

OIP-21

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

IPDATM/4/2022

M/S L OREAL (ORA/320/2013/TM/KOL)
VS
M/S LOREN BEAUTIFIERS PVT LTD AND ORS

BEFORE:

The Hon'ble JUSTICE RAVI KRISHAN KAPUR

Date : 9th December, 2025

Appearance:
Mr. Sayantan Basu, Sr. Adv.
Mr. Tanmoy Roy, Adv.
Ms. Aheriya Roy, Adv.
...for the petitioner

The Court:- The respondents remain unrepresented even in the second call. There is also no prayer for adjournment.

This is an application for cancellation of a mark "LOREN BOROHERB" registered in class 3 bearing no.1706660 in the name of the respondent no. 1 M/s. Loren Beautifiers Private Limited. The sole ground for seeking cancellation is one of non-user.

Briefly, the applicant is engaged with the business of manufacture, distribution and sale of a wide range of hair care, skin care, toiletries and beauty products. The applicant is a bonafide user of the word mark "L'Oreal" and has been using the said mark in various stylish and artistic formats and levels since 1910-1915. In fact, the applicant has been continuously and uninterruptedly using the mark "L'Oreal" both in the domestic and international market.

With the passage of time, the applicant's goods and business have obtained immense goodwill and reputation. The applicant's mark is also registered under the Trademark Act, 1999.

It is contended on behalf of the applicant that the respondent no. 1 has obtained the registration of the impugned trademark "LOREN BOROHERB" registered in class 3 bearing no.1706660 with an oblique and sinister purpose. The impugned registration is bad in law and is liable to be rectified/expunged/removed from the register.

The sole ground in this application is one of non-user. It is contended that there is nothing to demonstrate that the respondent no. 1 has ever used the product during the prescribed statutory period as contained in Section 47 of the Trademark Act, 1999.

For convenience Section 47 of the Act is set out hereinbelow:

"47. Removal from register and imposition of limitations on ground of non-use.—(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 Appellate Board 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 tribunal is of opinion that he might properly be permitted so to register such a trade mark, the tribunal 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 Appellate Board 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.”

The respondent no. 1 has been unable to show the use of the impugned mark for more than a period of 5 years and 3 months. Despite repeated

opportunities granted to the respondent no. 1 to file an affidavit disclosing user of the impugned mark, the respondent was unable to file any such affidavit.

In view of the above, the allegation of non-user remain uncontroverted and the application stands allowed.

The impugned mark being “LOREN BOROHERB” registered in class 3 bearing no.1706660 be removed/rectified/expunged from the register.

In view of the above direction, IPDATM/4/2022 stands allowed.

(RAVI KRISHAN KAPUR, J.)