

To,  
The Registrar of Trademark,  
Trademark Registry, DELHI

Date: 01/11/2024

**Sub: EVIDENCE IN SUPPORT REPLY BY OPPONENT RULE47 (MISR47) Dated on:**  
**Ref: Oppostion/Rectification Number 1278073**

Sir,  
With reference to the above application, the point wise reply is as under: -

Reply attached separately

ANAND AND ANAND  
Attorney [41996]



**EVIDENCE BY WAY OF AFFIDAVIT IN REPLY**  
**BY EMAIL/SPAD**

Attorney Code: 41996  
1 November 2024

Our Ref: 18943/DEL-1278073/6040766

To,  
The Registrar of Trade Marks,  
Trade Marks Registry,  
Delhi  
Email ID: [hodel.tmr@nic.in](mailto:hodel.tmr@nic.in)

**Re: Opposition No. DEL-1278073 against Application No. 6040766 for the mark “Absolute Biosciences” in class 44 in the name of M/s. ECSO GLOBAL PRIVATE LIMITED.**

Dear Sir / Madam,

We act for M/s. Pharmed Limited, having address at Sattva Mindcomp Tech Park, Ground Floor, Office 1, 149-A, EPIP II Phase, Whitefield Industrial Area, Bengaluru - 560 066, who is the Opponent in the captioned matter.

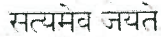
On behalf of the Opponent, we are enclosing herewith the Evidence in Reply by way of an affidavit under Rule 47. We are also marking a copy of this evidence to the Applicant's Counsel.

We hereby request the Learned Registrar to take the evidence on record and to proceed with the matter.

Yours sincerely,

Pavithra. R  
Managing Associate

Copy To: Remfry & Sagar,  
Remfry House, Millenium Plaza, Sec-27,  
Gurgaon, Haryana – 122009  
Email ID: [remfry-sagar@remfry.com](mailto:remfry-sagar@remfry.com); [Tanmay.Joshi@remfry.com](mailto:Tanmay.Joshi@remfry.com)



1. The authenticity of this Stamp Certificate should be verified at '[www.shieldstamp.com/](http://www.shieldstamp.com/)' or using e-Stamp Mobile App. Any discrepancy in the details on this Certificate and as available on the website / Mobile App renders it invalid.

2. The onus of checking the legitimacy is on the users of the Certificate.

3. In case of any discrepancy please inform the Competent Authority.

In the matter of Application No. 6040766 in Class 44 for registration of the trademark 'Absolute Biosciences' ('impugned mark') in the name of Ecs Global Private Limited, of the address 5<sup>th</sup> Floor, Plot No-68, Sector -44, Gurugram-122003

AND

In the matter of Opposition filed thereto by Pharmed Limited, Sattva Mindcomp Tech Park, Ground Floor, Office 1, 149-A, EPIP II Phase, Whitefield Industrial Area, Bengaluru - 560 066, Karnataka.

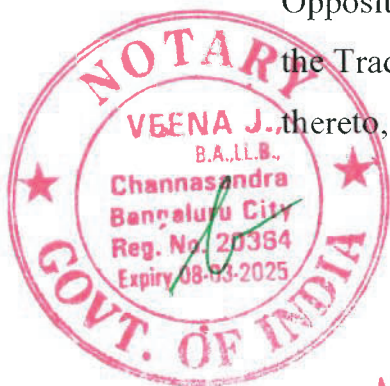
**AFFIDAVIT FILED AS EVIDENCE IN REPLY**

I, Noshir B. Shroff, s/o Shri Burjor D. Shroff, Authorized Signatory of the Opponent, major by age, Indian National, do hereby solemnly affirm and state as follows.

1. I am the authorized signatory of Pharmed Limited, having its address at PHARMED LIMITED, Sattva Mindcomp Tech Park, Ground Floor, Office 1, 149-A, EPIP II Phase, Whitefield Industrial Area, Bengaluru - 560066, Karnataka (hereinafter referred to as Opponent'), who is the Opponent in the present proceeding and I state that I have been associated with this Company for several years. By virtue of my position, I have full and free access to all the relevant records of the Opponent and the facts and figures appearing herein below have been taken from such records and books of the Opponent, and whatever is stated herein is true to the best of my knowledge, information and belief. I have read and rely on the submissions made in the Notice of Opposition and the affidavit in support of opposition filed under Rule 45 of the Trade Marks Rules, 2017 by the Opponent herein, along with Annexures thereto, which hereafter will be referred to as the 'Opponent's earlier

For PHARMED LIMITED

Authorised Signatory





affidavit', in the present proceedings and I pray that they may be treated as part and parcel of the present affidavit.

