



BEFORE THE
COMPETITION COMMISSION OF PAKISTAN


IN THE MATTER OF

COMPLAINT FILED BY
SHAJARPAK (PVT.) LIMITED

(F. NO: 268/SHAJARPAK/OFT/CCP/2017)

Date(s) of hearing: 21-09-2017,
24-04-2018

Commission: Dr. Shahzad Ansar 
Member

Dr. Muhammad Saleem 
Member

Present on behalf of:

M/s Shajarpak (Pvt.) Limited

Khwaja Ahmed Imran, Director
Tariq Abdul Quddus, Brand Manager
Qaisar Imam, Advocate

M/s Ahmed Pasha Collection

Asif Khan, Advocate

M/s Aamir Cloth House

Mian Nadeem Akhtar, Advocate

M/s Ramzan Fabrics

Nil

M/s Pasha The Designer Fabrics

Nil

M/s Sufi Cloth House

Mr. Muhammad Riaz, Advocate

M/s Baba Plastic & Dabba House

Nil

M/s Ahmed Plastic

Nil

Qaisar Brother Plastic Center

Mian Ghulam Rasool, ASC
Fida Hussain Matta, Advocate



ORDER

1. This order shall dispose of the proceedings initiated *vide* Show Cause Notices Nos. 18 – 25 (the ‘SCNs’) dated 23rd August 2017 issued by the Competition Commission of Pakistan (the ‘Commission’) for *prima facie* violation of Section 10 of the Competition Act 2010 (the ‘Act’) to the following undertakings:
 - i. M/s Ahmed Pasha Collection, Tailor & Fabrics (**Respondent No. 1**)
 - ii. M/s Aamir Cloth House (**Respondent No. 2**)
 - iii. M/s Ramazan Fabrics (**Respondent No. 3**)
 - iv. M/s Pasha-The Designer Fabrics (**Respondent No. 4**)
 - v. M/s Sufi Cloth House (**Respondent No. 5**)
 - vi. M/s Baba Plastic (**Respondent No. 6**)
 - vii. M/s Ahmed Plastic & Dabba House (**Respondent No. 7**)
 - viii. M/s Kausar Brother Plastic Corner (**Respondent No. 8**)

2. The above-named Respondents may be collectively referred to as the “**Respondents**” or individually as a “**Respondent**”. The SCNs were issued to the Respondents pursuant to the Enquiry Report dated 12th June 2017 (the ‘**Enquiry Report**’). The enquiry was initiated following the complaint lodged under subsection 2 of Section 37 of the Act by M/s Shajarpak (Pvt.) Limited (the ‘**Complainant**’).

FACTUAL BACKGROUND

A. COMPLAINT:

3. The Complainant alleged that the Respondents are fraudulently using the Complainant’s registered trademark and copyright protected trade dress with similar language, layout, get-up, colour/colour combination, size, shape and graphics in the sale and promotion of their product which is misleading the consumers in contravention of Section 10(2)(d), 10(2)(b) and 10(2)(a) read with Section 10(1) of the Act.

4. The Complainant is active in the business of manufacturing cotton fabrics and textile products under the trademark ‘**Pasha Fabrics**’ which are sold in specially designed



boxes/containers of different colour/colour combination, graphics, and pictorial illustrations or trade dress. The trademark '**Pasha Fabrics**' was registered on 2nd May 2008 *vide* Registration certificate No. 249945 issued by the Intellectual Property Organization of Pakistan (the '**IPO-Pakistan**'). The Complainant's trade dresses are also copyright protected *vide* Registration certificates Nos.21142, 21143, 21144, 21145, 21146, 21147, 21148, 21149, and 2115 issues by the IPO-Pakistan.

5. The Complainant alleged that the Respondents have copied/imitated the aforesaid distinctive trademark/trade dress on the boxes/containers of their textile items in a manner that the products manufactured by the Complainant and the Respondents are indistinguishable or deceptively similar and misleading the customers. Moreover, it is alleged that the Respondents products are qualitatively below par as compared to the Complainants products which are damaging its reputation and brand equity. Conclusively, the Complainant contended that the Respondents' marketing practices are in contravention of Section 10 of the Act.

B. ENQUIRY, SHOW CAUSE NOTICES:

6. The Enquiry Report examined whether the Respondents have contravened provisions of Section 10 of the Act. It was concluded that the Complainant is the first and rightful owner of the trademark '**Pasha Fabrics**' and owns copyrights for its logo and various label designs and the Respondents were fraudulently using the Complainant's trademark and labelling and packaging on similar products. Therefore, the Respondents are engaged in the dissemination of false and misleading information to the consumers' detriment and is causing harm to the business interests of the Complainant. Therefore, the Respondents have, *prima facie*, entered into deceptive marketing practices in terms of the provisions of clauses (a), (b) & (d) of subsection (2) of Section 10 read with subsection (1) of Section 10 of the Act.
 7. Based on the *prima facie* findings of the Enquiry Report and the recommendations contained therein, the Commission decided to initiate proceedings under Section 30 of the Act against the Respondents. A combined summary of the relevant portions of the
- are reproduced hereunder:



