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## RBI & FEMA

### • **ON FDI: RBI Relaxes Norms For Issue Of Shares**

RBI has now relaxed restrictions for issue of equity shares/convertible debentures by allowing Indian companies to issue shares/convertible debentures to non-resident investors against any other funds payable by the investee company, remittance of which does not require any prior permission of the Government of India or Reserve Bank of India under FEMA, 1999 or any other rules/regulations framed or directions issued thereunder, subject to compliances with FDI guidelines and tax laws, as applicable. *[RBI/2014-2015/234 A.P. (DIR Series) Circular No.31 dated September 17, 2014]*

### • **ON ECBs: ECB Lenders Can Extend Loans In Indian Rupees**

To make ECB arrangements more flexible, RBI has decided that recognized non-resident ECB lenders can extend loans in Indian Rupees, provided, they mobilize Indian Rupees through swaps, and comply all the conditions under automatic and approval routes and the all-in-cost of such ECBs is commensurate with prevailing market conditions. To execute such swaps for ECBs, the ECB lenders may set up a representative office in India *[RBI/2014-2015/207 A.P. (DIR Series) Circular No.25 dated 3rd September, 2014]*

### • **ON RISK MANAGEMENT: Hedging Of Currency Risk To Bring Both Exporters And Importers At Par**

On a review of the evolving market conditions and with a view to bring at par both exporters and importers for hedging of currency risk, RBI has decided to allow importers to book forward contracts under past performance route, up to 100 percent of the eligible limit. Importers who have already booked contracts up to previous limit of 50 per cent in the current financial year shall be eligible for difference arising out of the enhanced limits. *[RBI/2014-2015/250 A. P. (DIR Series) Circular No. 34 dated 30th September 2014]*

### • **ON WHOLE TIME DIRECTORS OF BANKS: Upper Age Limit For Whole Time Directors Revised**

To be in consonance with Section 196 of the Companies Act, 2013, which prescribes that no company shall appoint or continue the employment of any person, as Managing Director, Whole Time Director or Manager, who is below the age of 21 years or has attained the age of 70 years, RBI has revised the upper age limit of Whole Time Directors on the Boards of Banks to 70 years. *[RBI/2014-2015/217 DBOD. APPT.BC.No. 40 /29.39.001/2014-15, dated 9th September, 2014]*

## FOREIGN TRADE

### • **ON AGRICULTURAL PRODUCTS: Revision in Import Policy for some Agricultural Products**

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Import policy regarding some of the agricultural products like maize, jawar, bajra etc. has been revised from “state trading enterprise” to “free”. *[Notification No 93 (RE-2013) / 2009-2014 dated 29th September 2014]*

- **ON IMPORT OF CURRENCY PAPER:** Conditions Regarding Import Of Currency Paper And Security Printing Paper Amended

Requirement of a specific approval letter from Ministry of Finance for import of Currency Note Paper / Security Printing Paper has now been dispensed with, subject to submission of a certificate of import from the head of the units of Security Printing and Minting Corporation of India Limited (“SPMCIL”) and Bharatiya Reserve Bank Note Mudran Private Limited (“BRBNMPL”) to Customs, for clearance of such imports and subject to Actual User condition. *[Notification No 94 (RE-2013)/ 2009-2014 dated 29th September 2014]*

- **ON NET FOREIGN EXCHANGE EARNINGS:** Application Form For Net Foreign Exchange Earnings Notified For 2013-14

Form ANF 3 B-1 which is required to be filed for claiming benefit under the Served from India Scheme (“SFIS”) for export of services for the year 2013-14 has been notified. *[DGFT Public Notice No.71/(RE 2013)/2009-14 dated 30th September 2014]*

- **NAMKEENS/MIXTURES/SAVOURIES:** Fixation of standards for export product Namkeens / Mixtures / Savouries

Standard Input Output Norms (“SION”) for export food products Namkeens/Mixtures/Savouries has been notified in the Handbook of Procedure under product code “E”. *[DGFT Public Notice No.69/(RE 2013)/2009-14 dated 16th September 2014]*

