



IPAB Intellectual Property Appellate Board
balancing ip-protection

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OA/12/2020/TM/MUM
FRIDAY, THIS THE 7TH DAY OF AUGUST , 2020

HON'BLE SHRI JUSTICE MANMOHAN SINGH
HON'BLE DR. ONKAR NATH SINGH

CHAIRMAN
TECHNICAL MEMBER (PVPAT)

1. **HINDUSTAN UNILEVER LIMITED.**
UNILEVER HOUSE, B. D. SAWANT MARG,
CHAKALA, ANDHERI (EAST), MUMBAI,
MAHARASHTRA – 400099. INDIA.

...APPLICANT/APPELLANT

(Represented by:Mr.PravinAnand and Ms.ArchanaSanker)

Versus

1. **THE REGISTRAR OF TRADEMARKS**
TRADEMARK REGISTRY
BOUDHIK SAMPADA BHAVAN,
ANTOP HILL, S.M. ROAD, MUMBAI – 400037

...RESPONDENT

(Represented by –)

ORDER

HON'BLE SHRI JUSTICE MANMOHAN SINGH, CHAIRMAN

1. The present appeal has been filed against the order dated February 18, 2020 as passed by the Senior Examiner, Trademarks Registry, Mumbai, in respect of Trademark application number 3938924 for the mark GLOW & LOVELY in classes 3 and 5.

2. It is a non-speaking order. It is passed in mechanical printed form. No one appeared on behalf of respondent despite of service effected through E-mail. No counter affidavit has been filed. Mr. PravinAnand, counsel appeared on behalf of appellant. He submitted that once the order dated 15.02.2020 is quashed the earlier orders passed on 14.10.2019 and 18.10.2019 would also be quashed in consequences thereto.

3. The Registrar of Trademarks is duty bound to implement Section 18(5) of the Trade Marks Act by recording in writing grounds for refusal/conditional acceptance

and the order containing the grounds of refusal/conditional acceptance be sent to the applicant within two week of passing of the order. It is a Special Act. Valuable rights of all parties are involved.

4. The Hon'ble Supreme Court in *Simens Engineering and Manufacturing Co. of India* (1976 AIRSC 1785), where it was observed that "*6.....It is now settled law that where an authority makes an order in exercise of a quasi-judicial function it must record its reasons in support of the order it makes. Every quasi-judicial order must be supported byu reasons....*"

5. Admittedly the hearing officer has not taken in account the submissions made in reply to the examination report , at the time of the hearing and submissions made along with the review petition and documents submitted in support of the application. The several registrations obtained by the appellant had been ignored and there is no discussion at all in the impugned order.

6. With regard to limitation for filing the appeal, it is stated on behalf of appellant that in accordance with the provisions under Section 91 of the Trade Marks Act, 1999, which provides for an appeal to the Appellant Board within three months from the date of receipt of the order/decision against which the appeal is sought. It is submitted that the order dated February 18, 2020 has never been served upon the appellant either by email or by post by the Trademarks office. The appellant has obtained the impugned order from the online records of the Trademarks office and has also applied to obtain a certified copy of the said refusal order. The appellant is awaiting to receive the said certified copy of the refusal order. In any case as per the Supreme Court order all the deadlines stand extended until further orders are passed by the court.

7. The Appellant had applied for the mark **“GLOW & LOVELY”** under application no. **3938924** in classes 3 and 5. The application was examined and the Appellant submitted response to the Examination Report under cover of letter dated 26.10.2018.

8. A perusal of the examination report clearly reflects that objection was raised only under S 9(1) (a) of the Trade Marks Act 1999 i.e. *“the mark is non-distinctive and as such it is not capable of distinguishing the goods or services of one person from those of others”* .

9. It is stated on behalf of the appellant that the said objection was duly responded by the Appellant by highlighting that the words “GLOW & LOVELY” had been uniquely adopted by the Appellant and the composite mark has no dictionary meaning and that there is nothing in common parlance to refer to as “GLOW & LOVELY”. It was also elaborated with the help of case laws that the nature of the mark is such that it does not bear any direct reference to the character, quality and intended purpose of the goods covered under the mark.

10. Thereafter, a show cause hearing before the Trademarks Office was fixed on July 25, 2019, September 9, 2019 and October 14, 2019.

11. It is submitted in spite of fact that the Appellant had submitted arguments and documents in support of its acceptance of the instant mark, the Senior Examiner still passed a refusal order on October 14, 2019.

12. It is submitted that while the refusal order was never served upon/received by the Appellant either physically or by email, however, the Appellant while checking the status of its application came upon the said refusal order uploaded on the website of the Intellectual Property Office and downloaded the said refusal order. A perusal of the said refusal order failed to provide any detailed grounds or the basis of refusal of the Appellant’s instant mark. The refusal order simply states:

"I have heard arguments, gone through the records and passed the following Order.

*9-Absolute grounds for refusal of registration.
9(1)(a) - The trade mark is devoid of any distinctive character, that is to say, not capable of Distinguishing the goods or services of one person from those of another person"*

13. It is apparent that the refusal order did not provide any grounds of refusal, the Appellant filed TM-M to obtain Statement of Grounds of decision under Rule 36(1) of the Trade Marks Rules, 2017 on 18/10/2019. The Appellant received the Statement of Grounds of decision on November 06, 2019. The Statement of Grounds of decision indicated as follows:-

"It has been decided by the Registrar of Trade Marks to inform you that hearing in respect of above application was held on 14/10/2019 and the said application is refused on the following Grounds:-

Advocate Sanchi appeared and made his submissions. Gone through the records but the raised objection sustained hence, passed the Order refused.

The objection is raised under S 9(1) (a) of the Trade Marks Act 1999, as the mark is non-distinctive and as such it is not capable of distinguishing the goods or services of one person from those of others because of the applied mark is a very common & general tagline which can be used by any one & nobody can have monopoly or get exclusive right over this kind of mark".

