November 08, 2025

To,

BSE Limited Phiroze Jeejeebhoy Towers Dalal Street Mumbai - 400 001 **Scrip Code (BSE): 544203**	**National Stock Exchange of India Limited** "Exchange Plaza" C-1, Block G, Bandra-Kurla Complex, Bandra (East) Mumbai - 400051 **Symbol: ABDL**
Reference No:- 86/2025-26	**Reference No:- 86/2025-26**

Sub.: Disclosure under Regulation 30 of the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 ("SEBI Listing Regulations") – Update on Writ Petition

Dear Sir/Madam,

Pursuant to Regulation 30 of SEBI Listing Regulations, this is to inform that the Hon'ble Madras High Court vide its Order dated November 07th, 2025, has disposed of Writ Petitions being WP No. 19734 of 2013 and WP No. 25296 of 2013, as follows:

Sr. No.	Particulars	Trademarks
1	Dismissing Writ Petition No. 25296 of 2013 filed by John Distilleries Private Limited seeking cancellation of Allied Blenders and Distillers Limited's Trademark ['Officer's Choice' (Label)] under No. 538927 in Class 33; and	
2	Allowing Writ Petition No. 19734 of 2013 filed by Allied Blenders and Distillers Limited seeking cancellation of John Distilleries Private Limited's Trademark [Original Choice' (Label)] under No. 722161 in Class 33.	

The information/details as required under Regulation 30 of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, read with SEBI Master Circular No. SEBI/HO/CFD/CFD-PoD2 /P /CIR /P/ 2023/120 dated July 11, 2023, and SEBI Circular No. SEBI/HO/CFD/PoD2/CIR/P/0155 dated November 11, 2024 are given in **Annexure A**.

The copy of aforesaid Hon'ble Madras High Court Order was received on November 7, 2025 at 04:28 p.m. from the official website.

This intimation is also being uploaded on the Company's website at https://www.abdindia.com/

Request you to please take the above information on records.

Thanking you.

Yours sincerely,
For **Allied Blenders and Distillers Limited**

SUMEET MAHESHWARI Digitally signed by SUMEET MAHESHWARI Date: 2025.11.08 11:15:18 +05'30'

Sumeet Maheshwari
Company Secretary and Compliance Officer
Membership No. ACS 15145

Encl.: a/a

Annexure A

DETAILS AS REQUIRED UNDER REGULATION 30 READ WITH CLAUSE 8 OF PARA B OF PART A OF SCHEDULE III OF SEBI (LISTING OBLIGATION AND DISCLOSURES REQUIREMENTS) REGULATIONS, 2015

Sr. No.	Particulars	Update
a)	The details of any change in the status and/or any development in relation to such proceedings.	The Hon'ble Madras High Court vide its Order dated November 07th, 2025 has allowed Writ Petition No.19734 of 2013 filed by Allied Blenders and Distillers Limited and Writ Petition No. 25296 of 2013 filed by John Distilleries Private Limited was dismissed.
b)	In the case of litigation against key management personnel or its promoter or ultimate person in control, regularly provide details of any change in the status and / or any development in relation to such proceedings;	Not Applicable
c)	In the event of settlement of the proceedings, details of such settlement including - terms of the settlement, compensation/penalty paid (if any) and impact of such settlement on the financial position of the listed entity.	Not Applicable

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 14.10.2025	Delivered on: 07.11.2025

CORAM

THE HONOURABLE Dr.JUSTICE G.JAYACHANDRAN
and
THE HONOURABLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

W.P.Nos.19734 & 25296 of 2013
& M.P.No.1 of 2013 & W.M.P.No.2893 of 2017

W.P.No.19734 of 2013:

M/s.Allied Blenders and Distillers Pvt Ltd.,
having its registered office at,
394-C Lamington Road, Mumbai-400 004.
Represent by its constituted attorney Mr.S.K.Basu. ... Petitioner

/versus/

1. Intellectual Property Appellate Board,
2nd Floor, Guna Complex, Annex – 1,
Anna Salai, Teynampet,
Chennai – 600 018.

2. The Deputy Registrar of Trade Marks,
Trade Marks Registry,
"IPR Building", G.S.T.Road,
Guindy, Chennai – 600 032.

3. John Distillers Limited,
Having its registered Office at;
17/1, Cumbell Road, Austin Town,
Bangalore – 560 047. ... Respondents

Prayer in W.P.No.19734 of 2013: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the order of the 1st respondent dated 8th March 2013 made in ORA/143/2008/TM/CH and to quash the same and to direct the 2nd respondent to rectify the impugned mark.

For Petitioner : Mr.P.S.Raman, Senior Counsel,
for Mr.K.Premchander

For Respondents : Mr.Sanjay Jain, Senior Counsel,
Assisted by Mr.Sushant M.Singh
& G.Ramji, for
Mr.R.Sathish Kumar, for R3

: Mr.T.V.Krishnamachari, SPC,
Central Government, for R1 & R2

W.P.No.25296 of 2013:

M/s.John Distillers Pvt Limited,
(Formerly John Distillers Ltd),
Having its Registered Office,
No.110, Pantharapalya,
Mysore Road,
Bangalore – 560 047. ... Petitioner

/versus/

1. Intellectual Property Appellate Board,
2nd Floor, Guna Complex, Annex – 1,
Anna Salai, Teynampet,
Chennai – 600 018.

2. M/s.Allied Blenders and Distillers Pvt Ltd.,
Having its registered office,

At: 394-C Lamington Road,
Mumbai-400 004. ... Respondents

Prayer in W.P.No.25296 of 2013: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records and quash the impugned order dated 19.03.2013 passed by the Respondent No.1 herein in ORA/34/08/TM/MUM (amended as) calling for records relating to ORA/34/08/TM/MUM, quash the impugned judgment dated 08.03.2013 (communicated on 19.03.2013) passed by Learned IPAB and issue necessary directions allowing the ORA/34/08/TM/MUM, thereby rectifying the register of trademarks and expunging trademark number 538927 from the register under Section 57 of the Trademarks Act, 1999 and direct the amended petition incorporating the amendments to be taken on record and pass.

(Prayer Amended vide order dated 06.08.2025 made in WMP.No.15552/2025 in W.P.No.25296 of 2013 by CJ, SMJ)

For Petitioner : Mr.Sanjay Jain, Senior Counsel,
Assisted by Mr.Sushant M.Singh
& G.Ramji, for
Mr.R.Sathish Kumar.

For Respondents : Mr.T.V.Krishnamachari, SPC,
Central Government, for R1

: Mr.Satish Parasaran, Senior Counsel,

for Mr.K.Premchander, for R2

***

COMMON ORDER

M/s.Allied Blenders and Distillers Private Limited (hereinafter to be referred as 'ABD' for brevity) marketing its whisky under the name 'OFFICER'S CHOICE'. M/s.John Distillers Limited (hereinafter to be referred as "JDL" for brevity) marketing their whisky under the name "ORIGINAL CHOICE". Both companies have registered their respective trademarks.

2. Challenging the grant of a trademark to the other, both appeared before the erstwhile Intellectual Property Appellate Board (IPAB) seeking rectification of the mark used by the other. Both failed. Hence, these two captioned Writ Petitions have been filed.

3. Case of Allied Blenders and Distillers Ltd (ABD), as found in its 'Statement of case' and 'Grounds of Rectification 'in ORA 143/2008/TM/CH filed before the Intellectual Property Appellate Board (IPAB):

The Registered Trademark "ORIGINAL CHOICE" bearing No:722161 in Class 33 (Whisky) registered in the name of M/s.John Distillers Ltd (JDL) is sought to be removed/rectified/revoked for the following reasons:-

a) The applicant, M/s.Allied Blenders and Distillers Ltd (ABD),

manufacturing and marketing alcoholic beverages, including IMFL. One of the popular marks of the applicant is "OFFICERS CHOICE", which was originally adopted during the year 1988 by M/s.Cruickshank & Company Limited and later assigned to BDA Pvt Ltd., the predecessor-in-title to ABD. Subsequently, *vide* agreement dated 26.02.1991, the business of BDA Pvt Ltd got merged with ABD under a composite scheme of arrangement approved by the High Court, Bombay, on 23.02.2007. Thereafter, the applicant/ABD became the true and lawful owner of the trademark "OFFICER'S CHOICE". For recording it as the subsequent proprietor of the trademark, "OFFICER'S CHOICE" an application was filed dated 11.08.2007 and the same was duly allowed and accepted by Trademarks Registry *vide* order dated 15.02.2008. The applicant holds Trademark registration for 'OFFICER'S CHOICE' in respect of Classes 03, 21, 25, 32, 33 and 34. Ten more applications for registration of the trademark are pending before the Registrar of Trade Marks at different stages. The product of the applicant under the trademark "OFFICER'S CHOICE" is popularly known as 'OC' among the consumers and sold throughout India. It has gained enviable reputation and goodwill over a period of time. "OFFICER'S CHOICE" is one of the highest-selling whiskies in India. The applicant incurs extensive expenditure towards promotional campaigns to promote its product under the trademark

'OFFICER'S CHOICE' and the letters 'OC'.

b) The use of abbreviation is common in the Liquor Industry. The abbreviations are, in a sense, the pet name for the brand. ABD has been using the trademark OFFICER'S CHOICE and the abbreviated names/mark 'OC' and 'OCW' since 1988. As a result of its continuous and extensive use of the Trademark 'OFFICER'S CHOICE' by its predecessors and then by the ABD, the Trademark had gained reputation and goodwill and acquired the status of 'well-known trademark' and deserves to be protected under Section 11 of the Trade Marks Act, 1999.

c) M/s.John Distillers Ltd (JDL) adoption of the trademark 'ORIGINAL CHOICE' amounts to taking unfair advantage of the reputed mark 'OFFICER'S CHOICE' and is detrimental to the distinctive character of ABD. Such deceptive adoption of ABD's mark is likely to cause confusion among the public and dilute the distinctive character in course of time.

