

**FORM TM-O****THE TRADE MARKS ACT, 1999**

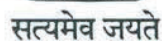
**Notice of Opposition / Application for Rectification of the Register by cancelling or varying registration of a trade mark / Counter statement / Request to refuse or invalidate a trade mark under Section 25(a),(b) of Geographical Indication of Goods (Regulation and Protection)  
under the Trade Marks Act**

**Temp Number : 10093170**

<b>REQUEST</b>	NOTICE OF OPPOSITION
<b>FEE</b>	2700
<b>APPLICANT OR REGISTERED PROPRIETOR/OPPONENT/THIRD PARTY MAKING THE APPLICATNION/REQUEST</b>	
<b>Opponent Name</b>	PHARMED LIMITED
<b>Trading As</b>	
<b>Address</b>	Sattva Mindcomp Tech Park, Ground Floor, Office 1, 149-A, EPIP II Phase, Whitefield Industrial Area, Bengaluru – 560066
<b>Service Address</b>	Flat GB, AR Villa, 31, 3rd Main Road, Gandhi Nagar, Adyar, Chennai-600020
<b>Mobile No</b>	9840455047
<b>Email address</b>	chennai@anandandanand.com
<b>AGENT OF THE APPLICANT OR REGISTERED PROPRIETOR/OPPONMENT/THIRD PARTY AS THE CASE MAY BE(if any)</b>	
<b>Agent Name</b>	ANAND AND ANAND
<b>Address</b>	FLAT NO. GB, AR VILLA, 31, III MAIN ROAD, GANDHI NAGAR, ADAYAR, CHENNAI 600 020
<b>Mobile No</b>	9840455047
<b>Nature of the Agent</b>	Advocate
<b>Registration No</b>	41996
<b>REQUEST OPPOSITION/APPLICATION IN THE MATTER OF</b>	
<b>DETAILS OF APPLICATION NUMBER</b>	6040766
<b>CLASS</b>	44
<b>REQUEST</b>	NOTICE OF OPPOSITION
<b>GROUND OF OPPOSITION</b>	Grounds of opposition are attached separately
<b>Date</b>	08-02-2024 05:36 PM

Digitally Signed By  
KRISHNAN PREMCHANDAR

for ANAND AND ANAND



**Government of Karnataka**

## e-Stamp

Certificate No.	: IN-KA69121851669975T
Certificate Issued Date	: 02-Dec-2021 01:38 PM
Account Reference	: NONACC (FI)/ kaksfcl08/ HALASURU/ KA-BA
Unique Doc. Reference	: SUBIN-KAKAKSFCL0886709083600709T
Purchased by	: PHARMED LIMITED
Description of Document	: Article 12 Bond
Description	: AGREEMENT
Consideration Price (Rs.)	: 0 (Zero)
First Party	: PHARMED LIMITED
Second Party	: NA
Stamp Duty Paid By	: PHARMED LIMITED
Stamp Duty Amount(Rs.)	: 100 (One Hundred only)



Please write or type below this line

FORM TM-M  
THE TRADE MARKS ACT, 1999  
Form of Authorisation of an agent  
[Section 145 and Rule 19]

We, Pharmed Limited, of the address Sattva Mindcomp Tech Park, Ground Floor, Office 1, 149-A, EPIP II Phase, Whitefield Industrial Area, Bengaluru - 560 066, Karnataka, do

For PHARMED LIMITED

Director

**Statutory Alert:**

1. The authenticity of this Stamp certificate should be verified at '[www.shcilestamp.com](http://www.shcilestamp.com)' or using e-Stamp Mobile App of Stock Holding. 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.

