

(2010) 01 IPAB CK 0007

In the Intellectual Property Appellate Board

Case No : S.R. No. 275/2009/TM/IPAB

Lakshmi Packaging

APPELLANT

Vs

M.K. Rao Family Trust And Ors.

RESPONDENT

Date of Decision : 22-01-2010

Acts Referred:

Trade Marks Act, 1999 — Section 91(1), 103, 104, 115

Citation : (2010) 01 IPAB CK 0007

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

Bench : Division Bench

Final Decision : Dismissed

Judgement

S. Usha, J

1. The Appellant filed an appeal against the opinion of the Deputy Registrar of Trade Marks given in letter No. TLA/49 on 19th June 2009 addressed to the DSP, Khammam stating that the Appellants have committed an offence under Sections 103 & 104 of the Trade Marks Act, 1999 (hereinafter referred to as the Act). The Registry of this Appellate Board had raised an objection as to how the Registrar's opinion under Section 115 of the Act, is appealable under Section 91 of the Act.
2. The matter was placed before us when Shri Raghuram appeared on behalf of the Appellant to satisfy us as to how the appeal was maintainable against an opinion of the Registrar of Trade Marks. The counsel admitted that it was an opinion and not an order. But it is not a mere opinion but a finding in writing giving it a finality. This opinion is given by the Registrar of Trade Marks who is considered to be an expert on the subject of Trade Marks and it must be considered to be an order within the meaning of the Act.

3. Section 91(1) of the Act provides that any person aggrieved by an order or decision of the Registrar under this Act, or rules made there under may

prefer an appeal within 3 months from the date on which the order or decision is communicated to such person preferring the appeal. It is clear from

the plain reading of the provision that for preferring an appeal the

4. The order or decision against which an appeal is filed should be of such a nature which affects the rights or liabilities of the parties. It is worthwhile

to quote the observation of this Appellate board reported in 2006 (33) PTC 216 IPAB Prabha Singh Jaswanth Singh v. B Mohammed Yousuff -

When once the complaint is filed before the Judicial Magistrate, it is open to the Appellant to take appropriate defence. Under the Trade Marks Act,

a false representation with regard to the unregistered trade marks as that of a registered one is an offence. With respect to false evidence in a court

of law, the IPC and the Cr.PC prescribe certain procedures to be followed to initiate proceedings against the person who gave false evidence. That is

a separate proceeding and when two different enactments make the commissions as distinct crime each has to be considered separately and both cannot be combined together

5. This observation squarely applies to the case on hand. The opinion given by the Registrar is only a preliminary one in order to file a complaint under

Section 115 of the Act and as such the rights of the Appellant cannot be said to have been affected. The opinion is not a final order or decision. If the

Appellant is to be affected by that opinion the remedy would be before the other forum and not before this Appellate Board.

6. We are therefore of the view that the appeal preferred against the Registrar's opinion person must be aggrieved by the order or decision. So it is a

must that there must be an order or decision to prefer an appeal. is not maintainable and there shall be no order as to costs.