



(T)OP(CR)/6/2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.02.2025

CORAM

THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

(T)OP(CR)/6/2024
(T.P.19/SZ/CR/2020)

Apex Laboratories Private Limited,
Having their Registered Office at No.76,
C.P.Ramaswamy road, Alwarpet, Chennai 600 018.

... Petitioner

-VS-

1.The Registrar of Copyrights,
Copyright Office, 4th Floor, Jeevan Deep building,
Parliament Street, New Delhi - 110 001.

2.K.Prasad Reddy

... Respondents

PRAYER: Transfer Original Petition (Copyrights) filed under Section 50 of the Copyrights Act, 1957, praying to rectify the Register of Copyrights by expunging the registration under No.A-90270/2011 dated 29.03.2011 for “ZINCOVIT WITH FRUITS DEVICE LABEL” granted to the 2nd respondent with costs to the petitioner.

For Petitioner : Mr.R.Sathish Kumar



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For R1 : Mr.M.Karthikeyan, SPC

For R2 : Set *ex parte* vide order dated 28.01.2025

ORDER

The petitioner seeks rectification of the Register of Copyrights by expunging the registration under No.A-90270/2011 dated 29.03.2011 for “ZINCOVIT WITH FRUITS DEVICE LABEL”, which was granted to the 2nd respondent.

2.Pursuant to order dated 20.08.2024, substituted service was effected on the 2nd respondent. Thereafter, by order dated 07.01.2025, substituted service was ordered for the second time. On 28.01.2025, after examining the affidavit of service along with paper publication, this Court set the 2nd respondent *ex parte*. The matter is listed today for arguments.

3.Learned counsel for the petitioner submits that the petitioner is engaged in the sale of pharmaceutical products. In course of business, it is stated that the trade mark ZINCOVIT was adopted by the petitioner in the



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year 1988, and that the trade mark was registered as a word mark on 16.03.1988 in respect of pharmaceutical and medicinal preparations. It is further stated that a distinctive label for the product carton was adopted by the petitioner, and that the label/carton contains the depiction of fruits and vegetables in a particular manner. By virtue of creating the said artistic work, the petitioner asserts that it is the first owner of the copyright in the said artistic work. The petitioner further states that it applied for and obtained such registration of copyright as No.A.54243/1997. The petitioner also states that the registration certificate specifies the year of publication as 1990.

4. According to the petitioner, an agreement dated 24.08.2007 was entered into with the 2nd respondent for the manufacture of products under the trade mark ZINCOVIT SYRUP by Hezen Pharmaceuticals Limited, which is said to be an entity promoted by the 2nd respondent. The petitioner asserts that the 2nd respondent was permitted to affix the trade mark ZINCOVIT on products manufactured and supplied to the petitioner. On the ground of breach of terms of the agreement, the agreement was terminated



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by the petitioner on 06.02.2009. Because the petitioner applied for trade mark registrations for the trade mark ZINCOVIT in multiple classes and even obtained such registration in class 29, disputes arose between the parties. The present petition was filed in the above facts and circumstances.

5.Learned counsel for the petitioner invited my attention to the petitioner's trade mark registration certificate, copyright registration certificate and the impugned copyright registration of the 2nd respondent. In particular, he pointed out that the application was made by the 2nd respondent on 29.12.2009 and that such application was granted on 29.03.2011 under No.A-90270/2011. He also pointed out that the correction of the year of publication is by hand and cannot be taken into account.

6.By referring to a judgment dated 11.07.2014 of the Division Bench of the Allahabad High Court, he submitted that the Court concluded that the copyright of the defendant therein (the petitioner herein) was registered on 22.10.1997, and that the registered copyright of the plaintiff therein (2nd respondent herein) was more or less identical to the artistic work of the



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defendant. Learned counsel also pointed out that applications of the 2nd respondent for registration of the trade mark ZINCOVIT in Classes 31 & 32 were dismissed as abandoned. As regards the registration in Class 29 under trade mark No.1810642, he submitted that the register was directed to be rectified by order dated 14.06.2024 in (T)OP(TM) No.443 of 2023 by this Court.

7.On examining the trade mark registration of the petitioner, it is evident that the petitioner registered the word mark ZINCOVIT with effect from 16.03.1988 in respect of pharmaceutical and medicinal preparations. The copyright registration certificate of the petitioner discloses that the artistic work bearing the word ZINCOVIT SYRUP and depicting fruits and vegetables in a particular manner was first published in the year 1990 and registered on 22.10.1997 under Registration No.A-54243/1997. The petitioner has also placed on record the supply agreement dated 24.08.2007 between the petitioner and Hezen Pharmaceuticals Limited. The said agreement has been signed by the 2nd respondent for and on behalf of the



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said entity.

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8. On comparing the artistic work of the petitioner with that of the 2nd respondent, it is evident that the artistic work of the 2nd defendant is a copy or at least a substantial copy of the petitioner's earlier work. The Registration Certificate indicates that it was issued on 29.03.2011. The Division Bench of the Allahabad High Court recorded the finding that the petitioner was the prior user. The civil suit under which the appeal arose was subsequently dismissed. In these circumstances, the petitioner has made out a compelling case for expunging the copyright of the 2nd respondent from the Register of Copyrights because it was wrongly entered on the register.

9. For reasons set out above, (T)OP(CR)No.6 of 2024 is allowed without any order as to costs by directing the 1st respondent to rectify the Register of Copyrights by expunging the registration of the 2nd respondent under No.A-90270/2011 dated 29.03.2011 for “ZINCOVIT WITH FRUITS DEVICE LABEL”. All necessary actions in this connection shall be taken within four weeks from the date of receipt of a copy of this order. No costs.



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Index : Yes / No

Internet : Yes / No

Neutral Citation: Yes / No

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To

The Registrar of Copyrights,
Copyright Office, 4th Floor, Jeevan Deep building,
Parliament Street, New Delhi - 110 001.

SENTHILKUMAR RAMAMOORTHY,J.

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