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

% *Date of Decision: 6th July, 2026*

\+ C.A.(COMM.IPD-TM) 44/2025

COLUMBIA PICTURES INDUSTRIES, INC .....Appellant
Through: Mr. Satvik Varma, Senior Advocate with Ms. Sugandha Bhatia, Mr. Parth Agrawal, Mr. Shantanu Parmar and Mr. Balram, Advocates.

versus

REGISTRAR OF TRADE MARKS & ANR. .....Respondents
Through: Ms. Nidhi Raman, CGSC with Mr. Om Ram and Ms. Nikita Singh, Advocates for R-1.

CORAM:
HON'BLE MS. JUSTICE JYOTI SINGH

JUDGEMENT

JYOTI SINGH, J.

1. This appeal is filed on behalf of the Appellant under Section 91 of the Trade Marks Act, 1999 ('1999 Act') read with Rule 156 of the Trade Marks Rules, 2017 ('2017 Rules') challenging order dated 16.04.2025 passed by Respondent No.1/Registrar of Trade Marks, whereby opposition of the Appellant filed vide Notice of Opposition bearing No.1159167 on 18.04.2022 against the mark ***GHOST BUSTER*** sought to be registered under application No.4763668 in Class 05 in respect of goods *"Pharmaceutical, veterinary and sanitary preparations; dietetic substances adapted for medical use, food for babies; plasters, materials for dressings; materials for stopping teeth, dental wax; disinfectants; preparation for destroying vermin; fungicides, herbicides",* was rejected.

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2. To the extent relevant and as pleaded, case of the Appellant is that the Appellant is a Delaware Corporation and is an American Film Studio and Production Company established in 1924 as part of Sony Pictures Entertainment conglomerate and is one of the 'Big Five' major American Film Studios responsible for distributing/producing several renowned movies including but not limited to ***GHOSTBUSTERS,*** Spider-Man, Men in Black, Jumanji and Karate Kid, to name a few. One of the most famous and successful movie series of the Appellant is Ghostbusters, which was released in 1984. It was a blockbuster movie and became extremely popular as one of the most successful supernatural comedy films of 1980s and in 2015, U.S. Library of Congress selected the film for preservation in the U.S. National Film Registry. Film's theme song 'Ghostbusters' by Ray Parker Jr. was a great hit and stayed in the number one spot on Billboard hot for some three weeks in 1984.

3. It is stated in the appeal that directed by the acclaimed Ivan Reitman and based on an original concept created by actors-writers Dan Aykroyd and Harold Ramis, Ghostbusters is a fictional story of three para-psychologist dismissed from Columbia University professorship, who set up a ghost removal business in New York. In 1984, the movie crossed revenues of more than USD 229 million for its theatrical release, making it the second highest grossing film of 1984 in US and Canada and was also one of the only four films to cross more than $100 million that year. The film was re-released theatrically several times thereafter in the years 1985, 2014, 2019 and 2021. Appellant produced animated television series called 'THE REAL GHOSTBUSTERS' in 1986, followed by a sequel and spin-off known as 'EXTREME GHOSTBUSTERS' in 1997. In 2022, an animated streaming television Netflix series of the same was also announced and recently in

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2024, Appellant released yet another GHOSTBUSTERS film titled GHOSTBUSTERS: FROZEN EMPIRE. In India, GHOSTBUSTERS movies have been released as follows:-

Movie Name	Year of Release
GHOSTBUSTERS	1985
GHOSTBUSTERS II	1990
GHOSTBUSTERS: ANSWER THE CALL	2016
GHOSTBUSTERS: AFTERLIFE	2021
GHOSTBUSTERS: FROZEN EMPIRE	2024

4. It is stated that GHOSTBUSTERS movies are also available for viewing on various platforms in India including Sony Liv, Apple TV, Amazon Prime, Netflix and Google Play. Appellant also sells several merchandise products with the trademark GHOSTBUSTERS including but not limited to toys, apparel, mugs, keychains, phone covers, blankets, books, costumes, face masks etc., which are readily available on GHOSTBUSTERS' official website https://shop.ghostbusters.com/. The products are also sold in India on Amazon India, a third-party ecommerce website. Appellant has extensively advertised and promoted the mark GHOSTBUSTERS since its adoption in 1984. Thousands of articles have been published in newspapers, periodical and journals in India pertaining to the GHOSTBUSTERS movie series. These publications include India Today, Times of India, Hindustan Times, Indian Express, Economic Times, Outlook India, to name a few. Appellant is the registered proprietor of the trademark GHOSTBUSTERS in India in different classes as follows:-

Trade Mark	Registration number	Classes	Date of application	Date of use claimed
GHOSTBUSTERS	2379995	09 and 41	14.08.2012	29.11.1985
GHOSTBUSTERS	4331300	25 and 28	25.10.2019	Proposed to be used

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5. The registrations are valid and subsisting and in addition, Appellant has also secured registrations in several other countries such as Canada, Germany, Japan, UK, USA etc. Owing to the success of the movies Ghostbusters as well as extensive promotion and use of the trademark GHOSTBUSTERS, coupled with high quality of goods/services rendered by the Appellant thereunder, Appellant has garnered enviable goodwill and reputation and the members of public and trade associate the mark only with the Appellant. Appellant enjoys not only statutory rights in the mark by virtue of registrations but also common law rights therein. In fact, the mark GHOSTBUSTERS fulfils all parameters and qualifies for being granted the status of well-known mark under Section 2(1)(zg) of 1999 Act.

6. It is stated that the genesis of the present appeal is the illegal and dishonest adoption of the mark ***GHOST BUSTER*** by Respondent No.2, which is identical to Appellant's ***GHOSTBUSTERS,*** save and except, the letter 'S' at the end and the words GHOST AND BUSTER being apart from one another. Appellant became aware of the impugned mark in India, when the same was advertised in the Trade Marks Journal No.2031 on 20.12.2021 at page 780. Appellant filed Notice of Opposition against the application under Rule 42 of 2017 Rules, to which Respondent No.2 filed counter statement under Rule 44 *albeit* without serving copy of the same on the Appellant, a fact brought to the notice of Respondent No.1. However, without waiting for service of the counter statement, Appellant proceeded to file evidence under Rule 45 on 10.01.2024 and Respondent No.2 filed its evidence under Rule 46. Hearing was scheduled on 01.04.2025, wherein both parties were heard and later both filed their written submissions. However, the opposition was rejected by Respondent No.1 vide impugned order dated 16.04.2025.

