



CMA(TM)No.6 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED: 22.07.2025

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THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

CMA(TM) No.6 of 2025
and C.M.P.No.8235 of 2025

Lucas TVS Limited,
Rep. by its Company Secretary, Ms.S.Logitha,
Having its registered address at (6 New No.11, 13),
Pattullos Road, Chennai - 600 002.

... Appellant

-vs-

1. FFC Impex
1589, Hardhyan Singh Road,
31 No Gali, Naiwala Karol Bagh,
New Delhi - 110 005,
Address for service as per Register of Trademarks,
Lalji Advocates, A-48, Yojna Vihar,
Delhi - 110 092.

2. The Assistant Registrar of Trade Marks,
Trade Mark Office Chennai,
Boudhik Sampada Bhawan,
GST Road, Guindy,
Chennai-600 032.

... Respondents

Prayer: Civil Miscellaneous Appeal (Trademarks) filed under Section 91 of the Trade Marks Act, 1999, praying this Court to allow the appeal and pass an order setting aside the impugned order of the 2nd respondent dated



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06.12.2024 and consequently, direct the 2nd respondent to process the subject mark for registration.

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For Appellant : Ms.Aanchal M.Nichani
R1 : Set *Ex parte* on 24.06.2025
For R2 : Mr.Rajesh Vivekananthan, DSG

JUDGMENT

The appellant herein filed Trade Mark Application No.4912372 for registration of the following device mark



in relation to *inter alia* starting devices and motors by asserting use since 21.01.1963. The application was accepted for advertisement and the advertisement was published in Trade Marks Journal No.2001 on 24.05.2021. The 1st respondent herein lodged notice of opposition on 14.08.2021. In response, the appellant filed the counter statement on 14.10.2021. Pursuant to a hearing on 19.11.2024, the order impugned herein was issued.



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2. Learned counsel for the appellant submits that the counter statement was filed in October 2021 and, consequently, the opponent/1st respondent should have filed evidence in support of the opposition within the time limit prescribed in Rule 45 of the Trade Marks Rules, 2017 (the TM Rules). In view of evidence not being filed within the time limit specified, learned counsel submits that the opponent is deemed to have abandoned the opposition as per sub-rule (2) of Rule 45. Learned counsel also relies upon Rule 18 of the TM Rules in this regard to contend that it is sufficient to prove service by e-mail if such e-mail communication had been addressed to the e-mail ID provided by the opponent.

3. By referring to the impugned order, learned counsel submits that the Registrar of Trade Marks failed to verify whether the e-mail with the counter statement attached thereto had been successfully transmitted to the e-mail ID provided by the opponent. Instead, she submits that the contention of the opponent was accepted merely by relying upon its affidavit. She also submits that the correspondence/notice history, which was filed by the opponent, does not always reflect particulars of all documents/notices sent by the Registrar of Trade Marks.



4. In spite of service of notice, the 1st respondent did not enter appearance either in person or through counsel. Therefore, the said respondent was set *ex parte* by order dated 24.06.2025.

5. Learned counsel for the Registrar of Trade Marks submits that the impugned order was issued after recognising that there was no proof of actual service of the counter statement on the opponent.

6. The operative portion of the impugned order is as under:

“I have heard the arguments of the rival claimants and gone through the records of this case. As per available records of the present case, the service of the Counter statement by this office was made through e-mail. Further the Opponent counsel has submitted Affidavit of oath along with supporting documents and the Opponent Counsel has also shown the web page of Correspondence History of Digital Signature Account page.

In this regard, it is pertinent to mention here that Rule 45 also uses the word 'Within two months from



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service of a copy of the counter statement' So unless the service is actually effected on the Opponent, the time to file evidence would fail to take off. Moreover no prejudice will be caused to the Applicant, if the opponent is given an opportunity to file his evidence in support of Opposition.

In view of the above and in the interest of the natural justice, I have considered the Affidavit filed by the Opponent Counsel and proceed the matter accordingly. On the strength of the Affidavit and supporting documents filed by the Opponent's, I hereby direct the opposition/tribunal section to serve fresh notice under section 21(3) along with Copy of the Counter Statement to the Opponent inviting their attention under rule 45 of Trade Marks Rules 2017 by mail and also through post with correct service address and mail id. Thereafter the matter shall proceed further as per Act/Rules. There shall be no order as to costs."

As is evident from the above extracts, the Registrar of Trade Marks was cognizant of the fact that the clock would start ticking for filing evidence in support of the opposition only from the date of service of a copy of the counter statement.



7. Undoubtedly, as contended by learned counsel for the appellant,

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Rule 18(3) of the TM Rules provides for a presumption that an e-mail communication is served if there is proof that such e-mail was sent to the e-mail ID provided by the party concerned. In this case, however, the opponent/1st respondent has filed an affidavit asserting that the counter statement was not received and has corroborated the assertion by submitting the correspondence/notice history from the portal of the Trade Marks Registry. On examining the correspondence/notice history, it appears that the despatch of the counter statement is not reflected therein. As submitted by learned counsel for the appellant, it is possible that the module is not fool proof and may not reflect the despatch of every document by the Trade Marks Registry. Nonetheless, on appraisal of the evidence on record, including the above mentioned document, the Registrar of Trade Marks has concluded that there is no proof of actual service and that the interest of justice warrants providing an opportunity to the opponent to file evidence in support of the opposition. In the facts and circumstances outlined above, I am not inclined to interfere with the decision of the 2nd respondent.



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8. It is noticeable, however, that the appellant filed the application for

registration of trade mark on 19.03.2021 by asserting use since 21.01.1963.

The said application has been pending for more than four years as on date.

These facts and circumstances justify a direction for expeditious disposal.

9. Therefore, CMA(TM)No.6 of 2025 is disposed of by directing the 2nd respondent to consider and dispose of Opposition No.1119112 and Trade Mark Application No.4912372 within three months from the date of receipt of a copy of this order after providing a reasonable opportunity to the appellant and the 1st respondent. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

22.07.2025

Index : Yes/No

Internet : Yes/No

Neutral Citation : Yes/No

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SENTHILKUMAR RAMAMOORTHY,J

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To

The Assistant Registrar of Trade Marks,
Trade Mark Office Chennai,
Boudhik Sampada Bhawan,
GST Road, Guindy,
Chennai-600 032.

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