d) Multiple proceedings between the Applicant-ABD and the first respondent-JDL regarding the use of the disputed trademark are pending. When the notice of opposition by the ABD/Applicant for the grant of the Trademark

'ORIGINAL CHOICE' in Class 33 to the first respondent (JDL) was not considered by the Registrar, ABD had filed appeal before the IPAB, which is pending as OA/1/2009/TM/CH/IPAB. Suits for passing off, infringement and unfair trade practices are pending in the Delhi High Court. To counterblast the rectification application of ABD, the first respondent (JDL) filed rectification application for the mark 'OFFICER'S CHOICE' under Application No:538927 under Class 33 before the IPAB, pending as ORA/34/2008/TM/MUM/IPAB.

e) The application of JDL for registration of the label mark 'ORIGINAL CHOICE' in respect of wines, spirits and liquors under Class 33 was filed on 04.04.1996. The mark was advertised in the Journal dated 25.09.2003. The applicant–ABD filed notice of opposition on 31st March, 2004 along with the required fees of Rs.2500/- by cheque but inadvertently did not signed it. Therefore, the Registrar, did not accept the notice of opposition for consideration even after curing the defect, on the ground of limitation. The review petition before the Registrar and further appeal before the IPAB were dismissed.

f) Admitting the mark 'OFFICER'S CHOICE' is deceptively similar to

'ORIGINAL CHOICE', the first defendant (JDL) had filed nine oppositions against ABD. Thus, the dishonest and malafide intention of JDL in adopting the mark 'ORIGINAL CHOICE' as a knowingly deceptive mark of "OFFICER'S CHOICE" is undoubtedly established. It is clear that JDL is trying to capitalise on the established market of ABD. Therefore, the dishonest adoption of the applicant's mark 'OFFICER'S CHOICE' by the first respondent as 'ORIGINAL CHOICE' cannot be protected in view of Section 12 of the Trade Marks Act, 1999.

g) The trademark 'OFFICER'S CHOICE' has been used since 1988 for Class 33 goods. The predecessor of the applicant, ABD are the prior users. The trademark 'ORIGINAL CHOICE' was wrongly granted to JDL without entertaining the opposition and before the expiry of the appeal period. The mark 'ORIGINAL CHOICE' is visually and phonetically similar to "OFFICER'S CHOICE". JDL is neither an honest nor concurrent user. The non-exclusion of the right over the word "CHOICE" does not confer any right on others to use similar marks with dishonest intention to deceive customers. The anti-dissection Rule to be applied, though the trade mark certificates for 'OFFICER'S CHOICE' and 'ORIGINAL CHOICE' contain a disclaimer regarding the word

'CHOICE'. The rights claimed by the applicant are for the entire trademark and the mark is to be read as a whole.

h) The grant of registration for the impugned mark 'ORIGINAL CHOICE' is in violation of Sections 2(1)(zb), 9(1)(a), 9(2)(a), 11, 12, 18, 28, 47, 57 and 125 of the Trade Marks Act, 1999. The registration of the impugned trademark offends the purity of the register. Hence, the removal of the impugned mark 'ORIGINAL CHOICE' for Class 33 under Application No:722161 is prayed on the grounds of non-bonafide intention and likelihood of causing confusion due to its visual and phonetic similarity with "OFFICER'S CHOICE".

i) M/s.John Distillers Pvt Ltd., being the contesting respondent in ORA/143/2008/TN/IPAB, had filed a counter. The content of the counter is similar to the statement of case submitted by JDL in its rectification petition before IPAB. Hence, the content of the statement of case and the grounds for the rectification of the mark 'OFFICER'S CHOICE' for class 33 from the register are extracted below.

4. Case of M/s. John Distillers Pvt Ltd (JDL), as found in its "Statement of case" and "Grounds of Rectification" in ORA/34/2008/TM/MUM filed before the Intellectual Property Appellate Board (IPAB):

a) M/s.John Distillers Pvt Ltd (JDL) is a reputed company engaged in manufacturing and sale of liquor, aerated water for a long time. It has established a vast reputation and goodwill in the market.

b) The trademark 'ORIGINAL CHOICE' was adopted in the year 1995, containing the letters 'OC' for liquor falling under Class 33 of the Trade Mark Act, 1999. On account of its long and continuous use of the trademark 'ORIGINAL CHOICE' with the composite letters 'OC', the same has become distinctive. It was duly registered under No:722161 on 04.04.1996 in respect of wines, spirits and liquor in Class 33. Only recently, during the pendency of the litigation with ABD, JDL came to know about the registration of the trademark 'OFFICER'S CHOICE' in Class 33 bearing Trademark No:538927 for alcoholic beverages including whisky.

c) The claim of ABD for a monopoly over the word 'CHOICE', which is

common in the trade, is not sustainable since ABD had expressly surrendered its right to claim exclusiveness over the word 'CHOICE' by way of a disclaimer when registration was granted to ABD for the label mark 'OFFICER'S CHOICE'.

d) The respondents, BDA Pvt Ltd and ABD, are not the owners of the trademark 'OFFICER'S CHOICE'. The right claimed by ABD through an assignment from M/s.Cruickshank & Co. Ltd. to and in favour of, the first respondent, BDA Pvt. Ltd. is under litigation. The assignor, M/s.Cruickshank & Co., had challenged the validity of the assignment dated 26.02.1991 and the dispute regarding proprietorship rights is pending before the Delhi High Court. Without disclosing the pendency of the litigation between the assignor and BDA (the predecessor) regarding the assignment of the impugned trademark, ABD applied for registration of the trademark 'OFFICER'S CHOICE' and got it surreptitiously. The registration was obtained by playing fraud upon the Trade Mark Registry. The registration obtained by ABD when the assignment under a cloud is bad in law.

e) The trademark registration obtained by ABD for alcoholic beverages

and whisky is being used only for whisky and not used for all other goods under this category. Hence, the registration entered in respect of other goods is to be rectified under Section 47 of the Act on the ground of non-use.

f) The applicant, JDL, is aggrieved by the grant of the impugned trademark 'OFFICER'S CHOICE' to ABD, when there was no valid assignment to ABD and a cloud over the right. If the said entry remains in the register, it will cause embarrassment for the entire trade and limit the legal rights of JDL.

5. The first respondent BDA Pvt Ltd and the second respondent, ABD, filed separate counters containing the facts which is narrated by ABD in its rectification petition filed against JDL.

6. The IPAB, having considered the grounds and the documents relied in ORA/143/2008/TM/CH filed by ABD for the rectification of the Trademarks No:722161 for "ORIGINAL CHOICE" and in ORA/34/08/TM/MUM filed by JDL for the rectification of the Trademark No:538927 for "OFFICER'S CHOICE", had passed common order on 08.03.2013 dismissing both the

petitions by holding that "OFFICER'S CHOICE' and "ORIGINAL CHOICE' are not deceptively similar to each other and are not likely to confuse among the public. All technical objections raised by one against the other were rejected.

7. Being aggrieved, challenging the dismissal of its rectification petition, ORA/143/2008/TM/CH, ABD had filed W.P.No.19734 of 2013. Similarly, challenging the dismissal of the rectification petition, ORA 34/08/TM/MUM, JDL had filed W.P.No.25296 of 2013.

8. Mr.P.S.Raman, Learned Senior Advocate for the petitioner/ABD and Mr.Sanjay Jain, Learned Senior Advocate for the petitioner/JDL extensively argued on the scope and purpose of rectification/removal of a registered mark. Their arguments covered various points, such as how likelihood of confusion in the public mind is to be tested, what is meant by deceptive similarity and when a mark to be held as infringing the registered trademark, the difference between a word mark and a label mark, the test of dominant feature in the trademark, the right of first user vis-a-vis honest and concurrent user, the effect of the expression 'special circumstances' in Section 12 of the Act, the admission of deceptive similarity in the pleadings, the effect of a disclaimer in respect of a

word ‘CHOICE’ while obtaining registration of a trademark and the tendency to abbreviate and identifying the goods by such abbreviation as a pet name.

9. Each of the point raised in the arguments also were buttressed with judgments rendered by the Hon'ble High Courts, the Hon'ble Supreme Court and House of Lords.

10. Arguments of Mr.Sanjay Jain, Leaned Senior Advocate for M/s.John Distillers Pvt Ltd (JDL), the Petitioner in W.P.No:25296 of 2013 and the contesting respondent in W.P.No.19734 of 2013:-

a) On the date of its application which is 26.10.1990, ABD was not the proprietor of the trademark “OFFICER’S CHOICE”. On the date of application, no right or interest vested with ABD. The user claimed in the application is false. Intentionally, ABD suppressed the pendency of the litigation between the assignor and BDA Pvt Ltd regarding the assignment of the right. The locus standi to apply for registration of the trademark “OFFICER’S CHOICE” goes to the root of the dispute and is germane to the *lis*. However, the IPAB, without proper discussion and reasoning, declined to grant rectification of the mark

"OFFICER'S CHOICE", by holding that this is a technical point and in-correct information provided in the application was not with an intention to defraud the Trade Marks Office.

b) Notwithstanding the subsequent settlement of the dispute between the assignor and the BDA Pvt. Ltd., the predecessor of ABD, perfecting the right subsequently, will not wipe out the wilful suppression of necessary fact committed on the date of the application. The said suppression of material fact is wilful and with intention. The falsity in the two resolutions dated 12.02.1990 and 24.04.1990, erroneously relied by the Registrar for granting the registration, is incurable. While so, the IPAB failed to take note of the inherent and incurable defect in the application. For furnishing false information and suppression of material facts, the IPAB ought to have allowed the ORA/34/2008/TM/MUM and removed the registration of "OFFICER'S CHOICE' from the register.

c) The IPAB failed to consider most of the vital grounds raised by JDL in its rectification application. The abbreviation 'OC' never present in the label of 'OFFICER'S CHOICE', at the time of filing the registration or even thereafter. The registration of ABD, which is impugned, does not carry the letters 'OC'. It

was subsequent introduction by ABD. Whereas, JDL got a composite label mark 'ORIGINAL CHOICE' with the letters 'OC' in a diamond shape box below the words "Original Choice". The subsequent introduction of the letters 'OC' in the label of 'OFFICER'S CHOICE' clearly proves that ABD follow the trademark of JDL and imitate it and not vice versa.

d) The dominant features of the two rival marks are entirely different and JDL, being a bonafide and honest user as well as the prior user of the mark with letters 'OC', ABD cannot claim exclusiveness over the letters 'OC'.

