



BEFORE THE
COMPETITION COMMISSION OF PAKISTAN

IN THE MATTER OF SHOW CAUSE NOTICE ISSUED TO M/S TARA CROP
SCIENCES (PRIVATE) LIMITED FOR DECEPTIVE MARKETING PRACTICES

(FILE No.119/AGRITECH/COMP/OFT/CCP/12)

Dates of Hearing

20 June 2014
19 February 2015

Adjudicating Members

Ms. Vadiyya Khalil
Chairperson

Dr. Shahzad Ansar
Member

Mr. Ikram Ul Haque Qureshi
Member

On behalf of M/s Agritech Limited

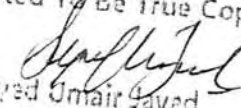
Mr. Wasif Majeed
Advocate High Court
Wasif Majeed & Co.

On behalf of M/s Tara Crop Sciences Private
Limited

Mr. Haseeb Zafar
Mr. Mohammad Sohail Akram
Advocates High Court
Zafar & Associates-LLP



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Registrar
Competition Commission of Pakistan
Government of Pakistan
Islamabad.

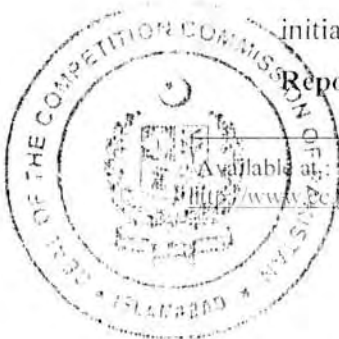


ORDER

1. This order shall dispose of the proceedings initiated pursuant to show cause notice No.11/2014 dated 22 May 2014 (the "SCN"). The SCN was issued pursuant to a complaint filed with the Competition Commission of Pakistan (the "Commission") by M/s Agritech Limited (hereinafter the "Complainant") for *prima facie* violations under Section 10 of the Competition Act, 2010 (the "Act").
2. The main issue under consideration in this matter is whether M/s Tara Crop Sciences (Private) Limited (hereinafter the "Respondent") has been engaged in deceptive marketing practices in violation of Section 10 (1), read with Section 10 (2) (a), (b) and (d) of the Act.

FACTUAL BACKGROUND

3. The Complainant is a fertilizer and chemical manufacturing concern, engaged in the production of urea, phosphate and allied products. The Respondent is one of a group of undertakings under the umbrella of M/s Tara Group. It is engaged in the manufacturing and selling of insecticides, herbicides, fungicides and is the undertaking behind the one-stop franchise network of 'Tara Zarat Markaz'. Both are undertakings in terms of Section 2 (1) (q) of the Act.
4. The Complainant alleged that its brand 'Tara' was being used fraudulently and illegally by the Respondent to market its products and business. It further alleged that the Respondent had resorted to the dissemination of misleading information which was capable of harming the business interests of the Complainant. The Complainant consequently submitted that they found the provisions of Section 10 of the Act to be attracted by the conduct of the Respondent, hence their complaint.
5. With regard to the above, a formal enquiry in terms of Section 37 (2) of the Act was initiated, which was concluded vide an enquiry report dated 04 April 2014, ('Enquiry Report')¹. Based on the *prima facie* findings of the Enquiry Report, a SCN was



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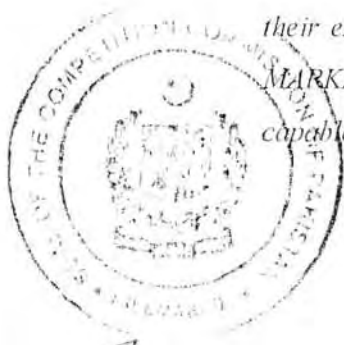
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issued to the Respondent, wherein it was required to respond in writing within fourteen (14) days as well as to appear before the Commission on 10 June 2014. The relevant portions of the SCN are reproduced below:

10. *WHEREAS, in terms of Paragraphs 49 to 74 of the Enquiry Report, it appears that the use of trademarks of the Complainant by the Undertaking, without seeking permission and any authorization, through its advertisements and marketing campaigns disseminated the information that misleads the consumers regarding the origin of products being sold at the TARA ZARAI MARKAZ owned and controlled by the Undertaking; and also gives an impression that the exclusive franchise network of TARA ZARAI MARKAZ are affiliates / franchise/ branch of the Complainant, which appears to be false/misleading information that is lacking a reasonable basis, related to method or place of production, suitability for use or quality of goods/services in violation of subsection (1) of Section 10, in particular, clause (b) of subsection (2) of Section 10 of the Act;*

11. *WHEREAS, in terms of paragraphs 49 to 74 of the Enquiry Report, the Undertaking was using the trademark of the Complainant fraudulently and without Complainant's authorization on the facades, nearby boards and hoardings of its exclusive franchise network one-stop shops i.e. TARA ZARAI MARKAZ for advertisement/marketing purposes, which constitutes 'deceptive marketing practices' in terms of subsection (1) of Section 10, in particular, clause (d) of subsection (2) of Section 10 of the Act;*

12. *WHEREAS, in terms of the paragraphs 49 to 74 of the Enquiry Report, the unauthorized use of Complainant's trademark by the Undertaking on the facades, nearby boards and hoardings of their exclusive franchise network one-stop shops i.e. TARA ZARAI MARKAZ for advertisement/ marketing purposes, prima facie, is capable of harming the business interest of the Complainant in*



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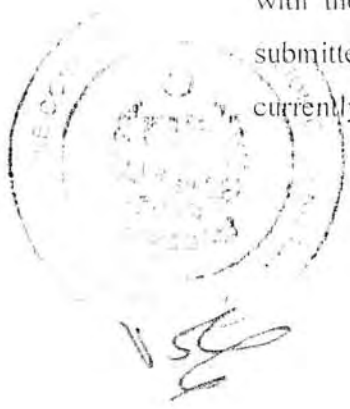
violation of subsection (1) of Section 10, in particular, clause (a) of subsection (2) of Section 10 of the Act:

6. The Respondent upon receipt of the SCN requested an adjournment of the hearing, as well as an extension in time to file the written reply. The requests of the Respondent were acceded and the Commission rescheduled the hearing for 20 June 2014.
7. Upon the hearing being adjourned on the request of the Respondent, the Complainant filed an application for interim relief under Section 32 of the Act, read with Regulation 25 of the Competition Commission (General Enforcement) Regulations 2007. The grounds for seeking the same remain primarily the same as those stipulated in the complaint to the Commission, with the added submission that the Enquiry Report initiated by the Commission also found the Respondent to be in violation of Section 10 of the Act. The Complainant further submitted that an interim order was necessary to restrain the Respondent from using the Complainant's brand during the pendency of the proceedings before the Commission, and prayed for the same. The Respondent was asked to file a written reply to this application on or before 17 June 2014.

SUBMISSIONS

A. BY THE COMPLAINANT

8. The brand '*Tara*' was launched in 2006, and used for advertisement of the Complainant's urea products, i.e. '*Tara DAP*', '*Tara MAP*', '*Tara MOP*' and '*Tara SSP*'. To implement the same, an aggressive promotional campaign was utilized. The Complainant submitted that an amount of Rupees Eighty-Seven Million, Fifty-Two Thousand, Five hundred and Six (PKR 87,052,506) was invested in this campaign to make '*Tara*' a recognizable brand for these products. It has been in continuous use since 2006.
9. With regards to the status of the registration of the mark '*Tara*', the Complainant submitted that the marks '*Tara Urea*', '*Tara DAP*' and '*Tara MOP*' are registered with the Trademarks Registry under Class 5, 5 and 1 respectively. They further submitted that registration of the individual mark '*Tara*' has been filed for and is currently pending.



