

IN THE HIGH COURT OF DELHI AT NEW DELHI

CIVIL WRIT PETITION NO. 12505 OF 2009

Haldiram India Pvt. Limited

.....Petitioner

Versus

Union of India & Others

....Respondents

**AFFIDAVIT OF COMPLIANCE ON BEHALF OF THE SECRETARY,
GOVERNMENT OF INDIA. DEPARTMENT OF INDUSTRIAL
POLICY AND PROMOTION. MINISTRY OF COMMERCE AND
INDUSTRY.**

I , Sanjay Kumar Lal, S/o Shri Jay Shankar Lal, aged 44 years, presently working as the Under Secretary in the Department of Industrial Policy and Promotion, Ministry of Commerce and Industry, New Delhi do hereby solemnly affirm and declare as under:-

1. That I am well conversant with the facts and circumstances of the present case in my supervisory capacity with regard to trade marks related issues and hence I am competent to file the present compliance affidavit.

2. That in its order dated 16th Dec 2010 the Hon'ble High Court ordered Secretary, Deptt. of Industrial Policy and Promotion , Ministry of Commerce and Industry to :

- (i) Personally supervise a full fledged enquiry into the issue of all the files missing in the office of Trade Marks Registry.
- (ii) Corrective action to be taken in respect of the missing files including filing of F.I.R.s.
- (iii) Procedure to be adopted for the purposes of re-construction of missing records.

This affidavit is filed in compliance with the above directions and action taken is detailed below :

A Inquiry into the issue of missing files

3. The Secretary in the Department of Industrial Policy and Promotion, Ministry of Commerce and Industry appointed Senior Director in the Department Smt. Chandni Raina as the inquiry officer to conduct a detailed inquiry in terms of the order dated 16.12.2010 of this Hon'ble Court. Details of the appointment are placed at **Annexure-I**.
4. That prior to the visit, the inquiry officer had vide an O.M dated 6th January 2011 addressed to the Registrar of Trade Marks had conveyed specific modalities for listing out the missing registered files and matters connected therewith. The

branches were also directed by the inquiry officer to explain the procedure to be adopted for constitution of missing files. A copy of the same is annexed hereto and marked as

Annexure-II

5. The said inquiry officer in compliance thereto and as per the direction of this Hon'ble Court, visited all the five branch offices of TMR at Chennai, Kolkata, Delhi, Ahmedabad and Mumbai between 16-26th February 2011 and inspected the record room and had conducted an inquiry into the matter as per the procedure undertaken in the enquiry report. A copy of Inquiry Report prepared by her is annexed hereto and marked as **Annexure-III.**

B Summary of the Inquiry Report and the findings:-

6. The inquiry officer ascertained at each office as to (a) whether the Trade Mark physical file pertaining to each record were in fact available?, (b) whether data in the electronic database tallied with the physical records? and (c) whether the electronic database for missing files was available?

The major findings of the Inquiry Officer are as follows

- a) Total registered and missing files at the time of the visit in the five branch registries were initially estimated at 60,052. Details in Annexure-III

- b) The files that were listed as available by the Branch Registries were verified for their physical presence by the Inquiry Officer and those identified on random basis could be retrieved in all the branch registries. Despite serialization and a comprehensive attempt to locate the files relating to Haldiram case under Registration No.285062 and application number 559875 (including oppositions numbers DEL-T-2988 and DEL-T-2515 from which the relevant documents were sought) could not be traced. Accordingly, a complaint was filed at the Police Station, Dwarka North, New Delhi on 15th March 2011 and an F.I.R. registered on 01st April 2011. Copy of the F.I.R is Annexed at **Annexure-IV (Coly)**. Similarly, file relating to Haldiram case under Registration No. 330375 from which relevant documents were sought could not be traced. Accordingly, a complaint was filed at the Police Station, 24 Parganas (North) on 1st April, 2011 and an FIR was registered on the same day. Copy of the F.I.R. is annexed at **Annexure-IV (Coly)**.
- c) That the Physical files inspected did not contain post Registration documents, wherever applicable. TMR officials had informed that post registration work is done on part files and these are not merged with the main file or preserved. Effectively in the absence of adequate documentation in the e

register (as documents have not been uploaded or verified) it is difficult to build the physical file. However, with the information available in the trademark journals and the history of e-record, it is possible to list out the action taken by the Trademark Registry during the life cycle of the trademark.

- d) One of the major reasons for the large number of missing files was that until 2003 the work in TMR was largely confined in its Mumbai branch, which is also the Head Office for Trademark Registry, when it got decentralized in a phased manner. Till then the other branch registries were responsible only for adjudicating contested cases and for dealing with show cause matters. Physical files would therefore travel to and from TMR Mumbai to the concerned registry. No systematic record of the movement of files was kept in TMR Mumbai or at the branch registry. With the result branch offices were unaware about the actual physical presence of the files in their registry.
- e) That on construction of the Intellectual Property Building at S.M. Road, Antop Hill, Mumbai-400 037 (present location), in the year 2006, the office of Trade Marks Registry was shifted to the present location and consequently, all physical registered and pending trade mark record/applications were transferred to the new premises in the year 2006. It may be

possible that in transportation of the record, the aforesaid registered file must have been lost or misplaced.

f) That, on further decentralization of work including process of registration in 2006-07 onwards, all registered files were sent to the respective branch Registries and also it may be possible that the registered file relating to the aforesaid trade mark must have been transferred to Trade Marks Registry, New Delhi alongwith other files.

C Action taken by the Department on the Inquiry Report

7. A meeting was chaired by Secretary, IPP to review the steps taken by the O/o CGPDTM to comply with the order of the Hon'ble Delhi High Court, dated 16th December, 2010 in the Haldiram case on 1-3-2011. It was informed that 50,872 trademark files were unaccounted for in the four branch is other than Mumbai, which subsequently reported 9180 files missing. A copy of the minutes of the meeting is at **Annexure-V**.