11. In defence of its rights over the trademark "ORIGINAL CHOICE", Mr.Sanjay Jain, Learned Senior Counsel for M/s.John Distillers Pvt Ltd, made the below submissions:-

1) The word "choice" is common in the trade. Only on the disclaimer over this common word, trademark registration is granted. While so, only the conferred rights are to be seen and no exclusivity can be claimed over the disclaimed part. No doubt, the law requires that, for the purpose of measuring

the deceptive resemblance between two trademarks and the likelihood of confusion and deception, the marks are to be compared as a whole. However, while comparing the marks as a whole, this must be done from two perspectives:-

a) Comparison between the marks on the strength of registration, which excludes the disclaimed portion; and

b) Comparison of the marks as a whole on the basis of common law rights, having regard to all the surrounding circumstances.

1) Unlike Section 17 of the Trade and Merchandise Marks Act, 1958, which provides that, while exercising the statutory rights over a trade mark, the disclaimed portion for the purposes of comparison of the trademark is to be ignored. Whereas, Section 17 of the new Trade Marks Act, 1999, mandates that when a registered trademark consists of several parts and some part of the mark is non-distinctive in nature, registration shall not confer any exclusive rights in relation to those non-distinctive characters. The resultant effect is that the

presence of the word 'CHOICE' in the competing trademark will not make any difference. The Court cannot find deceptive similarity based on the non-distinct common word "CHOICE".

2) High standard of proof required for ratification of a trade mark registered. If it is not a case of abandonment of the mark, then the principle of honest and concurrent user has to apply. In this case, JDL is in the market selling its " ORIGINAL CHOICE" WHISKY for more than 29 years. No case of confusion among public is made out by ABD. The market sample survey report rightly rejected by the IPAB since it has not followed the appropriate sample drawing and the appropriate methodology. The affidavits of distributors relied by ABD also is of no relevance decide about likelihood of confusion.

3) From 1995, JDL is manufacturing and marketing "ORIGINAL CHOICE" whisky without interruption. For distribution and sale of liquor in any State in India, should obtain prior approval from the concerned department of that state. For Karnataka, when JDL in the year 1995 applied for approval from the Exercise Department of Karnataka, ABD protested and filed objection. The said objection was overruled by the Department. Against the rejection of

objection, ABD did not file any appeal, though the order is appealable. Neither ABD issued any cease and deceit notice till 2002. The opposition petition filed by ABD dismissed as time barred. The cancellation petition by ABD filed in the month of June 2008 on the strength of the permission granted by the Delhi High Court. However, till 2011, ABD did not pursue its cancellation petition though pleadings were completed as early as 2009. It allowed JDL to continue the use of the mark 'ORIGINAL CHOICE' without obtaining any restrain order. Thus, both 'OFFICER'S CHOICE' and 'ORIGINAL CHOICE' are co-existing in the market for more than 29 years without any evidence of confusion and deception. Therefore, by virtue of the principle of waiver, estoppel and acquiescence, the bonafide adoption of the trade mark 'ORIGINAL CHOICE' need not be disturbed.

4) For examining the distinctiveness and the likelihood of confusion, the relevant date is the date of hearing and not the date of registration or the date of filing the rectification petition. Law permits, to look not only at the circumstances existing at the date of registration, but also at what has happened since right down to the present time. During the pendency of the rectification proceedings, the sale of 'OFFICER'S CHOICE' have gone astronomically high.

This proves, the existence of 'ORIGINAL CHOICE' in the market has not caused any confusion in public.

5) The plea of ABD that the tenancy to abbreviate and use the letters 'OC' will lead the customers to believe the goods of JDL as the goods of ABD is untenable and to be disregarded. The abbreviation of any mark or name of the Company, place etc., is developed for convenience. Mere tenancy to abbreviate shall not create any exclusive right unless it is backed by legal sanctity or accrual usage. ABD started using the letters 'OC' in their label only after 2007 and not prior to it. No evidence led by ABD to prove that they were using the letters 'OC' on their product before 2007. Whereas JDL using the letters 'OC' on their label right from inception and they are the prior user of the letters 'OC'.

12. The latest judgment of the Hon'ble Supreme Court rendered in ***Pernod Ricard India Private Limited and another v. Karanveer Singh Chhabra*** reported in ***(2025 SCC OnLine SC 1701),*** arises from a trademark dispute between 'London Pride' and 'Blender's Pride' (both in Class 33-whisky) was relied by Mr.Sanjay Jain, Senior Counsel, to emphasis that in a

similar set of facts, the Hon'ble Supreme Court had held that the marks 'London Pride' and 'Blender's Pride' are clearly not identical. Though the products are similar, the branding, packing and trade dress of each are materially distinct. The Hon'ble Supreme Court has arrived to above conclusion by applying the anti-dissection test, the overall similarity test and the perspective of an average customer. The same tests should be followed to uphold the trademark registration of "ORIGINAL CHOICE" granted to M/s.John Distillers Ltd.

13. Arguments of Mr.P.S.Raman, Senior Advocate for M/s.Allied Blenders and Distillers Pvt Ltd (ABD), the petitioner in W.P.No:19734 of 2013 and the contesting respondent in W.P.No. 25296 of 2013:

13.1. 'OFFICER'S CHOICE' was adopted in the year 1988 by M/s.Cruickshank & Co., and later, by assignment, ABD became the proprietor of the said mark. Application for registration of the Trade Mark for 'OFFICER'S CHOICE' (label) was made on 26/10/1990 for Class 33 goods and the certificate was granted on 19/04/2007. It is admitted that on the date of application, the process of assignment as per the assignment agreement dated 26/02/1991 not completed and the application for registration was made in

anticipation. After the dismissal of the suit filed by the assignor seeking declaration that the assignment deed is invalid and on the arrival of settlement between the parties, the cloud over the assignment deed is totally removed. Therefore, the application made by ABD for the grant of registration and the right of ABD to hold the proprietorship of the trademark 'OFFICER'S CHOICE' cannot be questioned. The IPAB had considered the objections of JDL on this point and rightly concluded that certain inaccurate information in the application will not disentitle ABD to sustain its application dated 26/10/1990. Once the assignment was given effect after arrival of settlement between the assignor and the assignee, there is no force in the argument that ABD applied for the grant of trademark without any right or interest.

13.2 Even prior to the grant of registration of Trade Mark 'OFFICER'S CHOICE' in Class 33, Trademark registration of OFFICER"S CHOICE for goods under Classes 21, 25, 32 and 34 were granted to ABD. The whisky produced by ABD is public popularly known and identified by abbreviated name 'OC'. It is sold throughout India and had gained the status of Well-Known Mark. 'OFFICER'S CHOICE' has an impeccable and formidable

reputation among the public. ABD jealously and successfully protects the purity of its mark by taking action against third parties/infringer's. Listing opposition petitions filed, succeeded and pending, Learned Senior Counsel Mr.P.S.Raman submitted that the conduct of ABD, being vigilant in protecting the Trademark 'OFFICER'S CHOICE' from any dilution, is well established. Even as against M/s.John Distillers Pvt Ltd., for using the mark "ORIGINAL CHOICE", two suits, one in C.S.(O.S).No.1058 of 2002 for passing off and another in C.S.(O.S).No.383 of 2007 for action against infringement were initiated and pending in the Hon'ble Delhi High Court. Therefore, the claim of JDL that they are using the mark 'ORIGINAL CHOICE', uninterruptedly for more than 29 years is factually incorrect. Their use of the impugned mark ORIGINAL CHOICE never peaceful or uninterrupted.

13.3 ABD, at the earliest point of time, soon after the publication made in the journal dated 25/09/2003 and made available to the public on 02/12/2003, filed an opposition petition for granting registration of the trademark 'ORIGINAL CHOICE ' in Class 33 to JDL. The objections were not taken up for consideration on merits but dismissed on technical reasons. Thereafter, a rectification application was filed and the same pending till 2013 before the

IPAB. Therefore the defence of estoppel or acquiescence or peaceful co-existence are not available to JDL. Nor do any special circumstance arise in case of this nature.

13.4 The marks 'OFFICER'S CHOICE' and 'ORIGINAL CHOICE' are deceptively similar on account of structural, visual and phonetic resemblance. The fact that 'OFFICER'S CHOICE' and 'ORIGINAL CHOICE' are similar is admitted by John Distillers in its petition and affidavit filed for rectification of the ABD mark. The amendment to the pleadings will not dilute the admission made earlier. Likewise, JDL had initiated actions against third parties when those third parties ventured to use the word 'CHOICE' as a suffix to the trade name of their products. Even assuming the word 'CHOICE' is non-distinctive and common to trade, when the said word is dishonestly used along with the exclusive word mark to piggyback on the goodwill and reputation of the prior user, same to be prevented or preserve the purity of register. The anti-dissection rule needs to be applied.

13.5 The rectification petition by ABD was filed against the label mark of JDL and not the word mark. While so, the IPAB erred in taking up a

hypothetical comparison only on the basis of word mark. The Learned Judge, erred in confining her discussion and findings only in respect of the words 'OFFICER'S CHOICE' and 'ORIGINAL CHOICE' based on a wrong assumption that the counsels argued only on the words and not on the device or label. This presumption, recorded by Learned Judge in her common order at paragraph No.15, is incorrect. The pleadings as well as the written submissions filed before IPAB extensively deal with the similarity and deceptiveness found in the label of JDL. The impugned trademark is the label of JDL and not merely the word, while so, the failure of the IPAB to compare the label constitutes a patent error.

