

(2018) 06 CAL CK 0039
In the Calcutta High Court
Case No : GA 1267 of 2018, CS 102 of 2018

Shambhu Nath & Bros & Ors.

APPELLANT

Vs

Imran Khan

RESPONDENT

Date of Decision : 13-06-2018

Acts Referred:

Citation : (2018) 06 CAL CK 0039

Hon'ble Judges : SOUMEN SEN, J

Bench : Single Bench

Advocate : Debnath Ghosh, Prithiwiraj Sinha, S.Jane, G. Das

Judgement

The Court : The petitioner No.1 is a registered partnership firm carrying on business under the trade name "Shambhu Nath and Brothers" since

1986. The petitioner No.1 was engaged in the business of manufacturing and marketing electrical fans of all kinds including ceiling fans, table fans,

pedestal fans and exhaust fans. In order to distinguish the goods manufactured and marketed by the petitioners, in or about 1987, the petitioners

adopted the trademark "TOOFAN" written in a stylised manner with a gap at the top of the two "o"s in the word and the letter "F" written in capital which is represented as "tooFAN".

The said mark is written in a rectangular box with the sides curved and the word "TOOFAN" forming only the distinctive and/or prominent

feature in the said mark taken as a whole. The said mark "TOOFAN" and the stylised manner of representation of the mark both have become

distinctive of the product of the petitioners and no one else. The petitioners had and have been carrying on manufacturing and marketing the said

goods under the said trademark "TOOFAN" written in a particular artistic get

up continuously and extensively. The trademark 'TOOFAN' is

is printed on the products, packaging materials, brochures, warranty cards, bills and invoices of the petitioners. The petitioners have disclosed

documents in the petition in justification of the statements made in the petition with regard to the distinctiveness of the said product and its wide sale.

In order to have statutory protection of the trademark 'TOOFAN', the petitioners, on 26th August 1993, filed an application being No. 605175 in

Class 11 under the Trade and Merchandise Marks Act, 1958 and the said mark was registered on 9th April 2012. The stylized representation of the

mark 'TOOFAN' was also registered under the Copyright Act on 30th April 2005.

The petitioners claim that apart from the trademark 'TOOFAN', the petitioners adopted the mark 'SNB' as the house logo to represent their

business, which is written in an artistic manner. The three letters 'S', 'N' and 'B' have been derived from 'Shambhu Nath and

Brothers' being the trade name of the petitioners. The abbreviated trading name of the petitioner No.1, namely 'SNB' was also registered as a

word mark on 18th August 2005. All the certificates form part of the petition.

The petitioners claim that since the said mark had over the years acquired goodwill and reputation in the market, unscrupulous traders tried to adopt

such marks and with a view to protect the property rights, the petitioners, from time to time, had to initiate several proceedings against such

unscrupulous traders. The basis of the petition appears to be that in the third week of October, 2017, the petitioners came to know that the respondent

has applied for registration of a composite label containing the marks 'TOOFAN' and 'SNJ' which was published in Trade Marks Journal

1820 dated 23rd October 2017.

It appears from the said advertisement that the respondent filed an application on 17th August, 2016 in Class 11 under the Trade Marks Act, 1999 for

registration of a label mark containing 'TOOFAN' and 'SNJ' in respect of electrical fans and cooler claiming user thereof since 1st August,

2016. On comparison of the said two marks and having regard to the field of activity and the nature of the products, there cannot be any doubt that the

said mark 'TOOFAN' and the mark 'SNJ' are deceptively similar to the marks already registered in favour of the petitioners. In fact, the

marks of the petitioners are infringed by user of the said infringing marks which clearly shows the dishonest intention of the said respondent to write on the reputation of the petitioners.

That the respondent is seeking to pass off his goods as that of the petitioners is prima facie established. In such circumstances and with the

overwhelming evidence in favour of the petitioners, in my view, the petitioners are entitled to an ex parte order since refusal to pass any such order

would cause greater prejudice to the petitioners than the passing would have under the facts and circumstances. Under such circumstances, there

shall be an order in terms of prayer (a) of the petition. The matter is made returnable on 9th July, 2018. The interim order shall continue for a period of

twelve weeks or until further order, whichever is earlier.