



* IN THE HIGH COURT OF DELHI AT NEW DELHI

% *Judgment delivered on: 24.12.2025*

+ **C.O. (COMM.IPD-TM) 385/2021**

RAJVAIDYA SHITAL PRASAD AND SONSPetitioner

versus

KARNA GOOMAR AND ANR.Respondents

Advocates who appeared in this case

For the Petitioner : Mr. Ajay Amitabh Suman, Mr. Shravan Kumar Bansal, Mr. Rishi Bansal, Mr. Pankaj Kumar, Mr. Deepak Srivastava, Mr. Rishabh Gupta, Ms. Shruti Manchanda and Ms. Deasha Mehta, Advocates.

For the Respondents : Mr. Rahul Vidhani and Ms. Purva Chugh, Advocates.

CORAM:
HON'BLE MR. JUSTICE TEJAS KARIA

JUDGMENT

TEJAS KARIA, J

1. This is a Rectification Petition under Section 57 of the Trade Marks Act, 1999 (“Act”) for cancellation / removal / rectification of the registered Trade Mark ‘ACTIVEPUSHPA’ under Registration No. 2471490 in Class-05 (“**Impugned Mark**”) in the name of Respondent No. 1 from the Register



of Trade Marks being contrary to the provisions of Sections 9, 11, 12, 18, 34, 47, 57 and 125 of the Act.

FACTUAL BACKGROUND:

2. The Petitioner is engaged in the business of manufacturing and marketing of medical preparations, ayurvedic syrups and tonics (“**Petitioner’s Goods**”). The Petitioner is the proprietor of the Trade Mark, ‘HEMPUSHPA’ (“**Petitioner’s Mark**”) in Class-05. The Petitioner adopted the Petitioner’s Mark in and around late 1920s / early 1930s. The Petitioner filed an application for registration of the Petitioner’s Mark as a Word Mark bearing Application No. 362381 in Class-05 claiming use since 01.01.1938. However, during the course of business, the Petitioner was able to locate old documents showing the use of the Petitioner’s Mark since 01.06.1933. Accordingly, the Petitioner filed a fresh application being Application No. 4054631 for registration of the Petitioner’s Mark as Label



‘**HEMPUSHPA**’ on 12.01.2019.

3. The Petitioner has been continuously using the Petitioner’s Mark since 1933 till the present time without any interruption or interference from anyone whatsoever. The Petitioner claims to have built valuable trade under the Petitioner’s Mark. The Petitioner’s Mark is duly registered under Registration No. 362381 in Class-05 as a Word Mark and is renewed up to 30.05.2028. The Petitioner’s Application No. 4054631 for the registration of the Petitioner’s Mark as Label under Class-05 is still pending.



4. The Petitioner claims that the Petitioner's Mark has become distinctive and is associated with the Petitioner's Goods on account of long, continuous, extensive and exclusive use since its adoption on 01.06.1933. The Petitioner's Goods bearing the Petitioner's Mark are highly in demand in the markets on account of standard quality. Accordingly, the Petitioner's Mark has acquired secondary significance and is a well-known Trade Mark within the meaning of the Act.

5. The Petitioner's Mark has been in use for more than 90 years and is the number 1 Ayurvedic Tonic for women. The Petitioner's Goods have been popularised and extensively advertised using the Petitioner's Mark by various Bollywood celebrities. The Petitioner's Mark has become significant and distinctive and is capable of protection under the statutory as well as common law. The Petitioner has acquired goodwill and reputation and has



exclusive right over the Copyright of the Label '  '.

6. Respondent No. 1 is engaged in the same / similar business as that of the Petitioner and engaged in the business of Ayurvedic Medicine ("**Impugned Goods**"). According to the Petitioner, Respondent No. 1 has dishonestly adopted the Impugned Mark in relation to the Impugned Goods as the same is identical with and / or deceptively similar to the Petitioner's Mark including phonetically, visually, structurally, in its basic idea, in its essential and prominent features. The Impugned Goods are same / similar / allied / cognate to the Petitioner's Goods. Accordingly, the Impugned Mark



is likely to cause and create confusion in the market, which is imminent, as the same is deceptively similar to the Petitioner's Mark.

