



(T)OP(TM)/233/2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.08.2023

CORAM

THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

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(ORA/2/2017/TM/CH)

Sri.Hitesh Chouhan, Proprietor  
M/s.Metro Marketing  
Door No.9-77-10, Pool Bhavi Street  
K.S.Jain Building, Near Brahmin Street,  
Old Post Office Vijayawada 50001,  
Andhra Pradesh Rep by Mr.Hitesh Chouhan ... Petitioner

-vs-

1.Sri.Ganapathlal, Proprietor, M/s.Jaya Stationery,  
No.97, Narayana Mudali Street, Sowcarpet,  
Chennai 600079, Tamilnadu  
2.Registrar of Trademarks,  
Trademark Registry,  
Chennai, Intellectual Property Building,  
G.S.T.Road, Guindy, Chennai 600032. ... Respondents

**PRAYER:** Transfer Original Petition (Trademarks) filed under  
Sections 47/57/125 of the Trademarks Act, 1999, that the trademark  
'LEO' vide application No.1707544 in Class 16 for the goods 'Rubber  
Band, Stationery required for office and education' registered in the



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name of Sri.Ganapathlal, Trading as Jaya Stationery shall be removed from the register. The registration certificate of the trademark 'LEO'



vide Application No.1707544 in class 16 shall be cancelled to maintain the purity of the register.

For Petitioner : Dr.Venkat Reddy, Sr. Adv.  
Mr.Ramesh Ganapathy  
for M/s.RVR Associates

For Respondents : Mr.C.Kulanthaivel, SPC for R2  
No appearance for R1  
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### **ORDER**

The petitioner challenges the registration of the trademark 'LEO' under trademark No.1707544 in Class 16. Notice was served privately on the first respondent on 08.06.2023 and through Court on 15.06.2023. Thereafter, the Registry was directed to print the name of the first respondent in the cause list. In spite of serving notice and printing the name of the first respondent in the cause list, there was



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no representation for the first respondent at the hearing on 10.08.2023 or at today's hearing. Therefore, the matter was proceeded with in the absence of the first respondent.

2. Learned senior counsel for the petitioner invited my attention to the certificate of registration issued to the petitioner in respect of the trademark



under Trademark No.1443501 in Class 16 for “Rubber bands of all types”. Particularly, learned senior counsel emphasized the fact that the petitioner has used the relevant mark from 01.04.2000 as recorded in the additional representation.

3. He then invited my attention to the impugned mark



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which was registered with effect from 07.07.2008 in Class 16 under trade mark No.1707544. By drawing my attention to the respective applications, he pointed out that the said applications were filed by the same counsel.

4. He next invited my attention to the award passed by the Lok Adalat at Vijayawada in proceedings arising out of C.C.No.91 of 2009 on the file of the Chief Metropolitan Magistrate Court at Vijayawada. The undertaking recorded therein is as under:

*"The accused herein undertakes that he should change the mode, pattern and style of packing, colour combination (black, white and black) on the packing in future which shall not be identical with the defacto-complainant's mode, pattern and style of*



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*packing and colour combination (i.e. black, white and black)''.*

He also pointed out that copyright registration was obtained and invited my attention to the relevant document at page 32 of the paper book.

5. In these facts and circumstances, learned senior counsel submitted that the first respondent adopted a near identical mark for identical goods, and that such adoption was both dishonest and fraudulent.

6. On examining the certificate of registration in favour of the petitioner, it is evident that the registration is in Class 16 in relation to rubber bands. The evidence on record discloses that the petitioner has used the mark from 01.04.2000. The certificate of registration issued on 07.07.2008 under Trademark No.1707544 is also in respect of rubber bands. The trademark of the first respondent is nearly identical and has been applied to identical goods. There is also



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evidence that such adoption was dishonest. In spite of undertaking to change the mark, as recorded in the award of the Lok Adalat, the first respondent has not taken concrete steps towards that end. For all these reasons, the petitioner is entitled to succeed and the entry relating to the mark is liable to be removed.

7. Hence, (T)OP(TM) No.233 of 2023 is allowed without any order as to costs by issuing the following directions to the second respondent:

(i) Cancel the certificate of registration relating to Trademark No.1707544 in Class 16.

(ii) Remove the entry relating to the aforesaid trademark from the Register of Trademarks.

(iii) Complete the above within a period of thirty days from the date of receipt of a copy of this order.

**25.08.2023**

Index : Yes / No  
Internet : Yes / No  
Neutral Citation: Yes / No



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**SENTHILKUMAR RAMAMOORTHY,J**

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**25.08.2023**