

**14 SCOB [2020] HCD**

**HIGH COURT DIVISION**

**(SPECIAL STATUTORY APPELLATE JURISDICTION)**

TRADE MARK APPEAL NO. 01 OF 2014

With

TRADE MARK APPEAL NO. 02 OF 2014

**Md. Anwar Hossain, Proprietor of M/s.  
Pride Knit Wear Ltd.**

.... Appellants in both the appeals.

-Vs-

**Registrar, Patents, Designs and Trade  
Mark, Dhaka and another.**

....Respondents in both the appeals.

Mr. Gazi Md. Neamat Hossain, Advocate  
...For the Appellants in both the  
appeals.

Mr. M. Hashmat Ullah Sheikh, Advocate  
...For the Respondent No. 2 in both the  
appeals.

Heard On; 24.04.2019, 08.05.2019,  
15.05.2019,  
24.07.2019, 31.07.2019 & 21.08.2019.

AND

Judgment on: 28.08.2019.

**Present:**

**Mrs. Justice Farah Mahbub.**

**And**

**Mr. Justice S.M. Maniruzzaman**

**An appeal under section 100(2) of the Trade Marks Act, 2009;**

**Prior use of trade mark and prior application for registration in case of identical marks  
will go in favour of the prior user**

**JUDGMENT**

**S.M. Maniruzzaman, J:**

1. Since, similar question of law and facts are involved in both the appeals preferred by the respective contending parties as such, both have been taken up for hearing together and are being disposed of by this single judgment.

2. Both the appeals have been preferred challenging the order and decision dated 03.03.2013 passed by the respondent No. 1, Registrar, Patents, Designs and Trade Mark, Dhaka in Opposition Case Nos. 2727 of 2011 and 2845 of 2012 allowing Opposition Case No. 2727 of 2011 and thereby refused to register connected trade mark application bearing No. MP 101364 in Class-25 filed by the appellant and dismissed Opposition Case No. 2845 of 2012 and thereby allowing the connected trade mark application No. 91718 in Class-25 filed by the respondent No. 2.

3. Facts, relevant for disposal of both the appeals, in short, are that the appellant is a renowned business man and is engaged in the business of manufacturing and selling superior quality of socks under the name and style “Pride Knit Wear and M.B. Hosiery”. The appellant has adopted the word “HAZARD” along with special carrier, designs and getup as

his trade mark in respect of socks and has been marketing “HAZARD” branded socks all over the country through his dealers, whole sellers and retailers since 2005. It has been contended that the mark “HAZARD” is being continuously used by the appellant under the said trading style and Pride Knit Wear M.B. Hosiery without any objection from any quarter whatsoever including the respondent No. 2 due to the superior quality of socks being manufactured and sold by the appellant. The appellant’s product i.e. socks with the trade mark “HAZARD” became popular amongst the customers and traders; hence, the appellant as applicant filed an application for registration of the said trade mark being application No. 101364 in Class-25 dated 27.09.2006 before the respondent No. 1, Registrar, Patents, Designs and Trade Mark, (in short, the Registrar) Dhaka claiming user of “HAZARD” trade mark since 2005. After preliminary examination of the application, the Registrar accepted the said application for advertisement in the Trade Mark Journal. Accordingly, it was published in the Trade Mark Journal No. 253 for the month of July- October, 2009 (at page 5307) and it was officially published on 27.01.2011. At this juncture, the respondent No. 2, Biplob Hossain Hawlader, proprietor M/s. Mack Knit Wear opposed the said publication by filing Opposition Case No. 2727 of 2011.

4. It has been stated further that the appellant has been manufacturing and selling “HAZARD” brand socks and that the respondent Biplob Hossain had been purchasing the said product (socks) from the appellant since 2006 to 2010. In the month of January, 2011 the appellant requested the respondent to liquidate all the previous outstanding dues in order to take further delivery of socks. Consequent thereto, the respondent upon paying off all previous outstanding had refused to take further delivery of “HAZARD” brand socks from the appellant.

