



BEFORE THE
COMPETITION COMMISSION OF PAKISTAN

IN THE MATTER OF

SHOW CAUSE NOTICE ISSUED TO
M/S UNIVERSITY OF MANAGEMENT TECHNOLOGY FOR
DECEPTIVE MARKETING PRACTICES

(F. NO: 247/UMT/OFT/CCP/2016)

Date of hearing:

08-05-2018

27-12-2018

Commission:

Dr. Muhammad Saleem
Member

Dr. Shahzad Ansar
Member

On special notice u/s 53 of
Competition Act, 2010:

Ms. Sophia Khan
Prosecutor

Assisted by
Ms. Aish K. Khan

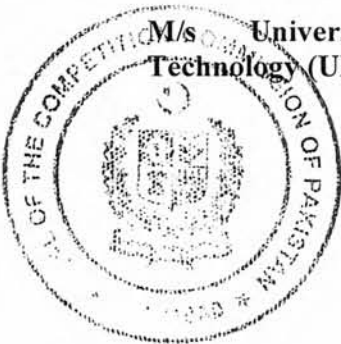
Present on behalf of:

M/s **University of Management Technology (UMT)**

of **Management**

Mr. Asad Manzoor But
Advocate Supreme Court

Mr. Hassan Fareed
Advocate High Court



ORDER

1. This Order shall disposed of the proceedings initiated *vide* Show Cause Notice No. 13 of 2018 dated 26th April 2018 (the 'SCN'), issued to M/s University of Management Technology (the 'Respondent' or 'UMT) by the Competition Commission of Pakistan (the 'Commission') for, *prima facie*, contravention of Sections 10(2)(a) and 10(2)(b) read with Section 10(1) of the Competition Act, 2010 (the 'Act').
2. The Commission received an information for the the purported violation of Section 10 of the Act by the UMT. The Commission upon receipt of the said information treated it as a Complaint under the provisions of Regulation 58 of the Competition Commssion (General Enforcement) Regulations, 2007 (the 'GER') and initiated an enquiry which was concluded vide Enquiry Report dated 22nd March 2018 (the 'Enquiry Report'). The Commission after considering the recommendations and conclusions of the Enquiry Report initiation proceedings under Section 30 of the Act against the Respondent by authorizing the issuance of SCN in accordance with law.

FACTUAL BACKGROUND

3. The Commission received complaint against UMT stating that the nephew of the Complainat took admission in UMT on perusing its prospectus for the year 2014-15, wherein it was claimed that UMT is "Top Ten in South Asia" and "Best Accredited in Pakistan". It has been alleged that by doing so UMT has engaged in deceptive marketing practices, which is a violation of Section 10 of the Act.
4. The Enquiry Report examined whether the Respondent has contravened the provisions of Section 10 of the Act. The Enquiry Committee sought solicitation of written comments of the Respondent dated 18th October 2016 and 29th December 2016. The Enquiry Report concluded as follows:

...[i]t appears that the conduct of the Respondent has the potential to cause confusion among customers through dissemination of leading information related to character, properties and quality



of its services via claims of being “Top 10 in South Asia and best accredited in Pakistan”, “UMT School of Business and Economics (SBE) is the only business school in Pakistan that has SAQS Accreditation by the Association of Management Development Institutions in South Asia (AMDISA)”, “UMT is also at the top as per HEC ranking in the General Category (medium sized) of private sector institutions in Punjab in a row since last year”, “Ranked as 2nd Best by HEC and Top 10 in South Asia.” and “...the best ranked and best accredited School of Business and Economics (SBE) at the University of Management and Technology”, in violation of Section 10 (1) of the Act, in terms of Section 10 (2) (b) of the Act.*

5.2 The Respondent is also found disseminating misleading information that is capable of harming the business interest of other undertakings, in violation of Section 10 (1) of the Act, in terms of Section 10 (2) (a) of the Act.

