

# 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 ENGLISH BISCUIT  
MANUFACTURERS (PVT.) LIMITED AGAINST M/S S.M FOOD MAKERS LIMITED  
FOR DECEPTIVE MARKETING PRACTICES**

BY

  
Faiz ur Rehman,  Urooj Azeem Awan &  Amin Akbar

Dated: June 28, 2022

## 1. BACKGROUND

- 1.1 M/s English Biscuits Manufacturers (Pvt.) Limited (the '**Complainant**') through its legal counsel, M/s Zafar & Associates, filed a complaint dated August 22, 2019 against M/s S.M Food Makers Limited (the '**Respondent**') with the Competition Commission of Pakistan (the '**Commission**') for alleged violation of Section 10 of the Competition Act 2010 (the '**Act**'), pertaining to Deceptive Marketing Practices.
- 1.2 It was alleged in the complaint that the Complainant is a well-known and leading biscuit and confectionary manufacturer and exporter in the Country and the Respondent has copied/imitated the registered trademark and copyrighted packaging of Complainant's numerous products, and by doing so has distorted healthy competition in the market.
- 1.3 Based on the preliminary fact finding, the Commission initiated an enquiry dated September 19, 2019 in accordance with sub Section (2) of Section 31 of the Act by appointing Ms. Marryum Pervaiz, Joint Director (OFT), Ms. Syeda Dureshehwar Naqvi, Management Executive (OFT) and Mr. Amin Akbar, Management Executive (OFT), as enquiry officers (collectively the '**Enquiry Committee**'). Later on, with the change of the head of the department and resignation of Ms. Syeda Dureshehwar Naqvi, the Enquiry Committee was reconstituted with the addition of Mr. Mohammad Salman Zafar, Director (OFT) as an enquiry officer. The Enquiry Committee was once again reconstituted because of the transfer of Ms. Marryum Pervaiz to another department. Mr. Faiz ur Rehman, Deputy Director (OFT) and Mr. Amin Akbar were appointed as the Enquiry Committee to conclude the enquiry. The Enquiry Committee was reconstituted once more with the addition of Ms. Urooj Azeem Awan, Deputy Director (OFT) as another enquiry officer.
- 1.4 The aim of the enquiry was to determine whether, *prima facie*, by using similar packaging:
  - a) The Respondent is violating Section 10 (1) of the Act, in terms of Section 10 (2) (d) of the Act, which prohibits *fraudulent use of another's trademark, firm name, or product labeling or packaging*; and/or
  - b) The Respondent's conduct *is capable of harming the business interest* of the Complainant in violation of Section 10 (1) of the Act, in terms of Section 10 (2) (a) of the Act; and/or
  - c) The Respondent's conduct pertains to *the distribution of false or misleading information to consumers related to character, place of production, properties and quality of goods*, in violation of Section 10 (1) of the Act, in terms of Section 10 (2) (b) of the Act?

## 2. THE COMPLAINT:

- 2.1 This section summarizes the contentions raised in the complaint:
- 2.2 The Complainant is a well-known and leading biscuit and confectionary manufacturer and exporter since its year of inception in 1965. It started off its business under the name and style of M/s **Peek Freans** (Pakistan) Limited, and is one of the largest and most successful biscuit manufacturing company in Pakistan with a market share of 48% of the total organized biscuit market.

7 A A

- 2.3 The Complainant hugely invested in getting the most sophisticated technology to its plants, which guarantees efficient production. Furthermore, the Complainant's investment in the latest technology has not only ensured its quality and abilities but also has kept the centuries old baking recipes unharmed even though they are not hand baked. That is why, the Complainant is amongst one of the few Companies of the Country to have achieved ISO-22000 Certification. It has been further stated that being a responsible entrepreneur, the Complainant not only understands the challenges of corporate governance but also refines its role towards the society. The outcome of its commitment towards the high standards of quality have brought many accolades for the Complainant in the industry, which are disbursed to the community and are reflected through Complainant's Corporate Social Responsibility (CSR) program.
- 2.4 The Complainant submitted that its array of confectionary products, are sold under its famous trademarks "**Peek Freans**" and "**Pied Piper**" under which, the Complainant sells variety of individually identifiable biscuits brands/trademarks which remain high in demand owing to their wholesome ingredients and unique taste. Some of the Complainant's popular brands include **Marie, Gluco, Click, Sooper, Party, Peanut-Pik, Peanut-Pista, Lemon sandwich** and **Chocolate Sandwich**. The image of the "**Pied Piper**" of Hamelin playing music under the house mark "**Peek Freans**" conspicuously appears on each individual brand packaging of the mentioned products and has become hugely popular while winning the trust of at least three generations of an average Pakistani family.
- 2.5 It has been further submitted that the Complainant it is extremely eager in building up the brand image of its products hence, has made much efforts in availing all the legal protections available under the Intellectual Property Laws including the Trademark and Copyright Registration. The eye-catching packaging of Complainant's products covering all the aspects of the graphic representations, artworks, design, color schemes and placements accompanying their trademarks have also been registered as copyrights.
- 2.6 The Complainant alleged that the Respondent is engaged in the business of manufacturing confectionary products mainly biscuits and snack products under the company M/s S.M Food Makers. The Respondent has a tainted history of selling and marketing of sub-par and counterfeiting products under its house marks namely **Gibs, Donal, Kims, Soney** and **Silver Lake** etc., thereby adopting confusingly similar and look-alike trademarks/logos as that of the well-known trademarks of the prominent biscuit manufacturing companies including Hilal, LU, Cadbury, Peek Freans (referred as Complainant), etc. Some of the graphic representations of the blatant adoptions of the original manufacturers that the Respondent has chosen to pick is attached as **Annexure-A**.
- 2.7 The Complainant further stated that it has learnt that the Respondent is blatantly involved in the acts of infringement of its registered and prior used trademarks thus, transgressing the precious Intellectual Property Rights (IPRs). The illegal and unauthorized use of the registered trademark and copyright of the Complainant falls within deceptive marketing practices in term of Section 10(2) (d) of the Act.
- 2.8 It has been alleged by the Complainant that the Respondent is involved in illegal and unauthorized adoption of many of the well- known trademarks of Complainant including, **Sooper, Marie, Peanut-Pik, Peanut-Pista, Party, Gluco** and **Lemon Sandwich**. The Respondent is also making infringing copies of the overall intricacies of the label/design, outer get up/trade dress, color

7 3 A-A

scheme, graphic representations, configuration and placements on the product packaging as well as the shape and size of the Complainant product.

- 2.9 It has been submitted that the Respondent has copied/adopted such suggestive, arbitrary and fanciful trademarks in the stream of commerce for selling and marketing of its sub-par and contravening products and also has made a colorable imitation and reproduction of the essential features of the Complainant's packaging in terms of the copyrighted artistic work, label design/ get-up/lay-out, color scheme, which are designed to deceive the unsuspecting consumers.
- 2.10 The most famous and successful brand of the Complainant is Sooper, which was voted "Brand of the Year" for two consecutive years in an independent consumer survey conducted by MEMRB. In 2013, sales of Sooper reached the highest mark of Rs. 11 billion. It was alleged that the Respondent copied Sooper into multiple counterfeiting products, in order to reap the illegal revenues out of it to the extent that the ordinary consumer could be duped into believing that they are buying the original Sooper. (Packaging of Sooper and the packaging of Respondent's contravening products are attached as **Annexure-B.1**)
- 2.11 The Complainant invested generous sums on the advertisement and promotion of its brands. These brands are extensively being sold and marketed in Pakistan since 70's and hence enjoy immense public recognition. The Respondent has picked up the above stated genuine brands of the Complainant to ride upon the goodwill connected thereto by adopting conceptually and confusingly similar trade dress and packaging for its sub-par contravening products.
- 2.12 The visual comparison between the Complainant's aforementioned product "**Peanut Pista**" with that of the infringing version sold by the Respondent for its sub-par and contravening products bearing all the physical appearances of Complainant's said product with its old and new labels is attached as **Annexure-B.2**)
- 2.13 The Complainant has extensively been using trademark/brand **Marie** for more than 4 decades in the low-sweet confectionary/ biscuit category, which is equally popular amongst the public being a high quality brand with a unique taste. The Respondent is parasitically capturing the benefits of this product as well. The visual comparison of the original Complainant's product and that of the contravening version by the Respondent is attached as **Annexure-B.3**)
- 2.14 It was stated that the Complainant's two popular brands "**Peanut Pik**" and "**Party**", are extensively being sold in Pakistan since decades and enjoy immense public recognition and are verily associated with the house of "Peek Freans" and has also invested in IPRs in terms of registration. The Complainant has alleged that the Respondent has picked up these genuine products of the Complainant to ride upon the goodwill and reputation connected thereto by adopting conceptually and confusingly similar trade dress/product packaging for its contravening products. The Comparison of Complainant's products Peanut Pik and Party with the infringing products of the Respondent is attached as **Annexure-B.4**)
- 2.15 It has been submitted that AC Nielsen has conducted a detailed Audit Survey for the Complainant's products on the basis of the latest statistics, which reveals a contrasting difference of overall market in value of shares of both the Complainant and the Respondent in different categories of biscuit products in Pakistan: in sweet and plain biscuit category the Complainant's market share is 38.5%,

7 A.A



whereas Respondent's share is 6.5% and in nuts biscuit category the Complainant's share is 69.4%, while Respondent's share is 14.5%.

- 2.16 The Complainant also resorted to seek legal remedy available under the Intellectual Property Laws by filling Suit No.206/IPT/2017 for the infringement of trademarks and copyrights before the Intellectual Property Tribunal (Lahore) against the Respondent. Whereby, the Tribunal graciously issued an Order dated 08-12-2017 against the Respondent, while deciding an application for the interim relief under Order 39 Rule 1 & 2 COC filed with the said suit. The Respondent however, in sheer disregard of the Order is continuously committing the infringement of the precious IPRs of the Complainant.
- 2.17 Furthermore, two other hugely popular products/brands of the Complainant are "**Lemon Sandwich**" and "**Gluco**". Lemon Sandwich is known for its striking yellow labeled product packaging of which the Complainant pioneered to introduce cream puffed sandwich biscuits first in the country. Whereas, **Gluco** is considered mothers' first choice as first food for toddlers, which is also been marketed and sold with another variant "**Gluco Plus**". Both the brands have been used in Pakistan since decades. The Respondent has adopted confusingly similar color scheme/design/get up for its products packaging to deceive unaware consumers. The visual comparison of the Complainant's products Lemon Sandwich and Gluco with the contravening products of the Respondent is attached as **Annexure-B.5**)
- 2.18 All the above mentioned illegal and unauthorized adoptions of Respondent's contravening products making use of the infringing copies of the overall intricacies of the label/design/get up/trade dress, color scheme, graphic representation and placements of the elements on the product packaging of the Complainant's said trademarks can be assessed from the Respondent's following websites:
- [www.smfoodmakers.com](http://www.smfoodmakers.com) and  
[www.wp.smfoodmakers.com](http://www.wp.smfoodmakers.com)
- The use of the above depicted contravening products by the Respondent is unauthorized and fraudulent and hence, is capable of harming the business interests of the Complainant and other competitors in the market.
- 2.19 The Complainant's products remain in high demand not only in Pakistan but also in the countries where they are also exported. The Complainant has untiringly worked in keeping the equilibrium between the availability of its products in the domestic markets and the consumers' demand for those products that it may not create an artificial increase in price. The availability of Complainant's products in the export markets and the dissemination of knowledge of the trademarks in respect of the products of the Complainant through media advertising, even, in the markets where the products do not have existence is, a proof that the Complainant's products have a trans-border reputation and their quality fully meets the international consumer goods standards.
- 2.20 It has been stated that the Complainant adopted very distinctive artistic work/label/lay-out design/get up with vibrant and eye-catching color schemes for the product packaging of its well-known products mentioned above. Each of the said product trade dress, be it a box, wrapper, shape of the product itself (device/logo), color scheme, configurations and placements on label itself, is fully protected as copyright. By choosing a deceptively similar trade dress/labeling for its products,

the Respondent tends to create an impression which is likely to dupe the ordinary consumers into believing that they are actually buying the original products emanating from Complainant.

Furthermore, it is pertinent to mention that under the law and related pronouncements of the Commission, it has become a settled principle that '*mere potential harm to the business interests of the Complainant suffices to constitute a violation of the said provisions of law (2015 CLD 1638)*'.

2.21 The Complainant prayed for the following reliefs:

- a) The Complainant humbly and respectfully prayed the Hon'ble Commission to conduct an enquiry under section 37(2) of the Competition Act read with Regulation 16 of the Competition (General Enforcement) Regulations, 2007 against the Respondent.
- b) Proceedings of contravention against the Respondent may be initiated under Section 30 in accordance with the procedure of the Competition Act, 2010.
- c) An order restraining the Respondent permanently from engaging into Deceptive Marketing Practices, including the order to cease and desist from the production, sale, distribution, marketing and export of the Respondent's contravening products.
- d) An order directing the Respondent to take down all promotional, advertisement, publicity and printing material.
- e) An order to take down from exhibiting the visual content of its products on billboards, electronic media and print media including adds/promos on social media.
- f) The Commission to authorize its officers to enter and search the Respondent's premises, without notice to the Respondent, for the purpose of enforcing the provision of the Competition Act, 2010 and impound any accounts, documents, articles, and goods etc., and restrain them in Commission's custody as long as it may be necessary.
- g) An appropriate Order under the provisions of Section 31 (c) of the Competition Act, 2010.
- h) An order pursuant to the instant complaint be issued directing the Respondent to submit a compliance report within 60 days of the order,
- i) An appropriate Order for the Respondent to pay penalty of such sums as may be determined by the Commission in the circumstances under Section 38 of the Competition Act, 2010.
- j) Any other relief which the Hon'ble Commission may deem fit and appropriate.

### **3. SUBMISSIONS OF THE RESPONDENT:**

3.1 The Complainant was forwarded to the Respondent by the Enquiry Committee for comments on September 20, 2019, and later a reminder was issued on October 11, 2019. The Respondent, vide

7  AA 6

letter dated October 10, 2019 requested for an extension in time, which was duly granted. The Respondent was directed to submit its comments on or before October 28, 2019. The Respondent vide letter dated October 28, 2019 requested for a further extension in time, which was granted and the Respondent was directed to submit its comments no later than November 07, 2019.