5. On the other hand, the case of respondent No. 2, in short, is that the respondent No. 2 is the sole proprietor of M/s. Mack Knit Wear. He has been manufacturing and supplying hosiery and garments items i.e. underwear, vest, socks etc. in the local market of the country under the trade mark “HAZARD” with the device of combined alphabet ‘H’ with expanded sword like ‘Z’ and adopted the word mark “HAZARD” since 1999. Accordingly, he applied for registration before the respondent No. 1, Registrar being Trade Mark application No. 91718 in Class-25 dated 26.05.2005 claiming to have been using the said mark since 1999. The respondent No. 1, the Registrar after preliminary examination of the application accepted the same for publication in the Trade Mark Journal. Accordingly, it was published in the Trade Mark Journal No. 255 for the month of January- March, 2010 (at page No. 6366) and it was officially published on 30.11.2011. The appellant, however, opposed the said publication by filing Objection Case No. 2845 of 2012.

6. It has been stated further that in order to meet the market demands specially for the “HAZARD” branded socks, the respondent No. 2 contacted with the appellant and proposed him to produce and supply socks of specified quality labeling the brand “HAZARD”. As per said verbal agreement, the appellant produced and supplied the socks to the respondent No. 2 for some times. In course of the said transaction the appellant came to learn about the popularity of the mark “HAZARD” in the local market and with a view to defraud the consumers and for his personal gain, the appellant upon imitating the respondent’s trade mark “HAZARD” in toto applied to the Registrar for registration of the said mark vide trade mark application No. 1013664 in Class-25 dated 27.09.2006 claiming the same to have been used since 2005. Accordingly, it was published in the Trade Marks Journal in violation of rule 23 of the Trade Mark Rules, 2015.

7. The aforesaid 2(two) Opposition Cases being No. 2727 of 2011 filed by the respondent in the trade mark application No. 101364 in Class-25 and Opposition Case No. 2845 of 2012 filed by the appellant in the trade mark application No. 91718 in Class-25 were heard analogously by the respondent No. 1. Both the contending parties contested their respective opposition cases by filing counter statements (T.M.-6), evidences in support of their oppositions and evidence-in-reply against evidence-in-support of applications. The Registrar upon hearing the contending parties and considering the evidences on record and submissions advanced by both the parties allowed Opposition Case No. 2727 of 2011 filed by the opponent respondent No. 2 and rejected Opposition Case No. 2845 of 2012 filed by the appellant vide the impugned order and decision dated 03.03.2013.

8. Being aggrieved by the aforesaid order and decision dated 03.03.2013 passed in Opposition Case Nos. 2727 of 2011 and 2845 of 2012 the appellant preferred both the trade mark appeals before this Court.