5.3 In view of the above the Respondent has entered into deceptive marketing practices thereby violating the provisions of Section 10 (1) in terms of Section 10 (2) (a) & (b) of the Act. Therefore, it is recommended that, in the interest of the public at large, proceedings may be initiated against M/s University of Management & Technology, Lahore under provisions of Section 30 of the Act for, prima facie, violation of Section 10 of the Act.

5. Based on the findings of the Enquiry Report, the Commission initiated proceedings under Section 30 of the Act against the Respondents. For the sake of brevity the SCN in its relevant parts is reproduced herein below:

2. **“WHEREAS**, *In terms of the Enquiry Report in general and paragraphs 4.4 to 4.55 in particular, the Undertaking was found to be claiming “Top 10 in South Asia and best accredited in Pakistan.”, “UMT School of Business and Economics (SBE) is the only business school in Pakistan that has SAQS*



Accreditation by the Association of Management Development Institutions in South Asia (AMDISA).”, “UMT is also at the top as per HEC ranking in the General Category (medium sized) of private sector institutions in Punjab in a row since last year.”, “Ranked as 2nd Best by HEC and Top 10 in South Asia.”, and “...the best ranked and best accredited School of Business and Economics (SBE) at the University of Management and Technology.” without a reasonable basis, on its prospectus of 2014-2015 and 2015-2016 respectively, thereby, prima facie, distributing false and misleading information related to properties, characteristics and quality of educational services, in violation of Section 10 of the Act read with Section 10 (2) (b) of the Act; and*

3. **WHEREAS**, *in terms of the Enquiry Report in general and paragraphs 4.56 and 4.57 in particular, the Undertaking is also found to be distributing false and misleading information that is capable of harming the business interests of other undertakings, prima facie, in violation of Section 10 (1) of the Act, in terms of Section 10 (2) (a) of the Act; and”*

6. On 8th May 2018, Mr. Umar authorized representative for the Respondent requested for an adjournment of one month for filing the reply to the SCN as they have been informed just two (2) days before, about the proceedings by the management of the Respondent. The the request for one month was not acceded, however, the authorized represertnative of the Respondent was directed to file detailed reply within a period of seven (7) days and directed the Registrar to fix the eharing after the filing of reply within the stipulated period.

7. The matter was again fixed for hearing on 27th December 2018. The Counsel for the Respondent praised the role of the Commission in maintaining rule of law. He stated that there are numerous departments of the university and the complainant is from the consumer community as no loss has been occurred due to the promotion of the Respondent. The Respondent has not done the act in question with



[Handwritten signature]

bad intentions and has discontinued the practices after the Commission took notice of it. The ranking as stated in the complaint as 43 was not correct as the Respondent has been ranked at 23. He further argued that the allegations so levied by the complainant without any proofs. The counsel requested to forgo the unintentional mistake so committed earlier. The Counsel also requested for a lenient treatment and not to impose any penalty. The Bench directed the the Counsel appearing on behalf of the Respondent to file the commitments in terms of Part IV and VI of the GER.

8. As per the directions of the Bench a sample statement was forwarded to the authorized representatives through email dated 02 January 2019. UMT vide letter dated 13-02-2019 filed the undertaking pursuant to Part IV and VI of Competition Commission (General Enforcement) Regulations, 2007.

9. Ms. Sophia Khan, Prosecutor was present on special notice under Section 53 of the Act, for providing assistance to the Bench, specifically emphasised that the claims made in the Prospectus of the Respondent was solely aimed at attracting the students for the purposes of admission and make profits. She further highlighted that instead of providing the basis for the claims under review by the Commission, the University has asserted that the claims are not intentional and must be forgiven. While referring to the **Order of Commission in the matter of Show Cause Notice issued to M/s Green Field Developers (Pvt.) Limited**, reported as **2018 CLD 404**; and **Order of the Commission in the matter of Show Cause Notice issued to M/s Eden Builders (Pvt.) Limited** reported as **2018 CLD 482**, it was stressed by Ms. Khan that in the process of advertising, the onus is upon the undertaking concerned to ensure that the claims made/advertised by them have a reasonable basis or prior substantiation. Reference and reliance was also placed on **M/s Procter and Gamble Pakistan (Private) Limited** reported as **2010 CLD 1695** and **Pfizer, Inc., 81 F.T.C. 23 (1972)**.

