



BEFORE THE
COMPETITION COMMISSION OF PAKISTAN

IN THE MATTER OF

SHOW CAUSE NOTICE ISSUED TO

M/S PAKISTANI LEATHER JACKET HOUSE

On a Complaint Filed By
M/S PAKISTAN LEATHER INTERNATIONAL (JKT)

(F. NO: 302/PAKISTAN LEATHER/OFT/CCP/2018)

Date of hearing: 12-12-2018
01-01-2019

Commission: Dr. Muhammad Saleem
Member

Dr. Shahzad Ansar
Member

Present: Noman A. Farooqi
Legal Advisor

Syed Farhan Shah
Deputy Prosecutor

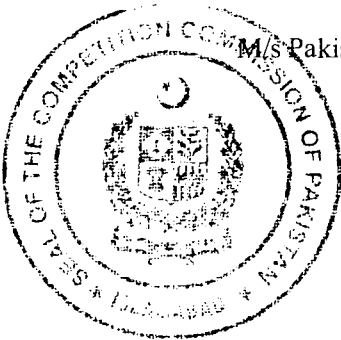
On behalf of:

M/s Pakistan Leather International (JKT)

Mr. Sohail Raja, Owner
Ms. Urooj Azeem Awan

M/s Pakistani Leather Jacket House

Mr. Zafar, Advocate High Court
Mr. Sheikh Shahid Jan, Owner



ORDER

1. This Order shall dispose of the proceedings initiated *vide* Show Cause Notice No. 19 of 2018 dated 28th November 2018 (the '**SCN**'), issued to M/s Pakistani Leather Jacket House (the '**Respondent**') by the Competition Commission of Pakistani (the '**Commission**') for, *prima facie*, contravention of Sections 10 of the Competition Act, 2010 (the '**Act**').
2. The SCN was issued to the Respondent pursuant to the Enquiry Report dated 24th September 2018 (the '**Enquiry Report**'). The enquiry was conducted by the Commission on the complaint received from M/s. Pakistan Leather International (the '**Complainant**') and initiated under Section 37(2) of the Act. In the light of the findings of the Enquiry Report the SCN was issued to the Respondent. .

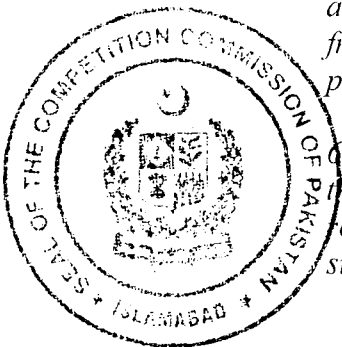
FACTUAL BACKGROUND

A. Complaint, Enquiry and Show Cause Notice:

3. The Complainant filed a complaint against the Respondent and M/s Leather Inn Pakistan. The Commission upon receipt of the Complaint initiated an enquiry under Section 37 (2) of the Act. The principle allegation in the Complaint was that the Respondents are disseminating false and misleading information to consumers by fraudulently using the Complainant's registered trademark, trade dress and logo on its marketing material, which is also capable of harming the business interest of the Complainant.
4. The Enquiry Report was concluded *vide* Enquiry Report dated 24th September 2019 (hereinafter the '**Enquiry Report**'). The conclusions of the Enquiry Report are as follows:

6.1 This enquiry report is aimed at examining whether the allegations of the Complainant, that the Respondents are fraudulently using the Complainant's trademark, firm name, or product labelling or packaging, are valid or not.

6.2 The Complainant applied for the registration of copyright under the Copyright Ordinance, 1962. The copy of the copyright registration certificate was attached with the Complaint which supported its claim. The copyright registration certificate proves



that the Complainant is the first and rightful owner of the subject trade dress.

6.3 In light of the facts, no evidence was found depicting the unauthorized use of the Complainant's trademark by any of the Respondents.

