

Reply to the Examination Report

To,
The Registrar of Trade Mark,
The Office of the Trade Marks Registry,
Trade Marks office Kolkata
7th Floor, Nizam Palace,
234, A.J.C. Bose Road,
Kolkata - 700 020

Sub: Reply to the Objection to the mark “Lutterman” under S.9(2)(a)

This mark has a record of Prior usage.

The claimed mark has been in usage from **11/10/2012**, thereby it has been in use for a duration of 8 years. The Applicant’s father Mr. Lutterman started a sports equipment store in Kolkata and soon it became the most popular and dependable shop in town at that time, and people knew that the name “Lutterman” provided an assurance of the superior quality of goods sold.

Over the years, people from outside the city came to Kolkata as by that time this city had become a hub for sports enthusiasts as it was the land of the famous cricketer Saurav Ganguli @Dada and from local recommendation they came to this “Lutterman” shop and there has been only good reviews from people about the products. People have often come back to buy more and in bulk for schools or gyms from across the country because of the guaranty that comes along with the name that is the mark of the owner. S.9(1) of Trademark Act provides that a trade mark shall not be refused registration if before the date of application for registration it has acquired a distinctive character as a result of the use made of it or is a well-known trade mark.

EXHIBIT A1, A2, A3 attached herein are proof of use of the mark over the years for the goods under Class 28 of the Nice Classification System. They are the store catalogue (it is distributed in the market once in two months- the attached is the one used in 2014 to 2015), a sample of the leaflet distributed in 2014, a picture of one of the delivery trucks that carries the mark, the picture was taken in the year 2016. Sale Invoices in the form of Cash Memo from 2013 and 2015, and after the introduction of GST in 2017, samples of GST bill have been attached as EXHIBIT B1, B2 & B3. These demonstrate not only the extensive prior usage of the mark but also the continuous usage from 2012 to 2020. EXHIBIT B4 is a certificate of the financial details of the last 5years, verified by a Chartered Accountant as the period of use will be

considered in conjunction with the turnover figures. An Affidavit and Declaration are also attached with this letter to substantiate the prior usage of the mark.

The Mark has obtained a reputation and good will in the Market.

The Mark has been in use for 8 years now, it has access to a wide market in almost every State in India. It has made its name and built an assurance amongst the consumers. The bills are the proof of the wide range of market and EXHIBIT C1, a sample of an advertisement made in a popular Indian Magazine in the August 2016 edition, EXHIBIT C2 a screen clipping of the YouTube review video of the store by a blogger and A2, a leaflet from 2014(already discussed before) are attached herein as proof of advertisement of the goods sold under this mark. The declaration by the Appellant also contains a record of the total expenditure made on advertisements in the last 5 years immediately preceding the date of Application. As per the Landmark *Whirlpool case*,¹ advertising a trademark is considered to be use and is sufficient to prove reputation and good will in India. To add on to it according to the Trinity Test set in the case of *Reckitt & Coleman Products Ltd. v. Borden Inc.*² to avoid the likelihood of confusion and establish a distinct identity the demonstration of “Local good will” is important. In the present case the Consumer survey report (EXHIBIT D1) and actual scanned copies of the survey card are shared as EXHIBIT D2 in addition to the invoices serve as the proof of the existence of local good will and the high reputation of the “Lutterman” in the market place.

In addition to it, the mark has acquired a secondary meaning:

1. The mark claimed is not a generic term, the combination of the color of the word “Lutterman” that is Teal blue along with the graphical representation in the color orange is the key to its distinctiveness. This term is used in combination of other marks rendering it a distinct identity. The SC in the case of *Parakh Vanijya Private Limited Vs. Baroma Agro Product and Others*.³ popularly known as “the Malabar Battle” held that registration of Parekh’s trademark had a specific disclaimer that company has no right over exclusive use of the word “Malabar”; several trademarks in conjunction with other terms/words existed like “Malabar Coast”. Baroma was thus, allowed to use the trademark “Baroma Malabar” and court found no similarity between it and Parekh’s

¹ 1996 5 SCC 714

² [1990] 1 All E.R. 873

³ AIR 2018 SC 3334

“Malabar”. Therefore, when the word is used in conjunction with other marks it has a complete distinct identity.

