IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
COMMERCIAL MISCELLANEOUS PETITION NO. 10 OF 2026

Glaxo Group Limited ...Petitioner

Versus

Shreya Life Sciences Private Limited & Anr. ...Respondents

Mr. Hiren Kamod a/w. Mr. Bhavya Shah i/b. A & P Partners for Petitioner.

Mr. Chintan Bhuva a/w. Mr. Siddharth Kurichh i/b. ASG Partners for Respondent No. 1.

CORAM : ARIF S. DOCTOR, J.

RESERVED ON : 6th APRIL 2026

PRONOUNCED ON : 24th APRIL 2026

JUDGMENT

1. The present Petition has been filed under the provisions of Section 47 of the Trade Marks Act, 1999 ("**Trade Marks Act**"), seeking cancellation of the registration of the mark 'PAXIL' ("**the said mark**") granted to Respondent No. 1 under Registration No. 1153709 in Class 5, i.e., pharmaceutical and medicinal preparations ("**the impugned registration**").

Submissions on behalf of the Petitioner:

2. Mr. Kamod, Learned Counsel appearing on behalf of the Petitioner has at the outset submitted that the Petitioner is a company that develops a range of medicinal and pharmaceutical products worldwide and is part of the GSK Group of companies, a global pharmaceutical giant.

3. He then pointed out from the list of international registrations appended at Exhibit 'N' to the Petition that the Petitioner had started using the said mark in relation to its pharmaceutical products since the year 1991 and had obtained registration of the said mark in various countries. He submitted that the Petitioner's products under the said mark were known to medical practitioners as well as consumers in India and that the Petitioner had a significant reputation both globally and in India. He then invited my attention to Exhibit 'R' to the Petition to point out that a Google search of the word 'PAXIL' generates results of the Petitioner's medicinal products.

4. Mr. Kamod then pointed out that Respondent No. 1 had applied for registration of the said mark in India on 27th November 2002, with a user claim

of 27th February 1973. He submitted that the Petitioner became aware of the impugned registration only in or about June 2024, whereupon the Petitioner conducted an investigation into the use of the said mark by Respondent No. 1 only to discover that Respondent No. 1 had never used the said mark. 1 in relation to any of its products, either before or after the impugned registration. He thus submitted that as per Section 47 of the Trade Marks Act, the impugned registration was liable to be removed from the register of trade marks on account of non-use.

5. Mr. Kamod then submitted that the Petitioner was clearly "first in the world market" to use the said mark since the Petitioner's use of the said mark dated back to the early 1990s, whereas Respondent No. 1 was granted the impugned registration only in the year 2002. He placed reliance upon the decision of the Hon'ble Supreme Court in the case of ***Milmet Oftho Industries v. Allergen Inc.***[1] to point out that the Petitioner clearly satisfies the test of "first in the world market", particularly in the context of pharmaceutical products since

[1] (2004) 12 SCC 624.

the Petitioner's use predates the impugned registration. Mr. Kamod thus submitted that the Petitioner, being the first adopter and user of the said mark on a global scale, was entitled to assert rights in respect of the said mark even in India since the Petitioner's products reflecting the said mark were known to medical practitioners and consumers in India on account of the Petitioner's spillover reputation.

6. Basis the above, Mr. Kamod submitted that the Petitioner squarely qualifies as a "person aggrieved", as the continued presence of the impugned mark on the register effectively precludes the Petitioner from seeking registration of its own mark in India. In support of this contention, he placed reliance on the decision of Hon'ble Supreme Court in ***Hardie Trading Ltd. & Anr v. Addisons Paint & Chemicals Ltd.***[2] and pointed out that the expression "person aggrieved" is to be construed liberally and not in a narrow or technical sense. He then, from the said decision, pointed out that the Hon'ble Supreme

[2] (2003) 11 SCC 92.

Court had, while approving the principle laid down in ***Re:Powell's Trade Mark*** [3], noted as follows, viz.

