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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14-10-2026

CORAM

THE HON'BLE MR.JUSTICE P.B. BALAJI

OP(TM) No. 68 of 2025
CNR: {HCMA013058262025}

Case QR

New Yorker S.H.K. Jeans Gmbh And Co.Kg
Russeer Weg 101-103, 24109,
Keil, Germany,
Rep.by Its Authorised Signatory
Wolfgang Furstberger

..Petitioner(s)

Vs

1. Rahul Barlota
   No.40, First Floor, First Cross,
   Second Main Road, H.Siddiah Road,
   Sudhanagar,
   Bangalore - 560027,
   Karnataka.

2. The Registrar Of Trade Marks
   Office of the Trade Mark Registry,
   IP Office Building, G.S.T. Road,
   Guindy, Chennai - 600 032.

..Respondent(s)

PRAYER: Original Petition (Trade Marks) is filed under Sections 47 and 57 of the Trade Marks Act, 1999, pleased to pass an order by directing the Respondent No.2 to rectify the Trademarks Register by removing, expunging, and/or cancelling the Trademark registered under No.2027328 in Class 25 in the name of the Respondent No.1.

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For Petitioner(s): Mr.S.Diwakar

For Respondent(s): Mr.G.Subramanian, CGC for R2
R1 - *Ex parte*

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ORDER

Heard Mr.S.Diwakar, learned counsel for the petitioner and Mr.G.Subramanian, learned Central Government Counsel for the Trade Marks Registry and the first respondent has set *ex parte*.

2. The petitioner has applied for rectification of the Register of Trade Marks by expunging the entry relating to the trade mark FISHBONE, which is registered in Trade Mark No.2027328 in Class 25. Upon receipt of notice, the notice sent to the address furnished by the first respondent was returned unserved with the endorsement "No such person found / no such person in the given address". On perusal of the records and the affidavit filed in support of this matter, this Court was satisfied that service cannot effectively be completed on the first respondent in the ordinary manner and that substituted service is warranted. Learned counsel for the petitioner is permitted to effect substituted service on the first respondent by publication of the notice in any daily newspaper having circulation in Bangalore, Karnataka, where the first

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respondent is stated to be located. Pursuant to the same, the petitioner also effected publication before the Registry. Therefore, the first respondent was set *ex parte*. Until today, the first respondent has not filed an application to set aside the order setting the said respondent *ex parte*.

3. The Petitioner wants to register the trademark "FISHBONE" in India. However, the Second Respondent has brought to light that an identical or deceptively similar mark "FISHBONE" already exists in the Trade Marks Register, because of the existing registration, has denied the Petitioner's request. The Petitioner has filed an application for Rectification of the Register to remove or cancel the conflicting mark under the very same Class 25. Immediately, thereupon the petitioner has conducted private investigation search with regard to the business of the first respondent and copy of the investigation report is also enclosed along with the typed set of papers. The said report is perused and I find that the first respondent was not even found at the registered address. It is also evident from the fact that even in the present application, the first respondent has not been served. The Manager of the first respondent has been enquired by the investigating official and he has stated that the first respondent applied for the trade mark to commence a new business venture.

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4. A registered trademark can be taken off the register, if continuous period of five years has elapsed from the date when the trademark was actually entered into the register, up to a date three months before the filing of the rectification application, during which there was no bona fide commercial use of the mark. As is noticeable, the marks are clearly identical and are applied in relation to identical products. Therefore, the registration of the impugned mark was made without sufficient cause and the continuance of the entry in the register is likely to cause confusion or deception among the public. This justifies rectification by expunging the impugned entry.

5. Therefore, this original petition is allowed by directing the Registrar of Trade Marks to expunge the entry relating to Trade Mark No.2027328 in Class 25 from the Register of Trade Marks in accordance with law. This action shall be carried out within ***thirty days*** from the date of receipt of a copy of this order uploaded in the High Court Website. No costs.

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Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No
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To

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

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P.B.BALAJI, J.

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