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(T)CMA(TM)/201,203/2023
(OA/SR.104,103/2018/TM/CHN)

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.01.2024

CORAM

MR.JUSTICE N.SESHASAYEE

(T)CMA(TM)/201,203/2023
(OA/SR.104,103/2018/TM/CHN)

SEW-EURODRIVE GmbH & Co. KG

A company organised and existing under the laws of Germany

Abt. ECG

Ernst-Blickle-Str.42

D-76646 Bruschal

Germany

Appellant in both the appeals

Vs

The Assistant Registrar of Trademarks

Trade Marks Registry

Intellectual Property Building

G.S.T.Road, Guindy

Chennai 600 032.

... Respondent in both the appeals

COMMON PRAYER: Transfer Civil Miscellaneous Appeal (Trade Marks) filed under Section 91 of the Trade Marks Act, 1999, praying to set aside the orders dated 28.04.2018 refusing the mark "SEW" vide application No.2812154 in class 37 and "SEW-EURODRIVE" vide application



(T)CMA(TM)/201,203/2023
(OA/SR.104,103/2018/TM/CHN)

No.2812156 in class 37 and the amendment request be taken on record and the mark "SEW" and "SEW-EURODRIVE" be allowed to proceed to registration.

For Appellant : Mr.Dwarakesh Prabhakaran
in both CMA

For Respondent : Mr.S.Janarthanam
in both CMA Senior Panel Counsel

COMMON JUDGMENT

These appeals roam within a narrow space. On 16.09.2014 the appellants had made applications to register its word marks "SEW" and "SEW-EURODRIVE". About a year later, to be precise on 23.12.2015, the search reports of the respondents were made available which obviously raised certain objections to registration from the respondent. On 21.03.2016 replies to search report were made. Then there was a deep lull on the part of the Trade Mark office for the next 15 months. On 03.05.2017 and 08.05.2017, the respondent had uploaded in the official website of the Trademarks Registry vis-a-vis the applications involved in (T)CMA(TM)/201/2023 and (T)CMA(TM)/203/2023, in which it had



(T)CMA(TM)/201,203/2023
(OA/SR.104,103/2018/TM/CHN)

required that the appellant to delete certain aspects of its intended marks.

This was not noticed by the appellant. The statute and its working is mercilessly demanding, and the respondent, vide its orders dated on 01.01.2018 and 11.01.2018 has notified that the appellant herein has abandoned its applications for the registration of its marks involved respectively in CMA(TM)/201/2023, and (T)CMA(TM)/203/2023.

2.Challenging the same, the appellant had moved this Court in a writ proceeding whose details are not very relevant now, and this Court has directed the appellant to prefer appeals before IPAB. However, after the closure of IPAB, all the pending matters came before this Court and thus this Court has again required to consider the same issue.

3. Heard both sides. The issue is short but the consequence is significant. It is not exactly clear why the Trademarks Registry takes inordinate time to decide what it has ultimately decided on 03.05.2017 in (T)CMA(TM)/201/2023 and 08.05.2017 in (T)CMA(TM)/203/2023. This Court understands that the Trademarks Registry posted its proceedings in



(T)CMA(TM)/201,203/2023
(OA/SR.104,103/2018/TM/CHN)

its official website without any alert intimation to the applicant. This is

something which this Court cannot appreciate in the 21st century India.

After all, when somebody makes an application before the Registry for registering the mark, the Registry cannot impose an obligation on the applicant to visit the official website on a daily basis. Mere filing of an application before the Trademarks Registry does not mean that the applicant should abandon all his other responsibilities and just keep watching 24x7 the official website to know the outcome of the application. It is time the Trademarks Registry upgraded its approach in running its Registry. In other words, every time it makes a posting in its official website, it should be accompanied by an alert message either by Whatsapp or SMS or any other convenient mode of communication to any cell phone number which the applicant may provide. If it is not already in the format of the filing procedure before the Registry to include the cell phone number, the Registry may suitably modify its software to make space to fill up the cellphone number. This would be convenient, (a) first to the applicant; and (b) next to this Court for this Court, which then will not be required to decide an issue which it can easily avoid deciding. The Registry should be



(T)CMA(TM)/201,203/2023
(OA/SR.104,103/2018/TM/CHN)

applicant friendly. After all, an avoidable litigation should be avoided.

4.The conclusion is to state the obvious. The order is hereby set aside and it is directed to be restored to the file of the Trademarks Registry. The appellant herein is required to attend to whatever proceedings that has been uploaded on 03.05.2017 in (T)CMA(TM)/201/2023 and on 08.05.2017 in (T)CMA(TM)/203/2023 within a period of 30 days. Once the job is done, the Trademarks Registry is required to proceed from where the proceedings has to commence and it should be decided on its own merit.

5.In the result, these appeals stand allowed. There shall be no order as to costs.

24.01.2024

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Index : Yes / No

Neutral Citation: Yes / No



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(T)CMA(TM)/201,203/2023
(OA/SR.104,103/2018/TM/CHN)

N.SESHASAYEE, J.

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(T)CMA(TM)/201,203/2023
(OA/SR.104,103/2018/TM/CHN)

24.01.2024