



2025:DHC:2733



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

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Date of decision: 9th April, 2025

+ C.A.(COMM.IPD-TM) 84/2024

VISAGE BEAUTY AND HEALTHCARE PVT LTDAppellant

Through: Mr. Vaibhav Vutts, Ms. Aamna Hasan
and Ms. Aarya Deshmukh, Advocates.

versus

REGISTRAR OF TRADE MARKS & ANR.Respondents

Through: Ms. Nidhi Raman, CGSC with Mr.
Akash Mishra and Mr. Arnav Mittal,
Advocates for R-1.**CORAM:****HON'BLE MR. JUSTICE AMIT BANSAL****AMIT BANSAL, J. (Oral)**



1. The present appeal has been filed under Section 91 of the Trade Marks Act, 1999 read with Rule 125 of the Trade Marks Rules, 2017 challenging the order dated 19th September 2024 passed by the Assistant Registrar of Trade Marks (hereinafter 'impugned order') whereby the appellant's trade mark application bearing no.4309324 was abandoned holding that the counter statement to the notice of opposition filed on behalf of the appellant/ applicant was time barred.
2. Notice in the present appeal was issued to the respondents and was accepted on behalf of the respondent no.1 in Court on 17th December 2024.
3. The appellant primarily carries out its business activities under the




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mark O3+.

4. The appellant adopted the marks O3+/  /  in the year 2005 when no such mark was known or being used in relation to the goods and services of the appellant.



5. The mark  , which is the subject matter of the present appeal, was adopted by the appellant in the year 2019 as a part of its O3+ family/ series marks (hereinafter 'subject mark'). The subject mark is the original artistic creation of the appellant.

6. Brief facts, as stated in the present appeal, which are necessary for adjudicating the present appeal are as follow:

6.1. The appellant filed a trade mark application for the registration of the subject mark on 1st October 2019 bearing no. 4309324 in respect of '*hygienic and beauty care for human beings or animals, visagists services, beauty salons, health spa services, health centers, health counselling, manicuring, massage, sauna services, solarium services, aromatherapy services, hair implantation, hairdressing salons*' in class 44 on a '*proposed to be used*' basis.

6.2. The prosecution history relating to the aforesaid trade mark application is set out below:

Date	Particulars
16.12.2019	Examination Report issued by the respondent



	no.1 citing objections under Section 9(1)(a) 9(1)(b) of the Act
06.01.2020	The appellant filed a response to the Examination Report
09.05.2022	Fixed for show cause hearing which was adjourned for technical reasons
13.05.2022	Fresh hearing notice issued by the respondent no.1 appointing show cause hearing for 11.07.2022
11.07.2022	Counsel for the appellant requested for an adjournment
18.09.2023	2 nd hearing notice issued by the respondent no.1 appointing hearing for 16.10.2023
16.10.2023	Show cause hearing took place
08.12.2023	The respondent no.1 passed an order accepting the subject application
18.12.2023	Subject mark was advertised by the respondent no.1 in Journal no. 2135

6.3. Thereafter, on 7th February 2024, a notice of opposition against the subject application was filed by the respondent no.2.

6.4. The appellant came to know about the aforesaid opposition filed by the respondent no.2 against the subject application for the first time on 2nd May 2024, when it was conducting a routine status check. However, the E-Register of Trade Marks showed that the notice of opposition was served upon the appellant on 20th February 2024, with a dispatch no. 6566805 dated 20th



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February 2024.

6.5. The notice of opposition was never served upon the appellant either by post or email. Yet the appellant immediately upon knowledge about the notice of opposition filed a counter statement thereto on 6th May 2024.

6.6. On 29th June 2024, the appellant, *vide* email of the same date, received a show cause notice from the respondent no.1 calling upon the appellant to show cause as to why the subject application should not be deemed to be abandoned under Section 21 of the Trade Marks Act, 1999 (hereinafter 'Act') as the counter statement was filed beyond the prescribed period.

6.7. The show cause notice was followed by a hearing scheduled on 31st July 2024, which was attended by counsel for the appellant.

6.8. During the oral hearing, counsel for the appellant informed the respondent no.1 that the appellant had not been served with the notice of opposition and hence the deadline to file the counter statement had not commenced.

6.9. Basis the aforesaid, the Hearing Officer directed the appellant to file an affidavit stating that the notice of opposition had not been served upon the appellant. Accordingly, the appellant's counsel filed an affidavit on 1st August 2024 to the effect that the appellant had not been served with the notice of opposition and the appellant's counsel became aware about the same only during a routine status check.

6.10. Despite the aforesaid affidavit having been filed on behalf of the appellant, the respondent no.1 passed the impugned order holding that the counter statement filed by the appellant was time barred and accordingly, the subject application was abandoned under Section 21(2) of the Act.

7. Ms. Nidhi Raman, CGSC, on instructions, submits that there are no



records available with the respondent no.1 for the service of the aforesaid notice of opposition upon the appellant due to a technical glitch at the end of the Trade Marks Registry.

8. I have heard counsel for the parties and examined the material on record.

9. The subject application has been abandoned by the respondent no.1 under Section 21(2) of the Act. For ease of reference, Section 21(2) of the Act is set out below:

*“(2) The Registrar shall serve a copy of the notice on the applicant for registration and, **within two months from the receipt by the applicant** of such copy of the notice of opposition, the applicant shall send to the Registrar in the prescribed manner a counter-statement of the grounds on which he relies for his application, and if he does not do so he shall be deemed to have abandoned his application.”*

[Emphasis supplied]

10. A reading of the aforesaid section 21(2) of the Act would show that upon receipt of a notice of opposition, the Registrar of Trade Marks is required to effect service of the same upon the applicant for registration. The applicant is thereafter required to file its counter statement within two months from the receipt of the notice of opposition and non-compliance with the aforesaid timeline would result in the trade mark application as deemed to have been abandoned.