14. It appears from the above Statement of Grounds of decision that the Senior Examiner failed to provide any detailed reasoning for refusal the mark. Accordingly, the Appellant filed a review petition against the refusal order.

Thereafter the Appellant received a hearing notice as per which the review petition was appointed for a hearing on February 18, 2020. At the time of the hearing or thereafter, no order was passed and/or communicated to the Advocates of the Appellant. However, on checking the online records maintained by the Trademarks Office it was found that an order dated February 18, 2020 is uploaded refusing the review petition filed by the Appellant and sustaining the objection raised/refusal against the application. The Appellant has already applied for a

certified copy of the refusal order before the Trademarks Office but has not received the same till now.

15. The principles are explained in McCarthy on 'Trade Marks and Unfair Competition', can be illustratively depicted as below:

GENERIC - Least Distinctive

DESCRIPTIVE - Secondary Meaning Required

SUGGESTIVE - Inherently Distinctive (No Secondary Meaning Needed)

ARBITRARY/ INVENTED MARKS - Inherently Distinctive (No Secondary Meaning Needed)

Discussion

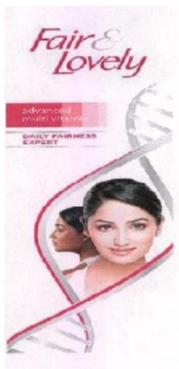
16. The Appellant has introduced a wide-range of FAIR & LOVELY products, including FAIR & LOVELY Fairness Cream, Skin Clarity Perfect Radiance, FAIR & LOVELY Anti-Marks Cream, FAIR & LOVELY Ayurvedic Cream, Skin Block, Winter Care etc. The Appellant has also launched the FAIR & LOVELY series of products is the 'FAIR & LOVELY' Multi Vitamin Fairness Cream which was introduced in the market in 2005, and voted "Product of the Year" in the Consumer Survey on Products Innovation, 2009 in the Fairness Cream Category.

17. It has come on record that in addition to the above, the Appellant and its parent company Unilever Plc. has also coined and adopted several other inherently distinctive combination of marks and have successfully got acceptances/registrations for those marks from the Trademarks Office. These includes marks such as FAIR & LOVELY and its formatives, several marks with the prefix/suffix GLOW/LOVELY formative marks which are listed below. Many of these marks have been registered successfully in favour of the Appellant without any disclaimer condition imposed. The list includes several marks applied by the

Appellant either Registered/Advertised or even currently pending at the examination stage. These marks clearly reflect the manner in which the Appellant has been coining its trademarks and is creating distinctive combinations which are inherently registrable and are thus capable of being associated with the Appellant only and none else:-

Trademark	Condition	Reg. No./Appl No.	Class	Journal	Goods
	<p>Registration of this Trade Mark shall give no right to the exclusive use of the word FAIR AND LOVELY SEPARATELY DEVICE OF FACES OF WOMEN AND DESCRIPTIVE LETTER PRESS</p>	<p>349209 dt. 16/5/79</p>	<p>3</p>	<p>783</p>	<p>cosmetics and toilet preparations</p>
<p>FAIR & LOVELY</p>	<p>No condition in the journal notification. TMR Status page incorrectly refers to disclaimer condition on the word "FAIR" whereas it is not imposed in the journal notification</p>	<p>1241333 dt. 6/10/03</p>	<p>42</p>	<p>1403</p>	<p>Providing of food and drink, temporary accommodation, medical, hygienic and beauty cares, veterinary and agricultural services, legal services, scientific and industrial research, computer programming, services that cannot be classified in other classes."</p>
<p>FAIR & LOVELY MAX FAIRNESS</p>	<p>No condition</p>	<p>1862574 Dt.15/09/2009</p>	<p>3</p>	<p>1560</p>	<p>soaps, essential oils, bath and shower preparations, skin care preparations, oils, creams and lotions for the skin, shaving preparations, pre-shave and after shave preparations, depilatory preparations, sun-tanning and sun protection preparations, cosmetics, make-up and make-up removing preparations, petroleum jelly, lip care preparations, talcum powder, cotton wool, cotton sticks, cosmetics pads, tissues or wipes, pre-moistened or impregnated cleansing pads, tissues or wipes, beauty masks facial packs</p>

	<p>Registration of this trade mark shall give no right to the exclusive use of the descriptive matters appearing on the label</p>	<p>1821027 Dt.22/05/2009</p>	<p>3</p>	<p>1479-0</p>	<p>Soaps, Essential Oils, Bath And Shower Preparations, Skin Care Preparations, Oils, Creams And Lotions For The Skin, Shaving Preparations, Pre-Shave And After Shave Preparations, Depilatory Preparations, Sun- Tanning And Sun Protection Preparations, Cosmetics, Make-Up And Make-Up Removing Preparations, Petroleum Jelly, Lip Care Preparations, Talcum Powder, Cotton Wool, Cotton Sticks, Cosmetics Pads, Tissues Or Wipes, Pre-Moistened Or Impregnated Cleansing Pads, Tissues Or Wipes, Beauty Masks Facial Packs.</p>
	<p>No condition</p>	<p>1822648 Dt: 27/05/2009</p>	<p>3</p>	<p>1649</p>	<p>soaps; essential oils; bath and shower preparations; skin care preparations; oils creams and lotions for the skin; shaving preparations; pre-shave and aftershave preparations; depilatory preparations; sun-tanning and sun protection preparations; cosmetics; make-up and make-up removing preparations; petroleum jelly; lip care preparations; cosmetics; talcum powder; cotton wool, cotton sticks; cosmetic pads, tissues or wipes; pre-moistened or impregnated cleansing pads, tissues or wipes; beauty masks, facial packs.</p>
<p>FAIR & LOVELY GOLDEN SHINE</p>	<p>No condition</p>	<p>1537008 Dt: 05/03/2007</p>	<p>3</p>	<p>1436</p>	<p>fairness cream, lotion, skin care preparations, cosmetics, cold cream, fair soap, dark circle remover cream, antimarks, talcum powder, face wash, cream, gel, lotion, cleaning preparations and beauty products.</p>
<p>FAIR & LOVELY TOTAL FAIRNESS</p>	<p>No condition</p>	<p>1537006 Dt: 05/03/2007</p>	<p>3</p>	<p>1440</p>	<p>fairness cream, lotion, skin care preparations, cosmetics, cold cream, fair soap, dark circle remover cream, antimarks, talcum powder, face wash, cream, gel, lotion, cleaning preparations and beauty products.</p>
<p>FAIR & LOVELY VITA ALOE</p>	<p>No condition</p>	<p>1499300 Dt: 27/10/2006</p>	<p>3</p>	<p>1429</p>	<p>soap, perfumery, essential oil, cosmetic oils, skin cream and lotions for the skin, anti-marks fairness cream, night cream and hair preparations for bath and shower, talcum powder, anti-prespirants</p>

