To,

Mr. Raghav,

Jubilee Hills,

Hyderabad.

Sub: Legal opinion on the registrability of your proposed trademark 'Wamishq'

Dear Raghav,

Thank you for reaching out to us for your intellectual property (IP) related concern. We are always committed to assisting you, to the best of our abilities, in protecting your IP assets.

This letter is in continuance of our previous interaction and contains our informed legal opinion on whether your proposed trademark ("**Wamishq**") is eligible for statutory registration under the law governing trademarks in India viz. The Trade Marks Act, 1999. Please be informed that the following opinion is specific to your query and is to be treated as confidential.

As per your instructions and requirement, we have explored the possibility of registration for the following criteria:

♦ <u>Mark/Brand</u>: Wamishq

- ♦ <u>Mark Type</u>: Wordmark
- ♦ <u>Nature of Use</u>: Proposed to be used
- ◊ <u>Nature of Product</u>: Goods
- ♦ <u>Class in Which Registration Sought</u>: Class 14 (NICE classification)
- ♦ <u>Type of Goods</u>: Jewellery

<u>Summary of our opinion</u>: After a careful perusal we are of the view that the proposed trademark is <u>liable to be objected to/rejected</u> by the Trademark Examiner and/or the Registrar primarily due to <u>its deceptive and phonetic similarity</u> with the popular and reputed trademark in the same Class namely, "<u>Tanishq</u>" (Proprietor: Titan Company Ltd., promoted by the Tata Group) and is therefore <u>unlikely to succeed</u> in getting a Class 14 trademark registration.. Even

if we hypothetically assume that the Registrar might fail to notice the deceptive similarity, the Titan Company is almost certain to oppose it after its publication in the Trade Marks journal.

Detailed Opinion and Its Reasoning

Determining Eligibility for Registration: The law that regulates trademark registration in India (Trade Marks Act of 1999) stipulates that in order to be registered, a mark must not only comply with the affirmative eligibility conditions prescribed by law but must also not be barred by any of the laid down restrictions. One such restriction is that of "deceptive similarity" which has been defined to mean a mark which so nearly resembles another existing mark as to be "likely to deceive or cause confusion" to consumers.

Trademark law in India explicitly prohibits registration of a mark which bears a similarity with an existing trademark and is proposed to be registered for similar or identical goods or services as that of the said existing trademark.

In our opinion "Wamishq" is deceptively similar to an existing trademark "**Tanishq**" which is owned by Titan Company Ltd., a company promoted by the Tata Group since 1984. "Tanishq" currently holds **nine** valid trademark registrations in Class 14 (jewellery). (Refer to Report-1 in the 'Appendix' at the end)

 <u>Deceptive Similarity</u>: The rule of not allowing registration of a subsequent similar mark which is to be used for identical or similar goods or services is based on that foundational principle of trademark law which states that the trademarks should help distinguish and differentiate products rather than confuse.

The Registrar is most likely to raise an objection on grounds of deceptive similarity if an applicant is apparently seeking to derive benefit from the goodwill of an existing trademark, in the same class, by coining a deceptively similar mark. The likelihood of rejection increases if the deceptive similarity is with a reputed trademark with a pan-India presence. The mark that you propose to register ("Wamishq") in Class 14 for jewellery is deceptively similar to an existing reputed trademark in the same Class, "Tanishq", which is very popular for jewellery in several states of India about which I am sure you would also be well aware.

In our opinion, "Wamishq" is deceptively similar to "Tanishq" in two ways:

- (i) *orthographically* (in terms of spelling) and
- (ii) *phonetically* (in terms of pronunciation or how a word is spoken) and thus, is unlikely to succeed in its attempt at registration in Class 14 (jewellery).

Both the marks have an <u>orthographic similarity in terms of how they are spelt</u>. Both marks end with the common part "*ishq*" which are 4 out of the 7 letters in the spelling of the respective marks.

Both the marks are deceptively <u>similar in how they are pronounced and how the listener</u> <u>may comprehend</u> what was uttered.

There are several judgements of courts from across the country which have affirmed that such deceptively similar marks cannot be registered as it would allow unscrupulous proprietors to benefit from the market goodwill of existing trademarks and may also harm the latter's reputation by selling counterfeit and sub-standard goods or services.