10. Ms. Khan also referred various instances from other jurisdictions wherein the educational institutions for the deceptive/false marketing were taken to Court. She placed reliance on **Trump University Settlement**, which was approved by the **United States Federal 9th Circuit Court of Appeals**. It was submitted on her behalf that the settlement was approved because the students challenged the claims



made by the University as false and ultimately won in settlement. Ms. Khan further referred to another case from UK i.e. ASA (2017f) ASA Ruling on Complaint ref: A17-393534. The Advertising Standard Authority¹ (the 'ASA') took notice of a paid Facebook post for the University of Leicester, on 17th July 2017, featured text stating that the university was "a top 1% world university" and "A World Ranked University". The ASA held that in the absence of qualification about the basis of the claim and adequate substantiation, the ad have exaggerated the level of the university's relative standing worldwide, and therefore was likely to mislead. She cited another case from US jurisdiction i.e. Federal Trade Commission, Plaintiff, v. DeVry Education Group Inc., formerly known as DeVry Inc., a corporation; DeVry University, Inc., a corporation; and DeVry/New York Inc., a corporation, Case No. 2:16-cv-00579-MWF-SS, wherein DeVry University, one of the nation's largest for-profit colleges, mislead consumers about the employment and earnings of its graduates in numerous radio, television, online and print advertisements. She submitted that a settlement was arrived and under the settlement resolving the FTC charges, DeVry will pay \$49.4 million in cash to be distributed to qualifying students who were harmed by the deceptive ads, as well as \$50.6 million in debt relief. The debt being forgiven includes the full balance owed—\$30.35 million—on all private unpaid student loans that DeVry issued to undergraduates between September 2008 and September 2015, and \$20.25 million in student debts for items such as tuition, books and lab fees.

11. After referring to the cases from other jurisdiction with reference to the treatment of the false/misleading claims by the educational institutions, Ms. Khan submitted that marketing by the educational institutions are very important and must be reviewed strictly; as based on the marketing/ advertising by the educational institutions students make important decisions about their education and their future, and they should not be misled by deceptive claims. She summed up her submissions by requesting the Bench to treat this matter strictly, in order to ensure that students' future is not jeopardized due to the misleading or false advertising claims by the educational institutions.



an independent regulator of advertising across all media.

ANALYSIS & DECISION

12. On careful review of the Enquiry Report, the SCN and the submissions made by the Respondent and the Learned Prosecutor, the substantive issues in the instant matter are as follows:

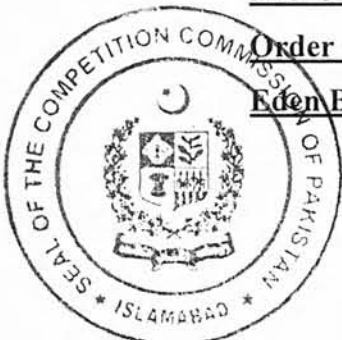
(i). *Whether the Respondent is distributing false or misleading information to consumers, including the distribution of information lacking a reasonable basis, related to character, properties and quality of services, in violation of Section 10 (2) (b) of the Act?*

(ii). *Whether the conduct of the Respondent is capable of harming the business interests of other undertakings, in violation of Section 10 (2) (a) of the Act?*

13. Keeping in view the submissions made before it and the documents submitted, we shall now examine the aforementioned points *in seriatim*.

Issue No. (i). Whether the Respondent is distributing false or misleading information to consumers, including the distribution of information lacking a reasonable basis, related to character, properties and quality of services, in violation of Section 10 (2) (b) of the Act?