## CORPORATE

- **COMPANIES ACT, 2013:** Corporate Social Responsibility

Recent Notification pertaining to CSR, has mandated that, the total expenditure of the Companies taking up CSR activity by themselves or through proper channels shall not exceed five percent of total CSR expenditure in one financial year including expenditure on administrative overheads. *[Notification dated 12th September, 2014, (MCA)]*

- **COMPANIES ACT, 2013:** Companies (Appointment & Qualification of Directors) Amendment Rules, 2014

The Ministry of Corporate Affairs has issued notification with respect to Companies(Appointment & Qualification of Directors) Amendment Rules, 2014 dated 18th September, 2014, making changes in furnishing details of independent directors for the purpose of maintenance of data bank such as: non requirement of Income Tax Pan Details for getting appointed as Independent Director, non mentioning of mother’s name and Spouse’s name, application in Form DIR-1 is not required to be filed by Independent Directors for inclusion of their name in the data bank of Independent Directors as the existing Form DIR-1 has been omitted by MCA, the requirement of DIR-4 for verification by the applicant for allotment of DIN has been dispensed with, mentioning of father’s or grandfather’s name in the absence of last name in Form DIR-3A , and insertion of Rule 10A, which is

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about intimation of DIN by Director to Company in Form DIR-3B and by the Company to Registrar of Companies in Form DIR 3C are being effected by the respective changes. **[Notification dated 18th September, 2014, (MCA)]**

**[Notification dated 18th September, 2014, (MCA)]**

- **COMPANIES ACT, 2013: National Advisory Committee On Accounting Standards Constituted**

To advise the Central Government on the formulation and laying down of accounting policies and accounting standards for adoption by companies or class of companies under the Companies Act, 2013, an advisory committee on accounting standards shall be constituted by the Central Government under Section 210A(1) of the Companies Act, 1956 as the corresponding Section 132 of the Companies Act, 2013 has not yet been notified. **[Notification dated 18th September, 2014, (MCA)]**

## SECURITIES

- **LISTING AGREEMENT: Clause 49 Further Amended**

Clause 49 of the listing agreement has been further amended to make it non-mandatory for the following listed companies:

- (i) Companies having paid up equity share capital not exceeding Rs. 10 crore and Net Worth not exceeding Rs. 25 crore, as on the last day of the previous financial year;
- (ii) Companies whose equity share capital is listed exclusively on the SME and SME-ITP Platforms.

SEBI has also brought some amendments in Clause 49 of the listing agreement. **[CIR/CFD/POLICY CELL/7/2014, dated 15th September, 2014, (SEBI)]**

- **SEBI: Amendments to SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009**

In a clarification with regard to the regulations on “anchor investor allocation” and “preferential issue”, it has been decided to increase the investment bucket for anchor investor and make certain amendments to regulations concerning the preferential issue norms. In this regard the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2014 were amended with effect from August 25, 2014. **[CIR/CFD/POLICYCELL/6/2014, dated 11th September, 2014, (SEBI)]**

- **MUTUAL FUNDS: Position Limits For Mutual Funds In 10 Year Interest Rate Futures (IRF) Clarified**

In a circular it has been clarified that the applicable for Mutual Fund level and scheme level position limits in IRF shall be:

- (a) Mutual Funds shall have position limits as applicable to trading members presently;
- (b) Schemes of Mutual Funds shall have position limits as applicable to clients presently.  
**[CIR/MRD/DRMNP/26/2014, dated 15th September, 2014, (SEBI)]**

- **TRADING : Companies Eligible For Shifting From Trade For Trade Settlement (TFTS) To Normal Rolling Settlement**

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In a recent circular issued by SEBI, it has listed out the companies that have established connectivity with both the depositories viz. NSDL and CDSL in order to shift from Trade for Trade Settlement (“TFTS”) to Normal Rolling Settlement in Annexure A.

