

(2013) 04 IPAB CK 0004

In the Intellectual Property Appellate Board

Case No : M.P. No. 275 Of 2012 In OA/29/2012/TM/DEL

Good Food Group

APPELLANT

Vs

Assistant Registrar Of Trade Marks And Suresh Kumar,
Trading As M/S. Suresh Kumar & Co.

RESPONDENT

Date of Decision : 15-04-2013

Acts Referred:

Citation : (2013) 04 IPAB CK 0004

Hon'ble Judges : S. Usha, J;V. Ravi, Technical Member

Bench : Division Bench

Advocate : Sheetal Vohra

Final Decision : Dismissed

Judgement

S. Usha, J

1. Both the appeals arise out of the orders dated 23.03.2012 passed by the Assistant Registrar of Trade Marks refusing to take on record the notice of

opposition and allowing the applications to proceed to registration. The 2nd respondent herein filed two appeals under Nos. 1320530 and 1325432 on

16.11.2004 and 13.12.2004 respectively. Application No. 1320530 was filed in respect of ""Jams, Marmalade, Jelly, Peanut Butter"" in class 29.

Application No. 1325432 was filed in respect of automobile parts and accessories included in class 12. Both the applications were advertised before

acceptance in the Trade Marks Journal No. 1328, suppl. (3) dated 21.02.2005 at page 2261 and 1369 respectively. The Trade marks Journal was

made available to the public on 06.05.2005. The deadline to file the Notice of Opposition was upto 06.08.2005. With one extension, the counter

statement could be filed latest on 06.09.2005. The appellant herein sent the

Notice of Opposition dated 02.08.2005 which was despatched from Kolkata to Delhi Registry through courier service under Airway Bill No. 114248385904 dated 02.08.2005. The transit time from Kolkata to Delhi is

one day as per the courier receipt. The notice of opposition is deemed to have been received by the Delhi Registry on 3rd or 4th August, 2005.

2. On 14.11.2006, a show cause notice was issued by the Registry, as to why the notice of opposition should be taken on record after posting the

notice of opposition on official website. On 19.12.2006, a reply was sent by the appellants. On 21.03.2012, a hearing on the show cause notice was

fixed. The hearing was fixed after six years. On 23.03.2012, the order came to be passed refusing to take on record the notice of opposition as it was

time barred.

3. Being aggrieved by the said order, the appellants have filed this instant appeal on various grounds.

4. The respondent No. 2 though served with the C-Form have not entered appearance and therefore we have heard the appellants. The appellants

also stated that the respondents presence was not necessary as the respondents will have their say only after the Registrar has taken on record the

notice of opposition.

5. We heard the appellants. The counsel reiterated all that was stated in the memo of grounds. The issues are common in both the matters and

therefore a common order is being passed.

6. The issue that arises for consideration is whether the notice of opposition is barred by limitation. We have perused the documents filed by the

appellants.

7. The notice of opposition has been sent from Kolkata to Delhi by letter dated 02.08.2005. The same has been sent by courier which is evident from

the courier receipt dated 02.08.2005 and the time is 15.00 hours. This receipt in fact has been filed before the Registrar along with their letter dated

19.12.2006 a reply to the show cause notice. We have no reason to disbelieve this receipt.

8. As per Rule 15(1) and (2) the letter which is despatched is deemed to have been sent and served on the Registrar. The notice of opposition

therefore cannot be said to time barred. For no fault on the part of the party, he should not be allowed to suffer.

9. We also find that the applications have been filed in 2004 and the marks were advertised in the Journal in the year 2005. The show cause is issued in the year 2006 as to why the notice of opposition should be taken on record which is time barred. The appellants had sent their reply immediately. But the hearing has been fixed after nearly 6 years. We are unable to understand why this inordinate delay has taken place only to fix the date of hearing. The applicants in such case are put to loss as it is kept pending for no fault of theirs and also for no reason. In view of the above mentioned reasons, the appeals are allowed and the impugned orders are set aside. The matters are remanded back to the Registrar to take on record the notice of opposition and decide the applications in accordance with law as early as possible. There shall be no order as to costs. Accordingly, miscellaneous petitions are closed.