
(2014) 01 IPAB CK 0006
In the Intellectual Property Appellate Board
Case No : OA/16/2007/TM/KOL

M/s. Voltas Limited

APPELLANT

Vs

Debraj Dey, Trading As M/S. Akurom Enterprises And The
Deputy Registrar Of Trade Marks, Kolkata

RESPONDENT

Date of Decision : 03-01-2014

Acts Referred:

Trade Marks Act, 1999 — Section 9(1), 11(1), 11(2), 18, 18(2), 20, 20(1), 20(2), 22

Citation : (2014) 57 PTC 565 (IPAB)

Hon'ble Judges : S. Usha, J; Sanjeev Kumar Chaswal, Technical Member

Bench : Division Bench

Advocate : S. Majumdar, Sreemoyee Roy Chowdhury, Kajal Sinha

Final Decision : Disposed Of

Judgement

S. Usha, J

1 . This appeal arises out of the order dated 20/10/2006 passed by the Deputy Registrar of Trade Marks, disallowing the opposition No. CAL-156852

and allowing the application No. 673973 in class 9 to proceed to registration under the provisions of the Trade Marks Act 1999 (hereinafter referred to

as the Act). The 1st respondent herein filed an application for registration of the trademark VOLTA under No. 673973 in class 9 on 21/7/1995 in

respect of ""lead acid accumulator"". The trademark was proposed to be used on the date of application. On 20/05/2003, the 1st respondent filed a

request in Form T.M. 16 for amending the date of user to be read as 01/04/1990. The request for amendment was allowed on 06/06/2003. The

trademark was thereafter advertised in the Trade Marks Journal No. Mega I Vol. D at page No. 392 dated 25/08/2003.

2 . The appellant herein filed the notice of opposition in Form T.M. 5 opposing the

grant of registration. The 1st respondent filed their counter statement in Form T.M. 6 defending the registration. On completion of the pleadings the matter was heard and the Deputy Registrar passed the impugned order.

3 . Being aggrieved by the impugned order, the appellants are before us in appeal in various grounds. The respondents had filed their counter statement defending their case and that the impugned order passed was in accordance with law.

4 . The matter was listed for hearing on 18/12/2013. Mr. S. Majumdar with Ms. Sreemoyee Roy Chowdhury appeared on behalf of the appellant and Ms. Kajal Sinha appeared on behalf of the 1st respondent.

5. The Learned Counsel Mr. Majumdar brought to our notice the impugned trade mark published in the Trade Marks Journal filed along with the Memo of appeal and the findings in the impugned order.

6. The impugned trade mark

7. Impugned Order

A label mark consisting of the word 'VOLTA' was sought for registration under Application No. 673973 in class 9 for the goods ""lead acid

accumulator"" on 21st July, 1995 by the above named Applicant. The mark was claimed to be used since 1st April, 1990 (the advertisement appearing

in the Trade Marks Journal reads the user as proposed to be used but the same stand amended by way of allowing the Applicant's request on Form

TM-16 dated 28th May, 2003 to read as ""since 1st April, 1990"" vide order dated 6th June, 2003) and the application was advertised before acceptance

under Section 20(1) proviso vide Trade Marks Journal No. Mega I Vol. D dated 25th August, 2003 at page 392.

I have considered the submissions of both the learned advocates and have gone through the records. It is correct that the impugned mark is not the

word 'VOLTA' but is a label mark. It is also correct that the Applicant's user statement was corrected to read as since 1st April, 1990 vide order

dated 6th June, 2003 by allowing the Applicant's request on Form TM-16 dated 28th May, 2003 i.e. much before filing of the impugned opposition.

8. On a plain reading of the impugned order, it is clear that the impugned Trade Mark advertisement is not in accordance with law.

9. It worthwhile to quote the provisions of Section 20 and 22 of the Act.

Section 20 Advertisement of application-(1) When an application for registration of a trade mark has been accepted whether absolutely or subject to conditions or limitations, the Registrar shall, as soon as may be after acceptance, cause the application as accepted, to be advertised in the prescribed manner.

Provided that the Registrar may cause the application to be advertised before acceptance if it relates to a trade mark to which sub-section (1) of section 9 and sub-sections (1) and (2) of section 11 apply, or in any other case where it appears to him that it is expedient by reason of any exceptional circumstances so to do.

(2) Where-

(a) an application has been advertised before acceptance under sub-section (1); or

(b) after advertisement of an application,-

(i) an error in the application has been corrected; or

(ii) the application has been permitted to be amended under section 22, the Registrar may in his discretion cause the application to be advertised again

or in any case falling under clause (b) may, instead of causing the application to be advertised again, notify in the prescribed manner the correction or amendment made in the application.

10. The Registrar is under an obligation to advertise the trade marks in the Trade Marks Journal.

Section 22 Correction and amendment-The Registrar may, on such terms as he thinks just, at any time, whether before or after acceptance of an application for registration under section 18, permit the correction of any error in or in connection with the application or permit an amendment of the application:

Provided that if an amendment is made to a single application referred to in sub-section (2) of section 18 involving division of such application into two or more applications, the date of making of the initial application shall be deemed to be the date of making of the divided applications so divided.

11 . The Registrar may permit the correction or any error in the application. The correction should be such that it does not substantially alter the

identity of the trade marks.

12. Sub-section 2 of Section 20 provides that if an application has been corrected or amended before advertisement, the advertisement of the

corrected mark has to be re-advertised. Where an application has been advertised without carrying out any error in the application that has been

corrected or the application has been permitted to be amended, the Registrar has the discretion to order re-advertisement of the application or cause

the correction to be carried out in the Journal (Corrigenda).

13. The necessary purpose of the trade marks advertisement is to provide complete information of the trade mark advertised, so that the public at

large may receive a clear and full information of the trade mark. If the incomplete particulars of the trade mark or any incorrect information is given in

the advertisement, the public are deprived of the opportunity of getting full particulars.

14. In 2000 PTC (20) 161 (Del)--Ashoka Dresses Vs. Bonn' Shirts and another--it was held that an incorrect advertisement which amounted to

misrepresentation is required to be cancelled.

15. We think the above decision squarely applies to this case on hand. The Deputy Registrar has observed in the impugned order that the applicants

i.e. the 1st respondent had filed request for amending the date of user and the same has been allowed. The advertisement of the said trade mark has

been subsequently published, but the amended date of user has not incorporated.

16. In our considered view, the advertisement is not correct and therefore, the matter has to be remanded back to the Trade Marks Registry for re-

advertisement. Accordingly, the matter is remanded back to the Registrar of Trade Marks, Kolkata for re-advertising the trade mark and to decide the

registrability of the Trade Mark in accordance with law at the earliest, as the application is of the year 1995. The above appeal is therefore disposed

of in the above terms.