

INTELLECTUAL PROPERTY RELATED NEWSLETTER [Dated 25-07-2009]

HUNTSMAN WINS DYE PATENT CASE AGAINST INDIAN COMPANY

Huntsman Corp. based in THE WOODLANDS, Texas, succeeded in a patent matter against an Indian Company. The Mumbai High Court on 12th June, 2009, ordered Kiri Dyes & Chemicals Ltd. from stop selling a black dye until it determines whether the product infringes Huntsman's patent. The Hon'ble High Court prohibited Kiri Dyes, from marketing or selling Reactive Super Black G dye until a hearing is held. Huntsman filed the court action to protect intellectual property rights

Huntsman's textile effects division has claimed that the product violates its Indian patent on Novacron Super Black G dye. The company contended it has found the Kiri Dyes product at several textile mills in Asian countries.

The Huntsman division, based in Basel, Switzerland, provides dyes and chemicals to textile and related industries.

MADRAS HIGH COURT USES BLOG REFERENCE TO SOLVE TVS – BAJAJ PATENT ISSUE

A blog posted by a student was instrumental in TVS Motor Co. Ltd's victory over Bajaj Auto Ltd in their recent legal skirmish over Patent Infringement issues, setting a precedent for the use of blog content by the country's courts. On 29th May, 2009, the Madras High Court allowed TVS to manufacture and sell vehicles with twin spark plug and triple valve engines. This judgment overturned a February 2008 decision by a Single Judge Bench of the same court. The single judge had restricted TVS from producing the 125cc TVS Flame, after Bajaj alleged its patent on twin spark plug engines had been infringed by TVS.

A Division Bench held that the technology used by TVS was considerably different from the twin spark plug technology patented by Bajaj. In order to establish this difference, the judgment quoted large sections of the blog to explain the distinctive features of both engines. Legal experts believe this is the first time a blog has been cited in a judgment by an Indian court.

JAY LENO WINS CYBER SQUATTING CASE

The World Intellectual Property Organization, on 2nd July, 2009, directed Guadalupe Zambrano, a real-estate agent from Texas, to return the domain name over to former 'Tonight Show' host Jay Leno within 10 days. Zambrano had registered the domain name in his own name in 2004. The ruling fell under the Anti cyber squatting Consumer Protection Act that makes it illegal for someone to mislead, confuse and steer users to their site. It was held that Leno's 30-year career in entertainment gives him common law trademark rights to his name.

VIACOM WON BACK THEIR 'muchmtv.com'

In a matter before WIPO, Viacom International Inc. based in New York, won Infringement of their Domain name 'muchmtv.com' in April 2009. Complainant (Viacom) had registered numerous trademarks around the world for MTV and variants thereof. The Complainant has been using these trademarks since 1981. The respondents registered and were using the domain name 'muchmtv.com' from 2008. A Complaint was filed with the WIPO (Arbitration and Mediation Center) in which Complainant asserted that Respondent's website provides links to other websites, some of which sell goods in competition with those sold by Complainant. Complainant further asserted that the word "much" is a trademark of a third party, and that in any event the addition of the generic word "much" and .com to Complainant's trademark does not remove the confusing similarity between the disputed domain name and Complainant's trademark. Complainant also asserted that Respondent's use of Complainant's trademark is a commercial use that is neither legitimate nor fair, because Respondent receives click-through fees for diverting users from Complainant's legitimate MTV merchandise to third party merchandise.

Held that there is no evidence that Respondent was making a bona fide use of the disputed domain name before receiving notice from Complainant or that Respondent has been commonly known by "muchmtv.com". It was also held that "The use of a domain name (that is identical or confusingly similar to a trademark) as a parking page that generates click through revenue typically does not give rise to rights or legitimate interests. Further, the sale of competitive products using a complainant's trademark typically is not considered bona fide or "legitimate" or "fair". WIPO ordered that the domain name, 'muchmtv.com', be transferred to Complainant.

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