7. Respondent No. 1 applied for the registration of the Impugned Mark on 04.02.2013 claiming use from 01.01.1992 in Class-05 for Ayurvedic Medicine and Medicine, which has been registered *vide* Certificate of Registration No. 1214440 dated 14.12.2016.

8. Respondent No. 1 has also filed Applications for registration of 'KUDOS ACTIVE PUSHPA LABEL' under Application Nos. 3998498 and 4024987 in Class-05, which have been opposed by the Petitioner.

9. Being aggrieved by the registration of the Impugned Mark, the Petitioner has filed the present Petition for cancellation / rectification / removal of the Impugned Mark from the Register of Trade Marks.

SUBMISSIONS ON BEHALF OF THE PETITIONER:

10. Mr. Ajay Amitabh Suman, learned Counsel for the Petitioner submitted that:

10.1 The Impugned Mark as a whole is highly deceptively similar to the Petitioner's Mark. The adoption of the Impugned Mark is dishonest, tainted and fraudulent. Respondent No. 1 was fully aware of the Petitioner's rights, user and reputation under the Petitioner's Mark at the time of adoption of the Impugned Mark. The Impugned Mark has been adopted with a *mala fide* intent to pass off the Impugned Goods as that of the Petitioner's Goods. Respondent No. 1 is guilty of unethical trade practices and has adopted the Impugned Mark with a view to take advantage and trade upon the reputation and goodwill of the Petitioner by creating confusion in the market to make easy



money at the cost of the Petitioner.

- 10.2 The registration of the Impugned Mark is bad in law as the same is in violation of the Petitioner's statutory and common law rights in the Petitioner's Mark. The Petitioner has been suffering in view of the registration of the Impugned Mark as the Impugned Goods are interfering with the business activities of the Petitioner.
- 10.3 The Petitioner is a prior user and having prior registration of the Petitioner's Mark in the same Class-05 as that of the Impugned Mark. The Petitioner has adopted the Petitioner's Mark since 01.06.1933 and is having registration since 28.02.1983 claiming user since 01.01.1938, whereas admittedly Respondent No. 1 is a subsequent user having registration since 14.12.2016 claiming user since 01.01.1992.
- 10.4 Respondent No. 2 failed to conduct search / examination in a proper manner and has not generated a report with the visually and structurally similar Trade Mark word 'HEMPUSHPA', i.e., the Petitioner's Mark prior to the registration of the Impugned Mark, 'ACTIVEPUSHPA'. If Respondent No. 2 would have generated the examination report in accordance with the rules and the provisions of the Act, after taking into consideration the parameters of generation search report, the Petitioner's Mark, 'HEMPUSHPA' registered prior to the registration of the Impugned Mark, 'ACTIVEPUSHPA' in the very same Class-05 ought to have been cited and the application for registration for the Impugned Mark would have never been accepted for



registration.

- 10.5 Further, Respondent No. 1 has not been using the Impugned Mark in respect of the Impugned Goods since 01.01.1992 and are not prior in adoption and use to the Petitioner's Mark. Respondent No. 1 has played a fraud before Respondent No. 2 while obtaining the registration of the Impugned Mark for the same nature and description of goods, despite having knowledge of the prior uninterrupted use and registration of the Petitioner's Mark since the year 1933.
- 10.6 The Impugned Mark is non-distinctive to Respondent No. 1 at the time when the application for registration of the same was filed as well as at the time when the Impugned Mark was registered or even till date. The Impugned Mark fails to identify the Impugned Goods of Respondent No. 1, and the registration of the Impugned Mark is contrary to the provisions of Section 9 of the Act.
- 10.7 The Impugned Mark of Respondent No. 1 is identical with and deceptively similar to the Petitioner's Mark. The Impugned Goods of Respondent No. 1 are of same description and nature and in the same Class-05. The Impugned Mark as a whole is highly deceptively similar to the Petitioner's Mark, which is well-known and famous. The Impugned Mark is structurally, visually and phonetically identical with and / or deceptively similar to the Petitioner's Mark. The goods are being sold through the same trade channels to the same class of people. Hence, the confusion and deception in the market is



unavoidable.

