



(T)OP(TM) No. 411 of 2023

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 14.10.2025	Pronounced on 16.12.2025
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THE HONOURABLE MR.JUSTICE N.SENTHILKUMAR

(T)OP(TM) No. 411 of 2023

Crompton Greaves Consumer Electricals Limited
Having its registered office at
Equinox Business Park, Tower 3,
1st Floor, East Wing ,
LBS Marg, Kurla (West),
Mumbai,
Maharashtra - 400 070

Petitioner (s)

Vs

1.Wipro Enterprises Private Limited
C Block, CCLG Division,
Doddakannelli, Sarjapur Road,
Bangalore - 560035,
Karnataka, India.
(Amended as per order of SKRJ in
(TM)A No.53/2023 dated 09.11.2023)

2.The Registrar of Trade Marks,
Trade Marks Registry,
Chennai

Respondent(s)

PRAYER

Petition filed under Sections 47/57 of the Trade Marks Act, 1999, (a) to pass an order to allow the rectification application and (b) to remove the Trade Mark



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Number 2222788 of October 20,2011 for the mark “PREMIO” in class 11 from
WEB COPY the Register.

For Petitioner (s) : Mr.Hemant Daswani

For 1st Respondent (s): Ms.Gladys Daniel

ORDER

This Petition has been filed to pass an order to allow the rectification application and to remove the Trade Mark Number 2222788 of October 20, 2011 for the mark “PREMIO” in class 11 from the Register.

2.The case of the Petitioner is as follows:

2.1.The Petitioner, a publicly listed company incorporated under the Indian Companies Act, 2013, operates from its registered office in Mumbai and its regional office in New Delhi. This petition is filed through its authorized representative, Mr. Keshav Sharma, Manager (Legal), who has been empowered by a Power of Attorney deed dated December 18, 2018 to sign, file, verify, and pursue this rectification petition.

2.2.The Petitioner is involved in the manufacturing, marketing and distribution of consumer electrical products including fans, lighting fixtures,



home appliances, pumps etc., The Petitioner also exports these products worldwide and their goods are known for high quality and are sold under a house brand "CROMPTON". In the year 2015, pursuant to a judgment of the Bombay High Court, the Petitioner's predecessor company viz., Crompton Greaves Limited (CGL) was demerged into two companies, one of which is the Petitioner viz., Crompton Greaves Consumer Electricals Ltd. The Petitioner had made huge investment in promoting its goods and services to ensure strong consumer recognition. In the year 2020, the Petitioner planned to launch fans under the brand name "PREMION" and it has filed a trademark application for the mark PREMION and the same is still pending. However, during January 2021, the Petitioner came to know about the trademark "PREMIO," owned by the 1st Respondent, which was cited in the examination report given in respect of the Petitioner's application.

2.3.Though the 1st Respondent obtained registration for the mark PREMIO in the year 2013 and claiming usage from 2011, the Petitioner found that the 1st Respondent has not sold any goods under this mark and there is no commercial use of the mark PREMIO. An all India survey conducted by the Petitioner confirmed that no PREMIO brand products are available in the market.



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2.4. The PREMIO mark was registered without bonafide intention and it has not been used for more than five years. Since the 1st Respondent's unused mark is now obstructing the Petitioner's PREMION mark, the Petitioner is eligible as a "person aggrieved" under the Act to file the present application.

3. The case of the 1st Respondent is as follows:

3.1. The rectification application is not maintainable as the Petitioner adopted the mark "PREMION" in bad faith. According to the 1st Respondent, though the Petitioner was fully aware that the 1st Respondent already owns the registered trademark "PREMIO" (No. 2222788), the petitioner proceeded to adopt and use a deceptively similar mark for the same kind of goods with a malafide intention.

3.2. When the 1st Respondent adopted the mark PREMIO, the Petitioner has knowingly selected a confusingly similar mark, violating the Respondent's rights. The Petitioner is not a "person aggrieved" under the Trade Marks Act. If at all the Petitioner wanted to use the Trademark PREMION, they should have taken appropriate measures to cancel the Trademark of the 1st Respondent and thereafter use the said Trademark. The Petitioner had no right to use the



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Trademark PREMION as a *fait accompli* against the 1st Respondent to cancel its
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registration. The Petitioner has acted in bad faith and has invaded the 1st Respondent's right born out of Intellectual exercise and is trying to take advantage of the 1st Respondent's trademark by adopting an identical mark.

