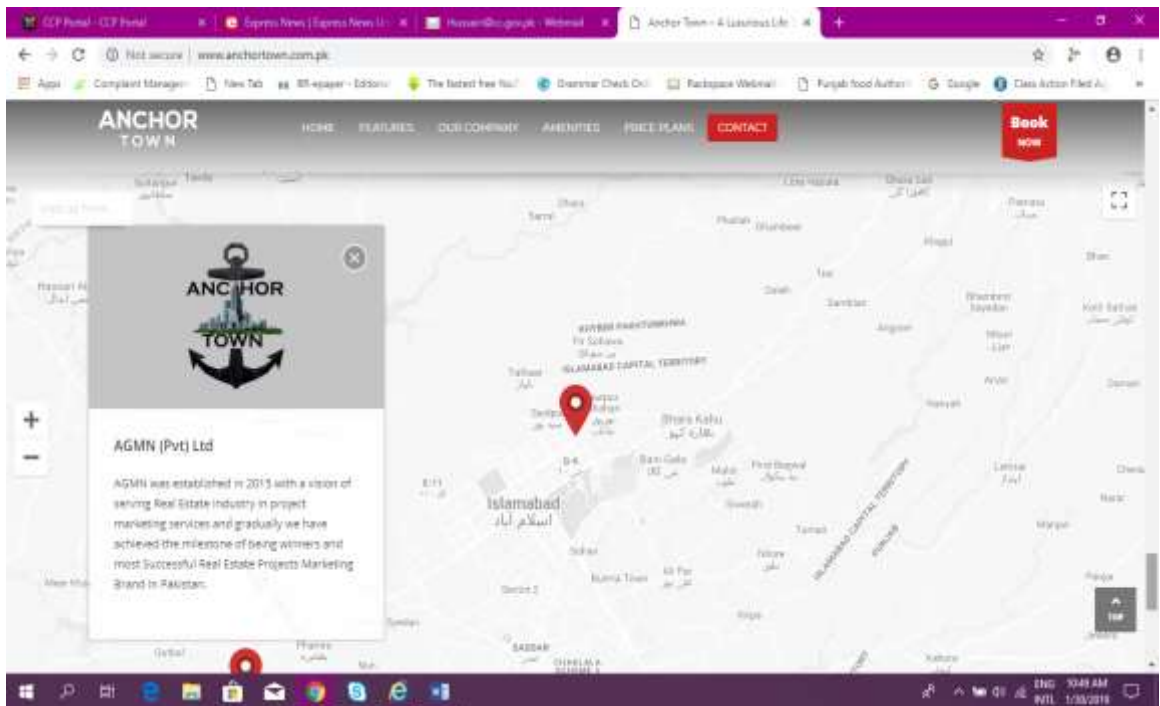
24. On the one hand, such usage if trade/service mark has the ability to deceive the students who may well believe that they are undertaking CFA program and qualification which is offered by the Complainant. Apart from misleading the consumer, these practices have the ability to harm business interests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

- 6.10 Consequently, it can be concluded that the Commission also observes that trade/service mark infringement must be prevented to avoid consumer injury. Furthermore, their curtailment is necessary to safeguard the overall brand equity of an undertaking as trade/service marks not only affect the perception and good will of the product, but also have a significant impact on its sales. Therefore, in order to protect consumers from anti-competitive behavior and to make provisions to ensure free and fair competition in the market, intellectual property rights must be protected and Section 10 of the Act must be enforced, in this case particularly through the mandate outlined in para 6.1 *ibid*.
- 6.11 Subsequently, the facts of the matter under consideration in this enquiry report, i.e., submissions of the Complainant and the Respondent as well as the material discovered during the process of market survey conducted by the Enquiry Committee, will be analyzed in light of the foregoing discussion to determine whether Section 10 has been, *prima facie*, violated by the Respondent or not.
- 6.12 As the primary concern of this enquiry is to verify whether the Respondent has been involved in fraudulent use of the Complainant’s registered trade/service mark, ample evidence has been submitted by the Complainant to demonstrate that the ‘Anchor Town’ Mark has been registered in class 37 of the Trade Mark Registry in Pakistan in respect of construction & developer. Furthermore, the Complainant has also submitted that it has invested adequate amount of money and time to promote its business in Pakistan. Therefore, it can be concluded, that the Complainant has in fact invested substantial amount of resources to protect and promote its brand and goodwill in Pakistan. Certain images of the Anchor Town Marks used by the Complainant on its website are reproduced below³:

Anchor Town Marks

² http://cc.gov.pk/images/Downloads/cfa_soae_order.pdf, Pg. 10, paras 23 and 24.

