

* IN THE HIGH COURT OF DELHI AT NEW DELHI

% *Judgment Reserved on : 13th January, 2023*
Judgment Delivered on : 3rd February, 2023

+ **C.O. (COMM.IPD-TM) 298/2022**

TOYOTA JIDOSHA KABUSHIKI KAISHA Petitioner
Through: Mr. Peeyoosh Kalra, Mr.Amol Dixit
and Mr. Suyas Malhotra, Advocates
versus

TECH SQUARE ENGINEERING
PVT. LTD. AND ANR. Respondents
Through: Mr. Kapil Wadhwa, Ms. Surya
Rajappan and Ms. Tejasvini Puri,
Advocates for respondent No.1
Mr. Harish Vaidyanathan Shankar,
CGSC with Mr. Srish Kumar Mishra,
Mr. Sagar Mehlawat and
Mr.Alexander Mathai Paikaday,
Advocates for respondent No.2

+ **C.O. (COMM.IPD-TM) 586/2022**

TOYOTA JIDOSHA KABUSHIKI KAISHA
M/S TOYOTA MOTOR CORPORATION Petitioner
Through: Mr. Peeyoosh Kalra, Mr.Amol Dixit
and Mr. Suyas Malhotra, Advocates
versus

TECH SQUARE ENGINEERING PVT.
LTD. AND ANR. Respondents
Through: Mr. Kapil Wadhwa, Ms. Surya
Rajappan and Ms. Tejasvini Puri,
Advocates for respondent No.1
Mr. Harish Vaidyanathan Shankar,
CGSC with Mr. Srish Kumar Mishra,
Mr. Sagar Mehlawat and

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Signing Date: 03.02.23 Page 1 of 19

Mr.Alexander Mathai Paikaday,
Advocates for respondent No.2

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C.O. (COMM.IPD-TM) 634/2022

TOYOTA JIDOSHA KABUSHIKI KAISHA
AS TOYOTA MOTOR CORPORATION

..... Petitioner

Through: Mr. Peeyoosh Kalra, Mr.Amol Dixit
and Mr. Suyas Malhotra, Advocates

versus

TECH SQUARE ENGINEERING
PVT. LTD. AND ANR.

..... Respondents

Through: Mr. Kapil Wadhwa, Ms. Surya
Rajappan and Ms. Tejasvini Puri,
Advocates for respondent No.1
Mr. Harish Vaidyanathan Shankar,
CGSC with Mr. Srish Kumar Mishra,
Mr. Sagar Mehlawat and
Mr.Alexander Mathai Paikaday,
Advocates for respondent No.2

CORAM:
HON'BLE MR. JUSTICE AMIT BANSAL

JUDGMENT

AMIT BANSAL, J.

1. The present rectification petitions have been filed on behalf of the petitioner company in the year 2018 seeking rectification of the trade mark register by removal of registrations granted in favour of the respondent no.1 in respect of trade mark 'ALPHARD' in (i) Class 9 in relation to car radios/stereos, navigation apparatus for vehicles; (ii) Class 12 in relation to automobiles and various car accessories and (iii) Class 27 in relation to automobile carpets, bearing registration no.3093216, 3093218, 3093219 respectively. The aforesaid petitions were originally filed before the

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erstwhile Intellectual Property Appellate Board (IPAB), however, due to the enactment of the Tribunals Reforms Act, 2021, the petitions have been placed before this Court.

2. Notice in the aforesaid rectification petitions was issued by the IPAB on 8th February, 2019. Counter statements thereto have been filed on behalf of the respondent no.1 and rejoinder has been filed on behalf of the petitioner company.

3. Since all the three petitions raise similar issues, they are being decided by way of a common judgment.

BRIEF FACTS

4. Briefly, the case set up by the petitioner company is as under:

4.1 The petitioner company, incorporated in Japan, is an automotive manufacturer and operates throughout the world. The vehicles of the petitioner company are sold in more than 170 countries and the petitioner company conducts business worldwide with 53 overseas manufacturing companies in 28 countries and regions.

