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(T) OP (TM) No. 447 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 08.01.2025

CORAM

THE HONOURABLE **DR. JUSTICE ANITA SUMANTH**

(T)OP(TM) No.447 of 2023

ABACUS MONTESSORI SCHOOL
3, Thirumalai Nagar Annexe
III Main Road, Perungudi,
Chennai – 600 096.
Tamil Nadu

... Petitioner

Vs

1.Abacus International Montessori School,
Peruntholuvu Mudalipalayam Road,
Tirupur – 641 606
Tamil Nadu.

2.The Registrar of Trade Marks
Trade Marks Registry,
Chennai.

... Respondents

PRAYER: This Petition came to be numbered by transfer of O.R.A.No.170/2015/TM/CHN from the file of the Intellectual Property Appellate Board, Chennai praying (i) Allow the instant application (ii) Order the impugned registration no. 1586733 under Class 41 to be expunged from the Trade Marks Register and (iii) Award costs of these proceedings.

For Petitioner : Mr.R.Rajesh
For M/s. De Penning and De Penning

For Respondents : Mr.S.Kolandasamy for R1
Mr.S.Janarthanam
Senior Panel Counsel
For R2



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ORDER

The petitioner is a Montessori School. It was formed in June, 1987 and propagates the Montessori method of teaching. It was originally commenced for the pre-primary group of students between the ages of two and half to six years. In time, the primary class was expanded to permit older children to form a class of their own.

2. According to the petitioner, the school boasts of world class facilities which are holistic in nature encompassing subjects, both academic and contemporary among others. The petitioner had adopted the use of the word 'ABACUS' in the name of the school, as early as in 1987. The term 'ABACUS' connotes a mathematical tool comprising a frame holding parallel rods strung with movable beads. Each rod designates a particular denomination in the decimal system and each bead represents a digit or a specific number of digits.

3. The trademark for which the petitioner had applied is 'ABACUS MONTESSORI SCHOOL (label)' (in short, 'mark') bearing number 2384509 in Clause 41 being Educational Services. The mark is pending registration before the Trade Marks Registry. The petitioner would submit that considerable expenditure has been incurred in advertising and marketing the mark through various media. The expenditures incurred over the years have been tabulated and supplied to the Court.



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4. While so, the petitioner noted that the first respondent (R1) had issued an advertisement for its school using the identical trademark 'ABACUS' in respect of the same genre of services i.e., educational services, as engaged in by the petitioner.

5. The school of R1 was advertised as 'ABACUS INTERNATIONAL MONTESSORI SCHOOL'. The petitioner issued a notice as early as on 28.08.2003 to R1 bringing to its notice the use of the same mark by it, and asking R1 to cease and desist from using its trademark.

6. The defence of R1 was that they are only a primary school functioning exclusively in the area of Tiruppur. An alternative defence, wider in scope, was that 'ABACUS MONTESSORI SCHOOL', as a phrase, had universal application and hence cannot be claimed as an exclusive right by any one entity. Admittedly, the petitioner did not proceed further with the matter and allowed R1 to continue functioning as it were.

7. Later, and closer to the time of institution of the present application before the Trademark Registry in May, 2015, the petitioner had come to know that R1 had initiated steps to protect the trademark 'ABACUS MONTESSORI SCHOOL', the only difference being, the insertion of the term 'International' in the mark. According to the petitioner, this constitutes a rank infringement of its own mark and the term 'International' would make no difference to the sum and substance thereof.



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8. The petitioner would also draw note to the statement of the authorized representative of R1 in the pleadings, to the effect that its services are extensive and are distributed throughout the world, including in India. That apart, the petitioner is also aggrieved by the proximate location of R1 school, as Tiruppur is only 500 kms from Chennai where the petitioner school is located. The petitioner is hence aggrieved by the infringement of their valuable right, in use since 1987, as prior user.

