

HELLO

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Complaint lodged against Deceptive Marketing Practice – Penalty imposed

Complainant: M/s EASTERN PRODUCTS (PVT.) LIMITED

Respondent: M/s MASTER FOOD INDUSTRIES

Decision: Deceptive Marketing Practices - Penalty Imposed

M/s EASTERN PRODUCTS (PVT) LIMITED, (the Complainant) made a formal complaint to the Competition Commission of Pakistan (the Commission) that the Respondent was involved in Deceptive Marketing Practices in violation of section 10 of the Competition Act, 2010 (**the Act**) by passing off Complainant's products through fraudulent use of Complainant's logo, packaging, colour scheme, design and getup. Furthermore, the Respondent's conduct had the potential to inflict harm upon the goodwill and business interest of the Complainant and cause confusion among customers through dissemination of false and misleading information related to character, properties, quality of product and place of production/origin via similar/identical packaging.

The Commission conducted an enquiry and after considering the prima facie findings of the Enquiry Report, deemed it appropriate to initiate proceedings against the Respondent, by issuing a show cause notice to the Respondent with an opportunity of hearing.

The Respondent filed a written reply to the show cause notice. In the hearing before the Commission, the Complainant relied on the Enquiry Report while the Respondent showed its willingness to comply with the directions of the Commission and agreed to change the packaging of their product and also filed commitment to comply with any order of the Commission in the proceeding. On the basis of the submissions made before the Commission, following issues were identified and demarcated for the purposes of deliberation:

- (i) Whether ignorance of law can be taken as a defense for violation of section 10 of the Act.
- (ii) Whether the Respondent has resorted to deceptive marketing practice in violation of section 10 of the Act.

The Respondent's defense relied on not being aware about the prevalent Competition Law in Pakistan and thus had copied the packaging of the Complainant mistakenly. The counsel for the Complainant submitted that the Complainant adopted the said packaging more than 20 years ago, which appeared on all advertisement materials and the said product/ packaging along with its devices as a whole was registered with the Intellectual Property Offices, i.e. Trade Marks Registry and Central Copyright Registry. The Director General (Legal) in attendance submitted that the plea of ignorance of law by the Respondent could not be construed or sustained as a bona fide excuse.

Bare perusal of statement on oath and commitments made on behalf of the Respondent during the hearing left no doubt that by its own admission, the Respondent in violation of section 10 of the Act was using the packaging material similar to that of the Complainant and now it had discontinued the use thereof. The Commission observed that with evolving consumer preferences and laws, presentation; trade dress had become just as essential for making products

and services distinctive and for building brand recall. The cultural diversity of the Pakistani market made a compelling case for the importance of product identification through packaging and visual impression. This 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 the Commission's view, the consumers were 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 Respondent's Trade Dresses.

Consequently, the Commission held that in view of facts and circumstances of the case, there was no doubt regarding violation of the provisions of the Act, however the Commission appreciated the approach of the counsel of the Respondent having cooperated throughout the proceedings in addition to the fact that they admitted the violation of the Act and apologized, as well as assured future compliance in letter and spirit. Therefore, the Commission imposed a token of 1,000,000/= (Rupees One Million only) directing the Respondent to deposit the same with the Registrar of the Commission within sixty (60) days of the receipt of the order. Also the Respondent was reprimanded by the Commission, to ensure responsible behaviour in the future with respect to the marketing of their business and also directed to file compliance report duly supported with affidavit on oath, to ensure future compliance and not to contravene the provisions of section 10 of the Act with respect to this matter.

