

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 CIBEX (PRIVATE) LIMITED
AGAINST M/S CIDEX LABORATORIES FOR DECEPTIVE
MARKETING PRACTICES**

BY

Marryum Pervaiz & Riaz Hussain

Dated: September 16, 2019

1. BACKGROUND

- 1.1. M/s CIBEX (Private) Limited (hereinafter referred to as the ‘**Complainant**’) filed a complaint with the Competition Commission of Pakistan (the ‘**Commission**’) against M/s CIDEX Laboratories (hereinafter referred to as the ‘**Respondent**’) for alleged violation of Section 10 of the Competition Act, 2010 (the ‘**Act**’) i.e., deceptive marketing practices.
- 1.2. The Complainant alleged that the Respondent is using firm name i.e. “**CIDEX**” which is deceptively similar to the Complainant’s name and cause unwanted confusion in the both medical community and patients and also capable of harming the business interest of the Complainant.
- 1.3. Keeping in view the above, the Competent Authority of the Commission has initiated an Enquiry in accordance with sub-Section (2) of Section 37 of the Act by appointing Ms. Maryum Pervaiz, Deputy Director (OFT), later on promoted as Joint Director and Mr. Riaz Hussain, Assistant Director (OFT), as the enquiry officers (hereinafter referred to as the ‘**Enquiry Committee**’). The Enquiry Committee was directed to conduct the enquiry on the issues raised within the complaint and to submit the enquiry report by giving their findings and recommendations *inter alia* on the following:
 - (i). *Whether the allegations levelled in the complaint filed by the Complainant constitute a, prima facie, violation of Section 10 of the Act?*

2. THE COMPLAINT

- 2.1 The Complainant is a private limited company operating under the name ‘CIBEX (Private) Limited’ since 1997 and had been issued a Drug Manufacturing License by the Drug Regulatory Authority of Pakistan (DRAP). The Health & OTC Division of DRAP had also issued a provisional certificate for enlistment as manufacturer of pharmaceuticals products, liquids and tablets.
- 2.2 It was further submitted that the Complainant is a registered company under the name “CIBEX (Private) Limited” with the Securities and Exchange Commission of Pakistan since March 03, 1997. It was also submitted that its trademark is duly registered with Trade Mark Registry, Government of Pakistan in multiple classes from class 1 to class 45, including class 05 “Pharmaceuticals preparations, veterinary and sanitary substances” (*Copy of trademark registration with Trade Mark Registry is attached as Annexure - A*).
- 2.3 The allegations levelled in the complaint are stated as under:
 - i. That the Firm named CIDEX Laboratories located at 84-B, S.I.E, Kohat Road, Peshawar, is operating as herbal/nutraceutical firm and had been enlisted with Health & OTC Division of DRAP.
 - ii. That the firm name “CIDEX” is deceptively similar to the Complainant firm name “CIBEX”, which is a registered trade mark of the Complainant. It was further alleged that

the name “CIDEX” is visually and phonetically similar to the Complainant firm name “CIBEX” and both of them belongs to the same industry. The similarity between the name of these two undertakings cause unwanted confusion in both medical community and patients as well.

- iii. That the Complainant had invested lot of money and resources in the promotion of its name ‘CIBEX’. They have promoted all the brands under the banner of ‘CIBEX’ and consequently they have earned positive reputation and goodwill in the market over the years. The Complainant alleged that the confusion between the two similar names can potentially damage its reputation in matters of quality and efficacy, which can also had legal consequences.
- 2.4 In the spirit of fair business practices and to protect the rights of consumers, Complainant, humbly requested the Commission to take action against the Respondent for violation of the Section 10 of the Act.

