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

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Date of decision: 18th December, 2024

+ C.O. (COMM.IPD-TM) 85/2024

DABUR INDIA LIMITED

.....Petitioner

Through: Ms. Akansha Singh and Mr. Saransh Saini, Advocates.

versus

MS USHA PROPRIETOR OF
RS INDUSTRIES & ANR.

.....Respondents

Through:

CORAM:

HON'BLE MR. JUSTICE AMIT BANSAL

AMIT BANSAL, J. (Oral)

1. The present cancellation petition has been filed under Sections 11(1), 11(3), 11(10) and 18(4) read with Section 57 of the Trade Marks Act, 1999 (hereinafter, 'the Act') seeking cancellation/removal of the trademark



‘Dagur’ bearing registration no. 4838510 in Class 3, from the Register of Trade Marks.

PROCEEDINGS IN THE PETITION

2. Notice in the present petition was issued by this Court through all modes on 9th July, 2024.

3. Despite service, none appeared on behalf of the respondent no.1 and the respondent no. 1 was proceeded against *ex parte vide* order dated 21st



October, 2024.

BRIEF FACTS

4. Brief facts relevant for adjudicating the present petition are set out below:

4.1. The petitioner, Dabur India Limited, is a public limited company incorporated under the provisions of the Companies Act, 1956. The petitioner, through its predecessors in interest, has been carrying on its trading activities since the year 1884 and is engaged in the business of manufacturing a wide range of edible food items, ayurvedic preparations, cosmetics, pharmaceuticals, toiletries, dentifrices and medical preparations.

4.2. The goods of the petitioner are marketed under its house mark 'DABUR' as well as under several trademarks such as 'DABUR AMLA', 'DABUR HONEY', 'DABUR CHYAWANPRASH', 'DABUR RED' and 'DABUR LAL TAIL' etc. At present, the petitioner has around 22 ultra-modern manufacturing units spread around the globe and products marketed in over 120 countries worldwide.

4.3. The petitioner is the registered proprietor of the trademark 'DABUR' under Class 3 in India. The petitioner has also applied for and obtained various other registrations pertaining to the trademark 'DABUR' in India and in other countries. The details of the trademark registrations of the petitioner in India, as given in paragraph 12.9 of the petition, are extracted below:

S. No.	Trade Mark	Reg. No.	Class	Valid Upto
1.	DABUR	100093	05	08.08.2028
2.	DABUR	147765	03	02.03.2028



3.	DABUR	154591	03	27.06.2029
4.	DABUR	154592	03	27.06.2029
5.	DABUR	154593	05	27.06.2029
6.	DABUR	154594	05	27.06.2029
7.	DABUR	197097	32	25.07.2029
8.	DABUR	249570	05	30.05.2030
9.	DABUR	249573	03	30.05.2030
10.	DABUR	250535	30	18.07.2023
11.	DABUR	531496	31	14.06.2034
12.	DABUR	531497	34	14.06.2034
13.	DABUR	531500	01	14.06.2030
14.	DABUR	531501	02	14.06.2034
15.	DABUR	531502	08	14.06.2030
16.	DABUR	531505	11	14.06.2030
17.	DABUR	531506	17	14.06.2034
18.	DABUR	531507	18	14.06.2030
19.	DABUR	531508	21	14.06.2034
20.	DABUR	531509	29	14.06.2034
21.	DABUR	1368347	16	01.07.2025
22.	DABUR	154595	05	27.06.2029

All the aforesaid trademark registrations remain valid and subsisting.

4.4. Furthermore, the petitioner's mark 'DABUR' has been declared as 'well-known' trademark in a judgment passed by the Co-ordinate Bench of this Court, ***Dabur India Limited v. Ashok Kumar and Ors.***, CS (COMM) 135/2022 [decided on 3rd March, 2022].



4.5. The petitioner has set very high standards in developing its products and processes that meet stringent quality norms. In addition to this, the petitioner's products bearing the trademark 'DABUR' have been marketed extensively and uninterruptedly on a huge commercial scale. As a result of the aforementioned activities undertaken by the petitioner, the mark 'DABUR' has acquired tremendous goodwill and reputation in the market and among consumers.