Similarly, in the present case, the exclusive use of the word “Lutterman” is not claimed, exclusivity of the mark is claimed only when it is in conjunction with the graphical representation in the specific color combination. Therefore, if any other company uses the word alone or use the picture with any other word, it would not be similar to the claimed mark. The mark would persistently retain its distinct identity.

2. The word “Lutterman” does not have an English meaning nor is it a common word in any of the Official languages recognized in India. It assumes a meaning in French that is a “wrestler” but that is not common knowledge to the Indian Consumers. Hence it would be safe to assert that this word is not descriptive nor generic in the area of usage that is in India. To support this argument reliance is placed upon the Delhi HC’s judgment in the case of *Sunil Mittal v. Darzi*.⁴ The principle argument of defendant in this case was that ‘Darzi’ could not qualify for trademark protection as it was a generic term for tailoring services. Court observed that the term ‘darzi’ to mean ‘tailor’ was only in area such as Delhi; it would not be generic/descriptive in the state of Kerala. Another reasoning of Court was ‘darzi’ was used in language as descriptive of services rendered; it was not used to designate the service of tailoring. Similarly, in the present case, the picture associated with the term ‘Lutterman’ was used in a language to provide a description of the type of products sold, it was not used to designate the items individually.
3. To emphasize on the question of descriptiveness of the mark, the word “Lutterman” is not descriptive in any manner but the picture associated with it is inculcated in the mark to provide a description of the types of goods sold by the owner of the mark. The SC in the case of *Godfrey Philips India Ltd. v/s. Girnar Food and Beverages Pvt. Ltd.*⁵ held that a descriptive mark may be entitled to protection if it has assumed a secondary meaning which identifies it with the particular product as being originated from the particular source only. The picture in the mark claimed in the present case when it adjoins the word “Lutterman” it assumes a secondary meaning: an indication of the type

⁴ 2017 (70) PTC 346 (Del)

⁵ Manu/SC/0541/2004

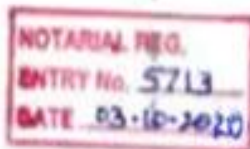
of goods sold by the owner. The picture adjacent to the word and its shape and positioning of the items, is the brainchild of the applicant and thereby it acquires a distinct identity, upon which the exclusivity is claimed.

It is requested that this letter be considered as the reply to the Examination report and the Registrar may provide a order under Sec.33(8) of the Trademark Act,2017.



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VP 316013



TRADEMARK USER AFFIDAVIT

In support of the request made to apply for Trade Mark for the mark "LUTTERMAN" under Trademark Class "28".

I, Mr. *IP Person*, Advocate of *Ms. Leona K. Lutterman*, having registered office at 101-B, *Shapuri*, Rajarhat, Kolkata 700213, do hereby solemnly affirm and declare as follows:

1. That I am an Indian by nationality and residing at 102-B, *Shapuri*, Rajarhat, Kolkata 700213.
2. I state that I am familiar and well conversant with the facts and circumstances of the present matter and competent and authorized to swear this affidavit and make the necessary statement in respect thereof.
3. A trademark application is hereby made for registration of the accompanying trade mark in class 28 and the said mark has been continuously used since 11/10/2012 in respect of the said goods (Sports Equipment).

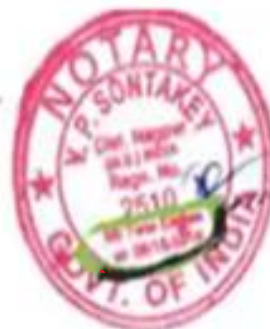
I solemnly state that the contents of this affidavit are true to the best of my knowledge and belief and that it conceals nothing and that no part of it is false

Place: Kolkata

IP Person
15.8.20

Signature

Date: 15/8/2020



In the matter of
Trade Mark Application No. NTMC2020048
in the name of: **Leona K. Lutterman**
to register the mark:
in Class: **28**



STATUTORY DECLARATION

I, Leona K. Lutterman, Daughter of Shri Arnab Lutterman, age-34 years, resident of 102-B, Shapurji. Rajarhat. Kolkata 700213. hold the position of Owner in Lutterman (hereinafter referred to as “the applicant company”) and I do hereby solemnly and sincerely declare as follows:

2 I have held the aforesaid position in the applicant company since 1/3/2018 and it has been passed down by my father. The evidence given in this declaration are within my personal knowledge or derived from the records of the applicant company to which I have access.

