



**BEFORE THE
COMPETITION COMMISSION OF PAKISTAN**

IN THE MATTER OF COMPLAINT FILED BY

OLX CLASSIFIEDS PAKISTAN

Against

PAK WHEELS (PVT.) LIMITED

(FILE NO. 294/PakWheels/OFT/CCP/2017)

Date of Hearing: 18.06.2019, 30.10.2019, 03.12.019,
23-01-2020, 18.08.2020

Commission: Ms. Shaista Bano 
Member

Ms. Bushra Naz Malik
Member

Present:

M/s. OLX Classifieds Pakistan
(Complainant)

Mr. Hasan Irfan Khan,
Advocate Supreme Court
Irfan & Irfan

Ms. Khadija Yasmin Bukhari
Advocate
Irfan & Irfan

M/s Pak wheels (Pvt.) Ltd.,
(Respondent)

Barrister Ahmed Uzair
Advocate
AUC Law



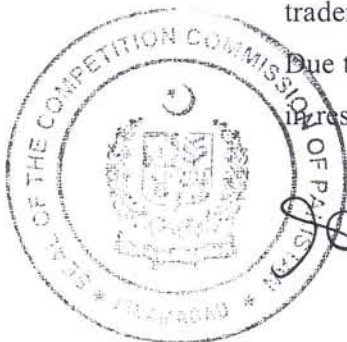
ORDER

1. This order shall dispose of proceedings arising out of Show Cause Notice No. 12/2019 dated May 31,2019 (hereinafter the 'SCN') issued to M/s PakWheels Private Limited (hereinafter the '**Respondent**') for *prima facie* violation of Section 10 of the Competition Act, 2010 (hereinafter the '**Act**').
2. In the instant matter, M/s OLX B.V. Netherlands and M/s OLX Classified Pakistan (SMC-Private) Limited (hereinafter collectively referred to as the '**Complainant**'), alleged that the Respondent resorted to deceptive marketing practices by using the complainant's web page, listings, photographs and description which amounted to violation of section 10 of the Act.

FACTUAL BACKGROUND

COMPLAINT:

3. The Competition Commission of Pakistan (the Commission) received a complaint wherein the Complainant stated that it has been involved in operations of a website by the name of www.olx.com.pk along with other related websites and mobile applications of online platform (collectively the 'Website'). The Complainant's platform provides certain services to buyers and sellers of second hand products in order to interact with each other. Using the platform, it is possible for sellers to upload a free advertisement of anything ranging from used cars to mobile phones, laptops, furniture, clothing and more. Similarly, interested buyers are able to search for products they require and contact the relevant seller and carry out actual sale transactions online. The said business of the Complainant uses the trademark and tradename 'OLX' and 'OLX Logo' respectively. Further, the Complainant has been carrying out the said business across various countries since 2006 (particularly in Pakistan since 2015).
4. The Complainant also stated that the domain name www.olx.com.pk is originally registered by it, whereas, all trademark rights and goodwill associated with the use of trademark OLX in Pakistan is the ownership and proprietorship of the Complainant. Due to this reason, the Complainant claimed exclusive rights over OLX and OLX logo in respect to all of its products and services.



