

37.

\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 6569/2008

**Date of decision: 10<sup>th</sup> November, 2009**

PATIALA DISTILLERS & MFRS. LTD. .... Petitioner  
Through Mr. Ajay Amitabh Suman & Mr. Ranjit  
Kumar Rana, Advocates.

versus

U.O.I & ANR. .... Respondents  
Through Nemo.

**CORAM:**  
**HON'BLE MR. JUSTICE SANJIV KHANNA**

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not ?
3. Whether the judgment should be reported in the Digest ?

**ORDER**

1. Respondent No. 2 has not entered appearance despite of service. It is pointed out that the respondent No. 2 had also not appeared before the Intellectual Property Appellate Board. Accordingly, I have heard the counsel for the petitioner.
2. The petitioner herein on 25<sup>th</sup> August, 1986 had applied for registration of label 'Commando XXX Rum' in class 33. An advertisement was published in the Trade Mark Journal on 1<sup>st</sup> November, 1993 and thereafter the respondent No. 2 filed their opposition.
3. Learned Registrar vide his order dated 24<sup>th</sup> November, 1997 rejected the petitioner's application for registration and allowed respondent No. 2's opposition.
4. Aggrieved, the petitioner filed an appeal being Civil Miscellaneous (Main) No. 392/1999 before this Court, which was transferred to the Intellectual Property

Appellate Board under Section 100 of the Trade Marks Act, 1999.

5. By the impugned order dated 16<sup>th</sup> June, 2008, the appeal filed by the petitioner has been dismissed on the ground that the petitioner did not file any evidence in support of the application under Rule 54 of the Trade and Merchandise Marks Rules, 1959.

6. Learned counsel for the petitioner submits that there was an error and mistake on the part of the counsel appearing for the petitioner but one opportunity to file documents/affidavit should have been granted to the petitioner.

7. The petitioner had earlier filed Civil Miscellaneous (Main) No. 392/1999 before the High Court against the order dated 24<sup>th</sup> November, 1997 passed by the Assistant Registrar of Trade Marks, Delhi and then petition was transferred as an appeal before the Intellectual Property Appellate Board. The respondent No. 2 had not filed any response to the appeal before the Appellate Board or even before the High Court. The word 'Commando' has been registered in the name of the petitioner in respect of wines, spirits and liquor. The petitioner had applied for registration of the label in question in August, 1989 and the matter had remained pending in the High Court and then before the Board. Lapses can take place when legal proceedings get prolonged. Some latitude in such cases can be given.

8. Keeping in view the aforesaid facts, the impugned order dated 16<sup>th</sup> June, 2008 passed by the Intellectual Property Appellate Board is set aside and the matter is remanded back to the said Board. One opportunity is granted to the petitioner to file evidence by way of affidavit within a period of four weeks from today. Fresh notice will be issued to the respondent No. 2 herein before the appeal is decided by the Appellate Board.

9. The petitioner will appear before the Registrar of the Appellate Board on 7<sup>th</sup> December, 2009, when next date of hearing will be fixed.

The writ petition is disposed of.

**SANJIV KHANNA, J.**

**NOVEMBER 10, 2009**  
**VKR**