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(T)OP(TM)/279/2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.12.2023

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THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

(T)OP(TM)/279/2023
(ORA/35/2018/TM/CHN)

Corona Remedies Pvt. Ltd.,
Corona House,
Block C-Mondeal Business Park,
Near Gurudwara S.G.Highway,
Thaltej, Ahmedabad-380059,
Gujarat State, India.

... Petitioner

-VS-

1.Sujatha Manthri, trading as Herald Healthcare,
D.No.1-8-B1, Flat No.2, HIG-II,
Block No.1, Sankalpa Residency,
Baglingampally, Hyderabad-500 044.

2.The Registrar of Trade Marks
Boudhik Sampada Bhawan,
G.S.T.Road, Guindy, Chennai-600 032.

... Respondents

PRAYER: Transfer Original Petition (Trademarks) filed under
Sections 47, 57 & 125 of the Trade Marks Act, 1999, praying to
remove/cancel/expunge/rectify the entry pertaining to impugned



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Trade Mark "B9" registered under No.3281514 in Class 5.

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For Petitioner : Mr.Ramesh Ganapathy
for M/s.Lexfons

For R1 : No appearance

For R2 : Mr.T.V.Krishnamachari

ORDER

The petition was filed to rectify the Register of Trade Marks by removing the entry relating to the trade mark "B9", which was registered under Trade Mark No.3281514 in Class 5.

2. On 20.09.2023, it was recorded that the petitioner had placed on record about three affidavits of service. It was further recorded that the petitioner had stated in the affidavit of service dated 26.06.2023 that notices despatched by courier and speed post to the 1st respondent were returned with the endorsement "receiver shifted from given address" and "item returned addressee cannot be located", respectively. It was further recorded that notice was served

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on learned counsel/agent for the 1st respondent as per affidavit of service dated 19.09.2023. Since the petitioner also reported that no alternative address was provided by the 1st respondent to the Trade Mark Registry, the petitioner was permitted to effect service by substituted service on the 1st respondent. On 22.11.2023, upon ascertaining that petitioner had effected substituted service on the 1st respondent by publishing the notice in the English daily, The Hindu, Hyderabad Edition, issue dated 20.11.2023 and the Telugu daily, Eenadu, issue dated 19.11.2023, it was recorded that the 1st respondent had been duly served. Therefore, the Registry was directed to print the name of the 1st respondent in the cause list. In spite of doing so, the 1st respondent remains unrepresented. The matter is proceeded with in the absence of the 1st respondent in the said facts and circumstances.

3. The petitioner asserts that it applied for and obtained registration for the trade mark "B29" under Trade Mark No.1412656 in Class 5 with effect from 10.01.2006. It is further stated that the



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application was filed by asserting use from 21.11.2002. In support of use of the said trade mark, learned counsel for the petitioner has invited my attention to several invoices issued by the petitioner. The first of these invoices is dated 18.07.2002 and there are invoices from the year 2002 up to 06.04.2017. By referring to the application of the 1st respondent, learned counsel points out that the 1st respondent applied for registration of the word mark “B9” on 10.06.2016 by asserting use from 26.05.2016. Learned counsel submits that the 1st respondent's mark is deceptively similar to the petitioner's mark. He further submits that the product to which the petitioner applies the mark is nearly identical to the product to which the 1st respondent applies the mark.

4. After pointing out that the sales turnover of the petitioner increased from a sum of Rs.1.45 lakhs in the financial year 2003-2004 to Rs.1519.34 lakhs in the financial year 2015-2016, learned counsel submitted that such sales turnover coupled with the promotional expenditure incurred by the petitioner establishes the reputation and good will of the petitioner. According to learned counsel, if the



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impugned mark is permitted to remain on the register, it would adversely affect not only the proprietary interest of the petitioner but also public interest.

5. On comparison of the petitioner's mark and the impugned mark, there is no denying the close similarity. In spite of the efforts taken to serve notice on the 1st respondent, the 1st respondent has not entered appearance and explained the reason for adoption of the mark "B9". By taking into account the fact that the respective marks are applied in relation to pharmaceutical products, the use of the petitioner's mark since 2002, as evidenced by invoices provided by the petitioner, the sales turnover and the promotional expenditure incurred by the petitioner, I am of the view that the impugned mark is liable to be removed from the Register of Trade Marks.

6. For reasons set out above, (T)OP(TM)/279/2023 is allowed, without any order as to costs, by directing the Registrar of Trade Marks to remove Trade Mark No.3281514 in Class 5 from the Register of Trade Marks and to cancel the certificate of registration relating thereto. These actions shall be completed within a period of



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four weeks from the date of receipt of a copy of this order.

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Index : Yes / No
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Neutral Citation: Yes / No

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