13.6 When anybody takes umbrage under honest adoption, it is fundamental to disclose the basis of adoption. In this case, JDL failed to disclose the basis for adopting the mark 'Original choice', for its product. Except for a dishonest intention to piggyback the reputation of ABD, there is no other reason for adopting the deceptively similar mark. JDL failed to place before the IPAB the basis for adopting the label, containing the words 'ORIGINAL CHOICE' and the letters 'OC' in the middle of a diamond-shaped box. Thus, when the adoption of 'ORIGINAL CHOICE' is not backed by

originality or an independent basis for adoption, the plea of honest adoption falls to the ground. As a consequence, the plea of concurrent user, not coupled with honesty has to be failed.

13.7 The Learned IPAB failed to appreciate the documents filed, including in the Survey Report, Affidavits of Distributors and copies of Bar Menus, to establish the likelihood of creating confusion in the minds of the public. The law requires to establish the likelihood of confusion and not proof of actual confusion. Therefore, the observation of the Learned Judge in paragraph No.24 of the order, that there is no strong evidence produced from customers and retailers showing that the rival marks were in fact abbreviated as "OC" resulting in confusion.

13.8 Listing out various brands of liquor identified with abbreviations, Mr.P.S.Raman Learned Senior Advocate, submitted that abbreviations used for convenient sake and for other reasons, become the *defacto* name of the product. Deceptiveness to be tested from the angle of common public consumer and not through the eyes of well-read elite. The IPAB, by ignoring to compare the label as a whole had gravely erred in holding that there is no visual and phonetic

similarity between ‘OFFICER’ and ‘ORIGINAL’ after deleting the non-distinct word 'CHOICE' which is common to trade. IPAB, which is supposed to conduct dominant feature test while considering the petition for rectification, miserably failed to apply the dominant feature test. It undertook dissimilarity test instead of similarity test. Contrary to the settled principle, the side-by-side comparison made by IPAB to hold that the word 'OFFICIAL' is not similar to OFFICER’S is erroneous.

13.9. As far as judgments as precedents, apart from citing judgments in support of his argument, Mr.P.S.Raman, Senior Advocate also brought to the notice of the Court that the ‘Bali’ Trade Mark judgment relied by JDL and referred to by IPAB in the impugned order has been overruled by the House of Lords. In respect of ***Pernod Ricard India Pvt Ltd*** case (cited supra), he culled six differences on facts between that case and the case under consideration and submitted that, in any event, the judgement in Pernod Ricard case is against the interim injunction order. The Hon’ble Supreme Court has clarified that the judgement is confined to the adjudication of the application for interim injunction and directed the Commercial Court to proceed with the trial and dispose of the suit on merits in accordance with law, uninfluenced by any

observations made. Hence, he submitted that the observations made in the *Pernod Ricard* case have no binding force of precedent.

14. <u>Points for consideration:-</u>

a) Whether the order of IPAB, holding that ABD's application to the Registrar for the trademark 'OFFICER'S CHOICE', on 26/10/1990, made in anticipation of assignment done without any intention of defrauding, is legally sustainable?

b) Whether the IPAB's omission to examine the disputed device and label as a whole has caused injustice to the parties who have sought for rectification of mark on the grounds of deceptive and dishonest adoption. In other words, is there any error in comparing only the distinct words in the rival marks for testing the likelihood of confusion in the public mind?

c) Whether the observation and finding of the IPAB, that taking 'OFFICER'S CHOICE' on one hand and 'ORIGINAL CHOICE' on the other hand, we do not see any confusion and deceptive similarity, amounts to a side-by-side comparison, which is impermissible?

d) Whether long existence in the market is a special circumstances to apply the principle of concurrent user and allow both the trade marks to exist?

e) Whether, assuming the device and labels are taken for test and found certain similarity, will it be proper to cancel the registration after lapse of several years ?

f) If the 'Dominant Feature Test' is to be applied in this case, whether it should be on facts existing on the date of application or on the date of hearing?

g) Whether ABD can claim the use of the abbreviation 'OC' by JDL on its label is an dishonest act to confuse the customers of ABD, when the letters 'OC' does not form part of the label under Registration No: 538927?

h) Whether, the pleadings and affidavit of JDL contending the marks 'OFFICER'S CHOICE' and 'ORIGINAL CHOICE' are 'deceptively similar' is to be construed as admission ?

i) What is the effect of the disclaimer in respect of a word ' CHOICE' while obtaining registration of a trade mark in the light of Anti-dissection Rule reiterated by Supreme Court in Pernod Ricard case?

15. <u>Consideration of points:</u>

a) Whether the order of IPAB holding ABD application to the Registrar for trademark 'OFFICER'S CHOICE', on 26/10/1990 in anticipation of assignment done without any intention of defrauding is legally sustainable?

(i) The origin of the mark 'OFFICER'S CHOICE' is traced to M/s.Cruickshank & Co Ltd. They were trading IMFL in that name in India. In view of the change in Excise Policy of State Governments , M/s Cruickshank & Co Ltd, proposed to its distiller M/s.BDA to get assigned the label rights. Accepting the proposal, BDA Breweries and Distillers, in the Board of Directors meeting held on 12/02/1990, resolved to express acceptance of the offer to assign label rights over three brands, namely Officers Choice Whisky, 1000 Guineas Whisky and Calypso Rum, for a consideration of Rs.5 lakhs each. In turn, the Board of Directors of M/s.Cruickshank & Co., Ltd, in the meeting held on 24/04/1990, resolved to assign their ownership in labels, including 'OFFICER'S CHOICE', for a consideration of Rs.5 lakhs each, to be paid

before the assignment is made. An agreement to that effect entered on 30/08/1990 between M/s.Cruickshank & Co., and BDA Breweries and Distillers. On payment of the agreed amount of Rs.15 lakhs, the deed of assignment was entered on 26/02/1991. In the meantime, based on the agreement, an application for registration of the trademark made by BDA, on 26/10/1990. The assignment dated 26/02/1991 came to be challenged in Suit No:1800 of 1993 before the High Court, Bombay. This suit, filed for declaration that the assignment deed dated 26/10/1990 as void, was dismissed as withdrawn *vide* order dated 16/10/2012.

(ii) From the above facts, it is clear that, on the date of application, BDA was the actual distiller of the whisky branded and sold by M/s Cruickshank & Co. The change in Excise law warranted the parties to assign the label rights to the distiller. Therefore, as the distiller and the agreement holder of the label on the date of applying for registration, ABD had a vested right and interest in the label. The assignment deed dated 26/02/1991 had made BDA the absolute owner of the label. The suit O.S.No.1800/1993 filed subsequently in the year 1993 and its dismissal in the year 2012, have no relevance. It is preposterous to claim that there was cloud over the proprietorship of the label due to the above

suit. M/s.John Distillers Pvt Ltd, (JDL) and its trade mark 'ORIGINAL CHOICE' admittedly came into existence only in the year 1995-1996, very much after the transfer of the label rights to BDA through assignment. Hence, we hold that the ABD application dated 26.10.1990 for grant of registration, made on the strength of the agreement and in anticipation of assignment, does not suffer an incurable defect. On the date of application, ABD had a vested right and within four months, that right has bloomed into absolute right. The omission to disclose the pendency of assignment is cured soon after the assignment. IPAB had considered the facts and circumstances and had held that, there was no intention of defrauding on the part of BDA, the predecessor of ABD, while applying for registration of the mark 'OFFICER'S CHOICE'.

(iii) It is further to be taken note that, thereafter, M/s.BDA merged with ABD, formerly known as M/s.Chhabra Marketing Limited. The Composite Scheme of Arrangement was duly approved by the High Court, Bombay, in its order dated 23/02/2007. By virtue of order dated 15/02/2008 passed by the Trademark Registry, Mumbai, M/s.ABD become the proprietor of the trademark 'OFFICER'S CHOICE' in different classes, including class 33. A bonafide purchaser of the trademark, with the approval of the Court, cannot be

deprived of its lawful right to enjoy the trademark citing an untenable reason. Hence, we hold that the application for registration of the trademark "OFFICER'S CHOICE', based on the agreement, is valid and we find no reason to differ from the view of the IPAB on this point.

(iv) Accordingly, to the point whether, the order of IPAB holding ABD application to the Registrar for trademark 'OFFICER'S CHOICE', on 26/10/1990 in anticipation of assignment was done without any intention of defrauding is legally sustainable, hence we answer in affirmative.

b) Whether, IPAB omission to examine the disputed device and label as a whole had caused injustice to the parties who have sought for rectification of mark on the ground of deceptive and dishonest adoption. In other words, is there any error in comparing the distinct words alone in the rival marks for testing the likelihood of confusion in the public mind ?

(i) This point had gained significance, since in the impugned IPAB Order at paragraph 15, it has been expressly recorded by the Learned Chairman, that, "*the device or description of the label did not find a part in the arguments. So*

while deciding whether the mark of JDL should be removed we will consider only the words." Confining the comparison only to word according to Mr.Raman, is a manifestation of wrong understanding by IPAB about the dispute, the pleadings and arguments. JDL hold trademark registration for word mark Original Choice (LOGO), Registration No:722161 sought to be revoked is the label (DEVICE) containing the word " Original Choice". In the rectification petition of ABD, it is specifically pleaded that the depiction of the mark, the visual representation, phonetic similarity, writing style, artistic work, getup and colour of letters of JDL prove the dishonest adoption of ABD. The oral and written arguments on either side was against each other Label. To ascertain similarity or imitation, the marks are expected to be compared in entirety. Isolating individual components or any one component alone (as in this case the 'word' component) to assess visual, phonetic, or structural similarity consistently deprecated by the Courts in their judgments. Despite that, IPAB without making comparison as a whole in entirety, had compared the word component alone and thereby expressly ignored to follow the fundamentals required for testing passing off and infringement.

