

# 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  
OLX B.V. & M/S OLX CLASSIFIEDS PAKISTAN (SMC – PRIVATE)  
LIMITED AGAINST  
M/S PAKWHEELS (PVT) LTD.  
FOR DECEPTIVE MARKETING PRACTICES**

BY



**Marryum Pervaiz & Faiz ur Rehman**

**Dated: November 27, 2018**

## BACKGROUND

M/s OLX B.V. ((hereinafter referred to as the '**Complainant No. 1**') and M/s OLX Classifieds Pakistan (SMC – PVT) LIMITED (hereinafter referred to as the '**Complainant No. 2**'), collectively referred to as the '**Complainants**', through Irfan & Irfan, filed a complaint against M/s PakWheels (Pvt) Limited (hereinafter referred to as the '**Respondent**'), with the Competition Commission of Pakistan (the '**Commission**') for alleged violation of Section 10 of the Competition Act, 2010 (the '**Act**'), pertaining to Deceptive Marketing Practices.

It was alleged by the Complainants that the Respondent has distorted healthy competition in the market by engaging in fraudulent use of their registered trademark, firm name, labelling and/ or packaging along with distribution of false and misleading information to consumers which is capable of harming the business interest of the Complainants.

Based on the preliminary fact finding, the Commission initiated an enquiry in accordance with sub Section (2) of Section 37 of the Act by constituting an Enquiry Committee (hereinafter referred to as an '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:

*Whether the allegations levelled in the complaint filed by the Complainant constitute a, prima facie, violation of Section 10 of the Act?*

## THE COMPLAINT

This section summarizes the contentions raised in the complaint by the Complainants:

The Complainant No. 1 is a Dutch Limited Liability Company organized and existing in the laws of the Netherlands with its office at Taurus Avenue, 105, 2132 LS Hoofddrop, the Netherlands.

The Complainant No. 2 is a single member company incorporated under the Companies Ordinance, 1984, having its registered office at the 2<sup>nd</sup> Floor, 1-E-1, Gulberg – III, Lahore, Pakistan.

Mr. Muhammad Aslam is the authorized signatory of the Complainants and is fully conversant with the facts of the complaint. He is also duly competent and authorized to sign and verify the complaint.

The Complainant No. 1 is a holding company for the Complainants' group of companies and also proprietor of the Pakistani Trademark registrations and applications in the group's name. The Complainant No. 2 is indirectly 100% owned by the Complainant No. 1 and also the Complainant No. 1 is responsible for the operations of the website

www.olx.com.pk, related sites and the mobile application of the platform. The domain name www.olx.com.pk was originally registered and owned by the Complainant No. 1.

The Complainant No. 1 along with its affiliates have been engaged in the business of providing collection of online resources which include classified advertisements and forums through a network of websites operating in several countries including the website www.olx.com.pk, which continues to operate in Pakistan since 2015.

Complainant No. 2 was incorporated on January 27, 2017, and all the rights and privileges of Complainant No. 1, in particular, copyrights, reputation and goodwill, relating to the contents and operations of www.olx.com.pk have been transferred to Complainant No. 2 through intra-corporate arrangements and agreements. However, all trademark rights, and the rights and goodwill associated with the use of trademark OLX in Pakistan continue to be in the ownership of the Complainant No. 1. Therefore, for the use of OLX, Complainant No. 1 has granted authorization through intra-corporate agreement to Complainant No. 2.

OLX provides a platform for buyers and sellers of second hand products and also certain services to interact with each other. It is possible for any seller to upload a free advertisement for anything ranging from used cars to mobile phones, clothing and more. Similarly, interested buyers are able to search for products and services that they require and contact the relevant seller to carry out actual sale offline.

Over the years OLX has maintained a focus on expanding its reach in emerging markets and currently has operations in over 40 countries with over a 1000 employees. Apart from the website, the OLX platform is available on mobile phones through mobile apps available on Google's PlayStore, Apple's AppStore and Microsoft's Windows Store.

Since OLX commenced its operations in Pakistan in the year 2015, OLX has emerged as the largest marketplace for second hand goods. The global advertising and promotional expenditure of OLX runs into millions of dollars annually.

OLX enables users to design advertisements with pictures and videos as per instructions and guidance of OLX; control their selling, buying and community activity through their My OLX Account; display their ads and social networking profile; access the site from their mobile phone; and view OLX account in their local language.

OLX platform had a staggering 260 million monthly unique users generating traffic of over 37 billion monthly page views and around 1.9 billion monthly visits. It is being ranked the No. 1 mobile app in 22 countries.

OLX is operating in Pakistan since 2015 by using its well-known trademark, service mark and trade name **OLX and OLX Logo**.

In order to protect its rights and interest in the trademark and service mark OLX and OLX Logo in Pakistan, the Complainant No. 1 has obtained registrations and also filed

applications under the Trade Marks Ordinance, 2001. The Complainant also submitted a copy of trademark registration certificates attached as **Annex – A**.

