

World Trademark Review *Daily*

Supreme Court clarifies meaning of 'person aggrieved'
India - Ranjan Narula Associates

Cancellation
National procedures

November 19 2010

In *Infosys Technologies Ltd v Jupiter Infosys Ltd* (Civil Appeal 5743-5745/2005, November 9 2010), the Supreme Court has set aside a decision of the Intellectual Property Appellate Board (IPAB) in which the latter had ordered the cancellation of *Infosys Technologies Ltd's* registrations for the mark INFOSYS on the grounds of non-use.

In 1987 Infosys obtained registrations for the trademark INFOSYS in Classes 9 and 16 of the [Nice Classification](#) for "computer stationery, computer hardware and peripherals". In 1988 it registered the mark in Class 7 for "machine and machine tools". Jupiter Infosys Ltd adopted 'Infosys' as part of its trade name in 1995. The parties were involved in several civil suits concerning various issues before the high courts of Chennai, Kolkata and Delhi. The appeal in this case was directed against the September 9 2004 decision in which IPAB had ruled in favour of Jupiter and ordered the cancellation of the INFOSYS mark.

In support of its appeal to the Supreme Court, Infosys alleged as follows:

- An application for rectification can be made only by a 'person aggrieved' - that is, a person whose rights are being affected by the existence of the mark on the register.
- The applicant must not only be a person aggrieved at the date of the application, but must continue to be a person aggrieved until a decision on the application has been reached.
- Jupiter had never traded, or intended to trade, in any goods covered by Infosys's registrations in Classes 7 and 16. Therefore, it was not a person aggrieved in this respect.
- Jupiter had changed its name to Jupiter International Limited. Therefore, it was no longer a person aggrieved.

In its defence, Jupiter argued as follows:

- The argument that Jupiter was not a person aggrieved was a new defence, as it was raised for the first time before the court.
- Jupiter was a person aggrieved due to the fact that various suits for infringement filed by Infosys against Jupiter were pending on the date of the application for rectification.
- The preconditions for filing a cancellation action must be satisfied at the time of filing of the application.
- Infosys had never marketed goods in Classes 7, 9 and 16.

Having considered the arguments and submissions of the parties, the court directed IPAB to hear the matter afresh based on the following observations:

- It is a pre-requisite that the applicant for rectification must be a person aggrieved.
- A likelihood that the applicant will suffer injury or damage if the trademark at issue remains on the register may satisfy the test of *locus standi*.
- Non-use does not, by itself, render the entry in the register incorrect.

Observing that IPAB had failed to consider Jupiter's *locus standi* in respect of each registration, the court held that:

- The grievance of the applicant must not only exist at the date of the application for rectification, but must continue to exist until the application is decided.
- If, during the pendency of the application, the applicant's grievance does not subsist, "there may not be any justification for rectification, as the registered trademark cannot be said to operate prejudicially to [the applicant's] interest".

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