(ii) In short, the argument of the Learned Counsel for ABD was focused

on failure of IPAB not comparing the marks in entirety for which registration given. According to the Learned Counsel, while the application by ABD for removal of trade mark from the register or rectification of the register was filed under Sections 47, 57 and 125 of the Trade Marks Act, 1999 with specific averment that the grant of registration of the impugned mark No:722161 under class 33 for the trademark "ORIGINAL CHOICE" is contrary to Sections 2(1)(zb), 9 (1) (a), 9 (2) (a), 11 (1) (2) (3) (5) & (10), 18 (1), 28, 29, 47, 57 and 125 of Trademarks Act, 1999. A similar petition filed by JDL for removal of the Trademark of ABD, 'OFFICER'S CHOICE' carrying register No:72161 under class 33, deciding the dispute on comparison of competing words is not only insufficient but also erroneous. The components such as trade dress, color, word–style, font and placement, distinctiveness, likelihood of confusion taking the mark in entirety without dissection were not considered by IPAB in proper manner.

(iii) The Learned Senior Advocate for JDL in response to the above argument, submitted that, though in the introduction of the order, IPAB had recorded that it will confine to word alone since the device or description of the label did not find part in the arguments, in fact the order had considered all the

components required to test similarity and the dominant features. No doubt, JDL also not being satisfied with the conclusion, had appealed against the order of IPAB. This Court, in exercise of its power under Article 227 of the Constitution of India, is empowered not only to quash the order but also substitute the order, if satisfied that there is reason to rectify/revoke either of the mark. ***(ref: 2022(2) MLJ 18, Timothy Ravinder Dev Prdeep vs. Charles Samraj and Ors)***. In any event, the matter need not be remanded in view of the abolishment of IPAB w.e.f., 13.08.2021 and the consequential Rules framed by the Madras High Court.

(iv) Mr.Sanjay Jain, Learned Senior Advocate referring Rules 8.11, 15 and 17 of The Madras High Court Intellectual Property Rights Division Rules, 2022 submitted that, reading the provisions of the MHC-IPD Rules and the dictum laid in ***L.Chandra Kumar vs. Union of India*** *reported in* ***(1997) 3 SCC 261***, the present writ petitions pending under consideration before the Division Bench exercising Judicial Review power over the order of the Tribunal, this Court either to upheld the impugned order or reverse it substituting its view, but not to remand 12 years old case to Single Judge.

(v) The submissions of the respective counsels, clearly indicates that the dispute regarding competing marks was never intend to be confined to the word alone. The alleged concession to confine the argument only to the 'word' also not in conformity with the written submissions of the parties. That apart, Section 57(4) of the Trademarks Act, 1999 had conferred suo motu power to the Tribunal to pass any order in exercise of its power under subsection (1) and (2) of Section 57 after giving opportunity to the party of being heard. While so, in our opinion, the IPAB even assuming there was concession given by the counsels to confine their submission only on the word component, it is the duty of the IPAB to compare the competing marks in entirety to arrive at a decision whether the mark is to be removed or rectified or corrected. We find, the IPAB failed to exercise its power properly as envisaged under Section 57 of the Act. By not comparing the Labels as a whole, the impugned order bristles with incompleteness.

(vi) Therefore, we hold, both the applications filed for rectification requires revisit. In view of the abolishment of IPAB and conferment of the powers of IPAB to High Court, there is a legal impediment in remanding the matter to Intellectual Property Division of this Court. Further, the pendency of

the writ petitions for about 12 years, impels us not to remand the matter for the Learned Single Judge, as suggested, but to test the conclusion of the IPAB by comparing the competing marks as a whole in respect of all the components.

(vii) The test of comparison of the two marks is reserved to be done at the later part of the judgment after briefly answering the other points for consideration.

c) Whether the observation and finding of the IPAB, that '*taking 'OFFICER'S CHOICE' on one hand and 'ORIGINAL CHOICE' on the other hand we do not see any confusion and deceptive similarity'*, amounts to a side by side comparison, which is impermissible ?

(i) The Courts have repeatedly held that "likelihood of confusion in the minds of the public" cannot be tested by side by side comparison. The comparison should be conducted from the standpoint of an average consumer with imperfect recollection. Of course, in the order while discussing the plea of deceptive similarity, the IPAB had made the above observation of comparing the two marks keeping it on its hand on either side. ABD relying upon the

market survey report, claims that about 20% of the consumer are confused, whereas, the IPAB had rejected the market survey report suffers, basic infirmity. It is not conducted in the states where 'Original Choice' of JDL is marketed.

(ii) Under Section 9(l)(a) the Act mandates, registration must be refused if the mark is devoid of any distinctive character not capable of distinguishing the goods of one person from those of another person. Likewise, Section 9(2)(a) of the Act mandates, registration must be refused if it is of such nature as to deceive the public or cause confusion.

(iii) An application under Section 57 of the Trademarks Act, ought to be considered holistically as well as within the framework of law particularly, Sections 9 , 11, 12 and 47 of the Act. In ***Parle Products -vs- JP & Co. Mysore*** reported in ***AIR 1972 SC 1359,*** at paragraph No.9, it is vividly explained how conclusion on the question whether one mark is deceptively similar to another to be arrived. Though there are several judgments on this line, for brevity and clarity, the relevant portion of the *Parle judgment* is reproduced below:-

"9. It is therefore clear that in order to come to the

conclusion whether one mark is deceptively similar to another, the broad and essential features of the two are to be considered. They should not be placed side by side to find out if there are any differences in the design and if so, whether they are of such character as to prevent one design from being mistaken for the other. It would be enough if the impugned mark bears such an overall similarity to the registered mark as would be likely to mislead a person usually dealing with one to accept the other if offered to him. In this case we find that the packets are practically of the same size, the color scheme of the two wrappers is almost the same; the design on both though not identical bears such a close resemblance that one can easily be mistaken for the other. The essential features of both are that there is a girl with one arm raised and carrying something in the other with a cow or cows near her and hens or chickens in the foreground. In the background there is a farm house with a fence. The word "Gluco Biscuits" in one and "Glucose Biscuits" on the other occupy a prominent place at the top with a good deal of similarity between the two writings. Anyone in, our opinion who has a look at one of the packets to-day may easily mistake the other if shown on another day as being the same article which he had seen before. If one was not careful enough to note the peculiar features of the wrapper on the plaintiffs goods, he might easily mistake the defendants' wrapper for the plaintiffs if shown to. him some time after he had seen the plaintiffs'. After all, an ordinary purchaser is not gifted with the powers of observation of a Sherlock Holmes. We have therefore no doubt that the defendants' wrapper is deceptively similar to the plaintiffs' which was registered. We do not think it necessary to refer to

the decisions referred to at the Bar as in our view each case will have to be, judged on its own features and it would be of no use to note on how many points there was similarity and in how many others there was absence of it."

(iv) Hence, we find that the IPAB erred by comparing the competing mark side by side.

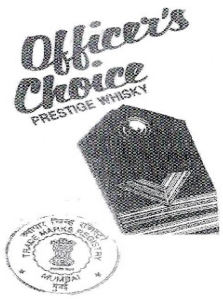
d) Whether the long existence in the market is a special circumstances to apply the principle of concurrent user and allow both the trade marks to exist. ? and

e) Whether, assuming the device and labels are taken for test and found certain similarity, does it sufficient to cancel the registration after lapse of several years?

(i) Section 12 of the Trademarks Act speaks about honest and concurrent user. It also speaks about special circumstances. The Learned Senior Counsel for M/s.JDL heavily harps on this provision and the judgments rendered by Courts protecting the interest of honest and concurrent user under special circumstances. In response, the Learned Counsel for M/s ABD, claims that JDL is not a honest user and rely on the past attempts by ABD to protect and

preserve its right over the mark and its abbreviation to demonstrate, how JDL became the concurrent user.

(ii) The registration for the word mark No:538927 'OFFICER'S CHOICE', in Class 33 (Alcoholic Beverages Being Whisky) issued on 26.10.1990, mentioning BDA Limited as user, claimed since 1988. In the advertisement before acceptance under Section 20(1) proviso, published in Trade Marks Journal No:1155, dated 16th July 1997, there is a disclaimer that, the registration of this Trade Mark shall give no right to the exclusive use of the word 'Choice' and 'Prestige Whisky'. The label published in the journal is :-



(iii) The registration for the word mark No:722161 'ORIGINAL CHOICE' (LOGO) in Class 33 (wines, spirits and liqueurs) issued on 26.12.2007, with Condition & Limitation that the registration shall give no right to the exclusive use of disclaimer of word "CHOICE" and other descriptive matter appearing on the label, mentioning used date since 28.03.1996. In the

advertisement before acceptance under Section 20(1) proviso, as published in the Trade Mark Journal Mega 2, dated 25th September, 2003 looks as below:-

(iv) Before adverting on this point further, it is appropriate at this juncture to record, the Trademark Registry, in tune with Section 17 of the Trademarks Act, 1999 included the disclaimer in both the cases in respect of the word 'choice' and other descriptive words. Only the distinct word 'OFFICER' and 'OFFICIAL' registered.

(v) Mr.Sanjay Jain, Learned Senior Counsel for JDL emphasising repeatedly that, ABD, of course pending registration of 'Original Choice' had filed C.S.(OS).No.1058 of 2002, for passing off before the Delhi High Court and after grant of registration had filed C.S.(OS).No.383 of 2007 for infringement. No interim order obtained by ABD to restrain JDL from using the mark 'ORIGINAL CHOICE'. However the rectification petition was filed only

in the year 2008. The label of JDL is also registered under Copyright Act bearing registration No: A-57394/00. While so, ABD had not challenged the copyright of the label "ORIGINAL CHOICE" till date. By allowing JDL to use the competing mark "ORIGINAL CHOICE", acquiescence for continuous co-existence to be presumed.