hereby authorize Mr. N.K Anand, Mr. Pravin Anand, Mr. Safir Anand, Mr. K. Premchandrar, Ms. Sandhya Singh, Ms. Madhu Rewari, Ms. Swati Sharma, Mr. Revanta Mathur, Ms. Twinky Rampal, Ms. Nupur Sharma, Ms. Shivani Rampal, Ms. Chitra Subbiah, Mr. L. Ramprasad, Mr. N.C. Vishal, Ms. Pavithra Ramasundaram, Ms. Scarlet Danielle Grey, Advocates of Anand And Anand, Advocates, at Flat GA & GB, AR Villa, New No.31, 3<sup>rd</sup> Main Road, Gandhi Nagar, Adyar, Chennai – 600 020, Tamil Nadu, India to act jointly or severally as our agents for the registrations, objections, assignments, oppositions, rectifications, renewal, protection of trademark applications, registered/ seeking registration of our trademark.

All communications relating thereto may be sent to our agents at the above address. We also authorize our said agents to appoint any person or persons on our behalf to attend and conduct the cases and/ or proceedings. We hereby ratify and agree to ratify all acts and deeds done/ to be done by our said agents. We hereby revoke all previous authorization, if any in respect of all our matters.

Dated at Bengaluru on this the 16th day of February 2022

For PHARMED LIMITED



Director

Signature

The Trade Marks Registry  
New Delhi/Mumbai/Kolkata/Chennai/Ahmedabad



Attorney Code: 41996  
08 February 2024

**Our Ref: 18943/DEL- 6040766**

To,  
The Registrar of Trademarks,  
Trademarks Registry,  
Delhi.

**Re: Opposition to Application No. 6040766 in Class 44, published in the Trademarks Journal No. 2125 dated 09<sup>th</sup> October 2023 at Page Number 10738, for registration of the trademark ABSOLUTE BIOSCIENCES in the name of M/s. ECSO Global Private Limited of the address 5th Floor, Plot No-68, Sector -44, Gurugram-122003.**

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 our client, we are filing herewith the Notice of Opposition in Form TM-O along with requisite fee of Rs.2700/-. A copy of the Power of Attorney is enclosed herewith.

We request the Learned Registrar to take the opposition on record and proceed further in the matter.

Yours sincerely,

Pavithra. R  
Managing Associate

**Encl: 1. Notice of opposition  
2. Copy of Power of Attorney**

**Proprietor Code:**

**Fee: Rs. 2, 700/-**

**Attorney Code:**

**FORM TM-O**  
**THE TRADEMARKS ACT, 1999**  
**BEFORE THE REGISTRAR OF TRADEMARKS,**  
**TRADEMARKS REGISTRY, DELHI**  
**NOTICE OF OPPOSITION TO REGISTRATION OF A TRADEMARK**  
**[Section 21(1), 64, 66, 73 of the Trademarks Act, 1999 along with Rules**  
**42(1) of Trademarks Rules, 2017]**

In the matter of Application No. 6040766 in Class 44 for registration of the trademark 'Absolute Biosciences' in the name of Ecso 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.

We, PHARMED LIMITED having our address presently at Sattva Mindcomp Tech Park, Ground Floor, Office 1, 149-A, EPIP II Phase, Whitefield Industrial Area, Bengaluru - 560 066, Karnataka, (hereinafter referred to as "*the Opponent*", which term shall hereinafter include our predecessors in rights, interests, and title) do hereby give notice of our intention to oppose the registration of trademark Application number: 6040766 in Class 44 covering: "*Medical services; veterinary services; hygienic and beauty care for human beings or animals; agriculture, horticulture and forestry services; Cultivation advisory services relating to agriculture; Rental of equipment for agriculture, aquaculture, horticulture and forestry; Providing information about agriculture, horticulture,*