					and deodorants for personal use, non-medicated toilet preparations, intensive serum, exfoliating face wash, peel-off mask.
	No condition	1984425 Dt: 24/06/2010	3	1643	soaps; essential oils; bath and shower preparations; skin care preparations; oils creams and lotions for the skin; shaving preparations; pre-shave and aftershave preparations; depilatory preparations; sun-tanning and sun protection preparations; cosmetics; make-up and make-up removing preparations; petroleum jelly; lip care preparations; talcum powder; cotton wool, cotton stick; cosmetic pads, tissues or wipes; pre-moistened or impregnated cleansing pads, tissues or wipes; beauty masks, facial packs.
FAIR & LOVELY SKIN CLARITY	No condition	1499299 Dt.27/10/2006	3	1442	soap, perfumery, essential oil, cosmetic oils, skin cream and lotions for the skin, anti-marks fairness cream, night cream and hair preparations for bath and shower, talcum powder, anti-perspirants and deodorants for personal use, non-medicated toilet preparation, intensive serum, exfoliating face wash, peel-off mask
FAIR & LOVELY ALMOND GOLD	No condition	1533011 Dt.21/02/2007	3	1818	fairness cream, lotion, skin care preparations, cosmetics, cold cream, fair soap, dark circle remover cream, antimarks, talcum powder, face wash, cream, gel, lotion, cleaning preparations and beauty products
FAIR & LOVELY AYURVEDIC BALANCE	No condition	1709551 Dt.11/07/2008	3	1571	soaps, essential oils, bath and shower preparations, skin care preparations, oils, creams and lotions for the skin, shaving preparations, pre-shave and after shave preparations, depilatory preparations, sun-tanning and sun protection preparations, cosmetics, make-up and make-up removing preparations, petroleum jelly, lip care preparations, talcum powder, cotton wool, cotton sticks, cosmetics pads, tissues or wipes, pre-moistened or impregnated cleansing pads, tissues or wipes, beauty masks facial packs
	No condition	2292737 Dt.01/03/2012	3	1736	soap; medicated soap; cleaning preparations; perfumery; essential oils; deodorants and antiperspirants; hair care preparations; shampoos and conditioners; hair colourants; hair styling products; non-medicated toilet preparations; bath and shower preparations; skin care preparations; oils, creams and lotions for the skin; shaving preparations; pre-shave and aftershave preparations; cologne; depilatory preparations; sun-tanning and sun protection preparations; cosmetics; make-up and make-up removing preparations; petroleum jelly; lip care preparations; talcum powder; cotton wool for cosmetic purposes; cotton sticks for cosmetic purposes; tissues, pads or wipes impregnated or pre-

					moistened with personal cleansing or cosmetic lotions; beauty masks, facial packs
FAIR &	No condition	2268531 Dt.18/01/2012	3	1843	fairness cream, lotion, skin care preparations, cosmetic, cold cream, soap, dark circle remover cream, anti-marks, talcum powder, face wash, cream, gel, lotion, cleaning preparations and beauty products.
LUX WHITE GLOW	No condition	1413976	3	1388	Soaps; detergents; bleaching preparations; cleaning preparations; perfumery; toilet water; aftershave; cologne; essential oils; aromatherapy products, not for medical use; massage preparations, not for medical use; deodorants and antiperspirants; preparations of the care of the scalp and hair; shampoos and conditioners; hair colourants; hair styling products; toothpaste; mouthwash, not for medical use; preparations for the care of the mouth and teeth; non-medicated toilet preparations; bath and shower preparations; skin care preparations; oils, creams and lotions for the skin; shaving preparations; oils, creams and lotions for the skin; shaving preparations; pre-shave and aftershave preparations; depilatory preparations; sun-tanning and sun protection preparations; cosmetics; make-up and make-up removing preparations; petroleum jelly; lip care preparations; talcum powder; cotton wool; cotton sticks; cosmetics pads; tissues or wipes; pretissues or wipes; pre-moistened or impregnated cleansing pads, tissues or wipes, beauty masks, facial packs.
F & L Age Glow	No condition	1517171	3	1424	Fairness cream, lotion, skin care preparations, cosmetics, cold cream, soap, dark circle remover cream, antimarks, talcum powder, face wash, cream, gel, lotion, cleaning preparations and beauty products.
F & L Youth Glow	Registration of this trade mark shall give no right to the exclusive use of the word GLOW	1517172	3	1424	Fairness cream, lotion, skin care preparations, cosmetics, cold cream, soap, dark circle remover cream, antimarks, talcum powder, face wash, cream, gel, lotion, cleaning preparations and beauty products.
PEARS OIL CLEAR GLOW	No condition	1682766	3	1434	Soaps; detergents; bleaching preparations, cleaning preparations; perfumery, toilet water, aftershave, cologne; essential oils; aromatherapy products, not for medical use; massage preparations, not for medical use; deodorants and antiperspirants; preparations for the care of the scalp and hair; shampoos and conditioners; hair colourants; hair styling products; toothpaste; mouthwash, not for medical use; preparations for the care of the mouth and teeth; non-medicated toilet preparations; bath and shower preparations- skin care preparations; oils, creams and lotions for the skin;

