



2025:DHC:796



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

% *Date of decision : 31st January, 2025*

+ C.O.(COMM.IPD-CR) 704/2022

DWARKA MATLANIPetitioner

Through: Mr. Rajesh Sharma, Advocate.

versus

JAY DARYANI AND ANRRespondents

Through: None.

**CORAM:
HON'BLE MR. JUSTICE AMIT BANSAL**

AMIT BANSAL, J. (Oral)

1. The present rectification petition has been filed by the petitioner for cancellation of the Copyright registered *vide* entry number A – 129092/2019 titled 'ROYAL' dated 2nd May 2019.
2. The petitioner is engaged in the business under the trade name "Kishan Foods Products," operating in Rajasthan. The petitioner manufactures and markets various products, including supari, sweet supari, mouth fresheners, Aam pachak tablets, and non-medicated confectionery, under the trademark 'RAHUL'.
3. In 1997, the petitioner adopted the mark "Rahul Aam Pachak Tablet"



2025:DHC:796



along with its distinctive label and artwork and



and has continuously been using these labels/artwork for marketing its Aam Pachak tablets and non-medicated confectionery.

4. The petitioner has obtained registration for its trademark/ label/



artwork on 17th August, 2007, under registration number 1591507 in Class 30.

5. It is stated that the petitioner has widely advertised its labels/artworks through various newspapers. Copies of these advertisements are annexed with the petition.

6. It is stated that the petitioner is the prior adopter and user of the



trademark, labels/ artworks, which constitute an original work under the Copyright Act, 1957. Moreover, the petitioner was the first to publish the said label/artwork.

7. By virtue of prior adoption, continuous use, advertisement, and registration, the petitioner claims exclusive rights over the labels /artworks



and

8. On 3rd April 2019, the petitioner discovered that the respondent no.1, Jay Daryani, trading as Rekha Trading Co, was using an identical or deceptively similar trademark/ label/ packaging



for similar goods.

9. Thereafter, the petitioner issued a legal notice dated 3rd April, 2019 to respondent no.1 to cease and desist the use of the impugned label/

packaging/ artwork



10. Respondent No. 1, who is an ex-employee and nephew of the petitioner, replied to the legal notice on 12th April, 2019, denying the petitioner's claims and stating that the adoption of the mark 'ROYAL AAM



2025:DHC:796



PACHAK TABLET' and label/packaging by respondent no. 1 was bonafide and honest.

11. The petitioner discovered that the respondent no.1 had applied for the registration of the impugned label/ packaging



under application number 3865742 titled 'ROYAL' on 20th June 2018, in Class 30 on a "proposed to be used" basis. Later, the said application was advertised in Trade Marks Journal No. 1999 on 10th May, 2021. The petitioner also filed an opposition No. 1111166 against the application and since no counter-statement was filed by respondent no.1, the application was abandoned.

12. The petitioner also found that the respondent no.1 also applied for copyright registration of the impugned label, artwork, and packaging



under diary number 2765/2019 dated 19th February, 2019.

13. On 11th April, 2019, the petitioner filed an objection to the said application. Despite these objections, respondent no.2/Registrar of Copyrights granted copyright registration to the respondent no.1 on 2nd May, 2019.

14. Due to the respondent's refusal to comply with the petitioner's requisitions, the petitioner filed a suit for copyright infringement in the District Court, Bharatpur, Rajasthan, which was contested by the respondent



2025:DHC:796



no.1.

15. On 14th June, 2019, the learned Additional District Judge, Bharatpur granted an interim injunction under Order XXXIX, Rules 1 and 2 of the Code of Civil Procedure, 1908 ('CPC'), restraining respondent no.1 from using the impugned label, artwork, and packaging during the pendency of the suit.

16. On 24th June, 2019, the petitioner published the injunction granted *vide* order dated 14th June 2019 in Dainik Bhaskar newspaper in Bharatpur.

