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MANU/CP/0015/2010

**Equivalent/Neutral Citation:** 2010(43)PTC612(CB)

**BEFORE THE COPYRIGHT BOARD**

F. No. 1-8/2005-CEB (NZ)

**Decided On:** 30.04.2010

Jolen Inc. **Vs.** Soban Lal Jain

**Hon'ble Judges/Coram:**
*Raghbir Singh, Chairman, T.N. Tiwari, P.L. Ahuja and Rajendra Kumar Mishra, Members*

**Counsels:**
*For Appellant/Petitioner/Plaintiff: S.K. Bansal and Saurabh Kapoor, Counsels*

**ORDER**

1. This is an application under Section 50 of the Copyright Act, 1957 for expunction of registration number A-56303/1999. The matter was heard at the sitting held on 22.3.2010 at New Delhi.

**2.** According to the Petitioner, it is a company organized and exiting under the laws of the United States of America having it principal place of business in USA. The artistic work relating to the Petitioner was first published in 1956 in USA. Petitioner is entitled to protection of copyright in India in terms of the Berne Convention and Universal Copyright Convention. Petitioner in greater details has referred to world wide, including in India, reputation enjoyed by its product under its trade mark and artistic design. Petitioner filed a civil suit in Madras High Court against the Respondent and others for infringement of copyright in its label Jolen creme bleach carton. Division Bench of Madras High Court by its judgment dated 30th April, 2004 granted interim injunction restraining Respondent and others from infringing the Petitioner's copyright in JOLEN creme bleach carton. Special Leave Petition filed by the Respondent in the Supreme Court failed. In totality of the reasons and arguments given by the Petitioner, it has questioned the originality of the impugned work as a copyright being slavish copying of the work of the Petitioner.

**3.** Respondent in his written statement has controverted the allegations of the Petitioner

**4.** Petitioner in its rejoinder has refuted the submissions of the Respondent and has reiterated its submission made in the petition.

**5.** Learned Counsel for the Petitioner at the outset questioned the originality of the work being copying of long standing work of the Petitioner. He submitted that the registration has been obtained in violation of Rule 16(3) of the Copyright Rules, 1958 since the Respondent was well aware about the interest of the Petitioner in the impugned label since its label Jolen creme bleach is well known and publicized through the media including in India. Inspite of being questioned, Respondent has not produced the assignment from the author of the work.

**6.** Originality of the work in this matter is surely of a questionable character in face of the well publicized label of the Petitioner. However, determination or otherwise of the originality in the copyright law is a tricky area. In view of that, without going into that

question, we adhere to the fundamentals of the Copyright law and the submissions made in, and documents produced along with, the application. Shri Vijay Uppal has been mentioned as the author of the work. In terms of Section 17 of the Copyright Act, he is the first owner of the impugned work. Ownership at the time of making application has been shown in the name of Shri Shoban Lal Jain. Surely, Shri Shoban Lal Jain can acquire the status of an owner from the author, Shri Uppal, only through an assignment made under Section 18 of the Act. An assignment of a work can only be made in writing in terms of Section 19 of the Act. Sine qua non for continued presence as a registrant in the Register is that the owner of the work should at all points of time be prepared to defend his ownership. Petitioner has challenged the passage of ownership from author to the applicant. There is nothing in the submission to show the documentary evidence therefor. This aspect is enough for us to conclude that the continued presence of the registration should be put to end. It is incumbent upon the registrant to help maintain purity of the register which he has failed.

**7 .** Accordingly, Registrar shall expunge the impugned entry from the Register. No orders as costs.

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