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(T)OP(TM) No.250 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.02.2026

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

(T)OP(TM) No.250 of 2023

and

(TM) A No.13 of 2026

Tibbs Food Private Limited
(A Partnership Firm) Tibbs Mansion,
Dr.Charatsingh Compound,
Dr.Charatsingh Colony,
Andheri Kurla Road, Mumbai – 400 093.
[Amended as per order dated 22.10.2024
made in (TM) A No.86/2024 in (T)OP
(TM) No.250/2023]

.... Petitioner

Vs.

1.D-LITE FRANKIES AND FOODS PRIVATE LIMITED,
8-3-169/167 and 168,
HF Nagar, Boarabanda,
Near Gaffor Bakery, Hyderabad – 500 018.

2.The Registrar of Trade Mark,
Trade Mark Registry,
Intellectual Property Office,
Intellectual Property Office Building,
GST Road, Guindy, Chennai – 600 032.

.... Respondents

[R1 amended as per order dated 19.02.2026]

Transferred Original Petition filed under Sections 47, 57 & 125 of the Trade Mark Act, 1999, praying for removal of Trade Mark Application No.2001235 in Class 30 for Mark/Device “d-lite Frankie FOOD PVT. LTD”



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For Petitioner : Mr.R.Sathish Kumar
For Respondents: Ms.S.Shruthikka [R1]
Mr.G.Subramanian,
Central Government Counsel [R2]

ORDER

This petition was filed for removal of the trade mark application Trade Mark Application No.2001235 in Class 30 for Mark/Device “D-Lite Frankies and Foods Private Limited”.

2. When this petition came up for hearing on 18.12.2025, this Court passed the following order:

“When the matter was taken up for hearing today, the learned counsel appearing on behalf of the first respondent came up with a startling fact. The learned counsel submitted that the first respondent company has been struck off by the Registrar of Companies in the year 2019 itself and it is non-existent thereafter and even before that took place, the first respondent company, through a deed of assignment dated 20.12.2018, had assigned the trade mark D-lite Frankie in favour of the Director of the company in his individual capacity. The learned counsel, therefore, sought for permission to enable the owner of the trade mark to file an impleading petition in this case.

2. The learned counsel appearing for the petitioner brought to the notice of this Court that the trade mark was renewed in the name of the first respondent company on 23.09.2019 and whereas, it is now claimed that the company has assigned the trade mark in favour of its Director as early as on 20.12.2018. The learned counsel also brought to the notice of this Court the counter affidavit filed on behalf of the first respondent on 22.01.2024 carrying the seal of the first respondent and the first respondent being represented by its Director. It was therefore contended that if the first respondent ceased to exist from the year 2019, a non-existent company could not have filed a counter in the year 2024.



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3. This Court was inclined to pass final orders in this petition today. But, however, the learned counsel for petitioner sought for some time to verify and to see if there was actually any assignment of the trade mark and also to ascertain as to whether the offending trade mark is being put to use by any other person.

4. The learned Central Government Standing Counsel appearing on behalf of the second respondent shall also verify the facts and report before this Court.

5. Post this petition on 08.01.2026 under the caption ‘for orders’.”

3. Pursuant to the above order, the matter was again listed for hearing on 08.01.2026 and the following order came to be passed by this Court:

“After the earlier order was passed on 18.12.2025, the first respondent, which is a non-existent entity as on today, seem to have engaged a new counsel.

2. Learned counsel for first respondent seeks some time to clarify the various queries raised by this Court in the earlier order dated 18.12.2025.

3. Learned counsel for petitioner, on instructions submitted that an application has been filed by an individual, who happens to be the Director of the first respondent company for bringing himself on record as proprietor of the trade mark during August’2025. Learned counsel further submitted that sporadically, the offending trademark is also being put to use by the said individual and in violation of the order of the interim injunction passed in a pending civil suit at Hyderabad.

4. Learned counsel for first respondent shall take instructions and clarify the various queries posed by this Court during the next date of hearing.

Post this petition under the same caption on 22.01.2026.”