A *Few Miscellaneous Hurdles*: Please note that, in our opinion, the points stated above and before this are the primary obstacles to registration of "Wamishq" in the desired class. There are a few other hurdles (in terms of pre-existing trademarks in class 14, based on the same principles highlighted above such as 'similarity' and 'likelihood of causing confusion') that an online trademark search on the 'E-Registry' has revealed. Since the search is an automated one, some of the results are not as relevant as others. We believe these are less significant and do not pose any serious obstacle to your desired trademark registration. We are confident that these smaller hurdles can be removed by us if at all they are raised by the Registrar's office. We are listing these smaller hurdles below (in **Table 1**) for your reference. We reiterate that in our opinion we are unlikely to receive a serious challenge from any of these. <u>The</u> <u>primary obstacle continues to be "Tanishq</u>".

Search Type: Phonetic					
Class: 14					
Key Word: "Wamishq"	5 records found				
Key Word: "Wam"	9 records found				
Key Word: "ishq"	10 records found				
(Refer to)	Report-2A, 2B & 2C in the 'Appendix' at the end'				

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The wordmark search (in **Table 2**) though does not list any matching mark or "Tanishq" as a clashing/similar mark, we are of the opinion that "Tanishq" is the primary obstacle. (Refer to Report-1 in the 'Appendix' at the end)

|--|

Search Type: Wordmark						
Key Word: "Wamishq"						
Cl	ass: 14					
Trademarks "start with" Wamishq	0 matching marks found					
Trademarks "contains" Wamishq	0 matching marks found					
Trademarks "match with" Wamishq	0 matching marks found					

Concluding Remarks/Advice:

On the basis of the explanation and legal reasoning given above, we are of the opinion that "Wamishq" is quite unlikely to succeed in its attempt at obtaining a statutory registration under Class 14 for jewellery.

Though, as a proprietor, you alone are the best person to know what will suit your business and trade interests, we recommend that you consider opting for a different and a more distinctive mark as a trademark. As explained above, any mark which does not resemble an existing trademark has a good probability of registration. You may consider suitably modifying the current mark or evolving a new mark altogether.

However, if after reading our view you would still prefer proceeding with the registration process for "Wamishq", we are open to that option as well. We are always committed to striving to achieve what our clients desire. We assure you that we will leave no stone unturned in our attempts to try and get the desired mark registered despite the obstacles in our path. We are always ready to help you with our robust legal support for whatever decision you may make.

Best Wishes and Regards,

NTMC2020031.