3 I am duly authorised to make this declaration on behalf of the applicant company in the prosecution of this application.



4 The trade mark _____ was first used in India on 11/10/2012 by the applicant company.

5 There is now produced and shown to me Exhibit ‘A’ which is showing use of the mark exactly, or substantially, as applied for.

Exhibit A1 which is the Catalogue of the store that is given to every customer who walks in and also sent along with the newspaper twice a year. It shows all the products sold under the mark in Class 28.

Exhibit A2 which is a leaflet from the year 2014 to broadcast a huge Sale held by this store, it shows use of the mark on the goods/services in Class 28.

Exhibit A3 which is picture of the delivery truck that is used by the applicant to deliver all inter-state orders, it shows use of the mark on the goods/services in Class 28.

6. Sales of the goods/Turnover for the services for the five years immediately preceding the date of application were as follows:

Year	Amount
2015-16	1,12,02,200
2016-17	1,36,93,744
2017-18	1,56,12,006
2018-19	2,04,52,790
2019-20	2,87,00,790

7. There is now produced and shown to me Exhibit 'B' which is showing sales invoices of the goods/services on which the mark is used. [The sales invoices must be dated before the date of your application. A selection of sales invoices from each year the mark is used shall suffice.]

Exhibit B1 are sales invoices of the goods/services in Class 28 on which the mark is used in the year 2018- GST Bill

Exhibit B2 are sales invoices of the goods/services in Class 28 on which the mark is used in the year 2017-GST Bill

Exhibit B3 are scanned copies of sale invoices of the goods in Class 28 on which the mark is used in the year 2015 and one from the year 2013- Cash Memo

Exhibit B4 are a verified Certificate of the Financial details of the Appellant company by whom the mark is used

8 The amounts spent on promoting the goods/services in the five years preceding the date of application were as follows:

Year	Amount				
	Newspaper	Magazine	TV/ Online	Radio	TOTAL
2016	700	70,000	8000	2,500	81,200
2017	900	1,01,000	12,000	2,500	116,400
2018	1,000	1,19,000	14,000	2,700	136,700
2019	1,200	1,20,000	17,400	2,700	142,300
2020	1,300	1,20,000	22,000	2,700	146,000

by means of TV, Radio on Red FM, newspapers: Anondobazar Patrika, Sangbad pratidin, Telegraph, The Times of India, The Indian Express; Magazines: Reader's Digest, Match! Annual, Sportz Sports Star Magazine.

9. There is now produced and shown to me Exhibit 'C' which consists of samples of promotional material showing use of the mark on the goods/services. [The samples must be of those used before the date of your application]

Exhibit C1 are samples of promotional material showing use of the mark on the goods/services in Class 28, a full-page magazine advertisement from the year 2018 to broadcast a huge Sale held by this store in 2018

Exhibit C2 are samples of promotional material showing use of the mark on the goods/services in Class 28 a screenshot of the YouTube review advertisement by a renowned blogger.

10. There is now produced and shown to me Exhibit 'D' it is a report of the yearly Consumer Feedback Survey, it contains:

Exhibit D1 an analysis of all the feedbacks received to procure the crucial information of the value of mark in the market

Exhibit D2, samples of actual survey sheet

11. And I do hereby declare that the information given above and in the enclosed documents is true to the best of my knowledge and belief and nothing has been concealed therein. I am well aware of the fact that if the information given by me is proved false / not true at any point of time, I will have to face punishment as per any provision of Law for the time being in force as well as the benefit availed of by me or the benefit accrued to me shall be summarily cancelled. conscientiously believing the statements contained in this declaration to be true in every particular.

Declared at KOLKATA

this 24th day of August, 2020

Leona K. Juthuman
24.8.20.

