



2024:DHC:5774



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

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Date of Decision: 30.07.2024

+ C.O. (COMM.IPD-TM) 197/2021

IRVINDER KAUR CHADHA SUPREME AGENCIEPetitioner

Through: Mr. Ajay Amitabh Sumar, Mr. Shraavan Kumar Bansal, Mr. Pankaj Kumar, Mr. Deepak Srivastava, Mr. Risabh Gupta and Mr. Mankaran Ahluwalia, Advs.
M: 9990389539

versus

GARNISH ELECTRONICS PVT. LTD. AND ANR.Respondents

Through: Mr. Harish Vaidyanathan Shankar, CGSC with Mr. Srish Kumar Mishra and Mr. Alexander Mathai Paikaday, Advs.
M: 9810788606
Email: hvscgscdhc@gmail.com

CORAM:**HON'BLE MS. JUSTICE MINI PUSHKARNA****MINI PUSHKARNA, J (ORAL)**

1. The present rectification petition has been filed for removal of trademark 'GARNISH' registered under Application no. 2342490 in Class 07 in favour of Garnish Electronics Pvt. Ltd., i.e., respondent no. 1, for rectification of the register of Trade Marks under Section 47/57/125 of The Trade Marks Act, 1999.



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2. This Court notes that in the previous order, this Court had already recorded that respondent no. 1 had been served through their Trademark Agent and such service is valid in the eyes of law. However, with a view to give opportunity to respondent no. 1, further steps were directed to be taken to serve respondent no. 1, which have been taken by the petitioner.

3. It is noted that by order dated 19th March, 2024, directions had been issued to learned counsel for the petitioner to trace the correct address of respondent no. 1 and take appropriate steps thereon.

4. Learned counsel appearing for the petitioner has drawn the attention of this Court to the alleged assignment deed dated 3rd November, 2010, purportedly in favour of respondent no. 1, to submit that the address of respondent no. 1 has been given in the said document. He submits that pursuant to the directions of this Court vide order dated 19th March, 2024, the petitioner sent another letter by speed post to the respondent no. 1. Thus, an affidavit has been filed on behalf of the petitioner, wherein, it is stated that complete paper book of the petition was sent to the address of respondent no. 1. However, the same has been returned on the ground that no such person resides in the address. The affidavit dated 11th July, 2024 filed by the petitioner reads as under:

“xxx xxx xxx

AFFIDAVIT

I, Rishabh Gupta, aged 29 years, S/o Shri Praveen Kumar Gupta, C/o. United and United, 52, Sukhdev Vihar, Mathura Road, New Delhi – 110025 do hereby solemnly affirm, depose and say as follows:

1. That I am one of the advocate for the petitioner, and therefore, can swear this Affidavit.



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2. That the subject matter rectification petition is pending adjudication before the Hon'ble Court.

3. That on my instructions and in accordance of Hon'ble Court directions my court clerk namely Mr. Jaspal Singh has sent the complete paper book of the present petition at the new address of the Respondent No. 1, i.e., garnish Electronics Pvt., A-37, Rajouri Garden, New Delhi-110027 (Page 351 of the petitioner documents) as available in the court records. The copy of speed post receipts and tracking reports are attached herewith.

4. That the contents of my above Affidavit are true and correct to my knowledge.

xxx xxx xxx"

5. Therefore, it is observed that respondent no. 1 cannot be served on any other address.

6. Accordingly, in view of the aforesaid circumstances, the present petition is taken up for hearing.

7. From perusal of the record, it is to be noted that the details of registration in question, brings forth, that the aforesaid trademark in favour of respondent no.1, was valid only up to 04th June, 2022. Thereafter, the registration of the aforesaid mark, had expired.

