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

+ **C.O. (COMM.IPD-TM) 108/2025**

PUSHPDEEP COTEX PRIVATE LIMITEDPetitioner

Through: **Mr. P.K. Jain, Adv.**

versus

ANOOP AGARWAL & ANR.

.....Respondents

Through: **Mr. Uvik Kumar, Mr. Nishant, Adv.**
for R-1.

**Ms. Nidhi Raman with Mr. Om Ram
& Mr. Mayank Sansanwal, Adv. for
R-2.**

CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

ORDER

% **24.09.2025**

1. The present petition has been filed under Section 57 of the Trade Marks Act, 1999 ['Act of 1999'] for rectification of the Register of the Trade marks for cancelling the Respondent No.1's trademark device/label



bearing registration No. 5925080 dated 06.05.2023 in Class 26. It is stated that the Respondent No.1 has employed a colour



scheme in the said label which now appears as ‘



CASE SET UP BY THE PETITIONER

2. Mr. P.K. Jain, learned counsel for the Petitioner has set up the Petitioner's case as under: -

2.1 The Petitioner adopted the trademark 'Rani' in the year 1985 in respect of saree falls and blouse textile pieces. The earliest date of registration for 'Rani' bearing TM No.925145 is 16.05.2000. The various other marks [including 'Rachna'] of the Petitioner have been tabularized in paragraph 2 of the petition.

2.2 Since the year 2007, the Petitioner has been continuously using the artistic labels for its trademarks 'Ragini' and 'Rachna' created by a firm, M/s Aman Art Gallery. The Petitioner had paid a valuable consideration for the said work. The receipt issued by the author along with a copy of the artistic work has been placed on record. The labels/trademark device used by the Petitioner are reproduced as under: -



2.3 The Petitioner's sales for the year 2024-2025 was Rs.18.33 crores and advertisement expenses for the year 2024-2025 was Rs.14.63 lakhs.

2.4 The Petitioner gained knowledge of Respondent No.1's mark when Respondent No. 1 began selling saree falls under the mark 'Ragini' with a



label - ['impugned label'], which is deceptively similar in



colour, arrangement and writing style to the Petitioner's label.

2.5 The Respondent No.1's impugned label is registered in Class 26 bearing registration number 5925080 dated 06.05.2023. It is stated that the writing style, artistic feature and colour combination of the Respondent No. 1's impugned label are deceptively and confusingly similar to the Petitioner's trademark label for 'Rani' and 'Rachna'.

2.6 The press cuttings showing the advertisements of the Petitioner's products with the use of its marks have been placed on record; and more specifically a caution notice issued on 01.11.2021 in the newspaper Dainik Bhaskar has also been placed on record. The said caution notice specifically reproduces the Petitioner's label bearing its trademark 'Rani' and 'Rachna'. The said caution notice is reproduced herein below: -



2.7 It is contended that the Respondent No. 1's impugned label mark



could not have been registered as it violates the copyrights of the Petitioner. In this regard reference is placed on Section 11 of the Act of 1999.

2.8 In view of the aforesaid, the Petitioner is seeking cancellation of the Respondent No. 1's trademark device/label.

CASE SET UP BY THE RESPONDENT NO. 1

3. In reply, Mr. Uvik Kumar, learned counsel for the Respondent No. 1 states that the Respondent No. 1's label mark 'Ragini' is distinct from the Petitioner's mark 'Rani' and 'Rachna'. He states that the similarities in the two labels are not likely to create any confusion or deceptive similarity.

3.1 The Respondent No. 1 adopted the trademark 'RAGINI SMILE



POLYESTER SAREE FALL/ [i.e., 'impugned label'] in February 2022 for saree fall products and other allied goods, with honest and bona fide intention.

3.2 The Respondent No. 1's TM application no. 5925080 was for proposed-to-use-basis and was granted without objection from the Trade Mark Registry. The Trade Mark Registry did not find any trademark identical and similar to Respondent No. 1's trademark and therefore proceeded with the registration of the same, and it is still valid and subsisting to date.

3.3 It is contended that the Respondent No.1 mark 'Ragini' is phonetically, visually and conceptually distinct from the Petitioner's marks 'Rachna' and 'Rani'. There exists no likelihood of confusion in the minds of the consuming public, nor is there any deceptive similarity between the



respective marks.