9. They also allege that the apparent intention of R1 is that its activities, and subsequent expansion thereof, would encroach on the petitioner's goodwill and reputation. The petitioner has established longstanding, uninterrupted and well-recognised rights, including substantial goodwill for, in excess of 35 years, and thus sought to restrict unwarranted erosion of those rights by R1, constituting passing off of its goodwill and reputation in the market.

10. The prayer of the petitioner before R2, the Registrar of Trademarks, was for a direction that the registration of R1 bearing No. 1586733, also under Clause 41, be expunged from the Trade Marks register, with costs.

11. R1 defended the proceedings vehemently. According to R1, there could be no exclusive right claimed by the petitioner, particularly seeing as the term 'ABACUS' has been in long and continuous public use. R1 submits that the Montessori Method of teaching is a generic method adopted by educators throughout the world. The method is seen as *publici*



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juris and the petitioner can lay no exclusive claim to that method of teaching per se. Neither could it claim monopoly over a generic word such as 'ABACUS'.

12. R1 would further argue that its school is functioning only in Tiruppur and hence there is no overlap in regard to the areas of operation of the two schools. Moreover, the petitioner was well aware from 2003 onwards of the existence of R1 school, as a cease and desist notice had been issued in August, 2003, However, upon receiving the reply of R1, it had dropped all proceedings and has not thought it fit to pursue its grievances as against R1. Hence even by its conduct, it has displayed intention to acquiesce to the existence and operation of R1 school and cannot, out of the blue, raise any grievances after more than a decade.

13. At the time of institution of the application for registration of trademark on 02.08.2007, a diligent search had been conducted by R1 who found no similar, deceptively similar or identical trademark that had either been registered or was pending registration. It is thus that it proceeded to seek registration of the trademark 'ABACUS INTERNATIONAL MONTESSORI SCHOOL'.

14. While not denying the submission in regard to extensive goodwill, and expenditure incurred by the petitioner, R1 would counter the same with the curious submission that such expenditure was incurred only as the quality of education in petitioner school was poor and petitioner school thus required publicity for its existence.



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15. Alternatively, it would state that if at all the goodwill and reputation of the petitioner's school was as excellent as put forth by it, then it need not worry about competition as it would sustain its existence solely on the basis of its own excellence. It would deny the argument that there was confusion in regard to two schools, either among the students or general public. In fine, it would seek dismissal of the application filed by the petitioner with costs.

16. The cases relied upon by the parties are as follows:

Petitioner

- (i) Satyam Infoway Ltd v Siffynet Solutions (P) Ltd¹
- (ii) Anjani Kumar Goenka & another v Goenka Institute of Education & Research²
- (iii) S.Syed Mohideen v P.Sulochana Bai³

Respondent

- (i) Goenka Institute of Education and Research v Anjani Kumar Goenka and Ors⁴

17. I have heard the detailed submissions of Mr.Rajesh for M/s. De Penning and De Penning for the petitioner, Mr.S.Kolandasamy for R1 and Mr.Janarthanam, Senior Panel Counsel for R2 and have also perused carefully the documents and case law.

¹ (2004) 6 SCC 145

² ILR (2009) III Delhi 758

³ (2016) 2 SCC 683

⁴ AIR 2009 Delhi 39



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18. The issues that arise for resolution in this matter are as follows:-

(i) Whether the adoption of the mark 'ABACUS MONTESSORI INTERNATIONAL SCHOOL' by R1 constitutes an infringement and passing off, of the petitioner's mark 'ABACUS MONTESSORI SCHOOL'.

(ii) Whether it is relevant that two schools are located in different places and, as on date, there is no overlap in their areas of operation?

(iii) Whether the petitioner could claim monopoly over the mark 'ABACUS'?

19. The facts insofar as they relate to the relevant dates and events are admitted and in order to set my decision in context, I would reiterate the material facts at this juncture.

