
(2014) 08 IPAB CK 0001

In the Intellectual Property Appellate Board

Case No : ORA18/2008/TM/DEL

India Gypsum Limited

APPELLANT

Vs

Ceiling Products (Regd.)

RESPONDENT

Date of Decision : 07-08-2014

Acts Referred:

Citation : (2014) 08 IPAB CK 0001

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

Bench : Division Bench

Advocate : Rajat Jain

Final Decision : Dismissed

Judgement

K.N. Basha, J

1 . This application is filed by the applicant seeking for the relief of removal of the trade mark from the register of trade marks in respect of

'CYPSTEEL' bearing Registration No. 1086194 in Class 19.

2. The learned counsel for the applicant Mr. Rajat Jain is appearing today. The learned counsel for the respondent neither appears in person nor

through any advocate. It is seen that the notice for date of hearing was already sent to the respondent to the address furnished by the applicant in the

application and the said address is furnished by the applicant on the basis of the address of the registered proprietor of the impugned trade mark given

before the Registrar of trade Mark as per the register. However, the said notice was returned unserved with the endorsement ""Left without Address"".

As the respondent left without furnishing any address abruptly, it is not possible even for the applicant to get further address and the registry also

already sent a proper notice and the same was returned as stated above on the

ground of ""Left without Address"". Therefore, we are inclined to proceed with the matter on merits.

3. The learned counsel for the applicant has come forward with the application seeking for the relief of removal or rectification of the trade mark

CYPSTEEL registered under the No. 1086194 in Class 19.

4. As the respondent not appearing in this matter and as such there is no counter filed denying and disputing the claim made by the applicant herein

and as such we need not narrate about the claim made by the applicant in respect of the statement of case. In view of the short submission made by

the learned counsel for the applicant before us today. The learned counsel for the applicant would make a two fold submission made before us viz. (1)

The applicant filed a Civil Suit in CS(OS) No. 2016 of 2007 on the file of Hon'ble High Court of Delhi and the same was decreed in favour of the

applicant by granting the relief of permanent injunction against infringement of the impugned trade mark. The fact remains that the defendant is same

the respondent herein and the dispute is also in respect of the same impugned trade mark. It is seen that the said decree was passed by the Hon'ble

High Court of Delhi dated 06.11.2007. It is pertinent to note that the suit was decreed in the following terms as per the internet order copy produced

before us which reads hereunder.

5 . The second limb of contention of the learned counsel for the applicant is that the impugned trade mark was valid only up to 11.3.2012 and the same

was renewed further and in order to substantiate such contention, the applicant would produced the latest website status report of the impugned trade

mark as per the Registry of the Trade Mark dated 06/08/2014. It is seen from the said copy of the status report that the impugned trade mark under

application No. 1086194 for Class 19 was renewed up to 11.03.2012. Therefore, it is crystal clear that the impugned trade mark cannot remain in the

register. Even assuming that the actual position is not reflected through the status report of the internet copy website produced before us is not correct

and the respondent could have renewed the impugned trade mark till date. We are of the considered view, the respondent having consented for the

decree on the basis of the terms mentioned in the order of the Hon'ble High Court of Delhi as incorporated earlier and we are of the view that there is

no justification for keeping the impugned trade mark remain in the register of

the Registrar of Trade Marks, New Delhi.

6 . In view of the foregoing reasons, we constrained to direct the Registrar of Trade Marks, New Delhi to remove the impugned trade mark

CYPSTEEL bearing No. 1086194 in Class 19 from the register of the Trade Marks Registry. New Delhi.