



BEFORE THE
COMPETITION COMMISSION OF PAKISTAN

IN THE MATTER OF
SHOW CAUSE NOTICE ISSUED TO

M/S SUKKUR TESTING SERVICES (SMC-PVT.) LIMITED
On Complaint Filed By
M/S SIBA TESTING SERVICES

(F. NO: 336/SIBA(V)STS/OFT/CCP/2018)

Date of hearing: 12-02-2020

Commission: Dr. Muhammad Saleem
Member

Dr. Shahzad Ansar
Member

Ms. Bushra Naz Malik
Member

Present: Noman A. Farooqi

Assisted by: Mr. Arsal Ikram
Assistant Director (Legal)

On behalf of:
M/s SIBA Testing Services
Sukkur IBA University

Mr. Mukesh Kumar,
Advocate Supreme Court

Engineer Zahid Hussain Khand,
Registrar/Director

Mr. Muhammad Junaid Dhalet,
Assistant Registrar

Mr. Ghulam Mujtaba
Owner



**M/s Sukkur Testing Services (SMC-
Pvt.) Limited**

ORDER

1. This Order shall dispose of the proceedings initiated by the Competition Commission of Pakistan (the '**Commission**') vide Show Cause Notice No. 01 of 2020 dated 17th January 2020 (the '**SCN**'), issued to M/s Sukkur Testing Services (SMC-Pvt) Limited (**STS**) (the '**Respondent**') for, *prima facie*, contravention of Sections 10 of the Competition Act, 2010 (the '**Act**').
2. The SCN was issued to the Respondent pursuant to the Enquiry Report dated 9th January 2020 (the '**Enquiry Report**'). The enquiry was conducted on the complaint received from M/s. SIBA Testing Services (**SIBA**) (the '**Complainant**').

FACTUAL BACKGROUND

A. COMPLAINT, ENQUIRY AND SHOW CAUSE NOTICE:

3. The Complainant filed a complaint against the Respondent. The Commission upon receipt of the Complaint initiated an enquiry under Section 37 (2) of the Act. The principle allegation in the Complaint was that the Respondent is disseminating false and misleading information to consumers through advertisements in various newspapers, claiming to be Testing Service Provider in the name and style of "*Sukkur Testing Service (STS)*", which graphically resembles to the Complainant as "*SIBA Testing Service (STS)*" and consequently damaging the Complainant's reputation, which is also capable of harming the business interest of the Complainant.
4. The findings of the Enquiry Report are as follows:

6.1 This enquiry report is aimed at examining the allegations of the Complainant. In view of the position stated in the preceding paras, it appears that the Respondent is fraudulently using the trademark and a firm name similar to the Complainant. As a result, the Response has, prima facie, entered into deceptive marketing practices in terms of the provisions of Section 10 of the Act.

6.2. Distribution of false and misleading information and IP infringement attracts the consumers into purchasing goods and/or hiring services they might otherwise have not opted for gives the fraudulent undertakings an unfair advantage over the fair competitors and also harms their business. Thus, in the interest of general public at large, an ordinary consumer in



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specific, the undertakings which are involved in misleading and unfair trade practices must be discouraged from selling their inferior products/services in a deceptive manner and they should also be directed to adopt such practices which are transparent and provide the consumers/customers true and correct information about their products/services.

6.3. Therefore, in light of the above mentioned findings, it is recommended that the Commission may consider initiating proceedings against M/s Sukkur Testing Services (SMC-Pvt) Limited, under Section 30 of the Act.

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

4. WHEREAS, in terms of the Enquiry Report in general and paragraphs 2.7 to 2.9, it has been alleged by the Complainant that Undertaking has made advertisements in various newspapers, claiming to be Testing Service Provider in the name and style of "Sukkur Testing Service (STS)", which graphically resembles to the Complainant as "SIBA Testing Service (STS)" and consequently is damaging the Complainant's reputation and is, prima facie constitutes violation of Section 10(1) of the Act; and

5. WHEREAS, in terms of the Enquiry Report in general and paragraph 5.33 in particular, it appears that the Undertaking fraudulently used the Complainant's trademark and logo, that too in the same line of business, without any authorization express or implied, which, prima facie constitutes violation of Section 10 (1) read with Section 10(2)(d) of the Act; and

