



**BEFORE THE  
COMPETITION COMMISSION OF PAKISTAN**

**IN THE MATTER OF COMPLAINT FILED BY  
M/s. DHL PAKISTAN (PVT.) LTD**

**(File No. 66/REG/COMP/DHL/CCP/2011)**

**Date of hearing:**

**13<sup>th</sup> March, 2012  
15<sup>th</sup> August, 2012**

**Present:**

Ms. Rahat Kaunain Hassan  
**Chairperson**

Mr. Mueen Batlay  
**Member**

Mr. Shahzad Ansar  
**Member**

**Present for M/s. DHL Pakistan (Pvt.) Ltd:**

Mr. Hassan Irfan Khan,  
Ms. Maria Farrukh Khan, and  
Ms. Habeeba Ahmad  
Advocates of Irfan & Irfan

**Present for  
Respondents:**

Mr. Nauman Anwar Butt,  
Mr. Shoaib Atta, Advocate,  
Mr. Uzair Zain ul Abidin,  
Mr. Abdul Shakoor on behalf  
of Mr. Rehan Sheikh,  
Raja Asir Munir,  
Mr. Asif Iqbal,  
Mr. Salman on behalf of  
ICS Couriers and  
Mr. Malik M. Pervaiz

## ORDER

1. This Order shall dispose of the proceedings arising out of Show Cause Notices No. 26-32 of 2012, issued to Mr. Rehan Sheikh, M/s ICS Express World Wide Mr. Uzair Zain-Ul-Abidin, Mr. Asif Iqbal, Mr. Malik M. Pervaiz of ACCS International World Wide Express and the Chief Executive Officer/Proprietor, Mr. Nauman Anwar Butt and Raja Asir Munir of (hereinafter collectively referred to as the '**Respondents**') for *prima facie* violation of Section 10 of the Competition Act, 2010 (hereinafter referred to as the '**Act**'), which prohibits deceptive marketing practices.

## FACTUAL BACKGROUND

2. M/s. DHL Pakistan (Pvt.) Ltd (hereinafter referred to as the '**Complainant**') filed a complaint with the Competition Commission of Pakistan (hereinafter referred to as the '**Commission**') against the Respondents.
3. In the Complaint it was alleged that the Respondents are fraudulently using Complainant's stylized and artistically created logo/trademark without the Complainant's permission or authorization or consent, which is false, deceptive and misleading and also capable of harming the business interests of the Complainant. Consequently it was alleged that the Respondents have violated the provisions of Section 10 of the Act. A representation of the trademark of the Complainant is depicted below:





4. The Commission initiated an enquiry pursuant to Section 37(2) of the Act by appointing the Enquiry officers to conduct a detailed enquiry on the issues raised in the complaint. The Enquiry officers submitted the Enquiry Report dated 15-02-2012 (hereinafter referred to as the 'Enquiry Report'). The Enquiry Report concluded as follows:

*4.1.1. In the matter of Mr. Rehan Sheikh, the use of complainant's trademark on the billboards/ hoardings/ signboards of his shop located in Sialkot for advertisement purposes, prima facie, give an impression that said shop is the authorized service centre of the Complainant. However, in view of the facts stated above, it appears that no authorization has been obtained from the complainant for such use; hence such use of Complainant's trademark, prima facie, is false/misleading and/or fraudulent and also capable of harming the business interest of the Complainant in violation of Section 10 of the Act;*

*4.1.2. In the matter of Mr. Uzair Zain-ul-Abidin, the use of Complainant's trademark by him on his visiting card, billboards/ hoardings/ signboards of the shops located in Lahore for advertisement purposes, prima facie, gives an impression that said shops are the authorized service centers of the Complainant. However, in view of the facts stated above, it appears that no authorization has been obtained by Mr. Uzair Zain-ul-Abidin from the Complainant for such use; hence such use of Complainant's trademark, prima facie, is false/misleading and/or fraudulent and also capable of harming the business interest of the Complainant in violation of Section 10 of the Act;*

*4.1.3. In the matter of Mr. Asif Iqbal, the use of Complainant's trademark by him on the billboards/ hoardings/ signboards of the shops located in Faisalabad and Lahore for advertisement purposes, prima facie, gives an impression that said shops are the authorized service centers of the Complainant. However, in view of the facts stated above, it appears that no authorization has been*

*obtained by Mr. Asif Iqbal from the Complainant for such use; hence such use of Complainant's trademark, prima facie, is false/misleading and/or fraudulent and also capable of harming the business interest of the Complainant in violation of Section 10 of the Act;*

*4.1.4. In the matter of Mr. Nauman Anwer Butt, the use of logo identical in colour and style of the Complainant's trademark on the billboard/ hoardings/ signboards of the shop located in Lahore for advertisement purposes, prima facie gives an impression that said shop is the authorized service center of the Complainant, which in fact is not correct impression. Hence, such use of mark which is identical to the Complainant's trademark, prima facie, is misleading the consumers and is also capable of harming the business interest of the Complainant in violation of Section 10 of the Act;*

*4.1.5. In the matter of Raja Asir Munir, the use of logo which is identical in colour and style of the Complainant's trademark on the billboard/ hoardings/ signboards of the shops located in Rawalpindi for advertisement purposes, prima facie, gives an impression that said shops are the authorized service center of the Complainant, which in fact is not correct impression. Hence, such use of mark which is identical to the Complainant's trademark, prima facie, is misleading the consumers and is also capable of harming the business interest of the Complainant in violation of Section 10 of the Act;*

*4.1.6. In the matter of Malik M. Pervaiz, the use of Complainant's trademark by him on the billboards/ hoardings/ signboards and the glass wall of the shop located in Lahore for advertisement purposes, prima facie, give an impression that said shop is the authorized service centers of the Complainant. However, in view of the facts stated above, it appears that no authorization has been obtained by Mr. Malik M. Pervaiz from the Complainant for such use; hence such use of Complainant's trademark, prima facie, is false/misleading and/or fraudulent and also capable of harming the business interest of the Complainant in violation of Section 10 of the Act;*

*4.1.7. In the matter of Waqass Ahmad Malik, prima facie, the allegations made against Mr. Waqas Ahmad Malik have not been made out as, the pictures provided by the Complainant are of a different outlet, whose address, company name and contact details does not match with that of Mr. Waqas Ahmad Malik;*

4.1.8. It has been noticed during the enquiry that the ICS Express Worldwide is using Complainant's trademark for advertisement purposes on the billboard/hoarding of its outlet located at LG 18, Hil View Arcade, 5 Davis Road, Lahore, and also on its website www.icsxp.com, prima facie, giving an impression that the said shop is the authorized service center of the Complainant. However, in view of the facts stated above, it appears that no authorization has been given by the Complainant for such use of its trademark. Hence, such use of Complainant's trademark, prima facie, is false/misleading and/or fraudulent and also capable of harming the business interest of the Complainant in violation of Section 10 of the Act.