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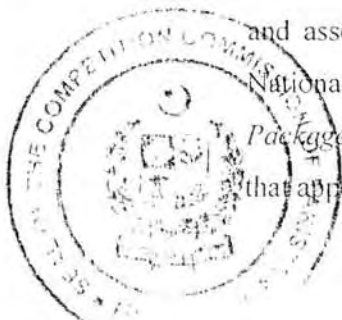
10. The primary contentions submitted by the Complainant are:

- a. That the Respondent's use of the term '*Tara*' in its franchises named '*Tara Zarai Markaz*' for promotion of their products and business is mala fide, and intends to deceive consumers. It further submitted that the use by the Respondent of 'confusingly similar trademarks' with respect to identical goods and other goods through these franchises to the same consumer base would amount to taking unfair advantage of , and be detrimental to the distinctive character and reputation of the Complainant's trade name.
- b. That the Respondent's intention is to pass off its products as those of the Complainant, and thus to harm its business interest. The Complainant has further submitted that keeping in mind the reputation of the Complainant's trade name and products in the market, an ordinary consumer would reach the conclusion that the Respondent's franchises are operating as franchises, affiliates or branches of the Complainant and that the products offered are theirs.
- c. That the Complainant has also initiated proceedings against other undertakings using the term '*Tara*' in infringement of the Complainant's right.

B. BY THE RESPONDENT

11. The Respondent filed its written reply on 16 June 2014, and made further submissions during the course of the hearings before the Commission, a combined summary of which is as follows:

- i. It stipulated that the complaint is not maintainable due to a suit regarding the same matter being currently under adjudication before the Honourable Additional District Judge, Lahore, vide Civil Suit No.525/2012.
- ii. It categorically denied any breach of Section 10 (2) (a) & (2) (b) of the Act, and asserted that it was a prior user of the term '*Tara*' as evidenced by a National Tax Number ('NTN') Certificate for an undertaking named '*Tara Packages*', dated 29 June 2010, as well as advertisements in a print magazine that appeared in the years 2005 and 2006.



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- iii. It provided that the Complainants' registered trademarks are 'Tara DAP', 'Tara Urea', and 'Tara SSP' and that the individual mark 'Tara' has not been registered by them and is therefore not protected. It further submitted that 'Tara Zarai Markaz' is used exclusively for the sale of pesticides by the Respondent. It also submitted that the logo of 'Tara Zarai Markaz' is entirely different from that of the Complainant, and presented the argument that the ordinary consumer, i.e. a farmer could therefore easily distinguish between the two.
- iv. The Respondent concluded with the submissions that approximately two hundred (200) outlets of 'Tara Zarai Markaz' were already in operation, and assured that the same would only be engaged in the sale of pesticides. It submitted that it had strictly restrained their franchisees from selling and/or stocking any product by the Complainant, or any other competitor upon risk of losing the franchise agreement. Copies of said agreements have been submitted with the Respondent's reply.

ISSUES

12. The issues identified are therefore as follows:
- a. Whether the Commission can take cognizance of the complaint during the pendency of Civil Suit No 525/2012;
- b. Whether the Respondent's use of the term 'Tara' in its franchise network named 'Tara Zarai Markaz' in the presence of the Complainant's products in the market which include the same term, amounts to a violation of Section 10(1) read with Sections 10 (2) (a), (b) and/or (d) of the Act.

ANALYSIS

With respect to the maintainability of concurrent proceedings before the Commission, and its jurisdiction in light of the pendency of Civil Suit No. 525/2012, the Respondent raised the contention that the subject matter and prayers of both the cases



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were the same, and therefore fell under the ambit of Section 10 of the Code of Civil Procedure 1908, (the 'CPC').

