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INTELLECTUAL PROPERTY RIGHTS

TikTok Denied Entry to the List of Well-Known Trademarks by Bombay High Court

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In a notable judgment concerning the recognition of well-known trademarks, the Bombay High Court has dismissed a petition filed by TikTok Limited, challenging the refusal of the Registrar of TradeMarks to include its trademark “TikTok” in the list of well-known marks under Rule 124 of the Trade Marks Rules, 2017.

Background

The Petitioner, Tiktok Ltd, filed an application for inclusion of its registered trademark “TikTok” in the list of well-known trademarks under Rule 124 of the Trade Marks Rules 2017. TikTok was globally launched in 2017 and it was available in 155 markets and in 75 languages. It gained immense popularity and by 2019 it was one of the most downloaded apps surpassing Facebook, YouTube and Instagram. It’s a social media video application for creating and sharing short talent videos.

Despite the fact that “TikTok” is a registered trademark in the Trademarks Registry, the Registrar declined to add it to the list of well-known trademarks in the order dated 31st October 2023. The primary reason noted in the impugned order was that TikTok was banned by the Government of India as prejudicial to the sovereignty and integrity of India, defence of India, Security of the State, and public order as per powers under the Information Technology Act, 2000 and associated rules.

Later, TikTok approached the Bombay High Court through a Commercial Miscellaneous Petition under the Ordinary Civil Jurisdiction (Commercial Division), claiming that the impugned order was alleging non-application of mind and erroneous reliance on Section 9, which was irrelevant to the application under Rule 124 of the Trade Marks Rules, 2017.

Petitioner’s Contentions

Tiktok claimed that they presented elaborate material before the Registrar for the inclusion of mark in the list of well known marks, but no reference was made by the Respondent while refusing the application. The petitioner also argued that the Registrar wrongly invoked Section 9 of the Trade Marks Act, which pertains to refusal of registration, whereas the correct basis for evaluating well-known status lies in
Section 11(6) to (9) which was not referred to at all in the impugned order. Therefore, the Petitioner indicated that the Court must consider remanding the matter back to the Respondent for a fresh consideration in the light of the requirements under the Trade Marks Act and Rules.

Respondent’s Contentions

The learned counsel for the Respondent submitted that the impugned order had considered the relevant material when refusing the application for the inclusion of the mark in the list of well known marks. It was further submitted that a mere reference to a wrong provision itself is not a ground for setting aside the order. Section 11(6) of the Trade Marks Act, 1999 is not exhaustive in nature and therefore, the Registrar was justified in taking into consideration the banning of the application as
well as not including its mark in the list of the well known marks. The fact that the Government of India banned TikTok citing concerns of national sovereignty, data privacy, and cyber safety, was a material and legitimate consideration. Section 11(9) of the Trade Marks Act specifies that the Registrar shall not require as a pre-condition satisfaction of clauses (i) to (v) of the said sub-section for determining whether a trade
mark is a well known trade mark

Court’s Observations

The Bombay High Court observed that Section 11(6) is illustrative, not exhaustive, allowing the Registrar to consider any relevant fact, including matters of public policy and constitutional values when evaluating applications for well-known status. The Court held the view that the Government of India's prohibition of TikTok, enacted under the Information Technology Act and its associated Rules, was a significant
element considered by the Registrar. Additionally, the Registrar referenced concerns regarding public safety, which encompassed risks related to data security, occurrences of cyberbullying, and inappropriate content, as well as the location of TikTok's servers in China. All these factors played a role in the Government of India's decision to impose a ban under the Information Technology Act.

The Court acknowledged that TikTok remains a registered trademark, which gives it statutory protection in India. However, recognition as a "well-known mark" grants enhanced protection, and in light of the ongoing ban, that elevation was not warranted. The use of the Constitution's preamble and public policy concerns was also justified given the national interest dimensions involved.

Scope of the Provisions

Rule 124 – it provides the procedure of determining any mark as a "well-known trademark"

Section 9 – Provides for grounds for refusal for registering a mark.

Section 11(6) to 11(9) – Outlines the factors to be considered by the Registrar while determining whether a mark is well-known, such as public recognition, usage, promotion, and enforcement. Registrar cannot mandate use or registration in India as a precondition for recognizing a trademark as well-known.

Well – Known Status of a Mark

According to Section 2(zg) of the Trade Marks Act, 1999, a trademark can be granted the status of a "well known" trademark when "a mark 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".

Conclusion

The decision made by the Bombay High Court in the case of TikTok Ltd. vs. Registrar of Trade Marks highlights the discretionary authority of the Registrar as outlined in the Trade Marks Act of 1999 regarding the acknowledgment of well-known marks. It also reaffirms that such acknowledgment must be consistent with broader constitutional and public policy considerations.

Despite TikTok's international recognition and its registered trademark status in India, the Court supported the Registrar's choice to refuse it the designation of well-known status, citing a government-imposed ban due to national security and data privacy issues. This ruling clarifies that mere commercial popularity does not grant a mark enhanced protection if its usage is legally restricted within the nation. The ruling could establish a precedent regarding the assessment of foreign technology brands,
especially those under regulatory examination in India, concerning intellectual property protections that extend beyond mere registration.

This decision emphasizes that the acknowledgment of a mark as well-known is not solely determined by its global popularity, it must also conform to India's domestic legislation, public interest considerations, and constitutional protections.

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