14. The basic and fundamental question, which needs to be addressed under this particular issued is that the claims made by the Respondent were false or misleading and whether the claims have been substantiated, if yes, to what extent?. We are in complete agreement with the submissions made by Learned Prosecutor before us that the advertiser must have some recognizable substantiation for the claims made prior to making it in an advertisement and in this regard, she had rightly placed reliance on **Order of Commission in the matter of Show Cause Notice issued to M/s Green Field Developers (Pvt.) Limited**, reported as **2018 CLD 404**; and **Order of the Commission in the matter of Show Cause Notice issued to M/s Eden Builders (Pvt.) Limited**, reported as **2018 CLD 482**.



15. It is on the record that the Respondent has made following claims in its Prospectus for the year 2014-2015:

- (a). "Top 10 in South Asia and best accredited in Pakistan",
- (b). "UMT School of Business and Economics (SBE) is the only business school in Pakistan that has SAQS Accreditation by the Association of Management Development Institutions in South Asia (AMDISA)",
- (c). "UMT is also at the top as per HEC ranking in the General Category (medium sized) of private sector institutions in Punjab in a row since last year",
- (d). "Ranked as 2nd Best by HEC* and Top 10 in South Asia." and
- (e). "...the best ranked and best accredited School of Business and Economics (SBE) at the University of Management and Technology"

16. With reference to the claims (a) & (b), the Enquiry Report has observed that out of the list of 18 Schools that have been granted SAQS accreditation, only three (3) are Pakistani Institutes, which are namely: (i) Institute of Business Administration (IBA), Karachi, Pakistan, (ii) School of Business Economics, University of Management & Technology, Lahore, Pakistan and (iii) Suleman Dawood School of Business, Lahore University of Management Sciences, Lahore, Pakistan. The Enquiry has observed that SAQS is a quality assurance scheme run by Association of Management Development Institutions in South Asia (the 'AMDISA') as a service to the management education profession worldwide. Further, AMDISA only offers an accreditation under SAQS Quality Label but does not rank institutions in the region. Therefore claiming as being top 10 in South Asia based on SAQS Accreditation is a misleading claim relating to character, properties and quality of services. Moreover, SAQS accreditation is a voluntary procedure that does not account for quality of business education among all operating institutes within South Asia. It is evident from the material available on the record that three business schools in Pakistan hold accreditation. Furthermore, it is also important to consider that AMDISA awards SAQS Quality Label only to schools offering business education. Therefore, if the Respondent has been able to obtain a SAQS



Label, it is only valid for its business school and not for other faculties at the institution. Therefore, labelling the cover of the prospectus with claims such as “**Top 10 in South Asia**” based on SAQS accreditation is also misleading as it portrays that the institution as a whole has been ranked top 10 in South Asia which is not the fact in this case.

17. According to the HEC’s Quality and Research based ranking of the Business Education Institutes in 2013, the Respondent’s name did not make it to the list. However, the Respondent had a normalized score of 60.633 in the General – Medium category in the HEC’s Quality and Research based ranking in 2013. In the year 2014, the Respondent was ranked at number 23 in the General Category with a normalized score of 51.745. From the information available on the record, the Respondent could not have been among the top 10 institutes in South Asia since the Respondent was not able to make it up to the HEC’s list by ranking of business education institutes within Pakistan. The Respondent was also directed to substantiate the claim of “**Best Accredited in Pakistan**” to which the Respondent submitted that unlike other universities in Pakistan, it had a 5 years SAQS Accreditation along with accreditation from NBEAC, National Accreditation Council for Teacher Education, NCEAC, Pakistan Council of Architects and Town Planners and PEC for its respective faculties. In light of this the Respondent had therefore, claimed that it was best accredited in Pakistan unlike other educational institutes. However, when taking the claim of “**Best Accredited in Pakistan**” at face value, it gives a net impression that the Respondent has been accredited as the best institute within Pakistan. Therefore, the claims are misleading and violate Section 10 (1) of the Act in terms of Section 10 (2) (b) of the Act.

