



OP(TM)No.67 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED: 25.03.2025

CORAM:

THE HONOURABLE MR. JUSTICE SENTHILKUMAR RAMAMOORTHY

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1. Iconic IP Interests LLC
Through its Constituted Attorney,
Mr.Harship Gupta,
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2. The Hershey Company
Through its Constituted Attorney,
Mr.Harship Gupta
19 East Chocolate Avenue
Hershey, Pennsylvania 17033
United States of America
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.. Petitioners

Vs.

1. Dukes Consumer Care Limited,
Unit-2, Plot No.45, SEIE, Kattedan,
Hyderabad-500 077
Also at,
7-4-112, Madhuban Colony Road,
Kattedan, Hyderabad-500 077
Email: info@dukesindia.com, rvrinfo@rvrattorneys.com

2. The Registrar of Trademarks



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Anna Salai, Guindy Industrial Estate,
SIDCO Industrial Estate,
Guindy, Chennai, Tamil Nadu-600 032
Email:chennai@nic.in

.. Respondents

Prayer: This Original Petition (Trademarks) filed under Sections 47 & 57 of the Trademarks Act, 1999, praying to a) allow the present petition; b) direct the Respondent No.2 to remove the entry relating to Application No.1349571 in Class 30 for the Registration of the mark TWO MUCH in Class 30; c)Cost of the proceedings be awarded in favour of the Petitioners.

For Petitioners :Mr.Aditya Rajesh for
M/s.KRIA Law

For Respondents :R1 set *ex parte* by order dated
21.01.2025

Ms.S.P.Arthi, SPC for R2

ORDER

By this petition, the petitioner seeks rectification of the register of trade marks by removing the entry relating to trade mark No.1349571 for the mark "TWO MUCH" in class 30.

2. The petitioners assert that the second petitioner is one of the



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largest candy and sugar confectionery manufacturers in the world. It is further stated that the products of the second petitioner are marketed, distributed and sold under about 90 brand names, including the 'JOLLY RANCHER' mark. According to the petitioner, the trade mark 'JOLLY RANCHER' was adopted in the year 1949 by the husband and wife duo of Bill and Dorothy Harmsen. It is further stated that the second petitioner's subsidiary, Hershey Chocolate and Confectionery Corporation, was granted an exclusive licence to use the 'JOLLY RANCHER' mark in relation to all goods and services. The licensor, Huhtamaki Finance B.V., is said to have thereafter transferred all rights in the marks to the first petitioner in the year 2018. It is also stated that one of the variants of the mark 'JOLLY RANCHER' is 'JOLLY RANCHER TWO-MUCH' and 'TWO-MUCH'.

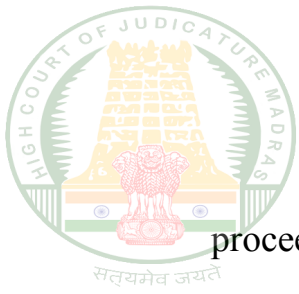
3. The petitioners had applied for registration of the trade mark 'JOLLY RANCHER TWO-MUCH' on 08.02.2024 and, as on date of filing of the petition, the said trade mark had been accepted and advertised. Learned counsel for the petitioner has placed on record a certificate dated 31.10.2024 in respect of the registration of the following mark:



under trademark No.6294502 in Class 30 with effect from 08.02.2024.

4. When the petitioner applied for registration of the word mark 'TWO-MUCH' on 08.02.2025, the respondent's registered trade mark was cited in the examination report. This resulted in the filing of the present rectification petition.

5. In spite of notice being served and the name of the first respondent being printed in the cause list for the hearing on 21.01.2025, the first respondent remained unrepresented. Therefore, by the said order, the first respondent was set *ex parte*. Consequently, the matter is being



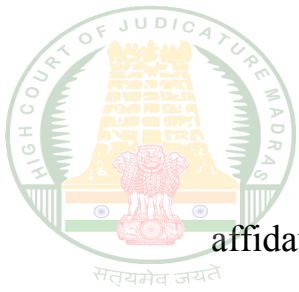
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proceeded with in the absence of the first respondent.

