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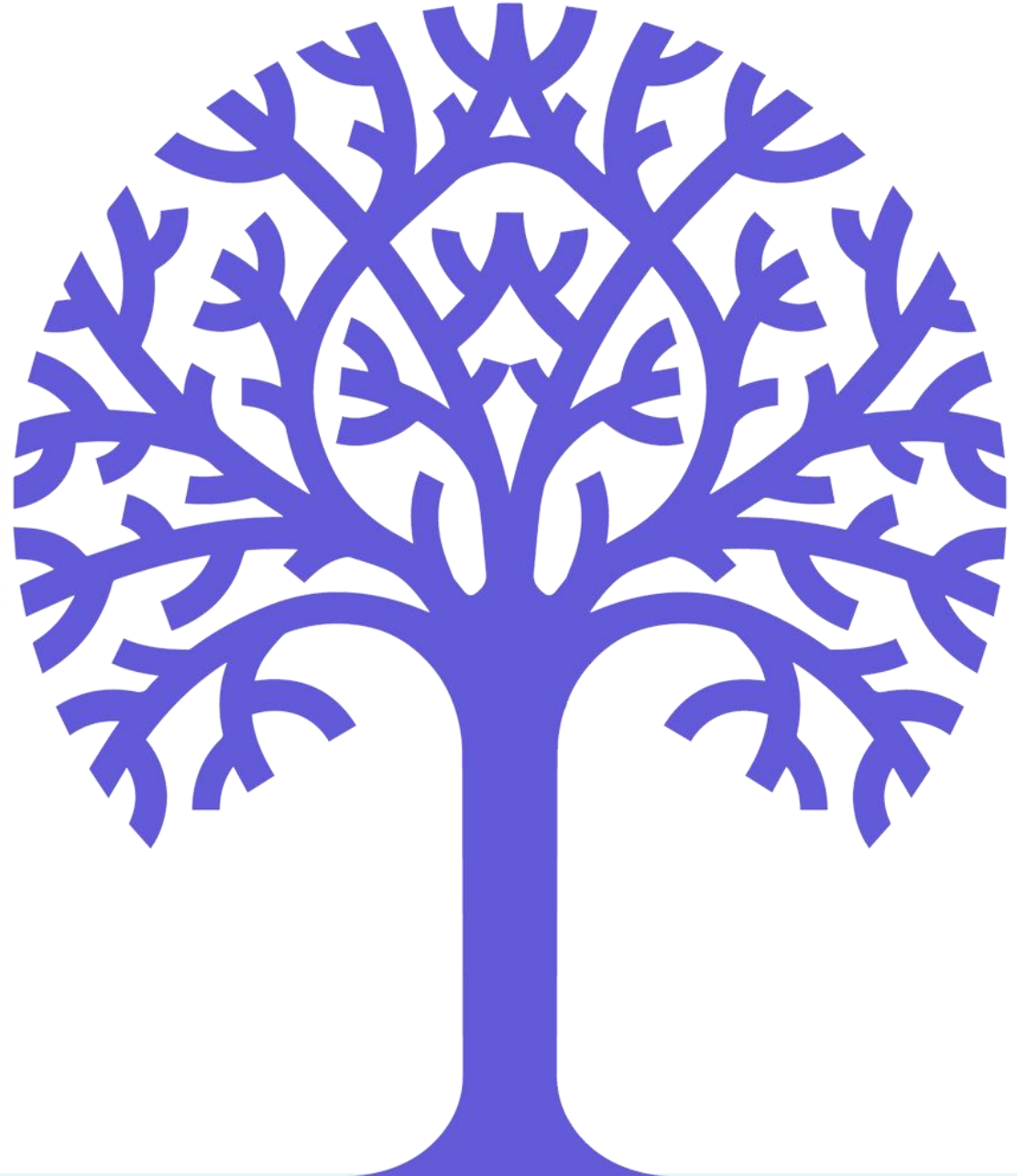


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Article

Plant variety protection – Procedural infirmities, not impacting eligibility of applicant/application for registration, are not fatal

By Harshita Agarwal and Vindhya S Mani

The Division Bench of the Delhi High Court has set aside the Single Bench's order which had affirmed the Protection of Plant Varieties & Farmers' Rights Authority's order of revocation of registration. The registration was earlier set aside due to alleged furnishing of incorrect information relating to the date of first commercial sale as well as the purported failure to present requisite information at the time of applying for registration. The article in this issue of IPR Amicus elaborately discusses in this regard the facts of the case including the analysis and findings of the Division Bench. The authors observe that the Division Bench essentially held that procedural infirmities, which have no impact on the eligibility of the applicant to apply for a plant variety application or on the eligibility of the application for registration, are not fatal to the registration unless such infirmities are due to willful misrepresentation or to gain any undue advantage. According to the authors, this view is consistent with the general judicial trend to consider procedural lapses or infirmities based on its impact on the substantive merits of the matter.

