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

% *Date of Decision: 29th May, 2026*

\+ C.O.(COMM.IPD-CR) 24/2024

FORTUNE MARKETING PRIVATE LIMITED .....Petitioner

Through: Mr. Nageshwar Kumhar, Mr. Siddharth Yadav, Mr. Ayush Dey, Mr. Anmol Pandey and Mr. Nitin Yadav, Advocates.

versus

GUJARAT PESTICIDES & ORS. .....Respondents

Through: Mr. Vinay P. Tripathi, Mr. Nilesh Nayak, Mr. B. Shravanth Shanker and Ms. Preeti Shukla, Advocates for R-1.
Ms. Nidhi Raman, CGSC with Mr. Om Ram and Ms. Nikita Singh, Advocates for R-2 and R-3.

CORAM:
HON'BLE MS. JUSTICE JYOTI SINGH

JUDGEMENT

JYOTI SINGH, J.

1. This petition is filed by the Petitioner under Section 50 of the Copyright Act, 1957 ('1957 Act') for cancellation of impugned copyright registration bearing No.A-153061/2024 pertaining to artwork  titled ZOOOK, registered in the name of Respondent No.1.

2. To the extent necessary, case of the Petitioner is that Petitioner is the true owner and prior and honest adoptor and user of registered trademark

ZOOOK and its variants including logo , in which Petitioner also has copyright registration. Due to substantial and prolonged use, extensive sales and advertisements, Petitioner has acquired statutory and common law rights in the ZOOOK marks as also copyright in . Details of trade mark registrations in favour of the Petitioner are as follows:-

TRADE MARKS				
S. No.	App. No.	Class	Trade Marks	Status
1.	2623912	9	ZOOOK	Registered & Valid Upto 07/11/2033
2.	2651518	9	ZOOOK	Registered & Valid Upto 31/12/2033
3.	4207492	13	ZOOOK	Registered & Valid Upto 15/06/2029
4.	4207490	35	ZOOOK	Registered & Valid Upto 15/06/2029
5.	4207491	42	ZOOOK	Registered & Valid Upto 15/06/2029
6.	4310585	11	ZOOOK	Registered & Valid Upto 03/10/2029
7.	4310566	11	ZOOOK	Registered & Valid Upto 03/10/2029
8.	4558287	10	ZOOOK	Registered & Valid Upto 06/07/2030
9.	4558288	10	ZOOOK	Registered & Valid Upto 06/07/2030
10.	5447731	9	ZG ZOOOK GAMING	Registered & Valid Upto 13/05/2032
11.	5447921	28	ZG ZOOOK GAMING	Registered & Valid Upto 14/05/2032
12.	5447922	35	ZG ZOOOK GAMING	Registered & Valid Upto 14/05/2032
13.	5447923	38	ZG ZOOOK GAMING	Registered & Valid Upto 14/05/2032
14.	5447924	42	ZG ZOOOK GAMING	Registered & Valid Upto 14/05/2032

3. Details of Copyright registration in favour of the Plaintiff in the logo  is as follows:-

COPYRIGHT			
S. No.	Regn. No.	Logo	Status
1.	A-109376/2014		Registered

4. It is averred in the petition that the earliest registration in favour of the Petitioner was in the mark  in Class 09, which dates back to 07.11.2013 and is valid upto 07.11.2033. Online search of ZOOOK produces numerous results, which are exclusively associated with the Petitioner. Given the abundance of organic search results and global accessibility of the internet, it would not be wrong to say that ZOOOK marks are globally known and most certainly in India, the awareness of the business model of the Petitioner under the said mark is widespread and unquestionable. Petitioner has undertaken several promotional endeavors across various channels to enhance the visibility and recognition of ZOOOK marks including through television commercials, newspapers, magazines, digital platforms etc. and many celebrities have endorsed Petitioner's brand.

5. It is stated that Petitioner owns and operates a dedicated website www.zoook.com which is registered since 15.07.2011 and conveys information of the extensive range of products under the ZOOOK marks. Apart from traditional methods of advertising and promotion, Petitioner has promoted the products under the ZOOOK marks on social media platforms, including but not limited to Facebook, Instagram and YouTube etc.

Petitioner sponsored the Indian Cricket Team in the Road Safety World's Series T20, 2020-21 and the India vs. South Africa Series in 2022, which enhanced the reputation of the brand. The revenues earned from 2016-17 till 2023-24, details of which are furnished in paragraph 8 of the petition, are reflective of the unprecedented success of Petitioner's products under the ZOOOK marks, which are well known for their superior quality. Petitioner has been vigilant and proactive in safeguarding its intellectual property rights and has filed various trademark oppositions and law suits in this regard, as detailed in paragraph 14 of the petition.

