

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 NAWABA OIL INDUSTRIES
AGAINST M/S AL-HAFEEZ OIL MILLS AND M/S MUSLIM CORPORATION FOR
ALLEGED VIOLATION OF SECTION 10 OF THE COMPETITION ACT, 2010**

BY

Mohammad Salman Zafar, Marryum Pervaiz, Faiz-ur-Rehman

Dated: July 20, 2020

1. BACKGROUND

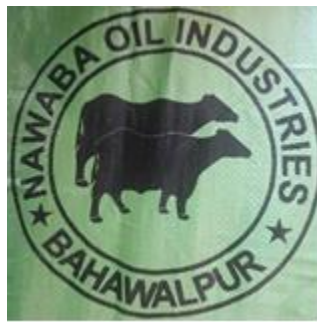
- 1.1 M/s Nawaba Oil Industries (the ‘**Complainant**’) filed a complaint against M/s Al-Hafeez Oil Mills (the ‘**Respondent No. 1**’) and M/s Muslim Corporations (the ‘**Respondent No. 2**’), jointly referred as the “**Respondents**”, with the Competition Commission of Pakistan (the ‘**Commission**’) for alleged violation of Section 10 of the Competition Act, 2010 (the ‘**Act**’) pertaining to deceptive marketing practices.
- 1.2 It has been alleged in the complaint that the Complainant is involved in manufacturing and selling of cattle feed such as “khal banola” and “wanda” as well as seeds since 2001. That the Respondent No. 1 and Respondent No. 2, both have copied/imitated the registered trademark and copyrighted packaging/trade dress of the Complainant, and by doing so has distorted healthy competition in the market.
- 1.3 Based on the preliminary fact finding, the Competent Authority initiated an enquiry in accordance with sub section (2) of Section 37 of the Act by appointing Mr. Mohammad Salman Zafar, Director (OFT), Ms. Marryum Pervaiz, Joint Director (OFT) and Mr. Faiz-ur-Rehman, Deputy Director (OFT) as enquiry officers (collectively the “**Enquiry Committee**”) to conclude the enquiry.
- 1.4 The aim of the enquiry is to determine whether, *prima facie*, by using similar trademark and packaging of the Complainant;
 - a) The Respondents are violating Section 10(1) of the Act, in terms of Section 10(2)(d) of the Act, which prohibits *fraudulent use of another’s trademark, firm name, or product labeling or packaging*; and/or
 - b) The Respondents’ conduct *is capable of harming the business interest* of the Complainant in violation of Section 10(1) of the Act, specifically in terms of Section 10(2)(a) of the Act;

2. THE COMPLAINT:

- 2.1 This section summarizes the contentions raised in the complaint:
- 2.2 The Complainant (which expression shall include its predecessors-in-interest), either itself and/or through its affiliates, licensees, franchisees etc., has been carrying on a reputable business of manufacturing and selling of cattle feed such as khal banola and wanda along with seeds since 2001.
- 2.3 The Complainant said that it has been involved in providing highest quality products, at very reasonable costs, to the farmers and customers and the sale figures of the Complainant for the last many years runs into millions of Pak rupees each year. Furthermore, the Complainant at the time of inception invented and adopted the word “NAWABA” as its trade/business name and has been continuously using the same as its business/trade name.

That the Complainant is also a member of the Bahawalpur Chamber of Commerce & Industry (BCCI) since 2007.

- 2.4 The Complainant submitted that it also created a distinctive trademark “NAWABA DOUBLE BHENS LABEL” to distinguish its high quality products and has been continuously using and advertising the said trademark “NAWABA DOUBLE BHENS LABEL” in relation to its goods, business and services since at least 2001. The Complainant has registered the said Trademark with Intellectual Property Organization of Pakistan (IPO) under the Trademark Ordinance, 2001 with Reg. No. 191616, dated January 27, 2004. (A copy of the advertisement from the Trademark Journal and certificate are attached herewith as **Annexure – A**). A depiction of the said trademark mark is as follows:



- 2.5 The Complainant further submitted that over the years, it has invested a good sum of money on advertisement and marketing to establish recognition of its trademark “NAWABA DOUBLE BHENS LABEL”. A copy of the affidavit from the designer declaring that the “NAWABA DOUBLE BHENS LABEL” was created as per the instructions of the Complainant and evidence of the promotional material relating to “NAWABA DOUBLE BHENS LABEL” has also been attached with the complaint.
- 2.6 Moreover, the Complainant has adopted a unique packaging/bag design which has become the identity of NAWABA, Double Bhens khal banola/cattle feed. The packaging, along with the Double Bhens logo, has distinctive color patterns and labeling which helps the Complainant’s consumers to identify the authenticity of their cattle feed. The design of Complainant’s packaging has also been attached with the complaint.
- 2.7 The Complainant stated that due to long, continuous and uninterrupted use and extensive advertisement, the mark “NAWABA DOUBLE BHENS LABEL” is associated with the Complainant and no one else, whereas use of an identical and/or other similar or deceptively similar trademark or any other formative mark by another manufacturer or trader would amount to violation under the relevant laws of the land as the trade name and/or trademark “NAWABA DOUBLE BHENS LABEL” is not only duly registered in Pakistan, but also, due to high quality products, has become a respected name among customers and the overall industry. As a result, it has been stated that the Complainant is enjoying envious reputation and goodwill in Pakistan. The Complainant further mentioned that the trademark “NAWABA DOUBLE BHENS LABEL” is a well- known trademark

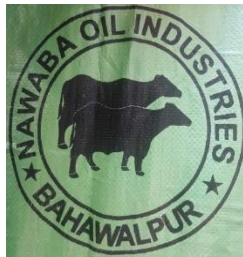
of the Complainant and hence, in case any person shall try to copy the name, being same or similar, shall fall in category of “Deceptive Marketing Practices” as defined in Section 10(2)(d) of the Act and other relevant laws of the land.

A. STATEMENT OF FACTS WITH RESPECT TO RESPONDENT NO. 1:

2.8 This section summarizes the contentions raised in the complaint specifically with respect to Respondent No. 1:

2.9 The Complainant alleged that it has come to its knowledge that a few months ago, the Respondent No. 1 started manufacturing, packing and marketing cattle feed/wanda under the trademark which is identical/confusingly and deceptively similar to the duly registered and well reputed trademark of the Complainant for the same and/or similar goods as that of the Complainant’s. Following is the description of the Complainant’s as well as the mark of the Respondent No. 1:

Complainant



Respondent No. 1



Furthermore, the marks are confusingly and deceptively similar to each other, visually as well as phonetically. Besides this, the design, getup and color scheme of both the marks are identical making the marks identical and/or confusingly and deceptively similar.

2.10 The Complainant further alleged that the Respondent No. 1 is not only using identical/confusingly or deceptively similar trademark, but is also copying the packaging and the trade dress being used is also identical to that of the Complainant’s. One of the descriptions of the packaging/trade dress being used by the Complainant and the Respondent No. 1 are as follows:



Complainant



Respondent No. 1

A sample of packaging of both, the Complainant and the Respondent No. 1, has also been attached with the complaint.

- 2.11 The Complainant presented that the Respondent No. 1 has created a similar company name and logo, “AH Nawab Oil Industries” and “Asal Bhens Marka”, respectively. Here the bottom of their packaging clearly reads “AH Oil Industries, Bahawalpur” which proves itself that the term *Nawab* in *AH Nawab Oil Industries* was created just to confuse the customers of the Complainant. Packaging of Respondent No. 1 is depicted below:



- 2.12 The Complainant further alleged that the name “Al-Hafeez Oil Mills, Bahawalpur” can be seen in the membership list (Year 2017-18) of BCCI, where the Respondent No. 1 is listed

with serial/membership number **258/C.278, Pg. 11** [Copy is attached as **Annexure – F**] and that the Respondent No. 1 has not declared himself as AH Nawab Oil Industries, Bahawalpur. This proves that the Respondent No. 1 has infringed the packaging and adopted the term AH Nawab Oil Industries, Bahawalpur, just to confuse the customers of the Complainant and damage the Complainant’s reputation and goodwill it has earned. Secondly, as per the Complainant’s knowledge, the Respondent No. 1 is selling cattle feed with the trademark “MALIK” under Registration No. 433524, and it can be seen that the contact person’s number, “0300-9683415”, is same everywhere on the following, with relevant documents attached with the complaint:

- a) Malik Mark Packaging
- b) AH NAWAB (Asal Bhen Mark) Packaging
- c) And on the Membership list of BCCI 2017-18



2.13 The Complainant, due to similar trademark is of the concern that the products being sold under the trademark of Respondent No. 1 and the Complainant is at the same counter to the same consumers. The likelihood of confusion and deception is all the more present, as products of Complainant as well as Respondent No. 1 pass through the same trade channels and are bought by the same class of customers.

2.14 The Complainant further highlighted the fact that the Respondent No. 1 has been reselling its product to Kashmir and outskirts of Islamabad through its resellers/dealers/customers namely.

- a) Maqbool Abbassi Traders
Shop No 136, I-11/4, Sabzi Mandi, Islamabad.
0300-8525039

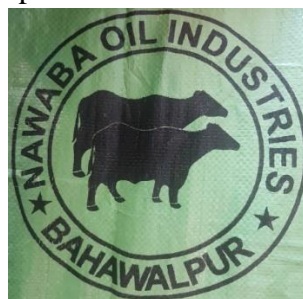
051-4442906

- b) Haris Traders
Kahuta Road, (Near Pak-Kashmir Hotel), Kak Pul, Sihala Bagh, Islamabad.
0344-5523301
0345-5418145

- 2.15 Furthermore, the Complainant is also concerned that the Respondent No. 1 is trying to take advantage of the goodwill and reputation accrued to the Complainant in respect of its earlier registered trademark. The Respondent No. 1 is trying to deceive the general public into believing that the Complainant and the Respondent No. 1 are related or that there is any trade connection between the two undertakings.
- 2.16 That additionally, the Respondent No. 1 is also trying to create an impression that it is associated with the Complainant. Moreover, the similar trademark and logo constitutes infringement and passing off and/or attempt to pass off, since it would inevitably lead to deception and confusion to the unwary purchasers who are likely to believe or be led to believe that the products under the marks of Respondent No. 1 emanates from the Complainant or they have some trade connection with the Complainant.
- 2.17 It has been submitted that the Respondent No. 1 is also using publicity cards that are similar to the publicity cards made by the Complainant. That the use of similar trademark by the Respondent No. 1 falls under the purview of “Deceptive Marketing Practices” and is unlawful under Section 10(2)(d) of the Act. The Respondent No. 1, therefore, cannot claim to be the proprietor of its said trademark. As per the Complainant, this conduct started around September 2017, and it continues to do so till date.

B. STATEMENT OF FACTS WITH RESPECT TO RESPONDENT NO. 2:

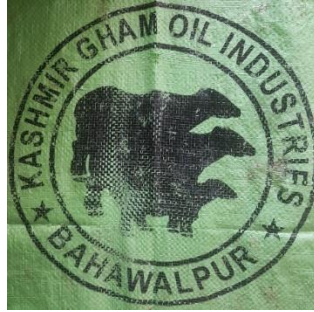
- 2.18 This section summarizes the contentions raised in the complaint with respect to Respondent No. 2:
- 2.19 The Complainant has alleged that it has come to its knowledge that a few months ago the Respondent No. 2 has started manufacturing, packing and marketing cattle feed/wanda under the trademarks which are identical/confusingly and deceptively similar to the duly registered and well reputed trademark of the Complainant for the same and/or similar goods as that of the Complainant. Following are the description of the Complainant’s as well as marks of Respondent No. 2 that have been adopted.