(vi) 'OFFICER'S CHOICE' and 'ORIGINAL CHOICE' are in the market for more than 29 years, for all these years, the sales turnover of the product 'ORIGINAL CHOICE; of JDL as well as 'OFFICER'S CHOICE' keep on increasing astronomically. This shows that, the customers have no confusion between the two marks. Before the IPAB, affidavits of distributors filed to support and prove there is no likelihood of confusion.

(vii) Mr.P.S.Raman, Learned Senior Counsel for ABD, argued that the filing of the opposition petition for grant of the mark to JDL and its dismissal on technical reason only proves that ABD always jealous in protecting its mark from dilution by others. The rectification petition filed after the attempts of ABD failed to get its opposition petition restored on file for to be considered on merits.

(viii) When journal advertisement for 'ORIGINAL CHOICE' published, in the year 2003, opposition petition was filed by ABD. It was dismissed due to the failure of not signing the cheque enclosed towards the Fees at the time of filing the opposition petition. Though the same was rectified later, the failure to sign the cheque, lead to dismissal of the opposition petition. ABD went on appeal upto Supreme Court but could not succeed. The first suit in the year 2002 for passing off and injunction, next the second suit for infringement were filed before Delhi High Court and same are still pending. Since, opposition before Excise Department, for the application of JDL to sell Original Choice in Karnataka State got dismissed and not appealed further, it does not mean that ABD had allowed JDL to use the mark Original Choice. It again proves that the existence of the rival mark 'ORIGINAL CHOICE' along with 'OFFICER'S CHOICE' is not a peaceful co-existence.

(ix) As far as the claim of JDL that its, "ORIGINAL CHOICE" is a honest adoption, the Learned Counsel for ABD submitted that such a claim is a farce and false claim. Admittedly M/s.John Distillers Limited (JDL) started selling its product namely, ORIGINAL CHOICE only from 1996. Whereas the

mark ‘OFFICER’S CHOICE’ was adopted in the year 1988 and the product was marketed by M/s.Cruickshank & Co., and later assigned to BDA assignment agreement deed dated 26.10.1990. By the time, “ORIGINAL CHOICE” came to the market, “OFFICER’S CHOICE” was already 7 years old, popularly called by its pet name ‘OC’. The words style of writing and position to carry the abbreviation ‘OC’ can be nothing but a deceptive imitation by JDL with dishonest intention to confuse the customer and piggy back the reputation of ABD. It is true that, during the month of October 1995, when JDL sought approval to sell whisky in the brand name of ‘Original Choice’ in Karnataka, ABD filed its objection and same was rejected by the Excise department of Karnataka. It is admitted that against the rejection of the objection, no appeal filed. This will not tantamount to acquiescence by any sense. ABD been consistently pursuing his right to defend his right over the mark “Officer’s Choice” from dilution by filing opposition before the Registrar of Trademark, Suits before the Delhi High Court, seeking injunction from passing off and infringement and the appeal before IPAB for rectification. Taking advantage of the dismissal of the opposition petition on a technical reason, the deceptive similar mark ‘ORIGINAL CHOICE’ is still surviving in the market.

(x) In ***M/s.Power Control Appliances and others vs. Sumeet Machines Pvt Ltd*** reported in ***1994 (2) SCC 448***, the effect of the term "acquiescence" in trademark dispute been well considered referring Halsbury's Laws of England and Judgments of House of Lords. We are of the opinion that, it is beneficial to reproduce a portions in the said judgment, which gives a good insight to us to know how and when the legal right of a man gets extinguished by his own act which we term as acquiescence.

> *"Upon this matter, a great deal of learning has been referred to, and we have also had our attention drawn to a number of cases. The latter include the well-known statement in Willmott v. Barber [(1880) 15 Ch D 96 : 43 LT 95] by Fry, J. (as he then was). He said this: 'It has been said that the acquiescence which' will deprive a man of his legal rights must amount to fraud, and in my view that is an abbreviated statement of a very true proposition. A man is not to be deprived of his legal rights unless he has acted in such a way as would 'make it fraudulent for him to set up those rights'. Let me pause here to say that I do not understand that, by the word 'fraudulent', the learned Judge was thereby indicating conduct which would amount to a common law tort of deceit. 'What, then, are the elements or requisites necessary to constitute fraud of that description?' In the first place 'the plaintiff must have made a mistake as to*

his legal rights'. Secondly, the plaintiff must 'have expended some money or must have done some act (not necessarily upon the defendant's land) on the faith of his mistaken belief'. Thirdly, the defendant, the possessor of 'the legal right, must know of the existence of his own right which is inconsistent with 'the legal right, must know of the existence of his own right which is inconsistent with' the right claimed by the plaintiff. If he does not know of it he is in the same position 'as the plaintiff, and the doctrine of acquiescence is founded upon conduct with a knowledge' of your legal rights. Fourthly, the defendant, the possessor of the legal right, must know 'of the plaintiff's mistaken belief of his rights. If he does not, there is nothing which' calls upon him to assert his own rights. Lastly, the defendant, the possessor of the legal 'right, must have encouraged the plaintiff in his expenditure of money or in the other acts which he has done, either directly or by abstaining from asserting his legal right'. In reading that passage, it is perhaps necessary to note (because it makes it at first sight a little more difficult to follow) that the positions of plaintiff and defendant as they are usually met with are there transposed, and that one of the parties who is there spoken of as the plaintiff corresponds with the present case with the defendants, and vice versa."

(xi) In the case in hand, ABD-the possessor of the legal right have neither

at its expenditure encouraged the JDL nor directly or indirectly abstained from asserting its legal right. Without any break or pause ABD been battling for its right to protect the mark 'Officer's Choice'.

(xii) In ***Hindustan Pencils Pvt. Ltd. v. India Stationery Products Co., (AIR 1990 Delhi 19)***, the Delhi High Court had the occasion to consider whether the lawful owner of the trademark will loss his right of exclusivity, if he failed to get an interim injunction. It held that,

> *"**29.** If an action is taken by the registered owner and no interim injunction is granted, the effect is that goods bearing the infringement mark or spurious goods would continue to be sold in the market. After a number of years when the case is finally disposed of, after trial, and the plaintiff succeeds and gets a permanent injunction then, possibly, the plaintiff may also be compensated by his being awarded damages or an account of profits. In that sense the non-grant of the interim injunction would not, ultimately, prejudice the plaintiff for he may be compensated with payment of money but during this period when the defendant is allowed to continue to infringe the intellectual property it is the consumer or the purchaser who alone suffers and who ultimately cannot be compensated. Therefore, in order to curb the menance of manufacture, production and sale of spurious goods and*

the blatant violation of intellectual property it will be proper for the court to take into consideration the interest of the general public. In this regard reference may usefully be made to the following observations of McCARTHY, which deals with the protection of third parties:

"Some courts also consider the necessity of protecting third parties. In trademark infringement cases, "third parties" means the buying public. If the equities are closely balanced, the right of the public not to be deceived or confused may turn the scales in favour of a preliminary injunction."

(xiii) Also, in yet another case of ***Hindustan Pencils Private Limited vs. Universal Trading Company*** reported in ***MANU/DE/1082/2000***, the Court held:-

"17. *However, we may also add another ground which persuades us to dismiss this appeal. As already observed above, the application for registration of the trade mark in question was moved by the respondent before the Registrar of Trade Mark in the year 1977 and user of three years and four months was claimed by the respondent as on that date. Although the appellants filed opposition to this application, the same was abandoned and the respondent's trade mark was registered. The application for rectification was filed in the year 1982 and*

as on that date respondent was using the trade mark for almost nine years. As of today he is in use of the said trade mark for more than 26 years. Respondent's business has expanded and prospered during this period. If the rectification application is allowed at this stage, it would definitely cause serious prejudice and hardships to the respondent and this ground also compels us not to exercise any discretion in favour of the appellants. (Refer: AIR 1963 SC 1882, London Rubber Co. Ltd. v. Durex Products Incorporated)"

(xiv) Whereas, the Calcatta High Court had a different views about the long usage. In ***Allergan Inc vs. Milmet Oftho Industries and others*** *reported in* ***1997 SCC OnLine Cal 337***, it was observed that,

*"**38.** The respondents say that no prejudice would be suffered by the appellant could limit its user to OFLOX. The submission is a red herring. The question is whether the mark OCUFLOX is associated with the appellant internationally. Prima faice this appears to be so. The respondents cannot also rely on the goodwill if any they may have built up in the period after receiving the objection from the plaintiff in November, 1994. Their persistence in doing so was at their risk"*

(xv) The IPAB, had referred Bali Trade Mark case, decided by Courts of Appeal and cited by JDL to emphasis that, what is relevant for the court is to

consider whether there is confusion on the date of application for rectification. The competing marks 'BALI' and 'BERLEI', both starts with the letter 'B' and ends with the letter 'I'. No one but illiterate and exceptionally careless person could mistake one for the other since the goods are presented in different coloured pack and different prices.

(xvi) Mr.P.S.Raman, Learned Senior Counsel for ABD brought to our notice that, the judgement of the Courts of Appeal been reversed by the House of Lords consisting of 5 Lordships. However that was not brought to the notice of IPAB.

