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(T)CMA(TM) No.164 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.02.2024

CORAM : JUSTICE N.SESHASAYEE

(T)CMA(TM) No.164 of 2023
(O.A/SR.37/2019/TM/CHN)

GLENMARK PHARMACEUTICALS LTD.,
Glenmark House, HDO - Corporate Building
Wing - A, B, D Sawant Marg
Chakala, Off.Western Express Highway
Andheri (East), Mumbai - 400 099.

..... Appellant

Vs

1.Mylan Laboratories Limited
Plot No.564/A/22, Road No.92
Jubilee Hills, Hyderabad - 500 034.

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

..... Respondents

Prayer : Transferred Civil Miscellaneous Appeal filed under Section 91 of the Trade Marks Act, 1999, praying (a) to allow the appeal, set aside the order dated 08.01.2019 of the respondent No.2 herein, the learned Assistant Registrar of Trade Marks, Chennai, passed in Opposition No. MAS-823672 to Application No.1871386 in Class 5 and communicated vide email dated 29/01/2019, and restore the notice of opposition on file; and (b) pending the



(T)CMA(TM) No.164 of 2023

hearing and disposal of the appeal, direct the Trade Mark Registry not to issue the registration certificate.

For Appellant : Ms.M.R.Mehavarshni
for Mr.R.Sathish Kumar

For Respondents : Mr.S.Janarthanam
Senior Panel Counsel for R2

JUDGMENT

The appellant herein challenges the rejection of its opposition by the second respondent on the ground that the appellant had not produced evidence to sustain its opposition for registration of the mark 'TREZAV PED'.

2. Ms.M.R.Mehavarshini, the learned counsel for the appellant argued that the appellant's mark is 'TREZAM', and the first respondent's mark is 'TREZAV PED', and both are in Class 5, as both the appellant and the first respondent are in pharmaceutical industry. She submitted that inasmuch as the mark of the first respondent bears a striking similarity to the mark of the appellant, the appellant has justly moved an application for opposition.

3. The learned counsel submitted that pursuant to the opposition filed by the appellant, the first respondent had filed its counter statement, but the Trade



(T)CMA(TM) No.164 of 2023

Mark Registry had mailed the same to the address of the appellant, which was not given for the service of notices. However, the second respondent had rejected it on the ground that the evidence was produced beyond the time stipulated.

4. Heard both sides. The Trade Mark Registry is however far too stringent in insisting on filing the evidence within time, especially when it should have appreciated the substantial rights of the appellant, which is endangered by the prospects of the first respondent registering the mark. Time line is fixed to discipline the litigants, but not to destroy their rights. Right of action and right to defence are precious rights, and that cannot be decided on grounds such as this.

5. In conclusion, this Court chooses to allow this appeal, and sets aside the order of the Trade Mark Registrar to the effect that on production of its opposition by the appellant, restore the opposition back to its file and directs the Registrar to dispose of the matter as per law. No costs.

07.02.2024

ds

Index : Yes /No



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(T)CMA(TM) No.164 of 2023

N.SESHASAYEE, J.

ds

To:

The Registrar of Trade Marks
Trademarks Registry
Intellectual Property Building
GST Road, Guindy
Chennai - 600 032.

(T)CMA(TM) No.164 of 2023
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