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(T)OP(TM)/231/2023  
(ORA/106/2016/TM/CHN)

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.02.2024

CORAM

MR.JUSTICE N.SESHASAYEE

(T)OP(TM)/231/2023  
(ORA/106/2016/TM/CHN)

Tempting Brands AG  
Krishna & Saurastri  
New Excelsior Building, 7th Floor  
Wallace Street, A.K.Nayak Marg, Fort  
Mumbai 400 001

... Petitioner

Vs.

1.Mr.Parasmal Purohit  
Trading as M/s.P.K.Trading Company  
No.2, A.M.lane, G.Basavarajappa Market  
Chickpet Cross, Bangalore 560 053

2.The Registrar of Trade Marks  
Trade Marks Registry  
Intellectual Property Office Building  
G.S.T Road, Guindy  
Chennai 600 032  
Respondents

...

PRAYER: The Transfer Original Petitions (Trademarks) filed under Sections 9, 11, 12, 18, 47 and 57 of the Trademarks Act, 1999, to a trade



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mark label inter alia consisting of the device of a shield and the expressions ROUTE 69 as an essential feature of the mark registered under trade mark No.1690863 in class 25 in the name of Mr.Parasmal Purohit trading as P.K.Trading Company, having its office at No.2, A.M.Lane, G.Basavarajappa Market, Chickpet Cross, Bangalore-560053 be cancelled and / or expunged from the register.

For Petitioner : M/s.Yatin Khochare & Jay Shah

For Respondent 1 : No Appearance

For Respondent 2 : Mr.M.Karthikeyan

### ORDER

The present petition is filed for rectification of register of the trade mark seeking cancellation of the mark of the 1st respondent.

2.The petitioner has registered its mark





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after due publication under class 99 (multiple class). It was registered on 21.12.2005. After the publication of the mark, the 1st respondent chose to register its mark under class 25 and it is as below:

Advertised before Acceptance under Section 20(1) Proviso

1690863 26.05.2008

MR.PARAMAL PUROHIT

trading as M/S.P.K.TRADING COMPANY

NO.2, A.M.LANE, G.BASAVARAJAPPA MARKET, CHICKPET

CROSS, BANGALORE-53

MANUFACTURERS AND SELLERS

Address for service in India / Agents address:

LEX EXIGO

23 TO 29, WHITE HOUSE, FIRST FLOOR, FF6, ST.MARKS ROAD,  
BANGALORE 560 001

Proposed to be Used

CHENNAI

CLOTHING, FOOTWEAR, HEADGEAR

3.The contention of the petitioner is to allow the expected lines:

(a) that except converting 66 into 69, the 1st respondent had literally lifted the mark of the petitioner, and that it bears very strong resemblance to the mark of the petitioner.



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(b) inasmuch as the 1st respondent has adopted the mark after due publication of the petitioner's mark, the very adoption is dishonest and ill intended.

4. Notice served on the 1st respondent. No representation for the 1st respondent.

5. This Court compared both the marks and it does not require great expertise to hold that the 1st respondent's mark is a literal imitation of the petitioner's mark except for one number 6. The petitioner uses a euphemistic expression to state that the 1st respondent has adopted his mark dishonestly, but this Court intends to make a slightly strong statement and state that the 1st respondent has literally stolen the mark of the petitioner and has made a cosmetic tinkering to the same. Necessarily the mark of the 1st respondent cannot stay in the register of trademark.



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6. In conclusion, this Court allows this petition and directs the 2nd respondent to cancel the mark of the 1st respondent, if it is still alive, within a period of four (4) weeks from the date of receipt of a copy of this order.

23.02.2024

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Index : yes / no

Neutral Citation : Yes / No



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N.SESHASAYEE, J.

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