18. In the year 2015-16, the again made the claim of being Top 10 in South Asia. Unlike the prospectus of 2014- 15, the Respondent has not even displayed the SAQS Quality Label on the prospectus of 2015-16 in relevance to the claim of being top 10 in South Asia. Therefore, the claim does not explain as to what authority had declared the Respondent one of the top 10 institutes of not only Pakistan but of South Asia. Furthermore, the claim does not even explain that the accreditation by NDISA was only for business school of the Respondent and not for all the faculties in general. Therefore, the claim of “**Top 10 in South Asia**” in the absence



of relevant context is highly misleading. Moreover, the first part of the claim, i.e., “Ranked as 2nd Best by HEC*”, gives an overall impression that the institute as a whole has been awarded the position of being 2nd best in Pakistan. Whereas contrary to the claim, the Respondent was ranked at number 23 in the General Category with a normalized score of 51.745 in the year 2014. Furthermore, adding the disclaimer on the 2nd page in continuation of the claim is also deceptive. The disclaimer in itself greatly limits the scope of ranking by HEC by only taking into account privately owned universities in Lahore. When reading the claim on the cover page with the disclaimer on the 2nd page, it is evident that the Respondent has mislead the consumers by portraying itself as the 2nd best institute in Pakistan. Although the Respondent has referred to its business school as the best institute whereas the SAQS accreditation does not provide ranking of institutes. Furthermore, it was ranked 23rd by HEC in the preceding year. Moreover, according to the HEC’s Quality and Research based ranking of the Business Education Institutes in 2013, the Respondent’s name did not even make it to the list. Therefore, calling its business school as the best ranked and best accredited school is false and misleading in terms of rankings both within Pakistan and in South Asia. Each claim referred in Para 15 *ibid* is misleading in terms of properties, characteristics and quality of educational services being provided and accordingly constitutes a violation of Section 10 (1) of the Act in terms of Section 10 (2) (b) of the Act.

19. During the hearings before the us, the Respondent, through their Counsel have not objected to the findings of the Enquiry and have also shown their willingness to comply with any or all the directions of the Commission. They also apprised us that the claims have been removed.

Issue No. (ii). Whether the conduct of the Respondent is capable of harming the business interests of other undertakings, in violation of Section 10 (2) (a) of the Act?

With respect to this Issue, we are required to determine whether the Respondent’s conduct i.e. making of claims in its prospectus falls within the scope of the violation caught by Section 10(2)(a) of the Act.



21. Section 10(2)(a) of the Act provides that ‘the distribution of false or misleading information that it is capable of harming the business interests of another undertaking’ shall be deemed to constitute a deceptive marketing practice. An in-depth discussion of the term ‘business interest’ has also been provided **in the order in the Matter Of Show Cause Notice Issued To M/S Tara Crop Sciences (Private) Limited** reported as **2016 CLD 105**, by which we are guided in this matter.
22. We have already reached a determination with regards to Issue (i) above that the claims of the Respondent as contained in its Prospectus were deceptive. In the event, there exists a contravention of Section 10(2)(b) of the Act by any undertaking, a concurrent violation of Section 10(2)(a) is also made out. The consequences of the distribution of false or misleading information is such that it is always capable of harming the business interests of and resulting in fatal consequences for the competitors of the Respondent concerned. As observed by the Commission on numerous occasions before, it is reiterated that no strict proof of actual harm caused to a competitor is required for a determination of a contravention of Section 10(2)(a) of the Act as long as it can be shown that such potential harm was capable or possible of being caused or foreseeable.
23. Therefore, we are of the concurring opinion that the distribution of false or misleading information to consumers by the Respondent through its Prospectus is in fact capable of harming the business interests of its competitors being numerous other Educational Institutions. We, therefore hold the Respondent liable for a violation of Section 10(2)(a) of the Act.