In this regard it has been clarified that the stock exchanges may consider shifting the trading in certain securities to normal Rolling Settlement subject to the following:

- (a) At least 50% of other than promoter holdings as per clause 35 of Listing Agreement are in dematerialized mode before shifting the trading in the securities of the company from TFTS to normal Rolling Settlement. For this purpose, the listed companies shall obtain a certificate from its Registrar and Transfer Agent (RTA) and submit the same to the stock exchange/s. However, if an issuer-company does not have a separate RTA, it may obtain a certificate in this regard from a practicing company Secretary/Chartered Accountant and submit the same to the stock exchange/s.
- (b) There are no other grounds/reasons for continuation of the trading in TFTS.  
*[CIR/MRD/DP/ 27 /2014, dated 18th September, 2014, (SEBI)]*

- **INVESTOR PROTECTION FUND: Modification to Investor Protection Fund (IPF) / Customer Protection Fund (CPF) Guidelines**

Based on the recommendations of Secondary Market Advisory Committee, Clause 13 of the Guidelines for Investor Protection Fund (IPF) / Customer Protection Fund (CPF) shall be substituted.

Clause 13 of the guidelines provides for compensation from Investor Protection Fund/Customer Protection Fund in case of a valid claim within three years of specified period. Similarly Clause 24 of the said guidelines is substituted which deals with cases where any litigation is pending against the defaulter member. **[CIR/MRD/DP/28/2014, dated 29th September, 2014, (SEBI)]**

**DISPATCH OF SHOW CAUSE NOTICE: Speed Post Not Included In The SEBI (Procedure For Holding Inquiry And Imposing Penalties By Adjudicating Officer) Rules Of 1995** In case SAT has decided that the Speed post may be an equally efficient mode of service but in the absence of any specific mention in the Rules of 1995, such a mode should be discarded by SEBI until the rules so mandate. Until the Rules of 1995 are so amended, SEBI is obliged to effect the service of Show Cause Notices (SCNs) etc. on a person concerned by registered post and not by speed post. *[Vilas Valunji v. SEBI, dated 5<sup>th</sup> September, 2014, (SAT)]*

- **SEBI POWERS: Exercise of Discretion Must Be Informed By Reason and Principles of Natural Justice**

In this case the Whole Time Member (“WTM”) of SEBI directed appellant to close down its business vide an ex-parte interim order. Hon’ble SAT ordered setting aside of ex-parte interim order passed by SEBI, observed that although SEBI is empowered to pass ex-parte interim orders, this power is to be exercised sparingly in most deserving cases of extreme urgency. Unless the clearest cause of public injury flowing from the least delay is self-evident, nothing should be done to act behind the back of a person by invocation of urgency. *[Pancard Clubs Limited v. SEBI & Ors., dated 17<sup>th</sup> September, 2014, (SAT)]*



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- **SAST REGULATIONS: Penalty of Upheld For Violating SAST Regulations**

Hon'ble SAT held that the obligation to make disclosures arises as soon as the shareholding of a person exceeds the limits prescribed under SAST Regulations, 2011 and PIT Regulations, 1992, irrespective of the mode and the manner of acquiring those shares and upheld the penalty imposed by SEBI for violating the provisions of disclosure under SAST Regulations. *[Akriti Global Traders Ltd v. SEBI, dated 30<sup>th</sup> September, 2014, (SAT)]*

- **ICDR REGULATIONS: Failure To Comply With ICDR Result In Ban For Two Years**

When there were several complaints from the investors regarding non receipt of CAFs in relation to rights issue from the appellant company. As per regulation 54(1) of ICDR Regulations, it was mandatory for the issuer-appellant company to dispatch the abridged letter of offer along with CAFs through registered post or speed post to all the existing shareholders at least three days before the date of opening of the rights issue.

The Appellate Tribunal held that SEBI is empowered under Section 11(4) of SEBI Act, to restrain a person violating SEBI Act and the Regulations made thereunder, from entering the securities market for such period as it deems fit. Therefore no merits in the appeal and the same has been dismissed with no order as to cost. *[M/s. Ram Kaashyap Investment Limited v. SEBI, dated 30<sup>th</sup> September, 2014, (SAT)]*

## COMPETITION

- **PREDATORY BIDDING: complaint Against United Telecoms And BBNL Rejected**

The case relates to alleged predatory bidding by United Telecoms pursuant to a tender floated by Bharat Broadband Network Limited ("BBNL") for procurement of broadband equipments based on Gigabit Passive Optical Network ("GPON") technology along with accessories and after sale services.