> "*32. In the latter case the locus standi would be ascertained liberally, since it would not only be against the interest of other persons carrying on the same trade but also in the interest of the public to have such wrongful entry removed. It was in this sense that the House of Lords defined "person aggrieved" in the matter of Powell's Trade Mark:*
>
> *"Although they were no doubt inserted to prevent officious interference by those who had no interest at all in the register being correct, and to exclude a mere common informer, it is undoubtedly of public interest that they should not be unduly limited, inasmuch as it is a public mischief that there should remain upon the register a mark which ought not to be there, and by which many persons may be affected, who, nevertheless, would not be willing to enter upon the risk and expense of litigation.*
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> *Whenever it can be shown, as here, that the applicant is in the same trade as the person who has registered the trade mark, and wherever the trade mark, if remaining on the register, would, or might, limit the legal rights of the applicant, so that by reason of the existence of the mark upon the register, he could lawfully do, it appears to me he has a locus standi to be heard as a person aggrieved.*" (emphasis supplied)

7. In the present case, Mr. Kamod submitted that because of the impugned registration, it was likely that, as and when the Petitioner applied for registration of the said mark in India, the Registry would object to the

[3] (1894) 11 RPC 4.

Petitioner's application on the ground that it was identical to the impugned registration. He thus submitted that the impugned registration, therefore, directly impacts the Petitioner and the Petitioner would therefore squarely qualify as a "person aggrieved" under the provisions of Section 47(1) of the Trade Marks Act.

8. Mr. Kamod submitted that the factum of non-use of the impugned mark by Respondent No. 1 had not been denied in the Affidavit-in-Reply filed by Respondent No. 1. He then invited my attention to the Affidavit-in-Reply to point out that the same was bereft of a single averment to support use of the said mark by Respondent No. 1. He thus submitted that in the absence of any pleading of use of the said mark by Respondent No. 1, an adverse inference would have to be drawn. In support of his contention, he placed reliance upon the decisions in ***Yashasvi Havelia v. Prabhtej Bhatia & Anr.***[4], ***Kabushiki***

[4] 2026 SCC OnLine Del 398.

Kaisha Toshiba v. Tosiba Appliances Company & Ors.[5]**,** and ***Aktiebolaget Jonkoping Vulcan v. VSV Palanichamy***[6].

9. Mr. Kamod submitted that since Respondent No. 1 had not used the said mark, despite having obtained the impugned registration in the year 2005, what Respondent No. 1 had effectively done was to squat over the said mark for a period of over 20 years. He placed reliance upon the decision of the Hon'ble Supreme Court in the case of ***Neon Laboratories v. Medical Technologies***[7] to point out that the legislative intent behind Section 47 was to ensure that the application and grant of a trade mark does not create a permanent right by virtue of an application alone, and the benefit of registration is lost if such mark is not utilised in a reasonable time, as in a bonafide manner. He therefore submitted that Respondent No. 1, not having used the said mark for over twenty years, cannot be allowed to squat over the said mark or claim any benefit from the impugned registration.

[5] (2008) 10 SCC 766.
[6] 1968 SCC OnLine Cal 48.
[7] 2016 (2) SCC 672.

10. Mr. Kamod then also pointed out that the only reason given by Respondent No. 1 for non-use of the said mark was "*expansion of its business",* which would not qualify as "special circumstance in the trade" under Section 47(3) of the Trade Marks Act. He submitted that the plain language of Section 47(3) of the Trade Marks Act makes clear that the "special circumstances in trade" must be such that they afflict all members in the trade in general, i.e., all those who are similarly situated, and must not be reasons specific to only one registered proprietor of a trade mark. In the present case, he submitted that the reason given by Respondent No. 1 for non-use of the said mark could never qualify as "special circumstances in trade" since Respondent No. 1 had, for its own commercial considerations, consciously decided not to use the said mark. He thus submitted that the non-use of the said mark was therefore a voluntary business decision taken by Respondent No. 1 which would never qualify as "special circumstances in trade". In support of his contention that "expansion of business" could never qualify as "special circumstances in

trade", he placed reliance upon the decision in the case of ***Aktiebolaget Jonkoping Vulcan*** which he pointed out held as follows, viz.

