

(2005) 02 IPAB CK 0002

In the Intellectual Property Appellate Board

Case No : TA/317/2004/TM/DEL (CM(M) 598/1994)

Swatch AG (Swatch SA) SWH Swiss Corporation For
Microelectronics And Watchmaking Industries Ltd., Through
Deepening And Deepening

APPELLANT

Vs

Vinod Kumar

RESPONDENT

Date of Decision : 09-02-2005

Acts Referred:

Trade And Merchandise Marks Rules, 1959 & Rule 53(2)
Trade Marks Act, 1999 — Section 100

Citation : (2005) 02 IPAB CK 0002

Hon'ble Judges : S. Jagadeesan, J;Raghubir Singh, J

Bench : Division Bench

Advocate : Mahabir

Final Decision : Allowed

Judgement

S. Jagadeesan, J

1 . The appellant preferred the appeal CM(M) 598/1994 on the file of High Court of Delhi against the order of the Assistant Registrar of Trade Marks

dated 14.6.1994 and the same stood transferred to this Board by virtue of section 100 of the Trade Marks Act, 1999.

2 . Since the opposition No. DEL 6900 of the appellant has been held to have been abandoned under the deeming provision of Rule 53(2) of the Trade

and Merchandise Marks Rules, 1959 framed under the Trade and Merchandise Marks Act, 1958, we are of the view that there is no need to discuss

the facts in detail.

3. The Assistant Registrar of Trade Marks had held the opposition of the appellant is deemed to have been abandoned by reason of the operation of

Sub-rule 2 of Rule 53 of the said Rules on the ground that the same is mandatory. Following the full bench judgement of the Delhi High Court in the case of Hastimal Jain Trading as Oswal Industries Vs. Registrar of Trade Marks and Anr. reported in 2000 PTC 24 w, e held in R.K. Cable Company

Vs. Registrar of Trade Marks 2004 PTC 504 that Rule 53(2) of the Trade and Merchandise Marks Rules is not mandatory but only a directory and as

such, there is no question of deeming abandonment of any opposition and the Registrar has to give his reasons. Hence on the said principles, the

impugned order of the Assistant Registrar cannot be sustained and the same is liable to be set aside.

4 . Accordingly, the same is set aside and the Opposition No. DEL 6900 of the appellant herein is restored on the file and the matter is remitted back

to the Assistant Registrar for fresh disposal. Considering the fact that the application of the respondent is of the year 1986, the Assistant Registrar is

directed to dispose off the same in accordance with law within four months from the date of receipt of the copy of this order and the records. The

appeal is allowed with the above directions. However, there will be no order for costs.