



Intellectual Property Appellate Board

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TP/5/2020/CR/SZ
TP/6/2020/CR/SZ
TP/7/2020/CR/SZ
TP/8/2020/CR/SZ
TP/9/2020/CR/SZ
TP/10/2020/CR/SZ

WEDNESDAY, THIS THE 30TH DAY OF DECEMBER, 2020

Hon'ble Shri Justice Manmohan Singh
Hon'ble Shri. N. Surya Senthil
Hon'ble Shri. SP. Chockalingam

...Chairman
...Technical Member (CR)
...Technical Member (CR)

M/S. N. RANGA RAO & SONS
No. 1553, M.G. ROAD (OLD VANIVILASA ROAD)
POST BOX No. 52
K.R. MOHALLA
MYSORE – 570 004

.....Appellants

(Represented by Mr. Rohan Swarup)

Vs.

1. M/S. DIVYA INCENSE INDIA PVT. LTD.
A-65, SECTOR-57,
NOIDA (U.P.)

Also at:

13, DIVYA MANSION, 1ST MAIN ROAD
SHREERAMPURAM, SAIBABA NAGAR
BANGALORE

2. Mr. PANDU
M/S. PANDU ADS, U19/W63
1ST STAGE, 5TH CROSS, OKALIPURAM
BANGALORE - 21

.....Respondents

(Represented by None)

ORDER

Hon'ble Shri SP. Chockalingam, Technical Member (Copyright)

The cases were taken up for hearing on 18/12/2020. Advocate Mr. Rohan Swarup appeared on behalf of the Petitioner in all the cases, and he had submitted a common affidavit seeking for the cancellation of the Respondent's copyright registration for the reasons contained therein. None appeared for the Respondent. We have perused the common affidavit and that we are satisfied with its contents, and the following order is passed.

Common Order:-

1. The Petitioner is carrying on the business of manufacturing incense sticks or agarbathi, based on the ancient Indian art of making "Dhoopa".

2. The Petitioner during August 2004 came across agarbathies being sold in the name of "DIA" in cartons by the Respondent, in and around Delhi. The said cartons were identical to "LIA" cartons of the Petitioner. Upon enquiry, the Petitioner came to know that the Respondent is selling series of DIA agarbathi, of which getup and packaging is virtually identical with six of LIA agarbathies of the Petitioner. Aggrieved by the same, the Petitioner instituted a Civil Suit No. CS (OS) 860/2004 against the Respondent, on the file of the Hon'ble Delhi High Court for permanent injunction restraining the Respondent from passing off, and infringing the Petitioner's copyright etc.
3. The learned single Judge of the Hon'ble Delhi High Court on 02/12/2005 had pronounced judgment in favour of the Petitioner herein by passing a decree, *inter alia*, of permanent injunction restraining the Respondent herein from using the mark 'LOTUS DIA' as well as the cartons and trade dresses bearing the same.
4. Aggrieved by the judgment of the learned single Judge, the Respondent herein had preferred an Appeal in RFA (OS) 10/2006, before the Hon'ble Division Bench of the Delhi High Court. In the Appeal, the Respondent herein had revealed the copyright registrations that it had obtained in relation to its 'DIA' range of agarbathies.
5. It is the case of the Petitioner that the Respondent had fraudulently obtained copyright registrations by misleading the Copyright Office. The Respondent had applied for the said copyright registration when the Civil Suit between the Petitioner and Respondent is pending before the Hon'ble Delhi High Court, more so, when an ex-parte injunction was granted restraining the Respondent to deal with the impugned labels. The Petitioner aggrieved by the said registrations, had filed the batch of petitions, in all numbering six, under Section 50 of the Copyright Act, 1957 for the cancellation of the said copyright registrations.
6. During the course of the hearing of the Appeal before the Division Bench of the Hon'ble Delhi High Court, the Petitioner herein had waived the cost imposed by the learned single Judge and has also expressed its no objection for the Respondent herein in using the trade mark DIA in the styling and font agreed upon by the parties. The Hon'ble Division Bench of the Delhi High Court recorded the submissions of the parties and had modified the decree of the learned Single Judge to that effect. The copy of the order, dated 14/02/2012 passed by the Hon'ble Division Bench of the Delhi High Court in RFA (OS) 10-13 of 2006 is produced before us.
7. From the factual narration, it is evident that the Respondent herein is only permitted to sell its agarbathies using the packaging and trade dress as agreed to between the parties. From the foregoing, it is clear that the Respondent had forsaken its rights over the impugned artistic works, and that it had lost interest in

agitating the cancellation petitions, since it had compromised the issue with the Petitioner. Further, that the Hon'ble Delhi High Court had also recognized the Petitioner's right in the artistic works. Thus it is clear that the Respondent has lost interest in the proceeding and did not appear.

8. For the foregoing, we are convinced that the registration of the Respondent's copyrights (Six artistic works), vide (1) A-73460/2005, (2) A-73461/2005 (3) A-73462/2005 (4) A-73463/2005 (5) A-73464/2005 and (6) A-73465/2005 are liable to be cancelled. We, therefore, direct the Registrar of Copyrights to cancel the aforementioned registrations. All the petitions are allowed. No costs.

-Sd/-

**Hon'ble Shri N. Surya Senthil
Technical Member (CR))**

-Sd/-

**Hon'ble Shri SP. Chockalingam
Technical Member (CR)**

-Sd/-

**Hon'ble Shri Justice Manmohan Singh
Chairman.**

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