9. Mr. Gazi Mohammad Neyamat Hossain, the learned Advocate appearing for the appellant of both the appeals submits that the respondent No. 2 in his notice of opposition (T.M.-5) in para 12 raised objection under sections 8(ga), 10(1) and 16(Ka) of the Trade Mark Act, 2009 (in short, the Act, 2009), whereas objection under section 10(1) of the Act can only be raised by any person/owner whose trade mark has already been registered. In the present case, he submits the respondent opponent's trade mark was pending for registration before the respondent No. 1, Registrar. But, the Registrar without considering the said legal aspect accepted the objection of the respondent No. 2, who had no *locus standi* to raise objection under section 10(1) of the Act, 2009 and thereby arrived at a decision not warranted by law. He further submits that the opponent respondent was a regular customer of the appellant and had purchased finished socks with trade mark "HAZARD" from the appellant from the year 2006-2010 and that the appellant adduced evidences to that effect and as such, the respondent could not raise any objection against the registration of the appellant trade mark "HAZARD" Pride Knit Wear. But, the respondent No. 1 misinterpreted the provision of section 115 of the Evidence Act, 1872 and passed the impugned decision not mandated by law, facts and evidences. He further goes to submit that the Registrar erred in law in holding "যুগপৎ ব্যবহারের বিষয়টি বলে বিবেচ্য বিষয় হিসাবে গন্যকরা যেত যদি তারা একটা দেশের ভিন্ন ভিন্ন অঞ্চলে ব্যবসা পরিচালনা করতো যেহেতু তাদের উৎপাদিত ও ব্যবসা পরিচালনা বা বাজার একই সে কারণে এই বিষয়টি এক্ষেত্রে প্রযোজ্য হয় না।" Despite the fact that honest concurrent user has no limitation as regards place of business of the respective parties. He next goes to argue that the opponent respondent had/has no business of manufacturing socks prior to applicant appellant and that admittedly the opponent respondent had purchased "HAZARD" branded socks from the applicant appellant and sold the same on commission basis but, the respondent No. 1, Registrar calculated the period of user on the basis of garments products of the opponent respondent, not on the basis of socks. Lastly, he submits that the respondent, Registrar has decided the opposition case under section 10(2) of the Act, 2009 which is beyond the pleadings of the parties under litigation, the respondent Registrar has considered the two trade marks as "হুবহু" but, in fact the two trade marks are not exactly the same. The word Pride Knit Wear appears in the label in addition to trade mark "HAZARD" which the respondent Registrar has totally ignored. Moreover, the Registrar has considered the opponent respondent as prior user of the trade mark since 1999 but, the respondent opponent produced evidence in support of user trade mark "HAZARD" from 2006 and onwards which was concurrent user with the appellant. In this regard he submits that in case of honest concurrent user the question of confusion and deception in the course of trade under section 8(ga) does not arise at all.

10. *Per contra*, Mr. Hasmat Ullah, the learned Advocate appearing on behalf of the respondent No. 2 by placing the impugned order and decision submits that the respondent No. 1, Registrar after hearing the contending parties and on considering the evidences on record and existing law allowed the opponent respondent's Opposition Case No. 2727 of 2011 and dismissed the appellant's Opposition Case No. 2845 of 2012 and as such there is no illegality in the impugned order and decision so passed by the respondent No. 1, Registrar. He further submits that the appellant has been manufacturing and supplying Swan, Addidas and Super Dock branded socks; whereas, the respondent opponent has been manufacturing and supplying only "HAZARD" branded socks to meet the market demand but, the appellant with ill motive and for destroying the goodwill of the opponent respondent applied for registration trade mark "HAZARD" and that the Registrar considering the said fact passed the impugned order and decision. He next goes to argue that the present respondent did not allow the appellant to use trade mark "HAZARD" in his business and the appellant failed to produce any kind of agreement in support of allowing to use "HAZARD" brand trade mark by the respondent. As such, question of estoppel under section 115 of the Evidence Act, 1872 is not applicable at all in the appellant's case. He further goes to argue that the present respondent is the prior user of the trade mark "HAZARD" which was successfully proved by the respondent before the Registrar and that the Registrar, considering the said legal aspect passed the impugned order and decision. In view of the above contexts he submits that both the appeals are liable to be dismissed. In support, he has referred the decisions in the case of *Nabisco Biscuit and Bread Food Products Limited, Dhaka -Vs- Baby Food Products Limited, Dhaka and another*, reported in 28 BLD 204, in the case of *S.M. Taufiq and others-Vs- National Biscuit Co. Ltd.*, reported in PLD 1962 (W.P) Karachi 355, *Abdul Motaleb and others -Vs- Haji Aftab Miah and others*, reported in 16 BLT 138, in the case of *MK. Electric limited, Shrubbery Road, Edmonton, London-Vs-Md. Mozammel Haque, Trading as MK Electronic Industry* reported in 27 BLD 445.

