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

+ **C.O. (COMM.IPD-TM) 86/2021**

ANSHUL VAISH , PARTNER ROHIT WRAPERSPetitioner
Through: Mr. Samrat S. Kang, Ms. Meenakshi
Ogra, Mr. Tarun Khurana, Mr.
Anubhav Gupta, Mr. Amarjeet
Kumar, Ms. Chhavi Pande, Mr. Rishi
Vohra, Advocates (M:9891012029)

versus

HARI OM AND CO. AND ANR.Respondents
Through: Mr. Pankaj Kumar Mishra, Advocate
(M:8447412683)
Email: pankajmishraadv@gmail.com

CORAM:
HON'BLE MS. JUSTICE MINI PUSHKARNA

JUDGMENT

% **07.02.2025**

MINI PUSHKARNA, J:

1. The present rectification petition has been filed seeking removal of respondent no.1's mark 'रोहित' , registered *vide* trademark application no. 2408221 in Class 17 ("impugned mark") from the Register of Trade Marks. The said trademark application was filed by respondent no.1 on 09th October, 2012 for registration of the impugned mark, which mark was registered on 14th August, 2014, with the user date of 01st January, 2005.
2. The present rectification petition has been received from the Intellectual Property Appellate Board ("IPAB") after the abolition of the IPAB upon promulgation of Tribunals Reforms (Rationalization and




Conditions of Service) Ordinance, 2021, as recorded in order dated 14th January, 2022.

3. The facts as canvassed in the petition by the petitioner, are as follows:


3.1 The petitioner is a partnership firm incorporated under the Indian Partnership Act, 1932 *vide* Partnership Deed dated 13th April, 2000. The petitioner subsequent to its incorporation is engaged in the business of manufacturing and trading PVC pipes.

3.2 To distinguish its goods from competitors, the petitioner adopted its

trademark,  **Rohit Wrappers**, and its variants “Rohit Wrappers”, “Rohit Tubes”, “Rohit Varadan”, “Rohit Gold” and “Rohit Durable” in a *bona fide* manner, without reference to any pre-existing mark. The said trademarks are inherently distinctive and fanciful in nature and have been in continuous, extensive, and exclusive use by the petitioner for over two decades, acquiring significant goodwill and reputation in the market.

3.3 The petitioner filed applications for the registration of its “ROHIT” trademarks. Consequently, TM Application no. 1989126 dated 05th July, 2010 for “Rohit Wrappers”, was duly advertised in Trade Mark Journal no. 1730 on 01st February, 2016. Since, no opposition was filed within the statutory period, the mark was registered.

3.4 Since the petitioner’s *bonafide* adoption in the year 2000, the mark

 **Rohit Wrappers**, consists of the term “Rohit” as its most prominent and essential feature, which is also the trade name of the petitioner, and is



distinctively associated with the petitioner. The public and trade exclusively associate the “ROHIT” marks with the petitioner, as evidenced by its invoices, packaging, and branding.

3.5 Proof of petitioner’s usage of its trade name “Rohit Wrappers” is also evident from the following:

- (i) TIN Reg. w.e.f. 22nd April, 2000
- (ii) Central Excise Registration Certificate issued w.e.f. 05th December, 2002
- (iii) Copy of sale invoices w.e.f. 28th September, 2004 - 22nd July, 2016
- (iv) Copy of purchase invoices w.e.f. 24th May, 2007 - 25th April, 2016

3.6 Respondent no. 1, applied for the trademark “ROHIT”/

रोहित

under application no. 1532767 dated 20th February, 2007 and application no. 2408221 dated 09th October, 2012, in Class 17 for goods, i.e., PVC pipes and fittings thereof, claiming use since 01st January, 2005. These applications were advertised in Trade Marks Journal no. 1404 dated 16th November, 2008 and Trade Marks Journal no. 1620 dated 23rd December, 2013, respectively.

