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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 04.08.2026

PRONOUNCED ON : 27.11.2026

CORAM

THE HON'BLE MR.JUSTICE K.KUMARESH BABU

O.P.(TM) No.55 of 2024

Allergan Holdings France SAS,
Rep., by its PoA Holder
Ms.Suriya Lekha
Tour CBX, 1 passerelle des Relets 92400,
Courbevoie, France

..Petitioner

Vs

1.Micro Labs Limited,
27, Race Course Road,
Bangalore-560 001.

2.The Registrar of Trademarks,
The Office of Trademarks Registry,
The Intellectual Property Building,
GST Road, Guindy, Chennai-600 032,
Tamil Nadu, India.

..Respondent

Prayer: Petition filed under Sections 47 and 57 of the Trade Marks Act, 1999 seeking cancellation of the trademark "SKINVIV', registered under No.2698417 in the name of the Respondent No.1, from the Register of Trademarks.

For Petitioner: Mr.Ramesh Ganapathy

For Respondent(s): Mr.T.Sai Krishnan
for R1

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Mr.J.Madanagopal Rao
Senior Panel Counsel
assisted by Ms.S.Sasikala
for R2

ORDER

The present Appeal is filed seeking cancellation of the trademark **"SKINVIV"**, registered under No.2698417 in the name of the Respondent No.1, from the Register of Trademarks, the petitioner is before this Court.

2. Heard Mr.Ramesh Ganapathy the learned counsel appearing on behalf of the petitioner, Mr.T.Sai Krishnan the learned counsel appearing on behalf of the first respondent and Mr.J.Madanagopal Rao the learned Senior Panel Counsel assisted by the learned counsel Ms.S.Sasikala, appearing for the second respondent

3. Mr.Ramesh Ganapathy, learned counsel appearing for the petitioner would submit that the petitioner, as a company organised and established under the Laws of France, which was founded in the year 2013, is carrying on its business having impact on the lives of people across several therapeutic areas, including dermatology. In its production, it also markets a product under a trade name **"SKINVIVE"**, which is approved by the FDA in US to improve skin smoothness of the cheeks. The same had been patented in USA and the

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products of the petitioner are also available in India through its website, apart from the details of the products being available on various social media platforms. The said trade name had achieved massive popularity and its extensive and continuous use has made the trade name synonymous with the petitioner. The product has been marketed in various countries.

4. The petitioner had taken out an application before the Trademark Registry in the year 2022 and is currently pending registration. It had come to the knowledge of the petitioner that the first respondent had earlier filed an application for a mark **"SKINVIV"** as early as in the year 2014, which is similar to that of the trade name pending registration in favour of the petitioner and is being used continuously by the petitioner. The impugned trademark was entered in the registry in the year 2018. In spite of such registration, noting it to be a mark to be used in the future, even as on this date, the first respondent had not marketed any of its products under the trade name that had been registered in India and a non-use of the same for a period of a five years from the date of registration would only indicate that the same was not a *bona fide* registration and as the period of more than five years had lapsed, the trademark as registered by the first respondent is liable to be removed from the Registry. Hence, he would submit that the impugned trade mark offends the petitioner's right to use its trade name in India, which is pending registration.

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5. He would further submit that the petitioner has a global presence with its trade name and the first respondent who had not even marketed any of the products would make the petitioner also prior use of the trade name. Mere absence in India cannot be put against the petitioner to claim such prior user. He would further submit that the first respondent itself had admitted that even as of the date, there has been no usage of the trade name, such reason is sought to be attributed to the COVID pandemic and its duty to provide drugs to sustain COVID pandemic. He would submit that the COVID pandemic stuck in the year 2020 and has gone as early as in the year 2022. Even during the COVID period, there has been no bar for the pharmaceutical company to function and even assuming that there is an affect due to the COVID pandemic to calculate the five years, first respondent had not produced any documents to substantiate that steps were taken to market the product, that had to be put on hold due to the COVID pandemic. When such evidences were not produced except for a pleading, which is also bald in the counter affidavit, the first respondent cannot be allowed to enlarge the period of five years as provided under the provisions of the Trade Marks Act, 1999 (hereinafter referred to as "the Act, 1999" for brevity). In that context, he had relied upon the following judgments and prays this Court to allow the petition as prayed for:

(i) N.R.Dongre and Ors. vs. Whirlpool Corporation and Another reported in ***(1996) 5 SCC 714;***

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(ii) Milmet Oftho Industries and Ors. vs. Allergan Incl reported in ***(2004) 12 SCC 624;***

(iii) J.N.Nichols (Vimto) Ltd. vs. Rose and Thistle and Anr. reported in ***1993 SCC OnLine Cal 254l*** and

(iv) Shell Transcourse Limited vs. Shell International Petroleum Company reported in ***(2012) 02 IPAB CK 0006.***

