



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

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Judgment delivered on: 24.12.2025

+ **C.O. (COMM.IPD-TM) 163/2024**

MS. BHUPINDER MEHTA

.....Petitioner

versus

SH PRADEEP BAREJA & ANR.

.....Respondents

Advocates who appeared in this case

For the Petitioner : Mr. Umesh Mishra & Ms.
Yashodhara Raina, Advocates.

For the Respondents : Ms. Nidhi Raman, Mr. Mayank
Sansanwal & Mr. Om Ram,
Advocates for Respondent No. 2.

CORAM:

HON'BLE MR. JUSTICE TEJAS KARIA

JUDGMENT

TEJAS KARIA, J

1. The present Rectification Petition has been filed under Section 57 of the Trade Marks Act, 1999 (“**Act**”) seeking rectification of the Register of Trade Marks by cancellation / removal of the Trade Mark ‘BSM’ registered under Trade Mark No. 5149074 in Class 11 (“**Impugned Mark**”) registered in favour of Respondent No. 1.



2. The notice in the present Petition was issued *vide* Order dated 02.09.2024 and the Respondents were given a period of four weeks to file their respective Replies to the present Petition. On 29.11.2024, the learned Counsel for Respondent No. 1 entered appearance and sought additional time to file the Reply to the present Petition. Accordingly, Respondent No. 1 was granted a further period of six weeks to file its Reply.

3. On 08.04.2025, none appeared for Respondent No. 1 and even the Reply was not filed on behalf of Respondent No. 1. In the interest of justice, liberty was granted to the Parties to file their respective Written Synopsis within a period of four weeks.

4. On the next date of hearing held on 06.05.2025 none appeared for Respondent No. 1 and neither Reply nor Written Synopsis was filed on behalf of Respondent No. 1. Accordingly, Respondent No. 1 was directed to be proceeded *ex-parte*.

5. The learned Counsel for the Petitioner made submissions on 12.11.2025 and the judgment was reserved.

SUBMISSIONS ON BEHALF OF THE PETITIONER:

6. The learned Counsel for the Petitioner made the following submissions:

6.1 In the year 2014, the Petitioner through her husband and sons started the family business of processing, marketing and selling of lighting, lighters, lightbulbs, light reflectors, light diffusers, light projectors, light installations, light fixtures, light shades, light bars, light fittings, spot light, led light machines, led light bulbs, led light strips, led underwater lights, led landscape lights, led mood lights, vehicle and automobile lights, decorative and party lights, included in Class 11 (“**Petitioner’s Products**”) under the Mark, ‘BSM’.



6.2 The Petitioner's husband, Late Sh. Surinder Kumar Mehta, on 13.05.2015 applied for registration of the Device Marks,



and



bearing Trade

Mark Application Nos. 2962127 and 2962126 in Classes 11 and 9 respectively. However, Application No. 2962127 for the Device Mark,



in Class 11 was abandoned and the

Application No. 2962126 for the Device Mark



in




Class 9 was registered. Thereafter, the Petitioner adopted the Mark,



and filed Application No. 5202553 on

09.11.2021 claiming user of the Petitioner's Mark since 12.04.2014 ("Petitioner's Mark"). The status of registration of the Petitioner's Device Marks is as under:



Trademark	Application Number	Application Filing Date and User Date	Class	Status
BSM 	2962127	13.05.2015 User since 12.02.2015	11	Abandoned
B BSM/ 	2962126	13.05.2015 User since 12.02.2015	9	Registered
BSM STAR Bhupender Surinder Mehta 	5202553	09.11.2021 User since 12.04.2014	11	Opposed

6.3 The Petitioner is using the Petitioner's Mark through her sons and has extensively publicized the Petitioner's Mark by exhibiting in Indian DJ Expo 2015, palm expo 2017, palm expo 2018, palm expo 2019, palm expo 2022, palm expo 2023, palm expo 2024. Moreover, the Petitioner through her sons has widely promoted the Petitioner's Mark *inter alia* through social media like Facebook, LinkedIn, Instagram and all these social media platforms have wide viewership and circulation all over India. The Petitioner through her sons has also heightened the online presence of the Petitioner's Mark by the use of internet as means to communicate to the public at large by featuring the Petitioner's Mark at various websites.



6.4 Because of high quality and efficiency of the goods marketed and sold by the Petitioner coupled with considerable amount of money, skills and labor invested in the promotion and advertisement of the same, the Petitioner's Products under the Petitioner's Mark are in great demand among the customers, public and the members of the trade. As a consequence thereof, the demand of the Petitioner's Products has extensively increased and as such the business as well as the sales of the Petitioner has been considerable, and the particulars thereof are as under:

Financial Year	Year-Wise Annual Sales Amount (In Rupees)
2017-2018	1,22,05,550
2018-2019	2,42,88,631
2019-2020	2,43,21,159
2020-2021	1,23,87,926.56
2021-2022	2,39,69,126.68
2022-2023	8,78,89,743.76

6.5 The Petitioner became aware of the Impugned Mark in the month of June 2024 when the notice of Opposition was filed by Respondent No. 1 against registration of the Petitioner's Mark by way of Application No. 5202553.

6.6 Respondent No. 1 has dishonestly and with *mala fide* intention adopted the Impugned Mark, which is identical with and / or deceptively similar to the Petitioner's Mark phonetically, visually and conceptually and in its essential features. Respondent No. 1 has adopted and started using the Impugned Mark dishonestly, fraudulently and out of positive greed. By Respondent No. 1's adoption and use of the Impugned Mark



deception and confusion in the market is ensuing or is likely to so ensue and the market and customers of the Petitioner are being diverted to Respondent No. 1.