[Signature of person making the declaration]

Before me:

M. Bala
24/08/20.

[Signature of person before whom the declaration made]



VALID OUTSIDE INDIA
MADHUBALA ADVOCATE
NOTARY PUBLIC INDIA

ATTESTED
NOTARY PUBLIC

24 AUG 2020

EXHIBIT A1

Lutterman Catalogue (attached as separate file due to its size)

EXHIBIT A2





EXHIBIT A3



EXHIBIT B1


Tax Invoice

	Lutterman. Salt-lake sector III. Big Bazar Mall. Shop No.32. Kolkata 700023. Ph: +91 7908376244 GSTIN/UIN: 19AAPCA0782M1Z3 State Name: West Bengal, Code: 19 CIN: U74110TN2014OPC096605 LuttermanK@gmail.com	Invoice No 180218-098	Dated 5-Apr-2018				
		Delivery Note	Mode/Terms of Payment				
		Supplier's Ref.	Other Reference(s)				
Buyer STAR POLYFAB MULLANPUR ROAD VILLAGE HUMBRAN DISTRICT LUDHIANA PUNJAB 141110 Ph: 98158 52400 GSTIN/UIN : 03AAMP7641A1ZV State Name : Punjab, Code : 03		Buyer's Order No.	Dated				
		Despatch Document No.	Delivery Note Date				
		Despatched through	Destination				
		Terms of Delivery					
SI No.	Description of Goods	HSN/SAC	Quantity	Rate	per	Disc. %	Amount
1	Cricket Bat (Zenith)	9506	1 PCS	24,000.00	PCS	20 %	19,200.00
2	Cricket Bat (Sisz-4)	9506	1 PCS	3,500.00	PCS	10.71 %	3,125.15
							22,325.15
	Less :	IGST R/o					2,679.02
							(-)0.17
	Total		2 PCS				₹ 25,004.00
Amount Chargeable (in words) E. & O.E							
INR Twenty Five Thousand Four Only							
HSN/SAC		Taxable Value	Integrated Tax		Total Tax Amount		
			Rate	Amount			
9506		22,325.15	12%	2,679.02	2,679.02		
Total		22,325.15		2,679.02	2,679.02		
Tax Amount (in words) : INR Two Thousand Six Hundred Seventy Nine and Two paise Only							
Company's PAN : AAPCA0782M							
Declaration We declare that this invoice shows the actual price of the goods described and that all particulars are true and correct.		For LUTTERMAN- OPC  5.4.18 Authorised Signatory					

This is a Computer Generated Invoice

EXIHIBIT B2

Tax Invoice

	Lutterman. Salt-lake sector III. Big Bazar Mall. Shop No.32. Kolkata 700023. Ph: +91 7908376244 GSTIN/UID: 19AAPCA0782M1Z3 State Name: West Bengal, Code: 19 CIN: U74110TN2014OPC096605 LuttermanK@gmail.com	Invoice No.	150213-067	Dated	7-Oct-2017
		Delivery Note		Mode/Terms of Payment	
Buyer FLAMBUOYANT SCHOOL KHOYAGHAT, CR DAS ROAD KOLKATA. 700098 PH: 0343-345677 GST/UID: 19SSMPR633A1Z9 State Name: West Bengal, Code:19	Supplier's Ref.		Other Reference(s)		
	Buyer's Order No.		Dated		
	Despatch Document No.		Delivery Note Date		
	Despatched through		Destination		
	Terms of Delivery				

SL No.	Description of goods	HSN/Sac	Quantity	Rate	per	Disc%	Amount
1	Foot ball	12004	4	600	Psc		2400
2	Foot-ball Goal Frame+ Net 6x3x4 foot, Steel frame	12004	2(set)+ 2(set)	8000	Set		16000
3	Cones	12004	6 (set) +6 (set)	900	Set		1800
4	Track and Field Speed agility Ladder	12004	2	800	Psc		1600
							21,800
	IGST						2616
	Less: R/o						
	Total		22 Pcs			N/A	24,416

Amount chargeable (in words)

INR Twenty-Four Thousand Sixteen Only

HSN/SAC	Taxable value	Integrate Tax Rate	Amount	Total Tax Amt.
12004	21,800	12%	2,616	
Total	21,800		2,616	2,616

Tax Amount (in words) : **Two Thousand Six Hundred and Sixteen**Company's PAN : **AAPCA0782M**

Declaration

We declare that this invoice shows the actual price of the goods described and that all particulars are true and correct.