					shaving preparations; pre-shave and aftershave preparations; depilatory preparations; sun-tanning and sun protection preparations; cosmetics; make-up and make-up removing preparations; petroleum jelly; lip care preparations; talcum powder; cotton wool, cotton sticks; cosmetic pads, tissues or wipes; pre-moistened or impregnated cleansing pads, tissues or wipes; beauty masks, facial packs.
PEARS REFRESHED GLOW	Applicant has no exclusive right to use the word refreshed glow as shown on label as agreed to	1682767	3	1449	Soaps; detergents; bleaching preparations, cleaning preparations; perfumery, toilet water, aftershave, cologne; essential oils; aromatherapy products, not for medical use; massage preparations, not for medical use; deodorants and antiperspirants; preparations for the care of the scalp and hair; shampoos and conditioners; hair colourants hair styling products; toothpaste; mouthwash, not for medical use; preparations for the care of the mouth and teeth; non-medicated toilet preparations; bath and shower preparations, skin care preparations; oils, creams and lotions for the skin; shaving preparations; pre-shave and aftershave preparations; depilatory preparations; sun-tanning and sun protection preparations; cosmetics; make-up and make-up removing preparations; petroleum jelly; lip care preparations; talcum powder; cotton wool, cotton sticks; cosmetic pads, tissues or wipes; pre-moistened or impregnated cleansing pads, tissues or wipes; beauty masks, facial packs.
PEARS NOURISHED GLOW	No condition	1682768	3	1448	Soaps; detergents; bleaching preparations, cleaning preparations; perfumery, toilet water, aftershave, cologne; essential oils; aromatherapy products, not for medical use; massage preparations, not for medical use; deodorants and antiperspirants; preparations for the care of the scalp and hair; shampoos and conditioners; hair colourants; hair styling products; toothpaste; mouthwash, not for medical use; preparations for the care of the mouth and teeth; non-medicated toilet preparations; bath and shower preparations; skin care preparations; oils, creams and lotions for the skin; shaving preparations; pre-shave and aftershave preparations; depilatory preparations; sun-tanning and sun protection preparations; cosmetics; make-up and make-up removing preparations; petroleum jelly; lip care preparations; talcum powder; cotton wool, cotton sticks; cosmetic pads, tissues or wipes; pre-moistened or impregnated cleansing pads, tissues or wipes; beauty masks, facial packs.
LUX GLOWING TOUCH		1726001	3	1434	Soaps; detergents; bleaching preparations; cleaning preparations; perfumery, toilet water, aftershave,

	No condition				<p>cologne; essential oils; aromatherapy products, not for medical use; massage preparations, not for medical use; deodorants and antiperspirants; preparations for the care of the scalp and hair; shampoos and conditioners; hair colorants; hair styling products; toothpaste; mouthwash, not for medical use; preparations for the care of the mouth and teeth; non-medicated toilet preparations; bath and shower preparations; skin care preparations; oils, creams and lotions for the skin; shaving preparations; pre-shave and aftershave preparations; depilatory preparations; sun-tanning and sun protection preparations; cosmetics; make-up and make-up removing preparations; petroleum jelly; lip care preparations; talcum powder; cotton wool, cotton sticks; cosmetic pads, tissues or wipes; pre-moistened or impregnated cleansing pads, tissues or wipes; beauty masks and facial packs.</p>
POND'S YOUTHFUL GLOW	No condition	1929354	3	1688	<p>Soaps; detergents; bleaching preparations, cleaning preparations; perfumery, toilet water, aftershave, cologne; essential oils; deodorants and antiperspirants; preparations for the care of the scalp and hair; shampoos and conditioners; hair colourants; hair styling products; toothpaste; mouthwash, not for medical use; preparations for the care of the mouth and teeth; non-medicated toilet preparations; bath and shower preparations; skin care preparations; oils, creams and lotions for the skin; shaving preparations; pre-shave and aftershave preparations; depilatory preparations; sun-tanning and sun protection preparations; cosmetics; make-up and make-up removing preparations; petroleum jelly; lip care preparations; talcum powder; cotton wool, cotton sticks; cosmetic pads, tissues or wipes; pre-moistened or impregnated cleansing pads, tissues or wipes; beauty masks, facial packs.</p>
COCOA GLOW	No condition	2048831	3	1813	<p>Soaps: cleaning preparations: deodorants and antiperspirants: hair care preparations: nonmedicated toilet preparations: bath and shower preparations: cosmetic preparations for skin care: oils, creams and lotions for the skin: shaving preparations: pre-shave and aftershave preparations: depilatory preparations: sun-tanning and sun protection preparations: cosmetic preparations for face sldn: cosmetic preparations for eyes: cosmetic preparations for lips: mascara: eve shadow: eyebrow pencils: face make-up: foundation creams: cosmetic preparations make up and makeup removing: petroleum jelly: cosmetic preparations lip care: talcum powder: cotton wool: cotton sticks: cosmetic pads, tissues or wipes: pre-moistened or</p>