³ www.anchorstown.com.pk



- 6.13 As mentioned in para 5.1 *ibid*, the project of the Respondent has been marketed by GDA Marketing, therefore, all the marketing material such as newspaper advertisement, brochures, application form, payment schedule was collected by the Enquiry Committee during its survey and the allegations leveled by the Complainant will be analyzed in light of Section 10 of the Act.
- 6.14 Furthermore, the marketing material as evidence, such as newspaper advertisement has also been submitted by the Complainant to prove that the Respondent was involved in fraudulent use of its Trade/Service Mark. Even though the

Complainant's allegations were not out rightly denied or accepted by the Respondent, the said allegations of the Complainant also need to be confirmed by the Enquiry Committee. The Enquiry Committee analyzed all the marketing material of the Respondent on various mediums and also conducted a market survey. The Complainant claim that it had not given any kind of authority to anyone to use its Trade/Service Mark to sell its project. Hence, it can be concluded that the Respondent, at no point in time, had the authorization to use the Trade/Service Name 'Anchor Town' and the 'Device of Anchor' to market/sell the Complainant's products. It is also pertinent to mention that the Respondent not only failed to provide the proof of same to the Enquiry Committee, but in fact, out rightly divert the attention towards the use of word 'Anchor' in different places/sectors all over the Pakistan. Certain marketing material of the Respondent is reproduced below⁴:

Screenshot on May 09, 2018 of the Website used by the Respondent for Advertisement



⁴ www.gdamarketing.com

CCP Portal - CCP Portal | husain@cc.gov.pk | BAHRIA TOWN KARACHI | Bahria Town Karachi | How to pronounce pro | GDA Marketing - Gwa |

Not secure: www.gdamarketing.com

Complaint Manager | New Tab | BR-e-paper - Editor | The fastest free You | Grammar Check On | Backpack Webmail | Punjab food Author | Google | Class Action Filed At |

inquiry or questions? +92 321 271 4258 | info@gdamarketing.com

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GDA *بہترین سٹور شدہ*
NDC # 5105HS/GDA

MH
Builders & Developers

- 125 SqY (Residential) (R) = 25' x 45'
- 150 SqY (Residential) (R) = 25' x 55'
- 200 SqY (Residential) (A) = 36' x 50'
- 400 SqY (Residential) (B) = 48' x 75'
- 100 SqY Commercial (SC) = 30' x 30'
- 200 SqY Commercial (SB) = 31' x 57' 4'
- 400 SqY Commercial (SD) = 48' x 75'

ENG 10:30 AM
INTL 9/5/2018

CCP Portal - CCP Portal | husain@cc.gov.pk | BAHRIA TOWN KARACHI | Bahria Town Karachi | How to pronounce pro | GDA Marketing - Gwa |

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ANCHOR CITY GWADAR

A recent & Available Residential & Commercial Project in Gwadar.

