

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 CFA INSTITUTE
AGAINST SOCIETY OF ACCOUNTING EDUCATION (SOAE) FOR
DECEPTIVE MARKETING PRACTICES**

BY

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Dated: MARCH 04, 2015

A. BACKGROUND

1. This report concludes the enquiry initiated by the Competition Commission of Pakistan (the “Commission”) under Section 37(2) of the Competition Act, 2010 (the “Act”) pursuant to a formal complaint filed under Section 37 (2) of the Competition Act 2010, on the 7th of October 2013. The Complaint was filed with the Commission by the CFA Institute (hereinafter referred to as the “Complainant”) against the Society of Accounting Education (hereinafter referred to as the “Respondent”).
2. The Complainant is a global not-for-profit corporation organized and existing under the laws of Virginia, United States of America. Mr. Muhammad Aslam is the authorized signatory of the Complainant and is duly competent and authorized to sign and verify the plaint on behalf of the Complainant. The Complainant was established in 1962 for the purpose of imparting education and training to students and professionals in the field of investment and financial analysis. The Complainant has gradually expanded its operations globally, with its establishment in Pakistan in the year 1991.
3. Thus, Respondents who are an undertaking, within the meaning of Competition Act have commenced their education program in the field of finance and investment, using Complainant’s CFA marks and also using indistinguishable variations such as ACFA, DCFA and FCFA. The Respondent’s marks CFA, ACFA, DCFA and FCFA are identical and nearly identical to the Complainant’s CFA mark, which has been used by the Complainant since as early as 1963 and used in Pakistan since 1991.
4. The Complainant alleged that the Respondent’s CFA mark is identical to and indistinguishable from the Complainant’s renowned CFA mark used worldwide, where as the Respondent’s mark are identical as well as colorable imitations and/or indistinguishable variations of the Complainant’s CFA mark. Therefore, any use by the Respondent of the marks CFA, ACFA, DCFA and FCFA in any manner will create distortions in the fair and free competition in the market place.
5. Keeping in view the foregoing, the Competent Authority initiated an Enquiry in accordance with sub-section (2) of Section 37 of the Act by constituting an Enquiry Committee. The Enquiry Committee was directed to conduct the enquiry on the issues raised in the complaint and to submit the enquiry report by giving findings and recommendations *inter alia* on the following:

Whether the allegations leveled in the complaint constitutes a *prima facie* violation of Section 10 of the Act?

B. COMPLAINT

6. The Complainant has been the sole, internationally renowned body which awards the prestigious designation of “Chartered Financial Analyst” commonly referred to as “CFA”. Since the last 50 years the CFA program has gradually grown to become known as the “Gold Standard” for investment professionals. Today the Complainant has over 117,000 members in 138 countries worldwide. For the June 2013 examination, 1688 candidates from Pakistan were registered.

The Complaint alleged that the Respondent has distributed false and misleading information through its advertisements in print and online through its website. Such blatant act of infringement of the Complainant’s rights by the Respondent is designed to cause confusion and deception amongst the general public in Pakistan, who associate the awarding of the CFA designation exclusively with the Complainant i.e. The CFA Institute. For ease of reference, the complaint has been categorized in terms of when each violation took place.

Date	Mode of Violation	Marks used	Evidence
2010	Advertisement of SOAE	CFA, DCFA	Annexure 1
2010	Prospectus published by the Respondent	CFA	Annexure 3
2012-2013	Use on websites	CFA, ACFA, FCFA, DCFA	Annexures 2,4,5,6,
2012-2013	Enrollment forms published	CFA, DCFA, ACFA, FCFA	Annexure 7, 8
Currently	Use on website	CFAC, ACFAc, FCFAc	Annexure 9

7. The Complainant submitted that candidates who will complete the Respondent's program will identify themselves as holding the "CFA" designation, and will be indistinguishable in the market place from candidates who have completed the Complainant's rigorous CFA Program and hold the Complainant's "CFA" designation. Such use is unauthorized, fraudulent and constitutes acts of deceptive marketing practices in the purview of Section 10 of the Act.
8. The Complainant put emphasis on the fact that since the Respondent is marketing identical services, the Respondent is benefitting from the reputation, goodwill and the Customers of the Complainant. Since the service is educational in nature, the deception is likely to lead to direct harm to the final consumers. The deception is serious in nature due to potential harmful effects caused by confusing the public as to the origin of the educational services and their ability to earn livelihood based on such false and unauthorized designations/qualifications/degrees.

