

**(2013) 03 IPAB CK 0004**

**In the Intellectual Property Appellate Board**

**Case No :** OA/56/2011/TM/KOL, Miscellaneous Petition No. 150/2011 In  
OA/56/2011/TM/KOL

M/S. Kaira District Co-Operative Milk Producers' Union  
Limited Amul Dairy

**APPELLANT**

**Vs**

Deputy Registrar Of Trade Marks Office Of The Trade Marks  
Registry 'Baudhik Sampada Bhawan', Registrar Of Trade  
Marks Office Of The Trade Marks Registry 'Baudhik Sampada  
Bhawan' And M/S. The Ichhamati Co-Operative Milk  
Producers' Union Limited

**RESPONDENT**

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**Date of Decision :** 07-03-2013

**Acts Referred:**

**Citation :** (2013) 1 MIPR 384

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

**Bench :** Division Bench

**Advocate :** Sreemoyee Roy Chowdry, Sreemoyee Chatterjee

**Final Decision :** Allowed

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**Judgement**

S. Usha, J

1. This appeal arises out of the order dated 31/07/2006 allowing the application No. 1281174 to proceed for registration and dismissing the opposition

No. CAL-206784 under the provisions of the Trade Marks Act, 1999. The opponent is the Appellant herein and the Applicant is the Respondent. The

Respondent herein filed an application for registration of the label mark consisting of the letters ""MP"" (Mono) and the word ""IMUL"" in a triangular

shape under application No. 1281174 in class 29 for the goods milk and other dairy products on 28/04/2004, claiming user since 01/04/2001. The trade

mark application was advertised in the Trade Mark Journal No. 1329 Supplementary (1) dated 15/04/2005 at page No. 4031.

2. The registration of the trade mark was opposed by the Appellant herein on the ground that the opponents i.e. the Appellants are carrying on a well

established business at Anand in Gujarat, manufacturing, marketing and exporting wide range of items such as milk, milk products, dairy products, food

products etc, under the trade mark AMUL since the year 1955. By virtue of long, extensive and continuous use, the Appellants trade mark AMUL

has become associated and identified by the public with the Appellants goods alone. The Respondents adoption and use of the trade mark IMUL is

deceptively similar to the Appellants trade mark and is likely to cause confusion and deception among the trade and public. The registration would be

in contravention of the provisions of the Act.

3. The Respondents filed their counter statement stating that their trade mark was basically adopted from their trading style in the year 2001 and they

had been using the same continuously since then.

4. The learned Registrar, the 2nd Respondent herein, heard the matter and decided the same on the finding that the Respondents' adoption is honest

and that the trade marks are not deceptively similar. Even though the Appellants trade mark is a well known trade mark as the Respondents have

been using the trade mark (impugned herein) since 2001 and that their sales turnover has increased periodically refusing their registration would cause

unnecessary inconvenience and damage to the Respondent. On the facts and circumstances of the case, the application is directed to proceed to

registration restricting the goods to read as ""Milk and other dairy products for sale in the State of West Bengal"". The opposition is therefore dismissed.

5. Aggrieved by the said order, the Appellants are before us on appeal. The main grievance of the Appellant is that their trade mark AMUL is

extensively and continuously used since 1955 for milk and dairy products. Their sales turnover runs to several Crores of rupees. The trade mark

AMUL is a well known mark. The use of the impugned trade mark will definitely cause confusion and deception among the trade and public. The

learned Registrar though considered the trade mark AMUL to be a well known trade mark but had gone ahead to decide in favour of the Respondents

considering the issue that the Respondents are using the trade mark since 2001. The impugned order therefore deserves to be set aside and the appeal

be allowed.

6. The Respondents despite service of the notice for the hearing on 07/12/2012 have not appeared in person or through their Counsel nor have they

filed their counter statement. The Respondents were therefore set Ex parte and we heard the learned Counsel for the Appellants.

7. The learned Counsel for the Appellants submitted that the Appellants trade mark AMUL has been used since 1946. The trade mark AMUL is

registered as early as 1960 in class 29. The trade mark has acquired distinctiveness. The sales turnover runs to several Crores of rupees.

8. The impugned application was filed on 28/04/2004 claiming user since 01/04/2001. The impugned trade mark is a label mark which contains the

trade mark IMUL which is deceptively similar to the Appellants trade mark AMUL.

9. The learned Counsel relied on few judgments:-

(a) MANU/DE/0513/1993 - Kaira District Co-Operative Milk Producers Union Ltd. Vs. Bharat Confectionery Works (REGD) - The trade mark

AMUL has become a household word and has come to denote to the public that the goods manufactured and sold are from the Appellants only.

(b) Un-reported - C.A. No. 7801/2007 - The Plaintiffs (the Appellants herein) are the registered proprietors of the trade mark AMUL and the Court

had restrained others from using the trade mark AMUL.

(c) MANU/SC/0303/1969-K.R. Chinna Krishna Chettiar Vs. Shri Ambal and Co., Madras and Anr. - For deciding the issue of deceptive similarity the

marks are to be compared as a whole.

(d) MANU/DE/2271/2008 - Shri Pankaj Goel Vs. Dabur India Ltd. - The issue of deceptive similarity has to be examined by applying the test of an

unwary purchaser having average intelligence and imperfect recollection. The subsequent adopter and user cannot said to be a honest user if no valid

reason is given for its adoption and use.

(e) ORA/204/2007/TM/AMD - IPAB Order No. 168 of 2012 - Crystal Knitters, Tirupur Vs. Kejriwal Yarns (P) Ltd., Surat and Anr. - The

Respondents though claim to be using the trade mark since 2001 have not appeared before the Court to prove their use.

(f) OA/16-17/2010/TM/CH - IPAB Order No. 7 of 2012 - M/s. Raymond Limited Vs. Raymond Financial Inc., and Anr. - The Registrar though

considered the trade mark RAYMOND, a well known trade mark but has decided the matter against the Appellants and has not considered the

Appellants reputation.

10. We have considered the arguments of the learned Counsel for the Appellants and have gone through the documents and pleadings.

11. The Respondents have not filed their counter statement but we have looked into the documents filed before the Registrar in support of their

application for registration. There are few pamphlets, few articles in some magazines and there are no invoices for sale of their products. These

documents will not help the Respondents to prove their use of extensive sale.

12. The sales turnover does not in any way support the case of the Respondents. The sales turnover is not certified by a Chartered Accountant. Mere

statement of sales turnover in the affidavit cannot be looked into to decide the matter.

13. We have no hesitation in holding the marks AMUL and IMUL to be deceptively similar. The goods are being purchased by all class of customers.

The marks are no doubt phonetically similar, except for first letter a and i. When we consider the marks to be deceptively similar, the possibility of

confusion is certain. The trade mark, therefore, shall not proceed to registration.

14. When the Registrar has considered the fact that the Appellants trade mark is a well known trade mark, the registration of a deceptively similar

mark ought not to have been allowed. For the reasons stated above, the impugned order is set aside and the appeal is allowed with no order as to

costs. The Miscellaneous Petition No. 150/2011 is closed as nothing survives in the stay petition.