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7. Laying a challenge to the impugned order, learned Senior Counsel for the Appellant submitted that Respondent No.1 failed to consider the bad faith adoption of the impugned mark by Respondent No.2 as per provisions of Section 11(10)(ii) of 1999 Act. Appellant's ***GHOSTBUSTERS*** mark was adopted in 1984 and has been extensively used since then and a simple Google search of the words GHOST BUSTER shows results only of the Appellant's mark ***GHOSTBUSTERS*** and considering the blockbuster success of the movie Ghostbusters, followed by its sequels and immense popularity of the movie and the mark, it is unbelievable that Respondent No.2 had no prior knowledge of Appellant's mark. In fact, the prior knowledge of Respondent No.2 is certified by the fact that Appellant had earlier opposed an application filed in U.S. by sister concern of Respondent No.2 and on opposition being filed the application was abandoned knowing that there was no defence and the Trademark Trial and Appeal Board of U.S. Patent and Trademark Office ('USPTO') passed a judgment on 07.01.2020 in favour of the Appellant. Respondent No.2's application in India is riddled with falsities and misstatements, which also shows bad faith adoption. Respondent No.2 has stated in the application that it adopted the mark after conducting profound and extensive research and search of the Trade Marks Register and only after ensuring that no other prior, similar or identical trademark exists for any goods or services related to or identical therewith. This statement is in teeth of the previous opposition proceedings between the Appellant and the sister concern before USPTO and on this ground alone, which was brought forth before Respondent No.1, the application ought to have been rejected. Moreover, the application was filed under Class 05 which includes pharmaceutical products, however, the adoption was sought to be justified by relying on use of 'High Performance Liquid

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Chromatography' ('HPLC') analysis. It is pertinent that 'Chromatography Columns' fall under Class 09 (for lab use) and Class 11 (for industrial use). Therefore, the explanation provided for adoption of the mark has no nexus with goods falling under Class 05. Even assuming, Respondent No.2 accepts that it only manufactures chromatography consumables including HPLC columns, notably, Appellant has registration in Classes 09 and 41 in India with user since 29.11.1985. Unable to defend this case also, Respondent No.2 has consciously chosen to stay away from these proceedings despite service and was proceeded *ex parte* vide order dated 21.01.2026. This shows a pattern in the conduct of the sister concerns in abandoning proceedings once they realise that no plausible defence is forthcoming.

8. It was further argued that Respondent No.2 has failed to showcase any plausible reason before Respondent No.1 as to why it adopted the mark ***GHOST BUSTER*** out of several permutations and combinations that may be available. Respondent No.1 has seriously erred in accepting the explanation offered that 'BUSTER' is used since the product efficiently absorbs or removes impurities. It is not understood why the word BUSTER was chosen, when the mark ***GHOSTBUSTERS*** was coined by the Appellant and is arbitrary and fanciful, enjoying the highest degree of protection under McCarthy spectrum of distinctiveness. Going by the explanation offered, Respondent No.2 could have adopted the marks such as GHOST ABSORBER, GHOST REMOVER etc. and adoption of BUSTER only shows the *mala fide* intent to come close to the Appellant and encash on its formidable goodwill and reputation. ***[Ref.: Somany Ceramics Limited v. Shri Ganesh Electric Co. and Others, 2022 SCC OnLine Del 3270].*** Law on bad faith adoption is fairly well settled. In ***BPI Sports LLC v. Saurabh***

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Gulati and Another, 2023 SCC OnLine Del 2424, this Court in the context of Section 11(10)(ii) held that bad faith can be understood either as unfair practice involving lack of good faith on the part of the applicant at the time of filing an application for registration or unfair practice based on acts infringing third person's rights. There is bad faith not only in cases where applicant intentionally submits wrong or misleading information but also where he intends, through registration, to lay his hands on the trademark of the third party. This decision has been relied by this Court in several judgments on the aspect of bad faith and dishonest adoption, including the decision in ***Kia Wang v. Registrar of Trademarks and Another, 2023 SCC OnLine Del 5844.***

9. It was argued that Respondent No.1 did not appreciate that registration and use of the impugned mark will be detrimental to the distinctive character and repute of Appellant's mark ***GHOSTBUSTERS*** as also to public interest inasmuch as members of public with average intelligence and imperfect recollection will in all likelihood associate the impugned mark with the Appellant and registration is therefore also contrary to provisions of Section 11(2) of 1999 Act. Section 11(2) provides that a trademark which is identical with or similar to an earlier trademark and is to be registered for goods/services which are not similar to those for which the earlier trademark is registered in the name of a different proprietor, shall not be registered, if or to the extent the earlier trademark is a well-known trademark in India and use of the later mark without due cause would take unfair advantage of or be detrimental to the distinctive character or repute of the earlier trademark. Explanation (b) to Section 11 defines '*earlier trademark*' as a trademark, which on the date of the application for registration of the trademark in question, was entitled to protection as a well-

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known trademark. Section 2(1)(zg) defines "well-known trademark", in relation to any goods or services, means a mark which has become so to the substantial segment of the public which uses such goods or receives such services that the use of such mark in relation to other goods or services would be likely to be taken as indicating a connection in the course of trade or rendering of services between those goods or services and a person using the mark in relation to the first-mentioned goods or services. Section 11(5) provides that a trademark shall not be refused registration on the grounds specified under sub-Sections (2) and (3), unless objection on any one or more of those grounds is raised in opposition proceedings by the proprietor of the earlier trademark. It is urged that concept of well-known mark has been derived owing to international obligations of India being a signatory of Trade Related Aspects of Intellectual Property Rights (TRIPs) Agreement, which was signed by India on 15.04.1994. In order to bring the law in conformity with TRIPs, the 1958 Act was amended with 1999 Act with addition of Sections 2(1)(zg) and 11(2)-(9), in accordance with Article 16(3) of TRIPs and this finds mentioned in the judgment of this Court in ***ITC Limited v. Central Park Estates Private Limited, 2022 SCC OnLine Del 4132.***

10. It was strenuously urged that protection of Section 11(2) is not only available to marks which are declared or determined as well-known marks and it is clear that the phrase 'earlier trademark' in Section 11(2) is a mark, which is entitled to protection as a well-known trademark, as defined in Explanation (b) to Section 11. The word 'entitle' is defined in Black's Law Dictionary to mean "to grant a legal right to or qualify for". On a plain reading of the provision and applying the golden rule of interpretation and taking into account the definitions, it is abundantly clear that legislature did