14. While this issue has previously been addressed in the Enquiry Report, since it was raised again at the hearing stage, we find it necessary to provide a brief explanation anew.
15. We find this argument to be without merit. Section 10 of the CPC does indeed prohibit the generation of multiple claims pertaining to the same subject matter before different forums, and enunciates the principle of 'res sub judice'. The purpose behind the provision, as explained through case-law, has been to avoid conflicting judgements and wastage of resources. Section 10 is however, limited by its language to be of application only to 'suits' pending in 'courts'.
16. Section 33 of the Act prescribes the powers of the Commission in relation to its proceedings. The relevant portion is reproduced below for convenience:

Any proceeding before the Commission shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Pakistan Penal Code. (Act XLV of 1860), and the Commission shall be deemed to be a civil court for the purposes of section 195 and Chapter XXXV of the Code of Criminal Procedure, 1898 (Act V of 1898).

17. The judicial nature of proceedings carried out by the Commission is therefore limited to the situations demarcated above. In all other situations, the Commission performs quasi-judicial functions and may not be deemed a 'court' for the purposes of Section 10 of the CPC. Proceedings before the Commission are therefore not equivalent to suits before a civil court. Furthermore, the settled interpretation of Section 10 of the CPC provides that for the section to be applicable, the two suits must be pending before courts of competent jurisdiction. In Industrial Development Bank Of Pakistan Versus Messrs Azeem Food Industries (Pvt.) Ltd.² for example, it was held by the Sindh High Court that where proceedings are not in the nature of a civil suit and are instead special proceedings provided for under special law, the provisions of Section 10 of the CPC would not be attracted.



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18. With respect to the second issue, we will begin by demarcating the boundaries of the matter under discussion. Both parties have made extensive submissions with regard to their trademarks, both registered and unregistered, and alleged infringements thereof. At the very outset therefore, we find it pertinent to clarify that the mandate of the Commission encompasses the protection and promotion of competition. While this includes the protection of competition against fraudulent use of trademarks, which serve to indicate proprietary interests of undertakings, it does not extend to the allocation thereof. The granting of the proprietary rights in intellectual property remains the sole domain of the Intellectual Property Organization (the 'IPO'), and the Commission cannot make any determination in this regard. Neither should the discussion in the order be construed to give credence to either party's trademark claim.
19. Lastly, paragraph 4 of the SCN refers to the Complainant as the 'owner' of the trademark 'Tara', which, with regards to the registrations pending before the Trademarks Registry, is an error in fact. The same does not however affect the substance of the allegations made. The order remains without prejudice to the trademark rights of either party in the term 'Tara'.

SECTION 10 (2) (a)

20. Before considering whether a violation exists in fact, we will, for each sub-section, first provide a brief overview of its interpretation in law. Sub-section 10(2) (a) of the Act provides that *'the distribution of false or misleading information that is capable of harming the business interests of another undertaking'* constitutes a deceptive marketing practice for the purposes of Section 10(1) of the Act and is therefore prohibited.
21. This provision constitutes two main elements: (i) there must be dissemination of false or misleading information, and (ii) it must be capable of harming another's business interest. A violation occurs only when both elements are present.



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22. The terms 'false' or 'misleading' have previously been interpreted by the Commission in its Order In The Matter Of M/S China Mobile Pak Limited & M/S Pakistan Telecom Mobile Limited ('Zong Order')³ as follows:

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

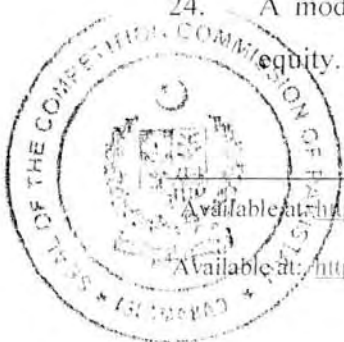
Whereas 'misleading information' may essentially include oral or written statements or representations that are: (a) capable of giving wrong impression or idea, (b) likely to lead into error of conduct, thought, or judgment, (c) tends to misinform or misguide owing to vagueness or any omission, (d) may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

23. 'Business interest', not being a term of art, has not been defined exhaustively, either in the Act, or in any of the previous orders of the Commission. The Commission has however, in its Order in the Matter of Show Cause Notice Issued to M/s Jotun Private Limited For Deceptive Marketing Practices ('Jotun Order')⁴, briefly touched upon a definition of the term by considering the 'image, goodwill and sales' of an undertaking as its business interests. The concept of goodwill had previously also been discussed by the Commission in its Order In The Matter Of Complaint Filed By M/S. Dhl Pakistan (Pvt.) Ltd. ('DHL Order') wherein it was stated 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'.

