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

% ***Date of decision: 13th September, 2024***

\+ C.O. (COMM.IPD-TM) 89/2024 & I.A. 33244/2024, I.A. 33245/2024

MRS ARTI GUPTA & ANR. .....Petitioners

Through: Mr. Pankaj Kumar, Advocate
Mob: 9810438450

versus

PURAN RANA & ANR. .....Respondents

Through: Mr. K.S. Choudhary, Advocate for R-1
Ms. Nidhi Raman, CGSC with Mr. Akash Mishra and Ms. Rashi Kapoor, Advocates for R-2.
Mob: 9891088658

CORAM:
HON'BLE MS. JUSTICE MINI PUSHKARNA

MINI PUSHKARNA, J *(ORAL)*

1. The present petition has been filed under Sections 47, 57 and 125 of the Trade Marks Act, 1999 seeking removal/cancellation of the trademark "KONVIO NEER" registered in Class 35, bearing registration no. 5704660 in the name of respondent no. 1/Puran Rana from the Register of Trade Marks.

Brief Facts

2. Brief facts leading to the filing of present petition are as under:

2.1. Petitioner no. 1 claims to be the adopter of the trade mark/label KONVIO and KONVIO NEER in respect of wide range of water purifiers,

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soap dispensers, RO membranes, water metres, TDS meters, PH meters, water purifying appliances, kitchenware, and other allied and cognate goods.

2.2. Petitioner no. 1 filed the application for registration of the trade mark KONVIO and KONVIO NEER under nos. 3928136 and 3939254 in Class 11 and got registration for the same on 28th August 2018 and 08th September 2018.

2.3. Petitioner learnt about adoption of the impugned mark by respondent no. 1 in July 2023 from the publication of application no. 5549515 and 5602569 in Class 9 filed on "*proposed user basis*".

2.4. Petitioner no. 1 came across the listing of the goods of the respondent no. 1 under the said marks on the interactive webpages of the respondent no. 1 hosted on the market platforms such as www.flipkart.com etc.

2.5. Petitioner no.1 filed a civil suit bearing *CS (COMM) 667/2023* against respondent no. 1 before the South Delhi District Court.

2.6. A decree of permanent injunction was passed in the aforesaid civil suit vide judgment dated 31st May 2024 in favour of the petitioner herein.

2.7. Subsequently, petitioner learnt of the registration for the impugned trademark KNOVIO NEER under no. 5704660 in Class 35 in the name of respondent no. 1 in the first week of June, 2024. Hence, the present petition has come to be filed.

Submissions on behalf of the petitioners

3. Submissions on behalf of the petitioners are as under:

3.1. Petitioner no. 1 is the proprietor of the trade mark/label KONVIO and KONVIO NEER with respect to the said allied and cognate goods. Petitioner no. 1, honestly and bonafidely adopted the said trade mark/label

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KONVIO and KONVIO NEER in respect of the said goods in the year 2018.

3.2. Petitioner no. 1 has been using the said trademark continuously and uninterruptedly by herself and through petitioner no. 2-company, which has been permitted through a licence, to use the said trade mark /label.

3.3. Petitioner no. 1, to secure statutory rights in the said trade mark, also applied for and obtained trade mark registrations pertaining to its said trade mark/label, which are legal, regular, subsisting, valid and in full force. The details of the said registrations, are as under:

S.No.	Trade Mark	Application No.	Class	Date of Application	Status	Disclaimer/ Condition
1	KONVIO	3928136	11	28/08/2018	Regd.	NA
2	KONVIO NEER	3939254	11	08/09/2018	Regd.	NA

3.4. The art works involved in the petitioner's said trademark/label are original artistic works and petitioner is the owner and proprietor of the copyright therein within the meaning of Copyright Act, 1957.

3.5. The goods and business being carried on by the petitioner under the said trade mark/label are very extensive and are widely demanded and sold though acclaimed retailers, wholesalers and online market places like www.amazon.com, www.flipkart.com etc.

3.6. The said trade mark/labels have acquired distinctiveness in the market and trade and are identified with the goods and business of the petitioner, as originating from petitioner's source alone.

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3.7. The petitioner's extensive knowledge in relation to its said goods and business, foresight, enterprise, determination and commitment, ready action has made it a frontrunner in the said goods and business. As a result of such vast goodwill and reputation earned by the petitioner under the said trademark/label, the said trademark/label has acquired secondary meaning which denotes the petitioner and its said goods.