11. We have heard the learned Advocate for the appellant and the learned Advocate appearing for the respondent No. 2 and have perused the impugned order and decision, memo of appeals and the relevant materials on record so appended thereto.

12. In both the appeals it is admitted by the contending parties that the appellant applied for registration of trade mark "HAZARD" being trade mark application No. 101364 in Class-25 dated 27.09.2006 claiming to use the said trade mark since 2005. On the other hand, the respondent No. 2 filed application for registration of the trade mark "HAZARD" being trade mark application No. 91718 in Class-25 dated 26.05.2005 for using the said mark since 1999. On perusal of both the applications for registration of trade mark word "HAZARD", it appears that the opponent respondent filed application prior to the application of the appellant; moreover, the said respondent is also prior user of trade mark "HAZARD". Considering the said context, the Registrar passed the impugned order and decision with the following findings;

*“সিদ্ধান্ত ও কারণঃ বিজ্ঞ আইনজীবীদের বক্তব্য এবং সাক্ষ্য হিসেবে উপস্থাপিত প্রমাণাদি হতে দেখা যায়- M/s. Mack Knit Wear “HAZARD” মার্কটি ব্যবহার ১৯৯৯ সাল থেকে এবং M/s. Pride Knit Wear এর Hazard মার্ক এর ব্যবহার ২০০৬ সাল থেকে এতে প্রমাণিত হয় M/s. Mack Knit Wear “HAZARD” মার্কটির prior user এবং Trademarks Act, 2009 এর ৮(গ) ধারা অনুযায়ী ট্রাইব্যুনালের নিকট প্রতীয়মান হয়েছে যে একই মার্ক একই ক্ষেত্রে দুইজনকে দেয়া হলে বাজারে বিভ্রান্তির সৃষ্টি হবে এবং জনসাধারণ প্রতারণিত হবে Estoppels এবং Backward linkage ভিন্ন ভিন্ন বিষয়ে হওয়ার কারণে এবং বর্তমান মামলার ক্ষেত্রে Backward linkage গ্রহণ যোগ্য বিবেচিত হওয়ায় অধিকন্তু বাজারে বিভ্রান্তি রোধ এবং ১০(২) ধারা অনুযায়ী হবহ মার্ক হওয়ার কারণে M/s. Mack Knit Wear দাখিলী আপত্তি মামলা নং-২৭২৭/২০১১ মঞ্জুর হবে।*

আদেশঃ অতএব, আদেশ হচ্ছে যে অপোজিশন মামলা নং-২৭২৭/২০১১ বিনা খরচায় দোতরফা সূত্রে মঞ্জুর করা হইল তদানুযায়ী দরখাস্ত নং-১০১৩৬৪ শ্রেণী-২৫ খারিজ করা হলো এবং অপোজিশন মামলা নং-২৮৪৫/২০১২ বিনা খরচায় দোতরফা সূত্রে না-মঞ্জুর করা হলো এবং তদানুযায়ী দরখাস্ত নং-৯১৭১৮ শ্রেণী -২৫ নিবন্ধনের জন্য অগ্রসর হউক। আদেশের সারমর্ম সংশ্লিষ্ট সকলকে অবহিত করা হউক।”

13. Countering the said findings the moot assertion of the appellant is that the Registrar without considering sections 8(ga), 10(1) and 16 (Ka) of the Act, 2009 rejected his Opposition Case No. 2845 of 2012. In order to appreciate of the arguments of the learned Advocate for the appellant, the relevant provisions of law are quoted below for ready reference;

“ধারা-৮। নিবন্ধনের বিষয়ে কতিপয় নিষেধাজ্ঞা।- কোন মার্ক বা মার্কেট অংশ ট্রেডমার্ক হিসাবে নিবন্ধিত হইবে না, যদি-

(ক) -----

(খ) -----

(গ) উহার ব্যবহার প্রতারণামূলক হইতে পারে বা বিভ্রান্তির সৃষ্টি করিতে পারে;

