
(2014) 11 IPAB CK 0004

In the Intellectual Property Appellate Board

Case No : S.R. No. 415/2013/TM/MUM

Mandom Corp

APPELLANT

Vs

FEM Care Pharma Ltd. And Ors

RESPONDENT

Date of Decision : 13-11-2014

Acts Referred:

Trade Marks Act, 1999 — Section 9, 11, 18(1), 47(1)(a), 47(1)(b)

Citation : (2015) 63 PTC 611 (IPAB)

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

Bench : Division Bench

Advocate : H.W. Kane, Phirose Palkiwala

Judgement

K.N. Basha, J

(No. 150/2014)

1. This application is for the removal of the trade mark GATSBY registered under No. 635739 in Class 3 registered in the name of Fern Care Pharma Ltd., presently merged with Dabur India Ltd. This matter is posted today questioning the maintainability of filing second rectification application in respect of the very same impugned trade mark already challenged before this Bench and an order was passed and the same is now challenged by the applicant in a Writ Petition pending before the Hon'ble High Court of Bombay (W.P. No. 1656/2013).

2. Mr. H.W. Kane, the learned counsel for the applicant would submit that the Hon'ble High Court of Bombay observed in its order dated 20/06/2014 that the pendency of the Writ Petition will not be a ground for not having the Petitioner's further application for rectification being heard by the IPAB. Therefore, it is contended that the second rectification application is maintainable.

3. Per contra, the learned counsel appearing for the respondent would submit that the Hon'ble High Court of Bombay also observed that all contentions including the contentions regarding the maintainability of the application are kept

open. The learned counsel for the respondent would also produce the earlier order of this Bench in respect of the very same impugned trade mark dated 05/04/2013 in ORA/56/2005/TM/MUM. It is contended by the learned counsel for the respondent that the DPAB already has given findings in respect of Section 9, 11, 18(1) of the Trade Marks Act, 1999 and as well as under Section 47(1)(b) and 47 (1) (a).

4 . Mr. H.W. Kane, the learned counsel for the applicant pointed out that there is no finding as such in 47(1)(b) and also 9 and 11. it is fairly submitted by the learned counsel for the applicant that as far as the present application is concern, the applicant would confined the ground and contention only in respect of Section 47(1)(b) which they have not challenged before the Hon'ble High Court of Bombay in the Writ Petition.

5. We are carefully considered the above said submissions of the learned counsel for the applicant and respondents and also perused the earlier orders of this Bench dated 5. 04.2013 in ORA/56/2005/TM/MUM and as well as orders of the Hon'ble High Court of Bombay dated 20/06/2014.

6 . Considering the submission of the learned counsel for the applicant to the effect that the applicant is confining the second application in rectification namely the instant application only in respect of the ground raised under Section 47(1) (b) and also considering that an endorsement is also made to that effect and enable to the fact that the learned counsel for the respondent has no objection. We are directing the Registry to number the application if it is otherwise in order. It is seen from the records of the Registry only on the above said ground question of maintainability is raised and as such the Registry shall number the application and send notice in accordance with the procedure. It is also made clear that it is open to the parties to complete their pleadings before the next date of hearing.