



**BEFORE THE  
COMPETITION COMMISSION OF PAKISTAN**

**IN THE MATTER OF COMPLAINT FILED BY**

**KENNOL PERFORMANCE OIL**

*AGAINST*

**M/S KENNOL PETROLEUM (PVT) LIMITED**

**M/S JAPAN LUBE PETROLEUM**

**M/S TECHNO LUBE LLC**

**M/S DEWAN OIL STORE**

**(FILE NO. 344/KENNOL/OFT/CCP/2019)**

**Date of Hearing:** 30.03.2021, 29.04.2021,  
25.05.2021, 22.06.2021

**Commission:** Ms. Shaista Bano  
**Member**

Ms. Bushra Naz Malik  
**Member**

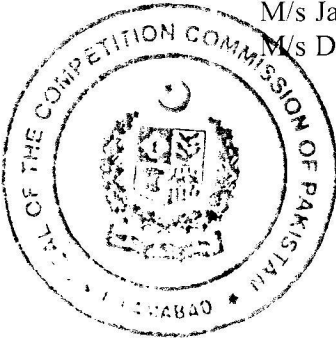
**Present:**

M/s Kennol Performance Oil

Ms. Melanie Gaboriau  
International Sale Developer  
Mr. Saad Nasrullah,  
Advocate High Court

M/s Kennol Petroleum (Pvt) Limited  
M/s Japan Lube Petroleum  
M/s Dewan Oil Store

Mr. Qasim Iqbal,  
Advocate High Court



## ORDER

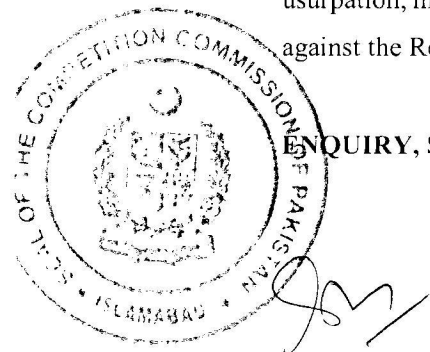
1. This order shall dispose of proceedings arising out of Show Cause Notice No. 2/2021, 3/2021 and 4/2021 dated March 1, 2021 (hereinafter the 'SCNs') issued to M/s Kennol Petroleum (Pvt.) Limited (hereinafter **Respondent no.1**), M/s Japan Lube Petroleum (hereinafter **Respondent no.2**) and M/s Dewan Oil Store (hereinafter **Respondent no.3**) respectively (collectively referred to as Respondents) for *prima facie* violation of Section 10 of the Competition Act, 2010 (hereinafter the 'Act').
2. In the instant matter, M/s Kennol Performance Oil, a subsidiary of Produits Petroliers Organisation S.A.S. (hereinafter referred to as the '**Complainant**'), alleged that the Respondents resorted to deceptive marketing practices by disseminating false and misleading information to consumers by distributing counterfeit packs of KENNOL Brand (the '**Product**') in the market and fraudulently used its trademark.

## FACTUAL BACKGROUND

### **COMPLAINT:**

3. The Competition Commission of Pakistan (the "**Commission**") received a complaint wherein the Complainant claimed to have been involved in the business of production and selling of motor engine oil and claimed to be the owner of brand name KENNOL PERFORMANCE OIL (hereinafter 'the **trademark**') which is also a registered trademark in France as well as in Pakistan.
4. The complainant alleged that the Respondent No.1 has exactly copied one of its famous brand 'KENNOL ULTIMA 20W60' and used 'KENNOL PERFORMANCE OIL' logo on mobile oil cans and delivery vans. Whereas, the Respondent no.2 is alleged to have copied the trademark and attempted to get it registered. Likewise, the Respondent no.3 is also alleged to have copied the trademark, manufactured and delivered its own counterfeit products. Whereas, the Respondents are involved in production and distribution of motor engine oil within Pakistan.
5. The Complainant claimed to have suffered significant damage to its reputation due to real brand usurpation, misrepresentation of logo and graphics. He requested the Commission to take action against the Respondent in spirit of fair business practice and protection of consumer rights.

