

**ORDER SHEET**  
**IN THE HIGH COURT OF SINDH, KARACHI**

**M.A No.16 of 2016**

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Order with signature of Judge(s)

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Hearing of case (priority)

1. For orders on CMA No.1470/2017 (U/s 151 CPC)
2. For orders on CMA No.6758/2016 (Stay Application)
3. For hearing of main case

**13.02.2024**

Mr. Salim Ghulam Hussain, Advocate for the appellant  
Mr. Sameer Ahmed, Advocate for Respondent No.1  
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**Zulfiqar Ahmad Khan, J:-** After hearing the matter at some length it transpires that the order passed by the Registrar of Trade Marks, Karachi dated 28.10.2015 is faulty and non-speaking to the extent that the Registrar of Trade Marks has considered as if the applicants goods were falling in class-5 being pharmaceutical products and sold through prescriptions, as evident from page 33. Following is a reproduction of the relevant paragraph:-

“...Being the Registrar of Trade Marks, one among the prime responsibilities, lying on my shoulders is to maintain the purity of the Registrar. In this capacity, I have to see whether the subsequent mark is conflicting with the mark already on the Register. The criteria used universally, as yard stick for determining the similarity of the subsequent mark with the registered mark, is visual, phonetic and conceptual similarity between them. In the instant case, the mark MAX is registered for detergents and scouring, is an single word, while the mark of the applicant is a three words mark Hair Max Plus for pharmaceutical preparations, written in a special and particular manner and is used for the treatment of hair. I do not see any reason that a common purchaser would be deceived or confused while picking and using the mark of his choice. This argument is further supported by the fact that the product of the applicant is a specialized product prescribed by the registered medial practitioner. This fact alone is sufficient to avoid confusion and deception during the course of trade. Hence, we can conclude that the mark of the applicant is totally different from the mark of the opponent. In order to further avoid the chances of confusion and deception, I would ask the applicant not to use the mark MAX separately. This would further strengthen the protection of the mark of the opponent that has already been registered...”

The fact is that the applicant’s mark was not filed in class-5 in the present case rather in relation to the goods falling in class-3. It is

therefore necessary that the decision passed by the Registrar be *set aside* and the matter is remanded back to the Registrar to re-hear the parties and pass a final and conclusive order preferably within three months.

With these directions, instant M.A is disposed of.

JUDGE

B-K Soomro