3. SUBMISSIONS OF THE RESPONDENT

- 3.1 In order to proceed further, the Complaint was forwarded to the Respondent dated June 06, 2018 for its comments. The Respondent vide its letter requested for an extension in time to file the comments till 10th of July, 2018 due to their professional work and Eid-ul-Fitter holidays. Accordingly, the Respondent was required to file its comments no latter then July 10, 2018. Consequently, the comments were filed by the Respondent on July 05, 2018.
- 3.2 The para wise comments filed by the Respondent to the complaint are as under;
- 3.1.1 The Respondent submitted that the CEO, Mr. Qazi Muhammad Murad Khan is well reputed person and law abiding citizen of the country and the Respondent has not violated Section 10 of the Act in any manner.
 - 3.1.2 That the Complainant has made this complaint in bad faith and with mala fide intention.
 - 3.1.3 The Respondent submitted that it is working in the field of pharmaceutical/nutraceutical field since 1993 and its IPO rights are preserved since 1995 **(Copy of Form ‘A’ & ‘H’ of the Partnership Act, 1932 for registration of firm and Copy of certificates of Bank Accounts is attached as annex-B).**
 - 3.1.4 The Respondent further submitted that both of the Respondent and Complainant are working in the same field of pharmaceutical/nutraceutical, for which the DRAP had granted enlistment No.(s) and license to run business fairly and to this the Respondent has got enlistment and license prior to the Complainant
 - 3.1.5 The Complainant has approached various other forums including the Trademark and license committee for the subject complaint however, its application was rejected on factual grounds.

- 3.1.6 In response to the point of similarity between the names of two firm, the Respondent submitted that the Complainant's company name is "CIBEX (Private) Limited" and its trademark is registered in the name and style of "CIBEX" however, the Respondent firm name is "CIDEX LABORATORIES" which is a single notation.
- 3.1.7 The Respondent alleged that the Complainant is not only working in pharmaceuticals, Herbals and Nutraceuticals but also working in 42 other classes of business under the same name.
- 3.1.8 In response to the protection of IP rights of the Complainant, the Respondent submitted that the IPO, rights in class 5, were granted to it in 1995 while the Complainant was registered in 1997 (**Copy of Trade Mark and Copyright certificates is attached as annex-C**). Furthermore, the Respondent quoted a maxim as "*law is for indolent non vigilant*" the laws come to the aid of those who are vigilant, not those who sleep on their rights, which was the maxim at common law. The Respondent business was being operated since 1993 with the name "CIDEX LABORATORIES" and got different certificates as ISO-9001 2000, ISI-9001 2008, 14001:2015, from PNAC and ACS.
- 3.1.9 That the Complainant was not issued any formal notice to us regarding the violation/infringement of their IP rights.
- 3.1.10 The Respondent has requested to acquaint the Complainant for the misunderstanding and give them direction as well. The Respondent has not been specifically requested to grant any remedy in its favor.

4 REJOINDER BY THE COMPLAINANT

- 4.1 The reply of the Respondent was shared with the Complainant via letter dated 10th of July, 2018, for comments/rejoinder, if any. The Complainant was directed to submit its rejoinder on or before July 23, 2018, however, before finalizing of the Enquiry Report the Complainant, on 28th of August 2018 requested for an extension of time period till 7th of September to file its rejoinder. The Enquiry Committee has granted the extension to the Complainant. On September 06, 2018 the Complainant requested further extension due to the verification of the documents submitted by the Respondent. Finally, the Complainant submitted its rejoinder via letter No. CPL/AN/2033, dated 26th of September 2018.
- 4.2 The rejoinder contained para-wise comments to the reply as summarized below:
- 4.2.1 It was submitted that the company adopted the corporate name 'CIBEX' and applied to the Securities and Exchange Commission of Pakistan for registration. The company also applied for trade mark registration 'CIBEX' in all classes under the Trade Mark Law and got registration in majority of classes and some of the applications are under process with the Trade Mark Registry.
- 4.2.2 The Complainant submitted that its trademarks, i.e., Cibocs, Cibkast, Cibtaz, CIBEX Soda, CIBEX ORS, Cibra Swift, Cibuther CIBEX Calicum were also derived from its company's corporate name 'CIBEX'. (**Copy of the trademarks is attached as annexure-E**)