8. After reviewing the exercise conducted by the Trademark Registry relating to tracing of missing files, Secretary DIPP observed that the main reason for such a large number of missing files was the lack of scientific record keeping practices in the branch registries as well as the lack of due diligence by the Registry Staff. CGPDTM was directed to take prompt action in all cases where malafide could be suspected. CGPDTM was also directed to:

i) Immediately file an FIR in the Police Station with jurisdiction about the missing Haldiram file, which had important documents relating to ownership of the mark.

ii) Where a file is located with missing papers on suspected tampering, a quick enquiry should be conducted and if the malafide is established prima facie, an FIR should be lodged.

iii) Where the file is not traceable and possibly misplaced but no malafide is suspected, departmental action should be taken to fix responsibility for negligence.

iv) To ensure that the misplacement of files does not recur, steps should be taken to adopt scientific record keeping practices at each branch registry. If necessary, professional advice should be taken for corrective steps. Further physical audit of all files in the registry should be undertaken every three months by the Records in-charge and every six months by the registry head.

9. At the meeting, CGPDTM had informed the Committee that computer reconstruction of missing files is not possible as documents submitted by the parties could not be replaced. However, information on a registered trade mark can be obtained from the Trade Mark journal in which it was published prior to registration. It was also informed that in the past few

years Trade Marks records have been digitized and documents have also been uploaded electronically. This information including the documents uploaded and available in the electronic format could be used to recover essential data relating to the missing files.

D Procedure to be adopted for recovery of missing files :-

10. A complaint has been filed before the Station House Officer, Dwarka Police Station (North) by the Deputy Registrar of Trade Marks, Trade Marks Registry, New Delhi, on 15th March, 2011 for registering a F.I.R in respect of the file relating to missing trade marks registration **NO.285062** and trade marks application No.**559875 (including two oppositions)**. A copy of the FIR registered (based on the complaint dated 15.03.2011) by Police Station, Dwarka (North), New Delhi is annexed hereto and marked as **Annexure-IV**. A complaint was also filed before the Station House Officer, 24, Parganas North on 1st April, 2011 in respect of file relating to missing Trade Marks Registration No. 330375. A copy of the FIR by Police Station North, 24 Parganas is also at **Annexure-IV**.

11. Files belonging to the Registry inadvertently sent to another Registry were located and retransferred. Approximately 1000 files so identified were dispatched to concerned jurisdictions.

12. TMR has been implementing a digitization project under the Plan Scheme. As part of this exercise, the TM files including the documents are available in electronic formats. Wherever complete documents were available in electronic format, the file was considered to be available.

13. Every action of the TMR on a TM application such as acceptance of application, registration, renewal, amendment, assignment, withdrawal, abandonment and removal is duly notified in the TM journal published periodically (at present on a weekly basis). The TM journal which is a public document is being published continuously since 1940. This archival information is now being utilized to build information for files not available in physical form.

14. Consequent to the action at para 12, 13, & 14 above, the branch Registries have updated their list of missing files. The latest position of files missing is as under : -

	DEL	MUM	CHEN	KOL	AHM	TOTAL
REGISTERED FILES *	224810	279446	103834	64001	50023	722114
NUMBER OF FILES WHERE PHYSICAL FILES ARE NOT AVAILABLE	7291	9180	15557	10179	2197	44404
MISSING FILES %	3.24	3.28	14.98	15.90	4.39	6.14%

* AS ON 3.01.2016

It is submitted that the number of missing physical files is 6.14% of the total live records maintained over the last 71 years since 1940.

E Corrective action to be taken by Trade Marks Registry :-

15. Besides this other corrective measures being taken to ensure that future occurrence of such incidents do not take place are as follows:-

I Digitization and recovery of records

- (a) About 3.8 lakh Trade mark files have been digitized and electronically uploaded but awaits in-house verification. This will be verified and placed in public domain within six months.
- (b) TMR has 279 CDs containing about 2 lakh scanned records of old registered files and these will be uploaded in the main server and linked with corresponding electronic record within three months.
- (c) The complete trade mark records have already been made open on the official website to ensure that if there are any discrepancies it would be brought to notice of the Registry for corrective action.
- (d) After completion of the above exercise, a Public Notice will be issued regarding the files not accounted for requesting the right holders to provide wherever

necessary documents to enable reconstituted amendment/updation of records.

- (e) An IT Policy that has been formulated and displayed on the official website of IPO and the Registrar is committed to totally digitize its complete IP records by 31st March,2012 positively. A copy of this is annexed hereto and marked as **Annexure- VI.**

II **Improvements in the Record Management System**

- (a) The CGPDTM has engaged the services of M/s. Deloitte & Touche (a professional service provider) as a consultant to make a detailed assessment of Record Management System prevailing at TMR. The consultant has commenced his study and will submit his final report by 31st May 2011. Based on the consultant report further steps will be taken.
- (b) A quarterly audit of trade marks records has been ordered which would be monitored directly by the Registrar. A physical audit of all files in the record room shall be undertaken by the Record in Charge every three months and by the Head of Office once in every six months, and both shall report on the audit to the Controller General. Record in-Charge shall also take necessary steps as indicated above to reconstruct the

missing files based on the digital data available on the system, journal publications and wherever possible requisitioning it from the registered proprietor.

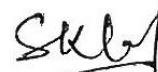
- (c) It is also proposed to restrict access to the Record Room and designated official will be made responsible for record management. An office order has already been issued by the Registrar to this effect. A copy of this order issued by Registrar is annexed hereto and marked as **Annexure-VII.**
- (d) The proposal for construction of new building for the Intellectual Property Office at Ahmedabad has been approved. The construction will start shortly. The building will store over **5** million IP records and the entire physical records of Patents and Trade Marks will be safely stored for future reference.

III Amendment of Trademark Rules to provide for e-filing

- (a) Action to notify that trademark would need to be filed only through electronic mode has already been initiated. This will obviate problem of data storage and retrieval as well as data

entry mistakes that are committed by trademark registry officials in manual entry of information and also reduce interface between Trade Mark Officials and the Applicants/General Public.

16. It is submitted that strenuous efforts have been made and are continuing to be made to put in place a fool proof records management system in all the five Trade Marks offices. All efforts are being made to ensure that all missing files are either traced or built up in a time bound manner and responsibility fixed for missing files.



