

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
FRONIUS INTERNATIONAL GmbH AGAINST M/S
WASIQ TRADERS**

BY

U.S. M.A. S.S.Z.
Umer Sheikh, Mehmoona Allauddin & Syeda Salva Zaidi

January 12, 2026

1. BACKGROUND

- 1.1 On March 10, 2025, M/s Fronius International GmbH, through its legal counsel, (the 'Complainant') filed a complaint before the Competition Commission of Pakistan (the 'Commission'), against Mr. Anwar Naveed Butt, trading as Wasiq Traders (hereinafter referred to as the Respondent), for alleged violation of Section 10 of the Competition Act, 2010 (the 'Act'), which prohibits deceptive marketing practices.
- 1.2 The Complainant is an international company, founded and existing under the laws of Austria, Froniussstrasse 1, 4643 Pettenbach, Austria, established in 1945. The Complainant has no subsidiary registered under the laws of Pakistan; however, it is present through its importer/distributor.
- 1.3 The Respondent is an undertaking within the meaning of Section 2(1)(q) of the Act, bearing NTN 2726920-5, operating as M/s. Wasiq Traders. The Respondent is currently engaged in import, assembly, distribution, installation and provision of services relating to solar power equipment.
- 1.4 It was alleged in the complaint that the Respondent has fraudulently been using the trademark of the Complainant, hence distorting competition in the market.
- 1.5 An enquiry was initiated dated June 16, 2025, in accordance with sub Section (2) of Section 37 of the Act by appointing Ms. Mehmoona Allaudin, Management Executive (OFT), and Ms. Syeda Salva Zaidi, Management Executive (OFT) as enquiry officers. Later, on November 17, 2025, Mr. Umer Sheikh, Joint Director (OFT) was also appointed as an Enquiry Officer (collectively the 'Enquiry Officers'/ 'Enquiry Committee').
- 1.6 The Enquiry Committee was directed to conduct the enquiry into the issues raised in the complaint, and to submit their enquiry report by giving their findings and recommendations, *inter alia*, on the following:
 - i. *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*
 - ii. *Whether the Respondent is disseminating false and misleading information to consumers, including the distribution of information lacking a reasonable basis, related to the price, character, method or place of production, properties, suitability for use, or quality of goods, prima facie, in violation of Section 10(1) in general and in particular, Section 10 (2)(b) of the Act.*
 - iii. *Whether the conduct of the Respondent is capable of harming the business interest of other undertakings in, prima facie, violation of Section 10 (2)(a) of the Act?*
 - iv. *Whether there is a spillover effect of the conduct of the Respondent?*

2. THE COMPLAINT

- 2.1 The Complainant states that, it is a company organized and existing under the laws of Austria, Froniussstrasse 1, 4643 Pettenbach, Austria, established in 1945, either itself and /or through its subsidiaries, affiliates, licensees carry on the business of manufacture and sale inter alia, of products to convert solar energy into alternating current, inverter, supply battery-powered intra logistics vehicles with new energy, and use electricity from the outlet for revolutionary welding processes, which are marketed under various trademarks in several countries. And Mr. Muhammad Aslam, son of Fateh Muhammad, is the authorized signatory of the Complainant.
- 2.2 To distinguish its goods and business from other companies, the Complainant has adopted and uses the trademark "FRONIUS" which was first used by the Complainant in the year 1945 in Austria in relation to radio and electrical equipment. Over the past three quarters of a century, Complainant has developed into a player on the global stage by diversifying its business units in the fields of perfect welding, solar, and perfect charging.
- 2.3 The trademark  of the Complainant is used for products relating to solar energy, perfect welding, and perfect charging, such as inverters, solar energy, batteries, etc., which include a wide range of products, including but not limited to Fronius Sunrise, Fronius IG, Fronius IG central inverter, Fronius IG Plus, Fronius CL, Fronius Agilo, Fronius Galvo, Fronius Symo, Fronius Agilo TL, Fronius Snap-Inverter generation, Fronius Ohmpilot, Fronius GEN24 Plus, Fronius Tauro, and Fronius Watt pilot, etc.
- 2.4 The Complainant has 37 subsidiaries in five continents with the vision of a global company. In 1992, the Complainant commenced Solar Energy business. One of the very first key milestones was "The Fronius Sunrise" inverter, which was the Complainant's First invention in 1995, and thereafter the business of the Complainant significantly expanded and developed a wide range of products and services. The Complainant's solar energy business is now being represented by more than 20 branches around the world.
- 2.5 The Complainant has also promoted its products marked with the trademark and trade name "FRONIUS", through various customary means of promotion in large number of countries.
- 2.6 The Complainant has been in business since 1945, achieving several milestones including battery chargers (1946), welding transformers (1950), welding systems (1962), torches (1968), inverter power source (1981), Solar Energy unit (1992), digital-controlled power sources (1998), and the Solarix inverter (1999).
- 2.7 The Complainant invented its first inverter in 1995, launched IG inverters (2001-2007), introduced Snap Inverter technology (2014), launched Fronius Solhub hydrogen refueling system (2018), and GEN24 Plus inverters (2020). It maintains long-term