5. Based on the *prima facie* findings of the Enquiry Report show cause notices were issued to the Respondents on 22-02-2012. The Respondents were required to respond to the show cause notices in writing within fourteen (14) days from the date of show cause notice and to appear before the Commission and avail the opportunity of hearing on 13-3-2012. The show cause notices in their relevant parts alleged as follows:

**Mr. Rehan Sheikh –Respondent No. 1**

9. **WHEREAS**, in terms of the Enquiry Report in general and Part 3.1 read with Para 4.1.1., in particular, prima facie, the Undertaking was fraudulently using the trademark of the Complainant on the billboard of the Premises for advertisement/marketing purposes, without Complainant's authorization, which constitutes 'deceptive marketing practices' and is a violation in terms of clause (d) of sub-section (2) of Section 10 read with sub-section (1) of Section 10 of the Act;

10. **WHEREAS**, in terms of Enquiry Report in general and Part 3.1. read with Para 4.1.1., in particular, the Undertaking by using the trademark of the Complainant on the billboard of the Premises for advertisement/marketing purposes and without Complainant's authorization is, prima facie disseminating false/misleading information to the consumers regarding the services it provides, that is lacking a reasonable basis, related to character, suitability for use, or quality of goods/services in violation of clause (b) of subsection (2) of Section 10 read with subsection (1) of Section 10 of the Act;

**11. WHEREAS**, in terms of Enquiry Report in general and Part 3.1., read with Para 4.1.1., in particular, the unauthorized and fraudulent use of Complainant's trademark by the Undertaking on the billboard of the Premises for advertisement/marketing purposes is, prima facie, capable of harming the business interest of the Complainant in violation of clause (a) of subsection (2) of Section 10 read with subsection (1) of Section 10 of the Act;

**M/s ICS Express World Wide – Respondent No. 2**

**7. WHEREAS**, in terms of the Enquiry Report in general and in particular Part 3.7 read with Para 3.7.4 to 3.7.8 & 4.1.8, prima facie, the Undertaking is using the trademark of the Complainant on the facades, nearby boards and hoardings of the Premises for advertisement/marketing purposes, fraudulently and without Complainant's authorization, which constitutes 'deceptive marketing practices' in terms of subsection (1) of Section 10, in particular, clause (d) of subsection (2) of Section 10 of the Act;

**8. WHEREAS**, in terms of Enquiry Report in general and in particular Part 3.7 read with Para 3.7.4 to 3.7.8 & 4.1.8, the Undertaking by using the trademark of the Complainant without any authorization and fraudulently on its facades, nearby boards and hoardings of the Premises for advertisement/marketing purposes, prima facie gives an impression that the Undertaking's is the authorized dealer and the Premises are authorized service centers of the Complainant hence, disseminating false/misleading information to the consumers regarding the services it provides, that is lacking a reasonable basis, related to character, suitability for use, or quality of goods/services in violation of subsection (1) of Section 10, in particular, clause (b) of subsection (2) of Section 10 of the Act;

**9. WHEREAS**, in terms of Enquiry Report in general and in particular Part 3.7 read with Para 4.1.8, the unauthorized and fraudulent use of Complainant's trademark by the Undertaking on the facades, nearby boards and hoardings of the Premises for advertisement/ marketing purposes, prima facie, is capable of harming the business interest of the Complainant in violation of subsection (1) of Section 10, in particular, clause (a) of subsection (2) of Section 10 of the Act;

**Mr. Uzair Zain-ul-Abidin- Respondent No. 3**

**9. WHEREAS**, in terms of the Enquiry Report in general and in particular Part 3.2 read with Para 4.1.2, prima facie, the Undertaking was using the trademark of the Complainant on its visiting card and on the facades, nearby boards and hoardings of his Premises for advertisement/marketing purposes, fraudulently and without Complainant's authorization, which constitutes 'deceptive marketing practices' in terms of subsection (1) of Section 10, in particular, clause (d) of subsection (2) of Section 10 of the Act;

**10. WHEREAS**, in terms of Enquiry Report in general and in particular Part 3.2 read with Para 4.1.2, the Undertaking by using the trademark of the Complainant without any authorization and fraudulently on its visiting card and on the facades, nearby boards and hoardings of his Premises for advertisement/marketing purposes, prima facie gives an impression that the Undertaking is the authorized dealer and his Premises are authorized service centres of the Complainant hence, disseminating false/misleading information to the consumers regarding the services it provides, that is lacking a reasonable basis, related to character, suitability for use, or quality of goods/services in violation of subsection (1) of Section 10, in particular, clause (b) of subsection (2) of Section 10 of the Act;

**11. WHEREAS**, in terms of Enquiry Report in general and in particular Part 3.2, read with Para 4.1.2, it appears that the unauthorized and fraudulent use of Complainant's trademark by the Undertaking on his visiting card and on the facades, nearby boards and hoardings of the Premises for advertisement/marketing purposes, prima facie, is capable of harming the business interest of the Complainant in violation of subsection (1) of Section 10, in particular, clause (a) of subsection (2) of Section 10 of the Act;

**Mr. Asif Iqbal- Respondent No. 4**

**9. WHEREAS**, in terms of the Enquiry Report in general and in particular Part 3.4 read with Para 4.1.3, prima facie, the Undertaking was using the trademark of the Complainant on the facades, nearby boards and hoardings of the Premises for advertisement/marketing purposes, fraudulently and without Complainant's authorization, which constitutes 'deceptive marketing practices' in terms of subsection (1) of Section 10, in particular, clause (d) of subsection (2) of Section 10 of the Act;

**10. WHEREAS**, in terms of Enquiry Report in general and in particular Part 3.4 read with Para 4.1.3, the Undertaking by using the trademark of the Complainant without any authorization and fraudulently on its facades, nearby boards and hoardings of the Premises for advertisement/marketing purposes, prima facie gives an impression that the Undertaking's is the authorized dealer and the Premises are authorized service centres of the Complainant hence, disseminating false/misleading information to the consumers regarding the services it provides, that is lacking a reasonable basis, related to character, suitability for use, or quality of goods/services in violation of subsection (1) of Section 10, in particular, clause (b) of subsection (2) of Section 10 of the Act;

**11. WHEREAS**, in terms of Enquiry Report in general and in particular Part 3.4 read with Para 4.1.3, the unauthorized and fraudulent use of Complainant's trademark by the Undertaking on the facades, nearby boards and hoardings of the Premises for advertisement/ marketing purposes, prima facie, is capable of harming the business interest of the Complainant in violation of subsection (1) of Section 10, in particular, clause (a) of subsection (2) of Section 10 of the Act;

**Mr. Malik M. Pervaiz- Respondent No. 5**

**9. WHEREAS**, in terms of the Enquiry Report in general and in particular Part 3.6. read with Para 4.1.6, prima facie, the Undertaking was using the trademark of the Complainant on the facades, nearby boards and hoardings of the Premises and displaying posters bearing Complainant's trademark on the glass wall of the Premises for advertisement/marketing purposes, fraudulently and without Complainant's authorization, which constitutes 'deceptive marketing practices' in terms of subsection (1) of Section 10, in particular, clause (d) of subsection (2) of Section 10 of the Act;

**10. WHEREAS**, in terms of Enquiry Report in general and in particular Part 3.6 read with Para 4.1.6, the Undertaking by using the trademark of the Complainant without any authorization and fraudulently on the facades, nearby boards and hoardings of the Premises and office premise and displaying posters bearing Complainant's trademark on the glass wall of the Premises for advertisement/marketing purposes, prima facie gives an impression that the Undertaking is the authorized dealer and his Premises is authorized service centre of the Complainant hence, disseminating false/misleading information to the consumers



*regarding the services it provides, that is lacking a reasonable basis, related to character, suitability for use, or quality of goods/services in violation of subsection (1) of Section 10, in particular, clause (b) of subsection (2) of Section 10 of the Act;*

**11. WHEREAS**, *in terms of Enquiry Report in general and in particular Part 3.6 read with Para 4.1.6, it appears that the unauthorized and fraudulent use of Complainant's trademark by the Undertaking on the facades, nearby boards and hoardings of the Premises, prima facie, is capable of harming the business interest of the Complainant in violation of subsection (1) of Section 10, in particular, clause (a) of subsection (2) of Section 10 of the Act;*