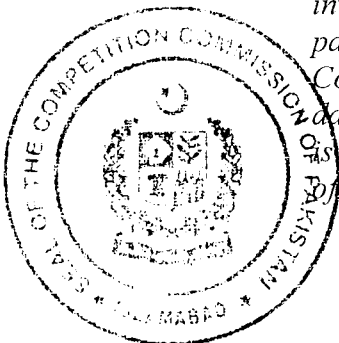
6.4 However, the Respondent No. 1 is imitating Complainant's trade dress. The slight alterations made by the Respondent No. 1 are insignificant and the trade dress by the Respondent No. 1 still resembles greatly to that of the Complainant. Analysing it as a whole, the Respondent No. 1 has been found in use of a similar/identical trade dress due to which its product packaging appears similar to that of the Complainant's product packaging.

6.5 In contrast, Respondent No. 2 has created a unique trade dress which has no resemblance with the Complainant's trade dress. Therefore, it is not found in violation of Section 10(2)(d) of the Act.

6.6 Therefore, keeping in view the above, it has been observed that the Respondent No. 1 is involved in copycat or parasitic packaging by using the similar trade dress as that of the Complainant's, which can induce consumers into buying its product instead of the Complainant's product. The likelihood of deception is reinforced considering the fact that the firm names of the Complainant and the Respondent No. 1, Pakistan Leather International (JKT) and Pakistani Leather Jacket House, respectively, although not the same, but yet quite similar, have the ability to confuse the buyer into taking one for the other. This probability increases considering the fact that the two outlets are located nearby in Saddar Rawalpindi. Thus, the Respondent No.1 has been found involved in violating the provisions of Section 10(1) of the Act, in terms of Section 10(2)(d) of the Act.

5. The Commission, after considering the *prima facie* findings of the Enquiry Report, deemed it appropriate to initiate proceedings under Section 30 of the Act against the Respondent while providing them the opportunity of hearing. The SCN in its relevant parts is reproduced herein below:

"4. WHEREAS, in terms of the Enquiry Report in general and paragraphs 2.4 to 2.7, it has been alleged that the Undertaking is involved in deceptive marketing practices by using Complainant's packaging, trade name and logo. The Respondent is using Complainant's registered trademark without any authorization and damaging the credibility of and reputation of the Complainant and therefore highly likely to deceive and cause confusion in the minds of consumers; and



5. *WHEREAS, in terms of the Enquiry Report in general and paragraphs 5.13 to 5.16 in particular, it appears that the Undertaking copies the Complainant's product labeling and creative design, including placement of various details of the shopping bags and language used by the Complainant; and*

6. *WHEREAS, in terms of the Enquiry Report in general and paragraphs 5.17 in particular, it appears that the Undertaking by infringing upon the rights of the Complainant through fraudulent use of Complainant's packaging, color scheme, design and get up of products is in prima facie violation of Section 10(1), in terms of Section 10(2)(d) of the Act; and*

7. *WHEREAS, in terms of the Enquiry Report in general and paragraphs 6.7 in particular, it appears that the Undertaking's conduct of parasitic copying of the Complainant's product, is capable of harming the business interests of the Complainant, in prima facie violation of Section 10(1) in terms of Section 10(2)(a) of the Act; and*

B. Written Replies and Hearings Conducted:

6. On 14th December 2018, the written reply of the Respondent was received, which is summarized as follows:

- a) The main highlights of the reply were that, the Respondents themselves are a regular tax payer with a good presence in the leather garments market.
- b) Regarding the invoices of M/s. SM Packaging for bill books and visiting cards the respondent maintained that M/s SM Packaging is a common 'service provider' regarding the printing of bill books, bags, visiting cards etc. for most of the similar local undertakings and the representative of M/s SM Packaging is one of his client.
- c) The Respondent also accused the Complainant for creating hurdles for their business and maintained that Local Business Community had decided the issue subsequent to which the Respondent discontinued the use of old marketing material having similarity in artistic work and creating doubts in mind of the Complainant. The Respondent also maintained that they are no longer availing the service of M/s SM Packaging since March 2017.

