
DEEMED ABANDONMENT IN TRADE MARK OPPOSITIONS: A NOTE ON ACE FOODS PVT. LTD. V. REGISTRAR OF TRADE MARKS

Krithika Sathyanandam, Advocate, Practising before the Madras High Court

ABSTRACT

In *ACE Foods*, the Madras High Court set aside an order treating a trade mark application as abandoned because the applicant's evidence affidavit, filed in time during the Covid lockdown, carried neither signature nor attestation. The Court said that section 21 of the Trade Marks Act, 1999 attaches deemed abandonment to a missing counter-statement and to nothing else, held Rule 46(2) of the Trade Marks Rules, 2017 ultra vires to that extent or, alternatively, read it down, and then decided the appeal on its facts. Five months later a Division Bench, in *V-Guard Industries v. Kangaro Industries*, held Rule 45 mandatory and upheld deemed abandonment under Rule 45(2). This note argues that *ACE Foods* now survives mainly as a decision about a timely but defective filing, and proposes a rule on curing defects and an amendment to section 21 that separates defect from default.

Keywords: Trade Marks Act, 1999; Rule 46; deemed abandonment; delegated legislation; opposition proceedings

I. INTRODUCTION

An opposed trade mark application goes through a fixed run of filings before anyone is heard: the notice of opposition, the counter-statement, the opponent's evidence, the applicant's evidence and a reply. The Trade Marks Rules, 2017 set a time limit for each. For two of these steps, Rules 45 and 46, they also say what happens to a party who does nothing in time. The opposition is deemed abandoned in the one case, and the application in the other.¹

On 10 February 2026 the Madras High Court held in *ACE Foods* that the second consequence goes further than the Trade Marks Act, 1999 allows.² The applicant won on its own facts, but the judgment also has two passages that speak generally, and it is hard to tell which of the Court's reasons carries the weight. Then, on 30 July 2026, a Division Bench of the same Court took a very different view of Rule 45 in *V-Guard Industries v. Kangaro Industries*.³ This note sets out the case, follows the line of decisions around it, and asks what is left of its wider reasoning. Part VI is a legislative comment proposing a rule on defective affidavits and, for the case of complete default, an amendment to section 21.

II. FACTS AND DECISION

ACE Foods Private Limited applied on 3 December 2018 to register "MODERN KITCHENS' Delite in Every Bite" in Class 35, claiming use since 1984. Modern Snacks Private Limited opposed. ACE Foods filed its counter-statement on 7 February 2020 and the opponent filed its evidence on 6 April 2020. ACE Foods's Rule 46 affidavit followed on 1 June 2020, in the middle of the lockdown. It had no signature or attestation and said so on its face, with an undertaking to file a signed and stamped copy whenever the Registrar directed. The opponent replied under Rule 47 on 1 August 2020 and reserved the right to respond again once a signed copy arrived.⁴

Then nothing happened for years. In 2024 ACE Foods paid to have the matter expedited, a hearing was fixed for 14 October, and on 8 October it applied to bring a signed and attested

¹Trade Marks Rules, 2017, rr. 45(2), 46(2) (India).

²*ACE Foods Pvt. Ltd. v. Registrar of Trade Marks*, CMA(TM) No. 22 of 2025, ¶¶ 37–38 (Madras High Court Feb. 10, 2026) (India) [hereinafter *ACE Foods*].

³*V-Guard Industries Ltd. v. M/s. Kangaro Industries*, LPA No. 18 of 2026 (Madras High Court July 30, 2026) (India) [hereinafter *V-Guard (DB)*].

⁴*ACE Foods*, ¶¶ 3–5, 16, 18–19. Paragraph 5 gives the date of the reply as 31 July 2020; this note follows ¶ 16 and ¶ 40.

affidavit on record. The original deponent had died in June 2022, so a different signatory signed the new one.⁵ On 4 July 2025 the Registrar rejected the application and declared the mark abandoned under Rule 46(2). An unsigned affidavit was not an affidavit in the prescribed form, the Registrar reasoned, so the affidavit had been filed only in October 2024, and even with the Supreme Court's pandemic extensions the time had run out on 30 May 2022. The Registrar added that it had no power to excuse the delay.⁶

ACE Foods appealed under section 91. Its main case was that the affidavit was filed in time on 1 June 2020 and the later one merely replaced it. It also argued that Rule 46(2) exceeded section 21 and the rule-making power in section 157(2)(vii). The opponent answered that a rule prescribing the manner and time of filing evidence must be able to say what follows from non-compliance, and that the Rule had not been challenged "in the manner known to law".⁷