4.6. The petitioner's products bearing the mark 'DABUR' had annual sales of Rs. 11,530 crores (approx.) in the financial year 2022-2023 in India. The annual sales of the petitioner's products bearing the mark 'DABUR' during the period 2000-2023 in India are given in paragraph 12.7 of the petition. Further, the promotional expenses of the petitioner for the said products from the year 2000 to 2023 in India are given in paragraph 12.8 of the petition.

4.7. The respondent no.1, Ms. Usha, is the registered proprietor of M/s RS Industries and is engaged in the business of manufacturing and sale of detergent, soap, dish wash, floor cleaner, and other toiletries.

4.8. The respondent no.1 applied for registration of trademark



' (hereinafter 'impugned mark') bearing application no. 4838510 dated 28th January, 2021 on a '*proposed to be used*' basis in respect of "*all type of detergent, detergent cake, washing soap, washing powder, hygienic dishwash bar, liquid soap, cleaning powder, toilet soap and floor cleaner preparation, bleaching preparation*" included in Class 3.

4.9. The impugned mark was advertised in the Trade Marks Journal No.



1989 and was made available to the public on 1st March, 2021. The petitioner filed a notice of opposition bearing no. 1112254 dated 28th June, 2021 seeking removal of the impugned mark from the Register of Trade Marks. Thereafter, the respondent no.1 filed a counter statement dated 3rd August, 2021.

4.10. The petitioner failed to file evidence in support of its opposition within the prescribed time limit under Rule 45 of the Trade Marks Rules, 2017 (hereinafter, 'the Rules, 2017'). In this regard, the respondent no.2 sought explanation from the petitioner and fixed a hearing on 4th October, 2023.

4.11. Since none appeared on behalf of the petitioner on the date of hearing, the said opposition of the petitioner was abandoned under Rule 45(2) of the Rules, 2017 *vide* order dated 9th October, 2023. The impugned mark was also registered on the same date i.e. 9th October, 2023.

SUBMISSIONS OF THE PETITIONER

5. Ms. Akansha Singh, counsel appearing on behalf of the petitioner submits that the petitioner did not receive the notice of counter-statement and the respondent no.2 fixed hearing in the said opposition proceedings without giving notice of the same to the petitioner. Pertinently, the opposition proceedings were abandoned on the same date as the date of registration of the impugned mark. Therefore, the petitioner did not have the opportunity to prefer an appeal against the order dated 9th October, 2023.

6. She further submits that the impugned mark is structurally, visually and phonetically similar to the petitioner's prior adopted, registered and well-known trademark 'DABUR'. The use of letter 'G' in place of 'B' does



not distinguish the impugned mark ‘’, from the trademark ‘DABUR’ of the petitioner. In this regard, counsel for the petitioner has placed reliance on the judgment of the Supreme Court in ***Kaviraj Pandit Durga Dutt Sharma v. Navratna Pharmaceutical Laboratories***, 1964 SCC OnLine SC 14.

7. It is further submitted that the use of the impugned mark in relation to the identical goods is likely to cause confusion in the market and amongst the public at large. The adoption of the impugned mark by the respondent no.1 is an attempt to tarnish, degrade and dilute the distinctive character of the petitioner’s well-known trademark ‘DABUR’.

8. Furthermore, the petitioner is the prior user and owner of the mark ‘DABUR’ since 1884 through its predecessor-in-interest and the impugned mark has been wrongly entered in the Register and therefore, is liable to be cancelled in terms of Section 57 of the Act.

9. Accordingly, the petitioner has filed the present petition.

ANALYSIS AND FINDINGS

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

11. In ***Kaviraj Pandit*** (*supra*), the Supreme Court held as follows:

“28. The other ground of objection that the findings are inconsistent really proceeds on an error in appreciating the basic differences between the causes of action and right to relief in suits for passing off and for infringement of a registered trade mark and in equating the essentials of a passing off action with those in respect of an action complaining of an infringement of a registered trade mark. We have already pointed out that the suit by the respondent complained both of an invasion of a statutory right under Section 21 in respect of a registered trade mark and also of a