3.7 Due to an oversight by the petitioner’s previous attorney, no opposition was filed within the statutory period. Consequently, both the trademark applications were registered. However, the petitioner has filed

rectification with respect to the mark रोहित, bearing application no. 1532767 before the Trade Marks Registry.

3.8 As per the respondent no.1’s own admission and claim, it started using the mark “ROHIT” only in the year 2005, whereas, the petitioner



adopted and put its mark into commercial use since the year 2000.

3.9 Despite the petitioner being the prior adopter and user of the mark “ROHIT”, the respondent no.1 issued a legal notice dated 28th March, 2015 to the petitioner for infringement and/or passing off of its registered trade mark “ROHIT” in respect of PVC pipes and fittings.

3.10 The petitioner responded to the said legal notice through its letter dated 16th April, 2015, addressing all concerns, including, the provisions of Indian trademark laws, which prioritize the rights of a prior adopter and user over even those of a registered proprietor.

3.11 Respondent no. 1 failed to reply to the petitioner’s response, which made the petitioner believe that respondent no. 1 would cease using the impugned mark. However, respondent no. 1 continued to use the impugned mark and also began threatening the petitioner’s dealers with false trademark infringement litigation to dissuade them from continuing their association with the petitioner.

3.12 Hence, the present petition came to be filed.

4. On behalf of the petitioner, the following submissions have been made:

4.1 Petitioner’s trade name containing word ‘ROHIT’, falls within the meaning of “use of the mark” and hence it corresponds to the start of use of its trade name by the petitioner. Such long, continuous and extensive use by the petitioner of not only its trade name but also its other derived trademarks containing the dominant feature “ROHIT”, has conferred a distinctive character on the dominant feature “ROHIT”, thus associating goods i.e., PVC pipes as belonging to the petitioner and originating from the petitioner




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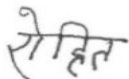


only.

4.2 The dominant feature “ROHIT” has been used and incorporated by the petitioner in its various derived forms since 20th April, 2000, and had also applied for trademark registrations of said marks, which have all been granted and registered in favour of the petitioner, which are detailed as under:

TMA NO.	TRADEMARK	CLASS/ Goods	Appl. Date	User Date
2941301	Rohit Wrappers (WORDMARK)	17/ PVC Pipes	14.04.2015	22.04.2000/ Registered
2941302	ROHIT TUBES (WORDMARK)	17/ PVC Pipes and fittings thereof	14.04.2015	22.04.2000/ Registered/ Subject to association with registered /Pending Registration nos.1989126, 2941301
2941303	ROHIT VARADAN (WORDMARK)	17	14.04.2015	22.04.2000/ Registered
2941304	ROHIT DURABLE (WORDMARK)	17	14.04.2015	22.04.2000/ Registered
1989126	 Rohit Wrappers (Device Mark)	17	05.07.2010/ All kinds of PVC pipes and Fittings included in Class 17	20.06.2010/ Registered

4.3 In order to ride upon the petitioner’s hard-earned goodwill, respondent no.1, also claiming to be in the same business of manufacturing PVC pipes, has with *malafide* and bad intentions, adopted the dominant feature of petitioner’s trade name ‘ROHIT’ and other derived marks containing the dominant feature ‘ROHIT’, by obtaining registration of

impugned mark ‘’, for identical goods covered in Class 17, upon false claims of user date as of 01st January, 2005. Such user claim is based



on documents adduced by respondent no.1 which are false and fabricated documents, created only to show user date of 01st January, 2005.

4.4 Respondent no.1 has failed to substantiate their user date claim of 01st January, 2005. Thus, on this ground alone, the impugned mark is liable to be removed as an entry wrongly remaining on the register.

