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(T)OP(TM)/403/2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.11.2023

CORAM

THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

(T)OP(TM)/403/2023
(ORA/4/2021/TM/CHN)

CRYTEK GmbH

Having address at:

Hugo-Junkers-Strasse 3

60386 Frankfurt am Main

Germany-60386

Through its Authorised Representative

Mr.Avni Yerli

Managing Director

... Petitioner

-VS-

1. Hameed Firnas

Trading As:M/s.AHB Groups

Having address at:

No.64, Venkata Maistry street

Mannady, Chennai-600 001

Tamil Nadu, India.

2.The Registrar of Trade Marks

Intellectual Property Building

G.S.T.Road, Guindy

Chennai-600 032

Tamil Nadu, India.

... Respondents



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PRAYER: Transfer Original Petition (Trade Marks) filed under Section 57 of the Trade Marks Act, 1999, praying to the Hon'ble Court that the impugned mark under Registration No.3143224 be cancelled or removed from the Register of Trade Marks.

For Petitioner : Mr.Omesh Puri
Mr.Sudhakar
Ms.Manisha Singh
Mr.Abhai Pandey
for M/s.Lexorbis

For R1 : No appearance

For R2 : Mr.M.Karthikeyan, SPC

ORDER

The petitioner seeks rectification of the Register of Trade Marks by removing the following device mark, which was registered as Trade Mark 3143224 in Class 9 from the Register of Trade Marks:





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2. On 12.06.2023, notice was issued to the respondents and private notice was also permitted. On 10.07.2023, learned counsel for the petitioner filed an affidavit of service and the track consignment report affixed thereto indicated that notice was served on the 1st respondent on 30.06.2023. Therefore, the Registry was directed to print the name of the 1st respondent in the cause list. On 08.08.2023, learned counsel for the petitioner was permitted to serve notice on the agent/learned counsel, who represented the 1st respondent before the Trade Mark Registry. Pursuant thereto, notice was served on the agent as evidenced by the documents annexed to the affidavit of service filed by the petitioner. Ms.Harini, learned counsel, entered appearance on behalf of the 1st respondent at the hearing on 28.08.2023, but subsequently reported on 18.10.2023 that she does not have any instructions to defend the petition on behalf of the 1st respondent. The matter is proceeded with in the absence of the 1st respondent in the above facts and circumstances.



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3. The petitioner is a company incorporated in Germany under the corporate name CRYTEK GmbH. The petitioner asserts that it is in the business of creating computer games, toys and educational services relating thereto. The petitioner further asserts that the trademark CRYTEK (word and device) has been applied in relation to the above mentioned goods across the world, including India.

4. Upon discovering that the 1st respondent had obtained registration in respect of the device mark extracted above with effect from 29.12.2015, the present petition is filed.

5. Learned counsel for the petitioner invited my attention to the registered trademark of the petitioner and pointed out that the petitioner's trademark was registered as Trademark No.1500410 with effect from 01.11.2006 in Classes 9, 28 and 42. He also pointed out that the petitioner had obtained multiple registrations in Overseas jurisdictions as evidenced by Exhibit-H. By referring to the device



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mark of the 1st respondent, learned counsel pointed out that the advertisement placed under Trademark Journal No.1762 on 12.09.2016 indicates use since 01/12/2015. Although such use predates the application by about 28 days, learned counsel submits that there is no evidence of use of the impugned mark by the 1st respondent.

6. With regard to use of the petitioner's trademark, learned counsel referred to the pamphlets and advertisement bulletins from the year 2007 in relation to the game 'Crysis' and pointed out that the documents bear the petitioner's mark CRYTEK. Learned counsel next referred to the promotional materials collated under Exhibit L and copies of abandonment orders obtained by the petitioner by instituting opposition proceedings before the Trademark Registry whenever applications for deceptively similar trademarks were filed by others.



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7. For all these reasons, learned counsel submits that the impugned trademark is liable to be removed from the Register of Trademarks.

8. On comparing the impugned mark with the petitioner's mark, it is evident that the prominent feature of the impugned mark is the word CRYTEC. This element of the 1st respondent's mark is phonetically identical to the petitioner's mark, CRYTEK. Moreover, the petitioner's registrations are in Classes 9, 28 and 42 and the 1st respondent's registration is in Class 9. The goods in relation to which the petitioner's mark is applied are computer games, toys and the like. The 1st respondent's trademark appears to be used in relation to computers systems, laptop computers and the like. While the goods are not identical, the goods may be considered as similar goods and it is possible that the channels of distribution may overlap.



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9. Under Section 11(1) of the Trademarks Act, 1999, the

Registrar of Trademarks is required to examine whether identical or deceptively similar marks exist on the register in relation to identical or similar goods. The Registrar of Trademarks is further required to consider whether permitting the applied mark to be entered on the register is likely to cause confusion to the public, including by way of association with the earlier mark.

10. In this case, the petitioner's trademark is derived from its corporate name. The mark was registered in India with effect from 01.11.2006. There is sufficient evidence on record for extensive use of said mark by the petitioner both overseas and in India. Registrations have been obtained both overseas and in India. By contrast, in spite of being provided an opportunity, the 1st respondent has failed to provide evidence of use. Consequently, there is no evidence at all of use of the impugned mark by the 1st respondent. The registration and use of the impugned mark by the 1st respondent in relation to similar



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goods is likely to cause confusion, including as to association with the earlier mark.

11. Upon taking into consideration the above facts and circumstances cumulatively, a case is made out to direct rectification of the Register of Trademarks. Therefore, (T)OP(TM)403/2023 is allowed by directing the Registrar of Trademarks to cancel the certificate of registration in relation to Trade Mark No.3143224 and remove the entry relating thereto from the Register of Trademarks. These actions shall be completed within four weeks from the date of receipt of a copy of this order. There shall be no order as to costs.

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Index : Yes / No

Internet : Yes / No

Neutral Citation: Yes / No



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SENTHILKUMAR RAMAMOORTHY,J.

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