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

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Date of decision: 18th July, 2025

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C.O. (COMM.IPD-TM) 207/2024

ONCQUEST LABORATORIES LIMITEDPetitioner

Through: Mr. Manish Kumar Mishra and Mr.
Saransh Saini, Advocates.

versus

MANISH KUMAR & ANR.

.....Respondents

Through: Ms. Nidhi Raman, CGSC with Mr.
Om Ram, Advocate for R-2.

CORAM:

HON'BLE MR. JUSTICE AMIT BANSAL

AMIT BANSAL, J. (Oral)

1. The present rectification petition has been filed under Sections 47 and 57 of the Trade Marks Act, 1999 (hereinafter 'the Act') seeking cancellation of registration/ removal of the trademark 'ONCQUEST' bearing registration no. 4004984 in class 44 in the name of the respondent no.1 (hereinafter 'impugned mark') from the Register of Trade Marks.

PROCEEDINGS IN THE PETITION

2. Notice in the present petition was issued *vide* order dated 18th October, 2024 and six weeks' time was granted to the respondent no.1 to file a reply. Counsel appearing on behalf of the respondent no.2 accepted notice on the same date.

3. *Vide* order dated 27th February, 2025, the Joint Registrar noted that the respondent no.1 has been served *via* speed post on 30th January, 2025.



4. On 1st May, 2025, it was recorded that despite service, neither any reply was filed on behalf of the respondent no. 1, nor any appearance was made on behalf of the respondent no. 1.

5. Even today, none appears on behalf of the respondent no.1.

BRIEF FACTS

6. Brief facts leading to the filing of the present petition are as follows:

6.1. The petitioner company, Oncquest Laboratories Limited, was incorporated by the promoters of Dabur India Ltd. and is engaged in operating diagnostic and pathology centers across India and in neighbouring countries such as Nepal, Bangladesh, Sri Lanka, Uzbekistan etc.

6.2. The trademark 'ONCQUEST' was coined and adopted in the year 2001 by Dabur India Ltd. The trademark 'ONCQUEST' has been continuously, extensively and commercially been in use by Dabur India since the year 2003 before being used by the petitioner since the year 2007 for diagnostic and pathology services. The petitioner applied for registration of the trademark 'ONCQUEST' in classes 5, 42 and 44 on 19th September, 2024, claiming user from 8th April, 2003. However, the said registration is pending.

6.3. The petitioner has about 30+ Labs, 400+ Collection Centers and 2500+ Service Associates in various cities such as New Delhi, Bengaluru, Guwahati, Hyderabad, Jalandhar, Mumbai, Varanasi etc.

6.4. The sales turnover of the petitioner for services offered under the mark 'ONCQUEST' for the period 2007-2023 has been given in paragraph 12.7 of the petition. The petitioner's services under the mark 'ONCQUEST' had annual sales of Rs. 91 crores (approx.) in the year 2022-2023.

6.5. The petitioner has spent excessively in advertising and promoting its trade name/ trademark 'ONCQUEST'. The petitioner company is one of the



best in the field of diagnostic and pathology services and has received various awards and recognitions. Due to long and continuous usage of the mark ‘ONCQUEST’, the petitioner has acquired immense goodwill and reputation.

6.6. The respondent no.1 was granted registration of the mark ‘ONCQUEST’ (hereinafter referred to as “the impugned mark”) *vide* registration no. 4004984 under class 44 on 15th May, 2019. The application for registration of the impugned mark was filed on 22nd November, 2018 on a ‘*proposed to be used*’ basis.

SUBMISSIONS OF THE PETITIONER

7. Mr. Manish Kumar Mishra, counsel appearing on behalf of the petitioner, submits that the petitioner is the prior adopter and prior user of the trademark ‘ONCQUEST’, using the said mark since 2007 whereas, the respondent no.1 had applied for registration of the impugned mark on a ‘*proposed to be used*’ basis.

8. It is submitted that the petitioner has spent immense amount of time, resources, effort and expense in use and promotion of its mark ‘ONCQUEST’ and due to such voluminous use and promotion of the petitioner’s mark, the same is inextricably linked with the petitioner and the relevant section of the public is well aware of the services under the ‘ONCQUEST’ mark as being rendered by the petitioner exclusively. Hence, the impugned registration is thus liable to be removed under Section 11(3) read with Section 57 of the Act.