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not stipulate that for protection under Section 11(2), it was necessary for the trademark to be declared as well-known. Had that been the case, legislature would not have used the word '*was entitled to protection as a well-known trademark*' in the Explanation. This position is fortified by Section 11(5), where also the words used are '*the proprietor of the earlier trademark*' and not 'proprietor of declared well-known mark'. It is further provided that proprietor of the earlier trademark can raise objection taking shelter of Section 11(2) and (3) in the opposition proceedings and therefore, in the opposition proceedings, the Registrar is empowered to decide on the well-known nature of the earlier trademark, independent of an application filed under Rule 124, which was introduced in 2017 Rules. Surely, there had to be and existed a mechanism and process between 1999 to 2017, as there could be no legal vacuum.

11. It was also urged that this position is fortified by reading of Rule 43 of the 2017 Rules, which in respect of Notice of Opposition or on an earlier right on which the opposition is based, provides in sub-Rule (1)(b)(iii) that "*where the opposition is based on an earlier trademark, which is alleged to be a well-known trademark within the meaning of sub-Section (2) of Section 11…*". Here also it is the proprietor of the earlier trademark, which has the right to oppose and which necessarily does not depend on the mark being declared/determined as a well-known mark. Conjoint reading of all these provisions and particularly the use of the words "was entitled to protection" can leave no doubt that Section 11(2) comes in picture only where determination/declaration of the mark as well-known has not taken place, inasmuch as if the mark has been declared as a well-known mark, then the legislature would have simply used the words "determined to be well-known" as has been used in Section 11(8). Pertinently, even Section

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2(1)(zg) does not use the word 'declared' while defining a well-known trademark. In fact, Rule 124 of 2017 Rules is a result of delegated legislation and by this provision, Registrar of Trade Marks has been assigned the powers to determine the well-known status of a mark as an alternate to a non-adversarial mechanism as held in ***Tata SIA Airlines Limited v. Union of India, 2023 SCC OnLine Del 3446.*** It was further emphasized that provisions of Section 11(2) include the words "well-known trademark in India" when registration is opposed in India but in contrast, when an independent request is made for determination, Registrar is required to follow provision of Section 11(9), where legislature has carefully used the words "well-known trademark" but omitted the words in India.

12. It was argued that all these submissions were extensively put forth before Respondent No.1 along with supporting evidence to show that the mark ***GHOSTBUSTERS*** has built formidable reputation of a threshold required for being entitled to protection as a well-known mark envisaged under Section 11(6) and thus even if the goods of Respondent No.2 were dissimilar, it's almost identical mark could not be registered. However regrettably, impugned order does not deal with this aspect of the matter at all. In ***Godfrey Philips India Limited v. Khoday India Limited and Another, 2023 SCC OnLine Mad 7201,*** the Madras High Court while dealing with an appeal against rejection of opposition by the Registrar observed that once the Appellant pleaded that its mark was well-known and adduced evidence in support thereof, Registrar should have examined the same and determine if the mark was well-known for deciding objections under Section 11(2). In ***Sharp Kabushiki Kaisha, Japan v. Sharp Industries, Sharp Nagar, Kalappatti, Coimbatore and Another, 2023 SCC***

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OnLine Mad 8415, the Madras High Court observed that Section 11(2) applies when the marks in question are identical/similar and goods/ services are not similar and the provision becomes applicable only if objector's mark is well-known in India and to decide this issue it is necessary to focus not only on the definition in Section 2(1)(zg) but also other conditions specified in Section 11(2). In ***Lego Juris A/S v. Gurumukh Singh and Another, 2024 SCC OnLine Mad 4858,*** it was held that the Explanation to Section 11 clarifies the legal position that an earlier trademark would also include a trademark which was entitled to protection as a well-known mark, even when not declared so and thus any identical/similar mark will be ineligible for registration even in respect of dissimilar goods.

13. Learned Senior Counsel also referred to and relied on the judgment of this Court in ***Bolt Technology OU v. Ujoy Technology Private Limited and Another, 2023 SCC OnLine Del 7565,*** where it was observed that reasons for protecting a well-known mark is to ensure that the applicant seeking to register a similar/identical mark does not take unfair advantage of a mark of repute so as to be detrimental to its distinctive character. In ***Indofil Industries Limited v. Sun Pharmaceutical Industries Limited, MANU/TM/ 0017/2022,*** the Registrar in fact examined the documents submitted by the opponent to decide whether the mark fulfilled the parameters of a well-known mark and was entitled to protection. Appellant placed on record ample material which evidenced that Appellant's mark ***GHOSTBUSTERS*** is entitled to be declared a well-known mark under Section 11(6) of 1999 Act, however, none of this material has been considered and this crucial point has been completely glossed over by the Registrar. The details placed before the Registrar can be captured as follows:-

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Factors under 11(6)	Evidence
The knowledge or recognition of that trade mark in the relevant section of the public including knowledge in India obtained as a result of promotion of the trade mark	i. First Ghostbusters film was released in India in 1985; ii. Other sequels have also been released in India; iii. Globally, the revenue generated only from the first film was around USD 229 million in 1984. Revenue generated from re-releases are also substantial; iv. Various merchandise and other products, viz., apparel, toys, mugs, keychains, books, pens, phone covers, games, costumers, etc., bearing the mark of the Appellant, are sold in India; v. Various OTT platforms in India stream movies under the mark of the Appellant.
the duration, extent and geographical area of any use of that trade mark	i. Since at least 1985, the mark has been in continuous use in India as the first film was released in 1985; ii. The film(s) of the Appellant bearing the mark were released worldwide and streamed on various OTT platforms across the world.
The duration, extent and geographical area of any promotion of the trade mark, including advertising or publicity and presentation, at fairs or exhibition of the goods or services to which the trade mark applies	i. Ever since its adoption in 1984, the Appellant has extensively advertised and promoted the mark worldwide; ii. Various documents showing strong presence on social media, online channels were also put forth before the Registrar; iii. Various articles have been published in the Indian media of the Appellant's mark.