- 4.2.3 The Complainant denied the statement that Mr. Qazi Muhammad Murad Khan is the CEO of the Respondent as it was registered as partnership firm and the Respondent has not submitted power of attorney, duly signed by other partner, to act on behalf of the Respondent.
- 4.2.4 The Complainant denied the fact that the Respondent was working prior to the registration of the Complainant. The Complainant submitted that Bank of Khyber Account of the Respondent was opened in 1993, which is closed now, whereas partnership deed and registration certificate dates are 26.05.1994. Similarly, in the bank account with First Women Bank Limited, bank account appears to be in the name of Mr. Qazi Muhammad Murad Khan and no other partner name appears in bank account, this account is also closed. The third bank account with Bank Al. Habib Limited was on the name of two partners namely, Mr. Qazi Muhammad Murad Khan and Ms. Safia Shaheen, whereas, in partnership application filed for registration of firm showed names of three partners, therefore, Respondent required put to strict proof thereof.
- 4.2.5 The Complainant denied the statement made by the Respondent that it had got seniority over their enlistment and licenses. The Drug Manufacturing licenses was issued to it on February 12, 2014 and application for enlistment of manufacturer was filed on September 27, 2014 however, the Complainant got enlistment dated June 07, 2016 due to some delay on part of Health & OTC department of Drug Regulatory Authority (the '**Authority**'). Therefore, its registration as licensed manufacturer was 1994 with the Authority which was much earlier than the Respondent.
- 4.2.6 The Complainant, in its rejoinder completely denied the statement of the Respondent that Complainant had reached on various other forums to discuss the matter of trade mark infringement and every time their application rejected due to the lack of vulnerability. The Complainant submitted that this statement is completely false and without any supporting document. None of its application had been denied for registration particular in class 05 of Trade Mark Registry.
- 4.2.7 The Complainant admitted the fact to the extent that its trade mark had been registered in different classes from 1-45 of Trade Mark Registry, including class 05 "Pharmaceutical preparations".
- 4.2.8 The Complainant denied the point of the Respondent that "'CIDEX LABORATORIES' is a single notation and its company name 'CIBEX' is totally different with the Respondent's firm name.
- 4.2.9 It was admitted that the Complainant is active as manufacturer in both pharmaceutical and Health OTC under the Authority. The Complainant denied that it was active in business under class 42 of Trade Mark Registry "Science & Technology Services".
- 4.2.10 The Complainant denied para No. 3.1.8 of the Respondent reply because as per the letter dated 18-09-2018 of the Trade Mark Registry, the trademark No. 128365 in class 05, which belongs to the Respondent was stand removed.

4.2.11 The Complainant denied the statement made by the Respondent in para No. 3.1.9 of the above, wherein the Respondent has submitted that no formal notice was received regarding the trade mark infringement from the Complainant.

5 ANALYSIS

5.1 The mandate of this enquiry report is to determine;

(i). Findings with respect to violations of Section 10 of the Act (if any) committed by the Respondent regarding the allegations made in the complaint by the Complainant.

5.2 However, before analyzing the facts it is pertinent to explain few terms relevant to the subject matter.

5.3 The term, “mark” has been defined in Section 2(xxiv) of the Trade Marks Ordinance, 2001 (the ‘Ordinance’)¹ as:

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

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

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

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

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

5.6 Furthermore, owing to its properties, significant efforts have been made across the world, including Pakistan, to protect such property rights. Whereas violation of these rights

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

constitutes a clear violation of law including Section 10 of the Act, which prohibits “*fraudulent use of another’s trademark, firm name, or product labelling or packaging.*”

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

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

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

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

5.9 Consequently, it can be concluded that the Commission also observes that trade/service mark violation must be prevented to avoid consumer injury. Furthermore, their curtailment is necessary to safeguard the overall brand equity of an undertaking as trade/service marks not only affect the perception and good will of the product, but also have a significant impact on its sales. Therefore, in order to protect consumers from anti-competitive behavior and to make provisions to ensure free and fair competition in the market, intellectual property rights must be protected and Section 10 of the Act must be enforced, in this case particularly through the mandate outlined in para 5.1 *ibid*.

