



भारत सरकार / GOVERNMENT OF INDIA
व्यापार चिह्न रजिस्ट्री / TRADE MARKS REGISTRY

बौद्धिक सम्पदा भवन प्लॉट नं. 32, सेक्टर 14, नयी दिल्ली-110078 फोन: 28082915, 28082916, 28082917
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VIRTUAL HEARING CELL

व्यापार चिह्न अधिनियम, 1999/THE TRADE MARKS ACT, 1999

Virtual hearing under rule 115 of Trade Marks Rules 2017

IN THE MATTER OF Application No 3683209
for registration of a trade mark ALPHARD
filed by TOYOTA JIDOSHA KABUSHIKI KAISHA (ALSO TRADING AS TOYOTA MOTOR CORPORATION).

आदेश/O R D E R

Above application has been filed for registration of the trademark ALPHARD on 21/11/2017 which was examined on 02/01/2018 and examination report was communicated to the applicant at his address for service. A reply to the office objection(s) had been filed on behalf of the applicant but the same was not found satisfactory and the application was set down for hearing and eventually hearing took place before me on 11/02/2021.

ADVOCATE NIPUN Attorney appeared before me and made his/her submissions. I have heard arguments and gone through the records.

The mark applied for registration is identical with /similar to earlier trademarks on record, as mentioned in the Examination report and by similarity of marks as well as similarity of goods and services covered under such marks, there exists a likelihood of confusion in the mind of public. As such the registration of the mark is objectionable under Section 11(1) of the Trade Marks Act 1999

ADVOCATE NIPUN appeared, argued and submitted that the conflicting mark cited in the examination report is visually, phonetically, structurally and conceptually different and have different goods. furthermore The attorney is relied on the judgement of MilmetOftho Industries and Ors. vs. Allergan Inc. [(1996) 12 SCC 624] and f H&M Hennes & Mauritz AB and Ors. Vs. HM Megabrands Pvt. Ltd and Ors. [2018 (740) PTC 229 (DEL)] , as per these cases prior international user should be consider. heard, and checked the details of application, As per examination report, visually ,phonetically, conceptually and structurally identical registered and duly renewed and valid cited mark no.3093218 with the similar goods and prior user are on record, and the applicant mark have no significance and uniqueness in the adoption of the trade mark in India. The cited mark is applied on 05/11/2015 as " ALPHARD" for the goods of " CAR COVER, VEHICLE AIR CUSHION. VEHICLE SEATS, HORNS FOR VEHICLES, COVER FOR VEHICLE STEERING WHEELS, VEHICLE MUDGUARD/MUD FLAP, SUN VISOR/DOOR VISOR/RAIN VISOR, BUMPER GUARD, HOODS FOR VEHICLE, SIDE STEP, BONNET VISOR, CAR SEAT COVERS, CAR WIPER, WIND SCREEN WIPER, WINDSHIELD WIPER. REAR VIEW MIRROR, CARRIER (LUGGAGE) FOR VEHICLES, UPHOLSTERY FOR VEHICLES, AIR BAGS, REVERSING ALARM FOR VEHICLES, ANTI THEFT ALARM FOR VEHICLES, ANTI THEFT DEVICES FOR VEHICLES INCLUDED IN CLASS - 12" which is identical to the applicant mark applied on 21/11/2017 as "ALPHARD" and as on proposed to be used mark in India for the similar goods of " Automobiles and structural parts thereof" . The applicant subject mark is " ALPHARD" so there is no difference between cited mark and the applicant's mark, since the subject mark is a common terminology hence there is phonetically and visual similarity with the cited mark. Furthermore applicant mark is applied as a proposed to be used in India, hence there is no question of acquired distinctiveness, and honest and concurrent user arise in India. The attorney of the applicant has relied on the judgement of MilmetOftho Industries and Ors. vs. Allergan Inc. [(1996) 12 SCC 624] and f H&M Hennes & Mauritz AB and Ors. Vs. HM Megabrands Pvt. Ltd and Ors. [2018 (740) PTC 229 (DEL)] which are based on trans boarder reputation however in a recent judgement of Supreme Court in the case of Toyota Jidosha Kabushiki Kaisha vs M/S Prius Auto Industries Limited on 14 December, 2017 popularly known as Prius Case upheld

that trans boarder reputation is not recognized because Territoriality Principle as opposed to the Universality Doctrine which has been accepted by the courts all over the world as the correct test to determine goodwill and reputation within any particular jurisdiction. The Hon'ble Supreme Court further held that the reputation could not merely be asserted, but must be proved within the territory of India. In the present application subject mark is applied on dated 21/11/2017 as a proposed to be used basis and till date in spite of due knowledge the applicant has not taken any legal steps against the proprietor of conflicting mark on the basis on prior user and adoption in Indian Market. Applicant and conflicting mark, both applied as a proposed to be used basis but the adoption and date of application of conflicting mark is prior than the applicant and as per Section 23 (1) (b) of the trademark Act 1999 mark is registered from the date of making the application and as per section 34 of the trademark act 1999 who comes first in the market hence date of adoption of the subject mark by the proprietor of conflicting mark is prior than applicant. furthermore It is a well settled law that, "The resemblance between the two marks must be considered with reference to the ear as well as the eye". so upon considering the above mentioned facts and material on record, the objection raised under section 11 of trade Mark Act 1999 can not be waived. hence application is refused.

After perusal of all the documents on record and submission made by the applicant / authorised agent it is concluded that applied mark is not registrable because of the reason stated as above. Hence application no 3683209 cannot be accepted and refused accordingly.

दिनांक/Dated : 19 February 2021.



(SARIKA S KADAM)

वरिष्ठ परीक्षक, व्यापार चिह्न/SENIOR EXAMINER OF TRADE
MARKS
(अधिनियम के 3 (2) के तहत प्राधिकृत)/(Authorized under 3(2) of
the Act)

सेवा में/To,

REMFY & SAGAR
REMFY HOUSE AT THE MILLENNIUM PLAZA SEC 27, GURGAON 122009, NEW DELHI NATIONAL CAPITAL REGION
INDIA

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