

Philips India Limited Vs. Philips Infotch Limited

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Court : Trademark

Decided On : Apr-28-2003

Reported in : (2003)(27)PTC57Reg

Judge : S Biswas, R.D.

Appellant : Philips India Limited

Respondent : Philips Infotch Limited

Judgement :

1. M/s. Philips India Limited, a company registered with the Registrar of Companies, Calcutta has made an application dated 23.7.2002 to the Regional Director, Department of Company Affairs, Chennai for issuance of directions under section 22 of the Companies Act, 1956 to another company namely M/s. Philips Infotech Limited, registered with the Registrar of Companies, Kerala to change its name. The applicant company has made the above application on the following grounds.

(i) The Trade Mark "PHILIPS" is a globally known and recognised trade mark which is owned by their parent company viz. M/s.

Koninklijke Philips Electronics N.V., The Netherlands (KPENV). In India 'PHILIPS' is registered in different classes under the Trade and Merchandise Marks Act, 1948 and the same is in force since last 30 years.

(ii) Philips India Limited was incorporated in January 1938 which is a subsidiary of KPENV and has been licensed to use the trade mark 'PHILIPS' under which it sells a variety of products including the Consumer Electronics, Lamps, Domestic Appliances and Personal care products. Apart from Philips India Limited, KPENV has other subsidiaries in India including Philips Medical Systems India Pvt.

Ltd., Philips Glass India Limited and Philips Software Centre Pvt.

Ltd. (iii) The 'PHILIPS' Trade mark is well known and is amongst the top 50 best known brands in India as per recent survey. Philips actively promotes the brand through a variety of promotional exercise and by focusing on world class quality for its products and services. Its products are readily accepted by the customers as world class quality is reflected in the products.

Hence, use of the word 'PHILIPS' by any other company may mislead the general public that the same is belong to Philips Group of Companies.

2. Upon the receipt of the said application, I have vide letter dated 23.8.2002 addressed the Registrar of Companies, Kerala to furnish full details of the respondent company and also to send a report on the application made by the applicant company under Section 22 of the Companies Act, 1956. The Registrar of Companies vide his letter dated 12.09.2002 has stated that the name Philips Infotech (P) Ltd., was allotted to Shri Philip Mathew on 10.5.1999 and the company was registered on 27th August, 1999. The Registrar has also furnished his report, the details of Directors and registered office address of the respondent company. As per the said details the registered office of the respondent company is situated at 3C, Metro Palace, Town Railway Station Road, Kochi-682018.

3. I have vide letter dated 23.08.2002 also addressed to M/s. Philips Infotech Limited enclosing therewith the application dated 23.07.2002 made by the applicant company and advised them to explain as to why directions under Section 22 should not be issued to them to change their name to some other name and also advised them to offer a detailed explanation and comments on the contentions raised by the applicant company.

4. Upon receipt of the report from the Registrar of Companies, Kerala, I have vide letter dated 07.10.2002 addressed the applicant company and respondent company to appear before me for a hearing on 22.10.2002 at 11.30 a.m. either in person or through an Advocate or an Authorised representative with a Power of Attorney alongwith necessary material papers, written statements, case laws etc., in support of their respective cases. Since none of the parties appeared on the appointed date and time, the hearing was refixed on 03.01.2003. Philips India Limited represented by Mr. S. Vanuvamalai and Mr. P. Ravindranath, Power of Attorney Holder of Philips Infotech Limited appeared. The applicant company has requested by way of letter stating that they want adjournment. As a last opportunity one more hearing was fixed on 5.2.2003 at 12.00 noon. Both the parties appeared before me on the said date and time represented by Shri AVS Rama Sarma, Advocate for applicant company and Shri. P. Ravindranath, Advocate for the respondent. The respondent company desires to present detailed objections on the application filed by the applicant company. The respondent company was given time limit upto 26.2.2003 to file detailed objections and a copy may be served on the applicant in order to file a counter by them within 2 weeks i.e. by 14.3.2003 and final direction u/s 22 of the Act would be considered thereafter.