ایسکر سٹی گوادر میں محفوظ ترین سرمایہ کاری
گوادر چھٹا انڈر ڈیولپمنٹ کی سرگرمیوں کے ساتھ باہر کی سرمایہ کاری کے لئے ایک نیا راستہ ہے۔

Anchor City Gwadar
160 فٹ چوڑے روڈ پر

ایسکر سٹی گوادر میں اوور سیز پاکستانیوں کیلئے خصوصی رہائشی بلاک

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Pakistan's No.1 Property Website

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Anchor City Gwadar
Zero Point, Gwadar

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Plot Features

- Green Space
- Electricity
- Water Supply
- 24x7 Gated
- Accessible to Road

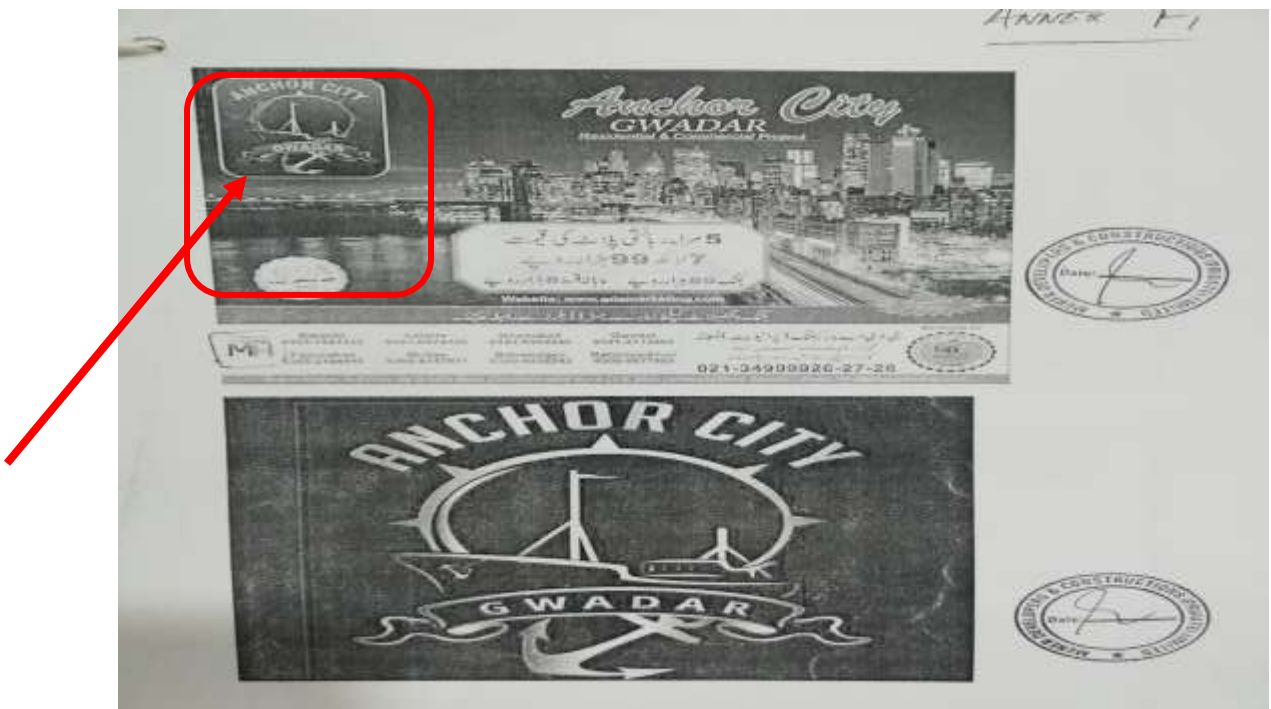
انٹرنیشنل گوادر میں پلاٹ کی خریداری اب ہوئی آسان
Bank Alfalah

ENG 10:30 AM
INTL 9/5/2018



5.14 Below are the images of marketing material submitted by the Complainant as evidence to prove that the Respondent fraudulently using the registered trade/services mark 'Anchor' and 'Device of Anchor' on its marketing material without due authorization.

