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

% Judgment delivered on: 22.08.2025

\+ **C.O. (COMM.IPD-TM) 566/2022**

**MANKIND PHARMA LTD.** .....Petitioner

versus

**RAM KUMAR M/S DR. KUMARS PHARMACEUTICALS** .....Respondent

**Advocates who appeared in this case**

For the Petitioner : Mr. Hemant Paswani, Ms. Saumya Bajpai and Ms. Pranjal, Advocate.

For the Respondent : Mr. Nishant Gautam, CGSC with Mr. Shaurya Mani Pandey and Mr. Prithviraj Dey, Advocates for R2.

**CORAM:**
**HON'BLE MR. JUSTICE TEJAS KARIA**

**JUDGMENT**

**TEJAS KARIA, J**

1. The present Rectification Petition has been filed under Section 57 of the Trade Marks Act, 1999 ("**Act**") seeking rectification of the Register of Trade Marks by cancellation/removal of the Trade Mark 'UNKIND' bearing Application No. 1711563 registered in Class 35 ("**Impugned Trade Mark**") registered in favour of Respondent No. 1.

2. The present Petition has been transferred from the Intellectual Property Appellate Board ("**IPAB**") consequent upon the abolition of IPAB,

and upon promulgation of the Tribunals Reforms (Rationalization and Conditions of Service) Ordinance, 2021.

**FACTUAL BACKGROUND:**

3. The Petitioner was incorporated in the year 1991 and is engaged in the business of manufacturing and marketing medicinal, pharmaceutical and veterinary preparations. The predecessor-in-interest of the Petitioner adopted the mark 'MANKIND' in the year 1986. The Petitioner has more than 300 registered Trade Marks, wherein the word 'MANKIND' and/or 'KIND' forms a part of its Trade Marks ("**KIND Family of Marks**"). The Petitioner is also the registered proprietor of the Mark 'MANKIND' in all 45 classes.

4. Respondent No. 1 adopted the Impugned Trade Mark, 'UNKIND' on 17.07.2008 with user claim dated 30.06.2006. Upon coming across the registration for the Impugned Trade Mark by Respondent No. 1, the Petitioner sent a Cease and Desist Notice to Respondent No. 1 asking to desist forthwith from using the Impugned Trade Mark and/or any other Trade Mark and/or Trade Name with the word element KIND. Respondent No. 1 did not reply to the aforesaid Cease and Desist Notice.

5. Respondent No. 2 is the Registrar of Trade Marks.

6. Being aggrieved by the subsistence of the Impugned Trade Mark, the present Rectification Petition has been filed.

**PROCEEDINGS IN THE PRESENT PETITION**

7. Notice in the present Petition was issued by the IPAB on 18.03.2019. Thereafter, due to the enactment of the Tribunals Reforms Act, 2021, the matter has been placed before this Court and Notice was issued to Respondent No. 1 by this Court on 17.05.2022. *Vide* order dated 09.09.2022,

it was recorded that Respondent No. 1 remained unserved and Counsel for the Petitioner was directed to file fresh address for Respondent No. 1.

8. After multiple attempts to serve Respondent No. 1 and the previous Trade Mark agent of Respondent No. 1, the associate of the previous Trade Mark agent of Respondent No. 1 appeared on 05.11.2024 and sought permission to place on record fresh details of Respondent No. 1. Liberty was granted to the Petitioner to serve Respondent No. 1, as per the fresh details provided, through all permissible modes, including WhatsApp. *Vide* order dated 07.02.2025, it was recorded that Respondent No. 1 was served through WhatsApp on 19.11.2024. Respondent No. 1 has not appeared despite multiple opportunities and is proceeded *ex parte*.

**SUBMISSIONS ON BEHALF OF THE PETITIONER:**

9. Mr. Hemant Daswani, the learned Counsel for the Petitioner, submitted that the Petitioner has been using the mark 'MANKIND' since 1986 through its predecessor-in-interest whereas Respondent No.1 had applied for registration of the Impugned Trade Mark with user claim since 30.06.2006. However, the Petitioner is yet to come across goods bearing the Impugned Trade Mark.

10. The learned Counsel for the Petitioner submitted that for the year 2017, the Petitioner group of companies had achieved annual turnover of ₹3525.56 Crores. In the year 2017, the Petitioner group for the top 24 products containing the word element 'KIND' had achieved annual turnover of over ₹1300 Crores. The Mark 'MANKIND' belonging to the Petitioner has been determined under Rule 124 of the Trade Marks Rules, 2017 as a well-known Trade Mark by the Registrar of Trade Marks and has been

published in the Trade Marks Journal and included in the list of well-known Trade Marks maintained by the Registrar of Trade Marks.

11. The learned Counsel for the Petitioner submitted that due to long and continuous usage of the Trade Mark "MANKIND" and KIND Family of Marks containing the word "KIND", the Petitioner has acquired goodwill and reputation, whereby public exclusively associate the Trade Mark "MANKIND" and KIND Family of Marks containing the word "KIND" with the Petitioner.