6.7 Respondent No. 1 is not the proprietor of the Impugned Mark. The Impugned Mark is identical and / or deceptively similar to the Petitioner's Mark with respect to identical goods. Hence, it makes a strong case for cancellation of the Impugned Mark. There is no justification on part of Respondent No. 1 in adopting the Impugned Mark, which is identical / deceptively similar to the Petitioner's Mark.

6.8 This Court in ***Sun Pharma Laboratories Ltd. v. Lupin Ltd. and Ors.***, 2018 (74) PTC 103 (Del), held that the correct approach to decide the infringing nature of competing mark is to examine whether the defendants have adopted the essential features of the plaintiff's mark. Phonetic similarity is a significant factor in this assessment. If the goods are identical, the possibility of confusion cannot be excluded. Further, the Supreme Court in ***Parle Products (P) Ltd v. J. P. & Co. Mysore***, 1972 AIR 1359, held that to determine whether one mark is deceptively similar to another, the focus must be on their broad and essential features. The marks are not to be compared side by side in order to identify minor differences in design or to assess whether such differences are sufficient to avoid confusion. It is sufficient if the impugned mark has an overall resemblance to the registered mark that is likely to mislead a person who is accustomed to dealing with one mark into accepting the other when it is offered.

6.9 This Court in ***Russell Corpn. Australia Pty. Ltd. v. Ashok Mahajan***, 2023:DHC:5556 has directed rectification of the Register of Trade



Marks, on the ground that the registration of the Trade Mark was applied for in bad faith.

6.10 In light of the above, it is stated that the Impugned Trade Mark has been wrongly entered in the Register of Trade Marks and, therefore, is liable to be cancelled in terms of Section 57 of the Act.

SUBMISSIONS ON BEHALF OF THE RESPONDENT NO. 2

7. The learned CGSC appearing for Respondent No. 2 submitted that Respondent No. 2 is a formal party and shall comply with any directions passed by this Court.

ANALYSIS AND FINDINGS:

8. At the outset, in the absence of any appearance and Reply by Respondent No. 1, the averments made in the present Petition have remained uncontroverted. Accordingly, for all purposes, the pleadings herein are deemed to have been admitted by Respondent No. 1.

9. The material placed on record demonstrates that the Petitioner is the prior adopter and prior user of the Petitioner's Mark. The Petitioner has been able to establish its case of being the prior user of the which was coined and adopted by the Petitioner in 2014 and the Petitioner has subsequently incorporated the Mark 'BSM' in the Petitioner's Mark being used to sell processing, marketing and selling of the Petitioner's Products.

10. The Impugned Mark is deceptively similar to the Petitioner's Mark and there is a high likelihood of confusion as the Impugned Mark is proposed to be used for goods identical or similar to the Petitioner's Products. The test of deceptive similarity as laid down in *Parle Products* (supra) and *Sun Pharma Laboratories* (supra) has been satisfied in the present case.



11. The Petitioner has acquired considerable goodwill in the market which is evident through the year wise annual sales data produced by the Petitioner, which shows sales of ₹8,78,89,743.76 in the Financial Year 2022-23. Respondent No. 1 has registration of the Impugned Mark in 2021 on a proposed to be used basis in Class 11 with respect to goods identical or similar to the Petitioner's Products under the Petitioner's Mark. The adoption of the Impugned Mark by Respondent No. 1 is nothing but an attempt to ride the goodwill of the Petitioner's Mark without any justification for the same.

12. It is trite law that a prior user's rights will override the rights of a subsequent user even though the latter's mark may be a registered Trade Mark. The Petitioner has categorically pleaded use of the Petitioner's Mark from 2014 and claimed that the use of the Petitioner's Mark is prior to that of Respondent No. 1.

13. Therefore, prior use of the Petitioner's Mark, registrations and the continuous and uninterrupted use of the Petitioner's Mark in the course of trade in respect of sale, processing and marketing of the Petitioner's Products demonstrate that the Petitioner's Mark has become associated with the Petitioner.

14. Respondent No. 1 has subsequently adopted the Impugned Mark, which is identical to the Petitioner's Mark for identical goods. Such conduct undermines the sanctity of the Register of Trade Marks and highlights the necessity to uphold and protect the rights of *bona fide* proprietors. It is evident that the entry relating to the Impugned Mark is wrongly remaining on the Register of Trade Marks warranting rectification under Section 57 of the Act. This Court in ***Russell Corpn.*** (supra) has directed the rectification of the



2025:DHC:11863



Register of Trade Marks when the registration of the Trade Mark itself was done in bad faith.

15. In view of the Petitioner's prior use, the identity of the competing marks, the similarity of goods, the likelihood of confusion, and the lack of *bona fide* adoption or use by Respondent No. 1, the Impugned Mark is liable to be removed from the Register of Trade Marks.

16. Accordingly, the present Petition is allowed, and Respondent No. 2 is directed to remove the Impugned Trade Mark 'BSM' bearing Trade Mark No. 5149074 registered in Class 11 from the Register of Trade Marks.

17. A copy of the present order is directed to be sent to the Trade Mark Registry at e-mail: llc-ipo@gov.in for compliance.

TEJAS KARIA, J

DECEMBER 24, 2025
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