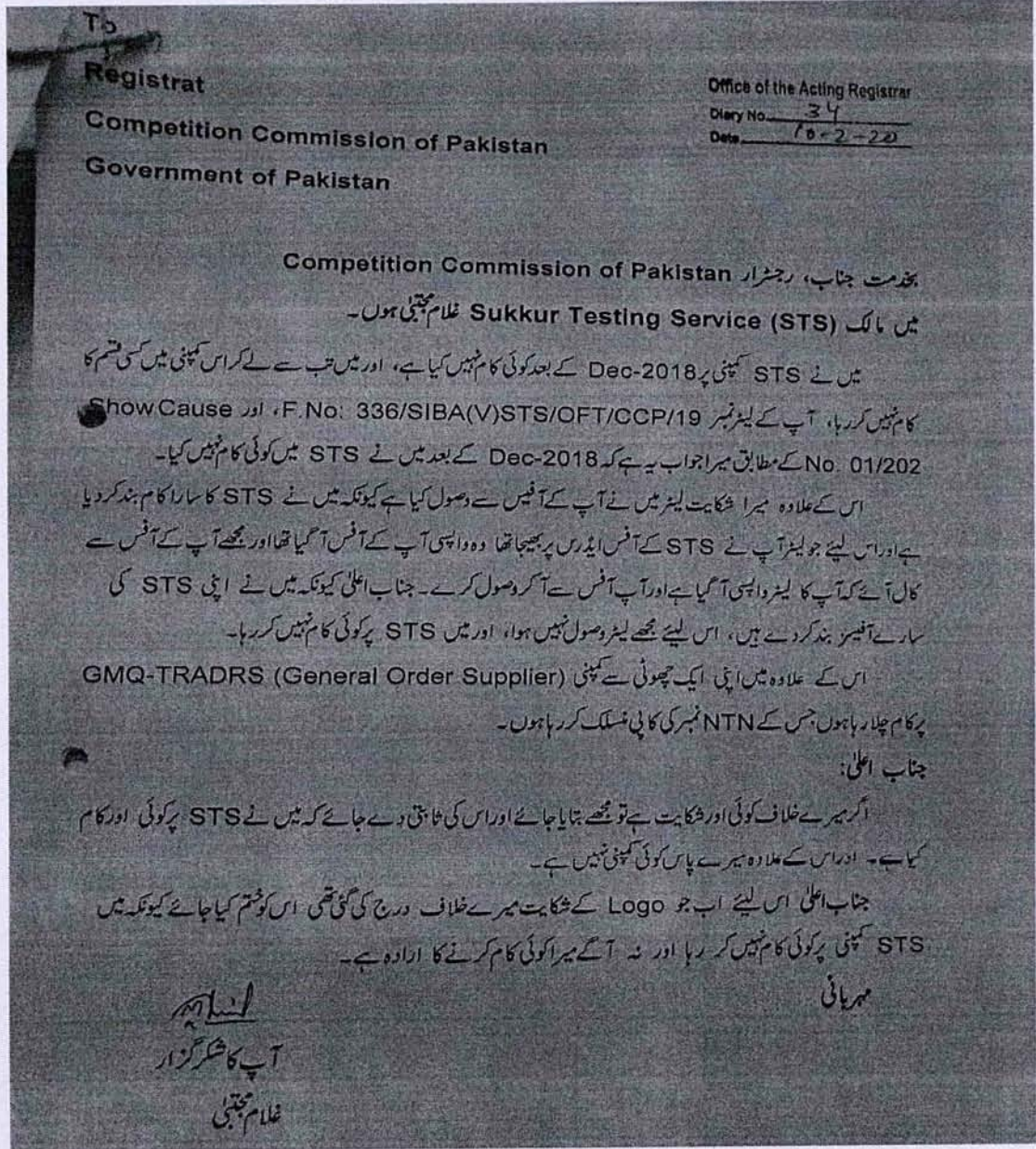
6. WHEREAS, in terms of the Enquiry Report in general and paragraph 5.32 in particular, it appears that the Undertaking by using Complainant's trademark and logo in the advertisements/marketing campaign, has disseminated the information to the consumers creating an impression that that it has affiliation with Sukkur IBA, which amounts to distribution of information lacking a reasonable basis related to character, method of production, properties, quality and suitability of use is, prima facie, in violation of Section 10(1) read with Section 10(2)(b) of the Act; and

7. WHEREAS, in terms of the Enquiry Report in general and paragraph 5.33 in particular, it appears that the Undertaking's conduct of distribution of false or misleading information lacking reasonable basis and fraudulent use of Complainant's trademark, logo is capable of harming business interest of another undertaking and is in, prima facie, violation of Section 10(1) read with Section 10(2)(a) of the Act; and



B. WRITTEN REPLIES AND HEARINGS CONDUCTED:

6. The SCN served to the Respondent was returned undelivered with the remarks of the courier "Shifted". The office of Registrar contacted the Respondent telephonically and directed to receive the SCN personally. The Respondent received the SCN and filed written reply on 10th February 2020. The written reply filed by the Respondent is reproduced as under:



On 12th February 2020 both parties were heard by the Bench. The Counsel for the Complainant apprised the Bench regarding the illegal acts of the Respondent using the

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name of Sukkur Testing Service (STS) claiming to be the testing service of Sukkur Institute of Business Management (SIBA). He argued that the Respondent has damaged the reputation of Complainant; as subsequent to the advertisement dated nil, the Complainant started to receive the applications of the candidates. The Counsel for the Complainant argued that the enquiry was conducted on their Complaint and in the Enquiry Report the Respondent's conduct was found to be in violation of Section 10 of the Act. The Complainant prayed for imposing penalty on Respondent for deceptive marketing practices. The representatives of the Complainant was asked about the date of filling of the trademark application, he responded that the complaint was filed on 28th January 2019 and after filing the complaint, the application for registration of trade mark was filed on 22 February 2019.

8. Mr. Ghulam Mujtaba owner of the Respondent admitted to have started the testing service in the name of his company i.e. M/s Sukkur Testing Services (SMC-Pvt) Limited and used STS as an abbreviation. He submitted that he had some amount and he was suggested by one of his friends to start this business. He submitted that since December 2018 he has not undertaken any work in the name of the Respondent. Further, he denied any resemblance of Trademark with the Complainant and also denied completion of any project. However, he admitted to have received fee for entry test for the advertisement of jobs published in the newspaper wherein the last date to apply is 26th November 2018 by the Public Sector Organization (hereinafter the '**Impugned Advertisement**'). He also informed us that he has removed his website but admitted to have received an amount amounting to Rupees 500,000 in his Bank account, which were reimbursed to the said public sector organization on their direction. He also apprised the Bench that he did not complete even his first project and the Respondent was blacklisted. He submitted that he may be given a lenient treatment as even showed willingness to comply with the directions during the enquiry.