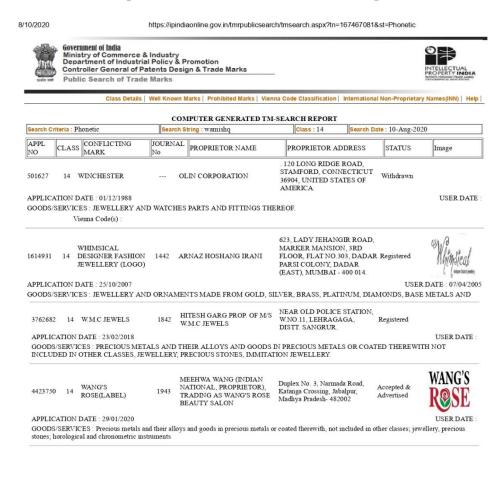
APPENDIX

Report-1: "Tanishq" Trademarks

Public Search of Trade Marks Description Class Details Well Known Marks Prohibited Marks Vienna Code Classification International Non-Proprietary Names COMPUTER GENERATED TM-SEARCH REPORT Search Criteria: Wordmark Search String: tanishq Class: 14 Search Date: 10-Aug-2020 APPL CLASS CONFLICTING JOURNAL PROPRIETOR NAME PROPRIETOR ADDRESS STATUS Ima 643126 14 TANISHQ 9999 TITAN COMPANY LIMITED 3, SIPCOT INDUSTRIAL COMPLEX, HOSUR - 635 126, Registered TAMIL NADU. 3, SIPCOT INDUSTRIAL COMPLEX, HOSUR - 635 126, Registered TAMIL NADU. 646019 14 TANISHQ 1310 TITAN COMPANY LIMITED 3, SIPCOT INDUSTRIAL COMPLEX, HOSUR - 635 126, Registered TAMIL NADU. 74	
COMPUTER GENERATED TM-SEARCH REPORT Search Criteria : Wordmark Search String : tanishq Class : 14 Search Date : 10-Aug-2020 APPL NO CLASS CONFLICTING MARK JOURNAL No PROPRIETOR NAME PROPRIETOR ADDRESS STATUS Ima 643126 14 TANISHQ 9999 TITAN COMPANY LIMITED 3, SIPCOT INDUSTRIAL COMPLEX, HOSUR - 635 126, Registered TAMIL NADU. OPPLICATION DATE : 17/10/1994 US GOODS/SERVICES : watches, clocks, timepieces, horological and chonometric instruments, accessories and parts thereof, jewellery, precious m thier alloys and goods in precious metals and quoted. 3, SIPCOT INDUSTRIAL COMPLEX, HOSUR - 635 126, Registered TAMIL NADU. 74 646019 14 TANISHQ 1310 TITAN COMPANY LIMITED 3, SIPCOT INDUSTRIAL COMPLEX, HOSUR - 635 126, Registered TAMIL NADU. 74 646019 14 TANISHQ 1310 TITAN COMPANY LIMITED 3, SIPCOT INDUSTRIAL COMPLEX, HOSUR - 635 126, Registered TAMIL NADU. 74 GOODS/SERVICES : watches, clocks, timepieces, horological and other chronometric instruments, accessories and parts thereof jewellery, preci and their alloys and goods in precious metals and quoted therewith included in class -14. US	
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and their alloys and goods in precious metals and quoted therewith included in class -14.	JSER DATE :
	ious metals
729274 14 TANISHQ 1327 TITAN COMPANY LIMITED ^{'Integrity' No.193, Veerasandra,} Electronics City P.O., Off Hosur Main Road, Bangalore – 560 100, Karnataka, India.	
