

M/s Options International (SMC-Pvt.) Ltd v. The Competition Commission of Pakistan

2024 SCP 260

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In *M/s Options International Ltd. v. Competition Commission of Pakistan*,¹ the Supreme Court of Pakistan ('Court') reinforced the key principles of competition law, particularly concerning the misuse of intellectual property in deceptive marketing practices. The original complaint was filed before the Competition Commission of Pakistan ('CCP') by Starbucks Corporation (a well-known public company registered in the USA as a coffee chain), against Options International Company (operating under 'Options Coffee'). In the complaint, Starbucks accused Options Coffee of infringing its registered trademark/logo, thus leading to deceptive marketing practices.

Starbucks ('Complainant') contended that Options Coffee ('Respondent') made false claims regarding its import and original use of Starbucks coffee beans, the grinding process of beans with Starbucks machines, and the preparation of coffee by staff trained under Starbucks guidelines to ensure that the quality is at par with Starbucks locations worldwide. The Complainant argued that these claims were not only false and misleading but also violated Section 10(2)(d), read in conjunction with Section 10(1) of the Competition Act, 2010 ('Act'). After a thorough inquiry conducted by the CCP, the Respondent was found guilty of engaging in deceptive marketing practices by fraudulently promoting its coffee business using the 'STARBUCKS MARKS' (the Complainant's trademark/logo registered in Pakistan) on their social media platforms without any authorized licensing arrangement. These activities were declared to be violative of the mentioned sections of the Act.² Additionally, the CEO of the Respondent company was held to be vicariously liable for the misleading marketing practices of its employees, as he failed to provide evidence of having initiated misconduct proceedings against them after the CCP passed the interim order. Therefore, the Commission held that the

¹ *M/s Options International (SMC-Pvt.) Ltd through its CEO v. The Competition Commission of Pakistan through its Registrar and another* 2024 SCP 460.

² *Starbucks Corporation v. Options International (SMC-Pvt) Ltd* (Order No 14 2018, Competition Commission of Pakistan, 11 December 2018).

CEO could not mitigate the repercussions of the illegal activities undertaken by the employees of the company under Section 38 of the Act. Consequently, a penalty of Rs.5,000,000/- was imposed on the Respondent, along with an additional fine of Rs.100,000/- per day for any failure to comply with the order of the CCP.³

Aggrieved by the CCP's decision, the Respondent, through its CEO, appealed to the Competition Appellate Tribunal ('Tribunal'), which unanimously dismissed the appeal and subsequently increased the fine imposed on the Respondent company.⁴ Dissatisfied again, Options Coffee filed an appeal in the Supreme Court ('Court') arguing that since the Starbucks Corporation did not conduct any business operations in Pakistan pursuant to Section 1(3) of the Act—applicable to 'undertakings and all actions or matters that take place in Pakistan and distort competition within Pakistan'—they were not in competition with Options Coffee. However, the Court, led by then Chief Justice Qazi Faez Isa, dismissed their appeal because the Respondent's actions had the effect of 'distorting competition within Pakistan' by manipulating the local consumers to believe that the Appellant was selling original Starbucks coffee, thus negatively impacting the sales of local coffee vendors.⁵ Thus, the Court's decision not only upheld the penalties but also clarified the applicability of competition laws in Pakistan to cases that involve the misuse of intellectual property to gain an unfair competitive edge and the protection of well-known trademarks registered in Pakistan. Through its judgment, the Court established a key precedent for balancing the security of global brands with maintaining the integrity of undertakings competing in a domestic market.

The Supreme Court's confirmation of the CCP Order and the Tribunal's decision have significant implications for Pakistan's evolving competition law jurisprudence. Firstly, the judgment seeks to enhance international brand confidence in the Pakistani market. The three decisions clarified that the Competition Act safeguards 'well-known trademarks', regardless of where the business operates. The Court's rejection of the argument that Starbucks was not a competitor under the Act due to its non-operation in Pakistan, and the affirmation of increased penalties for the blatant misuse of Starbucks' goodwill, sends a positive message that Pakistan's regulatory bodies are dedicated to upholding fair competition policies and protecting consumer

³ Ibid.

⁴ *M/s Options International (SMC-Pvt.) Ltd v. The Competition Commission of Pakistan* 2024 CLD 874.

⁵ Ibid [6].

trust. Such a decision aligns with Pakistan's international obligations under the TRIPS Agreement⁶ and the Paris Convention⁷, which require member states to preserve well-known trademarks and prevent their unauthorised use despite the undertaking not having a physical presence in the member state's domestic market.

In addition, the Court's ruling is a deterrent for deceptive marketing practices that erode consumer trust and distort competition in the local market. By holding Options Coffee guilty of exploiting Starbucks' goodwill through misleading claims and fraudulent imitation, the decision ensures that local businesses compete based on merit rather than unfairly benefitting from the goodwill of global corporations. Although the ruling may, *prima facie*, seem to favour international corporations, it ultimately safeguards local competitors from being harmed by deceptive marketing practices. Through high penalties and public knowledge about respondent's unauthorised affiliation with Starbucks, the judgment acts as a deterrent against future deceptive tactics of a similar nature. Thus, the decision reinforces the Commission's commitment to promote fair competition in the marketplace that thrives on real innovation and original creative marketing.

Another essential principle highlighted through the CCP Order and reinforced by the Tribunal and Court is the need to hold corporate leaders, especially owners and other C-level management accountable for deceptive actions and negligence of their employees. By dismissing the claim made by the CEO of Options Coffee that he was unaware of his employee's actions, the CCP reaffirmed the doctrine of vicarious liability. By imposing vicarious liability, the decision reinforces that employers cannot escape responsibility by blaming their employees for unlawful conduct.

Furthermore, the issue of fair trial was also discussed during the proceedings at the appellate tribunal when the respondent contended that the decision of the CCP was based on an inquiry report, hence, afforded no right to a fair trial, as guaranteed under Article 10-A of the Constitution of Pakistan.⁸ On this, the Tribunal held that the 'legal value of the inquiry

⁶Agreement on Trade-Related Aspects of Intellectual Property Rights (adopted 15 April 1994, entered into force 1 January 1995) 1869 UNTS 299 (TRIPS) art 16.

⁷ Paris Convention for the Protection of Industrial Property (adopted 20 March 1884, revised at Stockholm 14 July 1967, entered into force 26 April 1970), 828 UNTS 305 (Paris Convention) art 6.

⁸ The Constitution of The Islamic Republic of Pakistan 1973.

report is akin to a fact-finding exercise by the Commission, and the material so collected during the inquiry can only be used against a person when he or she is put on show cause notice to rebut evidence brought by the inquiry committee.⁹ The Tribunal then concluded that the Respondent received a proper trial since they were provided with an opportunity to present a response to the show cause notice and the evidence collected in the inquiry report; however, the Respondent acceded to the findings of the inquiry report without rebutting any evidence.¹⁰ Therefore, the opportunity for a fair trial is said to have been fully provided, fulfilling the unique standard of fair trials in cases relating to competition law.

The Options International judgment represents a crucial advancement in strengthening Pakistan's competition law framework, protecting intellectual property rights, maintaining market integrity, and upholding consumer trust. The case serves as a foundation for incorporating global antitrust policies into domestic jurisprudence, thus paving the way for ethical business conduct. By holding undertakings and their leaders accountable for deceptive marketing practices, the decision revives the trust of international corporations in Pakistan's domestic legal system.

⁹ *M/s Options International (n 4)* [8].

¹⁰ *Ibid.*