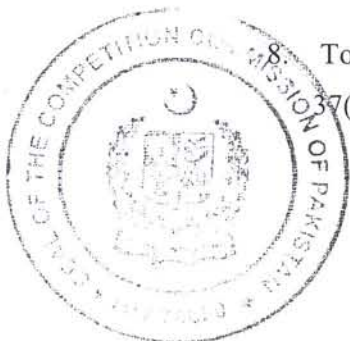
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5. In addition to trademark, the Complainant also claimed to have copyrights for all advertisements on its website. It stated that when a seller uploads information of his product, which is intended to be sold, it is stored and compiled by the Complainant on its computer servers in proprietary database which ultimately results in creation of advertisement/listing uploaded on www.olx.com.pk. Since creation and maintenance of the said database involves tremendous amount of skill, labour, creativity and judgment, therefore, advertisement/listing of the said database amounts to original literary work and should be deemed as first published in Pakistan and protected under Copyright Ordinance, 1962.
6. Likewise, the Complainant also claimed that when a seller uploads a photograph of his product along with other information, the Complainant then modifies the photograph by applying a watermark of the OLX logo to it. By virtue of said modification, the photograph becomes a derivative work of the original artistic work in the photograph. The Complainant then further compiles the photographs on its website hence, retains copyrights in the compilation of photographs displayed in its website.
7. However, the Complainant alleged that the Respondent had been involved in copying, without authorization, several advertisement/listing from the Complainant's website and reproduced on its own website. Not only that, it also alleged that the Respondent had been involved in copying photographs bearing the Complainant's watermarked OLX logo and posted them on its website without removing that watermark. Such unauthorized use of the trademark and service mark 'OLX' by the Respondent was claimed to be a fraudulent use of the Complainant's trademark and distribution of false and misleading information to the consumers. Further, the Respondent was also alleged to have gained commercial benefits from reputation, goodwill and customers of the Complainant by falsely implying and promoting its services/business to be the same or connected to or authorized by the Complainant by using an imitated trademark "OLX". Hence, the Respondent was alleged to have breached section 10 of the Act.

ENQUIRY, SCN AND WRITTEN REPLY:

8. To further probe into the matter, the Commission initiated an enquiry under section 37(2) of the Act and constituted an Enquiry Committee which submitted its Enquiry



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Report on November 27, 2018. The Enquiry Report found the Respondent acting in contravention of section 10 of the Act in following term;

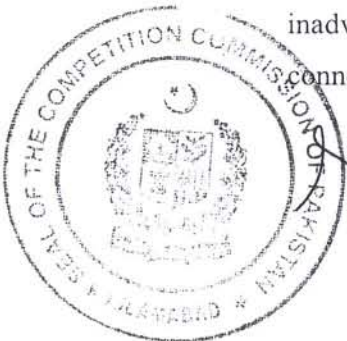
“5.2 In the light of analysis and given facts, it appears that the Respondent has, prima facie, fraudulently used the Complainant’s registered trademark OLX, copyrighted OLX logo, description and photographs from the Complainant’s listings without consent or authorization, in violation of Section 10(1) of the Act, in terms of Section 10(2)(d) of the Act.

5.3 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.

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

9. Accordingly, the Commission initiated proceedings under Section 30 of the Act against the Respondent, issued SCN on May 31, 2019, and afforded it an opportunity of hearing. Subsequently, the Respondent submitted its written reply on June 17, 2019, and contended all allegation in the Enquiry Report and SCN with regard to deceptive marketing practices. It asserted that the Complainant only provided evidence to the extent of OLX watermarked photographs posted on its website and that it would not dispute existence of objectionable listings at some point of time. However, this fact would not prove that the Respondent itself had been involved in illegal practice.

10. It further asserted that online classified advertisements usually enables relative freedom and anonymity in connection with the activity of posting advertisements. Users/third parties engaged in sale of their products would be free to post their advertisements on more than one website. In the instant case, due to either lack of knowledge or awareness of the intellectual property and anti-competitive implications of posting an advertisement carrying another’s logo/watermark, users/third parties might have posted inadvertently OLX watermarked photos on its website. The Respondent denied any connection with posting of such objectionable photos.