- 10.8 The word, 'PUSHPA' is an essential and prominent part of the Impugned Mark and, therefore, the adoption of the Impugned Mark for Impugned Goods is likely to cause and create confusion and deception in the market. The word, 'PUSHPA' as a part of a Trade Mark is very arbitrary in nature for Ayurvedic Syrups and Tonics and Medicinal preparations. The Petitioner was the first in the whole world to adopt, use and obtain registration of the word, 'PUSHPA' as part of the Petitioner's Mark, 'HEMPUSHPA' for the Petitioner's Goods. There is no cogent reason as to why Respondent No. 1 has adopted the Impugned Mark, 'ACTIVEPUSHPA' that includes the essential and prominent part 'PUSHPA' of the Petitioner's Mark.
- 10.9 Registration of the Impugned Mark is totally contrary to the provisions of Section 11(10) of the Act, which requires protection of a well-known Trade Mark against the identical or similar Trade Marks and taking into consideration the bad faith involved in adopting the Impugned Mark by Respondent No. 1, which is affecting the statutory and common law rights of the Petitioner in relation to the Petitioner's Mark. Accordingly, Respondent No. 2 ought to have refused the registration of the Impugned Mark under Section 11 of the Act.
- 10.10 Respondent No. 1 has obtained the registration of the Impugned Mark with a view to encash the tremendous goodwill and reputation of the Petitioner's Mark accrued in favour of the



Petitioner on account of long, continuous and extensive use with a view to derive illegal gains. Accordingly, Respondent No. 1 is guilty of passing off.

- 10.11 Respondent No. 1 has neither used the Impugned Mark including for a period of more than 5 years and 3 months prior to filing of this Petition nor does Respondent No. 1 have any *bona fide* intention to use the Impugned Mark. The registration of the Impugned Mark is contrary to the provisions of Section 47(1)(a) of the Act as Respondent No. 1 has obtained frivolous registration without any intention to use the same in respect of the Impugned Goods.
- 10.12 Respondent No. 1 is not entitled to claim any benefit under Section 12 of the Act as there is complete dishonesty on part of Respondent No. 1 with regard to adoption and use claimed by Respondent No. 1 as for claiming honest concurrent use, it is necessary that the adoption of the Mark is not dishonest. There are no special circumstances or any other factor existing in favour of Respondent No. 1 for sustaining the registration of the Impugned Mark. Respondent No. 1 has no right in the Impugned Mark and assuming without admitting that Respondent No. 1 had any right, the same has been abandoned.
- 10.13 The entry of the Impugned Mark is wrongly remaining on the Register of Trade Marks as the registration has been made without sufficient cause. In order to maintain purity of the Register of Trade Marks, the Impugned Mark is liable to be rectified / removed / cancelled.



10.14 While making comparison, similarity between the marks has to be seen and not the dissimilarity:

- ***Cadila Health Care Ltd. v. Cadila Pharmaceuticals Ltd.*** AIR 2001 SC 1952 ('FALCITAB' Label v. 'FALCIGO')
- ***Heinz Italia v. Dabur India Ltd.*** (2007) 6 SCC 1 ('GLUCON-D' Label v. 'GLUCOSE-D' Label).

10.15 The test of confusion is same in relation to infringement and passing off, where marks are similar as held in ***Ruston & Hornsby Ltd. v. Zamindara Engineering Co.*** AIR 1970 SC 1649 ('RUSTON' v. 'RUSTAM' and / or 'RUSTAM INDIA').

