



IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED: 26.06.2025

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THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

(T)OP(TM) No.97 of 2023
(ORA/191/2013/TM/CHN)

M/s.POLAR ELEKTRIC PRIVATE LIMITED,
an Indian Company duly incorporated and
registered under the provisions of the Indian
Companies Act, 1956, having its
Office at Unit No.8B, 8th Floor,
23, Circus Avenue, NA, Kolkata-700 017.

... Petitioner

(Amended as per the order dated 24.07.2024
passed by this Court in A.No.72 of 2024 in
(T)OP(TM)/97/2023 (ORA/191/2013/TM/CHN)

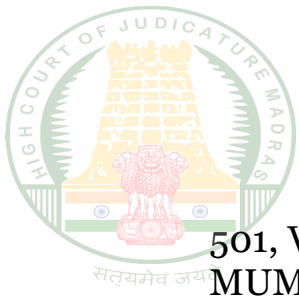
-Vs-

POLAR-MOHR MASCHINENVERTRIEBS
GESELLSCHAFT GMBH & CO. KG
(A company incorporated under the laws of Germany)
Hattersheimer Strasse 16-36,
D-65719, Hofheim/Taunus
GERMANY

... Respondent No.1

ADDRESS FOR SERVICE IN INDIA

M/s. CHANDRAKANT M. JOSHI
Patent & Trade Mark Attorneys,



501, Vishwa Nanak, Chakala Road, Andheri (East)
MUMBAI-400 099.

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REGISTRAR OF TRADE MARKS
Trade Marks Registry,
Intellectual Property Rights Building,
Industrial Estate SIDCO RMD,
Godown Area G.S.T.Road, Guindy,
CHENNAI-600 032.

... Respondent No.2

Prayer: This transfer original petition (Trade Marks) filed under Sections 47, 57 and 125 of the Trade Marks Act, 1999, praying that:

(i) the entry relating to the impugned trademark/label “POLAR” registered under No.1445891 in Class-07 may be removed, cancelled and expunged from the Register of Trade Marks

(ii) Costs of the proceedings may be awarded in favour of the petitioner and against the respondent

(iii) for such further and other relies as this Court deems just and proper in the facts and circumstances of the case.

For Petitioner	: Mr.M.K.Miglani
For R1	: No appearance
For R2	: Mr.M.Karthikeyan, SPC for R2

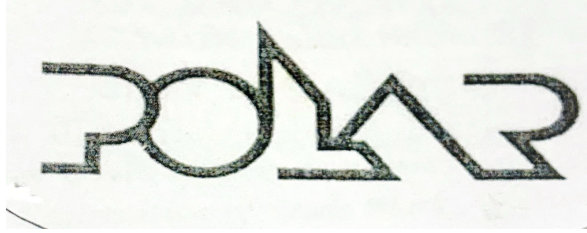
ORDER

By this petition, the petitioner seeks to rectify the register of trade marks by expunging the entry relating to the registration of



trade mark No.1445891 in Class - 7 in respect of the following mark:

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2. By order dated 17.11.2023, it was recorded that the bailiff's report of 11.10.2023 records that notice was served on the first respondent through its agent in India on 11.10.2023. After further recording that M/.s. N.D.Kasthuri and G.Ramji, Advocate, appeared on behalf of the first respondent at the hearing on 12.10.2023 and stated that they have no further instructions, learned counsel for the Registrar of Trade Marks was directed to ascertain whether the first respondent has communicated a change of agent or change of address for service in India. At the subsequent hearing on 12.12.2023, learned counsel for the Registrar of Trade Marks reported that no change of address or change of agent was



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communicated to the Trade Marks Registry. Therefore, it was recorded that the matter would be proceeded with in the absence of the first respondent. Thus, the matter has proceeded since then in the absence of the first respondent.

3. The petitioner asserts that it adopted and used the trade mark 'POLAR' in the year 1972 and has used the trade mark openly, honestly and continuously since then. It is further stated that the trade mark is applied to a range of products including electric fans, washing machines, mixies, lamps, lights and fixtures and even marbles and tiles. The petitioner further states that its sales turnover is substantial and that it was 2118.43 lakhs in financial year 2009-10 through Polar Industries Limited and Rs.6140.17 lakhs in the same financial year through Polaron Marketing Limited. As regards advertising expenses, it is stated that a sum of Rs.80.16 lakhs was expended for this purpose in the financial year 2009-10 by Polaron Marketing Limited and a sum of Rs.37.20 lakhs by the petitioner.

4. According to the petitioner, the contesting respondent made



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several other attempts to obtain registration of the trade mark 'POLAR' and 'POLAR MOHUR' in India. On each of those occasions, the petitioner opposed the application. Eventually, those applications were deemed to be abandoned because the contesting respondent either did not file evidence in support of the application or did not attend hearings in relation thereto.

5. Learned counsel for the petitioner referred to documents in support of the above assertions and submitted that the petitioner has established that it has acquired enormous goodwill through the extensive sale and marketing of its range of products. He further submits that the first respondent applied for and obtained registration of a deceptively similar mark by asserting use since 23.03.1992. Learned counsel contends that such assertion of use is false. In spite of filing a counter statement with supporting documents while these proceedings were pending before the erstwhile Intellectual Property Appellate Board (the IPAB), learned counsel submits that no evidence of use was submitted. Instead, he points out that the first respondent had placed on record search



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reports relating to other marks containing the element 'POLAR' or variants thereof. He submits that many of the marks listed in such search reports were rejected or abandoned and, in any event, such search reports do not constitute evidence of use.