**Mr. Nauman Anwar Butt- Respondent No. 6**

**9. WHEREAS**, *in terms of Enquiry Report in general and in particular Part 3.5 read with Para 3.1.4, the Undertaking by using a logo, identical in colour and style of the trademark of the Complainant on the facade, nearby boards and hoardings of the Premises for advertisement/marketing purposes is, prima facie, disseminating false/misleading information to the consumers regarding the services it provides, that is lacking a reasonable basis, related to character, suitability for use, or quality of goods/services in violation of Section 10, in particular clause (b) of subsection (2) of Section 10 of the Act;*

**10. WHEREAS**, *in terms of Enquiry Report in general and in particular Part 3.5 read with Para 4.1.4, using a logo on the facade, nearby boards and hoardings the Premises which is identical to the trademark of the Complainant even in colour scheme for advertisement/marketing purposes is, prima facie, capable of harming the business interest of the Complainant in violation of Section 10, in particular, clause (a) of subsection (2) of Section 10 of the Act;*

**Mr. Raja Asir Munir- Respondent No. 7**

**9. WHEREAS**, *in terms of Enquiry Report in general and in particular Part 4.6. read with Para 4.1.5, the Undertaking by using a logo, identical in colour and style of the trademark of the Complainant on the facade, nearby boards and hoardings of the Premises for advertisement/marketing purposes is, prima facie, disseminating false/misleading information to the consumers regarding the services it provides, that is lacking a reasonable basis, related to character, suitability for use, or quality of*

*goods/services in violation of Section 10, in particular clause (b) of subsection (2) of Section 10 of the Act;*

**10. WHEREAS**, *in terms of Enquiry Report in general and in particular Part 3.6 read with Para 4.1.5, using a logo on the facade, nearby boards and hoardings the Premises which is identical to the trademark of the Complainant even in colour scheme for advertisement/marketing purposes is, prima facie, capable of harming the business interest of the Complainant in violation of Section 10, in particular, clause (a) of subsection (2) of Section 10 of the Act;*

6. In response to the show cause notices, Mr. Rehan Sheikh, ICS Express World Wide and Mr. Asif Iqbal did not file their written reply to the Show Cause Notices. However, Mr. Rehan Sheikh and Mr. Asif Iqbal in response submitted the same reply which was submitted by them during the enquiry under Section 37. The submission made in the written responses are summarized as follows:

**(a). Mr. Rehan Sheikh-Respondent No. 1:**

- (i). *DHL Logo was displayed with the theme: “We are providing international Courier services through First Flight, Skynet, Aramex, APX & DHL.”*
- (ii). *DHL Logo was displayed with the prior written approval of authorized local representative working at DHL Sialkot.*
- (iii). *The offending logo has been removed from display. The same can be verified by appointed Enquiry Officers.*

**(b) M/s ICS Courier - Respondent No. 2, filed its reply at a much belated stage dated 13-08-2012:**

- (i). *ICS is not in receipt of the Show Cause Notice, however a copy of the enquiry report along with intimation of proceedings was received by ICS on 10-09-2012.*
- (ii). *It is unfair and unjustified and against the basic principle of justice to initiate proceedings without issuance of Show Cause Notice. Prior to 15-02-2012 no complaint had been filed by the complainant against ICS. It appears as if the name of ICS has been added to the enquiry report at a later stage.*

- (iii). *The nature of courier service is such that service providers use different courier networks as per the wish of the customer. For this reason, they display posters and banners of these courier networks, in the same way that travel agents use posters and banners of different airlines at their outlets.*
  - (iv). *ICS has never used the stationary of DHL, and has never had the intention of damaging business market of the complainant. Currently, DHL relies on individual courier operators for up to 70% of its business.*
  - (v). *Proceedings initiated against ICS may be dropped, and ICS commits that the logo of DHL will be removed from ICS's banners and billboards if the Commission passes an order requiring ICS to do so.*
- (c). **Mr. Uzair Zain-ul-Abidin – Respondent No. 3:**
- (i). *Mr. Uzair submitted that his reply to the enquiry proceedings may be treated as integral part of reply to the show cause notice;*
  - (ii). *It has been stated that the authenticity of the images in the enquiry report has been denied.*
  - (iii). *He denied the authenticity of photographs. He also denied that he has any outlet on PECO road and this fact can be confirmed by sending any person at PECO road. He submitted that many other outlets are also using DHL trademarks so this possibility cannot be ruled out that the enquiry officer might visit the shop of any other person situated at PECO road,*
  - (iv). *It has been stated that the affidavits of the employees of neighboring shops in support of the above contentions have been annexed. However, the reply was not supported with any document especially the affidavits.*
- (d). **Mr. Asif Iqbal – Respondent No. 4:**
- (i). *That the Act does not apply because he is not fraudulently using Complainants trademark.*
  - (ii). *That the Complainant mentions name of Mr. Asir Iqbal in the complaint, who is not working at the site therefore, the complaint is not proceed able and based on self presumption.*

- (iii). *On the facts of the complaint he stated that he is not using the Complainant company logo.*
  - (iv). *On allegations of using the logo of DHL, Mr. Asif submitted that he is not using Complainant logos and submitted that the allegations are self presumed and concocted.*
  - (v). *That there is no truth to the image annexed with the complaint which is the photograph of outlet because he has no concern with said outlet.*
- (e). **Malik M. Pervaiz – Respondent No. 5:**
- (i). *The Complaint upon which the inquiry is being conducted is false, frivolous, vexatious and based on insufficient facts, and Mr. Malik neither engages in deceptive marketing nor deceives any entity. The complaint amounts to campaign of victimization and harassment since Mr. Malik never violated copy right or trademark of Complainant.*
  - (ii). *Mr. Malik has no knowledge of any such special laws, and has no intention of deceiving any person in the universe.*
  - (iii). *The alleged visit is made up and the pictures are fake, and the entire exercise is a plan to pressurize and harass Mr. Malik M. Pervaiz.*
  - (iv). *Mr. Malik never distributed false or misleading information to the effect that he is authorized or permitted by the complainant or principle trade mark owner. Mr. Malik is in no position to harm the business interests of complainant. Mr. Malik is ready to satisfy DHL regarding any misunderstandings in this regard.*
- (f). **Nauman Anwar Butt – Respondent No. 6:**
- (i). *Mr. Butt submitted that his firm is registered and Registrar has not been made party who registered the same. Therefore, complaint cannot proceed.*
  - (ii). *He further submitted that Section 10 is not applicable to his firm as Registrar has not been made party who can cancel his license. He submitted that 2010 CLD 462 can be consulted which is relate to the Act. Allegations in para 2.4.1 of the Enquiry Report are illegal because the document is registered unless is cancelled, therefore, his business is legal. Commission initiated proceedings without*

*any lawful authority and any order under Section 31(c) would be illegal.*

(iii). *Moreover, the complaint has not been properly instituted, signed and verified by competent and duly authorized person. The resolution of Board of Directors appended with the complaint is illegal, unlawful and has no legality in the eye of law because it has no signatures, names and designations of DHL board of governors/directors which was necessary. The said argument is substantiated by the case law **PLD 1971 SC pg 550.***

(iv). *He further submitted that he has already filed his comments/reply to the complaint on 11-10-2010 and 18-10-2010 and those may be read as a part of this reply as well.*

(g). **Raja Asir Munir – Respondent No. 7:**

(i). *Mr. Asir submitted that after 9 months of starting of his business he came to know that some other persons are doing the business with the name and style of “DHS” and I am not authorized to do the same business with the same name. Therefore, he stopped the using of name “DHS” and replaced it with IDHS which is not identical with “DHL”,*

(ii). *He submitted that enquiry was conducted before October 2011 when he was using the name and style of “DHS” and thereafter he changed his business name when he was informed by some persons that he is not authorized to use the trademark “DHS”,*

(iii). *He denied that he never used the “DHL” trade mark or logos in connection or in relation to the undertaking business.*

## **HEARINGS**

7. In pursuance to the show cause notices hearing was held on 13-03-2012. The hearing was attended by Mr. Hasan Irfan Khan and Ms. Maria Farrukh Khan, Advocates of Irfan & Irfan Associates, representing the Complainant. It was noted that out of seven Respondents only two i.e. Mr. Nauman Anwer Butt and Mr. Uzair alongwith his counsel Mr. Shoaib Atta appeared before the Commission.

