



(T)OP(TM) No.351 of 2023
(ORA/45/2020/CHN)

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.03.2024

CORAM

MR.JUSTICE N.SESHASAYEE

(T)OP(TM) No.351 of 2023
(ORA/45/2020/TM/CHN)

1.Aswin Narayanan A.K.

2.M/s.Updates Clothing Inc.
an Indian Partnership Firm
represented by Aswin Narayanan A.K. and Jiju K.P
Room No.25, 2nd Cross
Sudhamanagar
Bangalore 27

... Petitioners

Vs.

1.Najeeb.S.,
an Indian National,
trading as NORTH REPLICANS
T.C.35/181, JM Road, Vallakkadavu
Thiruvananthapuram - 695 008
Kerala

2.The Registrar of Trade Marks
Trade Mark Registry
Chennai

... Respondents



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Prayer: Original Petition filed under Sections 9,11,18, 28, 29, 47 and 57 of the Trade Marks Act, 1999 to remove/rectify the registration of "NR NORTH REPLICANS (label)" under the Trade Mark No.3798527 in Class 25 registered in the name of Najeeb.S. trading as NORTH REPLICANS as the grant of registration of the said mark is contrary.

For Appellants : Ms.C.P.Chitra
for M/s.Puthran and Associates

For Respondent : Mr.K.Subbu Ranga Charathi, CGSC for R2

ORDER

The present petition is filed seeking rectification of register of the second respondent herein by cancelling the mark of the first respondent.

2. The facts are as below:

The petitioner has developed two different marks and has registered the same in different classes and on different dates and the details are tabulated below:



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Mark	Class	Date of Registration	Date of User
	25	02.11.2016	17.08.2015
	25	01.07.2017	01.11.2016
	18, 35 & 40	25.10.2020	01.11.2016

In the table above registration in class 18, 35 and 40 were pending at the time when the petition was pending before IPAB, and they are since registered in the respective class as shown above.



3. Be that as it may, the first respondent developed its mark and had it registered in class 25 on 28.09.2018, which was to take effect from 06.04.2014, the date on which the first respondent had filed its application.



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4. Claiming that the first respondent's mark bears a striking resemblance and is deceptively similar to the above shown two marks of the petitioner herein, the petitioner has approached this court seeking rectification of the register to strike off the mark of the first respondent.

5. The first respondent was served with notice, but did not choose enter appearance. Heard the learned counsel for the petitioner and the panel counsel for the second respondent.

6. The learned counsel for the petitioner argued :

- If the petitioners' mark is compared with the first respondent's mark notwithstanding a deliberate effort to use the word 'REPLICANS' in its mark, it still bears a striking resemblance to the word 'REPUBLIC', which the petitioners have used in their mark.
- Secondly, for no reasons, the first respondent has depicted the alphabets 'NR' prominently in its mark and if the second mark of the



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petitioners is compared with the mark of the first respondent, it is seen that the said mark employs a star super imposed on a circle and that it bears again a striking resemblance to the petitioners' mark.

- Thirdly, the first respondent has registered its mark only on 2018. Indeed in its application dated 06.04.2014, which was filed some five years prior to the date of registration, the first respondent has only indicated that it was only proposing to use its mark. This implies that as on the date, when the first respondent had filed its application for registration of its mark, it has not began to use its mark whereas the petitioner had already commenced using its mark from 01.01.2015.
- Summing up her arguments, the learned counsel for the petitioner submitted that the intent of the first respondent is only to hijack the mark of the appellant and to pass it on as its own mark. This is evident from the fact the first respondent has registered its mark in Class 25, the very class in which the petitioner had registered both of his marks.



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7. This court carefully weighed the submissions of the learned counsel for the petitioner and also perused the papers. After careful examination of both the marks, if only this court has to look for the points of dissimilarities, it may have to be stated that there are points of dissimilarity. However, the court is called upon not to compare the Trade Marks based on dissimilarities after a meticulous examination of the marks involved but to consider whether a gullible consumer will be tripped by the deception by the use of a mark of one by the other. If so viewed, this court does find that notwithstanding the variance in spelling, the word 'REPLICANS' in the first respondent mark, at the first blush it does appear to this court as 'REPUBLIC'. 'North' is retained, star is there and the alphabets NR are also lifted from the petitioner's mark. While the petitioner had established its user before the Trade Mark Registry from January, 2015, the first respondent is yet to use it.

8. This court is now left with the little option but to hold that the mark of the first respondent bears striking visual similarity to the mark of the petitioner and accordingly, it holds that the mark of the first respondent cannot stay any longer in the Register of the second respondent.



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9. Accordingly, this petition is allowed. The second respondent is directed to remove the mark "NR NORTH REPLICANS (label)" under the Trade Mark No.3798527 in Class 25 registered in the name of Najeeb.S. trading as NORTH REPLICANS 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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