5.10 On the basis of information presented above and in light of submissions made by the Complainant and the Respondent, the Enquiry Committee will analyze whether Section 10 has been, *prima facie*, violated by the Respondent or not.

5.11 The Complainant’s products include pharmaceutical, Health & OTC products including but not limited to Cibcos, Famobex, Balin, Cimora, Vebex, Bexpro, Rhizin and Nymssel. The Complainant has not filed the complaint in terms of its above mentioned products names, since the Respondent does not manufacture or sell a product similar to the names

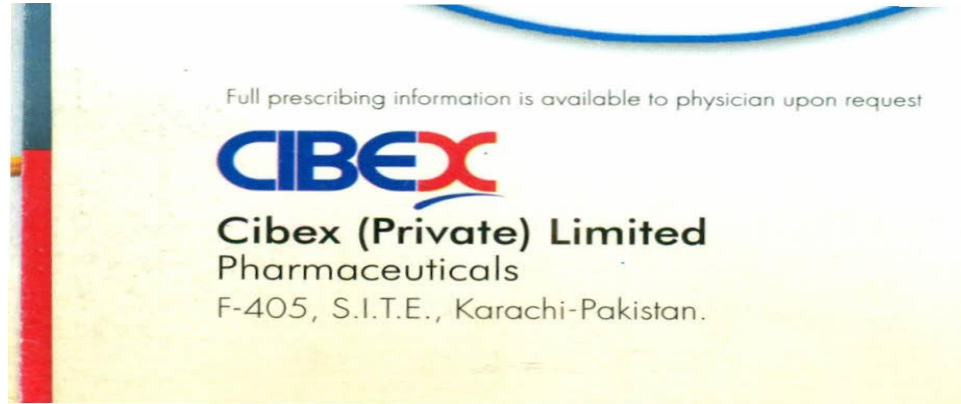
² http://cc.gov.pk/images/Downloads/cfa_soae_order.pdf, Pg. 10, paras 23 and 24.

of the Complainant's products. Therefore, the analysis in this enquiry report will be limited to the Respondent's firm name "CIDEX" that appears similar or identical to the Complainant's company name & trademark 'CIBEX'.

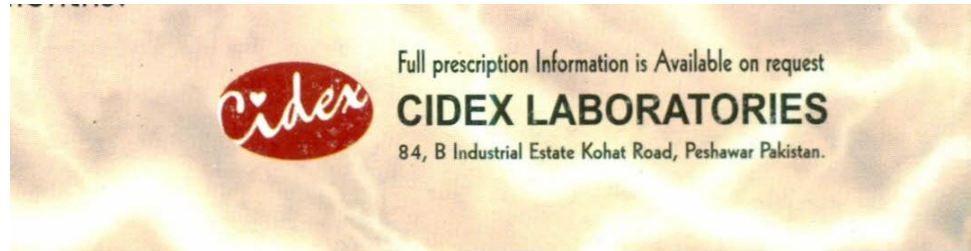
- 5.12 It is pertinent to recall the facts of the complaint before making any analysis. The Complainant is a private limited company registered on March 03, 1997. The complainant had also been issued a Drug Manufacturing License by the Drug Regulatory Authority of Pakistan (DRAP).
- 5.13 The Complainant's trademark is duly registered with Trade Mark Registry, Government of Pakistan in multiple classes from class 1 to class 45, including class 05 "Pharmaceuticals preparations, veterinary and sanitary substances". The trademark of the Complainant was initially registered in August, 1998. Subsequently, the Complainant renewed the registration of its trademark in 2005. The current trademark registration certificate submitted by the Complainant, to the enquiry committee, reveals that its trademark has been renewed for the period of ten years with effective from August, 2015.
- 5.14 Whereas the Respondent has submitted that it is a firm duly registered under Partnership Act, 1932 which is working in the field of pharmaceutical/nutraceutical since 1994. The Respondent got its certificate of registration of copyrights in May, 1995. It had registered its trademark in class 5 in January, 1995. However, it has also been observed that no renewal certificate showing the current registration of Respondent's trademark in class 5 has been submitted to the enquiry officers. This shows that the Respondent's trademark was registered in class 5 back in 1995, however, the Respondent may have not been renewed its trademark in class 5.
- 5.15 It seems that the Respondent is the first user of its trademark 'Cidex' in class 5 as the registration was done in 1995. Whereas the Complainant registered its trademark in 1998 with the title of 'CIBEX'. The Respondent has invested credible time in the establishment of its trademark prior to the registration of the undertaking of the Complainant with SECP in 1997.
- 5.16 Furthermore, it is important to mention here that the word 'Cidex', as trademark, was derived from the corporate name 'CIDEX Laboratories' by the Respondent and using its firm name since 1994 far before the formation of the Complainant's undertaking. The Respondent also submitted that as to the similarities between the names, the Complainant firm name is CIBEX (Private) Limited and the Respondent's firm name is CIDEX Laboratories which is a single notation & both are clearly different from each other.
- 5.17 The Complainant also submitted that its trademark 'CIBEX' was also derived from its corporate name 'CIBEX (Private) Limited'.
- 5.18 In view of the above, it can be establish that the firm name 'CIDEX Laboratories' and trademark 'Cidex' was registered prior to the registration of the Complainant's firm name 'CIBEX (Private) Limited' and trademark 'CIBEX'.