COMMITMENT & COMPLIANCE

24. During the hearing held on 27th December 2018, the Respondent’s Counsel tendered an unconditional apology and made a commitment to discontinue the impugned advertised claims as noted above. Through its Commitment dated 13th February 2019, the Respondent, through Ms. Aneesa Rahat, Registrar of University of Management and Technology, Lahore, submitted that:



- a) That, the claims i.e. (i) to be among Top 10 in South Asia and best accredited in Pakistan.”, (ii) “UMT School of Business and Economics (SBE) is the only business school in Pakistan that has SAQS Accreditation by the Association of Management Development Institutions in South Asia (AMDISA).”, (iii) “UMT is also at the top as per HEC ranking in the General Category (medium sized) of private sector institutions in Punjab in a row since last year.”, (iv) “Ranked as 2nd Best by HEC* and Top 10 in South Asia.”, and (v) “...the best ranked and best accredited School of Business and Economics (SBE)” are false and misleading information relating to the characteristics and quality of educational services, and is in violation of Section 10 of the Competition Act, 2010 (the ‘Act’).
- b) All advertisements, promotional materials, or instructional manuals pertaining to the above said claims, printed or otherwise, are to be modified or withdrawn from the public domain since 2015-16 prospectus to show our bona fide intentions.
- c) That, we shall comply with any and/or all directions of the Competition Commission of Pakistan (the ‘Commission’) in the subject proceedings, which may inter alia include the directions passed by the Commission under Section 38 of the Act read with Regulation 37 of the Competition Commission (General Enforcement) Regulations, 2007, and we shall ensure compliance with the provision of Section 10 of the Act, in letter and spirit, in future.

25. It is on the record, the Respondent has made the aforementioned commitments and has also withdrawn / amended modified the claims as committed by it in the above said Commitments, to the satisfaction of the Bench.



HA

REMEDIES AND PENALTY

26. We are conscious of the fact that education is an important aspect that plays a huge role in the modern, industrialized world. People need a high level of education to have a better life in the future. Therefore, education carries greater importance than ever in today's society. It does not only allow people to read or write it also offers them the opportunity to have a good life, communicate better, develop new technologies and support the economy. We are conscious of the fact, that many students would have taken the admission in various courses offered by the the Respondent, solely on the basis of the claims i.e. Top 10 in the South Asia and Best accredited in Pakistan and Ranked as 2nd Best by HEC. These claims creates an image in the minds of the prospective students/ consumers that after graduating from such institutions i.e. the Respondent which is highly rated, their chances to have a better future and prosperous career, increases manifold. Unfortunatley, the reality is made known to hem at a much later stage, when they are either in the middle of their course of about to finish it. At that time it is all too late for any student to change the university. Although, the Respondent in the instant matter has shown compliance and had also filed commitments, however; because of the reasons mentioned above, we are of the firm opinion that the Respondent cannot be left scot-free and must be dealt with under Section 38 of the Act.
27. As noted in the preceding paragraphs, it is established that the Respondent has engaged in deceptive marketing practices prohibited under Section 10(2) (b) and 10(1) (a) read with Section 10(1) of the Act. The commitments and compliance filed by Respondent denote its willingness to conduct its business activities in accordance with the provisions of the Act and associated rules and regulations. Nevertheless, in accordance with Section 37 of the GER read with Section 38 of the Act, and for the reasons also mentioned in the preceding paragraphs, we deem it appropriate to impose a penalty in the amount of PKR 5,000,000 (Rupees Five Million only) on the Respondent. The Respondent is directed to deposit the imposed penalty with the Registrar of the Commission, within sixty (60) days from the date of receipt of this order.



28. The Respondent is also directed to refrain from indulging in any form of deceptive marketing practices in the future and is forewarned that repeat violations may attract stricter penalties as per the law.
29. In terms of the above, the SCN is hereby disposed of.

M. Saleem

Dr. Muhammad Saleem
Member

Dr. Shahzad Ansar

Dr. Shahzad Ansar
Member

Islamabad, the 26th day of March, 2019.

