

IN THE COURT OF Sh. RASHID AHMED
DISTRICT & SESSIONS JUDGE /PRESIDING OFFICER, DISTRICT
CONSUMER COURT SIALKOT/NAROWAL.

Case No. 11 /2007

Date of Decision: 14-12-2010.

*District Coordination Officer, Sialkot (Authority) through Assistant
Director (Legal) District Consumer Protection Council, Sialkot.
(Complainant)*

Versus

*Coca Cola, Beverages Pakistan Ltd, through its Regional Sales
Manager, Siakot. (Service Provider/Respondent/Manufacturer)*

Petition under Section 25 of the Punjab Consumer Protection Act,2005

JUDGMENT.

1. The complainant i.e. District Coordination Officer, Sialkot through Assistant Director (Legal), District Consumer Protection Counsel, Sialkot has launched the instant complaint under the provisions of PCPA 2005, narrating therein that on 06-08-2007, a self explanatory complaint addressed to the Hon,'ble Chief Justice of Pakistan, copy endorsement to the complaint was received in his office from one Mr. Malik Aman-Ullah Adv. Chairman Sialkot Medical Complex (SMC), alleging therein that a seal packed **Sprite bottle 1.5 liter**, of respondent company was purchased from canteen of said complex for use and it was observed that a **cockroach** (insect) was present in the said bottle.

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It was further alleged, that the said bottle was shown to the Manager and Sales Officer of respondent company, to which they owned after

verifying the seal and batch number printed on the bottle but on the other hand the respondent company did not agree to take any responsibility rather pressurized the administration of Sialkot Medical Complex. Above mentioned complaint was referred to the District Consumer Protection Counsel, Sialkot for further necessary action and same was attended by the Assistant Director (legal) DCPC, Sialkot.

02. A formal inquiry was conducted by the Assistant Director (legal) DCPC Sialkot, into the contents of the complaint who also visited Sialkot Medical Complex (SMC) on 22-08-2007, got recorded statement of Admin Officer, and employee of the (SMC) canteen in which, they alleged that respondent company supplies the "drink" daily in the Sialkot Medical Complex Canteen. On the complaint of Sialkot Medical Complex Administration, the Area Sales Manager, namely Mr. Shakeel and his assistant visited admin office Sialkot Medical Complex and confirmed that the subject bottle is of their company. Learned Assistant Director (Legal) DCPC, contacted said Area sales Manager who also confirmed the story.

03. After conducting the inquiry Assistant Director (Legal) opined that product i.e Sprite bottle seems to be defective and injurious to health. Consequently, **legal Notice No. DCPC/SKT/37/07 dated 29-08-2007**, was served upon the respondent. After quenchment of all these formalities complaint

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has been launched for its regular disposal, praying that respondent be punished for violating the provisions of Punjab Consumer Protection Act, 2005.

04. The respondent while submitting reply to the complaint has contested this complaint by controverting the allegation of the complaint, inter-alia raising certain preliminary objections. It is main stance of the respondent that respondent company is a renowned multinational company engaged in world's largest selling beverage whereas, number of unscrupulous people are indulged in preparation

of spurious product and pass those off as genuine product of "Coca Cola" or "Sprite" brands of the respondent. The respondent has also pleaded that presence of insect in a sealed bottle of the respondent product seems to be a concocted and fabricated story or it could a spurious product not of the answering respondent.

05. In substantiation of their claim complainant examined Mehmood Ahmed (AW.1), who being Admin Officer of Sialkot Medical Complex by way of submitting affidavit placed upon the record as Ex-AW.1, has corroborated the allegation narrated in the complaint and has stated that on 02-08-2007, a Sprite bottle of 1.5 liter supplied from the Hospital Canteen contained cockroach and the canteen Vender told that same bottle are supplied daily by Coca Cola Company . In the same context Mr. Shahkel Area Sales Manager, was also contacted who after sighting impugned bottle and its batch number had verified and owned the said bottle. During course of cross examination nothing favouring respondent version could be got elicited

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from witness mouth rather witness has categorically denied the suggestion that impugned Sprite bottle Ex-A1, is not prepared by the respondent company as well as he has unequivocally stated that insect-cockroach is quite visible in the impugned bottle Ex.A1. Similarly Aman-Ullah Malik (AW.2) by owning his affidavit placed by the respondent as Ex-AW2/A, has also corroborated the allegations narrated in the contents of the complaint and has stated categorically that Sprite bottle 1.5 liter was injurious for human life as it contained a cockroach. The witness has stated that said bottle was purchased from the respondent company and its Manager and Sales Officer also owned the Batch number incorporated upon it. The witness has also owned and verified the application submitted to the Hon,^{ble} chief Justice of Pakistan Islamabad placed upon the record as Ex-A2/B, on the basis of which this complaint has been launched by the DCO. Similarly Nasir Mehmood S/O Aman-Ullaha (canteen vender) while

appearing as AW.3 has also verified-corroborated the version of the complainant and has also owned the contents of the affidavit placed upon the record as Ex-AW3/A. He has also stated that vehicle of the respondent company daily supply its product including Sprite bottle. The impugned bottle was supplied in the office of Admin Officer which contained a cockroach in it and when this complaint was launched to the Sales Manager, he owned the bottle and verified its seal and batch number. The witness also placed upon the record cash memo supplied by the respondent company as Ex-AW3/B. The witness i.e canteen vender has also narrated the

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details of his commission and discount being received by the respondent and has stated that after cropping up this matter, he has stopped to sell the Sprite brand. During course of cross examination the witness has unequivocally refuted the suggestion to sell the impugned product by purchasing the same from the market.