Complainant

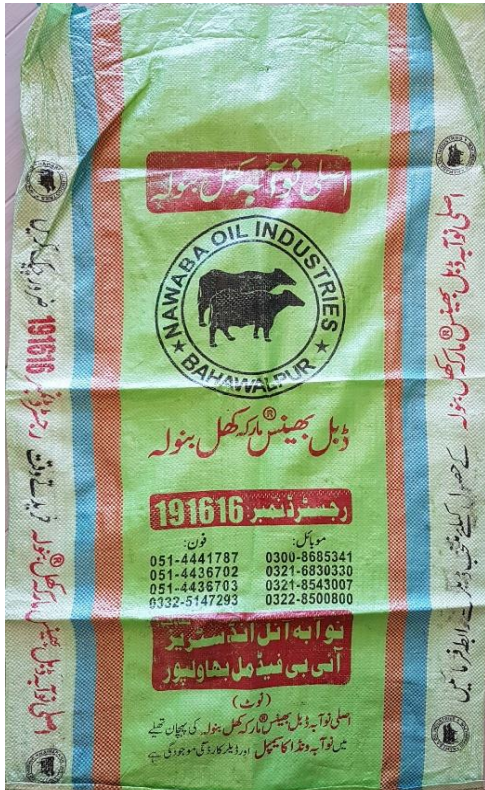


Taiz Roo – Respondent No. 2



Kashmir Gham – Respondent No. 2

2.20 The Complainant has highlighted that the packaging used by the Respondent No. 2 for “**Taiz Roo**”, Triple Bhens Mark and and “**Kashmir Gham**”, Triple Bhens Mark are identical, confusingly and deceptively similar to each other. Besides this, the design, getup and color scheme of both the marks are identical, making the marks identical and/or confusingly and deceptively similar to the Complainant’s Mark. Furthermore, it has been submitted that the Respondent No. 2 is not only using identical/confusingly or deceptively similar trademark, but also the packaging and/or trade dress being used is also identical to that of the Complainant, namely “**Taiz Roo**” and “**Kashmir Gham**”. A copy of both has been attached with the complaint.



Complainant



Taiz Roo – Respondent No. 2



Kashmir Gham – Respondent No. 2

- 2.21 The Complainant has also pointed out that Respondent No. 2 is reselling its products to Kashmir and other areas namely Islamabad, Rawat, Islampura Jaabbar, Choke Panoree, Kallar Syedan, Gujar Khan and Tordher (Swabi District).
- 2.22 The Complainant has further submitted that the Respondent No. 2 is also involved in making wrongful profits out of the reputation and goodwill of the Complainant. It has been stated that the Complainant is very much concerned about the likelihood of confusion and deception due to the literacy rate in our country which is very low and people will not be able to distinguish between identical /similar trademarks.
- 2.23 The Complainant said that through the use of Newspaper, it has created awareness of the uniqueness of the “Nawaba Double Bhens” khal banola mark and that it has been the sole authority to use this brand name and logo. Infringement of this brand name/logo will lead to legal actions and the Complainant will itself be responsible for the actions taken against them in accordance with law. The Complainant has suffered and will continue to suffer grave and irreparable loss and injury by reason of the wrongful acts of the both Respondents, in infringing the Complainant's earlier registered trademark and passing off and/or attempt to pass off their products as the Complainant's.
- 2.24 The Complainant, therefore, prayed for the following judgments, stating that:
- i. in light of the facts and circumstances mentioned above, this complaint may kindly be accepted and action be taken against the Respondents;

- ii. the Commission may initiate proceedings against both the Respondents for violation of the Section 10 of the Act;
- iii. the Respondents may kindly be directed to pay the amount of damages for harming the business interest and goodwill of the Complainant;
- iv. the Respondents may be directed to deliver upon oath all labels, packaging, advertising materials, printing blocks and other material which bears the infringing trademark; and
- v. the Commission may direct the Respondents to refrain from sale/supply of any goods/products that resemble the goods/products of the Complainant, till the final judgment is made by the Commission.

3. CORRESPONDENCE WITH THE RESPONDENT NO. 1:

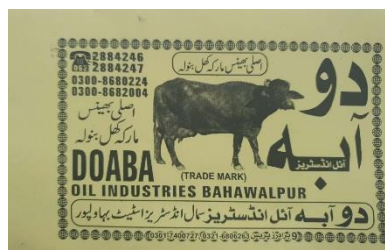
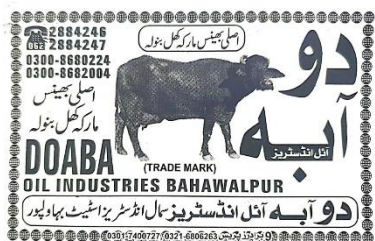
A. SUBMISSIONS OF THE RESPONDENT NO. 1:

- 3.1 The complaint was forwarded to the Respondent No. 1 by the Enquiry Committee for comments on May 16, 2019. Later on, a reminder was issued for submission of comments on June 17, 2019. The Respondent No. 1 requested for an extension in time limit through letter dated June 24, 2019, which was granted vide letter dated June 27, 2019.
- 3.2 The Respondent No. 1 submitted its reply, the contents of which is provided below:
- 3.3 Firstly, a brief introduction of Respondent No. 1 was provided which is reproduced as under:
- 3.4 The Respondent No. 1 has been involved in this business since 1986. It has examined the complaint filed by the Complainant along with the annexures and subsequently, deny each and every contention, statement, claim, ground, and averment.
- 3.5 The Respondent No. 1 (which expression shall include its predecessors-in-title) either itself and/ or through its affiliates, has for the past 60 years continued the business of manufacture and sale, *inter alia*, of varied industry portfolio in cotton factory business, ice factory, cold storage, rice husking plant before the year 1958 as well as in oil industry relating to oil extraction, from cotton seed for its conversion to edible oil and cotton seed cake since 1986. This is when one of the sisters concern of Al-Hafeez Group (Respondent No. 1 is also part of the same) namely, Friends Oil Mills started selling oil extracted goods by using slogan trademark 'Double Bhains Marka' from Bahawalpur.
- 3.6 The Respondent No. 1 has stated that it strives to be among the leading companies in the oil and cotton industry and is committed to manufacturing and selling consistent, high quality world class products. Furthermore, it has been stated that it uses various trademarks to identify its superior quality products and services which it markets in Pakistan. Today, the company (being a family owned business) manufacturers various products. The Respondent No. 1 is a part of Al-Hafeez Group of Companies which consists of:
 - Al Hafeez Cold Storage known as AH Cold Storage

- Al Hafeez Cotton Factory
- Al Hafeez Ice Factory
- Al Hafeez Oil Mill, 10 BC, Bahawalpur
- Al Hafeez Oil Mill, Dera Masti, Bahawalpur
- Royal Palace Marriage Club
- Rafi Cotton Industries Formerly known as Doaba Cotton Industry
- Friends Ice Factory
- Al Rehman Ice Factory
- Al Hamd Oil Mill known as AH Oil Mill
- Friends Oil Mill
- Naveed Oil Mill
- Al Rehman Oil Mill, known as AR Oil Mill.
- Al Hamd Oil Mill 2, known as AH Oil Mill 2

3.7 The Respondent No. 1 has stated that it is commencing its business at least before 1958 in Bahawalpur, Pakistan with the objective to expand its earlier business of Oil and Cotton Industries which was started by the real brother of his in 1986. Further, M/s. Rafi Oil Industries formerly known as Doaba Oil Industries was purchased by brother of the Respondent No. 1 with all assets and liabilities. M/s. Doaba Oil Industries was selling its products under the trademark DOABA with its slogan “Asli Bhains Marka Khal Banola” with “Buffalo Device” even before 1992.


3.8 The Respondent No. 1 has further stated that M/s. Rafi Industries, after acquisition/purchase of M/s. Doaba Oil Industries, kept on extracting, processing, manufacturing and selling oil extracted goods namely cotton seed cake as the buffalo food. For the sake of reference and clarity, trademark label for the oil extracted goods is provided hereunder:



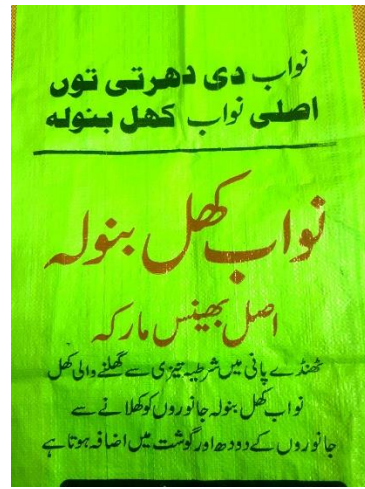
3.9 The Respondent No. 1 has been conducting business in the region for over 60 years and has its production plants in Southern Punjab (Bahawalpur, Samasatta) which is the main oil supplying region of Pakistan. Moreover, the Chief Executive Officer (CEO) of the company is one of the renowned oil businessmen of Pakistan. The Respondent No. 1 is providing its expertise for the development of Oil Industry of Pakistan to improve oil productivity and animal health for achieving the ultimate goal, i.e., a “healthy nation”. The products are subjected to tests at various stages of procurement, production and storage.

All products conform to internationally accepted quality parameters and strict adherence is maintained to ensure production of quality products only.

- 3.10 The production of Respondent No. 1 is effectively marketed in Pakistan. Its products have also attained brand acceptance and recognition through a well-developed marketing strategy. The Respondent No. 1's famous brand 'AH NAWAB KHAL BANOLA' with its renowned slogan "Asli Bhains Marka Khal Banola" with "Three Buffalo Devices" which was being used by "Doaba Oil Industries" has been built into a nationally recognized cotton cake brand which now holds a good reputation as its customers believe the product is of consistent high quality.
- 3.11 The Respondent No. 1 has been actively marketing and advertising its various products and customers from all over Pakistan associate all these trademarks belonging to the Respondent No. 1 and none else ever since its first use. The Respondent No. 1 has claimed that the attractive packaging of the trademark 'AH NAWAB KHAL BANOLA' with its renowned/famous slogan "Asli Bhains Marka Khal Banola" with "Three Buffalo Devices" makes it easier for the consumers to associate the oil and cotton seed products to the Respondent No. 1.
- 3.12 The Respondent No. 1, in view of the facts disclosed above, has claimed that the company and reputed trademark 'AH NAWAB KHAL BANOLA' with its renowned/famous slogan "Asli Bhains Marka Khal Banola" with "Three Buffalo Devices" have acquired a tremendous reputation and goodwill nationally by virtue of its use. Moreover, never has the Respondent No.1's mark ever been opposed nationally by a third party. In order to protect the trademark, the Respondent No. 1 has also applied for the registration of the trademark with the below mentioned status:

