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

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Date of Decision: 22nd January, 2026

+ C.O. (COMM.IPD-TM) 166/2025

YASHASVI HAVELIA

.....Petitioner

Through: Mr. Anshuman Upadhyay, Mr.
Naseem Sheikh, Mr. Rahul Singh and Ms.
Shubhangi Shaswat, Advocates.

versus

PRABHTEJ BHATIA AND ANR.

.....Respondents

Through: None for Respondent No.1.
Ms. Nidhi Raman, CGSC with Mr. Om Ram and
Mr. Arnav Mittal, Advocates for R-2.

CORAM:**HON'BLE MS. JUSTICE JYOTI SINGH****JUDGEMENT****JYOTI SINGH, J. (ORAL)****I.A.17044/2025 (Exemption)**

1. Allowed, subject to all just exceptions.
2. Application stands disposed of.

C.O. (COMM.IPD-TM) 166/2025 & I.A. 17043/2025

3. This rectification petition has been filed on behalf of the Petitioner under Sections 47 and 57 of the Trade Marks Act, 1999 ('1999 Act') for removal of entry in respect of trademark 'BANDOOK' under Registration No.3762319 in Class 33 in respect of alcoholic beverages, excluding beer, in the name of Sh. Prabhtej Bhatia, trading in the name of Raipur Bottling Company/Respondent No.1.
4. To the extent necessary, case of the Petitioner is that it is actively



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engaged in the business of conceptualizing, developing and marketing a range of beverages including beer and non-alcoholic drinks. Petitioner adopted the trademark 'BANDOOK' as an arbitrary and distinctive word intended to function as the core identifier for its beverage line. Petitioner secured registration of the mark in Class 32 bearing Registration No.6240831 with effect from 30.12.2023.

5. It is averred that prior to filing the present petition, Petitioner conducted a public search on the portal of Trade Marks Registry and discovered that the impugned mark 'BANDOOK' was registered under Class 33 in favour of Respondent No.1. The discovery was made when Petitioner attempted to expand its portfolio and filed its application for registration of mark 'BANDOOK' in Class 33 bearing Application No.7076325.

6. It is averred that as per Petitioner's information and belief, Respondent No.1 has never used the impugned mark 'BANDOOK' in the course of trade in relation to goods for which it is registered and does not have any genuine intent to use it, which is evident from the fact that for a period exceeding five years, the mark has not been put to use for goods in Class 33, which is contrary to letter and spirit of the 1999 Act and therefore, is liable to be removed from the Register of Trade Marks under Section 47(1)(b) of the 1999 Act.

7. Learned counsel for the Petitioner submits that Petitioner is a Director/Partner in various business entities engaged in manufacturing, selling and developing sale of alcoholic beverages including beer and also has a line of non-alcoholic beverages, as a part of its business profile. Petitioner independently conceived and adopted trademark 'BANDOOK' as a distinctive and arbitrary mark and *bonafidely* applied for registration in



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Class 33 vide Application No.7076325 on 21.06.2025 in respect of alcoholic beverages, excluding beer. Petitioner already holds registration for the said mark in Class 32 for beer and non-alcoholic beverages. The commercial operations under the mark are at an advanced preparatory stage and manufacturing is proposed to commence on completion of requisite statutory licensing and regulatory formalities.

8. It is submitted that an objection was raised by the Registrar earlier under Section 9(1)(a) of the 1999 Act and upon receipt of the reply from the Petitioner that the mark does not describe the goods and instead distinguishes Petitioner's goods from others in the market, objection was waived and registration was granted in Class 32. No conflicting mark was cited and no third party opposition was filed. The only impediment, therefore, in registration in Class 33 is the impugned mark of Respondent No.1, which deserves to be removed owing to 'non-use' for over 5 years.

9. It is submitted that Petitioner is entitled to file this petition as 'person aggrieved' since business interest of the Petitioner would be substantially damaged if the mark remains on the Register and Petitioner has substantial interest in its removal, as held by the Supreme Court in **Infosys Technologies Ltd. v. Jupiter Infosys Ltd., (2011) 1 SCC 125**. It is further submitted that despite being served, Respondent No.1 has chosen not to appear and contest the present proceedings and deserves to be proceeded *ex parte*. On 10.12.2025, learned Registrar recorded that despite service on 19.08.2025, Respondent No.1 neither put in appearance nor filed its reply and consequently, its right to file reply was closed. Once Respondent No.1 has failed to file reply, the averments in the petition are deemed to be admitted. In **DORCO Co. Ltd. v. Durga Enterprises and Another, 2023 SCC OnLine Del 1484** and **Kiranakart Technologies Private Limited v.**



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Mohammad Arshad and Another, 2025 SCC OnLine Del 1401, this Court held that onus of proving 'non-user' is on person who pleads the same, however, once the applicant pleads 'non-user', in the absence of specific denial by the Respondent, the allegation of 'non-user' will be deemed to be admitted.

