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REGISTRATION OF TRADE MARK - APPEAL BEFORE SINDH HIGH COURT

Appellant: GALLUP BUSINESS RESEARCH SERVICES (PVT.) LIMITED

Respondent: REGISTRAR OF TRADE MARKS and another

Decision: Appeal Allowed

The dispute was with regard to registration of trade mark "Gallup" where application filed by M/s GALLUP BUSINESS RESEARCH SERVICES (PVT.) LIMITED, a private limited company incorporated in Pakistan (the Appellant) was dismissed by the Registrar of Trade Marks and opposition filed by GALLUP, INC (the Respondent No.2) was accepted and its application for registration of trade mark "GALLUP" was also allowed.

The brief facts of the case are that Appellant is a private limited company incorporated in Pakistan, the dispute involved was ownership of rights of trade mark "GALLUP" in Pakistan in respect to class-16. The parent organization of the Appellant, Pakistan institute of public opinion (PIPO), introduced public survey and public opinions research in Pakistan. PIPO and its affiliate organization Gallup Pakistan (Pvt.) Limited and the Appellants are the only member of Gallup international Association and are the exclusive users of trade mark "GALLUP" in Pakistan. The joint names of Gallup Pakistan and Gallup Organization in the International Gallup Directories illustrate that Respondent No.2 never claimed any right for use of name "Gallup" in Pakistan nor objected to the use of the said name by the Appellant and its affiliates in Pakistan. Respondent No,2 accepted throughout the right of Gallup Pakistan to use the name "Gallup" in Pakistan exclusively.

After hearing arguments of the counsels of both sides, the Court observed that the counsel for the Appellant has sought to show that there has been honest and concurrent use of its trade mark "Gallup" since 1981 and has filed documentary evidence to show that the Appellant and its parent organization Gallup Business Research Services of Islamabad is the exclusive member of Gallup international Association. The Appellant has criticized that the Respondent No.2's entire reliance is in respect of work outside Pakistan which may be reflected in some magazines, which is not sufficient to refuse the Appellant's trade mark and has also refuted the Respondent No.2's arguments of exclusive global use by the admitted use of the mark "Gallup" by other entities in various countries and has made a reference of 26 companies that have the word Gallup as part of their name but not associated with Respondent No.2 where GIA members advertise "Gallup" on their web site. While the counsel for the respondent No.2 tried to prove that there has been no honest and concurrent user on the part of the Appellant and that the Appellant sought misappropriate the mark Gallup, which is the trade mark and corporate name of the Gallup Inc., and the trade mark is exclusively associated with Respondent No.2.

The Court further observed that admitted fact is that Appellant and its associated concerns has been the only user of the trade mark "GALLUP" in Pakistan since 1981 when they were accepted as the Pakistan member of Gallup International Association and has been extensively using the same in its publications and public opinion service in Pakistan. Even, in foreign judgments, passed by Courts of different countries, wherein somewhat similar facts and circumstances are involved and wherever the Respondent No. 2, initiated legal proceeding to stop the using of mark "Gallup", they lost the case, which fact also nullify the claim of exclusive right of Respondent No.2 to use the trade mark GALLUP worldwide.



Respondent No. 2 has not undertaken a single activity till date. Therefore, there cannot possibly be any infringement of Respondent No.2's name in Pakistan.

Consequently, the Court held that Appellant has proved concurrent and honest use of their trade mark 'Gallup for quite a long time which is not satisfactorily rebutted by the Respondent No.2 and as such the Respondent No.1(Registrar) has erred in refusing registration of Appellant's trade mark by accepting the opposition of Respondent No.2 and allowing its application for registration, The Court accepted Appeal and directed Registrar to accept and register the Appellant's application and bound the Appellant to abide by the terms contained in the settlement agreement arrived at between the Appellant and Respondent No.2 dated 30-09-2010.

