

Biotech Dental ... Petitioner

The Registrar of Trade Marks ... Respondent

CORAM : R.I. CHAGLA, J.

DATED : 8th JUNE, 2023.

1 By this Miscellaneous Petition the Petitioner is seeking the
setting aside of the impugned order dated 09.07.2021 passed by the
Examiner of Trade Marks in International Registration (IR) No. 1558631
allotted International Registration Designating India (IRDI) No.4737668
in Classes 05, 10, 35, 42 and 44 filed by the Petitioner.

2 The learned Counsel for the Petitioner has submitted that the
impugned order merely refers to Section 11(1) of the Trade Marks Act,
1999. There is no independent reasoning given to support the finding by

the Examiner of Trade Marks that there is a likelihood of confusion with regard to the similarity of marks as well as similarity of goods and services covered under the subject marks and/or there is confusion in the mind of the public. There is only a bare statement that the mark applied for is identical with similar original trade marks on record as mentioned in the examination report. He has accordingly sought the setting aside of the impugned order.

3 Mr. Sethna, learned Counsel appearing for the Respondent has submitted to the orders of this Court.

4 Having considered the impugned order and finding that it's bereft of reasons as only a reference is made to the examination report but there is no independent reasoning and/or consideration of the submissions of the Applicant/Authorised Agent to support the finding of the Examiner of Trade Marks in the impugned order, the impugned order is required to be quashed and set aside. The Examiner of Trade Marks is not merely to refer to Section 11(1) of the Trade Marks Act, and the examination report but is required to independently deal with the submissions of the Applicant/Authorised Agent and which is required to be reflected in the impugned order. By not doing so, it is held that no proper reasons have been given as to why the submissions are not

acceptable to the Examiner of Trade Marks.

5 Accordingly, the matter is remanded back to the Respondent for consideration of the submissions alongwith material produced by the Applicant/ Authorised Agent and for a proper reasoned order to be passed after hearing the Petitioner.

6 The exercise shall be undertaken by the Respondent/ Examiner of Trade Marks within a period of eight weeks from the date of this order.

7 Commercial Miscellaneous Petition is accordingly disposed of.

(R.I. CHAGLA, J.)