Plant variety protection – Procedural infirmities, not impacting eligibility of applicant/application for registration, are not fatal

By Harshita Agarwal and Vindhya S Mani

In the decision dated 9 January 2024¹, the Division Bench (Two-Judge Bench) of the Delhi High Court, while adjudicating cross-appeals, partly set aside the Single Judge's order, dated 5 July 2023. The Single Judge had previously affirmed the PPVFR (Protection of Plant Varieties & Farmers' Rights) Authority's order of revocation due to furnishing of incorrect information relating to the date of first commercial sale as well as the purported failure to present requisite information at the time of applying for registration, and adjudged PepsiCo's registration in respect of plant variety FL 2027, dated 1 February 2016, to be valid and further directed the restoration of the renewal application filed by PepsiCo.

Facts

PepsiCo applied for registration of FL 2027 on 18 February 2011 describing it as a 'new' variety. The first commercial sale date was indicated as 17 December 2009. Further, an assignment deed dated 26 September 2003 ('**Assignment**

Deed') was submitted which indicated that the original breeder, Dr. Robert Hoopes, has assigned all his rights with respect to subject plant variety to Recot Inc., a company incorporated in Delaware, USA.

On 9 June 2011, the Registrar sought certain corrections, documents, and information from PepsiCo. PepsiCo, in their letter dated 8 February 2012 communicated to the Registrar to treat the subject variety as 'extant' variety and submitted a revised application on 16 February 2012, wherein PepsiCo corrected the identity of the Applicant to 'assignee of any of above' but again chose to describe the subject variety as 'new' variety instead of 'extant' variety. It further maintained the first sale date as 17 December 2009, enclosed the Assignment Deed, and submitted the declarations from the original breeder, and Operations Director stating that the genetic or parental material for breeding, evolving, or developing the FL 2027 has been lawfully acquired. Based on the letter dated 14 June 2012, the Registrar communicated to PepsiCo that the subject variety will

¹ *Pepsico India Holdings Pvt. Ltd. v. Kavitha Kuruganti*, 2024 SCC OnLine Del 153

be considered under the 'extant' category and granted the certificate of registration for FL 2027 to PepsiCo on 1 February 2016.

A revocation action was filed by Ms. Kavitha Kuruganti, on 17 June 2019, under Section 34 of the Protection of Plant Varieties and Farmers Rights Act, 2001 ('PPVFRA/Act') alleging that the grant was obtained on incorrect information. During the revocation proceedings, Frito Lay North America ('FLNA'), an affiliate of PepsiCo, filed a letter dated 12 September 2019 purporting to clarify that it had allowed PepsiCo to file the application for registration of FL 2027.

In an order dated 3 December 2021, the Authority proceeded to revoke the registration *inter alia* on the ground that the Assignment Deed was neither stamped in accordance with the Indian Stamp Act, 1899 nor has it been signed by the witness as required and that FLNA has not submitted any assignment in favor of PepsiCo. The Authority further held that the Registrar incorrectly examined the application and granted the registration under 'extant' category without requiring PepsiCo to amend its claim from 'new' to 'extant'. Further, the

Authority held that the oral assignment, and evidence in support of the change of name of Recot Inc. to FLNA was provided for the first time only during revocation proceedings. Therefore, based on the above observations, the Authority revoked the registration under Section 34 (a), (b), (c), and (h) of the PPVFRA.