10.16 Side by side comparison is not the test, overall similarity between the mark is to be seen as held in ***Parle Products (P) Ltd. v. J.P. and Co.*** (1972) 1 SCC 618 ('GLUCO BISCUITS' v. 'GLUCOSE BISCUITS').

10.17 The phonetic similarity is sufficient enough as held in ***K.R. Chinna Krishna Chettiar v. Shri Ambal & Co.*** (1969) 2 SCC 131 ('AMBAL' v. 'ANDAL').

10.18 While evaluating confusion, the Court is required to see not only present business of the petitioner, but also the possibility of business, which may be carried in future as given in ***Laxmikant V. Patel v. Chetan Bhai Shah and Another*** (2002) 3 SCC 65.

10.19 In absence of any plausible explanation of adoption of trade mark, right of a party cannot be protected as held in ***Delhi Marketing v. Zydus Wellness Limited*** Neutral Citation: 2023:DHC:3302-DB.



10.20 In case of bad faith adoption of trade mark, more emphasis has to be given on similarity as held in ***Himalaya Wellness Company v. Abony Healthcare Ltd.*** Neutral Citation: 2023:DHC:7668.

10.21 In case of prior registered trade mark on Register, the subsequent registered trade mark has to be cancelled under Section 11 of the Act as held in:

- ***Dr. Reddys Laboratories Limited v. Fast Cure Pharma and Another*** Neutral Citation: 2023:DHC:7541.
- ***Jainsons Lights Pvt. Ltd. v. The Registrar of Trademark*** Neutral Citation: 2023:DHC:001284.

10.22 The trademark has to be rectified where triple identity test is satisfied as held in ***Jain Electronics v. Cobra Cable*** 2010 SCC OnLine 4199.

10.23 No search report taken by Respondent No. 1 prior to adoption of impugned trade mark shows dishonesty in adoption as given in ***Radico Khaitan Ltd. v. M/S Devans Modern Breweries Ltd.*** 2019 SCC OnLine Del 7483.

10.24 Dishonesty in adoption cannot cure any amount of subsequent use as given in:

- ***Hindustan Pencils Private Limited v. India Stationary Products Co.*** AIR 1990 Delhi 19
- ***Ansul Industries v. Shiva Tobacco Company*** 2007 SCC OnLine Del 74.



10.25 A trade mark can be cancelled or refused on the basis of its similarity with earlier registered or earlier pending trade mark application as given in ***Fybros Electric Private Limited v. Vasu Dev Gupta Trading and Ors.*** Neutral Citation: 2023:DHC:3789.

10.26 While comparing competing trade marks, the Court is also required to see as to how the products are stacked together in the shop as given in ***Allied Blenders Distillers Private Limited v. Hermes Distillery Pvt. Ltd.*** Neutral Citation: 2024:DHC:288.

10.27 The registered proprietor cannot be allowed to allege the trade mark to be common to trade as the same itself has obtained the registration as given in ***AMPM Designs v. Intellectual Property Appellate Board*** 2021 SCC OnLine Bomb 14029.

10.28 In order to prove a trade mark to be common to trade, the third-party use has to be substantial as given in ***Pankaj Goel v. Dabur India*** 2008 SCC OnLine Del 1744 DB.

10.29 The Plaintiff's trade mark Royal Stag, the Defendant asserted only Stag to be common, immaterial as trade mark as a whole has to be seen. ***Pernod Ricard India Private Limited v. A. B. Sugars Limited*** Neutral Citation: 2023:DHC:7842.

10.30 Evasive denial does amount to be admission as given in ***Pfizer Enterprises v. Cipla Limited*** 2009 (107) DRJ 735.

10.31 The registered trade mark may be cancelled on the ground of passing off under the provision of the Act as given in ***Marie Stopes International v. Parivar Seva*** Neutral Citation: 2023:DHC:6806.



