



**IPAB Intellectual Property Appellate Board**

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**MP.No. 49/2015 in ORA/262/2015/TM/CHN  
TUESDAY, THIS THE 25<sup>TH</sup> DAY OF AUGUST , 2020**

**HON'BLE SHRI JUSTICE MANMOHAN SINGH  
HON'BLE DR. ONKAR NATH SINGH**

**CHAIRMAN  
TECHNICAL MEMBER (PVPAT)**

- 1. RED BULL AG**  
POSTSTRASSE 3, 6341 BAAR,  
SWITZERLAND

...APPLICANT/APELLANT

(Represented by:Mr.Neeraj Grover)

Versus

- 1. DR. REDDY'S LABORATORIES LIMITED**  
7 - 1 - 27, AMEERPET. HYDERABAD - 500 016.
- 2. THE REGISTRAR OF TRADEMARKS**  
THE PATENT OFFICE,  
INTELLECTUAL PROPERTY BUILDING, G.S.T.  
ROAD, GUINDY, CHENNAI - 600 032

...RESPONDENT

(Represented by - None)

**ORDER**

**HON'BLE SHRI JUSTICE MANMOHAN SINGH, CHAIRMAN**

- The present application has been filed for removal of trade mark no. 1058481 in class 09 registered in the name of theDR. Reddy's Laboratories Limited, 7 - 1 - 27, Ameerpet, Hyderabad - 500016.
- No one appeared on behalf of respondent No.1 who also failed to rebut the case of the applicant. No counter-statement has also been filed.

### 3. The case of the applicant on merit as per petition

The Applicant has honestly adopted the mark/ tagline “GIVES YOU WINGS” and the same has been used in conjunction with the Applicant’s well-known Red Bull Trade Marks and the tagline “GIVES YOU WINGS” is used in promotional and advertising material as well. In addition, the Applicant has also adopted the device of wings in its various print and media commercials showing animated characters which include animals, human, etc. with wings. The Applicant is a pioneer in using such a unique concept for its promotional and advertising material and due to the extensive publicity, the concept of an animal/human acquiring wings after consumption of the Red Bull Energy Drink has become exclusively associated with Red Bull.

3.1. A 1997 Fessel-GfK market study carried out in Austria indicates that 79% of the general Austrian population is familiar with the designation "... verleihtFlügel" (GIVES YOU WINGS). 86% thereof could spontaneously associate the slogan with RED BULL and 68% of the general Austrian population associate the designation "verleihtFlügel" (GIVES YOU WINGS) with RED BULL.

3.2 A 1998 GfK market study carried out in Germany indicates that 60.4% of the general German population and 67.3% of the Energy Drinks users are familiar with the designation '...verleihtFluegel' (GIVES YOU WINGS) in connection with Energy Drinks; 50.2% of the general German population and 56.2% of the energy drink users familiar with the slogan perceive that soft drinks/energy drinks bearing the term '...verleihtFluegel' (GIVES YOU WINGS) come from one and the same company/producer. Of those persons, 44.0% of the general German population and 49.6% of the energy drink users were able to name RED BULL.


3.3, The Applicant is also registered as the owner of numerous domain names under both the generic top-level domain (TLD) ‘.com’ (in the English language and vernacular) and under the respective country code top-level domains in as many as 196 countries all over the world including but not limited to India specific domain [www.redbull.co.in](http://www.redbull.co.in). It is pertinent to mention here that the Applicant’s website [www.givesyouwings.com](http://www.givesyouwings.com) redirects to the Red Bull official website. These websites are more than internet retailing medium as it increase awareness of the Applicant’s trademarks and extends coverage to the Applicant’s advertising.

3.4.The immense brand recognition and value associated with the Applicant’s Red Bull Trade Marks are further evidenced, *inter alia*, by the facts that Applicant’s mark RED BULL has been ranked the “most valuable Austrian brand with a brand value of approximately EUR 13.4 billion” by Eurobrand Austria 2011 ranking published by the European Brand Institute in July 2011. The Applicant’s well-known mark RED BULL has also been ranked number 10 out of the 25 most valuable single brands in Europe.

3.5.By virtue of the above, Applicant claims legitimate rights in and to the Red Bull Trade Marks including but not limited to the use and/or registration of the word mark RED BULL used along with or without the registered trademark/tagline “GIVES YOU WINGS”.

3.6.In India the Applicant is the registered proprietor of the mark GIVES YOU WINGS as per the details below:

Trade Mark	Reg. No.	Classes	Registration Date

GIVES YOU WINGS	1204000	32	04/06/2003
	2560079	32	05/07/2013
<b>पंख दिलाए</b> (GIVES YOU WINGS in Hindi)	1289274	32	10/06/2004

4. It is stated that Recently the Applicant's attention was drawn to a trademark under registration no. 1058481 dated 12<sup>th</sup> November, 2001 for the trademark YOUR WINGS TO LIFE (Word) (hereinafter referred to as the 'impugned mark') in the name of Dr. Reddy's Laboratories Limited, in respect of goods under class 09.