Images of the Respondent's Marketing Material Submitted by Complainant



ایسکر سٹی
گوادار

فوری قیمتے اور فوری تعمیر کیلئے تیار
5 مرہ کے رہائی پلانٹ کی قیمت
سے 7 لاکھ 99 روپے

جس ڈی اے مارینٹاک (پرائیویٹ) لمیٹڈ







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**Anchor City
Gwadar**

160 فٹ چوڑے روڈ پر

گوادار کی سب سے بڑے سکون اور پرائم لوکیشن ★ بین کونٹری ہائی وے اور ڈیرو پراجیکٹ سے 3 منٹ کی ڈرائیو پر

انڈر گراؤنڈ ٹرنکیل کا ہیڈ چارج سسٹم
سیوریٹی کا بہترین انتظام
پینتھ کے ساتھ باقی کی مسلسل فراہمی
مسجد، اسکول اور ایئر پورٹ کی تعمیر
پارک، پلے لینڈ اور کمرشل مارکیٹ



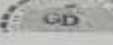
پینل آف، پینل پائپے
200, 125 اور 400 اور 100
گڑ کے سائٹھی پائپس گڑ کے کمرشل پائپس
کے رہائی پلانٹ کی قیمت
99 ہزار روپے

بنک 80 ہزار - ماہانہ قسط 8 ہزار

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جس ڈی اے مارینٹاک (پرائیویٹ) لمیٹڈ

Anchor City Gwadar

160 فٹ چوڑے روڈ پر

☆ گوادری سب سے بڑے سکون اور پرامن لوکیشن ☆ مین کوئٹل ہائی وے اور زیرو پوائنٹ سے 3 منٹ کی ڈرائیج پر

ایئر رگرواف ٹیکنالوجی کا جدید سسٹم
 سیوریج کا بہترین نظام
 چینی کے سائل ہائی کی مسلسل فراہمی
 مسجد، اسکول اور لائبریری کی تعمیر
 پارک، ٹینس کورٹ اور کرشل مارکیٹ

پہلے آئیے، پہلے باریے
 125، 200 اور 400 گز کے کرشل پلاٹس
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مین کوئٹل ہائی وے پر سائبل ہینڈر سے جنرل مینٹ پر اور زیرو پوائنٹ سے انتہائی قریب تر
 ایک میل رہائی کرشل ہاؤسنگ سکیم

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ماہانہ قسط صرف 8,000/-
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 5 مرلہ، 8 مرلہ اور 16 مرلہ
 125، 200 اور 400 گز

پلاٹس کی باریے پہلے آئیے پہلے باریے کی بنیاد پر

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 GWADAR MASTER PLAN

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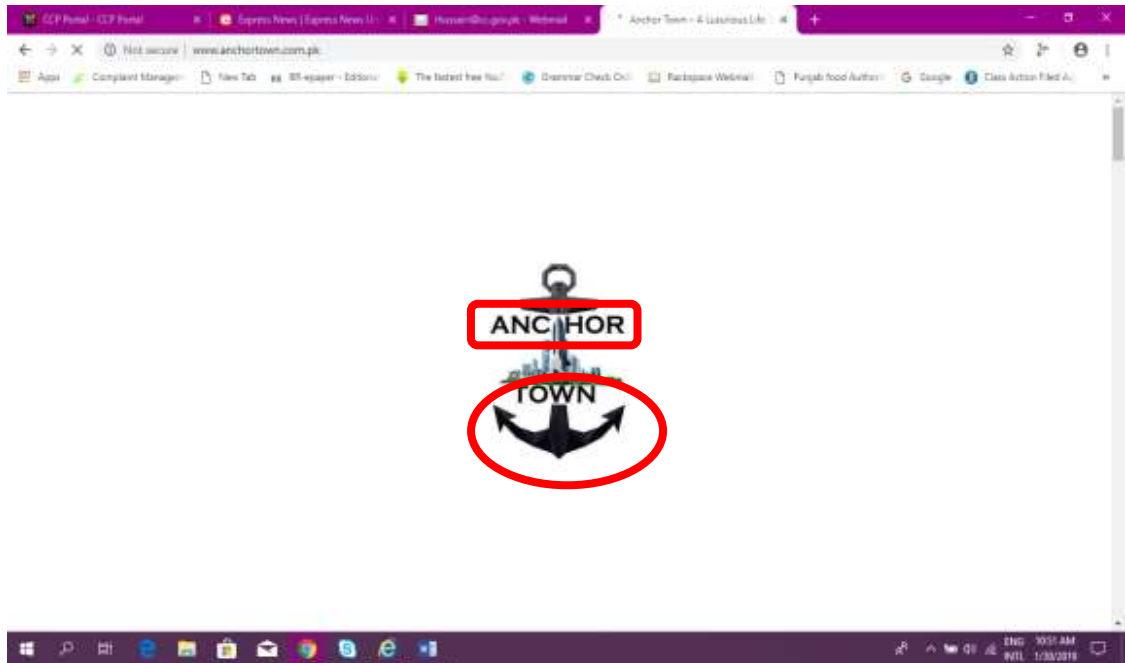
A Project by
 MH