- 3.2 The Respondent submitted its reply dated Nil through its legal counsel Mr. Malik Wasim Khokar, Advocate High Court. The contents of the reply are reproduced below:
- 3.3 The Respondent stated that it established its businesses in 1990, and is mainly engaged in manufacturing of variety of confectionary products falling in classes 29 and 30 of the International Classification of goods and services. Reportedly, the Respondent is the third largest biscuits selling company in Pakistan. It has a wide range of confectionary products being sold in domestic and international markets. These products are exported in various countries including USA, UK, Portugal, Saudi Arabia, Malaysia, Afghanistan, Tanzania, Yemen, Angola, Bangladesh and few other African countries. The Respondent claimed that its companies have latest German production lines and products produced in these lines are highly hygienic and safe.
- 3.4 The Respondent mentioned that it is involved in selling wide range of products including biscuits, toffees, bubble gums, jelly, cake, Nimko, chocolate bar, deposited candies, hard boiled candies, etc. under different house marks namely: **Gibs, Gibs Collection, Soney, Donal, Giggly, Cookania and Kims**. It has won the Exporter of the year award, which was delivered by the Prime Minister. Furthermore, the respondent was selected as good tax payer and qualified for civil award.
- 3.5 The Respondent stated that it is a creative innovator and recognizes the importance and value of the intellectual property rights and being a responsible entrepreneur, it has taken all necessary measures to protect their rights. In this regard, it has obtained registration of its trademarks and copyrights for the artistic works and has filed applications for registration for others. Moreover, the products under the house marks mentioned above are marketed, distributed, and sold throughout Pakistan and their popularity extends nationwide. The popularity of the product is heightened owing to the competitive pricing, quality products, wide sale, distribution network and smart marketing strategies that have been adopted by the Respondent.
- 3.6 The Respondent further stated that there is no likelihood of deception or confusion between the trademarks and packaging of the Complainant's and the Respondent's products as the Complainant's product are marketed under its house mark "Peek Freans".
- 3.7 It has also been alleged by the Respondent that the Complainant is trying to abuse the Court's process and disrupt the business of the Respondent, so that, it can enjoy the market without healthy competition. Hence, the action of the Complainant is mala fide and with ulterior motive to create impediment in the marketplace. Furthermore, the products of the Respondent are distinguishable due to the presence of House marks and distinctive get up, color scheme and layout design adopted by the Respondent to distinguish its products from other market players including the Complainant. It has been submitted that the instant complaint has been filed due to the business rivalry to harass the Respondent from expansion of its business.
- 3.8 It has been alleged by the Respondent that the Complainant has no *prima facie* case in its favor, as the Complainant has no legal justification to file the title Complaint and is liable to be dismissed with compensatory costs under Section 35-A CPC. Moreover, the Respondent has alleged that the allegations raised in the Complaint are based on concocted story, which even otherwise do not have any remotest

7 A.A 7

sense which corroborates with the documents attached with the Complaint. The Complainant is not only trying to blackmail the Respondent by using illegal tactics to harass but also wasting time of the Commission and other authorities by filing frivolous litigation.

- 3.9 It has been submitted by the Respondent that, it reserves its right to initiate proceedings (criminal as well as civil) against the Complainant, which became reason of filing such frivolous case. The Respondent further reserves right to advance relevant case laws during the course of hearing in support of its stance and to prove that the Respondent has not violated the Intellectual Property Rights of the Complainant and the use of the trade mark of the Respondent does not come under the parameter of unfair competition under Section 10 of the Act.
- 3.10 The Respondent vehemently denied that it is involved in the infringement activities as alleged. It has been carrying on its bona fide business in accordance with the law. Most of the trademarks being used by the Respondent are protected under the Trademark and Copyrights Law. It has been submitted that by virtue of the Respondent's registrations of the works and trademarks, it is entitled to use the same in relation to its products in the course of trade to distinguish the products from those of the other undertakings.
- 3.11 The Respondent further denied its involvement in deceptive marketing practices, as falsely alleged in the Complaint. It was stated that the Respondent has adopted the works, calligraphy, layout design and other labels prior in time and has been using the same since long time. The use of trademark by the Respondent with its house marks is its fundamental and constitutional right and it is not barred from doing the legitimate business. The purpose of using the House mark in relation to the Respondent's products is to identify its products so that the consumers may not be deceived while purchasing the goods of the Respondent, hence does not constitute infringement and/or unfair competition within the parameter of Section 10 of the Act.
- 3.12 The Respondent denied that its trademarks are identical and similar to the trademarks of the Complainant including, **Sooper, Marie, Peanut Pista, Peanut Pik, Party, Gluco and Lemon Sandwich**. It has been submitted that the trademarks of the Respondent are distinguishable from the said trademarks of the Complainant. Hence, does not constitute infringement and unfair competition within the parameter of Section 10 of the Act, as alleged in the Complaint. Moreover, the Respondent will produce its labels during the course of hearing to satisfy the Commission, and to prove that the labels/art works are distinguishable from the Complainant's trade mark and art work.
- 3.13 The Respondent submitted that it is a well settled Law of trademark that exclusive rights on descriptive word and or generic words are not granted to anybody. The Complainant has been illegally trying to capitalize the generic and descriptive words in order to restrain others including the Respondent from using such words. Furthermore, that the courts in their decisions held that infringement action on the basis of descriptive words cannot be taken. The Respondent reserves its rights to substantiate its claim of dissimilarity and to adduce relevant case laws during the course of hearing. Moreover, some of the products alleged by the Complainant are not even used by the Respondent.
- 3.14 It has been stated that the Complainant's use of the alleged trademarks has no nexus to the Respondent's trademarks for the reason that the trademarks as well as the get up, color scheme and trade dress are well separated both visually and phonetically. It has been denied that the Respondent has adopted the trademarks in order to take advantage of the Complainant's goodwill or the Respondent intends to earn on the reputation of the Complainant to make illegal profit. Due to dissimilarity of the trademarks there is no possibility of confusion and deception in the minds of the ordinary consumers. Furthermore, it has



been denied that the use of the Respondent trademarks, labels, wrappers, get-up designs constitute infringement and the Complainant's trademarks are well-known. Since, the Respondent has been using most of their marks in the Country prior to the adoption of the marks by the Complainant, it is entitled to the concurrent honest use and their use cannot be prevented under the Law. For the reasons stated above, it has vehemently been denied that the Respondent is in the violation of Section 10(2) (a) (b) & (d) of the Competition Act, 2010.

3.15 In view of the above, it has been submitted that the Complainant is not entitled to any relief sought in the Complaint. The Respondent respectfully prayed that the complaint may kindly be dismissed with special costs, as the Complainant had no cause of action against Respondent alongwith any further relief which the Commission deems appropriate, may also be granted.

3.16 Moreover, the Respondent was further requested to submit the below mentioned documents in support of their defense via letter dated October 22, 2020;

- i. Original packaging and labels of all the products alleged under the title Complaint.
- ii. Power of Attorney in favor of Malik Wasim Khokhar (Advocate High Court).
- iii. Any other documents or case laws to substantiate the claim of dissimilarity.

3.17 In response to our letter, the Respondent only submitted the requisite power of attorney via letter dated October 26, 2020. The remaining two queries were not responded to by the Respondent. Consequently, the Respondent was again directed to submit the above said remaining documentary evidence via letter dated November 03, 2020 & another letter dated November 17, 2020. The Respondent once again requested for extension in time via letter dated November 23, 2020, which was duly granted via letter dated November 26, 2020. The Respondent submitted its reply via letter dated December 08, 2020, the contents of which are reproduced below.

3.18 The Respondent made the following preliminary objections:

- a. The complaint filed by the Complainant against the Respondent is not maintainable as per law and is therefore liable to be dismissed.
- b. The Respondent is the bona fide user of the marks and labels and the same is registered and pending with Intellectual Property Organization of Pakistan since long, therefore the application should be dismissed.
- c. The complaint has been filed just to harass and to deprive the Respondent from its mark.
- d. The complaint has been filed by the Complainant as a counter blast of the cases filed by the Respondent before competent authorities, and the matters are pending and sub judice between the parties on same subject matter in Intellectual Property Tribunal, Lahore, therefore, the complaint is not maintainable and liable to be dismissed.
- e. No cause of action has accrued to the Complainant for filing this complaint.
- f. The Complainant has not come before the Commission with clean hands and the complaint is liable to be dismissed on this ground.

3.19 In addition to the above the Respondent made the following preliminary statement.

- a. The Respondent stated that it has filed a suit for declaration and permanent injunction under section 52 of the Trade Mark Ordinance, 2001, against the groundless threats of infringement proceedings of the Complainant, wherein, the Hon'ble Intellectual Property Tribunal, Lahore restrained- the Complainant from harassing and interfering and creating hurdles and threats of any kind in any manner whatsoever, in the business



of the Respondent. Moreover, the Respondent mentions that the purpose of this is to harass other traders from conducting their legitimate business, which is against the healthy competition in the market.

- b. The Respondent stated that the Commission needs to compare all labels and their getup and or color scheme of the alleged products in the complaint with the Respondent's labels and packaging. It is further submitted by the Respondent that its product are being sold under its own House Mark and words used in these products are purely descriptive words and they describe the character and or quality of goods and their exclusive rights cannot be granted to any particular person or company including the Complainant.
- c. Moreover, the Complainants' trademarks are registered with the disclaimer "*this trademark shall give no rights to the exclusive rights of all descriptive matter appearing on the label*". This type of disclaimer does not grant rights to the proprietor of the mark on any descriptive work. For example, in case of PEANUT PISTA the word PEANUT and PISTA are purely descriptive. Therefore the Complainant cannot restrain other from using the word PEANUT and PISTA as it has no right on the words and this registration is just a piece of paper and nothing else. In view of all the descriptive nature of the marks of the Complainant, the Commission will have to look into the real point that what rights in the marks are granted by the Trade Mark registry to the Complainant and whether the Complainant has exclusive rights on the alleged trademarks and words.
- d. The Respondent mentions that the Complainant is tantamount to blackmail the Respondent by invoking this complaint as they have no valid proof for their concocted story. **It is pertinent to mention here that the same tactics was used by the present Complainant against other competitors**, but the superior courts refused to accept the version of the Complainant and divisional bench of the Hon'ble Sindh High Court has dismissed the appeal of the Complainant in the case titled as "English Biscuits Manufacturers (Pvt.) Ltd. vs. Pakistan Dairy Products (Pvt.) Ltd. 2016 CLD 847 *"wherein the Hon'ble Court said that we do not see any reason that how a buyer of these two distinct products would get confused in buying the Respondent's products as that of the Appellant. As discussed earlier, both the Appellant as well as the Respondent, have a distinct what can more appropriately termed as, a house mark (PEEK FREANS AND LOGO) so to say, and their products are generally being sold by recognizing these trademarks or house marks as their respective marks and not by individual trademarks, appeal was dismissed"*.
- e. It is pertinent to mention here that the Complainant alleged 26 products in its complaint. However, the Respondent's counsel only submitted documentary evidence of 15 products in its response. The Enquiry Committee kept on reminding the Respondent's counsel through telephonic calls/ reminder letters, but the requisite material was not submitted. Thus, in order to provide the Respondent with the final opportunity, a detailed letter was issued and it was clearly mentioned that all the required documents/ material in support of their contentions should be supplied latest by December 30, 2020, failing which the Enquiry Committee shall be constrained to proceed further and conclude the pending enquiry on the basis of documents/materials available on record. Despite of the final reminder, the Respondent's counsel in its reply dated January 13, 2021 only submitted documentary evidence of 15 products. The Respondent further stated in its reply that all the remaining 11 label/boxes are not in its use.

7 J A.A

#### 4. REJOINDER:

- 4.1 The Respondent's reply was forwarded to the Complainant for a rejoinder, if any, vide letter dated November 11, 2019. The Complainant vide its letter dated November 25, 2019, requested for an extension in time to file the rejoinder. The said rejoinder was received on December 02, 2019, the contents of which are summarized below.
- 4.2 The Complainant stated that the reply submitted by the Respondent contains false, misleading and concocted statements, which are totally contrary to the basis of the instant Complaint. For the sake of clarity of its submissions and in order to avoid contradictory statements, the Complainant reiterates each and every content of the Complaint, mentioned hereinabove in Para's 2.2-2.21 *ibid*.
- 4.3 The Complainant submitted that the reply has so many ambiguities and falsification about Respondent's business, hence denied. The Complainant vehemently denied that the Respondent is the largest manufacturer and seller of biscuits in Pakistan as this claim entails a wider spectrum of documentary record, certification evaluations, market share, sales revenues and tax paying liabilities amongst others. However, no evidence has been submitted by the Respondent to substantiate these claims.
- 4.4 The Complainant alleged that the Respondent failed to prove its association with **Volka Foods International** thus, this entity has got nothing to do with these proceedings unless it is established through cogent evidence that Respondent is manufacturing biscuits under license from Volka Foods. Furthermore, no documents as to the memberships, certifications, licenses etc., have been appended with the Respondents' reply.
- 4.5 The Complainant submitted that the alleged claims of international business are not substantiated with documentary evidence i.e., expenses incurred in terms of exports of Respondent's contravening goods to different countries. It is admitted by the Complainant to the extent that the Respondent uses its house marks such as, **GIBS, SONEY, DONAL** etc. However, the **Respondent cannot resort to the above-mentioned house marks, each of which, represents a number of individual products under several individual, confusingly similar and look-alike trademarks/logos as that of the genuine and well-known trademarks of the Complainant.**
- 4.6 The Complainant alleged that the Respondent has very cleverly tried to swap out the said house marks for its suggestive, arbitrary and fanciful trademarks and the colorable imitations/reproductions of their respective artistic work/label designs, which carry almost all the prominent features of the Complainant's copyrighted label design/get-up/lay-out, color scheme on product packaging. Thus, it has categorically been denied that the **said house marks can be taken as substitute of each individual trademark the use of which, has been impugned through the instant Complaint.** Furthermore, the Respondent has tried to maneuver the attention of this Commission as if the Complainant's products are marketed and sold under its house mark "**Peek Freans**, as such, there is no confusion and deception between the trademarks and packaging of the Complainant and that of the Respondent. The Reality is that the Complainant is using a number of individually identifiable biscuit brands/trademarks and the image of the titular character of the legend "pied piper" under the house mark "Peek Freans" which, conspicuously appears on each of the individual brand packaging of the above-mentioned products.
- 4.7 It has been submitted that, all Consumers Goods Companies such as, **Nestle, PepsiCo, Coca Cola, Unilever, Proctor & Gamble**, sell a number of namesake products/individual brands under their respective umbrella/house marks. **Though, all namesake brands/trademarks have the capacity to be recognized individually however, they are always clustered under their respective house marks**

7 A-A

which is more of a marketing strategy with the fundamental goal of achieving a sustainable competitive advantage.