5. It is stated that the applicant t has reason to believe that neither the Respondent no. 1 nor their predecessors in interest and title ever intended to use the impugned mark in India even though an application for the same was filed in the year 2001 claiming use since 20<sup>th</sup> October, 2001. This is further established by the fact that the Respondent no. 1 or their predecessors in interest and title have not used the impugned mark in India since adoption and more specifically for at least duration of five years and 3 months from the date of filing this petition for rectification. To this date, the Respondent no. 1 or their predecessors in interest and title have not undertaken any activity to commence use of the impugned registration. Therefore, the impugned registration obtained by the Respondent no. 1 herein is liable to be cancelled as the same was registered without any bonafide intention on their part for registration that it should be used in relation to goods of

any nature whatsoever by it. The non-use of the impugned mark since the date of filing the application for registration of the same is clearly indicative of the lack of bona fides on the part of the Respondent no.1 or their predecessors in interest and title to use the same. The Respondent no.1 is called upon to furnish valid reasons and justification for the adoption of the impugned mark and the lack of use thereof up to date.

The impugned registration obtained by the Respondent no. 1 is an unwarranted hardship on the Applicant, who has an honest and bona fide use of the trademark GIVES YOU WING of which the Applicant is the rightful proprietor throughout the world. The Respondent no. 1 or their predecessors in interest and title have not used the trademark YOUR WINGS TO LIFE for the goods in respect of which it stands registered since almost 15 years and does not have any intention to do the same. It is obvious that such registration has been obtained malafidely with the ulterior motive to make undue gain from the Applicant. The Respondent no. 1 is called upon to furnish valid reasons and justification for the adoption of the impugned mark and the lack of use thereof up to the date of filing of this petition.

## 6. GROUNDS ON WHICH RELIEF IS SOUGHT FOR

a) That since the application for registration of the impugned mark was made without any bona fide intention to use the same and since there has been no bona fide use of the impugned mark in relation to goods for which the same has been registered since at least more than five years and three months from the date of present application for rectification, therefore the application for cancellation of the impugned registration in favour of the Respondent no. 1 is entitled to be allowed in exercise of the discretion of the Hon'ble Registrar under Section 47 of the Trade Marks Act, 1999.

b) It is humbly submitted that the Respondent No. 2, by registering and allowing the impugned mark to subsist on the Register, is wrong and is depriving the Applicant, who is genuine and honest adopter and user of the trademark GIVES YOU WINGS for the purpose of its business, and as such there are sufficient grounds for cancellation/removal/expunging the impugned mark registered under number 1058481 in class 09 on account of the grounds detailed herein.

c) The impugned registration obtained by the Respondent no. 1 herein is liable to be cancelled under the provisions of Section 47 (1) (a) and (b) of the Act, as the impugned trade mark was registered without any bona fide intention on the part of the Respondent no. 1 or their predecessors in interest and title to use the same in relation to the goods in respect of which the impugned registration was acquired. There has been no bona fide use of the registered trade mark in relation to those goods.

d) The impugned registration obtained by the Respondent no. 1 is an unwarranted hardship on the Applicant, who is a “person aggrieved” within the meaning of the Trade Marks Act, 1999 and who, as a member of the trade is being prevented/ hindered by reason of subsistence of the impugned mark on the register from the bona fide conduct of its business activities despite being the true original and rightful proprietor of the trademark GIVES YOU WINGS and despite having adopted and used the same several years prior to the alleged adoption by Respondent no. 1 or their predecessors in interest and title.

e) The petition for cancellation of the impugned registration in favour of the Respondent no. 1 is entitled to be allowed in order to maintain the purity of Register and in exercise of the discretion of the Hon’ble Registrar.

f) That the Respondent no. 1 has attempted to acquire an exclusivity to use of the impugned mark in contravention to the provisions and intent of the Trade Marks Act, 1999 and as such there are sufficient grounds for cancellation/removal/expunging the impugned mark registered under number 1058481 in class 09 on account of the reasons and grounds mentioned above.

7. As per scheme of the Act, in order to decide the rectification, filing of counter-statement is not mandatory. All the points raised by the applicant have not forced as both rival trademarks are neither deceptively similar nor identical with. The applicant mark Your Wings to life is not the main mark. It is the sub-brand. The good will and reputation alleged by the applicant is not pertaining to the main mark Red Bull.

8. In the present case two rival trademarks of parties are :-

a) Your WINGS TO LIFE (applicant)

b) GIVES YOU WINGS (respondent No.1)

9. The question of non-user will arise if the party who is seeking rectification is an aggrieved party and has introvert In our view both trademarks are not similar. The appellant is hence not the person aggrieved within the meaning of section 47 of the Act. All grounds raised are unnecessary and irrelevant.

10. Hence, the petition is dismissed.

11. No costs.

-Sd/-

(Dr. Onkar Nath Singh)  
Technical Member (PVPAT)

-Sd/-

(Justice Manmohan Singh)  
Chairman

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