

## DECEPTIVE MARKETING PRACTICE

**Complainant:** Agritech Limited

**Respondent:** Tara Crop Sciences (Private) Limited

**Decision:** Deceptive Marketing Practices - Penalty Imposed

The Complainant was producing urea, phosphate and allied products and selling under the brand name "Tara". The Respondent belonged to Tara Group engaged in the manufacturing and selling of insecticides, herbicides, fungicides and was also operating one-stop franchise network under the name "Tara Zarai Markaz". The Complainant alleged before the Competition Commission of Pakistan (**the Commission**) 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 dissemination of misleading information which was capable of harming business interests of the Complainant so it attracted Section 10 of the Competition Act 2010 (**the Act**). The Commission conducted an enquiry under the terms of Section 37(2) of the Act and based on the findings of the Enquiry Report, issued a show cause notice to the Respondent requiring it to respond in writing and also to appear before the Commission.

The Complainant claimed that it has been using the trade mark "Tara" with other combinations since 2006, obtained registration of the same under the Trade Marks law and also applied for registration of the word "Tara" alone as a trademark, which application was pending. The Respondent objected to maintainability of the complaint in view of a suit pending before the Additional District Judge, Lahore, in respect of the same matter. It also claimed prior adoption of "Tara" and non-applicability of Section 10(1) of the Act due to absence of registration of "Tara" alone in the name of the Complainant. It further stated that "Tara Zarai Markaz" is exclusively used for sale of its pesticide and ordinary farmer can distinguish between "Tara Zarai Markaz" and various trademarks bearing the word "Tara" of the Complainant. It also stated that about 200 outlets of "Tara Zarai Markaz" were operating with strict instructions to the franchisees from selling and/or stocking any product of the Complainant as by doing so they would stand losing the franchise.

The Commission identified the following issues:

- (a) Whether the Commission can take cognizance of the complaint during the pendency of civil suit; and
- (b) Whether the Respondent's use of the term "Tara" in its franchise network amounts to violation of Section 10(1) read with Section 10(2)(a), (b) and/or (d) of the Act.

With respect to the maintainability of proceeding before the Commission the Respondent raised objection under Section 10 of the Civil Procedure Code, 1908 (**CPC**). The Commission observed that the purpose behind the provision of Section 10 of CPC as explained through case law is to avoid conflicting judgments and wastage of resources. It further added that the said provision is limited by its language to be of application only to 'suits' pending in courts. Whereas, according to Section 33 of the Act proceeding before the Commission is deemed to be a judicial proceeding within the meaning of Sections 193 and 228 of the Pakistan Penal Code and the Commission shall be deemed to be a civil court for the purposes of Section 195 of the Code of Criminal Procedure, 1898 but in all other situations, the Commission performs

quasi-judicial functions and may not be deemed a court for the purposes of Section 10 of CPC. It concluded that proceedings before the Commission are therefore not equivalent to suits before Civil Court.

Discussing the second issue under Section 10(2)(a) of the Act the Commission stated that the distribution of false or misleading information that is capable of harming the business interests of another undertaking constitutes deceptive marketing practice for the purposes of Section 10(1) of the Act which is prohibited. In relation to Section 10(2)(a) the Commission stated that it has two elements, namely, (i) there must be dissemination of false or misleading information, and (ii) it must be capable of harming another's business interest and violation occurs only when both elements are present.

The Commission observed that business interest has not been defined exhaustively either in the Act or in any of the previous orders of the Commission. It 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 and for this reason in the modern times business interest is goodwill and brand equity. It further stated that goodwill constitutes the 'totality of attributes that lure or entice clients or potential clients to support a particular business'. Likewise brands constitute the perception of goods and services in the consumer's mind and are perhaps most sensitive to market factors.

The Commission observed that the Respondent claimed that its exclusive franchise network 'Tara Zarai Markaz' has been established with the aim of providing all types of agriculture-related products under one roof and the Complainant's brand is intrinsically related to the same industry by virtue of its fertilizer manufacturing business. The Respondent's one-stop agricultural shop with the name of an agricultural manufacturing brand will convey affiliation of both the brands/entities. This constitutes dissemination of misleading information and its use in the name of its exclusive franchise network amounts a deceptive marketing, which is a violation of Section 10(1) read with Sections 10(2)(a) and (b) of the Act.

However, with regards to objection under Section 10(2)(d) of the Act the Commission held that since the impugned mark has not been registered in the name of either of the parties and the only mandate Commission has with respect to the trade mark under Section 10(2)(d) of the Act is the protection of registered trade marks, therefore there is no matter for the Commission to even consider.

Consequently, the Commission in exercise of powers vested in it under Section 31(1)(c) of the Act imposed penalty on the Respondent of Rupees one million (PKR 1,000,000) for violations of Section 10(1) read with Sections 10(2)(a) and (b) of the Act. The Respondent was also directed to immediately cease solitary use of the distinct term 'Tara' in its exclusive franchise network 'Tara Zarai Markaz' and to ensure that the franchise network is renamed to make it perfectly clear that its business has no connection with the Complainant's brand or products and was also directed to file compliance report with the Registrar of the Commission within thirty (30) days.

