IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

IN ITS COMMERCIAL DIVISION

COMMERCIAL MISCELLANEOUS PETITION (L) NO. 27100 OF 2025

Entero Healthcare Solutions Limited ...Petitioner

Versus

Registrar Of Trade Marks ...Respondent

Mr. Kamod Mr. Jay Zaveri a/w. Ms. Kshamaya Daniel i/b Crawford Bayley & Co., for the Petitioner.

Mr. Anjani Kumar Singh a/w. Ms. Shilpa Gaikwad h/f Mr. Anjani Kumar Singh, for the Respondent.

CORAM : ARIF S. DOCTOR, J

RESERVED ON : 4th MARCH 2026

PRONOUNCED ON : 23rd MARCH 2026

JUDGMENT

1. The captioned Petition impugns an order dated 19th May 2025 ("**Impugned Order**") passed by the Respondent, i.e., Registrar of Trade Marks, rejecting the Petitioner's Application No. 6072440 ("**Subject Application**") for registration of the mark 'ENTERO', '  ' ("**Subject Mark**") as a device mark under Class 5.

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2. However, before considering the rival contentions, it is useful for context to set out the following facts, viz.

i. The Petitioner filed the Subject Application on 18th August 2023, pursuant to which a Preliminary Examination Report dated 22nd November 2023 ("**Examination Report**") was issued by the Respondent.

ii. The Examination Report raised an objection under Section 11(1) of the Trade Marks Act, 1999 ("**Trade Marks Act**"), i.e., that the subject mark was identical and/or deceptively similar to an earlier registered mark, i.e., "EnteroGG" ("**the cited mark**").

iii. The Petitioner then filed a detailed Reply dated 2nd December 2023 to the Examination Report, along with case law, in which the Petitioner *inter alia* set out (**a**) the Petitioner's honest and concurrent use of the subject mark and (**b**) the fact that the cited mark had never been used.

iv. A hearing was thereafter held on 15th May 2025, during which

the Petitioner filed a User Affidavit ("**User Affidavit**"), along with documentary evidence showing the Petitioner's continuous honest and concurrent use of the subject mark since the year 2018.

v. However, despite the material relied upon by the Petitioner to show honest and concurrent use of the subject mark, Respondent No. 1 passed the impugned order refusing the subject application, on the ground that the subject mark was identical/deceptively similar to the cited mark and due to similarity of marks, and goods and services covered under the marks, there would exist likelihood of confusion.

vi. Hence, the present Petition.

Submissions on behalf of the Petitioner:

3. Mr. Kamod, Learned Counsel appearing on behalf of the Petitioner, at the outset submitted that the impugned order was entirely devoid of any reasoning, much less cogent reasoning, dealing with the material upon which the Petitioner had placed reliance to support the

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Petitioner's case of honest and concurrent use of the subject mark.

4. He then pointed out that the impugned order was merely a reproduction of the Examination Report and simply held that the registration of the Petitioner's mark was objectionable under Section 11(1) of the Trade Marks Act, on the ground that the Petitioner's mark was identical/similar to the cited mark, along with the similarity of goods and services covered under the respective marks, giving rise to the likelihood of confusion in the mind of the public. He, however, reiterated that such a finding was wholly unreasoned since it failed to consider, much less dealt with, the Petitioner's case of honest and concurrent use of the subject mark since the year 2018 and the relevant case law cited in support thereof. He thus stated that the impugned order was passed in a mechanical manner and without any application of mind.

5. Mr. Kamod then submitted that it was well-settled that all orders and/or decisions of statutory bodies in the exercise of adjudicatory, judicial, quasi-judicial, or administrative powers/functions must be

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reasoned since reasons are the soul of any judicial or quasi-judicial decision. He submitted that this was more so when such orders were amenable to challenge since it was only on an assessment of the reasons contained in an order that an appellate court or authority could test the correctness, legality and validity of an order. In support of his contention, he placed reliance upon the decision in the case of ***Assistant Commissioner, Commercial Tax Department, Works Contract and Leasing, Kota v. Shukla and Brothers***[1].

