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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **21.11.2024**

CORAM

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

CMA (TM) No.11 of 2024

Bovian Pharma Pvt. Ltd.,
represented by its Director Vatsal Patel .. Appellant

(cause title accepted vide order dated
11.06.2024 in C.M.P. No.11216 of 2024
in C.M.A. (TM) SR.128928 of 2023)

-vs-

The Registrar of Trade Marks,
Patent Office Intellectual Property Building,
G.S.T.Road, Guindy,
Chennai - 600 032,
Office of Trade Marks Registry. .. Respondent

Prayer: This Civil Miscellaneous Appeal filed under Section 91 of the Trade Marks Act, 1999 read with Rule 7 of Madras High Court IPD Rules, 2022 to set aside the order passed by the respondent in Application No.3533333 in order dated 05.07.2023 and direct the respondent to publish the said application in the Trade Mark Journal within the prescribed time fixed by this Court.

For appellant : Mr.P.C.N.Raghupathy

For respondent : Mr.A.R.Sakthivel,
SPLGSC

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JUDGMENT

This appeal has been filed, challenging the impugned order dated 05.07.2023 passed by the respondent, refusing to register the appellant's Trade Mark 'BOOSTMIN' under Class 5.

2.As seen from the impugned order, the reasons for refusal are as follows:

> 'Since the appellant's mark 'BOOSTMIN' is identical to similar marks, which are under consideration for registration, the appellant's mark cannot be registered as per the provisions of Section 11 of the Trade Marks Act, 1999.'

3.Learned counsel for the appellant filed an additional typed set of papers before this Court and he drew the attention of this Court to the identical marks relied upon by the respondent, while refusing to register the appellant's Trade Mark for registration. He would submit that in respect of the first mark, viz. 'BOOSTIN', the trade mark registration has not been renewed and therefore, the respondent should not have any objection in registering the appellant's Trade mark. He would also submit that in respect

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of the second cited mark 'BOOSTWIN SYRUP' is concerned, an Opposition Petition has been filed opposing its registration and the same is pending consideration by the respondent and therefore, there cannot be any bar for the respondent to permit the appellant to publish its Trade Mark 'BOOSTMIN' in the Trade Marks Journal and receive oppositions, if any in respect of the appellant's mark 'BOOSTMIN'.

4.Admittedly, the Opposition Petition filed in respect of the second cited mark namely, 'BOOSTWIN SYRUP' is concerned, the same is still pending on the file of the respondent and no final orders have been passed in the said Opposition Petition by the respondent. It is also an admitted fact that the first cited mark i.e. 'BOOSTIN' is concerned, the trade mark registration obtained for the same, has got expired and it has not been renewed. The same is confirmed in the impugned order. The appellant's Trade Mark is registered under Class 5. The appellant is manufacturing Feed Supplement for animals and their products are being sold under the Trade Mark 'BOOSTMIN'.

5.Learned counsel for the appellant would submit that apart from the

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evidence placed on record before the respondent, the appellant is having further evidence to prove that the appellant's Trade Mark 'BOOSTMIN' is not identical or deceptively similar to any of the cited marks as reflected in the impugned order.

6.Since the first cited mark i.e. 'BOOSTIN' has not been renewed and its registration has got expired and in respect of the second cited mark i.e. 'BOOSTWIN SYRUP', there is an Opposition Petition pending, this Court is of the considered view that no prejudice would be caused to the respondent if the impugned order is quashed and Trade Mark Application of the appellant is considered afresh by the respondent, on merits and in accordance with law, after affording an opportunity to the appellant to produce additional evidence in support of the appellant's case that they are entitled for trade mark registration in respect of their Trade Mark 'BOOSTMIN' under Class 5.

7.For the foregoing reasons, the impugned order dated 05.07.2023, passed by the respondent is hereby quashed and the matter is remanded back to the respondent for fresh consideration of the appellant's Trade Mark

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Application in A.No.3533333, on merits and in accordance with law, after permitting the appellant to produce additional evidence in support of their claim for trade mark registration in respect of their Trade Mark 'BOOSTMIN' under Class 5. The respondent is directed to pass final orders within a period of six months from the date of receipt of a copy of this order.

8.With the above observation and direction, this appeal stands disposed of. No costs.

21.11.2024

vga
Index : Yes/No
Speaking/Non Speaking Order
Neutral Citation Case : Yes/No

To

The Registrar of Trade Marks,
Patent Office Intellectual Property Building,
G.S.T.Road, Guindy,
Chennai - 600 032,
Office of Trade Marks Registry.

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ABDUL QUDDHOSE,J.

vga

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