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4. After the above order was passed, an affidavit was filed by one Mr.Khaja Moinuddin Mohammed. Based on the same, learned counsel on either side were heard and the following order came to be passed on 22.01.2026.

“Pursuant to the queries posed by this Court in the earlier orders passed on 08.12.2025 and 08.01.2026, the matter was listed for hearing today.

2. Ms.Durga Bhat, learned counsel, who appeared on behalf of the 1st respondent filed the affidavit of Mr.Khaja Moinuddin Mohammed along with the typed set of papers.

3. The learned counsel by pointing out to the affidavit submitted that initially M/s.D-Lite Frankie Food Private Limited submitted an application for registration of the device mark under Class 30 on 29.07.2010. The impugned mark was accepted and advertised and ultimately, it was registered on 21.12.2015 in the name of M/s.D-lite Frankie Foods Private Limited. The name of the entity was changed as M/s.D-lite Frankies and Foods private Limited, which is evident from Form TM-33 dated 04.11.2016. Consequently, the registration in the Trade Mark registry was changed in the name of M/s.D-lite Frankies and Foods Private Limited. It is this entity which had assigned the trade mark in favour of Mr. Khaja Moinuddin Mohammed on 20.12.2018. The rectification application came to be filed by the petitioner on 14.12.2016 for removal of the trade mark against M/s.D-lite Frankie Food Private Limited. The renewal of the trade mark in favour of M/s.D-lite Frankies and Foods Private Limited took place on 23.09.2019.

4. What is evident from the affidavit filed before this Court and the documents relied upon is that the petitioner was under the presumption that the trade mark continued in the name of the 1st respondent and whereas the name of the 1st respondent had already changed as M/s.D-Lite Frankies and Foods Private Limited and the said change has also been effected in the trade mark Registry as early as in November 2016. Hence, the petitioner was prosecuting the rectification application against a wrong entity.



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5. To further add to the confusion, the assignment that had already taken place in favour of Mr.Khaja Moinuddin Mohammed on 20.12.2018 by M/s.D-Lite Frankies and Foods Private Limited, was not even taken into consideration and renewal of the trade mark had taken place in the name of M/s.D-lite Frankies and Foods Private Limited on 23.09.2019. In short, a renewal which ought to have taken place in the name of Mr.Khaja Moinuddin Mohammed had happened in the name of M/s.D-lite Frankies and Foods Private Limited. Obviously, the trade mark registration office was not aware of these developments and it was brought to the notice of the trade mark Registry by Mr. Khaja Moinuddin Mohammed only on 22.08.2025.

6. Going by the records, the petitioner cannot prosecute the rectification application either against the 1st respondent or against M/s.D-Lite Frankies and Foods Private Limited and at the best, it can be prosecuted only against Mr. Khaja Moinuddin Mohammed.

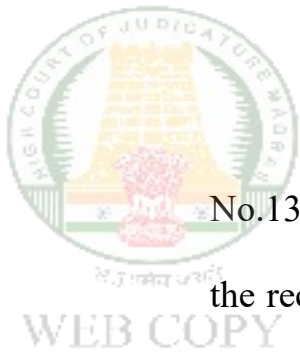
7. This Court suggested to the learned counsel for the petitioner that either the entire exercise undertaken by the petitioner has to be dropped and fresh rectification application has to be submitted against Mr.K. Khaja Moinuddin Mohammed or the said Mr.K. Khaja Moinuddin Mohammed will have to be impleaded as a respondent in this petition.

8. The learned counsel for the petitioner seeks for some time to take instructions.

9. All the above happenings does not in any way justify the 1st respondent filing a counter in this petition and Mr. Khaja Moinuddin Mohammed ought not have represented the 1st respondent since the entire events that took place were within the knowledge of the said person. This illegality cannot be swept under the carpet.