(xvii) Bali and Berlei were in competing trade of selling 'Ladies Bra' and 'Brassieres' in United Kingdom. During 1934 to 1939 'Bali' (first mark) was manufacturing and selling its products in a small scale and suspended its business in view of the War. Meanwhile the mark "BERLEI" got registered in the year 1954 for the same goods and occupied the market by mass production. Later, in the year 1959 when Bali Company proposed to re-enter the UK market applying for registration of trade mark of BALI (second mark) in block capital letters, same was opposed by 'Berlei' on the ground of non-user for more than 5

years. The Registrar found in favour of Berlei and rectified the existing BALI registration. On appeal to High Court, it was held that there was no similarity, in particular phonetic similarity, between the two marks, that there was a substantial likelihood of deception or confusion both at the date of registration of the first mark (BALI) in the year 1938, and also at the date of opposition to the second mark in 1960, and that as there was no reason for exercising the court's discretion both the marks were expunged and refused. On further appeal, the Court of Appeal by a majority (dissent by *Ungoed Thomas, J.*) held that Bali is an honest and concurrent user within the meaning of Section 12(2) and indeed 'BALI' and 'BERLEI' are dissimilar. Finally, the House of Lords (consist of 5 Lordships) reversed the finding of the Courts of Appeal, allowed the appeal by 'BERLEI' holding by majority,

> *"Held, allowing the appeal and restoring the decision of the Registrar and the judgment of Ungoed Thomas; (1) that in trade mark proceedings if it was established that a mark was potentially deceptive or conducive to confusion among members of the public it was immaterial whether or not it also caused injury to the party seeking to rectify the register or prevent registration*
>
> *(2) That the judicial ear whether or not aided by evidence, found it obvious that deception or*

confusion would be the most likely result of the use of both the words BERLEI and BALI in a competing trade and that accordingly the BALI registration should be expunged and the application for the registration a fortiori would be refused.

(3) That as the use of the mark BALI in 1938 would have been likely to cause confusion it would have been disentitled to protection in a court of justice and it therefore offended against the provisions of section 11 when registered In 1938.

(4) That there was no ground justifying an exercise of the Registrar's discretion under section 32 in favour of allowing the mark to remain on the register: and in particular the fact that the mark had been registered for over 25 years was not such a ground.

(5) That to establish that a mark offended against section 11 it was necessary only to show the likelihood of deception or confusion, and not necessary to show something further, such as some possible, probable of certain success in a passing off action."

(xviii) From the judgments cited, it is clear that if the rectification is sought on the ground of abandonment for more than 5 years the existence of the

competing mark peacefully will matter. Whereas, in other cases, firstly the later user must prove he is an honest adaptor of the mark. He cannot merely justify its existence quoting efflux of time without establishing it was honest adoption. Thus in those cases, the later mark holder do his business at his own risk. In the course of deciding a trademark rectification/opposition petition, the litmus test must be the likelihood of deception or confusion.

(xix) To claim concurrent user status, the use of the competing mark must have remained undisputed. In this case, the use of the mark 'Original Choice' is in use by JDL pendent lite. Long and undisturbed concurrent-use a ground to consider grant of registration in a special circumstances under Section 12 of Trademarks Act, only if the adaptor of the mark is an Honest User. Or otherwise, the prior user by its conduct expressly or impliedly allowed the subsequent user, conceding that it is not similar mark likely to cause confusion. In the case in hand, neither of the exceptions available to JDL.

f) If the 'Dominant Feature Test' is to be applied in this case, whether

it should be on facts existing on the date of application or on the date of hearing?

(i) In a recent judgement of the Hon'ble Supreme Court (***Pernod Ricard India Pvt. limited and another -vs- Karanveer Singh Chhabra reported in (2025 SCC OnLine SC 1701)***, while discussing 'Anti-dissection Rule and Dominant Feature test', held a foundational principle in Trademark law is that marks must be compared as a whole, and not by dissecting from into individual components. This reflects the real - world manner in which consumers perceive trademarks based on their overall impression, encompassing appearance, sound, structure, and commercial impression. In determining whether a mark is deceptively similar to another, courts often consider the dominant feature of the mark- that is, the element which is most distinctive, memorable and likely to influence consumer perception. The principles of the anti-dissection rule and the dominant feature test, though seemingly intention, are not mutually exclusive. Identifying a dominant feature can serve as an analytical aid in the holistic comparison of marks.

(ii). Thus, while considering the likelihood of deception and confusion,

from the eyes of the average consumer of the goods namely whisky, the potential deception and confusion apparent in this case, since JDL had adopted the mark 'Original Choice' the distinctiveness is claimed by combination of words. Nothing to show the words coined with honest intention. Particularly when the secondary name of the product 'OC' being used in the label. Therefore, we hold that the JDL's adoption of Original Choice does not fall under the category of honest user. The IPAB erred by excluding the word 'Choice' as common to trade and concentrated only on the word 'Officer' and 'Original'. It by erroneously looking into only one component i.e. the words 'Officer's and Original', has held that there is no similarity and no dishonest.

(iii) The contention of ABD is that the mark 'OFFICER'S CHOICE' correlates to "OC", which is popularly known among the consumers. The "OFFICER'S CHOICE" whisky has been in the market since 1988 and ABD is the assignee of the mark from its original user. The mark "OFFICER'S CHOICE" got registration in the year 1996, with effect from 1990. The mark of JDL, namely 'ORIGINAL CHOICE,' came into existence in the year 1995. The comparison table given by ABD is as below:-

ABD's Label	***JDL's label***
Product: Whisky	Product: Whisky

ABD's Label	***JDL's label***
Overall Combination: Use of a Red, White and Gold Colour Combination	Overall Combination: Use of a Red, White and Gold Colour Combination
Lay out: Bottom half-Red Colour Top Half-White Colour	Lay out: Bottom half-Red Colour Top Half-White Colour
Border: Gold border	Border: Gold border

Lettering	***Lettering***
In white half of the label, mark written in red colour with same font, slant and in cursive manner of writing	In white half of the label, mark written in red colour with same font, slant and in cursive manner of writing.
Red part of the Label, the word “Prestige Whisky” is written.	Red part of the Label, the word “Fine Whisky” is written.
The word 'Whisky' is written in white colour.	The word 'Whisky' is written in white colour.

(iv) It is contended that both products are sold through common trade channel. Therefore, the probability of deception is high. In this regard, if side-by-side comparison is avoided and the words are compared without dissecting the word “CHOICE”, the dominant feature in both competing marks undoubtedly is the two letters 'O' & 'C' and not the words “ORIGINAL” and “OFFICER’S.”

(v) As pointed out by the Learned Counsel for ABD, nowhere in the pleadings or in evidence, JDL had given reason for coining the word Original choice distinctively for adopting the trade name "*Original Choice*." The letters are in italics and the letters 'O' and 'C' are in capitals. Thus, the letters 'O' & 'C' is dominant feature in both trademarks. Whereas, the Learned Counsel for JDL plead that the word 'ORIGINAL CHOICE' as a whole is the dominant features of its mark. According to JDL, mere fact that the word begins with the alphabet 'O' does not ascribe a motive for adopting the distinct word "Original choice". The tendency to abbreviate and the use of the word 'OC' will lead the consumers confuse should be disregarded because abbreviations are coined for convenience and unless it is backed by any legal sanctity or actual usage, same will not create any exclusive right. In a sense, JDL is the prior user of the expression 'OC'. ABD actually using the abbreviation only after the later part of 2007. Whereas, JDL use these two letters in its label since inception i.e., 1996.

(vi) The Learned IPAB had dissected the mark and excluded the word 'CHOICE' being a non-distinctive and common to the trade. Taking into consideration that the word "ORIGINAL" is written horizontally, whereas the word OFFICER'S is written with a few degree upward elevation is one of the

dissimilarities between the two competing marks. Furthermore, below their respective marks, the words "FINE WHISKY" (under ORIGINAL CHOICE) and are "PRESTIGE WHISKY" (under OFFICER'S CHOICE) are written in capital letters. So, this is yet another dissimilarity highlighted by the IPAB.

(vii) Further, the logo of "ORIGINAL CHOICE" is missing in the "OFFICER'S CHOICE", also been taken into consideration as one of the dissimilarity by the IPAB. Contrarily, the surveyor's report relied by ABD indicates that the recollection of a common man would certainly deceive him while the "ORIGINAL CHOICE" whisky is sold to him though he intend to buy "OFFICER'S CHOICE."

(viii) From the discussion above, this Court is of the firm view that there are similarities between two competing marks. Even if JDL has got registration in the year 1996 and continuing in the market, its existence has been under challenge throughout, even before its registration though unsuccessful. At the end of the day, when the rectification application is to be decided, we are supposed to look at the two marks, which are competing in the same field on the date of application for rectification and not the subsequent changes made by

either parties. This is because the mark for which registration is given alone is static and any other modification to carry by the parties subsequent to that whether those change exclusively or inclusive of the earlier mark, is to be tested only in different proceedings and not in a rectification application. Hence as far as rectification application is concern, it is appropriate to test the similarity between the competing marks whether it leads to a likelihood of deception, on the date of the rectification application and not on the date of hearing which may be several years after the petition.

g) Whether ABD can claim the use of the abbreviation 'OC' by JDL is a dishonest use to confuse the customers of ABD, when the letters 'OC' does not form part of the label under Registration No:538927?

(i) From the documents relied by the parties, we find that ABD had its letter mark 'OC' only in the year 2007. It had not used the letters 'OC' in its label initially. Undoubtedly these letters never part of their label when they applied on 26.10.1990 or when the mark published in the Journal on 16.07.1997 for the Registration No:538927.

(ii) The response to this submission, the Learned Counsel for ABD,

submits that, 'OC' the nick name of Officer's Choice over the years gained a secondary meaning strongly associated with 'OFFICER'S CHOICE' of ABD. Use of the letter 'OC' in the label of Original Choice whisky is a wilful act to confuse the customers. 'OC' a term not inherently distinctive. It had acquired a new and exclusive meaning for consumers that identifies the brand 'OFFICER'S CHOICE'. On gaining the status of secondary meaning, the term got registered. The JDL deceptively by including the letters 'OC' in their label , wrongly claim it as a distinct mark and it is the prior user. The very act of including the word 'OC' in the label after ABD product 'OFFICER'S CHOICE' gained a secondary meaning as 'OC'. As the mark 'OC' had achieved the secondary meaning, under Trademark law, ABD is entitle for protection.