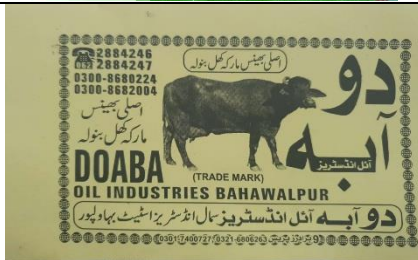
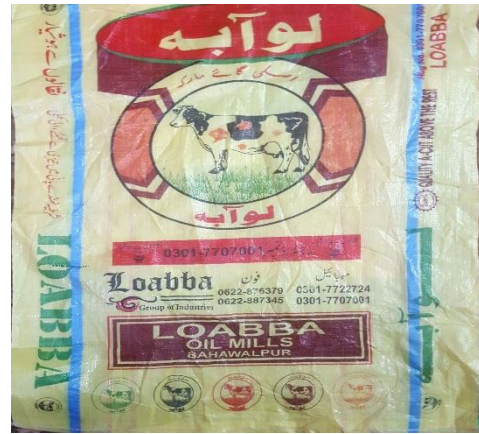
Trademark	Appl. No.	Filing Date	Class	Status
	473230	23-10-2017	31	(Pending)

- 3.13 Since 1986, the Al-Hafeez Group adopted and started using the word mark "Double Bhains Marka" with "Two Buffalos Device" along with its distinctive color scheme, design and getup with dominance of green color as a trademark for all the oil seed extracted products marketed by the Al-Hafeez Group in Pakistan. Images of the present product packaging and use of red color by the Al-Hafeez Group is depicted below:



3.14 All the companies engaged in oil seed cake business use “Buffalo Device” as an integral part of the packaging and livery to depict it as buffalo food for referring to its kind. Doaba Khal, Loabba Khal, Toaba Oil, Taizroo, Minhas Khal, Anmol Khal, Bala Gam, New Taiz Gam, Kashmir Gam, Shahtaj Khalbanola and many others are a few examples of undertakings which use prominent green, red color scheme, design and get up for packaging along with Buffalo and/or Cow Device. Some of the examples are given below:





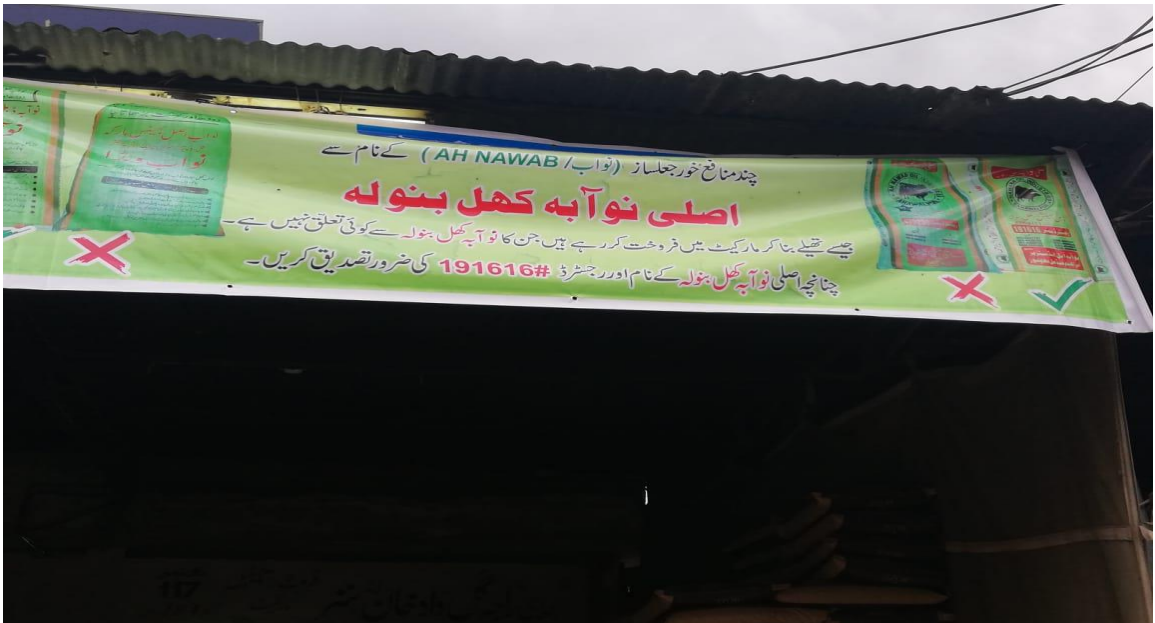


- 3.15 In addition to above, following preliminary objections have also been raised, which are reproduced as below:
- 3.16 That the titled complaint is not maintainable as framed and filed by the present Complainant, hence the same is liable to be dismissed. That the Complainant’s legal character/status has never been explained in the titled Complaint. For maintainability of the titled complaint and for determination of legal character and status of the Complainant, following questions need to be answered at first:-
- i) In case the Complainant – M/s Nawaba Oil Industries is the trade name of a natural person, i.e., a sole proprietorship, then how can the Complaint be competent, as a proprietary concern can be sued in its name, but it cannot sue in its own name in view of the provisions of Order XXX, Rule 10 of the C.P.C.?
 - ii) In case the Complainant is a partnership, unless the Complainant is registered as a partnership firm under the Partnership Act, 1932, the complaint under Section 69 of Partnership Act, 1932 is barred from being lodged.
 - iii) In case the Complainant is a company limited by shares, then unless the institution has mandated filing of the complaint by a person duly authorized, the complaint is liable to be dismissed, in terms of the law as laid down *inter alia* by the judgments reported as “Muhammad Siddiq Muhammad Umar vs. Austerlasia Bank” (PLD 1966 SC 684), “Abdul Rahim and 2 others v. M/s. United Bank Limited of Pakistan” (PLD 1997 Karachi 62)
- 3.17 That it is a settled law that under the provisions of Order XXX, Rule 10 of the CPC, a person carrying on business in a name and style other than his own may be sued in such name or style as if it were a firm name. However, the person cannot sue in such name because a proprietary firm/concern does not have any legal status separate and distinct from its proprietor. It has been submitted that for all intents and purposes, it is the proprietor who is the legal person entitled to all the benefits and liable to answer for all the liabilities that accrue in respect of the proprietary firm/concern. In other words the

proprietor and proprietary firm/concern, are one and the same person. However, as said above, by virtue of the provisions of Order XXX, Rule 11 of the CPC, a proprietary concern may be sued in its name, but the proprietary concern cannot bring a legal action as it does not have any legal character/status separate and distinct from its proprietor. Reliance in this regard has been placed upon the judgments reported as “Girdari Lal v. Kangra Motor Agency and others” (AIR 1934 Lahore 147), “Ismail Haji Sulaiman vs. M/s. Hansa Line and another” (PLD 1961 Dacca 693), “Habib Bank Limited vs. Iqbal I. Chundigar and another” (1983 CLC 1464), “M/s. Ahan Saz Contractors vs. Pak Chromical Limited” (1999 MLD 1781), “The Collector of Customs (Appraisement) Collectorate of Customs vs. M/s. Imran Enterprises Through Proprietor and others” (2001 CLC 419) and “M/s. M.A. Majeed Khan vs. Karachi Water and Sewerage Board and others” (PLD 2002 Karachi 315). In view of submissions made above, it has been humbly submitted that the titled complaint is not maintainable and hence, the same is liable to be dismissed.

- 3.18 That the Complainant has filed the titled complaint with *mala fide* intentions just to harass and blackmail the Respondent No. 1. Therefore, the titled complaint is not maintainable.
- 3.19 That the Complainant has made misstatements in the titled complaint, particularly with regard to its rights in relation to trademark, packaging and descriptive writings as appearing in the complaint. Therefore, the titled complaint is liable to be dismissed.
- 3.20 That it is the Al-Hafeez Group, which the Respondent No. 1 is a part of, that had started using the predominant green color scheme for its branding and packaging of its various products, prior to the Complainant. It is the Complainant who has adopted confusingly and deceptively similar color scheme design and getup to earn undue profits sailing upon the goodwill of the Respondent No. 1.
- 3.21 That it will not be out of place to mention here that the Respondent No. 1 is using its own distinctive trademark, namely Al-Hafeez Nawab Oil Industries with “Three Buffalos Device” along with a “Star Device” since 1992. And the renowned slogans, “Asli Bhains Marka Khal Banola” and “Asli Nawab Khal Banola” are also displayed for animal food products, that are exclusively made for buffalos, on the top of its bags. It has been submitted that perusal of label of the Respondent No.1 shows that the trademark carries the following dominating characteristics which have been concealed by the Complainant for defrauding this Honorable Commission.
 - (a) Star Device;
 - (b) Conspicuous representation of Trademark No. 473230 of the Respondent No. 1;
 - (c) Clearly mentioned name of the Respondent No. 1 as AH Oil Industries Bahawalpur;
 - (d) Al-Hafeez Nawab Oil Industries;
 - (e) Renowned Slogan “Asli Bhains Marka Khal Banola”;
 - (f) “Asli Nawab Khal Banola”; and
 - (g) Distinctive colour scheme, design and overall getup.

- 3.22 It has been submitted that the Complainant’s filed trademark certificate, which is annexed as Annexure – A to the complaint, whereby a label was registered in a particular manner and rights, if any, are restricted to the extent of registration, but not beyond. While referring to the packaging samples submitted by the Complainant, it has been further submitted that perusal of both the bags of the respective products/buffalo food of both the parties shows that the Complainant, with *mala fide* intent, has misused process of law. The factum of *mala fide* can easily be crystalized as the Complainant, rather than using its own trademark as granted, has dishonestly copied and adopted the Respondent No. 1’s scheme of arrangement and placement of various characters of its trademark. In this regard, it has been further submitted that the Complainant’s granted label shows that its slogan namely “Double Bhains Marka Khal Banola” has been written on the top of buffalo device and there has been nothing mentioned as “Asli Nawaba Khal Banola”. However, the Complainant, just to practice fraud upon this Honorable Commission, has wrongly applied for its trademark just to interfere into and to infringe upon the rights of the Respondent No. 1 relating to its distinctively arranged trademark.
- 3.23 Additionally, it has been submitted that it is a settled principle of law that the trademark shall be considered as whole but not in its parts. It has been further submitted that the Respondent No. 1’s mark is carrying its own distinctive placement of characteristics for the trade dress of the bag which was created by the Respondent No. 1 with its distinctive color scheme and getup, but the Complainant due to business rivalry with the Respondent No. 1, has itself encroached upon the rights of the Respondent No. 1 and such unlawful and illegal acts of the Complainant fall within the definition of unfair competition, dishonest business practices and deceptive marketing practices which are prohibited under the law. Therefore, it has been stated that it can be easily said that the Complainant is involved in deceptive marketing practices which is liable to be dealt with iron hands. Example of Deceptive Marketing Practices submitted by the Complainant is depicted here below:





- 3.24 That for ascertaining the unlawful activities of defrauding the general public by circulating false and misleading information which is capable of harming the business interests of the Respondent No. 1 which is a serious violation of Section 10 (2)(a) of the Act, attention of this Honorable Commission is drawn to the fact that on March 01, 2018, Mr. Furqan Masood, signatory to the Complainant, filed a suit titled Furqan Masood Versus Al-Hafeez Oil Mills (hereinafter referred to as the “Suit”) which is pending adjudication in the Honorable Intellectual Property Tribunal, Punjab at Lahore, which is fact that has intentionally been concealed by the Complainant.
- 3.25 That along with the Suit, the signatory to the Complainant had also filed an application under Order 39, Rules 1 and 2, read with Section 151 of CPC for grant of temporary interim injunction. Moreover, an ex-parte ad-interim injunctive order was also passed. Relevant extract of order dated March 01, 2018, is reproduced hereinafter:

“Relying upon the material placed above, in the meanwhile, respondents are restrained from imitating the petitioner’s trademark/label and passing off their products as such, which order would of course be subject to all legal exceptions and factual objections.”

