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## IPAB admonishes Gillette for anti-competitive behavior

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In a recent judgment, the Intellectual Property Appellate Board (IPAB) not only rejected the cancellation action filed by Gillette India (Gillette) but also reprimanded them for filing such an action.

### **FACTS**

1. 'Gillette India Limited', a subsidiary of US Company filed an action for cancellation of Respondent's 'Harbans Lal Malhotra & Sons Limited' (HLMS) trademark CHAMPION under registration nos. 223840 and 244109. The said marks were registered for 'razor blades for export' and 'safety razor blades and safety razors' respectively.
2. Gillette contended that the Respondent never used the mark CHAMPION and thus is liable to cancelled
3. Further, the Gillette also alleged that the mark/word CHAMPION is laudatory. Gillette contended that the core meaning of the mark implies to be the best in the market/competition. Hence, the mark cannot be monopolized by a single manufacturer.
4. Gillette contended that the mark CHAMPION was adopted in USA in the year 2003 and subsequently it was first used in India in the year 2005 as a part of advertising campaign for brand imagery.
5. HLMS submitted that the mark CHAMPION was registered in India in the year 1964 and extensively used since then. The mark has been renewed from time to time and thus is valid and existing. To support the aforementioned, Respondents furnished several invoices from as early as year 1964 until year 2005. Resultantly, the Respondent averred that due to uninterrupted use of the mark CHAMPION since 1964, it has acquired secondary significance.
6. HLMS in support of use and reputation of CHAMPION mark submitted A C Nielsen Retail Audit Data report for the year 2005 which indicated Respondent to be the market leader in this category.
7. HLMS argued that the present cancellation action is a counter blast to their refusal of an unreasonable offer of Gillette to take over their business.

### **Judgment**

IPAB after considering the submission of both sides rejected Gillette's cancellation petition on the following grounds;

- a. HLMS has proved continuous use of the mark CHAMPION since the year 1964 with the help several documents including invoices.
- b. With regard to the contention of the Gillette that the mark CHAMPION being laudatory, the Board held that a laudatory expression can qualify for registration if it has acquired secondary meaning.

IPAB while rejecting the cancellation petition filed by Gillette came down heavily on them and noted "Business ethics have both formative and descriptive dimensions. The conduct of the applicant to oust an Indian trade mark owner in this particular instant is not in conformity with international commercial behavior...[I]n the instant case the applicant are lacking in commercial scruples and are attempting to crush a relatively small time Indian player from playing its rightful role in the Indian market."

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