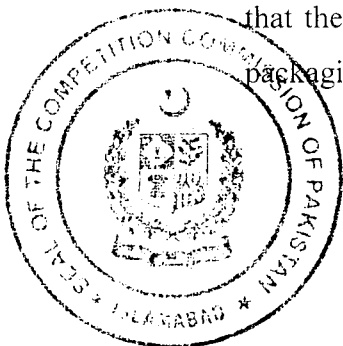


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- d) The Respondent also asserted that the Complainant had also raised same issue with the Federal Investigation Agency (FIA). Wherein inquiry was conducted by designated Agency and the Respondent was given a clean chit.
- e) The Respondent in his Para wise Comments challenged the evidence collected by Enquiry Report as mere oral, evidence without affidavit of the witnesses, has been collected. The lack of documented oral evidence was in the contravention to the Competition Commission Enquiry (Conduct of Investigating Officers) Rules 2007.
- f) Respondents have submitted that the evidence such as the bags mentioned in Enquiry Report do not indicate the time of usage or the duration.
- g) The Respondents also asserted that Respondent's business is small one and operating from a rented shop. After the trade union meetings the usage of articles in Annex C of the Enquiry Report were completely stopped and, made obsolete. Reflecting compliance and intention to erase any misunderstanding and deception.

7. On 12th December 2018 the Counsels of both parties were heard by the Bench. The Complainant apprised the bench regarding his business and alleged that the Respondent for violating Section 10 of the Act.

8. The Respondent through their counsel argued that his client is in like business since 1995 and is regular tax payer. The Respondent also apprised the bench that after the meeting of Local Market Committee, they had discontinued the old packaging and changed their bill books as well. The Counsel also requested the bench for granting time for filing the reply to the show cause notice as the bench allowed two days for doing the needful. The enquiry officer upon query raised by the bench apprised that old packing is still available with the shop of the respondent when a survey was conducted by them in March, 2018. The respondent also told the bench that they have arranged bags of cloth for packaging and has replaced all the old packaging with the new one.



9. The bench directed the respondent for filing reply and any other additional document in support of their defense within a period of two days. The Respondent filed the reply to show cause notice within the stipulated time.
10. On 1st January 2019 the authorized representatives appeared before the Bench for a second hearing and argued their case. The Respondent stated that their products are not exported. Hence, this will not be mentioned on their packaging. In response to the Complainant's concern over the use of the tag ® on the packaging used by the Respondents despite not being registered the Respondent agreed to scrub the same from their bags and undertook to abide by the guidelines of the Bench. Regarding the query of Respondent regarding the usage of polythene and cloth bags. The bench informed the Respondent that the Commission had no objection upon the material used but there shouldn't be any kind of similarity with the logo of the Complainant. The bench also asked the Registrar to get the undertaking/commitment signed from the Respondent as per General Enforcement Regulations, 2007.

ANALYSIS & DECISION

11. On the basis of the submissions of the parties in this matter, the following issues have been identified and demarcated for the purposes of deliberation:
 - A. *Whether the enquiry in the matter has been conducted in violation of any rules and with mala fide intentions?*
 - B. *Whether the Respondent has resorted to deceptive marketing practices in violation of Section 10 of the Act?*
12. We now would proceed to deliberate on the aforesaid issue while keeping in view the material/evidence placed on record and the applicable law in the matter.

Whether the enquiry in the matter has been conducted in violation of any rules and with mala fide intentions?

In the written reply to the SCN, the Respondent has raised an objection over the conduct of enquiry in the matter. It has been alleged by the Respondent that the enquiry relies on the oral evidence and no documentary evidence has been placed on record. It

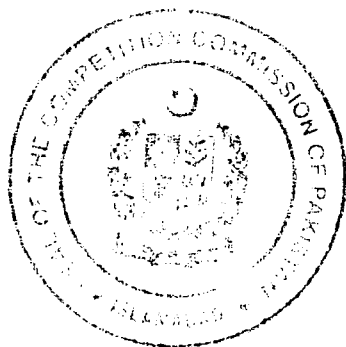


was further alleged by the Respondent that the enquiry conducted is in violation of Competition Commission Enquiry (Conduct of Investigating Officers) Rules 2007 (hereinafter the '**Conduct of Investigation Rules**'). The Legal Advisor in attendance apprised the Bench that the enquiry is based on the documentary evidence and the enquiry officers have carried out a survey whereby the bags used by the Respondent were gathered. Further, he also submitted that the instant enquiry does not fall within the purview and scope of the Conduct of Investigating Rules. He referred to Rules 3 of the Conduct of Investigation Rules, which provides for the scope of the said rules and for ease of reference is reproduced herein below:

3. Filing of complaint.— Any person or undertaking, aggrieved by the conduct of an investigating officer (the accused) who is alleged to have exercised the power which was vexatious, excessive or with mala fide intent, may lodge a complaint in writing before the Commission.

(2) Upon receipt of the complaint by an aggrieved person the Commission may initiate proceedings against the accused.

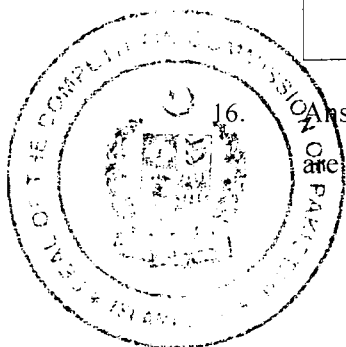
14. Further, we have also perused the file, the submissions made by the Respondent *vis-à-vis* the oral evidence is also contrary to the facts and evidence available on the record. The bags of the Complainant as well as the Respondent and the Certificate of the registration of trade mark and copyright issued in favour of the Complainant are also on the record. The trade mark of the Complainant is registered vide no. 369052 in class 18 on 27th August 2014. The trade mark so registered in favour of the Complainant is reproduced herein below:



Pakistan
Leather International (PKL)

A handwritten signature in black ink, consisting of several stylized, overlapping loops and lines.

15. Further, the Complainant has also produced the Certificate of Registration of copyright dated 10th August 2017 under the registration no 35780. On the other hand, the Respondent in its written reply has admitted that Local Business Community had decided the issue subsequent to which the Respondent discontinued the use of old marketing material having similarity in artistic work and creating doubts in mind of the Complainant. The Respondent was also asked about any certificate issued under the Trade Marks Ordinance or the Copyright Ordinance, however, the Respondent could not produce any evidence in its favour. The comparison of images of the Complainant and the Respondent, collected during the enquiry, is reproduced herein below:



16. In answering the first objection i.e. applicability of Conduct of Investigation Rules, we are in agreement with the submissions made by Mr. Farooqi, that the enquiry in the

instant matter is beyond the purview of the said rules. In fact, the Conduct of Investigation Rules are to be followed while conducting the enquiry on the conduct of the enquiry officers and not otherwise. Further, the evidence gathered coupled with the admissions made by the Respondent during the enquiry as well as in the proceedings under Section 30 of the Act, we are constrained to turn down the objections of the Respondent and while doing so we cannot ignore the statement made by Mr. Sheikh Shahid Jan, proprietor of the Respondent admitting the use of similar packaging material with that of the Complainant.

B. Whether the Respondent has resorted to deceptive marketing practices in violation of Section 10 of the Act?

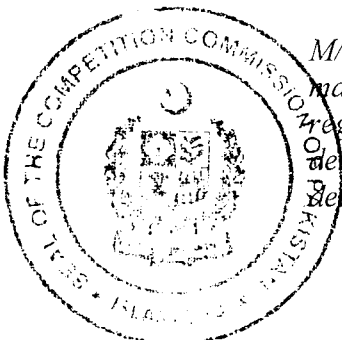
17. The Enquiry Report has concluded that the Respondent is using the packaging material similar to that of the Complainant. Further, the Respondent in its written reply has admitted the use of packaging material similar to that of the Complainant, however, the Respondent has also submitted that subsequent to the resolution of the issue by the Local Business Community, they have discontinued the use of bag which was similar to that of the Complainant. In addition to the foregoing, we also cannot ignore the fact that the Proprietor of the Respondent has made a statement on oath before us which is available on the record and for ease of reference is reproduced herein below:

This is with reference to subject proceedings wherein authorized representatives of M/s Pakistani Leather Jacket House (the 'Respondent') and M/s Pakistan Leather International (the 'Complainant') appeared before the bench of the Competition Commission of Pakistan (the 'Commission') on 01st January 2019.