3.3.The Petitioner's use of PREMION, despite the existing registration creates confusion to the consumers. Non use of the mark PREMIO alone is not a justified reason to seek cancellation of a registered trademark.

3.4.The Petitioner should have conducted a trademark search before adopting the mark PREMION and should have sought cancellation before using a mark which is similar to PREMIO.

4.Heard the learned counsel for the Petitioner and the learned counsel for the 1st Respondent and perused the available records.

5.The 1st Respondent has filed an affidavit of admission and denial, wherein, except the first document which is an extract of the impugned mark from the official website of Registrar of Trade Marks along with copy of registration certificate of the impugned mark, the 1st Respondent has denied the



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existence and correctness of all the other documents filed by the petitioner.

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6. This Court by order dated 02.07.2024 has framed the following issues:

“1.Whether the impugned trade mark PREMIO has been wrongly registered and is liable to be removed under Section 47(1)(a) and 47(1)(b) of the Trade Marks Act, 1999?

2.Whether the respondent has till date commenced sale of goods under the mark PREMIO?

3.Whether the petitioner is knowingly violating the rights of the 1st respondent?

4.Whether the 1st respondent is entitled to adopt the Trademark which is registered in favour of the petitioner during the subsistence of the registration?”

7. The petitioner and the 1st Respondent has not let in any oral evidence.

8. The learned counsel for the Petitioner submitted that the Petitioner adopted the mark PREMION in the year 2020 and applied for trademark registration on 25.12.2020. When the Petitioner came to know about the existence of the 1st Respondent's mark PREMIO, it conducted a search and



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found no evidence of any goods being sold under the mark PREMIO and therefore, the 1st Respondent's mark was registered without any genuine intention to use it and has remained unused for more than five years, making it liable for removal under Section 47(1)(a) and 47(1)(b) of the Trade Marks Act.

9. The learned counsel for the Petitioner submitted that the 1st Respondent registered the mark PREMIO only to block the competitors, but not to use it genuinely. The burden of proof of usage lies solely on the 1st Respondent and since it has failed to prove the genuine use, the mark should be cancelled under Section 47 of the Trade Marks Act. It is not a requirement to file a rectification petition before adopting a mark, while the law requires the 1st Respondent to prove actual use of its registered mark.

10. The learned counsel for the Petitioner relied upon the following judgments:

(i) *Hardie Trading Ltd. Vs Addisons Paint & Chemicals* reported in (2003) 11 Supreme Court Cases 92, wherein it was held as under:

"26. Thus before the High Court or the Registrar directs the removal of the registered trade marks they must be satisfied in respect of the following:

(1) that the application is by a "person aggrieved";



(2) that the trade mark has not been used by the proprietor for a continuous period of at least five years and one month prior to the date of the application;

(3) there were no special circumstances which affected the use of the trade mark during this period by the proprietor.

27. The onus to establish the first two conditions obviously lies with the applicant, whereas the burden of proving the existence of special circumstances is on the proprietor of the trade marks. These conditions are not to be cumulatively proved but established *seriatim*. There is no question of the third condition being established unless the second one has already been proved and there is no question of the second one even being considered unless the High Court or the Registrar is satisfied as to the *locus standi* of the applicant.

32. In the latter case the *locus standi* would be ascertained liberally, since it would not only be against the interest of other persons carrying on the same trade but also in the interest of the public to have such wrongful entry removed. It was in this sense that the House of Lords defined "person aggrieved" in the matter of Powell's Trade Mark [Powell's Trade Mark, Re, (1894) 11 RPC 4 : 1894 AC 8 : 70 LT 1 (HL)] :

"... although they were no doubt inserted to prevent officious interference by those who had no interest at all in the register being correct, and to exclude a mere common informer, it is undoubtedly of public interest that they should not be unduly limited, inasmuch as it is a public mischief that there should remain upon the register a mark which ought not to be there, and by which many persons may be affected, who, nevertheless, would not be willing to enter upon the risk and expense of litigation.

