

Regd.

F.No. 1-26/2003-CRB(C2)

Case No. _____

Government of India
Ministry of Human Resource Development
Department of Higher Education
Copyright Board

B-2/W-3 Curzon Road Barracks,
K.G. Marg, New Delhi

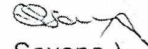
Dated : 10/05/2010

Subject: Forwarding of Order of Copyright Board.

Sir,

I am forwarding herewith copy of Order dated 30/04/2010 passed on above mentioned subject for compliance.

Yours faithfully,


(V.K. Saxena)

L.O & Dy. Registrar of Copyrights
Tel. No.23385834.

Encls: As above.

To

- ✓ (1) Shri Kishore Garg Prop. of
M/S G.M. Products (India)
Rawat Pura, Agra (UP)
- (2) Shri Arvind Kumar Gupta
Prop. of M/S Kamal Chemical
Works 1/32 Taksal Gram
Johri Bazar,
Agra (UP)
- (3) Shri Tajender Singh, Advocate
5/25, West ^{patel} Nagar
New Delhi - 110008
- (4) Shri Shailen Bhatia &
Shri Amit Jain, Advocates,
Flat No. E (GF)
Sagar Apartments, 6 Tilak Marg,
New Delhi

SY NO. 17/10

BEFORE COPYRIGHT BOARD

Bench : Dr. Raghbir Singh – Chairman
Sh. T.N. Tiwari – Member
Sh. P.L. Ahuja – Member
Sh. Rajendra Kumar Misra – Member

F. No.1-26/2003-CRB(CZ)

Shri Vivek Garg Prop. of
M/s G.M.Products(India),
Rawat Para,Agra.

Petitioner

V/s

Shri Arvind Kumar Gupta Prop. of
M/s Kamal Chemical Works,1/32,
Taksal Gani,Johri Bazar,
Agra (UP)

Respondent

Present:

S/Shri Sushant Singh & Tejinder Singh, Counsels for the Petitioner
Shri Shailen Bhatia, Counsel for the Respondent

ORDER

This is an application under section 50 of the Copyright Act, 1957 for expunction of registration number A-62016/2002. The matter was argued at New Delhi on 22.2.2010.

2. Petitioner has taken the following principle grounds that -

- (a) the impugned artistic work is a clear copy reproduction of the petitioner's work and is not original one;
- (b) there is violation in obtaining certificate under section 45(1) of the Copyright Act;
- (c) Shri Arvind Kumar Gupta cannot be the author of the impugned artistic work;
- (d) the first publication mentioned as 1977 is not genuine;
- (e) the registration has been obtained in violation of rule 16 of the Copyright Rules, 1958.

3. Respondent in his written statement refuted the allegations of the petitioner. He has stated further that the petitioner preferred a suit against the respondent in 1996 and failed in it. The suit was dismissed vide order dated 8.7.2004. An appeal is pending and no interim orders have been passed. Respondent has drawn attention to a trade mark registration for the mark having been granted to him under registration number 631726 dated 23.6.1994. Respondent has also mentioned about an application for registration of the petitioner being pending with the Registrar of Copyrights which has been kept pending the decision in the civil suit pending in Agra.

4. In the replication filed by the petitioner, he has refuted the assertions of the respondent in the written statement.

5. Learned counsel for the petitioner took us to p 244-49 of his paper book where a copy of letter dated 24.4.1996 from the office of the Registrar of Copyright alongwith the copy of the application of the petitioner for registration of his label have been enclosed evidencing his presence in 1996 with the label Shodhi Hare. He took us to a copy of letter dated 16.8.1994 at p 250 from the Registrar of Trade Marks evidencing the no objection certificate from that Registrar. He took us to the copy of certificate of the petitioner at p 9 bearing registration number A-59370/2001 dated 14.5.2001 wherefor the application was received in the Copyright registry on 30.11.2000. Year of first publication is claimed to be 1997.

He took us to the copy of the impugned certificate number A-62016/2002 dated 27.8.2002 at p 13 wherefor application was filed in the registry on 28.11.2001. First publication claimed is 1977. He took us to Ex C of his paper book where a copy from the Trade Marks Journal has been placed where the petitioner claimed the user as from 1.4.1989. He took us to the copies of certain newspaper advertisements at pp 171-174 where the earliest advertisement about his product is dated 22.8.1991. (22.8.1991)

6. Learned counsel for the respondent drew our attention to the English version of the judgment of District Judge, Agra wherein while deciding issue number 3, the learned judge has concluded that the petitioner herein drafted his design in the year 2001 and thus the respondent herein was using the trade mark of K.C. Sodhi Hare before the petitioner herein. Learned counsel submitted that the petitioner should have referred to the pending cases between the parties. There is no whisper about the same. He drew our attention to the copy of the trade mark certificate number 269813 issued to the respondent on 14.8.2003. Respondent has also pointed errors in the use of labels by the petitioner vis-à-vis the one for which licence was granted to him under the Drug licence. Counsel for the respondent drew our attention to the copy of a letter from the Ayurvedic Evam Unani Adhikari, Agra to the petitioner dated 19.3.1996 whereby error in use of the label was pointed out whereto the petitioner tendered any apology (copy placed as p.297). He drew our attention an application for registration of trade marked in the Trade Mark Journal in the name of the respondent where user claimed is as from 15.2.1977. In conclusion, the learned counsel submitted that there is no prior adoption, there are no chain of predecessor with prior use and the statement of before the Drug authority infers to an adverse view to be taken against the petitioner.

7. Learned counsel for the petitioner in reply reiterated his earlier position as to his user since 1996 as evidenced through the newspaper advertisements. He submitted the judgement of District Judge, Agra has recognized the earlier use by Mrs Beena Garg, the mother, being member of HUF.

8. Learned counsel from both sides have made arguments to buttress their view point which has been focused to establish their prior use to each other. Learned counsel for the petitioner has failed to make out a case as to the prior knowledge of the respondent of the interest of the petitioner in the subject matter of the impugned registration before the date of making application, that is, 28.11.2001. Similarly, there is nothing in the arguments of the learned counsel for the petitioner to establish violation committed in obtaining certificate under proviso to sub-section (1) of section 45 of the Act by the respondent. Similarly, there are no cogent grounds to question the originality of the work. It is clear that the respondent is marketing its products under the impugned label at least since he has obtained the said registration, that is, 27.8.2002. Packing involved are small pouches for retail sale at a very nominal amount. According to the own submissions of the respondent, he has been having very good turnover. It can be safely assumed that the articles to which the labels have been applied have been reproduced more



than fifty times by an industrial process by the owner of the copyright, or, with his licence, by any other person attracting disqualification under section 15(2) of the Copyright Act, 1957. It has been established under various judgments of Delhi High Court and Gujrat High Court culminating into a Division Bench judgment of Delhi High Court in Microfibres Inc vs Girdhar and Co., 2009(4)PTC519. This Board too has followed the said judgment in series of cases decided by it heretofore.

9. Accordingly, Registrar shall expunge the impugned entry from the Register.
No orders as to costs.

Raghu Singh
Dr. Raghbir Singh
New Delhi, Dated 17th March, 2010.



T.N. Tiwari
Sh. T.N. Tiwari
New Delhi, Dated 17th March, 2010.

P.L. Afuja
Sh. P.L. Afuja
New Delhi, Dated 17th March, 2010.

Rajendra Kumar Misra
Sh. Rajendra Kumar Misra
Patna, Dated.. 23-4-10

Dated 30-4-10

Attorn
[Signature]
30/4/10
Dy Registrar of Copyrights
New Delhi 110011