3.8. Respondent no. 1 is also engaged in the similar business of manufacturing and marketing of all kinds of water purifiers, soap dispensers, RO membranes, water meters, TDS meters, PH meters etc.

3.9. Respondent no. 1 has dishonestly and malafidely adopted and started using the identical trademarks/labels KONVIO and KONVIO NEER  and  in relation to their impugned goods and business.

3.10. The respondent has entirely copied the artistic features of the petitioner’s said trademark/label in its impugned trademarks/ labels and is reproducing the same on their packing. Respondent no. 1 has filed impugned application no. 5704660 in Class 35 and fraudulently obtained registration thereof through false representation.

3.11. The impugned trademarks/labels are identical with and deceptively similar to the petitioner's said trademark/label in each and every aspect including phonetically, visually, structurally, in basic idea, in their essential features, placements as well as in their artistic features.

3.12. Respondent no. 1 by use of the impugned trademark/label is illegally projecting and canvassing its association with the petitioner to ride piggy back on the goodwill and reputation of the petitioner in order to make easy

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and quick money at the expense of the petitioner's proprietary rights and thereby diluting petitioner's said trademark/label.

3.13. Respondent no. l is not the proprietor of the impugned registered trademark and has no right, authority, or liberty to maintain the impugned registration or to use the impugned registered trademark in relation to their goods and business for which the impugned trademark is registered.

3.14. The petitioner had filed a civil suit titled as *Mrs. Arti Gupta Versus Puran Rana., CS (COMM) 667/2023* before the South Delhi District Court against respondent no. 1, against the adoption and user of the impugned trademark.

3.15. Vide order dated 22nd December 2023, the respondent no. 1 was restrained from using the impugned trade mark/ label. Subsequently, vide judgement dated 31st May 2024, the respondent no. 1 had been permanently injuncted and restrained from using the impugned trade mark/label.

3.16. The respondent no. 1 has wrongly and illegally got the impugned trademark KONVIO NEER registered under no. 5704660 in Class 35 in relation to the impugned goods. The impugned registration is wrongly remaining on the register without sufficient cause.

4. Per contra, learned counsel appearing for respondent no.1 submitted that the respondent no.1 is in the process of filing an appeal against the judgment dated 31st May, 2024 passed by the District Court, Saket in *CS(COMM) 667/2023*, filed by the petitioner herein against the respondent no.1, wherein, a decree of permanent injunction has been passed against the respondent no.1. However, on a pointed query by this Court, the respondent no.1 was unable to justify the adoption of the impugned mark by him.

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Analysis and findings

5. I have heard learned counsel for the parties and perused the documents on record.

6. At the outset, this Court notes that the petitioner is the first adopter and prior user of the marks KONVIO and KONVIO NEER, having been registered with effect from 28th August 2018 and 08th September 2018 under registration nos. 3928136 and 3939254 respectively in Class 11. Further, the documents on record show that the said trademarks in favour of the petitioner are subsisting as on date and are valid up till 28th August 2028 and 08th September 2028 respectively.

7. In order to determine whether the trademark of the respondent no. 1 is identical to the trademark of the petitioner, it would be apposite to refer to the two trademarks, which are as under:

Petitioner's trademark	Respondent's trademark
KONVIO NEER	KONVIO NEER

8. A perusal of the two marks shows that respondent no. 1 has adopted an identical trademark/label KONVIO NEER in relation to their impugned goods and business. The respondents have entirely copied the artistic features of the petitioner's said trademark/label in its impugned trademarks/ labels which are being produced on their packing.

9. This Court notes that the competing trademarks in question are identical with/deceptively similar in all aspects. Further, respondent no. 1 has taken no defence to explain as to how he adopted the impugned

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trademark, which is an exact replica of the petitioner's mark.

10. Further, it is pertinent to note that the petitioner herein had filed a civil suit i.e., *CS (COMM) 667/2023* titled as *Mrs. Arti Gupta Versus Puran Rana.,* before the South District, Saket Court against respondent no. 1, challenging the adoption and user of the impugned trademark. The Court vide order dated 22nd December 2023, passed an *ex parte* interim injunction order and restrained respondent no. 1 herein, from using the impugned trade mark/label. Subsequently, vide judgement dated 31st May 2024, the respondent no.1 has permanently been injuncted and restrained, from using the impugned trade mark/ label. The relevant portion of the judgment dated 31st May 2024, passed by District Court Saket, in *CS (COMM) 667/2023*, is reproduced, as under:

> *"xxx xxx xxx*
>
> *18. After hearing the submissions advanced and perusal of material on record, this Court finds no reason to disbelieve the averment of plaint which has remained unchallenged. Plaintiff has succeeded in establishing that KONVIO and KONVIO NEER depicted as*  *and its variants are plaintiff's registered trademarks. The Plaintiff has the exclusive right to use trademarks as against the defendant. It is shown that Defendant is misusing and infringing the trademark of plaintiff and passing off his goods as that of the plaintiff. This not only causes loss of profit to the plaintiff but also results in the inferior products and services made available to the public at large, who are deceived by the conduct of the defendant.*
>
> *19. On appreciation of pleadings and record, this Court is satisfied that Defendant is using trademark of plaintiff i.e. KONVIO and KONVIO NEER depicted as*  *and is engaged in the business of providing identical services as that of plaintiff causing confusion in the minds of members of the general public. The plaintiff being the holder of a registered trademark is*

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entitled to protection against its infringement and the relief claimed.

20. In view of the abovesaid reasons, plaintiff is entitled to a decree of permanent injunction against the defendant. Defendant by himself and through his agents, representatives, distributors, assigns, heirs, successors, stockists and all others acting for and on his behalf is ***restrained*** *from using, selling, soliciting, exporting, displaying, advertising or by any other mode or manner dealing in or using (including through online modes and third party portals) the impugned trademark KONVIO/KONVIO NEER, in relation to impugned goods and business of manufacturing, marketing, sale and trade of Water Purifiers, Soap Dispensers, RO Membranes, water meters, TDS meters, PH Meters etc.*

xxx xxx xxx"

11. This Court notes that the respondent no.1 has already been injuncted from using the mark of the petitioner. Further, no plausible defence has been set up by the respondent to establish its claim as to why the impugned mark shall not be removed from the Register of Trademarks.

12. A fact that requires attention, and cannot be ignored by this Court is that the impugned trademark/label, adopted by the respondent no.1, is a complete reproduction of the petitioner's trademark/label. Such mark is bound to cause confusion and deception in the normal course of business activities of the petitioner and erode the tremendous goodwill and reputation accrued in favour of the petitioner under the said trademark/label.

13. Considering the facts of the present case, there is no doubt that there is dishonest intention of the respondent in adopting the mark of the petitioner for identical goods in the market i.e., water purifiers, soap dispensers, RO membranes, water metres, TDS meters, PH meters, water purifying appliances, kitchenware, and other allied and cognate goods. This Court also finds merit in the contention of the petitioner that the respondent no.1 has adopted the said trademark/label in the same colour, font and style,

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as that of the petitioner for a similar class of purchasers, with a dishonest adoption, which is likely to cause confusion in the minds of the purchasers.

14. A Coordinate Bench of this Court in ***Preetendra Singh Aulakh Versus Green Light Foods Pvt. Ltd., 2023 SCC OnLine Del 2492***, by placing reliance on a judgment of Supreme Court while determining the aspect of deceptive similarity, has enunciated on the rules of comparison which need to be adopted by the Courts, and observed that a mark is likely to cause confusion, if it resembles another mark, which is already registered. The relevant portions of the said judgment, are as under:

> *"xxx xxx xxx*
>
> ***38.*** *The test to be applied in determining whether the marks in question are deceptively similar to each other is that of an unwary purchaser with an average intelligence and imperfect recollection. The Supreme Court in Amritdhara Pharmacy v. Satya Deo Gupta, (1963) 2 SCR 484, has held as under:*
>
> > *"6. It will be noticed that the words used in the sections and relevant for our purpose are 'likely to deceive or cause confusion'.* ***The Act does not lay down any criteria for determining what is likely to deceive or cause confusion. Therefore, every case must depend on its own particular facts, and the value of authorities lies not so much in the actual decision as in the tests applied for determining what is likely to deceive or cause confusion****. On an application to register, the Registrar or an opponent may object that the trade mark is not registrable by reason of clause (a) of Section 8, or sub-section (1) of Section 10, as in this case. In such a case the onus is on the applicant to satisfy the Registrar that the trade mark applied for is not likely to deceive or cause confusion. In cases in which the tribunal considers that there is doubt as to whether deception is likely, the application should be refused.* ***A trade mark is likely to deceive or cause confusion by its resemblance to another already on the register if it is likely to do so in the course of its legitimate use in a market where the two marks are assumed to be in use by traders in that market. In considering the matter, all the circumstances of the case must be considered.*** *As was observed by Parker, J. in Pianotist Co.'s Application, Re*