- 4.8 It has emphatically denied and rebutted that the trademarks and copyrights registrations bearing “Peek Freans” is the salient feature of them all. The Complainant has drawn the attention of the Commission to the registration certificates of the Complaint, which have been filed for each individual trademark/namesake product of the Complainant and its respective artistic work/label design/product livery ONLY. The house mark Peek Freans is not reflected anywhere on the respective Trademark & Copyright registration certificates of the above-mentioned brands attached with the complaint. However, in advertising lingos and overall product packaging of each namesake product it appears as an associated/house mark of the Complainant.
- 4.9 The Complainant strictly denied and rebutted that the logos/trademarks and the artworks/labels of the Respondent’s products are distinguishable from those of the Complainant hence, no infringement or unfair competition is being committed by the Respondent. It has been submitted that the Complainant is the prior user and registered proprietor of the above-mentioned trademarks and the owner of the copyrighted works/liveries thereof since 90’s.
- 4.10 It has further submitted that Respondent has unremittingly been involved in making infringing copies of label designs/visual elements/color schemes, getup and overall intricacies of the Complainant’s genuine trademarks and product labeling/packaging. Moreover, the Complainant has already taken every legal resource available under the Intellectual Property Laws and filed Trademark Oppositions and Copyright Objections against the applications filed by the Respondent for trademarks and the impugned artworks/label designs conflicting with the Complainant’s registered trademarks and copyrights. The details are provided hereunder:

**Trademark Oppositions filed by the Complainant against the Respondent**

Respondent's Applied Trademarks	Application No.	Complainant's Registered Trademarks
Speedo Egg & Milk Cookies	257248	SOOPER
Donald Sober (Label)	258650	SOOPER

**Copyright Objections filed by the Complainant against the Respondent**

Sr.No.	Respondent's Applied Artwork	Application No.	Complainant's Copyrights
1.	Sony Party Wafer (Tutti Fruity)	2011/2320	PARTY
2.	Gibs Pista Peanut Plus Biscuits	201211217	PEANUT PISTA
3.	Sony Pista Peanut Plus Biscuits	201211321	PEANUT PISTA
4.	Gibs Peanut Pista Biscuits	201211545	PEANUT PISTA
5.	Gibs Peanut Pista Biscuits	2013/3527	PEANUT PISTA
6.	Gibs Nunna Biscuits (Box)	2003/2191	GLUCO
7.	Gibs Gluco Plus + Energy Biscuits	2003/2193	GLUCO
8.	Kims Classic Lemon Sandwich Biscuits	2013/3131	LEMON SANDWICH
9.	Kims Classic Chocolate Sandwich	2013/3115	CHOCOLATE SANDWICH

7  A.A

10	Kims Pride Biscuits With Blackcurrant & Peanut	201313117	PARTY
11.	Kims Superb Egg & Milk Enriched Cookies	201313118	SOOPER
12.	Gibs Smooper Egg & Milk Cookies	201611540	SOPPER
13.	Donald Skipper Egg And Milk Biscuits	2016/5698	SOOPER
14.	Soony Selection-Gluco Energy Biscuits	2016/5138	GLUCO
15.	Kims Peanut Pista Cookies	2016/3329	PEANUT PISTA
16.	Gibs Gluco Plus Biscuits	2003/2192	GLUCO PLUS

The Complainant has also filed a total of 15 Copyright Rectifications against the Copyright Registrations of the Respondent. Out of the above 15, the Complainant vide Rectification Application No. 5/2008 has got the impugned entry/Registration No. 12959-Copr under the work/titled "SPEEDO" of the Respondent, expunged from the register as it was deceptively similar to the prior registered work of the Complainant under No. 9035-Copr dated 1-4-2000 under the work/titled "SOOPER"

- 4.11 The Complainant stated that the following rectifications are pending adjudication at the IPO since long, as a new Board has not yet been constituted:

**Copyright Rectifications filed by the Complainant against the Respondent.**

S. No.	Copyright Rectifications against Registration Nos.	Work/Entitled
1.	25621-Copr	GIBS SUPREME EGG & MILK COOKIES
2.	22015-Copr	DONAL NEW SOOPER BAKERY STYLE EGG & MILK COOKIES
3.	16493-Copr	DONAL CLASSIC EGG & MILK COOKIES
4.	20 118-Copr	DONAL CLASSIC EGG & MILK COOKIES
5.	20119-Copr	DONAL CLASSIC EGG & MILK COOKIES
6.	25626-Copr	GLUCOSE
7.	25595-Copr	GLUCOSE
8.	25804-Copr	GIBS MARIE BISCUIT
9.	25803-Copr	GIBS MARIE BISCUIT
10.	21503-Copr	DONAL PEANUT PISTA BISCUITS
11.	26485-Copr	GIBS RICH PEANUT BISCUITS
12.	23336-Copr	GIBS PICNIC BISCUITS WITH PEANUT & KISHMISH
13.	20699-Copr	GIBS LEMON SANDWICH BISCUITS
14.	14326-Copr	GIBS MAGIC CHOCOLATE COATED BISCUITS (WRAPPER)

7 A-A



4.12 It is pertinent to mention here that in **Hilal Confectionary (Pvt.) Ltd vs. Haroon Sweet Factory & another: 2018 CLD 1072** the Sindh High Court on the issue of overall impression and leading characteristics of trademarks rightly held: appearance of number of infringements/imitations of trademarks or wrappers, color scheme, design or get up in market place would not give justification for an infringer/imitator to claim that trademark of original proprietary had lost its proprietary status and due to such reason, the imitator/infringer of such mark or label or wrapper was entitled to continue with its imitations and infringement... **when question had arisen whether a mark applied for had such resemblance to another mark likely to deceive, it should be determined by considering what was the leading characteristics of each.**... One should contain many even most of same elements, as other and yet leading or it may be just impression left on mind, might be very different...Critical comparison of two marks might disclose numerous points of difference yet idea which would remain with any person seeing them apart of different items could be same...**Mark was infringed if essential features/particulars of some were taken....color scheme, design and get up of label/wrapper of defendant was deceptively and confusingly similar or nearly resembled color scheme, design and get up of label/wrapper of the plaintiff and was likely to deceive an unwary person....**

4.13 The Complainant mentioned that another case titled **Abbas Hussain Farooqi vs. M/s. Royal Printing Press and Ali Printing Services & Others: PLD 1970 KARACHI 554** the Sindh High Court held: "Similarities between the two trademarks may be due to any of the following hypothesis: (1) mere chance; (2) works taken from a common source; (3) Plaintiff's work being taken from Defendant's and (4) Defendant's work being taken from the Plaintiffs'. It is only on the fourth hypothesis that an infringement can exist. **The protection extends not only to exact copies but to colorable imitations as well, for a copy is nonetheless a copy because there are only colorable differences....**

Furthermore, the question of "**Colorable Imitations**" has been discussed in *Halsbury's Laws of England, Third Edition, Vol. 8, at pages 426 & 427 in Jerrold vs. Holston (1857) 3k & J 708* where the Judges observed as follows:

**"no man is entitled to avail himself of the precious labors of another, for the purpose of conveying to the public the same information although he may append additional information to that already published one"...**

4.14 It has been claimed by the Complainant, that the Respondent has not attached with its reply **any single trademark registration certificates and mostly relied on the impugned Copyrights applications/registrations.** The Complainant has strongly denied the Respondent's claims pertaining to the trademarks registrations. Even otherwise, the courts have always deprecated the use of copyright registrations as substitute of trademarks. This question has been determined in length by the Apex Court in the case titled **Farooq Ghee and Oils Mills (Pvt.) Ltd. vs. Registrar of Trade Marks: 2015 SCMR 1230 SUPREME COURT** which held: "Copyright laws aimed to protect original works of art or creative articulation (may be of a trademark) in any tangible medium of expression, whereas, trademark was associated with the goods for the purpose of indicating or so to indicate a connection in the course of trade between the goods and some person having the rights either as a proprietor or as a registered user to use or apply the trademark on his goods... Trade Marks Act, 1940 protected the proprietor to use the trade mark on his goods and prevented other competitors from using and applying identical and/or confusingly similar trademark on their goods of similar goods and the only restriction placed was on the use and/or adoption of same or deceptively and/or confusingly similar trademark... **Trader may make or market or sell some or similar category of goods falling in same class but under a different brand name/mark that clearly distinguished its goods from same category or class of goods...copyright material could not be allowed to be used as an alternate and/or in substitution for the trademark unless, of course such copyright in the artistic work was also registered under the Trade Marks Act... Practice of using copyright as a substitute for the trade mark was deprecated by**

7 J A-A



out of the alleged twenty six (26) products. The Respondent was again provided an opportunity to furnish the evidence of remaining twelve (12) products via letter dated December 22, 2020. The Respondent via letter dated December 30, 2020 requested for extension in time which was not provided by the Enquiry Committee. The Respondent submitted two (02) further packagings via letter dated January 13, 2021.

- 5.3 In continuation to the above, the packagings obtained from the Respondent, referred to in para 2.23 above, were sent to the Complainant for its comments via letter dated February 02, 2021. The Complainant via letter dated February 08, 2021 requested for extension in time which was duly granted via letter dated February 10, 2021. The Complainant submitted its reply via letter dated February 15, 2021 containing copies of infringing packagings of the Respondent along with certified copies of the Copyright certificates. On April 22, 2021, a letter was sent to the Complainant in order to provide packaging of the alleged products of the Respondent along with colored copies of trademark and copyright certificate for product "Sooper Elachi". The Complainant submitted its reply via letter dated April 29, 2021, wherein requested documents were furnished. The submissions of the Complainant were once again sent to the Respondent via letter dated May 20, 2021. The Respondent via letter dated May 29, 2021 requested for extension in time which was duly provided via letter dated June 03, 2021. The Respondent submitted its reply dated June 10, 2021 furnishing the same information as summarized in para 3.2 to 3.19 above. The reply of the Respondent was once again sent to the Complainant for its rejoinder via letter dated June 21, 2021. The Complainant via letter dated June 23, 2021 requested for extension in time which was granted via letter dated June 28, 2021. The Complainant submitted its reply dated July 27, 2021, furnishing the same information as summarized in para 4.2 to 4.18 above.
- 5.4 In addition to the above, the Enquiry Committee wrote a letter dated April 07, 2022 to the Intellectual Property Tribunal, Islamabad (hereinafter referred to as "IPO") in order to ascertain the updated status of the oppositions filed by the Complainant against some of the products of the Respondent. The IPO replied via letter dated May 21, 2022 and provided the updated status of the requested matter. A copy of the letter is attached as Annexure-D.

## 6. ANALYSIS:

- 6.1 In the following paragraphs, the evidence submitted by the Complainant and Respondent are analyzed to ascertain if the allegations leveled against the Respondent under the complaint constitute, *prima facie*, violation of Section 10 (2) (a), (b) and (d) of the Act in terms of the following:
- Whether the Respondent is violating Section 10 (1) of the Act, in terms of Section 10 (2) (d) of the Act, which prohibits *fraudulent use of another's trademark, firm name, or product labeling or packaging*; and/or
  - Whether the Respondent's conduct is *capable of harming the business interest* of the Complainant in violation of Section 10 (1) of the Act, in terms of Section 10 (2) (a) of the Act; and/or
  - Whether the Respondent's conduct pertains to *the distribution of false or misleading information to consumers related to character, place of production, properties and quality of goods*, in violation of Section 10 (1) of the Act, in terms of Section 10 (2) (b) of the Act?

7 A.A

**the Courts (in Pakistan) and defense of an infringer of trademark resting on registration of copyright had been sternly rejected in a large number of case”....**

- 4.15 The Complainant has strictly denied that the Respondent is the honest concurrent user of the impugned marks and the labels/designs on product packaging. Had this been the fact the Complainant would have not filed the above-mentioned trademark and copyright oppositions or rectifications against the use and registrations of the impugned trademarks/label designs of the Complainant. **Suit No. 206/IPT/2017** is also a part of the legal discourse adopted by the Complainant against the blatant and unembarrassed infringement of its trademarks and copyrights.
- 4.16 The Complainant has submitted that all other parts of the Reply filed by the Respondent are denied and rebutted to the extent that those are contrary to the Complaint filed by Complainant hence, the Respondent is put to strict proof thereof. It has once again been reiterated by the Complainant that the Respondent has been blatantly engaged in the practice of hungrily copying the overall intricacies of the label/design, outer get-up/trade dress, color scheme, graphic representations, configurations and placements on the product packaging of the Complainant’s well-known trademarks. Thus, for all intents and purposes the Respondent’s behavior is anti-competitive, unfair for gaining illegal commercial gains.
- 4.17 Since the **law protects the honest traders, encourages due observance of fair play, moral and ethical values in trade and business practices thus, the courts of law always frowned on unfair trade and business practices that may tend to encourage malpractices, and/or usurpation of goodwill and market created by someone else.** Such wrongdoings could not be termed anything short of robbing someone of his/her hard earned goodwill and rights in Intellectual Property.
- 4.18 In view of the above, the Complainant requested the Commission to allow the instant Complaint by accepting the prayers sought therein and a stern action be taken against the Respondent for the redressal of Complainant’s grievance in order to prevent the injury and harm done to the Complainant’s business and goodwill.

**5. FURTHER CORRESPONDANCE:**

- 5.1 Further, a letter dated August 13, 2020 was sent to the Complainant’s legal counsel, wherein they were asked to submit the original representation annexed with their copyright certificates. The Complainant via its legal counsel submitted the reply along with the requested data through a letter received dated September 28, 2020. The Complainant in its response reiterated the same assertions as submitted in its previous reply dated August 22, 2019.
- 5.2 Moreover, during the course of the enquiry certain shortcomings were identified and, in order to resolve these, further correspondence was conducted with both the Complainant and the Respondent. A letter dated October 22, 2020 was written to the Respondent to provide original packagings of the alleged products and the power of attorney in favor of Malik Wasim Khokhar. Respondent replied via letter dated October 26, 2020 and submitted the power of attorney only. The Respondent was again asked for the above remaining information via letter dated November 03, 2020. The Respondent did not reply and a final opportunity was provided via letter dated November 17, 2020 to submit the same. The Respondent via letter dated November 23, 2020 requested for extension in time which was provided via letter dated November 26, 2020. The Respondent via letter dated December 04, 2020 again requested for extension in time. The Respondent meanwhile via letter dated December 08, 2020 submitted its reply containing only fourteen alleged products

7  A.A

out of the alleged twenty six (26) products. The Respondent was again provided an opportunity to furnish the evidence of remaining twelve (12) products via letter dated December 22, 2020. The Respondent via letter dated December 30, 2020 requested for extension in time which was not provided by the Enquiry Committee. The Respondent submitted two (02) further packagings via letter dated January 13, 2021.

- 5.3 In continuation to the above, the packagings obtained from the Respondent, referred to in para 2.23 above, were sent to the Complainant for its comments via letter dated February 02, 2021. The Complainant via letter dated February 08, 2021 requested for extension in time which was duly granted via letter dated February 10, 2021. The Complainant submitted its reply via letter dated February 15, 2021 containing copies of infringing packagings of the Respondent along with certified copies of the Copyright certificates. On April 22, 2021, a letter was sent to the Complainant in order to provide packaging of the alleged products of the Respondent along with colored copies of trademark and copyright certificate for product "Sooper Elachi". The Complainant submitted its reply via letter dated April 29, 2021, wherein requested documents were furnished. The submissions of the Complainant were once again sent to the Respondent via letter dated May 20, 2021. The Respondent via letter dated May 29, 2021 requested for extension in time which was duly provided via letter dated June 03, 2021. The Respondent submitted its reply dated June 10, 2021 furnishing the same information as summarized in para 3.2 to 3.19 above. The reply of the Respondent was once again sent to the Complainant for its rejoinder via letter dated June 21, 2021. The Complainant via letter dated June 23, 2021 requested for extension in time which was granted via letter dated June 28, 2021. The Complainant submitted its reply dated July 27, 2021, furnishing the same information as summarized in para 4.2 to 4.18 above.
- 5.4 In addition to the above, the Enquiry Committee wrote a letter dated April 07, 2022 to the Intellectual Property Tribunal, Islamabad (hereinafter referred to as "IPO") in order to ascertain the updated status of the oppositions filed by the Complainant against some of the products of the Respondent. The IPO replied via letter dated April 26, 2022 and provided the updated status of the requested matter. A copy of the letter is attached as Annexure-D.