APPLICATION DATE : 13/09/1996 US	JSER DATE :
GOODS/SERVICES : PRECIOUS METALS AND THEIR ALLOYS AND GOODS IN PRECIOUS METALS OR COATED THEREWITH (EX CUTLERY, FORKS AND SPOONS), JEWELLERY, PRECIOUS STONES, HOROLOGICAL AND OTHER CHRONOMETRIC INSTRUMEN	
NO. 3, SIPCOT INDUSTRIAL 1195629 14 TANISHQ SOLO 1327 TITAN INDUSTRIES LIMITED COMPLEX, HOSUR- 635 126 Registered TAMIL NADU. Registered	
APPLICATION DATE : 29/04/2003 US	JSER DATE :
GOODS/SERVICES : WATCHES, CLOCKS, TIMEPIECES, HOROLOGICAL AND CHRONOMETRIC INSTRUMENTS, ACCESSORIES A THEREOF.	

1195630	14	TANISHQ BANDHAN	1328	TITAN INDUSTRIES LIMITED	NO. 3, SIPCOT INDUSTRIAL COMPLEX, HOSUR- 635 126 TAMIL NADU.	Registered
APPLICA	TION	J DATE : 29/04/2003				USER DATE : 29/04/2003
THEREO	F, JE			EPIECES, HOROLOGICAL AND AND THEIR ALLOYS AND GOO		NTS, ACCESSORIES AND PARTS O COATED THEREWITH,
1345538	14	TANISHQ THE JEWELLER	1336	TITAN COMPANY LIMITED	NO. 3, SIPCOT INDUSTRIAL COMPLEX, HOSUR - 635 126, TAMIL NADU.	Registered
APPLICA	TION	J DATE : 18/03/2005				USER DATE : 01/09/2000
				EPIECES, ACCESSORIES AND I IETALS AND COATED THEREW		PRECIOUS METALS AND
2281221	14	fq TEEN DIAMONDS by TANISHQ	1739	TITAN INDUSTRIES LIMITED	TOWER A, GOLDEN ENCLAVE, HAL AIRPORT ROAD, BANGALORE-560017.	Registered
APPLICA	TION	J DATE : 10/02/2012				USER DATE : 08/02/2012
		ICES : JEWELRY AND P	RECIOU	IS STONES		
		Vienna Code(s) : 270517,	270523			
3742226	14	Tanishq Symbol of Strength with several distinctive features in a label	1859	TITAN COMPANY LIMITED	'Integrity' No. 193, Veerasandra, Electronics City P.O., Off Hosur Main Road, Bangalore - 560100	Registered
APPLICA	TION	DATE : 01/02/2018				USER DATE : 01/07/2017
GOODS/S	SERV	ICES : Jewelry & Precious	stones			
		Vienna Code(s) : 250115,	261325,	270501, 261102		
3742227	14	Device of diamond with Diamond sale 20% off with Tanishq logo	1900	TITAN COMPANY LIMITED	Titan Company Limited 'Integrity' No. 193, Veerasandra, Electronics City P.O., Off Hosur Main Road, Bangalore - 560100	Registered
		DATE: 01/02/2018				USER DATE : 20/01/2018
GOODS/S	SERV	ICES : Jewelry & Precious	stones			
		Vienna Code(s) : 250115,	260112,	170201, 270701, 270501, 290112		

