Omzee Vs. Zee

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SooperKanoon Citation : sooperkanoon.com/53013

Court : Trademark

Decided On : Oct-10-2006

Judge : P Lata, A R Marks

Appellant : Omzee

Respondent : Zee

Judgement :

1. An application No. 1122804 dated 31.7.2002 for trade mark OMZEE was made by M/S. Zenon Healthcare Ltd. Ahmedabad, Gujarat (hereinafter referred to as applicants in class 5 for medicines & pharmaceuticals claiming user from 18.7.2002. The mark was ordered to be advertised before acceptance and the same was advertised in the trade marks journal Mega 5 dated 14.11.2003. An opposition thereto was filed by M/s. Zee Telefilms Ltd., Worli, Mumbai, Maharashtra (hereinafter referred to as opponents). After taking on record counter statement and opponents' evidence, the applicants were called upon to file evidence in support of application. The applicants in reply relied upon the counter statement. As the applicants' did not file any evidence the stage of filing of opponents' reply evidence had to be skipped and final hearing was fixed on 21.10.2005.

2. Ms. Sejal Shah being representative from the Advocates' firm requested that the matter be decided on the basis of the records available and/or documents filed by the opponents. Ms. Sejal Shah simply marked the presence of the opponents and observed the proceedings. The counsel for the applicants was thus directed to

argue the matter with regard to the case of the applicants. The counsel for applicants also had a limited grounds available for arguing the matter because of non filing of applicants' evidence in support of she use of the impugned mark as claimed by them in the application. The contention of the counsel was that the two marks ZEE and OMZEE are different phonetically as well as visually and hence there is no likelihood of confusion specially with regard to the fact that the opponents are in the field of Telefilms and broadcasting services whereas the applicants are a pharmaceutical company. The adoption of the mark by the applicants is honest. It is coined by taking prefix 'OM' from Omeprazole being basic ingredients and suffix from Zenon being the trading style of the applicants company. The goods of the applicants' are not ever, distantly related with the activities of the opponents, the opposition thus is farfetched and is contrary in legal parlance amounting to groundless threat of the proceedings. Hence the opposition be dismissed and application he allowed to proceed to registration.

3. In reply the opponents filed the following case laws through their representative at the time of hearing: (1) 2003 (26) PTC 1 (Del) - Honda Motors Co. Ltd., v. Charanjit Singh and Ors. wherein HONDA has been adjudicated to have acquired international goodwill and reputation in India also. The adoption by the defendants is not honest and dealing in the same or similar goods not necessary for passing off.(SC) Mahendra and Mahendra Paper Mills Ltd. v. Mahindra and Mahindra Ltd., wherein again the use of the words MAHENDRA & MAHENDRA by the defendants company have been injuncted.

(3) 2004 (29) PTC 634 (IPAB) - S.K. Patel v. Deputy Registrar of Trade Marks and Ors. wherein NIRMA has been held to have built up goodwill and reputation in respect of their business the same trade mark cannot be allowed to be used by any other even in respect of different goods.

4. In the instant proceedings it was first onus on the part of the opponents to show that the mark as applied is confusing with the mark of opponents or it in some way shows the dishonestly driven advantage of the popularity of mark of opponents and also to establish that opponents mark commands reputation to the tune of well known mark. The opponents have contended in TM-5 that the applicants have

simply put prefix 'OM' before 'ZEE'. Opponents also filed bulky evidence in support of use and popularity of mark and rebutted the applicants claim of the honesty in adoption of the mark and having coined from the ingredients of the medicine, as they have not been able to clearly say as to how the mark has been actually coined picking up what letters from where whether ingredients or from the trading style. It is also contended that applicants have claimed the user at the time of application and not even a single paper has been filed as evidence in support of use.

5. Honesty in adoption of mark has to be derived from the circumstances of the matter. There is not even a single document which can be based for what is claimed be the applicants. The citations relied upon by opponents are where the reputed marks have been adopted for different goods.

6. After the onus of opponents is discharged it is incumbent upon the applicants so establish their right for the registration. The stand of applicants that the marks are not confusing or the goods are completely alien to each other is not suffice to grant registration in the favour of the applicants without any evidence in support of claims made by them in the application and also without rebutting the claim of the opponents being proprietors of well known mark which is based on the enough evidence filed by the opponents. The applicants have not bothered to support their own claim of use and have also not been able to justify the adoption.

7. Mere statements of claims and denials are not suffice to reach at the just conclusion.