



BEFORE THE  
COMPETITION COMMISSION OF PAKISTAN  
IN THE MATTER OF  
SHOW CAUSE NOTICE ISSUED TO

M/S MASTER FOOD INDUSTRIES  
*On Complaint Filed By*  
M/S EASTERN PRODUCTS (PVT.) LIMITED  
(VITAL TEA)

(F. NO: 329/VITAL TEA/OFT/CCP/18)

Date(s) of hearing:

07-01-2020

19-02-2020

Commission:

Dr. Muhammad Saleem  
**Member**

Dr. Shahzad Ansar  
**Member**

Ms. Bushra Naz Malik  
**Member**

Present:

Noman A. Farooqi

Assisted by:

Syed Farhan Shah  
Deputy Director (Legal)

On behalf of:

**M/s. Eastern Products (Pvt.) Limited**

Hafiz Munawar Iqbal, *Advocate*

Sardar Abdul Wahab, *Advocate*

Mr. Ali Akbar, *Zonal Sales Manager*

Mr. Muhammad Rashed,  
*Authorized Representative*

Ms. Urooj Azeem  
*Authorized Representative*

**M/s Master Food Industries**



## ORDER

1. This Order shall dispose of the proceedings initiated by the Competition Commission of Pakistan (the '**Commission**') vide Show Cause Notice No. 38 of 2019 dated 25<sup>th</sup> November 2019 (the '**SCN**'), issued to M/s Master Food Industries (the '**Respondent**') for *prima facie* contravention of Section 10 of Competition Act, 2010 (the '**Act**').
2. The SCN was issued to the Respondent pursuant to the enquiry report dated 15<sup>th</sup> October 2019 (the '**Enquiry Report**'). The enquiry was conducted under Section 37(2) of the Act in pursuance of the formal Complaint received from M/s Eastern Products (Pvt.) Limited (the '**Complainant**').

### FACTUAL BACKGROUND

#### **A. COMPLAINT, ENQUIRY AND SHOWCAUSE NOTICE:**

3. The Commission received a formal complaint from the Complainant. The primary allegation made in the Complaint was that the Respondent was involved in Deceptive Marketing Practices in violation of Section 10 of the Act by passing off Complainant's Products through fraudulent use of Complainant's logo, Packaging, colour Scheme, design and getup. The Complainant further alleged that the Respondent's conduct had the potential to inflict harm upon the goodwill and business interest of the Complainant and cause confusion among customers through dissemination of false and misleading information related to character, properties, quality of products and place of production/origin via similar/identical packaging.
4. The Commission constituted an enquiry in pursuance of Section 37(2) of the Act. The Enquiry Report concluded as follows:

*"6.1 In light of the facts, it appears that the conduct of the Respondent, prima facie, amounts to passing off its products as that of the Complainant's through fraudulent use of Complainant's logo, packaging, color scheme, design and get up of product, in violation of Section 10(1) in terms of Section 10 (2)(d) of the Act which prohibits fraudulent use of another's trademark, firm name, or product labeling or packaging.*



*[Handwritten signatures]*



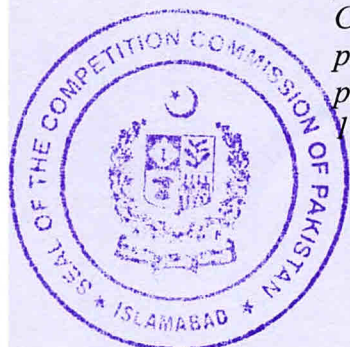
6.2 In view of the analysis, it can also be concluded that the conduct of the Respondent, *prima facie*, has the potential to inflict harm upon the goodwill and business interest of the Complainant and cause confusion among customers through dissemination of false and misleading information related to character, properties, quality of products and place of production/origin via similar/identical packaging, in violation of Section 10(1) in terms of Section 10(2)(a)&(b) of the Act.