Report 2A: Phonetic Search for "Wamishq"



4575305 14 WINCE QUARTZ WE APPRECIATE YOUR TIME WITH WINCE

YOUR --- JAVED KHAN

207, HARMAIN MANZIL, MHM ROAD , NEAR UMAR Send To Vienna MASJID, KAUSA MUMBRA, Codification THANE 400612



APPLICATION DATE : 18/07/2020

GOODS/SERVICES : Watches, wall clocks, time pieces, Artificial Jewellery, Fashion Jewellery & Jewellery Omaments

Report 2B: Phonetic Search for "Wam"

8/10/2020

https://ipindiaonline.gov.in/tmrpublicsearch/tmsearch.aspx?tn=167467538&st=Phonetic

			Class Details	Well Knor	wn Marks Prohibited Marks Vier	na Code Classification	Internationa	I Non-Proprieta	ry Names(INN) Help
Course Course	te te	Disco			COMPUTER GENERATED TM			10 10 20	20
Search Cr	iteria :	1			ch String : wam	Class : 14		te : 10-Aug-20	20
APPL NO	CLAS	SS MA	NFLICTING RK	JOURN No	PROPRIETOR NAME	PROPRIETOR AD		STATUS	Image
933632	14	WIN		9999	RAVI SHAMNANI	INDRA NAGAR WA SINDHI DHARAMS 5, CIVIL LINES, SA 001, (M. P.).	HALA, 150	Removed	
	SERVI	CES:1	: 21/06/2000 nanufacturer wat Code(s) :	tch, watch o	cases, watch straps.			USE	R DATE : 01/01/199
1547462	14	WIN			WIN TRENDZ EXIM PVT. LTI	LOTIA PALACE, 1S D. LINKING ROAD, KI (WEST), MUMBAI -	HAR	Abandoned	
GOODS/S	SERVI ED IN	CES : I CLAS	SES; JEWELLE		THEIR ALLOYS AND GOODS OUS STONES; HOROLOGIC AN			TED THEREW	
3240781	14	Woma	U.	1768	NIKHIL DOSHI	ROOM. NO. 26, D.M CHAWL NO. 1, MAT STATION ROAD, B. MATUNGA (C.R.), M 400019	UNGA A KHIMJI,	Registered	Woma
GOODS/S	SERVI ED IN	CES : I			THEIR ALLOY'S AND GOODS ", PRECIOU'S STONES, HOMOL		JOMETRIC	TED THEREW	
3333576			: 09/08/2016	1777	SIDDHANT ANEJA	Nagar New Delhi-110		Registered	DATE - 02/02/201
			Watches And Jew	vellery				USE	R DATE : 02/02/201
GOODS/S	SERVI	CES:			NITESH WADHWANI	64-B, PREM NAGAF MANIK BAUG ROA INDORE-452 004 [M	D,	Registered	
GOODS/S 3403820 APPLICA	14	CES : ' W WI DATE	Watches And Jew NWAY : 05/11/2016	1777	NITESH WADHWANI oys; jewellery, precious stones; ho	MANIK BAUG ROA INDORE-452 004 [M	D, [.P].	Registered	WINKER R DATE : 05/11/201
GOODS/3 3403820 APPLICA GOODS/3	14 ATION SERVI	CES : ' W WI DATE	Watches And Jew NWAY : 05/11/2016 recious metals a	1777		MANIK BAUG ROA INDORE-452 004 [M rological and chronomet WOOUM.4, KHERU COMPLEX, OPP- SI CIVIEMA, SHAHAL/ AHMEDABAD-3800	D, (P]. tric instrume WALA IALIMAR AM,	Registered USE nts included in Registered	WINKER R DATE : 05/11/201
GOODS/3 3403820 APPLICA GOODS/3 3446687 APPLICA	14 ATION SERVI 14 ATION	W WI DATE CES : 1 WOO DATE	Watches And Jew NWAY : 05/11/2016 recious metals a	1777 Ind their all 1782	oys; jewellery, precious stones; ho ANSARI MOHAMMEDAASIM	MANIK BAUG ROA INDORE-452 004 [M rological and chronome WOOUM.4, KHERU COMPLEX, OPP- SF CINEMA, SHAHALI-	D, (P]. tric instrume WALA IALIMAR AM,	Registered USE nts included in Registered	R DATE : 05/11/201 class 14.
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GOODS/ 3403820 APPLICA GOODS/ 3446687 APPLICA GOODS/ 4004180 APPLICA	14 14 14 14 14 14 14 14 14 14 14 14 14	CES: 1 W WI DATE CES: 1 WOO DATE CES: 1 WEIN DATE CES: 1 N 1894	Watches And Jew NWAY : 05/11/2016 Precious metals a UM : 30/12/2016 WRIST WATCH I : 21/11/2018 Precious metals a	1777 and their all 1782 ES 1880 and their all No. 93- 99, one piece	oys; jewellery, precious stones; ho ANSARI MOHAMMEDAASIN SAMIMBHAI ICONIC FASHION RETAILING PRIVATE LIMITED oys; Jewellery, precious and semi- Protection Granted	MANIK BAUG ROA INDORE-452 004 [M rological and chronome WOOUM,4, KHERU COMPLEX, OPP-51 CONEMA,5 NAHAL/ AHMEDABAD-3800 GUJARAT 601, 6TH FLOOR, G 5 HEIGHTS, SB-154, 7 ROAD, JAIPUR – 30 RAJASTHAN	D, LP]. tric instrume WALA IALIMAR M, 228, STATE ANGA CONK 12015 gical and chr	Registered USE: nts included in Registered USEI Registered	R DATE : 05/11/201 class 14.

