

(2014) 09 IPAB CK 0001

In the Intellectual Property Appellate Board

Case No : ORA/144/2014/TM/DEL

Dabur India Limited

APPELLANT

Vs

Rajkumar Saraf

RESPONDENT

Date of Decision : 19-09-2014

Acts Referred:

Citation : (2014) 09 IPAB CK 0001

Hon'ble Judges : K.N. Basha, J; Sanjeev Kumar Chaswal, Technical Member

Bench : Division Bench

Final Decision : Allowed

Judgement

K.N. Basha, J

1. This application is filed for the relief of removal of the trade mark from the register of trade marks in respect of 'YESMOLA' bearing Registration No. 1342000 in Class 30, in the name of Rajkumar Saraf, the respondent No. 1 herein.

2. The learned counsel for the applicant namely Dabur India Limited has submitted a letter dated 16.06.2014 in respect of this Rectification Application No. ORA/144/2014/TM/DEL stating that the applicant has also filed a Civil Suit for infringement of the trade mark against the respondent No. 1 in C.S. (OS) No. 2230 of 2013 before the Hon'ble High Court of Delhi and in the said proceedings, it is stated that the matter was settled amicably between the parties. It is further submitted that the suit has been decreed as per the terms of settlement arrived between the parties as per order passed by the Hon'ble High Court of Delhi dated 16.05.2014. The learned counsel in the same letter stated that in view of the settlement arrived between the parties and on the basis of the order passed by the Hon'ble High Court of Delhi as per the terms of the settlement arrived between the parties, the application for rectification may be allowed and consequently the impugned trade mark YESMOLA in Class 30 as per the Registration No. 1342000 may be cancelled.

3 . The above said factors have been admitted by the respondent No. 1 namely the registered proprietor by name Rajkumar Saraf as per the communication dated 14.05.2014 addressed to the Registry of this Bench. In the said communication, it is specifically stated in the registered proprietor is hereunder:--

"I further say that Dabur India Limited has also instituted a civil suit for infringement of trade mark and passing off being CS (OS) No. 2320/2013 before the Hon'ble High Court of Delhi against me and my firm namely Bindal Food Products. The same is pending before the Hon'ble High Court of Delhi. During the pendency of the above said proceedings, the parties have arrived at a settlement and have resolved all the disputes pertaining to the trade mark YESMOLA. I and my firm have undertaken to use the trade mark YESGOLA instead of YESMOLA for digestive tablets or for any other product in future.

In view of the above settlement, I request this Hon'ble Board that the rectification petition filed by Dabur India Limited may be allowed and the trade mark registration No. 1342000 pertaining to YESMOLA in class 30 may be cancelled from the Trade Marks Registry."

4. The learned counsel for the applicant also annexed alongwith communication letter dated 16.06.2014, the order passed by the Hon'ble High Court of Delhi dated 16.05.2014 and the terms of agreement arrived between the parties mutually in I.A. No. 9362 of 2014 in C.S. (OS) No. 2320 of 2013 containing the terms of mutual settlement arrived between the applicant and the respondent No. 1 herein. In the said settlement agreement entered between the parties signed by both the parties and as well as their respective defendants, it is specifically stated in para 9 that in view of the settlement arrived between them, the defendants namely the respondent No. 1 herein agreed that the trade mark registration No. 1342000 (YESMOLA) in class 30 be cancelled from the Trade Marks Register.

5. The above said communication sent by the learned counsel for the applicant and as well as the registered proprietor of the impugned trade mark the Respondent No. 1 and as well as the documents annexed namely the order dated 16.05.2014 passed by the Hon'ble High Court of Delhi in C.S.(OS) No. 2320 of 2013 and I.A. No. 19029 of 2013 and the terms of mutual settlement arrived between the parties signed by both the parties before the Hon'ble High Court of Delhi would make it crystal clear that the matter in respect of the impugned trade mark in the present application is mutually settled amicably between the applicant and the respondent No. 1 herein and the respondent has squarely and categorically agreed in the terms of agreement signed by both the parties and as well as in the communication sent to the Registry dated 14. 05.2014 stating that the present application for rectification may be allowed and consequently, the impugned trade mark YESMOLA under registration No. 1342000 on the file of the Registrar of Trade Marks, Delhi is to be cancelled.

6 . In view of the above said undisputed factors, we are constrain to allow the

application and consequently directed the respondent No. 2 namely the Registrar of Trade Marks, Delhi to cancel the impugned trade mark YESMOLA under registration No. 1342000 in Class 30.