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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ C.A.(COMM.IPD-TM) 14/2022

AVON CYCLES LTD.

.....Appellant

Through: Ms. Zeba Tarannum Khan, and Ms.

Sruthi Venugopal, Advocates

Mob: 9818558690

Email: shailenbhatia89@gmail.com

versus

MANISH RAJ GOYAL AND ANR.

.....Respondents

Through: Mr. Harish Vaidyanathan Shankar,

CGSC, with Mr. Srish Kumar Mishra,

Mr. Alexander Mathai Paikaday and

Mr. Sagae Mehlawat, Advocates.

CORAM:

HON'BLE MS. JUSTICE MINI PUSHKARNA

ORDER

18.09.2024

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1. The present appeal has been filed under Section 91 of the Trade Marks Act, 1999 assailing the order dated 06th April, 2018, passed by the respondent no.2-Deputy Registrar of Trade Marks, whereby, the opposition no. DEL-783156 filed by the appellant against the respondent no.1's application no. 1932181, for the trademark



‘WAVON’/  in Class – 06, has been dismissed.

2. It is submitted that the appellant’s trademark ‘AVON’ has multiple registrations in Class-12 since 8th June, 1959.

3. As per the case canvassed on behalf of the appellant in the present appeal, the fact are as follows:

3.1 The appellant, i.e., M/s AVON Cycles Limited is engaged in the business of manufacturing, marketing and exporting bicycles, bicycle parts and accessories thereof, and other cognate and allied goods, since 1952 under the trademark ‘AVON’.

3.2 The appellant-company is the registered proprietor of various ‘AVON’ marks in various Classes, including, Class – 6, 9, 12, and 32.

3.3 The respondent no. 1 herein filed an application bearing no. 1932181

seeking registration of ‘WAVON’/ , in Class-6, which is the impugned application. The application filed by the respondent no.1 before the Trade Mark Registry, is reproduced, as under:



Avion Date : 22/05/2024
Status : Opposed

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TM Application No.	1912181															
Class	5															
Date of Application	08/03/2010															
Appropriate Office	DELHI															
State	DELHI															
Country	India															
Filing Mode	Branch Office															
TM Applied For	WAVON															
TM Category	TRADE MARK															
Trade Mark Type	DEVICE															
User Detail	18/10/2006															
Certificate Detail																
Valid upto/ Renewed upto																
Proprietor name	(1) MANISH KAI GOVAL Trading As : SHIVAJEE INDUSTRIES Single Firm															
Proprietor Address	HR -6A/2, GALI NO. 10, ANAND PARVAT, NEW DELHI -110005															
Email Id																
Agent name	PURI & PURI (ADVOCATES)[2717]															
Agent Address	4999/5, 1ST FLOOR, SIRKI WALAN, (NEAR HAUZ QAZI POLICE STATION) HAUZ QAZI, DELHI-6															
Goods & Service Details	[CLASS : 01] DOOR AND WINDOW FITTING (HARDWARE GOODS) INCLUDING HANDLES, KNOBS, ALDROPS, HINGS, LETCHES, LOCKING BOLTS, NUT & BOLT, HACKSAW BLADE, SCREWS, DOOR STOPPERS, NAILS, GATE HOOKS, TOWER BOLTS, DOOR CLOSER, CATCHES, DOOR SAFETY, IRON PIPE, METAL, TELESCOPIC DRAWERS CHANNEL, TOWER BOLTS, HANGER, FLOOR AND DOOR SPRING, SAFETY, SAFETY CHAM, CURTAIN BRACKETS, DRAPERY RODS, CURTAINING STRIPS AND WHEEL CASTOR AS PER CLASS-05.															
Publication Details	Published in Journal No. : 149T-0 Dated : 13/08/2011															
Opposition/Rectification Details	<table border="1"> <thead> <tr> <th>Date</th> <th>Opp. Number</th> <th>Opponent Code</th> <th>Opponent Name & Address</th> <th>Details</th> </tr> </thead> <tbody> <tr> <td>08/09/2011</td> <td>[782806]</td> <td>[8206]</td> <td>S.G. INDUSTRIES PLOT NO.44, OPP GALI NO.6, INDL. AREA, NEW ROHTAK ROAD, NEW DELHI-5</td> <td>Details</td> </tr> <tr> <td>26/09/2011</td> <td>[783156]</td> <td>[42317]</td> <td>AVON CYCLES LIMITED G.T. ROAD, LUDHIANA, PUNJAB</td> <td>Details</td> </tr> </tbody> </table>	Date	Opp. Number	Opponent Code	Opponent Name & Address	Details	08/09/2011	[782806]	[8206]	S.G. INDUSTRIES PLOT NO.44, OPP GALI NO.6, INDL. AREA, NEW ROHTAK ROAD, NEW DELHI-5	Details	26/09/2011	[783156]	[42317]	AVON CYCLES LIMITED G.T. ROAD, LUDHIANA, PUNJAB	Details
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Trade Mark Image : (1)																