Whenever it can be shown, as here, that the applicant is in the same trade as the person who has registered the trade mark, and wherever the trade mark, if remaining on the register, would, or might, limit the legal rights of the applicant, so that by reason of the existence of the entry on the register he could not lawfully do that which, but for the existence of the mark upon the register, he could lawfully do, it appears to me he has a *locus standi* to be heard as a person aggrieved."



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(ii) *DORCO Co. Ltd Vs Durga Enterprises and Another 2023 reported in SCC*

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OnLine Del 1484, wherein it was held as follows:

*"19. In the judgment in *Shell Transource Limited Shell International Petroleum Company Ltd, 2012 SCC OnLine IPAB 29*, it was observed by the IPAB that the onus of proving "non-user" is on the person who pleads the same. However, when the applicant pleads "non-user", the 1st Respondent must specifically deny it. Therefore, in the absence of a specific denial, it was held that the allegations of "non-user" stood admitted.*

20. In the present case, the allegations of "non-user" against the 1st Respondent no 1 stand admitted in the absence of a specific denial of the same and the impugned trademark is liable to be removed from the Register of Trade Marks on account of "non-user" as contemplated under Section 47(1)(b) of the Act."

By referring to the above judgments, the learned counsel contended that all the judgments confirms the position of law that if the mark is not used for more than five years after registration, it deserves to be cancelled. Even after passing of nine years from the date of registration of the Respondent's trademark, there has been no genuine use of the mark PREMIO under Class 11. Therefore, the mark has also lapsed under Section 47(1)(b) of the Trade Marks Act, which strengthens the Petitioner's position as a "person aggrieved".

11. The learned counsel for the 1st Respondent submitted that the 1st Respondent is the registered proprietor of the trademark PREMIO, registered under Trademark No.2222788 in Class 11 for lighting apparatus, LED lighting,



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fancy lighting and related accessories. Originally, the present rectification petition was filed before the Intellectual Property Appellate Board and was then transferred to this Court. The learned counsel further pointed out that the 1st Respondent has held rights for the mark PREMIO for nearly fifteen years, which was long before the Petitioner adopted the mark PREMION. Though both marks fall within Class 11, the goods are not identical as the 1st Respondent's mark relates to lighting products and the Petitioner uses its mark for ceiling fans. The Petitioner is bound to conduct a proper trademark search before adopting a similar mark. The Petitioner cannot use the infringing mark PREMION while the 1st Respondent's trademark registration is in force.

12. The learned counsel for the 1st Respondent further submitted that the use of the 1st Respondent's Trademark PREMION by the Petitioner constitutes a criminal offence under the Trademarks Act, 1999 by relying upon the judgment of the Hon'ble Apex Court in *State of UP Vs. Ram Nath, Partner, Panna Lal Durga Prasad, Kanpur* reported in (1972) 1 SCC 130, wherein it was held as follows:

“6. Sections 78 and 79 are contained in Chapter I of the Act. Section 78 provides that any person who falsifies any trade mark, falsely applies to goods any trade mark; or makes, disposes of, or has in his possession any die, block, machine, plate or other



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instrument for the purpose of falsifying, of being used for falsifying a trade mark, applies any false trade description to goods etc. etc., shall unless he proves that he acted without intent to defraud, be punishable with imprisonment for a term which may extend to two years, or with fine, or with both, while Section 79 makes a person liable to similar punishment if he sells goods or exposes them falsely or for having them in his possession for sale or for any purpose of trade or manufacture any goods or things to which any false trade mark or false trade description is applied. Trade mark has been defined in Section 2(1)(v) to mean : “(i) in relation to Chapter X (other than Section 81), a registered trade mark or a mark used in relation to goods for the purpose of indicating or so as to indicate a connection in the course of trade between the goods and some person having the right as proprietor to use the mark; and

(ii) in relation to the other provisions of this Act, a mark used or proposed to be used in relation to goods for the purpose of indicating or so as to indicate a connection in the course of trade between the goods and some person having the right, either as proprietor or as registered user, to use the mark whether with or without any indication of the identity of that person, and includes a certification trade mark registered as such under the provisions of Chapter VIII.

