



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

% Judgement delivered on: 22.08.2025

+ **C.A.(COMM.IPD-TM) 54/2024**

MANKIND PHARMA LIMITED

.....Appellant

versus

THE REGISTRAR OF TRADE MARKS

.....Respondent

Advocates who appeared in this case

For the Appellant : Mr. Hemant Daswani, Ms. Saumya Bajpai & Ms. Pranjal, Advocates.

For the Respondent : Mr. Vinay Yadav, SPC along with Ms. Kamna Behrani, Mr. Ansh Kalra & Mr. Siddharth Gautam, Advocates.

CORAM:

HON'BLE MR. JUSTICE TEJAS KARIA

JUDGMENT

1. The present Appeal has been filed under Section 91 of the Trade Marks Act, 1999 (“Act”), being aggrieved by the Order dated 15.03.2024 (“**Impugned Order**”) passed by the Examiner of Trade Marks (“**Examiner**”), refusing the Appellant's Application for registration of the mark PETKIND (“**Subject Trade Mark**”) bearing Application No. 5157441 (“**Application**”) in Class 5.

2. The learned Examiner has refused the Application on the ground that there is a prior application to the Subject Trade Mark for registration of a mark which is phonetically and visually similar to the Subject Trade Mark



and in respect of similar goods and services and under the same Class. Therefore, the Application was refused with the finding that the Subject Trade Mark is not registrable pursuant to Section 11(1) of the Act.

FACTUAL BACKGROUND

3. The Appellant is a leading marketer of wide range of pharmaceutical, medicinal and veterinary preparations in India under its various distinctive and recognised well-known Trade Marks and is one of the largest pharmaceutical companies of India.

4. On 01.10.2021, the Appellant had applied for registration of the Subject Trade Mark *via* the Application for Medicinal, Pharmaceutical and Veterinary preparations including dietary, nutritional and vitamin food supplements.

5. The Registry of Trade Marks after examining the Application issued an Examination Report dated 05.11.2021 (“**Examination Report**”), the Examination Report stated that the Application is open to objection on relative grounds of refusal under Section 11 of the Act because the same or similar Trade Mark(s) are already on record of the Register for the same or similar goods or services. As per the Examination Report, the objection is raised under Section 11(1) of the Act, as the Subject Trade Mark is identical with or similar to earlier application for the mark ‘PETKIND PHARMA’ (“**Cited Mark**”) applied for by Wellford Pharmaceutical Pvt. Ltd. under Application No. 4794368 and because of such identity or similarity there exists a likelihood of confusion on the part of the public.

6. The Respondent issued a hearing notice dated 06.02.2024 scheduling a hearing for the Subject Trade Mark on 11.03.2024. The Counsel for the Appellant appeared for the hearing dated 11.03.2024 before the learned Examiner and put forward submissions in favour of the registration of the Subject Trade Mark.



7. The Application for the registration of the Subject Trade Mark was rejected on 15.03.2024 *vide* the Impugned Order. Aggrieved by the rejection of the Application for registration of the Subject Trade Mark, the Appellant has approached this Court, submitting that the decision is arbitrary, legally flawed, and contrary to the basic principles governing Trade Mark examination.

SUBMISSIONS ON BEHALF OF THE PETITIONER:

8. Mr. Hemant Daswani, the learned Counsel for the Appellant submitted that the Appellant has over Two Hundred and Eighty Registered Marks out of which Two Hundred and Ten Trade Marks are registered in Class 5 alone wherein the word ‘KIND’ forms part of the essential feature of their Trade Marks (“**KIND Family of Marks**”). The annual turnover in respect of top twenty-five different products of the Appellant containing the word element ‘KIND’ as a part of its Trade Mark cumulatively is over ₹25,53.00,00,000/- (Rs. Two Thousand Five Hundred and Fifty Three Crores) for the Financial Year 2022-2023.

9. The learned Counsel for the Appellant submitted that the mark ‘MANKIND’ belonging to the Appellant has been determined under Rule 124 of the Trade Marks Rules, 2017 as a well-known Trade Mark by the Registrar of Trade Marks and has been published in the Trade Marks Journal and included in the list of well-known Trade Marks maintained by the Registrar of Trade Marks.

10. The learned Counsel for the Appellant submitted that the Appellant is engaged in the business of selling the pet food products and the pet feed is being sold in the market with the brand name ‘PETSTAR’. The Appellant has another registered Trade Mark ‘Mankind’s Pet Cuisine’ for selling pet related products.