- 5.19 Trade name of both the Complainant and Respondent shown on their product packaging are as under:

Complainant's Firm Name:



Respondent's Firm Name:



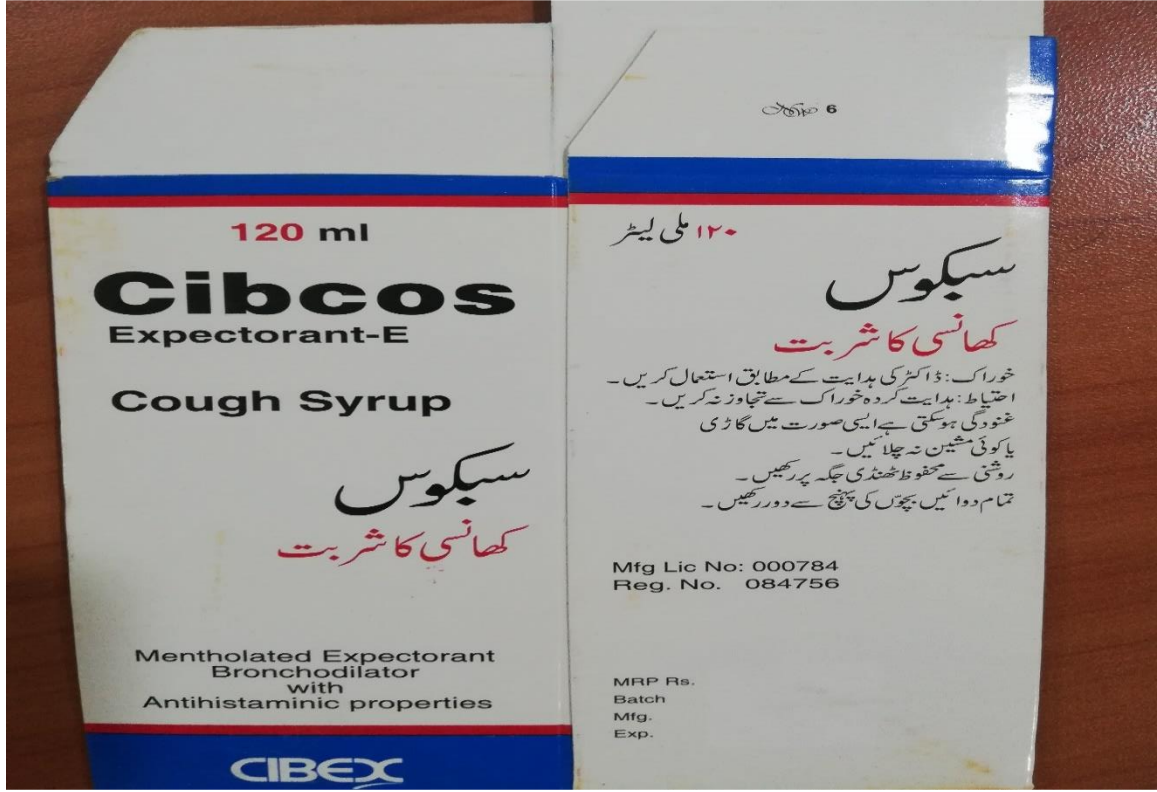
- 5.20 If we look into the deception regarding the firm/ undertaking name, it has been noted that the medicines of both Complainant & Respondent are prescription products. These medicines are prescribed by the medical practitioners. They always prescribed the medicines with their product name. For instance, Disprin tablet of M/s Reckitt & Benckiser Pakistan is always prescribed as '*Disprin*'. Similarly, Panadol tablet of M/s Pfizer Pakistan is always prescribed as '*Panadol*'.
- 5.21 The medical practitioners never refer a medicine with the name of the undertaking instead of product name. Like we never experienced any prescription with the direction of purchasing a '*Painkiller of M/s Pfizer Pakistan*'.
- 5.22 The Complainant is using capital letters as "CIBEX", for its trademark however, the Respondent is using small letters for its trademark "Cidex", inside oval shape, with a different font size and writing style as that of the Complainant.
- 5.23 It has also been witnessed that the product names of both the Complainant and Respondent are entirely different from each other even in the medicines prescribed for the same treatment. Names of Complainant's and Respondent's medicines as submitted by them during the enquiry are elaborated below:

NAMES OF COMPLAINANT'S PRODUCTS (MEDICINES):

1. Catafen (Diclofenac Potassium 100 mg)
2. Famobex (Famotidine 40 mg)
3. Voltagesic (Diclofenac Sodium 50 mg)
4. Rhizin (Cetirizine Dihydrochloride 10 mg)
5. Nymssel (Nimesulide 100 mg)
6. Vebex (Levofloxacin 250 mg)
7. Batema – F (Iron Protein Succinylate & Folic Acid 120 ml)
8. Nymbex 6 plus (Paracetamol 120 ml)
9. Cibcos – CH (Cough Syrup with Honey 120 ml)
10. Rhizin (Cetirizine dihydrochloride 60 ml)
11. Balin (Mecobalamin 500 mcg)
12. Cimora (Esomeprazole 20 mg)
13. P-Easy (Tamsulosin HCL 0.4 mg)
14. Bexpro (Ciprofloxacin 500mg)
15. Bexpro (Ciprofloxacin 250mg)
16. Cibtiz (Tizanidine 2 mg)
17. Vebex (Levofloxacin 500 mg)
18. Zabio (Azithromycin 250 mg)
19. Famobex (Famotidine 10 mg/5 ml)
20. Cibcos (Expectorant-E 120 ml)

5.24 Snapshots of the Complainant's product packaging are given below:





NAMES OF RESPONDENT'S PRODUCTS (MEDICINES):

1. Colmint Plus (antispasmodic & carminative 120 ml)
2. Mobinol-M (Expectorant 120 ml)
3. Dymex-Z (Anti-Diarrheal 120 ml)
4. DYMAX (60 ml)
5. Nascal-D (Calcium Supplement 120 ml 30 Tablets)
6. Licocid (Uterus Tonic 30 Tablets)
7. Erecto (For Vigor & Vitality 20 Capsules)
8. Bleedex (Haemostatic Agent 20 Capsules)
9. Phytoron (Iron with Folate 10 ml)
10. SALVIT (for Iron Deficiency 20 Tablets)
11. Pmint (Pippermint Formula 30 Capsules)
12. Calcium-P (Bone Health 120 ml)
13. Rondik (Relieves Chest Congestion 30 ml)
14. Colmint Plus Drops (antispasmodic & carminative 25 ml)
15. Cepon-H (Appetite Stimulant 120 ml)
16. Xcitor Capsules (20 Capsules)
17. Serven-M (30 Tablets)
18. Serven-M Syrup (120 ml & 240 ml)