4. This Court has heard the learned counsels for the parties and perused the record.

5. The Petitioner is the registered proprietor of the trademark 'Rani', registered under TM No. 925145 dated 16.05.2000 in Class 26. The trademark 'Rani' [in Hindi] is also registered in favour of the Petitioner under TM No. 2032873 dated 05.10.2010 in Class 26.

6. The artistic work of the Petitioner's label has been slavishly copied by the Respondent No. 1.

- (i) The style in which the word 'Rani' is written has been copied exactly by the Respondent No. 1 while writing its mark 'Ragini'. The style in which the word 'Rani' is written by the Petitioner is artistic and not commonplace.
- (ii) The tagline 'SMILE POLYSTER SAREE FALL' appears in the Petitioner's label below its mark 'Rani' and in an identical manner Respondent No. 1 has copied the same tagline 'SMILE POLYSTER SAREE FALL' and placed beneath its mark Ragini.
- (iii) The Petitioner's label is in the color combination yellow and red, so also Respondent No. 1's color combination is in yellow and red. The picture of a lady is on the right side of the Petitioner's label and similarly the picture of a girl is on Respondent No.1 impugned label.
- (iv) The Petitioner's label on the top right-hand corner has an element 'New Pack' and similarly Respondent No. 1's label also has the same element 'New Pack' on the right-hand corner.



- (v) The Petitioner's label has a tagline 'A QUALITY PRODUCT FROM THE HOUSE OF RACHNA' and Respondent's label also has an identical tagline 'A QUALITY PRODUCT FROM THE HOUSE OF RAGINI TEXTILE'.

7. The similarities in the labels of the Petitioner and Respondent No. 1 are overwhelming. There is literally no dissimilarity between the labels except for the names 'Rani' and 'Ragini'. However, since Respondent No.1's mark 'Ragini' is written in font and lettering style which is identical to Petitioner's mark 'Rani'; this distinction also loses significance and on a visual impression both the labels appear to be identical.

8. The similarities in the label of the Petitioner and Respondent No. 1 make them near identical and the only conclusion that this Court can reach is that Respondent No. 1 has copied the trademark label and artistic work of the Petitioner.

9. It would be relevant to refer to paragraph 60 and 63 of the judgment of the Coordinate Bench of this Court in **Colgate Palmolive Co. v. Anchor Health and Beauty Care (P) Ltd.**¹, which reads as under:

"60. Conscious imitation or substantial imitation of colour combination or getup or layout of container again bares the design of the defendant in causing confusion in the minds of customers. The Court is not required to find out whether there is confusion or deceptiveness. The test is whether there is likelihood of confusion or deceptiveness in the minds of unwary customers irrespective of dissimilarities in the trade name.

...

63. Significance of trade dress and colour combination is so immense that in some cases even single colour has been taken to be a trademark to be protected from passing off action. Colour

¹ 2003 SCC OnLine Del 1005



combination is a trademark within the definition of the TMM Act as there is no exclusion in the definition. Even a single colour has been held to be a trade mark. There may be exception also. Exception is that where the colour cannot be protected as the blue colour is for the ink and red colour is for the lipstick. Red and white has nothing to do with the pink. Teeth as white line and gum as pink colour alone at least sometimes can meet the basic requirements as a trademark. Colour depletion theory is unpersuasive only in cases where a blanket prohibition is being sought.”

[Emphasis Supplied]

10. The Petitioner has placed on record the details of its registration for its mark ‘Rani’ and ‘Rachna’ and it has also placed on record the evidence



proving that it adopted the label in the year 2007 much prior to the adoption of the impugned label by Respondent No. 1 in the year 2023. The caution notice issued by the Petitioner in the year 2021 proves beyond doubt the existence of its label prior to Respondent No. 1’s adoption in 2023.