(iii) To buttress this submission, the Learned Counsel for ABD submitted that in liquor trade, brands identified by nick names is common and widely prevalent. By way of illustration he referred to some of liquor brands recognised by its nick name and gained a secondary meaning. (Eg: Mcdowell Brandy recognised and called as 'MC' by the consumer, Bag Piper as 'BP', King Fisher as 'KF', Royal Challenge as 'RC' etc.,). Since the tendency to abbreviate is common in the trade, the use of the word 'OC' will lead the consumers confuse.

(iv) Abbreviations are coined for convenience and it is backed by legal sanctity. Having obtained registration of the mark 'OC' after gaining secondary meaning and also getting the status of 'well known mark', the purity of the mark cannot be polluted by allowing 'ORIGINAL CHOICE' a mark dishonestly adopted to exploit the goodwill and reputation of ABD.

h) Whether, the pleadings and affidavit of JDL contending the marks 'OFFICER'S CHOICE' and 'ORIGINAL CHOICE' are deceptive similarity in to be construed as admission ?

(i) In the pleadings and affidavit filed in support of their revocation petition against ABD, it is claimed and admitted both the marks are deceptively similar. Later, realising the said plea will be detrimental to their case, JDL amended its pleading deleting the word deceptive. But no amendment is sought to the affidavit filed in the support of their revocation petition. JDL in its revocation petition challenging the mark of Officer's Choice as well as in the counter affidavit filed in the revocation petition filed against their mark Original Choice, it had taken a consistent and specific stand that, they in the course of their business adopted trademark 'ORIGINAL CHOICE' in the year 1995 consisting of artistically conceived letters 'OC' as a device mark which is falling

under class 33 of the Trademarks Act. By committing fraud on the registry, ABD had obtained registration of its mark 'Officer's Choice'. Hence, to retain the mark 'Original Choice' on the basis prior and honest user, rectification of the registration granted to OFFICER'S CHOICE' been contested. The plea of concurrent user is taken only as an alternate.

(ii)The advertisement material relied by ABD as well as the fact that 'OC' of ABD 'OFFICER'S CHOICE' depicting men in uniform and used even before a formal registration of the mark after gaining a secondary meaning fortifies the right of ABD to protect its trademark as against the mark 'ORIGINAL CHOICE'. Original Choice got registered claiming to have been adopted in the year 1995 by JDL. When no justification or reason forthcoming from JDL for coining the mark 'ORIGINAL CHOICE' to the identical product of ABD sold through same source of supply and targeting the same set of customers, neither the plea of honest adaptor or concurrent user or any other special circumstances available to JDL.

i) What is the effect of the disclaimer in respect of a word 'CHOICE' while obtaining registration of a trade mark in the light of Anti-dissection Rule reiterated by Supreme Court in Pernod Ricard case ?

(i) According to the Learned Counsel for JDL, the word choice is common to trade and had given up right of exclusivity over the word 'choice'. Therefore, when the Tribunal is called upon to examine the deceptive resemblance on the strength of the registered trade mark, only the conferred rights are to be seen and exclusivity cannot be claimed over the disclaimer part.

(ii)This submission made on behalf of JDL cannot be countenanced since, it has been repeatedly held by Courts that in case of composite marks - those contained multiple elements, such as words and logos-the overall impression created by the mark is relevant. Though the proprietors cannot claim exclusive rights over individual component, particularly, non- distinctive or descriptive elements.

(iii) In *Pernod Ricard India Ltd.,* (cited supra), the Hon'ble Supreme Court while considering the test for the similarity in para 40.6 had referred ***Lidl Great Britain Ltd -vs- Tesco Stores Ltd*** *reported in* ***(2024) EWCA Civ 262,*** wherein, *Arnold LJ* has observed that;

> *"16. First, the average consumer is both a legal construct and a normative benchmark. They are a legal construct in that consumers who are ill-informed*

or careless and consumers with specialised knowledge or who are excessively careful are excluded from consideration. They are a normative benchmark in that they provide a standard which enables the courts to strike a balance between the various competing interests involved, including the interests of trade mark owners, their competitors and consumers.

17. Secondly, the average consumer is neither a single hypothetical person nor some form of mathematical average, nor does assessment from the perspective of the average consumer involve a statistical test. They represent consumers who have a spectrum of attributes such as age, gender, ethnicity and social group. For this reason the European case law frequently refers to 'the relevant public' and 'average consumers' rather than, or interchangeably with, 'the average consumer': see, for example, Intel Corpn Inc v. CPM United Kingdom Ltd (Case C-252/07), [2008] ECR I-8823; [2009] Bus LR 1079, para 34. It follows that assessment from the perspective of the average consumer does not involve the imposition of a single meaning rule akin to that applied in defamation law (but not malicious falsehood). Thus, when considering the issue of likelihood of confusion, a conclusion of infringement is not precluded by a finding that many consumers of whom the average consumer is representative would

not be confused. To the contrary, if, having regard to the perceptions and expectations of the average consumer, the court considers that a significant proportion of the relevant public is likely to be confused, then a finding of infringement may properly be made.

18. Thirdly, assessment from the perspective of the average consumer is designed to facilitate adjudication of trade mark disputes by providing an objective criterion, by promoting consistency of assessment and by enabling courts and tribunals to determine such issues so far as possible without the need for evidence..

.....

20. Fifthly, the average consumer rarely has the opportunity to make direct comparisons between trade marks (or between trade marks and signs) and must instead rely upon the imperfect picture of the trade mark they have kept in their mind."

(iv)The impugned judgment of IPAB, while considering the likelihood of confusion, had rejected the market survey report relied by ABD on the ground that, Jaipur in Rajasthan and Calcatta in West Bengal where the market survey was conducted, JDL has no presence. For testing the likelihood of confusion for an average consumer, the test need not be the real existence of rival mark in

the market. The five principles postulated in *Arnold LJ* in ***Lidl Green Britain Ltd*** (cited supra) should have been applied. In reality, an average consumer rarely has the opportunity to make a direct comparison unlike IPAB did in this case by keeping Original Choice whisky in one hand and Officer's Choice whisky in another hand. The imperfect picture of the trade mark an average consumer kept in his mind needed for the assessment of similarity. If anyone, now recollect the competing marks printed above and make a comparative assessment, obviously the potentiality to be confused could be palpable realised.

(v) Hence, we hold that, the disclaimer of the word 'CHOICE' is for the limited purpose of restraining the proprietors to claim exclusivity over the word and not for comparing similarity, which is necessarily be done taking the mark as a whole without dissecting.

16. To sum up; we hold that:

a) No element of fraud on the Trademark Registry was committed by ABD by applying, on 26.10.1990, for registration of their trademark 'Officer's Choice', based on the Board Resolutions dated 12.02.1990 and 24.04.1990, followed by the assignment agreement dated 30.08.1990 and the Assignment

Deed dated 26.02.1991. The minutes of the board resolution of M/s.Cruickshank & Co., the original proprietor of the mark 'OFFICER'S CHOICE' and passing of consideration of Rs.5 lakhs for the assigned rights, speak volumes about the existence of the mark, its reputation and its potential in the trade. The application made in anticipation of executing an assignment is not an act of fraud. In contract law, the holder of an agreement, derives interest in the subject matter. When no illegality is made out and found to be a genuine application by the Registrar as well as the IPAB, it is futile to claim that the registration of ABD of their trademark 'OFFICER' S CHOICE' is obtained by fraud.

b) The existence of the mark 'ORIGINAL CHOICE' in the midst of opposition and objections/rectification cannot be termed as peaceful coexistence. Section 57 of the Trademarks Act, vest a wide power on the Tribunal to cancel or vary registration and to rectify the register either on application by any aggrieved person or even *suo motu* in cases entries made without sufficient cause or entry wrongly remaining in the register. Section 9(1)(a) stipulates that any trademark which is devoid of any distinctive character or not capable of distinguishing the goods or services of one person from those of

another person, the Trademark registry refuse registration. Section 9(2)(a) of the Act says, if a trademark is of such a nature as to deceive the public or cause confusion registration may be refused. To survive with the trademark 'Original Choice', JDL is bound to first establish its honest adoption. We are able to clearly and without any doubt find the adoption of the composite mark 'ORIIGNAL CHOICE', written in italic with the first letter 'O' and 'C' and the combination of both the letters 'OC' in its label is intentional adoption to mislead the customers who possess average intelligence and ordinary memory.

c) The IPAB having failed to compare the competing marks as a whole and its selective failure to compare other components except the two words and its conscious omission to conduct the dominant feature test, renders its finding unsustainable.

d) On applying the anti-dissection rule and the dominant feature test, we find that the two competing marks have some degree of similarity. Even the similarities between these two marks are faint, judicial pronouncement of Courts abroad and approved by the Hon'ble Supreme Court in *Pernod Ricard Pvt Limited* case cited supra, emphasize that the similarities to be viewed from

the eyes of average consumer, who normally perceives a mark as a whole and does not proceed to analyse its various details.

e) The enjoyment of the trademark ' Original Choice' by JDL been in continuous disturbance. Any wrongful adoption of a mark in violation of Section 9(1)(a) and 9(2)(a) of the Trade Marks Act is at the risk of the adopter. Having held that JDL's use of 'ORIGINAL CHOICE' is not a *bona fide* and honest, the mark is liable to be rectified. It cannot coexist to the detrimental of the lawful proprietor of 'OFFICER'S CHOICE'.

17. As a result, the order of the Intellectual Property Appellate Board (IPAB) dismissing ORA No.143/2008/TM/CH is hereby set aside. Accordingly, W.P. No. 19734 of 2013 is allowed. The dismissal order of IPAB passed in ORA No.34/2008/TM/MUM is confirmed and W.P.No.25296 of 2013 stands dismissed. There shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

(Dr.G.J, J.) & (M.S.K, J.)
07.11.2025

Index :Yes.
Neutral Citation :Yes/No.
Internet :Yes.
bsm

Dr.G.JAYACHANDRAN, J.
&
MUMMINENI SUDHEER KUMAR, J.
bsm

Pre-delivery common order made in
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