6. It is stated that in January, 2020, Petitioner discovered a trademark application bearing no. 4264084 in Class 01 for the mark  filed by Respondent No.1 on 13.08.2019, which subsumed the registered trademark ZOOOK of the Petitioner as also the copyright. Petitioner filed Notice of Opposition on 14.01.2020, which was numbered as Opposition No.1025716. Respondent No.1 failed to file the affidavit under Rule 46 of Trade Marks Rules, 2017 ('2017 Rules') for leading evidence and subsequently filed Letter of Withdrawal. On 13.12.2022, an order was passed by the Registrar permitting withdrawal of the application. However, within 10 days of the withdrawal, Respondent No.1 filed two more trademark applications for 

(packaging/label) and ZOOOK (word mark) bearing application Nos. 5730850 and 5730851 in Class 01. On 21.12.2022, the applications

were accepted by the Trade Marks Registry and published in the Trade Marks Journal. Petitioner filed Notices of Opposition against the word mark on 30.09.2023 bearing Opposition No. 1242805 as also against the label mark 

on 19.12.2023 bearing Opposition No. 1264878. As brought forth in the petition, in the first opposition, notice was served on Respondent No.1 on 14.12.2023 but no counter statement has been filed and the opposition is pending. In the second opposition, the matter is listed for final hearing.

7. It is stated that in May, 2024, Petitioner discovered that Respondent No.1 had secured copyright registration in the impugned packaging/label  titled ZOOOK on 25.04.2024 comprising artistic work identical to label mark 

, which is pending for registration with the Registrar of trade marks and has been opposed by the Petitioner. It is pertinent that prior to grant of registration, Respondent No.3/Registrar of Trade Marks granted Trade Marks Search Certificate (TM-C) on 26.10.2023 under Rule 22(1) of 2017 Rules for use under Section 45(1) of 1957 Act, despite conflicting marks of the Petitioner on the Register. Aggrieved by

grant of copyright registration certificate in favour of Respondent No.1 by Respondent No.2/Registrar of Copyright, the present petition has been filed for cancellation.

8. Learned counsel for the Petitioner argued that Petitioner qualifies as 'person aggrieved' for filing this petition as it is the registered proprietor, owner and prior adoptor and user of the ZOOOK marks and has a copyright registration in 

, which it has continuously and extensively used since 2013. The earliest registration is of the device mark 

and dates back to 07.11.2013 in Class 09. The word 'ZOOOK' is a coined word with no dictionary meaning and was conceived by the Petitioner. Respondent No.1 has not demonstrated any independent creativity or originality in the impugned artistic work and has offered no valid justification for incorporating Petitioner's registered mark in its work. The only explanation now rendered that the mark ZOOOK was taken from Nigerian plant called ZUK is an afterthought and reverse engineering as this stand was never raised in the earlier opposition proceedings.

9. It was urged that the application for copyright registration leading to the impugned registration clearly demonstrates *mala fides* of Respondent No.1 and bad faith adoption. Having not succeeded in obtaining trademark registration for the mark ZOOOK, Respondent No.1 found a circutious and an ingeneous way of using the ZOOOK mark which is identical to the registered trademark of the Petitioner. Respondent No.1 filed a trademark

application in 2019 in Class 01 for registration of logo  subsuming the mark ZOOOK but after the Petitioner filed opposition, the application was withdrawn, as Respondent No.1 clearly realised that the mark was identical and the application would not sustain in law. Yet another attempt was made by filing applications for registrations of word mark ZOOOK and label mark , in which oppositions have been filed by the Petitioner and applications are pending consideration. It is obvious that Respondent No.1 is forum shopping and having been unsuccessful in getting trademark registrations, it resorted to the path of securing copyright registration in an artistic work which is almost similar to the label mark  with the word ZOOOK. It is also not understood how Respondent No.3 rendered an incorrect search certificate showing no identical/similar mark and granting NOC, overlooking the earlier communication dated 01.03.2023 stating that in light of the search report containing cited marks, copyright certificate could not be issued and calling upon the Petitioner to file written submissions. The search report referred to

several conflicting marks on the Register, including Petitioner's  device mark registered in Classes 13 and 35.