> *"42. This plea of "special circumstances" as the cause of the non-user is really a defence in the nature of frustration in a contract. Special circumstances like frustration should not be induced by the proprietor himself nor can it be individual or personal. It must always be circumstances beyond his control and for which he is not responsible in any way. Again, such "special circumstances" must be the direct cause of the non-use. If the non-use is due to other causes apart from special circumstances then the special circumstances cannot be availed to overcome the handicap of non-use of the statutory period of five years."* (emphasis supplied)

11. Mr. Kamod then also placed reliance upon the decisions in ***Financiere Batteur Sas v. Kalai Arasu & Anr.***[8], ***Kabushiki Kaisha Toshiba v. Tosiba Appliances Company & Ors.*** and ***Express Bottlers Services Pvt. Ltd. v. Pepsico Inc. & Ors.***[9] to submit that internal commercial decisions cannot constitute special circumstances so as to excuse prolonged non-use of a registered trade mark. He submitted that, given the fact that what Respondent No. 1 was doing was squatting on the said mark for over 20 years and not

[8] 2024:MHC:4092.
[9] 1989 PTC 14.

using the same, the Petition be allowed and the impugned registration be struck.

Submissions on behalf of Respondent No. 1:

12. Mr. Bhuva, learned counsel appearing on behalf of Respondent No. 1, at the outset submitted that the present Petition was wholly misconceived and was liable to be dismissed at the threshold since the Petitioner was not a "person aggrieved" under Section 47 of the Trade Marks Act and therefore the Petitioner lacked the requisite *locus standi* to file the present Petition and seek cancellation of the impugned registration.

13. Mr. Bhuva submitted that the requirement of *locus standi* for maintaining a rectification application on the ground of non-use under Section 47 was far narrower than the requirement under Section 57. He submitted that provisions of Section 47 of the Trade Marks Act pertained to the protection of private commercial rights, as opposed to proceedings under Section 57 of the Trade Marks Act, which were broader in their ambit and scope since they would involve considerations of public interest. In support of his contention Mr.

Bhuva placed reliance on *Kerly's Law of Trade Marks and Trade Names* to point out that the expression "person aggrieved" included persons who have a substantial and genuine interest in the mark of which removal was sought. He submitted that this includes persons who would be materially prejudiced if the mark in question were to remain on the Register, as well as trade rivals against whom an unfair advantage would be secured by the proprietor of a mark to which it is not legitimately entitled. He submitted that the Petitioner was neither.

14. Mr. Bhuva then also placed reliance upon the decision of the Hon'ble Supreme Court in the case of ***Hardie Trading Ltd. & Anr. v. Addisons Paint & Chemicals Ltd.*** from which he pointed out that the phrase "person aggrieved" under Section 47 was construed in the context of non-use involving private interests and would therefore include "expansion of business". He submitted that for the Petitioner to qualify as a "person aggrieved", it was incumbent upon the Petitioner to demonstrate a personal and commercial interest that was affected in a practical sense and not merely

in a notional or fanciful sense by the continued registration of the impugned mark. He submitted that there must be a likelihood of injury or damage to the Applicant by reason of the mark remaining on the Register, and that the Petitioner must continue to satisfy this requirement not only at the time of filing of the Petition but also until the petition is decided.

15. Mr. Bhuva then also placed reliance upon the decision of the Hon'ble Supreme Court in ***Infosys Technologies Ltd. v. Jupiter Infosys Ltd. & Anr.***[10] to point out that as per the Act, a "person aggrieved" is one whose interests are affected in some possible way and there is "likelihood of injury or damage" by such trade mark remaining on register.