10.32 Further, the following Marks were held to be similar:

- ‘AMRITDHARA’ v. ‘LAKSHMANDHARA’ – *Amritdhara Pharmancy v. Satyadev Gupta* AIR 1963 SC 449.
- ‘GOLDEN QILA’ v. ‘HARA QILA’ – *Amar Singh Chawalwala v. Vardhman Rice* 2009(40) PTC 417 (Del) (DB).
- ‘JHANDU PANCHARISHTA’ v. ‘BAIDYARAJ PANCHARISHTA’ – *Emami Limited v. Shree Baidyaraj Ayurved Bhawan* 2019(80) PTC 394 (Del).
- ‘DOUBLE DEER’ v. ‘GOLDEN DEER’ – *Kirorimal Kashiram Marketing and Agencies Pvt. Ltd. v. Sita Chawal Udyog Mill* 2010 (44) PTC 293 (Del).
- ‘UNDER ARMOUR’ v. ‘STREET ARMOUR’ – *Under Armour v. Aditya Birla Fashion* Neutral Citation: 2023:DHC:2711.
- ‘ROOH AFZA’ v. ‘DIL AFZA’ – *Hamard Foundation v. Sadar Laboratories* Neutral Citation: 2022:DHC:005711.
- ‘OFFICER’S CHOICE’ v. ‘COLLECTORS CHOICE’ – *Shree Nath Heritage Liquor Pvt. Ltd. v. Allied Blenders & Private Limited* 2015 (63) PTC 551 (Del) DB.

SUBMISSIONS ON BEHALF OF THE RESPONDENTS:

11. Mr. Rahul Vidhani, learned Counsel for the Respondents submitted that:

11.1 Respondent No. 1 has honestly adopted the Impugned Mark, ‘ACTIVEPUSHPA’ along with the House Mark ‘KUDOS’, which has been used openly, continuously, extensively and



exclusively. The label under the Impugned Mark has been artistically conceptualised in the year 2018, wherein the word 'ACTIVEPUSHPA' is written in white colour and red background and is placed beneath the House Mark 'KUDOS'.

- 11.2 Respondent No. 1 has been advertising the Impugned Mark and has spent a considerable amount in popularising the Impugned Goods and has acquired enormous goodwill and reputation.
- 11.3 It is well settled that the Trade Marks should be compared and viewed as a whole and need not be broken into its various integers in order to determine whether it conflict with another Mark. Further, the Marks need not be compared meticulously or word by word and should be considered as a whole. Accordingly, the Impugned Mark is phonetically and visually very different and dissimilar from the Petitioner's Mark. On a composite level, the said two Marks are completely different. The Impugned Mark is a coined word with an unusual juxtaposition of combination of two dictionary words from two different languages. The dictionary meaning of the word 'ACTIVE' is "*involved in activity; lively*", whereas the word 'PUSHPA' refers to "*flowers*" in Sanskrit / Ayurveda and generally flowers are compared to women owing to their tender and delicate nature. It is a common practice in cosmetic and pharmaceutical industry to name the product by the name of the organ or ailment, which it treats or the main ingredient present in the product. Because of such industry practice, there are numerous products available in market relating to women with



minor variations of suffix ‘PUSHPA’ to attract more women, who are the target customers. There are several products in the market containing the word ‘PUSHPA’ as part of the trade mark that are being sold in the open market, which is evident from the documents relied upon by Respondent No. 1, *inter alia*, showing the registration of ‘NARIPUSHPA’, ‘HIMANISUNDARIPUSHPA’, ‘MADHUPUSHPA’, ‘SWARNPUSHPA’, ‘CHANDRA PUSHPA’, ‘HARPUSHPA’, ‘JAYANTI PUSHPA’, ‘GANDHPUSHPA’, ‘GRAHPUSHPA’, ‘PILLPUSHPA’, ‘JAGPUSHPA’, ‘DABUR SWASTHYAPUSHPA’, ‘NAV PUSHPA’, ‘SWASTH PUSHPA’, ‘SAUNDARYA PUSHPA’.

