

MANU/CP/0001/2008

BEFORE THE COPYRIGHT BOARD, DELHI

F. Nos. 2-3/2004-CRB(SZ)

Decided On: 10.07.2008

Appellants: **Enercon Systems Pvt. Ltd.**
Vs.Respondent: **The Registrar of Copyrights****Hon'ble Judges/Coram:**

Ragbir Singh, Chairman, Yogendra Prasad and R. Ragupati, Members

Counsels:

For Appellant/Petitioner/Plaintiff: Pratibha M. Singh, Adv.

Subject: Intellectual Property Rights**Acts/Rules/Orders:**

Copyright Act, 1957 - Sections 13 and 72(1); Code of Civil Procedure (CPC)

Cases Referred:

R.G. Anand v. Delux Films and Ors. AIR 1978 SC 1613; PepsiCo. Inc. and Anr. v. Hindustan Coca Cola and Ors. 2001 (21) PTC 699; PepsiCo., Inc. and Ors. v. Hindustan Coca Cola 2003 (27) PTC 305(Del); Noah v. Shuba (1991) FSR; Sinanide v. La Maison Kosmeo (1928) 139 LT 365; Rose v. Information Services (1987) FSR 254; Macmillan and Co. Ltd. v. K and J Cooper AIR 1924 PC 75; Dr. Pepper and Co. v. Sambo's Restaurants Inc. 517F. Sup. 1202; Kleier Advertising Agency Inc. v. Premier Pontiac Inc. 2 USPQ2d 1152; University of London Press, Ltd. v. University Tutorial Press, Ltd. (1916) 2 Ch. 601

Disposition:

Appeal allowed

ORDER

1. This is an appeal under Sub-section (1) of Section 72 of the Copyright Act, 1957 against the order of the Registrar of Copyrights refusing to register the literary works of the appellant.

2. In the present case, the date of the order of the Registrar rejecting two applications for registration of the literary works of the appellant is 3.12.2003. The appellant filed the appeal against the decision of the Registrar on 7.6.2004. Section 72(1) provides that an appeal against the final decision or order of the Registrar may be filed before the Copyright Board within three months of the date of the decision of the Registrar. There is a delay of 3 months and 4 days in filing the appeal. The appellant had filed an application for condonation of delay. Although there are no specific provisions under the Act for condonation of delay by the Board, yet the Board is guided conceptually by the provisions of the Civil Procedure Code in matter of its procedure. There is no opposition on this score from the respondent. In view of that it shall be fair to condone this delay in filing the appeal and accordingly we allow it.

3. According to the appellant, it moved its applications, both dated 6.11.2002 on 29.11.2002 for registration of its literary work titled "Contents of Corporate Campaign" and "Contents of Enercon Advertisement". Both works comprise text, design as well as illustration and are original literary work of the appellant. Ms Hema Hattangady, the Managing Director of the appellant company is the author of these works and all rights in the works have been vested in the appellant company. Both the works were first published in India on 12.8.2002 and have been used by the appellant since their first publication. Respondent, the Registrar, relying upon his earlier decision in a matter relating to M/s Overnite Express Limited rejected to register the literary work on the ground that the same contain only advertisement slogans and general instructions which are not entitled to be registered as per the provisions of the Copyright Act, 1957. As per the appellant, Overnite case and the decision in the case of R.G. Anand v. Delux Films and Ors. MANU/SC/0256/1978 are not applicable in this matter. The only other Indian authority relied upon by the Registrar, that is, PepsiCo Inc. and Anr. v. Hindustan Coca Cola and Ors. 2001 (21) PTC 699 for the proposition that slogans are not copyrightable has been overruled by the Hon'ble Division Bench of the High Court of Delhi in appeal in PepsiCo, Inc. and Ors. v. Hindustan Coca Cola 2003 (27) PTC 305 wherein the court has held that slogans which form the theme of the advertisement of the applicant's products are entitled to copyright protection. Two foreign authorities of 1991 and 1928, namely, Noah v. Shuba (1991) FSR and Sinanide v. La Maison Kosmeo (1928) 139 LT 365 relied in Overnite Express case are inapplicable to the present case as the same were short descriptive phrases where the same ideas could not be expressed otherwise. Rose v. Information Services (1987) FSR

manupatra 254 relied upon by the Registrar is too inapplicable since it was held therein that a title 'the lawyer's diary' is not entitled to copyright protection whereas the work of the appellant is not merely a descriptive title. Registrar failed to appreciate that it is well established law that slogans are entitled to protection as literary work under the Copyright Act, 1957.

4. Registrar, the respondent herein, did not file any reply. Accordingly, learned Counsel for the appellant, while arguing the matter on the lines of submissions made in the petition, put reliance upon *Macmillan and Co. Ltd. v. K and J Cooper* AIR 1924 PC 75; *Dr. Pepper and Co. v. Sambo's Restaurants Inc.* reported in 517F. Sup. 1202; *Kleier Advertising Agency Inc. v. Premier Pontiac Inc.* reported in 2 USPQ2d 1152 and more importantly upon *Pepsi Co. Inc. and Ors. v. Hindustan Coca Cola Ltd. and Anr.* MANU/DE/0896/2003 and submitted that the law is now well settled that slogans are entitled to protection as literary work under the Copyright Act, 1957.

5. It shall be relevant to cull out the relevant part of the decision of the Registrar rejecting the applications for registration of the literary work. Letter dated 3.12.2003 of the Deputy Registrar conveying the decision of the Registrar reads as under:

I am directed to refer to your two applications on the above subject and to say that the works submitted by you in all these cases contain only advertisement slogans and some general instructions normally used which do not enjoy copyright protection. It may also be noted that in one case, you have enclosed two different pieces of advertisement material with slightly varying slogans. The literature contained in these works, being a combination of commonly used phrases and sentences, cannot claim any originality as defined under Section 13 of the Copyright Act, 1957. It has therefore been decided by the Registrar to reject the above two applications. A copy of the earlier order passed by the Registrar of Copyrights in a similar case is enclosed for your ready reference.

The elemental inference which led the Registrar to conclude that the impugned works are not copyrightable is that the contents thereof are mere advertisement slogans and some general instructions normally used and the literature contained in these works is nothing but a combination of commonly used phrases and sentences which all lack originality.

It is enough to test the basis of originality followed by the Registrar on the yardstick enunciation thereof given by Justice Peterson in the *University of London Press, Ltd. v. University Tutorial Press, Ltd.* (1916) 2 Ch. 601 approvingly quoted in *Macmillan and Co., Ltd. v. K. and J. Cooper* AIR 1924 PC 75 at p.85 as under:

The word 'original' does not in this connection mean that the work must be the expression of original or inventive thought. Copyright Acts are not concerned with the origin of ideas but with the expression of thought; and in the case of 'literary work,' with the expression of thought in print or writing. The originality which is required relates to the expression of the thought; but the Act does not require that the expression must be in an original or novel form, but that the work must not be copied from another work-that it should originate from the author.

The above judgment has been consistently followed in India in the context of successive Copyright legislations including the present one, namely, the Copyright Act, 1957. Appellant herein has submitted that the said works are the amalgam carefully conceived and designed consisting of text, design and illustrations.

We have carefully examined the impugned works. There is nothing in the conclusions of the Registrar to show as to the absence of the originality of the work. Copyright law does not rest the copyrightability on the yardstick of the excellence or the merit of the work. The moment there is nothing to doubt as to the work having been copied from some other work, the copyrightability follows *ipso facto*.

In view of the above, we accept the appeal and direct the Registrar to proceed with the registration of the works as per the provisions of the Copyright Act, 1957. No orders as to cost.