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The duration and geographical area of any registration of or any application for registration of that trade mark under this Act to the extent that they reflect the use or recognition of the trade mark;	i. Indian registrations of GHOSTBUSTERS: a. Reg. No. 2379995 in Class 9 and 41; User: 29.11.1985; b. Reg. No. 4331300 in Class 25 and 28 dated 25.10.2019. ii. The mark has been registered in over 50 countries.
The record of successful enforcement of the rights in that trade mark, in particular the extent to which the trade mark has been recognized as a well-known trade mark by any court or Registrar under that record.	i. Opposition No. 91251581 before the USPTO where identical mark applied by Welch Materials, Inc., sister concern of Respondent No.2 was refused. ii. In 2015, US Library of Congress selected the film of the Appellant for preservation in the US National Film Registry. iii. The Appellant also maintains vigilance teams in order to find out third-party infringers.

14. It was submitted that in light of the plethora of documents, as above, which have also been placed before this Court, it is wholly wrong for counsel for Respondent No.1 to contend that Appellant did not provide enough evidence in support of its claim of having achieved reputation required to seek protection as a well-known mark and thus reliance on the judgments in ***N. Ranga Rao & Sons v. Shree Balaji Associates and Others, 2018 SCC OnLine Mad 13537*** and ***Apollo Hospitals Enterprises Ltd., Rep. by its authorized signatory S.M. Mohan Kumar- Manager Legal v. Dr. Dheeraj Saurabh, 2023 SCC OnLine Mad 7521,*** is completely misplaced. In fact, the glaring fallacy in the impugned order is lack of exercise to determine the nature of Appellant's mark in light of the evidence led in the opposition proceedings, which if carried out would have led to an inevitable

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conclusion that the mark ***GHOSTBUSTERS*** is entitled to protection as a well-known mark and hence, impugned mark was disqualified from registration. Respondent No.1's reliance on the judgment of the Supreme Court in ***Nandhini Deluxe v. Karnataka Cooperative Milk Producers Federation Limited, (2018) 9 SCC 183,*** is also misplaced inasmuch as 'Nandhini' was not a coined or arbitrary word and is a generic word. Moreover, Respondent No.1 failed to consider the degree of similarity between Appellant's mark ***GHOSTBUSTERS*** and impugned mark ***GHOST BUSTER,*** the immense reputation and goodwill of Appellant's mark, which completely distinguishes its case from the judgment in ***M/s Nandhini Deluxe (supra). [Ref.: Pepsico, Inc. and Another v. Jagpin Breweries Limited and Another, 2023 SCC OnLine Del 2542].***

15. Appearing on behalf of Respondent No.1, Ms. Nidhi Raman, CGSC defended the impugned order and argued that the opposition filed by the Appellant has been rightly rejected. The impugned order is a well-reasoned and speaking order based on correct appreciation of facts and law and suffers from no legal infirmity, warranting interference in the present appeal. It was argued that the goods of the rival parties are entirely different and unrelated. Appellant cannot claim monopoly on the word ***GHOSTBUSTERS*** for all goods and services, specially, for those for which it has no registration or commercial use. The difference in the rival goods can be seen as follows:-

APPELLANT'S MARK	RESPONDENT NO. 2'S MARK
GHOSTBUSTERS	**GHOST BUSTER**
Classes 9	**Class 5**
Goods - Scientific, nautical, surveying, electric, photographic, cinematographic, optical, weighing, measuring, signaling,	**Goods** - Pharmaceutical, veterinary and sanitary preparations; dietetic substances adapted for medical use, food for babies;

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checking (supervision), lifesaving and teaching apparatus and instruments; apparatus for recording, transmission or reproduction of sound or images; magnetic data carriers, recording discs; automatic vending machines and mechanisms for coin operated apparatus; cash registers, calculating machines, data processing equipment and computers; fire extinguishing apparatus.	plasters, materials for dressings; materials for stopping teeth, dental wax; disinfectants; preparation for destroying vermin; fungicides, herbicides.
Class 25	**Class 5**
Goods - Clothing, footwear, headwear, clothing, namely, underwear; sleepwear; socks; hosiery; shoes; slippers; headwear; hats, gloves; belts; scarves; footwear; aprons; coveralls; sweatshirts; sweatpants; robes; caps; knit hats; swimwear; trousers; athletic pants and shirts; shorts; leggings; dresses; skirts; baby bodysuits; sweaters; jackets; infant clothing, namely, one-piece clothing and pajamas; shorts, leggings, jerseys, t-shirts, costumes for infants, children, and adults, namely, Halloween costumes and costumes for use in children's dress up play.	**Goods** - Pharmaceutical, veterinary and sanitary preparations; dietetic substances adapted for medical use, food for babies; plasters, materials for dressings; materials for stopping teeth, dental wax; disinfectants; preparation for destroying vermin; fungicides, herbicides.
Class 29	**Class 5**
Goods - Games, toys and playthings; video game apparatus; gymnastic and sporting articles; decorations for Christmas trees, toys, games and playthings, namely, puzzles; card games; toy figurines; scale model kits; paintable toy figurines; inflatable toys; toy masks; stress relief exercise toys; snow globes;	**Goods** - Pharmaceutical, veterinary and sanitary preparations; dietetic substances adapted for medical use, food for babies; plasters, materials for dressings; materials for stopping teeth, dental wax; disinfectants; preparation for destroying vermin; fungicides, herbicides.

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air mattress swimming floats for recreational use; amusement game machines; bath toys; bean bags; electric toy vehicles; face masks, namely, paper face masks, toy and novelty face masks; inflatable bop bags; toy construction blocks; toy construction sets; toys, namely, children's dress-up accessories; playsets for action figures; toy model hobby craft kits; skateboards; non-motorized toy scooters; roller skates; inline skates; toy building blocks; memory games; action skill games; parlor games; party games; role playing games; sit-in and ride-on toy vehicles; bubble-making wand and solution sets; piñatas; party favors in the nature of small toys and toy noisemakers; doll houses; amusement park rides; slot machines; pinball and coin-operated amusement machines.	
Class 41	**Class 5**
Services - Education; providing of training; entertainment; sporting and cultural activities.	**Goods** - Pharmaceutical, veterinary and sanitary preparations; dietetic substances adapted for medical use, food for babies; plasters, materials for dressings; materials for stopping teeth, dental wax; disinfectants; preparation for destroying vermin; fungicides, herbicides.