## 6. ANALYSIS:

- 6.1 In the following paragraphs, the evidence submitted by the Complainant and Respondent are analyzed to ascertain if the allegations leveled against the Respondent under the complaint constitute, *prima facie*, violation of Section 10 (2) (a), (b) and (d) of the Act in terms of the following:
- Whether the Respondent is violating Section 10 (1) of the Act, in terms of Section 10 (2) (d) of the Act, which prohibits *fraudulent use of another's trademark, firm name, or product labeling or packaging*; and/or
  - Whether the Respondent's conduct is *capable of harming the business interest* of the Complainant in violation of Section 10 (1) of the Act, in terms of Section 10 (2) (a) of the Act; and/or
  - Whether the Respondent's conduct pertains to *the distribution of false or misleading information to consumers related to character, place of production, properties and quality of goods*, in violation of Section 10 (1) of the Act, in terms of Section 10 (2) (b) of the Act?

7/2/22 A.A



- 6.2 Before analyzing, it is relevant to mention here that the Complainant alleged 26 products in its complaint and provided evidence for all of the alleged products in original and/or pictorial form. However, the Respondent's counsel only submitted documentary evidence of 11 products in its initial response. Under the circumstances, the Respondent's counsel was repeatedly requested to submit the documentary evidence of remaining 15 products but they only supplied the requisite supporting material of 04 more products. Moreover, as a reply to the complaint, the Respondent also submitted its packaging of certain products as defense. Consequently, the Enquiry Committee was able to obtain evidence on most of the alleged products. However, there were 5 products which were not supported by evidence by both the Complainant and the Respondent. For this purpose, based on market intelligence, the Enquiry Committee selected some cities and conducted a survey of Islamabad, Rawalpindi, Multan and Toba Tek Singh. However, the remaining 5 products were not found with any wholesaler or retailer in the said market areas. The products' absent evidence will be specified separately in the analysis. Therefore, the Enquiry Committee is constrained to keep their main focus on the alleged products that are accompanied with documentary evidence, submitted either by the Complainant or validated by the Respondent in this regard.
- 6.3 In order to determine the above, various matters pertinent to significance of trademarks and their association with Section 10 of the Act would subsequently be discussed.
- 6.4 A word, phrase, symbol, and/or design which is used to classify and distinguish goods and services in general and from those of its competitors is known as a trade or service mark. The term, "mark" has been defined in Section 2(xxiv) of the Trade Marks Ordinance, 2001 (the 'Ordinance')<sup>1</sup> as:

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

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

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

- 6.5 Such uniquely developed trade or service marks are created and adopted by undertakings to assist consumers in quick identification of their brands of varied products. One of the major purposes of these trade/service marks is also to separate them from those of its competitors.
- 6.6 These creative works then represent a certain perception about the respective products in terms of the status, price, unique characteristics, method or place of production/origin of service providers, properties, quality, etc., of the relevant goods and services. Consequently, they also become one of the most important aspects of the undertaking's goodwill.
- 6.7 Therefore, in order to form their unique identity, firms invest significantly in creating and promoting their brands through the medium of trademarks. These creative works, hence, become a prominent aspect of the brand image and goodwill of their owners, as they not only represent the producers/providers of these products, but also symbolize the unique features and quality of the

<sup>1</sup> [http://www.ipo.gov.pk/system/files/Trade Mark Ordinance 2001 0.pdf](http://www.ipo.gov.pk/system/files/Trade%20Mark%20Ordinance%202001%200.pdf)

7 A.A

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

- 6.8 Therefore, protection of such property rights have twofold benefits. Firstly, these laws ensure protection of property rights of the owners of these trademarks who invest significantly into their creation and promotion in order to establish a certain brand image and goodwill. Through such actions, fair competition is also protected and promoted. Secondly, they prevent consumer injury caused as a result of trademark infringement. Reason being that trademark infringement may induce a consumer into buying a product which they may otherwise have not bought. Such a situation may arise as a consequence of confusing one product with some other similar product containing the identical or similar trademark and/or packaging.

---

**I. WHETHER THE ALLEGATIONS LEVELLED AGAINST THE RESPONDENT UNDER THE COMPLAINT CONSTITUTE A, *PRIMA FACIE*, VIOLATION OF SECTION 10 (1) OF THE ACT IN TERMS OF SECTION 10 (2) (d) OF THE ACT i.e. FRAUDULENT USE OF ANOTHER'S TRADE MARK, FIRM NAME, OR PRODUCT LABELING OR PACKAGING.**

---

- 6.9 Before analyzing, it is pertinent to mention here that the Complainant alleged that the Respondent has imitated and copied seven of their well-known trademarks/products namely **Sooper, Peanut Pista, Marie, Peanut Pik, Party, Lemon Sandwich** and **Gluco**. The Complainant submitted its trademark certificates and copyrights certificates in support of allegations. The Complainant also submitted colored copies of product wrappers and boxes of the alleged products along with copies of each.

- 6.10 However, reiterating Para No. 6.2 above, there were 4 alleged products that remained unsubstantiated by the Complainant as well as the Respondent during the course of enquiry. Moreover, no evidence was found by the Enquiry Committee against these 4 products during their survey. Therefore, no analysis will be drawn for the following 4 products:

- i. Sooperior by Soney
- ii. Soober by Gibs Gold Collection
- iii. Peanut Pista Cookies by Soney
- iv. Rich Peanut Biscuits by Soney

- 6.11 Moreover, the allegations were levelled against the plastic wrapper of the biscuits of the Respondent as well as the box/carton of the same products. However, since the trademarks, labelling and packaging of the wrapper and the box/carton were identical, the Enquiry Committee deemed it fit not to discuss them individually in this report for the sake of brevity.

- 6.12 Furthermore, there are instances in this enquiry, where both the Complainant and the Respondent established rights pertaining to their respective trademark, packaging and labelling. In such

7 A.A.



instances, the Enquiry Committee deems it fit that the matter does not pertain to fraudulent use of another's trademark, packaging and labelling thereby not falling within the domain of Section 10 (2) (d) of the Act. However, in instances where one of the party has established a right as to the use of their trademark, packaging and labelling, the Enquiry Committee considers that the matter does falls within the scope of fraudulent use of another's trademark, packaging and labelling, and therefore will be discussed hereon in detail, respectively.

- 6.13 In view of the above, a comparative analysis of the alleged trademarks, alleged packaging and labelling is made hereunder, separately.

### TRADEMARKS ANALYSIS

#### A. SOOPER "Egg and Milk Cookies":

- 6.14 The trademark of the Complainant includes the word "SOOPER" in white, bold and uppercase letters with the phrase 'Egg & Milk Cookies' in black underneath in a yellow rectangular box. The trademark of the Complainant is registered with the IPO as of 8<sup>th</sup> of Jan, 2003 bearing no. 182580, and has been duly renewed over the years. The trademark certificate does not give rights over the exclusive use of the phrase 'Egg & Milk Cookies'.



#### a. Smooper By Gibs

- 6.15 The trademark of the Respondent has the word "Smooper" in white lowercase letters accompanied by the phrase 'Egg & Milk Cookies' above it in black. The Respondent has no registered trademark for its brand Smooper. Therefore, in this instance, the Complainant has a right of use of its trademark Sooper.

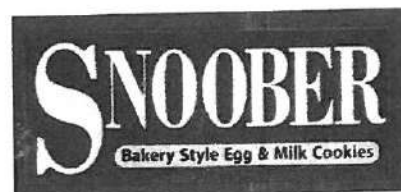


- 6.16 In light of this, it appears that the Respondent has attempted to significantly imitate the trademark of the Complainant's product. The Respondent has created a phonetically and visually similar trademark Smooper to that of the Complainant's registered trademark Sooper. The recreation of a similar trademark, along with the phrase 'Egg & Milk Cookies', although differently placed on the packaging, in conjunction give the identical essence of the label as to that of the Complainant's. At a mere cursory glance, both trademarks appears visually similar to each other.

- 6.17 Therefore, the conduct of the Respondent, *prima facie*, **DOES** amount to fraudulent use of another's trademark, thereby, in violation of Section 10 (2) (d) of the Act.

#### b. Snoober by Soney

- 6.18 The trademark of the Respondent has the word "Snoober" in white uppercase letters accompanied by the phrase 'Egg & Milk Cookies' below it in yellow rectangular box. The Respondent has no registered trademark for its brand Snoober. Therefore, in this instance, the Complainant has a prior right of use of its brand Sooper.



7 J A.P

6.19 In light of this, it appears that the Respondent has attempted to significantly imitate the trademark of the Complainant's product. The Respondent has created a phonetically and visually similar trademark Smooper to that of the Complainant's registered trademark Sooper. The recreation of a similar trademark, in conjunction with the phrase 'Egg & Milk Cookies', although slightly differently placed compared to the Complainant's, gives an similar visual experience as that of the Complainant's.

6.20 Therefore, the conduct of the Respondent, *prima facie*, DOES amount to fraudulent use of another's trademark, thereby, in violation of Section 10 (2) (d) of the Act.

**c. Sooperior by Soney**

6.21 The Complainant had alleged that the trademark 'Sooperior' of the Respondent was infringing the registered trademark of the Complainant, i.e., Sooper. In evidence, the Complainant had submitted a colored print of the Respondent's Sooperior packaging.



6.22 The Enquiry Committee, on multiple instances, directed the Complainant to submit the actual packaging as evidence in this regard. However, the Complainant failed to do so. Furthermore, the Respondent has also not acknowledged the presence of his brand Sooperior in the market in its submissions to the Enquiry Committee in the subject matter.

6.23 Therefore, the Enquiry Committee deemed it fit to survey the market for the presence of the brand Sooperior in the market. The Enquiry Committee, in their survey of Islamabad, Rawalpindi, Multan and Toba Tek Singh, were unable to find the respective brand available for sale with any retailer or wholesaler/ distributor.

6.24 It is obvious that in the absence of complete documents in support of the allegations, it is difficult for the Enquiry Committee to analyze and to make up a case of deceptive marketing practices for this specific product.

**d. Speedo By Gibs (A)**

6.25 The Complainant had alleged that the trademark 'Speedo' (hereinafter referred to as Speedo (A)) of the Respondent was infringing the registered trademark of the Complainant, i.e., Sooper. In evidence, the Complainant had submitted a colored print of the Respondent's Speedo (A) packaging.



6.26 The Enquiry Committee, on multiple instances, directed the Complainant to submit the actual packaging as evidence in this regard. However, the Complainant failed to do so. Furthermore, the Respondent has also not validated the presence of his brand Speedo (A) in the market in its submissions to the Enquiry Committee in the subject matter.

6.27 Therefore, the Enquiry Committee, during the survey referred to in Para No. 6.2 above, were unable to find the respective brand available for sale with any retailer or wholesaler/ distributor. However,

7 A.A

with reference to para 5.4 above, a trademark application for registration of Respondent's "SPEEDO" was obtained from IPO Pakistan. Hence, the Respondent did intent to register and use its trademark "SPEEDO (A)". (The trademark application is attached as **Annexure-C**)

6.28 Therefore, the conduct of the Respondent, *prima facie*, **DOES** amount to fraudulent use of another's trademark, thereby, in violation of Section 10 (2) (d) of the Act.

**e. Supreme by Gibs**

6.29 The trademark of the Respondent has the word "Supreme" in white uppercase letters accompanied by the phrase 'Egg & Milk Cookies' below it in yellow rectangular box. The Respondent has no registered trademark for its brand Supreme. Therefore, in this instance, the Complainant has a prior right of use of its brand Sooper.



6.30 The Respondent's trademark 'Supreme' is both phonetically and visually a similar connotation to that of the Complainant's registered trademark Sooper. The recreation of a similar trademark, in conjunction with the phrase 'Egg & Milk Cookies', placed identical to that of the Complainant's, gives similar visual experience as that of the Complainant's trademark.

6.31 Therefore, the conduct of the Respondent, *prima facie*, **DOES** amount to fraudulent use of another's trademark, thereby, in violation of Section 10 (2) (d) of the Act.

**f. Classic by Donal**

6.32 The trademark of the Respondent has the word "Classic" used as its trademark. The Complainant alleged that the trademark Classic of the Respondent infringes the proprietary rights it has in its trademark Sooper. The Respondent has no registered trademark for its brand Classic. Therefore, in this instance, the Complainant has a prior right of use of its brand Sooper.



6.33 However, the word Classic, visually, phonetically and in origin different from that of the Complainant's Sooper.

6.34 In light of this, the Respondent is **NOT** found violating Section 10 of the Act.

**g. Sooper by Donal**

6.35 The trademark of the Respondent has the word "Sooper" in white uppercase letters accompanied by the phrase 'Egg & Milk Cookies' below it in yellow rectangular box having rounded corners. The Respondent has no registered trademark for its brand Sooper. Therefore, in this instance, the Complainant has a prior right of use of its brand Sooper.



7 A A A

- 6.36 In light of this, it appears that the Respondent has attempted to significantly imitate the trademark of the Complainant's product. The Respondent has created a phonetically and visually similar trademark Soober to that of the Complainant's registered trademark Sooper. The recreation of a similar trademark, in conjunction with the phrase 'Egg & Milk Cookies', gives similar visual experience as that of the Complainant's.
- 6.37 Therefore, the conduct of the Respondent, *prima facie*, **DOES** amount to fraudulent use of another's trademark, thereby, in violation of Section 10 (2) (d) of the Act.

#### **h. Soober by Gibs Gold Collection**

- 6.38 The Complainant had alleged that the trademark 'Soober' by Gibs Gold Collection of the Respondent was infringing the registered trademark of the Complainant, i.e., Sooper. In evidence, the Complainant had submitted a colored print of the Respondent's Soober packaging.



- 6.39 The Enquiry Committee, on multiple instances, directed the Complainant to submit the actual packaging as evidence in this regard. However, the Complainant failed to do so. Furthermore, the Respondent has also not validated the presence of his brand Soober by Gibs Gold Collection in the market in its submissions to the Enquiry Committee in the subject matter.
- 6.40 Therefore, the Enquiry Committee, during the survey referred to in Para No. 6.2 above, were unable to find the respective brand available for sale with any retailer or wholesaler/ distributor.
- 6.41 It is obvious that in the absence of complete documents in support of the allegations, it is difficult for the Enquiry Committee to analyze and to make up a case of deceptive marketing practices for this specific product.

#### **i. Speedo by Gibs (B)**

- 6.42 The trademark of the Respondent has the word "Speedo" (hereinafter referred to as Speedo (B)) used as its trademark. The Complainant alleged that the trademark Speedo (B) of the Respondent infringes the proprietary rights it has in its trademark Sooper. The Respondent has no registered trademark for its brand Speedo (B). Therefore, in this instance, the Complainant has a prior right of use of its brand Sooper.