16. In the context of the above, Mr. Bhuva therefore submitted that the Petitioner had failed to establish that the Petitioner was a "person aggrieved" as contemplated under Section 47 of the Trade Marks Act since the Petitioner had never used the said mark in India at any point in time; never applied for or obtained registration of the said mark in India; failed to establish any

[10] (2011) 1 SCC 125.

commercial presence, distribution network, or business operations in India under the said mark; placed no concrete material on record demonstrating actual or potential damage to its business interests in India by reason of the continued registration of the impugned mark; and had not demonstrated that medical practitioners, pharmacists, or consumers in India associate the said mark with the Petitioner rather than with Respondent No. 1. He submitted that the Petitioner would not qualify as a "person aggrieved" since the Petitioner had not suffered any injury from the impugned registration, and the present Petition was therefore liable to be dismissed in limine. In support of his contention, he placed reliance upon the decision of the IPAB in ***Okasa Pharma Pvt. Ltd. v. Win-Medicare Ltd.***[11]

17. Mr. Bhuva then submitted that the rights of Respondent No. 1 in the said mark were traceable through a clear and unbroken chain of title dating back to 1973, when the said mark was originally coined and registered in India by Rallis India Limited, the predecessor-in-interest of Respondent No. 1. He

[11] 2010 SCC OnLine IPAB 198.

submitted that the registration in favour of Rallis India Limited predated the Petitioner's alleged first use of the said mark by approximately eighteen years. He submitted that Respondent No. 1 acquired the said mark from Rallis India Limited pursuant to a Deed of Assignment dated 29th January 2001, thereby stepping into the shoes of Rallis India and acquiring all right, title, and interest in the said mark, including the benefit of its use dating back to 1973.

18. Mr. Bhuva submitted that Respondent No. 1 had, thereafter, filed an application for registration of the impugned mark on 27th November 2002, which was duly entered into the Register of Trade Marks on 16th April 2005. He submitted that the registration had thereafter been consistently renewed by Respondent No. 1 and that the Petitioner's claim of having discovered the impugned registration for the first time only in June 2024, approximately nineteen years after the said mark was entered in the Register of Trade Marks, was wholly implausible. He submitted that the present Petition had been filed with the sole intent of harassing Respondent No. 1.

19. Mr. Bhuva reiterated that the defence of "special circumstances in the trade" under Section 47(3) of the Trade Marks Act fully protected Respondent No. 1. He submitted that, following the acquisition of the pharmaceutical business of Rallis India Limited, Respondent No. 1 focused its operations on expanding its pharmaceutical portfolio in markets outside India and hence had, on account of "expansion of its business", not used the said mark. According to him, such a commercial decision cannot be construed as an intention to abandon the impugned mark.

20. Mr. Bhuva then, also from the decision of the Hon'ble Supreme Court in ***Hardie Trading*** pointed out that non-use occasioned by factors beyond the control of a registered proprietor, such as import restrictions or economic impracticability, would constitute "special circumstances" within the meaning of Section 47(3), and that such non-use, when not stemming from an intention to abandon the mark, was protected under Section 47(3) of the Trade Marks Act. He pointed out from the decision of the Calcutta High Court in ***Aktiebolaget Jonkoping Vulcan*** that economic impracticability may, in

appropriate cases, amount to "special circumstances" within the meaning of the statutory provisions, and hence both the decisions would be of no assistance to the Petitioner.