9. The Director General (Legal) in attendance submitted that the only marketing material available on the record is an undated Impugned Advertisement, whereby the Respondent has advertised certain posts on behalf of a Public Sector Organization and the candidates were advised to fill the application form available on the website along with the deposit of amount in the branches of HBL Bank, and the last date of form



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submission was shown as 26 November 2018. He further submitted that although, the representatives of the Complainant have made oral submissions that they have received calls from the prospective candidates with reference to the Impugned Advertisement, however, said argument seems to be an afterthought for the reason nothing of such sort was submitted in the Complaint. Further, the Enquiry Report has also concluded that the Respondent issued one advertisement only i.e. the Impugned Advertisement, thereafter no further advertisements were issued by them. He also submitted that the Commission has time and again held that where the false or misleading information is disseminated through the advertisement/ marketing material it is so done to induce the consumers in preferring the products or services of a lesser known proprietor over the actual owner of the reputed goods or services. Reliance was placed on the **Orders in the Matter of Show Cause Notice issued to China Mobile and Pakistan Telecom Mobile reported as 2010 CLD 1478 and in the matter of Show Cause Notice issued to 2010 CLD 1454, in the matter of Show Cause Notice issued to Reckitt Benckiser Pakistan Ltd., reported as 2016 CLD 40, in the matter of Show Cause Notice issued to Dry Acid-Lead Batteries Manufacturers reported as 2018 CLD 844.**

10. The Director General (Legal) also submitted that under Section 10 of the Act, the scope of proceedings *vis-à-vis* the trademark is restricted to the extent of deceptive marketing practices. Unlike the Trade Marks registry where ownership is claimed based on the prior used, the Commission considers that under Section 10 of the Act the rights of an undertaking having registered trademark has to be protected. Otherwise, giving a finding on prior use would go beyond the scope of Section 10 of the Act. In the instant matter, the none of the Parties to the proceedings have got the trademark registered, hence, a violation of Section 10(2)(d) of the Act cannot be made out. In support of his submissions he placed reliance on **Order In the matter of Show Cause Notice issued to Tara Crop Sciences reported as 2016 CLD 105**, it was held as under:

53. *With regards to the matter at hand however, while both parties have made extensive submissions regarding their respective rights to use the mark "Tara", at the time of writing, the impugned mark had not been registered in favour of either.*



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54. As explained earlier, it is beyond the competence of the Commission to determine or even advise on the allocation of trademarks. The only mandate it has with respect to trademarks and Section 10 (2) (d) of the Act is the protection of registered trademarks from fraudulent use. Since neither party has an established claim to the impugned mark, therefore there is no matter for the Commission to even consider.

11. The Bench directed the Respondent to provide bank statements, letter of his company being backlisted and any other documents in support of his defense within three days, which was agreed by the Respondent accordingly. In pursuance of the directions, the Respondent filed all the requisite document substantiating his statements made during the hearing.

ANALYSIS & DECISION

12. However based on the submissions raised by the Complainant and the Respondent, we deem it appropriate to address the following issue:

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

13. We now would proceed to deliberate on the aforesaid issue while keeping in view the material/evidence placed on record and the applicable law in the matter. The primary allegation made by the Complainant in Para (5) & (6) of the Complaint, which for ease of reference is reproduced herein below:

“5. That the respondent has recently made an advertisement in various newspapers, claiming it to be Testing Service Provider, in the name and style of Sukkur Testing Services (STS), which is based in Islamabad at the given address. The advertisement details show that a public sector organization requires to recruit the candidates, who would qualify the test of STS. The candidates have been advised to fill the form/application available in its website along with the deposit of amount in the branches of HBL Bank, and the last date of form submission was shown as 26th November 2018.

6. That as soon, the Complainant came to know about the similarity in the name and nature of services of the respondent, he made certain inquiries and collected information which he believes to be true and correct that the Respondent has resorted to a deceptive marketing practice by using the name as Sukkur Testing Services, which is a clear abuse of the position of the Complainant in the territory of Pakistan and effecting its market conditions on one hand, damaging its well-known reputation on the other



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hand. Hence, in order to prevent such deceptive marketing practices on the part of the Respondent, the action as provided under Section 31 of the Competition Act, 2010 as well as interim orders in terms of Section 32 are also solicited under the facts and circumstances of the present case.”

14. In the Enquiry Report, the with reference to the allegations made in the Complaint, has concluded as follows:

“5.31 In view of the above, we are of the view that the allegations levelled against the Respondent under the complaint constitute a, prima facie, violation of Section 10(1) in terms of Section 10(2)(d) of the Act.

5.32 Considering the fact that the Respondent is fraudulently using the Complainant’s trade mark and logo of a renowned training and testing services provider , that too in the same line of business, i.e., training and testing services, and are implying by means of advertisement material that it has some affiliation with the Sukkur IBA, it can be concluded that the Respondent is also engaged in “distribution of false [and] misleading information to consumers, including the distribution of information lacking a reasonable basis, related to the place of production in terms of origin of services and quality of services”. This conduct of Respondent falls under, prima facie, violation of Section 10(1), read with sub-section 2(b) of the Act.