- 6.43 However, the word Speedo (B), phonetically and in origin, differentiates from that of the Complainant's Sooper.
- 6.44 In light of this, the Respondent is **NOT** found violating Section 10 of the Act.

### **B. PEANUT PISTA BISCUITS**


7 A.A

- 6.45 The Complainant alleged that the Respondent has copied its trademark is **Peanut Pista Biscuits**.
- 6.46 The Complainant submitted two packagings for its brands bearing trademark Peanut Pista Biscuits. Each of the packaging and the Respondent's alleged imitation of the trademarks are analyzed hereunder separately.


#### **Peanut Pista-A**

- 6.47 The first packaging of the Complainant, abbreviated as 'P.P-A', has the words Peanut Pista written in lowercase in white letters in an italic font. The rest of the packaging in predominantly dark green in color.
- 
- 6.48 The Complainant did not provide a trademark registration certificate for this packaging, therefore, has not been able to establish a right in the trademark. However, the Complainant has alleged 6 trademarks of the Respondent against its own P.P-A.
- 6.49 Since no right has been established in the case by the Complainant itself, the Enquiry Committee deems it fit not to discuss and analyze the alleged trademarks of the Respondent against it and rest the matter for the relevant regulatory body to deliberate.

#### **Peanut Pista-B**

- 6.50 The packaging of the Complainant, abbreviated as 'P.P-B', has the words Peanut (in red) and Pista (in green) in an italic font on a predominantly white packaging. The word Peanut Pista is accompanied by word 'Biscuits' underneath it in black color.
- 
- 6.51 The Complainant has established its rights in this trademark under class-30 bearing certificate No. 218055 since 03<sup>rd</sup> of February, 2006.
- 6.52 However, it is pertinent to mention here that the trademark registry does not give the Complainant rights over the exclusive use of words 'Peanut Pista' or 'Biscuits'. Moreover, the condition of the registration of the mark has been limited to colors in the case of P.P-B.

#### **a. Peanut Pista Biscuits by Gibs**

- 6.53 Peanut Pista Biscuits under house mark Gibs by the Respondent bears the word 'Peanut' in red followed by the word 'Pista' in green accompanied by the word 'Biscuits' underneath in black. The font used by the Respondent is bolder than the Complainant's. However, the trademark itself by the Respondent bears all devices and colors duly registered by the Complainant in this regard.
- 
- 6.54 Therefore, the conduct of the Respondent, *prima facie*, **DOES** amount to fraudulent use of another's trademark, thereby, in violation of Section 10 (2) (d) of the Act.

7/9 A.A



**C. MARIE BISCUITS**

- 6.55 The Complainant alleged that the Respondent has copied its trademark is **Marie Biscuits**.
- 6.56 The Complainant had submitted one packaging for its brands bearing trademark Marie Biscuits. The packaging and the Respondents alleged imitation of the trademark is analyzed hereunder.
- 6.57 The trademark of the Complainant consists of the word 'Marie' in red lowercase letters with the word 'Biscuits' in black underneath and the phrase 'Queen of Biscuits' written above the word Marie in black lettering.



- 6.58 The Complainant has established its right of use of the trademark 'Marie' through a trademarks registry bearing No. 187125 as of 19<sup>th</sup> of July, 2003 under class 30. It is pertinent to mention here that the registry does not give rights to the exclusive use of word 'Biscuit' and phrase 'Queen of Biscuits'.

**a. Marie Biscuits by Gibs**

- 6.59 The trademark of the Respondent consists of the word 'Marie' in red lowercase letters followed by the word 'Biscuits' underneath in black uppercase letters.
- 6.60 The word Marie and Biscuits in conjunction have been identically reproduced by the Respondent as that of the registered trademark of the Complainant. Moreover, since the word 'Marie' has no association in essence with biscuits, the trademark of the Complainant is duly authored and registered with the relevant authority.
- 6.61 The Respondent, hence, could not have authored identical trademark in the same product category.
- 6.62 Therefore, the conduct of the Respondent, *prima facie*, **DOES** amount to fraudulent use of another's trademark, thereby, in violation of Section 10 (2) (d) of the Act.



**D. NEW PEANUT PIK BISCUITS**

- 6.63 The trademark of the Complainant consists of words 'Peanut Pik' in white italics lowercase letters accompanied by 'Biscuits' in white underneath.
- 6.64 The Complainant has registered its trademark with all the elaborated devices in conjunction via registry No. 293234 under class 30 dated 23<sup>rd</sup> of December, 2010. However, the registry does not give an exclusive right over the words 'Peanut', 'New' and 'Biscuits'.

**a. Rich Peanut Biscuits by Gibs**

7 A.A

6.65 The first alleged trademark of the Respondent under house mark Gibs consists of words Rich in yellow and Peanut in white lowercase letters, with the word Peanut slightly larger and bolder than the word Rich. It is accompanied by the word 'Biscuits' underneath, also in white.



6.66 Since the trademark of the Complainant does not give an exclusive right over the words 'Peanut' and 'Biscuits', the trademark of the Respondent in conjunction with the word 'Rich' does not infringe upon the registered trademark of the Complainant. Moreover, the trademark is also visually different from that of the Complainant.

6.67 Therefore, the Respondent is **NOT** found violating Section 10 of the Act.

**b. Rich Peanut Biscuits by Soney**

6.68 The Complainant had alleged that the trademark 'Rich Peanut Biscuits' by Soney of the Respondent was infringing the registered trademark of the Complainant, i.e., Peanut Pik Biscuits. In evidence, the Complainant had submitted a colored print of the Respondent's respective packaging.



6.69 The Enquiry Committee, on multiple instances, directed the Complainant to submit the actual packaging as evidence in this regard. However, the Complainant failed to do so. Furthermore, the Respondent has also not validated the presence of his brand 'Rich Peanut Biscuits' by Soney in the market in its submissions to the Enquiry Committee in the subject matter.

6.70 Therefore, the Enquiry Committee, during the survey referred to in Para No. 6.2 above, were unable to find the respective brand available for sale with any retailer or wholesaler/ distributor.

6.71 It is obvious that in the absence of complete documents in support of the allegations, it is difficult for the Enquiry Committee to analyze and to make up a case of deceptive marketing practices for this specific product.

**c. Peanut Touch Biscuits by Gibs**

6.72 The alleged trademark of the Respondent under house mark Gibs consists of words 'Peanut' in uppercase letters with a white border and filled with red color, followed by the word 'Touch' in yellow italics. It is accompanied by the word 'Biscuits' underneath, also in white.



6.73 Since the trademark of the Complainant does not give an exclusive right over the words 'Peanut' and 'Biscuits', the trademark of the Respondent in conjunction with the word 'Touch' does not infringe upon the registered trademark of the Complainant. Moreover, the trademark is also visually different from that of the Complainant.

6.74 Therefore, the Respondent is **NOT** found violating Section 10 of the Act.

**E. PARTY**

7 A.A

6.75 The registered trademark 'Party' for biscuits by the Complainant consists of the Word 'Party' in block script, bold lowercase letters followed by the word 'Biscuits' underneath.

6.76 Complainant has duly obtained this registration bearing No. 123264 under class 30 as of 29th of December, 1993.



6.77 However, it was observed that besides the registered trademark the Complainant is using a different trademark as well, which is unregistered. The unregistered trademark appearing on the packaging has the word 'Party' written in a cursive script in white and is not accompanied by the device of 'Biscuits'.

6.78 The comparison of the alleged packagings of the Respondent will be drawn in light of this observation.

**a. Picnic by Gibs**

6.79 The trademark of the Respondent under house mark Gibs consists of the word 'Picnic' in a lowercase cursive font in white, followed by the phrase 'Biscuits with Peanut and Kishmish' underneath it.



6.80 It is pertinent to mention here that the word picnic is not, phonetically, visually or in origin, similar to the word Party. Moreover, the Complainant itself does not possess a right in the use of cursive print representation in white. The devices of the Respondent, in conjunction, do not resemble the registered trademark of the Complainant, i.e., the word 'Party' and 'Biscuits' in colored block script.

6.81 Therefore, the Respondent is **NOT** found violating Section 10 (2) (d) of the Act.

**b. Picnic by Soney**

6.82 The trademark of the Respondent under house mark Soney consists of the word 'Picnic' in a lowercase cursive font in yellow, followed by the phrase 'Biscuits with Peanut and Kishmish' underneath it in white.



6.83 It is pertinent to reiterate that the Complainant itself does not possess a right in the use of cursive print representation of the trademark 'Party' in white. The devices of the Respondent, in conjunction, do not resemble the registered trademark of the Complainant, i.e., the word 'Party' and 'Biscuits' in colored block script.

6.84 Therefore, the Respondent is **NOT** found violating Section 10 (2) (d) of the Act.

**c. Picnic by Donal**

7 A.A

6.85 The trademark of the Respondent under house mark Donal consists of the word 'Picnic' in a lowercase Comic Sans font in white, followed by the phrase 'Biscuits with Peanut and Kishmish' underneath it in white.



6.86 It may be pointed out that the devices of the Respondent, in conjunction, phonetically and visually, do not resemble the registered trademark of the Complainant, i.e., the word 'Party' and 'Biscuits' in colored block script.

6.87 Therefore, the Respondent is **NOT** found violating Section 10 (2) (d) of the Act.

**F. LEMON SANDWICH**

6.88 The trademark of the Complainant consists of the word 'Lemon' in lowercase red letters accompanied by the word 'Original' in black over it and the word 'Sandwich' in green underneath it.



6.89 The Complainant has its rights registered via a trademark registry numbered 189723 under class 30 as of 4<sup>th</sup> of November, 2003. However, the registration of the Complainant does not give exclusive rights in the use of the words 'Original Lemon' and the trademark registry is limited to the colors as shown on the registry.

**a. Lemon Sandwich Biscuits by Gibs**

6.90 The trademark of the Respondent under house mark Gibs consists of the word 'Lemon' in lowercase red letters followed by the phrase 'Sandwich Biscuits' in blue underneath. The word 'Lemon' has been reproduced by the Respondent in a font, style and color very similar to that of the Complainant's registered trademark followed by the word 'Sandwich' underneath.



6.91 In light of this, the trademark used by the Respondent does appear to be confusingly similar to that of the Complainant's registered trademark, especially considering similar origin and flavor profiles.

6.92 Therefore, the conduct of the Respondent, *prima facie*, **DOES** amount to fraudulent use of another's trademark, thereby, in violation of Section 10 (2) (d) of the Act.

**b. Super Lemon Sandwich Biscuits by Donal**

6.93 The trademark of the Respondent under house mark Donal consists of the word 'Lemon' in lowercase red letters followed by the word 'Super' over it in black and 'Sandwich Biscuits' in red underneath. The word 'Lemon' has been reproduced by the Respondent in a font, style and color very similar to that of the Complainant's registered trademark.



6.94 In light of this, the trademark used by the Respondent does appear to be confusingly similar to that of the Complainant's registered trademark, especially considering similar origin and flavor profiles.

6.95 Therefore, the conduct of the Respondent, *prima facie*, **DOES** amount to fraudulent use of another's trademark, thereby, in violation of Section 10 (2) (d) of the Act.

7 A.A



**c. Classic Lemon Sandwich Biscuits by Gibs**

6.96 The trademark of the Respondent under house mark Gibs consists of the word 'Lemon' in lowercase red letters followed by the word 'Classic' over it in red and 'Sandwich Biscuits' in green underneath. The word 'Lemon' has been reproduced by the Respondent in a font, style and color very similar to that of the Complainant's registered trademark. Similarly, the words sandwich biscuits are reproduced under it in similar green color.



6.97 In light of this, the trademark used by the Respondent as an overall does appear to be confusingly similar to that of the Complainant's registered trademark, especially considering similar origin and flavor profiles.

6.98 Therefore, the conduct of the Respondent, *prima facie*, **DOES** amount to fraudulent use of another's trademark, thereby, in violation of Section 10 (2) (d) of the Act.

**G. GLUCO**

6.99 The Complainant's trademark consists of the word 'Gluko' in a white, bold and cursive font in lowercase letters with the letter 'G' extended to underline the rest of the letters. The trademark appears slightly slanted on the label of the packaging.



6.100 The Complainant has in possession a trademarks registry numbered 119687 under class 30, as of 22<sup>nd</sup> of March, 1993. The Complainant has also obtained trademark registrations for further variations of its brand Gluco, i.e., Gluco Plus and Gluco Gold Biscuits.

**a. Glucose by Gibs**

6.101 The trademark of the Respondent under house mark Gibs consists of the word 'Glucose' in a white, bold and cursive font in lowercase letters. The trademark appears on a 180° plane on the label of the packaging.



6.102 The word, 'Glucose', although different from that of the Complainant's 'Gluko', still arises from the same origin of letters and as a whole gives a similar impression as to that of the Complainant's trademark.

6.103 Therefore, the conduct of the Respondent, *prima facie*, **DOES** amount to fraudulent use of another's trademark, thereby, in violation of Section 10 (2) (d) of the Act.

**PACKAGING AND LABELLING ANALYSIS**

6.104 Now an analysis will be drawn regarding the packaging and labelling of the alleged and duly substantiated products of the Respondent with those of the Complainant's.

**A. SOOPER**

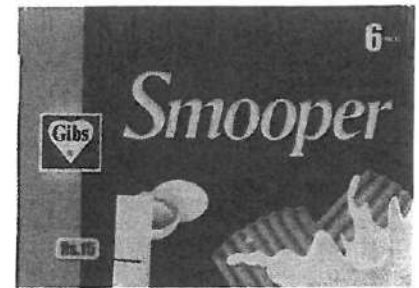
6.105 The Complainant has provided the registered Copyright certificates for its product "Sooper" and "Sooper Egg & Milk Cookies" bearing registration No. 9035 and 14002, registered on April 01, 2000 & March 02, 2005 respectively



6.106 The trademark Sooper is written in white color and the phrase "Egg and Milk Cookies" is written beneath the trade mark with black color in a yellow rectangle. The Complainant's packaging has a picture of an egg, two biscuits and a jug full of milk at the lower right corner.

**a. Smooper By Gibs**

6.107 If we compare graphical representation of the Complainant and the Respondent, they appears to be identical and have a close resemblance with each other. The trademark "Smooper" is written with white color and the phrase "Egg and Milk Cookies" is written above the trade mark with black color. The Respondent's packaging has a picture of an egg cracked in two halves, two biscuits and liquid milk pouring on two biscuits at the lower right corner.

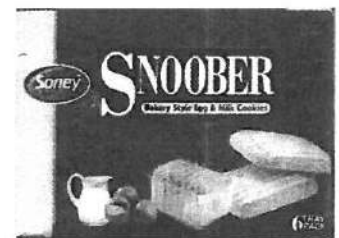


6.108 From the above images and discussion, it can be established that there is a similarity between the products of both the Complainant and Respondent. Furthermore, the artistic work which includes expressions/style/getup of the work used by the Respondent is also similar with that of the Complainant and causes confusion in the mind of an ordinary consumer.

6.109 Therefore, the conduct of the Respondent, *prima facie*, **DOES** amount to fraudulent use of another's product packaging and labelling, thereby, in violation of Section 10 (2) (d) of the Act.

