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(T)CMA(TM) No.55 of 2023

(OA/39/2015/TM/CH)

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.02.2024

CORAM

MR.JUSTICE N.SESHASAYEE

(T)CMA(TM) No.55 of 2023

(OA/39/2015/TM/CH)

Indchemie Health Specialities Pvt. Ltd.
Having its office at
510, Shah & Nahar Industrial Estate
Dr.E.Moses Road
Worli Naka
Mumbai 400 018.

... Appellant

Vs

1.M/s.Orchid Chemicals & Pharmaceuticals Limited
Having its office at
1, 6th Floor, "Crown Court"
34, Cathedral Road, Chennai – 600 086.

2.The Deputy Registrar of Trade Marks
Office of the Trade Marks Registry Branch at Chennai
IPR Building, G.S.T. Road
Guindy, Chennai – 600 032.

... Respondents



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Prayer : Civil Miscellaneous Appeal filed under Section 91 of the Trade Marks Act, 1999 (a) to set aside the order of the Deputy Registrar of Trade Marks, dated 22.03.2015 passed in Opposition No.MAS-197340 to Application No.794536 in Class 5 and communicated vide Letter dated 07/08/2015 and allow the opposition filed by the appellant against the respondent No.1; the respondent No.1 be asked to bear the cost of this proceeding under the provisions of Rule 19 of Intellectual Property Appellate Board (Procedure) Rules, 2003; and (c) pending the hearing the final disposal of this appeal, direct the Trade Mark Registry not to issue the registration certificate.

For Appellant	: Mr.R.Sathish Kumar for M/s.Vishesh Associates
For Respondent	: Mr.C.Kulanthaivel Central Govt. Standing Counsel for R2 No appearance for R1

JUDGMENT

The appellant herein challenges the order of the second respondent dated 22.03.2015 rejecting its opposition to the registration of the work mark 'ORZID' for which the first respondent had sought registration under Class 5, (which relates to pharmaceutical products). The appellant has its registered word mark, which reads 'ORKID', in the same class. This mark was registered



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in 1986 by the appellant.

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2. After holding due enquiry on the opposition entered by the appellant, the second respondent dismissed it on two grounds: (a) earlier the first respondent had registered a label mark with a word 'ORZID' sometime in 1999, and inasmuch as the appellant has not opposed the label mark, it has no right to challenge the application for registering the word mark 'ORZID'; (b) that the appellant has not raised any objection to the earlier registration of the same mark by the first respondent.

3. The learned counsel for the appellant submitted that a label will have its own distinctive feature even if a word is part of the label. A registered word mark *per se* will give an advantage to the proprietor of the mark, and it may affect the appellant's right over its own mark, as both the marks, are visually similar. The only difference between both the marks is the middle letter of the five letter word: while the appellant's word mark has 'K' as the middle letter, the first respondent's word mark has 'Z' in the middle.

4. The first respondent's name is printed in the cause list. This Court is also



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informed that the first respondent is facing certain proceedings under the Insolvency and Bankruptcy Code, and notice has already been taken on the Interim Resolution Professional.

5. This Court carefully perused the material papers and compared both the marks of the appellant along with the mark of the first respondent. On the face of it, this Court finds similarity between both the word marks of the appellant and the first respondent namely 'ORKID' and 'ORZID'. So far as the other mark for which the first respondent had earlier obtained registration, it is a label mark, and it is seen at page No.136 of the paper book of the appellant. Very obviously a lable mark will have multiple information to distinguish it from the rest, and hence it cannot be equated to a word mark which is sought to be registered. The second respondent has obviously gone in error here. In these circumstances, this Court has no hesitation to set aside the order of the second respondent and directs the second respondent to rectify its register accordingly.

6. In fine, this appeal is allowed and the order of the Deputy Registrar of Trade Marks, dated 22.03.2015 passed in Opposition No.MAS-197340 to



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Application No.794536 in Class 5 and communicated vide Letter dated 07/08/2015, is set aside. The second respondent/Deputy Registrar of Trade Marks, is now required to rectify the Trademark Register accordingly. However, there is no order as to costs.

20.02.2024

ASR

Index : Yes/No

Speaking Order / Non-speaking Order

Neutral Citation : Yes / No

To:

The Deputy Registrar of Trade Marks
Office of the Trade Marks Registry Branch at Chennai
IPR Building, G.S.T. Road
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N. SESHASAYEE, J.

Asr

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