Complainant alleged that United Telecoms had quoted rates below the cost for the broadband equipments. Although CCI noted that presence of other foreign players in the sale of GPON equipments negates any entity possessing dominance in the relevant market. Further, no specific allegation is leveled against BBNL in the information, however; some passing averments of abuse of dominant position by BBNL have been made which are of general in nature.

CCI held that in view of the above discussion, the issue of abuse of dominance by the Opposite Parties does not arise and, *prima facie*, no case of contravention of the provisions of section 4 of the Act is made out against the Opposite Parties. *[Telecommunication Users Group of India v. M/s United Telecoms Ltd. & Ors., dated 3rd September, 2014, (CCI)]*

- **COMPETITION NORMS: CCI Rejects Complaint Against Insurance Regulator**

CCI has rejected charges that insurance regulator IRDA's rules, which grant of corporate agency license to banks to sell insurance products, are anti-competitive. A complaint was filed with the CCI had alleged that banks in insurance retailing sector were imposing unfair and discriminatory conditions on financed clients to purchase insurance product from them, indulging in

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predatory pricing, restricting and denying market access to independent insurance agents, among others. It is noted and held by CCI that IRDA was discharging its regulatory and statutory mandate and did not fall within the purview of Competition norms. *[Shri Dilip Modwil v. Insurance Regulatory and Development Authority, dated 12th September, 2014, (CCI)]*

- **CCI RAID:** Competition Commission Of India Conducts Its First Ever Raid

CCI raided two offices of JCB India Limited (“JCB”), a UK based manufacturer of construction equipment in connection with a case of abuse of dominant position to keep away competitors from the market. This raid marks the first time that CCI has exercised its search-and-seizure power under the Competition Act, 2002. Under the current Act, the Director General (“DG”) can conduct such raids after obtaining a warrant from the chief metropolitan magistrate. *[Dated 23<sup>rd</sup> September, 2014 (Economic Times)]*

## INDIRECT TAXES

### (A) CUSTOMS

- **ANTI-DUMPING DUTY ON IMPORTS OF ELECTRICAL INSULATORS:** Levied For A Period Of Six Months

The Anti Dumping Duty (“ADD”), on imports of Electrical Insulators, falling under the tariff item 8546 originating in or exported from China, for a period of six months, levied, unless revoked earlier. *[Notification No. 40/2014 - Customs (ADD), dated 16th September, 2014]*

- **ANTI-DUMPING DUTY ON IMPORTS OF SULPHUR BLACK:** Levy Extended for a further period of five years

The Anti Dumping Duty (“ADD”) levied on imports of Sulphur Black, falling under the tariff item 3204 originating in or exported from the China, has been extended for a further period of five years *i.e.* up to 18th September, 2019, unless revoked earlier. *[Notification No. 41/2014 - Customs (ADD), dated 18th September, 2014]*

- **ANTI-DUMPING DUTY ON IMPORTS OF FLEXIBLE SLABSTOCK POLYOL:** Levy Extended For A Further Period Of One Year

The Anti Dumping Duty (“ADD”) levied on imports of Flexible Slabstock Polyol, falling under the tariff item 3907 originating in or exported from China, Korea and Chinese Taipei has been extended for a further period of one year *i.e.* up to and inclusive of 30th August, 2015, unless revoked earlier. *[Notification No. 42/2014 - Customs (ADD), dated 25th September, 2014]*

- **ANTI-DUMPING DUTY ON IMPORTS OF PHENOL:** Levy Extended For A Further period Of One Year

The Anti Dumping Duty (“ADD”) levied on imports of Phenol, falling under the tariff item 2907 originating in or exported from the United States of America and Chinese Taipei has been extended for a further period of five years *i.e.* up to and inclusive of 16th May, 2018 unless revoked earlier. *[Notification No. 43/2014 - Customs (ADD), dated 30th September, 2014]*

