



## COMPETITION COMMISSION OF INDIA

Case No. 39 of 2023

### In Re:

**Rajiv Rai Sachdev**

S/o Gulshan Sachdev

J-88, 3rd Floor, Kalkaji, New Delhi – 110 019.

**Informant**

### And

**Procter & Gamble Hygiene and Health Care Limited**

P&G Plaza, Cardinal Gracias Road, Chakala, Andheri East,

Mumbai, Maharashtra – 400 099.

**Opposite Party No. 1**

**The Procter & Gamble Company, USA**

#1 Procter & Gamble Plaza,

Cincinnati, OH 45202, United States.

**Opposite Party No. 2**

### CORAM

**Ms. Ravneet Kaur**

**Chairperson**

**Mr. Anil Agrawal**

**Member**

**Ms. Sweta Kakkad**

**Member**

**Mr. Deepak Anurag**

**Member**

### ORDER UNDER SECTION 26(2) OF THE COMPETITION ACT, 2002

1. The present Information has been filed by Shri Rajiv Rai Sachdev ('Informant') under Section 19(1)(a) of the Competition Act, 2002 (the 'Act') against Procter & Gamble Hygiene and Health Care Limited ('OP-1') and The Procter & Gamble Company, USA ('OP-2') (together the 'OPs') alleging contravention of the provisions of Section 4(2)(c) of the Act.
2. The Informant is the promoter of a start-up company Advantage Nature, a unit of Advantage Television Pvt. Ltd. It is stated that with a vision to create sustainable textile products with comprehensive herbal hygiene function, the Informant invented a disruptive green technology *i.e.* "Process of dyeing and processing a natural textile



*products using natural dyes/ herbs alongside Neem and Tulsi*” called ‘*Enliven*’. The said technology was duly patented by the Informant in India, US and Europe and many more fresh patents are also pending across the globe filed through World Intellectual Property Organisation (‘WIPO’) route in this domain. As per the Information, the prime vision and business model of the Informant is to collaborate/ license *Enliven* to other companies having global presence and as such, he has been promoting the application of his patented technology in all kinds of garments and textile products.

3. OP-2, an American multinational company founded in 1837, is a consumer goods corporation headquartered in Cincinnati, Ohio. It is stated to specialise in a wide range of personal health/ consumer health and personal care & hygiene products, including Sanitary Pads (manufacturing and selling) under the brand name ‘Whisper’. The Indian subsidiary of OP-2 is OP-1, having its office/ establishment at Mumbai, Maharashtra.
4. As per the Informant, in 2018, he learnt about an initiative of the OPs “*PG Connect + Develop*”, whereunder the OPs, through their portal [www.pgconnectdevelop.com](http://www.pgconnectdevelop.com), invited applications from techno-innovators like the Informant, who desired to partner with the OPs, to make their submissions to the OPs for development of innovative products. The Informant stated that under the OPs’ said program, he filed his submissions on 18.05.2018 with the title “*Functional Herbal Hygiene Bio Finishes for Sanitary Pads & Diapers for Adults & Kids*”. As per the Informant, he explained to the OPs details about the beneficial hygiene and wellness properties of neem, its unique features, and the benefits it offers relative to existing solutions both in terms of P&G’s target customers and mother earth along with patent details in the name of the Informant, and applicability of the same upon the products of P&G *i.e.* Sanitary Pads used by females and Diapers used by kids as well as adults.
5. As per the Informant, the submission of the Informant was duly acknowledged by the OPs *vide* e-mail dated 18.05.2018. However, the OPs, *vide* e-mail communication dated 02.08.2018, communicated to the Informant that they do not wish to pursue his submission currently, citing that “*Even such a large company as P&G must make strategic decisions regarding which opportunities we pursue. Regardless of its merit, we may find that a submitted technology, product, package, or other innovation is not a*



*fit for our current needs or strategies. Typically, we are not at liberty to provide detailed reasons for these decisions.”*