**b. Snoober by Soney**

6.110 The trademark "Snoober" is written with white color inside a blue rectangle box and the phrase "Egg and Milk Cookies" is written below the word "Snoober" with black color inside a yellow box. The Respondent's packaging has a picture of three eggs along with a cluster of biscuits inside a transparent pack beside which two biscuits are outside and milk is placed in a jug along with the eggs.



6.111 From the above images and discussion, it can be established that there is a similarity between the products of both the Complainant and Respondent. Furthermore, the artistic work which includes expressions/style/getup of the work used by the Respondent is also similar with that of the Complainant and causes confusion in the mind of an ordinary consumer.

6.112 Therefore, the conduct of the Respondent, *prima facie*, **DOES** amount to fraudulent use of another's product packaging and labelling, thereby, in violation of Section 10 (2) (d) of the Act.

7 J A.A

**c. Speedo by Gibs**

6.113 Reiterating Para No. 6.25-6.28 above, it is obvious that in the absence of complete documents in support of the allegations, it is difficult for the Enquiry Committee to analyze and to make up a case of deceptive marketing practices for this specific product.



**d. Supreme by Gibs**

6.114 The Respondent has duly provided the copyright certificate for its product "Supreme by Gibs" bearing registration No. 25621 registered on April 30, 2012.



6.115 Based on this, the Enquiry Committee is of the view that since both parties have established a right of use in this regard, the matter **DOES NOT** pertain to fraudulent use of another's packaging and labelling.

**e. Classic by Donal**

6.116 The Respondent has duly provided the copyright certificate for its product "Classic by Donal" bearing registration No. 20118, 20119, 16493 registered on July 31, 2009 and August 31, 2007 respectively.



6.117 Based on this, the Enquiry Committee is of the view that since both parties have established a right of use in this regard, the matter does not pertain to fraudulent use of another's packaging and labelling.

**f. Soober by Donal**

6.118 The Respondent has duly provided the copyright certificate for its product "Soober by Donal" bearing registration No. 22015 registered on August 27, 2010.



6.119 Based on this, the Enquiry Committee is of the view that since both parties have established a right of use in this regard, the matter **DOES NOT** pertain to fraudulent use of another's packaging and labelling.

**g. Soober by Gibs Gold Collection**

6.120 Reiterating Para No. 6.38-6.41 above, it is obvious that in the absence of complete documents in support of the allegations, it is difficult for the Enquiry Committee to analyze and to make up a case of deceptive marketing practices for this specific product.



7 9 A-A

**h. Speedo By Gibs**

6.121 The Respondent has failed to provide the registered copyright certificate for its product "Speedo by Gibs".

6.122 If we compare graphical representation of the Complainant and the Respondent they appears to be identical and have a close resemblance with each other. The trademark "Speedo" is written with white color and the phrase "Egg and Milk Cookies" is written below the trade mark with black color inside a yellow box. The Respondent's packaging has a picture of two eggs along with a cluster of biscuits inside a transparent pack besides which two biscuits are outside and milk is being poured on them with a jug full of milk at lower right corner.



6.123 From the above images and discussion, it can be established that there is a similarity between the products of both the Complainant and Respondent. Furthermore, the artistic work which includes expressions/style/getup of the work used by the Respondent is also similar to that of the Complainant and causes confusion in the mind of an ordinary consumer.

6.124 Therefore, the conduct of the Respondent, *prima facie*, **DOES** amount to fraudulent use of another's product packaging and labelling, thereby, in violation of Section 10 (2) (d) of the Act.

**i. Sooperior by Soney**

6.125 Reiterating Para No. 6.21-6.24 above, it is obvious that in the absence of complete documents in support of the allegations, it is difficult for the Enquiry Committee to analyze and to make up a case of deceptive marketing practices for this specific product.



**B. PEANUT PISTA BISCUITS**

6.126 The Complainant had submitted two packagings for its brand Peanut Pista Biscuits. Each of the packaging and the Respondents alleged imitation of the packaging and labelling are analyzed hereunder separately.

**PEANUT PISTA BISCUITS – A**

6.127 The Complainant has provided the registered Copyright certificate for its product "Peanut Pista Biscuits" bearing registration No. 26247 registered on June 29, 2012.

7 J A-A

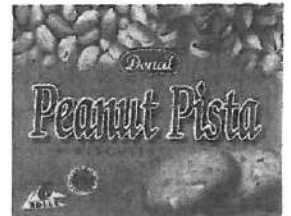


6.128 The Complainant has used predominantly green color for the packaging. The trademark Peanut Pista Biscuits is written in white color and an image of some peanuts is placed beneath the trademark. The Complainant has used an image of 3 biscuits and some peanuts in right corner of the box.



**a. Peanut Pista by Donal**

6.129 The Respondent has also provided a copyright certificate for its product "Peanut Pista by Donal", bearing registration No. 21503 registered on May 28, 2010.



6.130 Based on this, the Enquiry Committee is of the view that since both parties have established a right of use in this regard, the matter **DOES NOT** pertain to fraudulent use of another's packaging and labelling.

**b. Peanut Pista by Gibs**

6.131 The Respondent's trademark "Peanut Pista" is written with white color and the word 'Biscuits' is written below the trademark on green background in the center of the packaging. The Respondent's packaging has a picture of three biscuits placed on the top of the trademark and some peanuts and pistachios are sprinkled at the bottom of the label.



6.132 From the above images and discussion, it can be established that there is no similarity found between the products of both the Complainant and Respondent.

6.133 Based on these facts, it can be safely concluded that the allegation made against the Respondent is unsubstantiated and therefore **DOES NOT** violate Section 10 (2) (d) of the Act.

**c. Peanut Pista by Gibs Gold**

6.134 The Respondent has also provided a copyright certificate for its product "Peanut Pista by Gibs Gold" bearing registration No. 28055 registered on February 28, 2013.



6.135 Based on this, the Enquiry Committee is of the view that since both parties have established a right of use in this regard, the matter **DOES NOT** pertain to fraudulent use of another's packaging and labelling.

**d. Peanut Pista Plus by Gibs**

7 J A-A

6.136 The Respondent's trademark "Peanut Pista Plus Biscuit" is written in white color on green background in the center of the packaging. The Respondent's packaging has a picture of two biscuits placed on the top of the sprinkled peanuts and pistachios at the bottom right corner of the packaging.



6.137 From the above images and discussion, it can be established that there is no similarity found between the products of both the Complainant and Respondent.

6.138 Based on these facts, it can be safely concluded that the allegation made against the Respondent is unsubstantiated and therefore **DOES NOT** violate Section 10 (2) (d) of the Act.

**e. Peanut Pista Plus by Soney**

6.139 The Respondent's trademark "Pista Peanut Plus Biscuit" is written with white color on green background in the center of the packaging. The Respondent's packaging has a picture of two biscuits placed on the top of the sprinkled peanuts and pista at the bottom right corner of the packaging.



6.140 From the above images and discussion, it can be established that there is no similarity found between the product packagings of both the Complainant and Respondent.

6.141 Based on these facts, it can be safely concluded that the allegation made against the Respondent is unsubstantiated and therefore **DOES NOT** violate Section 10 (2) (d) of the Act.

**f. Peanut Pista by Soney**

6.142 The Respondent's trademark "Pista Peanut Biscuit" is written with Red color and Cookies is written below the trademark with black color on green background in the center of the packaging. The Respondent's packaging has a picture of two biscuits placed on the bottom of the packaging sprinkled with some peanuts on left side and pistachio on right side.



6.143 From the above images and discussion, it can be established that there is no similarity found between the products of both the Complainant and Respondent.

6.144 Based on these facts, it can be safely concluded that the allegation made against the Respondent is unsubstantiated and therefore **DOES NOT** violate Section 10 (2) (d) of the Act.

**PEANUT PISTA BISCUITS – B**

6.145 The Complainant has provided the registered Copyright certificate for its product "Peanut Pista Biscuits" bearing registration No. 9046 registered on April 01, 2000.

7 A.A

6.146 The Complainant has used white background color for the packaging. The trademark Peanut Pista Biscuits is written in Red, Green and white color, respectively. The Complainant has used an image of peanuts and pistachios and placed it on the packaging diagonally from top to bottom. A partially overlapping biscuit is placed on the diagonal peanut and pistachios line in right corner of the packaging.



**a. Peanut Pista by Gibs**

6.147 In regard to Respondent's trademark "Peanut Pista Biscuit", Peanut is written with red color, Pista is written with green color and Biscuit is written with black color in the center of the packaging. The Respondent's packaging has a picture of six biscuits on the top of the packaging and a single biscuit placed in the bottom right corner upon a strip made with peanuts and pistachios in the same color as that of the Complainant.



6.148 From the above images and discussion, it can be established that there is a similarity between the products of both the Complainant and Respondent. Furthermore, the artistic work which includes expressions/style/getup of the work used by the Respondent is also similar with that of the Complainant and causes confusion in the mind of an ordinary consumer.

6.149 Therefore, the conduct of the Respondent, *prima facie*, **DOES** amount to fraudulent use of another's product packaging and labelling, thereby, in violation of Section 10 (2) (d) of the Act.

**C. MARIE BISCUITS**

6.150 The Complainant has provided Copyright certificates for its product "Marie" bearing registration No. 9043 & 6109, registered on April 01, 2000 & April 16, 1997 respectively.



6.151 The Complainant had alleged that Respondent's product packaging and labelling of "Marie" under house mark Gibs bore resemblance to the Complainant's product Marie.

6.152 In this regard the Respondent furnished a copyright certificate for its product "Marie by Gibs" bearing registration No. 25804 & 25803, as of May 23, 2012.



6.153 Based on this, the Enquiry Committee is of the view that since both parties have established a right of use in this regard, the matter **DOES NOT** pertain to fraudulent use of another's packaging and labelling.

**D. PEANUT PIK BISCUITS**

7 [Signature] A-A

6.154 The Complainant has provided the registered Copyright certificates for its product "Peanut Pik Biscuits" bearing registration No. 26244, 9045 & 4815 registered on June 29, 2012, April 01, 2000 & June 15, 1995, respectively.

6.155 The Complainant has used a maroon color for the packaging. The trademark 'Peanut Pik Biscuits' is written in white color and an image of some peanuts is placed adjacent to the trademark. The Complainant has used an image of 3 biscuits and some peanuts placed below the trademark.



**a. Rich Peanut by Gibs**

6.156 The Respondent has also provided a copyright certificate for its product "Rich Peanut by Gibs" bearing registration No. 26485, registered on July 31, 2012.

6.157 Based on this, the Enquiry Committee is of the view that since both parties have established a right of use in this regard, the matter **DOES NOT** pertain to fraudulent use of another's packaging and labelling.



**b. Rich Peanut by Soney**

6.158 In case of "Rich Peanut Biscuit" under house mark Soney, Rich is written with yellow color while Peanut Biscuits is written with white color on a maroon background in the center of the packaging. The Respondent's packaging has a picture of three biscuits placed on the bottom of the packaging sprinkled with some peanuts around the biscuits.



6.159 From the above images and discussion, it can be established that there is a similarity between the products of both the Complainant and Respondent. Furthermore, the artistic work which includes expressions/style/getup of the work used by the Respondent is similar to that of the Complainant and causes confusion in the mind of an ordinary consumer.

6.160 Therefore, the conduct of the Respondent, *prima facie*, **DOES** amount to fraudulent use of another's product packaging and labelling, thereby, in violation of Section 10 (2) (d) of the Act.

**c. Peanut Touch by Gibs Gold**

6.161 In case of "Peanut Touch" under house mark Gibs Gold, Peanut is written with Red color while Touch is written with yellow color overlapping the word peanut. Biscuits is written with white color below the trademark. The Respondent's packaging has a picture of three biscuits placed on the bottom left side of the packaging sprinkled with some peanuts around the biscuits.



6.162 From the above images and discussion, it can be established that there is no similarity found between the product's packaging of both the Complainant and Respondent.

7- A-A



6.163 Based on these facts, it can be safely concluded that the allegation made against the Respondent is unsubstantiated and therefore **DOES NOT** violate Section 10 (2) (d) of the Act.

**E. PARTY BISCUITS**

6.164 The Complainant has provided a registered Copyright certificate for its product “Party Biscuits with Raisins and Peanuts”, bearing registration No. 18745 since November 29, 2008.

6.165 The complainant has used an indigo blue color for the packaging. The trademark is written in pale yellow color. "Biscuits with raisins and peanuts" is written beneath the trademark and the Complainant has used an image of stacked biscuits tied up in baby pink ribbon with one biscuit lying apart from the stack on the lower left corner of the box.



**a. Picnic by Gibs**

6.166 The Respondent has also provided a copyright certificate for its product “Picnic by Gibs” bearing registration No. 23336, registered since April 21, 2011.



6.167 Based on this, the Enquiry Committee is of the view that since both parties have established a right of use in this regard, the matter **DOES NOT** pertain to fraudulent use of another’s packaging and labelling.

**b. Picnic by Donal**

6.168 The Respondent’s product “Picnic” under house mark Donal has the trademark written in white color with the same font style as that of the Complainant’s. However, it is pertinent to mention that the Complainant does not possess a trademark registry in the representation being used by the Complainant on its label. Moreover, the term “Biscuits with peanut and kishmish” is written below the trademark in white color. Some biscuits without ribbon have been placed in the bottom right corner of the box along with some peanuts and raisins.



6.169 From the above images and discussion, it can be established that there is a similarity between the products of both the Complainant and Respondent. Furthermore, the artistic work which includes expressions/style/getup of the work used by the Respondent is similar to that of the Complainant and causes confusion in the mind of an ordinary consumer.

6.170 Therefore, the conduct of the Respondent, *prima facie*, **DOES** amount to fraudulent use of another’s product packaging and labelling, thereby, in violation of Section 10 (2) (d) of the Act.

**c. Picnic by Soney**

7 9 A.A

6.171 The Respondent's trademark "Picnic" under house mark Soney is written in white color and with the same font style as that of the Complainant's unregistered representation of the word 'Party'. The term "Biscuits with peanut and kishmish" is written below the trademark in white color. The Respondent has placed an image of biscuits stacked up in baby pink ribbon besides two biscuits outside of the ribbon on the lower left corner of the box.



6.172 From the above images and discussion, it can be established that there is a similarity between the products of both the Complainant and Respondent. Furthermore, the artistic work which includes expressions/style/getup of the work used by the Respondent is similar to that of the Complainant and causes confusion in the mind of an ordinary consumer.

6.173 Therefore, the conduct of the Respondent, *prima facie*, **DOES** amount to fraudulent use of another's product packaging and labelling, thereby, in violation of Section 10 (2) (d) of the Act.

#### F. LEMON SANDWICH BISCUITS

6.174 The Complainant has provided the registered Copyright certificates for its product "Original Lemon Sandwich" bearing registration No. 41284 registered on July 08, 2020 respectively.

6.175 The Complainant has used yellow color for the packaging. The trademark 'Lemon' is written in red color while sandwich is written in green color and in a smaller font. "Original" is written above the trademark in black color and in a different font style. The Complainant has used an image of 2 cream stuffed, yellow square shaped sandwich biscuits on right side of the box beneath the trademark.