10. It was argued that once the oppositions with respect to the ZOOOK marks, both word and label, were pending, neither the NOC nor the copyright registration certificate ought to have been granted in favour of Respondent No.1. The copyrighted work of Respondent No.1 contains the mark ZOOOK, which is visually, structurally and phonetically identical to Petitioner's registered ZOOOK marks and it is inevitable that when the work will be used by Respondent No.1 for its packaging etc., there will be consumer confusion and owing to the formidable goodwill and reputation of the Petitioner, Respondent No.1 will successfully pass off its goods and achieve indirectly what it could not achieve directly through trade mark registration. In any event, the impugned registration is against the concept of purity of Register, as the same has been obtained contrary to an existing trademark of the Petitioner by playing fraud on the Trade Marks as also Copyright Registrar.

11. Last but not the least, it was strenuously urged that the purpose of Section 45 of 1957 Act is to prevent unscrupulous persons from copying trade marks with the intent of passing off and taking shelter under false claims of copyright registrations in the artistic work and which is why proviso to Section 45 provides that in respect of an artistic work which is used or is capable of being used in relation to any goods or services, application shall include a statement to that effect and shall be accompanied by a certificate from the Registrar of Trade Marks that no trademark identical with or deceptively similar to such artistic work has been registered

under the Trade Marks Act, 1999 ('1999 Act') in the name of, or that no application has been made under the 1999 Act for such registration by, any person other than the applicant. In this context, reliance was placed on the judgment of this Court in ***Hugo Boss Trademark Management GMBH and Company KG v. Sandeep Arora Trading as Arras The Boss and Others, 2023 SCC OnLine Del 7956,*** to argue that while granting the search certificate, Registrar of Trade Marks ought to have seen the registered trademark of the Petitioner ZOOOK as also pending oppositions.

12. Learned counsel contended that there is a clear violation of Rule 70(9) of the Copyright Rules, 2013 ('2013 Rules') inasmuch as Respondent No.1 failed to notify the Petitioner, who had a direct interest in the impugned registration since the work incorporated the registered mark of the Petitioner. Respondent No.1 was well aware that the parties were already embroiled in the opposition proceedings pertaining to the word mark ZOOOK and label mark 

and application for registration of the mark  was withdrawn by Respondent No.1 on opposition by the Petitioner. Significantly, label mark under opposition is similar to the artistic work in the impugned copyright registration.

13. Counsel for Respondent No.1 opposed the petition. To begin with, it was argued that Petitioner is not a 'person aggrieved' under Section 50 of

1957 Act, which allows only a person whose rights are affected to seek rectification and on this ground the petition deserves to be dismissed. Copyright protection is independent of trademark rights and a trademark proprietor cannot seek cancellation of registration of copyright in an artistic work merely because his mark forms a part of the artistic work, so long as the artistic work is original and has no similarity with any other work. Likewise, reliance on trademark oppositions is irrelevant to copyright rectification as both enactments i.e., 1999 Act and 1957 Act, operate in two distinct fields.

14. It was argued that Section 50 empowers the High Court to rectify the Copyright Register by expunging entries 'wrongly made' or remaining on the Register. There is no averment that the entry was wrongly made or that there was any procedural violation. Section 45 governs artistic work and mandates that application for registration of copyright must be accompanied by certificate from Registrar of Trade Marks that no identical or deceptively trademark has been registered. In the present case, a valid Search Certificate TMR-CC No. 120644 was issued by the Trade Marks Registrar confirming that no identical/similar mark existed and hence, no infirmity can be found with the action of Respondent No.2 in issuing copyright registration certificate.

15. It was also argued that under Section 13(1)(a) of 1957 Act, only an 'original' artistic work is protectable and hence, Copyright Office is only to examine the work in question for determining whether it satisfies the originality requirement which does not imply that the work should be novel, distinctive, innovative or unique. The artistic work of Respondent No.1 meets the required standard as the artistic work is original and has no

similarity whatsoever with any work of the Petitioner and the word ZOOOK, which is part of the artistic work is derived from the plant ZUK from Nigeria, which conveys power and speed. Petitioner has placed no evidence on record to show that the artistic work was copied by Respondent No.1. *Arguendo,* even assuming there is similarity in the mark ZOOOK, there is no likelihood of any consumer confusion since rival marks target different consumers and markets. Petitioner's products are electronic goods, whereas Respondent No.1 uses ZOOOK for products relating to plant growth and fertilizers. The goods being dissimilar, Petitioner cannot claim any right to seek cancellation of Respondent No.1's copyright registration. In any event, the expression ZOOOK is a commercial identifier and not a product of independent artistic skill and is separately incapable of copyright protection. Petitioner's attempt to monopolize a coined word through copyright route is contrary to law and public policy. 1957 Act does not confer a proprietary right in trade *indicia* or prevent others from using similar words for *bona fide* trade purposes and the petition deserves to be dismissed, being devoid of merit.