5.33 The overall conduct of the Respondent, i.e., fraudulent use of another’s trademark and similar firm name, in prima facie violation of Section 10(2)(d) of the Act, is capable of harming the business interest of the Complainant by stealing its rightful customers, negatively affecting its sales and profits, and damaging its good will. Resultantly, as the Respondent’s conduct is capable of harming the business interest of the Complainant, the Respondent appears to be in prima facie violation of Section 10(2)(a) of the Act.”

15. Keeping in view the above conclusions and the recommendations mentioned in Para 4 above, a show cause notice was issued under Section 30 of the Act, wherein violation of Section 10 (1) read with Section 10(2)(a), (b) & (d) of the Act was highlighted and the Respondent was required to show cause as to why an Order under Section 31 of the Act and penalty under Section 38 of the Act may not be imposed thereto.
16. It needs to be highlighted that the after initiation of proceedings under Section 30 of the Act, the Commission or the Adjudicating Members are entrusted with the responsibility to give an independent analysis of the evidence available on the record and the submissions made by the parties and give an impartial assessment thereto. It is with this scope, we deem it appropriate to analyse the certain aspects in order to give our findings on the main issue in the instant matter, these are:



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- (i). The concept of Consumer *vis-à-vis* Section 10 of the Act:
- (ii). The concept of False or Misleading information in the process of advertising/marketing
- (iii). Net general impression of the Impugned Advertisement:
- (iv). Material information:

17. In the subsequent paragraphs, we will discuss the above aspects, keeping in view the submissions made before us and the evidence available on the record.

18. **The concept of Consumer *vis-à-vis* Section 10 of the Act:** It is clear that under the Act, the Commission is mandated to protect the consumers from anti-competitive practices prohibited. One of such practice is deceptive marketing practices, which is aimed at the consumers to make a transactional decision. Hence, it is important to determine the consumer for the purpose of assessment under Section 10 of the Act. In this regard we are guided by the Commission's earlier Order i.e. **Order in the matter of China Mobile Pak Limited and Pakistan Telecom Mobile Limited reported as 2010 CLD 1478**, wherein the concept of 'consumer' with reference to Section 10 of the Act in is discussed in the following terms, in the following terms:

32. *Taking the above into account, I am of the considered view, that if in Pakistan, we want to encourage a compliance oriented approach viz a viz Section 10 of the Ordinance we must place a higher onus on the Undertakings in relation to the marketing practices. Therefore, from OFT's perspective, the consumer to whom such information is disseminated has to be the 'ordinary consumer' who is the usual, common or foreseeable user or buyer of the product. Such a consumer need not necessarily be restricted to the end user. Here it may be relevant to point out that the 'ordinary consumer' is not the same as the 'ordinary prudent man' concept evolved under contract law. Unlike the 'ordinary prudent man' the thrust on ordinary diligence, caution/duty of care and ability to mitigate (possible inquiries) on the part of the consumer would not be considered relevant factors. It must be borne in mind that one of the objectives of the Ordinance is to protect consumers from anti-competitive practices; hence, the beneficiary of the law is the consumer. Therefore, in order to implement the law in its true letter and spirit, the scope of the term 'consumer' must be*



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construed most liberally and in its widest amplitude. In my considered view, restricting its interpretation with the use of the words 'average', 'reasonable' or 'prudent' will not only narrow down and put constraints in the effective implementation of the provision it would, rather be contrary to the intent of law. It would result in shifting the onus from the Undertaking to the consumer and is likely to result in providing an easy exit for Undertakings from the application of Section 10 of the Ordinance. Accordingly, the term 'consumer' under Section 10 of the Ordinance is to be construed as an 'ordinary consumer' but need not necessarily be restricted to the end consumer of the goods or services.

19. From the above, it is clear that 'consumer' for the purposes of the Section 10 of the Act is construed to be an 'ordinary consumer' in contrast to a 'reasonable' or 'prudent' consumer. We agree with the foregoing because of a simple reason that the while framing the provisions of Section 10 of the Act, the legislature in all its wisdom has crafted the provision in a manner that it requires the undertakings concerned marketing their products to justify their claim and hence has protected the interest of the consumers by placing the onus on the undertaking concerned i.e. marketer, manufacturer or supplier.

20. **The concept of False or Misleading information in the process of advertising/marketing**: Subsequent to understanding and clarifying the concept of Consumer, we are of the considered opinion that, it must be understood, what constitutes 'false' or 'misleading' information in the process of advertising/marketing which evokes a violation of Section 10 of the Act. The concepts of 'false' or 'misleading' vis-à-vis Section 10 of the Act have been elaborated in one of our earlier Orders i.e. **Order in the matter of China Mobile Pak Limited and Pakistan Telecom Mobile Limited reported as 2010 CLD 1478**, in the following terms:

*False information: "oral or written statements or representations that are:
(a) contrary to the truth or fact and not in accordance with reality or actuality; (b) usually implied either conscious wrong or culpable negligence, (c) has a stricter and stronger connotation, and (d) is not readily open to interpretation...."*



Misleading information: "may essentially include oral or written statements or representations that are: (a) capable of giving wrong impression or idea, (b) likely to lead into error of conduct, though or judgement, (c) tends to misinform or misguide owing to vagueness or any omission, (d) may or may not be deliberate or conscious, and (e) in contrast to false information, it has less erroneous connotation and is somewhat open to interpretation as the circumstances and conduct of a party may be treated as relevant to a certain extent".