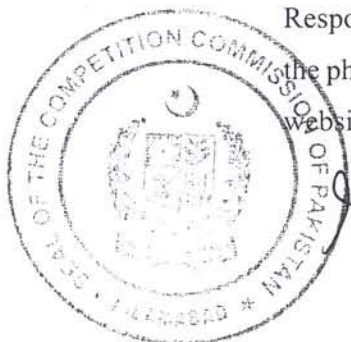
11. Further, it also contended supportive evidence provided along with the compliant on the ground that previously dated evidence would be difficult to judge as true or false given the volatile nature of advertisements/listings. Generally a listing/advertisement would be removed from the website once the transaction has been completed. Therefore, as per contentions, the Enquiry Committee had not been able to verify the evidence of excerpts provided by the Complainant displaying the alleged advertisement.
12. The Respondent also claimed to have a robust system of tracking and taking down any content that could be deceptive, misleading or infringing copyright. However, the Respondent suggested the Commission not to rule out a possibility that OLX itself could have posted objectionable photographs in a sinister manner ostensibly as an independent third party user and took screen shots of the same even before the Respondent had opportunity to remove/take down the photograph as a part of its standard policy of monitoring contents. Further, due to anonymity of user's identity and distinct possibility of misrepresentation/false identification of a user posting a photograph, it would be virtually impossible to judge if either of the parties had been involved in deceptive marketing practices.
13. Therefore, the Respondent requested the Commission to dismiss the Complaint on account of the Complainant's failure to establish any motive on part of the Respondent for having been involved in violation of section 10 of the Act.

ANALYSIS

14. Having gone through material available on the record and divergent arguments of the parties, the Commission has the following issue under consideration;

Issue: Whether the Respondent violated Section 10 of the Act by copying listing/advertisements from the Complainant's website and posting it on its own website?

15. The Enquiry Report found the Respondent acting in violation of section 10 of the Act on the account that photographs watermarked with OLX logo were found on the Respondent website which was further supported by snapshots or certain URLs wherein the photographs watermarked with OLX logo could be seen posted on the Respondent's website. We would like to refer to the paragraphs of the Enquiry Report;



"4.20 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.

4.21 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.

4.22 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;"

16. In terms of the aforesaid observation, it is clear that the Enquiry Committee has not addressed the question whether listing/advertisement was posted by the Respondent itself or by general users. The Bench is considerate of the fact that objectionable photographs have been found on the Respondent's website, we observe that neither the Enquiry Report nor the Complainant itself were able to prove that it was the Respondent who listed/advertised the objectionable content.
17. Evidence collected by the Enquiry Officers was collected after the Complainant's collection of evidence, which included the Respondents webpage where objectionable data should be seen. This evidence alone is, however, insufficient to prove a connection between the Respondent and the alleged conduct.
18. In order to address the further question as to whether the Respondent takes systematic precautionary measures to ensure that no general user posts objectionable content on its website. The Bench decided to probe the matter further. Keeping in view technical nature of the evidence, it constituted a Technical Committee during the hearing conducted on June 18, 2019, and mandated it to render an expert opinion vis-à-vis technical nature of evidence available on the record. This exercise was carried out with the objective to verify/evaluate the evidence by visiting premises of the Respondent to evaluate its filtration and management system put in place and to confirm that data had



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actually been copied/stolen from the Complainant's server or fraudulently posted by the Respondent. After visiting the Respondent's premises and conducting various technical tests at its system, the Technical Committee concluded its report on September 17, 2019, wherein it concluded as follows;

"Conclusion

1. *Based on the analysis performed on the acquired data, IS & T forensic team finds that apparently M/S PakWheels (Pvt.) Limited is not involved in copying and reproducing advertisements/listings originally posted on the Complainant's webpage."*

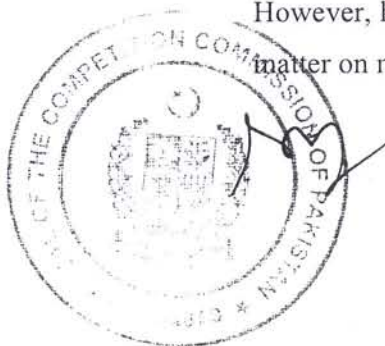
19. It was pointed out in the Technical Report dated 17.09.2019 that a gap was observed between incremental unique 'Ad ID' of the Respondent's ad for the same day posts, which is not a bot/crawler like behavior. Furthermore, to assess if the ads were published on the Complainant's website and then on the Respondent's site, a time stamp is required against each 'Ad ID'. Both these aspects should have been analyzed by the Enquiry Committee.