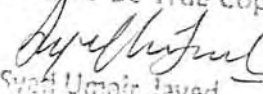
24. A modern interpretation of the term therefore includes goodwill as well as brand equity. Businesses have been able to identify acquired goodwill as an intangible asset

Available at: <http://www.cc.gov.pk/images/Downloads/ZONG%20-%20Order%20-%2029-09-09%20.pdf>

Available at: http://www.cc.gov.pk/images/Downloads/jotun_pakistan.pdf



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on balance sheets for some time⁵ and while accounting standards currently do not agree on methods of asset valuation of brands, the consensus as to their financial value remains in place.

25. In juxtaposition to the accounting concept, the concept of goodwill in law is a broad one and has been enunciated eloquently in a variety of cases under the common law tort of passing off. The principle that emerges is useful to our discussion and provides that goodwill constitutes the *'totality of attributes that lure or entice clients or potential clients to support a particular business'*.⁶

26. Similarly, the importance of a brand cannot be overemphasised in the modern commercial ecosystem. Brands today are more than simply brand *names*. They constitute the perception of goods and services in the consumer's mind and are thus perhaps most sensitive to market factors. Businesses use trademarks to help secure their brand equity, and while legal registrations are of paramount importance, they are not the sole indicators of the existence of a brand, especially for the purposes of a discussion in the ambit of competition law.

27. We consider now the actual circumstances of the violation as alleged in the SCN. From the evidence available, we can ascertain that the Complainant had fertilizers available in the market by the names of *'Tara DAP'*, *'Tara Urea'* and *'Tara SSP'* as long ago as 2006. Supporting evidence has been provided in the form of advertising costs, as well as figures of sales revenues from the products above. The Respondent was incorporated on 31 July 2012 and advertisements regarding its exclusive franchise network by the name of *'Tara Zarai Markaz'* appeared in October of the same year.

28. Also to be noted are the registrations with various authorities annexed by the Respondent itself with its reply to the complaint, of which those relating to the Respondent are all dated either 2012 or 2013.

FRS-10, available at : <http://frc.org.uk/Our-Work/Publications/ASB/FRS-10-Goodwill-and-Intangible-Assets-File.pdf>

Caterham Car Sales V Birkin Cars (Pty) Ltd 1998 (3) SA 938 (SCA)