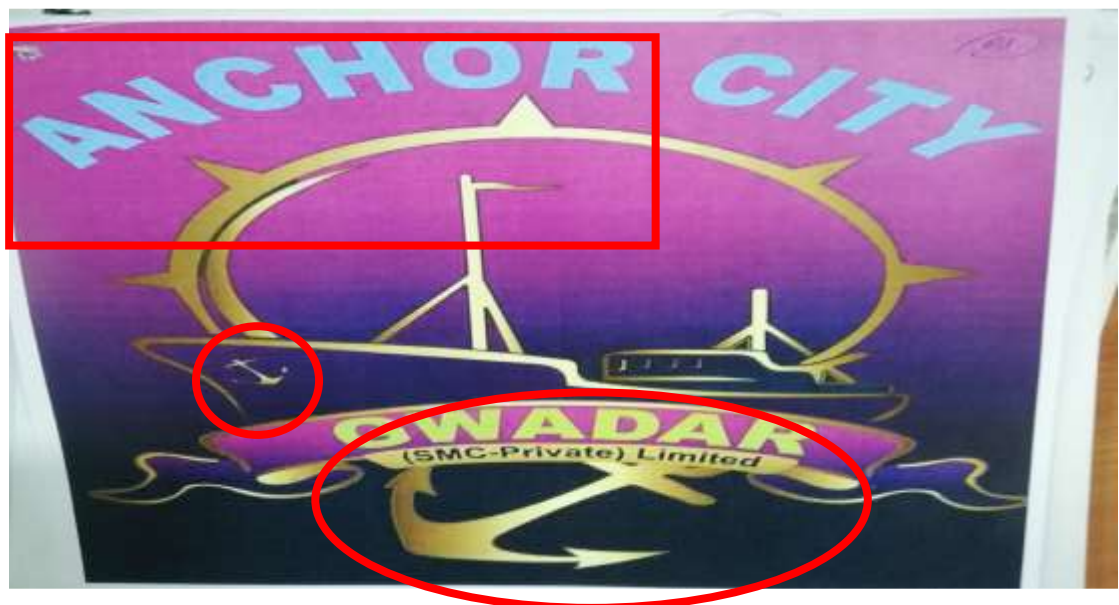
6.15 It can, therefore, be clearly viewed by the images above that the Respondent is blatantly using the Complainant's registered trade/service mark 'Anchor' with combination of word 'City' and 'device of the Anchor' without obtaining due authorization from the Complainant to increase its sales.

