



सत्यमेव जयते

भारत सरकार / Government of India
व्यापार चिन्ह रजिस्ट्री / Trade Marks Registry
15/27, National Chambers,
Ashram Road,
Ahmedabad – 380 009
Tel.No. 26587193, 26580567
E-mail: tmrabad@yahoo.co.in

1598-1599
17.05.10

FROM: THE DEPUTY REGISTRAR OF TRADE MARKS

To,

1. M/s. Dandi Salt Pvt. Ltd.,
3051, Ambaji Market,
Kaamela Darwaja,
Ring Road, Surat
(Gujarat)
2. M/s. Jasani & Company,
216-V.V. Comm. Complex,
2nd Floor, Dhebarbhai Road,
Rajkot-360 002 (Gujarat)

Sub: - Opposition No. AMD-742161 to application No. 1641653 in class 30

Gentlemen,

With reference to the above matter, I am directed by the Registrar of Trade Marks to forward herewith an order/decision passed in this matter.

Yours faithfully,

ok

For Registrar of Trade Marks

THE TRADE MARKS ACT, 1999
(Before the Deputy Registrar of Trade Marks)

In the matter of application No. 1641653 in Class 30 in the name of **M/s. Indo Brine Industries Ltd.**, Agrawal's House, Gokul Park, Plot No. 356, Ward 12-B, Tagore Road, Gandhidham, Gujarat.

: Applicants.

AND

In the matter of Opposition No. AMD-742161 thereto by M/s. Dandi Salt Pvt. Ltd. 3051, Ambaji Market, Kaamela Darwaja, Ring Road, Surat, Gujarat

: Opponents.

AND

In the matter of Interlocutory Petition dated 18.03.2010 filed by the applicants.

Present:(1) Shri Y.J. Jasani, Advocate for the applicants.

(2) Shri Satyanarayan Agrawal, Group Chairman & Managing Director of the applicants Company, and

(3) Shri Muralidhar M. Jeswani, Manager of the applicants company.

(1) Shri Pathik M. Acharya, Advocate of opponents

(2) Shri Ramniwas Gupta, Director of the opponents company Dandi Salt Pvt. Ltd., Surat.

ORDER

Proceeding having been taken under section 21 of The Trade Marks Act, 1999 by the above named opponents to oppose the registration of trade mark applied for by the above named applicants and also Interlocutory Petition dated 18.03.2010 filed along with an affidavit of Shri Murlidhar M. Jeswani, Manager of applicants company to reject/dismiss the notice of opposition lodged by M/s. Dandi Salt Pvt. Ltd. 3051, Ambaji Market, Kaamela Darwaja, Ring Road, Surat, Gujarat (hereinafter referred to as the Opponents) against the registration of Trade Mark under application No. 1641653 in Class 30 and also to recall/withdraw the directions issued by the registrar.

In brief the fact of the case is as under:

On 16.01.2008 M/s. Indo Brine Industries Ltd., Agrawal's House, Gokul Park, Plot No. 356, Ward 12-B, Tagore Road, Gandhidham, Gujarat.(hereinafter referred to as the applicants) made an application being number 1641653 in Class 30 for registration of trade mark DANDI NAMAK with device of crossed sticks in respect of Iodized Salt for Human Consumption and for preserving food stuffs. User claimed by the applicants is 1st June, 1998. The application was ordered to be advertised before acceptance and eventually the said application was advertised before acceptance under proviso of section 20(1) of the Trade Marks Act, 1999 in the trade marks journal number 1402 dt. 16.10.2008 at page 7339. A notification in Trade Marks Journal No. 1409 dtd. 01.02.2009 at page No. 1980 was issued as under:-

“The Advertisement inadvertently published in Journal No. 1402 is treated as cancelled in view of the order/decision dated 24.04.2003 of The Hon'ble High court of Andhra Pradesh.” An another notification issued in the trade marks journal number 1410 dated 16.02.2009 whereby the aforesaid notification published in The trade marks journal No. 1409 was withdrawn and the publication of the application number 1641653 in the trade marks journal no. 1402 was restored.

(3) On 12.03.2009 the opponents gave notice of their intention to oppose the registration of the impugned mark by filing a notice of opposition on Form TM-5 along with a request on Form TM-44 without verification clause. The opponents were directed to furnish the verification clause in TM-5 along with a request on Form TM-16 vide this office letter No. 5332 dt. 18.08.2009. The opponents filed TM-16 on 09.09.2009 and furnished a verification clause but not in a prescribed manner. Thereafter the said notice of opposition was served on the applicants vide this office letter No. OA-4051 dt. 10.09.2009 for filing the counter statement which was filed by the applicants on 12.10.2009 denying all the allegations of the opponents and emphatically stated that they have been using the impugned mark since the year 1990 and also requested to dismiss the opposition. A copy of the counter statement was served on the opponents vide this office letter No. OA -10717 dt. 24.02.2010. and invited their attention to Rule 50. Thereafter the applicants filed their Interlocutory petition on 18.03.2010 a copy of which was served on the opponents vide office letter No. OB 9617 dt. 30.03.2010 for their comments. The applicants have also filed a letter dated 30.04.2010 to issue the order under Rule 50(2) of The trade marks Rules 2002 as the opponents failed to file evidence under Rule 50(1). The hearing was fixed on 03-05.2010 when Shri Y. J. Jasani and others appeared on behalf of applicants and Shri Pathik M. Acharya, Advocate of opponents Shri Ramniwas Gupta, Director of the opponents company Dandi Salt Pvt. Ltd., Surat.