### **ENQUIRY, SCNs, RESPONSES AND HEARINGS:**



6. Thereafter, the competent authority constituted an Enquiry Committee and entrusted it with task to probe into the matter further. The Respondents were required to submit their responses, however after repeated reminders, response was only submitted by the Respondent no.1. Whereas, the Respondent no. 2 and 3 did not submit any written responses.
7. The Respondent no.1 submitted that it had already submitted an application of registration of trademark 'KENNOL' with Intellectual Property Organization (IPO) Pakistan and quit its business for the time being.
8. After evaluating facts and responses, the Enquiry Committee concluded its Enquiry Report (hereinafter the 'ER') dated Jan 04, 2021, wherein the Respondents were found to have resorted to deceptive marketing practice by copying the trademark of the Complainant and marketed counterfeit product. Pertinent to mention that the Enquiry Committee did not find any violation being done on the part of M/s. Techno Lube LLC. The ER concluded with following recommendations;

*"Prima facie violation under the Act is terms of the finding of this enquiry report warrant initiation of proceedings against M/s Kennol Petroleum (Pvt) Limited, M/s Japan Lube Petroleum and M/s Dewan Oil Store under section 10 of the Act and the Complaint against M/s Techno Lube LLC may be dismissed in accordance with law."*

9. Accordingly, the competent authority served SCNs to the Respondents and afforded opportunities of hearing on different dates. SCNs read as following;

*"5. WHEREAS, in terms of the Enquiry Report in general and paragraph 5.49 to 5.54 in particular, it appears that the undertaking have been involved in unauthorized use of the Complainant's trademark and product labelling including color of packaging, font and style of text which appears to be, prima facie, in violation of section 10(2)(d) of the Act; and*

*6. WHEREAS, in terms of the Enquiry Report in general and paragraph 5.55 in particular, it appears that the Undertaking used and disseminated the trademark KENNOL of the Complainant on its own without any authorization or approval and copied it exactly to mislead and harm the business interest of the Complainant which prima facie*



*h<sup>3</sup>*

*appears to be in violation of section 10(1) of the Act in general, read with sub-section 10(2)(a) and 10(2)(b) of the Act. ; and"*

10. During repeated hearings, counsel for the Complainant reiterated his concerns in respect of matter already stated in the complaint. He claimed to have got his trademark registered and revealed his future plans to start business in Pakistan, and that actions of the Respondents have caused irreparable loss to the Complainant.
11. Whereas, counsel for the Respondents contended the Complainant's version and claimed to have already discontinued alleged marketing activities and claimed to have done nothing with *mala fide* intentions on their part. He also stated the Respondent no.2 has already discontinued sale of the alleged brand for last two years and denied any link with sales and marketing of alleged products. He also claimed to have already removed all alleged material from Facebook page and website. Nonetheless, the Complainant negated this fact by stating that marketing content is still available online.
12. The hearings concluded on 22.06.2021.

#### ANALYSIS

13. We have heard the parties, perused the record and identified following issue to be decided;

***I. Whether the Respondents have been involved in deceptive marketing practice within the meanings of section 10 of the Act while fraudulently using the Complainant's trademark?***

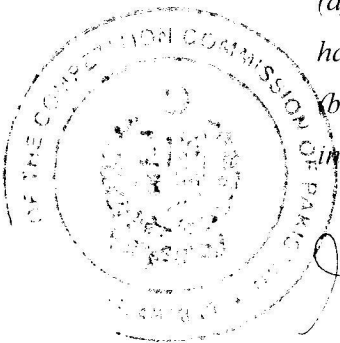
14. Before moving on to analysis, we would like to reproduce Section 10 of the Act for ease of reference which reads as follows;

*"10. Deceptive marketing practice:--- (1) No undertaking shall enter into deceptive marketing practice.*

*(2) The deceptive marketing practices shall be deemed to have been resorted to or continued if an undertaking resorts to---*

*(a) the distribution of false or misleading information that is capable of harming the business interests of another undertaking;*

*(b) the distribution of false or misleading information to consumers, including the distribution of information lacking reasonable bases,*



*[Handwritten signature]* 4

*related to the price, character, method or place of production, properties, suitability for use, or quality of goods;*

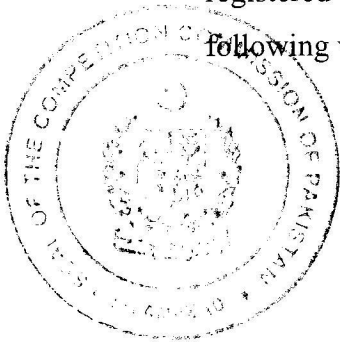
*(c) false or misleading comparison of goods in the process of advertising; or*

