
(2010) 03 IPAB CK 0002

In the Intellectual Property Appellate Board

Case No : M.P. 42/10 In ORA/90/07/TM/MUM

Mahavir Home Appliances

APPELLANT

Vs

Rallifan Limited And Ors.

RESPONDENT

Date of Decision : 31-03-2010

Acts Referred:

Citation : (2010) 03 IPAB CK 0002

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

Bench : Division Bench

Final Decision : Allowed

Judgement

S. Usha, J

1. The miscellaneous petition has been filed by Mr. Devichand S. Jain proposed applicant to implead him as necessary party as the trade mark which

was registered in the name of Mr. Rajesh Kumar Naredi has been assigned to the present Petitioner.

2. The trade mark 'RALLY' was registered in the name of Mr. Rajesh Kumar Naredi trading as Visesh Appliances. The Respondent herein filed an

application for rectification and the matter is pending before this Appellate Board. Meanwhile, the applicant in the rectification application had

assigned the trade mark to one Mr. Sanjeev Kumar Singnodia who in turn assigned to M/s Mahavir Home Appliances, the present Petitioner herein.

3. The Respondent herein/applicant in the main rectification application filed their counter-statement raising various technical objections as to the

recordal of the assignment by the Trade Marks Registry.

4. The Petitioner herein also filed their rejoinder to the counter denying the various allegations made in the counter.

5. We have heard Ms. P.V. Rajeshwari learned Counsel for the Petitioner / proposed applicant in the main rectification application and Shri A.A.

Mohan learned Counsel for the Respondent/Respondent and gone through the pleadings and documents filed.

6. Before we deal with the miscellaneous petition, we would like to comment on the act of the Trade Marks Registry in recording the subsequent

proprietors. On perusal of the certificate for use in the legal proceedings it seen that the Registry has shown some urgency while recording the same.

We see some discrepancies in the deed of assignment as well as the supporting affidavit and the legal user certificate. It is for the Registry to take

due care while carrying out the necessary recordal. We are not here to test the validity of the assignment or the recordal as it is for the other forum to

decide the same if there arises any dispute.

7. It is worthwhile to quote the observation of the Apex Court as regards the rights of the assignee on assignment of the mark in Thukral Mechanic

Works v. P.M. Diesels Pvt. Ltd. and Anr. MANU/SC/8485/2008 : 2009 (2) SCC 768.

The principle of ""purchaser of a property has a duty to make enquiries"" cannot apply in the case of this nature. So long as the right to assign a

registered trade mark remains valid, once the same is validly assigned, the assignee derives the same right as that of the assignor in terms of the

statute. The title to a trade mark derived on assignment as provided for under the Act cannot be equated with a defective title acquired in any other

property as admittedly on the date of assignment, the right of the registered trade mark was not extinguished.

8. In our considered opinion, in view of the above observation, the Petitioner herein has to be impleaded as necessary party for proper and final

adjudication of the matter. The Petitioner/applicant is directed to file amended copy of the application within three weeks from the date of receipt of

the order. Accordingly M.P. No. 42/10 is allowed.