



IN THE HIGH COURT OF JUDICATURE AT MADRAS

**DATED: 18-12-2025**

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**THE HONOURABLE MR JUSTICE N. ANAND VENKATESH**

**CMA(TM) No. 25 of 2025**

1. Gibraltar (uk) Limited  
1 Croft Court Plumpton Close,  
Whitehills Business Park,  
Blackpool, Lancashire, FY4 SPR,  
United Kingdom

Appellant(s)

Vs

1. The Registrar Of Trade Marks  
Trade Mark Registry, Anna Salai,  
Guindy Industrial Estate, SIDCO  
Industrial Estate, Guindy,  
Chennai 32, Also at Trade Marks  
Registry, Intellectual Property  
Building, G.S.T Road, Guindy,  
Chennai 32

Respondent(s)

**PRAYER**

Appeal filed under Section 91 of the Trade Mark Act, 1999, praying  
to set aside the impugned order dated 31.01.2025 and direct the  
Respondent to accept the Trademark Application No. 5343559.

For Appellant(s): M/s. Mansi Gautam  
For Mr.K.Gangadharan  
Respondent(s): Central Government  
Standing Counsel



## **ORDER**

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This appeal has been filed under Section 91 of the Trade Marks Act, 1999 (hereafter referred to as the Act) against the order passed by the respondent dated 31.01.2025 and for a direction to the respondent to accept the Trade Mark application No.5343559 and to advertise the same.

2. Heard Mr.Mansi Gautam, learned counsel for the Appellant and Mr.K.Gangadharan, learned Central Government Standing counsel for respondent.

3. The case of the appellant is that they are engaged in the business of developing and manufacturing high quality veterinary nutraceutical. The further case of the petitioner is that they have adopted the mark PROMAX gobally since 2005 and in India since 20.09.2013 and they have developed substantial goodwill and recognition in relation to the goods for which the mark is used.

4. The appellant submitted the trade mark application No.5343559 on 24.02.2022 under class 31 for the Mark PROMAX.



The application was objected under Section 11(1) of the Act since the mark is identical with or similar to earlier marks in respect of identical or similar description of goods and because of such identity or similarity, there is a livelihood of confusion on the part of the public and accordingly, the examination report was issued on 18.04.2022 and the respondent had cited four cited marks which were found similar to the mark for which the appellant had submitted the application. Under these circumstances, the application came to be rejected by the respondent through the impugned order dated 31.01.2025. Aggrieved by the same, the present appeal has been filed before this Court.

5. The main ground that was urged by the learned counsel for the appellant is that the cited marks viz., PROMAX-SMS, PROMAX-XL, PROMAX-PHY and the appellant's mark PROMAX should not be dissected while comparing the same and they have to be viewed as a whole. The learned counsel further submitted that the appellant is a prior user internationally since 2005 and subsequently in India since 2013. Therefore, since the appellant is the undisputed prior user, due weightage ought to have been given by the respondent and the respondent must have proceeded further and accepted the



application and advertised the same.

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6. The examination report shows that there were already three cited marks registered under class 31 for similar products which were put against the appellant. In fact, insofar as PROMAX SMS is concerned, their date of application was on 03.02.2011 which is much prior to the appellant using the mark PROMAX in India since 2013.

7. The learned counsel for the appellant submitted that for the very same mark, the application was entertained under class 5 and therefore, there cannot be any objection in entertaining the application under class 31.

8. In reply to the above submission the learned counsel for respondent submitted that the application was entertained since it fell under different class and whereas, insofar as the case in hand, all the three cited marks were under the same class 31. Therefore, entertaining application for a different class cannot be taken advantage while dealing with the present application which admittedly was submitted under class – 31.



9. On carefully reading the order passed by the respondent, it is seen that the respondent has taken note of the three cited marks as is evident from the examination report and it was found that the marks cited “PROMAX” formative mark with similar classification is already on record. The respondent came to a conclusion that the appellant’s mark is deceptively similar to the cited mark. Apart from that the appellant was attempting to register a single word PROMAX and whereas all the cited marks are PROMAX formative marks. Therefore if the single word PROMAX is proceeded further, the appellant will get the exclusive right over that word. In such an event, the appellant will be creating a monopoly insofar as that word is concerned which is already used by three others as a prefix for a similar product.

10. This Court does not find any illegality in the order passed by the respondent and it is well within the power and jurisdiction conferred under Section 11 of the Act. As rightly pointed out by the learned counsel for the respondent, the application entertained under class 5 cannot be a ground to entertain the present application under class 31. Therefore, if at all the appellant wants to use this mark,



the appellant has to necessarily include suffix to the word PROMAX and submit a fresh application to the respondent. Except giving this liberty, no further orders can be passed in this appeal.

11. In the result, the order passed by the respondent dated 31.01.2025 is hereby confirmed and the appeal stands dismissed. No costs.

**18-12-2025**

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Index:Yes/No  
Speaking/Non-speaking order  
Internet:Yes  
Neutral Citation:Yes/No



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**N.ANAND VENKATESH J.**  
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