4.2 The petitioner company entered the Indian market in a joint venture with the Kirloskar Group in 1997 known as Toyota Kirloskar Motor Pvt. Ltd. and set up manufacturing facilities in India.

4.3 The petitioner company owns various distinctive and well-known trademarks, one of which includes the trade mark 'ALPHARD'. The aforesaid trade mark was adopted by the petitioner company in the year 1986 and a luxury MUV under the said brand was launched in the year 2002.

4.4 Though, the petitioner company's vehicle under the trade mark

‘ALPHARD’ has not yet been formally launched in India, the same has been available in the country for the last many years on account of direct imports by Indian residents. The earliest registration of the petitioner company’s mark ‘ALPHARD’ dates back to 1986 and the said trade mark is registered in various jurisdictions, such as Japan, China, Singapore etc.

- 4.5 The petitioner company has sold more than 8,50,000 units under the trade mark ‘ALPHARD’ since its launch in 2002. The details of sales figures as well as advertising and promotional expenses incurred by the petitioner company from 2002-2017 have been given in the petition.
- 4.6 The petitioner company’s trade mark ‘ALPHARD’ is well-known throughout the world and has acquired a secondary meaning with the people associated with the trade associating the same with the petitioner.
- 4.7 The petitioner company applied for registration of the trade mark ‘ALPHARD’ on a *‘proposed to be used basis’* on 21st November, 2017 and the same has been objected to by the Registry.
- 4.8 The respondent no.1 obtained registration of the trade mark ‘ALPHARD’ under Classes 9, 12 and 27 on 5th November, 2015 on a *‘proposed to be used basis’*.
- 4.9 Adoption of the petitioner company’s trade mark by the respondent no.1 in relation to goods in the allied/cognate field has been done in a *mala fide* manner so as to trade upon the petitioner company’s goodwill and reputation.
5. The case of the defendants in the counter statement can be

summarized as under:

- 5.1 Respondent no.1 is the prior user and *bona fide* adopter of the trade mark 'ALPHARD' for goods under Classes 9, 12 and 27 since the year 2015.
- 5.2 The respondent no.1 coined and adopted the trade mark 'ALPHARD' in the year 2015 and since its adoption, the respondent no.1 has been continuously and extensively using the said trade mark.
- 5.3 The aforesaid trade mark has been used by the respondent no.1 along with its sister companies, 'Tekstar Global Private Limited' and 'Sai Supertrek Global Private Limited'.
- 5.4 Though the petitioner company applied for the registration of its trade mark 'ALPHARD' in Class 12, it is an admitted position that the petitioner company has not used the trade mark 'ALPHARD' in India.
- 5.5 In light of the non-user by the petitioner Company, there cannot be any goodwill or transborder reputation in respect of the aforesaid trade mark in India.
- 5.6 The petitioner company has made contradictory claims in its petition. On one hand, the petitioner company claims that the petitioner's vehicles under the aforesaid trade mark were available in India from the year 2008, on the other hand, the trade mark registration application has been filed by the petitioner company on a '*proposed to be used basis*' in November, 2017.

