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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **C.O. (COMM.IPD-TM) 280/2022**
TRAVELODGE HOTELS INDIA (IP) PTE. LTD. Petitioner

Through:

versus

**TRAVELODGE HOTELS LIMITED AND THE REGISTRAR OF
TRADEMARKS. Respondent**

Through: None for Respondent no.1.
Mr. Harish Vaidyanathan Shankar,
CGSC, with Mr. Srish Kumar Mishra,
Mr. Alexander Mathai Paikaday, Mr.
Lakshay Gunawat, and Mr. Krishnan
V. for Respondent no. 2

CORAM:
HON'BLE MR. JUSTICE ANISH DAYAL

ORDER
08.04.2024

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1. This rectification petition has been filed for removal of the respondent no.1's trademark TRAVELODGE registered in class 42 (No. 1277414, applied on 07.04.2024, on proposed basis and granted on 09.12.2005).
2. The petition was originally filed before the International Property Appellate Board and later pursuant to the abolition of the IPAB, was transferred to this Court in 2021. Since then, notices have been issued to respondent No.1, however, as noted in the order dated 06.10.2022, no one appeared.
3. Thereafter on 23.03.2023 notice was accepted on behalf of Remfry and Sagar, the trademark Attorneys of respondent No.1. On 03.08.2023, the counsel for Remfry and Sagar stated that they have no instructions in the said



matter and the Court directed to inform the respondent No.1 about the next date of hearing. Despite the same, no one has appeared on behalf of respondent No.1 till date, and therefore, the Court does not have the benefit of either counsel or party's presence or any other pleading, necessitating an assessment on the basis of records.

4. Counsel for the petitioner has drawn the attention to the fact that petitioner holds trademark registration for the trademark 'TRAVELODGE' as well (No. 517417 in Class 3 filed on 25.09.1989 and No. 3038903 in Class 43)

5. It is stated that pursuant to 1999 Act, the aspect of "services" was included in the trademark classes. Initially, registration of trademark was made in class 3, per force, since no category of services was available.

6. Petitioner is duly incorporated in Singapore with Travelodge Hotels Asia (IP) PTE Ltd. being the Limited Company. As regards India, the following registrations were claimed when the petition was originally filed in 2018.

Sl. No	Country	Trademark	Registration/ Application No.	Date	Class	Status
1.	India	TRAVELODGE	517417	1989-09-09	3	Registered
2.	India	TRAVELODGE	1312833	2004-10-04	35,42	Pending
3.	India	TRAVELODGE NANO	3038901	2015-08-21	43	Pending
4.	India	TRAVELODGE ONE	3038902	2015-08-21	43	Pending
5.	India	TRAVELODGE SKYE	3038903	2015-08-21	43	Pending



7. However, as stated above, registrations were granted subsequently (No. 3038903) as well.

8. As regards other countries in the world, petitioner claimed registrations at the time of filing of petition, as under:

<u>Sr. No.</u>	<u>Country</u>	<u>Trade Mark</u>	<u>Registration / Application</u>	<u>Date</u>	<u>Class</u>	<u>Status</u>	<u>Proprietor in official records</u>
1.	Azerbaijan	TRAVELODGE	991338	1997-07-22	35, 42	Registered	TIPPL
2.	Bangladesh	TRAVELODGE	117309	2008-07-29	43	Registered	TIPPL
3.	Brunei	TRAVELODGE	6215	1973-09-05	3	Registered	TIPPL
4.	Brunei	TRAVELODGE	6216	1973-09-05	16	Registered	TIPPL
5.	Bulgaria	TRAVELODGE	17236	1989-09-13	35, 42	Registered	TIPPL
6.	Bulgaria	TRAVELODGE	777-Y	1989-09-13	3, 16	Registered	TIPPL
7.	Cambodia	TRAVELODGE	20810/04	2004-10-01	43	Registered	TIPPL
8.	Cambodia	TRAVELODGE	20809/04	2004-10-01	35	Registered	TIPPL
9.	China	TRAVELODGE	4281971	2004-09-22	35	Registered	TIPPL
10.	Fiji		4731	1965-09-14	16	Registered	TIPPL
11.	Fiji	TRAVELODGE	20717	1989-09-11	3	Registered	TIPPL
12.	Fiji	TRAVELODGE	20718	1989-09-11	3	Registered	TIPPL
13.	Georgia	TRAVELODGE	10142	1997-07-24	35, 42	Registered	TIPPL
14.	Germany	TRAVELODGE	DD647748	1989-10-03	3, 35, 42	Registered	TIPPL
15.	Hong Kong	TRAVELODGE	2005B01179	1989-09-01	3	Registered	TIPPL
16.	Hong Kong		19701369	1970-10-29	16	Registered	TIPPL
17.	Hong Kong	TRAVELODGE	300287730	2004-09-17	35, 43	Registered	TIPPL