17. Being aggrieved by the same, the respondent no.1 preferred an appeal before the High Court of Rajasthan, which was dismissed *vide* Order dated 10th November, 2022.

18. Aggrieved by the registration obtained by the respondent no.1 on 2nd May, 2019, the petitioner filed the present rectification petition before the Intellectual Property Appellate Board (hereinafter 'IPAB') on 21st January, 2020.

19. Notice in the present petition was issued by the IPAB on 15th September, 2020.

20. However, with the dissolution of IPAB after 'The Tribunals Reforms Rationalization And Conditions of Service) Ordinance, 2021 (No.2 of 2021), the present petition was transferred to the High Court of Delhi.

21. *Vide* order dated 24th August, 2023, last opportunity was granted to the respondent no.1 to file its reply/written note of arguments, subject to payment of costs of Rs. 10,000/-. Since costs were not paid by the respondent no.1, the reply was not taken on record.

22. To be noted, none had appeared on behalf of the respondents on 24th



2025:DHC:796



September, 2024.

23. None appears on behalf of the respondents even today.

24. I have heard the counsel for the petitioner.

25. At the outset, the counsel for the petitioner submits that the petitioner does not have any objection to the petitioner using the word 'RAHUL'. The grievance of the petitioner is only *qua* the label/ packaging/artistic work adopted by the respondent no.1

26. It is the contention of the petitioner that the respondent no.1 is not the legitimate proprietor of the label, artwork, and packaging



and the registration was obtained by concealing material facts regarding the true ownership of the artistic work.

27. It is submitted that respondent no.1's label/ packaging/artistic work lacks originality, therefore, it is ineligible for copyright registration under Copyright Act, 1957.

28. The petitioner has put on record the images of the petitioner and the respondent's impugned label/ packaging/ artistic work. A comparison table illustrating the similarities between the plaintiff's label/packaging and the defendant's impugned marks/ packaging is set out below:

PETITIONER'S LABEL/ PACKAGING/ ARTISTIC WORK	RESPONDENT NO.1'S LABEL/ PACKAGING/ ARTISTIC WORK
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2025:DHC:796



29. From the comparison above, it is evident that the label/ packaging/ artistic work adopted by the respondent no.1 is a slavish imitation of the petitioner's label/ packaging/ artistic work. Additionally, the adoption and placement of the mark 'ROYAL' adopted by the respondent no.1 closely mimics the petitioner's mark 'RAHUL'. Both marks are displayed in yellow on a red background with a blue border, using identical fonts and script styles. Thus, the rival labels/ packaging/ artistic works, when viewed as a whole in its entirety, have a similar appearance.

30. Given the familial relationship and prior business association of the petitioner and the respondent no.1, it is highly unlikely that the respondent no.1 was not aware of the petitioner's label and packaging.

31. Clearly, the respondent no.1 is trying to ride on the goodwill of the petitioner. Since no reply has been filed by the respondent no.1, it is evident that the respondent no.1 has no defence to put forth on merits. Moreover, the respondent no.1 has been enjoined by the District Courts of Rajasthan in



2025:DHC:796



respect of the same label/packaging/ artistic work, and the said order has also been upheld by the High Court of Rajasthan.

32. It is evident that the objections filed by the petitioner were not adequately considered by the Registrar of Copyrights. Therefore, in my view, the copyright registration granted to the respondent no.1 is contrary to the law, and the same is liable to be rectified.

33. Accordingly, the present petition is allowed, and the impugned copyright registered *via* entry no. A-129092/2019 dated 2nd May, 2019 in the name of respondent no.1 is directed to be removed from the Register of Copyright.

34. The Registry is directed to send a copy of this order to respondent no.2/Registrar of Copyright through e-mail at registrar.copyrights@gov.in for compliance.

35. All pending applications stand disposed of.

AMIT BANSAL, J

JANUARY 31, 2025

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