The Complainant No. 2 owns all copyrights in the advertisements that are made and posted after the incorporation of the Complainant No. 2 in 2017. The ownership of copyrights is to the extent of both description and photographs in the advertisements posted on its website.

When a seller wishes to create an advertisement, also called a listing, on the Complainants' website [www.olx.com.pk](http://www.olx.com.pk), the seller is mandatorily required to provide the following information:

- Title (up to 70 characters)
- Product Category
- A description of the product
- Optionally upload the picture of the product
- Provide their name, contact number and the city where they are located

All of the above information is then store and compiled by the Complainants on their computer servers in a proprietary database. The said proprietary database of information resulting in the creation of listings on [www.olx.com.pk](http://www.olx.com.pk) are original literary works and is deemed to be first published in Pakistan. By virtue of the Section 10 read with Section 2(p) of the Copyright Ordinance, 1962, such original literary works are subject to copyright protection. Further, by virtue of the Section 13 of the Copyright Ordinance, 1962, the Complainants are the first owners of the copyrights in the said works as each case may be.

It was further submitted that all visitors to the Complainants' website, including sellers, are governed by the Terms of Use of the said website. A copy of the same is attached as **Annex – B**.

Therefore, all users, as per the Terms of Use, acknowledge the proprietary rights of the Complainants in all the advertisements, both in description and in photographs, posted on the Complainants' website.

When the sellers upload the photographs of their products onto the website, the Complainants modify the same by applying a watermark of the OLX Logo to the image. By virtue of the said modification, the photographs are derivative works of the original artistic works in the photographs. Hence, the Complainants are the owners of copyrights in the said photographs and compilations thereby having exclusive rights to exploit the same as per the Copyrights Ordinance, 1962.

It was also submitted that the Complainants have extensively promoted their website through various permitted customary means of promotion and the amounts approximately spent for this purpose have been as follows:

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<b>PROMOTIONAL EXPENSES</b>	
<b>Month/ Year</b>	<b>Amount in US\$ (Million)</b>
2012	2.5
2013	4.0
2014	6.4
2015	5.7
2016	3.0 to 3.5

Thus the Complainants' website has acquired a tremendous reputation and goodwill in Pakistan.

The Complainants alleged that during early part of 2017 they came to know that the Respondent had, without authorization, copied and reproduced on its website several advertisements/ listings, photographs and descriptions originally posted on the Complainants' website also containing the Complainants' trademark OLX Logo. The Respondent had reproduced the same on its own website [www.PakWheels.com](http://www.PakWheels.com) and continues to do so. Some of such listings are attached as **Annex – C**.

Furthermore, it was alleged that not only the text portions of their advertisements are identical to those found on the Complainants' website, but even the photographs of the products are found to be identical, besides bearing the watermark of the Complainants' trademark OLX Logo. The Respondent carelessly even forgot to remove or replace the Complainants' trademark OLX Logo before publishing the copied listing on its own website [www.PakWheels.com](http://www.PakWheels.com).

In addition to this, the acts of the Respondent show that it was not authorized by the Complainants or any other person to post the said listing on its own website as the seller/ user of the products.

The Complainants highlighted certain key factors of the alleged infringements in the case which are as follows:

- i. The Complainants' database of listings is dynamic in nature, i.e., it is constantly being updated with thousands of new classified advertisements being uploaded each day.
- i. The Respondent is copying substantial portions of the same in real time.
- i. The listings are not permanent in nature, i.e., they are deleted after the transaction has been completed between the parties, which makes it virtually impossible to identify and list all the URL's where the infringing content is being hosted at one particular time.

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However, an illustrative compilation of instances of the blatant copying and deceptive marketing by the Respondent is attached as **Annex – D**. The URL's upon which the offending content is hosted have also been identified on the compilations.

The Complainants further submitted that the Respondent is an undertaking within the meanings of the Act, engaged in the business of online advertisement and posting, using Complainants' OLX logo. The Respondent is therefore doing open violation and breach of provisions of Section 10 of the Act, through unauthorized use of product listings posted on www.olx.com.pk and posting them on its own www.PakWheels.com to attract the general public for the purposes of earning revenues for itself.

By copying and displaying the listings, their descriptions, photographs and compilations, on the Respondent's website, and by displaying the Complainants' watermarked trademarks OLX and OLX Logo, the Respondent is committing acts prohibited under Section 10 of the Act.

The Respondent is also purportedly accessing the servers of the Complainants' website through use of automated means, without the Complainants authorization, for the purposes of extracting, copying and reproducing data. The Complainants' Terms of Use and the robots.txt policy provide express notice to users including the Respondent, prohibiting the use of manual and automated means to scrape data from the Complainants' website.

The Respondent's aforesaid acts constitute distribution of false and misleading information termed as Deceptive Marketing Practices under Section 10 (2) (a) through the unauthorized use of the imitated trademark OLX and OLX Logo and unauthorized copying and posting of listings, photographs and descriptions.