professional partnerships through its System Partnership Program for renewable energy solutions.

- 2.8 The trademark "FRONIUS" unites over 7,000 professionals across 30+ countries. It is backed by significant marketing campaigns and certifications, contributing to its solid international standing. The Complainant stated that reputation and goodwill exist due to long and continuous use, the high quality of the Complainant's products, and extensive advertising. The said reputation and goodwill extend to Pakistan on account of availability and sale of Complainant's said products, i.e., the inverters, etc., by a large number of public in Pakistan.
- 2.9 The Complainant has also been conducting its aforesaid business in Pakistan for the last several years, and amongst others has used and is continuing to use the trademark "FRONIUS", which is being used since the year 2016 in Pakistan in respect of inverters etc. For the purposes of import into Pakistan and sale of Complainant's products using the Complainant's trademark, trade name and company name "FRONIUS", the Complainant has appointed Inverex Power Solutions, as its Pakistani distributor.
- 2.10 Furthermore, upon accession of Pakistan to Madrid Protocol, the Complainant duly extended designation of some of its designations for the trademark "FRONIUS" to Pakistan. The details of the trademark registration under the specified classes of International Nice Classification of Goods and Services, established through Nice Agreement 1957, are given below:

Trademark	International Registration (IR No.)	Nice Classes	Dated	Trademark Journal
FRONIUS	686363	01,06,07,09,42	04/02/2022	862
FRONIUS	1537456	01,07,09,3 5,3 7,39,40,41,42	04/02/2022	862

- 2.11 The Complainant discovered the Respondent's adoption of the imitated trademark "FRONUS" in May 2023, opposed their trademark application, and expected them to stop use. In April 2024, it learned that the Respondent continued using "FRONUS" for inverters, batteries, solar products, and related services, prompting the Complainant to file a suit for trademark infringement and passing off.
- 2.12 The Respondent trademark "FRONUS" is nearly identical and confusingly similar to the Complainant's registered trademark "FRONIUS," used worldwide, including in Pakistan, for inverters, batteries, and solar-related products. The Respondent deals with identical or similar products, thereby misappropriating the Complainant's reputation and goodwill. Their actions constitute deceptive marketing practices through fraudulent use of the Complainant's trademark under Section 10(2)(d) read with Section 10(1) of the Competition Act, 2010, and relevant judicial precedents.

- 2.13 It is submitted that the Respondent's use of imitated trademark "FRONUS" is illegal and malicious. Hence, such unauthorized use of the imitated trademark "FRONUS" by the Respondent cannot make it distinctive of the Respondent's goods in view of Complainant's reputation, goodwill and registration for the trademark "FRONUS" throughout the world, including Pakistan.
- 2.14 It is submitted that the Respondent had no justification for adopting the imitated trademark "FRONUS," as numerous alternative marks were available. This constitutes a clear case of fraud and misrepresentation under Section 10(2)(d) of the Competition Act, 2010.
- 2.15 The Respondent's fraudulent use of the trademark "FRONUS" is likely to mislead consumers into believing their products are those of the Complainant, as both parties share identical sales channels, outlets, and consumer base, and their products fall within the same category and are sold side by side.
- 2.16 The Respondent's unauthorized and fraudulent use of the trademark "FRONUS" constitutes deceptive marketing practices under Section 10(2)(a) of the Competition Act, 2010, as it distributes false and misleading information implying authorization by the Complainant and harms the Complainant's business interests, which is prohibited under Section 10(1).
- 2.17 The Respondent's acts also violate Section 10(2)(b) of the Competition Act, 2010, as by using the "FRONUS" mark for their products and services, they are infringing the Complainant's rights, committing passing off, and engaging in parasitic copying, thereby unlawfully attempting to pass off their goods and business as those of the Complainant.
- 2.18 The Respondent's actions are prohibited under the law laid down in *A. Rahim v. K&N Foods* (PLD 2023 SC 516). It is evident that the Respondent knowingly adopted the mark "FRONUS" to exploit the Complainant's goodwill and reputation, seeking to gain quick commercial advantage at the Complainant's expense.
- 2.19 The Respondent's trademark "FRONUS" is so closely similar to the Complainant's trademark "FRONIUS" that it is likely to confuse or mislead ordinary consumers and unwary purchasers into believing the Respondent's products originate from the Complainant.
- 2.20 The Respondent's use of the imitated trademark "FRONUS" causes confusion and deception, amounting to flagrant infringement of the Complainant's trademark "FRONIUS," common law rights, and passing off. It misleads purchasers into believing the Respondent's goods are produced, licensed, or sponsored by the Complainant and constitutes parasitic copying.
- 2.21 The Complainant seeks that the Commission conduct an inquiry against the Respondent for deceptive marketing practices, initiate proceedings under the Competition Act, 2010, and issue orders to restore the previous market condition, prevent repetition of the prohibited conduct, and confiscate, forfeit, or destroy goods bearing the imitated