18.	Indonesia	TRAVELODGE	J00 2014019117	2014-04-28	35	Pending	TIPPL (M)
19.	Indonesia	TRAVELODGE	J00 2014020166	2014-05-05	43	Pending	TIPPL
20.	Japan	TRAVELODGE	2704534	1995-02-28	3	Registered	THAPL
21.	Japan	TRAVELODGE	2657130	1994-02-28	16	Registered	THAPL
22.	Japan	TRAVELODGE	3004471	1994-09-30	35	Registered	THAPL
23.	Japan	TRAVELODGE	3177933	1996-07-31	42	Registered	THAPL
24.	Kazakhstan	TRAVELODGE	9579	1997-07-24	35, 42	Registered	TIPPL
25.	Korea (N)	TRAVELODGE	7832	1991-05-27	3, 16	Registered	TIPPL
26.	Korea (N)	TRAVELODGE	7833	1991-05-27	35, 42	Registered	TIPPL
27.	Korea (S)	TRAVELODGE	0123240	2004-09-17	35	Registered	TIPPL
28.	Korea (S)	TRAVELODGE	41-0129804	2004-09-17	43	Registered	TIPPL
29.	Kyrgyzstan	TRAVELODGE	4512	1997-09-06	35, 42	Registered	TIPPL
30.	Laos	TRAVELODGE	11468	2004-10-01	35	Registered	TIPPL
31.	Laos	TRAVELODGE	11469	2004-10-01	43	Registered	TIPPL
32.	Malaysia	TRAVELODGE	89005304	1989-08-29	3	Registered	ICPPL
33.	Malaysia	TRAVELODGE	88004555	1988-09-05	16	Registered	ICPPL
34.	Malaysia	TRAVELODGE	97020742	1997-12-01	35	Registered	ICPPL
35.	Malaysia	TRAVELODGE	97020744	1997-12-01	43	Registered	THAPL
36.	Sabah, Malaysia	TRAVELODGE	16893	1973-09-11	3	Registered	ICPPL
37.	Sabah, Malaysia	TRAVELODGE	16894	1973-09-11	16	Registered	ICPPL
38.	Myanmar	TRAVELODGE	11757/2014	2014-08-11	16, 35, 43	Registered	ICPPL

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39.	Nepal	TRAVELODGE	12689/054	1997-07-15	35	Registered	TIPPL
40.	Nepal	TRAVELODGE	12690/054	1997-07-15	42	Registered	TIPPL
41.	Pakistan	TRAVELODGE	51820	1969-06-26	16	Registered	TIPPL
42.	Pakistan	TRAVELODGE	194284	2004-04-19	35	Registered	TIPPL
43.	Pakistan	TRAVELODGE	193852	2004-04-19	42	Registered	TIPPL
44.	Papua New Guinea	TRAVELODGE	A56107	1989-08-31	3	Registered	TIPPL
45.	Papua New Guinea	TRAVELODGE	A55708	1988-09-29	35	Registered	TIPPL
46.	Papua New Guinea	TRAVELODGE	A55709	1988-09-29	42	Registered	TIPPL
47.	Philippines	TRAVELODGE	4/2014/000032 25	2014-03-14	35,43	Registered	THAPL
48.	Romania	TRAVELODGE	R18523	1989-11-23	3, 35, 42	Registered	TIPPL
49.	Russia	TRAVELODGE	91632	1989-09-27	3	Registered	TIPPL
50.	Samoa	TRAVELODGE	3020	1994-06-2816	3	Registered	TIPPL
51.	Samoa	TRAVELODGE	3022	1994-06-16	16	Registered	TIPPL
52.	Saudi Arabia	TRAVELODGE	1436015883	2015-05-14	43	Approved and published	THAPL
53.	Singapore	TRAVELODGE	T9101408Z	1999-01-15	35	Registered	ICPPL
54.	Singapore	TRAVELODGE	T9101859Z	1991-03-01	42	Registered	ICPPL
55.	Singapore	 TRAVELODGE	T6946491D	1969-05-24	16	Registered	ICPPL
56.	Sri Lanka	TRAVELODGE	191244	2004-09-01	35	Pending	ICPPL
57.	Sri Lanka	TRAVELODGE	191245	2004-09-01	42	Pending	ICPPL
58.	Taiwan	TRAVELODGE	01724435	2014-03-12	35,43	Registered	ICPPL
59.	Tajikistan	TRAVELODGE	TJ3926	1997-08-12	35, 42	Registered	TIPPL

