

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMMERCIAL MISCELLANEOUS PETITION NO. 1283 OF 2022**

Helix OpCo, LLC	...	Petitioner
vs.		
Registrar of Trade Marks	...	Respondent

Mr. Rahul Beruar a/w. Mr. Yogesh Mishra, i/by. PRS Legal for petitioner.

**CORAM : MANISH PITALE, J
DATE : 13th APRIL, 2023**

P.C. :

. By this petition, the petitioner has challenged the impugned order dated 28th August, 2021, passed by the sole respondent – Registrar of Trade Marks, whereby the application filed by the petitioner for registration of its trade mark HELIX has been refused, by invoking Section 11(1) of the Trade Marks Act, 1999. This Court issued notice on 12th December, 2022 and the sole respondent was served. On 27th January, 2023, this Court adjourned the matter to give an opportunity to the sole respondent to appear before this Court. Today, the matter is listed for final disposal, but there is no appearance on behalf of the respondent. Therefore, the petition is taken up for hearing.

2. Heard learned counsel for the petitioner. Attention of this Court is invited to the impugned order dated 28th August, 2021 and it is submitted that the order is cryptic, without any reasons and that therefore, on this sole ground, the impugned order deserves to be set aside. It is brought to the notice of this Court that in response to the examination report, received by the petitioner, indicating that the application is liable to be refused, by

invoking Section 11(1) of the said Act, on 3rd March, 2021, the petitioner had placed on record of the respondent, a detailed response, including reference to registrations obtained by the petitioner for the said mark in various international jurisdictions, including United States of America, Australia, Canada, European Union, Israel, Hong Kong, Japan, New Zealand, Singapore, South Korea, Switzerland, Taiwan and United Kingdom. In its response, the petitioner had stated in detail, the reasons as to why the objection under Section 11(1) of the said Act, is not sustainable. The petitioner also distinguished its products from those, that were indicated to be using a similar trade mark, by making detailed submissions in the response placed before the respondent.

3. Even before this Court, the petitioner has placed on record detailed material to indicate that the respondent ought to have dealt with such detailed contentions and material placed on record on behalf of the petitioner, while considering and disposing of the application for registration of trade mark HELIX. It is submitted that therefore, this Court may consider setting aside the impugned order.

4. As noted hereinabove, there is no appearance on behalf of the respondent, but this Court has considered the material placed on record to examine as to whether the impugned order can be sustained. The application before the respondent was under the Madrid protocol. The material on record sufficiently demonstrates the registration in international jurisdictions in favour of the petitioner. The detailed response placed on record before the respondent, shows that the petitioner is a genomics company, operating at the intersection of clinical care, research and genomics and that it has used the mark HELIX in various international

jurisdictions. It is found that the aspect of the petitioner enjoying protection for such a trade mark globally, was an aspect placed on record before the respondent with supporting material. An effort was made on behalf of the petitioner to distinguish its goods and services, in the context of the trade mark HELIX, to indicate that objection under Section 11(1) of the Act, may not be sustainable.

5. In the face of such detailed material placed on record on behalf of the petitioner, in response to the examination report, the least that was expected from the respondent was consideration of the material placed on record and discussion in respect of the specific contentions raised by the petitioner, while supporting its application.

6. But, a perusal of the impugned order shows that there is no such consideration, which lacks discussion and that the order is cryptic, without any reasoning. This Court is of the opinion that on this sole ground, the impugned order deserves to be set aside, as the respondent is expected to consider, discuss and deal with the material brought to its notice by the petitioner, in support of its application. Hence, it is found that the impugned order is liable to be set aside.

7. In view of the above, the petition is allowed. The impugned order is quashed and set aside.

8. The respondent is directed to consider afresh the application filed by the petitioner.

9. The petitioner shall appear before the respondent on 2nd May, 2023. The petitioner is granted liberty to place on record further material, if any,

before the respondent within two weeks from 2nd May, 2023. The respondent shall dispose of the application of the petitioner within six weeks from 2nd May, 2023.

10. The respondent is expected to pass a reasoned order, dealing with the contentions raised on behalf of the petitioner and the material placed on record, in support of the application.

11. The petition is disposed of. Needless to say, this Court has not expressed any opinion on the merits of the matter.

(MANISH PITALE, J)

Priya Kambl

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