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CMA(TM).No.3 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **11.03.2025**

CORAM

THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

CMA(TM)No.3 of 2025

M/s. EFFRA LIFE SCIENCE,
Rep. by its Proprietor S.Kannan,
Door No.5/2E, Chanakyan Street,
Annamalai Avenue, MAA SAI NILAYAM,
Nolambur, Thiruvallur, Tamilnadu-600095.

... Appellant

-VS-

The Registrar of Trade Marks,
Trade Marks Registry,
Intellectual Property Office Building,
GST Road, Guindy, Chennai-600 032.

... Respondent

Prayer: Civil Miscellaneous Appeal (Trademarks) filed under Section 91 of the Trademarks Act, 1999, to set aside the refusal order of respondent dated 03.10.2024, in the application No.5838712 of device mark



, and consequently direct the respondent to advertise the said device/Trade Mark in the Journal.

For Appellant : Mr.S.Nelson



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For Respondent : Mr.K.Subbu Ranga Bharathi, CGSC

JUDGMENT

This appeal is directed against the order dated 03.10.2024 rejecting application No. 5838712 for registration of the following device mark:



The appellant applied for registration of the above mentioned trade mark on 07.03.2023 in class 35. The appellant is engaged in the business of marketing and promoting pharmaceutical products.

2. The examination report was issued on 25.09.2023. In such report, the respondent raised an objection under Section 11(1) of the Trade Marks Act, 1999 (the TM Act) by citing the following mark:



The appellant replied to the examination report on 21.10.2023. In the reply,



the appellant stated that there is no similarity between the cited mark and the appellant's mark. It was also stated that the mark should be compared as a whole and not by dissecting the same into its elements. The order impugned herein was issued in the said facts and circumstances.

3. The nature of the appellant's business is evident from the documents on record, especially the invoice annexed to the user affidavit dated 28.07.2024. The said affidavit and invoice disclose that the appellant is a proprietary concern under the name and style of M/s.EFFRA LIFE SCIENCES and that the appellant markets pharmaceutical products. The cited mark is a device mark. The appellant applied for registration under class 35 and the cited mark, which is at the stage of having been accepted and advertised, is also in class 35. Nonetheless, it should be recognised that trade mark protection is limited to similar or cognate goods and services unless the relevant trade mark is a well known mark, as defined in the TM Act.

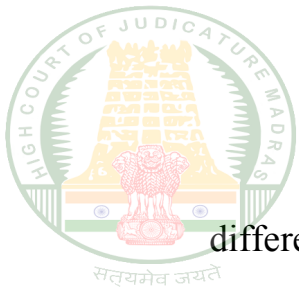


4. In the impugned order, the application was rejected by holding, in relevant part, as under:

“The rights conferred by registration of trademark is subject to the rights of the prior application/prior user of the marks. The mark taken in its entirety is significantly identical with and/or deceptively similar to the cited mark. Also the goods/services in respect of which the applicant is seeking registration are the goods/services of same description as those of the cited mark. Therefore the balance of convenience is clearly in favor of the cited mark. Hence the objections:

The mark applied for registration is identical with/similar to earlier trademarks on record, as mentioned in the Examination report and by similarity of marks as well similarity of goods and services covered under such marks, there exists a likelihood of confusion in the mind of public. As such the registration of the mark is objectionable under Section 11(1) of the Trade Marks Act, 1999. ”

While recording the above conclusion, the respondent has completely failed to notice that the appellant is engaged in a business which is completely



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different from the business of providing repair and installation of machinery and equipment, which the proprietor of the cited mark appears to undertake.

Merely because the applications are under the same class, the request for registration cannot be rejected.

5. Therefore, the impugned order dated 03.10.2024 is set aside. The application shall proceed to advertisement. It is, however, made clear that this order will not be binding on opponents, if any.

6. CMA(TM)No.3 of 2025 is disposed of on the above terms without any order as to costs.

11.03.2025

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 Office Building,
GST Road, Guindy, Chennai-600 032.

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SENTHILKUMAR RAMAMOORTHY,J.

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