4.5 The impugned mark was neither distinctive at the time of its registration, nor has it acquired distinctiveness since. As it was adopted after the petitioner's mark, it fails to distinguish respondent no. 1's goods from those of the petitioner, violating Section 9(1)(a) of the Trade Marks Act, 1999. Furthermore, the alleged use since 01st January, 2005 is a false claim made with the intent to mislead the public into associating the respondent no. 1's goods with the petitioner, contravening Section 9(2)(a) of the Trade Marks Act, 1999.

4.6 Respondent no. 1's mark unlawfully capitalizes on the established reputation of the petitioner, with no valid justification for such adoption. Section 11(1) of the Trade Marks Act, 1999, prohibits registration of marks similar to earlier trademarks where there is a risk of confusion. The use of the impugned mark unfairly benefits from the distinctiveness and reputation of the petitioner's brand, violating Sections 11(2) and 11(3)(a) of the Trade Marks Act, 1999. Given its deceptive similarity and registration for identical goods, the mark was adopted in bad faith, contravening Section 11(10) of the Trade Marks Act, 1999.

4.7 The registration of the impugned mark also breaches Article 8 of the Paris Convention, which mandates trade name protection without requiring registration. Since "Rohit" is the most distinctive part of "Rohit Wrappers",



the petitioner's trade name warrants protection. Moreover, respondent no. 1's adoption of the mark lacks honest concurrent use, having been copied from the petitioner's mark, making it ineligible for registration under Section 12 of the Trade Marks Act, 1999.

4.8 Respondent no.1 knowing it is not the first adopter or lawful proprietor, secured registration solely to create obstacles for the petitioner, violating Section 18(1) of the Trade Marks Act, 1999. Consequently, the registration is invalid and warrants rectification.

5. On behalf of respondent no. 1, the following submissions have been made:

5.1 Respondent no.1 has been using the impugned mark since the year 2005 and was granted the registration for trademark application no. 2408221 in the year 2012, without opposition.

5.2 The respondent no. 1 is the first, original and prior adopters, prior in point of filing of application, sole and absolute and lawful owners of its trademark.

5.3 The respondent no. 1 has huge sales for its products of pipes and fittings since the year 2005 onwards, clearly showing use of the impugned mark since the year 2005.

5.4 Invoices have been filed showing the use of the mark by the respondent no. 1 continuously.

5.5 The trademark registration for the mark 'रैहित', was granted in favour of respondent no. 1 on 20th February, 2007 and document with regard thereto has been attached.



6. Having heard learned counsels for the parties and having perused the record, this Court at the outset notes that the documents filed by respondent no. 1 to prove its user, have *prima facie* and glaring anomalies, as indicated by the addition of a Taxpayer Identification Number (“TIN No.”) to the invoices of the years 2005 and 2006, when the same was granted only in the year 2007.

7. On a pointed query by this Court to the counsel for respondent no.1 as to how the Sales Invoice show the TIN Number from the year 2005, when it was granted only in the year 2007, the counsel for the respondent no. 1 did not have any explanation for the same.

8. Thus, this Court is in agreement with the submission made by the petitioner that the documents adduced by respondent no. 1 to prove the user of the impugned mark from the year 2005, are apparently forged and fabricated.

9. Furthermore, it is to be noted that the Partnership Deed dated 01st April, 1997, of the respondent no.1, shows that partnership of respondent no. 1 was formed in the year 1997 for carrying on the business of sale of ‘oil, lubricants, agriculture implements etc.’. The Partnership Deed of the respondent no. 1 was subsequently modified by the deed dated 06th August, 2007, wherein, the business of ‘PVC pipes’ was added in the purposes for which partnership was formed. Thus, it is clear that it was only in the year 2007 that the Partnership Deed of respondent no. 1 was modified to include the business of ‘PVC pipes’. Hence, the claim of user of 2005, alleged by respondent no. 1 for ‘PVC pipes’, is manifestly false. The respondent no.1



has not been able to establish and substantiate the veracity of its claim, of its use of the impugned mark for PVC pipes, since the year 2005.