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[(1906) 23 RPC 774] which was also a case of the comparison of two words—

'You must take the two words. You must judge them, both by their look and by their sound. You must consider the goods to which they are to be applied. You must consider the nature and kind of customer who would be likely to buy those goods. In fact you must consider all the surrounding circumstances; and you must further consider what is likely to happen if each of those trade marks is used in a normal way as a trade mark for the goods of the respective owners of the marks.' (p. 777)

For deceptive resemblance two important questions are : (1) who are the persons whom the resemblance must be likely to deceive or confuse, and (2) what rules of comparison are to be adopted in judging whether such resemblance exists. As to confusion, it is perhaps an appropriate description of the state of mind of a customer who, on seeing a mark thinks that it differs from the mark on goods which he has previously bought, but is doubtful whether that impression is not due to imperfect recollection. *(See Kerly on Trade Marks, 8th Edn., p. 400.)*

xxx xxx xxx"

(Emphasis supplied)

15. Further, holding that confusion is likely to occur if the competing marks project the same general impression in the minds of consumers, Division Bench of this Court in the case of ***M/s South India Beverages Pvt. Ltd. Versus General Mills Marketing Inc. and Anr., 2014 SCC OnLine Del 1953***, has held as follows:

"xxx xxx xxx

49. Since time immemorial the Supreme Court has consistently sounded a note of caution that the competing marks have to be compared keeping in mind an unwary purchaser of average intelligence and imperfect recollection. [AIR 1963 SC 449 Amritdhara Pharmacy v. Satyadeo Gupta]

50. ***Consumers of any product do not deliberately memorize marks. They only retain a general, indefinite, vague, or even hazy impression of a mark and so may be confused upon encountering a***

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similar mark. Consumers may equate a new mark or experience with one that they have long experienced without making an effort to ascertain whether or not they are the same marks. The consideration therefore is whether one mark may trigger a confused recollection of another mark. Thus, if the marks give the same general impression confusion is likely to occur.

51. With a view to further foster our understanding of the concept of similarity and likelihood of confusion arising in trademark jurisprudence, we may profitably take cue from the analogous principle of 'observability' which is applied in the context of copyright laws.

52. The 'ordinary observer' test is applied to determine if two works are substantially similar. The Court will look to the response of an 'average lay observer' to ascertain whether a copyright holder's original expression is identifiable in the allegedly infringing work 274 F.2d 487 (2nd Cir. 1960) Peter Pan Fabrics Inc. v. Martin Weiner Corp. Since it is employed to determine qualitative and quantitative similarity in visual copyright work, the said test can also be usefully applied in the domain of trademark law as well.

53. The Courts have reiterated that the test for substantial similarity involves viewing the product in question through the eyes of the layman. A layman is not expected to have the same 'hair-splitting' skills as an expert. A punctilious analysis is not necessary. A layman is presumed to have the cognition and experiences of a reasonable man. Therefore, if a reasonable observer is likely to get confused between the two products then a copyright violation is said to take place.

54. ***Transposing the said principles in the context of trademark infringement, one may venture to assess similarity and likelihood of confusion between rival marks on the touchstone of the impression gathered by a reasonable observer, who is a layman as opposed to a connoisseur.***

(Emphasis supplied)

xxx xxx xxx"

16. The documents on record point out that the petitioner is the first adopter and prior user of the said trademark/label KONVIO NEER ,

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having been registered with effect from 08th September 2018 in relation to the said business and goods, while the respondent no.1 has got the impugned trademark/label registered with effect from 01st December 2022. The adoption of the said mark by the respondent subsequently for an identical and similar class of goods, cannot be considered as honest, or with a bonafide intent. Thus, the Court is of the view that the registration in favour of respondent no. 1 is in contravention of provisions of Section 9, 11, 12 and 18 of the Trade Marks Act, 1999.

17. Thus, the impugned trademark is liable to be cancelled and removed from the Register of Trade Marks.

18. Accordingly, the rectification petition is allowed and the impugned trademark registered under trademark application no. 5704660, in the name of respondent no. 1/Puran Rana, in Class 35, is hereby cancelled. The Registrar of Trade Marks is directed to remove the aforesaid entry from the Register of Trade Marks, and carry out the necessary rectification.

19. The Registry is directed to supply a copy of the present order to the Trademark Registry, at E-mail: llc-ipo@gov.in, for compliance.

20. Petition is disposed of, along with the pending applications.

MINI PUSHKARNA, J

SEPTEMBER 13, 2024

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