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

+ **C.A.(COMM.IPD-TM) 147/2021**

AXON ENTERPRISE, NIC.

..... Appellant

Through: **Ms. Rachana Bishnoi, Advocate.**

versus

REGISTRAR OF TRADE MARKS

..... Respondent

Through: **Mr. Harish Vaidyanathan Shankar,
CGSC with Mr. Srish Kumar Mishra,
Mr. Alexander Mathai Paikaday and
Mr. Krishnan V., Advocates.**

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

% **30.01.2024**

1. The present appeal under Section 91(1) of the Trademarks Act, 1999 (“Act”) arises from order dated 12th December, 2018 passed by the Registrar of Trademarks, whereby Petitioner’s trademark application No. 2538455 in respect of the trademark “AXON” in Class 9 was refused registration on the ground of Section 11 of the Act, in light of the presence of several conflicting marks on the register, details of which have been mentioned in the examination report.
2. It has come to light that during the pendency of present proceedings, there has been a change in the status of the conflicting marks cited in the examination report. Additionally, the owners of some of the cited marks have issued ‘no objection’ to the Appellant’s trademark application proceedings for registration, subject to certain specific conditions.



3. These facts were taken note of in detail on 3rd July, 2023 to the following effect:

“...

2. The Appellant-Axon Enterprise is aggrieved by refusal of its registration for the word mark - ‘AXON’ under Trade Mark Application No. 2538455 in Class-09 (hereinafter, impugned mark’) by the Respondent-Registrar of Trade Marks.

3. On the last date of hearing, the Appellant had drawn the attention of this Court to the averments made in respect of conflicting mark bearing Trade Mark Application No. 2065690 in Class-09, wherein they have agreed to strike the term “battery chargers” from the description of the goods.

4. The Appellant additionally relied on a Consent Letter/No-objection letter issued by the registered proprietor of Trade Mark Application No. 1643388 under Class-09, who has given a no-objection to registration of the Appellant's subject mark, provided a disclaimer is inserted.

5. Vide order dated 4th May 2023, this Court directed the Appellant to file on affidavit the amended description of goods in relation to the impugned mark within a period of one week.

6. Today, the amended description of goods has been placed on record by means of an affidavit dated 17th May 2023.

7. The Court has perused the search report dated 23rd May 2014, which has been issued by the Respondent, along with the examination report dated 9th June 2014 qua the impugned mark.

8. The search report shows that there are various trademark applications/registrations for the mark ‘AXON’ in different classes, which is being cited by the Respondent. The details of the same are as under:



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AVON
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HYDERABAD-500 012
(A.P.)

APPLICATION DATE 09/12/2010
GOODS/SERVICE BATTERIES, INVERTERS AND UPS.

2274394 9 AXON PLUS (DEVICE) MD. ZIAUDDIN AHMED AT- BANAPARIA, P.O.- KURUDA, DIST.- BALASORE-756056, ODISHA., Objected



APPLICATION DATE 31/01/2012
GOODS/SERVICE BATTERY (AUTOMOTIVE).

2431177 9 AXON [word and device mark] TASER INTERNATIONAL, INC. 17800 North 85th Street, Scottsdale, Arizona 85255, United States of America Objected



APPLICATION DATE 21/11/2012

GOODS/SERVICE Apparatus for recording video and audio, including cameras and digital recorders; Batteries; Chargers; Recorded media having recorded video, audio, and photographic evidence; Cell phone application software for video playback; Cell phone application software for audio playback; Cell phone application software for recording of narration; Cell phone application software for editing; Cell phone applications for a user to move data from one recording device to another device; Clips and accessories as part of a camera assembly for attaching a video and audio recording apparatus to clothing or eyeglasses;

HIMA PADATH MANOHARAN
For REGISTRAR OF TRADE MARKS

9. *Ld. Counsel for the Appellant, qua each of the mark as reflected in the table above, has taken the following position:*

TM Application No.	Appellant's submissions
1308449	Likely to be abandoned
1424653	Has been abandoned
1643388	Consent letter is relied upon
1741626	Has been abandoned
1861530	Consent letter is relied upon
1861531	Consent letter is relied upon
2065690	The Appellant is willing to remove "battery chargers" from their description of goods which would be the only overlapping product. In addition, it is submitted that this mark is restricted geographically to Andhra Pradesh and Telangana.
2274394	The Appellant is willing to remove the "battery chargers" from the description of goods.