6. The Informant stated that post 2018, he went on to pursue his dream of using his patented technology at commercial level and kept approaching other market players in the field of textiles and hygiene products with functional herbal hygiene. One of such players “*Peter England*”, a brand of Aditya Birla Fashion and Retail Ltd., in 2020, launched its products treated with *Enliven* and duly acknowledged and tested the benefits of the Informant’s green technology on its gamut of textile products.
7. As per the Informant, in October 2021, the Informant came across a new type of Sanitary Pads launched by the OPs namely “*Whisper ultra clean*” with the description “*New with Herbal Oil*” and “*Our No. 1 Hygienic Protection*”. The Informant alleged that the said product has exactly the same claims, features and benefits which were offered by the Informant’s submission dated 18.05.2018 to the OPs. Further, as per the Informant, the new product of the OPs, apart from this description, also contains upon its packaging pictorial view of “*Neem Leaves*” which makes it clear that the said product is treated with “*Herbal Oil and extracts of Neem*”. As per the Informant, the product packaging itself of “*Whisper ultra clean*” is sufficient to adduce that the said product is subjected to a particular process or treatment with the help of herbal/ neem oil or extracts to make it No. 1 in hygiene protection.
8. As per the Informant, he had, under the P&G Connect + Develop program, accepted the offer proposal of P&G and made his submissions to treat sanitary pads and diapers with hygiene and herbal properties on a non-confidential basis, only for the specific purpose of evaluation of his submission by P&G for partnering/ collaboration, according to the terms and conditions mentioned under the program. Under their technology/ innovation submission program, the OPs had mandated compulsory disclosure without signing any non-disclosure agreement (‘NDA’) by the participants. The terms and conditions stated that the “*non-confidential basis*” was only for the purpose of expediting the evaluation process of the innovations.
9. However, the Informant alleged that from the product being sold by the OPs, it is evidently clear that the OPs misused the information/ idea shared by the Informant and they failed to confirm to their terms and conditions conveyed through



www.pgconnectdevelop.com wherein the OPs committed that “P&G uses this information to communicate with you about your submission only not for any other purpose without your express approval”. As per the Informant, the OPs have used the information/ idea of the Informant without his consent or any agreement whatsoever. As per the Informant, submission made “non-confidential basis” solely for the purpose of evaluation does not give P&G the rights to use the submission and cheat or take advantage of innovators like the Informant. The Informant stated that while replying to the Informant *vide* e-mail dated 02.08.2018, the OPs had nowhere mentioned that the proposed solution is already known to them or that they already have work in progress in the area encompassed by the submission or conveyed any other doubts about the efficacy of Informant’s technology or patent as expressly mentioned in the pre-defined terms and conditions of the Connect + Develop program.

10. Further, the Informant submitted that in 2020, Aditya Birla Fashions and Retail Ltd. gave an official press release of Peter England Neem Tulsi Collection Apparel and Mask. As per the Informant, after going through Aditya Birla Fashion and Retail Limited and the Informant’s promotional material, the OPs realised the true potential of the Informant’s internationally patented green technology, which was already shared by the Informant with them in 2018 and accordingly, they launched their product Whisper ultra clean sanitary pads in a big way in 2021, after stealing the Informant’s vision document with creative ideas brochure. This, as per the Informant, amounts to abuse of dominant position by the OPs in contravention of Section 4(2)(c) of the Act *i.e.* indulging in practices resulting in denial of market access to the Informant. The Informant submitted that using their dominant power, unethical aid and deceptive business practices, the OPs have ousted the Informant at the very inception, from bringing in the use of his innovative technology applied upon sanitary pads segment of the products. By putting the technology of the Informant to commercial use in such a deceptive way, the OPs became the first market player to bring in such a product with over 50% market share in the relevant market of sanitary pads both geographically and revenue wise, meaning thereby that the Informant has lost the first edge to collaborate and bring into the relevant market such product despite being the inventor/ innovator of such technology with duly registered patents in his name.



11. The Informant alleged that it is the *modus operandi* of P&G's Connect + Develop program to wilfully collect and compile innovation data of techno-innovators like the Informant by fraudulently luring and inducing them, only to compliment and add value to their own products and business and for their own commercial exploitation.
12. The Informant also put on record certain correspondences exchanged between himself and the OPs as well as mentioned about a criminal complaint filed before the Superintendent of Police, Solan, Himachal Pradesh which was stated to be pending.
13. Citing the above facts and making the aforesaid allegations, the Informant, *inter alia*, prayed the Commission to initiate an investigation/ inquiry under Section 26(1) of the Act against the OPs for violation of the provisions of the Act, and pass remedial orders against the OPs by way of restraining them from manufacture and sale of impugned products "*Whisper – ultra clean with Herbal Oil*" along with grant of compensation to the Informant herein.
14. The Informant also sought interim relief from the Commission to, *inter alia*, restrain the OPs from manufacturing, selling and distributing the product "*Whisper - Ultra Clean with Herbal Oil*" in the territory of India and other relevant countries till passing of final order in the matter and to direct the OPs to produce before the Commission the process and method of manufacture of the alleged product in question.
15. The Commission, upon consideration of the above Information and the documents annexed therewith in its ordinary meeting held on 22.05.2024, sought comments of the OPs thereupon and the certain additional information from the Informant.
16. In response to the above, the Informant filed its reply on 10.06.2024, *inter alia*, stating that the Informant has not filed any patent infringement suit against the OPs as the present case is distinct from normal patent infringement cases.
17. On the other hand, the OPs filed their comments on 12.06.2024 and 24.06.2024, stating, *inter alia*, as follows:
  - 17.1 The Informant has not come before the Commission with clean hands and is indulging in forum shopping;
  - 17.2 The Informant submitted its non-confidential information ostensibly protected by a patent for dyeing textiles with Neem and Holy Basil Extract to the OPs voluntarily.