11.4 As per Section 15(1) of the Act, where the proprietor of a trade mark claims to be entitled to the exclusive use of any part thereof separately, such proprietor may apply to register the whole and the part as separate trade marks. In *Vardhman Buildtech Pvt. Ltd. & Ors. v. Vardhman Property Pvt. Ltd.* Neutral Citation: 2016:DHC:5833-DB, the Division Bench of this Court held that where a proprietor of a trade mark claims to be entitled to use of any part thereof separately, he is permitted to register the whole and the part as separate trade marks. When the proprietor of trade mark claims exclusive right to a part of the label / mark, which is not registered separately or contains any matter which is common to a trade or if otherwise is of a non-distinctive character, registration of the trade mark shall not confer any exclusive right in the matter forming only a part



of the whole of the trade mark so registered.

11.5 Section 17(1) of the Act provides that the registration shall confer on the proprietor exclusive right to use the trade mark taken as a whole and as per Section 17(2) of the Act, if the applicant has not applied for a separate registration for the part of the mark, then he is not entitled to any exclusive right on that part. Accordingly, the Petitioner cannot claim exclusivity over the word 'PUSHPA' as the Petitioner has not even applied for the registration of the said word 'PUSHPA' separately in addition to the Petitioner's Mark.

11.6 In ***Pernod Ricard India Pvt. Ltd. v. Falcon Distillery Ltd.***, this Court held that:

"56. Applying the above legal principles, first, to the contention of the plaintiff that the defendant's mark 'CASINOS PRIDE' infringes the plaintiff's 'BLENDERS PRIDE' registered word mark, there is substance in the contention of learned Senior Counsel for the defendant that the plaintiff cannot claim exclusivity over the 'PRIDE' part of the mark. 'PRIDE', etymologically, merely denotes the quality of the product, especially when used in context with the preceding expression 'BLENDERS'. It is, therefore, prima facie laudatory in nature, apparently intended to signify the pride that the blenders would have in their product. That apart, it is a word of common usage, and cannot be treated as distinctive, or as being capable of distinguishing the product of the plaintiff from that of any other manufacturer of whisky.

57. That being so, any claim for exclusivity over the 'PRIDE' part of the 'BLENDERS PRIDE' marks would be hit by Section 17(1) as well as 17(2)(b) of the Trade Marks Act. The right of the plaintiff, under Section 17(1) would be to the 'BLENDERS PRIDE' mark as a whole. Any claim to exclusivity over the



'PRIDE' part of the mark would be hit by Section 17(2)(b), as it is not distinctive in nature.

58. The law, as contained in the judicial authorities cited *supra*, permits a departure from this principle only where the part of the mark, in respect of which exclusivity is being claimed, is the dominant part of the mark. Though Mr. Hemant Singh has sought to contend that 'PRIDE' does constitute the dominant part of the 'BLENDERS PRIDE' mark, the contention is not easy to accept. The plaintiff has not placed any material on record which could lead to a *prima facie* conclusion that, over a period of time, the public has indelibly come to associate the 'PRIDE' suffix with the plaintiff's product. The test of discerning the dominant part in a mark is, essentially, a 'plain glance' test. At a plain glance, if one part of the mark stands out over the others, it would constitute the dominant part of the mark. That, again, has to be assessed from the perspective of the man in the street, who intends to purchase the product, or avail the service. Else, if one part of the composite mark has, by dint of longevity of usage, become identified with the plaintiff, it could be treated as the dominant part of the mark. To apply the 'dominant part' test and, thereby, overcome the Section 17 proscription against claiming exclusivity over a part of a registered mark, the Court must be able, definitively, to come to a conclusion that, in the perception of the customer of the goods, or the person availing the service, one part of the mark would stand out from the rest. Having said that, psychoanalysis is not the virtue of any judge, and the matter must, ultimately, rest with the dispassionate appreciation of the judge herself, or himself.