SUBMISSIONS OF THE PETITIONER COMPANY

6. Counsel appearing on behalf of the petitioner company has made the following submissions:

- 6.1 Vehicles bearing the petitioner company's trade mark 'ALPHARD' have been sold in India as far back as 2008. Reliance is placed on printouts from third-party websites showing listings of the petitioner company's vehicles in India for sale.
- 6.2 Petitioner company's trade mark 'ALPHARD' enjoys a worldwide reputation and the same has a direct spillover in India. In this regard, petitioner company has placed on record international brochures/annual reports, awards, worldwide trade mark registration certificates/renewal certificates and promotional material in respect of the mark 'ALPHARD'.
- 6.3 The invoices placed on record on behalf of the respondent no.1 are not of the respondent no.1 company but of 'Tekstar Global Private Limited'.
- 6.4 Registration could not have been granted to the respondent no.1 in terms of Sections 11(1), 11(2), 11(3) and 11(10) of the Trade Marks Act, 1999 (hereinafter 'the Act').
- 6.5 Reliance is placed on the judgment of a Division Bench of this Court in *MAC Personal Care Pvt. Ltd. v. Laverana GMBH and Co.*, 2016 SCC OnLine Del 530 and judgment of a Co-ordinate Bench of this Court in *Keller Williams Realty v. Dingle Buildcons Pvt. Ltd.*, 2020 SCC OnLine Del 539.

SUBMISSIONS OF THE RESPONDENT NO.1

7. *Per contra*, submissions made by the counsel on behalf of the respondent no.1 are as under:

- 7.1 It is an admitted position that the petitioner company has not used the

trade mark 'ALPHARD' in India in any of the three classes viz., Class 9, Class 12 and Class 27, where the mark has been registered in favour of the respondent no.1. Further, the trade mark 'ALPHARD' has not been used by the petitioner company in Classes 9 or 27 even outside India.

- 7.2 The products of the respondent no.1 have been continuously sold under the trade mark 'ALPHARD' since the year 2015. Reliance in this regard is placed on the invoices of 'Tekstar Global Private Limited', sister company of the respondent no.1.
- 7.3 The word 'ALPHARD' is the name of a star and therefore, the same has been adopted by the respondent no.1 in a *bona fide* manner. Its use in relation to car accessories is completely arbitrary and fanciful.
- 7.4 The provisions of Sections 11(1), 11(2) and 11(3) of the Act have no application in the present case as there is no earlier registered trade mark in the present case.
- 7.5 Reliance is placed on the judgment of the Supreme Court in *Toyota Jidosha Kabushiki Kaisha v. Prius Auto Industries Ltd.*, (2018) 2 SCC 1 and the order of IPAB in *Hypnos Limited v. Hosur Coir Foam Pvt. Ltd. and Ors.*, 2015 SCC OnLine IPAB 213, to contend that in the present case, there is no transnational reputation available to the petitioner company in India.

ANALYSIS AND FINDINGS

8. I have heard the counsel for the parties and perused the record.
9. The Supreme Court in the petitioner company's own case, *Toyota* (supra), though relating to a passing off action, has laid down the principles

for determining transnational reputation. It was the case of Toyota that the car under the brand 'Prius' was launched in Japan in 1997 and in other countries in 2000-2001. However, 'Prius' was released in India in the year 2009 and formally launched in the year 2010. The respondent (defendant in the suit), had got the mark 'Prius' registered in India in 2002 in respect of auto parts and accessories and was using the said mark in India since 2001. A suit for infringement of the mark 'Prius' and passing off was filed by Toyota against the respondent. After a full trial, a Single Judge of this Court held that the acts of the respondent amounted to passing off of the respondent's goods under the trade name 'Prius' and consequently granted a permanent injunction in favour of the plaintiff. In appeal, the Division Bench reversed the judgment of the Single Judge and declined the relief of permanent injunction. This was challenged by Toyota before the Supreme Court.

10. Relying upon the judgments of the Courts in the U.K. and Australia and the passages from the book '*The Law of Passing-Off*' by Prof. Christopher Wadlow, the Supreme Court applied the '*territoriality principle*' and held that the transnational reputation of Toyota in respect of the trade mark 'Prius' has not spilled over to India and hence, did not grant permanent injunction in favour of Toyota. The relevant observations of the Supreme Court with regard to the application of the '*territoriality principle*' are set out below:

“32. Prof. Cristopher Wadlow's view on the subject appears to be that the test of whether a foreign claimant may succeed in a passing-off action is whether his business has a goodwill in a particular jurisdiction, which criterion is broader than the “obsolete” test of whether a claimant has a business/place of

business in that jurisdiction. If there are customers for the claimant's products in that jurisdiction, then the claimant stands in the same position as a domestic trader.