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## (B) CENTRAL EXCISE

- **NEW COMMISSIONERATES OF CENTRAL EXCISE:** New Jurisdiction Of Central Excise Commissionerates Notified

The CBEC has issued notification appointing Chief Commissioners of Service Tax, Principal Commissioners of Service Tax, Commissioners of Service Tax, Commissioners of Service Tax (Audit), Commissioners of Central Excise (Audit), Commissioners Large Taxpayer Unit, Commissioners Large Taxpayer Unit (Audit), Commissioner of Central Excise (Appeals) and Commissioners of Central Excise (Audit), and all the officers subordinate to such officers, as Central Excise Officers and specifying their jurisdictions. *[Notification No. 27/2014 – Central Excise (N.T.), dated 16th September, 2014]*

- **DELEGATION OF POWER OF CBEC:** CBEC's Power Under Rule 3 Of Central Excise Rules, 2002 Delegated To Specific Officers

The Central Government has delegated the power of Central Board of Excise and Customs ("CBEC") under rule 3 of the Central Excise Rules, 2002, to the Principal Chief Commissioner of Central Excise or the Chief Commissioner of Central Excise or the Chief Commissioner of Central Excise, as the case may be, to specify within his jurisdiction, the jurisdiction of a Commissioner of Central Excise (Appeals) or a Commissioner of Central Excise (Audit) and the jurisdiction of such Commissioner of Central Excise (Appeals) or Commissioner of Central Excise (Audit) shall be limited to the jurisdiction so specified. The said delegation shall come into effect from 15<sup>th</sup> October, 2014. *[Notification No. 29/2014 – Central Excise (N.T.), dated 16th September, 2014]*

## (C) SERVICE TAX

- **NEW COMMISSIONERATES OF SERVICE TAX:** New Jurisdiction Of Service Tax Commissionerates Notified

The CBEC has issued notification appointing Chief Commissioners of Service Tax, Principal Commissioners of Service Tax, Commissioners of Service Tax, Commissioners of Service Tax (Audit), Commissioners of Central Excise (Audit), Commissioners Large Taxpayer Unit, Commissioners Large Taxpayer Unit (Audit), Commissioner of Central Excise (Appeals) and Commissioners of Service Tax (Appeals), and all the officers subordinate to such officers, as Central Excise Officers. *[Notification No. 20/2014 – Service Tax, dated 16th September, 2014]*

- **DELEGATION OF POWER OF CBEC:** CBEC's Power Under Rule 3 of Service Tax Rules, 1994 Delegated To Specific Officers

The Central Government has delegated the power of Central Board of Excise and Customs ("CBEC") under rule 3 of the Service Tax Rules, 1994, to the Principal Chief Commissioner of Central Excise or the Chief Commissioner of Central Excise or the Chief Commissioner of Service Tax, as the case may be, to specify within his jurisdiction, the jurisdiction of a Commissioner of Service Tax (Appeals) or a Commissioner of Central Excise (Appeals) or a Commissioner of Service Tax (Audit) or a Commissioner of Central Excise (Audit) and the jurisdiction of such Commissioner of Service Tax (Appeals) or Commissioner of Central Excise

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(Appeals) or Commissioner of Service Tax (Audit) or Commissioner of Central Excise (Audit) shall be limited to the jurisdiction so specified. The said delegation shall come in to effect from 15<sup>th</sup> October, 2014. *[Notification No. 21/2014 – Service Tax, dated 16th September, 2014]*

## INTELLECTUAL PROPERTY RIGHTS

- **TRADEMARKS: lower Threshold Of Proof Of Confusing Or Deceptive Similarity A Necessity In Public Interest when It Pertains To Pharmaceutical Products**

In this case the Plaintiff claimed that its registered Trade Marks, LOX 2% ADRENALINE, LOX 4%, LOX 5%, LOX HEAVY 5%, LOX VISCOUS, LOXALPRIN, LOXALPRY, LOXIMLA, PLOX and RILOX (“the **LOX Family**”), had been infringed by the Defendants who were using deceptively similar Trade Marks XYLOX 2%, XYLOX HEAVY, XYLOX GEL, XYLOX ADRENALINE, XYLOX 2% Jelly (“the **XYLOX Family**”), and that the Defendants were attempting to pass-off their goods as those of the Plaintiff.

