

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
#21
+ W.P. (C) 12505/2009 & CM 10327/2010 (for impleadment)

HALDIRAM INDIA PVT LTD Petitioner
Through: Mr. Amarjit Singh, Advocate.

versus

UNION OF INDIA AND ANR Respondents
Through: Mr. A.S. Chandhiok, ASG with
Mr. Ruchir Mishra, Advocate for R-1 & 2.
Mr. C. Mukund with
Mr. Amit Kasera, Advocates for intervenor/
Applicant in CM No. 10327/2010.

CORAM: JUSTICE S. MURALIDHAR

1. Whether Reporters of local papers may be
allowed to see the order? Yes
2. To be referred to the Reporter or not? Yes
3. Whether the order should be reported in Digest? Yes

ORDER
06.04.2011

1. Is it possible that the Trade Marks Registry ('TMR') in this country can lose over 44,000 of its files and not realise that it has for over five years? Unfortunately, it appears it is. Pursuant to stringent orders by this Court in the present petition, the TMR discovered in February this year that 44,404 files of trademark registrations have gone missing from its five branches in Mumbai, Delhi, Chennai, Kolkata and Chennai. What is disconcerting is that even the TMR has no real answer yet to the many questions that arise: who caused these many files to go missing, when exactly they went missing,

whether these missing files can be recovered and if not, whether they can be reconstructed. The consolation, if any, is that the TMR has placed before the Court a plan of corrective and preventive action which it has promised to sincerely implement. Whether in fact that happens remains to be seen.

2. A brief recounting of the background events is necessary to begin with. The Petitioner, a company having its registered office in New Delhi, stated that the its predecessor-in-interest adopted the trademark HALDIRAM BHUJIAWALA somewhere in 1941-42 in respect of sweets and namkeens and used the mark in the course of trade under the name and style of M/s Chandmal Ganga Bishan. The present proceedings are an off-shoot of the disputes arising from the application No. 285062 made with the Registrar of Trade Marks, New Delhi for grant of registration of the trademark HALDIRAM BHUJIAWALA as represented in a V-shaped logo device in Class 30 on 29th December 1972. On the said application being published in the Trade Marks Journal in accordance with the provisions of the Trade and Merchandise Marks Act 1958, an opposition, numbered as DEL 2106 was filed by a firm M/s. Haldiram Madanlal. On 31st July 1980 the Registrar of Trade Marks ('Registrar') dismissed the opposition DEL 2106 and directed the application No. 285062 to proceed to registration for the entire territory of India except West Bengal. Later the firm M/s. Chandmal Ganga Bishan was dissolved. In 1987 orders were passed by the Registrar for recordal of the names of the sons of late Mr. Moolchand Aggarwal as proprietors of the

W.P. (C) No. 12505 of 2009

aforementioned registered mark. The sons later formed the Petitioner company which was recorded as the proprietor of the mark. The Petitioner states that litigation commenced in December 1991 between the Petitioner's predecessor-in-interest and the family of Mr. Kamla Devi Aggarwal, an ex-partner of M/s. Chandmal Ganga Bishan. In the said proceedings Mr. Kamla Devi Aggarwal claimed to be the registered proprietor of an identical trademark registered under No. 330375 in Class 30. It appears that an opposition CAL 1048 was filed to application No. 284166B filed by M/s. Haldiram Bhujawal to grant of registration of the trademark HALDIRAM MADANLAL BHUJIWALA. The Petitioner filed another application for registration of the trademark HALDIRAM (logo) under No. 559875 in Class 30 which was also opposed by the family members of Rameshwar Lal Aggarwal/Mrs. Kamla Devi Aggarwal and the opposition proceedings were designated as DEL-T-2488, DEL-T-2489, DEL-T-2490 and DEL-T-2515. The Petitioner in 1999 filed CAL 629 for rectification of trade mark No. 330375.

3. It is stated that in the course of the ongoing litigation between the parties, the Petitioner filed the following six requests with the TMR for issuance of certified copies of several documents:

- “a) Request for supply of two sets of certified copies of the documents relating to the filing of registered trademark no. 285062 in class 30.

- b) Request for supply of two sets of certified copies to the documents relating to the filing of registered trademark no. 330375 in class 30.
- c) Request for supply of two sets of certified copies to the documents relating to no. CAL 1048 to application no. 284166 in class 30.
- d) Request for supply of two sets of certified copies to the documents relating to Opposition no. DEL-T-2488 to application no. 559875.
- e) Request for supply of two sets of certified copies to the documents relating to Opposition no. DEL-T-2489 to application no. 559875.
- f) Request for supply of two sets of certified copies to the documents relating to Opposition no. DEL-T-2490 to application no. 558975.
- g) Request for supply of two sets of certified copies to the documents relating to Opposition no. DEL-T-2515 to application no. 559875.”