6. In view of the reputation and goodwill of the petitioner and the use of the mark in relation to a range of products which cut across classes, learned counsel submits that the petitioner is entitled to seek rectification under Section 57. In view of non-use of the impugned mark, he submits that a case is also made out for rectification under Section 47. In this connection, by referring to the judgment of the Division Bench of the Delhi High Court in *Suresh Kumar Jain v. Union of India and another*, 2012 (49) PTC 287 (Del.), learned counsel submits that the Delhi High Court upheld the decision of the Single Judge affirming the order of the IPAB, wherein the registration on the basis of a false assertion of use was cancelled.

7. Learned counsel for the Registrar of Trade Marks made brief submissions in response. He pointed out that the first respondent

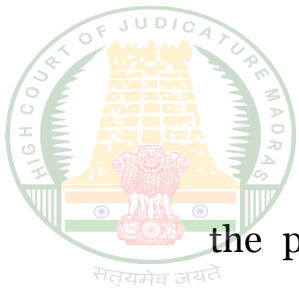


seems to apply the impugned mark in relation to paper cutting equipment. He also submits that there does not appear to be any evidence of use in India although it is possible that the product may be imported and sold in India.

8. In proceedings before the erstwhile IPAB, prior to the transfer of these proceedings to this Court, the first respondent had filed a counter statement. In the counter statement at paragraph 3, in relevant part, the first respondent stated as under:

“The Respondent No.1 are carrying on this business without any interruption from any body ever since 23.03.1992. The Respondent No.1 company is openly, extensively and continuously using the registered impugned trade mark “POLAR (LABEL)”.

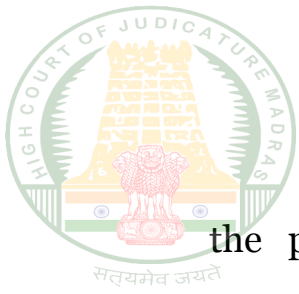
Various documents were exhibited by the first respondent along with the counter statement as Exhibits A to F. On examining these exhibits, any evidence of use is conspicuous by its absence. Instead,



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the petitioner has placed on record the registration certificate in relation to the impugned mark, registrations obtained by the petitioner for the impugned mark in other jurisdictions outside India and search reports relating to applications for registration of marks as evidence that deceptively similar marks find place in such search reports. As regards these search reports, it is noticeable that they relate to marks which were registered, withdrawn, objected to, abandoned and the like. The Hon'ble Supreme Court concluded in *Corn Products Refining Co. v. Shangrila Food Products Ltd., 1959 SCC OnLine SCC 11* that reliance on search reports as evidence of use is misconceived and that parties are required to place on record actual evidence that the mark is being applied to products which are available in the market.

9. The petitioner is the registered proprietor of the mark 'POLAR' and its variants in relation to a range of products. The first respondent has obtained registration of a device mark containing the word 'POLAR' written in a stylised manner. As such, the petitioner qualifies as a 'person aggrieved' not only for purposes of prosecuting

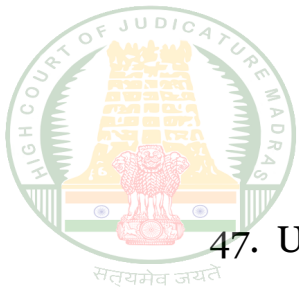


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the petition under Section 57 but by also meeting the higher threshold under Section 47 of the Trade Marks Act, 1999 (the TM Act)

10. Under Section 47 (1)(a) of the TM Act, if a trade mark were to be registered without any *bona fide* intention on the part of the applicant to use the mark in relation to the relevant goods or services and, in fact, there were no *bona fide* use of the trade mark in relation to those goods or services up to a date three months before the date of the application, the entry relating thereto is liable to be removed. Under clause (b) of sub-section (1) of Section 47, if the impugned mark has not been used for a continuous period of five years or longer up to a date three months prior to the date of presentation of the petition, the petitioner would be entitled to removal of the impugned mark.

11. In this case, registration was obtained by asserting use since 23.03.1992. As noticed earlier, the first respondent failed to provide any evidence of use in spite of filing a counter statement along with supporting documents. Therefore, a case is made out for removal of the mark under both clauses (a) and (b) of sub-section (1) of Section



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47. Under Section 57(1) of the TM Act, any person aggrieved may apply to the Registrar or High Court to cancel or vary the registration on the ground, *inter alia*, of any contravention or failure to observe condition(s) entered on the register in relation thereto, and, under Section 57(2) thereof, if an entry were to be made on the register without sufficient cause or, even if made with sufficient cause, if its continuance on the register is without sufficient cause, rectification is warranted.

12. The first respondent had represented to the Registrar of Trade Marks that the relevant mark had been used since 23.03.1992, whereas no evidence of use appears to have been placed either before the Registrar of Trade Marks or even before this Court. Therefore, the entry was made on the assumption that the relevant mark is being used from 23.03.1992. In the absence of any evidence of use of the relevant mark, the entry relating to the mark on the register undoubtedly continues on the register without sufficient cause.

13. For reasons stated above, this petition is allowed by



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directing the Registrar of Trade Marks to expunge the entry relating to Trade Mark No.1445891 in Class 7 from the Register of Trade Marks. This exercise shall be completed within 30 days from the date of receipt of a copy of this order. There shall be no order as to costs.

26.06.2025

Index : Yes/No
Internet : Yes/No
Neutral
Citation : Yes/No
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To

THE REGISTRAR OF TRADE MARKS
Trade Marks Registry,
Intellectual Property Rights Building,
Industrial Estate SIDCO RMD,
Godown Area G.S.T.Road, Guindy,
CHENNAI-600 032.



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