

(2010) 06 IPAB CK 0004

In the Intellectual Property Appellate Board

Amrit Kaur And Ors.

APPELLANT

Vs

Around Cable Systems (India) Pvt. Ltd. And Ors.

RESPONDENT

Date of Decision : 17-06-2010

Acts Referred:

Trade Marks Act, 1999 — Section 28
Code Of Civil Procedure, 1908 — Order 1 Rule 1

Citation : (2010) 06 IPAB CK 0004

Hon'ble Judges : S. Usha, J; Syed Obaidur Rahaman, Technical Member

Bench : Division Bench

Judgement

S. Usha, J

1. The rectification application has not been numbered as the Registry of this Board had raised an issue as to the maintainability of the rectification

application as the same has been filed on behalf of three applicants.

2. The matter was, therefore, placed before us on 07.06.2010 for deciding the issue as to the maintainability of the application by three applicants.

Learned counsel Mr. Essenese Obhan appeared on behalf of the applicants.

3. The counsel for the applicant submitted that the applicants No. 1 and 3 were sisters who formed the company, the applicant No. 2 herein. The

counsel also produced a copy of the order in Civil Suit no. 1 of 2010 passed by the District Judge, Pune to show that the applicant No. 1 and the

applicant No. 2 were the respondents in that proceeding. The applicants' only contention was that all their rights were to be protected.

4. The counsel also made his submissions that as there was no rule provided under the Trade Marks Act, 1999 (hereinafter referred to as the Act) or

under the IPAB (Procedure) Rules, 2003 to file application by one person only or

each applicant should file a separate application, Order 1 Rule 1 of the Code of Civil Procedure would apply.

5. Mere absence of any provision in the statute cannot be constituted against maintainability of joint suit by two or more pre-emptors. As has been observed in other similar matters by this Appellate Board, the office objection has to be considered in the light of Section 28 of the Act, which confers exclusive right to the use of the trade mark upon the registered proprietor and to obtain relief in respect of infringement of the trade mark. The pleadings are not clear as to whether they are the registered proprietors. There is no doubt that the applicants ought to be registered proprietors to initiate rectification application. It is also an admitted statement by the applicant that rights in the matter are inter-related they are common set of parties and common cause of action and common set of facts.

6. The applicant No. 1 who has initiated action for removal of a registered trade mark, the rights if any, arising therein will protect the other applicants and therefore becoming a co-applicant does not arise. One does not have to be a party to a proceeding to establish user by evidence, which can be substantiated by the party to the proceedings without having to implead that party for establishment of any fact.

7. The office objection is accordingly upheld. Liberty is granted to the applicant to submit amended application with statement of case duly amending the same within 15 days from the date of receipt of this order, failure to comply with, the Registry to strike out the name of the applicants No. 2 and 3 and process the application in accordance with law.