



(T)OP(TM) No.545 of 2023

WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.02.2024

CORAM

MR.JUSTICE N.SESHASAYEE

(T)OP(TM) No.545 of 2023

S.Sudhakar

... Petitioner

Vs.

1.K.Priya

Proprietor

Udaya Masala

SF. No.216/A2, Senguttaipalayam

Opp. Swami Sidhbavanandha School

Pollachi - 642 102

Coimbatore District

2.The Asst. Registrar of Trademarks

Trademarks Registry

Chennai

... Respondents

Prayer: Original Petitions filed under Sections 47 and 57 of the Trade Marks Act, 1999 to rectify the Trademarks Register by cancelling the registration granted to the 1st respondent under No.2412375 dated 16.10.2012 in respect of the trademark/label/representation UDAYA MASALA in Class 30 and direct removing/expunging the same and for the cost of the proceedings.



WEB COPY



(T)OP(TM) No.545 of 2023

For Appellant : Mr.Madhan Babu

For Respondent : Mr.A.R.Sakthivel, Sr. Panel Counsel
for R2 (No Appearance)
No Appearance for R1

ORDER

The present application is filed for rectification of the Trade Marks Register under Section 57 of the Trade Marks Act, 1999 seeking cancellation of first respondent's mark off the register of Trade marks.

2. The petitioner has registered about 14 trademarks, one in Class 16, 8 in Class 30 and 5 in Class 31. Each of the mark as between them has certain variations, but the dominant feature of petitioner's mark is the word, 'UDHAIYAM' with a device rising sun. The earliest of the mark registered by the petitioner was in 1993. While so, the first respondent is stated to have entered in the market with its mark 'UDAYA MASALA' with a rising sun sometime in 2012 and it has also registered its mark in Class 30. According to the petitioner, one of the products which the first respondent sells is 'UDAYA MASALA'. It is in these circumstances, the petitioner had



(T)OP(TM) No.545 of 2023

laid C.S. (CD) NO.324 of 2017 for infringement of trade mark by the respondent and for allied reliefs. Alongside the suit, the petitioner has also preferred the present petition for rectification of the register.

3.The first respondent herein contested the suit, wherein she had pleaded that the word 'UDAYA' in their mark 'UDAYA MASALA' is the name of her son and justified using of the mark. A learned single Judge of this court, who heard the matter, however, chose to reject the plea of the first respondent and decreed the suit on 01.12.2021.

4. The first respondent, though served with notice, did not choose to appear. Now, inasmuch as it has been decided in C.S.(CD) No.324 of 2017 that the mark of the first respondent is deceptively similar to the mark of the petitioner herein and since this finding has become final, there is nothing more this court need to do than to direct the Registrar of Trade Marks to cancel the first respondent's mark off its register.



(T)OP(TM) No.545 of 2023

5. Accordingly, this petition is allowed and the Registrar of Trade Marks, namely the second respondent, is directed to cancel the first respondent's mark off its register. No costs.

22.02.2024

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

To
The Asst. Registrar of Trademarks
Trademarks Registry
Chennai



WEB COPY



(T)OP(TM) No.545 of 2023

N. SESHASAYEE, J.

Asr

(T)OP(TM) No.545 of 2023

Dated : 22.02.2024