10. *The Appellant relies upon consent letters/no-objection letters dated 7th May 2019 issued by 'Axon Digital Design B.V', a Netherland based company, which is the applicant/registered proprietor of the Indian*



trademark no. 16433488 for mark 'Axon'; and by 'Axon Cable Inc.', a French company dated 7th August 2020, which is the applicant/registered proprietor of the Indian trademark marks 1861530 and 1861531. The consent letters issued by the French company were placed on record today.

11. Let an affidavit be filed on behalf of the Appellant within four weeks filing the supporting documents in support of the submissions qua each of the trademarks cited by the Appellant as reflected in the above table. Let the said affidavit be filed within six weeks.

12. List this appeal for hearing on 2nd November, 2023."

4. In terms of the above directions, the Appellant has filed an affidavit, wherein they have stated as follows:

"3. I submit that the current status of cited trade mark no. 1308449 is likely to be removed due to non filing of renewal request within prescribed time limit. The said mark was valid till 13th September, 2014 only and the restoration period has also been lapsed. Copy of status page for said cited mark is annexed herewith as Exhibit A.

4. I submit that the current status of cited trade mark no. 1424653 is abandoned. Copy of status page for said cited mark is annexed herewith as Exhibit B.

5. I submit that the current status of cited trade mark no. 1741626 is abandoned. Copy of status page for said cited mark is annexed herewith as Exhibit C.

6. I submit that the current status of cited trade mark no. 2431177 is abandoned. Copy of status page for said cited mark is annexed herewith as Exhibit D.

7. I submit that the current status of cited trade mark no. 1643388 is registered. The Appellant has taken consent letter from the owner of the said cited mark to the effect that the owner of the cited mark consents to the registration and use of the trade mark 'AXON' with respect to the goods claimed by Appellant in class 9, if the Appellant files a request to add disclaimer "none of the aforesaid used with or relating to video production or broadcasting, other than video production and broadcasting in the fields of or relating to law enforcement, surveillance, public safety, private security, weapons, electronic control devices, or defence apparatus". I submit that the appellant shall amend the description of goods in class 9 by adding the aforesaid disclaimer by way of filing TM M at Indian Trade Marks Registry once the appeal is allowed by the Hon'ble Court. Copy of consent letter along with status page of said cited mark is annexed herewith as Exhibit E.

8. I submit that the current status of cited trade mark no. 1861530 is opposed. The Appellant has taken consent letter from the owner of the said cited mark. Copy of consent letter along with status page of said cited mark



is annexed herewith as Exhibit F.

9. I submit that the current status of cited trade mark no. 1861531 is opposed. The Appellant has taken consent letter from the owner of the said cited mark. Copy of consent letter along with status page of said cited mark is annexed, herewith as Exhibit G.

10. I submit that the current status of cited trade mark no. 2065690 is registered and is restricted geographically to Andhra Pradesh and Telangana. The said cited mark is registered for the goods 'Batteries, inverters and UPS' in class 9. The said cited mark is in use since 2009 whereas the Appellant's mark is in use since 2008 internationally and in India since 2012. Further, the line of business of the owner of the cited mark include only batteries and other types of backup power devices, which are totally different from that to which the appellant's branded products which are used in providing recharging for primary power sources, as opposed to serving as an auxillary power source, as the referenced appellant's goods are. Also, the appellant shall delete the goods 'battery chargers from class 9 by way of filing Form TM-M at Indian Trade Marks Registry, once the appeal is allowed by Hon'ble Registry. Copy of status page for said cited mark is annexed herewith as Exhibit H.