- 6.16 It has been alleged in the complaint that the act of the Respondent of using the trademark of the Complainant i.e., ‘Anchor’ word and ‘Device of Anchor’ is capable of harming the business interest of the Complainant and is aimed at deceiving the unwary customers which in the instant case are general public.
- 6.17 The Complainant claimed that the Respondent instead of creating a unique brand identity for its product adopted the ‘Anchor Device’ and trade name ‘Anchor’ with the intention to deceive and to lure the general public into buying its product.
- 6.18 The Complainant alleged that the adoption and use of the word ‘Anchor’ and ‘Device of Anchor’ by the Respondent is nothing but an outcome of fraudulent tactics with the sole aim to capitalize the popularity and the influence that the Complainant trademark has on the consumer nationwide.
- 6.19 In support of the argument, the Complainant has provided the evidence regarding the registration of its trademark with the IPO. On other hand the Respondent has denied the allegation leveled by the Complainant and submitted that the word ‘Anchor’ has been used frequently in relation to other businesses/services.
- 6.20 Before proceeding further, it is important to determine the intension of the advertisement in question which pertains to the use of trademark ‘Anchor’ and the ‘Device of the Anchor’. 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 Ordinance⁵ in the following words:
- “misleading advertisement” means any advertising which in any way including its presentation, deceives or its likely to deceives 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.***
- 6.21 It is pertinent to point out that part of 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 expand considerable resources to identify their goods, distinguish their services, and cultivate their goodwill.
- 6.22 In the proceeding paragraphs the facts and the evidences submitted by the Complainant and Respondent are analyzed and discussed in order to reach the conclusion regarding the issue in hand, that whether the Respondent involved in the fraudulent use of the Complainant’s registered trademark and in doing so potentially mislead consumers and in, *prima facie*, violation of Section 10 of the Act.
- 6.23 In order to establish whether the Respondent is involved in the fraudulent use of the trademark, it is pertinent to compare both the trademark used by the Complainant and Respondent in its marketing material. An image of the Complainant trademark is depicted below:

⁵ [http://www.ipso.gov.pk/uploads/CMS/\(343\)TradeMark_Ordinance.pdf](http://www.ipso.gov.pk/uploads/CMS/(343)TradeMark_Ordinance.pdf)



- 6.24 The whole trademark of the Complainant consist of the word ‘Anchor Town’ and the device of Anchor, which is a unique identification of the Complainant’s product. It is important to mention here that the Complainant have no right to exclusive use of the word ‘Town’ separately.
- 6.25 In case of the Respondent, an image of their marketing material, containing the trademark under discussion, is depicted below:



- 6.26 The encircled areas of above image clearly demonstrate the use of the word ‘Anchor’ and the ‘Device of Anchor’ with slightly different style. Moreover, it is evident that the Respondent has used the device of Anchor twice on its logo. The only difference, between the Complainant’s trade/service mark and the Respondent’s logo design, is of the word ‘City’ and ‘Gwadar’. The fact that Respondent has adopted a trademark design which is obviously similar to that of the Complainant’s trademark. The Respondent is attempting to mislead consumers into making an impulsive decision into buying its product which looks “almost” identical to that of the Complainant.

- 6.27 It is also important to mention here that the Complainant was registered with the Securities and Exchange Commission of Pakistan (SECP) since 12th March, 2015 with the name of M/s Meher Developers and Constructions (Pvt) Ltd. The Complainant also got registration for trademark with the IPO on 24th March, 2015 as “Anchor Town” with the logo containing device of Anchor. The Respondent got registered with the SECP on February, 2017, as M/s Mir Hassan Builder and Developers (Pvt) Ltd. However, the Respondent, on 9th November, 2017, registered another company with the name of Anchor City Gwadar (SMC-Private) Limited and started advertising its project as “Anchor City Gwadar” without obtaining the trademark from the relevant authority.
- 6.28 The Registration of another company by the Respondent namely, Anchor City Gwadar (SMC-Private) Limited, soon after the trademark registration of the Complainant’s trademark shows the Respondent’s intentions to attain goodwill associated with the trademark ‘Anchor’ and the ‘Device of Anchor’ used by the Complainant. Therefore, it can be safely conclude that the act of the Respondent is not only capable of harming the business interest of the Complainant but also intends to mislead the consumers about the character, properties and place of production or services.
- 6.29 In view of the above, it can easily be established that the Respondent, by fraudulently using the registered trademark, has enjoyed the goodwill and reputation associated with it. Therefore, the Respondent has, *prima facie*, entered into deceptive marketing practices in terms of Section 10(1) of the Act in general and Section 10(2) (a) & (b) in particular.

7. RECOMMENDATIONS

- 7.1 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 undertaking should be stopped to advertise its products/services in an unfair and misleading manners 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 findings of this enquiry report warrant initiation of proceedings against the Respondent under Section 30 of the Act in accordance with law.

(Marryum Pervaiz)
Joint Director
Enquiry Officer

(Riaz Hussain)
Assistant Director
Enquiry Officer