
(2008) 02 IPAB CK 0004

In the Intellectual Property Appellate Board

Pullambath Hameed

APPELLANT

Vs

Naranath Chalil Mahamood And Anr.

RESPONDENT

Date of Decision : 22-02-2008

Acts Referred:

Citation : (2008) 146 CompCas 491

Hon'ble Judges : M.H.S. Ansari, J;S. Usha, Technical Member

Bench : Division Bench

Final Decision : Dismissed

Judgement

S. Usha, Technical Member

1. The two rectification applications have been filed for removal of the trade marks ""Sagar Group"" and ""Sagar Travels"" under Nos. 866077 and 866078 respectively in class 16 from the Register of Trade Marks.

The applicant is carrying on business of providing travel services under the name and style ""Sagar Travels"". The applicant along with the first

respondent and two others formed a partnership firm under the name and style Sagar Tours and Travels to carry on the business of travel services in

the year 1993. The said partnership was unregistered. The applicant as sole proprietor has been carrying on the business since 1994 after the first

respondent left the firm. The applicant is providing road transportation between Bangalore and districts in Kerala.

2. The applicant has been carrying on business in Kerala from 1993 and since 2000 in Bangalore. The applicant has been using the said trade mark for

a continuous period of 14 years without any interruption.

The first respondent has not been carrying on any business for the last few years. The applicant further states that no person had exclusive right to the

trade mark ""Sagar"" word per se.

3. The applicant has filed this application for removal of the trade mark on the grounds that the first respondent has obtained registration of the

impugned trademark without any bona fide intention to use the mark in relation to the goods for which it is registered. The impugned trade mark is

wrongly remaining on the register and the registration has been obtained by claiming false user and that the mark ought to be removed. The said trade

mark is generic as it is being used by several traders. The impugned trade mark is not distinctive of the respondent's goods. The applicant is facing a

criminal proceedings and as such is a person aggrieved.

The matter was heard on February 11, 2008, at Chennai. Learned Counsel Shri Sivaraman Vaidyanathan appeared on behalf of the applicant and

even after service by way of substituted service on the first respondent, none appeared on behalf of the respondents. Common arguments were

advanced as both the parties in the two applications are one and the same.

4. Learned Counsel for the applicant contended that the two applications were made in the year 1999 claiming user since the year 1996 in class 5. The

classification of goods under which the application for the mark was applied was paper and paper materials, whereas the first respondent was

carrying on business of travel services which falls under the classification of services and as such the classification under which the mark was applied

for itself was wrong.

5. The applicant further submitted that the applicant was an aggrieved person as criminal proceedings were initiated against the applicant by the first

respondent. The applicant brought to our notice the anticipatory bail order granted by the Additional Session Judge, Bangalore, filed as annexure A to

the application in proof of the same.

6. The applicant also submitted that the applicant and the first respondent along with two others had formed a partnership firm in the year 1993 and

the first respondent left the firm in the year 1994 and has not been carrying on any business, whereas the applicant has been carrying on the travel

business since 1994 under the name and style ""Sagar Travels"". The applicant pointed out to the various annexures like vehicle registration certificates,

invoices, bills, etc., filed along with the application to show that he was carrying on business under the trade mark ""Sagar"".

7. The applicant further submitted that the impugned mark has got to be removed for the reason that the mark was not in use also that the mark was remaining wrongly on the Register. On these grounds the mark has got to be removed. The applicant's other ground for removal of the mark from the Register was that the applicant was seriously affected by the first respondent's mark on the Register.

Learned counsel for the applicant referred to the judgment in *Jupiter Infosys Ltd. v. Infosys Technologies Ltd.* [2004] 29 PTC 385 to state that in

order to maintain the purity of the Register, the entry of the trade mark in the Register which cannot in law be justified, the court may expunge the

same. Counsel also referred to some of the passages from P. Narayanan's *Book of Trade Mark Law*, 6th editions.

8. A verse from the passage : ""Where the evidence shows that the registered proprietor had no intention to trade in the goods for which the mark is

registered, it would be proper to infer that he had no intention to use the mark and that the mark has been abandoned in respect of the goods"" was

relied on to say that the first respondent though had the mark registered claiming user since 1996 did not carry on the business since 1994 when he left

the partnership firm. On these grounds the applicant prayed that the impugned mark be removed from the Register of Trade Marks and the application

be allowed.

9. We have considered the arguments of the applicant and have gone through the documents filed by the applicant. Time and again this Board has

held that an application for opposition may be filed by any person as contemplated in the provisions of Section 21 of the Act, whereas an application

for rectification may be filed by an aggrieved person alone. The persons who are aggrieved are persons who are in some way or the other

substantially interested in having the mark removed or persons who would be really affected if the mark continued on the Register. Even though it is a

common principle that when the applicant is in the same trade as that of the registered person, the applicant is an aggrieved person in public interest,

the applicant must establish that in some way he may be affected if the mark remains on the Register.

10. Here, in the instant case, even though the applicant has made a bald statement that he is aggrieved person as he is defending a criminal case

initiated by the first respondent, no proof has been established by the applicant as to how really he was aggrieved by the mark of the first respondent

remaining on the Register. We, therefore, hold that the applicant is not an aggrieved person.

11. The next ground for expunging the mark was that the first respondent was not carrying on the business of travel service though had the mark

registered. In an application for rectification the onus of proof is on the applicant for rectification to show that the mark is wrongly registered or is

wrongly remaining on the Register or that the mark is not in use. On a perusal of the documents, it is seen that the applicant has moved the Sessions

Court for grant of anticipatory bail in the year 2007 based on the complaint lodged by the first respondent. When that being so, the issue as to the first

respondent has not used the trade mark does not arise. The documents filed as annexure to the main application is of no significance. The documents

pertain to the year 2001, whereas the applicant's contention is that they had been carrying on business since 1993. Except for one or two documents

which bear the date of the year 1996 which also has no mention of the trade mark will be of no use to the applicant to prove his case. Therefore, the

applicant's second ground for rectification is also negated.

12. Having rejected both the grounds of the application, we dismiss the application for rectification and allow the registered trade mark Nos. 866077

and 866078 to continue on the Register of Trade Marks. There shall be no order as to costs.