'4. Whereas, in terms of the Enquiry Report in general and paragraphs [...] to [...] in particular, it appears that the [u]ndertaking is using the word "Pasha" as an identical logo design and language of the Complainant's product on its packaging in order to mislead the general public as well as the use of Complainant's registered trademark, labelling, and packaging, without authorization is deceptive and fraudulent, thereby, prima facie, violating Section 10(1) of the Act in general and Section 10(2)(d) of the Act in particular; and

5. Whereas, in terms of the Enquiry Report in general and paragraphs [...] and [...] in particular, it appears that the [u]ndertaking is passing off their products as those of the Complainant, thereby, harming the business interests of the Complainant. The use of term 'Pasha' by the [u]ndertaking on the packaging of its products for its promotion is mala fide and intended to deceive the general public, in violation of Section 10(1) in terms of Section 10(2)(a) & (b) of the Act; and

6. Whereas, in terms of the Enquiry Report in general and paragraphs [...] to [...] in particular, it appears that by imitating the Complainant's trademark and its trade dress, the [u]ndertaking is trying to induce consumers into buying their goods instead of that of the Complainant's. Thus violating Section 10(2) (d) of the Act. Consequently, it also appears that the acts of the [u]ndertaking are not only misleading to the consumers about its products but it is also capable of harming the business interest of the Complainant in violation of Section 10(2)(a) & (b) of the Act'."

C. WRITTEN REPLIES BY RESPONDENTS:

8. Except Respondent No. 8, M/s Kausar Brothers Plastic Corner and Respondent No. 6, M/s Baba Plastic, none of the Respondents have filed their written replies to the SCNs.

The submissions made by the above-named Respondents are summarized in the following paragraphs.



9. There is no case made against it because it is engaged in the sale of plastic articles/products. Nonetheless, it is willing to submit its affidavit and affidavit on behalf of the entire business community in its locality that they are not engaged in any deceptive marketing practices.
10. It was submitted that the Complainant has complained against it with *mala fide* intention. According to the Respondent, there is no evidence that it is selling packaging material with the Complainant's trademark 'Pasha Fabrics'. It was submitted that the Respondent is selling blank packaging material beside half printed boxes/containers as per customer's requirements. Furthermore, it was asserted that the Enquiry Report was prepared on the basis of data made available by the Complainant only. Therefore, it does not depict the true picture of the case until an on-the-spot enquiry is conducted by the Commission. According to the Respondent, by quoting a single bill of a small value, a person cannot be held in default. Also, it was contended that the enquiry has not been conducted in accordance with the procedure laid down under Section 37 of the Act.

D. APPLICATION UNDER SECTION 32 OF THE COMPETITION ACT, 2010 FOR INTERIM RELIEF:

11. On 10th October 2017, the Complainant submitted application under Section 32 of the Act read with Regulation 25 of the Competition Commission (General Enforcement) Regulations, 2007 ('CCGR 2007') praying before the Commission seeking ad interim injunction against the use of its trademark/ trade dress by the Respondents as they are continuously harming the reputation of the Complainant. It was argued that the proceedings before the Commission can potentially be timely and in the situation that exists or is likely to emerge, may cause serious and irreparable damage to it. Therefore, the balance of convenience and inconvenience lies in favour of the Complainant.
12. Respondent No.1, Respondent No. 2, Respondent No. 5 and Respondent No. 8 have resisted the ad interim order application on the following grounds:

- i. Respondent No.1, M/s Ahmed Pasha Collection, Tailor & Fabrics submitted, *vide* written reply dated 1st March 2018 that the Complainant has no cause of action because it is solely engaged in the business of tailoring which is entirely different from the Complainant's business. Furthermore, the Respondent



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contended that there is no possibility of irreparable damage to the Complainant and no balance of convenience lies in its favour.

- ii. Respondent No. 2, M/s Aamir Cloth House submitted, *vide* written reply dated 19th October 2018, that it has committed no violation of the Act, as has been alleged by the Complainant. The ad interim injunction application is also liable to be dismissed on the basis of misstatement and misrepresentation of fact. There is no likelihood of irreparable loss and no balance of convenience lies in favour of the applicant.
- iii. Respondent No. 5, M/s Sufi Cloth House submitted, *vide* its written reply dated 26th February 2018, that it has never received a show cause from the Commission but only the notice of hearing to be held on 26th February 2018 in relation to the Complainant's application seeking ad interim injunction against it. Referring to annex "D" of the Enquiry Report containing the receipt of purchase of a textile item bearing "Pasha," the Respondent submitted that it was sold by one of its salesmen and when it came to its knowledge, it immediately terminated that salesman from service.
- iv. Respondent No. 8, M/s Kausar Brother Plastic Corner submitted, *vide* its written reply dated 20th October 2017 that it has no concern with deceptive marketing and is not using any trademark of the Complainant, so there is being committed no harm to the reputation of the company. The Respondent asserted that it has not used the name and trademark of the Complainant in any way. Furthermore, the Respondent contended that the Complainant has not shown any good cause against it and hence the applicant for *ad interim* injunctions is liable to be rejected.

E. HEARINGS:

13. During the course of hearings held on 21st September 2017 and 24th April 2018, the Complainant and Respondent No. 1, Respondent No. 2, Respondent No. 4, and Respondent No. 6 appeared before us and pleaded their case. It is noted that four out of eight Respondents appeared before us. We have enquired from the Registrar regarding service of the notices to the non-appearing Respondents. The Registrar informed that



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all the notices were duly served and the courier receipts in this regard were available with the office.