"FRONUS" trademark. The Complainant further seeks imposition of penalties under the Act and any other relief deemed fit by the Commission.

3. THE RESPONDENT'S REPLY

- 3.1 The Respondent submits that the present complaint under Section 10 of the Competition Act, 2010 is fundamentally misconceived and legally untenable. It argues that the dispute primarily concerns trademark ownership and proprietary rights, issues which are already under consideration before competent civil courts and the Intellectual Property Organization of Pakistan. According to the Respondent, the pendency of these matters renders the complaint non-maintainable, as parallel adjudication would create a substantial risk of conflicting factual and legal findings.
- 3.2 The Respondent asserts that it has been the *bona fide* and continuous user of the trademark  since 2005, nearly a decade before the Complainant's entry into the Pakistani market in 2016. It alleges that the Complainant has deliberately withheld this fact and has filed the Complaint with *mala fide* intent. The Respondent maintains that it has built substantial goodwill, brand distinctiveness, and strong consumer association with the mark through two decades of uninterrupted commercial activity.
- 3.3 It is contended that the Complainant has failed to demonstrate any instance of deceptive marketing. The Respondent argues that Section 10(2)(a) requires explicit proof of misrepresentation or dissemination of false or misleading information concerning a competitor's goods, and that no such evidence has been provided. The allegations, according to the Respondent, are vague, unsupported, and rely on assumptions rather than concrete market conduct.
- 3.4 The Respondent highlights that both the parties operate in distinct commercial ecosystems. Their goods are sold through separate retail outlets and distribution channels, and they maintain divergent after-sales and warranty regimes i.e., international and local. The Respondent submits that consumers of solar-energy systems are informed and technical buyers who rely on specifications, warranties, installation services, and verified dealership networks. In this environment, the Respondent argues, there is no reasonable possibility of confusion.
- 3.5 To establish *bona fide* use and market standing, the Respondent states that it has submitted evidence of business operations since the early 2000s. This includes its business profile, certifications, sales and transactional records, inspection reports, and marketing and promotional material. It also notes longstanding collaborations and partnerships with international solar-technology manufacturers, indicating a well-established and independently developed commercial identity.
- 3.6 The Respondent also refers to its trademark and copyright filings with Intellectual Property Organisation Pakistan (IPO) across several product and service classes, asserting that these filings demonstrate consistent and proactive brand protection.

According to the Respondent, these filings reinforce its proprietary claim to the mark and negate any inference of opportunistic adoption.

- 3.7 The Respondent further submits that in ongoing litigations, courts have restrained the Complainant from interfering with its business operations. It characterizes the current Complaint as an attempt to circumvent those judicial orders and to use the Commission's platform to exert pressure in ongoing trademark litigation.
- 3.8 The Respondent denies allegations of "*parasitic copying*," maintaining that the respective marks are visually and conceptually distinct when viewed holistically. It submits that the Complainant's attempt to portray a trademark dispute as a deceptive-marketing issue is a mischaracterization of the legal framework and an attempt to expand the jurisdiction of the Commission into matters exclusively governed by trademark law.
- 3.9 It further argues that prolonged, peaceful coexistence in the market demonstrates the absence of any meaningful risk of consumer deception. The Respondent notes that the Complainant itself claimed to have become aware of the Respondent's use only through a trademark filing in 2023, despite both parties operating for several years in overlapping markets. According to the Respondent, this is an admission that no actual or likely confusion was ever observed.
- 3.10 The Respondent concludes that the Complaint is devoid of statutory basis under Section 10, unsupported by evidence, and seeks regulatory intervention in a matter that is already the subject of judicial proceedings. It, therefore, prays that the Complaint be dismissed *in limine* with exemplary costs for abuse of process and concealment of material facts.