20. The petitioner school has been functional since June, 1987. An application was filed on 23.08.2012 for registration of the trademark 'ABACUS MONTESSORI SCHOOL (label)' in Clause 41, Educational Services, bearing no. 2384509 by the petitioner. That application is pending registration. The location of the petitioner school is Chennai, Tamil Nadu and there are no branches as on date.

21. Per contra, R1 school is stated to be in existence since 2003. The mark adopted by R1, 'ABACUS INTERNATIONAL MONTESSORI SCHOOL' has been registered in 2003 under Registration No. 1586733, also under Clause 41. R1 school is located in Tiruppur, Tami Nadu and also has no branches as on date.



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22. The respondent has circulated a report in regard to a search conducted on 09.01.2024 pointing out that there are more than 35 schools using the word 'montessori' in the title and 40 institutions using the term 'abacus' as part of their title. There is thus, according to them, no exclusivity that could be claimed over either of the two words 'Montessori' or 'abacus'.

23. The Montessori Method of teaching had been invented by an Italian Educator and Physician, by name, Dr.Maria Montessori. It is an educational approach based upon a child's educational requirements guided by his or her inner needs and interests. The unique characteristic of this method is its emphasis on independence and freedom within limits, that emphasises respect for the child's natural, psychological development and technological advancement in society.

24. The main function of this method is to encourage a child to develop independence in areas of functionality wholly guided by the child's own psychological directives. The first International Montessori course was held in Theosophical Society in India in 1939 by Dr.Maria Montessori herself on the invitation of the then President of the Theosophical Society.

25. The petitioner has referred to an international conference that was conceived and conducted by the first principal of the petitioner school in 1989 calling for participation from Montesorians across the country, including Dr.Mario Montessori Jr, grandson of the founder. A conference conducted by the International Montessori Congress in January, 2009



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under the auspices of the Association of Montessori Internationale, Amsterdam saw the involvement and participation of the petitioner and other schools in Chennai engaged in the Montessori method of teaching.

26. There is no doubt in my mind, and R1 does not dispute this, that the petitioner is, in fact, engaged in furthering a robust Montessori curriculum among its students. One of the questions raised by R1 is as to whether the petitioner could monopolize the use of the word 'Montessori'. I find this argument misconceived for the reason that the petitioner has nowhere claimed such exclusive right and, rightly so.

27. The claim of the petitioner is restricted to exclusivity in the label 'ABACUS MONTESSORI SCHOOL' and it does not anywhere dispute the right of R1 or, any other school for that matter, to use the word Montessori, if indeed, they are engaged in disseminating that methodology of instruction. To this end, the materials provided by R1 to show that the word 'Montessori' is in wide and prevalent use among other schools engaged in that method of teaching, seem unnecessary. I thus clarify that there could be no embargo on R1 to adopt use of the word 'Montessori' in the name of its school.

28. I now advert to the use of the word 'ABACUS'. Section 9 of the Trademarks Act, 1999, (Act) refers to those grounds that constitute an absolute bar on registration of a trademark. One of those parameters is, whether the registration of that mark would cause confusion in the minds



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of the public or is of such nature as to deceive the public. Section 9, to the extent to which it is necessary, is extracted below:-

"9. Absolute grounds for refusal of registration.—(1) The trade marks—

(a) which are devoid of any distinctive character, that is to say, not capable of distinguishing the goods or services of one person from those of another person;

(b) which consist exclusively of marks or indications which may serve in trade to designate the kind, quality, quantity, intended purpose, values, geographical origin or the time of production of the goods or rendering of the service or other characteristics of the goods or service;

(c) which consist exclusively of marks or indications which have become customary in the current language or in the bona fide and established practices of the trade, shall not be registered:

Provided that a trade mark shall not be refused registration if before the date of application for registration it has acquired a distinctive character as a result of the use made of it or is a well-known trade mark.