*and forestry services; Consultancy relating to agriculture, horticulture and forestry; Providing online information about agriculture, horticulture, and forestry services; Consultancy and advisory services relating to agriculture, horticulture and forestry; Information services relating to the use of chemicals used in agriculture; Information services relating to the use of fertilisers used in agriculture; Information services relating to the use of manures used in agriculture; Providing information relating to vermin exterminating for agriculture, horticulture or forestry; Agriculture, horticulture and forestry services relating to the recultivation of industrial wastelands; Advisory and consultancy services relating to the use of fertilizers in agriculture, horticulture and forestry; Advisory and consultancy services relating to weed, pest and vermin control in agriculture, horticulture and forestry; Advisory and consultancy services relating to the use of manure in agriculture, horticulture and forestry; Advisory and consultancy services relating to the use of non-chemical treatments for sustainable agriculture and horticulture; Agricultural services relating to environmental conservation; Farming (animals); Farming (crops); Fish farming services; Livestock farming services.”, which has been advertised in the Trademarks Journal No. 2125 dated 9<sup>th</sup> October 2023 at page no.10738.*

## **BACKGROUND OF THE OPPONENT**

1. The Opponent is a Limited Company incorporated in the year 1946 and engages in the marketing and sale of Pharmaceuticals and Nutraceuticals ever since 1946. The Opponent is the 40<sup>th</sup> fastest growing pharmaceutical corporate in India among the top one hundred corporates, *as* per IQVIA MAT DECEMBER 2023 data. As per IQVIA MAT DECEMBER 2023 data, the Opponent is ranked 51<sup>st</sup> in terms of value sales and is growing at 11.20 % as compared to Indian Pharmaceutical Market growth of 9.8%. As per C MARC, the Opponent is ranked 49<sup>th</sup> Corporate in India in terms of doctors' prescriptions as per four-monthly data from July 2023 to

October 2023. For over 77 years, the main charter of the Opponent has been providing products for quality healthcare of the Indian population.

2. It is stated that the Opponent's core strength lies in identifying and creating a unique therapeutic range of products across different specialty segments and marketing them across India through medical channels like doctors, chemists, and hospitals/institutions. Today, the Opponent is a name to reckon with in the fields of women's health, reproductive health, bone, orthopedic surgery and musculoskeletal health, pain management and general health and Opponent's products help people live healthier and enriched lives. The products of the Opponent are scientifically marketed and promoted through their teams of Technical Sales Officers to doctors all over India and doctors in turn prescribe to their patients to provide healthcare benefits.
3. The Opponent is engaged in marketing and sales of pharmaceuticals and nutraceuticals for orthopedic surgery, gynecology among others and owns and uses a large number of trademarks during their business. The trademarks and brand names form the essential identity of the products marketed and sold by the Opponent. The Opponent therefore has a well-structured and refined process of conceptualizing and coining trademarks following the norms of the industry and branding practices. The Opponent expends enormous effort in the adoption of trademarks so as to communicate to and identify with the end consumers. During the course of business since 1946, the Opponent has acquired various brands based on their suitability as a part of Opponent's product range. The Annual Sales turnover and Advertisement expenses of the Opponent run over crores of rupees.

## **OPPONENT'S TRADEMARK RIGHTS**

4. In the ordinary course of business and with a view to distinguish and differentiate the Opponent's products from those of their competitors, the Opponent has an established system and process for coining, searching, verifying, and then adopting and using brand names. The Opponent is the proprietor of numerous registered and pending trademarks, and the Opponent is always diligent in ensuring that their trademarks do not conflict with any existing trademarks.
5. The Opponent honestly and bonafidely adopted the trademark Absolut in the year 2001. The aforesaid trademark is an arbitrary trademark having no relation to its goods and hence is entitled to utmost protection. Ever since 2002, the Opponent has been using its Absolut Trademark and selling products under the said trademark continuously and extensively across the length and breadth of the country. In due course, the Opponent also adopted and commenced the selling of various products under various Absolut formative marks such as Absolut 3g, Absolut Syrup, Absolut Woman, Absolut Dm, Absolut Suspension, etc. with A in uppercase. to name a few. In 2020, the Opponent started using the said trademark in lower case, except the letter A. The Opponent's products bearing the "Absolut" formative marks, are highly in demand in the market on account of the high quality of goods rendered by the Opponent, thereby building up a handsome and valuable trade there under.
6. The Opponent owns the intellectual property rights in, and to the Absolut formative marks, and is the registered proprietor of the various Absolut formative marks as per details below:

S. No.	Application No.	Class	Trademark	Date of application	Status
1.	980671	5	ABSOLUT	01.01.2001	Valid up to 01-01-2031
2.	1127047	5	ABSOLUT	19-08-2002	Valid up to 19-08-2032
3.	1326804	5	ABSOLUT SYRUP	20-12-2004	Valid up to 20-12-2024
4.	3250918	5	ABSOLUT 3G	04-05-2016	Valid up to 04-05-2026
5.	3250919	5	ABSOLUT DM	04-05-2016	Valid up to 04-05-2026
6.	3250920	5	ABSOLUT DM INJECTION	04-05-2016	Valid up to 04-05-2026
7.	3250921	5	ABSOLUT WOMAN	04-05-2016	Valid up to 04-05-2026
8.	3250922	5	ABSOLUT 369	04-05-2016	Valid up to 04-05-2026
9.	3250923	5	ABSOLUT Suspension	04-05-2016	Valid up to 04-05-2026

7. The Opponent's goods, bearing the mark Absolut formative marks are being marketed on a large scale, building up a thriving business and enormous goodwill. The Absolut marks of the Opponent have thus become immensely popular among the public and have received great acclaim from among the members of the industry. The Opponent has also taken steps to

popularize its products bearing the trademark, and has expended large sums of money on publicity, advertisements, and sales promotional efforts, resulting in the instant popularity of goods under its Absolut Trademarks. As a result of such popularity, members of trade and public associate the trademark Absolut and the Opponent's line of products under the Absolut brand with the Opponent only, and with no one else. The Opponent is a revolutionary in the business trade in India and is a pioneer/market leader and is well known for its impeccable quality of products. Therefore, products of the Opponent carrying the Absolut marks, have thus acquired an enviable reputation and goodwill, and the trademark Absolut and its variants immediately calls to the mind of the unwary public goods originating from the Opponent exclusively.

8. Having regard to the tremendous goodwill and reputation acquired by the Opponent in the Absolut Trademarks, the use of any identical and/ or deceptively similar trade mark by any other manufacturer or trader not associated with the Opponent, is bound to cause confusion and/or deception in the industry, market and amongst consumers as to the trade origin of the impugned services and/or is bound to mislead traders and consumers to believe that, the impugned services are those connected with the Opponent, and such services would inevitably be passed off as and for those of the Opponent.
9. Further, the Opponent has been openly, continuously, and consistently using the Absolut Trademark in relation to their business for nearly two decades. The Opponent is the proprietor of the said trademark by virtue of priority in adoption, prior, continuous, and extensive use and the reputation consequently accruing thereto in the course of trade. The Opponent has exclusively used Absolut marks, so that they are uniformly perceived as

indicative of the source of the Opponent. By virtue of long, uninterrupted, continuous use and substantial, extensive promotion for over two decades, robust economic performance, large clientele, etc., the trademark Absolut of the Opponent is a well-known mark as per provisions of Section 2(1) (zg) of the Trademarks Act, 1999. The Opponent's mark being a well-known mark, and the Opponent being the proprietor of the said trademark, enjoys exclusive rights in the said trademark and is entitled to take action against unauthorized use thereof by third parties for any goods or services.

### **THE IMPUGNED MARK**

10. The present opposition is being filed against the Application No. 6040766 in Class 44 for registration of trademark 'Absolute Biosciences' (hereinafter referred to as the '*impugned mark*') in respect of "*Medical services; veterinary services; hygienic and beauty care for human beings or animals; agriculture, horticulture and forestry services; Cultivation advisory services relating to agriculture; Rental of equipment for agriculture, aquaculture, horticulture and forestry; Providing information about agriculture, horticulture, and forestry services; Consultancy relating to agriculture, horticulture and forestry; Providing online information about agriculture, horticulture, and forestry services; Consultancy and advisory services relating to agriculture, horticulture and forestry; Information services relating to the use of chemicals used in agriculture; Information services relating to the use of fertilisers used in agriculture; Information services relating to the use of manures used in agriculture; Providing information relating to vermin exterminating for agriculture, horticulture or forestry; Agriculture, horticulture and forestry services relating to the recultivation of industrial wastelands; Advisory*