2. I have also read the counter-statement and the affidavit and the evidence filed by the Applicant under Rule 46 of the Trade Marks Rules, 2017, hereafter referred to as the 'Applicant's affidavit', and at the outset, I deny all the averments, contentions, statements and submissions therein contained and state that the said affidavit and the evidence submitted with it are false, misleading and meritless for the reasons discussed below. Non-traversal of any of the contents of the Applicant's affidavit shall not be deemed admitted by the Opponent unless specifically admitted to hereunder.

Now, I shall deal with the specific contents of the Applicant's affidavit paragraph-wise.

3. **Paragraphs 1,2,3 and 4:** The contents of Paragraphs 1 to 4 of the Applicant's affidavit, are wholly denied for want of knowledge. The Applicant has not submitted Board Resolution or any authority to affirm that the signatory therein is the authorized representative of the Applicant. Hence these submissions including the said individual affirming copies as true certified copies are all baseless and merit no consideration.
4. **Paragraphs 5 and 6:** The contents of Paragraphs 5 and 6 of the Applicant's affidavit are extraneous to the issues involved herein. In any case such submissions are not admitted. Exhibit A annexed by the Applicant is a two-page document, which in no way establishes the alleged claims of the Applicant. Similarly, Exhibit B is a document self-created document by the Applicant, which also does not establish the tall claims of the Applicant. Hence these documents do not aid the Applicant's case in any manner.

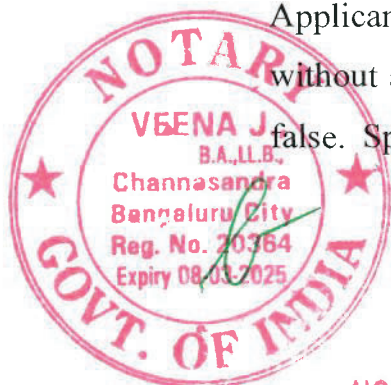


5. **Paragraphs 7,8,9, 10 and 11:** The contents of Paragraphs 7,8,9,10 and 11 of the Applicant's affidavit are all nothing but tall, self-awed and self-serving claims which are denied in toto as baseless. In any case these are irrelevant to the issues in hand as none of the Exhibits relied by the Applicant therein pertain to the impugned mark. Hence these submissions and corresponding exhibits merit no consideration. It is also pertinent to note from these submissions and exhibits that the Applicant has no business interests for the applied services and the impugned application is clearly frivolous where the Applicant has asserted rights, although it has no presence whatsoever in respect of the impugned services.
6. **Paragraphs 12 and 13:** The contents of Paragraphs 12 and 13 of the Applicant's affidavit are all wholly denied as false, misconceived and untenable. On account of prior, long, continuous use of the Absolut marks across the length and breadth of the country and by virtue of immense reputation, which is evident from even the turnover figures relied by the Opponent, the Applicant's adoption of the term Absolute with any prefix or suffix is void ab initio. In any case, it is clear from the website relied by the Applicant, the Applicant is not using the impugned mark. Hence by virtue of prior use, registrations and non-use of the impugned mark, the balance of convenience is in favour of the Opponent. With reference to Paragraph 13, the submissions therein are all wholly fallacious. The Applicant cannot apply for the mark bearing the term ABSOLUTE and then assert that no one can claim monopoly over it. The Applicant is blowing hot and cold and such self-contradictory submissions and exhibits merit no consideration. The Applicant cannot also use third party marks as a defense to outfox its malafides.
7. **Paragraphs 14, 15, 16 and 17:** The contents of Paragraphs 14 and 15 of the Applicant's affidavit on allegations of use, exposure, goodwill of the



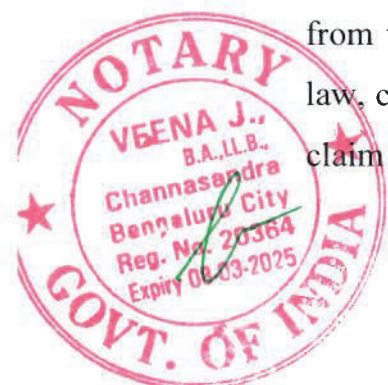
impugned mark are wholly denied as baseless and unsubstantiated. The Applicant has not substantiated these claims vide cogent documentary evidences. In fact, the Applicant has not even submitted a single document to show use of the impugned mark. Hence such baseless submissions merit no consideration. With reference to Paragraph 16, they are nothing but a matter of records of Hon'ble Tribunal. The registrations relied by the Applicant are bad in law as the adoption of the marks therein, are subsequent in nature. The Opponent's goods under the Absolut marks have been in continuous, uninterrupted use and marketing for over two decades now and the Opponent has built a valuable trade thereunder which is also evident from the turnover figures relied by the Opponent, wherein the turnover of goods under the Opponent's Absolut marks are over 40 crores for the past FY. Hence the impugned marks and registrations relied by the Applicant are all in contradiction and violation of the prior rights subsisting in the Opponent's marks. These registrations cannot aid the Applicant, and the Opponent reserves their right to file cancellation actions against these marks. With reference to Paragraph 17, the Applicant's claims of well-known mark are all without substance, frivolous and loose and wholly denied. The Applicant has not substantiated such claims vide cogent documentary evidences. In any case, the impugned marks of the Applicant including the present impugned mark has been filed on a proposed to be used. Hence the claims of well-known mark are all illogical, inconceivable besides being inadmissible and do not merit any consideration.

