

**In The Court Of Syed Maruf Ahmedali Presiding Officer
District & Sessions Judge District Consumer Court
Lahore.**

Iftikhar Hussain V/S Makro Store.

Order.

The Complainant Muhammad Iftikhar has filed a claim for damages amounting to Rs. 200000/- under the Punjab Consumer Protection Act 2005, against the Respondent.

2 Brief facts, according to the Complaint are that Complainant purchased a Tooth Paste with the brand name of “English Tooth Paste” manufactured by Respondent No.2 from the outlet of Respondent No.1. It is alleged that when it was used by him and his family, it transpired that the Tooth Paste is substandard and the Wrapper of the Tooth Paste does not mention its expiry date nor its weight nor address of the manufacturer . The Complainant approached Respondent No.1 who did not pay any heed. There after he issued a Legal Notice to the Respondent on 22.04.2008. Hence this Claim for the refund of the price of the Tooth Paste and damages amounting to Rs. 200000/-

3 Both the Respondents were summoned. Respondent No.2 contested the claim of the Complainant through his written statement. Respondent No.1 failed to file the written statement despite several opportunities .His defence was struck off on 17.07.2008. The Complainant in order to prove his case appeared in the Witness Box as PW-1 and tendered in evidence his Complaint Ex-P/1 .

Receipt of the Tooth Paste Mark A, Wrapper Mark B, Legal Notice Mark C and postal receipt Mark D. On the other hand the Respondent No.2 produced RW-1 Shahid Zahoor who tendered in evidence his Special Power of Attorney Ex/R-1. Certificate Mark R/2 and Wrapper Mark R/3.

4 It is contended by A.D.P.P appearing on behalf of the Complainant that the Complainant has produced documentary as well as verbal evidence and has supported and corroborated the contents of his Complaint. It is evident from the Wrapper of the Tooth Paste Mark B that no expiry date, its weight or address of the manufacturer Company has been mentioned on it. It is violation of the Punjab Consumer Protection Act. She has further contended that the Tooth Paste is substandard and harmful for human use. She has further contended that the Complainant has proved his case and he is entitled to the damages as prayed for.

5 On the other hand it is contended by the counsel for Respondent No.2 that the Complaint is not maintainable in its present form, as the same has not been filed by an authorized person. He has further contended that no Laboratory test of the Tooth Paste was got conducted before filing of this case nor Tooth Paste has been produced in this Court to prove that the same is substandard or the same is defective for the health of the Complainant or his family. He has further contended that no Notice as required under Section 28 of the Punjab Consumer Protection Act has been given to Respondent No.2. He has further contended that no medical certificate has been produced by the Complainant to prove his version He has further contended that the Complainant has failed to prove the damages and has contended that the Wrapper Mark R/3 proves that the weight and the address of the Company has been mentioned on it. He has prayed that this Complaint be dismissed, as the Complaint has failed to prove the same.

6 After hearing the arguments of both the learned counsel for the parties and perusing the record. As far as objection of the counsel for Respondent No.2 is concerned that this Complaint has been filed without prior approval of the Association nor any Resolution has been placed on record authorizing the Complainant to file the same. The Complainant can file this

case in his personal capacity which he has done under the law. It is considered that he cannot file the case on behalf of the Association. Law favours adjudication on merits and valuable rights of the parties should not be defeated due to mere technicalities. As far as the Notices under Section 28 of the Punjab Consumer Protection Act 2005 is concerned the Notice was issued to Respondent No.1 Copy of the Legal Notice is Mark C and its Postal receipt is Mark D. This Notice shall be deemed to be a Notice to Respondent No.2 as no address of Respondent No.2 was available on the Wrapper of the Tooth Paste Mark B. The Wrapper Mark R/3 of the Tooth Paste produced by RW-1 in his evidence who has appeared on behalf of Respondent No.2 has been prepared as an afterthought to create a false defence.

7 According to the Complainant who has been appeared as PW-1 has produced receipt of the Tooth Paste Mark A and Wrapper Mark B which have not been denied by the Respondent in his evidence. No weight of the contents of the Tooth Paste, nor expiry date nor address of the manufacturer has been mentioned on it. As far as the contents of the Tooth Paste are concerned it could not be proved by the Complainant that the Tooth Paste was substandard or injurious to health, as the same was not produced in the Court for Laboratory Test nor the Complainant has produced any medical certificate that he had suffered medically after using the Tooth Paste.

8 RW-1 Shahid Zahoor who was appeared on behalf of Respondent No.2 has produced his Special Power of Attorney Mark-R/1 Certificate Mark R/2 and Wrapper of the Tooth Paste Mark R/3. Wrapper of the Tooth Paste Mark R/3 shows the weight and the address of the manufacturer and has been prepared afterwards to create a false defence. During cross examination RW-1 has not denied that Wrapper Mark R/3 has been prepared after filing of this case.

In view of the afore said reasons, the Complaint is accepted .However the Complainant has failed to prove any actual damages which he had suffered and is not entitled the same under Section 10 of the Punjab Consumer Protection Act 2005. Respondent No.2 who are manufacturers of English Tooth Paste are burdened with costs of Rs. 5000/- and shall also refund the price of the Tooth Paste amounting to Rs. 18/-to the Complainant within 10 days from the date of this Order. It is directed that Respondent No.2 English Laboratories Swat Pakistan shall print the expiry date on their Tooth Paste of English brand and shall give the weight of the contents of the Tooth Paste and print their complete address in future. Respondent No.1 is directed to remove the English Tooth Paste from their Shelves and shall return the same to the manufacturer on which the expiry date, weight and address of the manufacturer is not mentioned.

File be consigned to record room after due completion.

**Announced
16.12.2008**

**Presiding Officer
District Consumer Court
Lahore.**

Certificate

Certified that this Order consist of Five (5) pages which have been dictated, read, corrected and signed by me.

**Announced
16.12.2008**

**Presiding Officer
District Consumer Court
Lahore.**