##### a. Lemon Sandwich by Gibs

6.176 The Respondent has also provided a copyright certificate for its product "Lemon Sandwich by Gibs" bearing registration No. 20699, registered on February 26, 2010.

6.177 Based on this, the Enquiry Committee is of the view that since both parties have established a right of use in this regard, the matter **DOES NOT** pertain to fraudulent use of another's packaging and labelling.



##### b. Super Lemon Sandwich by Donal

6.178 The Respondent has used a color combination on its packaging which is very similar to that of the Complainant. An image of one biscuit is placed on bottom right corner of the box along with two lemons on a green leaf. The trademark 'Lemon' is written with red color while 'Sandwich Biscuits' is written in white color with a red border. Word 'Super' is written in black color above the trademark.



6.179 From the above images and discussion, it can be established that there is a similarity between the products of both the Complainant and Respondent. Furthermore, the artistic work which includes

7 J A-A

expressions/style/getup of the work used by the Respondent is similar to that of the Complainant and causes confusion in the mind of an ordinary consumer.

6.180 Therefore, the conduct of the Respondent, *prima facie*, **DOES** amount to fraudulent use of another's product packaging and labelling, thereby, in violation of Section 10 (2) (d) of the Act.

**c. Classic Lemon Sandwich by Gibs**

6.181 The Respondent has placed an image of two biscuits on the bottom right corner of the box along with two lemons on a green leaf. 'Lemon' is written with red color while 'Sandwich Biscuits' is written with green color on a yellow background. Word 'Classic' is written with Red color above the trademark.



6.182 From the above images and discussion, it can be established that there is a similarity between the products of both the Complainant and Respondent. Furthermore, the artistic work which includes expressions/style/getup of the work used by the Respondent is similar to that of the Complainant and causes confusion in the mind of an ordinary consumer.

6.183 Therefore, the conduct of the Respondent, *prima facie*, **DOES** amount to fraudulent use of another's product packaging and labelling, thereby, in violation of Section 10 (2) (d) of the Act.

**G. GLUCO BISCUITS**

6.184 The Complainant has provided the registered Copyright certificates for its product "Gluko", "Gluko Plus" & "Gluko Biscuits" bearing registration No. 24140, 9036 & 9048 registered on October 08, 2011 & April 01, 2000 respectively.



6.185 The Complainant had alleged that Respondent's product packaging and labelling of "Glucose" under house mark Gibs bore resemblance to the Complainant's product Gluko.

6.186 It is important to mention here that the Respondent has also provided the copyright certificate for its alleged product, i.e., "Glucose by Gibs" bearing registration No. 25595 & 25626, registered on April 30, 2012.



6.187 Based on this, the Enquiry Committee is of the view that since both parties have established a right of use in this regard, the matter **DOES NOT** pertain to fraudulent use of another's packaging and labelling.

6.188 Based on the analysis drawn above, the Respondent, *prima facie*, appears to be violating Section 10 (2) (d) of the Act through fraudulent use of Complainant's trademark, product labeling and packaging in the following instances:

7 A-A

S. No.	Respondent's Product	Trademark	Product labeling and Packaging
1	Smooper By Gibs	Violation	Violation
2	Snoober by Soney	Violation	Violation
3	Speedo By Gibs (A)	Violation	-
4	Speedo By Gibs (B)	-	Violation
5	Supreme by Gibs	Violation	-
6	Soober by Donal	Violation	-
7	Peanut Pista Biscuits by Gibs	Violation	Violation
8	Marie Biscuits by Gibs	Violation	-
9	Rich Peanut by Soney	-	Violation
10	Picnic by Donal	-	Violation
11	Picnic by Soney	-	Violation
12	Lemon Sandwich Biscuits by Gibs	Violation	-
13	Super Lemon Sandwich Biscuits by Donal	Violation	Violation
14	Classic Lemon Sandwich Biscuits by Gibs	Violation	Violation
15	Glucose by Gibs	Violation	-

**II. WHETHER THE ALLEGATIONS LEVELLED AGAINST THE RESPONDENT UNDER THE COMPLAINT CONSTITUTE A, PRIMA FACIE, VIOLATION OF SECTION 10 (1) OF THE ACT IN TERMS OF SECTION 10 (2) (b) OF THE ACT i.e.. DISTRIBUTION OF FALSE OR MISLEADING INFORMATION TO CONSUMERS, INCLUDING THE DISTRIBUTION OF INFORMATION LACKING REASONABLE BASIS, RELATED TO THE PRICE, CHARACTER, METHOD OR PLACE OF PRODUCTION, PROPERTIES, SUITABILITY FOR USE, OR QUALITY OF GOODS**

6.189 The term misleading information has been interpreted by the Commission in its Order 2010 CLD 1478, as:

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

6.190 The basic question which arises from this is whether the act or practice is likely to affect the consumer's conduct or decision with regard to a product or service. If so, the practice is material, and consumer injury is likely, because consumers are likely to have chosen differently but for the deception.

6.191 This in turn leads to who is considered a 'consumer' for determining such issues. Similarly, for the purposes of Section 10 of the Act, the Commission in its order 2010 CLD 1478, elaborates that the consumer to whom such information is disseminated has to be the 'ordinary consumer' who is the

7 9 A-A



usual, common or foreseeable user or buyer of the product. Such a consumer need not necessarily be restricted to the end user. Here it may be relevant to point out that the 'ordinary consumer' is not the same as the 'ordinary prudent man' concept evolved under contract law. Unlike the 'ordinary prudent man' the thrust on ordinary diligence on the part of the consumer would not be considered relevant factors. Therefore, in order to implement the law in its true letter and spirit, the scope of the term 'consumer' must be construed most liberally and in its widest amplitude.

6.192 Therefore, in view of Para No. 6.189 to 6.191, it appears that the conduct of the Respondent, in the respective instances, has a likelihood of causing confusion in the mind of an unwary consumer and may or may not, alter their buying decision. Moreover, for the purposes of Section 10 of the Act, actual harm need not be proven in order to ascertain deception.

6.193 Therefore, in view of the foregoing, the Enquiry Committee is of the view that the conduct of the Respondent has resulted in a, *prima facie*, violation of Section 10 (2) (b) of the Act in terms of distribution of misleading information lacking reasonable basis related to the origin and place of production of the specified products.

---

**III. WHETHER THE ALLEGATIONS LEVELLED AGAINST THE RESPONDENT UNDER THE COMPLAINT CONSTITUTE A, PRIMA FACIE, VIOLATION OF SECTION 10 (1) OF THE ACT IN TERMS OF SECTION 10 (2) (a) OF THE ACT I.E. DISTRIBUTION OF FALSE OR MISLEADING INFORMATION THAT IS CAPABLE OF HARMING THE BUSINESS INTEREST OF ANOTHER UNDERTAKING**

---

6.194 Before analyzing whether the, *prima facie*, violation of Section 10 (2) (d) of the Act has impact on the business interest of the Complainant, it is important to understand and differentiate the terms Copycat packaging from Counterfeiting.

6.195 The two terms are defined and differentiated as:

*"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."*<sup>2</sup>

6.196 From this, it can be inferred that where there has occurred an infringement of a registered intellectual property right, an act of counterfeiting has taken place. In this instance, the Respondent has infringed upon the registered trademarks and copyrights of the Complainant.

6.197 Since the Respondent has infringed upon the Complainant's rights, it is not necessary to prove actual harm in monetary terms has occurred to the Complainant to prove that the business interest of the Complainant has been harmed.

---

2

<https://www.thefreelibrary.com/Copycat+packaging%2C+misleading+advertising+and+unfair+competition.-a0205910732>

7 J A.A

- 6.198 Moreover, it is pertinent to bring to attention the strategy of making multiple counterfeits of one registered and leading product of the market. The act of making multiple counterfeit of one leading brand and then moving on to place the product in similar point of sales reduces the chance of sale of the market leader by margins.
- 6.199 The phenomenon can be explained through a simple analogy, where one market leader has 4 counterfeits placed right next to it on an aisle at a point of sale. The probability of sale of the market leader gets reduced broadly by 80%, where all packaging have the look, getup and feel of the market leader.
- 6.200 The phenomenon gets even more serious, where the price of the counterfeit is lower than that of the market leader. In the instance of this enquiry, the Respondent has significantly lowered prices for its counterfeit packaging, which may result in loss of sales to the Complainant.
- 6.201 Therefore, in light of the above, the overall conduct of the Respondent, i.e., fraudulent use of another's trademark product labeling and packaging, *prima facie*, in violation of Section 10(2)(d) of the Act, is also capable of harming the business interest of the Complainant, thereby, *prima facie*, in violation of Section 10(2)(a) of the Act.
- 6.202 In reference to the above, it is also pertinent to mention here that, Intellectual Property Tribunal (Lahore) had in the past issued an Order dated 08-12-2017 against the Respondent, while deciding an application for the interim relief under Order 39 Rule 1 & 2 COC. The said matter is still pending adjudication with the Intellectual Property Tribunal (Lahore).

## **7. SPILLOVER EFFECT:**

- 7.1 Holistic analysis of the products of the Respondent, the Enquiry Committee found that the products are being marketed and sold nationwide and are not limited to one particular province.
- 7.2 As regards the effect of anti-competitive behavior spilling over territorial limits of other provinces is concerned, the products of the Respondent was marketed and sold nationwide. Hence the scope of the marketing was not restricted to a particular area or province, in fact, it is available to ordinary consumers around the country. The products of the Respondent have a nationwide effect because the ordinary consumers can buy the product anywhere in the country.
- 7.3 In view of the above, it can be established that the effect of anticompetitive behavior is spilling over the territorial limits of other provinces.

## **8. CONCLUSION AND RECOMMENDATIONS:**

- 8.1 The Respondents' products, falling under the imitated trademark and packaging & labelling, are in total disregard to the proprietary rights vested to the Complainant and amounts to deceptive marketing practices through fraudulent use of another's proprietary rights.
- 8.2 In light of the facts presented in this Enquiry Report, it appears that the conduct of the Respondent, *prima facie*, amounts to fraudulent use of Complainant's trademark and packaging & labelling, in violation of Section 10(1) in terms of Section 10 (2) (d) of the Act, in the following particular instances:

7 A.A

S. No.	Respondent's Product	Trademark	Product labeling and Packaging
1	Smooper By Gibs	Violation	Violation
2	Snoober by Soney	Violation	Violation
3	Speedo By Gibs (A)	Violation	-
4	Speedo By Gibs (B)	-	Violation
5	Supreme by Gibs	Violation	-
6	Soober by Donal	Violation	-
7	Peanut Pista Biscuits by Gibs	Violation	Violation
8	Marie Biscuits by Gibs	Violation	-
9	Rich Peanut by Soney	-	Violation
10	Picnic by Donal	-	Violation
11	Picnic by Soney	-	Violation
12	Lemon Sandwich Biscuits by Gibs	Violation	-
13	Super Lemon Sandwich Biscuits by Donal	Violation	Violation
14	Classic Lemon Sandwich Biscuits by Gibs	Violation	Violation
15	Glucose by Gibs	Violation	-

8.3 Moreover, the Respondent has also been involved in other similar proceedings, pending adjudication, under of Section 10 (2) (d) of the Act with the Commission.

8.4 In view of the analysis, it can also be concluded that the conduct of the Respondent has the potential to inflict harm upon the business interest of the Complainant, *prima facie*, in violation of Section 10(1) in terms of Section 10(2) (a) of the Act.

8.5 Similarly, in view of the foregoing, the conduct of the Respondent, *prima facie*, amounts to distribution of misleading information lacking a reasonable basis related to the origin and place of production, in violation of Section 10(1) in terms of Section 10 (2) (b) of the Act.

8.6 The deceptive marketing practices have a direct impact on the public at large. It is in the interest of the general public and to create fair competition in the market, the undertakings should be stopped to market their products in an unfair and misleading manner and be encouraged to resort to the marketing practices, which are transparent and give consumers/customers true and correct information. Therefore, in light of the above-mentioned findings, it is recommended that the Commission may consider initiation of proceedings against M/s S.M Food Makers Limited under Section 30 of the Act for the, *prima facie*, violation of Section 10 of the Act.




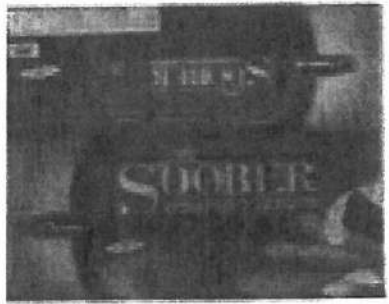








**Mr. Faiz Ur Rehman**  
Deputy Director (OFT)  
Enquiry Officer








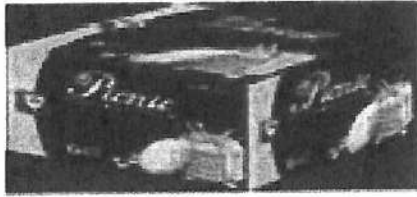



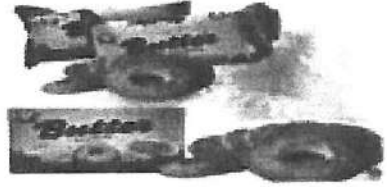


**Urooj Azeem Awan**  
Deputy Director (OFT)  
Enquiry Officer













**Mr. Amin Akbar**  
Management Executive (OFT)  
Enquiry Officer

TRADENAME OF ORIGINAL MANUFACTURER	ORIGINAL PRODUCT	RESPONDENTS' ILLEGAL/PARASITIC ADOPTION(S)
Peek Freans		
Hilal		
LU		
LU		
Peek Freans		



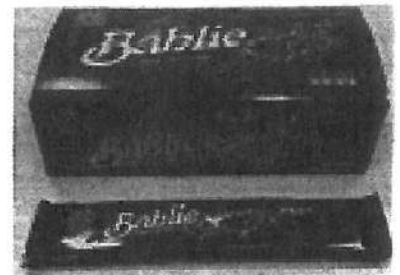
<p>Peek Freans</p>		
<p>Peek Freans</p>		
<p>Peek Freans</p>		
<p>LU</p>		
<p>LU</p>		
<p>Hilal</p>		







<p>Hilal</p>		
<p>LU</p>		
<p>Peek Freans</p>		
<p>Hilal</p>		
<p>Hilal</p>		

Hilal



Cadbury



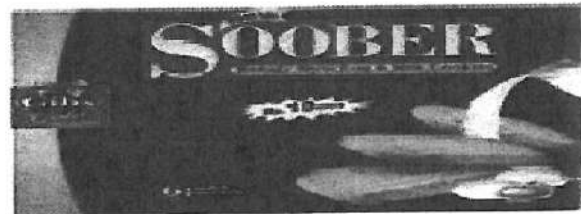
<p><b>Original/Genuine Products Manufactured and marketed by The complainant Company English Biscuit Manufacturers (Pvt) Ltd</b></p>	<p><b>Fake/Counterfeit/similar/identical products manufactured and marketed by the Alleged Company SM Food Makers, Multan</b></p>
<p><b>EBM's Current Label/Products</b></p>	<p><b>SMFM's Fake/Counterfeiting Products</b></p>
 <p>Original/Genuine Product (Current Packaging)</p>	
	   