6.3 The deceptive marketing practices have a direct impact on the public at large. It is in the interest of the general public and to create fair competition in the market, the undertakings should be stopped to market their products in an unfair and misleading manner and be encouraged to resort to the marketing practices which are transparent and give consumers/customers true and correct information. Therefore, in light of the above mentioned findings, it is recommended that the Commission may consider initiation of proceedings against M/s Master Food Industries under Section 30 of the Act for the, *prima facie*, violation of Section 10 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 2.13 to 2.24, it has been alleged by the Complainant that the Undertaking has adopted/copied its registered trademark and copyrighted packaging by deceptively using Complainant's color scheme, design and getup during the course of marketing/advertisement which, *prima facie* constitutes violation of Section 10(1) of the Act; and

5. **WHEREAS**, in terms of the Enquiry Report in general and paragraphs 5.6 to 5.14 in particular, it appears that the Undertaking fraudulently and without any authorization express or implied, used the Complainant's trademark "VITAL" and copyrighted trade dress and packaging labelling, without any consent or authorization, which is in *prima facie* constitutes violation of Section 10 (1), in terms of Section 10(2)(d) of the Act; and



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6. *WHEREAS, in terms of the Enquiry Report in general and paragraph 5.15 to 5.24 in particular, it appears that the Undertaking's conduct of infringing upon the rights of the Complainant's registered trademark, copyrighted trade dress and packaging labelling, is not only capable of harming the business interests of the Complainant but the Undertaking is also distributing false and misleading information to consumers related to the manufacturer of the products, character, properties and quality of goods, which is prima facie in violation of Section 10(1) in terms of Section 10(2)(a) & (b) of the Act; and*

**B. WRITTEN REPLIES AND HEARING CONDUCTED:**

6. On 20<sup>th</sup> December 2019, the Respondent filed the written reply to the SCN. The succinct representation of the Written Reply is as follows:

- a) The Respondent registered its business on 12<sup>th</sup> August 2017 to acquire, manufacture, processes and sell tea. Its first product was packaged as '*Asli Master Tea*', however, the same didn't get successful and was discontinued.
- b) The Respondent again started its operations in September 2018 they with the capital of approximately Rs. 2 million, and launched their Tea Product with the name of '*ViLAL TEA*'; however, within the period of two months from the date of launch of the product by the Respondent, the instant complaint was filed against the Respondent.
- c) The Respondent had not been able to make its mark in the market, as the market was already saturated with the brands that were copying the packaging of Complainant's Product. The Respondent also stated that distribution of their product '*ViLAL TEA*' is very limited.
- d) The Respondent admitted the allegation leveled against it, by the Complainant, in paragraphs 2.13 to 2.24 of the Enquiry Report and also conceded to the averions made in Para (4) & (5) of the SCN. However, the Respondent pleaded ignorance of law and stated that the copying was done mistakenly.
- e) The Respondent is at a loss to understand why the complainant had only targeted the Respondent, while there is a range of packaging, that were brought to light by Respondent to Enquiry Officers, similar to that of Complainant, involved in copying the packaging of complainant.



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7. Pursuant to SCN two hearings were conducted on 07<sup>th</sup> January 2020 and 19<sup>th</sup> February 2020; wherein the Complainant had relied on Enquiry Report while the Respondent in last hearing has showed willingness to comply with the directions of the Commission and agreed to change the Packaging of their product. Moreover the Respondent also filed Commitment to comply with any order of the Commission in the Subject proceedings.

### **ANALYSIS & DECISION**

8. On the basis of the submissions made before us, following issues have been identified and demarcated for the purposes of deliberation:

(i). *Whether ignorance of law can be taken as a defence for violation of Section 10 of the Act?*

(ii). *Whether the Respondent has resorted to deceptive marketing practices in violation of Section 10 of the Act?*

9. 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.

(i). *Whether ignorance of law can be taken as a defence for violation of Section 10 of the Act?*

10. The Respondent has taken the defense that they were not aware about the prevalent Competition Law in Pakistan and have copied the packaging of the Complainant mistakenly. On the other hand the Counsel for the Complainant has submitted before us that The Complainant, in order to distinguish its goods from those of other competitors in the same line of business, adopted design/work/trademark and trade dress/label "VITAL TEA" along with distinctive device of rising sun, dual encircled leaf, golden coin with encircled letters of company name and wavy dual lined green shield on its trade dress for more than 20 years. The label and/or layout, design and graphically designed packaging of the Complainant is in use in respect of tea and the get up including complete graphical representation of label/packaging are stand

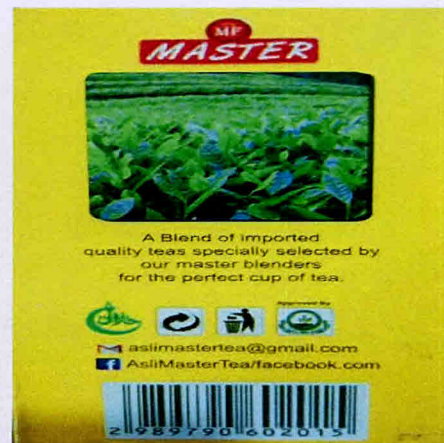


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registered as label or artwork /design/trademark of the Complainant products. The said distinguishable packaging appears on all the advertisement material, stationary as well as on the packaging of the products. The Counsel also submitted that their products' packaging along with its devices as whole stands registered with Intellectual Property Offices, i.e. Trade Mark Registry and Central Copyright Registry, Government of Pakistan. The image of registered trademark of the Complainant is depicted below:



11. The Counsel for the Complainant further submitted that their well-known trademark 'VITAL TEA' along with its design is registered with the IPO Pakistan under Registration No. 144883 and Registration No. 210169 in class 30. The trade dress, design, getup, type settings, packaging scheme and artwork of whole packaging are also registered with Central Copyright Registry, Government of Pakistan under the Registration No. 24032-copr. Specimen of the Complainant's product, bearing trademark as well as distinctive package color scheme, design and get up is depicted hereunder:



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12. The Director General (Legal) in attendance has submitted that the plea of ignorance of law could not be construed or sustained as *bona fide* excuse and reliance is placed on

(i). **Order dated 16 August 2010 in the matter of Ace Group of Industries reported as 2010 CLD 1840**, wherein the Commission held as follows:

“Nobody, could plead ignorance of provisions of Constitution or any other codified law, because after such law was notified in official Gazette; presumption would be that everybody living in country would have knowledge thereof”

(ii). **Order dated 21 December 2012, in the matter of DHL Pakistan (Pvt.) Limited, reported as 2013 CLD 1014**, wherein the Commission held as follows:

*“32. It is indeed a settled position and in our Order dated 16-08-2010 in the matter of Ace Group of Industries reported as 2010 CLD 1840, relying on superior court’s decision following principle was followed by the Commission:*

*“Nobody, could plead ignorance of provisions of Constitution or any other codified law, because after such law was notified in official Gazette; presumption would be that everybody living in country would have knowledge thereof”*

*33. In view of the above legal and factual position, we therefore, find merit in Complainant’s plea that ignorance of law cannot be accepted as a valid justification or defense.”*

(iii). **2019 CLC1496, FAHAD ALI VS. DISTRICT RETURNING OFFICER AND OTHERS**, wherein it was held that

*“14. This Court is conscious of the legal maxim “ignorantia legis neminem excusat” is meaning “ignorance of the law excuses no one” and it follows that a plea of ignorance of law could not be construed or sustained as a bona fide excuse.”*



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13. He further submitted that the Respondent in its written reply as well as the oral submissions has candidly conceded that the market was already saturated with many brands copying the trademark and packaging of the Complainant hence, they were unable to make their mark. The Director General (Legal) further highlighted Respondent's submission that why only Respondent is targeted whereas many others are also copying the packaging of the Complainant. Summing up the Director General (Legal) submitted that the Respondent by its own submissions was well aware about the brand value of the Complainant and thus the Respondents contention that it has no knowledge about the Act or any such type of special laws is not a valid justification.
14. We are in agreement with the submissions made by the Director General (Legal). It is a known fact that the trademark and the products of the Complainant are well known products. However, we deem it appropriate to compare the trademark and packaging of the Parties to the proceedings, which for ease of reference is depicted below:



15. When we compare the above images of the packaging of the Complainant with that of the Respondent, it becomes clear that the Respondent has copied the entire color scheme and the logo is depicted in a manner that can mislead the awry consumer conveniently. We are fortified in our view that the Respondent is responsible for and have in fact resorted to free riding and parasitic copying.



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16. We are cognizant of the fact that the Competition Law in Pakistan was introduced through Competition Ordinance, 2007. Over a period of three years the law was given permanence through the enactment of the Act. The Commission since its inception has issued 41 Orders for violation of Section 10 of the Act and all the Orders issued by the Commission are not only placed on the website for information of the general public but are also publicized in the newspapers for the information of the consumers and the stakeholders. In this background, taking the defense of ignorance of law is not justifiable. Accordingly, we are constrained to hold that the Respondent was well aware about the existence of the Act and the goodwill of the Complainant, and the defense holds not force and is hereby turned down.