5.25 Snapshots of the Respondent's product packaging are given below:

COLMINT-[®] Plus

Introduction:
Colmint Drops/ Syrup is a time-tested formula for common abdominal disorders like, flatulence, dyspepsia, nausea, vomiting, anorexia, abdominal pain, cramps and other gastro-intestinal disorders related to indigestion and fullness of abdomen.
All the ingredients are safe at any age, and extremely effective natural preparation having no side effects.

Ingredients:

- **Zingiber Officinale:** It is a remedy for nausea diarrhoea and motion sickness.
- **Hyoscyamus Niger:** In conditions like gastric or intestinal cramps, and diarrhoea can be treated.
- **Cardamon:** It relieves abdominal pain soothes colic, wind and dyspepsia.
- **Mentha Piperite:** It is used as a carminative, its leaves and stems helps in stomachaches.
- **Sunbulteeb:** It stops fermentation and gas in stomach and well known brain tonic that imparts calm and peace to mind.
- **Fennel:** It is widely used as a carminative for treating flatulence by encouraging the expulsion of intestinal gas.

Indications:
Acute or chronic dyspepsia, flatulence, fullness of abdomen, abdominal pain, loss of appetite & indigestion.

Suggested Intake:
Infants & children 1 to 2 drops per kg body weight and can be increased depending upon the severity of symptoms.

Adults:
One tablespoon (10ml) three times a day after meal.

Presentation:
120ml Pet Bottle
60ml Pet Bottle
25ml Plastic Drop


Manufactured & Marketed By:
CIDEX LABORATORIES
(AN ISO 9001:2008 CERTIFIED COMPANY)
No. 2, Industrial Estate Kohat Road,
Peshawar Pakistan
For Further Information Please Contact:
cidexlab@yahoo.com

Colmint-Plus Drops
Colmint-Plus Syrup
Colmint-Plus Syrup
120 ml
antispasmodic & carminative

Tablets

Serven-M

The Perfect Multivitamin and Multiminerals



Serven-M

Provides all vitamins including Vitamin A, Vit B Complex, Vit C, Vit D, Vit E, Folic Acid, etc.
Provide minerals including Zinc, Iron, Calcium, Potassium, & Magnesium etc.

Ginseng
It is especially helpful in treatment of sexual dysfunction in men. It also balances metabolic processes, lowers blood sugar, stimulate endocrine glands, that maintains proper hormone level.

Asparagus Racimose
Asparagus Racimose is used in case of pre-natal and post-natal problems. Asparagus Racimose is found to be very effective in increasing male potency. It is also used as health tonic and used in general weakness and debility. It is used in formulation of Body building medicine.

Lycopene
It is a powerful antioxidant that may help to protect cells from damage. This is why there is a lot of research interest in lycopene's role, if any, in preventing cancer.

BOOSTS IMMUNE SYSTEM.
BOOSTS STAMINA AND ENERGY.
PROVIDES ANTIOXIDANT EFFECTS.

Presentation
Pack of 30 Tabs in Alu Alu Blister
Syrup 120ml and 240ml in a pet bottle

A Perfect formulation of vitamins, minerals and Ginseng.

Serven-M for all age groups from 6 to 60 years.