21. Having addressed, the concept of 'false' and 'misleading' information we may now proceed to determine the overall net general impression of the Impugned Advertisement.

22. **Net General Impression of the Impugned Advertisement:** The third and most important aspect in order to record our findings *vis-à-vis* the violation of prohibition contained in Section 10 of the Act, is to gather the impression of the advertisement / marketing campaign impugned. The Commission in one of its earlier Orders i.e. **Order in the matter of China Mobile Pak Limited and Pakistan Telecom Mobile Limited reported as 2010 CLD 1478**, has held that:

"...evaluate complete advertisement and make an opinion regarding deception [...] on the basis of net general impression conveyed by them and not an isolated script".

23. From the above, it is clear that for the purposes of determination on Section 10 of the Act, it is important that what net general impression the advertisement conveys. No excerpt in isolation can be taken into account, rather the entire scheme of advertisement or marketing campaign is to be looked into. Before looking into the Impugned Advertisement, we deem it appropriate to refer to the logo of the Complainant, the graphic representation whereof is as under:



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24. Below is the image of the Impugned Advertisement submitted by the Complainant as evidence to prove that the Respondent is fraudulently using the registered trade mark:

Terms & Conditions

IMPORTANT NOTES

The Competent authority reserves the right to cancel the recruitment Process at any stage without assigning any reason.

- In case a candidate possesses additional extra qualification, be sure that he/she must possess the advertised qualification from Govt. recognized institute as required grade/division in any of above mentioned discipline to become eligible. Otherwise application may be rejected.
- Initially, shortlisted candidates will be called for written test and subsequently further short listing will be done before interview.
- Government Servants/Autonomous/ Semi-Autonomous/ Corporation employees must only apply through proper channel otherwise their candidature will not be accepted.
- No further relaxation in maximum age as mentioned above.
- Quotas are applicable as per Federal Government policy rules.
- In case the candidate is applying with a qualification as equivalent to the advertised qualification a certificate from IBEC or Higher Education Commission as the case may be to this effect will also be required to be attached along with application.
- If a candidate is interested to apply for more than one posts, a separate application may be required, otherwise the application will not be entertained.
- No TA/DA will be paid for appearing in any test/interview.
- Number of advertised posts may be increased or decreased at the time of final selection.
- Incomplete applications will be rejected.
- Reserve awaited candidates are not eligible to apply.

HOW TO APPLY

- Application Form and online deposit Slip are available on Sukkur Testing Services Website www.sukkurtestingservices.org.pk.
- Please pay the prescribed test/ processing fee through online deposit slip in any of the country-wide online branches of HBL Bank.
- Application without deposit slip will not be entertained.
- Deposited amount is non refundable and non transferable.
- Application submitted by hand will not be entertained.
- STS will not be responsible for the late receipt of application sent through post or by any courier service.
- Candidates are required to send their application to STS Project Office, Islamabad on prescribed Form along with paid online deposit slip (original).

**For Test Date / Time Please
Visit STS Website Regularly**



**Last Date of Forms Submission
Monday 26 November 2018**

**For Further Information, Please Contact
+92-51-2318527
Sukkur Testing Services - Pakistan
Office # L-15, Basement, Plot # 72, Afzal Center,
Street # 35, G-10/1, Islamabad.**

For Apply: www.sukkurtestingservices.org.pk

25. The overall net impression which one gathers from the Impugned Advertisement is that Sukkur Testing Services with the graphic representation of STS has advertised certain posts on behalf of a Public Sector Organization and the candidates were advised to fill the application form available on the website along with the deposit of amount in the branches of HBL Bank, and the last date of form submission was shown as 26 November 2018. However, whether the information disseminated is false or misleading, we now see the advertisements of the Complainant. They are as follows:



ABC Certified **The Largest Circulated Sindhi Daily of Pakistan**

روزانہ کاوش

ہفت روزہ کراچی، حیدرآباد و سکرمان شائع ہندو پھرین سنڈھی اخبار

Daily Komick Hyderabad

جلد 28) آچر 06 اگست 2017 ع بمطابق 13 ذوالقعد 1438 هـ (شمارو 04) قیمت 15 روپيا

Sunday, 06 August, 2017

STS
SIBA Testing Services

SUKKUR HOSPITAL
CAREER OPPORTUNITY

Our client Sukkur Hospital invites the applications with relevant qualifications and experience for the following position:
Chief Executive Officer (CEO)

Qualification:
Masters Degree in Public Health (MPH) / MBBS / FCPS / from a PMDC recognized University/Institute.

Experience & Skills:

1. Minimum 10 years of management experience in healthcare. Minimum 3 years in Senior Management position.
2. Proficiency in computer operations, including word processing.
3. Demonstrates community commitment.
4. Ability to lead at all levels of management related to hospital.
5. Must possess excellent written and verbal communication skills.

Salary Package: Market-based salary package will be offered, depending on qualification and experience of candidate.

Guidelines to Apply:

- Eligible candidates can apply through application form and challan/pay order (Non-refundable) of **Rs. 1000/-** in favour of "SIBA Testing Service" available at www.iba.suk.edu.pk along with all relevant & complete documents, updated CV and recent photograph latest by **August 22, 2017**.
- Providing fictitious, exaggerated, or misleading information on a job application shall result in rejection of application & termination of employment at any stage.
- Late submission or incomplete application shall not be considered.
- Only short-listed candidate will be contacted for further recruitment process.