11. Rule 18 of the Trade Marks Rules, 2017 (hereinafter ‘Rules’) deals with service of documents by the Registrar of Trade Marks. For ease of reference, Rule 18 of the Rules is set out below:

“18. Service of Documents by the Registrar. — (1) All communications and documents in relation to application or opposition matter or registered trademark may be served by the Registrar by leaving them at, or sending them by post to the address for service of the party concerned or by email communication.



(2) Any communication or document so sent shall be deemed to have been served, at the time when the letter containing the same would be delivered in the ordinary course of post or at the time of sending the email.

(3) To prove such service, it shall be sufficient to prove that the letter was properly addressed and put into the post or the email communication was sent to the email id provided by the party concerned.”

[Emphasis supplied]

12. The aforesaid Rule prescribes that the service of the notice of opposition shall be deemed complete at the time when the letter containing the same would be delivered ‘in the ordinary course of post’ or ‘at the time of sending the email’.

13. A perusal of the aforesaid provisions would unfold the existence of procedural inconsistency and ambiguity, particularly, with regard to the commencement of the time period for filing a counter statement by the applicant. Section 21(2) of the Act provides that the applicant must file a counter statement within two months from the date of receipt of the notice of opposition. On the other hand, Rule 18(2) of the Rules deems service to be complete at the time of sending the email itself.

14. In ***Samsudeen A v. Registrar of Trade Marks***, 2024 SCC OnLine Mad 6309, wherein under similar facts and circumstances as the present case, the High Court of Madras observed that Rule 18(2) of the Rules shall be purposively interpreted to align the said Rule with the legislative intent and to safeguard the rights of applicants. Accordingly, the High Court of Madras allowed the appellant therein to file a counter statement and directed the Registrar of Trade Marks to consider the opposition filed against his application on merits.

15. I am in agreement with the reasoning adopted by the High Court of Madras in ***Samsudeen*** (supra). In my view, a literal interpretation of Rule



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18(2) of the Rules would not be in consonance with Section 21(2) of the Act, which explicitly states that the time for filing a counter statement shall begin from the date of receipt of the notice of opposition.

16. In *Purushottam Singhal v. Registrar of Trade Marks*, 2023 SCC OnLine Del 1641, the case of the appellant therein was that neither the appellant nor any of his authorized representatives was served with the notice of opposition in terms of Section 21(2) of the Act. The Court, upon perusing the material on record, came to the conclusion that there was no proof of service of the notice of opposition on the appellant and the impugned order was set aside.

17. Recently, in *Mars Incorporated v. The Registrar of Trade Marks*, C.A.(COMM.IPD-TM) 88/2024, I have held that the time period prescribed under Section 21(2) of the Act for filing counter statement would begin from the date when the notice of opposition has been served upon the applicant. In the said case, since the notice of opposition was not served upon the appellant, the impugned order treating the subject trade mark application therein as abandoned was set aside. The operative part is set out below:

“37. A perusal of the aforesaid extract of the impugned order shows that while the Registrar has noted that there was acknowledgement of the successful service of Notice of Opposition to the Opponent, the service to the appellant is only substantiated by an email success report. There is no such finding in the impugned order with respect to receiving an acknowledgement in respect of service of Notice of Opposition to the appellant. This creates a doubt about whether the service was effected on the appellant.

38. On the basis of the record, I am satisfied that the appellant has been able to show that the Notice of Opposition was neither served on the appellant nor on the agent of the appellant, either by e-mail or any other mode of communication.

39. In view thereof, the impugned order dated 25th October, 2024 is set aside and the matter is remanded back to the Trademark Registry.”



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18. The aforesaid judgments are squarely applicable to the facts and circumstances of the present case.
19. As noted above, the appellant's counsel has filed an affidavit deposing to the non-receipt of the notice of opposition.
20. Counsel for the appellant submits that the aforesaid affidavit was not considered by the respondent no.1 while passing the impugned order. The impugned order simply states "*The Counter Statement filed by the Applicant is time barred, so the Application stands Abandoned u/s 21(2) of the Act*".
21. A perusal of the impugned order shows that the respondent no.1 has not even acknowledged the aforesaid affidavit filed by the appellant's counsel to the effect that the notice of opposition was not served upon the appellant. Counsel for the Trade Marks Registry confirms that there are no records to show that the notice of opposition was served upon the appellant.
22. On the basis of the material on record, I am satisfied that the appellant has been able to show that the notice of opposition was not served upon the appellant either by email or any other mode of communication.
23. In view of the above, the impugned order is set aside and the matter is remanded back to the Trade Marks Registry.
24. Accordingly, the counter statement filed on behalf of the appellant shall be taken on record and be served upon the respondent no.2 within four (4) weeks.
25. The opposition filed against the subject application shall thereafter proceed as per the provisions of the Act and the Rules.
26. Accordingly, the appeal is disposed of in the aforesaid terms.
27. The Registry of this Court is directed to supply a copy of the present order to the Office of the Controller General of Patents, Designs and Trade



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Marks on e-mail ID - llc-ipo@gov.in, for compliance.

AMIT BANSAL, J

APRIL 9, 2025

kd