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OP (TM) No.30 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 10.07.2024

Pronounced on: 19.07.2024

CORAM:

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

OP (TM) No.30 of 2024

Abishek Jain,
Trading as, A.K.Associates,
34/33, Strotten Muthiah Mudali Street,
2nd Floor, Sowcarpet,
Chennai – 600 079.

.. Petitioner

.Vs.

1.Kolluru Veera Venkata Satya Rakesh

2.The Registrar of Trademarks,
Anna Salai, Guindy Industrial Estate,
SIDCO Industrial Estate,
Guindy, Chennai,
Tamil Nadu – 600 032.

.. Respondents

Prayer: Original Petition has been filed under 57 of the Trade Marks Act, 1999, praying for the following reliefs:

a.Allow the present petition.

b.Direct the respondent No.2 to remove the entry relating to Application No.5693350 for the mark  in Class 06.



OP (TM) No.30 of 2024

For Petitioner : Mrs.Reshma Rajagopal
for Mr.M.S.Bharath

For Respondents

For R1 : Exparte

For R2 : Madanagopal Rao,
Senior Panel Central
Government Standing Counsel

ORDER

This rectification petition has been filed seeking to remove the entry relating to Application No.5693350 in Class 06.

2.I have heard Ms.Reshma Rajagopal, for Mr.M.S.Bharath, learned counsel for the petitioner and Mr.J.Madanagopal Rao, learned Senior Panel Central Government Standing Counsel for the 2nd respondent. Despite service of notice on the 1st respondent, the 1st respondent has not chosen to enter appearance, either in person or through a counsel. Hence, the 1st respondent was set exparte on 08.07.2024 and I proceeded to hear the learned counsel for the petitioner and the learned Standing Counsel for the



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3. Ms. Reshma Rajagopal, learned counsel for the petitioner would submit that the petitioner is the sole proprietor of A.K. Associates and he commenced business in the year 2010. The petitioner deals with nails, screws and metal hardware. The petitioner's trademark is ASTEL STRONG and according to the petitioner, the said trademark is an honest and bonafide adoption made by the petitioner. Further, the mark is also coined by the petitioner. Ever since 2010, the petitioner has been in the market and its trademark and logos are clearly indistinguishable from the goods of the petitioner. It is further submitted by the learned counsel for the petitioner that the petitioner is also a lawful registered proprietor of the trademark  in Class 06 and its registration has a validity until 27.11.2029.

4. The learned counsel for the petitioner would also take me through the various protective steps taken against copying of the petitioner's trademark, besides also highlighting the turnover of the petitioner firm right



from 2015 to 2024 which shows steady increase in the income/profits.

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5.The grievance of the petitioner is that the 1st respondent has dishonestly and deliberately adopted the impugned mark ASTEI STRONG. According to the learned counsel for the petitioner, the said impugned mark is identical to the petitioner's trademark and clearly being used with a view to cause confusion and pass off the 1st respondent's goods as though it is that of the petitioner's. The learned counsel for the petitioner also produced physical samples of the petitioner's trademark as well as the impugned trademark of the 1st respondent. Excepting for the letter alphabet “I” replacing “L” in ASTEL. The trademark of the petitioner has been verbatim copied and the manner in which the alphabet “I” is replacing “L” also clearly shows that the change is clearly malafide and only in order to cause confusion and deception in the market, especially considering that both the petitioner and the 1st respondent are in the same field of business.

6.The 1st respondent has managed to obtain a registration for its trademark under the very same Class 06 in Registration No.5493757. The



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learned counsel for the petitioner would further submit that the deliberate acts of the 1st respondent is clearly violate of the provisions of Section 2(1(i)) of the Trademark Act since it constitutes a false description in order to mislead consumers and public as regards the source and origin of goods.

7.The learned counsel for the petitioner would also submit that the petitioner has been enjoyed goodwill and right from 2010, on account of long and continuous use of trademark and also being a prior adopter, the rectification petition has to be necessarily ordered directing removal of the 1st respondent's impugned registration.

8.The 1st respondent despite service of notice, has not chosen to appear as already stated above and contest the matter.

9.Having regard to the submissions of the learned counsel for the petitioner and after having perused the papers made available to me, including the physical samples which were produced in the open Court to show the identical nature of the trademarks, I am satisfied that the 1st



OP (TM) No.30 of 2024

WEB COPY

respondent has adopted ASTEI STRONG only with a view to cause confusion and deception and mislead the public into buying its goods as if they are the goods of the petitioner. The petitioner has established that the petitioner is a prior user and has also acquired sufficient goodwill in the market. For all the above reasons, the petitioner is entitled to relief.

10. In fine, the Original Petition is allowed and the 2nd respondent/Trademark Registry is directed to remove the entry relating to Application No.5693350 for the mark  in Class 06. There shall be no order as to costs.

19.07.2024

Index : Yes/No
Speaking/Non-speaking order
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To

The Registrar of Trademarks,
Anna Salai, Guindy Industrial Estate,
SIDCO Industrial Estate,
Guindy, Chennai,
Tamil Nadu – 600 032.



WEB COPY



OP (TM) No.30 of 2024

P.B.BALAJI,J.

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OP (TM) No.30 of 2024

19.07.2024