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

+ **C.O. (COMM.IPD-TM) 154/2024**

**YONEX KABUSHIKI KAISHA TRADING AS YONEX
CO. LTD.**

.....Petitioner

Through: Ms. Rima Majumdar, Ms. Aditi
Umapathy, Ms. Saakshi Khandelwal,
Mrs. Bindra Rana and Mr. Vikrant
Rana, Advs.
M: 9818202368
Email: litigation@ssrana.com

versus

HARSHIT SETIA & ANR.

.....Respondents

Through: Mr. Devashish Bhadauria, Adv. for
R-1.
M: 7838743919
Ms. Rukhmini Bobde, Mr. Amit
Srivastava, Mr. Amlaan Kumar, Mr.
Vinayak Aren and Mr. Jatin, Advs.
M: 9871738029

**CORAM:
HON'BLE MS. JUSTICE MINI PUSHKARNA**

ORDER
25.11.2024

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1. The present petition has been filed under sections 47 and 57 of the Trade Marks Act, 1999 for rectification of the trademark registration no. 5548308 dated 28th July, 2022 in Class 25 for the mark 'AERUS/



' in the name of Mr. Harshit Setia.

2. It is the case of the petitioner that the petitioner has conceptualized and launched a new range of light weight badminton shoes under a coined



mark 'AERUS'. The said trademark has been extensively and continuously been used by the petitioner since 2015, with the earliest registration qua the said mark being in Japan in the year 2015.



3. It is the case of the petitioner that the petitioner has been commercially using the mark 'AERUS/ *AERUS*' for its badminton shoes since the year 2016.

4. Further, to obtain statutory protection in its bonafidely adopted trademark 'AERUS/ *AERUS*' in India, the petitioner has also applied for registration of the said mark with the Trade Marks Registry, details of which, are as follows:

Trade Mark	Application No.	Date	Class	User
AERUS	6456156	May 29, 2024	25	March 29, 2016

5. Thus, it is the case of the petitioner that by virtue of prior adoption, undisputed, and uninterrupted use of the mark 'AERUS/ *AERUS*' by the petitioner internationally as well as in India, the petitioner has the common law right to use the mark 'AERUS/ *AERUS*' in respect of its goods in exclusion to the others. Thus, the present petition has been filed on the ground that respondent no.1 has obtained registration of the mark



‘AERUS/*AERUS*’ fraudulently and clandestinely vide application no. 5548308 dated 28th July, 2022 in Class 25, which is identical to the petitioner’s prior adopted and used mark ‘AERUS/*AERUS*’ for identical goods.

6. Today, respondent no.1 has entered appearance through his counsel and is also present in Court.

7. Learned counsel appearing for respondent no.1 upon instructions from Mr. Harshit Setia, respondent no.1, who is present in Court, submits that the respondent no.1 does not wish to contest the present petition and has no objection if the trademark registration in his favour, is cancelled.

8. Accordingly, it is directed that the trademark registration in the name of Mr. Harshit Setia, vide application no. 5548308 dated 28th July, 2022 in Class 25 for the mark ‘AERUS/*AERUS*’, is hereby cancelled.

9. The Registrar of Trade Marks is directed to carry out the necessary rectification in the Register of Trademarks, accordingly.

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

11. With the aforesaid directions, the present petition is disposed of.

MINI PUSHKARNA, J

NOVEMBER 25, 2024/kr