11. I submit that the current status of cited trade mark no. 2274394 is registered. The said cited mark is registered for the goods 'Battery (Automotive)' in class 9. The said cited mark is in use since 2011 whereas the Appellant's mark is in use since 2008 internationally and in India since 2012. Further, the line of business of owner of cited mark include batteries which are used for automobiles such as cars whereas, the appellant develops technology and weapons products for military, law enforcement, and civilians. Its initial product was a line of electroshock weapons. The company has since diversified into technology products for military and law enforcement, including a line of body cameras and Evidence.com, a cloud-based digital evidence platform. As of 2017, body cameras and associated services comprise a quarter of Axon's overall business. Therefore, the class of purchasers will be altogether different as well as two sets of goods will not be sold under the same roof. The customers of appellants; products will be highly educated people who pay close attention to the details of products while purchasing, therefore, there exists no likelihood of confusion in the market. Also, the appellant shall delete the goods "battery chargers' from class 9 by way of filing Form TM-M, once the appeal is allowed by Hon'ble Court. Copy of status page for said cited mark is annexed herewith as Exhibit I.

12. That the appellant shall amend the description of goods in class 9 as "Apparatus for recording video and audio, including cameras and digital records; ~~Battery chargers~~; Cell phone application software for video playback; Cell phone application software for audio playback; Cell phone application software for recording of narration; Cell phone application software for editing; Cell phone applications for a user to move data from



one recording device to another device; Clips and accessories as part of a camera assembly for attaching a video and audio recording apparatus to clothing or eyeglasses; None of the aforesaid used with or relating to video production or broadcasting; other than video production and broadcasting in the fields of or relating to law enforcement, surveillance, public safety, private security, weapons, electronic control devices, or defence apparatus” one the appeal is allowed/accepted by the Hon’ble Court and application is restored by the Indian Trade Marks Registry.”

5. The proprietors of trademark Nos. 1643388, 1861530, 1861531 have given their consent for allowing the Appellant’s trademark application to proceed further for registration, subject to certain restrictions. Those restrictions are acceptable to the Appellant and accordingly as averred in paragraph No. 12 of their affidavit, they undertake to file the necessary Form TM-M for bringing the amendments on record in respect of description of the goods for which the trademark is proposed to be utilized. It is also pointed out that although the conflicting trademark Application No. 2065690, has since been allowed and the trademark applied for, has been registered, the use thereof has been restricted to states of Andhra Pradesh and Telangana. Further, as the said cited mark is registered for goods “battery, inverters and UPS” in Class 9 and as averred in the above-said affidavit, the Appellant has agreed to delete the goods “battery chargers” in respect of their filing. Regarding trademark No. 2274394, it is contended that the Appellant is the prior user of the mark and furthermore, the said mark is sought to be distinguished by contending that the description of the goods to which the two mark was applied is entirely different.

6. In light of the above affidavit and undertaking given, in the opinion of the Court, the trademark application can proceed to a stage of advertisement without acceptance under Section 20(1) of the Act.



7. In light of the above, present appeal is allowed with following directions:

- (a) The impugned order is set aside.
- (b) Trade Marks Registry is directed to process the registration application for the subject mark.
- (c) Subject mark be advertised before acceptance as per proviso of Section 20(1) of the Act, within a period of three months from today. On advertisement in the Trade Marks Journal, an intimation shall be sent by Trade Marks Registry to the registered proprietors of the cited marks as per the examination report.
- (d) If there is any opposition, the same shall be decided on its own merits, uninfluenced by observations made hereinabove.
- (e) Appellant shall also send a copy of the order passed today to the proprietors of competing/ cited marks.
- (f) In terms of the undertaking given by the Appellant in the affidavit, the Appellant shall to file an appropriate application under form TM-M within two weeks from today.
- (g) Registry is directed to supply a copy of the present order to the Trade Marks Registry at llc-ipo@gov.in for compliance.

8. The appeal is allowed and disposed of in the above terms.

SANJEEV NARULA, J

JANUARY 30, 2024

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