14. The main contention of the Complainant is that its trademark '*Pasha Fabrics*' and trade dress are not only registered but also have acquired the status of distinctiveness across Pakistan. With regard to the trade dress of its boxes/containers, the Complainant has further contended that its colours/colour combination, get-up, labelling, and packaging is original artistic work protected under the copyright laws of Pakistan. Hence, ownership of its trademark in conjunction with the trade dress is absolutely vested in it. Any unauthorized use of its trademark and trade dress is likely to cause confusion and consumer deception, in addition to harming its goodwill and business interests.
15. Furthermore, the Complainant has contended that it has spent substantial money in commercial exploitation and promotion of its trademark/products both in Pakistan and abroad. The Complainant claimed that '*Pasha Fabrics*' is now a well-known brand all over Pakistan. The Respondents' substantial reproduction of its trademark and colourable imitation of its trade dress on the boxes/containers of their inferior products amounts to fraudulent use of its trademark and infringement of copyright-protected labelling and packaging.
16. In support of its contentions, the Complainant submitted a list of its authorized dealers engaged in the retail sale of its textile items in all major cities of Pakistan. Furthermore, the Complainant submitted that the Respondents are selling such products at a much lower price in comparison to the original products sold under the brand of '*Pasha Fabrics*'. Due to the inferior quality of the Respondents' products, the Complainant contended that they are receiving complaints from their customers. Finally, the Complainant submitted that the Respondents need to be restrained to encash on the hard-earned goodwill of '*Pasha Fabrics*'.
17. In their defense, the Respondents reiterated their stance already submitted through their written replies to the SCN and the Complainant's *application for interim relief*. The Commission inquired about the size of their business and the Respondents maintained that they are individual retailers with small shops in different cities of Pakistan. Nevertheless, the Respondents, appearing before us, submitted to file unconditional



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commitment to ensure that none of their products bears the trademark and/or trade dress, which have been claimed by the Complainant as its registered intellectual property right, to the satisfaction of the Commission.

ISSUES

18. In view of the submissions made by the parties in the subject proceedings, following issues merit deliberation:
- i. *Whether or not the Complainant's claim qua the trademark 'Pasha Fabrics' and associated trade dress is distinctive in the relevant market is valid for the purposes of Section 10 of the Act?*
 - ii. *Whether or not the Respondents have engaged in deceptive marketing practices in contravention of Section 10(2)(a), 10(2)(b) and 10(2)(d) of the Act?*

ANALYSIS & DECISION

ISSUE -I

19. Before proceeding with the factual analysis and consequent determination as to any contravention(s), the Commission finds it necessary to highlight and clarify the purpose of Section 10 of the Act. For reference, Section 10 is reproduced hereunder:

'10. Deceptive marketing practices.—(1) No undertaking shall enter into deceptive marketing practices.

(2) The deceptive marketing practices shall be deemed to have been resorted to or continued of Undertaking resorts to—

(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;

(c) false or misleading comparison of goods in the process of advertising; or



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

20. Section 10 of the Act empowers the Commission to eliminate all cause of consumer deception. Earlier, the Commission in its Order dated 21st December 2012 in the matter of complaint filed by M/s DHL Pakistan (Pvt.) Limited, reported as 2013 CLD 1041, while interpretation of the provisions of Section 10(2)(d) read with Section 10(1) observed as follows:

'...while interpreting Section 10[2(d)] of the Act; one needs to be conscious that the interpretation of the fraudulent use of a trademark has to be in the context of deceptive marking and [it] would have a broader scope. Rather than making it too complex by focussing on "subjective intention" of the Respondents. [I]n our considered view, it is best if we adopt simplistic approach i.e. if it can be demonstrated that the Respondents by use of the trademark, intended to deceive the customer/consumer to gain an advantage. Keeping in view the nature of contravention, it is not the "subjective intention" but the "objective manifestation" of the intent that will establish the fraudulent use'.

21. The Bench notices that in the context of Section 10(2) (d) of the Act, there is no requirement that trademark, firm name or labelling and packaging of goods or services should be registered with the designated authority, *albeit* with registration, a firm's array of options for dealing with trademark or trade dress infringement will increase. A registered trademark, firm name or labelling and packaging are presumed to be valid and incontestable, thereby preventing infringers from claiming unawareness of the registration. The legislature did not intend to register proprietor to be deprived of the property at the instance of users whose use is unauthorized and fraudulent. Therefore, in case of the registered trademark and/or the registered trade dress, we would presume them eligible for Section 10 protection without further investigating their validity.

22. In the matter at hand, the Respondents appearing before us have attempted to assail the maintainability of the Complaint. On the other hand, the Complainant's main contention is that the Respondents have resorted to the unauthorized/fraudulent use of its trademark and trade dress of its products' boxes/containers with obvious elements



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of deceptive similarity. The Complainant has provided documentary evidence to this effect. After a review of the documents submitted by the Complainant, the Commission is of the considered opinion that the Complainant has a legally enforceable claim and could seek remedies against deceptive marketing practices under the provisions of Section 10 of the Act.

