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Champagne maker fails to prevent registration of almost identical mark

India - Ranjan Narula Associates

Examination/opposition
National procedures

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In *Champagne Moët and Chandon v Union of India* (WP (C) 9778 of 2006, May 19 2011), the Delhi High Court has dismissed an appeal filed by Champagne Moët and Chandon against an order issued by the Intellectual Property Appellate Board (IPAB).

Moët opposed an application filed by M/s Moets for the registration of the mark MOETS in Class 29 of the Nice Classification. Before the deputy registrar of trademarks, Moët argued as follows:

- Champagne bearing the trademark MOËT & CHANDON had been shipped to India since 1906; and
- It has owned registrations for the trademark MOËT in Class 33 since 1982 and for MOËT & CHANDON in Class 33 since 1985.

In response, Moets argued as follows:

- The name Moets was adopted in 1967; it derived from 'Mohit', the name of one of the company's partners. Moets was adopted as a trade name and has been used ever since.
- By virtue of its extensive use, the trademark MOETS has acquired goodwill and a reputation in India.

The deputy registrar of trademarks dismissed the opposition, holding as follows:

- Although the marks were almost identical, the goods were not of the same description: Moët's goods included "wines, spirits and liquors", while Moets' goods included "meat, fish, poultry, game and meat extracts".
- Moët had failed to establish use since 1947: annual sales figures for the years 1980 to 90 were not given in Indian currency, and Moët did not produce any evidence of use prior to 1980.
- Adoption and use of the mark MOETS by Moets was not dishonest.
- Moets had established use of the mark for a substantial period, showing sales figures since 1968.

Moët appealed to IPAB, which dismissed the appeal on the following grounds:

- Moët's goods were not openly available in India. The invoices submitted by Moët proved only use by embassies.
- Moets had established use of the mark MOETS since at least 1979, while Moët had provided invoices and sales figures for India only for the period from 1988 to 1991.
- None of the documents provided by Moët referred to the trademark MOËT alone: the invoices and advertisements mentioned the composite trademark MOËT & CHANDON.
- Moët had failed to establish that the mark MOËT had acquired a reputation and goodwill at the date on which Moets had applied for the registration of its MOETS mark.
- The goods and distribution channel were different.

On appeal to the Delhi High Court, Moët argued as follows:

- Moets' adoption of the mark MOETS was fraudulent and dishonest. It used two dots above the letter 'E', thus copying the essential feature of Moët's mark.
- The parties' products had the same consumers and trade channels.
- The opposition decided against Moët in relation to Class 16 goods was irrelevant since no Class 16 goods had been commercially sold by Moets.
- There had been no acquiescence on Moët's part, as it had opposed the registration of the MOETS mark immediately.

In response, Moets argued as follows:

- Moët had not filed any document to show prior use;
- The parties' goods were different;
- Moets had built up its own reputation for catering services;
- Moët had accepted the registrar's dismissal of its opposition to the registration of MOETS in Class 16; and
- Moët had acquiesced to Moets' use of the trademark MOETS.

The High Court upheld IPAB's order, stating that Moët had not established sale of its goods in India prior to 1980, as none of the evidence referred to the mark MOËT alone. The court also agreed that the goods and channels of trade were different, and rejected Moët's argument that Moets had adopted or used the MOETS mark in a dishonest manner. The court also accepted Moets' plea that Moët had acquiesced to Moets' use of the MOETS mark.

Abhishek Nangia, Ranjan Narula Associates, Delhi
