

\$~11

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 3125/2013**

ADIDAS AG

..... Petitioner

Through **Mr.Manav Kumar, Advocate.**

versus

UNION OF INDIA & ANR.

..... Respondents

Through **Mr.Anil Soni, CGSC for R-1.**

%

Date of Decision: 10th February, 2016.

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

J U D G M E N T

MANMOHAN, J: (Oral)

1. Present writ petition has been filed challenging the Intellectual Property Appellate Board (IPAB) order dated 28th December, 2012. The relevant portion of the impugned order is reproduced hereinbelow:-

“11. The settled principle of law is that a person aggrieved may alone file an application for rectification while any person may file an opposition to the registration of a trade mark. The applicants only contention is that they are aggrieved as the marks and the goods are identical. Even considering the fact that the marks and the goods are identical we do not find any reason for the applicants to be aggrieved.

xxx

xxx

xxx

16. The main ground of rectification is that the respondents had no bonafide intention to use the trade mark.

The applicants therefore, relied on the judgments by this Board where it was held that if the matter is not represented by the respondents, then it is to be taken that the respondents are not using the trade mark where the allegation is without rebuttal. In those cases, the applicants had satisfied their use and reputation by placing sufficient bills and invoices. In this case, there is no evidence of use. The use by the applicant if at all can be only from the year 2005.

17. The applicants in this case have not satisfied us as to how they are aggrieved person; and there is confusion or deception among the public. In these circumstances, we do not think it fit to remove the trade mark from the register. The application is therefore dismissed. In view of this, Miscellaneous Petition No.194/2011 for early hearing of the application is also dismissed. No order as to costs. The Registry is directed to issue the order copy only on receipt of the Miscellaneous Petition for condoning the delay.”

2. It is petitioner's case that the petitioner's trademark 'RESPONSE' with respect to footwear and apparels has garnered worldwide goodwill and reputation. It is stated that petitioner's trademark 'RESPONSE' is registered in various countries including USA and Germany in 1993 and 1995 respectively.
3. Learned counsel for the petitioner states that by virtue of number of registrations for the mark 'RESPONSE' and the long and continuous use of the said mark by the petitioner in the course of its business, the mark 'RESPONSE' has attained distinctiveness in relation to footwear and it has come to be associated solely with the petitioner.
4. Learned counsel for the petitioner points out that respondent no.2 had never appeared before the IPAB and even in the present proceedings it has not filed any response. He also states that the respondent No.2 has not renewed its mark since 2011.

5. This Court is of the opinion that the expression “person aggrieved” is a term of wide amplitude and an applicant for registration whose trademark has been objected or refused by reason of prior registration by a third party of the same or similar or identical mark for the same goods or description of the goods or whose application for registration is opposed on the basis of prior registration of the same or similar mark by the registry is a person aggrieved. The IPAB’s further finding that even when the marks and goods are identical, there is no person aggrieved is, in the opinion of this Court, contrary to law.

6. This Court also finds that though the IPAB has given a finding that there is no evidence of use of the mark ‘RESPONSE’ by the petitioner, yet it has itself held that the use, if any, is post 2005. Consequently, this Court is of the view that the finding given by the IPAB is contrary to facts. Moreover, the effect of the use post 2005 has not been analyzed.

7. Accordingly, the impugned order dated 28th December, 2012 of the IPAB is set aside and the matter is remanded back to the IPAB for re-considering the matter in accordance with the law. The writ petition stands disposed of accordingly. The matter is directed to be listed before IPAB for direction on 4th April, 2016.

MANMOHAN, J

FEBRUARY 10, 2016
KA