



F. No: 52/SY/CCP/2012
COMPETITION COMMISSION OF PAKISTAN
GOVERNMENT OF PAKISTAN

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POLICY NOTE

REGISTRATION OF POTENTIALLY DECEPTIVE FIRM NAMES

1. The Competition Act, 2010 (the 'Act') provides for 'free competition in all spheres of commercial and economic activity to enhance economic efficiency and to protect consumers from anti-competitive behaviour.'
2. The Commission is specifically mandated under Section 29(b) of the Competition Act, 2010 (the 'Act') to review policy frameworks for fostering competition and to make recommendations for amendments to laws that affect competition in the country.
3. This policy note strongly recommends that firm name registration authorities at federal and provincial levels should not register potentially deceptive firm names.
4. The policy note further recommends that the firm name registration authorities at the federal and provincial levels take steps to create a coordination and cross-verification mechanism amongst themselves so that potentially deceptive firm names cannot be registered anywhere in the country.
5. The policy note also recommends that the Federal Government and the provincial governments suitably amend, within their territorial jurisdictions, the Partnership Act, 1932, the Societies Registration Act, 1860, the Voluntary Social Welfare Agencies (Registration & Control) Ordinance, 1961, the Trusts Act, 1882 and the Co-Operative Societies Act, 1925 so as to bar registration of potentially deceptive firm names.

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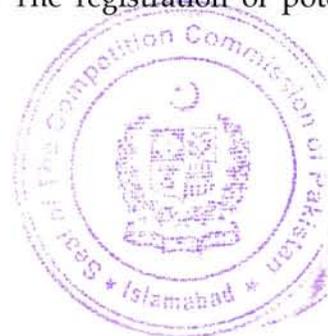


I. LEGISLATIVE FRAMEWORK

6. Undertakings in Pakistan may operate through a variety of structures, including in the form of companies, associations, firms or societies. The methods for registration in any of the forms prescribed above are provided in different legislative acts. The main authorities which provide registration services , and the acts under which undertakings may be registered are as follows:
- a. Securities and Exchange Commission of Pakistan ('SECP'): Undertakings may be registered under the Companies Ordinance, 1984 as public or private limited companies, companies limited by guarantee, or as not-for-profit associations. The Registration Department in the Company Law Division of SECP has field offices known as 'Company Registration Offices' (CROs) which are responsible for the incorporation/registration of undertakings.
 - b. Registrar of Firms: Firms may be registered in Pakistan under the Partnership Act, 1932 through an application filed with the Registrar of Firms that operates under the administration of the respective Directorates of Industries of the Provinces, and in the Islamabad Capital Territory.
 - c. Registrar of Joint-Stock Companies: Societies and trusts, while charitable for the most part, may also be engaged in commercial activities. They are registered by this Registrar of Joint-Stock Companies, and may be established under one of the following acts:
 - i. Societies Registration Act, 1860
 - ii. Voluntary Social Welfare Agencies (Registration & Control) Ordinance, 1961
 - iii. Trusts Act, 1882
 - d. Registrar of Co-Operative Societies: Cooperative societies, such as housing and agriculture cooperative societies are registered under the Cooperative Societies Act, 1925.

II. ISSUES

7. Section 10 of the Act, inter alia, prohibits businesses from fraudulently using another firm name in the market. The registration of potentially deceptive



firm names i.e. names that are identical or very similar to already registered firms, may lead to the violation of the Act. Furthermore, the legislation listed above does not include any specific provision relating to the bar on registering names that are already in use or similar enough to be potentially deceptive. Moreover, in the absence of such provisions and a mechanism for cross-verification of names across various registration authorities, the risk of competition distortion through deceptive marketing practices greatly increases.

III. COMPETITION CONCERNS

8. Deceptive marketing under Section 10 of the Act can occur through multiple ways. Most importantly, Section 10(2) (d) of the Act prohibits the fraudulent use of another business's firm name. One way to do this is to use an existing firm's name to sell products and services. Another way is to use firm names that are deceptively similar to an existing one. The registration of potentially deceptive firm names i.e. those that are identical or very similar to names of already registered firms can lead to deceptive marketing practices in violation of Section 10(2)(d) of the Act.
9. Another way is through the dissemination of information which causes confusion in the minds of consumers. Undertakings with identical or deceptively similar names may lead consumers to assume connections between them or the goods or services offered by them, and thus mislead them into unintended transactions and purchases. At the same time such information can harm the business interest of competitors. Dissemination of such information may amount to deceptive marketing practices in violation of Section 10(2)(a) and 10(2)(b) of the Act.
10. A third concern with respect to such practices is the potential for harm to undertakings. Businesses invest heavily into building their brand identities around the products and services they offer. The brand value of a business is directly related to its reputation in the market, and the goodwill it accumulates meticulously. Businesses use deceptive marketing practices to pass their own goods and services off as others', and thus free-ride on their investment.
11. The naming of undertakings is therefore a matter of significant importance, with wide-ranging effects. This is currently only reflected in the procedures implemented by SECP. It is pertinent here to reproduce Section 37 of the Companies Ordinance, 1984 which states that


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37. *Prohibition of certain names.- (1) No company shall be registered by a name which in the opinion of the Commission is inappropriate or deceptive or is designed to exploit or offend the religious susceptibilities of the people.*

(2) A company shall not be registered by a name identical with that by which a company in existence is already registered, or so nearly resembling that name as to be calculated to deceive, except where the company in existence is in the course of being dissolved and signifies its consent in such manner as the registrar requires.

12. This requirement has been reiterated by SECP in multiple incorporation guides, and a name search facility has also been provided on its website. No similar diligence, however, is exercised by the Registrar of Firms or the Joint-Stock Registrar, which have in the past, and continue to register undertakings without first scrutinizing whether the name, or similar, is already in use. Cases with issues as discussed above have also been brought before the Commission multiple times. A recent example involves the registration of a name that is deceptively similar to that of a leading courier company.
13. Corporate entities registered with SECP are therefore afforded a level of protection, which is not extended to firms and societies under the Partnership Act, 1932 or the Societies Registration Act, 1860, and other laws, even though a substantial number of undertakings operate based on registrations under these laws.

IV. RECOMMENDATIONS

14. In view of the above, and pursuant to Section 29(b) of the Act, it is strongly recommended that firm name registration authorities, at federal and provincial levels, may refrain from registering potentially deceptive firm names.
15. It is further recommended that the names registration authorities at the federal and provincial levels coordinate to setup a cross-verification mechanism so that potentially deceptive names are not registered anywhere in the country.
16. Furthermore, it is also recommended that the Federal Government and the provincial governments may suitably amend the following laws to include provisions, along the lines of Section 37 of the Companies Ordinance, 1984, that bar registration of names that may be deceptive:

- a. Partnership Act, 1932;

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- b. Societies Registration Act, 1860
 - c. Voluntary Social Welfare Agencies (Registration & Control) Ordinance, 1961
 - d. Trusts Act, 1882
 - e. Co-Operative Societies Act, 1925
17. Implementation of these recommendations will promote healthy competition between business undertakings in the various sectors of the economy as well as protect businesses and consumers from anti-competitive behaviour.

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