4. THE REJOINDER

- 4.1 The reply of the Respondent was forwarded to the Complainant for its comments/rejoinder vide letter dated August 13, 2025. The Complainant, after seeking the extensions twice, submitted its rejoinder vide letter dated September 18, 2025, the contents of which are reproduced in the following paragraphs.
- 4.2 The Complainant submits that the Respondent's Written Reply is baseless, misleading, and founded on misconceived objections. The Respondent has failed to justify their dishonest adoption of the imitated trademark "FRONUS", which is deceptively similar to the Complainant's long-established and globally reputed trademark "FRONIUS", used continuously since 1945. The Reply is characterized as unreliable and unsupported by plausible argumentation or evidence. The Complainant highlights that the Respondent's position is internally contradictory: while denying any similarity between the marks, they have themselves filed trademark oppositions acknowledging the similarity and likelihood of confusion. The Complainant asserts that the Respondent's conduct constitutes deceptive marketing practices, passing off, and parasitic copying within the meaning of Section 10 of the Competition Act, 2010.
- 4.3 The Complainant denies all allegations concerning lack of *locus standi*, bad faith, or non-maintainability. It reiterates its prior adoption and longstanding use of the

trademark "FRONIUS". The Complainant clarifies that it obtained a restraining order from the Intellectual Property Tribunal, Lahore, before initiating this Complaint, and that the Respondent's argument regarding parallel proceedings is misconceived. The Competition Commission and the IP Tribunal are distinct forums with different mandates, one addressing trademark infringement, and the other addressing deceptive marketing practices.

- 4.4 The Complainant rejects any claim that its right to restrain the Respondent is *sub judice* or that it is pursuing parallel remedies. In fact, it is the Respondent who initiated multiple suits before different fora. The assertion that the Respondent is *bona fide* first user of "FRONUS" is denied, and the Complainant reiterates uninterrupted global use of "FRONIUS" since 1945. The argument that deceptive marketing requires copying of a pre-existing product is rejected as legally incorrect. The Respondent's claim that coexistence negates confusion is dismissed as both factually and legally untenable.
- 4.5 The Complainant denies the Respondent's attempts to distinguish between the parties' goods or markets. Both deal in identical or highly similar goods, solar-related products, inverters, and electronic equipment, sold through overlapping trade channels to the same consumer base. The Respondent's argument that consumers exercise a higher degree of diligence is countered by the established legal test of the "unwary purchaser." The Complainant also rejects the assertion that the Respondent has acquired any goodwill or distinctiveness; any such claim is untenable in light of dishonest adoption.
- 4.6 The Complainant rejects the claim that this complaint constitutes an abuse of process or violates principles of *res sub judice*. The matter before the Commission concerns deceptive marketing practice, which is distinct from trademark infringement under the jurisdiction of the Intellectual Property Tribunal (IPT). Further, the Respondent's own conduct of filing multiple suits in different fora undermines the judicial process far more than the present complaint. Allegations that any facts were concealed or that courts have restrained the Complainant's actions are denied as false.
- 4.7 The Complainant refutes the Respondent's reliance on an alleged Supreme Court interpretation of Section 10(2), noting that the statute explicitly includes "*fraudulent use of another's trademark*" within deceptive marketing practices. The Complainant argues that the Respondent's misinterpretation is intended solely to evade liability. The claim that parasitic copying is inapplicable is rejected; "FRONUS" was adopted opportunistically, with no justification, despite the availability of many other names.
- 4.8 The Complainant rejects the Respondent's assertions about longstanding market presence, reputation, or investment under the alleged mark "FRONUS". The invoices and certificates produced by the Respondent is challenged as unreliable, lacking authenticity, and based on false representations. Under established jurisprudence, no amount of use can legitimize a dishonestly adopted mark. Likewise, trademark and copyright applications filed by the Respondent confer no legal rights, particularly when based on misleading representations. The Complainant has already challenged many of these applications and reserves the right to oppose the remainder.