SIBA Testing Services PID (H) 99648/17
Sukkur IBA University - Airport Road, Sukkur. Ph: 071-5644014-13
UAN: 071 (111-785-422) Fax: 071-5804419

FOUNDED BY QUAID-E-AZAM MOHAMMAD ALI JINNAH

DAWN

October 30, 2015

www.dawn.com

STS
SIBA Testing Services

SUKKUR HOSPITAL
CAREER OPPORTUNITY

Our client Sukkur Hospital invites the applications with relevant qualifications and experience for following position:
Chief Executive Officer (CEO)

Qualification:
Master's Degree in Public Health (MPH) / MBBS / FCPS / from a PMDC recognized University/Institute.

Experience & Skills:

1. Minimum 10 years of management experience in healthcare. Minimum 3 years in Senior Management position.
2. Proficiency in computer operations including word processing.
3. Demonstrates community commitment.
4. Ability to lead at all levels of management related to hospital.
5. Must possess excellent written and verbal communication skills.

Salary Package: Market based salary package will be offered depending on qualification and experience of candidate

Guidelines to Apply:

- Eligible candidate can apply through application form and challan/pay order (Non-refundable) of **Rs 1000/-** in favour of "SIBA Testing Service" available at www.iba.suk.edu.pk along with all relevant & complete documents, updated CV and recent photograph latest by **November 28, 2016**.
- Providing fictitious, exaggerated, or misleading information on a job application shall result in rejection of application & termination of employment at any stage.
- Late submission or incomplete application shall not be considered.
- Only short-listed candidate will be contacted for further recruitment process.

SIBA Testing Services PID (H) 97994/16
Sukkur IBA - Airport Road, Sukkur. Ph: 071-5644014-13
UAN: 071 (111-785-422) Fax: 071-5804419



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SCHOOL EDUCATION & LITERACY DEPARTMENT
Government of Sindh

CAREER OPPORTUNITIES

STS
SIBA Testing Services

On behalf of Public Private Partnership (PPP) Node, School Education & Literacy Department (SELD), Government of Sindh, SIBA Testing Services (STS) invites applications from dynamic, qualified and energetic candidates on merit, purely on contract basis for the following positions:

1. DIRECTOR (FINANCE)

Qualification:
I. MBA (Finance)/CA /ACCA/CFA from an HEC recognized University / Institute.
II. At least five (05) years of relevant experience in Corporate Banking, Investment Banking, Corporate Credit appraisal, Project Financing preferably with donor agencies.
III. Work experience related to PPP would be an added advantage.
Age Limit: Between 25 and 45

2. DIRECTOR (LEGAL)

Qualification:
I. Bachelors degree in law (LL.B) from an HEC recognized University / Institute or equivalent.
II. At least five (05) years of relevant experience in a reputable Law firm or legal advisory.
III. Work experience related to PPPs would be an added advantage.
Age Limit: Between 25 and 45

3. ASSISTANT DIRECTOR (FINANCE)

Qualification:
I. MBA (Finance) /CA /ACCA/ CFA from an HEC recognized University / Institute or equivalent.
II. At least two (02) years of relevant experience in Corporate Banking, Investment Banking, Corporate Credit appraisal, Project Financing preferably with donor agencies.
Age Limit: Between 24 and 35

4. FIELD SUPPORT OFFICER

Qualification:
I. Masters degree in management / education / public administration or related field from an HEC recognized University / Institute.
II. At least two (02) years relevant experience in field operations in a reputable firm in the private sector or government sector.
Age Limit: Between 24 and 35

GUIDELINES TO APPLY: Detailed Job description available at: www.iba-suk.edu.pk

I. Please send your application on prescribed format along with two recent colour photograph, complete CV, relevant documents with challan (non-refundable) of Rs. 1000/- latest by **October 24, 2017** on the above given address. (Application form & challan available at: www.iba-suk.edu.pk)
II. Government Employee must apply through proper channel or submit NDC along with job application.
III. Incomplete application in terms of any missing document(s) e.g. experience letters, NDC, challan shall not be entertained and shall stand rejected.
IV. Providing fictitious, exaggerated, or misleading information on a job application shall result in rejection of application & termination of employment at any stage.
V. The Competent Authority reserves the right to accept or reject any or all the applications without assigning any reason and cancel recruitment to any post(s).




SIBA Testing Services

Sukkur IBA University, Airport Road, Sukkur. Ph: 071-5644122, 5644130
UAN: 071 (111-785-422) Fax: 071-5804419

Note: Kindly mark the position on the envelope.

26. From the above three advertisements of the Complainant, one thing is evident that the graphic representation of the Complainant's logo is printed on the top. Further, in the advertisements the address depicts clearly that the Complainant or the Testing Service Office is located in Sukkur. Further, the Complainant was incorporated much prior to the Respondent i.e. at least two year prior to incorporation of the Respondent. Upon looking at the Impugned Advertisement in juxtaposition with the logo and marketing material of the Complainant, the overall net general impression is that the "Sukkur Testing Services" as mentioned in the Impugned Advertisement is somehow affiliated with the Complainant as their services, i.e., testing services are identical in nature, and the advertisement also bears a similar acronym "STS" as a mark on it.
27. **Material Information:** With reference to the materiality of the representation, reference can be made to the FTC Policy Statement on Deception dated 14.10.1983 appended to Cliffdale Associates, Inc., 103 F.T.C. 110, 174 (1984), wherein it is provided that the commission, omission, or practice must be a 'material' one which is likely to affect the consumer's conduct or decision with regard to a product or service. This was also endorsed by the Commission in one of its earlier Orders i.e. Order in the Matter of Show Cause Notice issued to Zong and Ufone reported as 2010 CLD 1478.