Anand Venkatesh J. allowed the appeal on three footings. First, section 21(2) deems an application abandoned when no counter-statement is filed, while section 21(4), on evidence, says nothing of the kind. The Court read that as deliberate: filing evidence is a procedural requirement, and at worst a party that misses it loses the right to adduce evidence. Rule 46(2) therefore "overrides the Act" and is ultra vires to that extent or, in the alternative, can be read down to mean only "deemed abandonment of letting in evidence".⁸ Second, the 1 June 2020 affidavit was the filing that counted on the facts, because the signed version was the same document in formal dress and the opponent had already answered it. Third, a Registry that sat on the file for years and then blamed the applicant for the delay acted arbitrarily.⁹ The operative finding, at ¶ 40, rests on "the peculiar facts": the affidavit complied with Rule 46(1) and there was "no question of deemed abandonment". The Registrar was directed to hear both sides and pass final orders within six months.¹⁰

III. WHERE THE ACT STOPS AND THE RULES BEGIN: THE STATUTORY SCHEME

Section 21 lays out the stages of opposition. An applicant who does not file a counter-statement

⁵Id. ¶¶ 6, 20, 40. The judgment gives inconsistent dates for the expedite request (¶ 6: 8 January 2024; ¶ 20: 3 June 2024).

⁶Id. ¶¶ 7–8, 21.

⁷Id. ¶¶ 7, 9, 11. The prayer cites section 11 of the Act; the body of the judgment refers to section 91.

⁸Id. ¶¶ 30–31, 37–38.

⁹Id. ¶¶ 27, 39–40.

¹⁰Id. ¶¶ 40–41.

within two months of the notice of opposition “shall be deemed to have abandoned his application”. Section 21(4) says that evidence is to be submitted “in the prescribed manner and within the prescribed time” and that the Registrar must hear both sides if they ask. It deems no one to have abandoned anything.¹¹

The Act uses abandonment where it means to. Section 21(6) lets the Registrar treat an opposition or application as abandoned when a party resident abroad fails to furnish security for costs. Section 132, as the Court described it, allows an applicant in default of prosecuting an application to be called upon to remedy the default, and permits abandonment only if that notice is ignored.¹² In both places the Registrar must first call upon the party to act.

The Rules are built differently. Rule 45 requires the opponent to leave its evidence with the Registrar by affidavit, or to say it wants to lead none, and Rule 46(1) gives the applicant two months from receipt to do the same. Each rule then has a second sub-rule deeming the defaulting party to have abandoned: the opposition under Rule 45(2), the application under Rule 46(2). The rule-making power in section 157(2)(vii) covers how evidence is filed and the time for doing so. The appellant said that covers manner and time but not consequences; the Court did not decide the point in those terms and took the wider position that rules “cannot go beyond the scope of the Act”.¹³ The mismatch is plain enough. The Act deems abandonment automatically for one default, a missing counter-statement. The Rules add two more. *ACE Foods* asks whether a rule can do that.

IV. FROM DELHI TO A DIVISION BENCH: THE LINE OF CASES

The Court in *ACE Foods* drew on three earlier decisions and took from them a “common thread”: procedural provisions should not be read so rigidly that they defeat substantive rights, and delay is excused where the other side suffers no prejudice.¹⁴

In *V-Guard Industries v. Registrar of Trade Marks* the Delhi High Court was looking at an opposition treated as abandoned under Rule 45(2) because evidence reached the Registry three days late. It refused to let the order stand, saying the right to oppose is “just as sacrosanct as

¹¹The Trade Marks Act, 1999, No. 47 of 1999, § 21(2), (4) (India).

¹²Id. §§ 21(6), 132; *ACE Foods*, ¶ 32.

¹³Trade Marks Rules, 2017, rr. 45, 46 (India), quoted in *ACE Foods*, ¶ 34; Trade Marks Act § 157(2)(vii); *ACE Foods*, ¶¶ 9, 33.

¹⁴*ACE Foods*, ¶ 25.

the right to seek registration”.¹⁵ In *Raj Vardhan Patodia (HUF)* the same Court applied that reasoning where an opponent had filed a photocopy of its evidence in time and the original afterwards.¹⁶ Neither decision, so far as the extracts in *ACE Foods* show, questioned the validity of the Rules.

