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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ C.O. (COMM.IPD-TM) 105/2022

CERTILINE SRL, VIA PIAVE, 8, 1-21100 VARESE, ITALY

..... Petitioner

Through: Mr. Sharabh Srivastava and Ms.
Anshukaamah, Advocates.

versus

INDIGO PRINTS PVT LTD. B-95, FLATTED FACTORY
COMPLEX, OKHLA PHASE-3, NEW DELHI & ANR

..... Respondents

Through: Ms. Aarti Manchanda, Advocate for
R-1.

Mr. Harish Vaidyanathan Shankar,
CGSC, Srish Kumar Mishra and Mr.
Alexander Mathai Paikaday,
Advocates for R-2.

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

% **10.01.2024**

1. The present petition seeks cancellation of trademark 'CERTICARD' registered under trademark No. 3495867 in Class 17 [*"impugned mark"*] in the name of Respondent No. 1/ Indigo Prints Private Limited.
2. Counsel for the Petitioner argues that, amongst several grounds urged in the petition, the impugned mark is liable to be cancelled solely for the reason that Respondent No. 1 has furnished false user details at the time of obtaining registration. To support this contention, he places reliance on the



online status page of the impugned mark, which reflects that Respondent No. 1 applied for registration claiming use of the impugned mark since 1st April, 2013. However, this assertion is false, as is evident from the reply filed by Respondent No. 1, wherein they have admitted to not having launched any their product using the impugned mark. Further, there are no documents furnished by Respondent No. 1 before the Trademark Registry or annexed with their reply to support their claim of use at the time of registration. In view of the above, counsel for Petitioner submits that registration of the impugned mark was obtained fraudulently and therefore should be cancelled.

3. On the other hand, counsel for Respondent No. 1 states that although the impugned mark may not have been applied to any physical product, Respondent No. 1 has been marketing by utilising the trademark 'CENTICARD'. However, she candidly admits that no documents to support the claim of use since 1st April, 2013, were filed before the Trademark Registry or along with the reply to the present petition.

4. In the opinion of the Court, in absence of any cogent material on record to prove the claim of user from 1st April, 2013, it cannot be held that Respondent No. 1 had been using the impugned mark from the date claimed. Respondent No. 1 has admitted that they have still not actually launched any physical product using the impugned mark. Furthermore, although they claim to have procured raw materials and created a marketing channel for launch of their product, however, there is no evidence furnished to support this claim. In view of the above, the registration obtained by Respondent No. 1 is evidently on the basis of a false statement, which amounts to fraud. Thus, the registration of the impugned mark is liable to be cancelled.



5. This conclusion of the Court is supported by the view expressed in other decision rendered by this Court in ***Suresh Kumar Jain Vs. Union of India & Anr***¹. The said decision was affirmed in LPA No. 676/2010², wherein the Division Bench observed as under:

“7. ... Once we accept that the appellant has not been able to place on record any evidence to show that the appellant had been using the trademark since April 1995, which was the basis of seeking the registration, the conclusion would be that the registration was obtained on the basis of a false statement and would amount to fraud.”

6. The decision in ***Suresh Kumar Jain (supra)*** was also followed by this Court in ***Vivek Kochher & Anr. Vs. M/s KYK Corporation Ltd. & Anr.***³.

7. In view of the foregoing, the Court concludes that the impugned mark is liable to be cancelled. Accordingly, the following directions are issued:

7.1. Registration of Respondent No. 1's impugned mark 'CERTICARD' under No. 3495867 in Class 17 is cancelled. Trademark Registry shall issue appropriate notification to this effect within two weeks from date of receipt of the copy of this order.

7.2. Registry is directed to supply a copy of the present order to the Trade Marks Registry at llc-ipo@gov.in for compliance.

8. Before parting, the Court notes that none of the other grounds urged in the present petition have been examined. In the opinion of the Court, the ground of false use claim at the time of registration is sufficient to require cancellation of the impugned mark, and the petition succeeds solely on that ground.

¹ W.P.(C) No. 72/2007 decided on 5th March, 2010.

² Decided on 2nd January, 2012; Neutral Citation No. 2012:DHC:16-DB

³ 2017 SCC OnLine Del 11383



9. With the above direction, the present petition is disposed of.

JANUARY 10, 2024/A

SANJEEV NARULA, J