
(2023) 02 DEL CK 0124

In the Delhi High Court

Case No : C.O. (COMM.IPD-TM) No. 793 Of 2022, I.A. No. 21088 Of 2022

Laboratoires Expanscience

APPELLANT

Vs

Seagull Pharmaceuticals Pvt Ltd & Anr

RESPONDENT

Date of Decision : 17-02-2023

Acts Referred:

Trade Marks Act, 1999 — Section 57

Citation : (2023) 02 DEL CK 0124

Hon'ble Judges : C.Hari Shankar, J

Bench : Single Bench

Advocate : Rahul Beruar, Manish Singhal

Final Decision : Allowed

Judgement

C.O. (COMM.IPD-TM) 793/2022

1. This is a petition under Section 57 of the Trade Marks Act, 1999.
2. The plaintiff is the proprietor of the registered word mark "MUSTELA" in Class 3, in respect of "non-medicated lotion and cream for the care of the skin". The said word mark "MUSTELA" stands registered in favour of the plaintiff with effect from 23rd August 1971 and is valid up to 23rd August 2026.
3. The plaintiff is aggrieved by the registration of the word mark "MUSTELA" in favour of the defendant in Class 5, for medicinal and pharmaceutical preparations. Registration of the impugned mark was granted to the defendant on 31st March 2009 with effect from 1st October 2007.
4. The petition, therefore, seeks rectification of the register of the trademarks by removal, therefrom, of the Registration No. 1607095 whereby the word mark "MUSTELA" has been registered in favour of the defendant.
5. Mr. Manish Singhal, learned Counsel for the respondent submits, on instructions, that his client is willing to give up the word mark "MUSTELA" and is agreeable to deletion of the mark from Registrar of Trade Marks and rectification

of the Register, accordingly.

6. Mr. Rahul, learned Counsel for the petitioner submits that the respondent has also instituted Opposition No. 917190 on 18th January 2018 before the Registrar of Trade Marks, opposing the plaintiff's registered word mark "MUSTELA". Mr. Manish Singhal, learned Counsel for the respondent submits, on instructions, that his client would be applying for withdrawal of the said Opposition No. 917190 and would not be pressing the opposition. The submission is recorded.

7. The respondent is directed to move an application before the learned Registrar for withdrawal of Opposition No. 917190 positively within a period of three weeks from today. The learned Registrar is directed to take a decision on the application within one week thereof.

8. In view thereof, nothing survives for adjudication in the present petition. It stands disposed of by recording the submissions of Mr. Manish Singhal by which the defendant shall remain bound.

9. Accordingly, the impugned word mark "MUSTELA", as registered in favour of the defendant in Class 5 vide Registration No. 1607095 shall stand deleted and removed from the Register of Trademarks. The Register of Trademarks shall stand rectified accordingly.

10. The petition is allowed in the aforesaid terms.

11. Order to be uploaded on the website of this Court within 24 hours.