



(T)OP(TM) No.512 of 2023

WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.02.2024

CORAM

MR.JUSTICE N.SESHASAYEE

(T)OP(TM) No.512 of 2023 and
(T)(TM) A No.10 of 2023

R.K.Steel Industries
Partnership Firm
Through Partner
Mr.Parthotam Lal and Mr.Vishal Mahajan
420, Focal Point, Amristar

... Petitioner

Vs.

1.R.K.Impex India Private Limited
Shree Center, 4th Floor Old No.130,
Mint Street, Sowcarpet
Chennai - 600 079

2.The Registrar of Trade Marks
G.S.T. Road, Guindy, Chennai - 600 032

... Respondents

Prayer : Original Petition filed under Sections 47 and 57 of the Trade Marks Act, 1999 to remove/rectify/expunge the entry pertaining to the impugned trade mark/label R.K.Impex registered under No.4279305 in class 6 in favour of respondent No.1 from the Register of Trade Marks with costs and direct the Respondent No.2 accordingly to remove the impugned mark.



WEB COPY



(T)OP(TM) No.512 of 2023

For Appellant : Mr.Ramesh Ganapathy
for M/s.Vidhani Associates

For Respondent : Mr.A.R.Sakthivel,
Senior Panel Counsel for R2
R1 - Served. No Appearance

ORDER

The petitioner is a manufacturer and marketer of screws under the trade name 'R.K.Steel'. It has registered multiple marks under Class '6'. In effect all the marks that it has registered are label marks with the letters 'R.K.' appearing boldly with other features of the device printed in the label. More significantly, the picture of various sizes of screws are in display at the bottom of the label and beneath the letters 'R.K'. The petitioner claims user since 1964 and has been using it.

2. The allegation/grievance of the petitioner is that in 2019 the first respondent has registered its label mark with the word 'R.K.Impex' printed boldly along with a display of different sizes of screws at the bottom and in its application, the first respondent has not disclosed any user claim. It is in



(T)OP(TM) No.512 of 2023

these circumstances, the petitioner, having felt aggrieved that the mark of the first respondent bears a striking resemblance to its mark seeks cancellation of the mark of the first respondent.

3. The learned counsel for the petitioner makes a statement that the petitioner's mark and the first respondent's mark are strikingly similar and hence the register of the second respondent ought to be rectified to ensure that the first respondent's mark registered in 2019 is no longer stays in the register.

4. Notice was served on the first respondent through substituted service, but it has not entered appearance.

5. The learned counsel for the petitioner brought to the notice of the court the various marks it has registered, which are shown in paragraph 7 of its petition. This court also perused the registered trademark of the first respondent and compared the same. This court finds that there is a considerable visual similarity between petitioner's registered mark as well



(T)OP(TM) No.512 of 2023

the first respondent's mark even though there may be other distinguishing features in the label of the first respondent. But this court finds those distinguishing features *per se* may not give a distinctiveness to the first respondent's mark, since the letters 'R.K.' along with a display of screws of different sizes at the bottom of the label, can confuse a gullible consumer of petitioner's product. In these circumstances, this court chooses to allow the petition.

6. Accordingly, this petition is allowed. The Registrar of Trademarks is directed to rectify the register, within a period of three weeks from the date of receipt of a copy of this order. No costs. Consequently, the connected original application is closed.

16.02.2024

Asr

Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No

To

The Registrar of Trade Marks

G.S.T. Road, Guindy, Chennai - 600 032



WEB COPY



(T)OP(TM) No.512 of 2023

N. SESHASAYEE, J.

Asr

(T)OP(TM) No.512 of 2023 and
(T)(TM) A No.10 of 2023



WEB COPY



(T)OP(TM) No.512 of 2023

Dated : 16.02.2024