ISSUE-II

23. The Complainant has contended that its trademark '*Pasha Fabrics*' is prominently displayed on the container of its products. And its copyright-protected trade dress is altogether different in terms of colour/colour combinations, get-up, and overall appearance. The Respondents are imitating its trademark and trade dress on the containers of their textile products.
24. We note that a trademark is a combination of signs and/or symbols that legally differentiate the products of one business from those of other businesses and a trade dress may be construed as overall appearance or the "look" of a product. One of the main purposes of a trademark and a trade dress is to prevent consumer confusion by distinguishing the source of competing products from each other.
25. In the Matter of M/s A. Rahim Food (Pvt.) Limited dated 8th February 2016 (reported as 2016 CLD 1128), the Commission, has observed that "*parasitic copying*" of trademark or trade dress of a brand is inherent in all cases of ' "fraudulent" use of another's trademark, firm name, labelling, and packaging' as follows:

'a) It is now well-established principle under the majority of regulatory competition regimes around the world that mimicking the packaging design of familiar established brands is a misleading and deceptive ploy with the end purpose of boosting sales.

b) Such purpose or object of parasitic copycat packaging is driven [...] from [...] the perspective of the consumer. A potential purchaser is much more likely to mistake and perceive products which employ parasitic copying to be of better quality than they in fact are or as equivalent to the aggrieved competitor or market leader (whose

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packaging has been copied). Hence, a consumer is more likely to purchase such a product, rather than if the packaging was clearly distinctive and distinguishable.

c) The end result of such a practice is that the consumer is misled by the "copycat" who is fraudulently attempting to pass off its products as something else. Furthermore, the copycat incurs the minimal cost and in fact none of the cost of investment and innovation of a design that the market leader has spent to build goodwill and reputation of its brand assets in the relevant market. Hence, where product differentiation is insufficient, such a practice on the part of the copycat has fatal consequences for the business of the market leader.

d) In furtherance to the interpretation of the term "fraudulent use" of "product labelling and packaging" within the scope of Section 10(2)(d) of the Act, it may be noted that fraud itself consists of some deceitful practice or willful device to obtain an unjust advantage and which deprives another of right or causes another injury. The Commission, entrusted with the task of adjudicating upon a potential contravention under the Act, remains of the much wider context and purpose of the said prohibition. The Commission shall, therefore, be satisfied that the evidence adduced before it is conclusive, if the strikingly similar packaging and labelling is misleading enough to cause confusion in the minds of average consumer of a commodity, with the end result of unjust advantage accruing to the copycat at the expense of and to the detriment of the complainant.

e) The Commission deems it appropriate to examine the packaging and product labelling appearance of a finished product as a whole which may collectively include visually confusing resemblance in elements of colour scheme, layout style, design, images, labels, font usage etc., instead of each individual similarity in isolation, to come to its determination as to the contravention under Section 10(2)(d) of the Act. It may also be noted that the Commission takes into account the surrounding circumstances which may be different in each



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particular case, as being peculiar to the parties, products, consumers and the relevant market.

26. *f. Lastly, it may be noted that the worldwide consumer survey-based consensus is that when copycat packaging is developed for a particular commodity, price becomes the main and sometimes only criterion which affects a consumer's choice of purchase. Furthermore, when price becomes the sole determining factor for the exercise of choice between two products with no other meaningful distinguishing factor existing between such products, it is evidence of the presence of parasitic copying.* In a fairly recent Order dated 30th March 2018, in the Matter of show cause notice issued to M/s Shainal Al-Syed Foods, the Commission endorsed the views of the Delhi High Court, reported as Colgate Palmolive Co v Anchor Health & Beauty Care (Pvt.) Limited (2003) PTC 478 Del, wherein Colgate sought an ad interim injunction to restrain Anchor Health's use of the trade dress and colour combination of red and white in relation to identical products i.e. tooth powder, even though the latter's trademark/tradename was completely different, the Court held that:

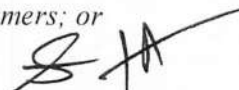
'52. It is overall impression that customer gets as to the source and origin of the goods from visual impression of colour combination, shape of the container, packaging etc.'

...

'If the first glance of the article without going into the minute details of the colour combination, get-up and layout appearing on the container and packaging gives the impression as to deceptive or near similarities in respect of these ingredients, it is a case of confusion and amounts to passing off one's own goods as those of the other with a view to encash upon the goodwill and reputation of the latter'.

26. To cap it all, with regard to Section 10(2)(d) of the Act, we shall be satisfied that the evidence adduced before it is conclusive, if, at first glance:

- (a) *there is complete absence of distinctive features between the trademark/logo of the Complainant and the Respondent(s), or*
- (b) *the striking similarities that exist are misleading enough to cause confusion in the minds of the targeted consumers; or*



(c) the end result of which is unjust enrichment by the Respondents at the expense and to the detriment of the Complainant.

