

BEFORE THE ADDITIONAL MASTER-III
HIGH COURT, MADRAS.

(T) OP (TM)/ 388/2023
and WP 27500/ 2021
and WMP No. 29025 of 2021

Date: 24.06.2024

Time: 12.00 A.M

Name : Mr.Mohammed Sohailuddin Farooqui (PW1)

Continuation of chief Examination by Mr. K.G. Bansal, Learned counsel for the Plaintiff.

Solemnly Affirmed:

In continuation of my chief examination the following documents are marked as exhibits.

Ex.P1 is the photocopy of impugned registered trademark ZINDA TEL in the name of Respondent No.1 under application no. 1633656 in class-05 by way of status report, Registration Certificate and copy of publication in Trademark Journal and Examination Report and copy of order dated 21.07.2016. (The document is the photocopy. Hence, Defendant side objection is recorded.) (65B affidavit filed.)

Ex.P2 is the certified true copy of the Petitioner's Registered Trademark ZINDA TILISMATH LABEL under no.214885 in class-05 alongwith status report and Legal user certificate. (The document is the certified true copy. Hence, Defendant side objection is recorded.)

Ex.P3 is the certified true copy of the Petitioner's Registered Trademark ZINDA TILISMATH LABEL under no.258842 in class-05 along with status report and copy of

publication in Trademark Journal along with Legal User Certificate. (The document is the certified true copy. Hence, Defendant side objection is recorded.)

Ex.P4 is the certified true copy of the Petitioner's registered trademark ZINDA TILISMATH under no.391023 in class-05 along with status report along with Legal User Certificate. (The document is the certified true copy. Hence, Defendant side objection is recorded.)

Ex.P5 is the certified true copy of the Petitioner's registered Trademark ZINDA BALM under no.401163 in class-05 along with status report along with Legal User Certificate. (The document is the certified true copy. Hence, Defendant side objection is recorded.)

Ex.P6 is the certified true copy of the Petitioner's registered trademark ZINDA BALM LABEL under no.401164 in class-05 along with status report and copy of publication in Trademark Journal along with Legal User Certificate. (The document is the certified true copy. Hence, Defendant side objection is recorded.)

Ex.P7 is the certified true copy of the Petitioner's Registered Trademark ZINDA TILISMATH LABEL under no.504907 in class-05 along with status report and Legal User certificate. (The document is the certified true copy. Hence, Defendant side objection is recorded.)

Ex.P8 is the certified true copy of the Petitioner's Registered Trademark ZINDA TILISMATH LABEL under no.1759639 in class-05 along with status report, Legal User certificate and copy of publication in Trademark Journal. (The document is the certified true copy. Hence, Defendant side objection is recorded.)

Ex.P9 is the certified true copy of the Petitioner's Registered Trademark ZINDA TILISMATH LABEL under no. 384432 in class-05 along with status report, Legal User certificate and copy of publication in Trademark Journal.(The document is the certified true copy. Hence, Defendant side objection is recorded.)

Ex.P10 is the photocopy of the Copy of Registration Certificate as a Small Scale Industries Unit dated 05.02.1976. (The document is the photocopy. Hence, Defendant side objection is recorded.)

Ex.P11 is the Photocopy of GST Registration of petitioner firm Form-6.(The document is the photocopy. Hence, Defendant side objection is recorded.)

Ex.P12 is the Original of Memorandum Acknowledging Receipt of documents by the Registrar of Firm, Hyderabad.

Ex.P13 is the Original of Certificate of Renewal of License by Department of Ayush.

Ex.P14 (Series- 26 Nos.) is the Originals of Sales Invoices issued by the Petitioner under the trademark ZINDA TILISMATH.

Ex.P15 (Series- 6 Nos.) is the Originals of the Advertisement invoices issued by the Advertiser in favour of the Petitioner for their goods under the trademark ZINDA TILISMATH.

Ex.P16 (8 Nos.) is the photos of Street Hoardings of Petitioner's goods under the trademark ZINDA TILISMATH/ZINDA BALM.

Ex.P17 (Series- 11 Nos.) is the Original of the Advertisement of Petitioner's goods under the trademark ZINDA TILISMATH published in various newspapers.