It is apparent from this definition that for the purposes of Chapter X of the Act which deals with criminal offences, a trade mark includes a registered as well as unregistered trade mark. An offence under Section 78 or 79 therefore relate to a trade mark whether it is registered or unregistered. The contention that the registered trade mark of the Habib Bank Ltd., has been abandoned since the said Bank had discontinued its use from 1954 will not absolve the respondents from criminal liability because even if it was abandoned it can only furnish a ground for a person to make an application under Section 46 to have the trade mark removed from the registers. It does not however entitle him to use a trade mark whether it is current or has been removed from the register, or has been abandoned or even if it has never been initially registered but has acquired the currency of a trade mark. The offences under Sections 78 and 79 consists in the deception and application of a trade mark which is in use



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and which signifies a particular type of goods containing that mark. There is, therefore, no validity in the contention that the infringement of the trade mark of Habib Bank Ltd., merely gives rise to a civil action, in respect of which no prosecution will lie. The provisions contained in Chapter IV in which is contained Section 28 relate to the effect of registration and have no bearing on the question before us."

13. By relying upon the above judgment, the learned counsel for the 1st Respondent submitted that the Petitioner has no *locus standi* to institute the Rectification Petition against the 1st Respondent. The petitioner and the directors of the petitioner are guilty of commission of criminal offence as held by the Apex Court in the above Judgment.

14. It is not in dispute that the petitioner has filed an application to register the trade mark PREMION for its product viz., ceiling fans and much prior to this application, the 1st Respondent has obtained registration for the trademark PREMIO under clause 11 for lighting apparatus.

15. While considering the issue Nos.1 & 2, this court has to look into the fact that after registering the trademark before the authority concerned, whether the 1st respondent has used the trade mark upto three months before the date of the application filed for removal of the trademark, for a continuous period of



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five years from the date of registration, which is essential as contemplated under **WEB COPY** Section 47(1)(b) of the Trade Marks Act. The Applicant has produced a copy of the affidavits of various dealers of electrical goods across India to substantiate the non-use of the trademark PREMIO by the 1st Respondent. In the said affidavits, the dealers have stated that they have never come across any product under the mark 'PREMIO' manufactured by the 1st Respondent.

16. It is to be noted that the 1st Respondent has not produced any document or adduced oral evidence to disprove the above affidavits filed by the petitioner and to invalidate the petitioner's claim of non-use of registered trademark by the 1st Respondent. In fact, the 1st Respondent has not filed any document in support of their defence. Thus the petitioner has made out a case that after registering their trademark, the 1st respondent has not done anything to carry out the trade by using the trademark for a period of more than five years. Therefore, the impugned trademark PREMIO is liable to be removed from the register under Section 47(1)(b) of the Trade Marks Act, 1999. In view of the same, issue Nos.1 & 2 are answered in favour of the Petitioner.

17. While considering Issue Nos. 3 & 4, it is noted that there is no evidence to show that after registering the impugned trademark by the 1st



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WEB COPY respondent viz., Wipro Enterprises Private Limited, the impugned trademark has been put to bonafide use. While the Petitioner claims to have filed an application for registering the mark “PREMION” in the year 2020, the 1st Respondent has not raised any issue pertaining to the use of the said trademark by the Petitioner, even though the said mark is very much identical to the 1st Respondent’s trademark which is registered prior to 2020. In view of the same, issue Nos.3 & 4 are also answered in favour of the Petitioner.

18. In fine, the present petition is allowed. The 2nd Respondent is directed to remove the impugned trademark from the register. No costs.

16.12.2025

Index: Yes
Speaking order
Internet: Yes
Neutral Citation: Yes/No

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To

1. Wipro Enterprises Private Limited
C Block, CCLG Division,
Doddakannelli, Sarjapur Road,
Bangalore - 560035, Karnataka, India.
2. The Registrar of Trade Marks,
Trade Marks Registry,
Chennai.



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**Pre-delivery order made in
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