16. It was emphasised that owing to difference in the nature of goods involved, the respective trade channels as also the class of consumers are also completely different and distinct, inasmuch as Appellant's consumers are movie-goers and consumers of popular merchandise while Respondent No.2's consumers are highly specialized and educated professionals in

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scientific and pharmaceutical fields, who use HPLC analysis. Therefore, there is no overlap and much less in the market of Hollywood film franchise and market for a technical product used to purify mobile phases in scientific analysis. Resultantly, an average consumer, let alone a scientifically qualified professional, is not likely to be confused or draw a connection between a pharmaceutical preparation and a motion picture making entity.

17. It was further argued that Appellant has no registration for the mark ***GHOSTBUSTERS*** in Class 05 and its goods are for general public in entertainment sector, whereas Respondent No.2's goods are highly specialized products intended for use in pharmaceutical and scientific research industry. It is a settled law that a proprietor of a trademark in a particular class/classes of goods (Classes 09, 25, 28 and 21 of Appellant), cannot claim monopoly over goods in distinct class of goods (Class 05 of Respondent No.2), when it holds no registration in the other class/classes. There is no material on record, which shows use of the mark ***GHOSTBUSTERS*** by the Appellant for goods falling under Class 05 and therefore, the opposition against registration of the impugned mark in Class 05 was misconceived. Respondent No.1 has correctly accepted the explanation of Respondent No.2 for adoption of the impugned mark in Class 05 i.e. the impugned mark ***GHOST BUSTER*** was derived from the specific function of the product in HPLC analysis. GHOST refers to 'Ghost Peaks' which are unexpected peaks that appear in a chromatogram and BUSTER refers to the product's function, which is to eliminate or bust these impurities causing the Ghost Peaks. Respondent No.1 found the explanation to be completely logical, credible and in consonance with the function of the product and therefore, the impugned mark has an independent origin and there is no dishonest adoption or bad faith, as alleged by the Appellant.

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18. It was urged that Respondent No.1 has exercised its power judiciously and within the four corners of Section 11(2). Rule 124 of 2017 Rules provides a dedicated and exhaustive mechanism for determining/declaring well-known trademarks and Appellant cannot bypass the procedural requirement of filing an application in form TM-M, paying the prescribed fee and submitting a comprehensive statement of case under Rule 124(1) to seek the special status and come through back door of a Notice of Opposition, to be declared as a well-known mark. An opposition under Section 21 of 1999 Act is an *in personam* dispute, whereas declaration of a trademark as a 'well-known' mark establishes an *in rem* right, granting a cross-class monopoly, enforceable against the world and Registrar cannot be faulted for refusing to circumvent the explicit legislative mandate. Assuming for the sake of argument that Registrar could entertain such a prayer, the impugned order constructively and conclusively operates as a refusal to grant well-known status to the mark ***GHOSTBUSTERS.*** Appellant's assertion that the Registrar failed to adjudicate on the well-known status of the mark is incorrect. Once the Registrar has categorically held that Appellant cannot claim a monopoly over the entire Class 05, it amounts to a statutory determination under Section 11(2) of 1999 Act. In any event, Appellant had not placed on record sufficient evidence which would have enabled the Registrar to come to a conclusion that all parameters under Section 2(1)(zg) read with Section 11(6) and (7) have been fulfilled. The following table will illustratively demonstrate that the evidence on record was in fact insufficient. While the documents successfully establish a popular footprint within the global entertainment and media industry, they completely fail to satisfy the rigorous market specific statutory thresholds of Section 11(6) and (7). Appellant has not produced any evidence to show

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commercial use, brand recognition or cross-class spill over reputation with the highly specialized pharmaceutical industry relevant to Respondent No.2's Class 05. General internet searches, box office releases, consumer toys and territorially restricted foreign registrations cannot bridge the gap between the general movie-going consumers and those purchasing pharmaceutical products. The relevant table is as follows:-

S. No.	Documents produced by the Appellant	Whether relevant/sufficient to treat the Appellant's Mark as a Well-Known Mark
1.	Google Search showing the details about the Film Series 'GHOSTBUSTERS'.	Generalized internet searches showing only about the Film Series merely show a cultural footprint, not trademark reputation to such an extent which can cut through classes. This fails **Section 11(6)(i) read with Explanation (b)**. It proves zero knowledge or recognition among the **"relevant section of the public"** (consumers purchasing the pharmaceutical products) who actually consume the Respondent No. 2's Class 5 goods.
2.	certificates issued by Central Board of Film Certification evidencing the release of the above-mentioned films in India.	CBFC certificates only prove theatrical release within the entertainment sector. Under **Section 11(6)(ii)**, the "extent of use" must be strictly evaluated. This evidence shows absolutely no commercial use or spill-over reputation in the highly specialized pharmaceutical industry.
3.	GHOSTBUSTERS movie franchise is available for viewing from various streaming platforms in India.	Streaming availability caters exclusively to the general media-consuming public. This completely fails the parameters of **Section 11(7)(ii) and (iii)**. The "distribution channels" and "business circles" for Hollywood movies have zero intersection with those for high-performance liquid chromatography columns.
4.	E-retailer's website evidencing the availability of the merchandise products being Toy Vehicles, Cookbook and Costumes.	Selling toy vehicles and costumes targets children and pop-culture fans. Under **Section 11(7)(i)**, the "actual or potential consumers" must be considered. A highly-trained professional purchasing industrial laboratory chemicals will never cognitively associate them with a movie's action figure.
5.	Advertisement and promotional material – Print out from social media websites.	Social media posts are designed purely to drive box-office viewership. While **Section 11(6)(iii)** considers the extent of promotion, entertainment marketing does not establish cross-class brand recognition. It fails to prove the mark'' strength in alienated, specialized industrial classifications such as Class 5.
6.	Articles published in the newspapers, periodicals and journals in India.	Newspaper articles constitute entertainment journalism, not proof of industrial trademark strength. To satisfy **Section 11(6)(i) read with Explanation (b)(iii)**, the Appellant needed to show recognition in pharmaceutical trade journals. It completely failed to do so.
7.	Trademark Registrations in other jurisdictions.	Trademark rights are strictly territorial. Under Section 11(6)(iv), registrations are only relevant to the extent they reflect actual use and recognition. The Appellant possesses zero Class 5 registrations globally. Foreign registrations in entertainment classes cannot justify an Indian cross-class monopoly against specialized scientific goods.