Serven-M
Induces energy to maintain body functions

Manufactured & Marketed By:
CIDEX LABORATORIES
An ISO 9001-2008 Certified Company

antispasmodic & carminative

Syrup

120 ml
۱۲۰ ملی لیٹر

سیرپ

پھیٹ کے مروڑ اور
بد ہضمی کے لئے

کالمینٹ پلس

COMPOSITION:
Each 10ml Derived from the Extract of:
Zingiber Officinale65mg.
Hyoscyamus Niger.....65mg.
Cardamom.....32mg.
Mentha Piperite50mg.
Sumbulteeb10mg.
Fennel 50mg.
Cinnamom Bark..... 50mg.

Shake well before use.
Keep away from children
Store in a cool dry place.

120ml Liquid Take Before Meal STORAGE Keep away from Children

T.M.R. No. 128365
DRAP Mfg. E: No.00160
Batch. No.
Mfg. Date: CPS-054
10/017
Exp. Date: 04/020
70.00
M.R.P. Rs.

Manufactured & Marketed by:
CIDEX LABORATORIES
84 - B, Industrial Estate, Kohat Road,
Peshawar, Pakistan

AN ISO 9001-2008 CERTIFIED COMPANY

5.26 It can clearly be viewed that the names of both the Complainant's and Respondent's products (medicines) are different, therefore, there is no point of confusion during the prescription of the products by the medical practitioner. Therefore, it can safely be concluded that no competition has been harmed due to the firm names used by the Complainant and the Respondent.

5.27 Furthermore, the DRAP has also set its own labelling and packing rules for drugs which are mandatory for all undertakings, engaged in manufacturing/marketing of pharmaceutical products.

5.28 The Drugs (Labeling and Packing) Rules 1986 defines the manner of labeling³ as:

The following particulars shall appear either in print or in writing in indelible ink in a conspicuous manner on a label of the innermost container of drug and also on the in which such container is packed namely: -

(a) The registered name of the drug;

(b) If the registered name is a proprietary name, then immediately following the registered name, the international non-proprietary name, and if no such non-proprietary name is known the Pharmacopoeial name or any other name, if any, approved by the registration board for this purpose in conspicuous manner;

(c) The international non-proprietary name of the pharmacopoeial name of the generic name, and if no such name is known the chemical name of each active ingredient of a drug with weight.

Or measures in metric system, or the number of units of activity as the cause may be, expressed:

(d) The name and principal place of business of the manufacturer

(e) The drug manufacturing license number.

(f) The drug registration number.

(g) The date of expiry.

5.29 According to the Drugs (Labeling and Packing) Rules, 1986 it is mandatory for a drug manufacturer to print its firm name on the packaging of its product. In this case the Respondent followed the Rules and accordingly mentioned its firm name "CIDEX Laboratories" in a conspicuous manner. The Complainant has also followed the Labeling Rules and print its firm name, "CIBEX (Private) Limited" along with its principal place of production.

5.30 Furthermore, pharmaceutical products are specialized in nature therefore, the end user/consumer depends on medical practitioners who are more aware regarding the product names/title and its uses. Keeping in view the fact in hand, it is concluded that the firm names of both Complainant and Respondent are different from each other. Moreover, we

³ <http://www.dra.gov.pk/docs/Druglabelingpackingrules1986.pdf>

are unable to establish the distortion of competition in the market as the Respondent is the first user of its firm name and trademark 'CIDEX'.

- 5.31 Therefore, in view of the above, it can be safely concluded that the Respondent, who is the prior user of the trademark "Cidex" which is also its firm name and graphically different from the Complainant's registered trademark "CIBEX", is not, *prima facie*, involved in violation of Section 10 of the Act.

6. CONCLUSION & RECOMMENDATIONS

- 6.1 Based on the information available on record and the submissions made before us, we the undersigned enquiry officers have reached on the conclusion that the, *prima facie*, allegation against the Respondent, under Section 10 of the Act, have not been made out as, the Respondent was the actual and prior user of the firm name "CIDEX Laboratories".
- 6.2 It is therefore, recommended that the complaint against M/s CIDEX Laboratories may be dismissed in accordance with law.

Marryum Pervaiz
Joint Director
Enquiry Officer

Riaz Hussain
Assistant Director
Enquiry Officer