Hon’ble High Court of Bombay held that any such confusion between products that deal with the same spectrum of health issues, even if sold under prescription, might well be life-threatening. It is human to err, doctors, like the rest of us, are no exception. There is an overarching public interest that requires a lower threshold of proof of confusing or deceptive similarity where the trade marks in question are applied to pharmaceutical products.

The Defendants' XYLOX family of marks is confusingly and deceptively similar to the Plaintiff's LOX family of marks. - *[Neon Laboratories Ltd v. Themis Medicare Ltd & Anr., dated 16th September, 2014 (Bombay HC)]*

- **TRADEMARKS: IF USE IS FOUND TO BE DISHONEST, DELAY OR ACQUIESCENCE HAS NO RELEVANCE**

Hon’ble High Court of Madras held that the law does not permit any one to carry on his business in such a way as would persuade the customers in believing that the goods or services belonging to someone else are associated with therewith. It does not matter whether the latter person does so fraudulently or otherwise. In the instant case, the Defendants provide no satisfactory explanation as to how they came to adopt the Trade Mark of the Plaintiff. It is well settled principle of law that if use is found to be dishonest, delay or acquiescence has no relevance.

In this case, the Defendant’s conduct is dishonest and fraudulent. Further held that in the facts and circumstances of the case, where it is established that the Defendants had lifted a substantial portion of the Trade Mark of the Plaintiff "THAYAR" and uses it as a part of his trading style or trade name, the damage to the Plaintiff's goodwill and reputation is inherent in the said act itself.

Therefore, notwithstanding the fact that the Defendants have obtained registration of the Trade Mark "THAAYAR" in respect of their products, they have to be restrained from passing off their goods as that of the Plaintiff. - *[M. Sundaram, Sole Proprietor v. THAYAR' Food Products & Anr., dated 15th September, 2014 (Madras HC)]*



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- **TRADEMARKS: A Registered Proprietor Of A Trademark Can Sue Another Registered Proprietor Of A Deceptively Similar Trademark**

The issue in the case was “whether a registered proprietor of a trademark can sue another registered proprietor of a trademark alleging deceptive similarity?”

The Plaintiff was registered proprietor of the mark ‘ANAFORTAN’ claiming a user since 1988 through its predecessor in interest. Defendant started selling ‘AMAFORTEN’ since 2012 and had a registration for the same in the year 2011, in the instant case.

Plaintiff filed a suit for permanent injunction restraining infringement of Trade Mark and passing off. Defendant pleaded that as per Section 28 (3) of the Trade Marks Act, 1999 Plaintiff cannot sue the Defendant as the Defendant is the registered proprietor of the mark ‘AMAFORTEN’.

Hon’ble High Court of Delhi, after reading Section 28 and 124 of the Trade Marks Act, 1999 held that “Section 124 of the Trademarks Act, 1999 would guide us that it contemplates a suit for infringement of a trademark on the allegation of invalidity of registration of the defendant’s mark and even includes a case where a defendant pleads invalidity in the registration of the plaintiff’s trademark. In such a situation the legislative intent clearly disclosed is, as per sub-Section 5 of Section 124, to stay the suit, to enable either party to take recourse to rectification proceedings before the Registrar of Trademarks, but after considering what interlocutory order needs to be passed”.