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

15. Clause (d) of the above referred section provides protection to trademarks of undertakings against fraudulent use by other undertakings. Fraudulent use of another's trademark, firm name or product labelling or packaging constitutes deceptive marketing. In its order ***In the Matter of Compliant Filed By M/s. DHL Pakistan (Pvt.) Ltd,*** the Commission with regard to the interpretation of the term 'fraudulent' stated that;

*'While interpreting section 10 of the Act; one needs to be conscious that the interpretation of fraudulent use trade mark has to be in context of deceptive marketing and would thus have a broader scope. Rather than making it too complex by focusing of 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 Respondent by use of trademark, intended to deceive customers/consumers to gain an advantage. Keeping in view the nature of contravention, it is not subjective intent but the objective manifestation of that intent that will establish the fraudulent use.*

16. With that understanding in mind, we now move on to analyze available evidence produced by the Complainant or collected by the Enquiry Officers. It is matter of record that the trademark of the Complainant 'KENNOL PERFORMANCE OIL' is registered in Pakistan since 22.10.2018 under Trademark Ordinance, 2001, and has following visual presentation;



*JM*

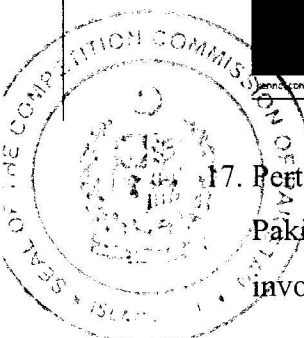
*5*



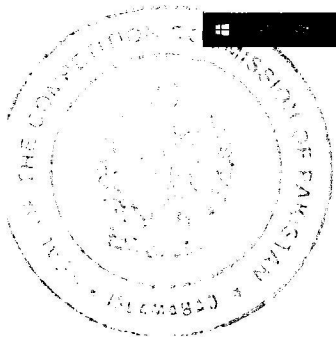
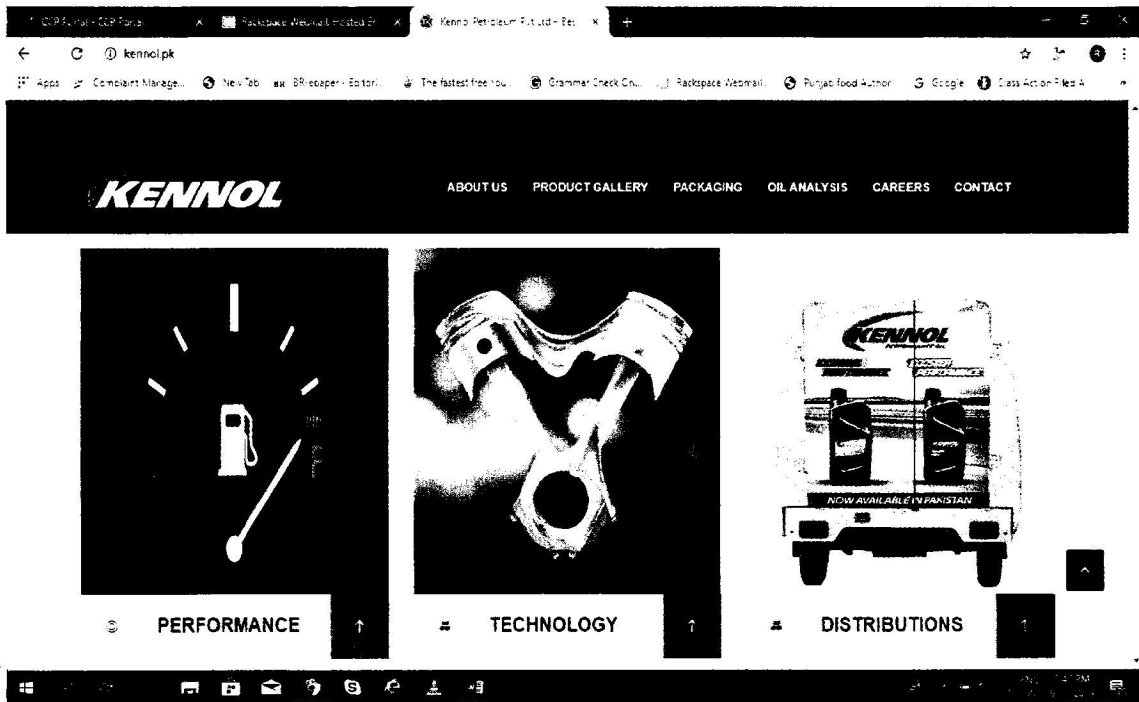
17. Pertinent to mention that the Complainant has not authorized any undertaking in Pakistan to act on its behalf or use its trademark. Neither is the Complainant himself involved in any business activity in Pakistan. Whereas, the Complainant alleged that