10. It is also to be noted that the partnership business is in the name of M/s Hariom and Company, with none of the partners having the name 'Rohit'. Besides, no explanation has been given as to the reason for adoption

of the mark रोहित by the defendants. It is also to be noted that as per the document placed on record, the TIN number of the respondent was issued in the year 2007 in the name of M/s Hariom and Company, the partnership firm of the respondent no.1. There is no mention of the mark or word 'Rohit' in the said document.


11. On the other hand, the Partnership Deed dated 13th April, 2000 of the petitioner shows that it is clearly mentioned therein that the name of the firm shall be 'Rohit Wrappers'. Further, the business of manufacturing and trading of PVC pipes and fittings, is clearly mentioned in the said Partnership Deed. It is to be noted that the TIN number issued in the year 2000 in favour of the petitioner is also in the name of 'M/s Rohit Wrappers'. Likewise, Central Excise Registration Certificate issued in the year 2002 is in the name of the petitioner's partnership firm, i.e., 'M/s Rohit Wrappers'. This Court also takes note of the document dated 01st August, 2003, which is certification granted by the Bureau of Indian Standards ("BIS"), which is again in the name of 'M/s Rohit Wrappers' for PVC pipes. There are various documents on record to show the renewal of the said BIS certificate on yearly basis.

12. Further, the petitioner has placed on record the certificate of registration from the UP Jal Nigam for supply of PVC pipes to the said body

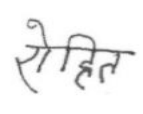


showing the registration of the petitioner for supply of PVC pipes under the name of the firm 'M/s Rohit Wrappers', having registration no. of the year 2003. This Court also takes note of the document issued by The Plastics Export Promotion Council, which has been issued in the name of 'Rohit Wrappers', clearly mentioning the date of establishment of the petitioner as 13th April, 2000, and description of goods, in which it deals, which includes, PVC pipes.

13. On account of the various documents on record and the submissions made before this Court, it is established that the petitioner has been *bona*

fidely using the mark  since the year 2000. Thus, the petitioner is clearly the prior user of the said mark. The claim is buttressed by the various documents on record, including, TIN Registration issued w.e.f. 22nd April, 2000, Central Excise Registration Certificate issued w.e.f. 05th December, 2002 and invoices from sale and purchase for the years 2004 to 2016.


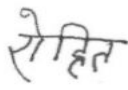
14. Furthermore, the balance sheet of the petitioner for the years 2000-2001, wherein, sales of Rs. 1,47,600/- were made, and the exponential growth in the said sales increased in the following years of 2001-2002, with a figure of Rs. 7,84,990/- and of Rs. 62,99,384.25/- in the year 2002-2003, brings forth that the petitioner has gained popularity and the mark "ROHIT Wrappers" came to be associated with the petitioner.

15. It is noted that the user claim of the mark  by the respondent no.1 is only since the year 2005, which is subsequent to the adoption by the



petitioner. As can be gauged from the facts discussed hereinabove, the said adoption by the respondent no.1 is at a time, when the petitioner had already established its marks. Therefore, even if the year of adoption by respondent no. 1, is considered to be correct, even then, it would nevertheless fall short towards the user as established by the petitioner.

16. At this stage it would be pertinent to compare the marks of both the petitioner and respondent no. 1. A comparative table of the two marks, is reproduced as under:

<u>Petitioner's Mark</u>	<u>Respondent no.1's Mark</u>
	

17. On a bare perusal of the aforesaid marks of the petitioner and respondent no.1, it can be seen that the dominant feature of the petitioner's mark is the word "ROHIT". The respondent no.1 has incorporated the dominant feature of the petitioner's trademark "Rohit Wrappers", in its trademark, *albeit* a translated version in Hindi language.

18. Comparison of the marks of the petitioner and the respondent no.1, demonstrates that the affinity between the two marks is so close, that the use by the respondent would undoubtedly lead to confusion that the mark of the respondent in fact emanates from the petitioner. Thus, adoption of identical and similar trademark, by the respondent would amount to infringement of the petitioner's trademark.

