

Competition - Pakistan

Ignorance is no excuse: Competition Commission on fraudulent trademark use

Contributed by [Vellani & Vellani](#)

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The Competition Commission is back after a two-month hiatus. Pursuant to a complaint by HD Michigan LLC and Bayerische Motoren Werke AG (BMW), it initiated an inquiry against ACE Group of Industries. Both HD Michigan and BMW alleged that: (i) ACE was manufacturing, marketing, selling and exporting leather jackets bearing HD Michigan and BMW's trademarks without the approval or authorization of the two companies; and (ii) such acts were fraudulent and constituted deceptive marketing practices under the Competition Ordinance 2010.

The Competition Ordinance defines deceptive marketing practices to include:

- the distribution of false or misleading information that is capable of harming the business interests of another undertaking;
- the distribution of false or misleading information to consumers, including the distribution of information lacking a reasonable basis and related to the price, character, method or place of production, properties, suitability for use or quality of goods;
- a false or misleading comparison of goods in the course of advertising; or
- fraudulent use of another's trademark, firm name or product labelling or packaging.

The commission forwarded both companies' complaints to ACE, which denied knowledge of the law and intent to deceive. ACE also offered to make amends.

The commission's report stated that:

- the matter was one of deceptive marketing practices, as the two companies are well known to the general public in Pakistan and around the world and the logos and registered trademarks of the two companies are famous and readily associated with each of the companies;
- the products advertised by HD Michigan and by ACE on their respective websites appeared identical - as such, there was every likelihood of confusion in the minds of consumers, who were likely to mistake ACE's goods for those of HD Michigan;
- neither BMW nor HD Michigan had authorized ACE to use its trademarks;
- ACE had admitted to using the trademarks of both companies.

Taking all of these facts into account, the report concluded that ACE's claim of ignorance of the law was not a tenable excuse; therefore, ACE was in violation of the provisions of the ordinance. Moreover, deceptive marketing practices have a direct impact on consumers and undertakings should be deterred from advertising their products in an unfair and misleading manner. Therefore, the report recommended that proceedings be initiated against ACE.

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