

INTELLECTUAL PROPERTY APPELLATE BOARD
Guna Complex Annexe-I, 2nd Floor, 443 Anna Salai,
Teynampet, Chennai-600018

(CIRCUIT BENCH SITTING AT AHMEDABAD)

OA/36/2012/TM/AMD &
M.P. 143/2015 in OA/36/2012/TM/AMD

(THURSDAY THIS THE 17th DAY OF DECEMBER, 2015)

HON'BLE SHRI. JUSTICE K.N.BASHA	... CHAIRMAN
HON'BLE SHRI SANJEEV KUMAR CHASWAL	... TECHNICAL MEMBER (TRADE MARKS)

1. Jaya Jayammal Thakore (now deceased)
Proprietor of POLSON,
1, Shwetapark Society,
Near Manekbaug Hall,
Ambawadi,
Ahmedabad 380 015.
2. Dr. Riddhi Yatin Pandya and
3. Dr. Shweta Kumaraswami, legal heirs of late
Mrs. Jaya Jaymal Thakore trading as
POLSON,
1, Shwetapark Society,
Near Manekbaug Hall,
Ambawadi,
Ahmedabad 380 015. ... Appellant

(Represented by Sejal Shah)

Versus

The Assistant Registrar of Trade Marks, National Chambers, 15/27, 1 st Floor, Ashram Road, Ahmedabad.	... Respondent
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(Represented by None)

ORDER (No.220/2015)

HON'BLE SHRI. JUSTICE K.N.BASHA, CHAIRMAN

The order under challenge in this appeal is dated 2/11/2011 passed by the Senior Examiner of Trade Marks, Ahmedabad dismissing the review petition filed by the appellant under Form TM-57 dated 07/04/2010.

2. Ms. Sejal Shah, the learned counsel for the appellant would submit that the appellant died on 29.11.2014 during the pendency of this appeal and as a result Miscellaneous Petition No.143/2015 is filed for bringing the legal heirs

namely Dr. Riddhi Yatin Pandya and Dr. Swetha Kumarasamy and also filed the supporting documents and also sought for permission to file certain other documents. In view of the same, the registry is directed to amend the cause title mentioning the above said names in the place of original appellant. Similar request was also already made before the Registrar of trade marks to amend the name of the appellant.

3. The learned counsel would contend that the appellant already preferred four rectification applications in respect of the same trade mark and they are pending as on date before this bench and this appeal also may be tagged along with the said rectification applications. It is further submitted that the impugned order is liable to be set-aside as the same was passed erroneously on facts and law. It is contended that the said rectification petitions have been filed on the ground of non use and as such this matter may be heard along with said petitions.

4. We have carefully considered the contentions of the learned counsel for the appellant and perused the materials including the impugned order.

5. At the outset, it is to be stated that the order under challenge is only an order of rejection of the review petition to review the order dismissing the application of the appellant seeking for registration of trade mark "POLSON". It is seen that the original order was passed by the Registrar of Trademarks refusing the application mainly on the ground that there are similar trade marks under No.12047, 12048, 147953, 151814, 435191, 435192 and 893952 in respect of the same trade mark "POLSON" (label) for the Milk & Milk Products. It was held that the present mark "POLSON" sought for registration by the appellant is visually, phonetically identical and similar and the goods are also the same. Apart from the said factor, the appellant/applicant has stated that the said trade mark is only proposed to be used and as such it was rightly held that the appellant has not acquired any distinctiveness.

6. The perusal of the impugned order reflects that the Senior Examiner considering and stating the above said points and findings rightly dismissed the review application. We are unable to find any infirmity and illegality in the impugned order. We are of the considered view that the pending rectification applications filed by the appellant is nothing to do with the present appeal and it is open for them to raise their contentions in the said matters. Accordingly, the appeal is hereby dismissed.

(SANJEEV KUMAR CHASWAL)
TECHNICAL MEMBER

(JUSTICE K.N.BASHA)
CHAIRMAN

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