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(T)OP(TM)/179/2023
(ORA/178/2015/TM/CHN)

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.02.2024

CORAM

MR.JUSTICE N.SESHASAYEE

(T)OP(TM)/179/2023
(ORA/178/2015/TM/CHN)

Hatsun Agro Product Ltd.,
No.1/20-A, Rajiv Gandhi Salai (OMR),
Karapakkam, Chennai – 600 097,
and also carrying on its business at,
Old No.AD-83/New No.AD13,
Anna Nagar, Opp.IOB Towers Branch,
Chennai – 600 040.

... Petitioner

Vs.

1.V.Nataraja
trading as M/s.Nataraja Traders,
120, Puthur Road, Worlur,
Tiruchirapalli.

2.Registrar of Trade Marks,
Office of the Trade Marks Registry,
GST Road, Guindy,
Chennai – 600 032.

... Respondents



(T)OP(TM)/179/2023
(ORA/178/2015/TM/CHN)

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PRAYER: Transfer Original Petition (Trade Marks) filed under Sections 9(1)(a), 9(2)(a), 11(1)(a), 11(1)(b), 11(2), 11(3), 18, 47 and 57 of the Trade Marks Act, 1999 seeking to rectify the register by removing or cancelling the 1st respondent's trademark registered under No.1347725 in class 29.

For Petitioner	: Ms.Y.K.Aiswarya for M/s.Surana & Surana
For Respondent 1	: No appearance
For Respondent 2	: Mr.J.Madanagopal Rao, Special Panel Counsel

ORDER

The present petition is filed to cancel the trademark of the first respondent from the register of the second respondent on the ground that it is strikingly and deceptively similar to the petitioner's mark.

2.The petitioner claims that it has developed considerable goodwill with the use of its mark 'ArokyA' with the alphabet A at both the ends with a bigger



(T)OP(TM)/179/2023
(ORA/178/2015/TM/CHN)

WEB COPY

font size, and has been using it since 1994 for its milk and other related products. While so, it opted to register its mark between 2013 and 2014, and in all, it has more than 20 registrations and they pertain to both its word mark as well as to its label mark. While so, the respondent has hijacked the plaintiff's mark 'ArokiyA' with the same colour scheme and also using a higher font size for the alphabet A at both the ends. To make a slight distinction from the petitioner's mark, it has added a device but it hardly can distinguish its products from the product of the petitioner.

3. It is in these circumstances, the petitioner approached this Court and laid C.S.No.668 of 2014 for an action for infringement of trademark and other associated relief against the first respondent and the said suit came to be decreed on 04.09.2019. In these circumstances, the petitioner herein has filed this petition for cancellation of the first respondent's mark from the register of the second respondent.

4. The first respondent has not chosen to appear despite service of notice. Ms.Y.K.Aiswarya, the learned counsel for the petitioner submitted that the



(T)OP(TM)/179/2023
(ORA/178/2015/TM/CHN)

WEB COPY

petitioner has registered its word mark ArokyA under registration no.2469516 on 05.12.2014, and the first respondent's mark has only a word TVS placed above ArokyA with a device attached. However, the word ArokyA is seen written with the same spelling, colour scheme and with the peculiar design, with the alphabet A displayed with a bigger font size. This mark is truly misleading. She added that the decree passed in C.S.No.668 of 2014 literally concludes the issue and has put a lid on any possible defense which the first respondent could have taken to defend its mark.

6.The petitioner's mark is displayed as below;





(T)OP(TM)/179/2023
(ORA/178/2015/TM/CHN)

The first respondent mark is displayed as below;

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What is deceptive in the above mark is the colour scheme employed by the petitioner as well as the first respondent in the word ArokyA. It may be said that both are in red. Another striking feature, which the learned counsel for the petitioner emphasized is alphabet A displayed at both the ends of the word is in a bigger font to make it distinctive and catchy. Inasmuch as this has already been registered as a word mark in the same style by the petitioner, it necessarily has to be concluded that the first respondent has literally mortgaged its capacity for creativity, and hijacked the petitioner's mark for its use.



(T)OP(TM)/179/2023
(ORA/178/2015/TM/CHN)

7. This Court has very little hesitation to hold that the first respondent's mark is strikingly and deceptively similar, if not identical despite certain device attached to it. It cannot stay in the register of the second respondent any longer.

8. In conclusion, this Court allows this petition and directs the 2nd respondent to cancel the mark of the 1st respondent, within a period of four (4) weeks from the date of receipt of a copy of this order. No costs.

29.02.2024

Tsg

Index : Yes / No

Neutral Citation: Yes / No



WEB COPY



(T)OP(TM)/179/2023
(ORA/178/2015/TM/CHN)

N.SESHASAYEE, J.,

Tsg

(T)OP(TM)/179/2023
(ORA/178/2015/TM/CHN)

29.02.2024