The Authority's order dated 3 December 2021 was appealed by PepsiCo which was heard by the Single Bench of the Delhi High Court. The Single Bench disagreed with PepsiCo's submission and held that the date of first sale/exploitation is important and material information for the application and whether the relevancy of such date will affect the registration is immaterial. With respect to the purported failure of PepsiCo to provide requisite information in Form PV-2, the Single Bench observed that PepsiCo had filed Form PV-2 in blank and without the signatures of the breeder or FLNA and held that the Authority has rightly not relied on the letter dated 12 September 2019 submitted by FLNA to the Authority during the revocation proceedings as it was not in compliance with Form PV-2 and was submitted post the registration, and therefore, has rightly invoked the provision of Section 34(c)² of

² 34. Revocation of protection on certain grounds. —

Subject to the provisions contained in this Act, the protection granted to a breeder in respect of a variety may, on the application in the prescribed manner of any

person interested, be revoked by the Authority on any of the following grounds, namely: —

the Act. With respect to the issue of the Assignment Deed being insufficiently stamped, the Single Bench held that the Registrar had initially complied with the proviso to Section 20(2)³ of the Act by providing PepsiCo with an opportunity to rectify the deficiencies in the application. Despite the opportunity being granted, PepsiCo filed an application not in conformity with the Act, the Rules, and the Regulations. Therefore, PepsiCo is suffering for its own mistakes and for its casual manner of making an application seeking registration. With respect to the ground of Section 34(h)⁴ of the Act, the Single Bench observed that mere filing of litigations by PepsiCo against the farmers, even presuming it to be frivolous, cannot make the registration granted not in consonance with the public interest, and held the Authority has erred in revoking the registration under Section 34(h) of the Act.

Aggrieved by the judgment passed by the Single Bench upholding the revocation of FL 2027, PepsiCo appealed the judgment. Kavitha Kuruganti filed a cross appeal against the

(c) that the breeder did not provide the Registrar with such information, documents or material as required for registration under this Act;

³ 20. **Acceptance of application or amendment thereof.** - (2) Where the Registrar is satisfied that the application does not comply with the requirements of this Act or any rules or regulations made thereunder, he may, either—

- (a) require the applicant to amend the application to his satisfaction; or
- (b) reject the application:

findings of the Single Bench with respect to the incorrect declaration of variety and Section 34(h) of the Act.

Analysis and findings of the Court

(a) *The 'new' and 'extant' dispute*

The principal issue that was considered by the Hon'ble Division Bench was the scope and intent underlying Section 34 of the Act and identifying the circumstances which would warrant the power of revocation being invoked. The Division Bench concurred with PepsiCo's submissions that Section 34 of the Act cannot be exercised or attracted in the slightest infraction.

The Division Bench further observed that language of Section 34 used the expression '*may, on the application in the prescribed manner of any person interested, be revoked...*', makes it *pari materia* to Section 64 of the Patents Act, 1970. The Bench relied upon the decision of another Division Bench of the Delhi

Provided that no application shall be rejected unless the applicant has been given a reasonable opportunity of presenting his case.

⁴ 34. **Revocation of protection on certain grounds.** —

Subject to the provisions contained in this Act, the protection granted to a breeder in respect of a variety may, on the application in the prescribed manner of any person interested, be revoked by the Authority on any of the following grounds, namely: —

- (h) that the grant of the certificate of registration is not in the public interest

High Court in *Maj (Retd.) Sukesh Behl v. Koninklijke Phillips Electronics*⁵, wherein the Division Bench held that the compliance with the requirements of Section 8(1) of the Patents Act, 1970 is mandatory and non-compliance of the same is the ground of revocation under Section 64(1)(m) of the Patent Act, 1970, but use of the word 'may' in Section 64 of the Patents Act, 1970 indicates that power to exercise revocation under such provision is directory, and not automatic, and it is upon the discretion of the Authority/Court, thus, implying that the provision of Section 8(1) of the Patents Act, 1970 is not the determinative factor of revocation under Section 64(1) of the Patents Act, 1970.

The Division Bench observed that PepsiCo in its letter dated 8 February 2012 apprised the Authority that it was seeking registration of FL 2027 under the 'extant' category, and while applying for registration PepsiCo never claimed FL 2027 to be novel which is the principal distinctive feature for the determination of 'new' variety. Thus, the Division Bench concurred with the conclusion rendered by the Learned Single Judge that the registration of the application is not liable to be revoked based on the incorrect mentioning of the variety.