*and consultancy services relating to the use of fertilizers in agriculture, horticulture and forestry; Advisory and consultancy services relating to weed, pest and vermin control in agriculture, horticulture and forestry; Advisory and consultancy services relating to the use of manure in agriculture, horticulture and forestry; Advisory and consultancy services relating to the use of non-chemical treatments for sustainable agriculture and horticulture; Agricultural services relating to environmental conservation; Farming (animals); Farming (crops); Fish farming services; Livestock farming services.” (‘impugned services’).*

### **GROUND OF OPPOSITION**

11. The Opponent submits that the registration of the impugned mark in the Applicant’s favour would be contrary to the provisions of Section 9(1) (a) of the Trademarks Act, 1999 as the impugned mark is neither prima facie distinctive of the Applicants goods from those of others, in particular the Opponents good/business. The addition of a generic term BIOSCIENCES along with a negligent change in the last letter to Opponent’s mark doesn’t lead to any drastic change in the impugned mark to classify it to be of distinctive character. In fact, the term BIOSCIENCES which is usually used to denote things with human life only accentuates the confusion in the matter. The Applicant has also filed applications for the formative of the impugned mark and the impugned mark itself in Class 5 and hence lack of distinctiveness is further exacerbated due to the Applicant applying to operate in the exact same class as the Opponent and also given that the impugned services are allied to the business interests of the Opponent.
12. The impugned mark is nothing but a slavish reproduction of the Opponent’s mark. The Opponent apprehends that the impugned services

bearing the impugned mark is likely to cause confusion in the minds of the public and dilute the reputation of the Opponent in its Absolut marks. Further the impugned mark has been services closely allied to those offered by the Opponent. In any case, the Applicant appears to have intentions in the Pharma Field which is evident from its Class 5 applications which the Opponent has Opposed. Further considering the meaning the BIOSCIENCES term is usually used to connote, there is an inevitable confusion on part of the ordinary consumers, who have imperfect memory and associate the mark 'Absolut,' and anything remotely related to it with the Opponent. Hence the impugned mark is contrary to the provisions of Section 11(1)(a) of the Trademarks Act,1999.

13. Having regard to the fact that the Opponent's trademark enjoys vast reputation and goodwill, and is acknowledged as a mark of repute, the use of a deceptively similar mark for any goods/services by the Applicant would cause confusion, dilution and let the impugned mark take unfair advantage in the reputation of the Opponent's mark as:

- (a) The Opponent is the prior adopter, user, and registered proprietor of the Absolut Trademark in various formatives for long.
- (b) The Opponent has made widespread use and caused massive promotion of the trademark much prior to the Applicant's impugned application.
- (c) The impugned mark is confusingly similar to the Opponent's Absolut trademarks and has been adopted for goods identical to the business interests of the Opponent.

Thus, for the aforesaid reasons members of the public and trade would be led falsely to believe:

- a) That the impugned services originate from and/or has an association with the Opponent's trademark and by extension, the Opponent.
- b) The Opponent has given a license to the Applicant for the use of the impugned mark while guaranteeing the high quality that the public is accustomed to and expects from Opponent; and
- c) That, in any event, by offering the impugned goods, the Applicant has some affiliation, sponsorship, association or nexus with the Opponent.

Thus, the impugned mark would be detrimental to the distinctive repute of the Absolute marks and would take unfair advantage in the reputation of the Absolut marks. The use of the impugned mark for which the Applicant is seeking registration is thus liable to be prevented by virtue of the law of passing off and is liable to be refused registration under Section 11 (2) and 11(3)(a) of the Trademarks Act, 1999.