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19. In light of the aforesaid submissions, it was submitted that the impugned order is legally justified and calls for no interference in the appeal.

20. Heard learned Senior Counsel for the Appellant and learned CGSC for Respondent No.1.

21. Before proceeding to examine the rival contentions of the parties, it will be useful to refer to the impugned order rejecting the opposition of the Appellant and allowing the application of Respondent No.2 for registration of the mark ***GHOST BUSTER*** in Class 05. The reason that has weighed with Respondent No.1 for rejection of the opposition is that Appellant is a registered proprietor of the mark ***GHOSTBUSTERS*** in Classes 09, 41, 25 and 28 and does not have registration for goods falling in Class 05 and has failed to provide any document to substantiate its claim of prior use of the mark specifically for goods in Class 05 and hence, merely on the basis of its registrations, it cannot claim proprietorship of the mark for goods in Class 05. Reliance is placed on the judgment of the Supreme Court in ***M/s Nandhini Deluxe (supra),*** where the Supreme Court held that the proprietor of the trademark cannot enjoy monopoly over the entire class of goods, particularly, when he is not using the trademark in respect of certain goods in the said class. Therefore, essentially the rejection is owing to the dissimilarity of goods and distinction of classes in question. The other ground of rejection is that Respondent No.2 has adopted the mark honestly and for this Respondent No.1 has accepted the version of Respondent No.2 that the word GHOST is derived from the function of the product in HPLC analysis, especially in gradient elution, where some unexpected peaks called ghost peaks may appear in a chromatogram owing to many reasons such as residue in injection valve, water pollution impurities and unknown

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components in samples. BUSTER originates from the capacity of the product to efficiently adsorb and remove the impurities from mobile phase to eliminate the interference of the target peaks, installed between the gradient mixer and the sample.

22. There is no dispute *inter se* the parties that Appellant's mark ***GHOSTBUSTERS*** was registered in India in Classes 09 and 41 on 14.08.2012 claiming use since 29.11.1985 and in Classes 25 and 28 on 25.10.2019. Respondent No.2 filed its application for the mark ***GHOST BUSTER*** on 01.12.2020 on a 'proposed to be used' basis, whereafter it was advertised in the Trade Marks Journal No.2031 under Class 05 on 20.12.2021. Appellant filed Notice of Opposition on 18.04.2022 to which Respondent No.2 filed counter statement on 20.07.2022. Appellant filed evidence under Rule 45 on 10.01.2024 followed by evidence of Respondent No.2 under Rule 46 on 08.03.2024 and Appellant's evidence under Rule 47 on 11.04.2024. By the impugned order dated 16.04.2025, Respondent No.1 dismissed the opposition and proceeded to register the mark of Respondent No.2, after hearing the parties on 01.04.2025 and taking on record their written submissions.

23. The first and foremost argument raised by learned Senior Counsel for the Appellant is that Respondent No.1 has misdirected itself in rejecting the opposition on the ground that Appellant has registrations only in Classes 09, 25, 28 and 41 and the mark is used for goods and services related to the fields of entertainment and media and allied goods/services while the mark of Respondent No.2 sought to be registered is for pharmaceutical products in the healthcare industry in Class 05, which is a separate class, without looking into or determining the well-known status of Appellant's mark ***GHOSTBUSTERS*** under Section 11(2) of 1999 Act and consequently,

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determining whether an identical mark ***GHOST BUSTER*** of Respondent No.2 has been adopted dishonestly and its use without due cause will be detrimental to the distinctive character and repute of Appellant's ***GHOSTBUSTERS.*** Had Respondent No.1 entered into this exercise, the question of dissimilarity of goods and distinction of classes would have been meaningless and Respondent No.1 would have arrived at the correct conclusion. Ms. Nidhi Raman, on the other hand, contested that in order to seek protection and succeed in opposing the registration of identical/similar mark for dissimilar goods under Section 11(2), Appellant should have first sought declaration/determination of its mark ***GHOSTBUSTERS*** as a well-known mark, either from the Court or by following the path of Rule 124 before the Registrar and in absence of such declaration, the opposition was legally untenable. Without prejudice, Ms. Raman sought to defend the order by urging that there is an implied rejection of this contention by Respondent No.1 since it has been held that Appellant cannot claim monopoly over dissimilar goods in a different class to oppose registration of the mark ***GHOST BUSTER*** in Class 05 and lack of express reasoning with respect to Section 11(2) cannot be fatal to the impugned order.

24. Plain reading of the impugned order shows that some of the crucial contentions raised by the Appellant in the opposition notice read with the evidence under Rule 47 of 2017 Rules and written submissions have not even been considered. There is absolutely no adjudication on the submission that Appellant's mark ***GHOSTBUSTERS*** is an earlier well-known trade mark under Section 11(2) and thus a nearly identical mark ***GHOST BUSTER*** cannot be registered as that would be detrimental to the character and repute of the mark ***GHOSTBUSTERS*** and the factum that rival goods were pharmaceutical products in Class 05 was irrelevant. In my view, non-

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consideration of this submission is a glaring error in the order and the defence that there is implied rejection of this ground is completely fallacious. Section 11(2) provides that a mark which is identical or similar to an earlier mark and is sought to be registered for goods or services which are dissimilar to those for which the earlier trade mark is registered in the name of a different proprietor, shall not be registered if or to the extent the "earlier trade mark" is a well-known trade mark in India and the use of the later mark without due cause would take unfair advantage of or be detrimental to the distinctive character or repute of the earlier trade mark. Therefore, once an opposition was filed by the Appellant claiming its mark to be an 'earlier mark' under Section 11(2), entitled to protection across classes, Registrar was obliged to consider the said ground of opposition as per law and take a view one way or the other. The impugned order shows that Respondent No.1 has not even referred to this ground, leave alone dealing with it, despite the Appellant taking this ground in the Notice of Opposition and the detailed written submissions and also filing overwhelming evidence to support the same and no plausible explanation is forthcoming even before this Court for this glaring omission, save and except, callously brushing aside the non-consideration of this ground of opposition by stating that there is implied rejection. Respondent No.1 was under a mandate to consider this issue as it had a significant bearing on determination of a crucial question whether the mark ***GHOST BUSTER*** could be registered for dissimilar goods in a different Class 05, for which Appellant does not have registration *albeit* being nearly identical to the registered mark GHOSTBUSTERS of the Appellant. Examination of the matter under Section 11(2) would have shifted the focus from the dissimilarity of goods, which is the sole ground in the impugned order to reject the opposition.