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60.	Thailand	TRAVELODGE	Kor102434	1989-09-13	3 ¹⁹	Registered	TIPPL
61.	Thailand	TRAVELODGE	Kor87190	1988-10-27	16	Registered	TIPPL
62.	Thailand	TRAVELODGE	Bor6388	1992-09-17	35	Registered	TIPPL
63.	Thailand	TRAVELODGE	Bor6360	1994-08-02	43	Registered	THAPL
64.	Tunisia	TRAVELODGE	TN/E/2004/2	1989-11-20	3, 16, 35,	Registered	TIPPL
65.	Turkmenistan	TRAVELODGE	5912	1997-08-07	35, 42	Registered	TIPPL
66.	UAE	TRAVELODGE	233313	43	2015-05-19	Pending	THAPL
67.	Uzbekistan	TRAVELODGE	8171	1997-07-23	35, 42	Registered	TIPPL
68.	Vietnam	TRAVELODGE	70895	2004-09-29	35, 43	Registered	TIPPL

9. Counsel for the petitioner points out that the earliest use of the petitioner's trademark 'TRAVELODGE' can be ascertained from the affidavit filed on 16.10.2019 by Mr. Jan Smits who had stated that he was deputed to India as General Manager of Regency Travelodge Resort, Goa in August 1994. Further, it is pointed out that the respondent's predecessor interest was an entity called the Travelodge Corporation which is admitted in the reply to the examination report filed in the impugned trademark registration. The Travelodge Corporation was succeeded by entity Forte USA Inc. and documents relating thereto (of the USA PTO) have been filed in the proceedings.

10. It is stated that Forte USA Inc. filed opposition against the petitioner's earliest trademark 517417 for 'TRAVELODGE' but later filed withdrawal of opposition *vide* letter dated 21.03.2007 which was taken on record *vide* order



dated 18.12.2012 by the Trademark Registry, and has been placed on record. There is yet another trademark dispute *inter se* parties in the People's Republic of China which was decided in favour of the petitioner and has been appended along with the petition as part of additional documents dated 25.08.2020.

11. Aside from the prior use by petitioner, their counsel points out to non-use by the respondent of the impugned trademark. For this purpose, he has relied upon the investigator's affidavit dated 15.06.2016 who conducted a full market survey in Delhi, Chennai, Mumbai and Kolkata with various tourist operators and travel agents querying them as to knowledge/ awareness of Travelodge U.K., their services and website www.travelodge.co.uk. It was informed that they had not heard of any such website, any such entity providing services, and had not availed of the services at any point of time.

12. It has been held by the Coordinate Bench of this Court in ***Russell Corpn. Australia Pty. Ltd. v. Ashok Mahajan***, 2023:DHC:5556 that in case the respondents have not appeared, averments of the petitioner will stand unrebutted and reliance can be placed on investigator's affidavit with respect to non-use.

13. In these facts and circumstances and applying principles enunciated in ***Russell Corpn.*** (supra), the Court is of the opinion that respondent no.1's mark is liable to be taken of the Registrar under Section 47 of the Act, if not otherwise under Section 11 of the Act, as well, due to petitioner's prior registration, and identity of marks to that of the petitioner.

14. Accordingly, the petition is allowed. The impugned mark TRAVELODGE registered in favour of the respondent no.1 under Number 1277414 in Class 42 be removed from the Register. The website of the registered trademark be also updated and the said removal be carried out within the period of 06 weeks.



15. The petition is allowed in the above said terms and is disposed of.
16. Pending applications, if any, are also disposed of as infructuous.
17. Registry is directed to supply the copy of the present order to the Office of the Controller General on e-mail lhc-ipo@gov.in for compliance of this order.
18. Order be uploaded on the website of this Court.

ANISH DAYAL, J

APRIL 8, 2024/MR/ig

Click here to check corrigendum, if any