Thus, impliedly, it was held that a registered proprietor of a trademark can sue another registered proprietor of a deceptively similar trademark. - *[Raj Kumar Prasad & Anr v. Abbott Healthcare Pvt. Ltd, dated 10th September, 2014 (Delhi HC)]*

- **TRADEMARKS: A Mere Failure To Sue Without A Positive Act Of Encouragement Is No Defence And Is No Acquiescence**

In the instant case, the plaintiff was proprietor of registered trademarks, OROFER and OROFER-X. Defendant was using COROFER and COROFOER-X. Issues of question of deceptive similarity, acquiescence and balance of convenience were under consideration and the Court decided all questions in favour of the plaintiffs. It was held that there is no difference between the Defendant’s marks and the Plaintiff’s marks except for the addition by the Defendant of a preceding letter ‘C’. Hence, There can be no doubt that the Defendant’s marks in the present case are confusingly and deceptively similar to those of the Plaintiff. Further that mere delay will not defeat the rights of a registered proprietor. A mere failure to sue without a positive act of encouragement is no defence and is no acquiescence. Acquiescence is a species of estoppel, a rule in equity and a rule of evidence.

Essential to the acquiescence doctrine is that it is accompanied by an encouragement or an inducement: he who possesses a legal right must have encouraged the alleged violator of that right in acting to the latter’s detriment, confident in the knowledge that the former is not asserting his rights against the violator. - *[Emcure Pharmaceuticals Ltd. v. Corona Remedies Ltd., dated 10th September, 2014 (Bombay HC)]*

- **TRADEMARKS: The Use By The Defendant Of The Plaintiff’s Embossed Bottles But Containing The Defendant’s Products Fall Squarely Within Section 29(3) Of The Act**

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Plaintiff and the defendant both were in the business of manufacturing and selling country liquor. Plaintiff claimed to have a registered trade mark “TANGO PUNCH”, of which the word “TANGO” was said to be an essential, leading and memorable feature. That mark “TANGO” and the three-finger device were embossed on the plaintiff’s glass bottles. According to the Plaintiff, the defendant was found to be vending its own distillations in the plaintiff’s embossed bottles.

Hon’ble Bombay High Court, after due hearing held that, there can be no doubt that the use by the defendant of the plaintiff’s embossed bottles but containing the defendant’s products falls squarely within Section 29(3) of the Act. That being so, the injunctions must follow. Therefore, the defendant (by itself or through any of its agencies, proprietors, directors, partners, agents, stockists, distributors or dealers) is restrained from infringing the Plaintiff’s registered trade mark by using bottles embossed with the trade mark “TANGO” whether with or without a device of a raised palm with three upright fingers or by the use of the trade mark “TANGO” or any other trade mark deceptively similar to the plaintiff’s registered trade mark upon or in relation to country liquor or similar goods. - *[Brihan Karan Sugar Syndicate Pvt. Ltd. v. South Konkan Distilleries, dated 2nd September, 2014 (Bombay HC)]*

- **TRADEMARKS:** Where The Mark Has A Unique, Distinctive, Memorable, Leading And Essential Feature, Albeit Not One Separately Registered, That Feature Cannot Be Used Willy-Nilly By All And Sundry Without Fear Of Repercussion

Hon’ble High Court of Bombay observing that the statute provides that where a mark has multiple elements, its registration gives exclusivity in the use of the entirety of the mark. But this cannot mean that where the mark has a unique, distinctive, memorable, leading and essential feature, albeit not one separately registered, that feature can be used willy-nilly by all and sundry without fear of repercussion. After due hearing it held that in the context of trade mark law, a leading or essential feature is akin to a synecdoche, a figure of speech where a part is uniquely representative of the whole (and sometimes vice-versa): “sails” for boats, or “willow” for a cricket bat for instance. There is a valid analogy to be drawn with trade mark law, for it often happens that a singular feature of a trade mark is so utterly unique and distinctive that it at once connotes the whole of the mark. - *[Brihan Karan Sugar Syndicate Pvt. Ltd. v. Lokranjan Breweries Pvt. Ltd., dated 2nd September, 2014 (Bombay HC)]*

## CONSUMER

- **SUPPRESSION OF MATERIAL FACTS BY THE INSURED:** Good Faith Forbids Parties From Non-Disclosure Of The Facts And The Obligation To Disclose Lies With The Applicant To The Extent Facts Are Known

