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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% *Date of decision: 19th December, 2024*

+ C.O. (COMM.IPD-TM) 47/2024 with I.A. 7869/2024 and I.A. 7870/2024

GEMINI EDIBLES AND FATS INDIA LIMITEDPetitioner
Through: Ms. Shikha Sachdeva, Ms. Radhika
Arora and Ms. Annie Jacob,
Advocates.

versus

DREAM FREEDOM HERBAL PVT. LTD. & ANR.Respondents
Through: None.

CORAM:
HON'BLE MR. JUSTICE AMIT BANSAL

AMIT BANSAL, J. (Oral)

1. The present rectification petition has been filed under Section 57 of the Trade Marks Act, 1999 (hereinafter, 'the Act') seeking removal of the

trade mark '' bearing trade mark no. 3213226 in Class 29 in the name of the respondent no.1, from the Register of Trade Marks.

PROCEEDINGS IN THE PETITION

2. Notice in the present petition was issued to the respondents on 8th April, 2024. The respondent no.1 was served through courier on 23rd May, 2024, at its Amritsar address and the respondent no.2, i.e., the Trade Marks Registry was served on 6th May, 2024.



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3. The counsel appearing on behalf of the respondent no.2, on 29th August, 2024, submitted that it is a proforma party and therefore no reply is needed to be filed on its behalf.
4. Despite service, neither an appearance has been made on behalf of the respondent no.1, nor did it file any reply to the petition. This indicates that the respondent no.1 has nothing substantial to put forth on merits, by way of a response to the averments made in the petition.
5. Accordingly, the right of the respondents to file their respective replies was closed *vide* the Order of Joint Registrar dated 16th August, 2024 and the respondent no.1 was proceeded against *ex-parte*. In view of the above, the averments made in the petition are deemed to be admitted.

BRIEF FACTS

6. Brief facts relevant for adjudicating the present petition are set out below:
- 6.1. The petitioner, an internationally renowned listed company, is a subsidiary of Golden Agri-Resources Ltd. (GARL), one of the world's largest fully integrated, seed-to-shelf, palm oil-based agri-businesses.
- 6.2. The petitioner is engaged in the business of manufacturing, sale and marketing of various fast moving consumer goods (FMCG) including edible oils and fats under the mark 'FREEDOM' since



the year 2009 and the trade dress ' ' including the mark



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‘Freedom’

since the year 2010 (hereinafter collectively referred to as ‘FREEDOM marks’). The petitioner has been continuously, extensively and uninterruptedly using the FREEDOM marks since then and, over time, has also introduced variations thereof to enhance their distinctiveness.

- 6.3. The petitioner honestly and *bona fide* adopted the mark ‘FREEDOM’ based on various factors, *i.e.*, trade mark registrability, positive connotation, English name and easy pronunciation.
- 6.4. The petitioner’s product portfolio under the FREEDOM marks includes sunflower oil, rice bran oil, mustard oil and groundnut oil. Due to their long and continuous use, the petitioner has acquired immense goodwill and reputation in the FREEDOM marks.
- 6.5. The petitioner has been operating a website, accessible at www.gefindia.com, which showcases its products bearing the FREEDOM marks as well as the website, accessible at www.freedomhealthyoil.com, dedicated to its well-reputed FREEDOM marks.
- 6.6. The petitioner has spent substantial resources for the development and promotion of the FREEDOM marks and has an extensive presence on social media platforms including Facebook, Twitter, Instagram and YouTube. The petitioner has also received various awards and recognition for its products under the FREEDOM marks, a list of which is provided in paragraph no.24 of the petition.



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- 6.7. The petitioner's extensive sales and promotional activities are evident from its sales revenue for the financial years 2009-10 to 2022-23 given in paragraph no.35 of the petition and the advertisement and promotional expenses for the financial years 2010-11 to 2022-23 given in paragraph no.34 of petition.
- 6.8. The petitioner has obtained multiple trade mark registrations for its FREEDOM marks and their variations, a list of which is provided in paragraph no.36 of the petition. The petitioner has also obtained several copyright registrations for its artistic works, a list of which is provided in paragraph no.37 of the petition.
- 6.9. The respondent no.1, Dream Freedom Herbal Pvt. Ltd, is a multi-level marketing company engaged in direct sales of products such as apparel, toiletries, cosmetics, personal and home care products, veterinary products, ayurvedic medicines, etc. under the mark  (hereinafter 'impugned mark').

- 6.10. The respondent no.1 has dishonestly obtained registration of the impugned mark bearing trade mark no. 3213226 in Class 29 with effect from 17th March 2016 and with a user claim since 14th January, 2016.

SUBMISSIONS OF THE PETITIONER

7. The counsel appearing on behalf of the petitioner submits that the impugned mark subsumes the petitioner's mark 'FREEDOM' in its entirety and is represented in an identical green colour, font, style and manner. Therefore, the impugned mark is deceptively similar to the petitioner's prior adopted, registered and well-reputed FREEDOM marks.