DEPONENT

5072 10/11/2011 / SANJAY KUMAR LAL
10/11/2011 / Under Secretary
10/11/2011 / 10/11/2011 / Secy. of C. & L.
10/11/2011 / 10/11/2011 / Secy. of L. & S.
10/11/2011 / 10/11/2011 / Secy.
Udyog Bhawan, New Delhi

Verification:

It is verified that the contents of the affidavit are as per records and as drafted by the Counsel under my instructions and are true to my knowledge and nothing material has been hidden.



DEPONENT

श्री जय शर्मा / दामोदर कुमार लाल
श्री जय शर्मा / Under Secretary
ऑफिस ऑफ सॉलिटर्स जनरल ऑफ सी. & ए.
ऑफिस ऑफ सॉलिटर्स जनरल ऑफ सी. & ए.
ऑफिस ऑफ सॉलिटर्स जनरल ऑफ सी. & ए.
नया दहली, नया दहली
नया दहली, नया दहली

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ANNEXURE-1

MOST IMMEDIATE
COURT MATTER
By Speed Post

No.10/43/2009-IPR-IV
Government of India
Ministry of Commerce and Industry
Department of Industrial Policy and Promotion

Udyog Bhavan, New Delhi-110107

Dated the 29th December, 2010.

To

Shri P.H. Kurian
Controller General of
Patents, Designs and Trade Marks,
Boudhik Sampada Bhavan,
Near Antop Hill Head Post Office,
S.M.Road, Antop Hill,
Mumbai-400037.

Sub: Civil Misc. Petition No. 10327/2010 and Writ Petition No. 12505/2009 in the matter M/s Haldiram India (P) Ltd. versus Union of India and others.

Sir,

I am forwarding herewith a copy of letter No.34975/DHC/Writs/D-4/2010, dated 20.12.2010 received from the Registrar General, Delhi High Court along with a copy of order dated 16.12.2010 passed by Hon'ble Dr. Justice S. Muralidhar in the above mentioned case.

2. It is seen from the order that the matter came before Hon'ble Dr. Justice S. Muralidhar of Delhi High Court for hearing on 16.12.2010. During the course of proceedings, it was informed that the original files relating to the above cases were not traceable in the Trade Marks Registry. The Hon'ble High Court after examining the affidavit filed by Shri U.L. Barve, Senior Examiner of Trade Marks in the Trade Marks Registry inter-alia ordered:

"to examine the matter at the level of the Secretary, Department of IPP, Government of India. The Secretary will personally supervise a full-fledged inquiry into this issue by a senior official of the Ministry and have a report prepared and submitted to the Court along with an affidavit within a period of three months from 16.12.2010. The affidavit will also indicate, in particular whether it is only the files in question or files of other cases as well that have gone missing, the corrective action that the Trade Marks Registry has taken in the matter including but not limited to filing FIRs and the procedure to be adopted for the purposes of reconstruction of missing original records".

3. It has, therefore, decided with the approval of Secretary (IPP) that Smt. Chandni Raina, Director, Department of IPP will conduct an inquiry into the matter and submit

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on fortnightly basis, a report on the progress of the enquiry to the Secretary (IPP). The Inquiry Officer will submit her final report to the Secretary by 16.02.2010 so that the affidavit can be filed by 16.03.2010 positively.

4. It is, therefore, requested that necessary steps may kindly be initiated to compile the requisite information/data in respect of missing files, as directed by the Hon'ble Court in its order dated 16.12.2010 and identify the circumstances leading to non-traceable of files and other related information and send the same to the Department to facilitate the filing of the affidavit.

5. This may be accorded highest priority and be monitored at your level.

Yours faithfully,


(B.K. Malhotra) *MP*

Under Secretary to the Govt. of India
Tele: 2306 1257

20/12/12
असे किया गया
ISSUED

Encl: as above.

JK

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By Speed Post

ANNEXURE-I

No.10/43/2009-IPR-IV
Government of India
Ministry of Commerce and Industry
Department of Industrial Policy and Promotion

....

Udyog Bhavan, New Delhi-110107
Dated the 6th January, 2011

To

✓
Shri P.H.Kurian
Controller General of
Patents, Designs and Trade Marks
Boudhik Sampada Bhavan,
Near Antop Hill Head Post Office,
S.M.Road, Antop; Hill,
Mumbai-400037.

Ram

Sub: Civil Misc.Petition No.10327/2010 and Writ Petition No.12505/2009 in the matter
M/s.Haldiram India (P) Ltd. versus Union of India and others.

....

Sir,

I am directed to refer to your letter No.CG./F/Order/2010/01, dated the 3rd January, 2011 addressed to the Heads of Branch Registries and copy endorsed to me regarding inquiry into the number of missing registered Trade Mark files at Trade Marks Registry consequent upon the order passed by Hon'ble Justice Dr. S.Murlidharan and to say that it is proposed to visit each Branch Registry to personally inspect the record room and the manner in which files are kept in the compactor as per the following tentative programme:-

Date	Place
21.1.2011	Mumbai
22.1.2011	Ahmedabad
27.1.2011	Chennai
28.1.2011	Kolkatta
31.1.2011	Delhi



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While Branch Registries may compile the information in the format prescribed by you, it would however be desirable that they are asked to (i) place the files in the compactor serial-wise and year-wise putting a tag on each compactor, listing the details of the files kept so that it is possible to verify the presence of files. In addition, immediate action may be taken to reconstitute the file relating to the Haldiram case.

It is also requested that the information being compiled by the Trade Marks Registry be made available to me 2 days in advance of my visit to a particular Branch Registry.

Yours faithfully,

Chandni Raina

(Chandni Raina)

Director

Tele : 2306 3596

A. Pre visit preparation: Communication with the O/o CGPDTM on the visits

- ❖ The Office of the CGPDTM was informed about the inspection visit as a consequence of the directives of the High Court of Delhi in the Haldiram Case well in advance on 29th December 2010.
- ❖ The office was requested to prepare a list of all the live TM files and place these in serial, year wise order to enable easy retrievability.
- ❖ The office was also requested to prepare branch wise missing file list.
- ❖ Each branch office was required to indicate their readiness for inspection and provide the list of all files two days before the visit.