(2) A mark shall not be registered as a trade mark if—

(a) it is of such nature as to deceive the public or cause confusion;

....."

29. The question of similarity or deceptive similarity does not arise in this case as in fact the two marks are identical qua the use of the word 'ABACUS'. Hence, and to this extent there could be no dispute on the position that there is total identity in the two marks. It is also evident that such identity in name would result in confusion among the public in regard to whether a business connection or relationship exists between the two schools.



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30. Further, I am of the categorical view that mere insertion of the word 'International' in the name of R1 school would be of no avail as it is the word 'Abacus' that catches the eye and would lead the public to assume a business relationship between the petitioner and R1 School. In this regard, I will refer to the decision of the Punjab and Haryana High Court in the case of *Mindtree Limited and Others v. The Regional Director, Northern Region, Ministry of Corporation Affairs and Others*⁵.

31. In *Mindtree Limited*⁶ a challenge was laid to the use of the name 'MindTreeEduvation Private Limited' as being identical with, or nearly resembling the registered trademark 'MindTree Limited'. The defence taken was that the one additional word, namely, Eduvation, made all the difference. The Punjab and Haryana High Court considered the challenge in the backdrop of Sections 20 and 22 of the Companies Act, 1956, Section 20 dealing with 'Companies not to be registered with undesirable name' and Section 22 dealing with rectification of name.

32. The Court held that Sections 20 and 22 would have to be read co-terminus and that the authority had erred in seeing a difference merely by reason of the fact that the word 'MindTree' was suffixed with the word Eduvation. The authority was hence directed to rectify the name of the Company dropping the name 'MindTree'.

⁵ MANU/PH/3731/2014

⁶ Footnote supra 5



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33. Though this decision proceeds on an interpretation of sections 20 and 22 of the Companies Act, 1956 dealing with names of companies, the *raison d'être* takes root from Section 9 (2) of the Act, particularly clause (c) thereof, which prohibits registration of a mark if it is likely to cause confusion among the general public.

34. I now come to the decisions cited, that are illuminating and on point. In *Syed Mohideen*⁷, the dispute related to the trade name 'Iruttukadai Halwa'. The respondent in the Civil Appeal before the Supreme Court (hereinafter 'plaintiff/Sulochana Bai') had registered the trademark Iruttukadai Halwa in 2007 though it was admitted that the business of selling Halwa under that name was started in 1900. She had approached the courts seeking a declaration and permanent injunction on the ground that Syed Mohideen (in short defendant/Syed Mohideen) should be estopped from using the same name.

35. The issues framed by the trial court related to whether Sulochana Bai was entitled to the decree of declaration and relief of permanent injunction and various other reliefs in regard to the rendition of accounts, quantification of profits, destroying of all items carrying the name/logo used by the defendant, in effect, whether Syed Mohideen had the right to sell Halwa under that mark.

36. Sulochana Bai succeeded in trial as well as before the High court and an appeal was filed before the Supreme Court by the defendant

⁷ Foot note supra 3



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in suit, which ultimately came to be dismissed in favour of the plaintiff. The basis on which the appeal was dismissed was that the plaintiff's trademark, Iruttukadai Halwa had become a household name. In addition to holding a prior registration of that mark, the plaintiff was also a prior user of the mark registration.

37. Syed Mohideen had registered the trademark only on 09.04.2008, and by such registration caused confusion in regard to the business entity making the famous Halwa. The Bench also notes that the name of Iruttukadai Halwa found reference in a song in a Tamil film, and this was a pointer to the popularity of the plaintiff's mark. Hence, the two reasons leading the plaintiff to succeed was that she was a prior and long time user of the mark Iruttukadai Halwa, and by such use, the mark had acquired distinctive reputation and goodwill. Hence the use of the mark 'Tirunelveli Iruttukadai Halwa' by the defendant amounted to deceiving the public and passing off, of the petitioner's goodwill and reputation. His appeal was dismissed with costs.