21. Mr. Bhuva submitted that trade mark rights in India were strictly territorial in character and that rights which emanated from the use or registration of a trade mark in foreign jurisdictions could not, by themselves, confer any enforceable rights within the territory of India. He further submitted that the Petitioner's entire case focused on the Petitioner's use and registration of the said mark in foreign territories, which were wholly irrelevant for the purposes of Indian trade mark law. He pointed out that the Petitioner had not produced any evidence of use, goodwill, advertising, or consumer recognition of the said mark within India and that no spillover reputation in India had been established by the Petitioner. In support of his contention that it was not open for the Petitioner to rely upon the global use of the said mark or the Petitioner's global reputation, he placed reliance upon the decision of the Hon'ble Supreme Court in the case of ***Toyota Jidosha Kabushiki Kaisha v. Prius Auto***

Industries Ltd. & Ors.[12] to point out that foreign companies must establish a significant presence or goodwill specifically within India to succeed in any trade mark claim. He pointed out that the Court had affirmatively rejected the universality doctrine and reaffirmed that trade mark protection was inherently territorial.

22. He then also placed reliance upon the decision of the Delhi High Court in ***Bolt Technology OU v. Ujoy Technology Pvt. Ltd & Anr***[13]**,** to point out that a foreign company's global presence does not automatically translate into protectable rights in India, and strong evidence of reputation specifically within India was required to be established. He also, from the case of ***Aktiebolaget Jonkoping Vulcan*****,** pointed out that use of trade mark in foreign countries under foreign registrations does not constitute "use" within the meaning of the Trade Marks Act.

[12] (2018) 2 SCC 1.
[13] 2023 SCC OnLine Del 7565.

23. Mr. Bhuva submitted that even as per the test of "first in the world market" laid down by the Hon'ble Supreme Court in ***Milmet Oftho Industries v. Allergen Inc.*****,** Respondent No. 1 would qualify in view of the fact that Rallis India, from whom Respondent No. 1 had acquired rights in the said mark, had coined and registered the impugned mark in India as far back as 1973, which was eighteen years prior to the Petitioner's alleged first use of the mark. He further submitted that the principle in this decision did not apply to a company that had no intention of coming to India to sell its products and that the Petitioner's complete absence from the Indian market fatally undermined any reliance on that decision.

24. Mr. Bhuva submitted that Respondent No. 1 was an established Indian pharmaceutical company which, through its predecessor, had maintained goodwill in the impugned mark spanning over five decades. He thus submitted that the balance of convenience was entirely in favour of Respondent No. 1 and that the cancellation of the impugned registration would inevitably cause immense and irreparable harm to Respondent's business, commercial identity,

and investment in the said mark. He pointed out that the said mark had been validly registered for more than two decades and that the law did not favour the disturbance of long-standing and publicly registered rights on the basis of belated and unsubstantiated foreign claims.

25. He reiterated that the Petitioner had no operation, no goodwill, and no commercial interest in the said mark within India and that any claimed damage to the Petitioner was purely speculative and unsubstantiated by any evidence on record. He further submitted that the Petitioner, instead of appearing before the Registrar of Trade Marks, had chosen to institute these proceedings before this Court with the sole purpose of unnecessarily harassing Respondent No. 1. He thus submitted that the Petition be dismissed with costs.

Submissions on behalf of the Petitioner in Rejoinder:

26. Mr. Kamod submitted that the Petitioner was not seeking to restrain the Respondent No. 1 from using the impugned mark in India by virtue of the Petitioner's prior global adoption of the mark and that the territoriality principle was therefore entirely irrelevant to the present proceeding. He

pointed out that the Petition was founded exclusively on the basis of Respondent No. 1's own deliberate and admitted non-use of the impugned registration and that Section 47(1)(b) of the Trade Marks Act did not prescribe any condition requiring a party who files an application for cancellation of a registered trade mark to first establish territorial rights, goodwill, or commercial presence in India.

27. Mr. Kamod then submitted that the Petitioner had clearly established a right to seek cancellation of the said mark and was therefore clearly a "person aggrieved". He submitted that reliance placed by Respondent No. 1 upon the decisions in ***Toyota Jidosha Kabushiki Kaisha v. Prius Auto Industries Ltd & Ors.*** and ***Bolt Technology OU v. Ujoy Technology Pvt. Ltd & Anr.*** were wholly misconceived, since both these decisions pertained to an action for passing off and in no manner concerned the right of a third party to seek cancellation of a registered trade mark on grounds of non-use under Section 47(1)(b) of the Trade Marks Act.