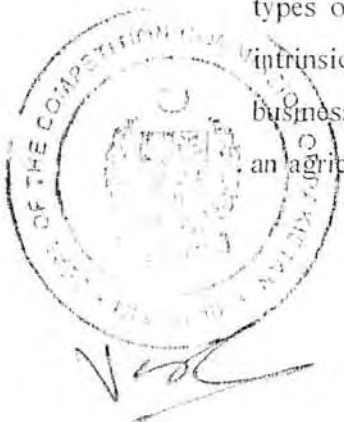


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29. The Respondent has in this regard presented the defence that the impugned term has been in its use since 2002. Uninterested in trademark claims, we must, however, only consider whether the Respondent had a brand presence by the name of 'Tara' distinct from the Complainant's, either prior in time or simultaneous to it. Copies of two issues of 'Mayaar Magazine' for December 2005 and November 2006, in which an undertaking named 'Tara Seeds' has been advertised, have been attached to support this claim. Furthermore, an NTN Certificate for an undertaking named 'Tara Packages' has also been appended. Lastly, it has been contended by the Respondent that its applications for the registration of the relevant trademarks have been made in 2008 and 2009.
30. As pointed out by the Complainant in its rejoinder to the Respondent's reply, the NTN Certificate, of effect from 2002, lists 'Tara Packages' as one of the concerns. However, the NTN Certificate has been printed in 2010. Furthermore, 'Tara Packages' has also been shown to have been registered as a firm only in 2012. We are of the opinion therefore that a doubt as to the authenticity of the document has been raised, which has not been dispelled during the course of the hearing, rendering it unreliable.
31. With regard to the trademark applications, while the dates of filing indicate that the Respondent has indeed had an interest in the impugned term prior to 2012, it still remains subsequent to applications filed by the Complainant as early as 2006, as evidenced by the search reports of the Trademarks Registry.
32. In light of the above, we are of the opinion that while the Respondent has provided isolated evidence to support its use of the brand 'Tara' prior to 2012, it is not sufficient to confirm the Respondent's brand presence in the relevant market for the period to which the complaint relates.
33. The Respondent's exclusive franchise network by the name of 'Tara Zarai Markaz' has been established, according to its own submissions, with the aim of providing all types of agriculture-related products under one roof. The Complainant's brand is intrinsically related to the same industry by virtue of its fertilizer manufacturing business. The implication upon seeing a one-stop agricultural shop with the name of an agricultural manufacturing brand is therefore simple. In our view, an affiliation is



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Secretary General, Commission of Pakistan

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assumed automatically. This amounts, in effect, to the dissemination of misleading information. Had the two undertakings been in unrelated markets such as agriculture and aviation, respectively, the implication may not have been automatically assumed.

34. With respect to the Respondent's submission that its franchisors may not, by agreement, stock products by the Complainant, we are of the view that the possibility of confusion as to affiliation of different products remains. However, the same does indicate willingness on the part of the Respondent to comply with the provisions of the Act.

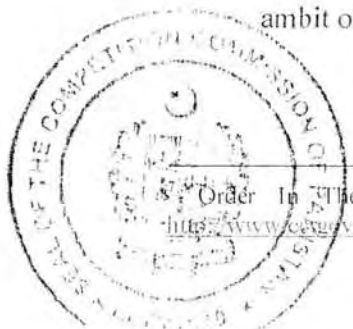
35. We find it relevant here to quote the findings of the Local Commission appointed by the Honourable Additional District Judge in Civil Suit No.525/2012, in which the same matter is under adjudication. Paragraph 5 of the report compiled by the Local Commission states that the 'owners [of the franchises] on query have told [...] that on asking of customers we often reply that the[se are] products of TARA Urea Group'. With respect to the official nature of the report, we are inclined to consider it of persuasive value.

36. The Commission in its **Order In The Matter Of Show Cause Notices Issued To Paint Manufacturers ('Paint Order')**⁷ has previously stated that

for the purposes of deceptive marketing, actual deception need not be shown to carry the burden of proof. It is sufficient to establish that the advertisement has the tendency to deceive and capacity to mislead.

37. According to the accepted interpretations of the term 'misleading' therefore, we find that the Respondent's use of the term 'Tara' in its advertisements was capable of deceiving consumers and other stakeholders into assuming an affiliation between 'Tara Zarai Markaz' and the Complainant's products.

38. Furthermore, we are of the opinion that the Respondent's practice also falls under the ambit of 'free-riding', which according to the definition provided by the Organisation

 Order In The Matter Of Show Cause Notices Issued To Paint Manufacturers, available at: <http://www.ccp.gov.pk/images/Downloads/token-paints-order.pdf>

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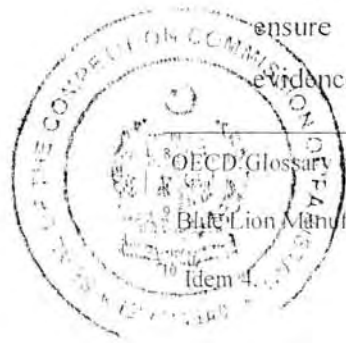


for Economic Co-operation and Development ('OECD'), occurs when an undertaking benefits from the actions and efforts of another without paying or sharing the costs.⁸