(Copy of the Injunctive Order dated March 01, 2018, attached with the reply is attached herewith in **Annexure – D**).

- 3.26 That the Respondent No. 1, through its counsel, under Order XXXIX Rule 4 of Code of Civil Procedure, 1908, filed an application on June 02, 2018. Whereas signatory to the Complainant rather than filing reply to the Respondent No. 1’s application kept delaying the matter on one or the other pretext and ultimately, on August 03, 2018, counsel for the signatory to the Complainant got its statement recorded to the effect that it did not want to file reply to the said application. In the light of the submissions made hereinabove, it is

clear that the Injunctive Order dated March 01, 2018, and further proceedings in the Suit were known to the Complainant.

3.27 That subsequent proceedings held on August 03, 2018, the Complainant sent a letter dated August 05, 2018 to:-

- i) The Chairman of All Pakistan Oil Mills Association; and
- ii) The President of Bahawalpur Oil Mills Association.

Relevant extract of the Letter dated August 05, 2018 is reproduced herein below:-

“a suit/case was filed in the court of THE INTELLECTUAL PROPERTY TRINUBAL, LAHORE (Later termed as Tribunal), where Hafeez Oil Mills, Bahawalpur were instructed by the said Tribunal to stop the supply of AH NAWAB Khal Banola in the market. (Through a Stay Order)”

3.28 That perusal of Injunctive Order shows that Honorable IP Tribunal has not passed any such order as deliberately communicated by the Complainant to the various organizations. The acts of the Complainant are illegal, unlawful, amount to distribution of false and misleading information, and are harming business interest of the present Respondent No. 1, which is a blatant violation of Section 10(2)(a) of the Act.

3.29 Such flagrant miscommunication and distribution of false and misleading information by the Complainant requires that proceedings under Section 10(2)(a) be initiated against the Complainant and the Complainant may be dealt with in accordance with law as it has willfully, knowingly and intentionally propagated false information, misused authority of the Court, and has misused due process of law. The Respondent No. 1 has suffered and is bound to suffer irreparable loss and injury as the Complainant will keep on propagating false and misleading information to harm the business interest of the Respondent No. 1. It is also pertinent to mention here that when the present Respondent No. 1 brought above facts to the knowledge of Honorable Intellectual Property Tribunal, the IP Tribunal did not extend the operation of Injunctive Order and therefore, the said Order was lapsed after six months period of its issuance in terms of Order XXXIX Rule 2A.

3.30 That the Complainant has wrongly and falsely claimed rights of Buffalo Device for the packaging of its Khal Banola products for the reason that all companies throughout Pakistan use Buffalo and Cow Devices for their products for referring it as Buffalo/Cow Food. It has also been submitted that right of exclusivity over an animal device cannot be claimed under the law, therefore, the titled Complaint is not maintainable.

3.31 That the Complainant is trying to claim exclusive rights upon all the characters/matters appearing in the label of the Respondent No. 1's product packaging, trade dress (banola bags). It has been further submitted that it is a settled principle of law that no exclusivity can be claimed over the characters/features appearing over any label which are either "Common to Trade" or falling in the sphere of "Public Juris". Perusal of subject matter labels, this Honorable Commission will find the following features which are public juris and/or common to trade.

- a) Buffalo Device as device of animals cannot be monopolized;
- b) Black Color of Buffalo, it is obvious that Buffalos available in Pakistan are of black color; and

c) Devices of animals do not carry any sort of distinctive character, but only refer to the kind, nature and intending purpose of the goods.

3.32 It has been alleged by the Respondent No. 1 that right of exclusivity as claimed by the Complainant is totally misconceived, therefore, the complaint is liable to be dismissed. For the sake of reference and brevity, packaging/banola bags belonging to various proprietors are attached herewith for *prima facie* proof of “Common to Trade” and “Public Juris” features appearing in the subjects labels of the parties.

3.33 It has been stated that in reference to the use of the word “Oil Industries” by both the parties, the term “Oil” refers to the extract squeezed from a seed which is common to trade and no one can claim right of exclusivity over the word “oil” and the same case is with the word “Industries” as well. Furthermore, use of the mark “Nawab”, which indicates the geographical origin of the goods, also falls within the premises of “Public Juris” use of which is legally allowed and no monopoly right could be claimed or granted in this behalf. Few examples of use of geographical indication “Nawab” for buffalo/cow food products by other proprietors are depicted hereunder:-





3.34 That it is the Complainant who had copied Respondent No. 1’s famous mark “Doaba Oil Industries” by adopting a confusingly similar mark, “Nawaba Oil Industries” for the same products, therefore, it has been submitted that it is the Complainant against whom proceedings under Section 10(2)(d) of the Act should be initiated. The use of word “AH” by the Respondent No. 1 refers to “Abdul Hafeez”, which is the name of the father of the

Respondent No. 1 and hence, the right of exclusivity over the features falling in public domain cannot not be granted to anyone.

- 3.35 It has been alleged that the Complainant is using the titled complaint as an instrument to coerce and force the Respondent No. 1 to acknowledge and accept unreasonable demands of the Complainant, in order to stifle fair and free competition. Moreover, the fundamental characteristics of a trademark are lacking completely in the case of the Complainant's aforementioned mark. Therefore, the Complainant has completely failed to make out a case under Section 10(2)(d) of the Act, and thus, the titled complaint is liable to be dismissed.
- 3.36 That the titled complaint is merely a result of trade rivalry, business jealousy, effort to discourage healthy competition and to make illegal profits and gains. That the titled complaint is meant to achieve unlawful objects as clearly reflected in the letter dated August 05, 2018, served by the Complainant.
- 3.37 Attention of the Commission has been drawn to the trademark registration certificate attached along with the titled complaint. It has been alleged that firstly, there is not a single trademark registration which has been granted without a disclaimer and secondly, perusal of registration certificate shows that it is registered in combination of various features. In such circumstances, it has been further alleged that the Complainant has no rights in trademark of "Buffalo Device", Oil Industries, Shahdara Road and "Bahawalpur" for packaging. Consequently, the titled complaint fails to comply with the criteria for initiation of an action under Section 10 of the Act.
- 3.38 Additionally, it has been submitted in this regard that the basic case pleaded by the Complainant is with reference to the Complainant's packaging, with word marks Nawaba of the Complainant, Al-Hafeez Nawab with three buffalos device of Respondent No. 1 and for green color scheme. That it is the Complaint who has made its best efforts to create nearly resembling labeling to the Respondent No. 1 by adoption of confusingly similar color scheme and placement of other features in close similarity to the overall trade dress of Respondent No. 1.
- 3.39 Referring to the Complainant's claim with regard to exclusive rights to use the buffalo device in question as well as to restrain Respondent No. 1 from using the buffalos device of packaging, it has been submitted that Buffalo Device packaging is commonly used in the oil products industry and business throughout the world including Pakistan and the Complainant cannot claim any exclusivity with regard to the same in terms of Section 21 of the Trademarks Ordinance, 2001.
- 3.40 Moreover, there is no similarity amongst the Respondent No. 1's packaging of various products with any of the packaging of Complainant's products relating to Buffalo Device. Importantly, the Complainant has not even attached any proof that Buffalo Device has been exclusively registered as its trademark (label) under the Trademarks Ordinance, 2001, rather it is registered as combination of various elements. Resultantly, the Complainant cannot claim any rights or otherwise any exclusive rights on the Buffalo Device. In this regard, reliance has been placed upon the reported judgment passed by the

Honorable Supreme Court in the matter of “M/s. Aftab Soap Factory Limited vs. Mujahid Soap Factory, Rawalpindi and another” (1991 SCMR 796).

- 3.41 In view of above, it has been stated that the Complainant’s case is clearly hit by Sections 14 and 21 of Trademarks Ordinance, 2001 and therefore, no case under Section 10 of the Act can be made out by the Complainant. That without prejudice to above, attention of the Commission has been drawn to Section 54, Illustration “W” of Specific Relief Act, 1877, relevant extract of which is reproduced hereinafter:

“(W) *A improperly uses the trademark of B. B may obtain an injunction to restrain the user, provided that B's use of the trademark is honest.*”

- 3.42 That in respectful submission of the Respondent No. 1, in terms of Section 54, Illustration ‘W’ of Specific Relief Act, 1877, the Complainant’s use of “Nawaba Oil Industries” is not “honest” if it claims that Nawaba Oil Industries is a trademark, which it is not and accordingly, the Complainant cannot plead the exclusive use of Nawaba Oil Industries or Buffalo Device to make out a case of Section 10 of the Act against the Respondent No. 1. Attention of Commission has been drawn to the draft of letter dated August 05, 2018, as forwarded by the Complainant and it has been submitted in this regard that the said letter is clearly an act on the part of the Complainant against the spirit of open, fair and honest competition as required under the Act.

- 3.43 That in view of above unreasonable and anti-competitive demands by the Complainant, without any right in the images on the product packaging, which in any event are entirely different from one another, and that there can be no trademark rights on the pictures, images of Buffalo etc., the complaint is liable to be dismissed.

- 3.44 The Respondent No. 1 has stated that the trademark certificate was issued to Mr. Furqan Masood (Natural Person), but the titled complaint is filed by Nawaba Oil Industries, who is an alien person to the subject matter of titled proceedings as Nawaba Oil Industries *does not fall within the definition of “Person”*. *It is respectfully submitted that the Complainant is neither a natural nor a body corporate and therefore, lacks locus standi to maintain the present proceedings and deserves to be rejected straight way.*

- 3.45 It has been submitted by the Respondent No. 1 that in absence of *locus standi* of the Complainant, this Honorable Commission lacks jurisdiction to adjudicate upon the titled complaint. It has been further submitted that questions of lack of competence of the Complainant and lack of jurisdiction of this Honorable Commission are primary questions which require due consideration of this Honorable Commission at primary stage, as it is a settled principle of law that the question of jurisdiction, *locus standi* and lack of competence of the Complainant goes to the very root of the case and renders the entire proceedings *Corum non Judice*, and vitiates the same. It is also a settled principle of law that the Honorable Court/Forum/Tribunal itself is required, before proceeding with a case, to examine whether it has jurisdiction in law to proceed or not.

- 3.46 It has been further submitted that Nawaba Oil Industries is neither a legal nor a juristic person and is not an independent entity to sue by its own name. It is also a settled principle

of law that a Dead Person and/or Non-Existent cannot sue, which is a fact of the matter that renders the entire proceedings a futile exercise. It is a settled principle of law that “the question of jurisdiction and competence of filer of proceedings being of fundamental nature in judicial proceedings should be decided first on priority basis without recording evidence on issues relating to merits of the case”. In the light of submissions made in above, it has been finally submitted that the Respondent No. 1 has raised fundamental questions of jurisdiction and lack of *locus standi* due to non-existence of the Complainant which is an admitted fact of the matter and if this Honorable Commission comes to answer to this question in affirmative, then the whole proceedings would be rendered as *Coram non Judice*. Therefore, these questions deserve to be decided first before parting with the merits.