(b) Dispute regarding the date of first sale

The Division Bench opined that PepsiCo could not have derived any advantage by mentioning the incorrect date of the first sale/commercialization. The Bench held that mentioning of date of first sale whether computed with reference to commercialization in Chile or India did not impact the right of PepsiCo to apply for registration under the Act. Also, concurring with PepsiCo's submission, the Division Bench observed that the protection of the variety provided under the Act flows from the date of registration and not from the date of first sale, thus, PepsiCo could not have derived any benefit. Section 2(j) of the Act refers to a variety 'available in India', the disclosures required in Form does not indicate the date of first sale being global or India specific. Referring to Section 15(3) of the Act, the Court observed that Section 15(3)(a)(ii) of the Act pertains only to 'new' variety since exploitation outside India is concerned with novelty, while Section 15(3)(b), (c), or (d) of the Act, which are relevant to 'extant' varieties does not use the phrase 'outside India'. Therefore, the Court held that PepsiCo made declarations with respect to first sale in accordance with the language of Section 2(j) of the Act.

⁵ 2014 SCC OnLine Del 2313

(c) Section 16(1)(c) and its import

With respect to the issue regarding the rights claimed by PepsiCo and the extent of disclosures and declarations made in the application, the Bench observed that PepsiCo consistently took the position that its application for registration is founded on Section 16(1)(c) of the Act and not under Section 16(1)(e)⁶ of the Act. Also, the application as submitted before the Registrar sought the grant in favor of PepsiCo and not in favor of FLNA. Dr Hoopes being the original breeder has not been disputed, and he had assigned all the rights with respect to the plant variety to Recot Inc. FLNA and PepsiCo are the affiliates and group entities of PepsiCo Inc. Therefore, the authorization by FLNA in favor of PepsiCo is to be construed in the aforesaid light. Section 16(1)(c) of the Act enables a person being assignee of the breeder to apply for registration. However, the said provision uses the expression '*in respect of the right to make such application*' which signifies that it not only enables the assignee of the breeder but even one who may have been empowered by

the assignee to make such an application. The Hon'ble Court further noted the distinction between clause (c) and (e) of Section 16(1) and stated that Section 16(1)(e) merely enables the applicant by virtue of an authorization to act as an agent of any of the category of persons falling within the clauses (a) to (d) to prosecute and pursue an application before the Registrar. Such a person does not claim or seek registration in its favor. This position is further fortified in Section 18(3) of the Act which lays down the assignment of the right to apply for registration. This expands the field of persons rendered eligible to apply for registration beyond a mere assignee of the breeder to even one who has been assigned the right to apply for and seek registration in its own name. Rule 27⁷ of the Protection of Plant Varieties and Farmers' Rights Rules, 2003 read along with Section 18(3) of the Act speaks of appropriate disclosures to be made in the manner specified in Form PV-2. However, Form PV-2 does not make adequate provisions to cater to myriad contingencies where the original breeder becomes a party along with its assignee to apply for registration. Therefore, its

⁶ **16. Persons who may make application.** —(1) An application for registration under section 14 shall be made by—

(e) any person authorised in the prescribed manner by a person specified under clauses (a) to (d) to make application on his behalf

⁷ **27. Proof of the right of making application under sub-section (3) of section 18.-**

(1) Where an application for registration is made by the successor or assignee of the breeder under sub-section (3) of section 18, he shall furnish documentary

proof, at the time of making such application or within six months of making such an application, as to the right to make such an application for registration.

(2) The documentary proof, in case of an assignment, shall be furnished in the manner specified in Form PV-2, given in the First Schedule and in case of succession, or a succession certificate or any other document in support of succession proving the applicant to be the successor shall be furnished.

restrictive nature had constrained PepsiCo to mention the name of the original breeder in the application form. Based on the above observations, the Bench held the letter dated 12th September 2019 by FLNA authorizing PepsiCo to be unambiguous to the extent of authorization and conferring of rights and that it clearly falls within the ambit of Section 16(1)(c) of the Act.

(d) Inherent contradiction

The Bench further accepted PepsiCo's submissions that the findings of Ld. Single Judge with respect to 'new' and 'extant' variety and with respect to the first sale of FL 2027 is contradictory and held that once the Ld. Single Judge had admitted the position with respect to the issues of incorrect mention of variety on the anvil of eligibility to seek registration, the same position should have been taken by the Ld. Single Judge with respect to the issue of mentioning incorrect date of first sale as PepsiCo's application does not fall foul of statutory time frame as construed in Rule 22(2)(a) of the Act, irrespective of whether the time period is computed from date of first sale in Chile or in India. The power of revocation comprised in Section 34 of the Act cannot be invoked in situations which may have no impact on the eligibility of the Applicant to apply for application or on the eligibility of the application for

registration. Mandating such exercise of provision is arbitrary and illogical as such factor has no material bearing on the ultimate grant and fails to meet the tests of fundamental ineligibility and invalidity. Thus, the Hon'ble Court held that PepsiCo's application or the ultimate grant does not suffer from fundamental misdeclaration or failure to provide information as required by the provisions of the Act, read along with the Rules.