Furthermore, the Respondent is distributing false and misleading information to consumers related to price, character, suitability for use or quality of goods, through the use of imitated trademark OLX and OLX Logo on its website, constituting a violation of Section 10 (2) (b) of the Act.

Such unauthorized and blatant acts of infringement and deceptive marketing are a violation of the Complainants' rights and can cause confusion amongst the general public in Pakistan who associate the online services bearing trademark OLX and OLX Logo exclusively with the Complainants. Respondent's aforesaid acts clearly constitute deceptive marketing practices in terms of Section 10(2)(d) of the Act.

The Respondent is marketing identical services and is commercially benefitting from the reputation, goodwill and customers of the Complainants by falsely implying and promoting their services and business to the same or connected to the Complainants by using their imitated trademark OLX and OLX Logo. This in turn is harming the business interests of the Complainants.

The Respondent's act of copy pasting the Complainants' listings, photographs and descriptions along with the Complainants' watermark of trademark OLX and OLX Logo

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is aimed and giving unwary customer false and misleading impression that the Respondent's website is in some way associated or linked with that of the Complainants or is authorized on their behalf to do so, thereby violating Section 10 (2)(a)(b) & (d) of the Act.

The Complainants have prayed that the Commission may initiate proceedings under Section 30 of the Act and restrain the Respondent from distributing false & misleading information to the consumers, harming its business interests and unauthorized use of registered trademark and copyrights, in violation of Section 10 (1) read with Section 10 (2) (a) (b) & (d) of the Act.

In view of the above, it has been prayed that an order for confiscation of all of Respondent's evidence from its premises that carry deceptive information with regards to the subject case may be passed.

It has also been prayed that an appropriate order may be passed against the Respondent to pay penalty of such sums as determined appropriate by the Commission under circumstances or any other relief the Commission may deem fit.

#### **SUBMISSIONS OF THE RESPONDENT**

The complaint of both Complainants was forwarded to the Respondent for comments/reply vide Commission's letter dated December 27, 2017. A reply was received from the Respondent vide letter dated January 07, 2018, requesting for extension in time period to file the requisite comments/ reply.

The Respondent was therefore granted an extension in time period to file its comments vide letter dated January 08, 2018. Thereafter, a reply was received from the Respondent containing its comments to the complaint, the particulars of which are summarized in the following paragraphs.

It has been submitted by the Respondent that the instant complaint is malicious, misconceived and baseless and has been filed just to harass and pressurize the Respondent.

It is noteworthy that most of the claims/allegations made by Complainants are related to alleged copyright/intellectual property infringement which has no relevance to or conception with any anti-competitive practices or the application of anti-trust laws. Moreover, notwithstanding the fact that Respondent is a market leader and owns a substantial share of the online automobile classified market, it has never even attempted to abuse its strong market position.

Since Respondent is the one that has a much stronger position in the online automobile classified space, Complainants, by filing their complaint relying solely on the baseless claim of deceptive marketing practices are trying to undermine Respondent's position in order to gain more ground in the online automobile classified space.

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The Complainants have also filed a suit which is pending adjudication before the Intellectual Property Tribunal, Lahore on similar grounds with similar false claims and allegations.

The Respondent has been conducting its business in a legitimate and bona fide manner without violating any laws including the intellectual property or competition laws mentioned in the Complaint.

The Respondent's reply to the Complaint does not constitute any admission, waiver or estoppel on the part of the Respondent unless specifically pleaded so within the reply.

The Respondent's domain name [www.PakWheels.com](http://www.PakWheels.com) was registered in 2002 and was founded in 2003, a Pakistan's top automotive portal that can be verified by checking information on [www.whois.domaintools.com](http://www.whois.domaintools.com) since its inception. It is pertinent to mention that Respondent created the market for buying and selling automobiles online by spearheading efforts for such sales in completely uncharted territory at a time when there was not even 3G technology available in Pakistan.

It is a wholly owned subsidiary of PakWheels Pte. Ltd., Singapore and its employees are over 175 people across Pakistan with three offices in Lahore, Karachi and Islamabad. Furthermore, Respondent offers unique and innovative products and services such as CarSure, Price Calculator, On Road Vehicle Price, Auto Shows and Sarfaranga Rally, etc.

The Respondent's website users of the year 2016 were 22 million and for the last year 2017 were 27 million. As per available information of 2016, Respondent's website users viewed more than 690 million pages on Respondent's website to buy and sell over 470,000 vehicles. During last year (2017), the Respondent's website users' views were 720 million. It has also received various awards such as the National ICT award twice, Red Herring Award Asia, Arabia 500 fast growing and Pakistan fast 100.

The Respondent also has a massive presence and substantial market share in the dealers' market due to its established goodwill and longstanding professional relationships with leading automobile dealers. It is also a comprehensive automotive portal with a forum dedicated to all automotive discussions, independent reviews and analyses of various automobiles including both cars and bikes.

