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

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Date of decision: 13th December, 2024

+ C.A.(COMM.IPD-TM) 107/2022

CANDICO (I) LIMITED

.....Appellant

Through: Mr. Nikhil Sharma and Mr. Akshay
Bhardwaj, Advocates.

versus

T.R. KOHLI, TRADING AS T.R. KOHLI AND
SONS AND ANR.

.....Respondents

Through: Mr. Mukul Singh, CGSC with Ms. Ira
Singh, Mr. Piyush Beniwal,
Mr. Sandip Munian and Ms. Jyotsna
Vyas, Advocates for R-2.**CORAM:****HON'BLE MR. JUSTICE AMIT BANSAL****AMIT BANSAL, J. (Oral)**

1. The present appeal has been filed under Section 91 of the Trade Marks Act, 1999 (hereinafter the 'Trade Marks Act') and is directed against the impugned order passed by the Deputy Registrar of Trade Marks (respondent no.2) on 25th August, 2008, whereby the opposition filed on behalf of the respondent no.1 has been allowed and on the basis of the said opposition, the registration of the mark 'JUMBO GUMBO' sought by the appellant under class 30, has been refused.

BRIEF FACTS

2. The case set up by the appellant is as follows:-



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2.1 The appellant, through its predecessor, has used the trademark “GUMBO” under class 30 in relation to confectionery, gums, and mints since 1989.

2.2 The appellant, through its predecessor, adopted the trademark “JUMBO GUMBO” in a *bona fide* manner and independently in the year 1996 for use upon and in relation to its confectionery, gums and mints, with a view to distinguish the same from those of other traders. Since the year 1996, the appellant has been openly and extensively using the said trademark “JUMBO GUMBO” in India upon and in relation to the said goods. In support, the appellant has filed invoices from the year 1996 [Pages 41 to 139 of the Appeal paper-book].

2.3 The appellant filed an application on 28th May, 1998 seeking registration of the said trademark “JUMBO GUMBO” under Application No.803930 in class 30 in relation to the said goods (hereinafter referred to as ‘subject application’), claiming user since 1st March, 1996.

2.4 Subsequently, the appellant applied for and secured registration of the trademark “CANDICO JUMBO GUMBO CHEWING GUM BALL” under No.808862 in class 30 with effect from 3rd July, 1998 in relation to the said goods. However, the said registration was removed on account of non-renewal of the same.

2.5 The respondent no.1 (Opponent) filed application dated 30th August, 1996 seeking registration of the mark “JUMBO” under No.730642 in class 30 in relation to confectionery on a ‘*proposed to be used*’ basis.

2.6 On 25th August, 2003, the subject application was advertised in the trademarks journal.

2.7 Thereafter, the respondent no.1 filed a Notice of Opposition on 21st



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November, 2003 against the subject application under Opposition No.141912, claiming, *inter alia*, to be the prior adopter and user of the mark “JUMBO” and citing its trademark application No.730642 dated 30th August, 1996 in class 30 in relation to confectionery.

2.8 The appellant duly filed its counter statement on 31st March, 2004. Pursuant thereto, the respondent no.1 filed its evidence in support of opposition under cover letter dated 27th November, 2004. Subsequently, the appellant filed its evidence in support of the application under cover letter dated 22nd March, 2005 and the respondent no.1 filed its evidence in reply on 23rd April. 2005.

2.9 Hearing *vis-à-vis* the respondent no.1’s opposition against the subject application took place before the respondent no.2 on 14th August, 2007. On the same date, the appellant filed its written submissions in support of the arguments.

2.10 *Vide* the impugned order dated 25th August, 2008, the respondent no.2 refused registration to the subject application filed by the appellant.

3. Accordingly, the appellant has been constrained to file the present appeal.

PROCEEDINGS IN THE APPEAL

4. The present appeal was filed before the erstwhile Intellectual Property Appellate Board (‘IPAB’) and pursuant to the enactment of Tribunal Reforms Act, 2021, it was transferred to this Court.

5. In the order dated 16th August, 2022, the Joint Registrar recorded that the IPAB did not issue notice in the present petition. However, the record reveals that the respondent no.1 filed a counter statement/reply before the IPAB.



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6. This Court issued fresh notice to the respondents on 19th December, 2022. Despite service and appearance, the respondent no.2 did not file a reply.

7. *Vide* order dated 2nd June 2023, the Joint Registrar noted that the respondent no.1 could not be served as its premises were found to be locked.

8. Thereafter, this Court passed an order on 3rd July, 2023 directing the Joint Registrar to examine the service and submit a report in that regard. On 14th September, 2023, the Joint Registrar recorded that the respondent no.1 was duly served on 4th March, 2023. Despite this, the respondent no.1 did not enter appearance in the present case.

9. Consequently, the respondent no.1 was proceeded against *ex parte vide* order dated 22nd November, 2023.

10. Since the respondent no.1 has chosen not to contest the present proceedings, it is indicative of the fact that the respondent no.1 has nothing substantial to put forth on merits, by way of a response to the averments made in the appeal. Hence, the averments made in the appeal are deemed to be admitted.

SUBMISSIONS

11. Counsel appearing on behalf of the appellant submits that the respondent no.1's pending application for registration of the mark "JUMBO" under No.730642 in class 30, on the basis of which the opposition against the subject application was filed, was treated to have been 'abandoned' by the Registrar of Trade Marks *vide* order dated 5th March, 2016. In addition to that, the respondent no.1 is currently not active in the field of confectionary products. Hence, the 'earlier trade mark' as defined under Trade Marks Act, 1999 is non-existent. In view of these



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circumstances, objections to the subject application under Section 11 of the Trade Marks Act cannot be sustained.

ANALYSIS AND FINDINGS

12. I have heard the counsel for the appellant and perused the material on record.

13. It is pertinent to note that the respondent no.1's pending application for the mark "JUMBO" was treated to have been abandoned by the Registrar of Trade Marks on 5th March, 2016. In this regard, the appellant has filed the status page from the Trade Marks Registry as document no.3 along with its brief note of submissions.

14. The appellant has placed sufficient evidence on record showing that the mark "JUMBO GUMBO" was being used by the appellant through its predecessor since 1996. The sales of the appellant's goods in India during the period 1996-2009 bearing the said trademark run into several crores of rupees, as given in paragraph 4(ix) of the appeal.

15. At this stage, it may be relevant to note that the respondent no.1 did not appear before the Court, despite service of notice on 4th March, 2023. Since the respondent no.1 has failed to take any requisite steps to contest the present appeal, it is evident that it has no defence to put forth on merits.

16. In my view, the fact that the mark "JUMBO" of the respondent no.1 has been abandoned displays that the respondent no.1 is no longer interested in the said mark. Therefore, the objections raised in the opposition proceedings do not survive.

17. In view of the aforesaid changed circumstances, the opposition to registration under Section 11 of the Act cannot be sustained. Hence, on this ground alone, the impugned order dated 25th August, 2008 refusing



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registration of the Trademark Application No.803930 is set aside.

18. The Trade Marks Registry is directed to accept and proceed with the registration of the trademark “JUMBO GUMBO” under the Application No.803930 in class 30.

19. The Registry is directed to send a copy of the present order to the Trade Marks Registry at e-mail - llc-ipo@gov.in for compliance.

AMIT BANSAL, J

DECEMBER 13, 2024

Corrected and uploaded on: 03rd January, 2025

Vivek/-