33. *The overwhelming judicial and academic opinion all over the globe, therefore, seems to be in favour of the territoriality principle. We do not see why the same should not apply to this country.*

34. *To give effect to the territoriality principle, the courts must necessarily have to determine if there has been a spillover of the reputation and goodwill of the mark used by the claimant who has brought the passing-off action. In the course of such determination it may be necessary to seek and ascertain the existence of not necessarily a real market but the presence of the claimant through its mark within a particular territorial jurisdiction in a more subtle form which can best be manifested by the following illustrations, though they arise from decisions of courts which may not be final in that particular jurisdiction.”*

11. Applying the aforesaid principles to the facts of the case before the Supreme Court in ***Toyota*** (supra), it was observed as under:

- (i) Undoubtedly, the trade mark ‘Prius’ has acquired a great deal of goodwill in various other jurisdictions in the world before its use and registration by the respondent in India.
- (ii) Merely on account of advertisements in automobile magazines, international business magazines and information on the internet, it cannot be said that the aforesaid product has acquired the necessary goodwill and reputation in the Indian market.
- (iii) The evidence on record also showed very limited sales of the product in the Indian market and no advertisement prior to the registration by the defendant.

- (iv) The plaintiff failed to furnish sufficient proof of knowledge and information about the product in India.
- (v) The brand name of the car 'Prius' had not acquired the degree of goodwill, reputation and popularity in the Indian market so as to create a right of prior user in favour of Toyota against a registered owner.

12. To a similar effect is the order of the IPAB in ***Hypnos Limited*** (supra). In the said case, the applicant was the registered proprietor of the mark 'Hypnos', adopted several decades ago in relation to beds, mattresses, pillows, etc. It was also the case of the applicant that beds bearing the trade mark 'Hypnos' had been supplied by the applicant to hotels in India in the years 2008 to 2010. The respondent's trade mark was registered in Class 20 in the year 2007. It was the case of the applicant that the respondent had dishonestly adopted and obtained registration of the trade mark 'Hypnos' in India and started using the same for selling similar goods. Rejecting the submission of the applicant that the impugned trade mark 'Hypnos' is a 'well-known trademark' and carries transborder reputation, which has spilled over to India, the IPAB dismissed the rectification petition. The relevant observations are as under:

"81. We agree with the proposition propounded in the judgment of Hon'ble Supreme Court on same issue, wherein the Hon'ble Apex court has held that in the case of National Sewing Thread Co. Ltd. v. James Chadwick & Bros. Ltd. (Supra).

"Wherein the Hon'ble court has taken view that "the suit of passing-off and the opposition proceedings pending before the Registrar of Trademarks are different from each other".

82. We are also of the same opinion as this proposition lay

down in above judgment that the rectification proceeding under section 57 of the trademarks Act is also altogether quite different from the suit of passing off or of opposition proceedings before the Registrar. The rectification proceedings before the board under section 57 of the trademarks Act cannot be equated to be similar with as in the case of passing off action, where the burden rests on the plaintiff to prove whether there is likelihood of the defendant's goods being passed off as the goods of the plaintiff but in rectification proceedings under section 57 of the trademarks Act it deals with the power to cancel or vary registration on many grounds and to expunge the trademark from the register is based on different tenets altogether not as in the case suit for passing off, as such the rectification application also has inherent different structure in totality than the suit of passing off.

83. To claim Trans-border reputation for a mark in India, the impugned trademark 'Hypnos' must be well known substantial segment of consumers in India must know about the existence of the mark of the foreign entity. Such knowledge may come from free availability of the product to Indian consumers or extensive advertising, which reaches a substantial segment of Indian consumers because of extensive circulation of those advertisements in India.