4. The Petitioner states that when it approached the Office of the Registrar for supply of above certified copies, it was informed that the files relating to application Nos. 285062 in Class 30, Trademark No. 330375 in Class 30, Opposition No. DEL 2106, Opposition No. CAL 1048, rectification petition No. CAL-629, and opposition petitions DEL-T-2488, DEL-T-2489, DEL-T-W.P. (C) No. 12505 of 2009

2490 and DEL-T-2515 were not traceable. The Petitioner's apprehension was that the said files might have been deliberately misplaced and/or concealed in the office of the Registrar and/or destroyed by third parties in collusion with some officials of the TMR. It is in the above context that the present petition was filed for a direction to the TMR to give the Petitioner an inspection of the above files.

5. This Court was informed on 22nd March 2010 that in respect of three of the cases in Delhi records were unable to be traced. As regards two registrations at Kolkata and Mumbai, it was stated that the records "may be available at those offices". Meanwhile Mr. Ashok Kumar Aggarwal filed CM No. 10327 of 2010 seeking impleadment in the present petition. He claimed that since the parties were in litigation, no order should be passed without giving him an opportunity of being heard.

6. On 13th May 2010, learned counsel for the Petitioner contested the statement made on behalf of the TMR that some of the files could not be traced. This Court then directed the TMR to file an affidavit setting out the efforts made to trace out the files and status of each of the files in which the inspection was sought. The direction issued on 22nd March 2010 for reconstruction of the files was kept in abeyance.

7. On 16th December 2010 this Court noted the contents of the affidavit dated
W.P. (C) No. 12505 of 2009

4th October 2010 filed by Mr. U.L. Barve, Senior Examiner in the TMR. It was stated that on construction of the Intellectual Property Building at Mumbai in 2006, the office of the TMR was shifted there and “consequently, all manual registered and pending trade mark record/ applications were transferred to the new premises in the year 2006.” It was stated that “it may be possible that in transportation of the record, the aforesaid registered file must have been misplaced”. It was further stated that on decentralization of the work including process of registration from 2006-07, all registered files were sent to the respective branch Registries. However, the file of the trade mark No. 285062 did not appear in the register through which the files were sent to the TMR, New Delhi. Certain other affidavits of the staff members of the TMR were also filed.

8. This Court, in its order dated 16th December 2010, recorded its dissatisfaction with the affidavit filed by Mr. Barve about the circumstances under which the files went missing. It was observed that if several other files had also gone missing, then the TMR ought to have initiated an inquiry in the matter. The Court also noted that there was no clarity of the procedure adopted for reconstruction of files that had gone missing from the TMR. Consequently, by its order dated 16th December 2010 the Court directed that the matter should be examined at the level of the Secretary, Department of Industries, Government of India. He was asked to personally supervise a full-fledged enquiry into the issue by a senior level official of the Ministry and

W.P. (C) No. 12505 of 2009

have a report prepared and submitted to the Court with an affidavit within a period of three months. In particular, it was directed that the affidavit would indicate “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.”

9. Pursuant to the above order, an affidavit of compliance has been filed by Mr. Sanjay Kumar Lal, Under Secretary in the Department of Industrial Policy and Promotion (‘DIPP’), Ministry of Commerce and Industry, New Delhi on 5th April 2011. As regards the inquiry into the issue of missing files, the affidavit states that a Senior Director in the DIPP conducted a detailed inquiry. She visited all the branch offices of TMR at Chennai, Kolkata, Delhi, Ahmedabad and Mumbai between 16th and 26th February 2011 and inspected the record rooms at each branch. The major findings of the Inquiry Officer were as follows:

(a) The total registered and missing files at the time of the visit of the officer in the five branch registries were initially estimated at 60,052.

(b) Despite serialization and a comprehensive attempt to locate the files relating to the Haldiram case under Registration No. 285062 and application No. 559875 (including opposition Nos. DEL-T-2988 and DEL-T-2515 from *W.P. (C) No. 12505 of 2009*

which the relevant documents were sought), the said files could not be traced. Accordingly, a complaint was filed at Police Station, Dwarka North, New Delhi on 15th March 2011 and an FIR was registered on 1st April 2011. Likewise, an FIR was lodged at Police Station, 24 Parganas (North), West Bengal on 1st April 2011 in relation to the file concerning Registration No. 330375 which could not be traced.

(c) In the absence of adequate documentation in the e-register (as documents have not been uploaded or verified), it was difficult to build the physical file. However, with the information available in the trademark journals and history of e-record, it was possible to list out the actions taken by the TMR during the life cycle of the trademark.

(d) The decentralization of the TMR which was earlier headquartered at Mumbai was one of the major reasons for the large number of files going missing. It was pointed out that till the work got decentralized, the physical files would travel to and from TMR Mumbai to the concerned registry and no systematic record of the movement of files was kept either at TMR Mumbai or the Branch Registry. As a result the branch offices were unaware about the physical presence of the files in their registry.

(e) The shifting of the files to the respective branches in 2006 possibly resulted in some of the files getting lost.