In terms of its legal structure, Respondent is a private limited company incorporated under the Companies Ordinance 1984, having its registered office located at 2<sup>nd</sup> Floor, Saeed Alam Tower, 37 Commercial Zone, Liberty Market, Gulberg, Lahore. Pursuant to a board resolution of Respondent, Mr. Sunil Munj was appointed as attorney to act as an authorized representative of Respondent with effect from 6<sup>th</sup> January, 2018.

The Respondent also submitted para wise comments in response to the complaint as part of its reply, important gist of which is summarized in the following paragraphs for the sake of brevity.



The Respondent vehemently denied all allegations of the Complainants as baseless and frivolous. However, it admitted that the variation, imitation or counterfeiting of a trademark or service mark without the consent of the owner of trademark or service mark is the violation of relevant trademark laws of Pakistan

It further submitted that copying or reproducing any advertisements/listings posted on a website such as Respondent's by any individual or entity such as Complainants on their website, would constitute misrepresentation made to potential users of the Respondent and amount to the commission of tort of passing off aimed at damaging the business and goodwill of the Respondent.


Respondent has never stolen any purportedly copyrighted advertisements or in any way violated any other purportedly copyrighted information including product listings, photographs/images and descriptions from the Complainants' website. Any allegation of such nature by the Complainants is frivolous and must be put to strict proof thereof.

As for the watermarked logo, the Respondent submitted that if any were found on its website, the Complainants have failed to prove whether Respondent was posting these photograph's/images on the Respondent's website or one or more of Complainants' users or Complainants themselves were involved in doing so. This failure reaffirms Respondent's suspicion that either Complainants' users posted these watermarked photographs/images on Respondent's website without realizing its copyright implications or Complainants themselves posted them in a sinister manner and immediately took screen shots of the same before Respondent could remove/take down these photographs/images as part of its policy.

The Respondent also raised the issue here of whether it would be in the business interest of the Respondent to post an advertisement/listing of a direct competitor/rival such as Complainants on its own website. Complainants have conveniently and maliciously alleged that Respondent was involved in posting these photographs/images without providing any concrete evidence that shows that Respondent was involved.

It further submitted that it was never registered on the Complainants' website and therefore did not have any access to the contact information of Complainants' customers. Furthermore, Complainants have failed to establish how any of Complainants' own users or Complainants themselves could not have been involved in using the contact information of Complainants' customers.

It was submitted that the Respondent has been doing business in Pakistan since 2003, for around 14 years, whereas Complainants started doing business in Pakistan in 2015, around two years ago. The fact that Respondent started doing business earlier and is a market leader in the online automobile classified space being ahead of its competitors reinforces the argument that Respondent has no reason to associate itself with any of its competitors such as Complainants or to free ride on any of their goodwill.

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The Respondent submitted that the complaint has referred to Section 10 of the Act which governs "fraudulent use of another's trademark, firm name, or product labelling or packaging." However, the complaint has failed to specifically allege and/or establish how Respondent has breached any of these provisions.

Even if certain URLs are proved to be correct/authentic, Complainants have failed to prove duration for which the alleged content existed, if at all, on Respondent's website. This failure reaffirms Respondent's suspicion that either Complainants' users posted this content on Respondent's website without realizing the copyright implications or Complainants themselves posted this content in a sinister manner.

Furthermore, the Respondent has no reason to cause confusion or deception to gain attention and draw users to its website for any commercial benefit and it already has a massive following on the internet. Therefore, the Complainants have failed to establish any motive on the part of the Respondent to engage in such an activity and consequently failed to substantiate how Respondent could be in breach of Section 10(2)(d) of the Act. Therefore, there is no breach of Sections 10(2)(a) & (b) of the Act as well.

The Respondent submitted to have established a powerful brand and due to its undisputed position as a market leader, would never use any illegal means by breaching Sections 10(2)(a)(b)&(d) of the Act, which could risk even slightly tarnishing its impeccable goodwill and unblemished reputation.

In view of the above, Respondent denied each and every prayer of the Complainants and it was prayed that the complaint may be dismissed with special costs.

## ANALYSIS

The mandate of this enquiry report is to determine whether the allegations levelled by the Complainants constitute a, *prima facie*, violation of Section 10(1) of the Act i.e.

*(1) No undertaking shall enter into deceptive marketing practices;*

This, in particular, will lead towards, *prima facie*, violation of Section 10(1), read with Section 10(2)(a)(b) and (d) of the Act, i.e.;

*(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;*

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(d) *fraudulent use of another's trademark, firm name, or product labelling or packaging;*

A 'Trademark' is defined under the Trademark Act, 1940, as,

1. *"trade mark" means a mark used or proposed to be used in relation to goods for the purpose of indicating or so as to indicate a connection in the course of trade between the goods and some person having the right, either as proprietor or as registered user, to use the mark whether with or without any indication of the identity of that person.*"<sup>1</sup>

Therefore, a trademark is a distinguishable sign, mark, design or expression which differentiates goods and services of the producer from that of its competitors. In this particular case, the letters '**OLX**' will be taken as the Complainants' trademark.