8. The Bench inquired from the Registrar of the Commission regarding service of the notices. The Registrar informed that all the notices were duly served and the courier receipts in this regard are available with the office.
9. Mr. Hasan Irfan Khan, counsel for the Complainant informed the Commission that DHL is a world renowned trademark, and that Complainant was a wholly owned subsidiary of DHL International. He added that the Complainant had been operating in Pakistan for several years and had generated considerable goodwill. All of the Respondents in this case had opened up their own courier services, to which the Complainant have not objection. He added that, the Respondents had been using the DHL logo on their boards, and even those that were operating under their own name were displaying the DHL logo very prominently. He submitted that the whole purpose of this exercise was to create a linkage with the Complainant and benefit from the goodwill attached to the trademark of the Complainant, either as authorized dealers or as licensees of the Complainant. Mr. Khan was asked as to whether the Respondents' rates were similar to that of the Complainant. He responded that he was able to find one case, and in that case the rates were the same. Mr. Khan concluded by praying for harsh penalization as a means of deterrence, and also rectification.
10. During the hearing, the Bench inquired as to whether the Complainant knew the Respondents' size of operations. Mr. Khan informed the Bench that the Respondents before the Commission were major operators, and gave the example of Mr. Uzair Zain ul Abidin, who had three outlets in operation, including one at the prime location of Lahore Mall Road. He further stated that the operators who have posed themselves as small businesses during the course of proceedings are in fact, large scale operators and are thus misleading the Commission.
11. Mr. Khan pointed out that the first party nominated as a Respondent was Mr. Rehan Sheikh, who had admitted that he had used the DHL logo. Mr. Rehan Sheikh had stated that he had obtained prior verbal approval from a representative

of the Complainant; however, the Complainant denies the same and no proof in this regard was presented by him.

12. The Bench also posed a question regarding the standard of operating procedure of the Complainant, specifically whether a person could act as a facilitator in collecting packages and parcels to be passed on to the Complainant for delivery, or whether such action would need to be cleared by the Complainant itself. The counsel for the Complainant responded that nobody was authorized to do so. He further stated that in order to facilitate deliveries, the Complainant operated approximately 49 service outlets with the support of approximately 100 vehicles and 500 employees across the country.
13. Mr. Shoaib Atta, Advocate, representing Mr. Uzair, submitted that in his reply to the Show Cause Notice, he had categorically denied that the pictures contained in the Enquiry Report were that of Mr. Uzair's outlet. Further, he stated that the pictures contained in the Enquiry Report were ambiguous as they did not contain date and time stamps. He was informed by the Bench that the pictures mentioned in the enquiry report were taken by one of the enquiry officer who visited these outlets in order to verify the facts and was also informed that no attempt to mislead the Commission be made as it would entail serious consequences. He was asked to rebut the pictures with concrete evidence in response. Mr. Shoaib submitted that the outlet at Peco Road Lahore had been closed for six months and that he had stopped using the DHL logo on his advertisements approximately 4 years ago, and that the Enquiry Report incorrectly represented that it was a going concern. Mr. Shoaib was asked to provide the proof of their winding up and also to provide evidence for discontinuation of the use of the Complainant's trademark against the findings of the Enquiry Report. Mr. Uzair on his own submitted that he will submit the affidavits of his employees in this regard and that of the nearby shopkeepers. Mr. Uzair was asked as to whether he was currently in the courier business; the response was in the affirmative. The Bench was informed that he operated under the name of 'Hawk' couriers and 'DHI' courier service.

14. Mr. Uzair then submitted that there were approximately 60 outlets using the DHL logo in Lahore without authorization, whereas only 7 had been nominated as Respondents in the current enquiry. The Bench asked for a list of the other outlets. Mr. Uzair was also informed that the Commission would need details of when and why he had stopped using the DHL logo in order to verify the submissions made.
15. Mr. Nauman Anwar Butt mainly relied on the written reply filed in response to the show cause notice and submitted that there is history behind the complaint. In fact the Complainant started their business in the 1990s and owing to failure of their operations the Complainant left Pakistani market. Thereafter, they re-launched their operations and asked other small courier shops like that of the Respondents to collect parcels on behalf of the Complainant. The parcels were collected by the ex-employees of the Complainant and thereafter were passed on to the Complainant at discounted rates. Since, the Complainant has established itself now therefore, they are targeting the Respondents who in fact helped and assisted the Complainant in establishing their business. He was asked to provide the names or the written agreement in this regard, he candidly informed that there exists no such agreement and such practices are carried out based on oral arrangements. He also submitted that the instant complaint has not been filed by a competent person as the board resolution does not bear any signatures of the board of directors and also relied on **PLD 1971 SC pg 550.**
16. Mr. Uzair and Mr. Nauman Anwar Butt were required by the Bench to submit (a) receipts of parcels that they had sent using DHL services, and (b) the total volume of documents sent via DHL, within ten (10) days from the date of the hearing. The aforementioned documents were provided only by Mr. Uzair on 22-03-2012 and were also forwarded to the Complainant for their comments. The Complainant filed its written arguments on 17-04-2012. However, we note that Mr. Uzair did not provide any evidence in support of the claim that he has closed the outlet at Peco Road and has discontinued the use of DHL logo.



17. The written arguments filed by the counsel for the Complainant against the Respondents are summarized as follows:

- (i). *The Respondents have engaged in deceptive marketing practices which are defined in Section 10 of the Act;*
- (ii). *The Respondents have been fraudulently using the trademark DHL and have been encashing the good will and reputation of the Complainant. DHL has established its good will for more than forty years which is used openly, extensively and continuously all over the world. Consumers as well as the general public associate the trademark DHL and DHL logo with high quality and services originating from DHL companies and in the present cases the Respondents have not been authorized/ licensed to use the trademark. Every Respondent is deceiving the public by using the Complainant's trademark along with color scheme, design and getup.*
- (iii). *The Commission has defined the term "false" in the Zong Order and the same was reproduced in the Paints order which went to establish that "an advertisement is deceptive if it has the elements of being misleading, capable of misleading, capable of giving the wrong impression or idea and tends to misinform or misguiding owing to vagueness or any omission."*
- (iv). *In Zong Order the Commission refers to the United States Unfairness Policy Statement in 1980 which was followed by the Deception Policy Statement in 1984 also issued by FTC. Under the framework a practice, representation omission is deceptive if*
  - (a). *the representation or omission is likely to mislead consumers acting reasonably; and*
  - (b). *If that representation is material to consumers.*
- (v). *US FTC elaborated this statement with respect to deceptive marketing and stated that: "the basic question is whether the act or practice is likely to affect the consumers conduct or decision with regard to a product or service. If so, the practice is material, and consumer injury is likely, because consumers are likely to have chosen differently but for the deception". Similarly in the case of Complainant the consumers were made aware of the fact that the Respondents were not affiliated with DHL in any manner what so ever, they would have chosen differently but for the deception and would not have availed Respondent's services, but of the Complainant.*
- (vi). *This point was also substantiated in the Paints Order. It was held that "Accurate disclosure of important terms and conditions allows consumers*

to compare services/products offered by one or multiple providers and weigh the different terms being offered in making decisions about purchase.” The point was also verified in the case of *International Harvester Co.* 104 F.T.C 949 at pg 1058.