(e) Section 39(1)(iv) and public interest

With respect to the ground raised under Section 34(h) of the Act, the Division Bench held that Counsel on behalf of Ms. Kavitha Kuruganti failed to establish that the suits filed by PepsiCo against the farmers were vexatious in nature. Therefore, as per the Court the application is not liable to be revoked under Section 34(h) of the Act. The Bench thus directed that the renewal application filed by PepsiCo stands restored and directed the Registrar of PPVFR Authority to dispose of the same in accordance with the law and the findings of the Bench.

Conclusion

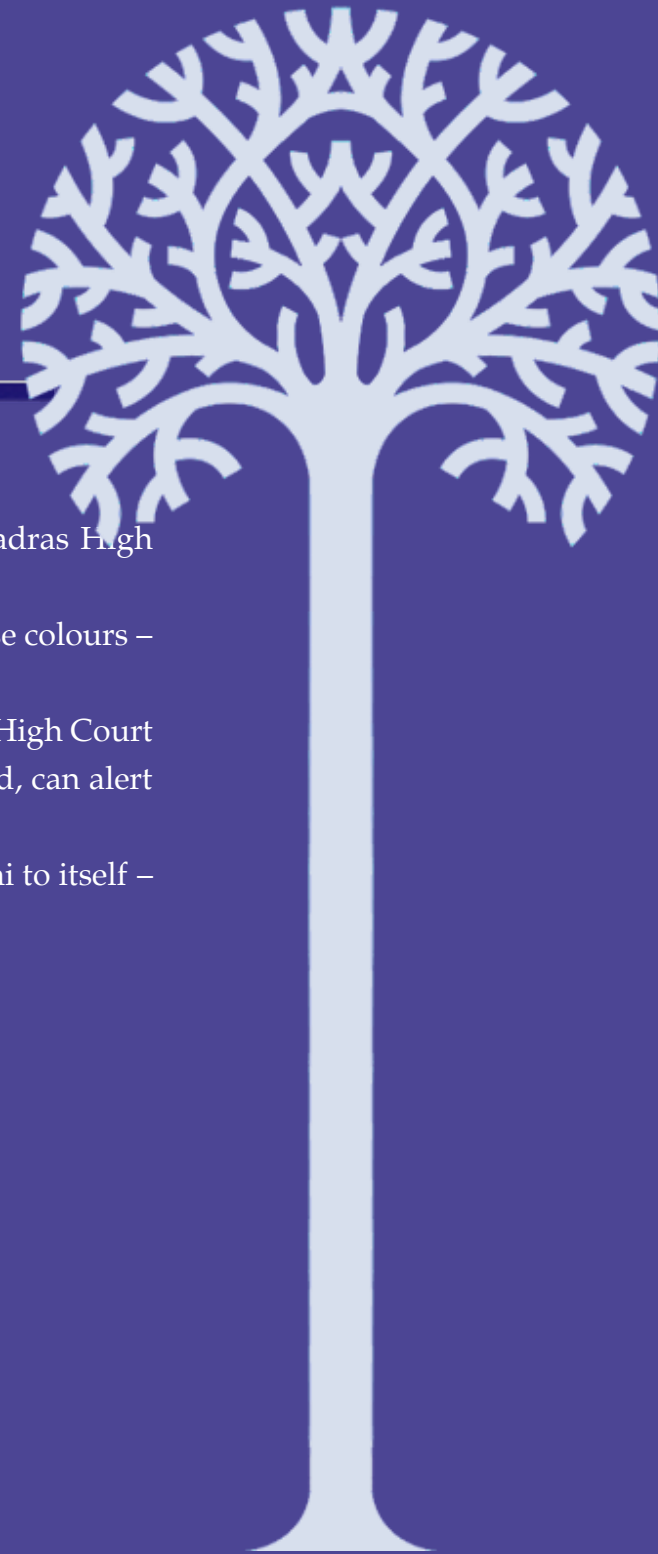
In the instant matter, the Division Bench essentially held that procedural infirmities, which have no impact on the eligibility of the Applicant to apply for a plant variety

application or on the eligibility of the application for registration, to be not fatal to the registration unless such infirmities are due to willful misrepresentation or to gain any undue advantage. This view is consistent with the general

judicial trend to consider procedural lapses or infirmities based on its impact on the substantive merits of the matter.

