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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ C.A.(COMM.IPD-TM) 59/2021

MEDICON EG CHIRUGIEMECHANIKER-GENOSSENSCHAFT ..... Appellant

Through: Ms. Anshu Davar, Advocate.

versus

THE REGISTRAR OF TRADEMARKS AND ANR..... Respondents

Through: Mr. Harish Vaidyanathan Shankar, CGSC with Mr. Srish Kumar Mishra, Mr. Sagar Mehlawat and Mr. Alexander Mathai Paikaday, Advocates for R-1.

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

O R D E R

% 03.03.2023

1. Appellant's notice of opposition (Opposition No. 878615) to Trade Mark Application No. 1931691 for the trademark 'ROMSONS MEDICONS' under Class-10 [hereinafter "*subject mark*"] has been deemed to be abandoned due to non-filing of evidence in support of opposition under Rule 45 (2) of the Trade Marks Rules, 2017 [hereinafter "*TM Rules*"] and consequently, the subject mark has been registered in favour of Respondent No. 2 – Mr. Vikas Khanna (Trading as 'Romsons Medicons'), *vide* the impugned order dated 07th June, 2019.

2. Briefly put, Appellant [hereinafter "*Opponent*"] is the registered

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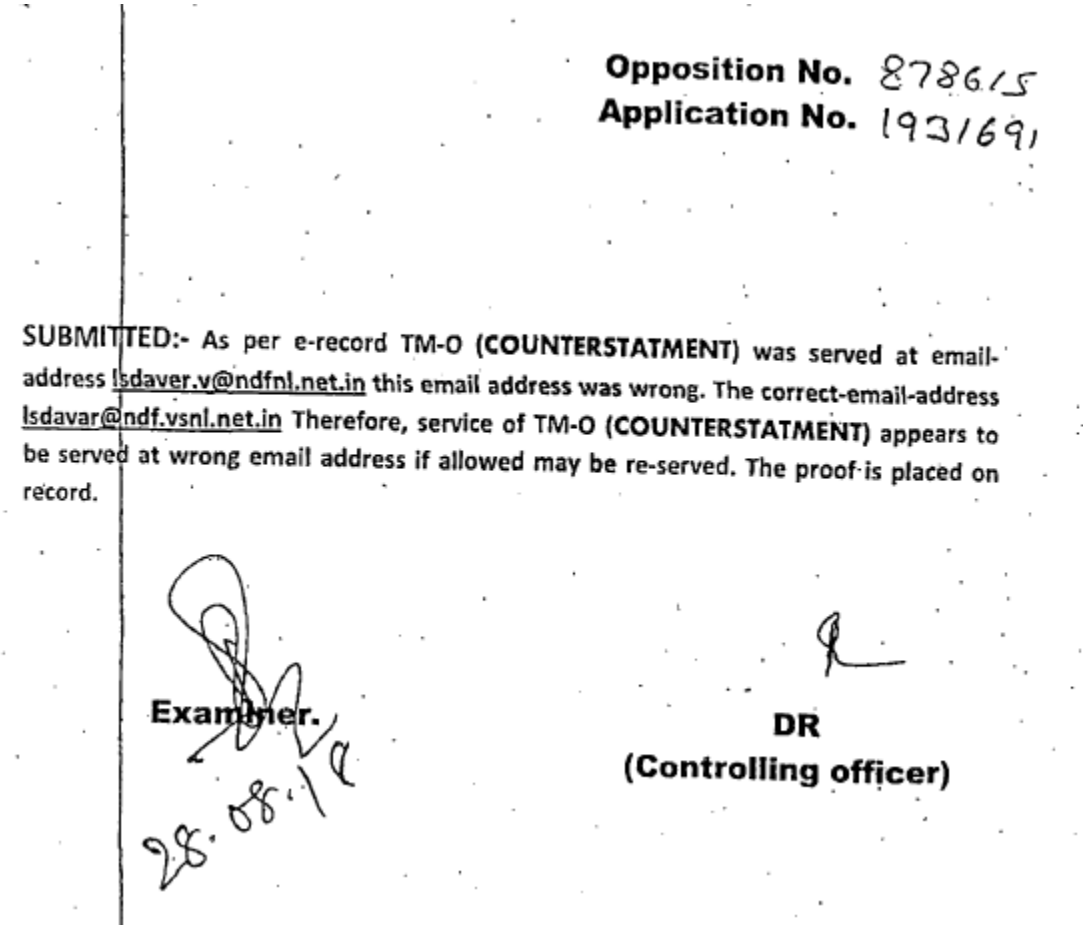
proprietor of the mark 'MEDICON' under Classes-10, 35 and 41,[1] which is primarily used in the medical arena. Respondent No. 2 [hereinafter "*Applicant*"] applied for registration of the subject mark under Class-10 on 05th March, 2010 and on its acceptance and advertisement, Appellant/ Opponent filed its notice of opposition on 20th February, 2017. In reply, Applicant filed its counterstatement, but the same was not served on the Opponent within the timelines prescribed under TM Rules.