- 3.47 Moreover, the contents of the introductory paragraphs of the titled complaint, being details by the Complainant of its alleged business activities and self-praise of some of its unknown goodwill are irrelevant and are not in the knowledge of the Respondent No. 1. Therefore, the same are vehemently denied as stated and the Complainant is put to strict proof thereof. Attention of this Honorable Commission has been drawn to the contents of the titled complaint, wherein the Complainant has stated that it is in the “***Khal Banola and Wanda and Seeds industry since 2001***”, however, according to the records relied upon by the Complainant in the complaint, herein reproduced in paragraph No. 2.3 *ibid*, the Complainant entered into the record of Bahawalpur Chamber of Commerce in the year 2007, which shows that the acts of distribution of false and misleading information and practicing fraud upon this Honorable Commission on behalf of the Complainant.
- 3.48 That the Complainant has no explanation about the gap from year 2001 up to year 2007 (6 years). In view of the above, the Complainant is put to strict proof of its existence, conduct of business and use of the mark “Nawaba” with imitated green color scheme for packaging. Contents of the complaint, reproduced herein in paragraph No. 2.7 *ibid*, portray a picture that perhaps it was only the Complainant which solely existed in the Seed Cake and Oil Business in Pakistan to the exclusion of all others. That it is also strongly denied that the “*Complainant is enjoying envious reputation and good will*”, in the manner and the context stated in the complaint, herein reproduced paragraph No. 2.7 *ibid*.
- 3.49 The Respondent No. 1 has vehemently denied that the “***Complainant adopted and invented the word Nawaba***” in the manner and the context stated in the complaint. It has been submitted that Doaba Oil Industries was purchased by brother of the Respondent No. 1 who continues to sell its products under the trademark Doaba with its slogan “*Asli Bhains Marka Khal Banola*” and “Buffalo Device” even before 1992. It has also been mentioned that M/s. Rafi Industries after acquisition/purchase of M/s. Doaba Oil Industries continued extracting, processing, manufacturing and selling oil extracted goods namely cotton seed cake as buffalo food. Therefore, the adoption of confusingly similar mark by the Complainant was an act of infringement and encroachment upon the rights acquired by the Respondent No.1’s Group of Companies.
- 3.50 Contents of the complaint, herein reproduced in paragraphs No. 2.1 to 2.10 *ibid.*, are without any basis, totally irrelevant, contain mis-statements by the Complainant about certain facts and an effort on its part to impress this Honorable Commission about the

business activities of the Complainant. Therefore, all the contents of the complaint, reproduced in paragraphs no. 2.2 to 2.7 *ibid.*, may kindly be ignored by this Honorable Commission. The contents herein reproduced in paragraph No. 2.10 *ibid.* of the titled Compliant are vehemently denied as stated and the Complainant is put to strict proof thereof. Attention of this Honorable Commission has been drawn to the Trademark Registration Certificate that has been granted to the Complainant. It has been submitted that is basically a combination of a slogan namely “Double Bhains Marka Khal Banola”, which is written on the top of device of Buffalos, and “Nawaba Oil Industries”, which is written on the right side of Buffalos Device and finally, “Shahdra Road, Bahawalpur”, written on left side. While in the packaging, “Double Bhains Marka Khal Banola” is written at the bottom of the Buffalo Device, Nawaba Oil Industries is not written at right side of Buffalo Device, and Shahdra Road, Bahawalpur is also not written at left side of Buffalo Device. Furthermore, the Complainant has no independent trademark registration for Buffalo Device which gives it the right of exclusivity over the device of an animal. The Complainant is copying the Respondent No. 1 by using the following:

- a) “Asli Nawaba Khal Banola” written on the top by copying the Respondent No. 1’s label; and
- b) Adopted colour-scheme, design and getup closely similar to the Respondent No. 1.

- 3.51 That the Complainant, just to mislead the general public and practicing fraud upon this Honorable Commission, has wrongly applied for its trademark just to interfere into and to infringe the rights of the Respondent No. 1 relating to its distinctively arranged trademark. It is a settled principle of law that the trademark shall be considered as whole but not in its parts.
- 3.52 That the Complainant has no rights in trademarks “Buffalo Device”, “Shahdra Road”, “Bahawalpur” and “Nawaba” independently therefore, the Complainant cannot maintain the titled complaint. The Complainant has no exclusive rights to use Buffalo Device except as a whole. Therefore, under Section 21 of the Trademarks Ordinance, 2001, the Complainant cannot claim any rights in such trademarks in the manner and the context of the complaint herein reproduced in paragraphs No. 2.4 *ibid.* It is respectfully submitted that Affidavit of the designer is a self-created private document having no evidentiary value unless the person who allegedly deposed the affidavit appears before the Commission for proving its authenticity and unless the said deponent would not be subjected to cross examination for testing the genuineness of the contents of affidavit. Hence, this document, having no confidence inspiring evidentiary value, is liable to be turned down unless not proved in accordance with Qanoon-e-Shahdat Ordinance, 1984.
- 3.53 It has been submitted that Respondent No. 1 cannot claim any exclusive rights in Buffalo Device for packaging of animal food products for the reason that Buffalo Device is commonly used for packaging of animal food products and for animal food business. It is respectfully submitted that for large varieties of animal food products a large number of Companies in Pakistan use Buffalo Device for their packaging including but not limited to Doaba Khal, Loabba Khal, Toaba Oil, Taizroo, Minhas Khal, Anmol Khal, Bala Gam, New Taiz Gam, Kashmir Gam, Shahtaj Khalbanola and many others including the present Complainant and the Respondent who are no exceptions to such use.

- 3.54 Moreover, all the details of its product packaging given in the complaint, herein reproduced in paragraphs No. 2.6 and 2.7 *ibid*, are irrelevant for the reason that in Pakistan, Al-Hafeez Group is clearly the prior user of Buffalo Device for branding and packaging of its animal food products as the same has been used by Al-Hafeez Group since year 1986, without any objection from any quarters.
- 3.55 It has been strongly denied by the Respondent No. 1 that the “*trade dress used by the Respondent No. 1 is identical to the Complainant*” for the reason that it is the Complainant who is imitating each and everything of the Respondent No. 1. Depiction of packaging of the Respondent No. 1 and the Complainant is shown hereunder:-

Front Side of Labels



Back Side of Labels



- 3.56 That the Complainant has come up with the present *mala fide* complaint just to coerce the Respondent No. 1 into admitting and acknowledging the illegal and unjust demands of the Complainant as mentioned in its letter dated August 05, 2018. It has been strongly denied by the Respondent No. 1 that the Complainant enjoys any good will and reputation in the Buffalo Device as wrongly and falsely stated in the complaint.

- 3.57 That the contents of the complaint, herein reproduced in paragraphs No. 2.12 and 2.13 *ibid.*, are denied vehemently and the Complainant is put to strict proof thereof. While dealing with the allegations of adoption of the trademark “AH Nawab” by the Respondent No.1, it has been submitted that Nawab is a generic term which is used in relation to the origin of products, namely Bahawalpur commonly known as “Nawabon Ki Dharti – Land of Nawabs” and AH refers to the name of the Group of Companies, namely Al-Hafeez Group, but Al-Hafeez cannot be written on the packaging as sanctity attached to the pious name of Almighty. Therefore, allegations leveled by the Complainant are without any basis. It is a settled principle of law that common to use terminologies can be adopted and used by all the parties. Reliance is placed upon reported judgment “Malik Muhammad Rafiq Awan vs. Javed Iqbal and others” (2012 CLD 905).
- 3.58 It has been submitted that annexures in the complaint themselves show that both the shops are being operated under their own trademarks and there is no complaint of confusion and deception made to the Complainant by use of the word “Nawab”. Hence, it has been established by the Complainant’s own showing that both resellers are selling their respective products under their own unique brand names. Reliance is placed here upon reported judgment “Malik Muhammad Rafiq Awan vs. Javed Iqbal and others” (2012 CLD 905).
- 3.59 That in the circumstances, Buffalo Device for packaging is commonly used by Animal/Buffalo food product manufacturers, resultantly, the Complainant cannot claim any right in the same or otherwise falsely accuse the Respondent No. 1 for having violated provisions of Section 10 of the Act.
- 3.60 It has been strongly denied that the “***Respondent No. 1’s trademark is confusingly similar to the Complainant’s***” as a wrongly and falsely stated fact in the Complaint. It has been submitted that neither the Complainant has any rights in trademark nor the same has been infringed for the reason that Buffalo Device of the Complainant and Buffalo Device of the Respondent No. 1 are entirely distinct. It is an established principle of law that “***where there is right there is a remedy***”.
- 3.61 Finally, the Respondent No. 1 prayed that the Honorable Commission may be pleased to dismiss the titled complaint and exemplary costs may be awarded to the Respondent No. 1 for filing a frivolous complaint.

B. REJOINDER BY THE COMPLAINANT TO THE SUBMISSIONS OF THE RESPONDENT NO. 1:

- 3.62 The reply of the Respondent No. 1 was forwarded to the Complainant for its comments/rejoinder vide letter dated August 01, 2019. The Complainant requested for an extension through an email dated August 08, 2019, which was granted to it till August 28, 2019. The Complainant submitted its rejoinder vide an undated letter, the contents of which are reproduced below:
- 3.63 It has been specifically denied that the Respondent No. 1 has mentioned itself as proprietor of M/s AH Oil Industries Bahawalpur without any documentary proof. A proprietorship

is not registered with any authority. Furthermore, that the Respondent No. 1 has maliciously published its name on the bags to cause injury and infringe the intellectual property of the Complainant. The existence of Respondent No. 1 since 1986 is in contradiction with the application submitted by it for trademark registration in 2016. Whereas in the NTN verification copy, the date of doing business is mentioned as November, 1995, which is contrary to its stance.

- 3.64 The Complainant has vehemently denied the comments on the basis that the Respondent No. 1 is deceiving and misleading the Honorable Commission. Furthermore, the stories of the Respondent No. 1 have nothing to do with the substance of this complaint. The Respondent No. 1 has mentioned other entities just to prolong and delay the proceedings of the Commission. Friends Oil Mills has falsely been asserted as sister concern of Respondent No. 1. That the Respondent No. 1 has not provided any proof of its trademark registration and ownership. The Complainant stated that his grandfather and father have been in this business since 1950's. It was Complainant's continuous trading in cotton field that he started this business in 2000. Copy of the relevant documents have also been attached.
- 3.65 It has been strongly denied that the Respondent No. 1 is not involved in making high quality products. Moreover, the AH Cold Storage & Al-Hafeez Oil Mills Chak-10, BC, Bwp are owned by Mr. Abdullah Arib as mentioned in FBR Taxpayer Registration Certificate. As per reply, it must be highlighted that this registration is w.e.f. 09-Oct-2011, whereas the principal activity is warehousing and storage (Read on the FBRs Certificate). Rafi Cotton is also a partnership between Mr Rafi, Mr Naveed, Mr Muneeb and Mr. Haseeb. And the Respondent No1 is not named in the partnership deed. Similarly, Friends Ice Factory, Friends Oil Mill and Naveed Oil Mills are all owned by different or same individuals, where the Respondent No. 1 has no business interest in them.
- 3.66 That the existence of Respondent No. 1 is not admitted, but denied by the Complainant that he is associated in the business of oil industry since 1986. Respondent No. 1 has no concern whatsoever with the referred M/s Rafi Cotton Industries as he himself did not attach any document in this respect as proof. Additionally, the mere mentioning of slogan "Asli Bhains Marka Khal Banola" cannot define the timeline of production and its sale.
- 3.67 It has been further denied that Respondent No. 1 is not involved in trying to create the impression that it is using the slogan as its industry was using it, whereas it has also been verified from the NTN Verification on 22.08.2019 that DO-AABA Oil Industry is working as a separate business entity and is also a member of Chamber of Commerce & Industry. However, it is pertinent to mention here that the Respondent No. 1 has also not annexed any proof regarding purchase of intellectual property rights of M/s Doaba Oil Industries. It has been made matter of record that Do-Aaba "Asli Bhains Marka Khal Banola" is not a registered trademark as per the Trademark Registration Act, hence Respondent No. 1 cannot claim or allege the so-called infringement thereof. Relevant documents have also been attached.
- 3.68 It has been vehemently denied that the provision of information regarding management and staff is not relevant with respect to the complaint. The information presented by the

Respondent No. 1 has nothing to do with the crime committed by it and even otherwise, upon such assertions, it has no right to infringe the registered trademark of the Complainant. That the quality assurance of the product is of no relevance to the subject matter.