*Handwritten signature*

*Handwritten signature*

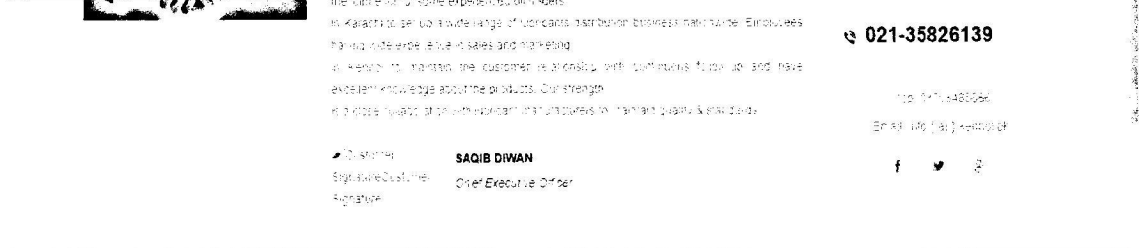
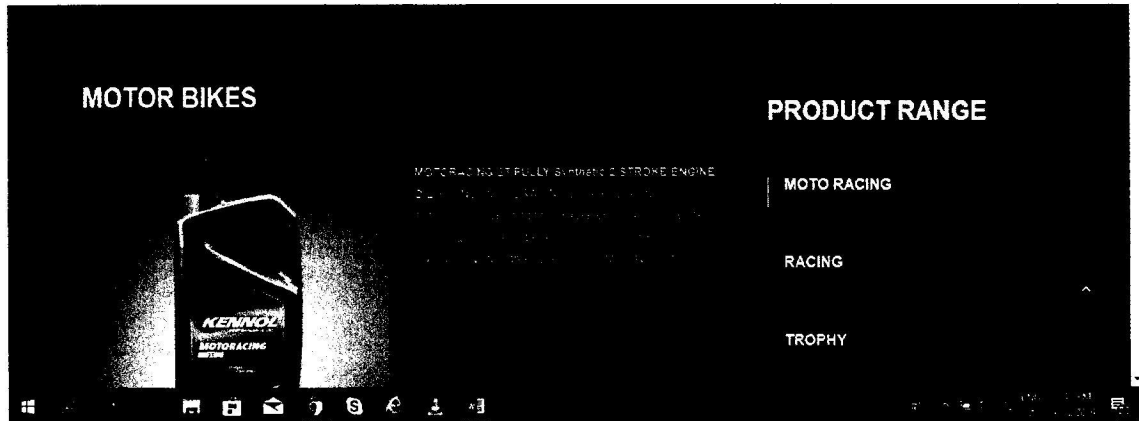


the Respondents have been using its trademark without any authorization which is not only infringement of its trademark but also causes harm to business interests of the Complainant. The Respondents are alleged to have made advertisement where false and misleading information is disseminated while copying exact trademark of the Complainant. Upon perusal of the record, we have found pictorial evidence against the Respondents which is gathered from online platforms i.e. Facebook or Respondent's website i.e. [www.kennol.pk](http://www.kennol.pk). Evidence also includes photographs of delivery vans and mobile oil cans of the Respondents where alleged trademarks are imprinted. Following are the photograph taken as screenshots of the Respondent no.1 website, showing presence of alleged trademark in clear manner.

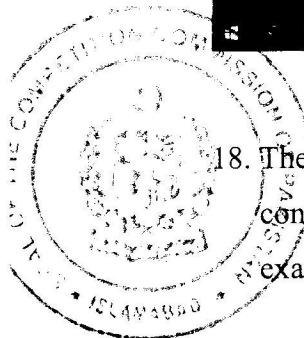


*[Handwritten signature]*

*[Handwritten signature]*



18. The following photograph is an image of booking form of the Respondent no.1 which contains trademark 'KENNOL PERFORMANCE OIL' with design and graphics exactly same as the Complainant's trademark.