The Madras strand began with *Kangaro Industries v. V-Guard Industries*. A single judge held that an opponent who applied for more time within the two months in Rule 45(1) had taken “action” under that sub-rule, so the fiction in Rule 45(2) was never triggered. A legal fiction, the judge said, must be confined to its purpose, which was to deal with an opponent who “fails to take any action”.¹⁷ Delhi and *Kangaro* both cut the deeming sub-rule down by construction. *ACE Foods* went further and asked whether Rule 46(2) could operate at all.

The Division Bench has since gone the other way. In *V-Guard Industries v. Kangaro Industries*, the appeal from the single judge, the Court set that decision aside. It held the two months in Rule 45(1) mandatory, treated Rule 45(2) as operating automatically, held that a request for extension is not compliance with Rule 45(1), and held that the Registrar cannot extend the period under section 131 read with Rule 109.¹⁸ So within about a year the Madras High Court produced three positions on the same fiction: confine it by purpose, strike it down or reduce it, and enforce it as written.

V. ANALYSIS

A. Three grounds, one that holds

The judgment offers three possible grounds: that Rule 46(2) is ultra vires section 21 (¶ 37), that it should be read down to a forfeiture of evidence (¶ 38), and that on the facts there was no default at all (¶ 40). Only the third was needed. If the affidavit complied with Rule 46(1), the sub-rule was never triggered and its validity did not arise. The first two grounds were always open to the charge of being obiter, and after *V-Guard* that charge is much harder to answer. A Registrar who wants to keep applying Rule 46(2) to a party that has filed nothing can now point

¹⁵*V-Guard Industries v. Registrar of Trade Marks*, 2023 SCC OnLine Del 59, ¶ 23 (India), quoted in *ACE Foods*, ¶ 24.

¹⁶*Raj Vardhan Patodia (HUF) v. Registrar of Trade Marks*, C.A.(COMM.IPD-TM) No. 13 of 2024, ¶¶ 8–14 (Delhi High Court [date to be added]), quoted in *ACE Foods*, ¶ 23.

¹⁷*Kangaro Industries v. V-Guard Industries*, (T) CMA(TM) No. 193 of 2023, ¶ 27 (Madras High Court [date to be added]), quoted in *ACE Foods*, ¶ 22.

¹⁸*V-Guard (DB)*, supra note 3 [pinpoint paragraphs to be added].

to a Division Bench that enforced the matching fiction in Rule 45(2) as written.

There were weak spots even before that. The opponent argued that the Rule had not been challenged “in the manner known to law”, and the judgment does not reply. It never says whether a statutory appeal under section 91 can carry a challenge to the validity of a rule. The reports of the Division Bench that I have seen do not say whether it was taken to *ACE Foods*, decided five months earlier, or whether vires was argued. Until that is clear, a declaration of invalidity from a single judge, set against a Division Bench enforcing a rule of the same kind, is a thin foundation.

B. Defect, not default: what ¶ 40 can bear

What is left is the third ground, and it deserves closer inspection than the judgment gives it. The Court leaned on three things. One was intention: the affidavit showed “the mind of the appellant to prosecute the application and not to abandon”. Another was the absence of prejudice, since the opponent had replied to the unsigned affidavit and had reserved its right to answer again. The last was the Registry’s conduct, because an authority that did nothing for years cannot then use the delay against the applicant.¹⁹ I think the last does most of the work.

The harder question is the one the Registrar answered the other way: is an unsigned and unattested affidavit an affidavit at all? The Court called the signed version a formal version of the same document, but an affidavit is a sworn statement, and the oath is the substance. The missing signature leaves it uncertain whether anything was sworn in June 2020. Treating the later version as relating back was generous, and probably right on these facts, with the deponent dead and the opponent unharmed. It would be far harder to defend where an applicant had put in a draft only to stop the clock. The case is best read as protecting a party that filed something real, in time, with a curable flaw, and was then left waiting by the Registry. None of the three considerations helps a party that simply forgot.

C. Paragraph 31 against the Division Bench

Paragraph 31 is where the trouble lies. It says that parties who fail to file evidence in the prescribed manner and time lose, “at the best”, the right to adduce evidence, and that this “can never result in a deemed abandonment”. It rests on the timely filing of the pleadings, which it

¹⁹*ACE Foods*, ¶¶ 17–18, 26–27, 40.

treats as a sign that the parties want to go on. Read literally, that protects even an opponent who files its notice and then disappears. That is the position of the party in *V-Guard*, whose opposition the Division Bench held abandoned.