In the instant case the NCDRC has held that health insurance policies become void on suppression of material facts and the expression “material facts” has to be understood in general terms, which applicant has already known and requires to disclose particularly while answering questions in the proposal form and it is not for the proposer to determine whether the information sought for is material for the purpose of the policy or not. *[Life Insurance Corporation of India v. Smt. Neelam Sharma, dated 30th September, 2014, (NCDRC)]*

- **LIMITATION PERIOD:** Decision on Merits in a Time Barred Complaint Has No Value

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NCDRC has held that the Consumer forums can entertain any complaint filed after the two years from the date of accrual of cause of action on sufficient cause being shown. As per the Hon'ble Supreme Court, Consumer Forums do not have the jurisdiction to entertain a complaint beyond two years from the date of cause of action has arisen and if complainant had per se barred by time and not taken condonation of delay, the consumer forums will have no option but to dismiss the same. *[Smt. Rita Mehra & Anr. v. State of Punjab & Ors., dated 29th September, 2014, (NCDRC)]*

- **COMMERCIAL ACTIVITY : NCDRC Reiterates Definition Of Consumer With Respect To Commercial Activity In Tata Motors Case**

In the suit against Tata Motors, where the buyers of the car manufactured by JLR India, which is a proprietorship of Tata, were overcharged and issues were raised on its date of manufacture. In the light of the recent fines imposed on Tata Motors by CCI on account of unfair trade practices, NCDRC agreed that Tata Motors and others had some serious defects with the manufacturing of its vehicles. However it maintained that, since the car was not used by the buyers i.e. Pharos Solutions pvt. Ltd. for either personal purposes or earning livelihood by means of self-employment, it can be used only for commercial activity and therefore the buyers don't fall under the definition of consumers. Thus the petition for damages was dismissed. *[Pharos Solutions Pvt. Ltd v. Tata Motors and Ors., Dated 1 st September, 2014, (NCDRC)]*

- **FALSE FACTS BY THE INSURED: Insurance Matter Regarding Cardiac Ailments Decided In Favour Of ICICI Prudential**

In the instant case where ICICI Prudential repudiated the insurance claim against the respondent, NCDRC decided that the claim had been rightly repudiated due to the respondents giving false information about cardiac ailments while taking up the policy. The respondent's husband even though had an artery disease, misled the company by stating false facts regarding the same. NCDRC hence allowed the revision petition. *[M/S ICICI Prudential Life Insurance Co. Ltd. v. Mary Joseph., dated 2nd September, 2014, (NCDRC)]*

## ENVIRONMENT

- **NATIONAL GREEN TRIBUNAL: Moef Ordered To Declare ESAS In Western Ghats Region**

The National Green Tribunal ("NGT") has asked the Union Ministry of Environment and Forest ("MoEF") to "expeditiously" declare ecologically sensitive areas in six states, including Goa, and directed that no fresh Environmental Clearance or permissions be issued by the MoEF till it issues the final notification in terms of section-3 of the Act of 1986.

It will be open to the MoEF to declare ecologically sensitive areas, State-wise or collectively, for the entire Western Ghats. - *[The Times of India, dated 26th September, 2014]*

- **NATIONAL GREEN TRIBUNAL: Central Govt. Received Direction From NGT To Finalise Policy On Preventing Pollution From Farm Waste**

Hon'ble NGT has directed the Centre to finalise the national policy for controlling and preventing pollution resulting from burning of agricultural waste in open fields. - *[The Economic Times, dated 26th September, 2014]*

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- **NATIONAL GREEN TRIBUNAL:** Delhi Gymkhana Club Penalised For Extracting Ground Water Without Permission

Hon'ble NGT directed Delhi Gymkhana Club to pay Rs. 10 lakhs to North Delhi Municipal Corporation ("NDMC") for operating five bore-wells in its premises and "illegal" extracting of groundwater. - *[Business Standard, dated 24th September, 2014]*

- **NATIONAL GREEN TRIBUNAL:** Construction On Riverbed Held Illegal

The National Green Tribunal (NGT), western zone bench in Pune declared any construction within the blue floodline area along the riverbeds, sanctioned under a circular issued by the water resources department, as illegal. - *[The Times of India, dated 4th September, 2014]*

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