Shri Pathik advocate for the opponents undertook to file TM-48 on behalf of the opponents and requested me to hear the matter fixed for today's hearing. Shri Pathik also submitted that the opponents are going to submit case laws on the issue by 05.05.2010. Shri Y.J. Jasani Advocate for the applicants has no objection to submit case laws on or before 05.05.2010 by the opponents.

Shri Y.J. Jasani Counsel for the applicants submitted that the notice of opposition is not maintainable and drew my attention to Letter dated 30.04.2010 and requested me to pass order under Rule 50(2). He further submitted that the applicants have neither received

any evidence in support of opposition nor received any reply to Interlocutory petition. He also submitted that the intention of the opponents is to delay the registration of the applicants without any justification. He further submitted that the opponents have not complied with the provisions of Rule 50 of The Trade Marks Rule 2002 and thereby the opponents themselves have abandoned their rights to oppose the registration of the application and hence the opponents themselves deemed to have been abandoned their opposition by their own act under Rule 50(2). He relied on the following case laws

- (1) A.I.R. 1998 Delhi-232. (M/s. Gupta Enterprises v/s. M/s. Gupta Enterprises)
- (2) 1992 PTC -243 (TMR-Bombay) (M/s. Velcro India Ltd. V/s. M/s. Velco Industries, Netherland)
- (3) 2002 (24) PTC – 558 (Delhi High Court) (Seiko Cables V/s. Hattori Seiko Company Ltd).
- (4) A.I.R. 1975 Supreme Court – 915 : 1975 (O) GLHEL-SC 23500 (Ramchandra Keshav Adke v/s. Govind Joti Chavare)
- (5) A.I.R. 2005 Supreme Court – . (Bhaurao Dagdu Parkar V/s. State of Maharashtra)
- (6) A.I.R. 1977 Supreme Court 2421 (T. Arivandandam v/s. T.V. Satyapal).
- (7) A.I.R. 1987 Supreme Court – 1926. (Samar Singh V/s. Kedar Nath)
- (8) A.I.R. 2005 Supreme Court – 540 : 2004 (O) GLHEL – SC 7317. (Dattaraj Nathuji V/s. State of Maharashtra)

Shri Pathik Acharya advocate for the opponents, submitted the written arguments and relied on the reply to applications filed under Right to Information Act, 2005 relating to status of application numbers 1641653 and 1641655 and various court orders and copies of the documents received from M/s. Jasani and Company and M/s. Indo Brine Ltd. Etc. He requested me to reject the Interlocutory filed by the applicants.

On 05.05.2010 Mr. Pathik Acharya furnished an authorization letter from Shri Ram Niwas Gupta (Director) of the Opponents company and relied upon the following two judgments (1) Jasbhai Motibhai Desai V/s. Roshan Kumar, Haji Bashir Ahmed and others 1976 1 Supreme Court Case 671 decided on 19th December, 1975 (2) MRC

Logistic Private Limited V/s. Regional Director. 2009(4) BCR 600 and also furnished opponents reply to the Interlocutory Petition dt. 18.03.2010 filed by the applicants.

I have pursued the material available on record and observed that the opponents have neither filed request on Form TM-56 for extension of time for filing evidence in support of their opposition nor filed evidence in support of opposition within prescribed time limit under Rule 50. Rule 50(2) says that If an opponents takes no action under sub-rule (1) within the time mentioned therein the opponents shall be deemed to have abandoned his opposition. An application for the extension of the period of one month mentioned in sub-rule (1) shall be made in Form TM-56 accompanied by the prescribed fees before the expiry of the period of 2 months mentioned therein. Thus within 2 months from services of a copy of a counterstatement or within such further period not exceeding one month in aggregate thereafter as the registrar may on request allow, the opponent shall either leave with the registrar such evidence by way of an affidavit as he may desire to adduce in support of his opposition or shall intimate to the registrar and the applicant in writing that he does not desire to adduce evidence in support of his opposition but intends to rely on the facts stated in the notice of opposition. He shall deliver to the applicants copies of any evidence that he leaves with the registrar under sub-rule 50(1) and intimate the registrar in writing of such delivery.

I have heard the submissions made by both the counsel for the applicants and opponents carefully and also gone through the material available on record of the proceedings. In the present case the opponents neither filed evidence under rule 50 nor relied on the notice of opposition. and therefore without going into the merits of the Interlocutory Petition filed by the applicants is disposed off and the following order is passed.

That by operation of law the opponents deemed to have abandoned their opposition under Rule 50(2) of The Trade Marks Rules, 2002.

It is hereby further ordered that the application No. 1641653 in Class 30 shall proceed further as per rules subject to outcome of other oppositions.

It is hereby further ordered that the aforesaid opponent shall forthwith pay a sum of Rs. 1,000/- (Rupees One Thousand Only) to the applicants as cost of these proceedings.

Signed and Sealed at Ahmedabad this 14th day of May, 2010.



(D. S. BANSOD)

DY. REGISTRAR OF TRADE MARKS