8. **Paragraphs 18 and 19:** With reference to Paragraph 18, the contents therein that the present Opposition is baseless, dishonest, malafide and that the Applicant is the honest, bonafide adopter are all baseless vague assertions without any cogent grounds or supporting reasons and are wholly denied as false. Specifically, the claims of bonafide and honest adoption merit no



consideration as the Applicant had admitted knowledge when the Opponent's mark was cited in the examination report rendered for one of the impugned Absolute marks. Even at the time of preliminary research, if the Applicant had conducted a due diligence, the Opponent's Absolut mark would have been identified, as the Opponent is a market leader and pioneer in this field having use of over two decades for the Absolut marks. Despite this, the Applicant has unauthorizedly adopted and filed several impugned Absolute marks. Hence clearly the claims of bonafide and honest adoption are concocted in nature. The contents of Paragraph 19 are nothing but hollow denials.

9. **Paragraphs 20a, b and c:** The contents of Paragraphs 20a, b and c are nothing but hollow, blanket denials of the entire contents of the Opponent's affidavit wherein the Applicant has simply negated the Opponent's submissions line by line without providing any cogent supporting grounds or reasons. Such hollow denials are bad in law and the Opponent reiterates the contents of the Notice of the Opposition and its earlier affidavit. In any case such denials of the Applicant are rendered immaterial in the light of cogent documentary evidences submitted by the Opponent in support of its claims. Further the Opponent has registrations for the Absolut mark dating back to the year 2000 and by virtue of acquiring a registration dating back to 2000, the adoption of its mark naturally goes back to 2000. Hence such frivolous claims merit no consideration. Furthermore, the Applicant's claims of dissimilarity between Absolut vis-à-vis Absolute Biosciences are all inane, frivolous, illogical and are all merely for the sake of arguments. It is conceivable that the term Biosciences will differentiate the impugned mark from the Opponent's Absolut marks. Such frivolous submissions are bad in law, concocted and denied. With reference to Paragraph 20c, the Applicant's claim that they are into the business of goods relied such as AI, pathology,





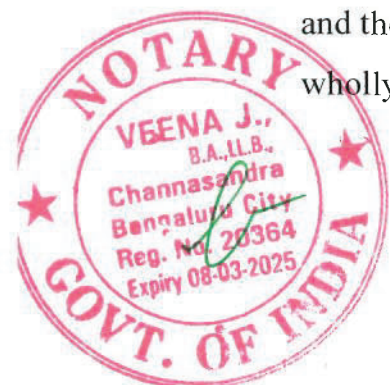
micrology etc..., therein are all self-contradictory and self-defeating in nature. On one hand, the Applicant has applied the impugned mark in Class 44 including Medical services as well as in Class 5 for goods such as *Pharmaceutical, veterinary, and sanitary preparations; dietetic substances adapted for medical use, food for babies; plasters, materials for dressings; materials for stopping teeth, dental wax; disinfectants; preparation for destroying vermin; fungicides, herbicide*, however on the other hand, the Applicant claims that they are operating in a completely different field/set of goods and that the goods in dispute are allegedly different. Such submissions are all completely incoherent and self-contradictory submissions, which establish that the Applicant is not reaching the tribunal with clean hands, in furtherance of which, these submissions merit no consideration. If indeed the Applicant is operating only the goods as claimed, then the refusal of the impugned mark for the impugned services will cause no prejudice to the Applicant and in fact the Applicant's claim to the present impugned application for impugned services and defending this Opposition is ipso facto frivolous. The impugned mark should be summarily refused on these grounds. In fact, the Applicant has specifically admitted that they are not rendering medicines but asserted rights for such goods by filing an application in Class 5. The Applicant is not entitled to any relief on these grounds. The Applicant claims that the Opponent's mark was not cited as conflicting mark and hence there is no cause of confusion. As per the own submissions of the Applicant, the Absolute One impugned mark of the Applicant deserves summary refusal on this ground alone, as all the Opponent's registered Absolute formative marks were cited against this mark under application no. 6040811. Clearly the Applicant is approbating and reprobating and continuously indulging in contradictory submissions to its own benefit.