20. Feeling aggrieved with the said Report, the Complainant filed an objection petition on 30th November 2019, and objected to the Technical Report on various grounds. Nonetheless, being unsatisfied with the grounds, the Commission dismissed the objection petition after detailed deliberation vide its order dated January 23, 2020. Subsequent to dismissal of objection petition, the Complainant requested to withdraw its complaint during the hearing conducted on August 18, 2020.

21. We are of the view that although Regulation 21 of Competition Commission (General Enforcement) Regulations, 2007, affords the Complainant right to withdraw its complaint in following words;

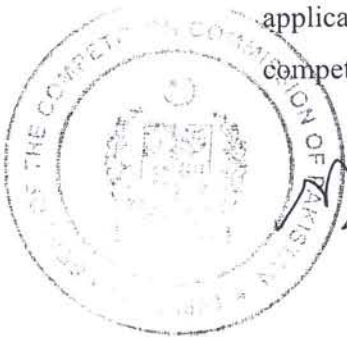
"21. Withdrawal of private complaints. — The Commission may permit the withdrawal of a complaint at any stage of the proceeding but an inquiry or proceeding does not necessarily abate on such withdrawal and may proceed if so decided by the Commission."

However, keeping in view the circumstances of the case, we are inclined to decide the matter on merits instead of dismissing the complaint as withdrawn.



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22. It must be borne in mind that matter under consideration is related to online platform which is a multisided market. The Complainant (OLX) provides a free platform that makes it easy to connect people to buy, sell or exchange used goods and services such as electronics, fashion items, furniture, household goods, cars, bikes etc. It can be used from a laptop or mobile phone. In other words, it works as a classifieds portal having a parallel system for customers running side by side. People who wish to sell any goods can upload their advertisements just like one is expected to do in a classified portal. People who wish to buy goods may browse through the listing. Sellers need to upload pictures of their goods, along with a title and description of the same and the expected sales price of the commodity. The buyers are allowed to browse through the several alternatives, contact the seller, negotiate with them one-to-one and then purchase the item. The surprising fact is that OLX doesn't act as a liaison between the buyer and the seller. It acts as a mere catalyst for connecting the two online through a classifieds portal. The conversation, bargaining, advances, and transactions remain between the buyer and seller only.
23. On the other hand, the Respondent (PakWheels) also provides a classified portal of similar nature, however, its scope is limited to selling/purchasing of used cars. Sellers post their advertisements and upload data in the form of information or photographs which becomes visible to Buyers interested in purchasing cars. The Respondent's role is only to facilitate platform services instead of uploading advertisement data on its own. If any objectionable data is seen on the platform there is a strong likelihood that the data is uploaded by either the sellers or the buyer. Any assumption that the objectionable data is uploaded by service provider (the Respondent) itself would require a strong evidence to this effect. Unfortunately, the evidence provided by the Complainant consists of those web pages where objectionable data can be seen, however, evidence so provided is not strong enough to prove the fact that objectionable data may have been uploaded by the Respondent itself.
24. No evidence exists sufficient enough to connect the Respondent with the allegation. Being a service provider, what the Respondent could do at the most was to ensure application of technical system so that no user would violate intellectual property or competition laws. We have observed in this regard from the same Technical Report that



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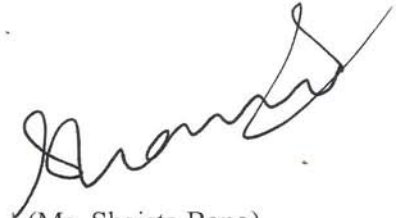
the Respondent has already put in place such screening mechanism which automatically removes objectionable content from its website.

25. Apart from the request for withdrawal of the complaint, we are inclined to take the view given in the Technical Report and hereby hold that the case of deceptive marketing practice within the meaning of Section 10 of the Act against the Respondent is not made out.

26. Accordingly, SCN dated 31.05.2019 is disposed of with no order as to cost.



(Ms. Bushra Naz Malik)
Member



(Ms. Shaista Bano)
Member



ISLAMABAD THE 26th DAY OF JANUARY, 2021