
(2014) 10 IPAB CK 0005

In the Intellectual Property Appellate Board

Case No : O.R.A./70/2008/TM/DEL

Yash Pal Bharara

APPELLANT

Vs

Amar Shakthi Electronic

RESPONDENT

Date of Decision : 16-10-2014

Acts Referred:

Citation : (2015) 62 PTC 587 (IPAB)

Hon'ble Judges : K.N. Basha, J; Sanjeev Kumar Chaswal, Technical Member

Bench : Division Bench

Advocate : Surinder Singh

Final Decision : Allowed

Judgement

K.N. Basha, J

1. Mr. Surinder Singh, learned counsel appearing for the applicants is present today. The respondents, in spite of serving notice of hearing today are not appearing either in person or through their counsel. It is seen that even for the last date of hearing i.e. on 18/09/2014, in spite of serving notice, the respondents neither appeared in person or through any representative. During the last hearing, the learned counsel for the applicants submitted that as per verification in the Trade Marks Registry, New Delhi, the impugned trade mark was not renewed beyond 2012 and the learned counsel had undertaken to file the status report of the same.

2 . As per the undertaking given by the learned counsel for the applicants as stated above, Mr. Surinder Singh would file an affidavit of the applicants stating that the impugned trade mark was due for renewal on 17/04/2012 and it was not renewed thereafter. It is also stated that the same is evident from the extract of the official records attached along with the affidavit as Exhibit-A. The learned counsel would also submit that the affidavit of the applicants along with the status report of the Trade Marks Registry, New Delhi reveals that the trade mark was renewed only upto 17/04/2012 and the same was not renewed thereafter.

3. We have considered the submissions of the learned counsel for the applicants and also perused the affidavit filed by the applicants and the extract of the official records of Trade Marks Registry, New Delhi in respect of status of the impugned trade mark as per Trade Mark Application No. 1096258 in class 21 in respect of word mark ZEN MARUTI. The trade was valid upto 17/04/2012.

4 . It is pertinent to note as stated earlier that the applicants have filed an affidavit dated 15/10/2014, the relevant portion is as under:--

? I have filed the present rectification against the trade mark No. 1096258 in class 21 dated 17/04/2002.

? I say that the mark was due for renewal on 17/04/2012. As per my information, till date no renewal/restoration application has been filed by the registered proprietor to renew the mark in his favour.

? I say that even the Registered Proprietor has not filed any reply to the present petition in spite of service.

? I say that no one is appearing on behalf of Registered Proprietor to pursue the matter.

? I say that above said facts clearly evidencing that the Registered Proprietor is not interested to pursue the present registration.

5. With the above said grounds stated in the affidavit, it is prayed in the affidavit as also prayed in the original application that the impugned trade mark may be removed/rectified or expunged from the register of Trade Marks under No. 1096258 dated 17/04/2002 in class 21.

6 . The above said facts stated in the affidavit of the applicants coupled with the perusal of official extract of the Trade Marks Registry, New Delhi dated 15/10/2014 regarding the status of the registered trade mark, it is crystal clear that the impugned trade mark ZEN MARUTI in class 21 under No. 1096258 was not renewed and it was valid upto 17/04/2012. The conduct of the respondent viz., not appearing before this Bench in spite of service of notice continuously for two hearings, makes it abundantly clear that the respondents are not interested in pursuing the matter or contesting the application and they are not interested in the impugned trade mark any more. Therefore, we are of the considered view that it is not justified that the impugned trade mark is to remain in the Register of Trade Marks. Accordingly, the Registrar of Trade Marks, New Delhi is hereby directed to remove and ex-punch the impugned trade mark ZEN MARUTI registered under No. 1096258 dated 17/04/2002 in class 21. Accordingly, the ORA/70/2008/TM/DEL is allowed.