- (vii). *Analogy can be drawn with arguments stated in Zong&Ufone Order where Commission was of the view that burden of evidence should be on the undertaking not on the buyer.*
- (viii). *Arguments were raised by the Respondents that they had verbal authorization from DHL; that they are small business; their livelihood is based on their business and there are other unauthorized outlets using the DHL logo etc. No evidence has been brought to establish any of these false accusations. The concept of verbal authorizations is self concocted and no such authorizations were provided by DHL and ignorance of law cannot be used as an excuse.*
- (ix). *DHL trademark and logo are known through the world since the Complainant has incurred considerable expenses in advertising and promoting its trademark DHL and DHL logo through various media, both print and electronic, having circulation/viewer ship throughout the world and in Pakistan. The Respondents contention that they have no knowledge about the Act or any such type of special laws is not a valid justification. Moreover, the fact that they lacked the intention to deceive any person and in turn this plea of innocence cannot be raised as a valid defense. This can be substantiated with the help of case law i.e. **PLD 2010 SC 19 Sikandar Hayat v/s Haseena Sheikh** at Pg 29 F it was held that “ignorance of the law is no excuse...”, in **SCMR 1999 799 Mst. Musarrat Bibi v/s Tariq Mahmood Tariq** at pg 803 F- it was held that “ignorance of law could not be entertained as a good ground for non compliance of law.”, **PLD 2007 Supreme Court 362 Malik Umar Aslam v/s Sumera Malik** and another- The appellant could not move application for amendment of verification clause immediately after the filing of the written statement by respondent No. 1 because there was no such objection nor issue was framed in this behalf. In this context, suffice to observe that ignorance of the law is no excuse.*
- (x). *Plea of innocence not a valid defence under civil law: In 2000 SCMR 1274: Muhammad Ishaq v/s District and Session Judge, Jhang at Pg 1276 A- it was held that*

*“Civil servant was a new entrant and had a short stay in the department but this fact could not absolve him of the responsibility – Service tribunal had rightly concluded that it was impossible to believe that civil servant was residing*

*in an island of innocence and that he was unaware of any malpractice”.*

**PLD 2001 Lahore 260 Kamran Asghar v/s Board of Intermediate and Secondary Education, D.G. Khan** at Pg 267 B and 270 F – *it was held that candidate consciously choose the path of deception for the purposes of improving his marks in the examination hoping that he would get away with it. Now that he has been caught and his culpability has been brought home, he could not be allowed to take refuge behind artificial veil of innocence.*

- (xi). *In view of foregoing it should be emphasized that the Respondents cannot even truthfully claim to be innocent as they were very well aware of their deception and unjust enrichment on the shoulders of the Complainants reputation.*
- (xii). *The counsel for the Complainant concluded his arguments by praying for harsh penalization as a means of deterrence, and also rectification.*

18. Since, in the earlier hearing despite service of notice to all Respondents only two out of seven Respondents were present; therefore, the Bench deemed it appropriate to schedule another hearing in order to provide an opportunity of hearing to the remaining Respondents. Accordingly, through the notice dated 02-08-2012, another hearing was scheduled for 09-08-2012 and the Respondents who had not filed the replies to the show cause notice i.e. Mr. Rehan Sheikh (Respondent No. 1), M/s ICS Express World Wide Courier (Respondent No. 2) and Mr. Asif Iqbal (Respondent No. 3) were directed to file the written reply. Since, no reply was received from the Respondent, therefore, vide hearing notice dated 08-08-2012 the hearing was again rescheduled for 15-08-2012 and the Respondents were informed that this is the ‘last and final’ opportunity of hearing.

19. On 15-08-2012, Ms. Maria Khan and Ms. Habeeba Ahmad, Advocates of Irfan & Irfan Associates, representing the Complainant attended the hearing. The Respondents present in particular Mr. Abdul Shakoor, Mr. Asif Iqbal and Mr. Salman of ICS Courier were asked why they have not filed the reply to the show cause notice and allowed a further period of seven days to file their reply. It was submitted by the Respondents that they want to comply with the directions of the

Bench and will submit their reply. The Respondents present at the hearing assured the Bench compliance to the directions issued by the Bench. On the other hand the Complainant's counsels submitted that the Respondents so far have failed to negate the allegations leveled against them with any evidence. It was also submitted by them that harsh penalty may be imposed on them as they have violated the provisions of the Act and without penalty no deterrence would be caused.

20. Pursuant to the direction given by the Bench in the hearing, ICS Courier filed their reply to the show cause notice, however, Mr. Asif Iqbal and Mr. Rehan Sheikh submitted their earlier responses which they had filed before the enquiry officers during the enquiry.

### **ISSUES**

21. In view of the submissions made before us in the subject proceedings, following issues need deliberation:

(i). *whether the complaint was competently filed through a duly authorized person?*

(ii). *whether the Respondents have acted in contravention of the provision of subsection (1) of Section 10 of the Act in general and in particular:*

*(a). are disseminating false/misleading information to the consumers lacking reasonable basis regarding inter alia in terms of clause (b) of subsection (2) of Section 10 of the Act,*

*(b). are fraudulently using the trademark of the Complainant in violation of clause (d) of subsection (2) of Section 10, and*

*(c) such practice is capable of harming the business interest of the Complainant in violation of clause (a) of subsection (2) of Section 10 of the Act?*

## **ANALYSIS**

*(i) whether the complaint was competently filed through a duly authorized person?*

22. In this regard only Mr. Nauman Anwer Butt (Respondent No. 6) has alleged that the complaint has not been filed by a competent person. He has argued before us that the board resolution does not contain the names and designations of the board of directors. He has placed reliance on **PLD 1971 SC 550 titled Khan Iftikhar Hussain Khan of Mamdoot vs. M/s Ghulam Nabi Corporation Limited**, wherein the August Supreme Court observed that “Suit on behalf of Company by a person (Director-In-charge of Company)- is not competent unless he is so authorized by a resolution passed by Company's Board of Directors”.

23. We are conscious of the fact that the Complainant is admittedly a legal person being a company limited by shares. It is registered as a company with the Securities and Exchange Commission of Pakistan under the provisions of the Companies Ordinance, 1984. Pleadings in legal proceedings initiated on behalf of juristic persons can be signed by any person (i) authorized to do so under the Articles of Association of the Company or (ii) authorized by its board of directors through a resolution passed in a duly convened meeting of such board or (iii) authorized to do so through a general power of attorney issued under the authority of Board of Directors given in a duly convened meeting of the Board.

24. We note that the present complaint has been filed by its Company Secretary namely Mr. Muhammad Hanif Idrees. The complaint not only bears the signature but also bears the seal of the Complainant undertaking. A certified true copy of the board resolution no. 12/2011 by circulation passed on 17-08-2011 has also

been annexed with the complaint. In the said Board Resolution along with the Company Secretary, Mr. Sarfaraz Siddiqui the Chief Executive Officer of the Complainant have been “authorized individually to file complaints, suits, complaints, petitions for an on behalf of the Company in the matter of unauthorized / misuse of trademark DHL and DHL logo and, to engage and instruct lawyers and sign their power of attorney, verify and sign pleadings, complaints, petitions, requests, affidavits and any and all documents required to be filed, give evidence and produce documents for an on behalf of the Company before the Competition Commission of Pakistan and any and all courts, arbitrators, tribunal, forum or administrative authority in relation to the said matter”.