28. We take into account the overall net general impression of the Impugned Advertisement, we cannot ignore the fact that similar acronym used by the Respondent might confuse the Consumers/ prospective candidates about the goodwill and status of the Testing Service. Hence, we are of the opinion that the Respondent by using the similar acronym is in fact passing off its services and misleading the consumers about its association with the Complainant.

29. **Substantiation of the Advertisement through reasonable basis in terms of Section 10(2)(b) of the Act:** With reference to substantiation of claims to ensure that the information distributed by any undertaking in the process of marketing does not lack a reasonable basis, the Commission in its **Order in the matter of Proctor and Gamble Pakistan (Private) Limited (Head and Shoulder Shampoo), 2010 CLD 1695,** observed that **“the advertiser must have some recognizable substantiation for the claims made prior to making it in an advertisement”**. This doctrine was enunciated in the case of **Pfizer, Inc., 81 F.T.C. 23 (1972)**, wherein the Federal Trade Commission (FTC) held that advertisers must possess the level of substantiation expressly or impliedly claimed in the advertisement.

30. As has been discussed in the preceding paragraphs, using of similar acronym by the Respondent gives the Consumers an impression that either the Impugned Advertisement is issued by the Complainant or the Respondent is somehow associated or affiliated with the Complainant. Further, the word ‘Sukkur’ also can confuse the consumers about the information disseminated through the Impugned Advertisement that the services being offered to attract prospective candidates are by the Complainant. In response we note that the Respondent has not provided any evidence which substantiate that the Respondent is associated with the Complainant. Further, the use of similar acronym and words Sukkur in the Impugned Advertisement seems to be a conscious attempt by the Respondent to capitalize on the goodwill and standing of the Complainant. Hence, we are of the considered view that in the instant matter a violation of Section 10(1) read with Sections 10(2) (b) is made out.

31. **Fraudulent Use of Trademark:** With reference to the fraudulent use of trademark, it is on the record that the Complainant had applied for registration of trademark in the



name and style of “SIBA Testing Services” vide application dated 22 February 2019 i.e. even after filing the Complaint with the Commission. We are also conscious of the fact that the trademark is not registered in favour of any of the parties. Although the Complainant, from the material available on the record, is a prior user; however, the ownership is yet to be conferred by the Trademarks Registry under the Trademarks Ordinance, 2001.

32. We are cognizant of the fact that the scope of proceedings under Section 10 of the Act is restricted only to the extent of deceptive marketing practices. We are not conferred with the power by the legislature to determine the right to ownership of any undertakings vis-à-vis the trademark. The assessment in terms of Section 10(2)(d) of the Act i.e. fraudulent use of another’s trademark, can only be carried out where the ownership is granted or acquired under any law i.e. the Trademarks Ordinance, 2001. Accordingly, we concur with the submissions made by the Director General (Legal) and the case law relied upon by him, and we deem it appropriate to reproduce the citation as well as the relevant excerpts thereof i.e. **Order In the matter of Show Cause Notice issued to Tara Crop Sciences reported as 2016 CLD 105**, it was held as under:

53. *With regards to the matter at hand however, while both parties have made extensive submissions regarding their respective rights to use the mark “Tara”, at the time of writing, the impugned mark had not been registered in favour of either.*

54. *As explained earlier, it is beyond the competence of the Commission to determine or even advise on the allocation of trademarks. The only mandate it has with respect to trademarks and Section 10 (2) (d) of the Act is the protection of registered trademarks from fraudulent use. Since neither party has an established claim to the impugned mark, therefore there is no matter for the Commission to even consider.*

33. As has been discussed in the preceding paragraphs, a similar situation exists in the instant matter, as the trademark is not registered in the name of either party, hence, any findings vis-à-vis the ownership of the trademark would be beyond the scope of Section 10 of the Act and would be construed as encroaching upon the domain of Trademark Registrar under the Trademarks Ordinance, 2001. Therefore, we are of the considered view that a violation of Section 10(2)(d) of the Act cannot be proved in the instant matter.



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34. **Information Capable of Harming the Business Interest of other undertakings:**

Now turning to Section 10(2)(a) of the Act, according to which '*the distribution of false or misleading information that is capable of harming the business interests of another undertaking*' constitutes a deceptive marketing practice. We are guided by one of Commission's earlier Order i.e. **Order dated 21 December 2012 in the matter of M/S. DHL Pakistan (Pvt.) Ltd, 2013 CLD 1014**, wherein the Commission had observed that "*it is important to recognize that part of any business' 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*". We are also guided by, **Order dated 17 March 2015 in the matter of M/S Jotun Pakistan (Pvt) Limited, 2015 CLD 1638**, the Commission had held that "*To prove conduct under Section 10(2) (a) of the Act, it is not necessary to show actual harm to competitors. It is sufficient to show the existence of a deceptive marketing practice that has the potential to harm the business interests of the competitors.*" (emphasis added).