59. 'PRIDE' being a plainly generic, commonplace and laudatory expression in the 'BLENDERS PRIDE' mark, one would be inclined, rather, to treat the initial the 'BLENDERS' part of the plaintiff's mark as the dominant part thereof, if at all. I say "if at all" because it is also apparent that, even as a whole, 'BLENDERS PRIDE' is purely descriptive of the plaintiff's product, which is blended whisky.



60. For this reason, I am also unable to accept the submission, of Mr Hemant Singh, that the only purpose for anyone to use 'PRIDE' as a part of her, or his, mark, in respect of whisky, can be to imitate the plaintiff, and capitalize on the plaintiff's goodwill. 'PRIDE' being a purely laudatory expression, the desire of any manufacturer, of any product, to use 'PRIDE' as a part of the trade name of the product is perfectly understandable, and the plaintiff just happens, in my opinion, to be one such manufacturer. It is clearly not open to the plaintiff to arrogate, to itself, all rights to use 'PRIDE' as a part of its brand name, qua whisky or otherwise.

61. Any attempt to claim exclusivity in respect of the 'PRIDE' part of the plaintiff's 'BLENDERS PRIDE' mark, and allege infringement on the ground that another manufacturer is using a mark including 'PRIDE' as a part thereof, must necessarily fail.

62. Applying the J.R. Kapoor²⁰ test, once the common 'PRIDE' part of the plaintiff's and defendant's mark is ignored, the remaining part of the marks are totally dissimilar. It is obvious that there is no phonetic, visual or other similarity, between the 'BLENDERS' and 'CASINOS' parts of the plaintiffs and the defendant's marks. No case of idea infringement can, either, be said to exist. One does not blend in a casino, and blenders don't play dice.

63. Visually, too, there is no similarity in the 'BLENDERS PRIDE' device mark of the plaintiff and the 'CASINOS PRIDE' device mark of the defendant. This is obvious when the marks are viewed plainly. Indeed, Mr. Hemant Singh did not even seek to argue device mark infringement, insofar as the defendant's 'CASINOS PRIDE' mark was concerned, when viewed vis-à-vis the plaintiffs 'BLENDERS PRIDE' mark. The plea of infringement, by the defendant's mark, of the plaintiffs 'BLENDERS PRIDE' mark was vis-à-vis the plaintiffs 'BLENDERS PRIDE' word mark, and not vis-à-vis the plaintiffs 'BLENDERS PRIDE' device mark.

64. I am unable to convince myself that any case of



infringement, by the defendant's 'CASINOS PRIDE' mark, of the plaintiffs 'BLENDERS PRIDE' mark, can be said to exist."

- 11.7 In ***Rajesh Jain v. Amit Jain***, 2014 (145) DRJ 694, this Court held that the marks 'BLUE VALLEY' and 'BLUE VARY' in the setting in which they appear are not similar in nature, which is likely to cause confusion or have the consumers associate the defendant's goods with those of the plaintiff. It was also found that the similarities in that case were negligible, while the variants were many. Accordingly, the interim injunction was refused.
- 11.8 In ***RSPL Health Pvt. Ltd. v. Reckitt and Colman (Overseas) Hygiene Home Ltd. & Anr.*** Neutral Citation: 2023:DHC:6056, this Court held that treating 'HARPIC DRAINXPERT' is similar to 'XPERT' would be stretching the principle of similarity to an unreasonable extent. It was found that the principle of similarity is not so elastic to be stretched to breaking point. It was held that 'XPERT' is only half of the second word of the impugned registered word mark which is 'DRAINXPERT' and only if one were to ignore 'HARPIC', bifurcate the second word of the impugned mark into 'DRAIN' and 'XPERT' and ignore the first of the said two parts 'DRAIN', 'XPERT' would become alike. Hence, the rectification petition for 'HARPIC DRAINXPERT' was dismissed.
- 11.9 In ***Kalindi Medicare v. Intas***, 2006 SCC OnLine Del 1166, this Court has held that 'LOPRIN' and 'LOPARIN' are dissimilar



as the price difference is huge and the purpose of the respective competing drugs are different because one is curative and the other is preventive.