6. Countering his arguments, Mr.T.Sai Krishnan, learned counsel appearing for the first respondent would contend that the first respondent, as early as in the year 2014, had applied for registration of the trademark and the same came to be registered in the year 2018, after due process of law. The adoption of similar trade name to that of the first respondent is wholly dishonest by hijacking the trade mark of the first respondent that had been registered. He would submit that the petitioner's trade name is deceptively similar to the first respondent's trade name both visually and phonetically. When the petitioner's registration is admittedly to be made only in the year 2022, it is clear that the first respondent's registration was much prior and the petitioner had failed to substantiate that usage of the petitioner's product outside India and cannot be put against the first respondent, even assuming such usage was *bona fide*. He would further submit that the first respondent is also a manufacturer of a well-known drug viz., Dolo-650 and during COVID pandemic, the requirement of the drug was substantially increased, thereby necessitating a corresponding

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increase in the production of the said drug and in that regard, the production of the products under the trade name registered by the petitioner could not be made. The first respondent had coined the trade name much before the petitioner's presence in respect of the product and had made an application as early as in the year 2014. Hence, the petitioner's claim that the first respondent would market its products on the reputation built up by the petitioner is wholly imaginary and ill-founded. He had also relied upon the following judgments of the Hon'ble Supreme Court

(i) Infosys Technologies Limited vs. Jupiter Infosys Limited and Another reported in ***(2011) 1 SCC 125;***

(ii) Hardie Trading Ltd. And Another vs. Addisons Paint & Chemicals Ltd. reported in ***(2003) 11 SCC 92;*** and

(iii) Cycle Corporation of India Ltd. vs. T.I. Raleigh Industries Pvt. Ltd. And Others reported in ***(1996) 9 SCC 430***

in contending that the petitioner cannot be said to be an aggrieved person to maintain an application for cancellation and removal of the trade mark of the first respondent. Hence, he prays this Court to dismiss the Original Petition.

7. I have considered the submissions made by the learned counsel for the petitioner and the learned counsel for the first respondent and carefully perused the material placed on record.

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8. The present petition has been filed primordially for removal of the product on the ground of non-use, as provided under Section 47(1)(b) of the Act, 1999. The claim of the first respondent primarily falls under the special circumstances that is provided under sub-section (3) of Section 47 of the Act.

9. Certain undisputed facts are that the first respondent had taken out an application in the year 2014 and had got a trade mark registered in the name of **"SKINVIV"** in the year 2018. Further, there is also no dispute with regard to the non-usage of the product till the date of the petition including the date on which the original petition was heard. Even though the *bona fides* of the petitioner's registration was challenged by the first respondent, such challenge had not been substantiated by providing any evidence for this Court to consider the use of the trade name **"SKINVIVE"** of the petitioner as not *bona fide*. The petitioner had also produced various documents to substantiate the registration of its trademark and its presence in the global market. The petitioner is also in the process of getting the trade mark registered in India.

10. The two reasons that were attributed by the first respondent in opposing the petitioner are that (a) COVID pandemic and (b) the petitioner is not an aggrieved person.

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11. As regards to the claim of COVID pandemic, it is an admitted case that the first respondent had been granted with the registration on 17.08.2018. COVID pandemic stuck in the month of March, 2020 and in the interregnum, the petitioner had two years. Even assuming COVID pandemic period could be excluded in the original petition filed in the year 2024, the first respondent had filed a counter in the month of December, 2024. Even assuming the pandemic prevailed till 2022, there is a further period of almost two years available with the first respondent. It is not the case of the first respondent that it was forced to shutdown the production unit, but it is the case of the first respondent that in view of its demand to produce Dolo-650, it was unable to concentrate on the production of product under the trade name **"SKINVIV"**. In that regard, the first respondent had not produced any shred of document to at least show the attempt that was made by it in the non-pandemic period, which was available to market its products under the trade name. The special circumstance sought to be relied upon by the first respondent, in the considered view of this Court, cannot be accepted, particularly when the first respondent has not even pleaded the steps taken by it to support the production of the product in respect of which it had obtained a beneficial registration. Even though there is a special circumstance that prevailed, this Court is of the view that special circumstance, do not prevail the entire period of five years and was only for a period of two years. Hence, as coupled with the reasoning that the first respondent had not substantiated any step that it had taken to take the benefit of such registration,

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this Court is of the view that the first respondent cannot have the benefit of Section 47(3) of the Act, 1999.

12. The concept of a person aggrieved to raise an issue of non-user stands on a different footing, as the Trade Marks Registration itself does not render the entry to be incorrect to give a *locus standi* to a person whose interest may be affected to such a claim. A person aggrieved must substantiate on the date of making such application that it was in existence and his grievance of the continuous registration should be subsisting.

13. In the present case, the petitioner had substantiated that it has been in the global market with their trademark **"SKINVIVE"** and had made an application for registering the said trademark in India. It is to be noted that the petitioner has also benefited with the trade mark in US. Further, the trademark of the first respondent, as registered in the Registry would have a bearing on the application of the petitioner.

14. In that regard, the petitioner cannot be said to be a person not aggrieved as claimed by the first respondent.

15. For the aforesaid reasons, the Original Petition stands allowed as prayed for and there shall be a direction to the second respondent to remove the

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entry pertaining to the trademark **"SKINVIV"**, registered under No.2698417 in the name of the Respondent No.1, from the Register of Trademarks. There shall be no order as to costs.

27-11-2026

Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No

abr

To

The Registrar of Trademarks,
The Office of Trademarks Registry,
The Intellectual Property Building,
GST Road, Guindy, Chennai-600 032,
Tamil Nadu, India.

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K.KUMARESH BABU, J.

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