10. Post this petition under the same caption on 05.02.2026.”

5. When the matter was taken up for hearing today, learned counsel for petitioner brought to the notice of this Court that (TM) Application



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No.13 of 2026 has been filed to amend the long and short cause title in the rectification petition by substituting the first respondent from “D-Lite Frankie Food Private Limited, #8-3-168/E/1/31, Srinivas Nagar Colony, Rajiv Nagar, Near Church, Yusifguda, Hyderabad” to “D-LITE FRANKIES AND FOODS PRIVATE LIMITED, 8-3-169/167 and 168, HF Nagar, Boarabanda, Near Gaffor Bakery, Hyderabad – 500 018.” This application has been filed in view of the fact that the name of first respondent has been changed and such change in name has also been effected in the Trade Mark Registry on 26.04.2018.

6. There will be no difficulty in allowing this application since ultimately the petitioner has to necessarily seek rectification only as against the proprietor in whose name the trade mark stands. As on date, it stands in the name of “M/s.D-Lite Frankies and Foods Private Limited”. Hence, the said application stands allowed and necessary amendment shall be carried out in the short and long cause title.

7. The first respondent is not prosecuting this petition. The only person, who is claiming right over the trade mark is Mr.Khaja Moinuddin Mohammed. According to him, the trade mark was assigned in his favour on 20.12.2018 by the registered proprietor and for some reason, he has



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not taken any steps to get his name registered as the proprietor of the trade mark in spite of the assignment made in his favour. Curiously, he has brought it to the notice of the trade mark registry only on 22.08.2025. Therefore, as on today, Mr.Khaja Moinuddin Mohammed cannot be considered as the registered proprietor of the trade mark and going by records, it is only M/s.D-Lite Frankies and Foods Private Limited, which is the registered proprietor of the trade mark.

8. Even in the previous hearing, it was brought to the notice of this Court that the said entity has already been struck off and this entity is no longer in existence in the eye of law. Therefore, no useful purpose will be served in retaining the registration of the trade mark in the name of an entity, which is not even in existence.

9. In the light of the above discussion, prosecuting this petition as against the first respondent (amended *vide* order dated 19.02.2026) is like whipping a dead horse. The first respondent can no longer be considered to be the registered proprietor of the trade mark and such registration, as on today, is non-est in the eye of law.



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10. Learned counsel, who appeared for Khaja Moinuddin Mohammed submitted that if the trade mark, which has been registered in the name of the entity is declared to be non-est, Mr.Khaja Moinuddin Mohammed will not be able to claim any right in spite of the trade mark being assigned in his name.

11. In the considered view of this Court, Mr.Khaja Moinuddin Mohammed has to blame himself for facing a situation like this. After the assignment had taken place in the year 2018, nothing prevented Khaja Moinuddin Mohammed to take steps to register his name as the proprietor of the trade mark. However, he allowed the trade mark to continue in the name of the entity. Therefore, there is no use in Mr.Khaja Moinuddin Mohammed complaining regarding declaration of the registered trade mark in the name of a non-existent entity, as non-est in the eye of law.

12. The upshot of the above discussion leads to the only conclusion that as on today, the first respondent company (amended *vide* order dated 19.02.2026) is non-existent and hence, the trade mark registered in the name of first respondent also becomes non-est in the eye of law. Hence, by operation of law, the trade mark will cease to continue in the name of the first respondent company. This situation is akin to removing the trade



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mark as sought in the present petition. If at all, Mr.Khaja Moinuddin Mohammed claims any right over the trade mark by virtue of the assignment, he has to work out his remedy independently in the manner known to law. As on today, it is not necessary for the petitioner to seek any remedy as against Mr.Khaja Moinuddin Mohammed.

This petition is disposed of accordingly. The second respondent is directed to act upon this order and remove the registered trade mark that stands in the name of first respondent entity (amended *vide* order dated 19.02.2026). This process shall be completed within a period of four (4) weeks from the date of receipt of a copy of this order.

19.02.2026

Note:

Registry is directed to carry out necessary amendment in all the concerned records.

Index:yes/no

Speaking Order/Non-speaking Order

NCC:yes/no

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N.ANAND VENKATESH, J.

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