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Deceptive Marketing Practice

Complainant: M/s Polygon Pakistan (Private) Limited

Respondent: M/s Irshad Trading Corporation

Decision: Deceptive Marketing Practices - Penalty Imposed

M/s Polygon Pakistan (Private) Limited (hereinafter referred to as “the Complainant”) was involved in the business of manufacturing food graded polyethylene water tanks through rotation moulding since 1986 and was traded and marketed under the registered trade mark “Super Tuff”. Due to the novel shapes and design of their water tanks, it was also patent protected under Patent and Designs Act, 1911. **M/s Irshad Trading Corporation** (hereinafter referred to as “the Respondent”) was using the words “Super Power Tuff” and “Polygon” which were respectively brands of Complainant. The Respondent was not only fraudulently using these brands but also distributing false and misleading information with reference to the trade mark and brand name of the Complainant, harming the business interests of the Complainant within the meanings of section 10 of the Competition Act, 2010. The basic allegations levied against the Respondent in the complaint were that:

The Respondent had been passing himself off as a joint venture partner of the Complainant through advertisement on fake brochures claiming to be the joint venture partner of the Complainant, such conduct of the Respondent amounted to false and misleading information having tendency to seriously harm not only consumers, but also, the business interests of the Complainant. The Respondent had designed a trade mark, ‘Super Power Tuff’ which gave deceptive impressions; phonetically, textually and graphically when compared to the Complainant’s trade mark. The Respondent had also copied the Complainant’s brand name by using ‘Polycon’, as compared to the Complainant’s ‘Polygon’ to deceive the minds of consumers. The Respondent had also disseminated inaccurate, false and misleading claims on his advertisement brochures regarding quality, durability, capacity and food grade material of his products by displaying tag lines such as, ‘since 1989’, ‘beware of copiers’, ‘made from food grade material’ and ‘capacity as embossed’ were false statements and parasitic copy of the Complainant’s advertisements.

Based on the Complainant’s allegations, The Competition Commission of Pakistan conducted an enquiry and after considering the findings, recommendations and conclusion in the Enquiry Report, it issued a Show Cause Notice (SCN) to the Respondent with an opportunity of hearing. The Respondent without denying the contents of the Enquiry Report and the SCN gave three explanations without any supporting evidence, provided below:

That the joint venture was made with the consent of the Complainant and evidence to this fact would be produced before the Commission on the date of hearing;

That being a distributing agent of the Complainant, the Respondent put efforts in to building a strong customer network for which the Respondent was also given an award by the Complainant, copies of the same were also promised to be produced on the date of hearing.



That through the complaint, the Complainant has tried to attain monopoly and kick out Respondent from the market.

Based on the allegations levelled in the complaint, findings of the Enquiry Report and SCN issued to the Respondent along with the submissions made by the counsels of both sides in the hearing, the Commission reached to the conclusion that the Respondent was engaged in fraudulent use of trade mark and was also disseminating false and misleading information in violation of sections 10 (2) (d) and (b) of the Act, respectively. Information was capable of harming the interest of the Complainant by misleading consumers into both negative and positive associations between the two undertakings, which did not in fact exist. This amounted to the Respondent free riding on the Complainant's reputation and in the event the consumers had a negative experience with the Respondent's products, they may not only be dissuaded from purchasing the Complainant's products resulting in direct harm to sale and revenue, but also, could result in damage to the Complainant's brand, image, reputation, goodwill and value and as such the Respondent violated section 10(2)(a) of the Act as well.

Consequently, the Commission held that the false claim to be the joint venture partner by the Respondent was an alarming state of affairs and if such conduct was not dealt with appropriately then every manufacturer would be under fear of being exploited by their dealers/franchisors. Therefore, the Commission imposed a penalty to the tune of PKR5,000,000/=(Rupees five million only) directing the Respondent to deposit the same with the Registrar of the commission within sixty(60) days of the receipt of 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 was also directed to file a Compliance Report within sixty (60) days with the Registrar of Commission and in case of violation of order, the Respondent would be liable to pay an additional penalty of Rs. 500,000/=(five hundred thousand only) per day from the date of violation.