B. Strategy followed during Inspection

- ❖ Declaration was sought from each branch office prior to the commencement of the inspection. Copies of the Declaration given by the branch registries at Chennai, Delhi, Kolkata and Ahmedabad are attached. The Trademark Registry at Mumbai had not completed the work of serialization of files, and therefore, could not submit a declaration.
- ❖ During February 16-26, 2011, the five branch registries of Trade Mark Registry under the Controller General, Patents, Designs and Trade Mark were visited to conduct inquiry.
- ❖ Before the initiation of inspection, the contents of a typical trade mark file were ascertained. The following are the documents that should be found in a TM file- both physical and electronic.
 - TM-1: the initial application
 - Additional Representation
 - Examiners Report
 - Reply to the Examiners Report
 - Hearing Notice
 - Orders after the hearing
 - Published copy-a cut out from the journal in which published
 - Registration Certificate
 - TM-12 renewal
 - TM 24 assignment with goodwill
 - TM 23 assignment without goodwill
 - TM 33 change in name
 - TM 34 change in address
 - TM 50 address for service

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- ❖ Physical files were selected randomly to ascertain
 - Their presence as stated in the report
 - To check the availability of the documents in the files and whether the files were updated
 - The data in the physical files was also tallied with their electronic version to ascertain whether information had been digitized.

- ❖ E files were also selected from the missing list and information analyzed to check for inconsistencies if any.

C Broad Findings

- ❖ Total Registered and missing files in the 5 branch registries are given below:

S.No	Branch Registry	Total Registered files	Total available files	Total missing files	% missing
1	Chennai	103834	81917	21917	21.11
2	Delhi	224810	210056	14754	6.56
3	Kolkata	64001	52117	11884	18.57
4	Ahmedabad	50023	47706	2317	4.85
5	Mumbai (given on 15.3.11)	279446	270266	9180	3.28
	Total	722114	662062	60052	

- ❖ Procedure followed by the branch registries
 - All the branch registries were provided the list of live file by TMR Mumbai. The available files have been matched with the list provided by Mumbai.
 - Procedure followed in Chennai office was as per the instructions. The abandoned/removed files have been kept separately. The other files are in serial and application number wise basis. The files are kept in bundles consisting of approximately 50 files each.
 - Delhi, Kolkata and Ahmedabad branch Registries have made bundles of approximately 40 files on an 'as is where is basis' ie the files are in random order. Space constraint and need for quick completion of the exercise was given as the reason for such a step. In Mumbai, the exercise of serialization is still to be completed and the procedure being followed is identical to that of the Chennai office and as per instructions. The Bundle has a unique number and the list of files have been entered in the excel sheet. Files are not in serial or year wise order, the bundles are however in serial order. File can however be identified.
 - In the Trademark Registry, Ahmedabad 211 files belonging to other jurisdictions were identified and have been since sent to the concerned jurisdictions on 26th January, 2011.
 - All the branches have shared the missing files list with the Trademark Registry, Mumbai, which is also the Head Office to enable location of files.

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- ❖ **Observations** -The files that were identified on random basis could be retrieved at the 5 branch registries. Haldiram file continues to be missing even after this exercise. In case of missing files, the availability of documents in electronic versions were also checked for a small sample and it was found that in some files, the documents were available in electronic version although they were not available for public viewing as they needed to be verified. For instance, in case of Ahmedabad, of the 12 such files that were checked, 3 were found to have electronic documents. Major observations are as follows

Systemic issues

- Work in TMR was largely confined in its Mumbai branch till 2003 when it got decentralized. Till then the other branch registries were just the receiving offices. Physical files would therefore travel to and from TMR Mumbai to the concerned registry. No systematic record of the movement of files was kept in TMR Mumbai or at the branch registry. With the result branch offices were unaware about the physical presence of the files in their registry.
- After the construction of the Intellectual Property Building at S.M. Road, Antop Hill, Mumbai-400 037 (present location), in the year 2006, the office of Trade Marks Registry was shifted to the present location and consequently, all physical registered and pending trade mark record/applications were transferred to the new premises in the year 2006. It may be possible that in transportation of the record, the aforesaid registered file must have been lost or misplaced.
- On further decentralization of work including process of registration in 2006-07 onwards, all registered files were sent to the respective branch Registries and also it may be possible that the registered file relating to the aforesaid trade mark must have been transferred to Trade Marks Registry, New Delhi alongwith other files.
- The list provided by TMR Mumbai, on the basis of which search is being conducted was not an updated list as it includes files that have not been renewed for more than 40 years.
- The new files have very cryptic entries for instance in case of 1739794. The examination report had initially raised objections. Notings only reflect that hearing was held and that the application was allowed Advertised before Acceptance (ABA) with no analysis why the objections were waived.
- It was found that even in case of the e-files, post registration documents submitted are not being uploaded in a large number of files. TM 12 on renewal is not uploaded as a matter of practice.
- Most physical files that I inspected were incomplete. Files generally had TM1 form and the examination report but did not have post registration entries or documents. The details of the application numbers checked and problems in the concerned files are attached at Annexure II.
- Physical files that were inspected did not have post registration entries. TMR informed that post registration work is done on part files and these are not merged with the main file or preserved. Effectively in the absence of adequate documentation in the e register (as documents have not been uploaded or verified) it is impossible to trace the history of the TM with complete conviction.

Other implementation issues

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- The electronic version of the files was also analyzed for inconsistencies. Some examples of this are as follows: Application 99 in Chennai has an application date of 10th October 1991 and the renewal date is also the same.
- E version of the inspected files that were missing lacked details and documents.
- File number entries in the excel sheet prepared by the branch registries are incorrect and need to be revalidated. This is particularly true for the Kolkata branch registry. Delhi had conducted this revalidation exercise and was able to rectify a large number of file entries and thereby could recover a number of files that were earlier missing.
- Most registries also contain files pertaining to other jurisdictions. These need to be sifted and sent to concerned offices.
- The branch registries claim that the majority of the missing files are in TMR Mumbai.