					impregnated cleansing pads, tissues or wipes: beauty masks: facial packs: medicated soap.
LAKME NOURISHING GLOW	Registration of this trade mark shall give no right to the exclusive use of the "Nourishing Glow".	2618613	3	1855	Hair care preparations; skin care preparations; oils, creams and lotions for the skin; skin cleansing products; face masks; sun-tanning and sun protection preparations; cosmetics; make-up; make-up removing preparations; make-up kits; petroleum jelly; lip care preparations.
LUX SAFFRON GLOW	No condition	3705410	3	1830	Soaps; perfumery, deodorants and antiperspirants; hair care preparations; bath and shower preparations; skin care preparations; shaving preparations; sun protection preparations; cosmetics; make-up and make-up removing preparations; lip care preparations; cosmetic pads, tissues or wipes.
<i>GlitterGlow</i> 	No condition	3938426	3	1872	Soap; medicated soap; cleaning preparations; perfumery; essential oils; deodorants and antiperspirants; hair care preparations; shampoos and conditioners; hair colourants; hair styling products; non-medicated toilet preparations; bath and shower preparations; skin care preparations; oils, creams and lotions for the skin; shaving preparations; pre-shave and aftershave preparations; cologne; depilatory preparations; sun-tanning and sun protection preparations; cosmetics; make-up and make-up removing preparations; petroleum jelly; lip care preparations; talcum powder; cotton wool for cosmetic purposes; cotton sticks for cosmetic purposes; tissues, pads or wipes impregnated or pre-moistened with personal cleansing or cosmetic lotions; beauty masks, facial packs.
EVEN & LOVELY	No condition	3938926	3 & 5	1872	[Class : 3] Soap; medicated soap; cleaning preparations; perfumery; essential oils; deodorants and antiperspirants; hair care preparations; shampoos and conditioners; hair colourants; hair styling products; non-medicated toilet preparations; bath and shower preparations; skin care preparations; oils, creams and lotions for the skin; shaving preparations; pre-shave and aftershave preparations; cologne; depilatory preparations; sun-tanning and sun protection preparations; cosmetics; make-up and make-up removing preparations; petroleum jelly; lip care preparations; talcum powder; cotton wool for cosmetic purposes; cotton sticks for cosmetic purposes; tissues, pads or wipes impregnated or pre-moistened with personal cleansing or cosmetic lotions; beauty masks, facial packs. [class : 5] Herbal skin cream, soap, herbal and nutritional supplements, ayurvedic

					preparations for skin, hair, eyes, ayurvedic medicine, fairness cream.
ALWAYS LOVELY	No condition	3938928	3 & 5	1929	<p>[Class : 3] Soap; cleaning preparations; perfumery; essential oils; deodorants and antiperspirants; hair care preparations; shampoos and conditioners; hair colourants; hair styling products; non-medicated toilet preparations; bath and shower preparations; skin care preparations; oils, creams and lotions for the skin; shaving preparations; pre-shave and aftershave preparations; cologne; depilatory preparations; sun-tanning and sun protection preparations; cosmetics; make-up and make-up removing preparations; petroleum jelly; lip care preparations; talcum powder; cotton wool for cosmetic purposes; cotton sticks for cosmetic purposes; tissues, pads or wipes impregnated or pre-moistened with personal cleansing or cosmetic lotions; beauty masks, facial packs.</p> <p>[class : 5] Herbal skin cream, medicated soap, herbal and nutritional supplements, ayurvedic preparations for skin, hair, eyes, ayurvedic medicine, medicated fairness cream.</p>
I AM LOVELY	No condition	3938929	3 & 5	1881	<p>[Class : 3] Soap; medicated soap; cleaning preparations; perfumery; essential oils; deodorants and antiperspirants; hair care preparations; shampoos and conditioners; hair colourants; hair styling products; non-medicated toilet preparations; bath and shower preparations; skin care preparations; oils, creams and lotions for the skin; shaving preparations; pre-shave and aftershave preparations; cologne; depilatory preparations; sun-tanning and sun protection preparations; cosmetics; make-up and make-up removing preparations; petroleum jelly; lip care preparations; talcum powder; cotton wool for cosmetic purposes; cotton sticks for cosmetic purposes; tissues, pads or wipes impregnated or pre-moistened with personal cleansing or cosmetic lotions; beauty masks, facial packs.</p> <p>[class : 5] Herbal skin cream, soap, herbal and nutritional supplements, ayurvedic preparations for skin, hair, eyes, ayurvedic medicine, fairness cream.</p>
CARE & LOVELY		3938933	3 & 5	1881	<p>[Class : 3] Soap; medicated soap; cleaning preparations; perfumery; essential oils; deodorants and antiperspirants; hair care preparations; shampoos and conditioners; hair colourants; hair styling products; non-medicated toilet preparations; bath and shower preparations; skin care preparations; oils, creams and lotions for the skin; shaving preparations; pre-shave and aftershave preparations; cologne;</p>

	No condition				depilatory preparations; sun-tanning and sun protection preparations; cosmetics; make-up and make-up removing preparations; petroleum jelly; lip care preparations; talcum powder; cotton wool for cosmetic purposes; cotton sticks for cosmetic purposes; tissues, pads or wipes impregnated or pre-moistened with personal cleansing or cosmetic lotions; beauty masks, facial packs. [class : 5] Herbal skin cream, soap, herbal and nutritional supplements, ayurvedic preparations for skin, hair, eyes, ayurvedic medicine, fairness cream.
	No condition	4250886	3	1918	Soap; medicated soap; cleaning preparations; perfumery; essential oils; deodorants and antiperspirants; hair care preparations; shampoos and conditioners; hair colourants; hair styling products; non-medicated toilet preparations; bath and shower preparations; skin care preparations; oils, creams and lotions for the skin; shaving preparations; pre-shave and aftershave preparations; cologne; depilatory preparations; sun-tanning and sun protection preparations; cosmetics; make-up and make-up removing preparations; petroleum jelly; lip care preparations; talcum powder; cotton wool for cosmetic purposes; cotton sticks for cosmetic purposes; tissues, pads or wipes impregnated or pre-moistened with personal cleansing or cosmetic lotions; beauty masks, facial packs.
	No condition	1740620	3	1423	SOAPS; ESSENTIAL OILS; BATH AND SHOWERS PREPARATION; SKIN CARE PREPARATIONS; OILS, CREAMS AND LOTIONS FOR THE SKIN; SHAVING PREPARATIONS; PRE-SHAVE AND AFTERSHAVE PREPARATIONS; DEPILATORY PREPARATIONS; SUN-TANNING AND SUN PROTECTION PREPARATIONS; COSMETICS; MAKE-UP AND MAKE-UP REMOVING PREPARATIONS; PETROLEUM JELLY; LIP CARE PREPARATIONS; TALCUM POWDER; COTTON WOOL, COTTON STOCKS; COSMETIC PADS; TISSUES OR WIPES; PRE-MOISTENED OR IMPREGNATE CLEANSING PADS, TISSUES OR WIPES; BEAUTY MASKS, FACIAL PACKS.
	No condition	4179787	3 & 5	1938	[CLASS : 3] Soap; medicated soap; cleaning preparations; perfumery; essential oils; deodorants and antiperspirants; hair care preparations; shampoos and conditioners; hair colourants; hair styling products; non-medicated toilet preparations; bath and shower preparations; skin care preparations; oils, creams and lotions for the skin; shaving preparations; pre-shave and aftershave preparations; cologne; depilatory preparations; sun-tanning and sun protection preparations; cosmetics; make-up and make-up removing

