

INTELLECTUAL PROPERTY APPELLATE BOARD
2nd floor, Annexe-I, Guna Complex, 443, Anna Salai, Teynampet,
Chennai 600 018

(Circuit Bench sitting at Delhi)

M.P.No.172/2009 in OA/31/2008/TM/DEL

FRIDAY, THIS THE 15TH DAY OF JANUARY, 2010

HON'BLE Ms.S.USHA

VICE-CHAIRMAN

HON'BLE Mr. SYED OBAIDUR RAHAMAN -

TECHNICAL MEMBER

M/s. Johnson Diversey Inc.,
A Company organized under the Laws of
State of Delaware, U.S.A.,
8310, 18th Street, Sturtevant,
Wisconsin 53177 – 1964,
United States of America.

.....Appellant

(By Advocate Shri Shantanu Sood)

Vs.

The Registrar of Trade Marks,
Trade Marks Registry,
New Delhi.

.....Respondent

(By None)

ORDER No. 8 of 2010



Hon'ble Ms. S.Usha, Vice-Chairman

Miscellaneous Petition filed by the appellants for fixing an early date for hearing the main appeal.

2. The petitioner herein filed an application for registration of the trade mark **J-FLEX** on 06/01/2006 in class 21 in respect of Dispensers for cleaning and disinfectant preparations claiming user since February, 2004 under application No. 1411945. The respondent herein sent an examination report wherein an objection under Section 9(1)(a) of the Trade Mark Act 1999 (hereinafter referred to as the Act) was raised – proposed mark could not be registered in favour of the appellant as the mark was allegedly "*denial of distinctive character and not*

capable of distinguishing the goods of the appellant from those of other manufacturers and merchants" No prior mark was pending or registered as seen from the examination report.

3. The petitioner herein replied to the examination report wherein it was stated that the objections are not sustainable and requested for a personal hearing. Again a letter was sent to the respondent in response to the examination report. Thereafter the respondent fixed a date for hearing. At the hearing the petitioner filed an user affidavit and documents to prove his claim of use.

4. After hearing the petitioner, the respondent passed the order dated 17/01/2008 refusing the application for registration with a statement "*that application is open to objection under Section 9(1)(b) of the Act as it is not capable of distinguishing the goods or services of person from those of another person and the user affidavit was filed without any supporting documents and the applicants failed to establish honest and concurrent user of the mark under section 12 of the Act.*"

5. The petitioner herein requested for the grounds of decision on Form TM 15 for which the petitioner had not received any reply and filed the appeal before this Appellate Board. The petitioner suffers great prejudice and is deprived of statutory rights. The object of constitution of the Appellate Board is to provide speedy disposal of the matters. Hence it is prayed that the matter be heard and disposed of at the earliest.

6. We have heard Mr. Shantanu Sood, counsel for petitioner and none appeared for the respondent during the hearing on 17.12.2009 at Delhi.

7. The learned counsel for the petitioner brought to our notice the examination report filed as annexure C along with the appeal. The counsel submitted that no grounds of decision was received. The counsel further reiterated what was stated in the miscellaneous petition.

8. We have heard the counsel and have gone through the appeal pleadings and documents. The impugned order is passed at the stage of accepting the application for registration. There is no doubt the statutory rights of the litigant



are to be protected. In the instant case, we do not find any reason for hearing the matter at an early date except for the statement that the petitioner suffers great prejudice. There is no merits in the petition and therefore the Miscellaneous Petition is dismissed with no costs.



Sd/-
(SYED OBAIDUR RAHAMAN)
TECHNICAL MEMBER

CERTIFIED / TRUE COPY

Sd/-
(S.USHA)
VICE-CHAIRMAN

sjr

Deputy Registrar
Intellectual Property Appellate Board,
Chennai - 18