***(ii). 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. In addition to the foregoing, we also cannot ignore the fact that the authorized representatives of the Respondent in pursuance of Regulation 37 of the Competition Commission (General Enforcement) Regulations, 2007 has also submitted as Commitment for obtaining Favourable Order, which is available on the record and for ease of reference is reproduced herein below:

*“We, Mr. Muhammad Rasheed (CNIC No. 25202-9413344-1) and Ms. Urooj Azeem Awan (CNIC No. 13503-8832310-4), authorized representatives of M/s Master Foods Industries, duly authorized in this regard, do hereby declare undertake as follows:*

- 1. That, Master Food Industries advertising campaign relating to its product titled “VILAL” which relates to selling of Tea is in prima facie violation of Section 10 of the Competition Act, 2010.*
- 2. That any/or all other packaging, advertisements or promotional materials, in print form or otherwise, in relation to its products has been withdrawn from the public domain.*





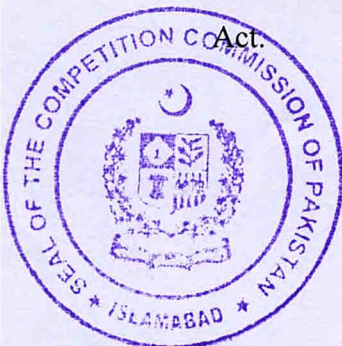
3. *That, we shall comply with any and/or all directions of the Commission in the subject proceedings, which inter alia include the directions passed by the Commission under Section 38 of the Act read with Regulation 37 of the Competition Commission (General Enforcement) Regulations, 2007 and shall ensure compliance with the provision of the Competition Act, in letter and spirit, in future.*

*That this undertaking and/or Commitments serein setout are validly stated under the authority of the Partners of M/s Master Foods Industries in accordance with the partnership Deed and authorization.”*

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 in violation of Section 10 of the Act 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, and in accordance with the principle enshrined under Article 113 of the Qanoon-e-Shahdat Order, 1984 i.e., facts admitted need not be proved, 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**

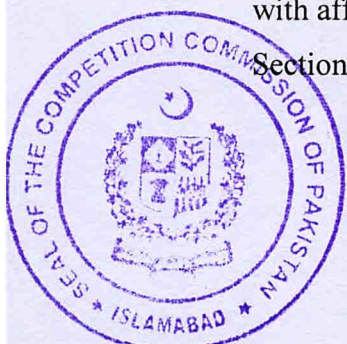
20. For the reasons discussed above and in line with our mandate to protect the consumers from anti-competitive behavior, including deceptive marketing practices, we hereby hold the subject conduct of the Respondent clearly in violation of Section 10(1) of the



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21. We are cognizant of the fact that marketers traditionally focus on designing advertising campaigns and other promotional strategies to promote a brand name. However, with evolving consumer preferences and laws, presentation; trade dress have become just as essential for making products and services distinctive and for building brand recall. The cultural diversity of the Pakistan market makes a compelling case for the importance of product identification by packaging and visual impression. This has resulted in third parties creating lookalikes of popular products with similar packaging in order to grab consumers' attention and generate demand for their own products in the market. In our considered view, the consumers are clearly susceptible and at a serious risk of falling prey to deceptive confusion pertaining to the origin and quality of the products, due to the striking similarity in the Complainant's Trade Dress and the Respondents' Trade Dress.
22. Keeping in view all the facts and circumstance of the matter in hand, there is no doubt regarding violation of the provisions of the Act, however, the approach of the representative of the Respondent needs to be appreciated as they cooperated throughout the proceedings. In addition to the fact that they admitted the violation of the Act and apologized as well as assured future compliance of the Act in letter and spirit. We, therefore, inclined to impose a token penalty of Rs. 1,000,000/- (Rupees One Million Only). However, the Respondent is reprimanded that in future, the Commission will take a very strict view of any or all non-compliances or contraventions under the Act.
23. The Respondent is further 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



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Commission. The Respondent is also directed to deposit the penalty amount with the Registrar of the Commission within sixty (60) days from the date of receipt of this Order.

24. The Respondent is forewarned that in case of non-compliance of the above directions or failure to submit a compliance report, the Respondent is liable to pay penalty of Rs. 100,000/- (Rupees One Hundred Thousand Only) per day from the date of receipt of this Order, in addition to initiation of criminal proceedings against the Partners of the Respondent under sub-section (5) of Section 38 of the Act before the Court of competent jurisdiction.
25. In terms of the above, the Show Cause Notice No. 38 of 2019 dated 25<sup>th</sup> November 2019 is hereby disposed of.

*M. Jaleel*

(Dr. Muhammad Saleem)  
*Member*

*Dr. Shahzad Ansari*

(Dr. Shahzad Ansar)  
*Member*

*Bushra Naz Malik*

(Ms. Bushra Naz Malik)  
*Member*

**ISLAMABAD THE 19<sup>th</sup> DAY OF FEBRUARY 2020**