- 4.9 Claims regarding alleged expansion, goodwill, or market presence of "FRONUS" are denied. The Complainant reiterates that the Respondent's adoption of "FRONUS" was dishonest and clearly intended to ride on the goodwill of "FRONIUS".
- 4.10 The Complainant asserts that the Respondent's responses amount to bare denials without substantive justification. Allegations regarding discrepancies in the Power of Attorney, or claims that the Complainant failed to provide evidence, are rejected as false. The Complainant reiterates its prior and extensive use of "FRONIUS" since 1945.
- 4.11 The Respondent's contradictory conduct is emphasized: while they deny similarity between "FRONIUS" and "FRONUS", they simultaneously rely on that very similarity in their own trademark opposition. The Complainant dismisses the Respondent's attempt to challenge its evidence of international registrations, noting that such registrations establish the well-known character of "FRONIUS", a concept expressly recognized under Pakistani trademark law.
- 4.12 The Respondent's claims that the Complainant did not provide evidence of use or goodwill is refuted. The Complainant notes that it has provided comprehensive documentation of global use, registration, and reputation, while the Respondent simultaneously claims its own trademark applications as relevant but dismisses those of the Complainant.
- 4.13 The Complainant rejects all claims attempting to deny deceptive marketing practices. Assertions that the parties coexisted without confusion are rejected as both speculative and contrary to the Respondent's own admissions. The Complainant denies claims that any restraining order is no longer operative, insisting that the Respondent is put to strict proof. Allegations of concealment, misapplication of law, or failure to meet statutory requirements are denied, and the Complainant reiterates that the Respondent has fundamentally misunderstood the law governing deceptive marketing practices. The Complaint clearly establishes fraudulent use of the Complainant's trademark and consequent violation of Section 10 of the Competition Act.

5. ANALYSIS:

- 5.1 As mentioned in para 1.4 above, the mandate of this enquiry is to find out:
- i. *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*
 - ii. *Whether the conduct of Respondent is disseminating false and misleading information to consumers, including the distribution of information lacking a reasonable basis, related to the price, character, method or place of production, properties, suitability for use, or quality of goods, prima facie, in violation of Section 10(1) in general and in particular, Section 10 (2)(b) of the Act.*

iii. *Whether the conduct of the Respondent is capable of harming the business interest of other undertakings in, prima facie, violation of Section 10 (2(a)) of the Act?*

iv. *Whether there is a spillover effect of the conduct of the Respondent?*

5.2 Before moving towards issue-wise analysis, a brief analysis of the submissions of the parties is given below.

5.3 The Complainant bases its case on the claimed recognition and market presence of the “FRONIUS” mark, including its use worldwide since 1945 and in Pakistan since 2016. It points to the Respondent’s use of the mark “FRONUS” for similar products, sold through similar sales channels to the same type of consumers, and explains how this could affect consumer understanding in the market. The Complainant also refers to the Respondent’s continued use of the mark despite earlier notice and opposition. Although such trademark-related actions do not fall directly within the Commission’s mandate, they are cited by the Complainant in support of its overall position. In substance, the submissions aim to highlight the market-facing aspects of the Respondent’s conduct relevant to the issues identified above.

5.4 The Respondent has challenged the maintainability of the Complaint, arguing that the dispute relates to trademark ownership and proprietary rights, which are already pending before civil courts and IPO-Pakistan. It has also denied that its conduct amounts to deceptive marketing under Section 10 of the Act. These arguments rely on claims of prior use, goodwill, absence of consumer confusion, and the existence of parallel proceedings. It is noted that civil courts and trademark fora deal with questions of ownership and infringement, whereas the Commission’s mandate is limited to examining market conduct and the use of another’s trademark in a manner that may constitute deceptive marketing. The mere pendency of civil or trademark proceedings, *ipso facto*, does not prevent the Commission from examining the complaint. The subject matter differs, and the Commission’s exclusive jurisdiction over deceptive marketing prevails. Further, the Respondent has claimed continuous use of the trademark since 2005, but the evidence on record only shows use from later periods and does not substantiate the claimed start year.

5.5 Through the rejoinder, the Complainant restates its earlier position and responds to the objections raised in the Respondent’s reply. The focus remains on the similarity of the marks, the identity of goods, overlapping trade channels, and the risk of consumer confusion. The Complainant challenges the Respondent’s claims of prior use, goodwill, coexistence, and jurisdiction, and questions the reliability of the supporting material. Overall, the rejoinder reinforces the relevance of market-facing conduct, while treating procedural and forum-related objections as secondary.