10. It is urged that in the present case Petitioner has categorically pleaded that Respondent No.1 has not used the impugned mark 'BANDOOK' for goods in Class 33 despite obtaining registration on 23.02.2018 and there is no known commercial activity, digital presence or public reference to any product sold by Respondent No.1 under the mark 'BANDOOK' in Class 33 and the very fact that no steps have been taken towards obtaining excise approvals, manufacturing licences or brand label registrations under applicable laws fortifies that registration was taken only to squat as opposed to actual use. Specific averments to this effect have been made in the petition but Respondent No.1 has consciously chosen to remain absent from the proceedings and not file a reply.

11. It is argued that Section 47(1)(b) expressly provides that registered trademark may be removed from the Register where up to a date three months prior to the date of filing of the rectification petition, the same is not used in relation to those goods or services in respect of which it is registered for a continuous period of at least five years from the date on which the mark is entered in the Register. Respondent No.1 has no *bona fide* intention to use the mark and therefore, the mark is wrongly remaining on the Register for over 7 years. Petitioner has applied for registration of the trademark 'BANDOOK' in Class 33 on 'proposed to be used' basis and the impugned mark is the sole reason for provisional refusal and therefore, Petitioner is 'person aggrieved' under Section 47(1)(b) of the 1999 Act,



entitled to file this rectification petition. Reliance is placed by learned counsel on the judgments of this Court in *Russell Corp Australia Pty. Limited v. Ashok Mahajan and Another*, 2023 SCC OnLine Del 4796; *Shell Transource Limited v. Shell International Petroleum Company Ltd.*, 2012 SCC OnLine IPAB 29; and *Kiranakart (supra)*, to buttress the plea that a registered mark is liable to be taken off of the Register of Trade Marks if up to a date three months prior to the date of filing of the rectification petition, the same is not used in relation to those goods/services in respect of which it is registered for a continuous period of at least five years from the date on which the mark is entered in the Register.

12. I have heard learned counsel for the Petitioner and perused the documents on record.

13. Respondent No.1 was served through speed post on 19.08.2025 and chose not to contest this petition. Right of Respondent No.1 to file the reply was closed on 10.12.2025 and no steps have been taken either to challenge the order or to enter appearance thereafter. Even today, none is present on behalf of Respondent No.1. It appears that Respondent No.1 is not interested in contesting this petition and is accordingly set *ex parte*.

14. As no reply is filed to the present petition, the averments in the petition are deemed to be admitted. In *DORCO (supra)*, while dealing with the rectification petition, this Court referring to the judgment in *Shell Transource (supra)* held as follows:-

“19. In the judgment in Shell Transource Limited v. Shell International Petroleum Company Ltd., 2012 SCC OnLine IPAB 29, it was observed by the IPAB that the onus of proving “non-user” is on the person who pleads the same. However, when the applicant pleads “non-user”, the respondent must specifically deny it. Therefore, in the absence of a specific denial, it was held that the allegations of “non-user” stood admitted.”

15. The same view has been taken by this Court in *Kiranakart (supra)*. It



is thus settled that if the Petitioner pleads ‘non-user’, the onus of proving is on the Petitioner. However, if the Respondent does not specifically deny the pleading, the allegation of ‘non-user’ will stand admitted and the impugned trademark will be liable to be removed from the Register of Trade Marks on account of ‘non-user’ as contemplated under Section 47(1)(b) of the 1999 Act.

16. In *Russell Corp (supra)* and *Kiranakart (supra)*, this Court also took the view that if investigation by an independent investigator reveals that impugned mark was not used for the goods or services in the class for which it is registered and a categorical stand to this effect is taken in the petition, which is not refuted or denied by the Respondent, the impugned mark is liable to be removed owing to ‘non-use’. In this context, I may refer to the following passages from the judgment in *Kiranakart (supra)*:-

“12. A Coordinate Bench of this Court, in Russell Corp Australia Pty Ltd. v. Shri. Ashok Mahajan, (2023) 4 HCC (Del) 301, had observed as follows:

“22. A perusal of the impugned mark in the present case would show that the application for the said impugned mark was filed on 27th February, 2007 and the same was granted on 18th March, 2010. The mark relates to sporting articles. The affidavit of the investigator would show that the clear information received from the Respondent was that the mark ‘SHERRIN’ was discontinued since the year 2010. The present petition was filed in the year 2020 before the IPAB. This affidavit filed by the investigator as also the petition has gone unrebutted by the Respondent. Thus, the requirement of the period of five years & three months stands satisfied.

...