The Copyrights Ordinance, 1962<sup>2</sup>, defines a 'Copyright' as:

*"Copyright means inter alia the exclusive right*

- *to reproduce the work*
- *to publish the work*
- *to perform or broadcast the work*
- *to make any translation or adaption of the work"* (for details see s. 3).

As already referred in Para No. 2.17 above, the Complainants are the first owners of the copyrights in the creation of listings on [www.olx.com.pk](http://www.olx.com.pk).

Furthermore, as per the submissions of the Complainants, all trademark rights, and the rights and goodwill associated with the use of trademark OLX in Pakistan continue to be in the ownership of the Complainant No. 1. However, for the use of OLX, Complainant No. 1 has granted authorization through intra-corporate agreement to Complainant No. 2.

It is also pertinent to mention here The Unfair Commercial Practices Directive 2005 (UCPD), defines prohibited commercial practices as *"Promoting a product similar to a product made by a particular manufacturer in such a manner as to deliberately mislead the consumer into believing that the product is made by the same manufacturer when it is not."*<sup>3</sup>

On the basis of information presented above and in light of submissions made by the Complainants and the Respondent, the Enquiry Committee will analyze whether the act of the Respondent has violated Section 10 of the Act.

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[ww.acif.org.pk/Files/TradeMarkAct\\_1940.pdf](http://ww.acif.org.pk/Files/TradeMarkAct_1940.pdf)  
[www.wipo.int/wipolex/en/text.jsp?file\\_id=129350#LinkTarget\\_851](http://www.wipo.int/wipolex/en/text.jsp?file_id=129350#LinkTarget_851)  
[ir-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52016SC0163](http://ir-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52016SC0163) ,

**Whether the Respondent's conduct pertains to *fraudulent use of another's trademark, firm name, or product labelling or packaging, in violation of Section 10(1) of the Act, in terms of Section 10(2)(d) of the Act;***

The Complainants' webpage is an online selling portal for second hand/ used items varying over up to 12 basic categories of products. When the webpage is accessed, all of these portals come to life and are accessible through a drop down menu. One of these categories is automobiles.

The subject matter of the complaint only pertains to this particular category of automobiles as the Respondent is engaged in operating a selling portal which only offers sale of automobiles specifically.


Therefore, analysis will be limited to the automobiles category of the Complainants' website particularly in this Enquiry Report.

Whenever a listing on the website of the Complainant is accessed for the purchase of a used automobile, the description generally involves name of the seller, its contact information, the specifications of the car, estimated price and photographs.

All of the photographs displayed within listings are watermarked by the OLX Logo at the center of the photographs. A sample is reproduced hereunder for reference:



Therefore, as per the Copyrights Ordinance, 1962, as referred to in Para No. 2.17 above, the provided description of the listing and all produced photographs fall within the intellectual property of the Complainants.

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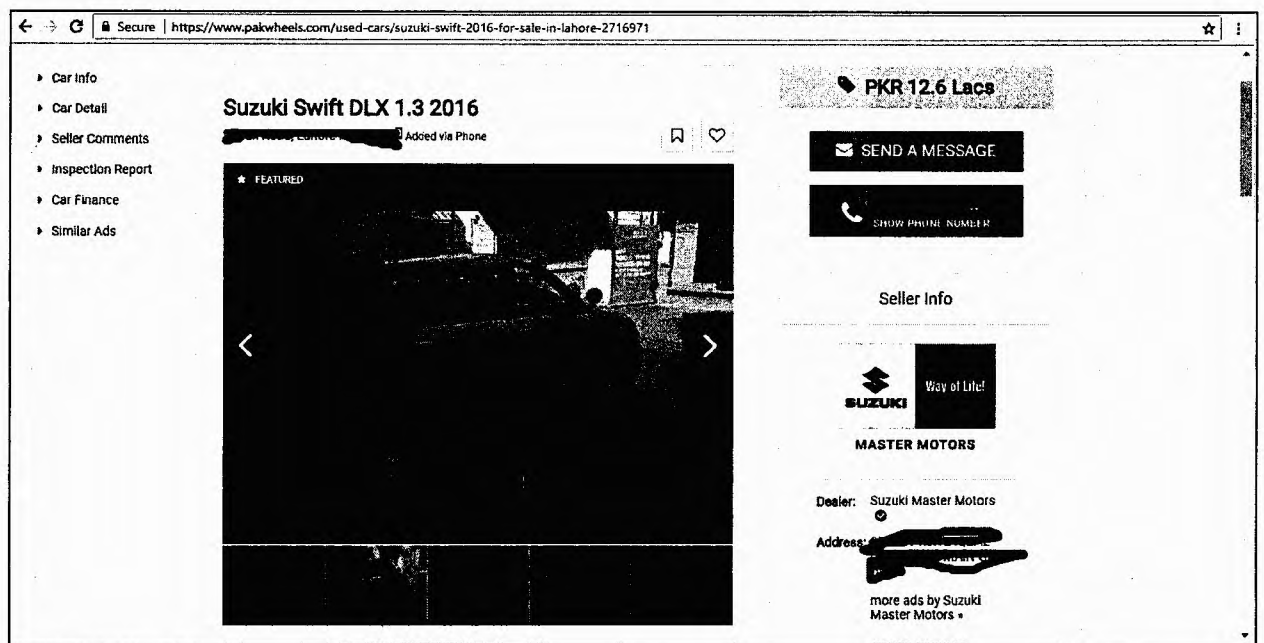


Any unauthorized use of the said descriptions would result in infringement of the intellectual property rights of the Complainants. Similarly, the watermark OLX Logo is a registered trademark of the Complainants and is therefore protected under the relevant trademark laws and subject to remedy in the instance of violation of the right.