25. We also note that the instant complaint does contain the signature of the authorized person of the Complainant by virtue of Board Resolution No. 12/2011 passed through circulation on 17-08-2011 and seal of the Complainant is also affixed on the complaint. The power of attorney of the Counsel is also duly signed by Mr. Muhammad Hanif Idrees, Company Secretary of the Complainant, who is duly authorized in this regard.
26. Therefore, we do not find any merit in the objection that the complaint is not filed by an authorized representative, reliance in this regard can be placed on **Messrs GMS Lines Co. Ltd. vs. Messrs Adamjee Insurance Company Limited, 2010 CLD 327** wherein it was observed that where power of attorney or an extract of Resolution of the Board of Directors was placed on record or annexed with the complaint, burden of proving that such power did not exist, was upon the defendant. Mr. Nauman Anwer Butt has failed to provide anything to the contrary and in fact has solely relied on the judgment, which we are of the view, supports the case of the Complainant.

27. Prior to deliberating on the main issue, we deem it appropriate to deal with certain objections raised by the Respondents. Some of the Respondents during the hearing denied the authenticity of the pictures relied upon in the enquiry report, and stated that they had discontinued the use of DHL trademark since 2008. However, when they were informed that the above images were also verified by one of the enquiry officer who visited the outlets during the enquiry in the September 2011, they were unable to offer any satisfactory response. Mr. Uzair on his own had volunteered to submit the affidavits of his employees in this regard and of the nearby shopkeepers. He was specifically asked to provide the documentary evidence in rebuttal as a proof within ten (10) days from the date of the hearing. Notwithstanding that ample time was given, nothing was placed on the record to support the submissions to this effect.
28. During the course of hearing Mr. Butt (Respondent No. 6) submitted that the Complainant has encouraged using its trademark, but now they are penalizing the Respondent. Regarding the legitimacy of the images, he denied the authenticity of the images/pictures taken and submitted that the same have been created to implicate. Again nothing was brought forward to substantiate such claims.
29. It was also submitted by Mr. Asif Iqbal (Respondent No. 4) that the Complainant mentions the name "Asif Iqbal" in the complaint, who is not working at the site therefore; the complaint cannot be proceeded with. On the other hand the Complainant has submitted that the complaint submitted was received by Mr. Asif Iqbal on the address provided by the Complainant. The same could have been returned, however, it was accepted. We also note that the enquiry officers have found the website i.e. <http://relianceintl.com.pk/> on which the name of Mr. Asif Iqbal is mentioned as Manager Sales. It further needs to be appreciated that the logo of "Reliance Intl. Express" mentioned on the aforesaid website is also mentioned on the billboard of the outlet run and operated by Mr. Asif Iqbal on which the complaint was delivered. Therefore, we are left with no option but to agree with the findings of the enquiry report in this regard that the name 'Asif Iqbal' was a typographic mistake and in fact the complaint is against Mr. Asif

- Iqbal. It is also relevant to mention here that while the Complaint and the rejoinder by the Complainant are duly supported with duly sworn in affidavits, however, the Respondents are primarily making verbal or written assertions. Moreover, the enquiry findings are *prima facie* endorsing the allegations of Complainant based on the visits to the outlets of the Respondents.
30. One common objection taken by the Respondents is that *'they have no knowledge about such type of special laws i.e. Competition Act and that they had no intention to deceive any person in any manner whatsoever'*. It has also been submitted that the complaint has been filed for extraneous purposes and with *mala fide* intention and is tantamount to victimization and harassment.
31. In this regard the counsel for the Complainant has submitted that DHL trademark and logo are known worldwide. The Complainant has incurred considerable expenses in advertising and promoting its trademark through various media, both print and electronic, having circulation/viewer ship throughout the world and in Pakistan and through its quality service has earned a certain stature in rendering courier services. Therefore, the Respondents contention that they have no knowledge about the Act or any such type of special laws is not a valid justification.
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 can not be accepted as a valid



justification or defense. We also fail to understand as to what ulterior motives the Complainant could possibly derive from the making the subject complaint before us. The Complainant in our view is within its right to seek and pursue protection of its rights conferred under the law.

34. Having addressed these preliminary objections of the Respondents, we now proceed to deliberate on the core issue, i.e.

(ii). *whether the Respondents have acted in contravention of the provision of subsection (1) of Section 10 of the Act in general and in particular:*

(a). *are disseminating false/misleading information to the consumers lacking reasonable basis regarding inter alia in terms of clause (b) of subsection (2) of Section 10 of the Act,*

(b). *are fraudulently using the trademark of the Complainant in violation of clause (d) of subsection (2) of Section 10, and*

(c) *such practice is capable of harming the business interest of the Complainant in violation of clause (a) of subsection (2) of Section 10 of the Act?*

35. For the purposes of dealing with the instant issues, it will be useful to briefly discuss and compare the “DHL” trademark and the marks used by the Respondents. Keeping in view the facts and circumstances as well as the conduct of the parties during the proceedings before the Commission, the Respondents can be broadly divided in four categories, which are as follows:

(i). Respondent No. 1 & 2 namely Mr. Rehan Sheikh and ICS Couriers, respectively, who were allegedly using ‘DHL’ trademark and have discontinued its use subsequent to the receipt of notice of the Commission,

- (ii). Respondent No. 3 namely Mr. Uzair Zain-ul-Abidin who allegedly used ‘DHL’ trademark and has not stopped using the same, however, the courier packages are ultimately being sent through the Complainant;
- (iii). Respondent No. 4 & 5 namely Mr. Asif Iqbal and Mr. Malik M. Pervaiz, respectively, who have allegedly used ‘DHL’ trademark and have not provided any proof of its discontinuation or provided any evidence that the couriers were passed on to the Complainant;
- (iv). Respondent No. 6 & 7 namely Mr. Nauman Anwer Butt and Raja Asir Iqbal, respectively, who allegedly continue using the marks which are deceptively similar to ‘DHL’ trademark and have been carrying out business in their own names.

36. In the subsequent paragraphs the images of the shops and billboards of the Respondents belonging to the first category are compared to the trademark of the Complainant. The Respondents in the first category are Mr. Rehan Sheikh (Respondent No. 1) and M/s ICS Courier (Respondent No. 2). The image comparison is given as under:

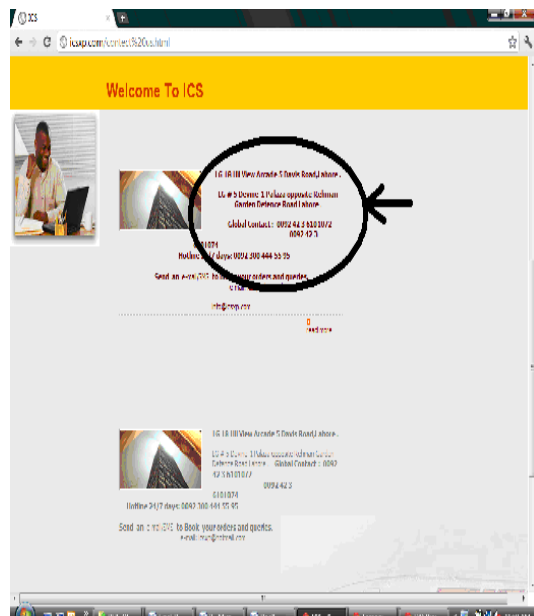
**Complainant’s Trademark**



**Image of the Billboard of Mr. Rehan’s Shop**



The images of brochures, billboards displayed outside the Shop and the website of ICS Courier



37. Comparison of the “DHL” trademark and the marks used by the Respondents of the first category leads us to conclude that both the Respondents have used the identical “DHL” trademark for marketing purposes i.e. Mr. Rehan has used it on the billboard of his shop and M/s ICS Courier has used the ‘DHL’ trademark on the billboards, nearby hoardings, brochures and even on their website i.e. [www.icsxp.com](http://www.icsxp.com). However, it is worth mentioning and needs to be appreciated that subsequent to the receipt of Commission’s notice, both the Respondents

promptly discontinued the use of the ‘DHL’ trademark and also reported compliance by removing the ‘DHL’ trademark from their billboards, nearby hoardings and also brought major changes to the website; thus demonstrating their good faith in the given case. As for Respondent No. 2 the logo ICS itself, when compared with ‘DHL’ trademark both appear to be quite distinct and quite clearly are not confusing or deceptive and the website now only displays ICS logo.