38. In *Satyam Infoway Ltd (SATYAM)*⁸, the dispute related to infringement of domain name. The principle question that was raised was whether internet domain names would be subject to legal norms applicable to other Intellectual properties. Satyam Infoway Ltd sought protection of the corporate name SIFY coined by using the elements of its corporate name 'Satyam Infoway Ltd'. While so, the respondent, SIFYNET

⁸ Foot note supra 1



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Solutions Private Limited (Sifynet) had registered the domain names 'www.siffynet.net' and 'www.siffynet.com' on and with effect from 05.06.2001.

39. SATYAM had served notice on Siffynet asking it to cease and desist from using those domain names and followed it up with the suit before the City Civil Court. The City Civil Court allowed an application for temporary injunction holding that SATYAM was a prior user of the name 'SIFY' and since the domain names of the respondent were similar to the names used by SATYAM, it would cause confusion in the minds of the general public.

40. SIFYNET filed an appeal which came to be allowed by the High Court, which felt that SATYAM had not established that it had significant reputation and goodwill in respect of the domain name SIFY. The High Court was also of the view that the business interests of the two entities were dis-similar and since Sifynet had spent huge amounts in establishing and growing its business it would put to great hardship and inconvenience by virtue of the interim order granted by the court below.

41. In appeal by SATYAM before the Supreme Court, the Court held firstly, that domain names would be entitled to legal protection under the laws relating to passing off. Passing off action would be based on the goodwill that a merchant has established in his name and a distinction was made in respect of action for infringement of trademark, where the right of a merchant would be based on property in that name. Hence, the



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Court required SATYAM to establish that the public associated its services with the name 'SIFY'.

42. Substantial evidence was placed by SATYAM in that regard, considering which, the Court appreciated that a prima facie case has been made by SATYAM to establish goodwill and reputation claimed by it in connection with the trade name 'SIFY'. The relevant paragraph reads as follows:-

28. In support of its claim of goodwill in respect of the name of "Sify", the appellant had brought on record press clippings of articles/newspapers in which the appellant has been referred to as "Sify". For example, a news item published in The Hindu on 5-5-2000 talks of "Sify plans of internet gateways". Another article published in The Business Standard on 11-5-2000 says "Sify chief sees strong dotcom valuations rising". There are several other publications filed along with the plaint all of which show that the appellant was referred to as "Sify". That the listing of the appellant with NASDAQ in 1999 under the trade name "Sify" was featured on several newspapers has been established by copies of the news items. Documents have also been produced to show that the appellant had been awarded prizes in recognition of achievements under the trade name "Sify". For example, the Golden Web Award for the year 2000 was awarded to the appellant's corporate site www.sifycorp.com. A number of advertisements in connection with "e-market services from Sify". "Messaging solutions from Sify" have also been filed. It is unfortunate that none of these documents were even noticed by the High Court. We have, therefore, been constrained to appreciate the evidence and on doing so, we have reached, at least prima facie conclusion that the appellant has been able to establish the goodwill and reputation claimed by it in connection with the trade name "Sify".



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43. Yet another ground on which the appeal came to be allowed was the phonetic similarity between 'SIFY' and 'SIFFY'. The Court held that mere addition of the word 'net' to 'fifty' would not detract from the similarity. What also appealed to them was the timing in the matter, where SIFYNET had adopted the mark long after SATYAM had. Hence, SATYAM was a prior user and, the Court held, had the right to de-bar the respondent from eroding the goodwill and reputation built by it in connection with the name.

44. The substantial similarity in the name, the Court held, would cause confusion in the minds of an unwary user of the internet in possession of average intelligence and imperfect recollection who may assume a business connection between the two entities. The use of the extra 'f' in 'siffy.net' would only add to that confusion rather than provide a point of distinction.