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6. Learned counsel for the petitioner invited my attention to the affidavit by Dhanashree Hrushikesh Karandikar in support of trade mark application No.6294501. He points out that three invoices were annexed thereto to substantiate the contention that the petitioner is using the trade mark 'JOLLY RANCHER TWO-MUCH'. He also invited my attention to the relevant invoices. He further referred to the published articles in the digital media with regard to the launch of products bearing the trade mark "JOLLY RANCHER TWO-MUCH".

7. He proceeded to refer to the registration certificate relating to the impugned mark and pointed out that the impugned mark was registered with effect from 07.04.2005 on a 'proposed-to-be-used' basis. After obtaining such registration, learned counsel submits that the first respondent failed to use the mark in relation to any of its products. In support of this contention, learned counsel refers to print outs from the website of the first respondent which show the sale of several confectionery products under the brand 'DUKES'. By further referring to the affidavit of Mr. Rahul Singh, Investigator, he submits that the said



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affidavit records that the investigator could find no evidence at all of the use of the trade mark 'TWO MUCH' by the first respondent. In these circumstances, learned counsel submits that the entry relating to the impugned trade mark is liable to be expunged.

8. As discussed earlier, the petitioner has placed on record the certificate of registration relating to the trade mark 'JOLLY RANCHER TWO-MUCH'. The registration certificate combined with the status certificate indicates that the mark has been used since 21.12.2023. The registration is in Class 30 in relation to multiple food products, including confectionery products. The petitioner has also placed on record the affidavit of Dhanashree Hrushikesh Karandikar and invoices evidencing the use of the trade mark. Such registration and the examination report citing the first respondent's mark lead to the conclusion that the petitioner qualifies as a “person aggrieved” even for purposes of Section 47 of the Trade Marks Act, 1999 (the TM Act).

9. The registration certificate of the first respondent shows that the trade mark was registered with effect from 07.04.2005 on a 'proposed to



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be used' basis. The first respondent's registered word mark 'TWO MUCH' in Class 30 in relation to chocolates, biscuits, confectionery products and the like. As contended by learned counsel for the petitioner, the printouts from the website contain no reference to the trade mark 'TWO MUCH'. The affidavit of Mr.Rahul Singh, dated 30.08.2024, records that the investigator could find no evidence of the use of the trade mark “TWO MUCH” either on social media or in the first respondent's brochure.

10. As per Section 47 of the TM Act, an entry in relation to a trade mark is liable to be removed from the register of trademarks either if the trade mark was registered without the *bona fide* intention of using the mark provided the registration was not followed by *bona fide* use or if the trade mark has not been used for a continuous period of 5 years from the date of registration, and such 5 year period ended 3 months prior to the filing of the rectification petition. As discussed, the respondent's registration was with effect from 07.04.2005, and the registration certificate is dated 31.01.2007. If computed from the date of registration certificate, the 5 year period ended on or about 30.01.2012. The present petition was lodged on 10.10.2024. A period considerably in excess of the statutorily prescribed period has elapsed. The petitioner has placed on



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record the affidavit of non-use adverted to above. In spite of service of notice, the first respondent has failed to contest the proceedings and place on record any evidence of use. In these circumstances, the petitioner is entitled to succeed.

11. For reasons set out above, OP(TM) No.67 of 2024 is allowed by directing the Registrar of Trademarks to remove the entry relating to trade mark No.1349571 in Class 30 in respect of the trade mark “TWO MUCH” from the register of trade marks. This action shall be completed within four weeks from the date of receipt of a copy of this order. There shall be no order as to costs.

25.03.2025

Index : Yes/No
Internet : Yes/No
Neutral Citation : Yes/No
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To



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The Registrar of Trademarks

Anna Salai, Guindy Industrial Estate,

SIDCO Industrial Estate,

Guindy, Chennai, Tamil Nadu-600 032

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SENTHILKUMAR RAMAMOORTHY J.

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