



\$~6

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

+ **C.A.(COMM.IPD-TM) 38/2025**

CJ CHEILJEDANG CORPORATION

.....Appellant

Through: Mr. J.V. Abhay and Mr. Madhur
Chopra, Advocates.

versus

THE REGISTRAR OF TRADE MARKS

.....Respondent

Through: Ms. Manisha Agrawal Narain, CGSC
with Mr. Sanjay Pal, GP and Mr. Navneet Saharan,
Advocate.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

ORDER

23.03.2026

%

1. This appeal is filed on behalf of the Appellant under Section 91 of the Trade Marks Act, 1999 ('1999 Act') laying a challenge to impugned order dated 21.04.2025 passed by the Respondent, whereby the Respondent has refused registration of the trademark GrowinAct.

2. To the extent necessary, facts as pleaded in the appeal are that Appellant filed the trademark application bearing No. 5748802 on 03.01.2023 for registration of trademark 'GrowinAct' in Class 01 in respect of goods '*Enzymes to assist in digestion for use in the manufacture of animal feeds; enzymes for use in the manufacture of pet food; enzymes for industrial purposes; chemical preparations for use in the manufacture of pharmaceuticals; chemicals used in industry and science; bacterial preparations other than for medical or veterinary use; enzyme preparations*



for agricultural purposes; artificial sweeteners (chemical preparations); nutrients for yeast for industrial purposes; biomass for producing bio fuels; bacterial preparations for the food industry’ on ‘proposed to be used’ basis. Application was examined by the Respondent and on 29.08.2023 Examination Report (‘ER’) was issued. Appellant filed reply to the ER on 11.09.2023, whereafter hearing notice was issued scheduling the hearing for 15.05.2024. After the hearing concluded on 02.04.2025, Respondent passed the impugned order on 21.04.2025, refusing registration of the mark GrowinAct under Section 11(1)(a) and (b) of 1999 Act on the ground that there was phonetic and visual similarity between the cited mark



and the applied mark and hence, there exists a strong likelihood of confusion amongst the consumers as also that the Appellant failed to give reason as to why he adopted the applied mark when a similar mark was already on record.

3. Learned counsel for the Appellant has challenged the impugned order on multiple grounds. It is urged that the Respondent has erred in concluding that there is similarity between the cited mark and the applied mark by drawing an incorrect comparison between the applied mark, which is a word mark and the cited mark, which is a device mark. A device mark has to be considered as a whole and if a comparison has to be made it can only be with respect to essential and prominent feature of the device mark and in the present case there is no phonetic similarity between the essential part of cited mark and the applied mark GrowinAct. Moreover, the other features of the cited mark, including its colour combination and artistic elements of two



flowers and a leaf completely differentiate the two marks visually, contrary to the finding of the Respondent.

4. It is urged that Respondent has overlooked a crucial fact that the goods in question under the cited mark and the applied mark are complete dissimilar. The goods under the cited mark are agrochemicals and fertilizers for agricultural use, whereas the goods covered by Appellant's mark are Enzymes used in animal feed, pet food, industrial purposes, chemical preparations for pharmaceuticals etc. Agrochemical and fertilizers are not the same as Enzymes preparations as they encompass various chemicals used in agriculture, while Enzymes preparations are biological substances. Moreover, the conclusion that there is likelihood of confusion amongst consumers is wholly misplaced since the goods under the applied mark are purchased specifically by institutional buyers, agronomists and trained professionals and are not sold to mass consumers.

5. It is also urged that Appellant filed the application for registration on a 'proposed to be used' basis and hence, the observation of the Respondent that the intent in adopting the applied mark was not *bona fide*, is baseless. Use of mark is not a pre-condition for registration and there is no reasoning in the impugned order which supports the conclusion that the adoption was not *bona fide*. Respondent has also failed to consider that Appellant is

already a registered proprietor of trademarks GrowinAct and  in Class 31 in India in relation to goods which are allied and cognate to the goods under the applied mark. Reliance is placed by the counsel on the judgment of the Supreme Court in ***Nandhini Deluxe v. Karnataka Cooperative Milk Producers Federation Limited, (2018) 9 SCC 183*** and of



this Court in *Twentieth Century Fox Film Corporation v. Registrar, 2023 SCC OnLine Del 1198*. Last but not the least, it is also urged that Respondent overlooked the fact that the cited mark carries a disclaimer ‘Use for sale in the Southern States Only’, which further eliminates the chances of confusion, if any.