39. Since both undertakings operate in the same market and cater to largely the same category of consumers, we find that the use of the same brand as the Complainant is capable of misleading consumers into creating both negative and positive associations between the two undertakings which do not in fact exist. Consumers relying on their experience with the Complainant's products may be swayed into purchasing the Respondent's products solely on the basis of the association created in their minds through the use of the same brand. This amounts to the Respondent free-riding on the Complainant's reputation.
40. Similarly, consumers having a negative experience with the Respondent's products may also be dissuaded from purchasing the Complainant's products, which may result in direct harm to sales and revenue, but can also result in damage to the Complainant's brand, image, reputation, goodwill, and value, all of which are elements of business interests.
41. Finally, we find it useful to employ the analogies provided in the jurisprudence related to the tort of passing off. For example, in a recent Commonwealth decision, it was stated that

The law of passing off is not designed to grant monopolies in successful get-ups. A certain measure of copying is permissible. But the moment a party copies he is in danger and he escapes liability only if he makes it "perfectly clear" to the public that the articles which he is selling are not the other manufacturer's, but his own articles, so that there is no probability of any ordinary purchaser being deceived.⁹

42. The same view was also articulated by the Commission in the Zong Order, and quoted with approval in succeeding orders, i.e. the onus is on undertakings to ensure that no deception results through their marketing practices.¹⁰ From the evidence available, we find that the Respondent has not made sufficient effort to



OECD Glossary of Statistical Terms, available at: <https://stats.oecd.org/glossary/detail.asp?ID=3222>

Blue Lion Manufacturing (Pty) Ltd V National Brands LTD [2001] ZASCA 62 [South Africa]

Idem 4.

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distinguish its franchise network and products from those of the Complainant's and has therefore not discharged the onus upon it.

43. In view of all of the above therefore, we find that the Respondent's use of the term 'Tara' constitutes dissemination of misleading information which is doubtlessly capable of harming the Complainant's business interests, which is a violation of Section 10 (1) read with Section 10 (2) (a) of the Act.

SECTION 10 (2) (b)

44. Section 10 (2) (b) of the Act provides that *'the distribution of false or misleading information to consumers, including the distribution of information lacking a reasonable basis, related to the price, character, method or place of production, suitability for use, or quality of goods'* constitutes a deceptive marketing practice, use of which amounts to a violation of Section 10(1) of the Act.

45. This provision relates clearly to consumer protection, and unlike Section 10 (2) (a) of the Act does not require the potential of harm to be actionable. Any dissemination of false or misleading information to consumers, lacking reasonable basis, constitutes a violation under the Act. The definitions of 'false' and 'misleading' have both been provided above in paragraph 22 and as regards the types of information, it has been held in the Order In The Matter Of Show Cause Notices Issued To Askari Bank Ltd. United Bank Ltd. My Bank Ltd & Habib Bank Ltd. ('Banks Order')¹¹ that the list of examples of false or misleading information to consumers is *'by no means exhaustive and does not preclude the possibility of a violation of Section 10 in instances other than those stated'*. Lastly, a 'consumer' under the Act has been held in the Zong Order 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.