11. The learned Counsel for the Appellant submitted that against the Cited Mark, the Appellant has filed a notice of opposition before the Respondent by asserting its rights over the KIND Family of Marks. Wellford Pharmaceuticals Private Limited had applied for the Cited Mark on 24.12.2020 on a 'proposed to be used' basis. Therefore, till December 2020, Wellford Pharmaceuticals Private Limited had not even launched any goods under the mark 'PETKIND PHARMA'. Since even before Wellford Pharmaceuticals Private Limited applied for the Cited Mark, the Appellant had amassed goodwill under the KIND Family of Marks. For the year ending 2020-2021, the Appellant had clocked a turnover of ₹19,62,00,00,000/- (Rupees One Thousand Nine Hundred and Sixty Two Crore) before the adoption of the Cited Mark by Wellford Pharmaceuticals Private Limited.

12. The learned Counsel for the Appellant submitted that the Impugned Order was passed without putting on record the Written Submissions and the Supporting Documents filed by the Appellant before the learned Examiner that would have crystalized the Appellant's prior use of the KIND Family of Marks despite the Appellant's request to put on record the Written Submissions and the Supporting Documents.

13. The learned Counsel for the Appellant submitted that the learned Examiner failed to consider that in the pharmaceutical and veterinary industry, public and the trade associates any mark with the word element 'KIND' with the Appellant and none else. Therefore, in case there is any likelihood of confusion, between the Subject Trade Mark and the Cited Mark in the Examination Report it is solely on account of the *mala fide* adoption of the Cited Mark by Wellford Pharmaceuticals Private Limited and not by the Appellant.



14. The learned Counsel for the Appellant relied on the decisions in *Mankind Pharma v. Lemford Biotech Pvt. Ltd. and the Registrar of Trade Marks* Neutral Citation: 2025:DHC:1232, *Mankind Pharma Ltd v. Arvind Kumar Trading and Anr.* Neutral Citation: 2023:DHC:2700, *Mankind Pharma Ltd. v. Manoj Kumar M/s Novakind Biosciences* Neutral Citation: 2024:DHC:7590 *Mankind Pharma Ltd. v. Gurinder Singh* C.O. (COMM.IPD-TM) 257/2022, *Mankind Pharma Ltd. v. Dr. Kind Formulation Pvt. Ltd. and the Registrar of Trade Marks* C.O. (COMM.IPD-TM) 282/2022 wherein this Court has recognised the Appellant is the prior and recognised user of the KIND Family of Marks.

15. Accordingly, the Impugned Order deserves to be set aside and the Respondent ought to advertise the Subject Trade Mark in the Trade Marks Journal.

SUBMISSION ON BEHALF OF THE RESPONDENT:

16. Ms. Nidhi Raman, the learned CGSC for the Respondent submitted that the Impugned Order is in consonance with the settled principles of Trade Mark law and the statutory scheme under the Act. A bare perusal of the Impugned Order demonstrates that the Respondent extended to the Appellant a full and fair opportunity of hearing, in due compliance with the principles of natural justice. The Impugned Order is a reasoned and well-considered decision.

17. The learned Counsel for the Respondent submitted that in response to the Examination Report, the Appellant filed a Reply on 11.11.2021. However, the Reply was wholly devoid of any substantive reasoning or supporting material. The Appellant merely made a bald assertion that the Subject Trade Mark was honestly adopted and claimed it to be distinctive, without furnishing any documentary evidence or comparative analysis to support such assertion.



18. The learned Counsel for the Respondent submitted that the balance of convenience did not lie in favour of the Appellant. There exists a likelihood of confusion and deception in the mind of the consuming public, owing to the existence of the Cited Mark in the same Class, i.e., Class 5. The Cited Mark predates the Appellant's Application and stands at the opposition stage before the Trade Marks Registry. The opposition by the Appellant against the Cited Mark signifies that the Appellant had knowledge of the Cited Mark.

19. The learned Counsel for the Respondent submitted that the Respondent, in terms of Section 11(1) of the Act, rightly held that the registration of the Subject Trade Mark was objectionable as the Cited Mark covers goods that are virtually identical to those in respect of which the Subject Trade Mark is sought to be registered. The phonetic and structural similarity between the Subject Trade Mark and the Cited Mark gives rise to a likelihood of confusion, warranting refusal of registration under the statutory mandate.