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

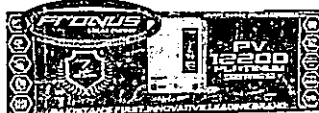
5.6 It is pertinent to recall the facts briefly; the Complainant has adopted and used the



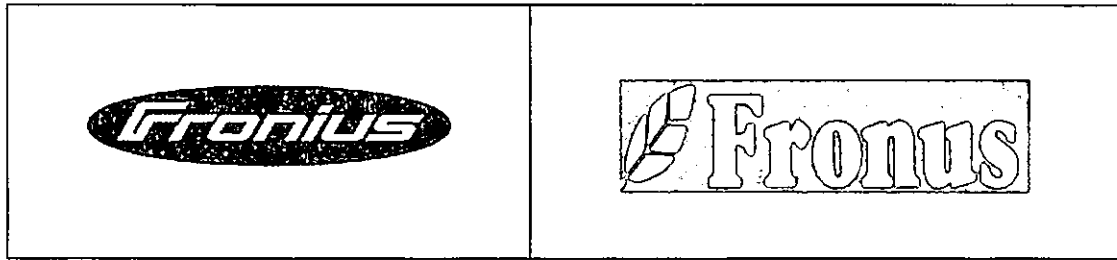
trademark to distinguish its goods and business from other companies which was first used by the Complainant in 1945 in Austria in relation to radio and electrical equipment. Over the past three quarters of a century, Complainant has developed into a player on the global stage by diversifying its business units in the fields of perfect welding, solar, and perfect charging. The Complainant, a globally recognized company, entered in Pakistan in 2016, is engaged in welding technology, solar energy solutions, and industrial electronics. It is renowned for the quality of its products, innovative technology, and strong brand presence. The trademark mentioned has acquired significant goodwill, and is widely known among consumers and industry participants, establishing it as a prior trademark within the meaning of Section 10(2)(d) of the Act.

5.7 As admitted in para 3.2, the Respondent has been using the mark  for its solar power inverters in the market since 2005, the evidence provided suggests the branding of "FRONUS" was there in 2007. According to the Respondent, its business predates the business existence of the Complainant in Pakistan as the Complainant admitted, in para 2.9, its commencement of business in 2016 in respect of inverters.

5.8 The Respondent's trademark appears in two different designs and fonts. In one style that appears on the box packaging the Respondent used a similar font to the Complainant's trademark. Both the fonts are scribed. Below is the comparison of the trademarks:

COMPLAINANT'S TRADEMARK	RESPONDENT'S TRADEMARK
	 

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- 5.9 The Complainant's mark uses a distinct stylized font within an oval red background. The Respondent's mark uses a green background and a leaf device that distinguishes the two trademarks from each other. Despite differences in color and graphic elements, the imitation of the name itself carries substantial weight in determining deceptive similarity. Though, the colors used in both the trademarks are different yet a notable point in the present matter concerns the close phonetic similarity between the two marks. The only spelling difference is the omission of the letter "i" from the Respondent's mark "FRONUS". When spoken, both names sound very similar, with nearly identical pronunciation patterns, rhythm, and syllabic structure.
- 5.10 Importantly, "FRONIUS" is not an ordinary English language word, but a surname traditionally used as a family name. It carries no independent meaning in English or in general commercial use, and it is not a term that would naturally appear in everyday language, particularly in Pakistan. The surname belongs to the founder of the Complainant named, "Günther Fronius" who incepted the company in 1945.¹ Because of this distinctive origin and the absence of any generic or descriptive character, the name "FRONIUS" stands out as a unique identifier rather than a general word that others would naturally or accidentally adopt.
- 5.11 The Complainant registered its trademark "FRONIUS" internationally² in 1997, and has acquired substantial goodwill due to long-standing international use, technological innovation, and a strong reputation in global markets. Such a mark, being distinctive and well recognized in its industry across the world, enjoys exclusive rights related to prior use. Any similar mark adopted later, especially in the same or related commercial space, raises a strong presumption of intent to ride on the goodwill of the established brand. While the Respondent admitted the use of impugned trademark since 2005³ prior to the presence of the Complainant in Pakistan since 2016.⁴ However, to determine the prior use of a trademark, the territorial limits within which a trademark is used may not be significant, especially when a trademark is established worldwide and has global presence. Therefore, the admission of the Respondent that it has been using the trademark "FRONUS" since 2005 reinforces the idea of the adoption of a trademark similar to the trademark of the Complainant.

¹ <https://www.fronius.com/en/about-fronius/history>

² <https://www3.wipo.int/madrid/monitor/en/showData.jsp?ROM=1&ID=ROM.0686363>

³ See para 3.2 above.

⁴ See para 2.9 above.