16. Arguing on behalf of Respondents No.2 and 3, Ms. Nidhi Raman, CGSC submitted that the impugned registration certificate has been correctly issued and there is no merit in the petition. Application for search and issuance of certificate under Section 45(1) of 1957 Act was filed by Respondent No.1 on 21.12.2022 before the Registrar of Trade Marks, whereafter Examination-cum-Search Report dated 01.03.2023 was issued by the Registrar citing certain conflicting marks to which reply was filed by Respondent No.1 on 11.03.2022, clarifying the objections. Being satisfied with the response and after ascertaining that no trademark identical or

deceptively similar to impugned artistic work was registered under the 1999 Act, Registrar of Trade Marks issued the Search Certificate dated 26.10.2023 and it is thus wrong to allege that the certificate is wrongly issued.

17. It was argued that Rule 70(9) of 2013 Rules provides for a notification procedure for an applicant to formally serve a notice of the application for registration of copyright to any person, who claims or has interest in the subject matter of the copyright or disputes the rights of the applicant to it. The phrase 'the subject matter of the copyright' clearly limits the scope to the work or material for which copyright registration is sought, such as literary, artistic or musical work. The word 'it' at the end of the provision grammatically and by connotation refers only to the subject matter of the copyright and since Petitioner does not claim similarity to any artistic work it owns, Respondent No.1 was not obliged to notify the Petitioner under the said Rule. A trademark proceeding relating to disputes of trademarks cannot confer interest in the subject matter of the work under the 1957 Act. Respondent No.1 had served a notice to a party, namely, Parajiya Kapil Parsottambhai, who had an interest in the subject matter of the copyright and no further notice was required.

18. Heard learned counsels for the parties and examined their submissions.

19. Indisputably, Petitioner has registration in the ZOOOK marks and the earliest registration goes back to 07.11.2013 in the mark 

, in which Petitioner also has copyright registration. Petitioner has been using the ZOOOK marks since 2013 and over the years

owing to extensive, continuous and uninterrupted use, has acquired formidable goodwill and reputation in the mark, which is evident from the sales figures and promotional expenses placed on record. The marks have been advertised on different platforms, through print and electronic media as also through social media platforms. Aggrieved by the copyright registration in favour of Respondent No.1 in the artistic work , Petitioner has filed this petition for cancellation thereof.

20. Section 45 of 1957 Act clearly provides that when any person seeks copyright registration for artistic work, which is used or has the potential of being used in relation to any goods or services, the application must be accompanied by a certificate from Registrar of Trade Marks that no trademark identical or deceptively similar to such artistic work has been registered or applied for by anyone other than the applicant. The legislative intent behind proviso to Section 45(1) is to ensure that the artistic work sought to be registered does not infringe on any existing trademark. In ***Marico Ltd. v. Mrs. Jagit Kaur, 2018 SCC OnLine Del 8488,*** this Court held that *albeit* trademarks and copyrights operate under different statutes, since rights in the original artistic work could overlap with label marks registered under the 1999 Act, legislature in its wisdom added the proviso. In ***Hugo Boss (supra),*** Court observed that the intent of the proviso was to prevent unscrupulous persons from copying label marks with the intent of passing off and taking shelter under a false claim of ownership of copyright in an artistic work. Referring to Section 50 of 1957 Act, Court also observed that 'person aggrieved' is a person, who has real and tangible interest in the

work or in the mark. In the said case, a petition was filed by HUGO BOSS seeking rectification of the Register by removal of copyright registration titled 'ARAAS THE BOSS'. Contention of the Petitioner was that it is the registered proprietor of trademarks HUGO BOSS and BOSS and other BOSS formative marks first adopted in the year 1923 with an enviable reputation and goodwill in the mark and the mark BOSS was registered in several jurisdictions, including India. Referring to Section 45 of 1957 Act and examining the contentions of ***Hugo Boss (supra),*** Court held that the impugned artistic work was not original artistic work and primarily comprised of the mark BOSS which did not belong to the contesting Respondent and the colour scheme was also imitated.

21. In my considered view, the instant case is covered on all four corners by the judgment of this Court in ***Hugo Boss (supra).*** It bears repetition to state that unquestionably, Respondent No.1 had applied for registration of the mark  on 13.08.2019 in Class 01 and as can be seen, the device subsumed the word ZOOOK. On opposition being filed by the Petitioner, Respondent No.1 filed an application for withdrawal and the application was treated as withdrawn on 13.12.2022 and this date is significant for the reason Court shall advert to later. Respondent No.1 filed another application on 21.12.2022 for registration of word mark ZOOOK followed by an application on the same day for mark  (Packaging/Label).