27. Now keeping in view the facts and the conduct/submissions of the parties during the proceedings before us, the Respondents can broadly be divided into three categories, which are as follows:

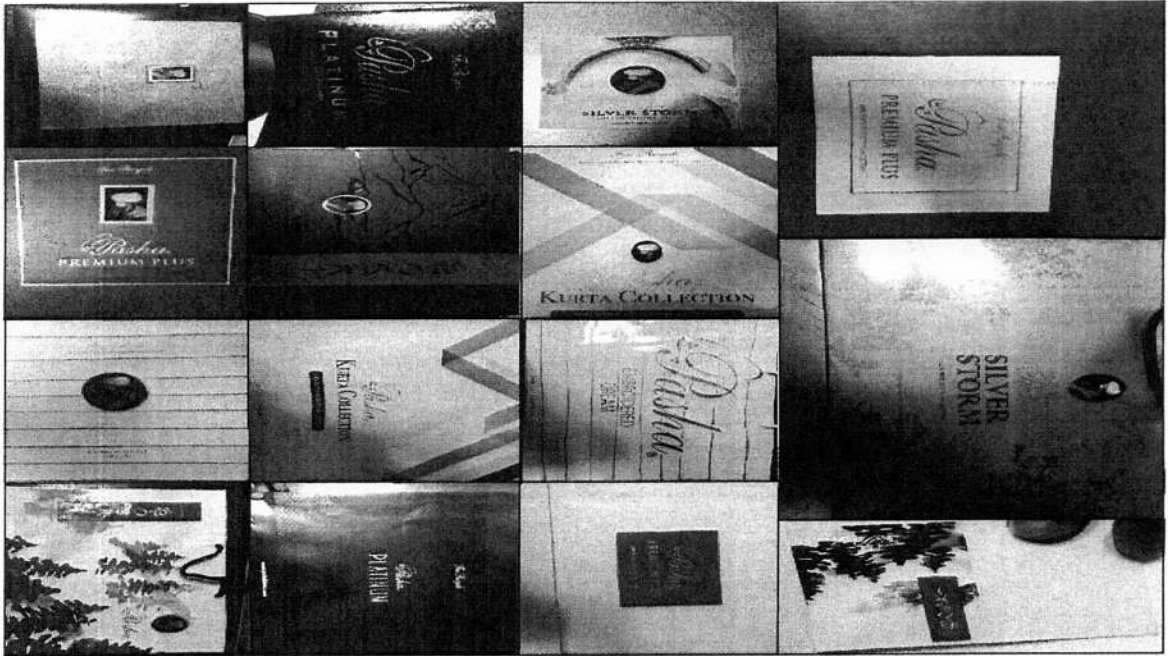
- i. Respondent No. 1 namely, M/s Ahmed Pasha Collection Tailor and Fabrics, allegedly using the font and style of word '**Pasha**' on the billboard on its shop and also selling textile items in containers bearing resemblance to the Complainant's trade dress, is primarily engaged in the business of tailoring and is also selling the said textile items.
- ii. Respondent No. 2, Respondent No. 3, Respondent No. 4 and Respondent No. 5, allegedly using the word '**Pasha**' in name and style of '**Real Pasha**,' '**New Pasha**,' '**Pasha-The Designer Fabrics**,' '**Pasha Collection**' respectively on the deceptively similar containers of their textile products, are engaged in the business of retail sale of textile items in the market.
- iii. Respondent No. 6, Respondent No. 7 and Respondent No. 8, allegedly using the word '**Pasha**' in the name and style of '**Pasha Gold**,' '**Pasha Fabrics**,' '**Pashah**,' '**Pasha Collection**,' '**Pashah Fabrics International**,' and '**Supreme Pasha**,' are engaged in the business of manufacturing deceptively similar containers to be sold in the market.

28. To substantiate its claims and alleged contraventions of Section 10, the Complainant has produced its products packaging and the Respondents' products packaging material, which have been verified in the Enquiry Report. Some of the similarities pointed out by the Complainant and dissimilarities between the Complainant's and the Respondents' trade name and trade dress, noted by us, are as follows:



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Complainant's trademark/trade dress



29. The following paragraphs compare the Complainant's trademark and trade dress to the Respondents' trade name and trade dress in order to assess contravention of Section 10 of the Act by the Respondents.

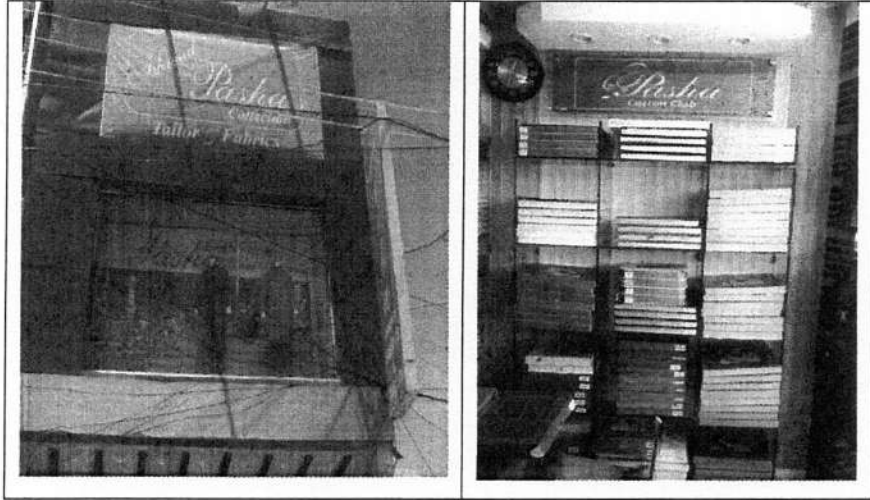
Respondent No. 1:

30. Respondent No. 1, M/s Ahmed Pasha Collection, Tailor & Fabrics, is primarily engaged in the business or occupation of tailoring under the name "Ahmed Pasha Collection Tailor & Fabrics". Moreover, it is active in the business of retail sale of textile items. It has a separate section in its outlet named "Pasha Cotton Club" and uses identical trade dress and colour combination on the boxes/containers of its products as of the Complainant. For comparison, the Respondent's products images are reproduced as

under:



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31. Comparing the Complainant's trademark and its trade dress to the trade name and trade dress used by the Respondent No. 1 lead us to the conclusion that the Respondent No, 1 has been using the deceptively similar trademark and trade dress for marketing and promotion of its product. It has not only imitated the Complainant's trademark on the billboard displayed on its store, but also inside the store it has a separate section where it offers textile items in boxes/containers, which are confusingly similar to those of the Complainant. This clearly manifests the Respondent's intention to appropriate or adopt identical trade name and trade dress to encash upon the reputation and goodwill of the Complainant.

32. Foregoing in view, we hereby conclude that the Respondent No, 1 had been engaged in the unauthorized/fraudulent use of the Complainant's trade name and trade dress in contravention of Section 10(2)(d) read with Section 10(1) of the Act. We are also of the considered opinion that it is highly likely that the consumers would be deceived/misled by false and misleading depictions of the Respondent which constitutes a contravention of Section 10(2)(b) read with Section 10(1) of the Act. We are further of the view that by resorting to the aforesaid practices, the Respondent No. 1 has failed to fulfil its obligation to avoid unfair competition and become unjustly rich by encashing on the goodwill or reputation of the Complainant, hence violation of Section 10(2)(a) read with Section 10(1) of the Act is also made out against the Respondent No. 1.

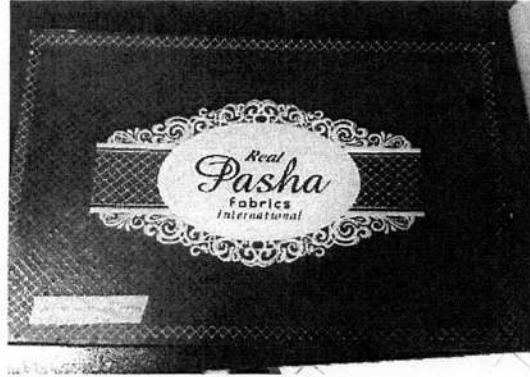
Respondent No. 2

Respondent No. 2, M/s Aamir Cloth House, is engaged in the retail sale of textile items.

An image of the product packaging of the Respondent is reproduced below:



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34. Comparison of the Complainant's trademark "**Pasha Fabrics**" and the Respondent's trade name "**Real Pasha Fabrics Intentional**" leads us to conclude that the Respondent's use of the word "**Pasha**" along with its trade dress contains elements of dishonesty and deception to pass off his products as that of the Complainant and trading upon its reputation in the market.
35. Keeping in view the evidence available on the record We are constrained to concludes that the Respondent has been engaged in the unauthorized/fraudulent use of the Complainant's trade name in contravention of Section 10(2)(d) read with Section 10(1) of the Act. Similar to the case of Respondent No. 1, in the case of Respondent No. 2, we are also of the considered opinion that it is highly likely that the consumers would be deceived by the false and misleading depictions of the Respondent No. 2 which constitutes a contravention of Section 10(2)(b) read with Section 10(1) of the Act. We further hold that the Respondent No. 2 by resorting to the aforesaid practices has failed to fulfill its obligation to avoid unfair competition and encashing on the goodwill or reputation of the Complainant, hence a violation of Section 10(2)(a) read with Section 10(1) of the Act is also made out against the Respondent No. 2.

Respondent No. 3

36. Respondent No. 3, M/s Ramazan Fabrics, is engaged in the retail sale of textile items in the market. An image of the product packaging of the Respondent is reproduced





37. Comparison of the Complainant's trademark "**Pasha Fabrics**" and specifically its "embroidered dreams" series and the Respondent's trade name "**New Pasha Embroidered Series**" leads us to conclude that the Respondent has used the confusingly similar trade name and trade dress. The Respondent's trade dress in this category of embroidered products apart from the infringement of the Complainant's trademark and trade dress is intended to trade upon the reputation of the Complainant in the market.

38. We note that the Respondent No. 3 was duly served with SCN and multiple hearing notices, but it never made any representation either by itself or through an authorized representative, hence we are constrained to proceed *ex-parte* under Section 30(2) (b) of the Act. Based on the above findings, it is concluded that the Respondent No. 3 has been engaged in the unauthorized/fraudulent use of the Complainant's trade name in contravention of Section 10(2) (d) read with Section 10(1) of the Act. We further hold that it is highly likely that the consumers would be deceived by the false and misleading depictions of the Respondent No. 3, which constitutes a contravention of Section 10(2)(b) read with Section 10(1) of the Act. Based on the material available on the record and its comparison *inter se*, we are firmly of the view that the Respondent No. 3 by resorting to the aforesaid practices has failed to fulfill its obligation to avoid unfair competition and encashing on the goodwill or reputation of the Complainant, hence a violation of Section 10(2)(a) read with Section 10(1) of the Act is also made out against the Respondent No. 3.