[The authors are Associate and Partner, respectively, in IPR practice at Lakshmikumaran & Sridharan Attorneys]

Ratio Decidendi



- Patent for 'Enzyme Granules for Animal Feed' – Madras HC distinguishes two prior arts – Madras High Court
- Trademark Registrar has no authority to restrict choice of colours – Applicant has right to choose colours – Madras High Court
- Trademark registration of names of Hindu Gods is not deniable under Section 9(2)(b) – Madras High Court
- Suo-motu rectification of trademark register by Registrar – Anyone, including person aggrieved, can alert the Registrar – Madras High Court
- Madras High Court can transfer rectification proceedings from Trademarks Registry, New Delhi to itself – Madras High Court

Patent for 'Enzyme Granules for Animal Feed' – Madras HC distinguishes two prior arts

The Madras High Court has directed the patent for an invention titled 'Enzyme Granules for Animal Feed' to proceed for grant. The claimed invention identified the problem to be solved as enhancing pellet stability in animal feeds by incorporating an organic zinc salt together with the enzyme. Allowing appeal against the IPO order which had rejected the grant basing its finding on the two alleged prior arts, the Court held that the said arts would not lead a person skilled in the art to the claimed invention.

The High Court in this regard noted that the solution in one of the alleged prior arts was by coating the enzyme containing granule with a salt, while in contrast, the solution in the claimed invention was in producing a core containing the enzyme and a zinc salt of an organic acid. The Court noted that the recitals in earlier art regarding the use of either inorganic or organic salts in the core in multiple combinations do not teach or even suggest any benefit therefrom especially by use of a zinc salt of organic acid. Two differences that were discernible from the earlier art in the claimed invention - the core was not coated with but

comprised a salt; and such salt was a zinc salt of an organic acid, were noted by the Court. It observed that although the earlier patent did indicate the use of inorganic or organic acids in the core as an option, there was nothing there that recited or taught the benefits of using a zinc salt of organic acid.

In respect of another prior art, the Court noted that the same was intended to enable reduction of the dissolution time of the granule, which was achieved by coating the granule containing the enzyme with a dispersion and hence the earlier art was designed to provide a solution to a different problem from that of the claimed invention.

The patent application/appellant here was represented by Lakshmikumaran & Sridharan Attorneys. [*Novozymes A/S v. Assistant Controller of Patents and Designs* – Judgement dated 19 March 2024 in (T) CMA (PT) No.92 of 2023, Madras High Court]

Trademark Registrar has no authority to restrict choice of colours – Applicant has right to choose colours

The Madras High Court has held that the Registrar of the Trademarks does not have the authority to impose restriction on the choice of the colours. Observing that what is not restricted

under the Act cannot be restricted by the authority functioning under it, the High Court held that an applicant has the right to choose the colours of its choice, as the Trade Marks Act, 1999 does not impose any restriction in the freedom of the owner of a mark to choose his/her/its favoured colours.

The Registry had earlier rejected the registration of the mark with a plus sign having colours of our national flag. The Court in this regard noted that saffron, white and green are merely colours, and they existed even before they were adopted in our national flag.

The Court also noted that if the applicant applies for the mark without limitation on the colour scheme as provided under Section 10(2), then post its registration the owner of the mark has the freedom to choose the colour scheme of its choice later, which may include the colours of our national flag.

Directing the Registrar to register the mark, the Court also raised a question that even if the mark is considered as resembling the national flag, does it anywhere seen denigrating its honour.

[*Swasth Digital Health Foundation v. Trademarks Registry – Judgement dated 15 March 2024 in CMA(TM) No.10 of 2023, Madras High Court*]

Trademark registration of names of Hindu Gods is not deniable under Section 9(2)(b)

The Madras High Court has set aside the Trademark Registry's decision to refuse registration of the mark 'Brahmabrews' under Section 9(2)(b) of the Trade Marks Act, 1999, on the ground that the word 'Brahma' is likely to hurt the religious sentiments of Hindus. The Court in this regard observed that the names of any Hindu God *per se* may not be adequate to bring it within Section 9(1)(b), and in that sense they cannot be equated to the names of the holy religious scriptures.

The High Court also observed that anyone who engages in any trade has the freedom to choose one's mark, and its selection need not be based on any objective criterion. According to the Court, one may select a trade name based on one's social or religious sentiments, and it may be difficult to interfere with the reason for one's choice of the trademark.