The Respondent's website previously made the following claims:



- CFA Program (Internationally recognized)
 - CFA Pakistan
 - CFA has 17 reciprocal agreements in the world
 - SOAE has international offices in the UK, Saudi Arabia, Afghanistan and USA/Canada
 - Their program has affiliations with international professional bodies in UK, USA, Canada, Malaysia, South Africa etc
9. The above claims imply that the Respondent is an international organization or have an affiliation with/authority from an international organization and are offering the same services as that of the Complainant's.
 10. According to the submission of the Complainant, there is prima facie violation of Section 10, subsection (2), clause (a), (b) and (d).
 11. The reliefs claimed in the complaint are as follows:
 - i) An appropriate order under Section 31 (c) of the Competition Act, 2010
 - ii) An appropriate order for the Respondent to pay penalty of such sums as may be determined by the Commission in the circumstances of the case.
 - (iv). Any other relief deemed fit in the circumstances.

C. RESPONDENT'S REPLY

12. In order to investigate the allegations put forward by the Complainant, a letter was sent to the Respondent informing them about the Complaint. The Complaint was annexed with the letter and the Respondent was asked to justify/substantiate their

claims.

13. In their response, the Respondent states that there is no violation of Section 10 of the Competition Act 2010 and that they are not involved in deceptive marketing practices. The respondent sent in the following as part of their substantiation:

Description	The Society of Accounting Education	The CFA Institute
1. Name of Institute	The Society of Accounting Education	The CFA Institute
2. Logo of institute		
3. Name of Program	Certified Financial Accountant	Chartered Financial Analyst

14. The Respondent further submitted: “We have clearly mentioned on our website that the Certified Financial Accountant Program offered by SOAE is different in design, structure, scope, content, method of examinations and registered independently meeting the legal requirements of their own countries and also different from the CFA Program offered by the CFA Institute, USA and other countries of the world. The SOAE and CFA Institute USA are independent of each other, and there are no reciprocal arrangements. All reference to the CFA Program in this document pertains to the Certified Financial Accountant Program offered by SOAE only.”

D. ANALYSIS & FINDINGS:

15. As already mentioned in para 5 *supra* the mandate of this Enquiry is as follows:

Whether the allegations leveled against the Respondent under the complaint constitutes a *prima facie* violation of Section 10 of the Act?

II. WHETHER THE ALLEGATIONS LEVELED AGAINST THE RESPONDENT UNDER THE COMPLAINT CONSTITUTES A *PRIMA FACIE* VIOLATION OF SECTION 10 OF THE ACT?

16. In the preceding paragraphs the facts and evidence submitted by the Complainant and Respondent are analyzed and discussed in order to reach a conclusion regarding the issues at hand, that is, whether the Respondent has violated Section 10 of the Act by engaging in deceptive marketing practices through using the same trademark as that of the Complainant's.
17. The primary allegation against SOAE is their unauthorized use of the CFA mark in connection with its program for financial professionals. The CFA mark has been registered by the Complainant in multiple jurisdictions around the world. It is registered in Pakistan as a trademark under classes 35 and 41 through TM Registration Numbers 196401 and 196402 ,and is applied for in class 16.
18. Keeping in view the above submissions made before us, it is evident that SOAE is engaged in the use of the "CFA" mark. Although the mark used by SOAE has been modified, it still constitutes to the use of "CFA" (the mark now used is "CFAc"). The fact that the acronym "CFA" is still a part of the Respondent's modified mark of "CFAc", is evidence of continued violation on the Respondent's part.
19. The Complainant became aware of the Respondent's unauthorized use of the CFA mark on September 20th 2010, when the Complainant received a copy of the Respondent's advertisement through a concerned consumer. The complainant sent a cease and desist letter in February 2011 to the Respondent. However, in its reply, the respondent denied the claim to have any kind of affiliation with the Complainant. The complainant then sent further letters to the respondent in an attempt to prevent the respondent from infringing the CFA mark. The respondent failed to reply to these letters. Despite the failure to respond, shortly after the letters were sent, the respondent modified their website and eliminated any references to "CFA". In July 2012, the respondent resumed the use of the term "CFA" to refer to its program and services.
20. It was further submitted by the Complainant that the respondent has commenced their education program in the field of accounting and investment, not only using the CFA mark but also indistinguishable variations such as ACFA, DCFA and FCFA. The respondent's marks CFA, ACFA, DCFA and FCFA are identical and nearly identical to the Complainant's CFA mark which has been solely used by the Complainant since 1963 and in Pakistan since 1991. Moreover, it was submitted that the variations used by the Respondent are "colourable imitations and/or indistinguishable variations" of the Complainant's mark. Therefore, any use of the Respondent's marks; CFA, ACFA, DCFA and FCFA in any manner will create distortions in the fair and free competition in the market place.
21. The complainant also made the assertion that candidates who will complete the Respondent's program will identify themselves as holding the "CFA" designation, and will be indistinguishable in the marketplace from candidates who have completed the Complainant's rigorous CFA Program and hold the Complainant's "CFA" designation. Such use is unauthorized, fraudulent and malafide and


constitute acts of “Deceptive Marketing Practices” within the meaning of Section 10 (1)(2)(a), (b) and (d) of the Competition Act 2010;

Section 10 (2)(a)*The distribution of false or misleading information that is capable of harming the business interests of another undertaking*

(b) the distribution of false or 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;

(d) fraudulent use of another’s trademark, firm name, or product labeling or packaging.

