

(2013) 09 IPAB CK 0003

In the Intellectual Property Appellate Board

Case No : ORA/90/2006/TM/DEL

M/S. Sun Pharmaceuticals Industries Limited	APPELLANT
Vs	
M/S. Optica Pharmaceuticals And Registrar Of Trade Marks	RESPONDENT

Date of Decision : 20-09-2013

Acts Referred:

Citation : (2013) 09 IPAB CK 0003

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

Bench : Division Bench

Advocate : Sachin Gupta

Final Decision : Allowed

Judgement

S. Usha, J

1. Application for rectification of the trade mark ""KELUR"" registered under No. 1123243 in Class 5 under the provisions of the Trade Marks Act,

1999. The application for rectification was filed on various grounds. The applicant's main averment was that they had been using the trade mark

KELUR"" prior to that of the respondents, who had been using a similar trade mark ""KELUR"". The rectification application was filed on 11.05.2006.

2. The respondents herein filed their counter statement on 24.11.2006. The applicants herein filed their reply to the counter statement on 27.02.2007.

3. On 18.07.2013, when the matter was posted for hearing, the counsel for the applicant was present and none appeared for the respondents. The

notice sent to the respondents for the hearing on 18.7.2013 was returned with an endorsement ""unserved"". So we directed the applicants to send a

notice to the respondents for the hearing on 19.08.2013 by Speed Post with Acknowledgement due and by Courier.

4. On 19.08.2013, the applicants filed the affidavit in proof of service of notice on the respondents. The respondents did not appear on 19.08.2013

despite service of notice. We therefore set the respondents ex-parte and we heard the applicants counsel.

5. Learned counsel placed before us the orders passed by the Competition Appellate Tribunal. On 04.01.2010, the Tribunal passed following order in

Unfair Trade Practices Enquiry No. 78 of 2004:-

20. In view of the factual and legal position highlighted above, the inevitable conclusion is that the complainant is entitled to the reliefs prayed for and

the respondent is prohibited from using the trade mark ""KELUR"" forthwith. An affidavit of compliance shall be filed within two months. If there is

violation of this order it shall be open to the complainant to seek such relief as is available in law.

6. On 10.07.2010, when the matter was placed before the Tribunal, the respondents herein represented through a counsel and submitted that they

have already discontinued the use of the impugned trade mark.

7. In view of the above, the applicants prayed that the impugned trade mark be cancelled for non-use. For the above mentioned reasons, the original

application for rectification is allowed with a direction to the Registrar of Trade Marks to remove the trade mark ""KELUR"" registered under No.

1123243 in Class 5. There shall be no order as to costs.