Petitioner filed Notices of Opposition on 30.09.2023 and both oppositions are pending. It is significant for this case to note that when Respondent No.1 applied for Search Certificate on 21.12.2022 before the Registrar of Trade Marks, Examination-cum-Search Report dated 01.03.2023 was issued citing conflicting marks. This position flows from the written submissions of Respondents No.2 and 3, who have also appended the report with the submissions. The report refers to number of conflicting marks and amongst them two are the device mark  of the Petitioner in Classes 13 and 35. There is no gainsaying that these marks were cited as conflicting only because they were found to be deceptively similar this exercise was carried out in light of the mandate of Section 45(1) of 1957 Act. It is also important to note that Respondent No.1 filed a response to this report vide letter dated 11.03.2022. Be it noted that the letter bears the date of 11.03.2022, but it was clarified during hearing that this was a typographical error and the year would be' 2023' since the letter was in response to letter dated 01.03.2023. In this reply, Respondent No.1 categorically stated that registration *qua*  mark was pending. This on the face of it was false as on 11.03.2023, since the application was withdrawn on 13.12.2022 on opposition by the Petitioner. It be also noted that while Respondent No.1 responded to the other cited marks stating that they were abandoned or refused but gave no reply to the device mark

of the Petitioner, knowing it had no answer. Oblivious of the objections raised in the Examination-cum-Search Report citing Petitioner's mark as conflicting for some strange reason, which Respondents No.2 and 3 have not been able to explain even today before this Court, Search Certificate was issued on 26.10.2023 stating that there was no registration of similar marks and this wrong certificate led to the grant of the impugned copyright registration certificate. It is thus clear that the start line of the journey for copyright registration was unfortunately incorrect and the destination had to be wrong. The Search Report is thus inaccurate and contrary to the Register of Trade Marks and this is enough to set aside the impugned copyright registration.

22. Court also agrees with the Petitioner that the Petitioner is a 'person aggrieved' under Section 50 of 1957 Act as being the registered owner and prior user and prior adopter of the ZOOOK marks, Petitioner has a real and tangible interest in the registered work, which evidently subsumes Petitioner's registered mark ZOOOK. In light of this, Petitioner is also right that Respondent No.1 ought to have notified the Petitioner under Rule 70(9) of 2013 Rules as the Petitioner does have an interest in the subject matter and this requirement becomes even more pronounced in the present case since Respondent No.1 was fully aware that Petitioner was disputing its very claim over the mark ZOOOK and one opposition had succeeded and two are pending. Non-compliance of Rule 70(9) undermines the procedural integrity of the process and makes the copyright registration vulnerable. Non-issuance of notice has also resulted in a situation, where Petitioner has been deprived of its valuable right to contest the registration on legitimate

grounds. This procedural violation also vitiates the impugned registration.

23. For all the aforesaid reasons, Court finds that the grant of copyright registration in favour of Respondent No.1 is procedurally flawed, both owing to non-compliance of Rule 70(9) as also rendering a Search Certificate (TM-C) on 26.10.2023 contrary to the Trade Marks Register and deserves to be revoked, entailing fresh consideration of the application.

24. Accordingly, the impugned copyright registration in the artistic work/label/packaging  titled ZOOOK under registration no. A-153061/2024 in favour of Respondent No.1 is revoked/cancelled and the Search Certificate dated 26.10.2023 is also set aside. Original application filed by Respondent No.1 is revived for fresh consideration by Respondent No.2. Since inaccuracy and discrepancy has crept in the procedure from the stage after issuance of Examination-cum-Search Report dated 01.03.2023, it is from this stage that consideration will commence. Respondent No.3 shall consider the reply of Respondent No.1 dated 11.03.2023 including the status of registration of its mark  since in the reply it was stated that registration *qua* this mark was pending as also the cited device mark  of the Petitioner. Thereafter, a fresh Search Certificate will be issued by Respondent No.3 and sent to Respondent No.2 who will then consider the application of Respondent No.1 for registration of

copyright in the artistic work  after granting opportunity to the Petitioner to file its objections/written submissions and to Respondent No.1 to file its written submissions. Both parties will be granted opportunity of hearing and decision will be taken within an outer limit of four months from today. It is made clear that this Court has not expressed any opinion on the merits of the case.

25. Petition stands disposed of in the aforesaid terms.

JYOTI SINGH, J.

MAY 29, 2026*/YA*