

OIPD-13

IN THE HIGH COURT AT CALCUTTA
ORIGINAL SIDE
(Intellectual Property Rights Division)

IPDATM/30/2023

TRIUMPH DESIGNS LIMITED(ORA/6/2020/TM/KOL)
VS
TUBE INVESTMENTS OF INDIA AND ANR

BEFORE:
The Hon'ble JUSTICE RAVI KRISHAN KAPUR
Date : 25th September, 2025.

Appearance:
Mr. Sayan Roy Chwodhury, Adv.
Ms. M. Mukherjee, Adv.
Mr. K. K. Pandey, Adv.
Ms. Sayani De, Adv.
Ms. Sonia Nandy, Adv.
Ms. Mallika Bothra, Adv.
...for the petitioner

Mr. Arun C. Mohan, Adv.
Mr. Swabhi Tyagi, Adv.
Mr. Rishav Maity, Adv.
...for the respondent no. 1

The Court: This is an application under Section 47 of the Trademarks Act, 1999, seeking cancellation and removal of the mark TRIUMPH registered under trademark number 135253 in class 12 for, “cycles driven solely by the feet”. The primary ground on which cancellation is sought is one of non-use.

Briefly, the petitioner is a globally renowned motorcycle manufacturer and part of the Triumph Motorcycle group of companies. The petitioner's associate companies are Triumph Motorcycles Limited and Triumph Motorcycles (India) Private Limited all dealing with manufacture and sale of motorcycles under the mark TRIUMPH.

It is contended that the petitioner has been using the mark TRIUMPH since 1886 in the United Kingdom. With the passage of time, the mark TRIUMPH has acquired significant international fame, reputation and goodwill both in the domestic and international market. The particulars of the registrations being enjoyed by the petitioner in respect of motorcycles under the mark TRIUMPH are fully mentioned in the petition.

The petitioner is also the registered proprietor of the trademark TRIUMPH both in India and in numerous foreign jurisdictions. The petitioner has extensively, uninterruptedly and continuously been using the mark TRIUMPH in India *vis-a-vis* motorcycles. The petitioner has also widely advertised the mark TRIUMPH and boasts of high sale figures.

The primary grievance of the petitioner insofar as the impugned registration is concerned is one of non-use. In support of such allegations, the petitioner relies on extensive internet search reports. The petitioner also contends that there is no evidence whatsoever to demonstrate that the respondent no. 1 has made any use of the impugned registration. Additionally, the impugned registration is only blocking the Registrar of Trade Marks. There is nothing to substantiate the fact that the respondent no. 1 has used the mark "TRIUMPH" for the statutory period described under the Act. In such circumstances, the impugned registration is liable to be cancelled under section 47(1)(a) and 47(1)(b) of the Act and consequential reliefs be granted.

On behalf of the respondent no. 1, it is contended that the petitioner is not a person aggrieved within the meaning of the Act and the application

is not maintainable. The petitioner has itself registered multiple marks in relation to goods and services which it has never made any bona fide or commercial use of since registration. Such conduct demonstrates that the petitioner is selectively using and non-using a number of marks. There is nothing to demonstrate that the petitioner has used any of its marks in respect of moped, scooters, bi-cycle, e-bikes, e-cycles, tri-cycles, quad bikes etc. Thus, the petitioner is nothing else but an opportunist and as a business rival is simply attempting to corner the mark "TRIUMPH". Such an approach is contrary to public interest and amounts to unfair competition.

Section 47 of the Act provides as follows:

"(1) A registered trade mark may be taken off the register in respect of the goods or services in respect of which it is registered on application made in the prescribed manner to the Registrar or the ¹[High Court] by any person aggrieved on the ground either--

(a) that the trade mark was registered without any bona fide intention on the part of the applicant for registration that it should be used in relation to those goods or services by him or, in a case to which the provisions of section 46 apply, by the company concerned or the registered user, as the case may be, and that there has, in fact, been no bona fide use of the trade mark in relation to those goods or services by any proprietor thereof for the time being up to a date three months before the date of the application; or

(b) that up to a date three months before the date of the application, a continuous period of five years from the date on which the trade mark is actually entered in the register or longer had elapsed during which the trade mark was registered and during which there was no bona fide use thereof in relation to those goods or services by any proprietor thereof for the time being:

Provided that except where the applicant has been permitted under section 12 to register an identical or nearly resembling trade mark in respect of the goods or services in question, or where the ²[Registrar or the High Court, as the case may be] is of opinion that he might properly be permitted so to register such a trade mark, the ²[Registrar or the High Court, as the case may be] may refuse an application under clause (a) or clause (b) in relation to any goods or services, if it is shown that there has been, before the relevant date or during the relevant period, as the case may be, bona fide use of the trade mark by any proprietor thereof for the time being in relation to--

(i) goods or services of the same description; or

(ii) goods or services associated with those goods or services of that description being goods or services, as the case may be, in respect of which the trade mark is registered.