The following available files were checked:

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ANNEXURE II

TMR, Chennai

Application No.	Documents contained in the file	Electronic version of the files
11298	Last renewal made in 1986. Registered certificate not available. Other documents relevant to the application available.	No registration certificate present
83713	Mark not renewed after 1980. Documents not available.	Data entry not made. No documents uploaded.
2578	Mark not renewed after 1980. other Documents available	No documents uploaded. Only history sheet. It was found that the documents have not been verified after uploading.
5588	No relevant documents available in the file.	Only history sheet with no documents uploaded. Last renewal effected in 1999.
1739793	All documents were available.	Data entry complete.
1739794	Document available in the file but note portion is incomplete. The examination report had initially raised objections. Noting only reflects that hearing was held and that the application was allowed Advertised before Acceptance(ABA) with not analysis why the objections were waived	Documents have not been uploaded.
139303	Last renewal made in 1985 on file	No documents uploaded in the computer data base. History sheet however shows that the TM was renewed till 2016.
198349	Relevant documents were available.	Documents not verified and uploaded.
831773	No documents of renewal in the physical file.	Data and documents are updated in the electronic file
827802	TM1 and Registration present. Mark not renewed	Documents uploaded but no renewal after 2005
826766	Documents relating to renewal not available in the file.	Renewal request not available

Application Number	Documents contained in the file	Electronic version of the files
1280921	All documents are available.	Documents available
667873	TM 1, Registration certificate available but the mark not renewed	Data entry made in respect of renewal but no documentation in this regard.
498991	File incomplete.	History sheet reflects updation.
497729	Renewal not effected. It was informed that this is a fit case for removal but TMR Mumbai shows it as a live file	No renewal details also
189467169	Data entry in respect of the application file not correct.(application number has been entered wrongly)	
120088213	Application number wrong. The right number is 1200882. The file needs to be removed from the live registered file as it is under opposition.	
818843	No post registration details in the file.	No documents uploaded. Validity date is wrong
886042	Relevant documents and data not available.	No documents uploaded. No renewal of the TM
900567	Renewal of the mark not effected	Data available
942552	TM 16 and 12 are not found in the file.	Data available in the history sheet.
8366116	Application number is wrong. Actual number 836616. No data or documents relating to subsequent changes, namely renewal available. Needs to be removed.	Data in electronic version is incomplete with no certificate number or date of issue also. Only the file cover is uploaded.
1158529	File abandoned. But has been shown as live file.	
711173	File abandoned. But has been shown as live file.	
638023	File abandoned. But has been shown as live file.	
2987	Recorded as registered but not renewed after 1992 in file.	Electronic version shows entry for certificate dated August 1949 and no subsequent activity. Digitization has not been done properly

TMR Kolkata

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The following available files were checked:

Application No.	Documents contained in the file	Data entry in the computer
246	Details available. However renewal not effected.	Data entry made.
693	Details available. However renewal not effected	Data entry made.
1513	It is a removed file but shown by TMR Mumbai as live	
1154528	Documents are available.	Data entry made.
3058	No renewal effected after 1971 on file	Shows renewal till 2016. TM 12 which relates to renewal has not been uploaded.
9145	Documents/Data not complete in physical file.	No information available in the data base beyond 1985. The documents are not uploaded except the file cover.
1177039	Documents available	Documents available
58570	Application No. was wrongly indicated. On checking with the physical file, the same has been corrected.	
48661	Shown as live in Kolkata but not in TMR mumbai's list. Physical file available	No digitized record available.
38931	No digitization record. Therefore, not present in TMR Mumbai list. But shown as available in the live registered file.	No digitization record.
17033	Missing in Kolkata	Belongs to Delhi

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The following available files were checked:

Application No.	Documents contained in the file	Data entry in the computer
56651	Documents are available	Data entry has been made but all documents have not been uploaded
958618	Details available.	Documents and details available
154339	No documents are available	No renewal in e-format after 1984
	It is a removed file but shown by TMR Mumbai as live	
171123	Documents are available. File belongs to Mumbai Registry	It has not been digitized
201018	Details available	The file has not been digitized
280315	Details available.	Documents available
396187	Physical file not complete	Complete e-file available
409433	No renewal after 1991 in the physical file	E-filing details show renewal in 2004
423638	No renewal in file since 1993	No renewal in electronic format since 1993
457715	No renewal in file	Renewal available in e-format but other documents not uploaded
466455	No renewal in physical file	Form TM-12 was filed in 2008 and has not been uploaded for viewing by the Registry
474904	Documents are available	File has not been digitized
488180	Documents are incomplete	Documents available
660650	Documents incomplete	Documents available
880526	Documents are complete	Documents available
1023246	Documents available. However no analysis regarding the grounds on which objections were waived.	Documents available
1137038	Documents available	Not digitized
1418118	Documents available	Not digitized

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The following available files were checked:

Application No.	Documents contained in the file	Data entry in the computer
2684	Documents relating to renewal are missing	Not digitized
72489	No renewal after 1979	
101945	File incomplete.	No digitization
123730	No renewal after 1989	Digitization incomplete
306536	Not renewed after 1979	Database in wrong
387304	Documents available	No digitization
1314509	Documents available	Not digitized
1558968	Documents available	Not digitized
1643232	Documents available	Not digitized
1400343	Documents available	Electronic file has no 'valid date' entry
1054	Documents incomplete	All documents not uploaded
580-	No renewal since 1985	All documents not uploaded
1183700	Documents available	Digitized
1151826	Documents available	Not digitized
1231132	Documents available	Not digitized
1076138	Documents available	Digitized
100920	Documents available	Not digitized

20141
FIRST INFORMATION REPORT
In Respect of Non Cognizable Offence
(Under Section 155 Cr.P.C.):

P.S: Dwarka North District: SOUTH WEST DELHI NCR No: 372/2011 Date: 01-04-2011

- 1. Act(s):
- (i)
- (ii)
- (iii)
- (iv)

Section(s):

2. Occurrence of Offence:

(a) Information received at P.S.:	Date: 01-04-2011	Time: 16:30 hrs
(b) General Diary Reference:	G.D No.: 29A	G.D Time: 16:30 hrs
(c) Occurance Date: 01-04-2011 16:30:00	Place: INTELLECTUAL PROPERTY OFFICE, PLOT NO. 32, SEC-14, DWARKA	