- 3.69 That the contentions of the Respondent No. 1 are denied by the Complainant due to their vagueness. The alleged brand acceptance and recognition in a composite form by the Respondent No. 1, without specifying any of them, is completely vague. The trademark and name of the Complainant is branded, marketed and has gotten acceptance massively from the general public and more than the copied brand of Respondent No. 1. That copying of brand of the Complainant by Respondent No. 1 itself is a proof that the brand of the Complainant is higher in quality, market acceptance and recognition than that of Respondent No. 1. That the Respondent No. 1 does not bear any intellectual right registered in accordance with the prevailing laws before the concerned authorities qua any of the trade name or trademark or brand or slogan mentioned in its comments.
- 3.70 That the Respondent No. 1 failed to prove its direct connection with such brands and the details of purchase of the same. It has been claimed that fact of the matter is that Respondent No. 1 is infringing on the rights of the Complainant regarding its registered trademark. In order to deceive the customers, the Respondent No. 1 is using the slogan “*asli bhens marka khal banola*” with ‘three buffalo devices’. It has been highlighted by the Complainant that why does the label have three buffalo images (translated as triple bhens), but the wording under logo on bag says “*asli bhens marka khal banola*”, where the triple bhens printed on bag seem exactly like double bhens logo of the Complainant.
- 3.71 It has been further denied that the Respondent No. 1 is involved in greater publicity, sales, promotional activities and the advertisements published in Pakistan as well as seen, read and heard by the Pakistani population in Pakistan, but the burden of proof is still on the Respondent No. 1. That the Respondent No. 1 has categorically admitted the infringement of registered trade name of the Complainant. It has been alleged that the Respondent No. 1 has admitted that it has been using AH Nawab Khal Banola with the slogan “*asli bhains marka khal banola*” and the buffalo devices.
- 3.72 That usage of the mark, Nawab Khal Banola is deceptive and in order to infringe further rights of Complainant, the Respondent No. 1 is deceiving the general public by using the words “*asli bhains marka khal banola*” with regard to the right of the Complainant qua double *bhains marka khal banola*. It has been alleged that although the Respondent No. 1 has stated three buffalo devices, but in order to cause infringement and injury to the registered rights of the Complainant, it printed buffalos on the bag which appear as two buffalos to make it confusing for the consumers who relate and associate the same through the products of the Complainant. That in these circumstances, the Respondent No. 1 is in sheer violations of provisions of the Trademark Act and other relevant laws on the subject, causing serious, detrimental and irreparable losses to the Complainant.
- 3.73 It has been denied by the Complainant that Respondent No. 1 is not infringing any Trademark and slogans being used by the Complainant. That the Respondent No. 1 is copying not only the trademark and slogans, but also the packaging of the Complainant

which has won the trust of the consumers. That it is a matter of fact and record that the Complainant is using the mentioned trade name, slogan and other identities to distinguish its products since 2001, whereas as a matter of fact, the Respondent No. 1 is using the copied trade name/trademark and deceptive slogan since 2016. As Respondent No. 1 started infringement of rights of the Complainant related to the subject matter in 2016, upon acquiring the knowledge thereof, the Complainant called upon a meeting before the Bahawalpur Oil Mills Association. Thereafter, the Complainant served a legal notice bearing **Reference No. NGT/101/17 dated 19.12.2017** to the Respondent No. 1 and agitated the matter of infringement of registered trademark, etc. It also availed different forums. Copy of legal notice has been attached.

- 3.74 The Complainant denied the facts made by the Respondent No. 1 on the grounds that an application bearing **No.473230** was filed by Respondent No. 1 on **23.10.2017** before the concerned authorities. However, the conduct and *mala fide* intention of Respondent No. 1 can be seen and adjudged by the Commission that the Respondent No. 1 intentionally and purposely did not disclose the further proceedings and outcome of the application mentioned supra. In haste manner, a notice so received by it against the said application on **18.01.2018** with **reference No.TN/TX/16577/2018** issued by the concerned registering authority has been attached. In the said notice, it was communicated to the Respondent No. 1 that its application cannot be proceeded and resultantly, rejected with the objection to be removed under Section 27 of Trademark Ordinance.
- 3.75 It has been alleged that the registering authority categorically objected to the application submitted by the Respondent No. 1 with the objection that the trademark which Respondent No. 1 intended to get registered was similar to the earlier trademark already registered and purpose of such application and registration of similar trademark has been made just in order to create confusion amongst the public. It was further objected that the applied trademark by Respondent No. 1 was scandalous and likely to deceive or cause confusion. That in these circumstances, the trademark and other details which were applied by Respondent No. 1 have been rejected with objections and no proof to this effect has been placed by Respondent No. 1 that the objections were redressed and the application is still pending. Moreover, it has been stated that notwithstanding anything described above, it is pertinent to mention here that the trademark and other details of the Complainant are registered, whereas Respondent No. 1 firstly infringed upon the rights of the Complainant and thereafter, applied for a deceptive trademark.
- 3.76 It has been vehemently denied that the Respondent No. 1 is the single owner of many industries. That this statement is in contradiction with the time span of business falsely asserted by the Respondent No. 1. Moreover, the Respondent No. 1 has claimed to be part of Common Shareholding/Directors just to falsely portray that it has been doing business since long, as long as 1986 and it claims to have rights of using the label/design/trade name/dressing which the Complainant has challenged. That Al-Hafeez Group is not an existent registered entity. Respondent No. 1 is an individual running sole proprietorship and under that flag, is infringing the rights of the Complainant. Furthermore, that some of the contentions raised by the Respondent No. 1 have nothing to do with the subject matter.

- 3.77 The Complainant has stated that it is important to mention here that it has registered this complaint because the Respondent No. 1 is trying to copy its products packaging/bag in a way that the overall look of the bags is the same. Also, Respondent No. 1 is trying to use a business name and logo/buffalo device which is confusing the customer with the Complainant's registered trademark and business name.
- 3.78 It has been denied by the Complainant that Respondent No. 1 has not mentioned any law which restrict to mention self-praise and goodwill. The Complainant also attached and annexed copy of certificate of trademark registration and copy of record from FBR. It has been submitted that the conjunctive reading of both these documents clearly spells out the legal character of the Complainant.
- 3.79 Allegations of the Respondent No. 1 have been denied based on the fact that the instant complaint has been filed by the proprietor Furqan Masood being Managing Partner of M/s Nawaba Oil Industries, which is a registered firm duly registered with the Registrar of Firms Bahawalpur. That the contentions raised in the reply and the judgments relied upon are pertaining to the sole proprietor and hence, have no relevance with the case in hand and can be distinguished. That the fact remains that Respondent No. 1 is deceptively using the registered trademark of the Complainant and portraying before this Commission that since it is allegedly member of large group of industries and producing various products, as a result, it has the right to infringe a registered trademark.
- 3.80 It has been admitted by the Complainant that legal remedy was invoked by the Complainant as per law on the subject.
- 3.81 It has been denied by the Complainant that it is merely seeking indulgence of this Commission upon infringement of its registered trade mark. Moreover, the Respondent No. 1 claims that Complainant's logo is not unique, whereas the Complainant adopted this unique trade logo after a thought process and sorting out help with a designer, whose certificate has already been annexed in the original complaint. That without any doubt, the Complainant was the trendsetter of creating a product of highest quality, which became renowned with the unique buffalo device and company name. And that it has a royalty registered with this brand name/logo as it was registered at the Trade Marks Registry, Karachi in the year 2004.
- 3.82 It has been submitted that the complaint has been misconceived by the Respondent No. 1. That the complaint is not only against usage of a particular word by the Respondent No. 1, rather it is against infringement of the registered trade mark of the Complainant's product. That the Respondent No. 1 is creating confusion by copying the complete appearance of bags of the products of the Complainant. That the complaint has been filed upon infringement of rights truly and duly in accordance with law on the subject. It has been submitted that the Complainant believes and appreciates healthy competition in business not cheating.
- 3.83 Finally, it has been stated by the Complainant that lengthy repetitions of false assertions have been made by Respondent No. 1 in its comments, that too of matters that are of no relevance. That it has been settled and well celebrated law on the subject that pleadings

are about facts and facts only, hence, legal proposition discussed in the these paras shall be refuted by the Complainant during the hearing of the matter in hand to the best satisfaction of the Commission.

3.84 It has been, therefore, prayed by the Complainant that the filed complaint may be graciously accepted as prayed for in order to meet the ends of justice.

C. SUBMISSION OF RESPONDENT NO.2 :

3.85 The complaint was forwarded to the Respondent No. 2 by the Enquiry Committee for comments on May 16, 2019. Later on, a reminder was issued for submission of comments on June 17, 2019. Upon not responding to the initial reminder, a final reminder was issued on August 01, 2019. However, neither the communication was acknowledged, nor any comments have been furnished by the Respondent No. 2 to date.

4. ANALYSIS:

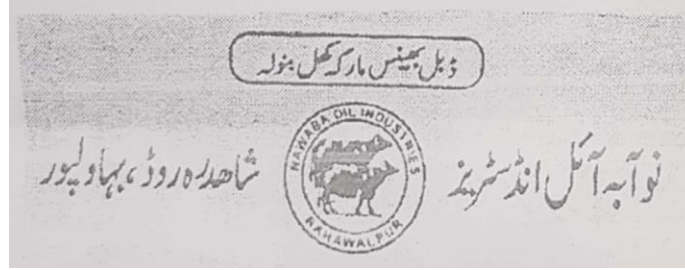
4.1 As mentioned in para 1.4 above, the mandate of this enquiry is to determine whether *prima facie*;

- a) the Respondents are violating Section 10(1) of the Act, in terms of Section 10(2)(d) of the Act, which prohibits *fraudulent use of another’s trademark, firm name, or product labeling or packaging*; and/or
- b) The Respondents’ conduct *is capable of harming the business interest* of the Complainant in violation of Section 10(1) of the Act, specifically in terms of Section 10(2)(a) of the Act;

4.2 The evidence submitted by the Complainant and the Respondents have been analyzed and it has been observed that the Complainant’s trademark, which is the subject matter of this enquiry, has been registered with the IPO since 2004 (**Annexure – A**). The same was renewed in 2011 up till the year 2021. Details of the mark are reproduced below:

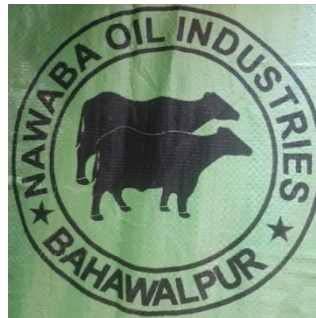
Trademark	Number	Reg./ Filing Date	Type of Goods	Status
NAWABA DOUBLE BHENS LABEL	191616	27 th January, 2004	Khal Banola and Seeds	Valid

4.3 The said mark has been published in The Trade Marks Journal as given below, with the instructions, that the owner, Mr Furqan Masood, Sole Proprietor of Nawaba Oil Mills does not have the rights of exclusive use of the words “Bahawalpur” and “Shahdara Road”:



The Mark as Published in the Trade Marks Journal

4.4 Whereas the packaging and colored versions of the said logo are provided below:



Complainant's Logo



Complainant's Packaging (Front)



Complainant's Packaging (Back)

4.5 As the complaint was filed against two different undertakings, the analysis will also be carried out separately for them.

