

OIP-88

IN THE HIGH COURT AT CALCUTTA
ORIGINAL SIDE
(Intellectual Property Rights Division)

IPDTMA/13/2024

DINESH KUMAR CHOWDHURY
VS
THE REGISTRAR OF TRADE MARKS AND ANR

BEFORE:

The Hon'ble JUSTICE RAVI KRISHAN KAPUR

Date : 3rd March, 2025.

Appearance:
Mr. Sanjay Banerjee, Adv.
Ms. Labony Ray, Adv.
...for the appellant

Mr. Arunava Mukherjee, Adv.
Mr. Jeeten Kumar Dhal, Adv.
...for the respondent no. 2

Mr. Dhruv Surana, Adv.
Ms. Smita Sarkar, Adv.
..for the Registrar

The Court: The grievance of the appellant is directed against an order dated 6 August, 2024 whereby an application for rectification filed by the private respondent no.2, dated 5 December 2020 seeking removal of the registration in favour of the appellant has been allowed.

Briefly, the private respondent no.2 is *inter alia* engaged in the business of manufacture of “Dried fruits (Makhana)” and is the registered proprietor of the mark “CHAPPAN BHOG” (label) in respect of the said goods. The respondent no.2 has been openly, uninterruptedly and continuously using the mark “CHAPPAN BHOG” since 1 January, 2011. The respondent no.2 had obtained registration of the said mark on 1 January, 2011 and claims user since 2003. The respondent no.2 also claims to be the proprietor in the artwork

of the label 'CHAPPAN BHOG' having duly obtained registration under the Copyright Act, 1957.

It is alleged that one Mr. Dinesh Kumar Chowhury is doing business under the name and style GANRAJ PAPAD UDYOG for more than a decade and had applied for registration of the device mark "GANRAJ-Chappan Bhog" claiming to be user since 16 March, 2006.

By the impugned order, the Deputy Registrar has allowed the application for rectification and found that the private respondent was not only a prior user of the mark 'CHAPPAN BHOG' but after analyzing both the labels, there was a striking similarity between the two. Consequently, upon consideration of the trade dress, packaging style, colour combination, get up and overall appearance of both the marks, there is a real likelihood of confusion and deception.

The adoption and registration of the impugned mark by the appellant has also been found to be dishonest. The appellant has not only copied the style of writing of the mark 'CHAPPAN BHOG' but has used the same artwork, colour scheme and the deceptively similar packaging. There is no difference in the ingredients of the two products. The trade channels of the two products are also same. The respondent no.2 is also the prior user and has been using the mark since 2003. Accordingly, there is every likelihood of deception and confusion since the impugned mark is deceptively similar to the prior registered mark of the private respondent no.2.

In *Ciba Ltd. vs. M. Ramalingam and S. Subhramaniam* AIR 1958 Bombay 56 it has been held as follows:

“The object of maintaining a trade mark register is that the public should know whose goods they are buying and with whom particular goods are associated. It is therefore essential that the register should not contain trade marks which are identical or which so closely resemble each other that an unwary purchaser may be likely to be deceived by thinking that he is buying the goods of a particular person or a particular firm or a particular industry, whereas he is buying the goods of another person or firm or industry....”

In *Laxmikant V. Patel vs. Chetanbhat Shah & Anr.* (2002) 3 SCC 65 it has been held as follows:

“The law does not permit any one to carry on his business in such a way as would persuade the customers or clients in believing that the goods or services belonging to someone else are his or are associated therewith. It does not matter whether the latter person does so fraudulently or otherwise. The reasons are two. Firstly, honesty and fair play are, and ought to be, the basic policies in the world of business. Secondly, when a person adopts or intends to adopt a name in connection with his business or services which already belongs to someone else it results in confusion and has propensity of diverting the customers and clients of someone else to himself and thereby resulting in injury.”

In view of the above, there is no impropriety nor any other ground which warrants any interference with the impugned order directing rectification. The impugned order is well reasoned and deals with each of the issues raised by the parties. As such, there is no merit in this appeal.

For the above reasons, IPDTMA/13/2024 stands dismissed. However, there shall be no order as to costs.

(RAVI KRISHAN KAPUR, J.)