*Handwritten signature*

*Handwritten signature*



Customer code:  Customer Name:

Company Name:

Address:

Tehsil:  Dist:

Contact:

Email:

**Order Booking Form**

OBF No:

Date:

S/O Name:

S/O Code:

Region:

Zone:

Sr#	Product Code	Product Description	Packing	Qty	Unit Price	Gross Amount	Discount Amount / Ltr	Net Amount	Remarks
1									
2									
3									
4									
5									
6									
7									
8									
9									
10									
11									
12									
13									
14									
15									
<b>Total:</b>									

Amount in words

Outstanding (if any)

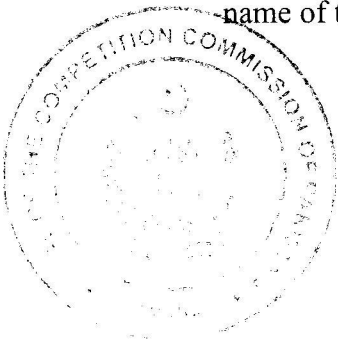
Credit Limit:  Credit Days:

Remarks

OBF Vol. LTRs  Total Monthly Vol. Vol. in Scheme  Vol. Without Scheme

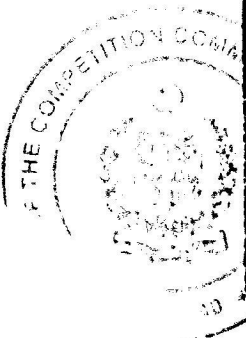
**Sales Office**  **General Manager Marketing Operation**

19. Whereas, following are photographs of product packaging and delivery van containing name of the Respondent no. 2 i.e. "Japan Lubes";