(ঘ) -----

(ঙ) -----

(চ) -----

(ছ) -----

ধারা-১০। সাদৃশ্যপূর্ণ বা প্রতারণামূলকভাবে সাদৃশ্যপূর্ণ ট্রেডমার্ক নিবন্ধনে বাধা-নিষেধ।

(১) উপ-ধারা (২) এর বিধান সাপেক্ষে, ভিন্ন কোন স্বত্বাধিকারীর নামে কোন পণ্য বা সেবা অথবা, পণ্য বা সেবার বর্ণনা নিবন্ধিত থাকিলে, উক্তরূপ পণ্য বা সেবা অথবা পণ্য বা সেবার বর্ণনার অনুরূপ বা প্রতারণামূলকভাবে সাদৃশ্যপূর্ণ কোন মার্ক নিবন্ধন করা যাইবে না।

(২) সৎ উদ্দেশ্যে যুগপৎ ব্যবহার বা অন্য কোন বিশেষ কারণে একই পণ্য বা সেবা অথবা একই বর্ণনার পণ্য বা সেবা প্রায় সাদৃশ্যপূর্ণ হইলেও উক্ত বিষয়ে কোন ট্রেডমার্ক একাধিক স্বত্বাধিকারীর নামে নিবন্ধন করা প্রয়োজন বিবেচনায় নিবন্ধক, উপযুক্ত শর্ত ও সীমাবদ্ধতা সাপেক্ষে, একাধিক স্বত্বাধিকারীর নামে কোন ট্রেডমার্ক নিবন্ধনের অনুমতি দিতে পারিবেন।  
ধারা-১৬। গৃহীত আবেদন প্রত্যাখ্যান।-কোন ট্রেডমার্ক নিবন্ধনের আবেদন গ্রহণের পর নিবন্ধক যদি এই মর্মে নিশ্চিত হন যে,-

(ক) আবেদনটি ভুলবশত গৃহীত হইয়াছে; বা

(খ) -----”

14. Section 8(ga) provides that the Registrar cannot accept any mark or part of mark for registration if the said mark can be registered which consists of or contents any scandalize design, or any matter use for fraud. Section 10 provides prohibition of registration of identical or similar trade mark. Sub-section (1) of section 10 provides that no trade mark shall be registered in respect of any goods or description of goods which is identical with a trade mark belonging to a different proprietors and either already on the register in respect of the same goods or description of goods or which so nearly resembles such trade mark as to be likely to deceive or cause confusion.

15. In the instance cases, the respondent No.2 is the sole user of the mark “HAZARD” and with the said trade mark he has been manufacturing hosiery and garments (including socks) items since 1999. In support of said contention he submitted challan/invoices (Annexure-C16) showing different dates from 06.06.2006-26.06.2006 for supplying “HAZARD” branded items in the local market and also submitted affidavits swearing by the some purchasers/distributors (Annexure-D series) confirming that the respondent M/s. Mack Knit Wear are using mark “HAZARD” since 1999. On the other hand the appellant submitted challan/invoices dated 11.12.2006-07.12.2009 (Annexure-B) in support of manufacturing and selling socks using the mark “HAZARD” since 2006.

16. Vide the said challan/invoices (Annexure-B) it appears that the appellant manufactured and supplied socks in the local market with trade marks Swan, Addidas and Super Dock. So, it is evidenced by the Annexure-B that excepting mark “HAZARD”, the appellant has been manufacturing and supplying Swan, Addidas and Super Dock branded socks in the local market. On the other hand, the opponent respondent has been manufacturing and supplying garments and hosiery (including socks) under the trade mark “HAZARD”. It also appears that the respondent’s application for registration was prior to the application of the appellant. Moreso, the respondent has been manufacturing and supplying garments and hosiery (including socks) under the trade mark “HAZARD” since 1999; whereas, the appellant has been manufacturing and supplying socks with trade mark “HAZARD” since 2006. The Registrar, however, allowed the respondent objection holding, *inter alia*-