3 Name & Residence of Complainant: AMAR PRAKASH, DEPUTY REGISTRAR OF TRADE MARKS (S/O) PN SAHAY(R/o)INTELLECTUAL PROPERTY OFFICE, PLOT NO. 32, SEC-14, DWARKA, NEW DELHI

4 NCR Contents:

The complainant, Deputy Registrar of Trade Marks and Head of the Office, has reported that one Registered Trade Mark No. 285062 and an application No. 559875 including two opposition files having No. DEL-T-2488/57922 & DEL-T-2515/57972 have been missing from the office of Trade Mark Registry, Intellectual Property Building, Plot No. 32, Sec-14, Dwarka, New Delhi. The files/records belong to Trade Marks Registry, New Delhi. The charge of this office was taken by the complainant in June 2009. At that time the loss of files/records was not brought into the knowledge of complainant. The loss of files came to notice only when a writ petition was filed in this regard. The complainant is not sure about the time of loss of the files/records. As told by the complainant the files/records have been searched at every possible place but could not find. The complainant has desired to get an FIR registered against some un-known person but as per his statement the files have been lost in that case responsibility of any un-known person can not be fixed. Moreover the matter is non-cognizable in nature. So a copy of this computerized entry is given to the complainant. ASI/DO

5. Particulars of properties involved(Attach separate sheet,if necessary):

Sr.:	Property Type:	Property Description:
1	ACCOUNT BOOKS	REGISTERED TRADE MARK NO. 285062 AND APPLICATION NO. 559875 (OPPOSITION FILE NO. DEL-T-2488/57922 & DEL-T-2515/57972)

6. Name and Full address of witnesses:

- 1:
- 2:

7. R.O.A.C.:

Signature / Thumb Impression

Signature of Officer



[Handwritten Signature]
P.S. Dwarka North
11411

29/4/1

of The Complainant/Informant:

[Signature]
Name: SURAJ BHAN/Am/07

Rank: ASI

No.: 28760616



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CARE W/ F D A R K E
NORTH PARAGANA DISTRICT POLICE

POLICE STATION

C.D.F. / P.I.R. NO. 27

DATE / 07.01.2011

IN EMERGENCY DIAL 100

100

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ANNEXURE-II

MOST IMMEDIATE


No.10/43/2009-IPR-IV
Government of India
Ministry of Commerce and Industry
Department of Industrial Policy and Promotion

Udyog Bhavan, New Delhi-110107
Dated the 4th March, 2011.

OFFICE MEMORANDUM

Sub: Minutes of the meeting taken by Secretary, DIPP with the Controller General of Patents, Designs and Trade Marks to review the action taken in compliance of the Order of the Hon'ble High Court of Delhi in the Haldiram case & RFD target.

The undersigned is directed to forward herewith minutes of the meeting taken by Secretary, Department of IPP on 01.03.2011 to review the steps taken by the Office of the Controller General of Patents, Designs and Trade Marks in compliance with the order of Hon'ble High Court of Delhi in the case of Haldiram and also to review the performance of the organization with respect to RFD target are forwarded herewith.


(Alok Mukhopadhyay)
Under Secretary to the Govt. of India

To

1. Sr. PPS to Secretary, Department of IPP
2. PS to JS(VB)
3. PS to Director (CR)

Copy forwarded by speed post for strict and urgent compliance to:

1. Shri P.H. Kurian, CGPDTM, Mumbai
2. Shri V. Ravi, Sr. Joint Registrar of Trade Marks, Office of CGPDTM, Mumbai

Copy to:

US(AM), Department of IPP.

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minutes of the meeting taken by Secretary, DIPP with the Controller General of Patent, Design and Trade Marks to review the action taken in compliance of the Order of the Delhi High Court in the Haldiram case.

A meeting was chaired by Secretary, IPP to review the steps taken by the O/o CGPDTM to comply with the order of the Hon'ble Delhi High Court, dated 16th December, 2010 in the Haldiram case on 1-3-2011 and also to review the performance of the organization with respect to the RFD target set for 2010-11.

2. List of the officer who participated in the meeting is as follows:-

1. Mr. V. Bhaskar, Joint Secretary, IPP
2. Mr. P.H. Kurian, Controller General, Patent, Design and Trade Marks.
3. Mr. V. Ravi, Sr. Joint Registrar, O/o CGPDTM
4. Mrs. Chandni Raina, Director, IPP

A. Haldiram Case in the High Court of Delhi.

3. At the outset, it was mentioned that the Hon'ble High Court of Delhi in the Haldiram case had given the following directions to the Department :-

- To conduct a full fledged enquiry to ascertain whether the Haldiram file alone is missing or files of other cases are also missing.
- To inform about the corrective action taken by the Trade Marks Registry including but not limited to filing FIRs.
- To delineate the procedure to be adopted for the purpose of reconstruction of files.

4. In pursuance of the directions of the Hon'ble High Court, the Department vide its letter dated 29th December, 2010 requested O/o CGPDTM to prepare a list of all the live Trade Marks files and place these in serial, year wise order to enable easy retrievability. The office was also requested to prepare branch wise list of missing Trade Marks files. Each Branch office was required to indicate their readiness for inspection two days before the inspection visit.

5. Director(IPR) carried out an inspection of all the five branches of the Trade Mark Registry i.e., Chennai, Delhi, Kolkata Ahmedabad and Mumbai between 16th - 26th February, 2011. A copy of her inspection report is placed at Annexure-A. According to the major findings in the inspection report, there are 442668 registered trade mark files in the four branch registries (Ahmedabad, Chennai, Delhi & Kolkata). Of these, 50872 trade mark files are presently unaccounted for. The inspection of the Mumbai Branch Registry revealed that

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The exercise for arranging the file has still to be completed and missing file list will be prepared by 10th March 2011.

6. Secretary, DIPP reviewed status of the action taken to implement the directives given by the hon'ble High Court. The details are as follows:

7. CGPDTM explained that work in TMR was largely confined in its Mumbai branch till 2003 when it got decentralized. Till then the other branch registries were only receiving offices. Physical files would therefore travel to and from TMR Mumbai to the concerned registry. No systematic record of the movement of files was kept in TMR Mumbai or at the branch registry. With the result branch offices were unaware about the physical presence of the files in their registry. The physical movement of files across the country has also led to their misplacement.