*[Handwritten signature]*

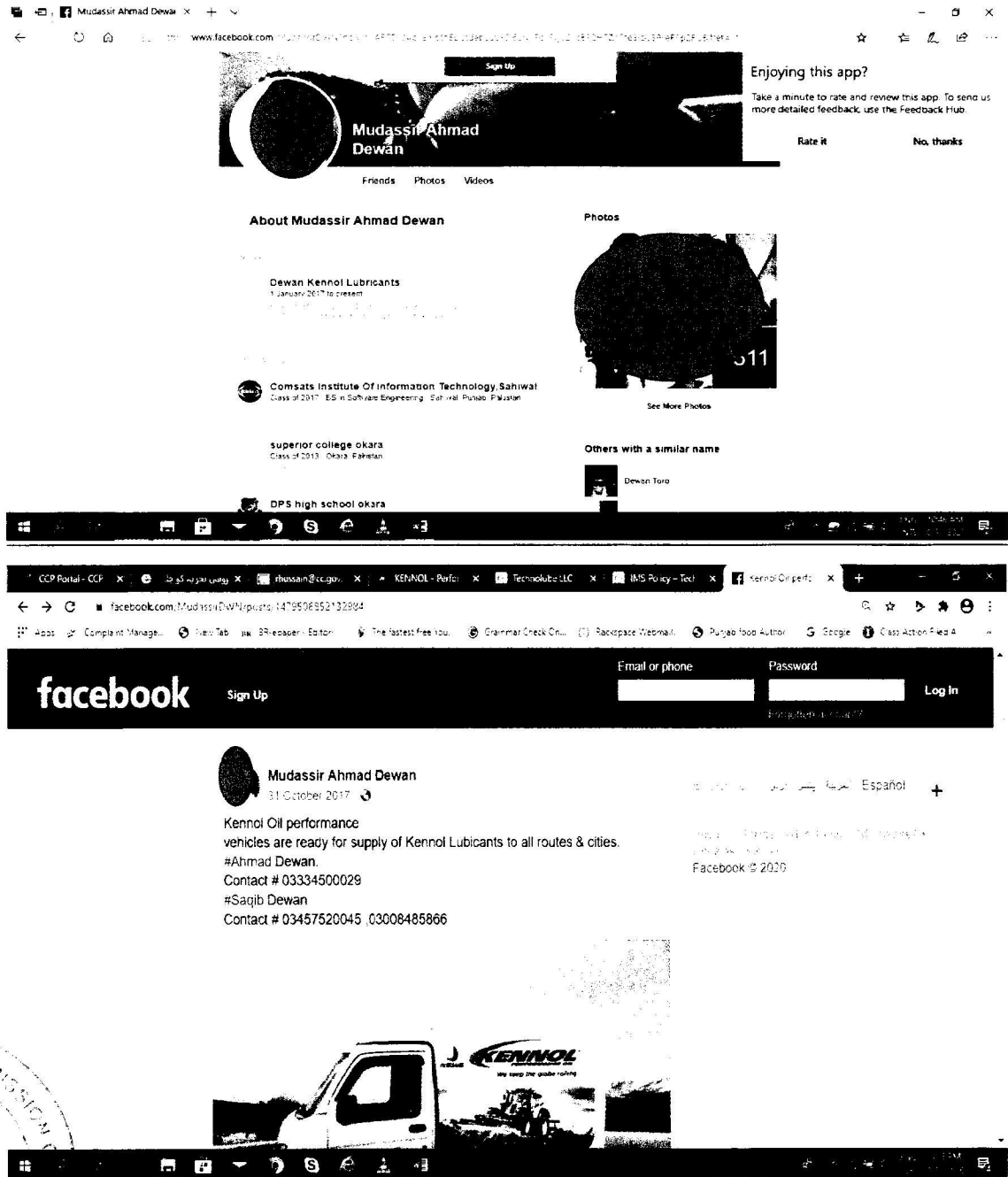
*[Handwritten signature]*



*[Handwritten signature]*

*[Handwritten signature]* 10

20. Following are the screenshots taken from Facebook page of the Respondent no.3.



21. Above images show that the Facebook page of the Respondent no.3 contains not only brand name of the Complainant, but also, contact number of the Respondent no.1. This brings the fact to the light that Respondent no.1 and 3 are somehow connected to each other. Likewise, Respondent no.1 and 2 also appear to be connected to each other. Following is the image of trademark application filed by the Respondent no.2, showing

11

that Respondent no.1 and 2 both are owned and controlled by the same person i.e. Mr. Saqib Dewan.

**TM-1**

Trade Mark No. 463854

Application for registration of trade mark for goods or services and to register a domain name under section 22(1), section 84(2); rule 12

# KENNOL


MOTOR OIL

Application is hereby made for registration in the register of the accompanying trade mark in class 1, 04 in respect of MOTOR OIL, GAIR OIL, INDUSTRIAL OIL AND GREASES, LUBRICANTS, FUELS.

in the name of MUHAMMAD SAQIB SOLE PROPRIETOR PAKISTANI NATIONAL  
trading as M/S.JAPANLUBE PETROLIUM PRODUCTS (PAKISTANI)  
COMPANY

having their office at PLOT NO-207, STREET NO 59, SECTOR 9, MALIZOR  
COLONY, MEHMOODABAD KARACHI EAST JAMSHED TOWN (PAKISTAN)  
who claims to be the proprietor thereof and by whom the said mark is proposed to be used from the date 2017 in respect of said goods or services.

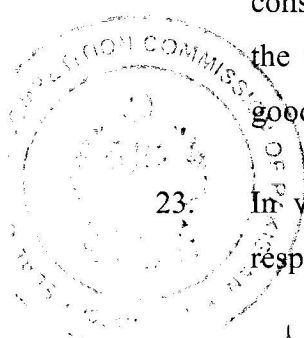
My attorney, agent, advocate and state the following:-  
Copies of the application, fee and all correspondence should be sent  
dated this 18<sup>th</sup> day of 07, 2017.

Signature: 

MUHAMMAD SAQIB, SOLE PROPRIETOR, PAKISTANI NATIONAL  
CNIC NO. 35302-3384157-1

22. There is no doubt that pictorial comparison of alleged trademark of the Respondents and original trademark of the Complainant leads to the obvious conclusion that there exist similarities in terms of color, graphics, fonts and placement on the product packaging. Confusion between the two trademarks will be intensified in the context of visualizing the products of both the Complainant and the Respondent being placed in close proximity to one another in display shelves at retail outlets, supermarkets and other points of sale across the country. We believe that the ordinary consumer, specifically the illiterate, would not be able to distinguish between the products' origin or brand names evident on the packaging. Such similarities would mislead the consumer into believing that the source/ origin of the Respondents' products is in fact the Complainant. The Respondents in the present case are, in fact, free riding on goodwill of the Complainant by exactly copying his trademark.