**“M/s. Mack Knit Wear “HAZARD” মার্কটি ব্যবহার ১৯৯৯ সাল থেকে এবং M/s. Pride Knit Wear এর Hazard মার্ক এর ব্যবহার ২০০৬ সাল থেকে এতে প্রমাণিত হয় M/s. Mack Knit Wear “HAZARD” মার্কটির prior user এবং Trademarks Act, 2009 এর ৮(গ) ধারা অনুযায়ী ট্রাইব্যুনালের নিকট প্রতীয়মান হয়েছে যে একই মার্ক একই ক্ষেত্রে দুইজনকে দেয়া হলে বাজারে বিভ্রান্তির সৃষ্টি হবে।”**

17. Another assertion of the appellant is that the respondent objection case is barred by the principle of estoppel. Conversely, the opponent respondent submits that as per his tender the appellant supplied “HAZARD” branded socks for the time being to fill up the backward linkage. In this regard, we have noticed from Annexure-B series that the appellant supplied “HAZARD” branded socks to the opponent respondent several times but, he included trade marks Swan, Addidas and Super Dock in his challan/invoices. However, he did not include mark “HAZARD” therein. As such, the appellant cannot claim that he has been manufacturing and supplying socks under the trade mark “HAZARD”. In addition, the appellant could not place any agreement before the Registrar in support of allowing him to manufacture and supply “HAZARD” branded socks in the market by the present respondent. As such, the contention so has been raised to that effect falls through.

18. On perusal of the relevant provisions of law regarding registration of trade mark, it appears that when nearly resembled trade mark is claimed by different proprietors, the Registrar as per provision under section 10(2) of the Act, 2009 may give registration to different proprietors considering the trade mark being used concurrently and with honest purpose. In the instant appeals both the parties filed objection cases against each other. However, if the Registrar would allow registration of trade mark “HAZARD” for supplying and manufacturing socks to the appellant, he would not use mark “HAZARD” honest purpose since, the appellant is using other 3(three) trade marks for manufacturing socks. Besides, from the logo of the mark “HAZARD” in both the applications, we found that those are visually and phonetically identical i.e. “হবহ” not nearly resemble. Hence, section 10(2) of the Act does not allow to give registration of identical trade mark to different proprietors, although the mark is to be used concurrently and with honest purpose.

19. The issue involves in the instant appeals has been discussed by the Apex Court in the several judgments of our jurisdiction as well as Indian jurisdiction.

20. In the case of *Abdul Motaleb and others-Versus- Haji Aftab Miah and others* reported in *16 BLT 138*, it has been held that-

**“The respondent No. 1 is using the Trade Mark “Bonoful” illegally and therefore the claim of use of the Trade Mark “Bonoful” for over 14 years by**

*the respondent hereof has no legal value and said period cannot be counted for the purpose of section 10(2) of the Trade Mark Act to get benefit as honest concurrent user and hence granting of registration of Trade Mark “Bonoful” in favour of Respondent No. 2 under section 10(2) of the Trade marks Act is illegal.”*

21. In the case of *Nabisco Biscuit and Bread Factory Limited, Dhaka, Appellant - Versus- Baby Food products Limited, Dhaka and another, Respondent* reported in 28 BLD 304 it has been held that-

*“Section 8 of the Act prohibits, inter alia, registration of any trade mark which is likely to deceive or cause confusion or otherwise be disentitled to protection in a Court of justice. Section 10 of the Act further prohibits, inter alia, registration of any trade mark which is identical with a trade mark belonging to a different proprietor and either already on the register in respect of same goods or description of goods or which so nearly resemble such trade mark as to be likely to deceive or cause confusion.”*

