

LEGAL OPINION

12th August, 2020

To,

Mr. X,

Nariman point,

Mumbai -01

RE: Trade Mark search for **VIROTIZE**

Mr. X, you recently reached out to confirm the availability of your proposed '**VIROTIZE**' mark for its use in your business and, to check if it is non-infringing, and to then discuss about registering the mark under the Indian Trademark Act, 1999 (Hereinafter referred to as "**Act**") for its use in India. I would firstly, like to take this opportunity to thank you for giving me the chance to assist you.

In continuance to our telephonic conversation, I would like to reiterate the point about the importance of the description of your product for which the trade mark is sought. It is important to include ancillary activities that accompany your core purpose of the product while filing for registration of a mark. I would propose your description of goods to be as follows;

"Sanitizing disposable wipes used to disinfect and clean surfaces, Disinfectant wipes impregnated with cleaning chemicals or compounds for cleaning and sanitizing surfaces such as counters, stoves, sinks, table tops, chairs and the like. Kills bacteria, viruses, as well as remove dirt and grease. Sanitizing wipes used in homes, kitchens, offices, cars etc."

Advancing to the next subject, as you may already know, while registering for a trade mark under the Act it is important to find out the various classes under which a trade mark can be registered. As per your guidance, you have explained that you want to register your mark under class 5. After a thorough search, it is found that there already exists a mark which is registered by the name '**VIROTIZE**' for a sanitizer product under class 5. Thus, due to the mark as well as the nature of the product being similar, the chances for getting a registration for the same are slim. (For details about the same, please refer to the Annexure at the end of the letter)

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However, it is to be noted that your product also falls under class 3 based on the description suggested above and can be thus, be filed under both classes for a wider reach. In furtherance to this, I have made a search under both the classes which even covers phonetically similar marks, and there seems to be no similar mark under class 3. (please refer to the search report)

As far as the application for the mark is concerned, there are two approaches;

First, you may file a multi class application which means filing a single application under different classes or,

Second, you may file separate applications for different classes.

In the former, the biggest drawback is that the application is the grave possibility of blockage or rejection of the whole application by the Registry in case an opposition is raised on the proposed mark under any of the multiple classes specified.

In the latter, if there is an objection in one of the application, the second one can still continue without affecting the other application. However, filing two sperate applications means paying the registration fee separately for both and thus, I would leave it up to you to decide how you would like to go ahead.

Keeping in mind all the above stated facts, there is a high chance of the application not being accepted by the Registrar as there clearly may be a likelihood of confusion in the minds of the public as the word mark as well as the nature of the goods are indistinguishable from the already existing mark.

There are plethora of judgements that affirm the use of a similar word marks by two different proprietors if the goods fall under different classes however, registration is only granted when they fall under different goods or services which is not the situation in your case. Thus, I would suggest you to think over the name once again and try to change it in a way that it shows distinctiveness. If however, you would still want to get the same mark registered, you may try getting it registered in a separate class which will be an expensive risk.

Please find attached, the search reports of searches done for your mark '**VIROTIZE**' under both classes. Kindly note that the results are as on date.

Sincerely,

Ms. K

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ANNEXURE

Search Criteria : Wordmark	Search String : Virotiz	Class : 5	Search Date : 12-Aug-2020
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APPL NO	CLASS	CONFLICTING MARK	JOURNAL NO	PROPRIETOR NAME	PROPRIETOR ADDRESS	STATUS
4493825	5	VIROTIZE	1975	M/S. ZENVITO HEALTHCARE PRIVATE LIMITED	#127, 4th Cross, Mansara Road, Ittigegud, Mysore – 570 010	Accepted & Advertised

APPLICATION DATE : 30/04/2020
GOODS/SERVICES : SANITIZING PREPARATIONS

USER DATE