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(T)OP(TM)/509/2023
(ORA/SR.37/2018/TM/CHN)

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.02.2024

CORAM

MR.JUSTICE N.SESHASAYEE

(T)OP(TM)/509/2023
(ORA/SR.37/2018/TM/CHN)

M/s Shubham Goldiee Masale Pvt. Ltd.
51/40, Goldiee House,
Nayaganj, Kanpur, U.P

... Petitioner

Vs.

1.Indu Devi,
Trading as: Indu Trading Company,
No.158-NC.C.Complex, New Road,
Kovilpatti – 628501.

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

... Respondents

PRAYER: Transfer Original Petition (Trademarks) filed under Sections 47,

57 and 125 of the Trade Marks Act, 1999, praying to;

- i. remove/cancel/expunge/rectify the entry pertaining to impugned Trade Mark “GOLDY” registered under no.1849838 in class 34.
- ii. stay the effect and operation of the entry pertaining to impugned



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Trade Mark “GOLDY” registered under no.1849838 in class 34 during the pendency of the present proceedings.

iii. Any other relief(s) which is fit and proper in the facts and circumstances including an order for costs of the proceeding to petitioners.

For Petitioner	: Mr.Somnath De for M/s.K.G.Bansal and Company
For Respondent 1	: No appearance
For Respondent 2	: Mr.C.Samivel, Senior Panel Counsel (GSC)

ORDER

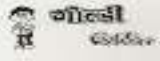
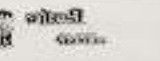
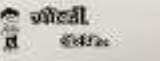
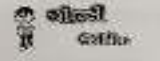
This petition is taken out seeking cancellation of first respondent's trade mark GOLDY, written in Hindi, which the Registrar of Trade Marks has registered under Clause 34. According to the petitioner, the aforesaid mark is identical to the petitioner's mark and seeks cancellation of the first respondent's mark from the Register of Trade Marks.



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2. Developing his submissions, the learned counsel for the petitioner submitted that between 1980 and 2008, the petitioner had registered as many as 8 marks, all of which have the word mark GOLDIEE with or without a device attached to them and they are registered both in Hindi as well as in English and their details are as below;

S.No.	Trade Mark	Application No.	Class	Date of Application	Status
1.	 GOLDIEE	773763	3	14/02/1997	Regd.
2.	GOLDIEE (Word Mark)	1687004	29	14/05/2008	Regd.
3.	 GOLDIEE	703444	29	27/03/1996	Regd.
4.	 GOLDIEE	703443	30	27/03/1998	Regd.
5.	 GOLDIEE	703442	30	27/03/1996	Regd.
6.	GOLDIEE (Word Mark)	696960	30	02/02/1996	Regd.
7.	 GOLDIEE LABEL	367000	30	01/10/1980	Regd.

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3.The first respondent's mark appears as below;



The first respondent has made its application for registration of the above trademark on 12.08.2009, a year after the petitioner has registered last of its mark. Though the said mark was registered under clause 34, it is identical to the mark of the petitioner and hence, the petitioner seeks cancellation of the said mark.

4.The first respondent, though was served with a notice, did not choose to defend this petition.

5.The learned counsel for the second respondent submitted that the first



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respondent mark can be distinguished from the petitioner's mark as it has an oval circle as its background within which is written around the word 'GOLDY' in Hindi.

6.This Court carefully perused the mark of the petitioner and finds that the prominent feature of the petitioner's registered mark is the word GOLDIEE. The font in Hindi in all the marks of the petitioner is visually makes little difference and phonetically the mark of the first respondent sounds exactly the same as the petitioner's mark. To the eyes and ears of this Court, the first respondent mark must be considered as strikingly and deceptively similar to the mark of the petitioner.

7.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.

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Index : Yes / No
Neutral Citation: Yes / No

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