22. In the case of *MK Electric Limited, Shrubbery Road, Edmonton, London N9 OPB (U.K), appellant, -Versus- Md. Mozammel Hoque, Trading as MK Electric Industries and others, Respondents* reported in 27 BLD 445 it has been held that-

*“There is a legal prohibition for registration of a trade mark which is phonetically identical with the previously registered trade mark. In such circumstances the Registrar has to record a finding of fact on the materials before him, if he comes to the conclusion that the matter falls within the prohibited category then he has no discretion but has to refuse Registration.”*

23. In the case of *Tosiba Appliances Company-Opponent-Versus- Kabushiki Kaisha Toshiba-Applicant in 2002(24) PTC 654 (Reg.) (at page 655, 5<sup>th</sup> line from top)* it has been held that-

*“The honest concurrent use is the main element to be considered by the Tribunal for allowing a trade mark to proceed for concurrent registration under section 12(3) of the Act. The honesty of the use of a trade mark has to be considered from the commercial point of view. The honesty or dishonesty of use of a trade mark relates back to its adoption. If a trade mark had been adopted honestly its subsequent use has to be honest. But to the contrary, if a trade mark had been dishonestly adopted its subsequent use of any length of time cannot launder the vice of dishonesty of adoption. If a person adopts a trade mark having knowledge of an earlier existing identical or deceptively similar trade mark, such adoption has to be dishonest adoption is tainted with mala fide intention of the person who adopts such trade mark.”*

24. In the case of *S.M. Taufiq and others- Appellants-Versus- National Biscuit Co., New York-Respondents* reported in PLD 1962 (W.P) Karachi 355(from 4<sup>th</sup> line of page No. 359), it has been held that-

*“The evidence produced by the respondents undoubtedly proves that after 1940, in the territories now comprising Pakistan, the trade mark “Nabisco” was neither used nor had any reputation till 1947, or after Partition upto the time they filed application for the registration of the said trade mark.” Therefore, it is found that the appellants S.M. Taufiq and others being the prior user, the appeal was allowed and got registration for Trade Mark “Nabisco”.*

25. Considering of the above context, it is discovered that section 8 of the Act, 2009 prohibits registration of any trade mark or part of the mark which is likely to deceive or cause confusion and or any matter use for fraud and or otherwise be disentitled in a Court of justice. Section 10 of Act, 2009 further prohibits registration of any trade mark which is identical with a trade mark belonging to a different proprietor and either already on the register in respect of same goods or description of goods or which so likely to deceive or cause confusion. In the instant appeals, both the contending parties filed applications for registration of trade mark “HAZARD” for supplying hosiery/garments/socks in the local market and both marks are phonetically and visually identical. However, sections 8 and 10(1) prohibit registration identical marks in respect of same goods or description of goods to different persons.

26. Moreover, the respondent is the prior user of trade mark “HAZARD” and his application was filed prior to the application of the appellant. The Registrar considering the said facts and the provisions of law granted registration of trade mark “HAZARD” in favour of the present respondent.

27. In view of the above facts and circumstances of the cases, findings and observations we find no legal infirmity in the impugned order and decision so passed by the Registrar refusing to register the trade mark “HAZARD” in favour of the appellant.

28. In the result, both the appeals are dismissed without any order as to costs.

29. The impugned order and decision dated 03.03.2013 passed by the respondent No. 1, Registrar, Patents, Designs and Trademarks, Dhaka in Opposition Case Nos. 2727 of 2011 and 2845 of 2012 allowing Opposition Case No. 2727 of 2011 and thereby refused to register connected trade mark application bearing No. MP 101364 in Class-25 filed by the appellant and dismissed Opposition Case No. 2845 of 2012 and thereby allowing the connected trade mark application No. 91718 in Class-25 filed by the respondent No. 2 is hereby upheld.

30. Communicate the judgment and order to the concerned respondents forthwith.

31. Send down the lower Court records at once.