45. Siffynet had taken the argument that there were several similar domain names such as scifinet, scifi.com and others, which submission the Supreme Court repelled, pointing out that the word 'sci-fi' is an abbreviation of the words science fiction and is also phonetically dissimilar to the word 'sify'. In regard to the argument regarding dissimilarity of services, the Court negated the same as being factually irrelevant as the domain name would be the basis of use by all internet users. The relevant paragraph in this regard is as below:-



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"33.The respondent then says that confusion is unlikely because they operate in different fields. According to the respondent its business is limited to network marketing unlike the appellant which carries on the business of software development, software solution and connected activities. The respondent's assertion is factually incorrect and legally untenable. A domain name is accessible by all internet users and the need to maintain an exclusive symbol for such access is crucial as we have earlier noted. Therefore a deceptively similar domain name may not only lead to a confusion of the source but the receipt of unsought-for services. Besides the appellant has brought on record printouts of the respondent's website in which it has advertised itself as providing inter alia software solution, integrating and management solutions and software development covering the same field as the appellant. To take a specific example, the respondent's brochure explicitly offers intranet and extranet solutions which are also explicitly offered by the appellant. There is clearly an overlap of identical or similar services. It may be difficult for the appellant to prove actual loss having regard to the nature of the service and the means of access but the possibility of loss in the form of diverted customers is more than reasonably probable."

46. They also rejected the argument of bonafide, concurrent use holding that the explanation put forth by siffynet was not acceptable and that was not a case where the right of use, of the two parties was co-equal.

47. In my view, the circumstances envisaged under Section 12 of the Act in regard to bonafide and concurrent use would also not be attracted to the facts of the present case. Even if one were to assume that the use was bonafide, which aspect I address in the paragraphs to follow, it is certainly not concurrent. The petitioner has been in operation since 1987, having successfully completed 25 years of existence in 2012.



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48. R1, for its part, has registered the marks only in 2015 claiming use since 2003. Hence and even on the admitted dates, the petitioner's school has had a head start for over 15 years and the prior, long and continuous use of the mark by the petitioner must be enure to its benefit.

49. In *Anjani Kumar Goenka*, the plaintiffs were aggrieved by the adoption of the mark 'Goenka' by the respondents. The plaintiffs had been using the name/mark 'Goenka' or 'GD Goenka' from 1994. The defendant, Goenka Institute of Education & Research had also been using the term 'Goenka' from various years in its educational institutions.

50. After an examination of the documents filed, the Delhi High Court recorded a prima facie observation that the material on record indicated that the name 'Goenka' was used by the defendant only from 2004 – 05. There was nothing to indicate any use prior thereto. The specific argument taken by the defendants was that Goenka was a common surname and cannot be monopolised by the plaintiff and that in that case it had not acquired any distinctiveness.

51. After dealing with several cases relating to infringement and passing off, balance of convenience was maintained by the Court permitting the defendant to use the word 'Goenka' in respect to four schools alone, injuncting them from using it in respect of certain other schools, where the Court felt that held that the defendants had not established long term usage. I am of the view that the facts of this case are dissimilar and distinguishable from the facts in the present case.



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52. Coming to the aspect of bonafide use, in Ex.8, the petitioner has placed on record an advertisement of R1 in the Hindu dated 19.05.2003, calling for 'Anglo Indians to teach kids in Tirupur very urgently'. The contact in that advertisement is 'Abacus Montessori School'. In the Economic Times dated 27.03.2009, there is an advertisement released by R1 advertising the facilities for 'Abacus International Montessori School (CBSE)'.

53. A perusal of the aforesaid two documents placed as Ex.8 makes me question the bonafides of R1 School. Clearly in 2003, the school advertised its existence with a mark identical to the petitioner's school. It is only in 2009 that the word 'International' appears to have been inserted in the title.