Further, observing that names of Hindu Gods are used to name those who profess Hinduism, the Court was of the view that if the Registrar takes up a position not to register any trademark with the names of Hindu Gods, then the shelf may well be half empty for an adopter of a trademark to choose the mark from.

Remanding the matter back to the Registry, the Court also held that if the Registrar of the trademarks brings in limitation as to

the choice of the mark based on his religious perception, then it is quite possible that such limitation may be an expression based on his personal values, something of which the Registrar must be conscious of.

[*R.R.Santosh Sriram v. Senior Examiner of Trade Marks – Judgement dated 15 March 2024 in (T)CMA(TM) No.97 of 2023, Madras High Court*]

Suo-motu rectification of trademark register by Registrar – Anyone, including person aggrieved, can alert the Registrar

The Madras High Court has rejected the contention that *suo motu* action cannot be taken by the Registrar under Section 57(4) of the Trade Marks Act, 1999 on a complaint given by a 'person aggrieved'. The Court in this regard noted that in a *suo motu* action contemplated under Section 57(4), the legislature does not intend to equate the Registrar/High Court with a 'person aggrieved', for it was intended not to remedy a personal cause of a person aggrieved, contrary to what is available under Sections 57(1) and (2), but to preserve the purity of the register.

The High Court noted that Section 57(4) nowhere qualifies the source from which the Registrar of Trademark can obtain or gather information for exercising the power to initiate the *suo*

motu action for rectification of the register. According to the Court, the Registrar/High Court should be concerned only with the quality of the information necessary to initiate a *suo motu* action and not with the source of such information.

The Court thus held that as long as there is a *bona fide* intent to preserve the purity of registration and the register, the fact that the information-provider is also a 'person aggrieved' cannot be held against him. The Supreme Court's decision in the case of *Whirlpool* was distinguished.

It may be noted that while disposing off the petition, the High Court also stated that the Registrar is required to apply its mind to the information received and must ascertain whether the same can provide a cause of action for a private action for rectification under Section 57(1) or (2). It was of the view that if the answer is in the affirmative, then the Registrar must step back and may refrain from exercising its *suo motu* power under Section 57(4), and if it senses a case where but for it exercising its *suo motu* power to rectify its register the purity of the register will be in peril, then it must step in.

[*Apollo Hospitals Enterprise Ltd. v. Deputy Registrar of Trade Marks – Order dated 15 March 2024 in W.P.(IPD) No. 29 of 2023, Madras High Court*]

Madras High Court can transfer rectification proceedings from Trademarks Registry, New Delhi to itself

The Madras High Court has held that there is no statutory bar under the Trade Marks Act, 1999, for entertaining a transfer application to transfer the rectification application pending before the Trademarks Registry at New Delhi, to the file of Madras High Court when already there is an infringement suit pending on the file of the Court. The Court noted that the suit was filed by the plaintiffs who were having their principal place of business at Chennai and a part of cause of action had also arisen at Chennai.

Observing that the statutory rights of the defendants will not be affected in such case, the Court also held that the *forum conveniens* for deciding the rectification application was only before the Madras High Court, as only through a consolidated hearing of the infringement suit and the rectification application an effective adjudication of the dispute can be rendered. Applying the 'dynamic effect' principle, the Court held that it is

empowered to transfer the rectification proceeding pending on the file of the Trademarks Registry, New Delhi to the file of the Court.

The High Court in this regard also observed that it had inherent power to transfer the rectification application more so when the Registrar of Trademarks (which is inferior to the High Court) under Section 125(2) of the Trade Marks Act, 1999, is empowered to *suo motu* transfer the rectification proceeding to the High Court.

The Court was also of the view that allowing the rectification application to be adjudicated by the Trademarks Registry at New Delhi may result in conflicting decisions and therefore, consolidation of all the proceedings involving the very same trademark dispute is necessary for an effective resolution of the trademark dispute between the parties.