3.4 Subsequently, the appellant filed opposition proceedings against the aforesaid application of the respondent no.1. The notice of opposition was numbered as DEL – 783156.

3.5 The respondent no. 1 filed its counter statement, which as per the present appeal, was never served upon the appellant. Thus, in view of non-service of the counter statement, the evidence could not be filed by the appellant before the Trade Mark Registry.

3.6 However, by way of the impugned order dated 6th April, 2018, passed by the learned Deputy Registrar of Trade Marks, the opposition application of the appellant herein, was dismissed as deemed to have been abandoned,



on the ground that the appellant herein, has not filed any evidence in support of its opposition, nor has any statement been filed on behalf of opponent.

4. The order dated 6th April, 2018, reads as under:

“xxx xxx xxx

ORDER

Proceedings were initiated under Section 21 of the Trade Mark Act, 1999, by the above named opponent to oppose the registration of trade mark applied for by the above named applicant and whereas the Counter Statement was filed by the applicant and the same was served to the opponent vide 73+74 dated 17-06-2016 and whereas within the time prescribed under the rules, neither any evidence in support of opposition was filed nor any statement was submitted on behalf of the opponent to the effect that the opponent does not desire to adduce evidence but wants to rely on the facts mentioned in the Notice of Opposition the abovementioned opposition is therefore deemed to have been abandoned under Rule 45(2) of the Trade Marks Rules 2017.

IT IS HEREBY FURTHER ORDERED that there shall be no order as to cost of these proceedings.

Signed and Sealed at Delhi dated this 06 April, 2018

V. NATARAJAN
FOR DEPUTY REGISTRAR OF TRADE MARKS
Dated:06/04/2018

xxx xxx xxx”

5. It is the case of the appellant that in the absence of receipt of the counter statement, no evidence could have been filed by the appellant and that the impugned order is therefore, bad in law.

6. No reply has been filed on behalf of the respondents.

7. Today, learned counsel appearing for respondent no. 2, i.e, Registrar of Trade Marks, submits that he has instructions to submit that a copy of the counter statement had been sent to the appellant by post, by the office of the Registrar of Trade Marks.



8. However, on pointed query by this Court as regards the Tracking Report, showing proof of service upon the appellant, learned counsel appearing for the respondent no.2, fairly submits that no such proof is available with the Registrar of Trade Marks.

9. Accordingly, this Court is of the view that that benefit of doubt has to be given to the appellant, as there is nothing on record to show that a copy of the counter statement filed on behalf of respondent no.1, was actually served upon the appellant herein.

10. It is also to be noted that no E-mail was sent to the appellant in this regard by the respondent no.2.

11. This Court notes the submission of learned counsel appearing for respondent no. 2 that at that point of time, practice of sending the documents by way of E-mail, was not there and that such practice has been adopted, only after the new Trade Marks Rules, 2017, came into force.

12. Accordingly, the matter is remanded back to the Trade Marks Registry.

13. It is directed that a copy of the counter statement filed by respondent no. 1, shall be served on the E-mail of the appellant, including, the following E-mail: advocate.shailenbhatia89@gmail.com, as given by learned counsel appearing for the appellant.

14. The appellant is also directed to update the record of the Trade Marks Registry with respect to its latest and current postal address, as well as E-mail address, wherein, communications can be sent by the Trade Marks Registry, to the appellant.

15. Upon receipt of the counter statement filed by respondent no. 1,



evidence and other requisite documents/reply thereto, shall be filed by the appellant, as per procedure.

16. The Registry is directed to supply a copy of the present order to the Office of the Controller General of Patents, Designs and Trade Marks of India, on E-mail Id: llc-ipo@gov.in, for compliance.

17. With the aforesaid directions, the present appeal is disposed of.

MINI PUSHKARNA, J

SEPTEMBER 18, 2024

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