54. Quite apart from R1 being a subsequent entrant into the arena of education when compared with the petitioner, the attempt to ride on the reputation of the petitioner is quite evident as the name of the school in 2003 is stated to be 'ABACUS MONTESSORI SCHOOL'. The various documents placed in regard to reputation and goodwill of the petitioner believe me no doubt that its reputation would certainly have travelled 500 kms between Chennai and Tiruppur.

55. In any event, the founders of R1 School, being in the sphere of Montessori Method of education, as is the petitioner, could not, but have known of the existence of the petitioner's school in 2003 as, on that date, the petitioner had completed 16 years of existence.



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56. At this juncture it would be apposite to note that the petitioner has supplied, in Ex.3, particulars of expenditures incurred by it towards marketing and promotion:-

Year	Marketing and Promotional Expenses (INR)
2000-2001	8217
2001-2002	11290
2002-2003	7406
2003-2004	7406
2004-2005	16392
2005-2006	16392
2006-2007	27202
2007-2008	15484
2008-2009	98968
2009-2010	41328
2010-2011	82413
2011-2012	48118
2012-2013	57481
2013-2014	69439
2014-2015	58745
2015-till date	131705

57. The incurrence of the expenditure would establish that the activities of the petitioner had been advertised over the years from 1987 onwards. That apart, the petitioner school being one of the early entrants to the Montessori method of instruction in Chennai, would certainly have come to the notice of the management / founders of R1 school. In this light of the matter, I am of the categoric opinion that use of the identical



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mark by R1 'ABACUS' is nothing but an attempt to pass off R1 school as related to, or a branch of the petitioner school itself.

58. The comparative marks as well as the points of similarity as set out in the petitioner's application are as below:-

Petitioner's Mark	Respondent's Mark
ABACUS MONTESSORI SCHOOL	ABACUS INTERNATIONAL MONTESSORI SCHOOL



S.No.	Point of Similarity	Petitioner	1 st Respondent
1.	Trademark	ABACUS MONTESSORI SCHOOL	ABACUS INTERNATIONAL MONTESSORI SCHOOL
2.	Services Provided	Educational services namely running of schools	Educational services namely running of schools
3.	Classes	Pre- primary to 12 th Std.	Pre- KG to 12 th Std.
4.	Method of Teaching	Montessori Method	Montessori Method
5.	Geographical location	Chennai, Tamil Nadu	Tirupur, Tamil Nadu
6.	Preamble	Children should be given the opportunity to choose and direct their own learning and together make ground rules for the group.	Children are encouraged to develop their maximum potential characterized by self - confidence and independent thinking.



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S.No.	Point of Similarity	Petitioner	1 st Respondent
7.	Website	Available	Available
8.	Media Presence	Available	Available

59. The period of operation of the petitioner school is not in question since sample registration and admission forms evidencing admission of students on various dates from 1987 to December, 2014 have been placed on file. (Ex.5 at pages 266 to 440 of compilation dated 25.05.2015).

60. Media reports establishing the existence of petitioner's school and its activities have been placed on record vide Ex.6. The involvement and participation of the petitioner in the conference conducted by the International Montessori Association are part of these exhibits.

61. I do not see the necessity of adverting further or in detail to these documents as R1 has not really disputed the aspects relating to prior use of the mark since 1987, and the existence and continued functioning of the petitioner school since then.

62. The geographical locations of the two schools are not that very distant from one another. In any event, this point is not really relevant as schools run by a common management are known to operate at various locations, sometimes separated by great distances. Hence it is no argument that the location of R1 School (in Tirupur), would not result in confusion. Confusion, in my categorical view, would arise merely on adoption of the identical mark wherever the school may be located.



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63. For the detailed reasons as aforesaid, this original petition is allowed and R2 is directed to expunge the impugned registration bearing No. 1586733 under Clause 41 from the Trade Marks register. No costs.

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Index : Yes
Neutral Citation: Yes
ssm

To
The Registrar of Trade Marks
Trade Marks Registry,
Chennai.

DR.ANITA SUMANTH,J.

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