Ex.P18 is the Original of Acknowledgement of Income Tax Return from Income Tax Department along with Chartered Accountant report including Audit report, Balance Sheet and Profit & Loss Accounts.

Time: 12.30 p.m

Taken down in open Court, read over and explained to the witness and the same is

admitted by the witness to be correct and signed before me.

ADDITIONAL MASTER-III

BEFORE THE ADDITIONAL MASTER-III
HIGH COURT, MADRAS.

(T) OP (TM)/ 388/2023
and WP 27500/ 2021
and WMP No. 29025 of 2021

Date: 25.06.2024

Time: 02.45 P.M

Name : Mr.Mohammed Sohailuddin Farooqui (PW1)

Cross Examination by Mr. Sathish Kumar, Learned counsel for the 1st respondent.

Solemnly Affirmed:

Q1: You have stated that the petitioner is the partnership firm. How many partners are there in the petitioner's firm currently?

A: There are 12 partners including me.

Q2: (Proof affidavit is shown to the witness) please see para 3 and 4, in which you have stated, the trademark is used since 1920, is there any document filed to prove that?

A: Not for 1920.

Q3: Therefore I put it to you that your claim in 1920 is false.

A: I am not accepting the suggestion.

Q4: (Ex.P1 to Ex.P9 are shown to the witness) Please see and confirm, whether these are your registration certificates?

A: Yes.

Q5: (Ex.P1 is shown to the witness) As regards Ex.P1, you have not filed a certified copy, therefore the document cannot be taken as evidence.

A: It is certified copy taken from the court and there is no way to deny it. I deny.

Q6: (Ex.P2 is shown to the witness) Please see Ex.P2 and tell, whether the trademark is in the name of current partners of the petitioner's firm?

A: Yes. It is the firm registration certificate in the year 1963, it is in the name of one of the deceased partner representing the firm and subsequently the documents renewed.

Q7: So I take it that the current partners have not applied to get their names transferred as the registered proprietor?

A: I deny. It is in the name of the firm and it does not make a difference who the partners are.

Q8: (Ex.P3 to Ex.P9 are shown to the witness) Between Ex.P3 to Ex.P9 also in the same way the current partners have not applied to get their names transferred as the registered proprietor?

A: It is denied. The names are there.

Q9: Please tell the names of the partners?

A: My name is there, it is more than sufficient to represent the firm.

Q10: (Ex.P14 is shown to the witness) Can you please see Ex.P14 and tell , as to why no document prior to the year 2014 has been submitted to prove the use of the mark?

A: I feel the documents sufficient for the case have been filed.

Q11: (Ex.P16 is shown to the witness) Whether any dates are given for the photographs?

A: I do not see any dates on the photographs. But we have filed documents to show the same.

Q12: (Ex.P15 is shown to the witness) Similarly Ex.P15 also, you have not produced any document prior to the year 2019 with regard to advertisement?

A: It is correct.

Q13: (Ex.P18 is shown to the witness) Is Ex.P18 also from the year 2011 only?

A: Yes.

Q14: (Ex.P9 is shown to the witness) I put it to you that this trademark filed in the year 2018 was the first time you have claimed use since 1920.

A: It is not true to suggest.

Q15: Therefore I put it to you that your claim since 1920 is false and therefore you cannot seek to rectify the trademark.

A: I deny.

Q16: Are you aware that you filed an opposition first when the trademark of the first respondent was pending?

A: Yes.

Q17: Are you also aware that the opposition was dismissed?

A: Yes.

Q18: I put it to you that opposition was dismissed because you did not file any evidence to prove the opposition.

A: There was a delay in filing evidence due to communication gap between the counsel.

Q19: The opposition you filed was abandoned in the year 2016.

A: Yes.

Q20: Therefore I put it to you that the rectification that was filed in October, 2020 is liable to be dismissed for delay.

A: I deny.

Q21: (Ex.P9 is shown to the witness) The application dated 2018 itself was filed only after you abandoned your rights in the opposition of the 1st respondent.

A: I deny.

Q22: Therefore I put it to you that your rectification should fail.

A: I deny.

Re-examination: Nil.

Time: 03.25 p.m

Taken down in open Court, read over and explained to the witness and the same is admitted by the witness to be correct and signed before me.

ADDITIONAL MASTER-III