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OP (TM) No. 24 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 04.06.2024

Pronounced on: 14.06.2024

CORAM:

THE HON'BLE MR.JUSTICE P.B.BALAJI

OP (TM) No.24 of 2024

&

(TM)_A. No.27 of 2024

1.Ahmed Hussain. B

2.Seille Educations Private Limited,
rep by its Manager,
Mr.Ahmed Hussain. B

.. Petitioners

..Vs.

1.Sh.Sunil Jethi

2.The Registrar of Trademarks,
The Office of Trademarks Registry,
The Intellectual Property Building,
Plot No.32, Sector 14, Dwarka,
New Delhi -110 075.

.. Respondents

Prayer: Original Petition has been filed under 57 of the Trade Marks Act, 1999 to rectify the Trade Marks Register by removing, expunging and/or cancelling the Trade Mark of the first respondent which has been granted Registration by the second respondent in Application No.2232874 in Class 41.



OP (TM) No. 24 of 2019

For Petitioners : Mr.Ramesh Ganapathy

For Respondents : No Appearance for R1
Madhana Gopal Rao,
Senior Panel Counsel for R2

ORDER

The Original Petition has been filed for rectification of the Trade Marks Register by removing, expunging and/or cancelling the Trade Mark of the first respondent which has been granted Registration by the second respondent in Application No.2232874 in Class 41.

2. I have heard Mr.Ramesh Ganapathy, learned counsel for the petitioners and Mr.Madhana Gopal Rao, learned Senior Panel Counsel for the second respondent. Despite service of the notice, there is no appearance for the first respondent who holds a registration in his favour, which is subject matter of the present Original Petition.

3. The case of the petitioners is that the first petitioner is a registered proprietor of Trade Mark  "LITTLE EINSTEINS". The date of Application of the petitioner is 23.06.2009, where he has claimed user



from 20th June 2008. The registration has been granted to the petitioner under Class 41 and under Certificate No.1275680 dated 17.05.2016 and the same is valid upto 23.06.2029.

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4. The petitioners are in the field of kindergarten Education Services. The second petitioner is a licensee holding non exclusive right to use the trademark under a valid trademark license agreement dated 10.07.2016. The second petitioner also holds valid GST Registration Certificate.

5. According to the petitioners, their Trademark “LITTLE EINSTEINS” is well established not only all over the country but also across the globe and they have acquired excellent reputation and good will for the said Trade Mark. Whiles, the first respondent has applied for the Trademark “LITTLE EINSTEINZ” by just adding a tag line “KINDLING YOUNG MINDS” under the very same Class 41. The date of Application of the first respondent is subsequent to the date of Application made by the petitioner. According to the petitioners, the impugned trademark “LITTLE EINSTEINZ” is deceptively and phonetically





similar and identical to the petitioners' prior adopted trademark "LITTLE EINSTEINS" and the same is only to deceive the people at large, believing that the impugned trademark has nexus or is associated with that of the petitioners.

6. It is further contended that the adoption of the Trademark "LITTLE EINSTEINZ" is malafide and only to take advantage of the petitioners' prior registration trademark and for cashing in on the same. It is also the grievance of the petitioners that the first respondent is also in the same field of Kindergarten Education Service Sector and their Application is also under Class 41.

7. The learned counsel for the petitioners, Mr. Ramesh Ganapathy would submit that under Section 11 of the Trademarks Act, 1999, the Registration of the impugned Mark of the first respondent ought to have been refused, since the adoption of the same is on misrepresentation and it satisfies all the ingredients of passing of the Mark, as if it is that of the petitioners.



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8. As there was no appearance on the side of the first respondent, this Court had directed service of notice by substituted service by effecting paper publication in English and vernacular language newspapers, having significant circulation in the State of Punjab for the hearing 04.06.2024. The petitioners have filed proof of service evidencing the publication having been made as directed by this Court on 15.04.2024 in 'The Times of India', Chandigarh Edition and 'Punjabi Jagran' Newspaper on 24.04.2024.

9. I have heard the arguments of Mr. Ramesh Ganapathy, I have also gone through the documents filed in support of the above Original Petition. It is clear that the petitioners usage is prior in point of time and their registration is also prior to the registration given to the first respondent. It is an admitted fact that both the petitioners as well as the first respondent are in the Education Service, especially kindergarten Education and both have been accorded registration under Class 41.

10. The learned counsel for the petitioners has strenuously contended that the trademark adopted by the first respondent is phonetically identical



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and deceptively similar to that of the petitioners' trademark. As pointed out by the learned counsel for the petitioners, by changing last letter alone, from **S to Z**, the very same name has been adopted by the first respondent. Phonetically both the petitioners' trademarks and the first respondent's trademark are the same and though there might be slight visual dissimilarity, there is every likelihood that the public would be deceived by the name adopted by the first respondent. The Trademark Registry also ought to have been more careful while giving the Registration Certificate to the first respondent under Class 41, when already the petitioners' trademark has been registered prior in point of time and was very much available for verification at the time of granting the Registration Certificate to the first respondent.

11. I also find that the first respondent's Application is only on 14.11.2011 and he claims user only from 04.11.2009, in contrast to the petitioners' Application dated 23.06.2009, their user from 20.06.2008. The adoption of the trademark by the first respondent is clearly an attempt to deceive the General Public into believing that the first respondent is in some way associated with the petitioners. The petitioners are therefore entitled to



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rectification as prayed for.

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12. The petition is accordingly allowed. Consequently connected

Application is closed. No costs.

14.06.2024

Index : Yes/No

Speaking/Non-speaking order

rkp

To

The Registrar of Trademarks,
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P.B.BALAJI,J.

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