



(T)OP(TM) Nos.294 & 384 of 2023
(ORA/8/2019/TM/CHN & ORA/97/2020/TM/CHN)

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.03.2024

CORAM

MR.JUSTICE N.SESHASAYEE

(T)OP(TM) Nos.294 & 384 of 2023
(ORA/8/2019/TM/CHN and ORA/97/2020/TM/CHN)

TTK Prestige Limited
11th Floor, Brigade Towers
No.135, Brigade Road
Bengaluru - 560 025

... Petitioner in both petitions

Vs.

1.Bharath R.
trading as Single Firm
located at
45/1 M.M. Lane, Ganigarpet
Nagarathpet Cross, Banalore - 560 002

2.The Registrar of Trade Marks
Trade Mark Registry
Boudhik Sampada Bhawan
G.S.T. Road
Guindy, Chennai - 600 032

... Respondents in both petitions

Prayer in both OPs : Original Petitions filed for cancellation/removal of Trade Mark PRESTORE bearing Registration No.3772098 in Class 21 under Sections 11(1) read with 29, 11(3)(a), 11(10), 18(4) and 57(2) of the Trade



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Marks Act, 1999 from the register of Trade Marks and Trade Mark PRESTORE bearing Registration No.3772097 in Class 11 under Sections 11(1), 11(3)(a), 11(10), 18(4) and 57(2) of the Trade Marks Act, 1999 from the register of Trade Marks

For Appellants : Mr.Manish K.Mishra
for M/s.INTTL Advocare

For Respondent : No Appearance for R1
Mr.S.Diwakar, Sr. Panel Counsel for R2

COMMON ORDER

These two petitions are filed seeking rectification of register of the second respondent wherein, the petitioner has alleged that the word mark of the first respondent bears striking resemblance to the mark of the petitioner.

2. The facts are as below:

- The petitioner herein is a market leader in kitchen appliances and has been in business since 1940s and over a period of time, it has developed multiple trade marks and had them registered at various points of time. In all, the petitioner is the owner of as many as 22 registered marks. While all those marks are registered in Class 21, its



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word mark 'Prestige' alone was registered under multiple classes to include Classes 6, 7 and 11 and 21 and the details are as below:

Trade Mark	Registration No.	Registration Date	Class	Valid upto
PRESTIGE	3104154	28.12.2015	6,7,11, 21	28.12.2025

- Be that as it may, the first respondent herein has applied for registration of its work mark 'Prestore' under Class 21. The registration was made on 28.09.2018 on an application filed by the first respondent on 07.03.2018. Along side, it has also registered another mark under Class 21 and Class 11.
- Alleging that the first respondent had registered its mark in two different classes where the petitioner has established commendable goodwill in the use of its mark and that the first respondent's mark bears striking similarity and hence deceptive resemblance to the mark of the petitioner, the petitioner has come forward with these petitions for striking off the mark of the first respondent from the register of the second respondent. The first respondent was served with notice of this petition but he did not choose to appear.



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3. The learned counsel for the petitioner made the following submissions:

- The intent of the first respondent is to hijack the trade mark of the petitioner, to tweak with the word 'Prestige' with its own word mark 'Prestore' and to put it in the market with a view to confuse gullible consumers of kitchen appliances. Indeed, at least three of the petitioner's mark has a colour scheme attached to it where the word 'Prestige' was written in white on a red backdrop. The first respondent literally lifted the font style of the word 'Prestige' and applied it on its word mark 'Prestore' and also tried to seek registration of the mark with a colour backdrop. Indeed he had made this application on 24.08.2018 and also adopted the same colour scheme, which is as below:



The intent therefore is only to mislead the consumers of kitchen appliances. However, the Trade Mark Registry during search has



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brought it to the notice of the first respondent about the mark of the petitioner with aforesaid colour scheme and font style following which the first respondent did not proceed with the matter.

- In the meantime, the petitioner has laid a suit in O.S. No.187 of 2019 before the City Civil Court, Bangalore for infringement and for passing off. The first respondent herein who is the sole defendant in that suit, chose to contest the suit and by a considered judgment and decree dated 30.08.2023, the District Court chose to decree the suit. The first respondent is not known to have filed any appeal till date.
- The petitioner has been in business since 1949 and its mark has also been well known and widely popular since 1949 and the intent of the first respondent is far too obvious.

4. This court compared the word mark of the petitioner with that of the first respondent. Very apparently, the word 'Prestige' and the word 'Prestore' have different spelling and hence they may be considered as possessing certain dissimilarities in spelling, however the court is expected to compare any two mark sitting in the arm chair of the gullible consumer with ordinary prudence



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and perhaps even zero literature. If so viewed, there is every possibility that a gullible consumer can easily be tripped by the mark of the first respondent.

5. This court, therefore, has little hesitation to hold that the mark of the first respondent bears striking similarity to the mark of the first petitioner and given the circumstances, this court is constrained to hold that the first respondent's mark is deceptively similar to that of the mark of the petitioner.

6. Accordingly, these petitions are allowed. The second respondent is directed to remove the mark "PRESTORE" under the Trade Mark Nos.3772098 and 3772097 in Classes 21 and 11 registered in the name of the first respondent from the Trade Marks Register. No costs.

07.03.2024

Asr
Index: Yes/No
Speaking Order / Non-Speaking Order
Neutral Citation: Yes / No

To
The Registrar of Trade Marks
Trade Mark Registry
Chennai



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N. SESHASAYEE, J.

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