23. In view of the foregoing, we are fortified in our view that the Respondents are responsible for and have in fact resorted to deceptive marketing. Marketers traditionally



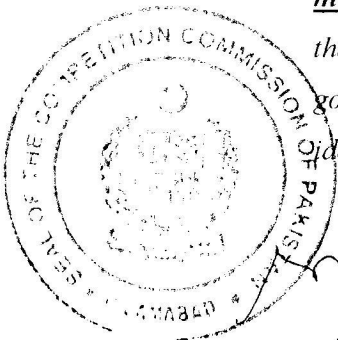


 12

focus on designing advertising campaigns and other promotional strategies to promote a brand name. However, with evolving consumer preferences and laws, trademarks have become just as essential for making products and services distinctive and for building brand recall. The cultural diversity of the Pakistani market makes a compelling case for the importance of product identification by packaging and visual impression. This has resulted in third parties creating lookalikes of popular products with similar packaging in order to grab consumers' attention and generate demand for their own products in the market. In our considered view, the consumers are clearly susceptible and at a serious risk of falling prey to deceptive confusion pertaining to the origin and quality of the products, due to the striking similarity in the Complainant's and the Respondents' trademark.

24. The Respondents have failed to discharge the burden of providing any level of substantiation for the authenticity of its trademark to the effect that it would not cause a misleading impression that Respondent's products originate from the Complainant or match the quality of the Complainant's products. This deceptive similarity in the trademarks has the potential to directly or indirectly affect the transactional decision of the consumers to buy the Respondents' product on the misleading pretense as to origin/ place of production and quality of the product and, hence, materially deceptive. Therefore, we are in agreement with conclusion of the Enquiry Report with regard to fraudulent use of the Complainant's trademark by the Respondents, amounting to deceptive marketing practice within the meanings of section 10(2)(d) of the Act.
25. Whereas, with reference to the information being capable of harming the business interest of other undertakings, we would like to refer to earlier decision of the Commission i.e. **In the matter of Show Cause Notice issued to M/s Shainal Al-Syed Foods**, reported as **2018 CLD 1115**, wherein it was held that:

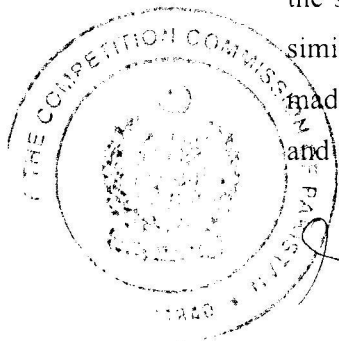
*"44. With respect to the term "business interest" in clause (a) of subsection (2) of Section 10 of the Act, the Commission observed **in the matter of M/S. DHL Pakistan (Pvt.) Ltd** reported as **2013 CLD 1014** that, 'it is important to recognize that part of any business' identity is the goodwill it has established with consumers, while part of a product's identity is the reputation it has earned for quality and value'.*



45. As per the ruling laid down by the Commission in the 2016 CLD 1128, "in the event that there exists a contravention of Section 10(2)(d) by an undertaking, a concurrent violation of Section 10(2)(a) is also made out". Furthermore, as established above, copycat packaging, being a practice that falls within the ambit of clause (d) of subsection (2) of Section 10 of the Act, in itself also amounts to the dissemination of misleading information to the public as it amounts to an unfair and deceptive trading practice. The unavoidable consequence of the dissemination of such information is that it is capable of harming the business interest of and resulting in a serious injury to competitors whose product packaging and labelling has been copied in terms of the goodwill that the competitor has established in the market and reputation it has earned for the quality of its product. It is also placed on record that clause (a) of subsection (2) of Section 10 of the Act has a much broader scope than clauses (b) & (d) of subsection (2) of Section 10 of the Act and therefore, a contravention of clauses (b) & (d) of subsection (2) of Section 10 of the Act will almost in every circumstance lead to a consequent contravention of clause (a) of subsection (2) of Section 10 of the Act, unless there exist exceptional circumstances in a particular case that warrant otherwise."

26. In line with the Commission's above referred decision, we are of the view in the present case also that by violating section 10(2)(d), the Respondents have concurrently violated section 10(2)(a) of the Act and caused harm to business interests of the Complainant.

