

Competition Tribunal's order challenged in appeal before Supreme Court of Pakistan

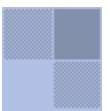
Appellant: OPTIONS INTERNATIONAL (SMC-PVT.) LTD; through its CEO.
Respondent: The COMPETITION COMMISSION OF PAKISTAN through Registrar and another.
Decision: Appeal dismissed.

The facts of this case are that Starbucks Corporation USA, a registered proprietor of trademarks "Starbucks" and Logo in Pakistan and abroad filed a complaint before the Competition Commission against **OPTIONS INTERNATIONAL (SMC-PVT.) LTD (The Appellant)**, regarding the use of Starbucks name and logo, for the same products as that of the Complainant. On receipt of the complaint, the Commission acted on it and imposed a penalty of five million rupees (PKR 5,000,000) and ordered a further additional penalty of one hundred thousand rupees per day (PKR 100,000/day) from the date of passing of the order in case of non-compliance.

The Appellant had assailed the said order of the Commission before the Competition Appellate Tribunal. The Tribunal decided the appeal and enhanced the penalty amount from five million rupees (PKR 5,000,000) to six million rupees (PKR 6,000,000) but reduced the per day penalty amount of one hundred thousand rupees (PKR 100,000/ day) to five thousand rupees (PKR 5,000/ day) with effect from December 3, 2021, which was the date from which the Tribunal had become functional. The Court inquired from the Appellant's Counsel which judgment, whether of the Commission or the Tribunal, favoured the Appellant who then stated it was that of the Tribunal. The Court also inquired from the Counsel whether the Appellant disputed the name and logo which were the registered trademarks to which he conceded that both were registered abroad and in Pakistan.

The learned Counsel contended that section 1(3) of the Competition Act, 2010 applied to '**undertakings and all actions or matters that take place in Pakistan and distort competition within Pakistan**' and since the Respondent No. 2 did not have any outlet in Pakistan, nor had authorized anyone to use its name and logo on products in Pakistan, the Appellant was not in competition with Respondent No.2, its authorized user(s) and/or its products.

The Court disagreed with the submissions of the Counsel of the Appellant and stated that the Appellant had put itself forward by selling its own products under the international brand name and logo of Starbucks, which had the effect of distorting competition within Pakistan. A local vendor selling similar products, as those being sold by the Appellant, would be at serious disadvantage and not be



able to compete therewith since the unsuspecting public would believe, understand or perceive that the same would be the genuine products of the Respondent No. 2.

The Counsel then objected to the levy of said penalties.

The Court inquired from the Counsel whether the law authorized the penalties which had been imposed to which the Counsel conceded that it did under section 38 of the Act, therefore, it was not understandable how the same could be objected. No other point was urged which would have persuaded the Court to take a view different from the one taken by the Appellate Tribunal. Consequently, the appeal was dismissed.