8. This Court notes that in terms of Section 25 (4) of The Trade Marks Act, 1999, within one year of the expiry of the trademark, steps can be taken for restoration/renewal of the trademark. However, this Court notes that in the present case the trademark was valid only up to 04th June, 2022, and the one year grace period in terms of Section 25 (4) of the Trade Marks Act, 1999, has already expired in the year 2023. For the sake of convenience, Section 25 (4) of the Trade Marks Act, 1999 is reproduced as under:

"xxx xxx xxx

25. Duration, renewal, removal and restoration of registration –



xxx xxx xxx

(4) Where a trade mark has been removed from the register for non-payment of the prescribed fee, the Registrar shall, **after six months and within one year from the expiration of the last registration of the trade mark**, on receipt of an application in the prescribed form and on payment of the prescribed fee, if satisfied that it is just so to do, restore the trade mark to the register and renew the registration of the trade mark either generally or subject to such conditions or limitations as he thinks fit to impose, for a period of ten years from the expiration of the last registration.

xxx xxx xxx”

(Emphasis Supplied)

9. Furthermore, Rule 60 of the Trade Marks Rules, 2017 also envisages a grace period of one year for restoration and renewal of the trademark registration after its expiry. Rule 60 of the Trade Marks Rules, 2017, reads as under:

“xxx xxx xxx

60. Restoration and renewal of registration. – An application for the restoration of a trademark to the register and renewal of its registration under sub-section (4) of section 25, **shall be made in Form TM-R within one year from the expiration of the registration of the trademark accompanied by the prescribed fee**. The Registrar shall, while considering the request for such restoration and renewal have regard to the interest of other affected persons.

xxx xxx xxx”

(Emphasis Supplied)

10. It is settled law that in case the trademark registration is not renewed within the statutory period, as envisaged in the Trade Marks Act, 1999, and the Trade Mark Rules, 2017, the Registrar of Trade Marks is enjoined upon to remove the trademark in question from the Register of Trade Marks, after following the due procedure.

11. Thus, as per the prescribed procedure, before the expiration of the last



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registration of a trademark, the Registrar of Trade Marks is required to send notice to the registered proprietor, of the date of expiration, and the conditions as to payment of fees, upon which a renewable of registration may be obtained. Section 25 (3) of the Trade Marks Act, 1999, in this regard, reads as under:

“25. Duration, renewal, removal and restoration of registration.—

xxx xxx xxx

(3) At the prescribed time before the expiration of the last registration of a trade mark the Registrar shall send notice in the prescribed manner to the registered proprietor of the date of expiration and the conditions as to payment of fees and otherwise upon which a renewal of registration may be obtained, and, if at the expiration of the time prescribed in that behalf those conditions have not been duly complied with the Registrar may remove the trade mark from the register:

Provided that the Registrar shall not remove the trade mark from the register if an application is made in the prescribed form and the prescribed fee and surcharge is paid within six months from the expiration of the last registration of the trade mark and shall renew the registration of the trade mark for a period of ten years under sub-section (2).

xxx xxx xxx”

12. This court notes that in compliance of Section 25 (3) of the Trade Marks Act, 1999, respondent no. 2, issued a Notice dated 02nd March, 2022, to the respondent no.1, thereby, intimating it about the fact and date of expiry of its registered trademark. The said notice was duly served upon respondent no. 1 and published by respondent no. 2. As noted hereinabove, the period from the date of the Notice, with inclusion of the grace period, has expired in the year 2023.



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13. At this stage, learned counsel appearing for respondent no. 2, i.e., Registry of Trade Marks, submits that he has no objection if the present petition is allowed.

14. In view of the detailed discussion hereinabove, the respondent no. 2 is directed to remove the entry of the impugned mark, as aforesaid, from the Register of Trade Marks.

15. All rights and contentions of the petitioner, on the merits of the dispute, shall remain open.

16. The Registry is directed to supply the copy of the present order to the Office of the Controller General of Patents, Designs and Trade Marks (“CGPDTM”) at llc-ipo@gov.in, for compliance.

17. The present petition is disposed of, in the aforesaid terms.

MINI PUSHKARNA, J

JULY 30, 2024/kr