The Complainants have alleged in their complaint that the use of their description of listings, photographs and the use of OLX trademark and Logo by the Respondent is unauthorized and thereby a violation of its rights.

Moving on to the Respondent's website, i.e., [www.PakWheels.com](http://www.PakWheels.com), it is also engaged in the display of multitudes of listings for sale of used cars by the general public who create a username for themselves to be able to sell the product.

The Respondents listings also contains similar details as that on the Complainants' website, just as its photographs are also watermarked with words 'PAKWHEELS.COM'. A sample of the same is reproduced hereunder for reference:



In the same way as the Complainants, the listings on the Respondents website are also its intellectual property by rights of first publish.

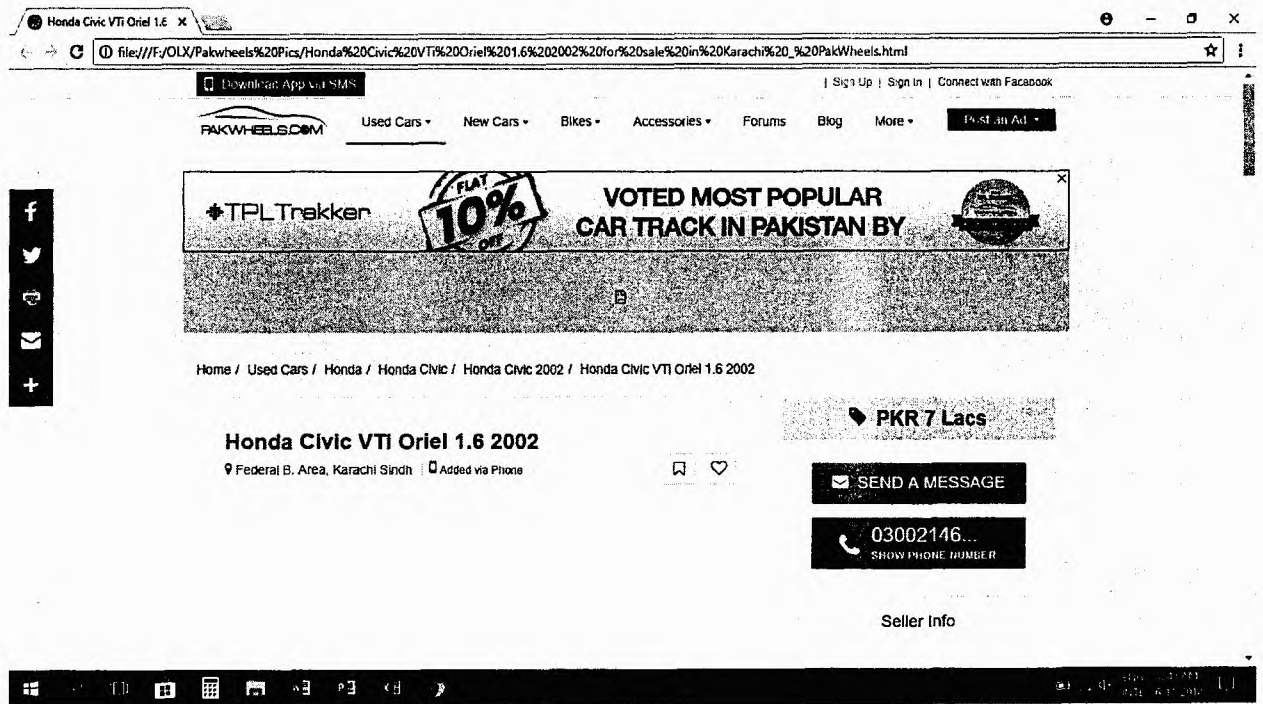
The Respondent had vehemently denied all allegation of copying and reproduction of Complainants' listings on its own website. However, the Complainants produced certain excerpts taken from the Respondents website which clearly displayed the OLX logo at the bottom of the photographs within the listings (already referred as Annex - C).

As previously discussed, in this particular case, it is impossible to investigate a previously dated evidence as true or false due to the nature of the complaint. The listings are posted

on the website by general sellers, whereby at contact with the right buyer the transaction is made and the listing is removed from the website.

Due to this constraint, the Enquiry Committee was not able to verify the evidence of excerpts provided by the Complainants displaying the alleged infringement. However, the referred evidence was made as a basis to further investigation of a similar nature.

