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

\+ C.A.(COMM.IPD-TM) 60/2021

OPIBRA-OPERACOESINTERNACIONAIS DO BRASIL L TDA
..... Appellant

Through: Ms. Sanna Harta, Ms. Shahana Farah, Moh. Yunus and Ms. Shilpa Rajasekar, Advocates.

versus

REGISTRAR OF TRADE MARKS ..... Respondent

Through: Mr. Harish Vaidyanathan Shankar, Central Government Standing Counsel with Mr. Srish Kumar Mishra, Mr. Sagar Mehlawat and Mr. Alexander Mathai Paikaday, Advocates.

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

O R D E R

% 10.05.2023

1. The present appeal is directed against order dated 10th May, 2019 passed in review of order dated 13th September, 2018, whereby Appellant's trademark application No. 2329916 for the device mark '', has been refused registration in class 03 for cosmetics (hair lotion and shampoo) [*hereinafter*, "*subject application*"].

2. The sole ground of refusal, as is discernible from the impugned order as well as Statement of Grounds of Decision dated 05th July, 2019, is under Section 11(1)(a) of the Trademarks Act, 1999. Thus, it would be appropriate

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to examine the conflicting marks cited in the Examination Report dated 14th May, 2013, which are as follows:

LOCATION:
SECTION: EXM
REPORT: EXM007

PHONETIC SEARCH REPORT
APPLICATION NUMBER: 2329916
Class : ---
TRADEMARK: 'ERVAMATIN (DEVICE)'

USER : ASK
PAGE:1
DATE: 20/03/2013

APPL NO	CLASS	CONFLICTING MARK	JOURNAL No	PROPRIETOR NAME	PROPRIETOR ADDRESS	STATUS	TM IMAGE
GOODS SERVICES							
942904	3	ERAVAMATIN 1327	TVC SKYSHOP . COM LTD.		KHANDWALA CENTRE, DAFTARY ROAD, MALAD (E), MUMBAI - 400 097.	Registered	
APPLICATION DATE 27/07/2000 14:42:00							
GOODS/SERVICE ITEM USED FOR PREVENTING HAIR LOSS/DANDRUFF.							
2231835	3	ERVAMATIN 1568	RP TELEBUY SKYSHOP PVT. LTD.		NO.93, J BLOCK TELEBUY TOWERS, 13 MAIN ROAD, ANNA NAGAR, CHENNAI 600040.	Advertised bef acc	
APPLICATION DATE 11/11/2011							
GOODS/SERVICE HAIR LOTION, HAIR OIL AND PERSONAL CARE PRODUCTS, SOAPS; PERFUMERY, ESSENTIAL OILS, COSMETICS,							
2329916	3	ERVAMATIN (DEVICE)	OPIBRA-OPERACOES INTERNACIONAIS DO BRASIL LTDA		AV. ATLAMIRO AVELINO SOARES 136 BAIRRO CASTELO BELO HORIZONTE MG CEP 31.330-000-BRAZIL	Marked for Exam	ERVAMATIN
APPLICATION DATE 11/05/2012							
GOODS/SERVICE "COSMETICS (HAIR LOTION AND SHAMPOO)".							

ASHOK KUMAR SHAMMI
For REGISTRAR OF TRADE MARKS

3. Presently, the trademark application Nos. 942904 and 2231835 at S.Nos. 1 and 2, respectively, have been removed from the Register of Trademarks and the mark at S. No. 3 is the subject application itself. Therefore, the objection under Section 11 of the Trademarks Act is no longer valid.

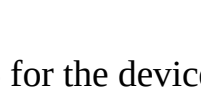
4. It has been pointed out by counsel for Respondent that during the pendency of the appeal, another third-party trademark application No. 5226280 for the wordmark 'ERVAMATIN' in class 3 has been accepted and advertised, which is currently opposed by the Appellant. To which, counsel for Appellant responds that the subject mark '**ERVAMATIN**' has been

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used by them since past 25 years in the Brazilian market, where the Appellant's headquarter is situated, and for 15 years in about 50 other countries.

5. Considering the foregoing, present appeal is allowed with following directions:

(i) The review order dated 10th May, 2019 is set aside.

(ii) Trademarks Registry is directed to process the subject application No. 2329916 for the device mark '' in class 03.

(iii) The aforesaid mark be advertised before acceptance, within a period of three months from today.

(iv) If there is any opposition, the same shall be decided on its own merits, uninfluenced by observations made hereinabove.

6. With the above directions, the appeal is disposed of.

7. 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

MAY 10, 2023
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