



IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED: 21.11.2023

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THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

(T)OP(TM)/409/2023
(ORA/16/2021/TM/CHN)

M/s.Blue Heaven Cosmetics Pvt. Ltd
Mr.Avneet Singh (Authorised Signatory) ,
39, DLF Industrial Area, Kirti Nagar,
New Delhi - 110 015, India .

... Petitioner

-VS-

1.BHCosmetics LLC
2801, Burton Avenue, Burbank,
California - 91504, United States of America.

2.The Registrar of Trade Marks
Trade Marks Registry, Intellectual Property Rights Building,
Industrial Estate, SIDCO Road,
Godown Area, G.S.T.Road,
Guindy, Chennai 600032.

... Respondents

PRAYER: Transfer Original Petition (Trademarks) filed under
Sections 47, 57, 125 of the Trade Marks Act, 1999, praying that the
impugned registration No.4200085 in class 99 (Class 03, Class 18,



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Class 21) be removed/rectified/expunged from the Register of Trade Marks.

For Petitioner : Mr.Sahil Gupta
for M/s.Indian Trade Marks Co.

For Respondent 1 : Mr.Dwarakesh Prabhakaran
for M/s.De Penning and De Penning

For Respondent 2 : Mr.C.Samivel, SPC

ORDER

The petitioner seeks rectification of the Register of Trade Marks by removing the device mark extracted below:



and registered as Trade Mark No.4200085 therefrom.



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2. The petitioner asserts that its predecessor-in-interest, Mr. Gurnam Singh, sole proprietor of M/s. G.C. Laboratories, coined and adopted the trade mark "Blue Heaven" in 1972. Originally the said trade mark and its formative marks were used by three entities until 2019 when the marks were assigned solely to the petitioner. In paragraph 3 of the petition, the petitioner has set out its trade marks and the various classes in which such marks were registered. The petitioner has further specified the registrations obtained in various classes by it in paragraph 7 of the petition.

3. The present petition was filed upon noticing that the first respondent, which is a subsequent user, had adopted the trade mark extracted above and obtained a registration in respect thereof in classes 3, 18 and 21 by filing a multi-class application.

4. M/s. De Penning and De Penning, learned counsel, appear on



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behalf of the first respondent. On instructions, it is stated that the first respondent is not interested in defending this petition.

5. From the pleadings and documents placed on record, it is evident that the petitioner is the prior adopter and user of the trade marks at paragraph 7 of the petition. The first respondent's trade mark, which was subsequently adopted, is deceptively similar thereto and confusion would be caused in the minds of the relevant section of the public if the mark is allowed to remain on the register because both the petitioner's and the first respondent's marks are used in relation to cosmetics and related products.

6. For reasons set out above, (T)OP(TM)/409/2023 is allowed by directing the Registrar of Trade Marks to cancel the certificate of registration relating to Trade Mark No.4200085 and remove the entry relating thereto from the Register of Trade Marks. These actions shall be completed within a period of *four weeks* from the date of receipt of a copy of this order.



21.11.2023

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

SENTHILKUMAR RAMAMOORTHY,J



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