[*Nippon Paint Holdings Co. Ltd. v. Suraj Sharma* – Order dated 21 March 2024 in C.S.(Comm.Div.) No.7 of 2024, Madras High Court]



News Nuggets

- Invention does not lack novelty unless it's all features are contained in a prior art
- No interim injunction when defendant using particular process before the patent for same was filed by plaintiff
- Delay in trademark registration – Madras High Court wonders at state of affairs at Trademark Registry
- Trademarks 'AMIXIDE' and 'KIMIXIDE' are deceptively similar
- Momos – Original taste gets justice
- Trademark 'Haldiram's' declared a well-known mark

Invention does not lack novelty unless it's all features are contained in a prior art

The Madras High Court has held that unless all features of the invention are contained in a prior art, it cannot be concluded that the invention lacks novelty. The High Court in *Ollos Biotech Private Limited v. Omega Ecotech Products India Limited* observed that the features of the respondent's product were cumulatively not contained in any cited prior art, and hence the device satisfied the requirements of novelty. The invention consisted of three trapezoidal containers with multiple perforations; each container was separated from the next by a divider with a hole in the centre; a chimney was fitted to the top lid with a detachable closure with a vent; and a plate was placed at the bottom to ward off rodents and insects.

No interim injunction when defendant using particular process before the patent for same was filed by plaintiff

The Delhi High Court has held that the fact that the plaintiff secured a suit patent in 2018 effected from 2016 and granted in 2021, cannot suddenly exclude defendants from continuing to adopt the process which they did since 2014. The Court in *Parwan Kumar Goel v. Dr. Dhan Singh* hence rejected the application for

seeking interim injunction against defendants restraining them from manufacturing 'Alpha Yohimbine' extracted from *Rauwolfia Tetraphylla/Rauwolfia Canescens* with purity greater than 90%. It was of the view that at the stage when the evidence is still to be led, there was no merit in the plea for injunction as *prima facie* there was evidence placed on record by the defendants to show that they were already manufacturing the subject compound through a process for industrial quantities.

Delay in trademark registration – Madras High Court wonders at state of affairs at Trademark Registry

The Madras High Court has expressed its displeasure at the state of affairs at the Trademark Registry. The Court was amazed at the fact that despite being a defaulter by consuming an unexplained and inexplicable 32 years delay for registering the mark, the Trademark Registry exhibited immense confidence to raise an issue of limitation for seeking renewal of the mark. According to the High Court, he who is at fault can hardly claim *locus standi* within the statutory scheme to insist on limitation. The Court in this regard also noted that registration of the mark after 32 years was also a job half done, as the Registry had ignored two subsequent TM-16 forms filed by the assignees of

the mark. The Court in *Rexcin Pharmaceuticals Private Limited v. Registrar of Trademarks* [Order dated 6 March 2024] stated that *'This is an atrocious state of affairs and this court cannot encourage it.'* The Trademark Registry was directed to receive the application for renewal.

Trademarks 'AMIXIDE' and 'KIMIXIDE' are deceptively similar

The Madras High Court has granted permanent injunction against the defendant using the mark 'KIMIXIDE' which was held deceptively similar to the plaintiff's trademark 'AMIXIDE'. The Court in *Sun Pharmaceutical Industries Limited v. Kivi Labs Ltd.* [Judgement dated 11 March 2024] observed that Triple Identity Test was satisfied to prove infringement of the plaintiff's trademark on account of use of deceptively similar trademark in relation to identical goods, namely, anti-depression drug, which is a Schedule-H drug, and having identical trade channels.

Momos – Original taste gets justice

The Delhi High Court has in recent two decisions granted relief to two separate parties – both occupying prominent places in selling momos (a Tibetan delicacy in form of a dumpling).

In the first case, the Court directed for removal of Respondent's registered trademark which was not only identical to the petitioner's trademark 'Dolma Aunty Momos' but also used the name of the petitioner herself as in 'Dolma'.

In the second case, an *ex parte ad interim* injunction was passed restraining the defendant from using, advertising, directly or indirectly dealing in any goods or services under defendant's trademark 'WOW' / 'WOW PUNJABI' which was found to be identical or deceptively similar to plaintiff's registered trademark 'WOW' / 'WOW!MOMO'.

Trademark 'Haldiram's' is a well-known mark

The Delhi High Court has granted a decree of declaration declaring the mark 'HALDIRAM', as well as the oval-shaped mark, as a 'well-known' mark in respect of food items as well as in respect of restaurants and eateries. The Court noted that the Plaintiff, Haldiram India Pvt. Ltd., exports its products not just within Asia, but to a large span of other countries. It, in this regard, also observed that the 'HALDIRAM'S' brand, with its origins deeply rooted in India's rich culinary tradition, has not only established a presence within the national market but has also extended its influence globally, transcending geographical, cultural, and national boundaries.

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