12. The learned Counsel for the Petitioner submitted that the Petitioner has spent a significant amount of time, resources, effort and expense in use and promotion of KIND Family of Marks and due to such voluminous use and promotion of the KIND Family of Marks, the Petitioner has acquired immense goodwill and trade reputation in the community dealing with drugs and pharmaceuticals not only in India but abroad also.

13. The learned Counsel for the Petitioner submitted that the Impugned Trade Mark was registered without any *bona fide* on the part of Respondent No. 1. The Petitioner is yet to come across any goods manufactured by Respondent No. 1 under the Impugned Trade Mark. The Impugned Trade Mark is liable to be removed for non-use in terms of Section 47(1)(a) and (b) of the Act, as up to three months before the date of application, a continuous period of five years from the date of registration has elapsed, during which period there has been no *bona fide* use of the Impugned Trade Mark in relation to goods for which the registration was granted.

14. The learned Counsel for the Petitioner submitted that the word element 'KIND' used in relation to pharmaceutical preparations cannot be deemed to be generic or descriptive or laudatory. The word 'KIND' is not

related to the products being sold by the Petitioner, but due to its long and continuous usage, the said word has been exclusively associated with the Petitioner. In this regard, counsel for the Petitioner has relied upon the judgment of this Court in ***Mankind Pharma Ltd. v. Cadila Pharmaceuticals Ltd***. 2015 SCC OnLine Del 6914.

15. The learned Counsel for the Petitioner submitted that the use of the Impugned Trade Mark in relation to the similar goods is likely to cause confusion in the market and among the members of trade and is bound to cause erosion of the distinctive character of the Petitioner's KIND Family of Marks. The Impugned Trade Mark is neither distinctive, nor capable of distinguishing the goods of Respondent No.1 from that of the Petitioner. Adoption of a Trade Name with the word element 'KIND' would give an undue advantage to Respondent No. 1 to springboard its activities in the pharmaceutical field.

16. The learned Counsel for the Petitioner relied on the decisions in ***Mankind Pharma v. Lemford Biotech Pvt. Ltd. and the Registrar of Trade Marks*** Neutral Citation: 2025:DHC:1232, ***Mankind Pharma Ltd v. Arvind Kumar Trading and Anr.*** Neutral Citation: 2023:DHC:2700, ***Mankind Pharma Ltd. v. Manoj Kumar M/s Novakind Biosciences*** Neutral Citation: 2024:DHC:7590 ***Mankind Pharma Ltd. v. Gurinder Singh*** C.O. (COMM.IPD-TM) 257/2022, ***Mankind Pharma Ltd. v. Dr. Kind Formulation Pvt. Ltd. and the Registrar of Trade Marks*** C.O. (COMM.IPD-TM) 282/2022, wherein this Court has recognised the Petitioner is the prior and recognised user of the KIND Family of Marks.

17. In light of the above, it is stated that the Impugned Trade Mark has been wrongly entered in the Register of Trade Marks and therefore is liable to be cancelled in terms of Section 47 and 57 of the Act.

**SUBMISSIONS ON BEHALF OF THE RESPONDENTS**

18. Respondent No. 1 is proceeded against *ex parte*.

19. Respondent No. 2 is a formal party. The learned Counsel appearing for Respondent No. 2, has submitted that they shall comply with any directions passed by this Court.

**ANALYSIS AND FINDINGS:**

20. At the outset, it is to be noted that in the absence of any appearance and reply by Respondent No. 1, the pleadings made in the present Petition have remained uncontroverted. Accordingly, for all purposes, the pleadings herein are deemed to have been admitted by Respondent No. 1.

21. The Petitioner has several Trade Mark registrations granted in its favour that use the word 'KIND' as a suffix. Hence, the Petitioner has developed a Family of Marks with the word 'KIND' as an essential part of the Petitioner's Trade Marks. In ***Mankind Pharma Ltd. v. Cadila Pharmaceuticals Ltd.*** 2015 SCC OnLine Del 6914, a Coordinate Bench of this Court has observed that the word 'KIND' has no relation to sale of the Pharmaceutical products and the Petitioner having established its first user of the word 'KIND' in the pharmaceutical market is entitled to a higher protection for the word 'KIND'.

22. Although the word 'KIND' is not related to the pharmaceutical products being sold by the Petitioner, but due to its continuous and extensive usage, the said mark has come to be exclusively associated with the Petitioner, and this would entitle the Petitioner to a higher protection for the

KIND Family of Marks. Merely changing the first part of the Impugned Trade Mark and using the distinguishing family name or characteristic is likely to cause confusion in the market.

23. From the averments made in the Petition and the evidence on record, the Petitioner has established that it is the prior registered proprietor and a prior user of the mark 'MANKIND' and KIND Family of Marks since the year 1986 through its predecessor.

24. The Impugned Trade Mark is confusingly / deceptively similar to the Petitioner's prior adopted, registered Mark 'MANKIND' and KIND Family of Marks. The Impugned Trade Mark has been adopted by 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 Trade Mark 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 Section 57 of the Act.

25. Accordingly, the present Petition is allowed and the Trade Marks Registry is directed to remove the Impugned Trade Mark 'UNKIND' bearing Application No. 1711563 registered in Class 35 from the Register of Trade Marks.

26. 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.

**TEJAS KARIA, J**

**AUGUST 22, 2025** / *'AK'*