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8. She further submits that, in addition to violating the petitioner's statutory and common law rights in the mark FREEDOM, the respondent no.1's products bear the trade dress/ packaging which is nearly identical with the petitioner's trade dress/packaging of its well-reputed FREEDOM Refined Edible Oil. For ease of reference, a comparison of the impugned mark and the respondent no.1's products bearing the same with those of the petitioner is set out below:

Petitioner's Trade Mark/ Trade Dress	Respondent No. 1's Trade Mark/ Trade Dress
	
	

9. The counsel for the petitioner, therefore, contends that the registration of the impugned mark has been obtained by the respondent no.1 with the *mala fide* intention of coming as close as possible to the petitioner and deceiving the consumers and the general public. The respondent no.1's *mala fide* adoption of the impugned mark is also evident from the fact that it did not reply to the cease-and-desist notice issued by the petitioner to stop using the impugned mark.

10. She also submits that the trade mark application for the impugned mark was accepted without proper examination as the petitioner's prior FREEDOM marks were not cited in the examination report issued by the Trade Marks Registry.



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11. Due to the aforesaid reasons, the impugned mark has been registered without sufficient cause and is wrongly remaining in the Register of Trade Marks. Therefore, the registration of the impugned mark is liable to be cancelled under the provisions of Section 57 of the Act.

ANALYSIS AND FINDINGS

12. I have heard the counsel for the petitioner and perused the record of the case.

13. A perusal of the records in the present case shows that the petitioner is the prior adopter and user of the FREEDOM marks and its earliest registration for the FREEDOM marks in Class 29 dates back to the year 2009. Per contra, the respondent no.1 obtained registration for the impugned mark with effect from 17th March 2016 and with a user claim since 14th January, 2016.

14. This Court in the case of *Greaves Cotton Limited versus Mohammad Rafi and Ors.*, 2011 SCC OnLine Del 2596, has held as follows:

“16. It is not necessary that in order to constitute infringement, the impugned trademark should be an absolute replica of the registered trademark of the plaintiff. When the mark of the defendant is not identical to the mark of the plaintiff, it would be necessary for the plaintiff to establish that the mark being used by the defendant resembles his mark to such an extent that it is likely to deceive or cause confusion and that the user of the impugned trademark is in relation to the goods in respect of which the plaintiff has obtained registration in his favour. It will be sufficient if the plaintiff is able to show that the trademark adopted by the defendant resembles its trademark in a substantial degree, on account of extensive use of the main features found in his trademark. In fact, any intelligent person, seeking to encash upon the goodwill and reputation of a well-established trademark, would make some minor changes here and there so as to claim in the event of a suit or other proceeding, being initiated against him that the trademark being used by him, does not constitute infringement of the trademark, ownership of



which vests in some other person. But, such rather minor variations or distinguishing features would not deprive the plaintiff of injunction in case resemblance in the two trademarks is found to be substantial, to the extent that the impugned trademark is found to be similar to the registered trademark of the plaintiff. But, such malpractices are not acceptable and such a use cannot be permitted since this is actuated by a dishonest intention to take pecuniary advantage of the goodwill and brand image which the registered mark enjoys, it is also likely to create at least initial confusion in the mind of a consumer with average intelligence and imperfect recollection. It may also result in giving an unfair advantage to the infringer by creating an initial interest in the customer, who on account of such deceptive use of the registered trademark may end up buying the product of the infringer, though after knowing, either on account of difference in packaging etc. or on account of use of prefixes or suffixes that the product which he is buying is not the product of the plaintiff, but is the product of the defendant.”

(emphasis supplied)

15. As may be seen from the side-by-side comparison of the marks set out in the table above, the dominant feature of the impugned mark is the word FREEDOM written in the colour green and mere addition of the prefix DREAM does not render it different from the petitioner’s prior and reputed FREEDOM marks. It is therefore evident that the impugned mark is deceptively similar to the petitioner’s FREEDOM marks. Further, this Court notes that the products offered and sold by the respondent no.1 under the impugned mark is identical with the petitioner’s products under the FREEDOM marks and as a result of the same, the target consumers of the competing parties are identical. Thus, the Triple Identity Test, i.e., the existence of an identity / similarity between the respective marks, goods/ services and trade channels is satisfied in the present case.

16. Considering the aforesaid, I am of the view that the impugned mark is likely to cause confusion and deception among the consumers who are



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ordinary persons of average intelligence and imperfect recollection, especially as the petitioner has been using the FREEDOM marks since the year 2009 and has acquired immense goodwill and reputation thereunder.

17. In view of the above, it is clear that the impugned mark has been adopted by the respondent no.1 dishonestly to trade upon the goodwill and reputation of the petitioner under the FREDDOM marks and to associate itself with the petitioner. Therefore, the continuation of the registration of the impugned mark in the name of the respondent no.1 in the Register of Trade Marks is in contravention of the provisions of Section 11 of the Act and is liable to be cancelled under the provisions of Section 57 of the Act.

18. Accordingly, the present petition is allowed and the Trade Mark

Registry is directed to remove the impugned mark ‘’ bearing trade mark no. 3213226 in Class 29 in the name of the respondent no.1 from the Register of Trade Marks.

19. The Registry is directed to supply a copy of the present order to the Trade Mark Registry, at e-mail: llc-ipo@gov.in, for compliance.

20. The pending applications stand disposed of.

AMIT BANSAL, J

DECEMBER 19, 2024

Corrected and uploaded on 3rd January, 2025

Vivek/-