06. As against this Arif Sarwar, Technical Manager of respondent company while appearing RW.1 has tried to controvert the respondent version but in a vague and unconvincing manner as he has confined himself to narrate only the detailed process of manufacturing its product and has deposed that there is no possibility of any such adulteration of insect in the respondent products. The witness has also refused to own the sample A, of impugned bottle but could not justify and explain as to how he is disowning the same particularly, when there is sufficient proof upon the record. It is interesting to observe that the witness could not refute the issuance of sale receipt issued by the respondent company placed upon the record As Ex-AW3/B by merely taking the excuse that he only performs the technical assignments. This attitude on the part of witness manifestly reveals that he is concealing the established facts also. Similarly Nasir Mehmood (RW.2) Sales Manager, of respondent company has disowned to manufacture the impugned Sprite bottle Ex-A1, by taking the flimsy plea that the seal is not in existence upon it whereas, fact

of the matter is that impugned bottle Ex-A1 contain seal lock. The witness has even

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denied the established fact of issuance of sale receipt Ex-AW3/B. It is also interesting to observe that during course of cross examination the witness has admitted that he supply bottles to canteen of Sialkot Medical Complex. The witness has even shows his inability to conform the Batch number upon the impugned bottle Ex-A1, but astonishingly at court question he had admitted that he goes to the market off and on to check the product of respondent company.

07. In the same contexts just to arrive at just conclusion Dr. Qurat-Ul-Ain Syed Principal Scientific Officer, PCSIR, laboratories Complex, Ferozpur Road Lahore, was also summoned as CW.1, who has testified the Test Report placed upon the record as Ex-CW.1/A. As per findings in this report the impugned Sprite bottle (sample# A) is microbiological not safe for human consumption in respect of above mentioned phathogens. In the same perspective, Dr. Nusrat Ejaz Chief Scientific Officer, PCSIR, laboratory Complex Ferozpur Road Lahore, while appearing as CW.2 has also corroborated the test Report placed upon the record as Ex-CW.1/A and Ex-CW.1/B . 08.

After careful scrutiny of the evidence available on the record, I am of the considered opinion that allegations of the complaint has cogently and convincingly been established and proved. A visual examination of the impugned bottle (Ex-A1) also evidently reveals that impugned bottle contains cockroach (insect) swimming in it, which is undeniably injurious for human life and survival. The respondent in a tacit manner tried to shift his responsibility by taking the filmsy plea that

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impugned bottle is not manufactured by it, Whereas, the record /evidence available substantiate the fact that impugned defective and spurious Sprite bottle has been manufactured and supplied in the market by the respondent company without adopting due care and caution.

09. Regarding the preliminary objections projected in the body of the reply to the complaint, record reveals that these objections i.e (i) petition being time barred (ii) This court lacks jurisdiction to adjudicate the matter (iii) complaint being hit by rule of double Jeopardy (iv) lack of cause of action, my learned predecessor vide detailed order dated 13-02-2008, has turned down these preliminary objections and the same order also remained upheld by the Hon,^{ble} Lahore High Court in vide order dated 18-04-2008, so there is no need for repetition of the same.

10. Epitome, of the above discussion leads to the irresistible conclusion that the product complaint against suffers from the defect as alleged by the complaint and the respondent company is liable to manufacture and supply spurious, defective, and unhygienic product Sprite (Drink) in the market, which is not only injurious to the health but is also alarming to the human health and lives. The respondent company being manufacturer and supplier of the impugned unhygienic drinks (sprite bottle) have not adopted due care of caution. So the respondent company is held culpable and liable to be imposed penalty U/S 31&32 of the PCP Act, 2005. Accordingly respondent company is punished with a fine of Rs. 100000/- (one Hundred Thousand

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rupees) to be deposited in the State Treasury within a period of one months otherwise the same would be recovered as arrear of land Revenue as well as DCO Sialkot is also directed to recall whole the products of respondent company from trade and commerce and confiscate or destroy the defective products of the respondent company within a period of one month. The respondent company be

also not allowed to manufacture and sell its defective products until it achieves the required standard of hygienic conditions. Complaint stands accepted accordingly. Registrar of this Court is directed to send a copy of this order to the DCO Sialkot and Narowal for compliance under intimation to this court . A copy of this order be also sent to the Secretary, Govt of the Punjab Industries department for information and further necessary action at its ends.

Announced:
14-12-2010.

Presiding Officer,
District Consumer Court
Sialkot/Narowal

CERTIFICATE

Certified that this judgment consists of eight pages. Each of the page has been dictated, read corrected and signed by me.

Announced:
14-12-2010.

Presiding Officer,
District Consumer Court
Sialkot/Narowal