10. It is stated that a meeting chaired by the Secretary, DIPP was held thereafter on 1st March 2011 to review the steps taken to comply with the order dated 16th December 2010 of this Court. The meeting was informed that the 50,872 files were unaccounted for in the four branches, other than Mumbai which subsequently reported 9180 files missing. After reviewing the exercise conducted by the TMR it was observed that the main reason for a large number of missing files was the lack of scientific record-keeping practices in the branch registries as well as lack of due diligence by the TMR staff. The Controller General of Patents, Design and Trade Marks ('CGPDTM') was directed to take prompt action in all cases where malafides were suspected. The CGPDTM was directed to adopt the following procedure:

- “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.”

11. The CGPDTM informed the Committee that the computer reconstruction of the missing files was not possible as documents submitted by the parties could not be replaced. However, information on a registered trademark could be obtained from the Trade Mark Journal in which it was published prior to registration. The information including documents that had been electronically uploaded could also be used to recover essential data relating to the missing files.

12. As regards the procedure to be adopted for recovery of the missing files, it is stated that the branch registries have updated their list of missing files. The latest position of missing files has been set out in para 14 of the affidavit dated 5th April 2011 as under:

	DEL	MUM	CHEN	KOL	AHM	TOTAL
Registered Files as on 3 rd January 2011	224810	279446	103834	64001	50023	722114
Number of files where physical files are not available	7291	9180	15557	10179	2197	44404

13. In para 15 of the affidavit, the corrective action proposed is as under:

- “(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 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.”

14. It is further stated that the CGPD TM has engaged the services of a professional service provider as a consultant to make a detailed assessment of the record management system prevailing at TMR. A final report would be submitted by 31st May 2011 and further steps would be taken on the basis

W.P. (C) No. 12505 of 2009 *Page 11 of 15*

of the said report. Further, it is stated that quarterly audits of trademark records have been ordered which would be monitored directly by the Registrar. It is stated that the physical audit of all the files in the record rooms shall be undertaken by the Record In-charge every three months and by the Head of the Office once in every six months and both shall report on the audit to the Controller General. It is stated that the 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.” A third plan of action is to amend the Trademark Rules to provide for e-filing of applications through electronic mode. It is expected that this will obviate the problem of data storage and retrieval as well as data entry mistakes.

15. While this Court appreciates the steps taken by the DIPP to have an inquiry conducted into the issue of the missing files, it is alarming that as many as 44,404 files of trade mark registrations (not accounting for opposition files) have gone missing since 2006 and this fact remained unknown to the TMR and the DIPP till an enquiry was ordered by this Court. Also, the holders of the concerned trade mark registrations and those who have filed oppositions and applications for rectification of those marks possibly do not yet know that the said files are missing.

submitted that the contents of the above affidavit and in particular the details of the files that have gone missing, should be made public. Mr. A.S. Chandhiok, the learned ASG refers to para 15 of the affidavit which has been extracted hereinbefore and states that after conclusion of the exercise of in-house verification of the trademark files a public notice will be issued regarding the files not accounted for.

17. This Court directs that the fact the above files have gone missing, the procedure for recovery of the missing files and the corrective action by the TMR as detailed in the affidavit dated 5th April 2011 should be immediately placed on the website of the TMR and given as wide publicity as possible. The above information should also be displayed forthwith on the notice boards of each of the branches of the TMR at Delhi, Mumbai, Kolkata, Chennai and Ahmedabad. The Secretary, DIPP will call for a compliance report in this regard from each branch to be filed with him by 30th April 2011.

18. It is next submitted by Mr. Amarjit Singh that the above procedure outlined in the affidavit applies only to the files concerning trademark registrations and not the oppositions. It is confirmed by Mr. Chandhiok, learned ASG that the same procedure would be adopted in regard to the missing files concerning oppositions.

19. It is then submitted by Mr. Amarjit Singh that a detailed enquiry should be undertaken by the DIPP to fix responsibility on the officials of the TMR both serving and retired who were entrusted with the responsibility of ensuring the safety of the files. In para 8 of the affidavit dated 5th April 2011 the Under Secretary, DIPP has set out the proposed corrective measures. This Court directs that the said measures should be strictly implemented. In particular where a file is not traceable and/or possibly misplaced departmental action should be taken to fix the responsibility for negligence, and where malafide is prima facie established, an FIR should also be lodged.

20. The last submission is that this Court should fix the modalities for reconstruction of the Haldiram case files. How in each of the cases concerning the Petitioner on the one hand and the applicant in CM No. 10327 of 2010 on the other, and in the other connected cases, the original trade mark registration and opposition/rectification files should be reconstructed, is not for this Court to decide. That will have to be decided by the courts and other fora where the cases are pending.

21. This Court would expect the TMR branches to be streamlined on the lines of what has been stated in the affidavit dated 5th April 2011 of the Under Secretary, DIPP without unnecessary delay. In the event the steps proposed in the said affidavit are not implemented and corrective action not taken, it would be open to any of the parties to apply to this Court for

W.P. (C) No. 12505 of 2009 *Page 14 of 15*

directions.

22. The writ petition is disposed of in the above terms. The application stands disposed of.

23. Order dasti.

S. MURALIDHAR, J

APRIL 06, 2011
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