TRADEMARK (In continuation with earlier circulation… Part 2 of 2)

Is it possible to register a Trademark which is similar and likely to confuse with the already registered Trademark under the Trade Mark Act, 1940 ("Act")?

Corn Products Refining Co. "**Appellant**"	Shangrila Food Products Ltd. "**Respondent**"

- The application was made under the Act, for registration of a trade mark by the Respondent and it was **opposed** by the Appellant.
- The Respondent is a manufacturer of biscuits. *On November 5, 1949, it made the application for registration of the mark '**Gluvita'** under the Act in class 30*.
- The Appellant *on August 31, 1942, had registered the mark '**Glucovita'*** under the Act in class 30 in respect of substance as an ingredient in food containing glucose powder mixed with vitamins.
- The Appellant opposed the Respondent's application contending that it should be refused under section 8(a) and 10(1) of the Act.
- *The Deputy Registrar in the above appeal held that, no reasonable likelihood of any deception being caused by or any confusion arising from, the use of the respondent's proposed mark and the Respondent trademark could not be refused because*:
  - Biscuits were not goods of the same description as glucose powder mixed with vitamins.
  - The word "**Glucovita**" and "**Gluvita**" were not visually or phonetically similar.
- The Appellant then ***preferred an appeal to the High Court of Bombay*** challenging the order of the Deputy Registrar.
- High court disagreed with the view of the Deputy Registrar that the Respondent's mark was not likely to cause confusion. *High court held that the two marks were sufficiently similar so as to be reasonable likely to cause confusion.* ***Thus it was held that Respondent's mark could not be registered***.
- Aggrieved by the order of Hon'ble High Court, *Respondent preferred and Appeal*.
- The Appellate bench of High Court held that the proposed mark of the Respondent was not likely to confuse or deceive any one as there was no evidence that the Appellant's mark had acquired any reputation among the public but that the evidence produced showed that it had acquired a reputation among the trades people only who were discerning and were not likely to be deceived or confused.. ***Thus they set aside the order of High Court and restored that of the Deputy Registrar***.
- *Aggrieved by the order, Appellant made an Appeal to the Supreme Court*. Appellate Bench relied on the affidavits filed by the Appellant wherein it was stated that "Glucovita is a well-known mark in the trade" and denoted only the products of the Appellant. Supreme Court think that the Appellate Bench had put too strict a meaning on the words "in the trade" in

thinking that they referred *only to the tradespeople*. In our view, these words may refer *also to the public*. If they do, then of course, that would be evidence that the ***Appellant's mark had acquired a reputation among the public.***

- The evidence provided by the affidavits filed by respondent make it perfectly clear that the appellant's mark had acquired a reputation among the general buying public. This is the case of ***the commodity manufactured by a particular manufacturer has acquired a reputation among the public.***
- ***A trade mark may acquire a reputation in connection with the goods in respect of which it is used though a buyer may not know who the manufacturer of the goods is.***
- There is trade connection between glucose and biscuits and a likelihood of confusion or deception arising there from would appear from the fact stated by the appellant that it received from a tradesman an enquiry for biscuits manufactured by it under its mark 'Glucovita'. The tradesman making the enquiry apparently thought that the manufacturer of 'Glucovita' glucose was likely to manufacture biscuits with glucose; he did not worry whether biscuits were made with powder or liquid glucose.
- Supreme Court held that a trade connection between glucose and biscuits would appear to be established as a result of which, the commodities concerned are so connected as likely to create confusion.

Therefore, in view of the similarity of the two trademarks the respondent's trademark could not be registered. The court set aside the order of Appellate Bench of the High court.

Please feel free to reach out to us!!!

E-mail us at	➢ kbaglacs@gmail.com ➢ maheshgbagla@gmail.com
Call us on	➢ **+91-9049000431** ➢ **+91-7249136913** ➢ **+91-7875795779**

Thanks and Regards
Team ~ K. Bagla & Associates
Your Compliance Partner