35. It is also pertinent to mention that in the event that there exists a contravention of Section 10(1) of the Act read with 10(2)(b) or (c) or (d) of the Act, a concurrent violation of Section 10(2)(a) is also made out. The consequence of the distribution of information to the public that is false or misleading is that it is capable of harming the business interests of and resulting in fatal consequences for the competitors of the undertaking making such deceptive claims. It may also be clarified at this point that the scope of Section 10(2)(a) is much wider and far reaching than the other sub-sections of section 10(2). It was observed by the Commission in its **Order dated 08 February 2016 in the matter of Show Cause Notice issued to M/s A. Rahim Foods (Private) Limited, 2016 CLD 1128**, that "*While there are innumerable instances of misleading information that an undertaking may distribute to the targeted potential consumer and hence be culpable under Section 10(2)(a), a contravention of Section 10(2)(d) will almost in every circumstance lead to a consequent contravention of Section 10(2)(a) of the Act, unless there exist exceptional circumstances in a particular case that warrant otherwise*". The same rationale is applicable to Section 10(2)(b) of the Act, as it is to Section 10(2)(d) of the Act.



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36. As has been discussed above, the conduct of the Respondent vis-à-vis the Impugned Advertisement is found to be in violation of Section 10(1) of the Act, read with Section 10(2)(b) of the Act. Based on the above, we are of the conclusive opinion that the Impugned Advertisement of the Respondent, is, in fact, capable of harming the business interests of the Complainant as well as other competing undertakings operating in the relevant market. Furthermore, the dissemination of misleading information are likely to cause eventual dilution of the brand identity and goodwill of the Complainant as well as other competing undertakings, which might have been built over the years. Moreover, these deceptive claims are capable of influencing consumer purchasing decisions. Therefore, the claims under review in the instant proceedings are capable of harming the business interests of other competitors, being in violation of Section 10(2)(a) of the Act. Accordingly, the Respondent is found to have also violated the provisions of Section 10(1) of the Act read with Section 10(2)(a) of the Act.

REMEDIES AND PENALTY

37. For the reasons discussed above and in line with our mandate to protect the consumers from anti-competitive behavior, including deceptive marketing practices, we hereby hold the subject conduct of the Respondent has violated provisions of Section 10(1) of the Act read with Section 10(2)(a) & (b) of the Act.
38. We are cognizant of the fact that marketers traditionally focus on designing advertising campaigns and other promotional strategies to promote a brand name. However, with evolving consumer preferences and laws, presentation; trade dress have become just as essential for making products and services distinctive and for building brand recall. The cultural diversity of the Pakistan market makes a compelling case for the importance of product identification by packaging and visual impression. This has resulted in third parties creating lookalikes of popular products with similar packaging or offer services through similar logos in order to grab consumers' attention and generate demand for their own products / services in the market. In our considered view, the consumers are clearly susceptible and at a serious risk of falling prey to deceptive confusion pertaining to the origin and quality of the products, due to the striking similarity in the Complainant's logo and the logo used by the Respondent.







39. In the instant matter it is on record that the Respondent had only published one advertisement i.e. the Impugned Advertisement, the last date to file application thereof was 26th November 2018. Thereafter, no further advertisements were issued by the Respondent. The Complaint was filed on 28th January 2019 and in the Enquiry Report it is also acknowledged that no other advertisement was published by the Respondent. It is on the record that the proprietor of Respondent discontinued the business through Respondent. The Respondent after the hearing in the matter has also submitted its Bank statement for the period 27th June 2018 to 12th February 2020 titled Sukkur Testing Services (SMC-PVT) Limited at Habib Bank Branch G-10 Markaz, Islamabad. From examination of advertisement and bank statement it is evident the advertisement was published in the newspapers on November 2018 and the last date of forms submission of fee was 26th November 2018. The Respondent received the fee amounting to Rs. 50, 150, 250, 300 and 450 from students for seven different posts mentioned in the advertisement. Till 26th November 2018 its account balance was Rs. 556,140.00/-. The Respondent has clarified that the amount of Rs. 500,000/- (Rupees Five Hundred Thousand Only) was returned to the Public Sector Organization and the Bank Statement shows the withdrawal of the said amount also. During the hearing the Respondent had also submitted that he is willing to comply with the directions and he will not indulge in any illegal practices in future. It is also relevant that Complainant though had claimed during the hearing that prospective consumers approached them, however, no evidence in this regard was produced before us. Further, even in the Complaint's para (5) & (6) there is no mention that the prospective candidates approached them upon seeing the advertisement.

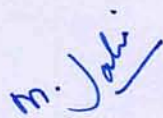
40. Keeping in view all the facts and circumstance of the matter in hand, there is no doubt regarding violation of the provisions of the Act, however, the approach of the representative of the Respondent needs to be appreciated as they cooperated throughout the proceedings and the Respondent discontinued the violation during the enquiry and never repeated that violation of the Act. In addition he also apologized and assured future compliance of the Act in letter and spirit. We, therefore, inclined to impose a token penalty of Rs. 250,000/- (Two Hundred and Fifty Thousand Only). However, given Respondent is directed to deposit the penalty with the Commission in two equal



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instalments within ninety (90) days from the date of this Order. The Respondent is also reprimanded that in future, the Commission will take a very strict view of any or all non-compliances or contraventions under the Act.

41. In terms of the above, the Show Cause Notice No. 01 of 2020 dated 17th January 2020 is hereby disposed of.



(Dr. Muhammad Saleem)
Member



(Dr. Shahzad Ansar)
Member



(Ms. Bushra Naz Malik)
Member

ISLAMABAD THE 12th DAY OF FEBRUARY 2020.