6. Mr. Kamod then submitted that since the cited mark was not in use, the Petitioner became aware of the same only upon the examination report being filed by the Respondent. He further pointed out that the Petitioner had been continuously and extensively using the subject mark in the public domain since the year 2018 and that the Petitioner had never been made aware of any objection thereto by the proprietor of the cited mark.

7. He then, from the Petitioner's Reply to the Examination Report and

[1] (2010) 4 SCC 785.

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the User Affidavit, pointed out that the Petitioner had, *inter alia,* established the fact that the Petitioner (i) had honestly and independently adopted the subject mark in 2018; (ii) was one of India's largest pharmaceutical and healthcare supply chain companies, having a presence in 50 cities and 505 districts in India; (iii) has been enjoying tremendous reputation and goodwill in the pharmaceutical industry, trade, medical profession and amongst consumers in India; (iv) has been distributing and marketing a wide range of products which carry a high degree of confidence with doctors and hospitals, chemists, retailers and consumers; (v) has been using the subject mark which has built up substantial capital and recognition and was an integral and conspicuous part of the Petitioner's trading style and name; (vi) has the purchasing public and members of trade recognising and identifying the subject mark and, thereby, the Petitioner's goods; (vii) was listed on the Bombay Stock Exchange and the National Stock Exchange; (viii) also had an extensive presence on various social media platforms, in addition to being bestowed with several awards;

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(ix) had an extensive sales turnover of the products sold under the subject mark; (x) also expended significant monies in the manner of sales promotional expenses for widely advertising its products under the subject mark *via* electronic and print media accessible to millions of consumers in India. In contrast, he reiterated that the cited mark had never been used.

8. Mr. Kamod then pointed out that the Respondent had, in rejecting the subject application, entirely overlooked the provisions of Section 12 of the Trade Marks Act, which specifically contemplated registration of more than one identical/similar mark in respect of similar goods/services in cases of honest and concurrent use. In support of his contention, he placed reliance upon the decision of the Hon'ble Supreme Court in the case of ***London Rubber Co. Ltd. v. Durex Products Incorporated and Anr.***[2]

9. Basis the above, he submitted that the impugned order would have to be set aside since the Respondent had failed to give any reasons as to

[2] 1963 SCC OnLine SC 223.

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why the Petitioner would not be entitled to registration of the subject mark as per the provisions of Section 12 of the Trade Marks Act based on the material which was relied upon in the Reply to the Examination Report and the User Affidavit. He reiterated that the impugned order was therefore passed with complete non-application of mind and was devoid of any reasoning whatsoever with regards to the Petitioner's case of honest and concurrent use of the subject mark. He submitted that the matter must therefore be remanded back to a different Examiner of Trade Marks for the matter to be examined afresh in a time-bound manner.

Submissions on behalf of the Respondent:

10. *Per contra*, Ms. Singh, Learned Counsel appearing on behalf of the Respondent, opposed the Petition by submitting that the Petitioner was granted a hearing which was restricted only to the extent of determining the registrability of the subject mark under Sections 9 and 11 of the Trade Marks Act. She pointed out from the Respondent's Affidavit in Reply that the hearing officer did not have the power to

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"*dig into verifying the actual user of cited mark*"[3]. She submitted that the hearing officer had, in fact, considered all the relevant arguments advanced on behalf of the Petitioner at the time of the hearing and had, after a careful consideration of the same, correctly refused the registration of the subject mark under the provisions of Section 11(1) of the Trade Marks Act.

11. Ms. Singh then submitted that the Petitioner's contention of alleged non-use of the cited mark would fall entirely within the domain of rectification/cancellation of proceedings, which would lie under Section 47 of the Trade Marks Act. She thus submitted that neither the examiner nor the hearing officer would have the jurisdiction to adjudicate upon the issue of non-use when deciding an application for registration filed under Section 18(1) of the Trade Marks Act. She submitted that as long as the cited mark was validly registered, the examiner or hearing officer was bound to take cognisance of the same and could not ignore such fact on the ground of alleged non-use.