84. After going through the pleading and rival contention of the parties. We have observed that even assuming the applicant's trademark acquired reputation in foreign countries, where their trade mark is registered, but no presumption can be drawn at this juncture that trade mark of the applicant registered in foreign countries has automatically acquired reputation in India or trans-border reputation is percolated in India, as we have already pointed out that no document of the applicant shows of its extensive usage of the mark in India or any other place of registration.

85. The applicant has failed to establish that indeed the applicant has trans-border reputation due to its long and

extensive use of the impugned trademark in question and the impugned trademark 'Hypnos' is well known. The applicant has further failed to establish that the trademark "Hypnos" has attained the reputation and goodwill which has spilled over in to other countries and India. The substantial segments of consumers in India know about the existence of the mark 'Hypnos' as of the foreign entity.

86. *It is well settled proposition that the onus is on the applicant applying rectification to establish by letting his evidence about the trans-border reputation, so the burden is on the applicant herein, the applicant has to discharge his burden by showing extensive use and making out strong ground for rectification. The applicant applying for rectification application has to discharge its onus in removing of registered trademark from register.*

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88. We have also gone through the authorities submitted by the respondent in support of his contention. We agree with propounded proposition in the above citations that the onus is on the applicant to discharge by producing substantial evidence in his support and it is burden on the applicant to establish evidence of extensive, long use of its mark and show the well knownness, trans-border reputation and making out strong ground for rectification."

13. In light of the principles laid down in the aforesaid judgments, it has to be examined whether in the present case, the petitioner company has produced sufficient evidence on record in support of its contention that the trade mark 'ALPHARD' carries a transborder reputation that has spilled over in India.

14. Merely, the international usage of the trade mark 'ALPHARD' by the petitioner company is not sufficient to prove the spillover of its transnational

reputation in India. In the present case, the petitioner company has failed to place on record a single invoice to show that it has sold any car under the brand 'ALPHARD' in India. In fact, the trade mark application filed on behalf of the petitioner company in November, 2017 was on a '*proposed to be used basis*'. It is petitioner company's own case that the same model of the car has been launched in India under a different brand name, 'Vellfire'.

15. It is also an admitted position that the petitioner company has not advertised the said brand in India in any manner. Various documents placed on record by the petitioner company such as, international brochures/annual reports, awards, worldwide trade mark registration certificates/renewal certificates and promotional material, are in relation to international usage of the aforesaid trade mark. Undoubtedly, these documents show that the trade mark 'ALPHARD' has acquired goodwill and reputation in several other jurisdictions around the world. However, as per the '*territoriality principle*', the onus is on the petitioner company to show that the trade mark 'ALPHARD' had acquired sufficient goodwill and reputation in the Indian market also. None of the aforesaid documents filed by the petitioner company shows that the brand 'ALPHARD' has acquired goodwill and reputation in India. The documents filed by the petitioner company relating to India are screenshots from third-party websites showing that a few cars of the petitioner company under the brand 'ALPHARD' have been listed for sale in India. As per the import-export data of India filed on behalf of the petitioner company, only fifteen import shipment records have been found under the brand 'ALPHARD' between the years 2014 to 2016 and not all of them are in respect of vehicles. It may be noted that the aforesaid imports have not been made by the petitioner company itself but by private parties.

16. The petitioner company has filed certain articles in various trade/automobile magazines and newspaper reports regarding the petitioner company considering the launch of a vehicle under the brand 'ALPHARD' in India. However, most of these articles are after the trade mark 'ALPHARD' had already been registered by the respondent no.1 in India. It is also to be noted that the vehicle under the brand 'ALPHARD' was never launched in India. The same model was launched in India in February, 2020 under the brand 'Vellfire'. Therefore, no reliance can be placed on these articles to show that the brand 'ALPHARD' has acquired goodwill and reputation in India.