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25. Ms. Raman is also not correct in her argument that for seeking benefit of Section 11(2) and opposing registration as a proprietor of an earlier mark, formal declaration of the mark as a well-known trademark is a pre-condition and hence, before filing the opposition, Appellant ought to have followed the required procedure of seeking declaration either from the Court or for inclusion of mark in the list of well-known trademarks from the Registrar. For ready reference, relevant sub-Sections of Section 11 are as follows:-

> *"**11. Relative grounds for refusal of registration.**—(1) Save as provided in section 12, a trade mark shall not be registered if, because of—*
>
> *(a) its identity with an earlier trade mark and similarity of goods or services covered by the trade mark; or*
>
> *(b) its similarity to an earlier trade mark and the identity or similarity of the goods or services covered by the trade mark,*
>
> *there exists a likelihood of confusion on the part of the public, which includes the likelihood of association with the earlier trade mark.*
>
> *(2) A trade mark which—*
>
> *(a) is identical with or similar to an earlier trade mark; and*
>
> *(b) is to be registered for goods or services which are not similar to those for which the earlier trade mark is registered in the name of a different proprietor,*
>
> *shall not be registered if or to the extent the earlier trade mark is a well-known trade mark in India and the use of the later mark without due cause would take unfair advantage of or be detrimental to the distinctive character or repute of the earlier trade mark.*
>
> *xxx xxx xxx*
>
> *(4) Nothing in this section shall prevent the registration of a trade mark where the proprietor of the earlier trade mark or other earlier right consents to the registration, and in such case the Registrar may register the mark under special circumstances under section 12.*
>
> *Explanation.—For the purposes of this section, earlier trade mark means—*
>
> *(a) a registered trade mark or an application under section 18 bearing an earlier date of filing or an international registration referred to in section 36E or convention application referred to in section 154 which has a date of application earlier than that of the trade mark in question, taking account, where appropriate, of the*

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priorities claimed in respect of the trade marks;

(b) a trade mark which, on the date of the application for registration of the trade mark in question, or where appropriate, of the priority claimed in respect of the application, was entitled to protection as a well-known trade mark.

(5) A trade mark shall not be refused registration on the grounds specified in sub-sections (2) and (3), unless objection on any one or more of those grounds is raised in opposition proceedings by the proprietor of the earlier trade mark."

26. Close look and analysis of the language of Section 11(2), leaves no doubt that the provision does not require or envisage the 'earlier trademark' to be a formally declared well-known mark. Sub-Sections 11(6) and (7) provide factors which are required to be considered for determining whether that trade mark is a well-known mark. Explanation (b) to Section 11 defines an '*earlier trademark*' as a mark registered on the date of the application for registration of the trademark in question and 'entitled to protection as a well-known trademark'. Clearly, the phrase in Section 11(2) is '*mark is a well-known trade mark in India*' and not 'the mark is a declared well-known mark and/or included in the list of well-known marks by the Registrar'. This only means and connotes that the earlier mark qualifies the threshold requirement of Section 2(1)(zg) i.e., it has become well known to the substantial segment of the public which uses the goods or receives services in relation to which the mark is used and is likely to be taken as indicating a connection in the course of trade and is well known in India. The words "entitled to protection" in Explanation (b) are not without significance inasmuch as 'entitle' as defined in Black's Law Dictionary means 'to grant a legal right to or qualify for' and cannot be construed to mean 'declared'. Therefore, the enquiry under Section 11(2) is whether opponent's mark is substantially well known amongst the relevant segment and enjoys immense and extensive reputation in India and to test this, factors delineated in

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Section 11(6) and (7) are to be considered and the enquiry is not whether there is a prior formal declaration as a well-known mark. Had the legislature intended the earlier mark under Section 11(2) to be a declared well-known mark, the provision would have so stated expressly and in the absence of an express exposition to this effect, it is not open to the Court to substitute words in statutory provisions beyond what has been legislated.

27. The central theme of Section 11(2) is the well known status and repute of the earlier registered mark and its protection so that the Register of Trade Marks does not include a later mark, which owing to its similarity/identity, takes unfair advantage of or is detrimental to the distinctive character or repute of the earlier mark. The right to oppose registration under 11(2) thus arises from the well-known nature of the earlier mark and is not dependant on its formal declaration as a well-known mark, in my considered view. The legislative intent is clear from the common thread that runs in sub-Section (5), which provides that a trademark shall not be refused registration on the grounds specified in sub-Sections (2) and (3), unless objection on any one or more of those grounds is raised in opposition proceedings by the proprietor of the 'earlier trademark' and does not require that the opponent should be a proprietor of a 'declared' well-known mark.

28. I am fortified in my view by the judgment of the Madras High Court in ***Lego Juris (supra),*** where the Court was dealing with rectification petitions under Section 57 of 1999 Act and the Petitioner who was the registered proprietor of the mark LEGO sought removal of the mark LEGO adopted by Respondent No.1 for its confectionery products from the Register of Trade Marks. Be it noted that Petitioner's mark was declared as well-known trademark in foreign jurisdictions and Section 11(2) was invoked for cancellation of the registration. Respondent No.1 contended that

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its adoption of LEGO was *bona fide* and that its registration was in a class different from the class for which Petitioner's LEGO mark was registered and hence, the goods were wholly dissimilar. Objection was also taken that Petitioner's mark was not a declared well-known mark as contemplated under Section 11(6) read with Section 2(1)(zg) of 1999 Act, besides disputing the similarity in the rival marks. Madras High Court took the view that Explanation (b) to Section 11(4) clarifies that an earlier trademark would also include a trademark which was entitled to protection as well-known mark on the date of the application for registration by the rival party *de hors* the nature of goods and/or trade channels, meaning thereby that it is not mandatory to have a prior declaration under Section 11(2) for opposing registration of an identical or similar mark. Madras High Court observes that even though Petitioner's declaration was pending and as and when granted will be prospective but construing the provisions of Section 11(2), the LEGO mark of the Petitioner will be entitled to be protected against the identical mark of Respondent No.1, even though the goods were way different. This judgment, therefore, highlights that to seek protection under Section 11(2) and oppose the registration of an identical/similar mark, the earlier trademark must only satisfy the requirement of being a mark 'entitled' to protection as a well-known mark as provided under Section 2(1)(zg).