For LUTTERMAN- OPC


Leona K. Lutterman

Authorised Signatory

This is a Computer Generated Invoice

EXHIBIT B-3

 <p style="text-align: center;">LUTTERMAN Salt-lake sector III, Big Bazar Mall, Shop No.32, Kolkata 700023. Ph: +91 7908376244</p> <p style="text-align: center;">CASH MEMO (DD/MM/YY)</p> <p style="text-align: center;">S No: 15324-022 Date: 16-12-2015</p>			
QUANTITY	RATE	DESCRIPTION	TOTAL
2 Pcs.	1000	1. Hexagon Dumbbells 10kg x 2	2000
6 Pcs.	1500	2. Iron Weight Plates - Chrome (3-set x 2)	3000
1 Pcs.	7,999	3. Olympic Weight Lifting Bar 5ft. 25mm	7999
1 Pcs.	1000	4. Medicine Ball 3kg	1000
AMOUNT IN WORDS: <u>Thirteen Thousand Nine</u> <u>Hundred and Ninety Nine only.</u>			G. TOTAL: <u>13,999/-</u> SIGN: <u>Shovan K. Lutterman.</u>

 <p style="text-align: center;">LUTTERMAN Salt-lake sector III, Big Bazar Mall, Shop No.32, Kolkata 700023. Ph: +91 7908376244</p> <p style="text-align: center;">CASH MEMO (DD. MM. YY)</p> <p style="text-align: center;">S No: 13622-019 Date: 02-03-2013</p>			
QUANTITY	RATE	DESCRIPTION	TOTAL
4 Pcs. (set)	2000	1. Cricket bat - KASHMIR Willow (Legend) with boils	2000
6 Pcs.	1000	2. Cricket Natural Stump (Set of 3 x 2)	2000
2 Pcs.	648	3. Club Cricket ball Leather	1296
AMOUNT IN WORDS: <u>Five Thousand</u> <u>Two Hundred and Ninety Six</u>			G. TOTAL: <u>5,296/-</u> SIGN: <u>[Signature]</u>

Financial Details Certificate

Exhibit-B4

This is to certify that the store 'Lutterman' owned by Ms. Leona K. Lutterman having its registered office at Salt-lake sector III. Big Bazar Mall. Shop No.32. Kolkata Pin: 700023, has an average gross receipt of 16586 lakhs in the last three consecutive years (2016-17, 2017-18, 2018-19) The annual turnover of the store is as under-

S. No.	Financial Year	Annual Turnover
1	2016-17	1,36,93,744
2	2017-18	1,56,12,006
3	2018-19	2,04,52,790

Date: 11-10-2019

Place: Kolkata



For Ravikanth Tata & Co.
Chartered Accountants
PIN: 0184925

Ravikanth Tata
Proprietor
M No: 922196

Office: 690/34, 3rd floor. Arunima Building.

Sarat Chandra Lane. Rajarhat, 700045.

Off: 0343 455537 e-mail: ravikanth10@gmail.com

COMPLETE HOME GYM
COMBO OFFER

LUTTERMAN
Salt-lake sector III. Big Bazar Mall. Shop
No.32. Kolkata 700023.
Ph: +91 7908376244

50 YEARS
FITNESS WORLD
CELEBRATING
Family Owned & Operated

The advertisement features a purple and pink background. On the right, a silver and black stationary exercise bike is shown. In the center, there are several rolls of exercise mats in purple, blue, black, orange, and green. To the left of the mats is a silver exercise ball. Further left, two pairs of black and white resistance bands are displayed. A circular logo with various fitness icons and the word 'Lutterman' is positioned above the mats. In the top right corner, a gold seal commemorates 50 years of 'FITNESS WORLD' and notes that the company is 'Family Owned & Operated'.



Look for the **CIRCLE** with all your Sporty Needs only at **LUTTERMAN**. We assure it will be a GOOD GAME!