17. In *Toyota* (supra), the 'Prius' model had been introduced by Toyota in the Indian market in 2009-2010 and there were advertisements in automobile magazines. Despite this, taking note of limited sales of the product in India and the absence of any advertisement of the product in India prior to 2001, the Supreme Court held that the trade mark 'Prius' cannot be said to have acquired goodwill and reputation in the Indian market. The present case stands on a worse footing for the petitioner company, as in the present case the petitioner company has neither launched the model under the trade mark 'ALPHARD' in India nor has advertised the same.

18. Counsel for the petitioner company has placed reliance on the judgments in *MAC Personal Care* (supra) and *Keller Williams Realty* (supra) in support of his submission that the transborder reputation in respect of a trade mark may have a spillover reputation in India as well, despite the aforesaid brand not having a commercial use in India. In *MAC Personal Care* (supra), the Division Bench enlisted the principles for determining international reputation. However, the issue of spillover of transnational

reputation in India was not before the Division Bench. These principles were laid down by the Supreme Court subsequently in *Toyota* (supra). Both the aforesaid judgments were in the context of passing off action and not in the context of rectification petitions. To be noted that in *Keller Williams Realty* (supra), the Co-ordinate Bench of this Court denied the relief of interim injunction in a passing off action. One of the reasons for denial of interim injunction was that the plaintiff therein had been unable to show spillover of its reputation and goodwill in India. Therefore, the reliance placed by the petitioner company on the aforesaid judgments is misplaced.

19. As regards the contention of the petitioner company that the adoption of the mark 'ALPHARD' by the respondent no.1 is *mala fide*, counsel for the respondent no.1 has drawn the attention of the Court to the dictionary meaning of the word '*Alphard*'¹. The word '*Alphard*' has been described in the following manner:

*"an orange star of the second magnitude that is the brightest star in the constellation Hydra
Hydra is actually the largest constellation. Despite its size, it has only one bright star named Alphard. It can be found over in the southwest sky all by itself—hence the name, which in Arabic means "the solitary one."*

20. Except for making a bald averment, the petitioner company has failed to place any material on record to show that the adoption by the respondent no.1 was *mala fide*. Therefore, on the basis of evidence on record, it cannot be held that the adoption of the trade mark 'ALPHARD' by the respondent no.1 was *mala fide* or in bad faith.

¹ Alphard. 2023. In Merriam-Webster.com. Retrieved on January 13, 2023, from <https://www.merriam-webster.com/dictionary/Alphard>

21. Reliance has been placed by the petitioner company on Section 11(1), 11(2) and 11(3) of the Act to contend that the trade mark 'ALPHARD' should not have been granted registration in favour of the respondent no.1 on account of its identity and similarity with an "*earlier trade mark*". To appreciate this submission, a reference may be made to the relevant provisions of Section 11 of the Act, which is set out as under:

"11. Relative grounds for refusal of registration.— (1) Save as provided in section 12, a trade mark shall not be registered if, because of—

*(a) its identity with an **earlier trade mark** and similarity of goods or services covered by the trade mark; or*

*(b) its similarity to an **earlier trade mark** and the identity or similarity of the goods or services covered by the trade mark,*

*there exists a likelihood of confusion on the part of the public, which includes the likelihood of association with the **earlier trade mark**.*

(2) A trade mark which—

*(a) is identical with or similar to an **earlier trade mark**; and*

*(b) is to be registered for goods or services which are not similar to those for which the **earlier trade mark** is registered in the name of a different proprietor,*

shall not be registered, if or to the extent, the earlier trade mark is a well-known trade mark in India and the use of the later mark without due cause would take unfair advantage of or be detrimental to the distinctive character or repute of the earlier trade mark.

(3) A trade mark shall not be registered if, or to the extent

that, its use in India is liable to be prevented—

(a) by virtue of any law in particular the law of passing off protecting an unregistered trade mark used in the course of trade; or

(b) by virtue of law of copyright.

