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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.12.2023

CORAM

THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

(T)OP(TM)/473/2023
(ORA/37/2020/TM/CHN)

M/s.Suparshva Swabs (I),
487/18, Peeragarhi,
Rohtak Road,
New Delhi - 110 087.

... Petitioner

-vs-

1.Beauty Tulip Cosmetic Private Limited,
No.6, New No.13, Raju Street,
West Mambalam, Chennai 600 033,
Tamil Nadu.

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

... Respondents

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



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mark BEAUTY TULIP'S LABEL WITH DEVICE OF TULIPS under no.1879850 in Class 3 and stay the effect and operation of the entry pertaining to impugned Trade Mark Beauty Tulips Label with device of tulips under no.1879850 in Class 3 during the pendency of the present proceedings.

For Petitioner : Mr.Sudarshan Kumar Bansal
for M/s.K.G.Bansal and Company

For Respondent 1 : No Appearance

For Respondent 2 : Mr.A.R.Sakthivel, SPC

ORDER

By this petition, the petitioner seeks rectification of the Register of Trade Marks in relation to the following device mark of the first respondent:



2. The petitioner asserts that it adopted the Trade Mark TULIPS in relation to cotton buds in the year 1999. It is further stated that the petitioner's mark was applied in relation to cotton buds and related products since 1999. Upon noticing the registration of the above mentioned device mark on a "proposed to be used" basis with effect from 04.11.2009, and by asserting superior rights as the prior user of the mark, the present petition was filed.



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3. Upon issuing notice to the first respondent, the bailiff's report dated 11.09.2023 recorded that notice could not be served on the first respondent because the first respondent does not function from the specified address. Therefore, learned counsel for the petitioner was directed to ascertain whether any change of address was communicated by the first respondent to the Trade Marks Registry. Learned counsel for the petitioner reported that no change of address was communicated. In those circumstances, the petitioner was permitted to effect substituted service on the first respondent by publishing the notice in one issue of the English daily, THE TIMES OF INDIA, Chennai Edition. Thereafter, at the hearing on 29.11.2023, the petitioner placed on record an affidavit of service dated 20.11.2023. Annexed to the affidavit was the publication made in the English daily, THE TIMES OF INDIA, issue dated 09.11.2023. Therefore, it was recorded that service had been effected by substituted service on the first respondent and the Registry was



directed to print the name of the first respondent in the cause list. In spite of service of notice and the name of the first respondent being printed on the cause list, the first respondent remains unrepresented. The matter was proceeded with in the absence of the first respondent in the above facts and circumstances.

4. Learned counsel for the petitioner invited my attention to the registration obtained by the petitioner for the device mark with the element "TULIPS" in Class 5 with effect from 16.11.2000. He next referred to multiple registrations obtained by the petitioner for the mark "TULIPS, both word and device marks, in Classes 5, 21, 3, 6, 10 and 16. As regards use of the trade mark, learned counsel referred to the invoices at pages 68 to 470 of the paper book. He pointed out that these invoices are from November 1999. He also referred to the sales turnover and advertising expenditure incurred by the petitioner by applying the mark TULIPS to its products. He pointed out that the sales turnover was Rs.2,13,11,356/- in the financial year 2008 - 2009



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and that the same increased to Rs.2,41,58,228/- in the financial year 2009 - 2010. A little prior to the filing of the rectification petition, in the financial year 2018 - 2019, he pointed out that the turnover increased to Rs.45,18,19,720/-. He also pointed out that the advertising expenditure increased to about Rs.16,56,853/- for the financial year 2018 - 2019. By referring to brochures, posters and the like, learned counsel submitted that the petitioner's trade mark had acquired significant reputation and garnered considerable goodwill.

5. Learned counsel next submitted that the products of the petitioner pertain to personal care and are classified and referred to as hygiene and beauty products in trade circles. Likewise, he submitted that the products of the first respondent fall within the broad category of personal care and the specific category of beauty products. Since a deceptively similar trade mark was adopted and used subsequently by the first respondent with regard to similar products, he submits that this petition is liable to be allowed.



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6. The petitioner has placed on record a large number of invoices evidencing use of the petitioner's trade mark in relation to cotton buds and related products. The sales turnover and advertising expenditure of the petitioner is on record. The sales turnover had reached about Rs.2.4 crore at the time the first respondent filed its application on a "proposed to be used" basis. Such turnover increased further to about Rs.45 Crore when the rectification petition was filed. As pointed out by learned counsel for the petitioner cotton buds and related products fall within the broad category of personal care products and are closely related to beauty products. It is likely that the channels of distribution and the retail sale environment may overlap. In spite of effecting substituted service on the first respondent, the first respondent has not entered appearance and controverted the petitioner's assertions. At the hearing of 05.09.2023, it was noticed that the last registration of the first respondent was valid only up to 04.11.2019, but the mark



continues to remain on the Register. In these circumstances, this petition is liable to be allowed.

7. For reasons set out above, (T)OP(TM)/473/2023 is allowed by directing the Registrar of Trade Marks to cancel the certificate of registration relating to Trade Mark No.1879850 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. There shall be no order as to costs.

19.12.2023

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Index : Yes / No

Internet : Yes / No

Neutral Citation: Yes / No



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