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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 9260/2018 & CM Appln. No.35777/2018

ORACLE AMERICA INC ..... Petitioner  
Through: Mr. Pravin Anand, Ms. Vaishali  
Mittal, Ms. Siddhant Chamola and  
Mr. Vivk Ayyagari, Advocates.

versus

UNION OF INDIA & ORS ..... Respondents  
Through: Mr. Sanjeev Narula, Mr. Abhishek  
Ghai and Mr. Rajat Gava, Advocates  
for R 1 and 2.

**CORAM:**  
**HON'BLE MR. JUSTICE VIBHU BAKHRU**

**ORDER**  
**% 04.09.2018**

1. Mr Narula, who appears for respondent no. 1 and 2 accepts notice. None appears for respondent no.3 despite service of advance notice. This Court does not consider apposite to await any representation on behalf of respondent no.3

3. The petitioner has filed the present petition, *inter alia*, praying as under:

- (i) Issue a writ of mandamus and/ or any other similar order or direction to Respondent No. 2 to immediately cancel Respondent No. 3's registration No. 2114468 for the impugned mark JAVASCHOOL.

- (ii) Issue a writ of mandamus and/ or any other similar order or direction to Respondent No. 2 that if, in future, a party submits to it, a consent decree/ order passed by a court upholding consent terms which include withdrawal/ cancellation of a trade mark application/registration, then Respondent No. 2 should forthwith proceed to cancel the said trade mark application/ registration.

4. Petitioner had filed a suit bearing CS(OS) No.1194/2013 captioned ***Oracle America Inc. v. Manoj Kumar Gupta*** for restraining the respondent from using the trademark 'JAVASCHOOL'. The said suit was premised on the basis that the petitioner (plaintiff therein) is a registered proprietor of the trademark 'JAVA'.

5. The said suit was decreed on 26.11.2013 in terms of a compromise arrived at between the parties. In terms of paragraph 6 of the said terms, the defendant was required to withdraw his application for registration of the trademark 'JAVASCHOOL' being application bearing No.211468, dated 14.03.2011 in Class-41. Paragraph 6 of the said terms of settlement is relevant and is set out below:

6. The Defendant undertakes to this Hon'ble Court to forthwith withdraw the trade mark application for JAVASCHOOL bearing number 2114468 dated 14<sup>th</sup> March 2011 in Class 41. The Defendant further declares that he has not be filed any other trademark application and undertakes to this Hon'ble Court that he will not in future file any application for registration of the trademark/service mark and/or logo comprising the Plaintiffs registered trademarks SUN, JAVA and/or variants thereof or for any other similar and/or deceptively similar trademark/logo before the Registrar of Trade Marks.

6. In terms of the aforesaid settlement, respondent no.3 (Defendant in the said suit) had filed an application seeking withdrawal of his application for registration of the Trademark 'JAVASCHOOL'. Apparently, signatures of respondent no.3 on the said application did not match with the signatures on the application filed for registration of the said Trademark and, therefore, the said application was not withdrawn by the Trademark Registry (respondent no.2). Consequently, despite respondent no.3 seeking withdrawal of his application for registration, the Trademark 'JAVASCHOOL' came to be registered in favour of respondent no.3.

7. Respondent no.3 has thereafter, filed an application for cancellation of the said Trademark, however, the same is still pending.

8. In view of the above, there can be no dispute that respondent no.3 had given up his right for seeking registration of the Trademark 'JAVASCHOOL'. In the aforesaid view, respondent no.2 is directed to forthwith take the necessary steps to rectify the register of Trademarks and remove the registration in favour of respondent no.3. The same be done as expeditiously as possible and in any event, not later than six weeks from today.

9. The petition is disposed of in the above terms. The pending application is also disposed of.

10. Order *dasti* under signatures of the court master.

**VIBHU BAKHRU, J**

**SEPTEMBER 04, 2018**

dr