*(4) Nothing in this section shall prevent the registration of a trade mark where the proprietor of the **earlier trade mark** or other earlier right consents to the registration, and in such case the Registrar may register the mark under special circumstances under section 12.*

***Explanation.*—For the purposes of this section, **earlier trade mark means**—**

*(a) a **registered trade mark** or an application under Section 18 bearing an earlier date of filing or an international registration referred to in Section 36E or convention application referred to in section 154 which has a date of application earlier than that of the trade mark in question, taking account, where appropriate, of the priorities claimed in respect of the trade marks;*

*(b) a trade mark which, **on the date of the application for registration of the trade mark in question**, or where appropriate, of the priority claimed in respect of the application, was entitled to protection as a well-known trade mark.”*

22. The Explanation to Section 11 of the Act as set out above makes it clear that for the purposes of Section 11 of the Act, the phrase ‘*earlier trade mark*’ would apply only in respect of a registered trade mark. Admittedly, the trade mark of the petitioner company was not registered in India at the time registration was granted in favour of the respondent no.1. Therefore, the petitioner company cannot take benefit of sub-Sections (1) and (2) of

Section 11 of the Act. Even the ground of passing off under sub-Section (3) of Section 11 of the Act would not be available to the petitioner company as it has failed to make out a case of having goodwill and reputation in India in respect of the trade mark 'ALPHARD'.

23. Counsel for the petitioner company contends that the respondent no.1 has failed to provide any evidence in respect of its use of the trade mark 'ALPHARD'. The various invoices filed by respondent no.1 to show the user of the aforesaid trade mark is by another entity, 'Tekstar Global Private Limited'. In this regard, it may be noted that in the present case, registration has been obtained by the respondent no.1 on a '*proposed to be used basis*', which is permissible under Section 18 of the Act. Therefore, user on the date of registration would not be a relevant factor. The respondent no.1 has placed on record various photographs of its products bearing the trade mark 'ALPHARD' as also invoices of its sister company, 'Tekstar Global Private Limited' from 12th May, 2015 to 1st June, 2018 showing sales of products under the trade mark 'ALPHARD'. Therefore, based on the material on record, it cannot be established that the respondent no.1 has registered the trade mark without any bona fide intention to use the same.

24. In view of the above, the petitioner company has completely failed to discharge the onus to show the reputation and goodwill of the mark 'ALPHARD' in India. In fact, it is not even the case of the petitioner company that it is dealing in products under Class 9 and Class 27 anywhere in the world. The documents placed on record by the petitioner company do not reflect extensive use of the brand 'ALPHARD' or establish that the brand 'ALPHARD' has acquired a transborder reputation in India in Classes 9, 12 and 27. The evidence on record shows very limited sales and use of the

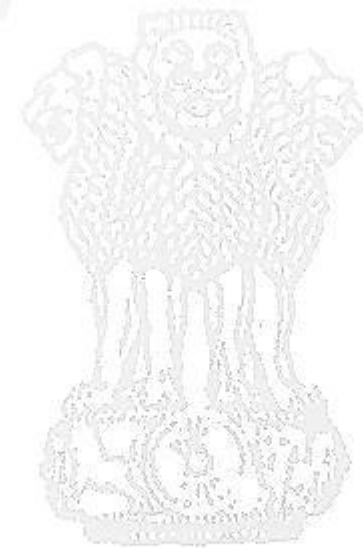
product in the Indian market and that too by private parties. No advertisements have been made by the petitioner company in India. It cannot be stated that a substantial number of consumers in India know about the existence of the brand 'ALPHARD'.

25. Therefore, in my considered view, the petitioner company has failed to make out any ground for rectification of the trade mark 'ALPHARD' registered in Classes 9, 12 and 27 in the favour of the respondent no.1. I find no merit in the present rectification petitions filed on behalf of the petitioner company. Dismissed.

FEBRUARY 03, 2023

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AMIT BANSAL, J.



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