



(T)OP(TM)/353/2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.12.2023

CORAM

THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

(T)OP(TM)/353/2023  
(ORA/48/2020/TM/CHN)

M/s.Naachiyars  
No.125-126, South Masi street,  
Madurai-625 001, Tamil Nadu.

... Petitioner

-VS-

1.Ms.Annapoorani,  
Flat No.3, 3<sup>rd</sup> floor, Shree flats,  
New No.19, Old No.8,  
Venkatachalam street,  
Triplicane, Chennai-600 005.

2. The Registrar of Trade Marks,  
Trade Marks Registry, Chennai.

... Respondents

**PRAYER:** Transfer Original Petition (Trade Marks) filed under Sections 47 and 57 of the Trade Marks Act, 1999, praying to the Hon'ble Court that to call for and examine the records of the said registered Trade Mark No.3515521 in Class 25 registered and to



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direct the Registrar of Trade Marks to rectify the said Trade Mark No.3515521 in Class 25 in the register by expunging all the entries relating to the said Trade Mark No.3515521.

For Petitioner : Mr.A.Swaminathan  
for M/s.L.R.Swami & Co.

For R1 : Notice unserved (vacated)

For R2 : Mr.K.Subbu Ranga Bharathi, CGSC

### ORDER

The petition was filed to rectify the Register of Trade Marks by removing the entry relating to the following device mark:



The petitioner asserts that it adopted and used the word mark “NAACHIARS” in relation to apparel and textile products. Since 14.04.2012 and that the registration certificate in respect of the word mark was first issued with effect from 25.07.2012. It is also submitted



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that a device mark containing the element “NAACHIYARS” was registered under Trade Mark No.3513020 after modifying the mark by adding an additional letter 'Y' in the trade mark.

2. As evidence of use of the trade mark, learned counsel for the petitioner relies upon the website at page 17 of Volume-I; the Facebook page at page 117 of Volume-I; which also indicates the number of views on specific dates; the Twitter handle at page 118 of Volume-I; and the invoices at pages 358 to 558 of Volume-III and pages 559 to 759 of Volume-IV.

3. Learned counsel further submits that the present petition was filed in the year 2020 after noticing that the 1<sup>st</sup> respondent had applied for and obtained registration of the impugned device mark with effect from 28.03.2017 on a “proposed to be used” basis.

4. On 21.07.2023, it was recorded that the notice to the 1<sup>st</sup> respondent was returned with the endorsement “No such person in



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the address". On 04.08.2023, it was recorded that court notice could not be served on the 1<sup>st</sup> respondent because the 1<sup>st</sup> respondent had vacated the relevant premises. In these circumstances, the petitioner was permitted to effect service on the 1<sup>st</sup> respondent by substituted service. On 01.12.2023, the petitioner placed on record the affidavit of service dated 29.11.2023. The publication made in the Tamil daily, Malai Murasu, issue dated 13.11.2023, was annexed thereto. After taking note of the publication and the fact that the notice was also affixed on the court notice board on 07.11.2023, it was recorded that substituted service had been effected on the 1<sup>st</sup> respondent. The Registry was, therefore, directed to print the name of the 1<sup>st</sup> respondent in the cause list. In spite of substituted service and the name of the 1<sup>st</sup> respondent being printed in the cause list, the 1<sup>st</sup> respondent continued to remain unrepresented. Therefore, the matter was proceeded with in the absence of the 1<sup>st</sup> respondent.

5. From the submissions and documents placed on record by the petitioner, it is evident that the petitioner has used the trade mark "NAACHIARS" at least from 27.08.2015 after obtaining the



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registration certificate with effect from 25.07.2012. The application for registration of the impugned device mark was filed by the 1<sup>st</sup> respondent on 28.03.2017 on a “proposed to be used” basis. Both the petitioner and the 1<sup>st</sup> respondent carry on business relating to apparels and textiles. The marks in question are clearly deceptively similar. Since the 1<sup>st</sup> respondent is the later adopter and user of a deceptively similar mark in relation to similar goods, the petitioner is entitled to the relief claimed.

6. For reasons set out above, (T)OP(TM)/353/2023 is allowed without any order as to costs by directing the Registrar of Trade Marks to remove the entry relating to Trade Mark No.3515521 in Class 25 from the Register of Trade Marks. He is further directed to cancel the certificate of registration relating to the trade mark. These actions shall be completed within a period of four weeks from the date of receipt of a copy of this order.

**18.12.2023**

Index : Yes / No  
Internet : Yes / No

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Neutral Citation: Yes / No

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**SENTHILKUMAR RAMAMOORTHY,J.**

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