I. IN THE MATTER OF M/S AL-HAFEEZ OIL MILLS (THE “RESPONDENT NO. 1”)

4.6 With respect to the Respondent No. 1, the Complainant has highlighted two of its brands, i.e., i) Malik Marka and ii) AH NAWAB OIL INDUSTRIES, BAHAWALPUR. For the purpose of this case, only the brand and marketing material of AH NAWAB OIL INDUSTRIES, BAHAWALPUR will be considered as the former bears no resemblance to the Complainant’s marks.

4.7 Below is the logo and packaging of the Respondent No. 1 for its brand AH NAWAB OIL INDUSTRIES, BAHAWALPUR. The remaining marketing material is attached in **Annexure – B**.



Logo of the Respondent No. 1



Packaging of the Respondent No. 1 (Front) Packaging of the Respondent No. 1 (Back)

4.8 An instant analysis of the logo and packaging of both the Complainant and Respondent No.1 shows a clear resemblance with minute differences which are quite negligible. The logo and packaging of the Complainant and Respondent No. 1 are discussed below:

- i. The logo appear to be strikingly similar. The only difference is that the Complainant's logo says, "Nawaba Oil Industries, Bahawalpur", whereas the logo of the Respondent No. 1 says "AH Nawaba Oil Industries". The wordings of the Complainant's logo is based on its own firm name, however, there appears to be no reasonable basis as to why would the Respondent No. 1 use these words. Only "AH" appears to be denoting "Al Hafeez" of the Respondent No.1s firm name, however, the firm name of the Respondent No. 1 is Al Hafeez Oil "Mills" and not Al Hafeez Oil "Industries", whereas the logo states "AH Nawab Oil Industries". This further makes logo objectionable. Moreover, there is a negligible difference between Nawab and Nawaba, especially on an instant glance and sound of the two.
- ii. Finally, the Respondent No. 1 gave a vague justification that its use of the term "Nawab" in its logo has been inspired by the title given to its city, i.e., Bahawalpur – City of Nawabs. In this reference, it is submitted that the objection is not only on the use of the term Nawab, whereas it is on the overall presentation of it, which is deceptively similar to the Complainant's logo. The Respondent No. 1 also submitted logos of various other undertakings in the market who have the term "Nawab" in their logo. In this reference, it is submitted that a) all of those marks are pending trademark registrations, b) all of them have significantly different logo designs as opposed to the Respondent No. 1 and c) the complaint was filed only against Respondent No. 1 and Respondent No. 2 in this case.
- iii. Similarly, if the packaging of all other brands are considered compared with that of the Respondent No. 1 and the Complainant, there is a lot of similarity only between the packaging of the Respondent No. 1 and the Complainant. This evidence also shows how various undertakings in the market can use numerous creative variants of logos and trade dress for their similar products, while using the same buffalo device and packaging option, i.e., a sack. The Enquiry Committee agrees that the Complainant cannot claim sole ownership of the buffalo device owing to the nature of this product, however, it does have the right to ensure individuality in how it is presented. Where the same appears to be copied by the Respondent No. 1.
- iv. Other slogans surrounding the logo can be easily created innovatively by different players. The Complainant's slogan, "*Asli Nawaba Khal Banola*" has been copied exactly and placed in a similar position on the packaging with the words, "*Asli Nawab Khal Banola*", which appears to be deceptively similar. Similarly, the Complainant's registered slogan, "*Double Bhains Marka Khal Banola*" has been copied exactly and placed in a similar position on the packaging with slightly different words, "*Asal Bhains Marka Khal Banola*", which appears to be deceptively similar when the whole packaging is seen.
- v. The Complainant also does not have the sole ownership of use of the color Green for its packaging, however, to analyze probable deception in this case, it is important to consider the overall look and feel of the product's logo, packaging, etc., and the overall net general impression. Consequently, it is obvious that the two variants are near absolutely similar. The similar colors, shapes, wordings, positioning of various texts and numbers, etc., are all encircled below:



Complainant's Packaging (Front) Respondent No. 1's Packaging (Front)



Complainant's Packaging (Back) Respondent No. 1's Packaging (Back)

vi. The examination of each of the highlighted portion of the Complainant's designs, when compared with the corresponding highlighted of the designs of the Respondent

No. 1, along with both also being green and red, make it obvious that the two are deceptively similar.

- 4.9 In defense, the Respondent No.1 has presented various other arguments as well, which will be discussed subsequently.
- 4.10 With reference to the objections raised by the Respondent No.1 vis a vis provisions of Order XXX Rule 10 of CPC and provisions of Section 69 of the Partnership Act 1932, we note that both the objections are misconstrued and not applicable in the instant matter because of the following reasons:
- i) In terms of section 37(2) of the Act complaint can be filed with the Commission by an “undertaking” or a “registered association of consumers”. In the instant matter, the complaint is filed by one of the partners of the Complainant which is a registered partnership firm with the Registrar of Firms, Bahawalpur District, under the Registration No. 46 /B.D/of 2018-2019. Form C available on the record evidencing the registration of firm is dated 1st November, 2018, and is placed as **Annexure – F** of this enquiry report.
 - ii) The registered partnership firm is engaged in the business of manufacturing, offering for sale and selling of cattle feed such as khal binola, wanda and seeds and hence is an undertaking in terms of 2 (1) (q) of the act.
 - iii) Further it is noted that the complaint is signed and verified by Mr. Furqan Masood who is one of the partners in the complainants firm. This satisfies the condition laid down in Order XXX Rule 2 of CPC which for ease of reference is reproduced below:

*“Where persons sue or are sued as partners in the name of their firm under sub-rule (1), it shall, in the case of any pleading or other document required by or under this Code to be signed, verified or certified by the plaintiff or the defendant, **suffice if such pleading or other document is signed, verified or certified by any one of such persons.**”*

- 4.11 Moreover, the Respondent No. 1 has submitted that it has been in business since 1986 and it is involved in around fourteen (14) different businesses in various capacities. Therefore, it is the Respondent No. 1 who has a long standing in the market compared to the Complainant and enjoys a considerable goodwill owing to its long presence. In this regard, it is observed that the focus of this enquiry is infringement of the trademark, firm name, trade dress/packaging, labeling, etc., of one undertaking by another. It is not necessary that long presence in the market of one undertaking would result in building of a strong goodwill as well. Furthermore, neither has the Respondent No. 1 been able to prove its presence in the market since 1986, nor has it been able to show its connection to all the firms it has mentioned. It appears that some of the firms mentioned by it **may** belong to its other relatives, but not directly by the Respondent No. 1. Additionally, most of the firms mentioned by the Respondent No. 1 do not even appear to be related to the market of cattle feed. Finally, the only relevant document submitted by the Respondent No. 1 is the tax registration certificate of the Respondent No. 1 – M/s Al Hafeez Oil Mills from the year 1995.

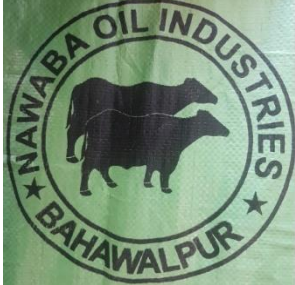


- 4.12 Keeping in view the above, it is also extremely pertinent to this case that as mentioned earlier, that the prime motivation of this enquiry is infringement of the trademark, firm name, trade dress/packaging, labeling, etc., of the Complainant by the Respondent No. 1. It has been established, based on evidence received by the Enquiry Committee, that the overall trademark of the Complainant has been registered under the relevant laws of Islamic Republic of Pakistan since the year 2004, whereas the trademark application submitted by the Respondent No. 1 is still pending approval. In addition, the registration by the Respondent No. 1 was applied for on October 23, 2017, and as per the application, the Respondent No. 1 has been in use of this trademark since 2016 (**Annexure – C**). Perusal of the two documents, i.e., the trademark registration certificate of the Complainant as well as the trademark registration application of the Respondent No. 1, prove that it is the Complainant who has been in use of the relevant trademark since 2004, whereas the Respondent No. 1 appears to be in attempts of trying to establish ownership over it.
- 4.13 In this reference, it is pertinent to note that the same issue has also been pursued before the Honorable Intellectual Property Tribunal, Punjab at Lahore (the “**Suit**”), wherein the following ex-parte ad-interim injunctive order was passed (**Annexure – D**). Relevant extract of the order dated March 01, 2018, is reproduced hereinafter:
- “Relying upon the material placed above, in the meanwhile, respondents are restrained from imitating the petitioner’s trademark/label and passing off their products as such, which order would of course be subject to all legal exceptions and factual objections.”*
- 4.14 In the mentioned Suit, the Complainant to this case was the Petitioner, whereas the Respondent No. 1 to this case has been referred as the Respondent. The interim order suggests that the Respondent No. 1 was also barred by the Honorable Intellectual Property Tribunal, Punjab at Lahore from use of the Complainant’s trademark/label and passing off their products as such. Whereas perusal of the facts of this case exhibits that the Respondent No. 1 has continued to do so, also in non-compliance of the IP Tribunal’s interim order.
- 4.15 The Respondent No. 1 also claimed that it has another famous brand in the market by the name of “Doaba”, which the Complainant has allegedly copied to form its brand Nawaba. It is submitted in this regard that as per the documents submitted by the Complainant of BCCI (**Annexure – E**) the brand Doaba belongs to Mr. Raheel Khalid of Doaba Oil Industries and not the Respondent No. 1.
- 4.16 Furthermore, comparison of the logo of “Nawaba Oil Industries, Bahawalpur” and “Doaba Oil Industries, Bahawalpur” suggests that the two are very different from each other, not only phonetically, but also visually. Therefore, this argument does not appear to hold much substance before the Enquiry Committee.
- 4.17 In view of the foregoing detailed discussion, it appears that the Respondent No. 1 is engaged in fraudulent use of the Complainant’s trade mark, packaging/trade dress as well as labelling, thereby attempting to pass off as the same by making minute changes to its trade mark, packaging/trade dress, and labelling. Such conduct of the Respondent No. 1 appears to be in *prima facie* violation of Section 10(1) of the Act, specifically in terms of Section 10(2)(d) of the Act.

4.18 Subsequently, effects of deception as discussed in paras above may lead to the general consumer of this product to purchase the product of the Respondent No. 1, instead of the Complainant’s product after being confused regarding the true origin of these brands. Therefore, conduct of the Respondent No. 1 discuss in the preceding paragraphs also appears to be *capable of harming the business interest* of the Complainant in *prima facie* violation of Section 10(1) of the Act, specifically in terms of Section 10(2)(a) of the Act.