20. The learned Counsel for the Respondent submitted that both the Subject Trade Mark and the Cited Mark fall within the same Class, i.e., Class 5. The Cited Mark is not only visually and phonetically similar but also operates in the same commercial space. Given the concurrent similarities in the marks, goods and target consumer base, there exists a real likelihood of confusion or association.

21. Accordingly, the Impugned Order rightly held that the Appellant is not entitled to the registration of the Subject Trade Mark, i.e., 'PETKIND' and refused the Application No. 5157441.

ANALYSIS AND FINDINGS:

22. Section 11 of the Act provides "relative grounds for refusal of registration". The grounds for refusal, contained in Section 11 of the Act,



essentially relate to earlier Trade Marks registered in favour of someone else, or in respect of which an application is pending with the office of the Registrar of Trade Marks. The present case is concerned with Section 11(1) of the Act.

23. It is clear, from a bare reading of Section 11(1) of the Act that mere identity or similarity of the mark, of which registration is sought, and the earlier mark, is not sufficient as a ground to reject the Application seeking registration. Section 11(1)(a) of the Act bars the registration of a Trade Mark that is identical to an earlier Trade Mark and used in relation to similar goods or services. Similarly, Section 11(1)(b) bars the registration of a Trade Mark that is similar to an earlier Trade Mark and used in relation to identical or similar goods or services. In either case, a third condition is required to be satisfied that owing to the identity or similarity between the Appellant's Mark and the Cited mark, and the identity or similarity between the goods covered under two marks, there exists a likelihood of confusion on the part of the public, which would include a likelihood of association with the earlier Trade Mark.

24. In *Manu Garg & Ratan Behari Agrawal v. Registrar of Trade Marks* 2023 SCC OnLine Del 581, a Coordinate Bench of this Court held that the prohibition under Section 11(1)(a) and Section 11(1)(b) of the Act applies specifically in respect of similar/identical goods and services, and not in respect of goods being under the same Class. It has been further emphasised that an additional requirement under both Sections 11(1)(a) and 11(1)(b) of the Act would be the aspect of likelihood of confusion.

25. The Appellant has several Trade Mark registrations granted in its favour in Class 5 that use the word 'KIND' as a suffix. Hence, the Appellant has developed a Family of Marks with the word 'KIND' as an essential part of the Appellant's Trade Marks. In *Mankind Pharma Ltd. v. Cadila*



Pharmaceuticals Ltd. 2015 SCC OnLine Del 6914, a Coordinate Bench of this Court had observed that the word ‘KIND’ has no relation to sale of the pharmaceutical products and the Appellant having established its first user of the word ‘KIND’ in the pharmaceutical market is entitled to a higher protection for the word ‘KIND’. Due to its continuous and extensive usage, the word ‘KIND’ has come to be exclusively associated with the Appellant, and this would entitle the Appellant to a higher protection for the KIND Family of Marks.

26. Likelihood of confusion is not to be easily presumed. The nature of the goods and the class of their purchasers has to be borne in mind. A perusal of the response to the Examination Report, shows that the Cited Mark was applied for on a proposed to be used basis and there is no active user of the Cited Mark.

27. The Appellant has established that they have been using various marks with the suffix ‘KIND’ since 1986 and the use of the ‘KIND’ is affiliated to the Appellant especially with respect to goods falling under Class 5. The Appellant has over 210 registered Trade Marks in Class 5 alone with the suffix ‘KIND’ and the Appellant has amassed significant goodwill. The Cited Mark in the Examination Report would not lead to rejection of the Subject Trade Mark considering the overwhelming use and registrations of marks with the suffix ‘KIND’ by the Appellant.

28. In view of the above, the present Appeal is allowed and the Impugned Order is set aside. The Subject Trade Mark ought not to have been rejected and deserves to proceed for advertisement. However, it is made clear that if there are any opposition proceedings filed against the Subject Trade Mark, the same would be decided in accordance with law on its own merits, without any reference to and without being influenced by the present Order.



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29. The Respondent shall proceed with the advertising of the Subject Trade Mark, i.e., PETKIND, in accordance with the provisions of the Act, within two months.

30. Let a copy of the present Order be sent to the Office of the Controller General of Patents, Designs and Trade Marks on e-mail ID - llc-ipo@gov.in, for compliance.

31. Accordingly, the Appeal is disposed of in the aforesaid terms.

TEJAS KARIA, J

AUGUST 22, 2025 /'ak'