					preparations; petroleum jelly; lip care preparations; talcum powder; cotton wool for cosmetic purposes; cotton sticks for cosmetic purposes; tissues, pads or wipes impregnated or pre-moistened with personal cleansing or cosmetic lotions; beauty masks, facial packs. [CLASS : 5] Herbal skin cream, soap, herbal and nutritional supplements, ayurvedic preparations for skin, hair, eyes, ayurvedic medicine, fairness cream.
MOROCCAN GLOW	No condition	2434800	3	1824	soap; medicated soap; cleaning preparations; perfumery; essential oils; deodorants and antiperspirants; hair care preparations; shampoos and conditioners; hair colourants; hair styling products; non-medicated toilet preparations; bath and shower preparations; skin care preparations; oils, creams and lotions for the skin; shaving preparations; pre-shave and aftershave preparations; cologne; depilatory preparations; sun-tanning and sun protection preparations; cosmetics; make-up and make-up removing preparations; petroleum jelly; lip care preparations; talcum powder; cotton wool for cosmetic purposes; cotton sticks for cosmetic purposes; tissues, pads or wipes impregnated or pre-moistened with personal cleansing or cosmetic lotions; beauty masks, facial packs.
PINKISH - WHITE GLOW	No condition	1575184	3	1573	NON-MEDICATED TOILET PREPARATIONS; BATH AND SHOWER PREPARATIONS; SKIN CARE PREPARATIONS; OILS, CREAMS AND LOTIONS FOR THE SKIN; SHAVIN PREPARATIONS; PRE-SHAVE AND AFTERSHAVE PREPARATIONS; DEPILATORY PREPARATIONS; SUN-TANNING AND SUN PROTECTION PREPARATIONS; COSMETICS; MAKEUP AND MAKE-UP REMOVING PREPARATIONS; PETROLEUM JELLY; LIP CARE PREPARATIONS; TALCUM POWDER; COTTON WOOL, COTTON STICKS; COSMETIC PADS TISSUES OR WIPES; PRE-MOISTENED OR IMPREGNATED CLEANSING PADS, TISSUES OR WIPES; BEAUTY MASKS, FACIAL PACKS.
BOLD & LOVELY	Yet to be advertised	3938932	3 & 5	-	[CLASS : 3] Soap; medicated soap; cleaning preparations; perfumery; essential oils; deodorants and antiperspirants; hair care preparations; shampoos and conditioners; hair colourants; hair styling products; non-medicated toilet preparations; bath and shower preparations; skin care preparations; oils, creams and lotions for the skin; shaving preparations; pre-shave and aftershave preparations; cologne; depilatory preparations; sun-tanning and sun protection preparations; cosmetics; make-up and make-up removing preparations; petroleum jelly; lip care preparations; talcum powder; cotton

					wool for cosmetic purposes; cotton sticks for cosmetic purposes; tissues, pads or wipes impregnated or pre-moistened with personal cleansing or cosmetic lotions; beauty masks, facial packs. [CLASS : 5] Herbal skin cream, soap, herbal and nutritional supplements, ayurvedic preparations for skin, hair, eyes, ayurvedic medicine, fairness cream.
BRIGHT & LOVELY	Yet to be advertised	3938930	3 & 5	-	[CLASS : 3] Soap; cleaning preparations; perfumery; essential oils; deodorants and antiperspirants; hair care preparations; shampoos and conditioners; hair colourants; hair styling products; non-medicated toilet preparations; bath and shower preparations; skin care preparations; oils, creams and lotions for the skin; shaving preparations; pre-shave and aftershave preparations; cologne; depilatory preparations; sun-tanning and sun protection preparations; cosmetics; make-up and make-up removing preparations; petroleum jelly; lip care preparations; talcum powder; cotton wool for cosmetic purposes; cotton sticks for cosmetic purposes; tissues, pads or wipes impregnated or pre-moistened with personal cleansing or cosmetic lotions; beauty masks, facial packs. [CLASS : 5] Herbal skin cream, medicated soap, herbal and nutritional supplements, ayurvedic preparations for skin, hair, eyes, ayurvedic medicine, medicated fairness cream.
FAIR AND LOVELY	Yet to be advertised	1114022	5	-	HERBAL SKIN CREAM, SOAP, HERBAL AND NUTRITIONAL SUPPLEMENTS, AYURVEDIC PREPARATIONS FOR SKIN, HAIR, EYES, AYURVEDIC MEDICINE, FAIRNESS CREAM.
	No condition	3251895	3	-	Soap; medicated soap; cleaning preparations; perfumery; essential oils; deodorants and antiperspirants; hair care preparations; shampoos and conditioners; hair colourants; hair styling products; non-medicated toilet preparations; bath and shower preparations; skin care preparations; oils, creams and lotions for the skin; shaving preparations; pre-shave and aftershave preparations; cologne; depilatory preparations; sun-tanning and sun protection preparations; cosmetics; make-up and make-up removing preparations; petroleum jelly; lip care preparations; talcum powder; cotton wool for cosmetic purposes; cotton sticks for cosmetic purposes; tissues, pads or wipes impregnated or pre-moistened with personal cleansing or cosmetic lotions; beauty masks, facial packs.
FAIR AND LOVELY VITAMAX		1862575	3	1448-0 Dated : 06/09/2010	SOAPS;ESSENTIAL OILS;BATH AND SHOWER PREPARATIONS;SKIN CARE PREPARATIONS;OILS,CREAMS AND LOTIONS FOR THE SKIN;SHAVING PREPARATIONS;PRE-SHAVE AND