¹¹ Available at: http://www.ec.gov.pk/images/Downloads/banks_order_14-01-10.pdf


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46. We will consider now whether the use of the term 'Tara' by the Respondent in its franchise network 'Tara Zarai Markaz' falls in the ambit of the interpretations provided above. The ordinary consumers being targeted by the Respondent through its marketing practices are for the most part farmers. The overall market in which both parties operate is that of agriculture.
47. An ordinary farmer, already familiar with the Complainant's products, is likely to assume a connection between the said products and 'Tara Zarai Markaz'. The name of the franchise thus provides misleading information as to the origin, as well as the quality of products being sold at the franchise. The Respondent has, with regards to this argument, submitted that the franchise does not stock any of the Complainant's products, and furthermore, since the Respondent is itself a pesticide manufacturing concern, deception is not possible.
48. Our considered view with regard to this argument is that while both factors do help mitigate the situation, the deception here is clearly not of such a nature as to confuse a consumer between two similar products. Neither do the provisions of Section 10 (2) (b) of the Act limit itself to such a case. For the purposes of the provision, it is sufficient that information is being provided to the consumer which is capable of leading customers to believe that the goods available at the franchises have an association, quality or endorsement which belongs or would belong to the goods associated with those of the Complainant, leading to errors of judgment and conduct.
49. The above is also supported by the information provided previously in paragraph 35, which is in fact an instance of false information being provided to consumers. Keeping in mind however that the survey in question was external, we are inclined not to rely on it, but consider it of persuasive value nonetheless.
50. In view of the above therefore, we find that the Respondent's use of the term 'Tara' in the name of its exclusive franchise network constitutes a deceptive marketing in terms of Section 10 (2) (b) and thus amount to a violation of Section 10(1) of the Act.



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Syed Umair Javed

Registrar

15 Competition Commission of Pakistan
Government of Pakistan
Islamabad.

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SECTION 10 (2) (d)

51. Section 10 (2) (d) of the Act provides that '*fraudulent use of another's trademark, firm name, or product labelling or packaging*' also constitutes a deceptive marketing practice.
52. This provision relates to proprietary rights in intellectual property, and for it to be operative, the same must be ascertainable *prima facie*. The Commission has most recently demonstrated its support of trademark protection in the DHL Order wherein it was stated that '*trademark protection also hinders the efforts of unfair competitors, such as counterfeiters, to use similar distinctive signs to market inferior or different products or services*'.
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. Since neither party has an established claim to the impugned mark, therefore there is no matter for the Commission to even consider.

REMEDY AND PENALTY

55. In case of a violation of Section 10 of the Act, the Commission is empowered to impose a penalty on the violating party under Section 38 of the Act. The Commission may also, under the powers prescribed in Section 31(1) (c) of the Act, require the undertaking concerned to take such actions as may be necessary to restore the previous market conditions and not to repeat the prohibitions specified in Section 10 of the Act.



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Syed Umair Javed
Syed Umair Javed
Registrar
Competition Commission of Pakistan
Government of Pakistan
Islamabad.

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56. In view of the Respondent's violation of Section 10 of the Act, the Commission hereby imposes on it a penalty of:

- i. Pakistani Rupees Five Hundred Thousand (PKR 500,000) for contravention of Section 10 (1) read with Section 10 (2) (a) of the Act;
- ii. Pakistani Rupees Five Hundred Thousand (PKR 500,000) for contravention of Section 10 (1) read with Section 10 (2) (b) of the Act;


The Respondent is therefore liable to pay a sum of Pakistani Rupees One Million (PKR 1,000,000).


57. The Commission further directs the Respondent to immediately cease solitary use of the distinct term '*Tara*', as in its present form, in its exclusive franchise network '*Tara Zarai Markaz*'. The Respondent is directed to ensure that the franchise network is renamed so as to make it perfectly clear that its business has no connection with the Complainant's brand or products.


58. The Respondent is also directed to file a compliance report with the Registrar of the Commission within a period of thirty (30) days from the date of issuance of this order, and is reprimanded from indulging in deceptive marketing practices in the future at the risk of severe penal consequences.

59. In terms of the above, SCN No.11/2014 is hereby disposed of.

60. Ordered accordingly.

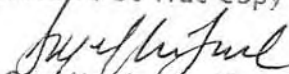

Ms. Vadiyya Khalil
Chairperson


Dr. Shahzad Ansar
Member


Mr. Ikram Ul Haque Qureshi
Member

Islamabad, 19th June 2015

Attested To Be True Copy


Syed Umair Javed 19/06/15
Registrar

Competition Commission of Pakistan
Government of Pakistan
Islamabad.