Sheikh Shahid Jan, Sole Proprietor of the Respondent stated on Oath and undertakes as follows:

M/s Pakistani Leather Jacket House previous marketing materials were in violation of Section 10 of the Competition Act, 2010 till March 2017, being similar with the trade dress of Complainant's registered packaging, trade name and logo, and there forth were never used.

M/s Pakistani Leather Jacket House shall refrain from deceptive marketing practices by using Complainant's or any third party's registered packaging, trade name, logo, product labelling and creative designs in future and withdraw all the material which is similar or deceptive.



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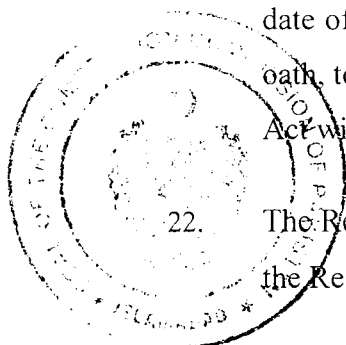
M/s Pakistani Leather Jacket House shall comply with any and/or all directions of the Commission in the subject proceedings, which inter alia include the directions passed by the Commission under Section 38 of the Act, and shall ensure compliance with Section 10 and all other provisions of the Competition Act, 2010, in letter and spirit, in future.

18. Bare perusal of the above statement on oath and the commitments filed on behalf of the Respondent during the hearing leaves no doubt that by its own admission, the Respondent was using the packaging material similar to that of the Complainant and the Respondent has now discontinued the use thereof.
19. We are appreciative of the compliance oriented approach shown by the Respondent in the hearing and the truthfulness shown by them while filing the written reply and the oral submissions made before us. In presence of clear and unambiguous admission on behalf of the Respondent, which is reproduced above, we are constrained to hold that the violation of Section 10 of the Act on behalf of the Respondent stands proved and does not require any further deliberation.

REMEDIES AND PENALTY

20. For the reasons discussed above and in line with our mandate to protect the consumers from anti-competitive behavior, including deceptive marketing practices, we hereby hold the subject conduct of the Respondent clearly in violation of Section 10(1) of the Act.
21. The Respondent is directed to cease and desist, as per its own statement, from using the trademark of the Complainant, or use the packaging material similar to that of the Complainant or any other undertaking, in future. The Respondents is also reprimanded to ensure responsible behavior in future with respect to the marketing of its business and is also directed to discontinue the use of trademark or Packaging material similar to that of the Complainant with immediate effect and not to use it in future without due authorization. The Respondent is also directed to file within sixty (60) days from the date of receipt of this Order, the Compliance Report duly supported with affidavit on oath, to ensure future compliance and not to contravene provisions of Section 10 of the Act with respect to the subject matter, with the Registrar of the Commission.

22. The Respondent is forewarned that in case of non-compliance of the above directions, the Respondent is liable to a penalty of Rs. 500,000/- (Rupees Five Hundred Thousand



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Only) per day from the date of receipt of this Order in addition of initiation of criminal proceedings against the Proprietor of the Respondent under sub-section (5) of Section 38 of the Act before the Court of competent jurisdiction.

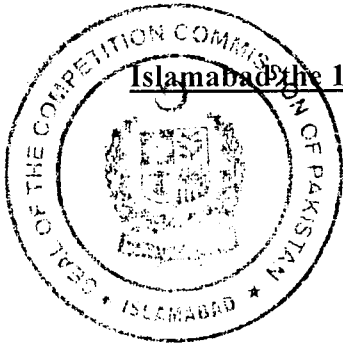
23. In terms of the above, the Show Cause Notice No. 19 of 2018 dated 28th November 2018 is hereby disposed of.

M. Jolvi

Dr. Muhammad Saleem
Member

[Signature]

Dr. Shahzad Ansar
Member



Islamabad the 17th day of September 2019.