38. Respondent No. 3 namely Mr. Uzair. The images of the shops and the visiting card of Respondent No. 3 are as under:



39. The above images of Mr. Uzair (Respondent No. 3) show that he has been using the ‘DHL’ trademark on his visiting card and on the billboards and hoardings of his shops displayed at the entrance of his shops. However, it is worth mentioning that subsequent to the first hearing Mr. Uzair submitted the courier receipts and the delivery status reports from the website of the Complainant which substantiated his claim that the couriers received by him were eventually passed on and sent through the Complainant. While, the marketing of his courier outlets as being affiliated with the Complainant is false and misleading and is in contravention of Section 10(1) yet we cannot overlook this fact that the courier packages booked by him were ultimately sent through the Complainant. It is noted that the Complainant has not taken any step in discouraging such practice, except for filing the instant complaint. The Complainant needs to devise an appropriate modality to deal with such unauthorized representatives.

40. Mr. Asif Iqbal’s (Respondent No. 4) and Mr. Malik M. Pervaiz (Respondent No. 5) belong to the third category of the Respondents. The images of the billboards of their shops are as under:

**Complainant’s Trademark**



**Image of the Billboard of Mr. Asif’s Shops**



**Images of the Billboard displayed at the Shop of Mr. Malik M. Pervaiz– Respondent No. 5**



41. Comparison of the above images with the “DHL” trademark leads us to conclude that the Respondents are using the Complainant’s trademark in contravention of subsection (1) of Section 10 of the Act. It is pertinent to note that both the Respondents have not placed on the record that they have any authorization by the Complainant regarding the use of ‘DHL’ trademark. The sole purpose seemed to represent themselves as the Complainant’s ‘Service Center’ or ‘Authorized Dealers’ to reap the benefit from the goodwill attached to the Complainant’s trademark by misleading the consumers.

42. Mr. Nauman Anwer Butt (Respondent No. 6) and Mr. Raja Asir Munir (Respondent No. 7) belong to the fourth category of Respondents. The comparison is as follows:

**Images of the shop of Mr. Nauman Anwar Butt**



### Images of the Billboard displayed at the Shop of Mr. Raja Asir Munir



43. It is relevant to highlight that when the abovementioned marks are compared with the “DHL” trademark, we note that the exact colour scheme of the DHL trademark i.e. DHL yellow (Pantone 116) background and red (Pantone 200) italicized font is used by both the Respondents. Although Respondent No. 6’s logo is ‘DHIL’ and Respondent No. 7 logo is ‘DHS’, however, the manner in which these are printed and advertised, both the marks look deceptively similar to that of the Complainant’s trademark. Further the first two letters i.e. “DH” appearing in the above images are identical to the ones used in the “DHL” logo and even the last word are so presented that does not distinguish the marks from the “DHL” trademark. It is also pertinent to highlight that Mr. Nauman Anwer Butt has also displayed the poster bearing “DHL” logo on the glass walls of his shop which is visible from the outside. We are of the view that the mark used by both Mr. Nauman and Raja Asir Munir are deceptively similar to the “DHL” trademark.

44. Here it is worth mentioning that both the Respondents i.e. Respondent No. 6 & 7 are in fact doing the business of courier service in their own name while using a logo which is deceptively similar to that of the Complainant’s. Respondent No. 6 has even used the Complainant’s trademark and displayed it in the glass wall of his outlet. Whereas, it is pertinent to highlight that the Respondents of first three categories (Respondent Nos. 1 to 5) are using Complainant’s trademark for their marketing purposes and are engaged in the business of courier services including receiving couriers for international destination (which is a competing business of the Complainant). In all cases we note that the ‘DHL’ trademark is deceptively

- used to mislead the consumers to gain more business of courier service from the market. As contended by the Complainant and we agree that by displaying the trademark of the Complainant on the billboards, nearby hoardings and visiting cards, the Respondents have in fact made the consumers believe that they are authorized dealers/representatives or service centers of the Complainant.
45. The counsel for the Complainant has consistently submitted throughout the proceedings that the Complainant or its principal has not authorized any of the Respondents to use its trademark or logo. It was also submitted by the counsel for the Complainant that in order to facilitate deliveries, the Complainant operated approximately 49 service outlets with the support of approximately 100 vehicles and 500 employees across the country and there are no authorized dealers or otherwise in Pakistan. The Complainant operates only through its own service outlets.
46. We are of the view that such conduct of the Respondents, in the given facts, is aimed at capitalizing on the goodwill attached to Complainant's trademark by misleading the consumer through the deceptive logo and thus capable of harming the business interest of the Complainant in terms of clause (a) & (b) of subsection (2) of Section 10 of the Act read with subsection (1) of Section 10 of the Act. Reliance in this regard can be placed on our **Order in the matter of ZONG 2010 CLD 1478**.
47. Regarding the second limb of the issue dealing with fraudulent use of Complainant's trademark, it is important to recognize that part of any business's identity is the goodwill it has established with consumers, while part of a product's identity is the reputation it has earned for quality and value. In a larger sense, trademarks promote initiative and enterprise worldwide by rewarding the owners of trademarks with recognition and financial profit. Trademark protection also hinders the efforts of unfair competitors, such as counterfeiters, to use similar distinctive signs to market inferior or different products or services. This enables people with skill and enterprise to produce and market goods and services in fair conditions, thereby facilitating international trade.



48. We also would like to refer to the judgments of **Hoffmann-La Roche [1978] E.C.R. 1139, para.7, and Philips Electronics NV v Remington Consumer Products Ltd [2002] ECR 1-0000**; wherein it was held that *“the essential function of a trademark is to guarantee the identity of origin of the marked goods or services to the consumer or end user by enabling him, without any possibility of confusion, to distinguish the goods or services from others which have another origin. For the trade mark to be able to fulfil its essential role in the system of undistorted competition, it must offer a guarantee that all the goods or services bearing it have been manufactured or supplied under the control of a single undertaking which is responsible for their quality”*. It is also pertinent to high light that in the judgments of **Arsenal Football Club v. Matthew Reed [2003] RPC 9** and **Loendersloot [1997] E.C.R. I-6227** it was observed that *“for that guarantee of origin, which constitutes the essential function of a trade mark, to be ensured, the proprietor must be protected against competitors wishing to take unfair advantage of the status and reputation of the trade mark by selling products illegally bearing it.”*

49. As per the submissions, the Complainant’s trademark is registered in Pakistan among other countries and is widely used in over 220 countries<sup>1</sup>. The “DHL” trademark was introduced on 25-03-2003. It was designed in 2002 by Nitsch Design GmbH. Generally it has been termed that the “DHL” logo represents swiftness and speed.<sup>2</sup>

