

OCD-23

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

IPDATM/237/2023

AMIR CHAND OM PRAKASH (ORA 20/2019/TM KOL)
VS
VARUN RITOLIA AND ANR

BEFORE:

The Hon'ble JUSTICE RAVI KRISHAN KAPUR

Date : 27th January, 2025.

Appearance:
Mr. R. K. Jain, Adv.
Mr. Tanmoy Roy, Adv.
Mr. Devashu Jain, Adv.
...for the applicant

Mr. Indrajeet Das Gupta, Adv.
Mrs. Priti Jain, Adv.
...for respondent no. 2

The Court: None appears on behalf of the respondent no. 1 nor is any adjournment prayed for on their behalf. Affidavit of Service filed by the petitioner be kept with the records.

In view of the non-appearance of the Registrar of Trade Marks, Mr. Indrajeet Dasgupta alongwith Mrs. Priti Jain who usually appears on behalf of the Registrar are directed to appear in this matter. Their services be regularized by the Appropriate Authority. A copy of the application is served on them in Court.

The instant application has been filed for rectification of the trademark "MARUTI 100 HUNDRED" (label) registered in the name of the respondent no. 1, Varun Ritolia trading and carrying on business as Shri Maruti Dhoop

Agency. The impugned mark has been registered bearing no. 1317652 in Class-3 in respect of “agarbattis of all kinds including incense sticks”.

Briefly, the petitioner is a registered partnership firm and has been *inter-alia* engaged in the business of manufacturing, distribution and trading of “Dhoopbattis and Agarbattis” since 1935. It is alleged that the petitioner is one of the leaders in the business of “Dhoopbattis and Agarbattis” and sells its products all over India.

In or about 1943, the petitioner adopted the trademark “MAHABIR” along with the device “MARUTI/HANUMAN” in respect of “dhoopbattis” falling in Class-3. Admittedly, the petitioner is the first adopter, owner and lawful proprietor of the above mark. The mark has been registered bearing registration no.14958 since 26.04.1943 in respect of “Dhoopbattis” falling in Class-3. The petitioner is also the registered proprietor of the trademark “MAHABIR” bearing registration no. 532374 since 28 June, 1990.

It is evident from the above facts that the petitioner has been continuously and uninterruptedly using the above mark “MAHABIR” since 1935. The said mark has been renewed and is valid and still subsisting. There are other registrations which the petitioner has been enjoying in respect of the mark “MAHABIR” along with devise of MARUTI/HANUMAN. The petitioner is also the registered proprietor of trademark “HANUMAN” alongwith the devise of “MARUTI/HANUMAN” since 18th May, 2011.

In view of the extensive and uninterrupted use of the above mark “MAHABIR” along with the devise “MARUTI/HANUMAN”, the same has

acquired distinctiveness in relation to the goods which are being sold by the petitioner. The sales of the petitioner are also to the tune of crores. The petitioner has also spent considerable amount of money in advertisements and publication of its mark.

The crux of the dispute between the parties pertains to the registration of a deceptively similar mark 'MARUTI 100 HUNDRED' (label) both letter and label by the respondents bearing no. 1317652 in respect of "agarbattis and all kinds of incense sticks".

Despite the petitioner having filed an opposition against the registration in favour of the impugned mark the same was ultimately allowed by an order passed by the Intellectual Property Appellate Board (IPABP) dated 5 July, 2007. Thereafter, the petitioner has filed a Civil Suit being CS/1/2006 seeking a permanent injunction against the respondent no.1 from using the mark "MARUTI 100 HUNDRED' (label) in respect of agarbattis of all kinds. By a decree passed by the Learned Additional District Judge, Amritsar, the respondent no. 1 has been restrained through its partners, proprietors or servants, agents, stockiest and retailers, assigns and representatives from manufacturing or selling agarbattis and incense sticks under the impugned mark "MARUTI 100 HUNDRED' (label).

It is submitted on behalf of the petitioner that the decree in favour of the petitioner has been continuing and is still subsisting and there has been no appeal against the same.

The present rectification proceedings have been filed primarily on the ground that the impugned registration obtained by the respondent no. 1 is in contravention of Section 9(1), 9(2), 11, 18 and 57 of the Trade Marks Act, 1999. It is further submitted that there is a patent and glaring defect in the procedure followed in the respondent no. 1 in obtaining the impugned registration. The entry in the Register in favour of the respondent no.1 does not reflect the condition and restriction imposed by the Assistant Registrar of Trademark, Kolkata vide its order dated 7th June, 2005 that registration of the impugned mark was granted subject to confirming that the goods were for sale only in the State of Bihar and Jharkhand. Consequently, the advertisement published on 1 July, 2005 could not have been published without the above restriction being reflected therein. The subsequent advertisement published in the Official Gazette dated 1 July, 2005 also does not contain the above territorial restriction or limitation in respect of the impugned mark.

In view of the above, the petitioner prays for rectification of the Registered by directing removal of the impugned mark in Class-3 registered in favour of the respondent no. 1.

Despite service having been effected on the respondent no. 1, the respondent no.1 chooses to remain unrepresented.

It is submitted on behalf of the respondent no. 2 that in view of the obvious error in the registration procedure there is an patent error in the registration which has been granted in favour of the respondent no. 1. Despite the order dated 7th June, 2005 passed by the Assistant Registrar of Trademark,

Kolkata the impugned registration does not contain any territorial restriction or limitation nor did the advertisement published in the Official Gazette dated 1st July, 2005 have any such restriction. As such, there has been a procedural error in the registration in favour of the respondent no. 1 and the same should to be rectified.

In view of the submissions made on behalf of the parties, admittedly, there is a patent error in the grant of registration of the impugned mark in favour of the respondent no.1. Notwithstanding the order dated 7 June, 2005, the condition or restriction on the territorial limits i.e. only for the State of Bihar and Jharkhand has not been reflected either in the advertisement dated 1st July, 2005 or the Official Gazette dated 7th June, 2005 respectively.

In view of the above, IPDATM/237/2023 stands allowed.

Accordingly, the respondent no. 2 is directed to take necessary steps in accordance with law.

(RAVI KRISHAN KAPUR, J.)