28. Mr. Kamod in dealing with the reliance placed by Respondent No. 1 upon the case of ***Hardie Trading Ltd.,*** submitted that the said decision in fact supports the case of the Petitioner since the Hon'ble Supreme Court had specifically held that "special circumstances" were occasioned on account of the non-use by reason of import restrictions and economic conditions that were applicable to all manufacturers of paints, in that case. He submitted that in the facts of the present case, no industry-wide or trade-wide circumstances applied to persons other than Respondent No. 1. Mr. Kamod then also submitted that the reliance placed by Respondent No. 1 upon the decision in ***Okasa Pharma Pvt. Ltd v. Win-Medicate Ltd.***[14] was also entirely misplaced since the same, *inter alia,* held that a person who had not commenced use of its own mark was held to be a "person aggrieved" since both parties were engaged in the same trade.

29. Mr. Kamod thus concluded by submitting that in the facts of the present case all that Respondent No. 1 had done after obtaining registration of the said mark was to hoard the same. He submitted that such conduct was precisely

[14] 2010 SCC OnLine IPAB 198.

what Section 47 of the Trade Mark Act sought to prevent. He reiterated that the non-use of the said mark was entirely voluntary and in no manner covered by the exception of "special circumstances" under section 47(3) of the Trade Mark Act. He thus submitted that the Petition be allowed.

Reasons and Conclusion:

30. Having heard learned counsel for the Parties and having considered the material and case law upon which reliance has been placed, I have no hesitation in holding that the present Petition is required to be allowed. I say so for the following reasons:

A. Section 47(1)(b) of the Trade Marks Act provides as follows:

> *"**47. Removal from register and imposition of limitations on ground of non-use-***
> *(1) A registered trade mark may be taken off the register in respect of the goods or services in respect of which it is registered on application made in the prescribed manner to the Registrar or the Appellate Board by any person aggrieved on the ground either –*
> *(a) ..*
> *(b) that up to a date three months before the date of the application, a continuous period of five years from the date on which the trade mark is actually entered in the register or longer had elapsed during which the trade mark was registered and during which there was no bona fide use thereof in relation to those goods or services by any proprietor thereof for the time being."*

In the present case, it is not in dispute that Respondent No. 1 has, after obtaining the impugned registration in the year 2005, not at any point used the said mark. Thus, there has been no use whatsoever of the said trade mark, let alone any bona fide use for a period of approximately twenty years. Clearly, therefore, the requirements of Section 47(1)(b) of the Trade Marks Act have been satisfied.

B. The only reason given by Respondent No. 1 to justify the non-use of the said mark, i.e., "expansion of business", would not, in my unhesitating view, ever qualify as being special circumstances under Section 47(3) of the Trade Marks Act which would entitle Respondent No. 1 the benefit of the exclusion contemplated under the said Section. Section 47(3) of the Trade Marks Act makes it explicitly clear that the special circumstances must be "**in the trade**" and therefore of such a nature that would afflict all or at least a majority of the members of the trade in general. In the present case, what Respondent No. 1 has pleaded as "special circumstances" is purely a commercial decision taken by

Respondent No. 1 not to use the said mark for "expansion of business". Respondent No. 1 has, therefore, on its own volition consciously chosen not to use the said mark, it is thus unstatable for Respondent No. 1 to suggest that such a reason would cloak Respondent No. 1 with the protection contemplated under Section 47(3) of the Trade Mark Act. In these facts, Respondent No. 1 has clearly failed to establish that the non-use of the said mark would fall within the exception carved out in Section 47(3) of the Trade Marks Act.