50. It has also been submitted by the counsel for the Complainant that since 1982 the Complainant has spent substantial amount of monies on advertisements and sales promotion was able to generate heavy revenues for itself, the details whereof are provided herein below:

<b>Year</b>	<b>Revenue Amount in Pak Rupees</b>	<b>Advertisement &amp; Sales Promotion Expenditure in Pak Rupees</b>
2007	2,067,160,352/-	47, 155,380/-
2008	2,615,404,727/-	57,047,082/-
2009	2,878,118,669/-	28,676,116/-
2010	3,297,419,285/-	34,233,314/-

<sup>1</sup> <http://wap.dhl.com/serv/services.html>

<sup>2</sup> <http://www.logoinn.net/courier-companies-logo-design/>

51. While this has not been relied upon by the Complainant, being an independent evaluation it appears to be of relevance to note that in the Global 500 rankings of Brand Finance plc, London, a UK market research company, the DHL brand climbed 16 places from number 107 in 2010 to number 91 in 2011. Brand Finance calculates current brand value by benchmarking the strength, risk and future potential of a brand relative to the competition. The study put the brand value of DHL at US\$9.78 billion in 2011, up from US\$7.30 billion in the previous year.
52. As for the fraudulent use of Complainant's trademark, we are aware that there is no definition of the term 'fraudulent' or 'fraud' in the Act nor can one perhaps attempt to give one single definition. However, while interpreting Section 10 of the Act; one needs to be conscious that the interpretation of fraudulent use of trade mark has to be in the context of deceptive marketing and would thus have a broader scope. Rather than making it too complex by focusing on subjective 'intentions' of the Respondents, in 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 trade mark, intended to deceive the customer/consumer to gain an advantage. Keeping in view the nature of contravention, it is not the subjective intent but the objective manifestation of that intent that will establish the fraudulent use. In the US, in actual practice the courts look at the surrounding facts and circumstances in relation to misrepresentation and apply the elements strictly and leniently as believed and warranted by the courts. In the present case, there can be little doubt that the Respondents knew or should have known that the representation i.e. use of Complainant's trademarks was indeed unauthorized and hence false - in that, the result of misrepresentation gave the Respondents a benefit and an advantage that they would not otherwise have obtained. Also, the result was intended and anticipated (whether nefarious or not) such a conduct/practice in our considered view would be termed as fraudulent in terms of clause (d) read with sub-section (2) of Section 10 of the Act on part of all the Respondents except Respondent No. 6 & 7 namely Mr. Nauman Anwer Butt and Raja Asir Munir, respectively, who are not using the trademark of the Complainant but of their own, albeit deceptively.

53. 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 Respondents clearly in violation of Section 10(1) of the Act.
54. In deciding the quantum of penalty, we have taken into account the aspect of seriousness of the violation and all other relevant factors, including, the conduct of the Respondents, OFT's compliance oriented approach, bearing in mind the peculiar nature of the instant case, as well as the stage of understanding and lack of appreciation of intellectual property rights in Pakistan. For these factors, at this point in time, we are not inclined to impose harsh penalty as pleaded by the Complainant and consider it appropriate to deal with each of the categories of Respondents as follows:
55. The Respondents of the first category i.e. Mr. Rehan (Respondent No. 1) and ICS Courier (Respondent No. 2) were forthcoming in their conduct as discussed in Para (36)&(37). Therefore, taking a lenient view, we are not imposing any penalty on both the Respondents; however, they are reprimanded not to commit such contravention in future, which shall otherwise entail serious consequences under the Act.
56. The Respondent belonging to the second category, i.e. Mr. Uzair, has also provided the documents substantiating that in fact the couriers booked by him were passed on to the Complainant and were eventually sent through the Complainant. He has also provided the details of many other undertakings using the trademark of the Complainant. Although the Respondent has assured the Commission future compliance, it is important that at least some penalty be imposed keeping in view that his practices were misleading and deceptive in terms of Section 10. Particularly, the fact that he even represented himself affiliated with the Complainant by using the Complainant's trademark on his visiting card cannot be overlooked being a serious breach. Also, he did not place anything on record to demonstrate that he has discontinued such practices, after the issuance of the show cause notice. Keeping the above in view coupled with

his assurance, we are restricting the penalty to Rs.5,00,000/- (Rupees Five hundred Thousand Only).

57. The Respondents, namely Mr. Asif Iqbal (Respondent No. 4) and Mr. Malik M. Pervaiz Respondent No. 5) have failed in substantiating their stance and have not even demonstrated their good faith through their conduct. The contravention of Section 10(1) of the Act stands established in terms of what has already been discussed above. However, we are of the view that the necessary deterrent effect would be achieved and the interests of justice served even if a penalty in the sum of Rs. 1,000,000/- (Rupees One Million Only) is imposed.
58. Similarly, Mr. Nauman Anwer Butt (Respondent No. 6) and Raja Asir Munir (Respondent No. 7), are doing the business in their own names i.e. DHIL and DHS respectively, yet using a logo which is deceptively similar to the Complainant's trademark for which no plausible justification has been placed forward. Based on the principles laid down by the courts in cases of 'passing off' similarity in colour, scheme, get-up, overall similarity and the broad salient features by which an ordinary illiterate customer would be misled for taking product manufactured or services rendered by defendant as that of plaintiff are the relevant factors for such determination. In our considered view in the present case, taking these factors into account we find the Respondents' marks misleading and deceptive and capable of being taken as marks of the Complainant by an ordinary consumer. On comparison these marks bear such resemblance which is likely to cause confusion and deception. It is a cardinal principle of law and fair commercial trading, that deceptive measures should not be adopted to adversely affect goodwill and recognition earned by other organization. The only reason for such conduct is to gain an advantage on the goodwill attached to the Complainant's trademark, which is indeed capable of harming Complainant's business interest; as it is in the case of all Respondents. While these Respondents are primarily using their own business names, clause (d) of subsection (2) of Section 10 is not relevant. Nonetheless, in the given facts and circumstances, it is in the interest of justice to deter such practices and these Respondents are also

held liable to pay a penalty in the sum of Rs. 1,000,000/- (Rupees One Million Only).

59. The Respondents are hereby reprimanded to ensure responsible behavior in future with respect to the marketing of their business and are directed to discontinue the use of trademark of the Complainant with immediate effect and not to use it in future without due authorization. The Respondents are also directed to file within fifteen (15) days from the date of this Order, the commitments with the Registrar of the Commission reporting compliance with this Order, to ensure future compliance and not to contravene provisions of Section 10 of the Act with respect to the subject matter, along with the penalty.
60. In case the violation of this Order continues, it is then warranted that the Respondents shall be made further liable under sub-section (3) of Section 38 of the Act to pay an additional penalty amounting to Rs. 500,000/- (Rupees Five Hundred Thousand Only) per day from the date of such violation.
61. At the end, we cannot ignore the fact that during the proceedings, details of other undertakings alongwith the images were provided by Mr. Uzair. The Registrar is directed to forward this concern to the OFT department of this Commission for further scrutiny and independent inquiry, if deemed necessary, in terms of Section 37 of the Act.
62. Accordingly, the Show Cause Notices No. 26 to 32 of 2012 issued to the Respondents are hereby disposed of in terms of this Order.

(Rahat Kaunain Hassan)  
Chairperson

(Mueen Batlay)  
Member

(Shahzad Ansar)  
Member

Islamabad, the 21<sup>st</sup> of December, 2012.