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**(2018) 12 CAL CK 0066**  
**In the Calcutta High Court**

**Case No :** General Application No. 3369 Of 2018, Civil Suit No. 251 Of 2018

Shambhu Nath & Brothers & Ors.

APPELLANT

Vs

Adesh Anand

RESPONDENT

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**Date of Decision :** 17-12-2018

**Acts Referred:**

**Citation :** (2018) 12 CAL CK 0066

**Hon'ble Judges :** Soumen Sen, J

**Bench :** Single Bench

**Advocate :** Pratap Chatterjee, Debnath Ghosh, Prithwiraj Sinha, Tin Kari Jana, Gautam Kumar Ray, Gopal Das, Sourav Jana

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## 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 business of 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 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 have also obtained registration of the mark "TOOFAN" in Class 11 under the Trade Marks Act, 1999 for fans manufactured and marketed by them. The registration certificate was issued by the Trade Mark Registry on 3rd April, 2017.

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 proprietary 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 on searching from the Website of the Trade Marks Registry, the petitioners came to know that the respondent has applied for registration of a deceptively similar trade mark "ARG TOOFAN" in respect of electric fans claiming user thereof since 01.04.2015 and are dealing in electric fans under the said mark. The application for registration of the mark "ARG TOOFAN" filed by the respondent has been objected by the Trade Marks Registry as would appear from the document being Annexure "H" to the petition.

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 "ARG TOOFAN" of the respondent is 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 impugned mark which clearly shows the dishonest intention of the said respondent to ride on the reputation of the petitioners. The petitioners state that the artistic representation of the impugned trade mark of the respondent amounts to infringement of the petitioners' copyright in respect of their trade mark "TOOFAN".

That the respondent is seeking to infringe the petitioners' registered trade mark "TOOFAN" 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 ad-interim order of injunction in terms of prayers (c) and (d) of the Notice of Motion since refusal to pass any such order would cause greater prejudice to the petitioners than the passing would have under the facts and circumstances of the present case.

The matter is made returnable on 16th January, 2019.

The interim order shall continue for a period of 8 (eight) weeks or until further orders, whichever is earlier.

The petitioners shall communicate this order along with a copy of the plaint and

petition by day after tomorrow by speed post with acknowledgement due and affidavit-of-service be filed on the next adjourned date.