22. In a telephonic conversation with the President of the SOAE, Mr. Ansar Ali Noor claimed that the program offered by their body is related to financial accounting only and that the program does not include any material relating to investment or portfolio management. Moreover, Mr. Ansar Ali Noor informed the Enquiry Committee that in order to make a distinction between the certification of the CFA Institute and that of SOAE, the management at SOAE decided to amend their mark and use “CFAC” instead of CFA to describe their program. Mr. Noor was of the view that the abbreviation of “Ac” in the mark refers to “accountant” and thereby is easily distinguishable from the mark “CFA” in which “A” stands for analyst.
23. On examining SOAE’s website, it was observed by the Committee that the CFA mark had indeed been modified and replaced by “CFAC”. Here is a snapshot of the Respondent’s website:



THE SOCIETY OF ACCOUNTING EDUCATION
Study to learn - So Many Things to Discover

Certified Financial Accountant (CFAc)

This program is being offered from graduation level to certification and then its associate and fellow memberships to the students meeting the required criteria.

Eligibility of Certified Financial Accountant (CFAc)

- Graduates interested to build a career in the field of accountancy, financial management, and taxation.
- Professional like Chartered Accountants, Cost and Management Accountants, Chartered Secretaries and Banking Diploma Holders, Certified Financial Consultants, Public Finance Accountants and its equivalent certifications and degrees.
- MBAs / M.Com / Master of Economics / Master of Business Education / Master of Business Economics
- Professional and Executives in Financial, Banking, Insurance and Investment Sectors.
- Professionals of Public / Private Sectors.
- Professionals of Development Sectors like NGOs / Donors / Funding Agencies etc.

Duration of Certified Financial Accountant (CFAc)

24 Months (Four Semester, each of 6 months).

Syllabus of Certified Financial Accountant (CFAc)

Syllabus can be seen / downloaded on the website

Exemptions of Certified Financial Accountant (CFAc)

Exemptions scheme is available on the website.

24. The advertisements printed in the newspaper by the SOAE are depicted below:

Registration of Joint Stock Companies under the Societies Registration Act of 1860

CFA has 17 reciprocal agreements in the world

Shape your future....
Give Your Career a Boost...
Join us to Become
Internationally Recognized
Certified Financial Accountant

CFA Pakistan

**Exemptions are available for
B.Com/BBA, M.Com/MBA, MA Eco./MBE
MPA/MAS, PIPFA, ACCA/CMA, CA/CFC/CPA
CFC/ CIA, and Equivalent Foreign Qualification.**

Affiliations with
International Professional
Bodies from
USA, UK, Canada
Malaysia, South Africa,
West Africa/Nigeria,
Hong Kong, UAE,
Saudi Arabia, Oman,
Afghanistan, India,
France.

**Admissions
Open**
(Classes has been started
in Lahore on Week End)
in SOAE Coaching Centers

Golden
Opportunity
CFA
Pakistan

Corporate Office E-146/2, St. No.6, Yasrab Colony, Walton Road, Lahore Cantt. ,
Punjab, Pakistan Tel. +92-42 5612849 Dir: 0300-944026 0323-8861161
0321-4816460

25. In the mid-80s, the Chartered Financial Analyst (CFA) Institute of the US tied up with the Institute of Chartered Financial Analysts of India (ICFAI) to lend its name to the latter's programme. By the mid-90s, the deal was allowed to expire and in 1997 the CFA Institute filed a case against ICFAI over its CFA course. After a protracted legal battle, the Delhi High Court asked ICFAI to drop CFA from its name. The CFA Institute on its website has clarified the following;

“CFA Institute is pleased to announce that on May 25, 2012, it amicably resolved its worldwide dispute with the Institute of Chartered Financial Analysts of India (“Icfai”). The agreement will allow the parties to peacefully coexist and pursue their respective business objectives. Icfai will continue to operate under the Icfai brand; students currently enrolled in the program will be eligible to receive a CFA degree from Icfai, but Icfai otherwise is no longer offering the CFA program to new students. Icfai also will advise its existing alumni and students to use the terminology “CFA (Icfai)” to help distinguish themselves from CFA Institute’s charterholders.”¹