8. TMR has been implementing a digitization programme since the Xth Plan when the TM journals were digitized and the digitization of TM files including data entry was initiated. In the XIth Plan this exercise has been reinforced and now related documents are also being uploaded to the electronic database. CGPDTM further informed that since September, 2009, examination and other work related to processing of trade mark application is being carried out online. He was of the opinion that this database could be utilised for retrieving essential data relating to each grant; though file could not be rebuilt. The Controller General of Patent Design and Trade Marks mentioned that the exercise of listing missing files in the Mumbai Branch Registry would be completed by 10th March 2011. After which, the list of available and missing files from each branch registry would be integrated and a final figure of the number of missing files would be available.

9. Secretary DIPP expressed concern over the large number of missing files and directed that effective action be taken to reconcile all the unaccountable files in different registries and a final list be indicated by mid March 2011.

Corrective action on part of the Trade Marks Registry

10. Secretary DIPP pointed out that the main reason for such a large number of missing files was the lack of scientific record keeping practices in the branch registries as well as the lack of due diligence by the Registry Staff. All cases where malafide could be involved had to be promptly dealt with. CGPDTM was directed to:

i) Immediately file an FIR in the Police Station with jurisdiction about the missing Haldiram file, which had important documents relating to ownership of the mark.

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ii) Where a file is located with missing papers on suspected tampering, a quick enquiries should be conducted and if the malafide is established prima facie, an FIR should be lodged.

iii) Where the file is not traceable and is suspected to have been and misplaced but no malafide is suspected, departmental action should be taken to fix responsibility for negligence.

iv) To ensure that the misplacement of files does not recur; steps should be taken to adopt scientific record keeping practices at each branch registry. If necessary, professional advice should be taken for corrective steps. Further physical audit of all files in the registry should be undertaken every three months by the Records in-charge and every six months by the registry head.

Procedure for re-building of files

11. CGPDTM informed that reconstruction of files is not possible as documents submitted by the parties could not be replaced. He, however, stated that information on a registered trade mark can be obtained from the Trade Mark journal where it was published prior to registration. He added that in the past few years Trade Marks records have been digitized and documents have also been uploaded electronically. This information including the documents uploaded and available in the electronic format could also be used to recover essential data relating to the missing files.

12. CGPDTM was directed to take necessary action to rebuild the information on files determined as missing and report the status by 15th March 2011.

B. Status Report on Other Issues:-

- i) Results Framework Document - CG was requested to confirm that the target set under the RFD for 2010-11 would be met. CG informed while achievement in design trade mark and geographical indications would exceed the targets, on the patent side however there was a possibility of the target not being met. He added that till January 2011, 8863 application were examined and the figure is expected to increase to about 11000 by 31st March, 2011 which would be short of the target of 12000 patent applications. Secretary, DIPP directed him to make all efforts to achieve the RFD target, if necessary by increasing the outsourcing of patent search.
- ii) Strengthening and Security of the IT infrastructure including the database and website - Secretary, DIPP was informed that M/s Deloitte and Touche were assigned to conduct a security audit and that the report

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IT Security Policy

Objective:

The purpose of this policy is to help ensure abidance of law, security & improved productivity. Current IT technologies leverage each individual's ability to access and transmit information from remote sources. Users must be mindful of the rights pertaining to intellectual property, privacy and other rights. This policy codifies what is considered appropriate usage of computers and networks with respect to law & the rights of others.

Internet usage:

Internet use, on office equipment, is authorized for official use only. It brings the possibility of breaches to the security of confidential IPO information. Internet use also creates the possibility of contamination to our system via viruses or spyware. Spyware allows potential access to passwords and other confidential information to unauthorized people. Removing such programs from the IPO network demands time and attention of IT staff that can be better devoted to productive work. For this reason, and to assure the use of work time appropriately for work, it is requested to the members of IPO to limit Internet use. Under no circumstances office computers or other electronic equipments are permitted to use to obtain, view, or reach any pornographic, or otherwise immoral, unethical, or Internet sites not related to office work. Such misuse if found will attract disciplinary action. Viewing pornographic content in the presence of female staff is sexual harassment and will attract action according to law governing sexual harassment at work place.

Under no circumstances can office computers and internet facility be used to conduct personal business including trading in stocks.

Email Usage:

Official email (NICEMAIL) is restricted for officers only unless approved by CGPDTM. Official email is to be used for official purposes only. All official communication is required to be done through official email only. Confidential information shall not be transmitted/disclosed to any unauthorized person. The officers and staff are also not allowed to conduct personal business via email. Sending non-official emails to associates, family or friends etc. affects office functioning and is strictly prohibited. Sending pornographic jokes or stories etc. via email to female staff is considered to be sexual harassment and will be addressed according to the law governing sexual harassment at work place.

Any emails that discriminate employees in respect of race, gender, nationality, religion, and so forth are prohibited.

Official Email Ownership:

IPO owns any communication sent via email or that is stored on office equipment. IPO or other authorized personnel have the right to access any material in

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Official email or on the office computer at any time. Any electronic communication, storage or access using office computers will not be considered private.

P2P networks:

Participation in P2P (peer to peer) networks like Kazza, Mirc, Morpheus, Torrents etc and social networks like Facebook, Twitter, Orkut etc is strictly prohibited. P2P networks are also a known source of Trojans and viruses. Files transferred to and from the office can make the office liable to copyright infringement lawsuits as well as attract prosecution of the offending individual. The use of any program that connects the computer to another group of computers for the purpose of exchanging files should be approved by System-Administrator & Head of Office.

Intranet Usage & Configuration:

Access to LAN shall be restricted to authorized domain for each user. Users are not authorized to change the IP address without the approval of System Administrator, as this may lead to IP conflict on other running machines. Full sharing of folders over LAN is also discouraged as this may lead to propagation of viruses.

Usage of Data storage equipments:

Usage of USB Drives/Flash disks/other recording Media etc. for unofficial purposes is strictly prohibited and copying data from the official computers to such devices may attract disciplinary action. Such usage also makes office computers vulnerable to viruses.