(2) Where in relation to any goods or services in respect of which a trade mark is registered--

(a) the circumstances referred to in clause (b) of sub-section (1) are shown to exist so far as regards non-use of the trade mark in relation to goods to be sold, or otherwise traded in a particular place in India (otherwise than for export from India), or in relation to goods to be exported to a particular market outside India; or in relation to services for use or available for acceptance in a particular place in India or for use in a particular market outside India; and

(b) a person has been permitted under section 12 to register an identical or nearly resembling trade mark in respect of those goods, under a registration extending to use in relation to goods to be so sold, or otherwise traded in, or in relation to goods to be so exported, or in relation to services for use or available for acceptance in that place or for use in that country, or the tribunal is of opinion that he might properly be permitted so to register such a trade mark,

on application by that person in the prescribed manner to the ¹[High Court] or to the Registrar, the tribunal may impose on the registration of the first-mentioned trade mark such limitations as it thinks proper for securing that that registration shall cease to extend to such use.

(3) An applicant shall not be entitled to rely for the purpose of clause (b) of sub-section (1) or for the purposes of sub-section (2) on any non-use of a trade mark which is shown to have been due to special circumstances in the trade, which includes restrictions on the use of the trade mark in India imposed by any law or regulation and not to any intention to abandon or not to use the trade mark in relation to the goods or services to which the application relates.”

Three essential conditions are required to be satisfied before removal of a registered trademark is directed. Firstly, that the application has been made by a person aggrieved. Second, the trademark in question has not been used by the proprietor for a continuous period of at least five years and three months prior to the date of application. Thirdly, that there are no special circumstances which would justify non-use of the trademark in question. [*Kellogg Company vs. Pops Food Products (P) Ltd.* 2018 SCC OnLine Del 6562].

A perusal of the records would demonstrate that though the respondent no. 1 had obtained registration as far back as on 28.09.1950, they have been unable to show any use of the impugned mark for more than a period of 75 years. In this context, it is well-settled that the use has to be

genuine in the relevant class of goods and services. There is no explanation whatsoever to show any use of the impugned mark by the respondent no. 1. [*Russell Corp Australia PTY Limited vs. Ashok Mahajan And Another* [(2023) SCC online Del 4796] and *In Fedders Llyod Corporation LTD & Anr vs. Fedders Corporation & Anr.* [ILR (2005) I Delhi 478.]

In this background, the registration obtained in favour of the respondent no. 1 is liable to be cancelled and expunged.

Insofar as the plea of the petitioner not being a person aggrieved is concerned, there is no merit in such contention. In *Hardie Trading Ltd. vs. Addisons Paint & Chemicals Ltd.* (2003) SCC 92, it has been held as follows:

“30. The phrase ‘person aggrieved’ is a common enough statutory precondition for a valid complaint or appeal. The phrase has been variously construed depending on the context in which it occurs. Three sections viz. Sections 46, 56 and 69 of the Act contain the phrase. Section 46 deals with the removal of a registered trade mark from the register on the ground of non-use. This section presupposes that the registration which was validly made is liable to be taken off by subsequent non-user. Section 56 on the other hand deals with situations where the initial registration should not have been or was incorrectly made. The situations covered by this section include: (a) the contravention or failure to observe a condition for registration; (b) the absence of an entry; (c) an entry made without sufficient cause; (d) a wrong entry; and (e) any error or defect in the entry. Such type of actions are commenced for the ‘purity of the register’ which it is in public interest to maintain. Applications under Sections 46 and 56 may be made to the Registrar who is competent to grant the relief. ‘Persons aggrieved’ may also apply for cancellation or varying an entry in the register relating to a certification trade mark to the Central Government in certain circumstances. Since we are not concerned with a certification trade mark, the process for registration of which is entirely different, we may exclude the interpretation of the phrase ‘person aggrieved’ occurring in Section 69 from consideration for the purposes of this judgment.

31. In our opinion the phrase 'person aggrieved' for the purposes of removal on the ground of non-use under Section 46 has a different connotation from the phrase used in Section 56 for cancelling or expunging or varying an entry wrongly made or remaining in the register.

32. In the latter case the locus standi would be ascertained liberally, since it would not only be against the interest of other persons carrying on the same trade but also in the interest of the public to have such wrongful entry removed."

The user claim of the impugned mark is unsubstantiated and there is no evidence at all to demonstrate the same. Thus, the fact of non-user is practically admitted by the respondent. Hence, the impugned mark deserves to be removed from the Register. In view of the above, IPDATM/30/2023 stands allowed.

The trade mark no. 135253 be cancelled and expunged from the Register.

(RAVI KRISHAN KAPUR, J.)

SK./Arsad.