5.12 Considering the above, it is concluded that the trademark of the Respondent "FRONUS" is similar to the trademark of the Complainant "FRONIUS", as examined in paras 5.9 to 5.11. In light of the deceptive similarity, the established goodwill and prior use of the trademark of the Complainant globally, the conduct of the Respondent appears to fall within the scope of fraudulent use contemplated under Section 10(2)(d) of the Act. Therefore, the adoption of a deceptively similar trademark by the Respondent amounts to *prima facie* violation of Section 10(2)(d) of the Act which prohibits the *fraudulent use* of another's trademark.

II. Whether the conduct of Respondent is disseminating false and misleading information to consumers, including the distribution of information lacking a reasonable basis, related to the price, character, method or place of production, properties, suitability for use, or quality of goods, prima facie, in violation of Section 10(1) in general and in particular, Section 10 (2)(b) of the Act.

5.13 The allegation pertains to the unauthorized use of the Complainant's registered trademark/trade name by the Respondent in a manner that allegedly misleads consumers regarding the source, quality, and nature of the goods being sold.

5.14 As discussed in para 5.11 above, the trademark of the Complainant corresponds to its founder's surname. Thus, the expansion of the business of the Complainant worldwide developed the recognition of the word / name "FRONIUS" as its business. Therefore, the word "FRONIUS" known in the world has a meaning that associates it to the business of the Complainant. Since the Respondent denied association or derivation of its trade name "FRONUS" from the Complainant's trade name, the same have not been substantiated by evidence. Section 10(2)(b) addresses the distribution of false or misleading information to consumers. Given the near identity of the names "FRONIUS" and "FRONUS," an ordinary consumer is likely to assume an association, affiliation, or origin link between the Respondent and the Complainant. The consumer confusion becomes more significant when the goods or services pertain to technical or industrial sectors where brand reliability is crucial.

5.15 To understand how the trademarks are perceived in the market, the Enquiry Committee visited solar markets in three cities: Rawalpindi, Gujranwala and Lahore. The market perception was necessary to determine whether the marketing of the Respondent contains any misleading factor. To determine this, the Enquiry Committee presented themselves as ordinary consumers intending to purchase a solar inverter and engaged with retailers in general discussions regarding available brands, their features, properties, place of productions and pricing. While interacting with the retailers and shopkeepers, it was observed that even the retailers themselves were not able to clearly distinguish between the two brands of the instant matter. A majority of the retailers, when queried, demonstrated difficulty in distinguishing between "FRONIUS" and "FRONUS," often interchanging the two names. Such lack of clarity at the distributor and retailer level has the potential to extend to consumers and influence their purchasing

decisions. Accordingly, it is observed that a likelihood of consumer confusion may exist between the two brands. (Summary of the market visit is attached as **Annexure A**).

- 5.16 Furthermore, the Enquiry Committee observed that the Respondent's products were prominent in the market through several distributors while the Complainant's products were only available through its sole distributor. Additionally, the Enquiry Committee observed that the Respondent's products had a wider market presence through multiple distributors, whereas the Complainant's products were marketed through a sole distributor. In this context, the Respondent's use of a similar trade name, coupled with its broader distribution network, may be perceived as having the potential to derive benefit from the market recognition associated with the Complainant's trademark.
- 5.17 The business of the Respondent is based on Chinese technology as informed by the retailers. The Respondent also submitted the evidence that confirms the import of the material from China. On the other hand, the Complainant is based in Austria, and its products are designed from European technology. Since both the businesses uses different technologies, provide different after sale services and warranties, there is likelihood of dissemination of misleading information in terms of the properties and place of production. A deceptively similar trademark to an original / prior trademark tends to mislead consumers by disseminating false information i.e., association of its business to the original trademark without any reasonable basis. Such an act, thus, misleads ordinary consumers with respect to quality, method and place of production, properties and character of goods.
- 5.18 Accordingly, as discussed in paras 5.9 to 5.12, it can reasonably be concluded that the Respondent's *prima facie* fraudulent use of the Complainant's trademark creates confusion in the minds of ordinary consumers, leading them to believe that the products or services offered by the Respondent is associated with or originate from the Complainant.
- 5.19 In addition to the above, it appears that the Respondent has disseminated false and/or misleading information through their product marketing. The use of such trade names is, *prima facie*, misleading and likely to cause confusion among consumers regarding the affiliation, endorsement or association of the Respondent's goods with those of the Complainant. The dissemination of such false or misleading information *prima facie* constitutes a violation of the Act.
- 5.20 In view of the foregoing and the material on record, it is concluded that the Respondent has, *prima facie*, contravened the provisions of Section 10(2)(b) of the Act by disseminating false and/or misleading information to consumers regarding the character, method or place of production, properties, suitability for use and quality of goods. This dissemination of false or misleading information, through both online and physical platforms, is capable of deceiving consumers and distorting market competition by creating a deceptive association with the Complainant's well-established brand. Such conduct constitutes a *prima facie* violation of Section 10(1) read with Section 10(2)(b) of the Act.