Use of office equipments during Breaks, Lunch, and After Hours:

This policy extends to all use of office digital equipment during all hours of the day and night. This policy also applies to any personal computing devices, laptops, PDA's, etc that may be connected to the IPO network.

Access to Internet:

Access to internet shall be available only to officers of Group B and above, and such access shall be subject to the restrictions imposed in the foregoing paragraphs.

Internet access to any other employee will be allowed only on specific request to the CGPDTM justifying the need thereof by the respective head of office in the prescribed format:

Format for Internet Access Approval:

Name of User	Designation	Functional Group	Nature of Duty	Purpose	Approval (Approved/Not Approved)	Remarks

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On order by the CGPDTM, the System Administrator/ NIC shall provide such access.

Creation of email Account:

Each officer is required to have one email account on NICEMAIL for the purpose of official communication. Requisition for email account should be sent on the prescribed form given on the home page of NICEMAIL (<http://www.mail.nic.in>) duly attested by Head of the respective office (with seal) to IT Division by Fax or email.

Access to Intranet and Password Policy:

Intranet access will be provided strictly based on the allotment of work. Passwords are of high importance to IT security. A poorly chosen password is vulnerable and may pose threat to information security. Therefore, strong password norms shall be followed as under by all having access to intranet.

- All passwords must be changed on regular basis (Within 3 months)
- Password should be a combination of at least one upper case i.e (A, B, C, D...), at least one lower case i.e. (a, b, c, d....), at least one numeral i.e.(1, 2, 3, 4....) and at least one special character i.e. (!, @, #, \$, %.....)
- All passwords should be at least 8 characters long. (longer the password better the security)
- Previously used password should not be repeated.
- Passwords shall not be shared with anybody else.
- Safe custody of passwords is the responsibility of the respective individual
- Passwords should not be communicated over internet or email.

Digital Signatures:

Official Digital Signatures are to be utilized for official purposes only. Hard token (USB token) of digital signatures along with the respective passwords should be kept in safe custody by individuals themselves as these can be misused, if lost. Any such loss of digital signature should also be reported to IT division immediately.

Authorisation of NIC:

NIC is authorized to impose restrictions on access to internet and intranet as per this policy in consultation with the System Administrator.

*Controller General of Patents,
Designs and Trade Marks*



**INTELLECTUAL
PROPERTY INDIA**

PATENTS/DESIGNS/
TRADE MARKS/
GEOGRAPHICAL
INDICATIONS.



सत्यमेव जयते

Government of India
Office of The Controller General
Patents, Designs & Trade Marks
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No. CG/PG/Office Order/2010/176

Date : 16-03-2011

Circular No. 17 of 2010

Under Section 6(1) of the Trade Marks Act, 1999, the Registrar of Trade Marks is obligated to maintain a record called Register of Trade Marks. Under Section 148 of the Trade Marks Act, 1999 any person may inspect the files/documents relating to trademark applications and obtain a certified copy of such document on payment of prescribed fee. Hence under the law it is imperative on the Trade Marks Registry to maintain and preserve the trade mark register and all the records relating to the registration of trade marks. However, in the last 10 to 15 years the maintenance of register has not been receiving the required attention from the officials of the Registry partly due to paucity of officers and staff and enormous increase in the filing of trademark applications. The Trade Marks Act further provides that the Registrar may maintain the register and record in the electronic form. The digitization of all records has been started from 2009 onwards and is progressing.

The non production of records in respect of certain applications has resulted in the Hon'ble High Court of Delhi taking serious note in writ petition No. 12505/2009. In pursuance of the interim order in the above case the record rooms in all the Trade Mark Registry Offices have been streamlined and files have been sequentially arranged and accounted for as per declaration made by the Heads of Offices of each office. The following numbers of registered trade mark files are missing from the concerned Registry.

Name of the Office	TMR, Mumbai	TMR, Delhi	TMR, Chennai	TMR, Kolkata	TMR, Ahmedabad
No. of TM files missing	9180	3665	17797	7987	794

These numbers has been arrived based on the physical maintenance of trade mark application files upto 11th September, 2007(Mumbai), 1st September, 2009 (Delhi), 1st

Shri I. S. Jena

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...ber,2010 (Chennai), 1st December,2010 (Kolkata) December 2009(Ahmedabad). Files starting from those dates are maintained only in the electronic form.

In view of the above, the following order is issued to be followed strictly by all the Trade Mark Registry and all the officials in the Trade Mark Registry.

1. Each Registry shall digitize all the old records comprehensively by 31st March,2012, and upload it after verification in the central server of the Trade Mark.
2. New applications and all the papers received in connection with trade mark application or registered trade mark shall be digitized and uploaded to the server before processing at the concerned section.
3. The officer In Charge of the EDP section shall be responsible for digitization and uploading of such applications.

The following officers are designated as In Charge of the record rooms

Name of the office	Name & Designation of Officer
Trade Marks Registry, Mumbai	Mr. R.D. Kamtekar, Sr. Examiner of Trade Marks
Trade Marks Registry, Delhi	Mr. I.S. Juneja, Examiner of Trade Marks
Trade Marks Registry, Kolkata	Mrs. Jayanti Sen, Examiner of Trade Marks
Trade Marks Registry, Chennai	Mr. M. Habibullah, Examiner of Trade Marks
Trade Marks Registry, Ahmedabad	Mr. Sikander Singh, Examiner of Trade Marks

They shall be responsible and accountable for the files available in the record room. Any file moved out of the record room has to be accounted and brought back to the concerned place in their respective location on return from the concerned section. No unauthorized person including Registry official shall have access to the record room.

A physical audit of all files in the record room shall be undertaken by the record In Charge every **three months** and by the Head of Office once in every **six months**, and both shall report on the audit to the Controller General. Record In Charge shall also take necessary steps to reconstruct the missing files based on the digital data available on the system, journal publications and wherever possible requisitioning it from the registered proprietor.


16/3/11
(P.H.Kurian)
Controller-General of Patents, Designs & Trade Marks

- Copy to :
1. All concerned
 2. Head of Office, TMR, Mumbai, Delhi, Kolkata, Chennai, Ahmedabad
 4. Office order file



22/3/11