¹ http://www.cfainstitute.org/about/governance/Pages/trademark_dispute_resolution.aspx

26. The Commission has had three cases which are similar in nature to the one at hand. These include the “DHL Trademark” Order as well as the case of “Harley-Davidson”. The Commission held the following in the “DHL” order regarding deceptive marketing practices pertaining to trademark infringement;

“While interpreting Section 10 of the Act; one needs to be conscious that the interpretation of fraudulent use of trade mark has to be in the context of deceptive marketing and would thus have a broader scope. Rather than making it too complex by focusing on subjective „intentions” of the Respondents, in our considered view, it is best if we adopt simplistic approach i.e. if it can be demonstrated that the Respondents by use of the trade mark, intended to deceive the customer/consumer to gain an advantage. Keeping in view the nature of contravention, it is not the subjective intent but the objective manifestation of that intent that will establish the fraudulent use. In the US, in actual practice the courts look at the surrounding facts and circumstances in relation to misrepresentation and apply the elements strictly and leniently as believed and warranted by the courts. In the present case, there can be little doubt that the Respondents knew or should have known that the representation i.e. use of Complainant’s trademarks was indeed unauthorized and hence false - in that, the result of misrepresentation gave the Respondents a benefit and an advantage that they would not otherwise have obtained. Also, the result was intended and anticipated (whether nefarious or not) such a conduct/practice in our considered view would be termed as fraudulent in terms of clause (d) read with sub-section (2) of Section 10 of the Act.”

27. The case of Harley-Davidson concluded the following;

“The documents and evidence available on the record such as the website images and the catalogues submitted by the Complainants establishes that they are involved in the manufacturing and sale of the products, which AGI advertised on its website. There is no doubt that, the website of AGI is accessible from anywhere around the world and the products advertised and offered for sale on AGI’s website are same as the ones manufactured and marketed by the Complainants, as well. In presence of the website images of AGI and their admission regarding unauthorized use of trademarks of the Complainant, there is not doubt in reaching to the conclusion that the information disseminated by AGI through its website is capable of harming the business interests of the Complainants with reference to the products advertised therein. 30. I would like to refer to my earlier decision in the matter of ZONG dated 29-09-09, wherein relying upon the judgments of American Home Products Corporation, A Delaware Corporation, Petitioner, v. Federal Trade Commission, Respondent, 695 F.2d 681 (1982-83 Trade Cases 65,081) and Federal Trade Commission v. Direct Marketing Concepts,

Inc., 569 F.Supp.2d 285 (2008) it was held that, "... [a]ctual deception need not be shown by complaint counsel to carry its burden of proof. It is necessary only that the advertisements have the tendency or capacity to deceive..."

28. Upon analysis of the evidence available, we find the Respondent in *prima facie* violation of Section 10 (2) (a) (b) and (d) of the Act. The Complainant has substantiated with evidence that when cease and desist letters were initially sent to the Respondent, they, without responding to the letters modified their website and discontinued the use of "CFA" to describe their programs. However, soon after they were seen to continue using the "CFA" mark again.
29. Emphasis is placed on the fact that the goodwill of a business is an integral part of its identity. The value of a company's brand name, solid customer base, good customer relations, good employee relations and any patents or proprietary technology represent goodwill. As a result, businesses spend tremendous amounts of resources to identify their goods, distinguish their services, and cultivate good will. Businesses develop a relationship with its customers by building up its reputation. In case of a scenario such as the one in question where a world renowned certification such as the CFA, the goodwill linked to the CFA charter is of utmost importance; considering it is an extremely prestigious charter all over the world.

E. RECOMMENDATIONS:

30. The deceptive marketing practices discussed in this enquiry report have a direct impact on the public at large. It is in the interest of the general public that the undertakings should be stopped to advertise their products/services in an unfair and misleading manner and be encouraged to resort to the advertising practices which are transparent and gives consumers/customers true and correct information. Prima facie violations of Section 10 (2) (a), (b) and (d) under the Act in terms of the findings of this enquiry report warrant initiation of proceedings against Society of Accounting Education (SOAE), under Section 30 of the Act in accordance with law.

Noman Laiq
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Enquiry Officer

Resham Ibrahim
Junior Executive Officer
Enquiry Officer

ANNEXURES

1. Advertisement dated September 2010
2. Screenshots from Respondent's website dated 2012
3. Respondent's prospectus , published 2010
4. Screenshots of Respondent's Facebook Page from 2012
5. Screenshots of Respondent's LinkedInPage from 2012
6. Screenshots of advertisements from the Respondent's website, from 2013
7. Enrollment forms published by the Respondent
8. Screenshots from Respondent's website dated 2013
9. Screenshots from Respondent's website dated 2015