



(T)OP(TM)/428/2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED: 07.11.2023

CORAM

THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

(T)OP(TM)/428/2023
(ORA/7/2021/TM/CHN)

E. Kiruthika
1/10, Muthu Nagar, Ellaimedu,
Perundurai, Erode District,
Tamilnadu - 638 052 .

... Petitioner

-VS-

1.1.K.S. Moorthi Ram
2. M. Maheshwari, partnership firm
M/s.Viswak Garments,
No. 8/54A, A.V.P. Layout,
3rd Street, Gandhi Nagar (Post),
Tirupur - 641 603 .

2.The Registrar of Trade Marks
Intellectual Property Building,
G.S.T. Road, Guindy
Chennai 600 032.

... Respondents

PRAYER: Transfer Original Petition (Trade Marks) filed under



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Sections 47 and 57 of the Trademarks Act, 1999, praying to cancel /
expunge the registration of the impugned trademark VISHWAK
registered in class 25 under No. 2638010 and cost of proceedings be
awarded in favour of the Applicant.

For Petitioner : Mr.S.Yogeshwar
for M/s.G.Ramji

For Respondent 2 : Mr.P.G.Santhosh Kumar, SPC

ORDER

The petitioner seeks a rectification in respect of the following
device mark,



which was registered under Trade Mark No.2638010 in Class 25 in
relation to hosiery and ready made garments.

2. The bailiff's report records that notice was served on the first



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respondent on 14.07.2023. On 21.08.2023, Mr.P.C.N.Ragupathy, learned counsel, entered appearance for the first respondent and took time to file a counter. Thereafter, on 26.09.2023, he submitted that he had no instructions to contest the matter on behalf of the first respondent. In order to provide an opportunity to the first respondent to engage a different counsel, the matter was listed on 18.10.2023 and is listed again today. The first respondent failed to appear in person or engage a different counsel. The matter is proceeded with in the absence of the first respondent in those facts and circumstances.

3. Learned counsel for the petitioner invited my attention to the petitioner's device and word marks. He pointed out that the petitioner has separate registrations for the word marks VISWAK and VISWAK TEX. These registrations are in Class 25 in relation to clothing, including readymade garments. Although the applications specify use since 01.09.2013, learned counsel asserted that the



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predecessor-in-interest of the petitioner, her mother-in-law, used the mark from the year 2008. In support of use of the mark, learned counsel referred to and relied upon invoices issued between August 2008 and October 2020.

4. As regards the first respondent, learned counsel pointed out that the first respondent dishonestly adopted a mark containing the word VISHWAK as an important element and applied for registration of the same. Such registration was granted with effect from 05.12.2013. Learned counsel further submitted that the impugned mark is being applied in relation to nearly identical goods and that this is likely to cause confusion among the relevant section of the public.

5. The petitioner (including through her predecessor) has asserted use of the mark VISWAK in relation to clothing from the year 2008. In support of this submission, a large number of invoices



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have been placed on record. These invoices date from 06.08.2008.

The petitioner has also placed on record advertisements published in the print media with regard to the sale of clothing bearing the petitioner's mark VISWAK.

6. Both the petitioner and the first respondent are engaged in the sale of garments. While the mark of the petitioner contains the word VISWAK or the words VISWAK TEX, the mark of the first respondent is a mark contains the word VISHWAK. There is considerable phonetic similarity between the petitioner's and first respondent's marks. In view of the fact that the marks are applied in relation to nearly identical goods, the use of the word VISHWAK by the first respondent in its mark is likely to cause confusion among the relevant section of the public, including in relation to association between the first respondent and the petitioner. The petitioner has provided evidence of use from 2008 through her predecessor-in-interest, whereas the first respondent asserts use from 01.08.2012.



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7. In these circumstances, the entry in relation to the impugned mark was made without sufficient cause and the petitioner is entitled to the relief claimed.

8. Therefore, (T)OP(TM)/428/2023 is allowed by directing the Registrar of Trade Marks to cancel the certificate of registration relating to Trade Mark No.2638010 in Class 25 and to remove the entry relating thereto from the Register of Trade Marks. This action shall be completed within a period of *four weeks* from the date of receipt of a copy of this order.

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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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