Upon investigating the Respondent's website and after going through multitudes of listings, the Enquiry Committee was able find an instance on the Respondent's website where a listing contained photographs watermarked with the OLX Logo. A snapshot of the referred listing is reproduced hereunder for reference:



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Honda Civic VTI Oriol 1.6 x

file:///F:/OLX/Pakwheels%20Pics/Honda%20Civic%20VTI%20Oriol%201.6%202002%20for%20sale%20in%20Karachi%20\_%20PakWheels.html

Raza  
Member Since Nov 23, 2017

See if your friends know this seller  
Connect with **facebook**



Safety tips for transaction

1. Use a safe location to meet seller
2. Avoid cash transactions
3. Beware of unrealistic offers

[Learn More](#)

[Report this ad](#)

Honda Civic VTI Oriol 1.6 2002 | PKR 700,000

[SHOW SELLER PHONE NUMBER](#) [MESSAGE SELLER](#)

Raza  
Member Since Nov 23, 2017







Honda Civic VTI Oriol 1.6 x

file:///F:/OLX/Pakwheels%20Pics/Honda%20Civic%20VTI%20Oriol%201.6%202002%20for%20sale%20in%20Karachi%20\_%20PakWheels.html

3. Beware of unrealistic offers

[Learn More](#)

[Report this ad](#)

	
Rs 45 Lakh	Rs 40 Lakh
	
Rs 26 Lakh	Rs 16 000.00
	
Rs 18 000.00	Rs 20 000.00

Honda Civic VTI Oriol 1.6 2002 | PKR 700,000

[SHOW SELLER PHONE NUMBER](#) [MESSAGE SELLER](#)

Raza  
Member Since Nov 23, 2017

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Honda Civic VTI Oriol 1.6 x

file:///F:/OLX/Pakwheels%20Pics/Honda%20Civic%20VTI%20Oriol%201.6%202002%20for%20sale%20in%20Karachi%20%20PakWheels.html

2002	96,000 km	Petrol	Manual
Registered City	Karachi	Color	Grey
Assembly	Local	Engine Capacity	1600 cc
Body Type	Sedan	Last Updated:	Nov 23, 2017
Ad Ref #	2403999		

Rs 27 Lakh    Rs 20 Lakh

**zameen.com**  
Pakistan's No.1 Property Website

**OPPO**

**F5 6GB**  
Capture the real you

**CAR FEATURES**

ABS	AM/FM Radio	Air Conditioning
Alloy Rims	CD Player	Cassette Player
DVD Player	Keyless Entry	Power Locks
Power Mirrors	Power Steering	Power Windows
Sun Roof		

Honda Civic VTI Oriol 1.6 2002 | PKR 700,000

VIEW SELLER PHONE NUMBER    MESSAGE SELLER

Raza  
Member Since Nov 20, 2017

Honda Civic VTI Oriol 1.6 x

file:///F:/OLX/Pakwheels%20Pics/Honda%20Civic%20VTI%20Oriol%201.6%202002%20for%20sale%20in%20Karachi%20%20PakWheels.html

**SELLER'S COMMENTS**

Good condition, original engine, new tyres, petrol and CNG both fuels, sun roof, DVD player, camera, CD player, CPLC clear

Mention PakWheels.com when calling Seller to get a good deal

Never buy a Used Car without

Our CarSure experts inspect the car on over 200 checkpoints so you get complete satisfaction and peace of mind before buying.

**GET THIS CAR INSPECTED**


Learn More >

Honda Civic VTI Oriol 1.6 2002 | PKR 700,000

VIEW SELLER PHONE NUMBER    MESSAGE SELLER

Raza  
Member Since Nov 20, 2017

It can be seen in the continued images of the referred listing above that the photographs bore the watermark of the registered OLX Logo. Surprisingly, at a closer look, it was seen that the photographs also bore the watermark of the Respondent along with the Complainants.

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Therefore, in addition to the evidences provided by the Complainants, the above instance proves that the Respondent was indeed hosting listings bearing the registered OLX Logo.

It is pertinent to mention here that the Respondent has not counter alleged that the Complainants are also engaged in the copying of and reproduction of the Respondent's listings on its own website. However, the Respondent has vehemently denied being involved in the act itself.

The Respondent, however, does raise the possibility that the listings may have been uploaded on the Respondent's website by the Complainants through malafide intent of harming the Respondent's business.

This can be taken into consideration as a possibility, however, the Enquiry Committee observed that the reply/ comments of the Respondent did not contain any evidence to back the bold claim.

The Enquiry Committee deems it fit to bring to attention that the Respondent submitted itself within the reply that it has strong IT systems in place which are efficient enough to track down malicious or infringing content from its website. However, the Respondent fails to locate the Complainants behind these malafide listings and prove the same through evidence.