For PHARMED UNITED  
  
Authorised Signatory

10. It is reiterated that the Applicant has no presence or intention to use the impugned mark for the goods/services applied in various classes. Admittedly as per the own admissions of the Applicant, the Applicant is involved in Biosciences and Agriculture, whereas the applicant has filed its various application for a myriad of services and goods in various classes, where it has no presence whatsoever admittedly. Further none of the documents relied by the Applicant do not show a single instance of use of the impugned mark. In any case, the Opponent's Absolut products and trademark has earned a stellar reputation in India based on the high-quality products provided by the Opponent to a wide range of customers across the country and the same is also evident from the massive turnover figures relied by the Opponent. In such circumstances, the use of the impugned mark for any goods/services will indeed cause confusion and severe embarrassment to the Opponent. The remainder of the submissions are all repetitive submissions based on frivolous argument of dissimilarity of the marks and hollow blanket denials, which are all denied and have been dealt elaborately in the preceding paragraphs and are not repeated for the sake of brevity and the Opponent craves the leave of the Tribunal to refer to preceding paragraphs.

11. **Paragraphs 21, 22 and 23:** With reference to Paragraph 21, the Applicant's prayer to amend the evidence are all untenable prayers and, in any case, ought not be granted given that the Applicant is not reaching the Tribunal with clean hands and is continuously trying to misguide the Hon'ble Tribunal. The contents of Paragraph 22 are all vague assertions which are an inference that the Applicant does not have fit grounds to refute the Opponent's submissions, and the contents of Paragraph 23 are all concocted and baseless in nature and wholly denied.

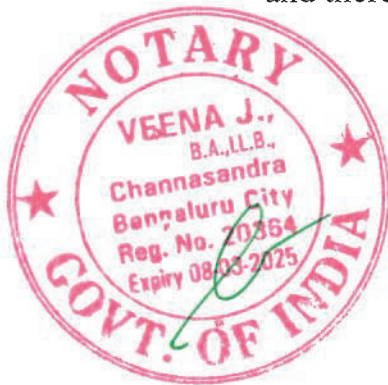


For PHARMED LIMITED

*[Signature]*  
Authorised Signatory

12. **Paragraph 24:** The Applicant's prayer in paragraph no. 24 is misconceived, legally untenable and dishonest. Admittedly the Applicant has not submitted a single document showing use of the impugned mark. Clearly the Applicant's claim to the impugned mark is frivolous and false. The Applicant has also not discharged its onus of honest adoption when the Opponent's Absolut marks was already in use for two decades neither have, they provided any rationale for adopting the impugned mark, feel and overall impression of which, is deceptively similar to the Opponent's renowned Absolut marks. It is reiterated that the Applicant is simply trying to encroach on rights on the Opponent by filing numerous applications frivolously and vexatiously, without any intention to use such marks, neither in the manner applied nor for the goods/services applied. On account of the preceding submissions, the balance of convenience is clearly in favour of the Opponent.

13. In the light of the aforementioned facts and circumstances it is humbly prayed that the Hon'ble Registrar be pleased to refuse registration of the impugned trademark 'Absolute Biosciences' under Application No. 6040766 in Class 44 and allow opposition no. 1278073 with costs in favour of the Opponent and thereby render justice.



Dated this 29<sup>th</sup> day of October 2024

For PHARMED LIMITED

  
Authorized Signatory

Noshir B Shroff  
Authorized Signatory  
Pharmed Limited

NO. OF CORRECTIONS: 

## VERIFICATION

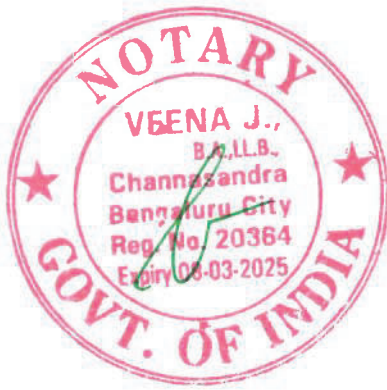
I, Noshir B Shroff, Authorized Signatory of the Opponent herein do hereby verify the contents of Paragraphs 1 to 12 as true to the best of my knowledge, information and belief and based on the legal advice received. Paragraph 13 is merely a prayer before this Hon'ble Tribunal.

Verified this at Bangalore on the 29<sup>th</sup> day of October 2024

For PHARMED LIMITED

  
Authorized Signatory

Noshir B Shroff  
Authorized Signatory  
Pharmed Limited



  
**ATTESTED BY ME**

**VEENA J., B.A., LL.B.,**  
ADVOCATE & NOTARY PUBLIC  
GOVT. OF INDIA  
No.247, AKG Colony,  
Opp. to MVJ College, Channasandra  
Kadugodi Post, Bengaluru - 560 067

**30 OCT 2024**

  
**NO. OF CORRECTIONS**