

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/CIVIL APPEAL NO. 7 of 2025**

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LINCOLN PHARMACEUTICALS PRIVATE LIMITED**Versus****REGISTRAR OF TRADE MARKS & ANR.**

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Appearance:**MR VATSAL M PATEL(13752) for the Petitioner(s) No. 1****MS VYOMA K JHAVERI(6386) for the Respondent(s) No. 1,2**

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CORAM:HONOURABLE MRS. JUSTICE MAUNA M. BHATT**Date : 20/11/2025****ORAL ORDER**

1. Learned advocate for the appellant requested for draft amendment. The same is allowed. To be carried out forthwith.

2. This appeal under Section 91 of the Trade Marks Act, 1999 (“the Act, 1999” for short) is filed challenging the order dated 11.08.2025 (Annexure A page 22) under which, the registration sought by the appellant has been rejected.

3. Heard learned advocate Mr.Vatsal Patel for the appellant. Learned advocate submitted that the appellant made an application dated 22.08.2023 (Annexure E page 28) under Section 18(1) of the Act, 1999 seeking registration of Trade

Mark, “Glypanta”. Once the application was made, it was examined by the authority and a report was prepared by examiner of Trade Mark. In the said examination report, the objections were raised to which, appellant responded by reply dated 30.10.2023 (Annexure G page 86). By placing reliance on paper book filed, learned advocate submitted that a detailed reply was filed against the Examination report dated 30.10.2023 (Annexure F page 84), whereby, the appellant has raised various grounds, however, the said grounds were not considered. Learned advocate in support of his submissions had relied upon grounds referred in the reply to the Examination report dated 30.10.2023 (Annexure F page 84) with the submission that even if the class is same but composition of the product is different subsequent registration is permissible, because it would constitute additional mitigating factor to disabuse the possibility of any likelihood. Learned advocate in support of his submission has relied upon the decision of Hon’ble Delhi Court in the case ***Elyon Pharmaceuticals Pvt. Ltd. vs. The Registrar of Trademarks*** in C.A. (COMM.IPD-TM) 153/2021 dated 23.08.2023 wherein it is held as under:

“7. Further, it is not known as to whether the pharmaceutical composition of the product which stands registered under the name ELEMENTAL is the same as that for which the plaintiff is seeking

registration for the mark ELMENTIN. If the two compositions are different, that would constitute an additional mitigating factor to disabuse the possibility of any likelihood of confusion amongst the public.”

3.1. It was thus submitted that the objection raised by the Examiner of Trade Mark under Section 11(1) of the Act, 1999 are required to be ignored since they are not sustainable in the eye of law. However, ignoring the reply filed by the appellant, an order dated 11.08.2025 was passed which is a subject matter of present appeal.

4. Learned advocate further submitted that it is clear from the order dated 11.08.2025 that Examiner of Trade Mark has placed reliance on the Trade Mark that are proposed to be used whereas the present appellant is in use since 2023 and he has a substantial market over its product. Moreover, the grievance of the appellant is that the mark is not published in the trademark journal and if the same is permitted, the appellant would be in a position to establish his case and thereafter, after publication if the objections if any by 3rd party can be considered. In other words, the application was rejected without any publication.

5. Learned advocate in support of his submissions, relied on Section 20 of the Act, 1999 to submit that even if the objections are there of Section 11(1) or Section 11(2) of the Act, 1999 then also advertisement of the Trade Mark is permitted.

6. On the aspect of non-joining of the party, learned advocate submitted that at this stage joining of the private respondent is not required since the appellant challenges rejection of his application prior to publication.

7. Ms. Vyoma Jhaveri for respondent submitted that opposition party has not been joined as party respondent here. However, she could not dispute the provisions of Section 20 of the Trade Mark Act.

8. Considering the submissions and noticing that Section 20 of the Act, 1999 permits advertisement despite objections under Section 11(1) of the Act, 1999, following order is passed,

(i) The present appeal is allowed and impugned order dated 11.08.2025 is quashed and set aside.

(ii) The trademark registry is directed to proceed with the

advertisement of the subject application as per the proviso to Section 20 of the Act, 1999.

(iii) Let the same be done within a period of three months from the date of receipt of this order. If there is any opposition to the said application, the same shall be decided on its own merits.

9. Accordingly, the present Civil Appeal is disposed of.

(MAUNA M. BHATT,J)

NAIR SMITA V./13

Original copy of this order has been signed by the Hon'ble Judge.
Digitally signed by: SMITA VINU NAIR(HC00186), PRINCIPAL PRIVATE SECRETARY, at High Court of Gujarat on 21/11/2025 17:33:45