19. As per the documents on record, the petitioner is using the mark 'Rohit' not only as a trademark, but also as a trade name since the year



2000, which again constitutes as use of the trademark. It is evident that the dominant feature of the petitioner's mark is the word "ROHIT", which is also the trade name used by the petitioner. Apparently, the two competing marks are deceptively similar and are bound to cause confusion in the minds of the consumers. Thus, the Division Bench of this Court in the case of *M/s South India Beverages Pvt. Ltd. Versus General Mills Marketing Inc. & Anr.*, 2014 SCC OnLine Del 1953, while discussing the prominence of a dominant feature of the mark, has held as follows:

"xxx xxx xxx

19. Though it bears no reiteration that while a mark is to be considered in entirety, yet it is permissible to accord more or less importance or 'dominance' to a particular portion or element of a mark in cases of composite marks. Thus, a particular element of a composite mark which enjoys greater prominence vis-à-vis other constituent elements, may be termed as a 'dominant mark'.

xxx xxx xxx

26. Dominant features are significant because they attract attention and consumers are more likely to remember and rely on them for purposes of identification of the product. Usually, the dominant portion of a mark is that which has the greater strength or carries more weight. Descriptive or generic components, having little or no source identifying significance, are generally less significant in the analysis. However, words that are arbitrary and distinct possess greater strength and are thus accorded greater protection.[174 F. Supp. 2d 718, 725 (M.D. Tenn. 2001) Autozone, Inc. v. Tandy Corporation]

xxx xxx xxx"

(Emphasis Supplied)

20. In a country like India, wherein, the public at large are aware of multiple languages and understand the same, there exists all possibilities of confusion arising for a consumer, when products are sold under a mark, especially, in the two of the most spoken languages in the country, that being, Hindi and English. Further, as in the present case, wherein, the



petitioner has a prior use since the year 2000 and both parties admittedly being in a similar trade and business, there is all likelihood of confusion. Thus, this Court in the case of *M/S. Bhatia Plastics Versus Peacock Industries Ltd., 1994 SCC OnLine Del 387*, while dealing with similar circumstances, wherein, the plaintiff's mark was 'MAYUR' and the defendants' mark was 'PEACOCK', observed that the plaintiff had prior use over the defendants' mark, and further held that 'PEACOCK' being an English translation of the word 'MAYUR', i.e., plaintiff's mark, and the parties being in the similar realm of business and trade, the translation of a mark would nevertheless likely cause confusion and deception. Thus, it was held as follows:

“xxx xxx xxx

15. The most important point in the present controversy between the parties is whether the use of word Peacock by the defendants would constitute an infringement of the trade mark MAYUR of which plaintiff is the registered proprietor. MAYUR is a Sanskrit name of a bird and in India it is called by different name as 'MOR' or MAYURI, the English equivalent or name of MOR in English language is PEACOCK. Plaintiff has been using trade mark MAYUR since its registration in 1980. Trade mark MAYUR has been used by the plaintiff in relation to manufacturing and sale of plastic goods, such as buckets, jugs, mugs and trays etc. Even otherwise after going through the documents placed on record by both the parties, I am of the view that the use of the trade mark MAYUR is prior in point of time than the user of PEACOCK by the defendants with regard to aforesaid plastic goods. The question which falls for consideration and examination is that if a person is the prior user of a trade mark in Hindi, can another person use the trade mark using another word in English but conveying the same idea as conceived by the word used in Hindi. The answer is in affirmative. More so from the cash memos, invoices, advertisements filed by the plaintiff, it is clear that in relation to plastic goods for which registration was granted under trade mark MAYUR, plaintiff is a prior user. Since defendants are using PEACOCK in relation to the said plastic goods and are manufacturing and selling



the same, it is clear that trade mark PEACOCK of the defendants is likely to cause deception and confusion in the minds of average man of ordinary intelligence qua the trade mark of the plaintiff.

