

(2014) 12 KAR CK 0087
In the Karnataka High Court

Case No : Writ Petition Nos. 37192-193, 37194-195 and 37203-204/2013(IPR)

Nandhini Deluxe

APPELLANT

Vs

Karnataka Co-Operative Milk Producers Federation Limited

RESPONDENT

Date of Decision : 02-12-2014

Acts Referred:

Trade Marks Act, 1999 — Section 11, 9

Citation : (2014) 12 KAR CK 0087

Hon'ble Judges : D.H. Waghela, C.J.;Budihal R.B., J

Bench : Division Bench

Advocate : Harikrishna S. Holla, Advocate for the Appellant

Judgement

D.H. Waghela, C.J.

1. All the petitions are preferred from the common order dated 04.10.2011 of the Intellectual Property Appellate Board (IPAB), Chennai in M.P. No. 47 and 53/2010 in O.A. No. 12 and 13/2009 and other connected matters. The appeals before the IPAB were filed by the respondent herein. They were allowed on the basis that the respondent herein was using the mark "NANDINI" since several years, before the petitioner tried to adapt it for their restaurant, which would fall in a different class. On the basis of the material on record, the IPAB has found that the respondent herein was in regular and consistent use of the mark "NANDINI" and it had become entrenched in the minds of the consumer and it would not be in the interest of the public to allow the petitioner herein to use the mark in connection with the commodities in question.

2. Petitioner herein had thereafter also filed review application on the ground that the respondent had not proved their user for their goods and the affidavit filed by them was incorrect. The Appellate Board decided the review application by their order dated 01.05.2013 holding that there was no ground for reviewing the aforesaid order even if it were assumed that the review petition was maintainable.

3. From the material on record it appears that the respondent was in use of the mark "NANDINI" since several years in connection with goods sold as milk and milk products falling under class 29 as per classification under Schedule IV to the Trade Marks Rules, 2002, and the petitioner admittedly adopted the mark "NANDHINI" for their restaurant since 1989. However, the only trademark applications under consideration before IPAB in these cases were for use of the mark "NANDHINI" for products under class 29 and 30 both relating to foodstuff and not the use of the mark for the restaurant, and the respondent objected to them on the ground of being registered. But, there was no evidence found by IPAB that the petitioner herein was trading in the goods in question as claimed by them, apart from running the restaurant. The respondent was found to have been in regular and consistent use of the mark "NANDINI" since 1985 for two-and-half decades and the mark having acquired "distinctiveness" the IPAB held that, an average consumer was likely to connect commodities under class 29 and 30 with the mark of the respondent.

4. Having regard to the provisions of Sections 9 and 11 of the Trade Marks Act, 1999 the principle that emerges is that a mark is not to be registered if it is likely to deceive the public or cause confusion; and if, because of its identity or similarity with an earlier trade mark and similarity of goods or services covered by it, there exists likelihood of confusion. When the mark "NANDINI", is held to have acquired a distinctive character and has become well-known, the use of another mark different only in one alphabet but with no difference in spelling or pronunciation in the local language, would very likely cause confusion in the minds of the public if allowed to be registered for commodities falling in the same classes. Thus, there is no infirmity in the reasoning and finding in the impugned order of the IPAB.

5. Learned counsel for the petitioner mainly contended that, while the petitioner was running the business of restaurant since the year 1989, the respondent had started user of the mark "NANDINI" since the year 1985 only for milk and not for other products. There is no foundation in facts for the argument and no material whatsoever is cited from the record to substantiate that argument. No other ground is made out to take a view different from the view taken by the IPAB in the impugned order.

6. Therefore, the petitions being wholly devoid of merit, they are summarily dismissed, with no order as to cost.