
(2010) 06 IPAB CK 0005

In the Intellectual Property Appellate Board

Wockhardt Limited And Ors.

APPELLANT

Vs

Fdc Limited

RESPONDENT

Date of Decision : 17-06-2010

Acts Referred:

Trade Marks Act, 1999 — Section 28

Citation : (2010) 06 IPAB CK 0005

Hon'ble Judges : S. Usha, J; Syed Obaidur Rahaman, Technical Member

Bench : Division Bench

Judgement

S. Usha, J

1. The above rectification application has been filed by two applicants and the Registry of this Appellate Board has raised an objection as to the maintainability of the application by two applicants.

2. The matter was, therefore, placed before us for deciding the issue as to whether the applicants are to file separate application on behalf of each

applicant. In reply the applicants had written to this Registry stating that the applicant No. 1 is the subsequent proprietor of the impugned trade mark

'FACITHER' by way of assignment from the applicant No. 2. Necessary steps have been taken to bring on record the applicant No. 1 as the

subsequent proprietor before the Trade Marks Registry.

3. When the matter came up for hearing to the issue, the counsel relied on the judgement reported in 2010 (42) PTC 456 (Delhi) Dinesh Chandra

Vaghani and Ors. v Union of India and Ors. and stated that in view of the finding of the Hon'ble Delhi High Court, the rectification application can be

filed by more than one applicant.

4. We have perused the order. We are of the view that the facts in that case was

different from the one on hand. The objection has to be decided in the light of Section 28 of the Trade Marks Act, 1999, which confers exclusive right to the use of the trade mark upon the registered proprietor and to obtain relief in respect of infringement of trade mark.

5. The registered proprietor has initiated action, the rights, if any, of the assignee spring from the registered proprietor, the question of assignee, therefore, becoming co-applicant does not arise. One does not have to be a party to a proceeding to establish user by evidence, which can be substantiated by the party to the proceedings without having to implead that party for establishment of any fact. The registered proprietor can protect his rights of exclusivity and that is a statutory right for which he is not dependent upon the assignee to join with him as a party to such proceedings initiated by him.

6. In view of the above, the objection raised by the Registry is upheld. Liberty is granted to the applicant to amend the application and the statement of case and duly submit the same within a period of 15 days from the date of receipt of this order failing which the Registry is directed to strike out the name of the applicant No. 2 and process the application in accordance with law.