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REGISTRATION OF WELL-KNOWN MARKS

The Bombay High Court (**HC**), on June 10, 2025, in the *Tiktok Limited* case,¹ opined that a ban imposed by the Government of India on an application is a relevant fact that the Trade Marks Registrar can consider while refusing to include a trademark in the list of well-known marks.

Brief Facts

Tiktok Limited (**Tiktok**), a technology company, operates the popular social media video application TikTok (“**App**”). The App, launched in 2017, gained immense global popularity, becoming available in 155 markets. The mark ‘TikTok’ is already a registered trademark in India.

Tiktok filed an application to have its mark included in the list of well-known trademarks under Rule 124 of the Trade Mark Rules, 2017 (**Rules**).²

The Assistant Registrar of Trade Marks (**Registrar**) refused the application, primarily because the Government of India (“**Government**”) had banned the App, finding it to be prejudicial to the sovereignty, integrity, and security of India.

Aggrieved by this refusal by the Registrar, Tiktok filed the present petition before the HC.

Contentions of the Parties

Tiktok:

- Argued that the Registrar’s order was passed without reasons or application of mind, as it merely quoted government press releases and news items.
- Contended that the Registrar wrongly referred to Section 9³ of the Trade Marks Act, 1999 (**Act**), which was irrelevant to the matter, instead of the applicable Section 11.⁴
- Submitted that a government ban is a ‘transient situation’ and cannot be the sole basis for refusing the application.
- Highlighted that under Section 11(9) of the Act, use of a trademark in India is not a pre-condition for its determination as a well-known mark, and therefore the ban leading to non-use should be irrelevant.

The Registrar countered that the factors for determining a well-known mark under Section 11(6) of the Act are illustrative, not exhaustive and asserted that the provision allows the Registrar to consider “*any fact which he considers relevant,*” which includes the Government’s ban on the App.

¹ *Tiktok Ltd. v. Registrar of Trade Marks Mumbai*, 2025 SCC OnLine Bom 2323

² Rule 124. *Determination of Well-Known Trade mark by Registrar.*

³ Section 9. *Absolute grounds for refusal of registration.*

⁴ Section 11. *Relative grounds for refusal of registration.*

HC's Judgement & Reasoning

The HC dismissed the petition observing that:

- The determination of a well-known trademark is governed by Rule 124 of the Rules, which mandates the Registrar to consider the provisions of Section 11 of the Act.⁵
- Section 11(6) explicitly allows the Registrar to take into account “*any fact which he considers relevant,*” and the list of factors in clauses (i) to (v) is merely illustrative and not exhaustive.⁶
- The fact that the Registrar’s order did not explicitly discuss the factors in Section 11(6) and (7) or that it wrongly referred to Section 9 is not, by itself, a sufficient ground to set aside the order.⁷

The HC held that the Registrar had taken into account the reasons for the Government’s ban of the App, which were serious matters relating to the sovereignty and integrity of India, defence of India, security of state, and public order. The Registrar also noted concerns regarding data privacy and cyberbullying associated with the App.⁸

It opined that the ban imposed by the Government is indeed a relevant fact that the Registrar is entitled to consider under the wide ambit of Section 11(6) of the Act. It also stated, while Section 11(9) clarifies that use in India is not a pre-condition, the reason for non-use in this case cannot be ignored and is a highly relevant factor.

Based on these observations, the HC concluded that the Registrar did not err in refusing Tiktok’s application. It held that while the Tik Tok mark already enjoys statutory protection as a registered trademark, the refusal to grant it the ‘added protection’ of a well-known mark was justified given the circumstances.⁹

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⁵ Paragraph 9 of the Judgement.

⁶ Paragraphs 11 to 13 and 18 of the Judgement.

⁷ Paragraphs 15 and 16 of the Judgement.

⁸ Paragraphs 19, 20 and 23 of the Judgment.

⁹ Paragraph 24 of the Judgement.