III. Whether the conduct of the Respondent is capable of harming the business interest of other undertakings in, prima facie, violation of Section 10 (2)(a) of the Act?

- 5.21 The Complainant, in its complaint, has submitted that a fraudulent adoption of its trademark is in clear contravention of the Act. The said adoption by the Respondent is to cause grave injury to the Complainant's established reputation in the market and to grab the general public's attention to create undue damage for its offerings. Hence, the unauthorized use of the Complainant's trademark/trade name by the Respondent is in violation of Section 10 of the Act and has the potential to further harm the business interest of the Complainant in violation of Section 10(2)(a) of the Act. To support its stance, the Complainant relied upon the precedent (2022 CLD 1343) laid down by the Commission.
- 5.22 It is pertinent to mention that the distribution of false or misleading information is sufficient to establish the potential of harm to the business interests of the Complainant, provided the information is capable of harming the same. In the instant matter, the Enquiry Committee has noted that the Complainant could not provide any quantifiable harm to its business to corroborate its allegation of violation of Section 10(2)(a) of the Act. However, the Enquiry Committee, as concluded above, is of the opinion that the Respondent is disseminating false and misleading information that associates its business with the business of the Complainant by fraudulently using a deceptively similar trademark. Such misleading association is further aggravated by the Respondent offering its goods and/or services at significantly lower prices as compared to those of the Complainant, thereby creating an impression of an economic or commercial linkage between the two entities. This practice is likely to deceive consumers into believing that the Respondent's products originate from, are affiliated with, or are endorsed by the Complainant. Consequently, this misrepresentation is sufficient to determine the capability of causing confusion in the market and harming the goodwill, reputation, and business interests of the Complainant.
- 5.23 Therefore, the Enquiry Committee concludes that the conduct of the Respondent is capable of causing competitive injury and thus *prima facie* violates Section 10(1) read with Section 10(2)(a) of the Act.

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

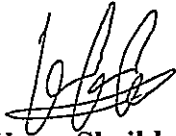
- 5.24 The Respondent maintains a nationwide presence through its distributors in multiple cities. Its marketing and promotional content is also disseminated through its website and other digital platforms and thereby giving rise to a clear spillover effect beyond provincial boundaries.

6. **CONCLUSIONS AND RECOMMENDATIONS**

- 6.1 Based on the information available on record and the submissions made by the parties, the Enquiry Committee have concluded that, *prima facie*, both the products of the Complainant and the Respondent have similarity in their trademarks for marketing their

products. The trade name, though slightly different, may not be enough to dissociate the Respondent's products from that of the Complainant's, especially when the Complainant holds worldwide presence of its trademark, thereby, *prima facie* amounts to violation of Section 10(1) read with Section 10(2)(d) of the Act.

- 6.2 The Respondent is also disseminating false and/or misleading information to consumers regarding the character, method or place of production, properties, suitability for use, and quality of goods pertaining to the use of a trademark similar or deceptively similar to that of the Complainant and hence, *prima facie*, amounts to violation of Section 10(1) read with Section 10(2)(b) of the Act.
- 6.3 The Respondent appears to be involved in the distribution of false and/or misleading information, which is capable of harming the business interest of the Complainant, but the Complainant has failed to provide evidence of harm caused by the Respondent's use of a trademark similar or deceptively similar to "FRONIUS". However, the Complainant has faced injury to goodwill and reputation due to the acts of the Respondent. Hence, the case of deceptive marketing practices in terms of Section 10(1) read with Section 10(2)(a) of the Act is, therefore, *prima facie* established.
- 6.4 The acts of the Respondent are not confined to one single province and thus have a spillover effect beyond provincial boundaries.
- 6.5 Therefore, in light of the above-mentioned findings, it is recommended that the Commission may consider initiation of proceedings against M/s Wasiq Traders (the Respondent), under Section 30 of the Act for, *prima facie*, violation of Section 10(2)(d), (b), and (a) of the Act.



Umer Sheikh
Joint Director
(Enquiry Officer)



Mehmoona Allauddin
Assistant Director
(Enquiry Officer)



Syeda Salva Zaidi
Assistant Director
(Enquiry Officer)