
The Creative Travel saga

The parties herein; Creative Tours and Travels (India) Private Limited (CTTPL), Mumbai and Creative Travel (CT), a Delhi based entity are asserting rights over the word CREATIVE in relation to tours and travel business. The parties have agitated the issue before several forums. This note discusses the writ petition filed by CTTPL challenging the order passed by the Intellectual Property Appellate Board (IPAB) whereby it expunged their mark 'CREATIVE' (a label mark) on a cancellation/rectification petition filed by CT.

Rectification petition before the IPAB

CT filed the rectification petition alleging that CTTPL's trade mark CREATIVE is registered without sufficient cause and is wrongly remaining on the register and ought to be rectified. CTTPL contested the proceedings on the ground that they were rightly granted registration on the basis of 'honest concurrent user'. The IPAB after analyzing the pleadings and documents and detailed hearing cancelled the mark/registration holding that CTTPL has failed to prove its honest concurrent use. Aggrieved by the said order CTTPL filed the writ petition at the Bombay High Court.

Facts and Background

- CTTPL is a Company incorporated under the Indian Companies Act, 1956, and carries on business, inter alia, of tours and travel arrangements, manpower consultancy and recruitment.
- The predecessor of CTTPL was a proprietary concern of Mr. V.S. Abdul Karim, who carried on business under the trade name "Creative Enterprises" from the year 1979. The said entity changed its name to "Creative Travel and Tours" in 1992 and thereafter in 1997 CTTPL was incorporated with Mr. Abdul Karim as the Managing Director.
- The trademark "Creative Tours and Travels (India) Private Limited", along with an original artistically rendered device of a globe is registered in Class 39 in name of CTTPL since April, 2004. CTTPL is registered with several statutory authorities and have accreditations from the International Air Transport Association (IATA).
- CTTPL has won several awards and have also filed documents evidencing payment of income tax with the statutory authorities from 1997.
- CT filed a civil suit against CTTPL before the Delhi High Court in the year 2006. An ex-parte interim injunction was granted in favour of CT but was set aside on the application

filed by CTTPL. The appeal filed by CT before the Division Bench was dismissed and their appeal before the Supreme Court also met with the same fate.

Grounds in Writ Petition

- CTTPL contends that IPAB's order is vitiated by non-application of mind and without considering the facts and documents on record. Moreover, IPAB has failed to appreciate the plea of 'honest concurrent user' by CTTPL.
- The IPAB failed to take into account the fact that CTTPL has been in existence since 1979 through its predecessor in title and the voluminous documents filed to substantiate this fact has not been properly considered by the Board.
- CT on the other hand contends that CTTPL was not able to provide any satisfactory and cogent evidence to substantiate the plea of honest concurrent use and the Board is justified in expunging the mark.
- CT has shown its business since 1977 and registration for the mark 'CREATIVE TRAVEL' in Class 39 since September 26, 2003.

The Division Bench after considering the documents, case laws and arguments of the rival sides held as follows:

- 1) Once CTTPL has set up a defense of honest concurrent user in the rectification proceedings it is incumbent upon them to substantiate its plea with cogent and satisfactory evidence which is lacking in the instant case.
- 2) IPAB relied upon a letter dated 2nd July, 1997, filed by CT containing a suggestion by the Registrar of Companies to CTTPL to adopt some other name as "CREATIVE" was not available and it was already used by some other Company, however, CTTPL adopted the same name.
- 3) CTTPL before the IPAB claimed use since 1997, whereas, in the writ petition before the High Court it has claimed use of the mark since 1979. The court noted that such use is by a proprietary concern and not by the company/registered proprietor of the mark and the Petitioner before the High Court in the writ proceedings.
- 4) The Court noted that Board has found that the Assessment Orders, Income Tax Returns, advertisement, awards etc. would indicate that prior to 1997 (the registration of CTTPL as a private limited company) there was no use by this entity. The explanation that CTTPL had no occasion to file Income Tax Returns in its name and as a company prior to its incorporation was observed to be an afterthought.

In view of the above the High Court held that the finding of the Board that CT is the prior user and CTPL has failed to substantiate its claim of honest concurrent user is correct and justified, and there is no reason for any interference with the order of the IPAB.

401-402, 4th Floor,
Suncity Success Tower,
Sector - 65, Golf Course Extension Road,
Gurgaon - 122 005,
National Capital Region (Haryana),
India

Tel. +91124 2841222
Fax. +91124 2841144
Email info@rnaip.com

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