[3] Paragraph 17 of the Affidavit in Reply.

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12. Ms. Singh, therefore, submitted that the Petitioner's appropriate remedy was to file an Application under Section 47 of the Trade Marks Act for rectification/cancellation of the cited mark, which the Petitioner had failed to promptly do. Learned Counsel pointed out that the Petitioner had instituted rectification proceedings in respect of the cited mark only on 5th November 2025, which was after the institution of the present Commercial Miscellaneous Petition. She, therefore, submitted that the present Petition was misconceived and would have to be dismissed as such.

Reasons and Conclusions:

13. After having heard Learned Counsel for the parties and having considered the rival contentions, as also the case law upon which the Petitioner has placed reliance, I find that the Petition deserves to succeed. I say so for the following reasons:

A. At the outset, it is *ex facie* clear from a reading of the impugned order that it is unreasoned and has been passed in a mechanical manner with complete non-application of mind. The Petitioner's

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application has been dismissed solely under Section 11(1) of the Trade Marks Act and entirely ignores the material upon which the Petitioner has placed reliance to establish honest and concurrent use of the subject mark since the year 2018.

B. Respondent No. 1 has completely ignored or then overlooked the fact that Section 11(1) of the Trade Marks Act itself specifically carves out an exception in respect of those trade marks which satisfy the conditions laid down in Section 12 of the Trade Marks Act, i.e. (i) honest concurrent use or (ii) special circumstances.

C. The Petitioner has, in support of its case of honest and concurrent use of the subject mark, filed a Reply to the Examination Report as well as a User Affidavit in which the Petitioner has extensively set out material to show honest and concurrent use of the subject mark since the year 2018. *Crucially*, the Petitioner has also set out that the cited mark has in fact never been used. None of this even finds a mention in the impugned order, let alone any reasoning as to why despite this the Petitioner would

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still not be entitled to the rectification of the subject mark.

D. Additionally, and crucially, Section 18(5) of the Trade Marks Act mandates the Registrar to record reasons when refusing an application for a trade mark. Furthermore, Section 91 of the Trade Marks Act specifically provides for an appeal against any order passed by the Registrar, which would include an order refusing an application for registration. Despite these provisions, the impugned order is *ex facie* unreasoned. The order being appealable would have to contain reasons, since that is the only basis on which the legality of the order can be tested in appeal. The Petitioner's reliance upon the decision in the case of ***Assistant Commissioner, Commercial Tax Department, Works Contract and Leasing, Kota v. Shukla Brothers*** is therefore entirely apposite.

E. The stand taken by the Respondent in the Affidavit in Reply is as untenable as it is surprising. Firstly, the reasons to refuse the Petitioner's Application set out in the Affidavit in Reply do not

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find place in the impugned order. Secondly and crucially, the contention of the Respondent that since the cited mark was a registered trade mark, the Petitioner would have to adopt proceedings under Section 47 of the Trade Marks Act and the hearing officer did not have the power to "*dig into verifying the actual user of cited mark*" would effectively render the provisions of Section 12 of the Trade Marks Act entirely otiose and, in my view, does violence to the plain letter and spirit of the Trade Marks Act.

F. The Petitioner's reliance upon the decision of the Hon'ble Supreme Court in the case of ***London Rubber Co. Ltd. v. Durex Products Incorporated and Anr.*** which *inter alia* lays down that the provision allowing registration on the ground of honest concurrent use was an independent provision which is to be interpreted liberally. The decision also observed that such provision operated against the general prohibition to registration as per Section 8(a) of the Trade Marks Act, 1940, which is *pari*

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materia to Section 9(2)(a) of the Trade Marks Act, 1999, i.e. deception or confusion the Respondent has completely overlooked this.

14. Hence, for the aforesaid reasons, I pass the following order:

i. The Impugned Order dated 19th May 2025 is set aside.

ii. The Application No. 6072440 is remanded back to a different Registrar to be decided afresh.

iii. There shall be no order as to costs.

[ARIF S. DOCTOR, J.]