

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 _____

sr 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;

~~and the respondent has not taken any steps to rectify the same. The respondent has also submitted in violation of rule 12 of the Copyright Rules, 1957.~~

~~3. Respondent in its written statement admitted the illegitimacy of the petitioner's work. He has stated that the petitioner produced a suit against the respondent in 1998 and failed to it. The suit was dismissed with costs dated 8.7.2004. An appeal is pending and no further steps have been taken. Respondent has drawn attention to a prior work registration number A-1705 dated 23.8.1994. Respondent has also mentioned about the application for registration of the petitioner being pending with the Registrar of Copyrights which has been kept pending the decision in the above mentioned suit.~~

~~4. In the application filed by the petitioner, he has alleged the violation of the provisions in the Act and Rules.~~

[illegible]

It is further proved by the suggested averment that attention to the English version of the petition of Hridaya Rajya, was made, with details from volume 2, the learned judge has concluded that the petitioner himself failed to object to the said averment and that the suggested facts, were fully disclosed to the petitioner. The learned judge has also stated 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-a-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 Exam Unani Adhikari, Agra to the petitioner dated 19.2.1996 whereby error in use of the label was pointed out wherein the petitioner tendered any apology (copy placed as p297). 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 refers to an adverse view to be taken against the petitioner.

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 13(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. Raghu Singh
New Delhi, Dated 17th March, 2010.

Sh. T.N. Tiwari

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

Sh. P.L. Afuja

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

Sh. Rajendra Kumar Misra

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

Dated 30-4-10

Atkari
30/4/10

Dr. Rajendra Kumar Misra