	No condition				AFTERSHAVE PREPARATIONS,DEPILATORY PREPARATIONS;SUN-TANNING AND SUN PROTECTION PREPARATIONS;COSMETICS;MAKE-UP AND MAKE-UP REMOVING PREPARATIONS;PETROLEUM JELLY;LIP CARE PREPARATIONS;TALCUM POWDER;COTTON WOOL,COTTON STICKS;COSMETIC PADS,TISSUES OR WIPES;PRE-MOISTENED OR IMPREGNATED CLEANSING PADS,TISSUES OR WIPES;BEAUTY MASKS,FACIAL PACKS
	No condition	4250884	3	1918-0 Dated : 09/09/2019	Soap; medicated soap; cleaning preparations; perfumery; essential oils; deodorants and antiperspirants; hair care preparations; shampoos and conditioners; hair colourants; hair styling products; non-medicated toilet preparations; bath and shower preparations; skin care preparations; oils, creams and lotions for the skin; shaving preparations; pre-shave and aftershave preparations; cologne; depilatory preparations; sun-tanning and sun protection preparations; cosmetics; make-up and make-up removing preparations; petroleum jelly; lip care preparations; talcum powder; cotton wool for cosmetic purposes; cotton sticks for cosmetic purposes; tissues, pads or wipes impregnated or pre-moistened with personal cleansing or cosmetic lotions; beauty masks, facial packs.
	No condition	4250888	3	1936-0 Dated : 13/01/2020	Soap; medicated soap; cleaning preparations; perfumery; essential oils; deodorants and antiperspirants; hair care preparations; shampoos and conditioners; hair colourants; hair styling products; non-medicated toilet preparations; bath and shower preparations; skin care preparations; oils, creams and lotions for the skin; shaving preparations; pre-shave and aftershave preparations; cologne; depilatory preparations; sun-tanning and sun protection preparations; cosmetics; make-up and make-up removing preparations; petroleum jelly; lip care preparations; talcum powder; cotton wool for cosmetic purposes; cotton sticks for cosmetic purposes; tissues, pads or wipes impregnated or pre-moistened with personal cleansing or cosmetic lotions; beauty masks, facial packs.
TRULY LOVELY	Yet to be advertised	3938931	3 & 5	-	Soap; medicated soap; cleaning preparations; perfumery; essential oils; deodorants and antiperspirants; hair care preparations; shampoos and conditioners; hair colourants; hair styling products; non-medicated toilet preparations; bath and shower preparations; skin care preparations; oils, creams and lotions for the skin; shaving preparations; pre-shave and aftershave preparations; cologne; depilatory preparations; sun-tanning and sun protection preparations; cosmetics;

					make-up and make-up removing preparations; petroleum jelly; lip care preparations; talcum powder; cotton wool for cosmetic purposes; cotton sticks for cosmetic purposes; tissues, pads or wipes impregnated or pre-moistened with personal cleansing or cosmetic lotions; beauty masks, facial packs. [CLASS : 5] Herbal skin cream, soap, herbal and nutritional supplements, ayurvedic preparations for skin, hair, eyes, ayurvedic medicine, fairness cream.
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Considering that the mark of the Appellant is a unique combination of two word "GLOW & LOVELY" the refusal order passed against the same is erroneous.

SUCCESSFUL ENFORCEMENT

18. The acceptance of the Appellants distinctiveness of its various marks as detailed above is also evident from the judicial recognition and protection of their statutory and proprietary rights in the trademarks as mentioned above. Even courts and tribunals have recognized the distinctive and exclusive rights in favour of the Appellant in its trademarks. It is pertinent to state here that in Miscellaneous Petition No.38 of 1988 filed by the Appellant against the Asst. Registrar of Trade Marks &Anr., this Hon'ble Court vide an Order dated 6th June, 2002, had rightly recorded that the words "Fair & Lovely" cannot be treated as words having a reference to or describing the character or quality of the goods in question i.e. cream.

19. It is rightly submitted on behalf of appellant that the order has been passed by Examiner refusing the application by passing one-line pre drafted mechanical or system-based orders. The said order does not deal with any submissions of the Appellants and also do not deal with the case laws cited by the Appellants; That such orders neither deal with the written submissions made through reply to the examination report nor do they deal with the oral submissions made during the

show cause hearing and nor does it deal with the documents filed along with the review petition. Sections 18(4) and 18(5) of the 1999 Act to states that when a trade mark application is refused or conditionally accepted.

20. The Appellant relies upon the case of *Manohar vs. State of Maharashtra*, [(2012) 13 SCC 14; MANUISCI1114012012, wherein the Hon'ble Supreme Court held as under:

"18. In the case of Kranti Associates (P) Ltd. and Drs. v. Masood Ahmed Khan and Drs. [MANUISCI0682120IO: (2010) 9 SCC 496j, the Court dealt with the question of demarcation between the administrative orders and quasi-judicial orders and the requirement of adherence to natural justice.