It is pertinent to consider that the Complainants had submitted a list of up to 2,500 listings from the Respondent's website with identified URL's as supporting evidence. Therefore, when the complaint was forwarded to the Respondent along with its annexures, the Respondent would have been in an easy position of tracing down those 2,500 referred listings and provide evidence that the listings had indeed been uploaded by the Complainants themselves on the Respondent's website with malafide intent.

In the presence of evidence in support of the allegations made within the complaint, it is apparent that the Respondent has, *prima facie*, fraudulently used the Complainants' registered trademark OLX, copyrighted OLX Logo, descriptions and photographs from Complainants' listings without consent or authorization, in violation of Section 10(1) of the Act, in terms of Section 10(2)(d) of the Act, which prohibits fraudulent use of another's registered trademark, firm name, product labeling and packaging.

**Whether the Respondent's conduct pertains to 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, in violation of Section 10(1) of the Act, in terms of Section 10(2)(b) of the Act;**

The Honorable Commission has in the past noted that misleading information includes any information that is capable of giving a wrong impression or idea, or is likely to lead to an

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error of conduct, thought or judgment, or which tends to misinform or misguide the consumer. It is furthermore an established view that it is not necessary that the deceptive information cause actual deception, but it is in fact sufficient that the misleading information tends to cause deception amongst the ordinary consumers.

The listings copied and reproduced by the Respondent from the Complainants' page were unauthorized, the same falls under distribution of false and misleading information to consumers in terms of properties and place of production. Place of production, in this particular Enquiry Report, is taken in the meaning of the place of service provider or platform of service delivery.

It is evident from the analysis drawn in Para No. 4.1 to 4.32 above, that the Respondent has been engaged in the fraudulent use of registered trademark, copyrighted logo, description and photographs of the listings from Complainants' website. Therefore, the information may mislead the general ordinary consumer into either associating the Respondent with the Complainants or thinking that the listing has been advertised by the Complainants themselves.

The Enquiry Committee also brings to light the submission of the Respondent that it has been engaged in the said business since over 14 years, and that the Complainants are a fairly new entrant. However, the subject matter of the complaint and this Enquiry Report is not mandated to ascertain which of the entities is more able and efficient than the other. Thus, the submission is irrelevant to the allegations raised within the complaint.

Therefore, the Respondent is, *prima facie*, found engaged in distributing misleading information to the consumers related to the properties and place of production of goods, in violation of Section 10(1) of the Act, in terms of Section 10(2)(b) of the Act.

**Whether the Respondent's conduct pertains to *distribution of false or misleading information that is capable of harming the business interests of another undertaking, in violation of Section 10 (1) of the Act, in terms of Section 10 (2) (a) of the Act;***

The Complainants have not reported losses in its sales figures in the complaint. However, the, *prima facie*, distribution of false and misleading information by the Respondent to its consumers, does not only intended to steal the brand identity and goodwill of the Complainants' products but may also inflict damage to the Complainants' business interests.

In view of the facts and analysis drawn above, it appears that the Respondent's conduct is also capable of harming the business interests of the Complainants, in violation of Section 10(1) of the Act, in terms of Section 10(2)(a) of the Act.

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## CONCLUSION & RECOMMENDATION

This enquiry report aimed at examining whether the allegations of the Complainants against the Respondent for infringing their trademark OLX, OLX Logo, descriptions and photographs of the listings, constitute, *prima facie*, violation of Section 10 of the Act or not.

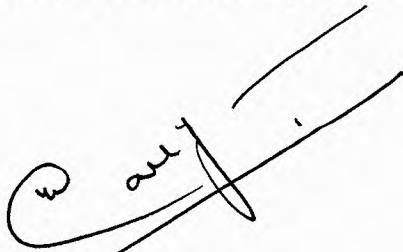
In light of the analysis and given facts, it appears that the Respondent has, *prima facie*, fraudulently used the Complainants' registered trademark OLX, copyrighted OLX Logo, descriptions and photographs from Complainants' listings without consent or authorization, in violation of Section 10(1) of the Act, in terms of Section 10(2)(d) of the Act.

Similarly, the Respondent is, *prima facie*, found engaged in distributing false and misleading information to the consumers related to the properties and place of production, in violation of Section 10(1) of the Act, in terms of Section 10(2)(b) of the Act.

Furthermore, the Respondent's conduct is also found to be capable of harming the business interests of the Complainants, in violation of Section 10(1) of the Act, in terms of Section 10(2)(a) of the Act

The deceptive marketing practices have a direct impact on the public at large and therefore, it is in the interest of the general public and fair competition in the market that the undertakings should be stopped from marketing their products in an unfair and misleading manner and be encouraged to resort to marketing practices which are transparent and give consumers true and correct information.

Therefore, in light of the above mentioned findings, it is recommended that the Commission may consider to initiate proceedings under Section 30 of the Act against M/s PakWheels (Pvt) Limited for, *prima facie*, violation of Section 10 of the Act.



Marryum Pervaiz  
Joint Director  
Enquiry Officer



Faiz ur Rehman  
Deputy Director  
Enquiry Officer