The OPs declined the Informant's proposal under binding terms and conditions which the Informant had accepted while making its submission.

17.3 The Informant's patent is a process patent and the OPs have not used or applied the Informant's patented process. In India, use of Neem and its properties *etc.* have been well known for thousands of years.

17.4 Sanitary napkins are not textiles and the process of the OPs to treat their sanitary napkins is quite different from the patented process of the Informant. The formulation used for treatment is also different than Neem and Holy Basil Extract used in the Informant's patented process.

17.5 The matter does not fall within the scope of Section 4 of the Act which deals with abuse of dominant position by imposition of unfair or discriminatory conditions or price in the purchase or sale of goods. The allegations in the present matter do not pertain to sale or purchase practices of the OPs' Whisper products.

17.6 The Informant has been unable to prove dominance of the OPs in the Sanitary Pads market. The Informant has failed to show any harm to consumers or competition as a result of the action of the OPs. The OPs have also not restricted the Informant from collaborating with other sanitary napkin manufacturers or with companies in other industries.

18. In its Ordinary Meeting held on 16.07.2024, the Commission considered the Information along with its Annexures, the additional information provided by the Informant, and the comments of the OPs on the Information, and decided to pass an appropriate order in the matter.

19. The primary grievance of the Informant in the present matter seems to be the launch of "Whisper ultra clean" Sanitary Pads by the OPs in the Indian market, which product, as per the Informant, has exactly the same claims, features and benefits, which the Informant had suggested to the OPs *vide* his submission dated 18.05.2018 under PG Connect + Develop program. As per the Informant, such information/ idea to develop the OPs' sanitary pads and diapers by incorporating Informant's green technology *Enliven* therein was shared by the Informant with the OPs without signing an NDA under the terms and conditions of the said program, as per which the OPs were not to use the information shared for any purpose without express approval of the Informant.



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However, the OPs used the said idea to incorporate herbal technology in their well-known sanitary pad brand ‘Whisper’, without authorisation from the Informant.

20. As per the Informant, the OPs are a dominant player in the sanitary pad market and as such, their such conduct of wilfully collecting and compiling innovation data of technologists like the Informant by fraudulently luring and inducing them through P&G Connect + Develop, and thereafter using their idea in its own products without collaboration with/ permission of the innovator, amounts to abuse of dominant position by the OPs in terms of Section 4 of the Act.
21. As per the Informant, such conduct of the OPs resulted in denial of market access to the Informant to the sanitary pads market as he lost the first edge to collaborate and bring into the market this technology despite being the inventor/ innovator of such technology with duly registered patents in his name.
22. For the purposes of examining the allegations of abuse of dominance under Section 4 of the Act, the Commission adopts the following three-pronged approach:
  - (a) Defining a ‘relevant market’;
  - (b) Assess whether the OP is in a position of dominance in the delineated relevant market; and
  - (c) Determine if the alleged conduct of the OP is abusive in nature.
23. In the present case, the Informant has raised issues concerning the product “Sanitary Pad”. A sanitary pad is a female hygiene product used during menstruation or in other situations where it is necessary to absorb blood flow. They are generally classified into two categories: disposable pads, which are designed for single use, and reusable cloth pads, which can be washed and reused. This distinction is significant as it reflects different physical characteristics of the products, consumer preferences and usage patterns. Additionally, other female hygiene products, such as tampons and menstrual cups, serve a similar purpose but differ in form and method of use. Sanitary pads are worn externally, providing a different experience in terms of comfort and hygiene. In contrast, tampons and menstrual cups are used internally, catering to different consumer preferences and requirements. Therefore, considering these factors in terms of factors listed under Section 19(7) of the Act, the relevant product market in this context appears to be the “market for disposable sanitary pads”. This market segmentation is



- crucial for addressing competition concerns and understanding the competitive landscape within the female hygiene products industry.
24. As far as relevant geographical market is concerned, there appear no trade or linguistic barriers, or local specification requirements, or national procurement policies or constraint(s) of any other factor stated under Section 19(6) of the Act, on sale of the same across India. As such, the relevant geographic market in the present matter seems to be “*India*”. Therefore, the relevant market in the present matter is delineated as the “*market for disposable sanitary pads in India*”.
  25. The next step to which the Commission adverts is the assessment of position of dominance of the OPs in the delineated relevant market.
  26. In the Information, the Informant, citing a ‘Eurometer International’ study, has stated the OPs to be dominant player in the relevant market of sanitary pads in India with 54.8% market share.
  27. From the information available in the public domain<sup>1</sup>, it is noted the said study “*Euromonitor International Report on Passport, Sanitary Protection in India, Category Briefing, (2012)*” is of the year 2012. As per the same, the leading brands in the Indian market are P&G brand Whisper (54.8% market share), J&J brands Stayfree and Carefree (30.8% and 1.4% market share respectively), and Kimberly-Clark Lever Ltd brand Kotex (3.4% market share). Almost 92% of the market for feminine hygiene products is held by multinationals like P&G, J&J, and Kimberly-Clark Lever Ltd.
  28. However, as per the other latest information available in the public domain<sup>2</sup> for the year 2022 as extracted below, although the OPs seem to have a large market share in the delineated relevant market, they do not strictly emerge as a dominant player in the said market who would be able to “*operate independently of competitive forces prevailing in the relevant market*” or “*affect its competitors or consumers or the relevant market in its favour*”:

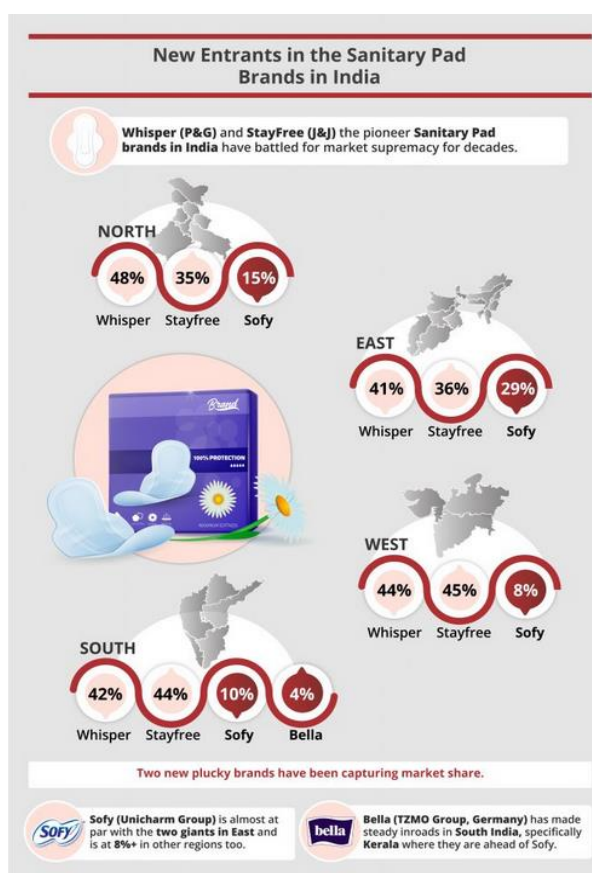
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<sup>1</sup> Reference to the study found at:

[https://www.sciencedirect.com/science/article/pii/S1877042814039494/pdf?md5=c54145e1543905be66d6a756872b6dbb&pid=1-s2.0-S1877042814039494-main.pdf&\\_valck=1](https://www.sciencedirect.com/science/article/pii/S1877042814039494/pdf?md5=c54145e1543905be66d6a756872b6dbb&pid=1-s2.0-S1877042814039494-main.pdf&_valck=1), last accessed on 02.08.2024.

<sup>2</sup> <https://botreesoftware.com/sanitary-pad-brands-and-their-market-share/>, last accessed on 02.08.2024.





Multinational conglomerate Johnson and Johnson's brand Stayfree seems to be a close competitor equivalent to the OPs in the delineated relevant market having comparable economic resources.

29. As such, in the absence of dominant position of the OPs in the delineated relevant market, the allegations of abuse made against the OPs need not be examined by the Commission.
30. Be that as it may, based on the information available on record, the Commission is of the view that the alleged conduct cannot be considered as an abuse of dominant position by the OPs. The Informant has not provided any evidence indicating that the OPs used the Informant's information to develop and launch their products. Additionally, there is no evidence suggesting that the OPs prevented the Informant from introducing a similar product into the market. Furthermore, there is no record of the Informant having a similar product in development that was close to being launched and accordingly the Informant lost the first-mover advantage due to OPs' product



launch. Moreover, it is not demonstrated that having a first-mover advantage is crucial in this market.

31. As such, for the reasons stated above, there does not seem to be any abuse of dominant position by the OPs in the delineated relevant market.
32. In view of the above, the Commission is of the considered opinion that no *prima facie* case of contravention of the provisions of Section 4 of the Act is made out against the OPs in the present matter. Hence, the matter is directed to be closed in terms of the provisions contained in Section 26(2) of the Act. All pending applications stand disposed of accordingly.
33. The Secretary is directed to communicate the same to the Informant and the OPs, accordingly.

Sd/-  
**(Ravneet Kaur)**  
**Chairperson**

Sd/-  
**(Anil Agrawal)**  
**Member**

Sd/-  
**(Sweta Kakkad)**  
**Member**

Sd/-  
**(Deepak Anurag)**  
**Member**

**New Delhi**  
**Date: 09.08.2024**