The two can be reconciled only by reading ¶ 31 narrowly, as speaking to a filing made in time but flawed. Even then there is a cost. *ACE Foods* is a Rule 46 case and *V-Guard* a Rule 45 case, but the two sub-rules are drafted alike and the Division Bench's reasoning about a mandatory period and an automatic fiction reads as well against Rule 46(2) as against Rule 45(2). I would expect a single judge in Madras to follow the Division Bench on either rule. That leaves ¶ 40 as the part of *ACE Foods* that stands, which is a more modest case than the one announced. The Division Bench also removed the purposive limit that *Kangaro* had put on the fiction, so the argument that a party has taken "some action" is now much weaker than it was a year ago. What the party can argue is that it filed the thing the rule asks for, and the defect was one of form.

D. Questions the cases leave open

Two questions remain unsettled. The first is power to extend time. The Registrar in *ACE Foods* said it could not condone the delay and the Court did not take that up. The Division Bench has since held that section 131 and Rule 109 cannot be used to extend the Rule 45 period, so a party that misses the date cannot rely on discretion, at least under that rule. The second is what the Registry does if the consequence is only forfeiture of evidence. The Rules do not say whether the matter then goes to hearing on the pleadings alone, whether the party must first be heard before forfeiture is declared (section 132 was held irrelevant where the consequence is itself a deeming provision), or what starts the other side's clock if a party neither files nor says it will not. Forfeiture is also thin protection in practice: grounds such as prior use ordinarily need proof, so a party that cannot lead evidence may still lose at the hearing, though a hearing does at least take place.

VI. LEGISLATIVE COMMENT: SEPARATING DEFECT FROM DEFAULT

A. The object and the present difficulty

The object of the opposition rules is to carry an opposed application to a hearing on a timetable that does not depend on the parties' goodwill. The deeming sub-rules were a blunt tool for that,

and they were enough while nobody doubted them. Now the Registry has one Division Bench enforcing the fiction as written and one single judge saying that, for evidence, the Rules cannot create it. Registry offices in different cities have no stated way to reconcile the two. The likely result is inconsistent orders and more appeals.

Two principles should guide reform. A consequence that ends an application or an opposition should come from the Act, since *ACE Foods* says the Rules cannot supply it and the Division Bench, so far as I can tell, did not decide that point. And the steps that surround a default are procedure and belong in the Rules, stated clearly enough that every Registry office acts alike.

B. A rule for curable defects

On that footing I suggest two changes. The first is a rule on defective affidavits:

“Where an affidavit filed within the time allowed under rule 45, 46 or 47 is defective in form, including for want of signature or attestation, the Registrar shall by notice allow the deponent a reasonable period, not less than thirty days, to cure the defect. An affidavit so cured shall be treated as filed on the date of its original filing.”

This writes into the Rules the line that the facts of *ACE Foods* invite: *ACE Foods* filed something, in time, and was treated as if it had filed nothing. It also puts into rule form the relation back that the Court applied at ¶ 40.

C. Notice before abandonment for complete default

The second is for the party that files nothing at all. If Parliament wants such a party to lose its application or its opposition for evidence default, it should say so in the Act and give the Rules a firm footing, which would end the vires doubt for good. The model already exists in sections 21(6) and 132: notice first, and abandonment only if the notice is ignored. A new provision might read:

“(4A) Where a party, having been required by the prescribed rules to submit evidence or to intimate that he does not desire to do so, has done neither within the prescribed time, the Registrar shall give him notice of the default, and if the default is not remedied within thirty days of the notice, the Registrar may treat the opposition or the application, as the case may be, as abandoned.”

Rules 45(2) and 46(2) would then be amended to take effect through that notice. The expected effect is modest but real. A party with a curable defect would get a chance to cure it, a party in complete default would get one clear warning before losing its right, and abandonment for evidence default would rest on the Act and not on a rule whose validity is disputed. One objection is that a notice step slows proceedings that the Rules meant to speed up. Thirty days is short next to the years that this file sat idle, and the Registry would control when notice goes out.

VII. CONCLUSION

ACE Foods is best remembered for ¶ 40: a party that files something real, in time, with a flaw that can be cured, should not be treated as having filed nothing. Its wider statements, that an evidence default can never mean abandonment and that Rule 46(2) is ultra vires, have been overtaken in practice by the Division Bench in *V-Guard*, which treats the Rule 45 fiction as automatic and the period as mandatory. The Rules should now say plainly what these cases are circling around. A curable defect gets a chance to be cured. Complete inaction gets notice, and then the consequence the Act itself provides.