10/2020	https://ipindiaonline.gov.in/tmrpublics	earch/tmsearch.aspx?tn=16746753	88&st=Phoneti	ic
	Fujian			
	Province			
	China			
APPLICATION DATE				
: 10/12/2018				
	tals, unwrought or semi-wrought; jewelry boxe			
electronic calendar; clocks; wristwa		.,, .,,		
		L-38, TRICITY PLAZA PEER MUCHALLA, ZIRAKPUR, DISTT MOHALI, PUNJAB 140603	Objected	WWINNI
electronic calendar; clocks; wristwa	Atches; watch bands. DHAWALA ONLINE SOLUTIONS PRIVATE LIMITED	L-38, TRICITY PLAZA PEER MUCHALLA, ZIRAKPUR, DISTT MOHALI, PUNJAB	Objected	ER DATE : 02/06/2012

Report 2C: Phonetic Search for "ishq"

0/2020			https://ip	indiaonline.gov.in/tmrpublicsearc	h/tmsearch.aspx?tn=1	1674685398	st=Phonetic	
	Min Der Cor	criment of India istry of Commerce partment of Indust itroller General of plic Search of Tra	rial Policy Patents D	y & Promotion esign & Trade Marks				INTELLECTUAL PROPERTY INDIA
		Class Detail	s Well Know	wn Marks Prohibited Marks Vienr	a Code Classification	International	Non-Proprietar	y Names(INN) He
Search Crit	eria :	Phonetic		COMPUTER GENERATED TM- ch String : ishq	SEARCH REPORT	Search Da	te : 10-Aug-20	20
ADDI			JOURN	AT				
NO	CLAS	S MARK	No	PROPRIETOR NAME	PROPRIETOR AD	DRESS	STATUS	Image
1147330		ISHI S	9999	SUASHISH DIAMONDS LTD.	MEHTA MAHAL, 11 FLOOR, 15, MATHE OPERA HOUSE, MU 400 004, MAHARAS	W ROAD, JMBAI -	Registered	
GOODS/S	ERVI	DATE : 30/10/2002 CES : precious metals :al and chronometric in Vienna Code(s) :		bys and goods in precious metals or cluded in class 14.	coated therewith, not	included in o	ther classes, je	USER DA' wellery, precious
175442	14	ISHIKA	9999	ANJAL IMMITATION JEWELLERY	761, CHAWL NO. 96 SIDDHARTH NAGA SIDDHARTH HOSP. 16, GOREGAON (W	R, NR. , RD. NO.	Removed	
APPLICAT	TION	DATE : 17/02/2003			MUMBAI-62		USEI	R DATE : 17/02/2
			ellery, precio	us metal and their alloys, goods in p	precious metals or coat	ed therewith	all kinds of jev	vellery, precious
297709	14	ICOOK	1328	ALTICOR INC.	7575 FULTON STRE ADA, MICHIGAN 4 UNITED STATES OF AMERICA.	9355,	Registered	
		DATE : 22/07/2004 CES : CLOCKS, COO	KING TIMI	ERS, KEY FOBS, CORDS FOR K		JND ONE'S	NECK INCLU	USER DAT DED IN CLASS
1829988	14	IC4C'S	1444	SUNRAJ DIAMOND EXPORTS LTD.	1008, PANCHARATI 10TH FLOOR, MAN PARMANAND MAF MUMBAI-400004	Í A	Registered	
		DATE : 16/06/2009						USER DAT
				THEIR ALLOYS AND GOODS I PRECIOUS STONES	N PRECIOUS METAI	LS OR COAT	TED THEREW	ITH, NOT
2435403	14	ISWISS	1789	ICE IP S. A.	3, RUE DES TILLEU ROMBACH, LUXEN		Registered	
GOODS/S	ERVI D IN	OTHER CLASSES, J	EWELLERY	THEIR ALLOYS AND GOODS I , PRECIOUS STONES, HOROLO E REGULATING THE USE OF N.	GICAL AND CHRON	OMETRIC I	TED THEREW	
2435404	14	i-swiss	1781	ICE IP S. A.	.3, RUE DES TILLE ROMBACH, LUXEN	ULS, L-8832 MBOURG	Opposed	
GOODS/S	ERVI D IN	OTHER CLASSES, J	EWELLERY	THEIR ALLOYS AND GOODS I , PRECIOUS STONES, HOROLO E REGULATING THE USE OF N.	GICAL AND CHRON	OMETRIC	TED THEREW	
				TWENTIETH CENTURY FOX	10201, WEST PICO BOULEVARD, LOS	ANGELES	Registered	
2685617	14	ICE AGE	1788	FILM CORPORATION	CALIFORNIA 90035		registered	

2896664	14	ISIKA	1858	P.KAVYA	GUV VIVILASH CHAMBERS, ROAD NO. 14, BANJARA HILLS, HYDERABAD - 500 034, TELANGANA, INDIA	Registered	
APPLICATIO	ON E	ATE: 02/02/2015				USEI	R DATE : 14/11/20
					D PEARLS. DESIGNER .JEWELLI TONES; PRECIOUS STONES; HO		
ps://ipindiaor	nline	gov.in/tmrpublicsearc	h/tmsearc	h.aspx?tn=167468539&st=Phor	netic		
		Test 1	1950		1875, 1ST FLOOR, RANI		IChala
3098774	14	IShake	1758	SHRI. NAVAL KISHORE GAB	A BAGH, DELHI 110034	Registered	плике
							TOUMBE
APPLICAT	ION	DATE : 17/11/2015				USER	DATE : 05/10/201
	RVI	CES : BANGLES & IM	ITATION	EWELLERY, GOLD & SILVER	JEWELLERY SILVER GOLD DIA	MONDS PLATI	NUM PEARLS
GOODS/SE	STC	NES PENDANT CHA	IN LOCKE	ET BRACELET HALL MARK JE	WELLARY SUHAG CHURA INCI	LUDED IN CLA	ASS 14
					NOTIVE AND DOOT OF DEP		Niche.
PRECIOUS		17115.4	1850	FUNNER SETH PRAKASH	KOTWALLY, POST-SADAR,	Registered	
PRECIOUS		IZUSA	1850	FUNNER SETH PRAKASH SETH SARRAF	KOTWALLY, POST-SADAR, AZAMGARH, UTTAR PRADESH, PIN - 276001	Registered	HEUSA
PRECIOUS		IZUSA	1850		AZAMGARH, UTTAR	Registered	HETSA
PRECIOUS	14	IZUSA DATE : 13/04/2018	1850		AZAMGARH, UTTAR	Registered	USER DATE

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