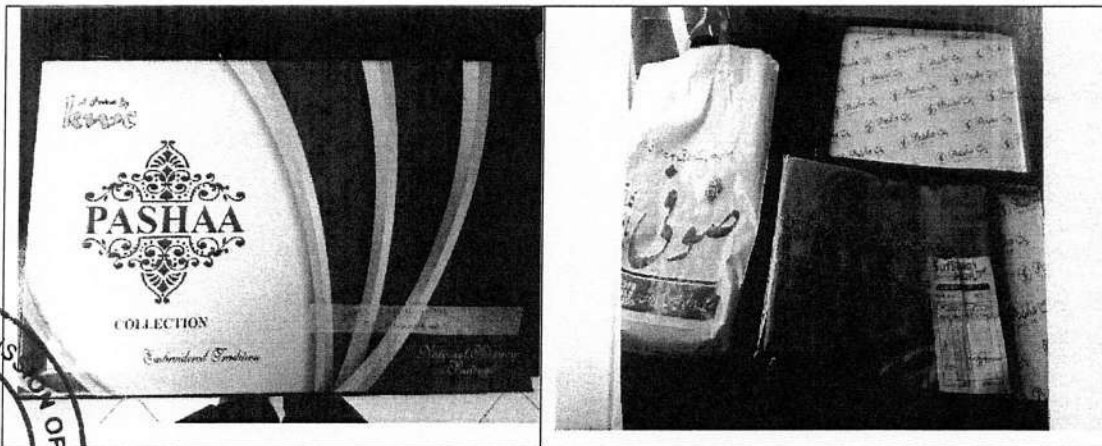
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Respondent No. 4

39. Respondent No. 4, M/s Pasha-The Designer Fabrics, according to the case record was active in the retail sale of textile items in the market until August 2015. According to the Enquiry Report, the Respondent had submitted that it had named its business “*Pasha-The Designer Fabrics*” in its own name *Zulfiqar Ali Pasha* and also because he belonged to the tribe “*Pasha*”. The Respondent No. 4 also submitted that the Complainant’s registered trademark is ‘*Pasha Fabrics*’ whereas he had been using “*Pasha*”. The Respondent No. 4 contended that the Complainant has the right over the use of the word “*Pasha*” in combination i.e. as “*Pasha Fabrics*” instead of the singular use of the word “*Pasha*”. Thus the trade name and logo being used by it were completely different from that of the Complainant.
40. Against this background, we observe that neither the Complainant nor the Enquiry Report provided any substantive evidence to prove that Respondent No. 4 has been imitating the trademark and/or trade dress of the Complainant. Therefore, We deemed it appropriate that in the absence of any concrete and cogent evidence against the Respondent No. 4, we cannot hold it liable for violation of the Act. Accordingly, the SCN issued to Respondent No. 4 is hereby disposed off.

Respondent No. 5

41. Respondent No. 5, M/s Sufi Cloth House, is engaged in retail sale of textile items in the market. An image of the product packaging of the Respondent No. 5 is reproduced below:



Comparison of the Complainant’s trademark “*Pasha Fabrics*” and the Respondent’s above-reproduced product packaging leads us to conclude that the overall impression



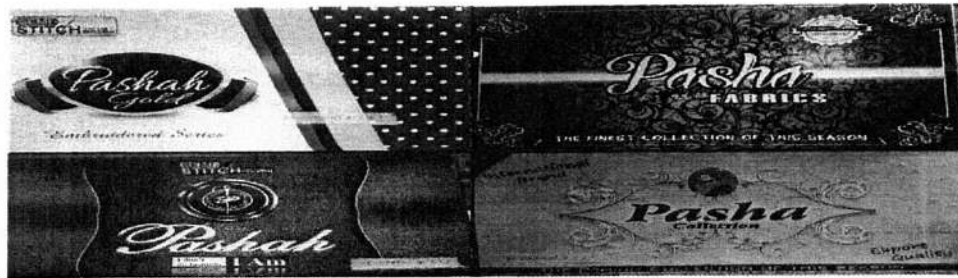
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created by the use of the term 'Pasha Collection' and packaging and appearance of its products are deceptively similar.

43. Based on the above, We conclude that the Respondent No. 5 had been engaged in the unauthorized/fraudulent use of the Complainant's trade name and trade dress in contravention of Section 10(2)(d) read with Section 10(1) of the Act. We, while keeping in view the Order dated 30th March 2018 in the matter of Al-Shainal Al-Syed Foods for deceptive marketing practice, also of the firm view that it is highly likely that the consumers would be deceived/misled by fraudulent depictions of the Respondent, which constitutes a contravention of Section 10(2)(b) read with Section 10(1) of the Act. Based on the material available on the record and its comparison, we further hold that by resorting to the aforesaid practices the Respondent has failed to fulfill its obligation to avoid unfair competition and encashing on the goodwill or reputation of the Complainant, hence a violation of Section 10(2)(a) read with Section 10(1) of the Act is made out.