To the extent that the Opponent has not consented to the use of the impugned mark by the Applicant, the Applicant is not even entitled to the benefit of the provision stipulated in Section 11(4) of the Trademarks Act, 1999. Further, the adoption of the impugned mark by the Applicant is clearly *not bonafide*, which is evident from the fact that admittedly, the adoption and application of the impugned mark is much subsequent to the adoption, extensive use, application, and registration by the Opponent. Hence, there cannot be any possibility of concurrent and honest adoption. The Opponent has not consented to the use of the impugned mark. In fact, Section 12 is not even a practicable claim given that the impugned mark has been filed on a proposed to be used basis.

14. It is submitted that the impugned mark would cause an unmistakable association with the Opponent's 'Absolut' trademarks, which will result in dilution and would thus amount to impugned mark taking unfair advantage in the reputation of the Opponent's mark. Further claiming to be in the same filed as the Opponent, which is evident from the Applicant's Class 5 applications (which the Opponent has Opposed) the Applicant cannot claim no knowledge about the Opponent, who is a market leader and pioneer in the pharmaceutical field and the Opponent's long use and reputation in its Absolut marks. Despite this, the Applicant has filed a highly confusingly and conceptually similar mark. Therefore, the Applicant is not entitled to the registration of the impugned mark within the provisions of Section 18 of the Trademarks Act, 1999.

15. The Opponent has a prior registration for the Absolut Trademarks in India as set out in the preceding paragraphs of the Notice of Opposition and the impugned mark being highly confusingly similar to the mark of the Opponent amounts to infringement and dilution of the Opponent's well-known trademark. Therefore, the applicant's impugned mark is liable to be hit by Section 29 of the Trademarks Act 1999 for infringement of a registered trademark. Also, the attempt by the Applicant to register the impugned mark while being aware of the obvious falsification is carries attracts liability and penalty under Section 102 and 103 of the Trademarks Act 1999 respectively.

16. In summary, the registration of the impugned mark is contrary to the provisions of various provision of the Trademarks Act, 1999, especially Sections 9(1)(a), 11(1), 11(2) 18, 29, 102 & 103 of the Act. Use or registration of the impugned mark is likely to dilute the distinctiveness of

the Opponent's well-known trademark 'Absolut' and would cause irremediable loss, injury, and embarrassment to the Opponent. Hence, the impugned mark is liable to be refused.

### **PRAYER**

17. The Opponent therefore prays that in view of the above premises:

- a) This Notice of Opposition be allowed.
- b) The Application No. 6040766 in class 44 for registration of the mark 'Absolute Biosciences' be refused; and
- c) The cost of these proceedings be awarded to the Opponent.

All communications in respect of the above proceedings may be sent to the following address in India:

**Anand and Anand**  
**Flat GB, AR Villa, New No.31,**  
**Old No.13,3<sup>rd</sup> Main Road, Gandhi Nagar,**  
**Adyar, Chennai- 600020.**  
**Email : [Chennai@anandandanand.com](mailto:Chennai@anandandanand.com)**  
**Mobile: 9840455047**

Dated the 06<sup>th</sup> day of February 2024

For PHARMED LTD.

(By Their Advocate)



**Anand And Anand**

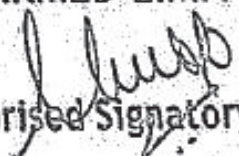
To,  
The Registrar of Trademarks  
Trademarks Registry, Delhi

**VERIFICATION**

I, Noshir B Shroff, Authorized Signatory of the Opponent herein, do hereby verify that, the contents of Paragraph Nos. 1 to 16, are true to the best of my knowledge, information, and belief, based on the records maintained by the Opponent and based on the advice received. Paragraph No. 17 is the prayer before this tribunal.

Verified on the 6<sup>th</sup> day of February 2024.

**FOR PHARMED LIMITED**

  
**Authorised Signatory**

Noshir B Shroff  
Authorized Signatory  
Pharmed Limited