EXHIBIT C-2

YouTube

Search

SIGN IN

Up next

AUTOPLAY

Salt Lake Kolkata

Quick Tour

Tech Tip Review

15K views • 1 year ago

10:27

Salt Lake, Kolkata |

Full Tour and Review | India's...

AD VLOGS

17K views • 1 year ago

10:19

Go Sport's New Store | Bangalore

Toys and more with Bud

3K views • 1 year ago

3:51

Kilbirnie Sports a Retail Stores in Wellington offering Sports...

Big Review TV

666K views • 3 years ago

1:04

Kolkata's Maidan Market is now

LUTTERMAN Salt Lake Kolkata Store Tour\ Affordable Sports & Fitness Equipment Store India

1,620 9

SHARE SAVE

ps://www.youtube.com/watch?v=C7_kcun9j0o

EXHIBIT D1

Consumer Survey.

Result:


It is a Christmas scheme used at the Lutterman's. With every purchase in the month of November and December a Christmas card is handed out which has a review section added to it. Every person who walks in with the filled review by 30th January would get a flat 30% off on the next purchase. This scheme was started in 2017 with the intent to know the customers better. Review samples from the year 2018 are shared (Scanned copies). This survey is conducted every year, the people involved are the consumers of the goods sold under the mark. There are almost 10,000 Review cards given away every year and almost 9,500 filled ones are collected, the number is high due to the Holiday Season. In an average there are 28,500 review cards from 2017-18, 2018-19 & 2019-20 that were considered for the following analysis.

A cumulative analysis of all the reviews brings out the following:

- Name of the Company in the market: 90% of the people assert that the Lutterman's is highly popular and they depend on it for sports equipment. They trust the mark. It has attained a good reputation in the market. People purchase sports equipment from Lutterman looking at the mark alone.
- Similarity index: Almost 95% of the people explicitly declare that the quality of the products at Lutterman's match no other. To quote one review "The orange and blue circle tells me it is Lutterman- I would definitely expect it to a Lutterman and be confused if it was not. I would blindly trust the mark for all sports gear!" another person wrote it to be the most recommended and one of a kind, very less likely to be confused. Lutterman is easily distinguishable for its bright logo and its bright range of products

It can be derived that the mark is explicitly recognized as to be the Lutterman's. People recognize the mark and associate it with one source alone. It is considered to be easily identified by most of the people in the market and hence it would be safe to assert that the mark has made an identity of its own, and people recognize it.

EXHIBIT D2



Merry Christmas


Name: Vivekananda Academy, Telangana.

Are you happy with the goods sold at Lutterman:
10 (Rate it from 1 to 10)

How would rate "Lutterman" in the market: 9

How can we improve? Or any comment?
Lutterman consistently lives up to its name in the market. Most Recommended.

*Fill and submit it at the store to avail a flat 30% discount. Valid from 1st Dec 2017 to 30th Jan 2018



Merry Christmas

Name: Ronaldo Das.

Are you happy with the goods sold at Lutterman:
Yes-10 (Rate it from 1 to 10)

How would rate "Lutterman" in the market: 10

How can we improve? Or any comment?
The Orange & Blue circle is Lutterman & there is no doubt about it. I blindly trust the MARK for any Sports Equipment.

*Fill and submit it at the store to avail a flat 30% discount. Valid from 1st Dec 2017 to 30th Jan 2018

EXHIBIT D3



Name: Sulakha Women's Gym

Are you happy with the goods sold at Lutterman:

10 😊 (Rate it from 1 to 10)

How would rate "Lutterman" in the market: 10/10

How can we improve? Or any comment?

Lutterman is the pretty blue & orange colour, never disappoints. Best Sports Products.

*Fill and submit it at the store to avail a flat 30% discount. Valid from 1st Dec 2017 to 30th Jan 2018



Name: Army School, Bihar.

Are you happy with the goods sold at Lutterman:

9 (Rate it from 1 to 10)

How would rate "Lutterman" in the market: 10

How can we improve? Or any comment?

Lutterman is trustworthy for Sports equipments. Would always keep coming back. One of a kind!

*Fill and submit it at the store to avail a flat 30% discount. Valid from 1st Dec 2017 to 30th Jan 2018