27. Despite aforesaid, we are considerate of the Respondents' admission with regard to violation and their compliance oriented approach. The Respondents extended their regrets for alleged activity and expressed inability to pay hefty amount of penalty given the size of their companies. Nonetheless, they ensured the Commission that nothing similar to alleged activity will be repeated in future. Not only that, the Respondent also made oral commitments during hearings with regard to altering their company names and shutting down websites containing alleged trademark. Subsequent to that the



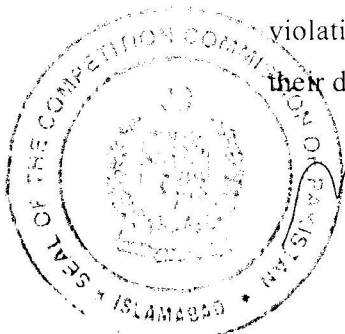
 14

Commission received a compliance report dated 24.08.2021 wherein the Respondents confirmed change of their company name and mentioned their efforts to get new company name registered with the concerned authority. The Respondents also referred in their compliance report to a legal notice issued by them to one of their distributor who, without authorization of the Respondents, printed in fake manner their company names on the mobile oil cans containing alleged trademark.

28. We have taken into consideration the commitments made by the Respondents, however, cross checked whether their website is still functional. Although the Respondent's website is functional and contains a new trademark which is slightly different from the Complainant's trademark, however, it still bears resemblance with it and is capable of confusion to the consumers. Therefore, we believe that commitments offered by the Respondents themselves are not fully complied with in letter and spirit.

29. Besides, we do not find ourselves convinced with the Respondents' action of serving legal notice to one of its distributor who exploited the Respondents' name and printed it on product packaging without their authorization. Further, the Respondents cannot be allowed to get away with violation of law merely on the pretext that the alleged action is not carried out by themselves, but rather by one of their distributor. When the distributor printed the Respondents name on the product packaging and the Respondents kept silent on it, we are constrained to presume that the benefit of that deceptive marketing practice would have extended to the Respondents as well, which is why the Respondents kept silent on it until the action was taken by the Commission.

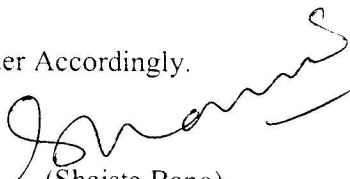
30. It is important to highlight here that undertakings in the market should be vigilant and considerate of their distributors or employees acting on their behalf. They cannot be allowed to resort to any sort of argument which shifts their burden on others and help them to get away. Undertakings must ensure proper training and procedures for their employees and distributors in order to make them aware of what may constitutes violation of competition laws and that distributors or employees do not transgress from their domains.




## PENALTY

31. Keeping in view aforesaid, the Commission directs the Respondents to cease use of contentious trademark of the Complainant and to ensure that their products are sold in a manner that is distinct in its overall layout, design, shape, font and color scheme so as to be easily distinguishable from the Complainant's trademark and products.
32. The Respondents are given six (6) weeks to shut down their website ([www.kennol.pk](http://www.kennol.pk)) and Facebook pages containing trademark of the Complainant or any other trademark which may be capable of creating resemblance with the Complainant's trademark. The Respondents are restrained to carry out any deceptive marketing practice whatsoever and file a fresh compliance report with the Registrar of the Commission along with evidence of shutting down the alleged activity.
33. Such lenient approach of the Commission is a result of the Respondents' commitments and their compliance oriented approach. However, in case of failure to comply with direction of the Commission in given time, the Respondents shall be liable to pay a penalty of Pakistani Rupees 1 Million (PKR.1,000,000) each for contravention of Section 10(2)(a) of the Act and Pakistani Rupees 1 Million (PKR.1,000,000) each for contravention of Section 10(2)(d) of the Act. Thus accumulatively, each Respondent shall be liable to pay Pakistani Rupees 2 Million (PKR.2,000,000).
34. The Registrar of the Commission is directed to provide copies of this order to Pakistan Telecom Authority (PTA), Pakistan Electronic Media Regulatory Authority (PEMRA) and Securities and Exchange Commission of Pakistan (SECP) along with a request to take necessary step to ensure that neither website or advertisement of the Respondents containing trademark of the Complainant nor the Respondents' company name resembling the Complainant continues.
35. In terms of above, SCN No. 2/2021, 3/2021 and 4/2021 are hereby disposed of.

36. Order Accordingly.

  
(Shaista Bano)  
*Member*

  
(Bushra Naz Malik)  
*Member*

ISLAMABAD, THE 25<sup>th</sup> DAY OF AUGUST, 2021.