C. Furthermore, the Calcutta High Court, in the case of ***Aktiebolaget Jonkoping Vulcan,*** has specifically held that special circumstances should not be induced by the proprietor, nor can they be individual or personal. It is therefore clear that special circumstances in the trade must be circumstances that are beyond the control of a proprietor or for which a proprietor is not responsible in any way. Also, as held in the case of ***Financiere Batteur Sas***, ***Kabushiki Kaisha Toshiba*** and ***Express Bottlers Services Pvt. Ltd.*** internal commercial decisions

cannot constitute special circumstances so as to excuse prolonged non-use of a registered trade mark. I find the Petitioner's reliance on these decisions to be entirely apposite.

D. From the facts in the present case, to my mind, there can be no doubt that Respondent No. 1 never had any bonafide intention of using the said trade mark. Respondent No. 1 has, after obtaining the impugned registration, simply squatted on the said trade mark and hoarded the same. It cannot be lost sight of that a trade mark by its very definition, is meant to be used as a source identifier in respect of goods and services and is thus meant to be used and not hoarded or traded. In the facts of the present case, it is clear that this is precisely what Respondent No. 1 has done. Hence, the Petitioner's reliance upon the decision of the Hon'ble Supreme Court in the case of ***Neon Laboratories*** is well founded.

E. Equally, I find the contention that the Petitioner is not a "person aggrieved" and therefore lacks the requisite locus to invoke Section 47

of the Trade Marks Act to be wholly untenable. As held by the Hon'ble Supreme Court in ***Hardie Trading Ltd***. an Applicant under Section 47(1) of the Trade Marks Act is required to demonstrate the possibility of practical damage or prejudice caused if the mark of which removal is sought is permitted to remain on the register. In the present case, the Petitioner has clearly set out that the continued registration of the impugned mark would preclude the Petitioner from seeking registration of the said mark in India despite the Petitioner's extensive worldwide use, of which there is no dispute. This fact alone, i.e., the Petitioner being precluded from applying for registration, is adequate to establish that the Petitioner is a "person aggrieved" under Section 47(1) of the Trade Marks Act.

F. Furthermore, the Hon'ble Supreme Court has observed in the case of ***Infosys Technologies Ltd.*** that a "person aggrieved" must be the one whose interest is affected in some possible way and that there is likelihood of some injury or damage to such person by the existence of

the mark on register. In my view, the Petitioner has sufficiently established the "likelihood of damage" which would be caused to the Petitioner if the said mark is not removed from the Register of Trade Marks and has thus satisfied the test of a "person aggrieved".

G. Furthermore, the decisions in the case of ***Toyota Jidosha Kabushiki Kaisha*** and ***Bolt Technology OU*** upon which reliance was placed by Respondent No. 1 would have no application to the facts of the present case since both those decisions were rendered in the context of actions for passing off. The present Petition is founded entirely upon the provisions of Section 47 of the Trade Marks Act, which does not prescribe any condition requiring a party who files an application for cancellation of a registered trade mark to first establish territorial rights, goodwill, or commercial presence in India. The object of Section 47 of the Trade Marks Act is to weed out those trade marks which are not used and/or not put to bona fide use and to prevent hoarding of trade marks. Thus, even accepting the contention of Respondent No. 1 that

Rallis India had obtained registration of the said mark back in 1973, this would make no difference since Respondent No. 1 had thereafter obtained the impugned registration in the year 2005, after which Respondent No. 1 has admittedly not used the said mark. Therefore, considering the conduct of Respondent No. 1 in not using the mark for more than 20 years after obtaining registration, the requirements of Section 47(1)(a) of the Trade Marks Act are also, to my mind, satisfied. The conduct of Respondent No. 1 leaves no manner of doubt that Respondent No. 1 had obtained registration of the said mark without any bona fide intention of using the same.

31. In view of the aforesaid reasons, I pass the following Order:

a. The captioned Commercial Miscellaneous Petition is allowed in terms of prayer clauses ‘i’ and ‘ii’.

b. The captioned Petition is accordingly disposed of.

c. There will be no order as to costs.

[ARIF S. DOCTOR, J.]