passing off by the use of the same mark. The finding in favour of the appellant to which the learned counsel drew our attention was based upon dissimilarity of the packing in which the goods of the two parties were vended, the difference in the physical appearance of the two packets by reason of the variation in the colour and other features and their general get-up together with the circumstance that the name and address of the manufactory of the appellant was prominently displayed on his packets and these features were all set out for negating the respondent's claim that the appellant had passed off his goods as those of the respondent. These matters which are of the essence of the cause of action for relief on the ground of passing off play but a limited role in an action for infringement of a registered trade mark by the registered proprietor who has a statutory right to that mark and who has a statutory remedy for the event of the use by another of that mark or a colourable imitation thereof. While an action for passing off is a Common Law remedy being in substance an action for deceit, that is, a passing off by a person of his own goods as those of another, that is not the gist of an action for infringement. The action for infringement is a statutory remedy conferred on the registered proprietor of a registered trade mark for the vindication of the exclusive right to the use of the trade mark in relation to those goods" (Vide Section 21 of the Act). The use by the defendant of the trade mark of the plaintiff is not essential in an action for passing off, but is the sine qua non in the case of an action for infringement. No doubt, where the evidence in respect of passing off consists merely of the colourable use of a registered trade mark, the essential features of both the actions might coincide in the sense that what would be a colourable imitation of a trade mark in a passing off action would also be such in an action for infringement of the same trade mark. But there the correspondence between the two ceases. **In an action for infringement, the plaintiff must, no doubt, make out that the use of the defendant's mark is likely to deceive, but where the similarity between the plaintiff's and the defendant's mark is so close either visually, phonetically or otherwise and the court reaches the conclusion that there is an imitation, no further evidence is required to establish that the plaintiff's rights are violated. Expressed in another way, if the essential features of the trade mark of the plaintiff have been adopted by the defendant, the fact that the get-up, packing and other writing or marks on the goods or on the packets in which he offers his goods for sale show marked differences, or indicate clearly a trade origin different from that of the registered**



***proprietor of the mark would be immaterial;** whereas in the case of passing off, the defendant may escape liability if he can show that the added matter is sufficient to distinguish his goods from those of the plaintiff.”*

(emphasis supplied)

12. From the averments made in the petition and the evidence on record, the petitioner has established that it is the prior registered proprietor and a prior user of the mark ‘DABUR’ since the year 1884. The adoption and the



use of the impugned trademark ‘’ by the respondent no.1, which is very similar to the trademark ‘DABUR’ of the petitioner, is likely to create confusion in the market.

13. Not only is the trademark of the respondent no.1 confusingly/deceptively similar to the petitioner’s prior adopted, registered and well-known trademark ‘DABUR’ but the nature of the goods of the petitioner and the respondent no.1 are identical i.e. ‘*all type of detergent, detergent cake, washing soap, washing powder, hygienic dishwash bar, liquid soap, cleaning powder, toilet soap and floor cleaner preparation, bleaching preparation*’ included in Class 3.

14. At this stage, it may be relevant to note that the respondent no.1 did not appear before the Court on 21st October, 2024, despite service of notice. Further, no communication on behalf of the respondent no.1 has been placed on record in respect of the allegations of the petitioner in this petition. Since the respondent no.1 has failed to take any requisite steps to contest the present petition, it is evident that she has no defence to put forth on merits.

15. In view of the discussion above, it is clear that the impugned



trademark has been adopted by the respondent no.1 dishonestly to trade upon the established goodwill and reputation of the petitioner and to project itself to be associated with the petitioner. Therefore, the continuation of the impugned registration on the Register of Trade Marks is in contravention of the provisions of Section 11 of the Act and is liable to be cancelled under Section 57 of the Act.

16. Accordingly, the present petition is allowed and the Trade Marks



Registry is directed to remove the impugned mark 'Dagur', bearing trademark registration no. 4838510 in Class 3 from the Register of Trade Marks.

17. The Registry is directed to send a copy of the present order to the Trade Marks Registry at e-mail - llc-ipo@gov.in for compliance.

AMIT BANSAL, J

DECEMBER 18, 2024

Corrected and uploaded on: 03rd January, 2025

Vivek/-