

OCD-20

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

IPDATM/129/2023

M/S. SONA BEVERAGES PVT LTD
(APPLICATION NO.247502 IN CLASS 32)
VS
THE COCA-COLA COMPANY AND ANR

BEFORE:

The Hon'ble JUSTICE RAVI KRISHAN KAPUR

Date : 27th January, 2025.

Appearance:
Mr. Tanmoy Roy, Adv.
...for the petitioner

The Court: The grievance of the petitioner is directed against the impugned mark "SIMBA" which has been registered in favour of the respondent in Class 32 bearing no. 247502.

None appears on behalf of the respondents nor is any adjournment prayed for on their behalf even in the second call.

Affidavit of Service filed by the petitioner be kept with the records.

It is alleged on behalf of the petitioner that the impugned mark "SIMBA" which had been registered in favour of the respondent was valid till 24th February, 2020 and has lapsed.

Admittedly, the said trademark has not been renewed nor has any application being filed for renewal of the same.

The petitioner also relies on a notice served by the Registry on 18th November, 2019 on the respondents. Despite receipt of such notice, the respondents have taken no steps for renewal of the impugned mark.

In such circumstances, the petitioner prays for an order directing removal of the impugned mark under Section 25(3) of the Trademark Act, 1999.

For convenience, Section 25(3) of the Trademark Act, 1999, provide as follows:-

“25(3):

At the prescribed time before the expiration of the last registration of a trade mark the Registrar shall send notice in the prescribed manner to the registered proprietor of the date of expiration and the conditions as to payment of fees and otherwise upon which a renewal of registration may be obtained, and, if at the expiration of the time prescribed in that behalf those conditions have been duly complied with the Registrar may remove the trade mark from the register:

Provided that the Registrar shall not remove the trade mark from the registry, if an application is made in the prescribed form and the prescribed fees and surcharge is paid within six months from the expiration of the last registration of the trade mark and shall renew the registration of the trade mark for a period of ten years under sub-section (2).”

In view of the materials on record and the fact that the validity of the impugned mark under Section 25 of the Act has long expired and no steps have been taken for renewal of the same, it is evident that the respondent is no longer interested in the continuation or renewal of the impugned mark in its favour.

Despite notice dated 18th November, 2019 being served on the respondent, there is nothing on record to demonstrate that the respondent have taken any steps for protection or continuance of the impugned mark. The statutory validity period of the impugned mark has admittedly expired. There is

also nothing on record to suggest that there has been any renewal request for registration in favour of the private respondent.

In view of the above, there shall be an order directing removal/rectification/expunging the entry pertaining to the impugned trademark "SIMBA" bearing application No. 247502 in Class 32 in the favour of THE COCA-COLA COMPANY, Proprietor Address -515 Madison Avenue, City of New York, State Of York, United States Of America.

In such view of the matter, IPDATM/129/2023 stands allowed.

(RAVI KRISHAN KAPUR, J.)

S.Bag