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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ C.O. (COMM.IPD-TM) 178/2022 & I.A. 26234/2023.
JACK IN THE BOX INV. 9330 BALBOA AVE. SAN DIEGO, CA
92123-1516 Petitioner

Through: Mr. Ranjan Narula, Mr. Shashi
P.Ojha, Ms. Aishani Singh & Ms.
Shivangi Kohli, Advocates.

versus

MARCHING ANTS HOSPITALITY PVT LTD. FOUND FLOOR,
SHOP NO. 2, FOOD COURTS, KNOWLEDGE BOULEVARD, A-
8A, SECTOR-62, NOIDA, UP Respondent

Through: None

CORAM:
HON'BLE MR. JUSTICE ANISH DAYAL

ORDER
08.01.2024

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1. This petition has been filed for rectification of the Register in respect of the impugned mark “Jack in the Box”, registered *vide* no. 3477065 in the Register of Trade Marks, Delhi. The said registration was granted in favour of the respondent on 4th August, 2017.
2. This petition has been filed by the petitioner contending that the trademark “Jack in the Box” was conceived in 1951 by a businessman Robert O. Peterson who opened the first restaurant for dispensing hamburgers in San Diego, USA. In 1960, the business expanded and restaurants were opened in Phoenix, Houston, Dallas, etc. and then the business grew to more than 1,000 restaurants by 1979. The petitioner claims to be the largest hamburger chain having more than 20,000 employees with more than with more than 2,200



restaurants in 21 states in USA and other countries as well.

3. The marks which are used by the petitioner for its business were also applied for in India and the status, as per the petitioner, is tabulated as under:

Trade Mark	Services	Application. No. / Class	Status
	Restaurant Services	3751491 / 43	Advertised
JACK IN THE BOX	Restaurant Services	3751492 / 43	Objected
	Restaurant Services	3751493 / 43	Advertised

4. Counsel for the petitioner states that subsequently the said marks have been granted registration Nos. 3751491, 3751492 and 3751493 all dated 12th February, 2018 and all are valid up till 12th February, 2028.

5. The petitioner and its franchise restaurants have invested enormous amounts of money, as per the petition, to advertise and publicise the services under its established mark. Besides the registration and prior use since 1950, the petitioner marks also acquire cross border reputation. The petitioner claims to be a person aggrieved within the meaning of Section 57 of the Trade Marks Act, 1999 (*“the said Act”*) as regards the mark ‘Jack in the Box’ registered at the behest of the respondent which are identical to the



petitioner's marks. Further, the services for which impugned marks are registered are for 'cafeteria & quick service restaurants catering to food items & beverages like tea, coffee and soups' which are identical in nature to the services offered by the petitioner.

6. The grounds on which this petition has been filed is *inter alia* under section 9(2)(a) {causing to deceive the public or cause confusion}; section 11(1) (a) and (b) {identity with an earlier trademark with similarity of goods and services}; section 11(2) {similar to an earlier trademark and registered for goods and services which are similar}; section 11(3) {to cause confusion and deception amongst members of trade and public at large}, section 11(10) {identical mark}; section 12 {registration in case of honest concurrent use}; and 32 {protection of registration on ground of distinctiveness in certain cases} of the said Act.

7. Despite notice being issued to the respondent no.1, no one has appeared. It is noted in order dated 2nd August, 2023 of the Joint Registrar that respondent no.1 was served through publication finally on 8th March, 2023 but has not filed reply nor presented himself through counsel and the opportunity to file reply was closed.

8. It is further stated by the counsel for the petitioner that the impugned mark was registered on 8th February, 2017 and ought to be removed on account of non-use, 5 years having passed, as per section 47 (1)(a) and (b) of the said Act.

9. To this effect, an affidavit has been filed on behalf of Mr. Neeraj Kumar Chaudhary, a representative of the petitioner, who states that he conducted a market search to find out if respondent no.1 company was operating business. On his visit to the registered office of respondent no.1 in Naraina Industrial Area, New Delhi, he was unable to find any restaurant or food joint by the



name 'Jack in the Box'. Enquiries made through shopkeepers also did not lead any result. The other address provided was ground floor of a Food Court in Sector 62, Noida, U.P. but there was no restaurant or food joint by the name 'Jack in the Box' operating there as well.

10. This Court has perused the documents appended with the petition including the images of the petitioner's restaurants from 1950s and 1960s, some registration and renewal certificates, extracts from websites, list of awards, online articles and write-ups, links to social media sites, copy of franchise yearbook and a copy of extract of 'WHOIS' details evidencing registration of the petitioner's website www.jackinthebox.conn.

11. In view of the above facts and circumstances, this Court is of the view that petitioner has made out case for rectification of the Register and removal of the impugned mark. It is therefore directed that the said marks 'Jack in the Box' be removed forthwith from the register of Trademarks registered in the name of respondent no.1 bearing registration no. 3477065. The website of the respondent no.2 shall also be updated accordingly. The same may be given effect to within 4 weeks from receipt of the order.

12. Registry to supply a copy of this order to the Trade Mark Registry, including through email.

13. Petition is disposed of with these directions.

14. The date of hearing 11th March, 2024, fixed earlier, stands cancelled.

15. Order be uploaded on the website of this court.

ANISH DAYAL, J

JANUARY 8, 2024/sm/ig