6. Ms. Manisha Agrawal Narain, learned CGSC submits that there is no legal infirmity in the impugned order. After comparing the applied mark and the cited mark, registration has been rightly refused as the marks are phonetically and visually similar and knowing the existence of the cited on the Register of Trade Marks, Appellant adopted the applied mark, which is a dishonest adoption, as rightly observed by the Registrar *albeit* it is conceded that Section 11(1) of 1999 Act does not contain the ground of *bona fide* adoption. As far as the argument of disclaimer is concerned, she submits that this point was not raised by the Respondent.

7. Heard learned counsels for the parties and examined their rival submissions.

8. Indisputably, the applied mark is a word mark GrowinAct and the cited mark is a device mark. For ready reference, comparative of the two marks is as follows:-

Particulars	Cited mark	Appellant's mark
Mark		GrowinAct

9. Appellant has assailed the impugned order refusing to register the applied mark on several grounds, as captured above. Respondent has refused registration on the ground that the applied mark is phonetically and visually



similar to the cited mark and registration will lead to confusion amongst the consumers. Appellant highlights that the applied mark is a word mark while the cited mark is a device mark and ought to have been seen as a whole mark for comparison. Respondent has erroneously dissected the device mark and then compared the word 'GROWIN', which is impermissible in law. Even assuming that the device mark can be dissected and its essential feature is compared, the two marks may have phonetic similarity, however, mere phonetic similarity is insufficient to render the marks identical or similar within the meaning of Section 11(1) and it is imperative that the similarity must result in likelihood of confusion in public, as held by this Court in *Twentieth Century Fox (supra)*.

10. It is true that Respondent has dissected the device mark and compared part of the mark with the applied mark to come to a conclusion that both are similar, overlooking the stand of the Appellant that Section 17 1999 Act proscribes vivisection of marks into its individual components and provides that where a mark is registered as a whole, exclusivity is conferred on the whole mark and not individual parts thereof as also overlooking the argument that the cited mark has distinctive features such as the unique colour combination and artistic elements comprising two flowers and a leaf, which may be sufficient to distinguish them and rule out any possibility of confusion among the members of public. In *Twentieth Century Fox (supra)*, the cited mark included the word AVATHAR in English and Tamil with the sketch of the face of a lady alongside. While comparing the two marks, Court observed that Section 17 of 1999 Act proscribes vivisection of the mark and provides that where the mark is registered as a whole it should be seen as a whole as the registration is in the entire mark as a whole and not



parts thereof and in this backdrop, held that there was no similarity between the two marks as the features in the composite mark, which were absent in

AVATAR

the applied mark were enough to distinguish the two marks and there was no chance of confusion. This facet has not been examined by the Respondent in the instant case, knowing fully well that the cited mark was a device mark.

11. From a reading of the impugned order, it is manifest that Appellant is right in urging that several other important points raised in support of registration have been overlooked by the Respondent such as: dissimilarity



of goods; earlier registrations of marks GrowinAct and in Class 31 in India in favour of the Appellant; absence of ground of *bona fide* adoption in Section 11(1) and without prejudice, there being no evidence of dishonest adoption; and disclaimer in the cited mark. It needs no gainsaying that consideration of the above points may have led to a different decision and thus, in my view, this is a fit case for remand for fresh consideration.

12. Accordingly, this appeal is allowed and impugned order dated 21.04.2025 is quashed and set aside. Respondent shall consider the application of the Appellant bearing No. 5748802 for registration of the trademark GrowinAct in Class 01, afresh. The decision will be taken within a period of three months from today after giving opportunity of hearing to the Appellant and taking into consideration all issues and contentions raised by the Appellant in the present appeal and without being influenced by the impugned decision.



13. It is made clear that this Court has not expressed any opinion on the merits of the case.

14. Appeal stands disposed of.

JYOTI SINGH, J

MARCH 23, 2026/YA