

**(2011) 01 IPAB CK 0005**

**In the Intellectual Property Appellate Board**

**Case No :** ORA/53/2010/TM/CH And ORA/74/2010/TM/CH

CBM International Development Organisation also known  
Christliche Blindenmission International (CBMI) having  
Branch Office at No. 140 Commerce Cube 2nd floor, 5th Main,  
Puttannachetty Road, Chamrajpet, Bangalore-560018

APPELLANT

Vs

Institute Of Bank Management & Research 52, Nagarjuna  
Hills Hyderabad-500082

RESPONDENT

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**Date of Decision :** 24-01-2011

**Acts Referred:**

Trade Marks Act, 1999 — Section 9, 9(1)(a), 9(2)(a), 11, 11(3), 11(10), 12

**Citation :** (2011) 01 IPAB CK 0005

**Hon'ble Judges :** Prabha Sridevan, J;S. Usha, J

**Bench :** Division Bench

**Final Decision :** Allowed

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**Judgement**

S. Usha, J

1. Both the above applications have been filed for removal of the trade mark CBM in Class 16 and 41 registered under No. 1042272 and 1374499

respectively under the provisions of the Trade Marks Act of 1999 (in short ""Act"").

Facts of the Case:

2 . The applicants are an organization of international repute known world over for the high quality of goods rendered by them. The primary purpose

of CBM, the applicants herein, is to improve the quality of life of the world's poorest persons with disabilities and those at risk of disability. The

applicants are an international organization which also cooperate with UN agencies, global organizations and disabled people organization.

3 . CBM is recognized as a collaborating organization by the World Health

Organisation. This organization was founded by the German Pastor Ernst Jakob Christoffel in 1908 who because of his Christian faith, cared for the needs of children with disabilities and orphans in various countries. The trade mark CBM was adopted in the year 1908 outside India and in the year 1967 in India. It uses comprehensive, sustainable and community focused approaches which contribute to poverty alleviation and self-reliance and by reason of long, continuous, and extensive use the mark CBM has acquired distinctiveness, reputation and goodwill among the people.

4 . The respondents herein who are the Institute of Bank Management and Research issued a cease and desist notice dated 15th December, 2008 for which an interim reply was sent on 22.1.2009 and reply dated 10th February, 2009 was sent to the respondents herein. On 18th February, 2009 the respondents herein filed a civil suit before the City Civil Court of Hyderabad for a permanent injunction restraining the applicant from using the trade mark CBM. Therefore, aggrieved by the suit for injunction, the applicants have filed this rectification application on the grounds that:

- (i) the respondents are not the lawful proprietor of the trade mark CBM;
- (ii) the registration is in violation of the applicant's right in the trade mark and therefore causing loss to the applicant;
- (iii) the respondents have copied the applicant's well known trade mark with malafide intention only to trade upon the goodwill earned by the applicant;
- (iv) the registration of the impugned trade mark has caused confusion and therefore is in contravention of provisions of Section 11 of the Act;
- (v) the impugned mark being deceptively similar lacks distinctiveness and it is contrary to Section 9(1)(a) of the Act;
- (vi) the impugned registration is prohibited under Section 9(2) (a) of the Act; the respondents have dishonestly copied this trade mark which is likely to deceive and cause confusion among the public;
- (vii) the impugned mark will not be entitled to protection under law and therefore contrary to Section 11(3) of the Act;
- (viii) the applicant's trade mark has acquired the status of a well known mark and so respondent's registration of the trade mark CBM is prohibited under Section 11(10) of the Act;
- (ix) the adoption of impugned trade mark being dishonest and subsequent, the respondents cannot claim any benefit under Section 12 of the Act;

(x) the impugned registration is erroneous and remains wrongly on the register without sufficient cause;

(xi) the impugned registration is contrary to law and is not entitled to protection in any Court of law.

5. The impugned registration therefore deserves to be removed from the Register.

6. The respondents were served with the notice and they entered appearance through the Counsel. The Counsel on entering appearance filed a

Vakalatnama and sought extension of time to file their counter statement on 2.6.2010 and extension was also granted. Subsequently, the respondents

had neither filed their counter statement nor has sought for any extension. On the date of hearing there was no appearance on behalf of the

respondents and therefore the Board proceeded to hear the Counsel for the applicant.

7 . The Counsel for the applicant reiterated the facts stated in the application for rectification and prayed that the applications for rectification be

allowed and the impugned trade mark be removed/cancelled.

8 . We have heard and considered the argument of the Counsel for the applicant on 31.10.2011.

9. The applicants has adopted the trade mark CBM in the year 1908. In the year 1967 started its work in India. CBM refers to the organization -

Christoffel Blindenmission/Christian Blind Mission. As seen from the impugned trade mark registration certificate the respondents have claimed user

since 2001 as regards Class 4 and proposed to be used in Class 16. We have also gone through the copy of the plaint filed by the respondent against

the applicant before City Civil Court Hyderabad in OS No. 107 of 2009. We find no reason or explanation given for the adoption of the trade mark

CBM. The respondents only averment is that they conceived and adopted the trade mark CBM in respect of educational services in information

technology. This will not suffice. The adoption cannot therefore be said to have been honest.

10. The applicants have claimed user since the year 1908 outside India and since 1967 in India. The applicants have filed sufficient documents in

support of the same. The respondents though have claimed user since 2001 have not substantiated the same. In fact, in their cease and desist notice

dated 15.12.2008 sent to the applicant, their contention is that they had been

using the trade mark for the past several years.

11. The applicant is a person aggrieved as a cease and desist notice has been issued and a Civil Suit has been filed based on the impugned

registrations against them by the respondent. The applicants can therefore file and maintain an application for rectification as a person aggrieved.

12. For the reasons stated above, we do not think it fit to allow the trade mark to continue on the register. Accordingly, original rectification application

Nos.ORA/53/2010/TM/CH and ORA/74/2010/TM/CH are allowed with the direction t the Registrar to remove the trade mark Nos.1042272 in Class

16 and 1374499 in Class 41 respectively. No order as to costs.