24. ...Under such circumstances, in the absence of denial by the Respondent, the Court has no reason to disbelieve the pleadings as also the investigator's affidavit on record. The Respondent has chosen not to appear in the matter despite being served. Specific court notice was issued even to the lawyer/trademark agent of the Respondent.

[Emphasis supplied]

13. The aforesaid observations are fully applicable in the present case. The petitioner, in the present case, has filed an affidavit of the authorized



representative of an independent investigating agency to support its averments with regard to non-use of the impugned mark by the respondent no. 1 for the aforesaid services in class 35 for nearly 8 years up to the date of filing of the present petition.

14. A perusal of Section 47(1)(b) of the Act would reveal that a registered trade mark is liable to be taken off the Register of Trade Marks if up to a date three months prior to the date of filing of the rectification petition, the same is not used in relation to those goods/services in respect of which it is registered for a continuous period of at least five years from the date on which the mark is entered in the Register of Trade Marks.

15. While dealing with the issue of non-use of a registered mark by the registered proprietor, this Court, in Russell Corp (supra), had held as follows:

25. In the context of non-use, it is the settled legal position that use has to be genuine use in the relevant class of goods and services. Unless the non use is explained by way of special circumstances, the mark would be liable to be removed for non-use. In the present case, no special circumstances have been cited and, in these facts, the mark would be liable to be removed on the ground of non-use itself.”

[Emphasis supplied]

16. The petitioner has continuously and extensively been using the ZEPTO marks since July 2021 in India and, by virtue of their widespread advertisement and promotion, has acquired immense goodwill and reputation thereunder. On the other hand, the respondent no. 1 has not made any use the impugned mark in relation to the aforesaid services in class 35. Despite the aforesaid, the respondent no. 1 opposed the petitioner's application for the mark ZEPTO in class 35. Considering the aforesaid, I am of the view that the petitioner is aggrieved by the continued subsistence of the impugned mark on the Register of Trade Marks.

17. In view of the above, the impugned mark is liable to be removed from the Register of Trade Marks under the provisions of Section 47(1)(b) of the Act.

18. Accordingly, the present petition is allowed and the Trade Marks Registry is directed to remove the impugned mark ‘ZEPTO’ bearing the no. 2773519 in class 35 in the name of the respondent no. 1 from the Register of Trade Marks.”

17. In my view, the aforesaid judgments squarely apply to the instant case. In the present case, Petitioner has categorically pleaded in the petition that Respondent No.1 has not used the impugned mark in the course of trade in relation to alcoholic beverages from the time of registration of the mark



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‘BANDOOK’ in Class 33 on 23.02.2018. Investigations revealed that Respondent No.1 has not obtained any excise licence or regulatory clearances required for lawful manufacture, distribution and/or sale of alcoholic beverages. Diligent search of public records and regulatory databases revealed that Respondent No.1 does not have any active manufacturing licence, brand registration or commercial presence in respect of the impugned mark. Despite lapse of over 5 years since registration, Respondent No.1 has not taken steps to manufacture, launch or sell the products and this shows that it had no *bona fide* intention to use the mark in the course of trade.

18. It is further pleaded that being a registered proprietor of identical mark ‘BANDOOK’ in Class 32 and having applied for registration in Class 33, Petitioner has a direct legal and commercial interest in seeking removal of the impugned mark from the Register. Continued existence of impugned registration is creating serious prejudice to the Petitioner in its commercial venture and hence, Petitioner is a ‘person aggrieved’ under Section 47 of the 1999 Act. Since Respondent No.1 has not filed any reply, each of these averments are deemed to be admitted. *Sans* any reply by Respondent No.1 and consequently, absence of specific denial to this averment and/or documents, this position is unquestionable.

19. Section 47(1)(b) of the 1999 Act provides that a registered trademark is liable to be taken off of the Register of Trade Marks if up to a date three months prior to the date of filing of the rectification petition, the same is not used in relation to those goods or services in respect of which it is registered for a continuous period of at least five years from the date on which the mark is entered in the Register. Petitioner has continuously and extensively used the ‘BANDOOK’ mark and has registration in Class 32. Petitioner



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applied for registration of mark 'BANDOOK' in Class 33 covering alcoholic beverages excluding beer on 21.06.2025 on 'proposed to be used' basis and thus there is no doubt that Petitioner is aggrieved by the continued subsistence of the impugned mark on the Register.

20. In view of the above, the impugned mark is liable to be removed from the Register. Accordingly, present petition is allowed and Trade Marks Registry is directed to remove the impugned mark SBA under Registration No.3473533 in Class 22, registered in the name of Respondent No.1, from the Register of Trade Marks and rectify the Register to maintain its purity.

21. Petition stands disposed of along with pending application.

JYOTI SINGH, J

JANUARY 22, 2026

S.Sharma