The Court held as under:

Summarizing the above discussion, this Court holds:

- (a) In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.*
- (b) A quasi-judicial authority must record reasons in support of its conclusions.*
- (c) Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.*
- (d) Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.*
- (e) Reasons reassure that discretion has been exercised by the decision maker on relevant grounds and by disregarding extraneous considerations.*
- (f) Reasons have virtually become as indispensable a component of a decision-making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.*
- (g) Reasons facilitate the process of judicial review by superior courts.*
- (h) The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the lifeblood of judicial decision-making justifying the principle that reason is the soul of justice.*

- (i) *Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.*
- (j) *Insistence on reason is a requirement for both judicial accountability and transparency.*
- (k) *If a judge or a quasi-judicial authority is not candid enough about his/her decision-making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.*
- (l) *Reasons in support of decisions must be cogent, clear and succinct. A pretense of reasons or "rubber-stamp reasons" is not to be equated with a valid decision-making process.*
- (m) *It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision making not only makes the judges and decision-makers less prone to errors but also makes them subject to broader scrutiny. (See David Shapiro in Defence of Judicial Candor.)*
- (n) *Since the requirement to record reasons emanates from the broad doctrine of fairness in decision-making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence. See Ruiz Torija v. Spain EHRR, at 562 para 29 and Anya v. University of Oxford, wherein the Court referred to Article 6 of the European Convention of Human Rights which requires, "adequate and intelligent reasons must be given for judicial decisions".*
- (o) *In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of due process'*

21. The requirement of adherence to principles of natural justice in adjudicatory process, the Court in the case of *Namit Sharma v. Union of India* 2012 (8) SCALE 593], held as under:

"It is not only appropriate but is a solemn duty of every adjudicatory body, including the tribunals, to state the reasons in support of its decisions. Reasoning is the soul of a judgment and embodies one of the three pillars on which the very foundation of natural justice jurisprudence

rests. It is informative to the claimant of the basis for rejection of his claim, as well as provides the grounds for challenging the order before the higher authority/constitutional court. The reasons, therefore, enable the authorities, before whom an order is challenged, to test the veracity and correctness of the impugned order. In the present times, since the fine line of distinction between the functioning of the administrative and quasi-judicial bodies is gradually becoming faint, even the administrative bodies are required to pass reasoned orders. In this regard, reference can be made to the judgments of this Court in the cases of Siemens Engineering & Manufacturing Co. of India Ltd. v. Union of India and Anr. [MANU/SC/0211/1976: (1976) 2 SCC 981]; and Assistant Commissioner, Commercial Tax Department Works Contract and Leasing, Kota v. Shukla and Brothers [MANU/SC/0258/2010: (2010) 4 SCC 785]"

22. In the recent writ petition numbered W.P.(C) 3851/2019 & CM Appls. 17546/2019, 29362/2019 filed before Delhi High Court by *INTELLECTUAL PROPERTY ATTORNEYS ASSOCIATION v. THE CONTROLLER GENERAL OF PATENTS, DESIGNS & TRADE MARKS & ANR*, wherein the Court held that “the Registrar of Trade Marks is duty bound to send the copy of the order passed under Section 18(5) of the Trade Marks Act containing the grounds for refusal/conditional acceptance and material used by him in arriving at his decision to the Appellant. Rule 36 of the Trade Marks Rules is arbitrary, unreasonable and inconsistent with the mandatory provision of the statute insofar as it empowers the Registry to communicate the decision without the grounds for refusal/conditional acceptance. In that view of the matter, Section 18(5) of the Trade Marks Act shall prevail over Rule 36 of the Trade Marks Rules. The writ petition is allowed and the Registrar of Trade Marks is directed to strictly implement Section 18(5) of the Trade Marks Act by recording in writing grounds for refusal/conditional acceptance and the order containing the grounds of refusal/conditional acceptance be sent to the Appellant within two weeks of the passing of the order.

It is submitted that in spite of the aforesaid order of the Hon'ble Delhi High order dated October 16, 2019, the impugned order has been passed on February 18, 2020 clearly violating the directions specifically given to the Registrar of Trademarks to follow a mechanism while passing orders. It is clear from a plain reading of the impugned order that the Registrar has failed to indicate the material used by him in arriving at his decision. This is clearly stated by the Hon'ble Delhi High Court in the aforesaid writ petition order.

As can be seen from the above, the Hearing Officer has failed to appreciate substantive facts, propositions of Law and documents and has passed the impugned order. Therefore the impugned order must be set aside on account of the fact.

23. That the Hearing officer has failed to take into account that the mark of the Appellant is a unique combination of two common English words which when taken together results in a composite mark yielding a different and distinctive commercial impression. The Hearing Officer has also erred in not taking into consideration the numerous registrations and acceptances granted by the Trademarks Office to the other distinctive combination of marks of the Appellant.

24. Mr. Pravin Anand, counsel for the appellant is agreeable to the said conditions as earlier imposed while accepting the other application. Further in the similar position, various marks of the appellants were accepted for registration subject to conditions. These are :-

- a) That the applicant shall have right to the words Fair and Lovely when used together.
- b) The said words shall be used in combination with each other.

25. Mr. Anand said that the applicant shall claim exclusive rights only with combination of two words and not in single word.

26. Thus in view of such conditions imposed, we agree that the mark "**GLOW & LOVELY**" of the Appellant is inherently distinctive in nature. It is reiterated that the mark of the Appellant is a **unique combination** of two common English words which when taken together results in a composite mark yielding a different and **distinctive commercial impression as** the words put together by the Appellant have distinct meanings by itself and one does not add as an adjective to the other and are completely unconnected to each other. The application is accepted subject to the disclaimer that the appellant shall have right to the words **Glow& Lovely** if used together.

27. In the light of above, the impugned order dated 14.10.2019 and 18.10.2019 are quashed. The appeal is allowed. The application is accepted for registration.

28. We direct the Trademarks Office to proceed further that the trademark GLOW & LOVELY under application number 3938924 in classes 3 and 5 for advertisement of the mark in an early issue of Trademarks Journal.

29. No costs.

-Sd/-

(Dr. Onkar Nath Singh)
Technical Member (PVPAT)

-Sd/-

(Justice Manmohan Singh)
Chairman

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