29. The above position also finds support from Rule 43 of the 2017 Rules, which in respect of a Notice of Opposition or on an earlier right on which the opposition is based and provides that "*where the opposition is based on an earlier trade mark which is alleged to be a well-known trade mark within the meaning of sub-section 2 of section 11[…]*". The language of this Rule is also a pointer to and furthers the interpretation that opposition under

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Section 11(2) is not conditioned by declaration of a mark as a well-known and the registered proprietor of the earlier mark has only to satisfy through evidence that it fulfills all parameters under Sections 11(6) and (7) read 2(1)(zg) and is entitled to protection as a well-known mark. Any other interpretation would render the Explanation (b) and Section 11(5) as also the corresponding Rule, otiose. As rightly urged on behalf of the Appellant, legislature in its wisdom deliberately chose not to use the term "declared" since before the amendment to the Trade Marks Rules in 2017, whereby Rule 124 was introduced, the only way to seek a declaration of well-known trade mark was perhaps to engage in adversarial proceedings, such as law suits for infringement, passing off, cancellation, opposition, etc. Additionally, even in the definition of well-known trademark, legislature has consciously used the words "a mark which has become so to the substantial segment of the public", which only means a substantial segment of the public that patronizes the product/service associated with the earlier trademark. The whole objective of the protection extended to a well-known mark is to ensure that a mark, which is similar/identical, does not dilute its reputation and the character. Furthermore, legislature has consciously used two distinct terms, i.e. "well-known" trademark in Section 11 (2) and "determined to be well known" in Section 11 (8). The golden rule of interpretation stipulates that words and phrases in a statute must be given their ordinary meaning. Therefore, the contention of Respondent No.1 that in the absence of a formal declaration of the mark GHOSTBUSTERS, opposition by the Appellant was misconceived, is rejected and it is held that there is no statutory prescription under Section 11(2) that the proprietor of an earlier mark must first obtain a declaration of 'well-known trademark' status before invoking the provision in opposition proceedings. Section

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11(2) merely requires that the earlier mark is well-known in India and the Registrar is empowered to determine whether the mark is well-known by considering factors under 11(6) and (7), including duration and extent of use, extent of promotion, recognition among relevant public, registrations and record of enforcement etc. by looking into evidence led by the opponent.

30. It needs no gainsaying that if Appellant is able to satisfy that its mark ***GHOSTBUSTERS*** meets the required threshold under Section 2(1)(zg) read with sub-Sections (6) and (7) of Section 11 it shall be entitled to oppose registration of nearly identical mark ***GHOST BUSTER*** under Section 11(2) despite the dissimilarity of rival goods and difference in the classes. However, be it noted at the cost of repetition that the Respondent No.1 did not even delve into this aspect of the matter and focussed its attention only on the dissimilarity of goods and classes and thus having travelled on the wrong path, reached the wrong destination. Learned Senior Counsel for the Appellant took pains to demonstrate that Appellant made extensive and specific averments and also filed plethora of documents in support thereof to show that the mark ***GHOSTBUSTERS*** is a well-known mark within the meaning of Section 2(1)(zg) as it fulfills the criteria laid down in Section 11(6), but regrettably, the impugned order is silent on this aspect. Hence, Ms. Raman's reliance on the judgements in ***N. Ranga Rao (supra)*** and ***Apollo Hospitals (supra),*** to contend that no evidence was led under Section 11(6), is also misplaced.

31. Appellant also urged before Respondent No.1 that the adoption of the mark ***GHOST BUSTER*** by Respondent No.2 was in bad faith for two reasons. Firstly, the reputation of the mark ***GHOSTBUSTERS*** was so well known that the adoption was only to take unfair advantage of Appellant's

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GHOSTBUSTERS as there could be no other reason to adopt unique name coined by the Appellant. Secondly, Respondent No.2 was well aware of Appellant's rights in the mark inasmuch as its sister concern Welch Materials Inc. (Welch) filed an application on 04.06.2019 before the USPTO bearing No.88458465 for registration of the mark ***GHOST BUSTER***, which was opposed by the Appellant. On 14.10.2019, Notice of Opposition was served on the attorney of Welch and soon thereafter the application was abandoned. Owing to the no contest by Welch, Appellant filed notice of motion for default judgment on 02.12.2019 and on 07.01.2020, USPTO passed an order refusing the application filed by Welch. Despite this significant proceeding and order, Respondent No.2 filed the application in question in India on 01.12.2020 on 'proposed to be used' basis. However, even to this extent there is not a whisper in the impugned order. Appellant is also right in its submission that Respondent No.2 does not contest and/or abandons prosecution when it finds it has no defence as even in the present proceedings, there was no representation despite service and Respondent No.2 was set *ex parte.* Learned Senior Counsel rightly placed reliance on the judgments of this Court in ***BPI Sports (supra)*** and ***Kia Wang (supra)*** to urge that bad faith is an unfair practice involving lack of good faith at the time of filing applications and includes not only cases where an applicant intentionally submits wrong or misleading or insufficient information to the Trade Marks Office but also where it intends to lay his hands on the mark of a third-party, through registration, with which it has had earlier relations. The term 'bad faith' is a shade milder than malice.

32. On perusal of the impugned order and the detailed Notice of Opposition, evidence and written submissions of the Appellant filed before Respondent No.1 and for all the aforesaid reasons, I am of the view,

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that this is a fit case for remand before Respondent No.1 for fresh consideration. The Registrar shall look into all relevant contentions raised by the Appellant and the supporting documents as also the rival contentions of Respondent No.2. More particularly, Respondent No.1 shall consider and adjudicate Appellant's contentions relating to alleged bad faith and its claim that the mark ***GHOSTBUSTERS*** is entitled to protection as a well-known trademark on the touchstone of Sections 2(1)(zg) and 11(6) and (7) of 1999 Act under the provisions of Section 11(2). The decision will be taken within three months from today, after giving an opportunity of hearing to the Appellant and Respondent No.2.

33. Accordingly, the impugned order dated 16.04.2025 cannot be sustained and is quashed and set aside. Respondent No.1 shall decide the case on its own merits in accordance with law and it is made clear that this Court has not expressed any opinion on the merits of the case.

34. Appeal stands disposed of in the aforesaid terms.

JYOTI SINGH, J.

JULY 06, 2026/YA

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