5. M/s. Cantwell & Co., Power of Attorney Holder of the applicant company has submitted written argument vide their letter dated 5th February 2003 on the following grounds.

(i) In India, Philips NV through the applicants, has been selling goods under the mark 'PHILIPS' for over 70 years. The products are known for their reliability and performance coupled with advertising and sales promotional efforts, the trade mark 'PHILIPS' has becomes a household name in India.

(ii) Philips NV is also the registered proprietor of the Trade Mark 'PHILIPS' and PHILIPS SHIELD EMBLEM in various classes in various countries of the world.

(iii) The applicants in the last few years sponsored number of sporting events and T.V. Programmes in addition to being the sole sponsor of the Foot Ball World cup held in Korea in the year 2002.

(iv) Philips NV is a majority shareholder of the applicants and has permitted them to use the said marks under a licence agreement.

(v) Philips N.V. and the applicants have been vigilant in seeking judicial recognition and protection for their statutory and proprietary rights in the mark "PHILIPS" in respect of identical goods as well as allied and cognate goods and that they have been taking action in India against various third parties who have attempted to misappropriate its trade marks, copyright and common law rights in the mark 'PHILIPS' as well as its logo. Philips NV and the applicants has also issued legal notices in the Times of India/Hindustan Times pertaining to the trade mark 'PHILIPS'.

(vi) The respondent company intends to carry on business of information Technology by imparting training and conducting courses and to undertake all types of software development and manufacturing, marketing and exporting software for computer and electronic systems on various platforms and deal in computer hardware and software. These goods are of the same description as that of the applicant company.

(vii) "PHILIPS" has become a household name and any ordinary person with average intelligence will associate any products or service provided under the name "PHILIPS" branded products and trade name to the applicants and none else.

(viii) The respondent company is attempting to deceive and cause confusion by virtue of Registration of applicant's Trade name to confuse the purchasing public that the services being provided by them comes from the globally reputed Philips group.

(ix) The use of an identical trade name by the respondent company is with a mala fide intention in order to give impression to all the customers, traders and industry that they are authorised by the applicants to deal with the said business.

6. The applicants further submitted that the word 'PHILIPS' which is an essential and integral part of the applicants corporate name registered under law and also

the applicants registered trade mark and hence, Philips Infotech Limited have also violated the relevant provisions of law. As such, the registration of corporate name with the said word 'PHILIPS' is not valid under law. If a company has been registered in a name in clear violation of the statutory provisions, such registration is liable to be revoked and cancelled. The applicants have therefore prayed that in exercise of the power conferred on the Regional Director under the Companies Act he may order the respondent company to delete "PHILIPS" from its trade name.

7. The applicant further states that it has come to know about the incorporation of the respondent company only in March 2002. Hence, as per the proviso to Section 22(1) of the Companies Act, 1956 the application may be disposed of by the Regional Director within 5 years from March 2002.

8. Shri S. Ramesh Babu, Advocate, Cochin, vide letter dated 18.10.2002 has submitted preliminary objection on the following grounds: (i) As per the provisions of Section 22 of the Companies Act, 1956 a company can be directed to change its name only if such direction is issued within 12 months of the commencement of the Companies Act, 1956 or within 12 months of Registration of the company whichever is later. The respondent company was incorporated on 27.8.1999. As more than one year has elapsed since the incorporation of the respondent company no "direction" can be issued Under Section 22 of the Companies Act, 1956 to the respondent company compulsorily change its name. Hence, the application made by the applicant is liable to be discountenanced.

(ii) In the light of the Trade Marks Act, 1999, the application under Section 22(ii) can be maintained only by a "registered proprietor of a Trade Mark". The Trade Mark "Philips" is allegedly owned by Koninklijke Philips Electronics N.V. and not by the applicant. In the absence of any case that the present applicant is registered proprietor of Trade Mark "Philips" the same is not in consonance with the said provision and hence the application is not liable to be entertained.