16. In *N.S. Thread Co. Ltd.* (supra) Supreme Court held that appellants camouflaging on Eagle into a vulture by calling it such is likely to cause confusion. I am also supported in my view by a decision of this Court in the matter of *M/s. Surya Rohni Ltd. v. M/s. Electronic Sound Components Co.* (supra)(6). In the matter of *Hindustan Lever Limited v. Pioneer Soap Factory, etc.* 1983 PTC 211(7) in which the Court has the occasion to decide infringement on the basis of the trade mark of the plaintiff, which was 'SUN' and defendants started manufacturing and marketing the soap under the trade mark 'SURAJ'. Court held that:—

“In the present case he urged except for the translation of the word “SUN” in Hindi, there is no similarity. The label of the plaintiff is yellow and blue whereas the defendant's label is red in colour with white background. The sun rays shown on the defendant's label are not portrayed on the plaintiff's label. He contended that at any rate there was no evidence that a washing soap with the mark “SUN” has been marketed by the plaintiff. He further contended that there was no evidence that the soap being marketed by the defendant has been passed off as that of the plaintiff.

*At this stage I am not called upon to decide the entire case on marks. It is the plaintiff's case that the defendant's soap is being or is likely to be passed off as that of the plaintiff. Whether in fact there has been any deception caused by the defendant's product is to be decided after the parties have led evidence. While deciding this application under Order 39 Rules 1 & 2 of the Code of Civil Procedure all that I have to say is whether prima facie the commodity concerned is likely to deceive the customers of the goods in question. **Admittedly, the product is the same, i.e. washing soap. Suraj is the Hindi translation of the English Word “SUN”. For the time being therefore I have to assess whether there is scope for confusion in the minds of the public with regard to the two marks. Applying the ratio of the cases referred to earlier prima facie the plaintiff has been able to make out a case in its favour. For the decision of the application I am satisfied that mark “Suraj” being equivalent in English to the trade mark “SUN” is to be considered deceptively similar.**”*



17. In the case of *J.C. Eno Limited v. Vishnu Chemical Company* AIR 1941 Bombay 3(8) it has been held that:—

“In my opinion however the principle there laid down is equally applicable in a country where there is in fact to register of trade marks, and where traders have to rely on long user, of certain marks and on having acquired by long user the exclusive right to the use of certain particular marks. In my judgement, if traders in India have acquired in any language the exclusive right to the use of certain particular marks not merely as descriptive of but as distinctive of their goods, they have the right to restrain another trader from copying those words for use in connection with a similar class of goods in any other language in India, and the reason for my opinion is that there are in India, as is well known, a very large number of languages, and that a very large number of persons in India know several languages. Many persons who know Marathi know English, many persons who know Urdu know English, many persons who know Gujarati know English, and so on. Accordingly, a person knowing a number of languages would very likely be deceived if a trader translated into one of the languages which that person know the trademark acquired by long user by a trader in another language with which that person was familiar, and affixed that trade-mark so translated to a similar class of goods.”

xxx xxx xxx”

(Emphasis Supplied)

21. A matter with similar circumstances was dealt with by the Bombay High Court in the case of *Indian Express Ltd. Versus Chadra Prakash Shivhare*, 2015 SCC OnLine Bom 5541, wherein, the plaintiffs were the owners of the mark ‘Indian Express’ and the defendant dealt in a similar line of business in selling newspapers with an identical mark “Indian Express”, however, in the Devanagari script, which is another medium of writing in Hindi. The Court categorically held that use of the mark by the defendant in the Devanagari script would amount to infringement, and the defendant was



restrained from using the mark “Indian Express” in any other language.
Thus, it was held as follows:

“xxx xxx xxx

36. Dr. Chandrachud is justified in his reliance on the decision of the Supreme Court in *Cadila Health Care Ltd. v. Cadila Pharmaceuticals Ltd.* The tests are well established: if the defendant's use of a mark is so structurally, phonetically, visually and aurally similar to that of the plaintiff, an injunction will usually follow, except in certain limited circumstances. Given the longevity of the Plaintiffs' mark, its widespread use, daily production in very many centres across India, multiple editions, online presence, and large circulation the conclusion that theirs is a well-known mark must necessarily follow. Once this is done, the Plaintiffs are automatically entitled to protection under Section 29(4) of the Trade Marks Act, 1999. But they are also entitled to protection at closer quarters: none may lay claim to title registration under the Press Act of “The Indian Express” in any script. Doing so would ipso facto result in a trade mark infringement, and no use of a Press Act registration can be permitted as would result in such an infringement. Registration under the Press Act is not a defence to an infringement action under the Trade Marks Act, 1999.

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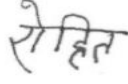
40. The third (and only) issue for determination must therefore be answered in the affirmative for the Plaintiffs and against the Defendant. His use of “The Indian Express” in the Devnagari script is an infringement of the Plaintiffs' registered marks. The suit is decreed in the following terms : The Defendant, his heirs, assigns and all who claim by or under him are all permanently restrained from in any manner using the words “Indian Express” in any form, either by themselves, or with any other words or symbols, and whether in English or in any other language or script so as to infringe the Plaintiffs' registered trade marks including but not limited to those referred to in the Complaint, its annexures, and in the documents marked as exhibits in evidence.

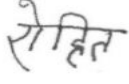
xxx xxx xxx”

(Emphasis Supplied)



22. It is to be noted that the petitioner and the respondent no.1 are in the same trade, and selling identical goods covered in Class 17. The discussion hereinabove brings to the fore that the petitioner is the prior user of the trademark, bearing the prominent feature “ROHIT”, which also forms part of the trade name of the petitioner. The petitioner’s trademark is totally

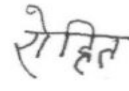
subsumed by the impugned trademark, “”. The mere fact that the mark of the respondents is in a different language, does not deter from the incidence of the likelihood of confusion, in addition, the risk of association with the petitioner’s trademark and goods. Confusion and deception amongst the competing marks is inevitable on account of identity of trademarks and commonality of goods, trade channel and class of consumers. An unwary consumer of average intelligence and imperfect recollection is bound to get confused by the adoption of the identical mark by the respondent, who would assume that the impugned mark is a variant of the petitioner’s mark written in a different language. Further, the adoption and use of the impugned mark by the respondent, in the course of trade and in relation to similar goods, will certainly lead to confusion and/or deception about a trade connection, nexus or trade association between the petitioner and the respondent.

23. The impugned mark “” of the respondent no.1 is phonetically identical to the petitioner’s registered trademark of the same name, though, in English language. The adoption and use of the impugned mark for similar goods is bound to cause confusion and deception amongst



the public *qua* the source of such goods and their association with the petitioner's goods. The competing marks are identical, and overall hardly distinguishable, as India is a multi-lingual country with Hindi and English, being prominent languages that are spoken, written and understood in large areas of the country. The competing marks being identical, though in different languages, are bound to be confused *qua* each other on account of imperfect recollection in multi-lingual society of India.

24. Accordingly, the present petition is allowed with the following directions:

I. Registration of the impugned trademark  bearing registration no. 2408221 in Class 17, is cancelled.

II. The Register of Trade Marks may accordingly be rectified.

III. The Trade Marks Registry shall issue an appropriate notification in this regard.

25. The Registry of this Court is directed to supply a copy of the present order to the Office of the Controller General of Patents, Designs and Trade Marks of India, on E-mail Id: llc-ipo@gov.in, for compliance.

26. The present petition stands disposed of, with the aforesaid directions.

(MINI PUSHKARNA)
JUDGE

FEBRUARY 07th, 2025
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