

24th August, 2020

New Delhi

To
The Registrar of Trademark,
Intellectual Property Bhavan,
Plot no. 32, sector 14,
Dwarka, New Delhi- 110078.

Sub: Reply to the examination report for Application No. NTMC 2020012 in class 12 in the name of M/s: LITROEN COMPANY LTD.

Dear sir/ madam,

In furtherance of the examination report dated 16 august, 2020 regarding the trademark “LITROEN” which is the subject matter of **Application No. NTMC2020012** in **Class 12** in the name of **M/s Litroen Company Limited**, we would like to humbly submit the following response:

1. The trademark “LITROEN” is distinct and distinguishable as against the objections raised in the examination report. It is a coined word mark, capable of distinguishing the applicant's goods and services from those of others. Over the years the trademark has also acquired a distinctive character in view of its extensive use in relation to the goods and services rendered by Litroen Company Limited. Therefore, we disagree with the contention that the mark is in any manner capable of deceiving the public or causing confusion.

I. THE TRADEMARK IS NOT DECEPTIVE

2. It is humbly submitted that the said trademark is not likely to cause confusion in the minds of a rational consumer and public at large. Any sort of objection has to be understood from

the point of view of a man of average intelligence and imperfect recollection. The question of any such impression of the consumers has to be considered in its geographical and social context.

3. The Hon'ble courts have previously held that marks with separate spelling and composition of words cannot be called deceptive.¹ In the present case, the conflicting mark has been registered in France, making it a part of a completely different market from that of the applicants'. We would like to point out that the country of origin is of a particular significance here, for establishing the phonetic dissimilarity between the marks. The languages spoken in both the countries differ vastly on the basis of cultural and social background. The conflicting mark "CITROEN" is a French word and is thus pronounced as '*see-toe-en*' whereas the pronunciation of the applicant's mark, "LITROEN" is pronounced as '*lit-roe-en*'. Therefore, the question of phonetic similarity and thus deceptive nature does not arise.
4. The test of environment in which the trademark is used², as laid down by the courts also helps in establishing that the mark is not likely to create confusion in the minds of the consumers. "LITROEN" has been in use in the Indian markets since 2014, here also the geographic origin of the company makes the mark substantially differentiated as against the similar mark which a large proportion of its market in Europe. It is also important to note that the channel of goods and the market are also diametrically opposite leading to no scope of overlap in the consumer base of "LITROEN" with others.
5. Therefore, any objection on the grounds of deceptiveness and likeliness of confusion stands rejected on the various grounds substantiated above.

¹ M/S Lakme Ltd. v. M/S Subhash Trading, 1996 (64) DLT 251, SM Dyechem Ltd. v. Cadbury (India) Ltd., (2000) 5 SCC 573.

² M/S Mohan Meakin Limited v. A.B. Sugars Limited, CS(OS) 2335/2010 decided on 10 Oct. 2013.

II. THE TRADEMARK IS DISTINCTIVE

6. We humbly contend that the trademark "LITROEN" is distinctive and capable of distinguishing the goods and services offered by "M/s. Litroen Company Limited" from those of others in the existing market. The wide array of goods and services offered by the applicant also differ substantially, making it a distinctive mark. The proviso to section 9(1) states that "a trade mark shall not be refused registration if before the date of application for registration it has acquired a distinctive character as a result of the use made of it." Therefore, in light of the above provisions, we argue that "LITROEN" is a distinctive trademark.
7. The applicant's mark is a coined word mark which is fanciful in nature; the respective mark was invented by the company solely for the purpose of selling the goods and services offered by the applicant. The mark has no dictionary meaning and thus cannot be understood in a generic sense. As laid down in the case of M/S. South India Beverages Pvt. v. General Mills Marketing Inc.³, such distinct brand names play a paramount role in influencing a consumer's choice of brand and his memory of the previous exposures of the brand.
8. Further, the applicant has been in the automobile business and related services since 2014 which has led them to incur advertising expenditures, conduct consumer feedback survey for services rendered and extensive market research. We would like to contend on behalf of the applicant that market share, investment in marketing and advertisement and use of a trade mark for the purpose of specific good and services also contributes to its distinctiveness. There is sufficient documentary evidence to prove the commercial use of the trademark prior to the registration.
9. As laid down by the courts in various judgments that "Sales Figures" can be used as a determiner for establishing the goodwill / reputation of the trademark, and in turn establishing whether the trademark has acquired distinctiveness or not.⁴ Thus, the mark of the present applicant is distinctive if we take into account factors like the nature of goods

³ FAO(OS) No. 389/2014, decided on 13 Oct. 2014.

⁴ M/S P.K. Overseas Pvt. Ltd.v. M/S KRBL Ltd., 2014 (57) PTC 129 (IPAB); Metropolitan Trading Company v. Shri Mohanlal Agarwal, MIPR 2008 (1) 24.

and services offered, customary use during the business years, intended purpose and origin of the coined word mark.

10. We humbly submit that the mark shall be considered distinct in light of the nature of goods and services and the subsequent use of the term "LITROEN" in the market.

III. PRAYER

11. Therefore the refusal raised under sections 9 (2) (a) and 9 (1) (a) of the Trade Marks Act, 1999, should be subject to withdrawal. Further, the application for the relevant trademark should be accepted for registration and published in the Trade Mark Journal at the earliest. In the event where the applicant is still required to pursue the application for the respective mark and submit any arguments and/or produce evidence in support of the applicants' contentions and defense, it is humbly submitted that we would like to be heard at the office of the Trademarks Registry, New Delhi.

Thank You

Anil Sarbh

S&A Solicitors