II. IN THE MATTER OF M/S MUSLIM CORPORATION (THE “RESPONDENT NO. 2)

4.19 As highlighted above, the complaint was also forwarded to the Respondent No. 2 by the Enquiry Committee for comments along with two further reminders to its for submission of its reply. However, no response has been received from the Respondent No. 2 to date. Resultantly, analysis of practices of the Respondent No. 2 in light of the mandate of this enquiry report will be based on the evidence and arguments submitted by the Complainant.

4.20 As per the complaint, the Complainant highlighted two brands of the Respondent No. 2 that it claimed to have resemblance with the logo and packaging of the Complainant’s *Nawaba Oil Industries Bahawalpur*, “*Asli Nawaba Khal Banola*” “*Double Bhains Marka Khal Banola*”, namely “*Taiz Roo*” and “*Kashmir Gham*”. Images for comparison are provided below:

Complainant’s Logo	Logos of Respondent No. 2	
		
	Taiz Roo	Kashmir Gham

4.21 As discussed earlier, the first observation that comes to mind is that even though the firm name of the Respondent No. 2 is M/s Muslim Corporation, the title given on the logos by the Respondent No. 2 are “*Taiz Roo Oil Industries, Bahawalpur*” and “*Kashmir Gham Oil Industries, Bahawalpur*”, which does not appear to have a valid justification for its use. Similarly, the overall look and feel of the logo, i.e., the way the trademarks are written in the encircled parts with deceptively similar buffalo devices, the term “Bahawalpur” separated by “star” signs, and all of these on green bags seem to be an obvious case of copycat packaging.

4.22 It is admitted that the exact trademark is neither same and nor similar, i.e., the Complainant’s trademark is “*Nawaba*”, whereas the marks used by the Respondent No. 2

are entirely different names, i.e., “*Taiz Roo*” and “*Kashmir Gham*”. Therefore, evaluation of this data suggests that there is not an issue of the trademark “words” copied by the Respondent No. 2. However, considering the overall look and feel of the logo suggests clearly that the overall logo has been copied by the Respondent No. 2 for its two brands.

4.23 Additionally, it is important to also take into consideration the overall trade dress, i.e., the packaging of these products. Images of the same are reproduced below for ease of comparison.

Packaging (Front)



Complainant



Taiz Roo



Kashmir Gham

Packaging (Back)



Complainant



Taiz Roo



Kashmir Gham

4.24 Taking into consideration the packaging/trade dress of the Complainant and Respondent No.2s' products, an instant analysis of the logos and packaging show a clear resemblance with minute differences that are quite negligible. The logo and packaging of the two Complainant and the Respondent No.2 are discussed below:

- i. The logo appear to be strikingly similar. The only difference is that the Complainant's logo says, "Nawaba Oil Industries, Bahawalpur", whereas the logo of the Respondent No. 2 says "Taiz Roo Oil Industries, Bahawalpur" and "Kashmir Gham Oil Industries, Bahawalpur", all three in the same style and get up. Therefore, use of the terms "**Oil Industries**" in the logos of the Respondent No. 2 appears to be suspicious as its firm name is M/s Muslim Corporation.
- ii. The Respondent No. 2 is using a three buffalo device compared to the Complainant's two buffalo device. However, the same is quite negligible when the whole product packaging/trade dress is taken into consideration. Similarly, if the packaging of other brands are considered compared with that of the Respondent No. 2 and the Complainant, there is deceptive similarity only between the packaging of the Respondent No. 2 and the Complainant. This evidence also shows how various undertakings in the market can use numerous creative variants of logos and trade dress for their similar products, while using the same buffalo device and packaging option, i.e., a sack. The Enquiry Committee agrees that the Complainant cannot claim sole ownership of the buffalo device owing to the nature of this product, however, it does have the right to ensure individuality in how it is presented. Where the same appears to be copied by the Respondent No. 2.

- iii. Likewise, other slogans surrounding the logo can be easily created innovatively by different players. The Complainant's registered slogan, "**Double Bhains Marka Khal Banola**" has been copied exactly and placed in a similar position on the packaging with slightly different words, "**Triple Bhains Marka Khal Banola**", which also appears to be deceptively similar when the whole packaging is seen.
- iv. As discussed above, the Complainant also does not have the sole ownership of use of the color Green for its packaging, however, to analyze probable deception in this case, it is important to consider the overall look and feel of the product's logo, packaging, etc., and the overall net general impression thereof. Consequently, it is obvious that the two variants are almost entirely similar, especially the front of the packaging. The similar colors, shapes, wordings, positioning of various texts and contact numbers, etc., are all encircled above, which exhibit the apparently copied packaging of the Respondent No. 2.

4.25 It is pertinent to mention here that the OECD Glossary of Terms¹ define 'Free Riding' that free riding occurs when one firm (or individual) benefits from the actions and efforts of another without paying or sharing the costs. In light of the above analysis, the Respondent No. 1 appears to be involved in activity of 'free riding' by way of imitation of marketing material of the Complainant.

4.26 It is also important to understand the stance of international competition legislation in the matters regarding "Parasitic Copying" or "Copycat Packaging" also. There is no specific definition of Copycat packaging however an appropriate definition could be:

*"Copycat packaging is the practice of designing the packaging of a product in a way that gives it the general look and feel of a competing, well-known brand (typically the market leader). Copycat packaging is distinct from counterfeiting, since normally it does not infringe intellectual property rights. The risk posed by copycat packaging is consumer confusion, and consequently distortion of their commercial behavior"*².

4.27 According to the Consumer Protection from Unfair Trading Regulations 2008, UK, a list of prohibited commercial practices, as transposed from the Unfair Commercial Practices Directive 2005 (UCPD), include at item no. 13 "*Promoting a product similar to a product made by a particular manufacturer in such a manner as to deliberately mislead the consumer into believing that the product is made by the same manufacturer when it is not.*"³

4.28 In view of the above, it appears that even though the Respondent No. 2 has developed innovative brand name for its products, i.e., 'Taiz Roo' and 'Kashmir Gham', however, the artistic work of the logo and packaging/trade dress has been copied from the Complainant. Such conduct, therefore, amounts to fraudulent use of another's packaging and labeling in,

¹<https://stats.oecd.org/glossary/detail.asp?ID=3222#:~:text=Free%20riding%20occurs%20when%20one,paying%20or%20sharing%20the%20costs.&text=This%20second%20retailer%20is%20viewed,incurred%20by%20the%20fir%20retailer.>

² Giuseppe Abbamonte, "Copycat Packaging, Misleading Advertising and Unfair Competition"

³ <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52016SC0163> , No 13 of Annex I

prima facie, violation of Section 10(1) of the Act, read with sub-Section 10(2)(d). It may also be noted by the Commission that the Respondent No. 2 has already been fined an amount of PKR 300000/- for infringing upon trademark, labeling and packaging of another undertaking for a product of same nature, i.e., cattle feed in the order titled, “*In the Matter of show cause notice issued to Taizgam Feed Manufacturers on complaint filed by M/S Al – Rahman Oil Mills.*”

- 4.29 Finally, such practices may also deceive consumers into buying products of the Respondent No. 2 instead of the Complainant which may harm the business interest of the Complainant in, *prima facie*, violation of Section 10(1), in terms of sub-Section 10(2)(a) of the Act.

5 RECOMMENDATIONS:

- 5.1 The Complainant has filed a complaint against two undertakings, i.e., the Respondent No. 1 and the Respondent No. 2, jointly referred herein as the Respondents, for alleged violation of Section 10(1) of the Act, read with sub-Sections 10(2)(a) and 10(2)(d) of the Act.
- 5.2 The evidence so obtained in the process of this enquiry has been analyzed and it appears that:
- a) The Respondent No. 1 is involved in fraudulent use of the Complainant’s trademark, product labeling and packaging/trade dress, which amounts to, *prima facie*, violation of Section 10(1) of the Act, read with sub-Sections 10(2)(a) and 10(2)(d) of the Act; and
 - b) The Respondent No. 2 is involved in fraudulent use of the Complainant’s trademark, product labeling and packaging/trade dress, which amounts to, *prima facie*, violation of Section 10(1) of the Act, read with sub-Sections 10(2)(a) and 10(2)(d) of the Act.
- 5.3 It is important to acknowledge that deceptive marketing practices have a direct impact on competitors and public at large alike and therefore, it is in the interest of the general public and fair competition in the market that the undertakings be curtailed from marketing their products in an unfair and misleading manner. It is necessary to cultivate an environment where undertakings are encouraged to resort to marketing practices which are transparent and give consumers/customers true and correct information, including the origin and nature of the products in the sense that, *inter alia*, who is the true manufacturer of the products. Therefore, in light of the above mentioned findings, it is recommended that the Commission may consider initiating proceedings against M/s Al-Hafeez Oil and M/s Muslim Corporations under Section 30 of the Act.

Mohammad Salman Zafar
Director
Enquiry Officer

Marryum Pervaiz
Joint Director
Enquiry Officer

Faiz-ur-Rehman
Deputy Director
Enquiry Officer

Annexure – A



GOVERNMENT OF PAKISTAN
THE TRADE MARKS REGISTRY, KARACHI

It is hereby Certified that the registration of

Trade Mark No **191616**
Dated **JANUARY 27, 2004**
In class **31**

has been renewed for a period of ten years.

with effect from **27TH** day of **JANUARY, 2011**

in the name of **Furqan Masood, Trading As NAWABA OIL INDUSTRIES.**

(Issued under the direction of the Registrar of Trade Marks).

Dated this **JULY 6, 2011**



(S. NASIR ABBAS)
Examiner of Trade Marks

The renewal is being advertised in the Trade Marks Journal.

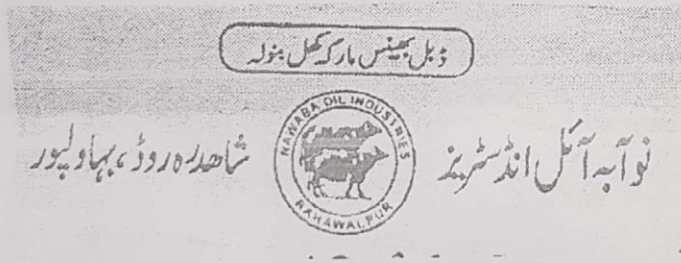
CLASS-31.

BUSTAN

بستان

Advertised Before Acceptance Under Section 15(1)(Proviso).

189867 Agricultural-horticultural and forestry products and grains (not included in other classes), living animals, fresh fruits and vegetables, seeds, live plants and flowers, foodstuffs for animal, malts, OMAR KASEEM AL ESAYI MARKETING CO. LIMITED, a Company incorporated under the laws of the Royal Kingdom of Saudi Arabia, 6th Floor Al esayi Plaza, Baghdadiya, Medina Road, P.O. Box 8680, Jeddah 21 492, Saudi Arabia. Manufacturers and Merchants, dated 12-Nov-2003 Agent, Sheikh Brothers (Advocate), 601, Al-Ameera Center, Shahrah-e-Iraq, Saddar, Karachi.



Advertised Before Acceptance Under Section 15(1)(Proviso).

Registration of this Trade Mark shall give no right to the exclusive use of word "BAHAWALPUR" and "SHAHIDARA ROAD",

191616 Khal Binola and Seeds, Furqan Masood, Sole Proprietor, NAWABA OIL INDUSTRIES, Shadrah Road, New Ghalla Mandi, Bahawalpur. Merchants and Suppliers, dated 27-Jan-2004 Agent, Sheikh Brothers (Advocate), 601, Al-Ameera Center, Shahrah-e-Iraq, Saddar, Karachi.