9. It is further submitted that the respondent no.1 has no *bona fide* intention to use the impugned mark in relation to the services claimed in the impugned registration. Nearly 6 years have passed since the date when the impugned mark was entered on the Register of Trade Marks, however, the respondent no.1 has failed to use the impugned mark in relation to the



aforesaid services in class 44 till date. Therefore, the impugned mark is merely a block on the Register of Trade Marks.

10. It is also submitted that there is no justification on part of the respondent no. 1 to adopt or maintain registration of the impugned mark other than to block the registration of the petitioner which the petitioner otherwise is entitled to on account of its prior adoption and long, extensive, continuous use since the year 2007. Such conduct on part of the respondent no. 1 *ex-facie* establishes the bad faith and dishonesty harboured by it in adoption of the impugned mark. Hence, the impugned mark ought to be removed being in violation of Section 11 (10) read with Section 57 of the Act.

11. Accordingly, the petitioner has filed the present petition.

ANALYSIS AND FINDINGS

12. I have heard counsel for the petitioner and also perused the record of the present petition.

13. The respondent no.1 has not filed his reply to the present petition, which indicates that he has nothing substantial to put forth on merits, by way of a response to the averments made in the petition. In view of the above, the averments made in the petition are deemed to be admitted.

14. From the averments made in the petition and the documents on record, the petitioner has established that it is the prior user of the mark 'ONCQUEST' since the year 2007. The petitioner has also filed invoices from the year 2011 to establish its user claim (*filed as document along with the petition at pages 366-534*).

15. On the other hand, even though the respondent no.1's mark has been registered with effect from 2018, the respondent no.1 did not file any invoices or any other documents evidencing the user of the impugned mark. Therefore,



the mark is liable to be removed on the ground of non-user.

16. In this regard, reference may be made to an earlier decision passed by this Bench in *DORCO Co. Ltd. v. Durga Enterprises and Another*, 2023 SCC OnLine Del 1484 wherein this Court had ordered the removal of the mark on the ground of non-user. The relevant observations from *DORCO* (supra) are set out below:

“8. In the judgment in *Shell Transource Limited v. Shell International Petroleum Company Ltd.*, 2012 SCC 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 respondent must specifically deny it. Therefore, in the absence of a specific denial, it was held that the allegations of “non-user” stood admitted.

9. In the present case, the allegations of “non-user” against the 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.

10. From the facts detailed above, it is clear that the petitioner is the proprietor of the impugned trademark. The respondent no.1 cannot claim to be the proprietor of the impugned trademark as there is nothing to show as to how the impugned trademark has been adopted by the respondent no.1. Therefore, the application for registration of the impugned trademark is in contravention of Section 18(1) of the Act. In fact, the registration of the petitioner’s identical mark in respect of similar goods, was pending in India and was also cited as a conflicting mark in the examination report issued in the application for registration of the impugned trade mark. Therefore, as per Sections 9(1)(a) and 11(1)(a) of the Act, the registration of the impugned trademark could not be granted.”

[Emphasis supplied]

17. Furthermore, the petitioner has established that it has adopted the mark ‘ONCQUEST’ in a *bonafide* manner. The petitioner has also filed on record its sales turnover from the financial year 2007-2008 till 2022-2023 to show its goodwill and reputation in the market.

18. The adoption and the use of the impugned trademark ‘ONCQUEST’ by



the respondent no.1, which is identical to the trademark 'ONCQUEST' of the petitioner, is likely to create confusion in the market. Not only is the trademark of the respondent no.1 confusingly/deceptively similar to the petitioner's prior adopted, registered trademark 'ONCQUEST' but the nature of the goods of the petitioner and the respondent no.1 are identical, i.e. health centers falling in class 44.

19. In view of the discussion above, it is clear that the impugned trademark has been adopted by the respondent no.1 dishonestly to trade upon the established goodwill and reputation of the petitioner and to project itself to be associated with the petitioner. Therefore, the continuation of the impugned registration on the Register of Trade Marks is in contravention of the provisions of Section 11 of the Act and is liable to be cancelled under Sections 47 and 57 of the Act.

20. Accordingly, the present petition is allowed and the Trade Mark Registry is directed to remove the impugned registered trademark 'ONCQUEST' bearing trademark registration no.4004984 in class 44 from the Register of Trade Marks.

21. The Registry is directed to send a copy of the present order to the Trade Mark Registry at e-mail - llc-ipo@gov.in for compliance.

AMIT BANSAL, J

JULY 18, 2025

Vivek/-