11. At this stage it would be apposite to refer to the judgment passed by the Supreme Court in **S. Syed Mohideen v. P. Sulochana Bai**², wherein the Court while elucidating the law on the rights of a prior user of mark, held as under:

“30.4. Section 34 of the Trade Marks Act, 1999 provides that nothing in this Act shall entitle the registered proprietor or registered user to interfere with the rights of prior user. Conjoint

² (2016) 2 SCC 683



reading of Sections 34, 27 and 28 would show that the rights of registration are subject to Section 34 which can be seen from the opening words of Section 28 of the Act which states “Subject to the other provisions of this Act, the registration of a trade mark shall, if valid, give to the registered proprietor...” and also the opening words of Section 34 which states “Nothing in this Act shall entitle the proprietor or a registered user of registered trade mark to interfere....” **Thus, the scheme of the Act is such where rights of prior user are recognised superior than that of the registration and even the registered proprietor cannot disturb/interfere with the rights of prior user. The overall effect of collective reading of the provisions of the Act is that the action for passing off which is premised on the rights of prior user generating a goodwill shall be unaffected by any registration provided under the Act.** This proposition has been discussed in extenso in *N.R. Dongre v. Whirlpool Corpn.* [*N.R. Dongre v. Whirlpool Corpn.*, 1995 SCC OnLine Del 310 : AIR 1995 Del 300] wherein the Division Bench of the Delhi High Court recognised that the registration is not an indefeasible right and the same is subject to rights of prior user. The said decision of *Whirlpool* [*N.R. Dongre v. Whirlpool Corpn.*, 1995 SCC OnLine Del 310 : AIR 1995 Del 300] was further affirmed by the Supreme Court of India in *N.R. Dongre v. Whirlpool Corpn.* [*N.R. Dongre v. Whirlpool Corpn.*, (1996) 5 SCC 714]”

[Emphasis Supplied]

12. While referring to **S. Syed Mohideen v. P. Sulochana Bai** (supra), the Supreme Court in **Neon Laboratories Ltd. v. Medical Technologies Ltd.**³, held that the rights of the prior user will override the rights of the subsequent user, even if the subsequent user has obtained a registration of its trademark. The relevant paragraph reads as under: -

“11. ... The “first in the market” test has always enjoyed pre-eminence. We shall not burden this judgment by referring to the

³ (2016) 2 SCC 672



several precedents that can be found apposite to the subject. In the interest of prolixity we may mention only *N.R. Dongre v. Whirlpool Corpn.* [*N.R. Dongre v. Whirlpool Corpn.*, (1996) 5 SCC 714] and *Milmet Oftho Industries v. Allergan Inc.* [*Milmet Oftho Industries v. Allergan Inc.*, (2004) 12 SCC 624]. In *Whirlpool* [*N.R. Dongre v. Whirlpool Corpn.*, (1996) 5 SCC 714] , the worldwide prior user was given preference nay predominance over the registered trade mark in India of the defendant. In *Milmet* [*Milmet Oftho Industries v. Allergan Inc.*, (2004) 12 SCC 624] , **the marks of pharmaceutical preparation were similar but the prior user worldwide had not registered its mark in India whereas its adversary had done so. This Court approved the grant of an injunction in favour of the prior user.** Additionally, in the recent decision in *S. Syed Mohiden v. P. Sulochana Bai* [*S. Syed Mohiden v. P. Sulochana Bai*, (2016) 2 SCC 683 : (2015) 7 Scale 136] this Court has pithily underscored that the rights in a passing-off action emanate from common law and not from statutory provisions, **nevertheless the prior user's rights will override those of a subsequent user even though it had been accorded registration of its trade mark. ...”**

[Emphasis Supplied]

13. In overall conspectus of the facts and circumstances of this case and the law settled in the aforesaid judgments; this Court is of the considered opinion that the Petitioner established the case for cancellation of the Respondent No. 1' impugned label.

14. The Petitioner has been continuously and extensively using its



trademark label

since the year 2007, which is in fact



much prior to the adoption of the impugned label by the Respondent No. 1. Thus, it is evident that Respondent No. 1 is a subsequent user of the impugned label and that Respondent No. 1 has adopted the impugned label with a dishonest and malafide intention.

15. In view of the aforesaid, it is accordingly ordered that the trademark device/label registered under TM no. 5925080 dated 06.05.2023 in favour of Respondent No. 1 is cancelled.

16. The Registrar of Trade Marks is directed to rectify and remove the aforesaid entry from the register of the Trade Marks, within a period of four (4) weeks.

17. With the aforesaid directions, this petition, along with pending applications, if any, stands disposed of.

MANMEET PRITAM SINGH ARORA, J

SEPTEMBER 24, 2025/gm/MG