<p><b>Original/Genuine Products (New Label) Manufactured and marketed by The complainant Company English Biscuit Manufacturers (Pvt) Ltd</b></p>	<p><b>Fake/Counterfeit/similar/Identical products manufactured and marketed by the Alleged Company SM Food Makers, Multan</b></p>
<p>EBM's Current Label/Products</p>	<p>SMFM's Fake/Counterfeiting Products</p>



Original/Genuine Product  
(Old Packaging)



Counterfeits

<p><b>Original/Genuine Products (Old Label) Manufactured and marketed by The complainant Company English Biscuit Manufacturers (Pvt) Ltd</b></p>	<p><b>Fake/Counterfeit/similar/identical products manufactured and marketed by the Alleged Company SM Food Makers, Multan</b></p>
<p>EBM's Current Label/Products</p>	<p>SMFM's Fake/Counterfeiting Products</p>
 <p>Original/Genuine Product</p>	
	
	
	



Counterfeits

**Original/Genuine Products (New Label)**

**Manufactured and marketed by  
The complainant Company  
English Biscuit Manufacturers  
(Pvt) Ltd**

EBM's Current Label/Products

**Fake/Counterfeit/similar/identical products manufactured and marketed by the Alleged Company**

**SM Food Makers, Multan**

SMFM's Fake/Counterfeiting Products



Original/Genuine Product  
(Old Packaging)



Counterfeit



**Original/Genuine Products  
Manufactured and marketed by  
The complainant Company  
English Biscuit Manufacturers  
(Pvt) Ltd**

**Fake/Counterfeit/similar/id  
entical products  
manufactured and marketed  
by the Alleged Company SM  
Food Makers, Multan**

EBM's Current Label/Products




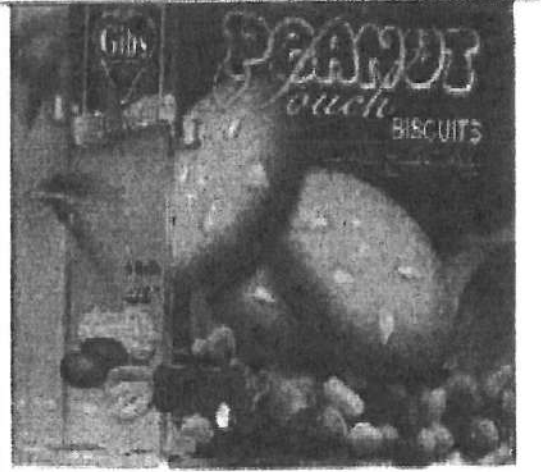
SMFM's Fake/Counterfeiting  
Products



Original/Genuine Products  
(Current Packaging)



Counterfeit

<p><b>Original/Genuine Products Manufactured and marketed by The complainant Company English Biscuit Manufacturers (Pvt) Ltd</b></p>	<p><b>Fake/Counterfeit/similar/i dential products manufactured and marketed by the Alleged Company SM Food Makers, Multan</b></p>
<p>EBM's Current Label/Products</p>	<p>SMFM's Fake/Counterfeiting Products</p>
 <p>Original/Genuine Products (Current Packaging)</p>	 
	

**Original/Genuine Products  
Manufactured and marketed by  
The complainant Company  
English Biscuit Manufacturers  
(Pvt) Ltd**

**Fake/Counterfeit/similar/i  
dential products  
manufactured and  
marketed by the Alleged  
Company SM Food Makers,  
Multan**

EBM's Current Label/Products

SMFM's Fake/Counterfeiting  
Products



Original/Genuine Products  
(Current Packaging)



Counterfeits

<p><b>Original/Genuine Products</b> Manufactured and marketed by <b>The complainant Company</b> <b>English Biscuit Manufacturers</b> <b>(Pvt) Ltd</b></p>	<p><b>Fake/Counterfeit/similar/i</b> <b>dential products</b> <b>manufactured and marketed</b> <b>by the Alleged Company SM</b> <b>Food Makers, Multan</b></p>
<p>EBM's Current Label/Products</p>	<p>SMFM's Fake/Counterfeiting Products</p>
 <p>Original/Genuine Products</p>	 <p>Counterfeit</p>








Original/Genuine Product



Counterfeit

C-

File Number	257248	
Filing Date	27/10/2008	
Status	Pending, (Opposition decisions)	
Description of mark	GIBS SPEEDO (logo) REGISTRATION OF THIS TRADE MARK SHALL GIVE NO RIGHT TO THE EXCLUSIVE USE OF ALL OTHER DESCRIPTIVE MATTER APPEARING ON THE LABEL.	
Owner : S.M. Food Makers (Private) Limited., 1-Km, New Central Jail Road, Multan, Punjab, Pakistan		
Representative : CODE & PATMARK SERVICES, Ground Floor, A-23, Block 13-A, Gulshan-e-Iqbal, W.C.H.S., Karachi		
Applied Goods / Services : 30 Coffee, tea, cocoa, sugar, rice, tapioca, sago, artificial coffee; flour and preparations made from cereals, sweets, bubble gum, bread, biscuits, wafers, candies, mint candies, toffees, chocolate coated confectionery items cakes, pastry, confectionery, ices, honey, cookies, treacle, ice cream, yeast, baking-powder, salt, mustard, pepper, vinegar, sauces (condiments), spices, nimko, ice all being goods included in class 30.		
Period of Use	1999	

Case Fix too Hearing 08/06/2022



GOVERNMENT OF PAKISTAN  
Intellectual Property Organization of Pakistan  
Commerce Division



Office of Fair Trade (OFT)

Diary No: 73

Date: 28/4/22

NO.14/DD/Enforcement/2022


Islamabad, the 26<sup>th</sup> April, 2022

**SUBJECT:** ENQUIRY INTO THE MATTER OF COMPLAINT FILED BY THE M/S ENGLISH BISCUIT MANUFACTURES (PVT) LIMITED (PURSUANT TO REGULARIZATION 17 (2) OF THE COMPETITION (GENERAL ENFORCEMENT) REGULARIZATION, 2007 FOR ALLEGED VIOLATION OF THE COMPETITION COMMISSION ACT, 2010.

I am directed to refer to letter of Competition Commission of Pakistan letter No.354 / EBM / OFT/ CCP / 2019 on the subject cited above and to attached herewith the requisite information received from Copyright and Trademark Registries (Annex-A) and (Annex-B) respectively i.e latest status of IPO cases referred by Competition commission of Pakistan, for further necessary action, if any.

Moreover, it is requested to convey two option of dates for the meeting on the subject matter at the earliest.

Encl: (As above)

  
(Ameen Javairia)  
Deputy Director (Enforcement)

Faiz-ur-Rehman  
Deputy Director  
(Enquiry Officer)  
Competition Commission  
Pakistan

Urooj Azeem Awan  
Deputy Director  
(Enquiry Officer),  
Competition Commission  
Pakistan.

✓ Amin Akabr  
Deputy Director  
(Enquiry Officer)  
Competition Commission  
Pakistan



3<sup>rd</sup> Floor NTC-HQs Building, Ataturk Avenue (East), Sector G-5/2, Islamabad.Pakistan.

Tel: + 92-51- 9245875. Fax: + 92-51- 9245938

Email: Javairia984@ino.gov.pk Website: www.ino.gov.pk

Annexure-A

**Trademark Oppositions filed by the Complainant against the Respondent**

Respondent's Applied Trademarks	Application No.	Complainant's Registered Trademarks	
Speedo Egg & Milk Cookies	257248	SOOPER	Matter relates to Trademark Registry
Donald Sober (Label)	258650	SOOPER	

**Copyright Objections filed by the Complainant against the Respondent**


Respondent's Applied Artwork	Application No.	Complainant's Copyrights	Remarks by Copyright Office/Status
Sony Party Wafer (Tutti Fruity)	2011/2320	PARTY	Decided the Copyright Application 2011/2320 was refused during objection proceeding.
Gibs Pista Peanut Plus Biscuits	2012/1217	PEANUT PISTA	Under hearing
Sony Pista Peanut Plus Biscuits	2012/1321	PEANUT PISTA	Under hearing
Gibs Peanut Pista Biscuits	2012/1545	PEANUT PISTA	Under hearing
Gibs Peanut Pista Biscuits	2013/3527	PEANUT PISTA	Under hearing
Gibs Nunna Biscuits (Box)	2003/2191	GLUCO	Under hearing
Gibs Gluco Plus + Energy Biscuits	2003/2193	GLUCO	Under hearing
Kims Classic Lemon Sandwich Biscuits	2013/3131	LEMON SANDWICH	Under hearing
Kims Classic Chocolate Sandwich	2013/3115	CHOCOLATE SANDWICH	Under hearing
Kims Pride Biscuits With Blackcurrant & Peanut	2013/3117	PARTY	Under hearing
Kims Superb Egg & Mille Enriched Cookie	2013/3118	SOOPER	Under hearing
Gibs Smooper Egg & Milk Cookies	2016/1540	SOPPER	Under hearing
Donald Skipper Egg And Milk Biscuits	2016/5698	SOOPER	Decided the Copyright Application 2016/5698 was refused during objection proceeding.
Soony Selection-Gluco Energy Biscuits	2016/5138	GLUCO	Under hearing
Kims Peanut Pista Cookies	2016/3329	PEANUT PISTA	Under hearing
Gibs Gluco Plus Biscuits	2003/2192	GLUCOPLUS	Under hearing

S. No.	Copyright Rectifications against Registration Nos.	Work/Entitled	Remarks by Copyright Office/Status
1.	25621-Copr	GIBS SUPREME EGG & MILK COOKIES	Under rectification proceeding before Copyright Board
2.	22015-Copr	DONAL NEW SOOPER BAKERY STYLE EGG & MILK COOKIES	Under rectification proceeding before Copyright Board
3.	16493-Copr	DONAL CLASSIC EGG & MILK COOKIES	Under rectification proceeding before Copyright Board
4.	20118-Copr	DONAL CLASSIC EGG & MILK COOKIES	Under rectification proceeding before Copyright Board
5.	20119-Copr	DONALCLASSIC EGG & MILK COOKIES	Under rectification proceeding before Copyright Board
6.	25626-Copr	GLUCOSE	Under rectification proceeding before Copyright Board
7.	25595-Copr	GLUCOSE	Under rectification proceeding before Copyright Board
8.	25804-Copr	GIBS MARIE BISCUIT	Under rectification proceeding before Copyright Board
9.	25803-Copr	GIBS MARIE BISCUIT	Under rectification proceeding before Copyright Board
10.	21503-Copr	DONAL PEANUT PISTA BISCUITS	Under rectification proceeding before Copyright Board
11.	26485-Copr	GIBS RICH PEANUT BISCUITS	Under rectification proceeding before Copyright Board
12.	23336-Copr	GIBS PICNIC BISCUITS WITH PEANUT & KISHMISH	Under rectification proceeding before Copyright Board
13.	20699-Copr	GIBS LEMON SANDWICH BISCUITS	Under rectification proceeding before Copyright Board
14.	14326-Copr	GIBS MAGIC CHOCOLATE COATED BISCUITS (WRAPPER)	Under rectification proceeding before Copyright Board



File Number	257248	
Filing Date	27/10/2008	
Status	Pending, (Opposition decisions)	
Description of mark	GIBS SPEEDO (logo) REGISTRATION OF THIS TRADE MARK SHALL GIVE NO RIGHT TO THE EXCLUSIVE USE OF ALL OTHER DESCRIPTIVE MATTER APPEARING ON THE LABEL.	
Owner : S.M. Food Makers (Private) Limited., 1-Km, New Central Jail Road, Multan, Punjab, Pakistan		
Representative : CODE & PATMARK SERVICES, Ground Floor, A-23, Block 13-A, Gulshan-e-Iqbal, W.C.H.S., Karachi		
Applied Goods / Services : 30 Coffee, tea, cocoa, sugar, rice, tapioca, sago, artificial coffee; flour and preparations made from cereals, sweets, bubble gum, bread, biscuits, wafers, candies, mint candies, toffees, chocolate coated confectionery items cakes, pastry, confectionery, ices, honey, cookies, treacle, ice cream, yeast, baking-powder, salt, mustard, pepper, vinegar, sauces (condiments), spices, nimko, ice all being goods included in class 30.		
Period of Use	1999	

Case Fix too Hearing 08/06/2022

File Number	258650	 <b>New Soober</b>
Filing Date	27/11/2008	
Status	Pending,(Opposition decisions)	
Description of mark	NEW SOOBER (logo) REGISTRATION OF THIS TRADE MARK SHALL GIVE NO RIGHT TO THE EXCLUSIVE USE OF WORD "NEW".	
Owner : S.M. Food Makers (Private) Limited.,1-Km, New Central Jail Road, Multan, Punjab, Pakistan		
Representative : LEGACY LAW ASSOCIATES ,Office # 9, 1st Floor, SAF Centre, 8 Face Road, Near High Court, Lahore		
Applied Goods / Services : 30 Coffee, tea, cocoa, sugar, rice, tapioca, sago, artificial coffee; flour and preparations made from cereals, sweets, bubble gums, bread, biscuits, wafers, candies, mint candies, toffees, chocolate coated confectionery items cakes, pastry, confectionery, ices, honey, treacle, Ice cream, yeast, baking-powder, salt, mustard, pepper, vinegar, sauces (condiments), spices, nimko, ice all being goods included in class-30		
Period of Use	1999	

No.	Complainant's product	Respondent's Product	Trademark	Product Labeling and Packaging	Status with IPO	Respondent's Registration/ application No.	Year Applied for reg. by Respondent
1		Smooper By Gibbs	Violation	Violation	COPR-Under Hearing	1540	2016/1540
2		Snoober by Soney	Violation	Violation	-	-	-
3		Speedo By Gibbs (A)	Violation	-	TM- Under Hearing	-	27-10-2008
4	Soooper	Speedo By Gibbs (B)	-	Violation	-	-	-
5		Supreme by Gibbs	Violation	-	COPR-Under Rectification	25621	-
6		Soober by Donal	Violation	-	TM-Under Hearing	-	27-11-2008
7	Peanut Pista	Peanut Pista Biscuits by Gibbs	Violation	Violation	COPR - Under Hearing	-	2012/3527
8		Rich Peanut by Soney	-	Violation	-	-	-
9	Marie	Marie Biscuits by Gibbs	Violation	-	COPR-Under Rectification	25803 25804	-
10		Picnic by Donal	-	Violation	-	-	-
11	Party	Picnic by Soney	-	Violation	-	-	-
12		Lemon Sandwich Biscuits by Gibbs	Violation	-	COPR-Under Rectification	20699	-
13	Lemon Sandwich	Super Sandwich by Donal	Violation	Violation	-	-	-
14		Classic Lemon Sandwich Biscuits by Gibbs	Violation	Violation	-	-	-
15	Gluco	Glucose by Gibbs	Violation	-	COPR-Under Rectification	25626 25595	-

\*Application/Registration No. 's and dates sourced from correspondence with IPO