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JUDGEMENT OF THE COMPETITION APPELLATE TRIBUNAL APPEALED IN SUPREME COURT OF PAKISTAN

Appellant: A. RAHIM FOODS (PVT) LIMITED and another.
Respondent: K &N'S FOODS (PVT) LIMITED and others.
Decision: Appeals Dismissed

In this case, the Honourable Judge of Supreme Court of Pakistan before discussing the facts of this case stated that 'No man is allowed to pass off his goods as the goods of another person; no manufacturer of goods is allowed to represent to the public that the goods which he is selling are the goods of a rival manufacturer. This is one of the basic principles of business morality, honesty and fair dealing that forbid deceptive marketing practices and unfair competition in commercial and economic activities.' In this backdrop, the Court in this case interpreted the phrase '*fraudulent use of another's trade mark, firm name, or product labelling or packaging*', as used in clause (d) of Section 10 (2) of the Competition Act, 2010 and also made some elaboration of the phrase '*distribution of false or misleading information that is capable of harming the business interests of another undertaking*' used in clause (a) of section 10(2) of the Act.

The brief facts of the case are that K &N'S Foods (Pvt.) Limited ("K &N'S Foods") filed a complaint against A. Rahim Foods (Pvt.) Limited ("Rahim Foods") with the Competition Commission of Pakistan ("Commission"), alleging that Rahim Foods was involved in deceptive marketing practices under provisions of section 10 of the Act by copying K &N'S Foods product labelling and packaging for the sale of its several frozen and processed meat products as well as its trade mark term "*Combo Wings*".

Two officers of the Commission conducted an enquiry in to the matter complained of and on receipt of the report of the enquiry officers, the Commission initiated proceedings against Rahim Foods by issuing a show cause notice, as to why an appropriate order may not be passed against it simultaneously imposing a penalty on it. Rahim Foods was given the opportunity to place before the Commission the facts and material in support of its contentions. Rahim foods filed its reply disputing the findings of the enquiry officers, together with the material in support of its contentions.

The Commission on considering the material collected by the enquiry officers and the material produced by the parties before it and relevant provisions of the Act, decided the proceeding against Rahim Foods and imposed penalties of PKR 10 million (Rs. 10,000,000) for the contravention of section 10(1) read with section 10(2)(a) and PKR 10 million (Rs. 10,000,000) for the contravention of section 10(1) read with section 10(2)(d) of the Act; with further direction to cease the use of the contentious copycat packaging for its frozen and processed meat products and to ensure that they were

repackaged in a manner that was distinct in its overall layout so as to be easily distinguishable from that of K &N'S Foods products.

Rahim Foods appealed the order of the Commission before the Competition Appellate Tribunal ("Tribunal"). On reappraisal of the material available on the record of the case, the Tribunal affirmed the findings of the Commission and observed that section 10(2)(d) of the Act confers jurisdiction on the Commission regarding fraudulent use of another's trade mark, firm name or product labelling or packaging 'whether the same is registered or not'. The Tribunal, however, held that since Rahim Foods had not distributed any false or misleading information regarding K &N'S Foods products, the penalty imposed by the Commission upon Rahim Foods for the contravention of section 10(2)(a) of the Act, was not warranted. The Tribunal allowed the appeal of partially setting aside the order of Commission to the extent of imposing a penalty for the contravention of section 10(2)(a) of the Act and maintained the order of the Commission to the extent of imposing penalty for the contravention of section 10(2)(d) of the Act. Hence, Rahim Foods and Commission both filed appeals against the impugned judgment of the Tribunal.

The apex Court after hearing the arguments of the learned counsels for the parties and examining the record of the case and reading the case laws cited by them made detail discussion on following points:

- *Non-interference by Supreme Court with concurrent findings of facts,*
- *Constitutional underpinning,*
- *Codification of common law on injurious falsehood and passing-off actions,*
- *Changes made in common law actions of injurious falsehood and passing-off,*
- *Meaning of the word 'use' in section 10(2)(d) of the Act,*
- *Criterion for determining confusing similarity,*
- *Registration of trademark, etc., is not necessary for section 10(2)(d),*
- *Meaning of distribution of or misleading information in section 10(2)(a),*
- *No locus standi of an adjudicatory body to contest body to contest for holding its quasi-judicial decision.*

After detail discussion on all the above points, the Supreme Court observed that in determining the liability of appellant-company under section 10(2)(d) of the Act, the criterion applied by the Commission and the Tribunal had correctly decided that the case fell within the prohibition of section 10(2)(d) of the Act, while the Commission being an adjudicatory body deciding a matter in exercise of its quasi-judicial powers between two rival parties under a law cannot be treated as an aggrieved person if its decision is set aside or modified by a higher forum under the law or by a court of competent jurisdiction, such body thus does not have locus standi to challenge the decision of that higher authority or court. The appeals filed by the Commission in this case against the decision of the Tribunal setting aside partially its quasi-judicial order were therefore not maintainable. Consequently, for the above reasons the appeals were found meritless and were therefore dismissed.