(iii) The notice dated 21.3.2002 issued by M/s. Cantwell & Co.

indicates the various fields in which Koninklijke Philips Electronics N.V. is said to be operating. The areas covered are not seen to include the objects for which the respondent company has been incorporated which is in the field of information technology and software. Evidently no Trade Mark has been obtained by either the applicant or Koninklijke Philips Electronics N.V. in respect of service of imparting Training and conducting courses in information technology, etc., which is the area of respondent's company under such circumstances it is inconceivable that the said name has been adopted by the respondent company to pass off its goods as those of either the applicant or its alleged parent company.

(iv) The name 'Philips' is very common name especially in Kerala.

The word has been incorporated as part of the respondent company as the promoter and Managing Director -- a prominent businessman of repute is one Shri Philip Mathew. The name is not intended to refer to the applicant or its alleged parent company. Besides these are several leading institutions and concerns with the name 'Philips' as a part of its name for example M/s. Philips Carbon Black Ltd., having its unit at Cochin. A perusal of Telephone Directory for Ernakulam District will vouch safe the fact that there are several institutions and companies with the word 'Philips' as part of their name.

In light of the above objections, the respondent company has requested that the application made by the applicant company be rejected.

9. The arguments placed by the applicant and respondent companies orally at the time of hearing and by way of written submissions have been examined.

10. The main argument of the respondent company is that the applicant company has not made this application within 12 months from the date of incorporation of the respondent company as per the provisions of Section 22 of the Companies Act, 1956. As more than one year has been elapsed since the incorporation of the respondent company, the respondent company has contended that "no direction" can be issued under Section 22 of the Companies Act, 1956 to the respondent company.

In this connection. I am to rely on the proviso to Section 22(1) of the Companies Act, 1956 which states that "Provided that no application under Clause (ii) made by a registered proprietor of Trade Mark after five years of coming to notice of registration of the company shall be considered by the Central Government". As stated elsewhere in this order the applicant company is possessing rights to use the registered Trade Mark 'Philips'. As the applicant company came to know of the registration of the respondent company only in March 2002, the application has been received well within the time allowed under proviso to Section 22(1) of the Companies Act, 1956.

11. The second argument of the respondent company is that the application under Section 22 of the Act can be maintained only if it is made by a registered proprietor of Trade Marks. The respondent company has contended that since, the Trade Mark "Philips" allegedly owned by M/s. Koninklijke Philips Electronics N.V. and not by the applicant company the said application is not liable to be entertained. In this connection, it is observed from the Corporate Name Licence Agreement dated 20.12.1993 entered between Philips Electronics N.V. The Netherlands and the applicant company, that the Philips Electronics N.V. has held directly or indirectly majority of issued capital of applicant company and it has granted to the applicant company non-exclusive royalty free right and licence to use the word "Philips" as a part of its corporate name. The said two companies have also entered a Registered user Agreement dated 20.12.1993 by which the said M/s. Philips Electronics N.V. has granted to the applicant company the right to use the Trade Marks mentioned in Annex A of the said Agreement which includes the Trade Mark "Philips".

12. The other argument of the respondent company is that the respondent company has been incorporated with the main objects to carry on the business of Information Technology by imparting training and conducting courses and to undertake all types of software development, but no Trade Mark has been obtained either by the applicant company or by M/s.

Koninklijke Philips Electronics N.V. in respect of service of imparting Training and conducting courses in Information and Technology. The applicant company has

produced the copy of Trade Mark bearing registration No. 145525 in Class 9 for 'PHILIPS' which is registered in respect of all goods in Class 9 and as per the International Classification of goods wherein it is found that the area relating to all computer programmes and software etc., are covered.

Considering all the facts and in exercise of the powers vested in me by Clause (b) of Sub-section (1) of Section 22 of the Companies Act, 1956, read with Government of India, Ministry of Industries, Department of Company Affairs, Notification No. GSR 288(E) dated 31.5.91. I am inclined to direct M/s. Philips Infotech Limited, the respondent company herein to delete the word "Philips" from its existing name and change to some other name/prefix appropriately within 3 months from the date of this order.

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