Respondents No. 6, 7 and 8

44. Respondents Nos. 6, 7 and 8 are engaged in manufacturing and sale of plain and printed boxes/containers and handbags imitating the identical brand name, logo, size, shape, colours, texture, and graphics, among other things. Some of the images of the Respondent's product is reproduced below for reference:



(i) M/s Baba Plastic (ii) M/s Ahmed Plastic & Dabba House



M/s Kausar Brothers Plastic Corner

45. The above-named Respondents are not directly or indirectly engaged in the selling and marketing of textile items. The Respondent (except M/s Ahmed Plastic and Dabba House neither filed a reply to the SCN nor appeared before the Commission to plead his case) have stated they have no desire or intention to deceive or confuse the purchasing public, and that there is absolutely no need for the Respondents to do so. However, we cannot accept the Respondent's contention because they are engaged in the deliberate and slavish copying of the Complainant's trademark and trade dress on their boxes/containers for the packaging and selling of textile items by retailers in the market.
46. Based on the above, we are constrained to conclude that the Respondents have been engaged in the unauthorized/fraudulent use of the Complainant's trade name and trade dress in contravention of Section 10(2)(d) read with Section 10(1) of the Act. Based on the material made available on the record, we are also of the firm view that it is highly likely that the consumers would be deceived/misled by fraudulent depictions by the Respondent of the Complainant's trade mark, trade dress and packaging materials, which constitutes a contravention of Section 10(2)(b) read with Section 10(1) of the Act. Further, by resorting to the aforesaid practices the Respondents have failed to fulfill its obligation to avoid unfair competition and encashing on the goodwill or reputation of the Complainant, hence a violation of Section 10(2)(a) read with Section 10(1) of the Act is made out against the Respondents.

REMEDIES AND PENALTIES

47. Before imposing a penalty and/or passing any directions in the matter at hand, we deem it appropriate to highlight the importance of trademark and trade dress in the modern day business environment. The owners view their marks as vitals business asset that not only encompasses and conveys information about the origin of a product, but also a whole construct of visual imagery and prestige and consumers' association and loyalty with the product. Consumers purchasing decisions are influenced by trademarks and the reputation such brands represent. Anyone who chooses to use a trademark or a trade dress without the owner's permission should be mindful not only of the potential liability for infringement under the trademark laws but also of potential consequences,



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such as violation of Section 10 of the Act, the principal legislation governing to protect public-at-large against deceptive marketing practices.

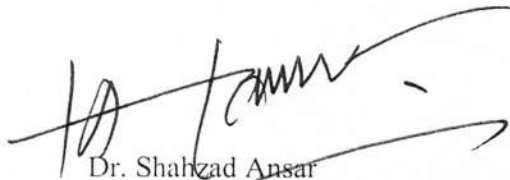
48. All Respondents, except Respondent No. 4, are found to have contravened the provisions of Section 10 of the Act.
49. Respondent No. 1, Respondent No. 2, Respondent No. 5 and Respondent No. 8 appearing before the us have committed not to repeat the contravention and comply with the provisions of Section 10 of the Act as well as any direction given by the Commission under the provisions of Regulation 37 of the CCGER read with Section 38 of the Act. Copies of the Undertakings/Commitments are placed as 'Appendices to this Order'. Foregoing in view, we are inclined to take a lenient view and in pursuance of the aforesaid provisions i.e. Section 38 of the Act read with Regulation 37 of CCGER, we hereby imposes penalty in the amount of PKR 500,000/- (Rupees Five Hundred Thousand Only) each on Respondent No. 1, Respondent No. 2, Respondent No. 5 and Respondent No. 8. The Respondent No. 1, Respondent No. 2, Respondent No. 5 and Respondent No. 8 are hereby directed to deposit the penalty imposed on them with the Registrar of the Commission within sixty (60) days from the date of this Order.
50. Respondent No. 3, Respondent No. 6 and Respondent No. 7 having failed to appear before the Commission are proceeded against under Section 30(2)(b) of the Act and a penalty in pursuance of Section 38 of the Act, in the amount of PKR 750,000/- (Rupees Seven Hundred and Fifty Thousand Only) each on Respondent No. 3, Respondent No. 6 and Respondent No. 7 is hereby imposed. The Respondent No. 3, Respondent No. 6 & Respondent No. 7 are hereby directed to deposit the penalty imposed on them with the Registrar of the Commission within sixty (60) days from the date of this Order
51. Neither the Complainant nor the Enquiry Report has provided us with any evidence to proceed adversely against the Respondent No. 4 in this case. Hence, the SCN issued to Respondent No. 4 is hereby disposed of.

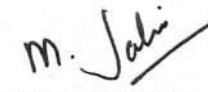
The Registrar of the Commission is directed to send a copy of this order to each of the Respondent for compliance under the provisions of the Act and CCGER. The Registrar of the Commission is further directed to send copies of this order to the Respondents'



respective chamber of commerce and/or trade association for general information in the market. The Respondents are also directed to file within sixty (60) days from the date of this order, to file compliance and not to contravene any provisions of the Act in the future. The Respondents are also directed to refrain from indulging in any form of deceptive marketing practices in the future and is forewarned that repeat violations may attract stricter penalties as per the law.

53. In case of non-compliance with this order, the Respondents shall be made further liable under subsection 3 of Section 38 of the Act to pay an additional penalty amounting to PKR 25,000 (Rupees Twenty Five Thousand Only) per day from the date of this Order.
54. In view of the above, the SCNs are hereby disposed of.


Dr. Shahzad Ansar
Member


Dr. Muhammad Saleem
Member



Islamabad the 27th day of August, 2018.