3. On reviewing the status of its opposition proceedings on Trade Mark Registry's portal, Opponent was surprised to notice that a communication dated 13th December, 2017 was dispatched to Opponent's Attorney (*vide* Dispatch No. 2379687) and also uploaded on the portal indicating that copy of Applicant's counterstatement (dated 19th August, 2017) was enclosed with the communication. Opponent's Attorney had not received a copy and an e-mail communication dated 20th March, 2018 was sent to the Registrar of Trade Marks, apprising him of non-receipt of counterstatement, and the incorrect status reflected on the portal. In the same communication, Opponent's Attorney requested that for supply of Applicant's counterstatement for filing evidence in support of opposition under Rule 45 of TM Rules. In the said communication, as a matter of abundant caution, Opponent also stated that they are relying on the grounds taken in the notice of opposition and reserve their right to file evidence in support thereto upon receipt of counterstatement. Appellant sent a follow-up/ reminder e-mail dated 28th March, 2018, however, no response was received to either of the above communications.

[1] Trade Mark Applications No. 1772274 (*qua* Class 10) and 2522192 (*qua* Classes 35 and 41).

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4. Opponent also noticed Examiner's internal office noting dated 28th August, 2018, acknowledging the error in recording the e-mail address of the Attorney for service and directing fresh service of counterstatement. The same is extracted hereinbelow: -



Opposition No. 878615
Application No. 193169

SUBMITTED:- As per e-record TM-O (COUNTERSTATMENT) was served at email-address lsdaver.v@ndfnl.net.in this email address was wrong. The correct-email-address lsdavar@ndf.vsnl.net.in Therefore, service of TM-O (COUNTERSTATMENT) appears to be served at wrong email address if allowed may be re-served. The proof is placed on record.

Examiner.
28.08.18

DR
(Controlling officer)

5. Pursuant to the above correction, Opponent's Attorney received an e-mail from Trade Marks Registry on 29th August, 2018 purportedly serving the copy of Applicant's counterstatement. However, the said communication only contained Form TM-O (Form of counterstatement) *sans* detailed grounds of counterstatement. This discrepancy was brought to the notice of

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Trade Mark Registry *vide* communication dated 01st September, 2018, wherein Opponent highlighted that the detailed grounds of counterstatement was not received by them. The opponent prayed that Applicant's Trade Mark Application should be deemed to be abandoned under Section 21(2) of the Trademarks Act, 1999 for deficient filing.

6. Later, Respondent No. 1 *vide* notice dated 15th April, 2019 scheduled hearing on 08th May, 2019. On the said date of hearing, the portal reflected Applicant's date of filing of counterstatement along with detailed statement of grounds dated 18th August, 2017. The same was contrary to record and Applicant had also not paid the prescribed fee.

7. At the time of hearing, Opponent's Attorney brought the aforenoted facts to the notice of Respondent No. 1, however, such submissions were not entertained, and the impugned order dated 07th June, 2019 was passed, as under: -

"***ORDER***

Proceedings were initiated under Section 21 of the Trade Mark Act. 1999, by the above named opponent to oppose the registration of trade mark applied for by the above named applicant and whereas the Counter Statement was filed by the applicant and the same was served to the opponent on and whereas within the time prescribed under the rules, neither any evidence in support of opposition was filed nor any statement was submitted on behalf of the opponent to the effect that the opponent does not desire to adduce evidence but wants to rely on the facts mentioned in the Notice of Opposition. The above mentioned opposition is, therefore, doomed to have been abandoned under Rule 45(2) of the Trade Marks Rules 2017. The above mentioned application shall proceed further as per rules.

IT IS HEREBY FURTHER ORDERED that there shall be no order as to cost of these proceedings.

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Signed and Sealed at Delhi dated this 07 June, 2019"

[Bold and underlining in original]

8. The Joint Registrar in his order dated 08th February, 2023, (Judicial) has noted that Applicant (Respondent No. 2) has been served *through* e-mail, and courier as well as *dasti*. Despite service there is no appearance, and it is thus assumed that the Applicant does not wish to contest to the present petition. The Court has considered the aforenoted facts and correspondence exchanged between Opponent and Respondent No. 1, annexed with this Petition. The communications referred to in the preceding paragraphs confirm that the Opponent has been vigilant of its opposition proceedings and has been regularly following up with the Trade Marks Registry requesting for supply of detailed counterstatement, in order to file evidence to contradict the same. The correspondence exchanged with the Registry indicates that, at no point of time, Opponent was provided detailed grounds to the counterstatement. Therefore, Opponent's valuable right to contest the counterstatement and prosecute the opposition has been denied to them. The impugned order dated 07th June, 2019 holding Opponent's opposition as abandoned under Rule 45(2) of TM Rules is arbitrary and is not supported by the material on record. Counterstatement provided to Opponent without detailed grounds is violative of the TM Rules.

9. For the foregoing reasons, the impugned order is not sustainable and accordingly, the present appeal is allowed with following directions:

(i) Impugned order dated 07th June, 2019 is set-aside.

(ii) Opponent's opposition No. 878615 is restored to its original number.

(iii) Since Opponent has now received copy of the detailed

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counterstatement, they are permitted to file their evidence in support of their opposition, within timelines prescribed as per TM Rules which would be operative from the date of release of this order.

(iv) Since Opponent's opposition proceedings are being restored, registration of the Trade Mark Application No. 1931691 is cancelled and Registry is directed to issue an appropriate notice, to this effect and in line with the directions passed hereinabove.

10. Disposed of.

11. Registry is directed to supply a copy of the present order to the Trade Marks Registry at llc-ipo@gov.in for compliance.

SANJEEV NARULA, J

MARCH 3, 2023
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(Corrected and released on 20th March, 2023)

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