

Honest and concurrent TMs: Moët & Chandon's case



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Ruling in *Champagne Moët And Chandon v Union of India & Ors*, Delhi High Court recently upheld a decision taken in 2004 by the Intellectual Property Appellate Board (IPAB) to not interfere with an order by the Deputy Registrar of Trademarks (DR) to allow the registration of the mark MOET's.

The French champagne company Moët & Chandon had objected to the registration as it has held the Indian trademark registrations for MOET and MOET & CHANDON (in class 33 of the Trade and Merchandise Marks Act, 1958) from 1982 and 1985 respectively.

Origins of the dispute

A Delhi-based seller of meat products, M/s Moets, had applied in 1986 for the registration of the mark MOETS.

Although the mark was to be registered under class 29 (meat, fish, poultry and game and meat extracts), the French company, Moët & Chandon, had objected to it. But the DR rejected their opposition and allowed M/s Moets to proceed with the registration.

Moët & Chandon challenged this order in Delhi High Court, and in 1995 it was granted a stay. Subsequently, the case was transferred to the IPAB after the enactment of Trade Marks Act, 1999. In 2004 the IPAB dismissed the appeal against the DR's order and this prompted the French company to file a writ petition in the Delhi High Court.

The high court did not find any perversity or anything contrary to the evidence in the determination of facts by the DR and the IPAB and therefore found itself not inclined to exercise its power of judicial review.

Understanding the decision

The rejection of the trademark opposition filed by Moët & Chandon and the subsequent dismissal of the appeal was founded primarily on the inadequacy of evidence submitted by it and on the difference in the description of goods being dealt in by the parties.

Also, the French company did not oppose the IPAB's order on the basis that the registration of marks that would be likely to deceive or cause confusion should be prohibited.

The high court, while endorsing the findings of the DR and IPAB said that although there was a nexus between food and drink, as the goods are registered under different classes they cannot be said to be of the same description. The high court and the quasi-judicial authorities both commented on the lack of evidence submitted by Moët & Chandon regarding prior user of their marks and the reputation and goodwill it enjoyed in the country.

In addition, in presenting its case to the DR, Moët & Chandon had shown little evidence that it had used its mark to build a reputation for its wines in India or that M/s Moets had taken advantage of its mark to build up its reputation in catering services.

The court found that the use of the mark MOETS was a significant part of the trading style and trade name of M/s Moets. As such, the court said the mark was capable of being registered as that of an honest and concurrent user.

Honest and concurrent use

Section 12 of the Trade Marks Act, 1999, provides for the registration of a trademark in case of honest and concurrent use.

Under trademark law an applicant needs to establish prima facie that there is no other person using an identical or similar mark. Since it is not possible to show conclusively that there is no such person, the registrar may raise a presumption that there is no such user based on "the common course of natural events, human conduct and public & private business".

However, if an objection is raised, the presumption that no other person uses an identical or similar mark would not be raised.

Then the burden is on the objecting person to prove his case in accordance with the principle of section 101 of the Evidence Act, 1872. He must also prove that the registration of the mark would be of material detriment to him.

In concurrent registration of identical or similar marks, there is a heavy burden on the applicant, M/s Moets in this case, to prove the following conditions:

1. The quantum of the concurrent use of the trademark in connection with the goods concerned and the duration, area and volume of the trade.
2. The degree of confusion likely to ensue from the resemblance of the marks.
3. The honesty of the concurrent use.
4. Whether any instances of confusion have in fact been proven.
5. The relative inconvenience, which would be caused if the marks were registered, subject if necessary to any conditions and limitations.

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