- 11.10 In *Ranbaxy v. Intas* 2011 SCC OnLine Del 3527, this Court held that the trade marks 'NIFTRAN' and 'NIFTAS' are not similar either phonetically or visually as the price difference is not much.
- 11.11 In *Sun Pharma v. Anglo French* 2014 SCC OnLine Del 4716, the Division Bench of this Court has vacated the injunction granted and held that the trade marks 'OXETAL' and 'EXITOL' are not similar relying on *Cadila* (SC) as the purpose of treatment of the two drugs are different, one being an anti-convulsant / mood stabiliser and the other being a laxative and also held that the prefixes are different in the two trade marks.
- 11.12 In *Ajanta Pharma v. Zuventus*, Neutral Citation: 2020:DHC:1874, this Court held that the trade marks 'AMADAY' and 'ANADAY' are dissimilar as the Plaintiff failed to prove dishonest adoption and also the purpose of the drugs in treating ailments were different as one was for treatment of high blood pressure / heart disease and the other was for treating breast cancer. Further, it was noted that the Plaintiff's drug was mainly exported and not available locally and hence, no chance of confusion.
- 11.13 In *Cadila Labs v. Dabur India* 1997 SCC OnLine Del 360, this Court held that the trade marks 'MEXATE' and 'ZEXATE' were dissimilar as 'EXATE' is common to the trade. Further,



both being for treatment of cancer involvement, importance was given to involvement of cancer specialist while prescribing the two drugs and hence, no chance of confusion could be there. Also, it was observed that the prefix of 'Me' and 'Ze' were significantly different.

- 11.14 In *Medley Pharma v. Khandelwal Labs* 2005 SCC OnLine Bom 1160, it was held by the Division Bench of the Bombay High Court that the trade marks 'CEFO' and 'CEFI' were not similar as 'CEF' was held to be common to the trade and substantial user of the said mark by other companies was established, hence, no likelihood of confusion. *Medley Pharma v. Khandelwal Labs* SLP (C) No. 5004/2006, the Supreme Court had declined to interfere with the order of the Bombay High Court.
- 11.15 In *Astrazeneca UK Ltd. v. Orchid Chemicals and Pharmaceuticals Ltd.* ILR (2007) 1 Delhi 716, the Supreme Court held that the trade marks 'DROPOVIT' and 'PROTOVIT' were not similar as the suffix of 'VIT' was held to be common to the trade. It was held that 'DROPOVIT', conceived from "Drop of Vitamin" was an invented word and, therefore, registrable.
- 11.16 In *Apex Laboratories v. Zuventus Healthcare Limited* 2006 SCC OnLine Mad 1238, the Division Bench held that the trade marks 'ZINCOVIT' and 'ZINCONIA' were dissimilar as 'ZINC' was held common to the trade and the likelihood of confusion was not established.



11.17 In *Johann Wulffing v. CIPLA* 1983 SCC OnLine Bom 285, this Court has held that the trade marks 'COMPLAMINA' and 'CIPLAMINA' were not similar as there was significant phonetic dissimilarities, especially in pronunciation of 'C' in the respective marks and also they were different in visual impression.

11.18 In *Sun Pharma Ltd. v. Mylan Laboratories* 2017 SCC OnLine Del 6932, the Division Bench of this Court held that the trade marks 'OXIPLAT' and 'SOXPLAT' were dissimilar as there was no phonetic similarity between the two marks and also no case was made out for deceptive similarity.

11.19 In *East African (I) Remedies v. Wallace Pharmaceuticals Ltd.* 2003 SCC OnLine Del 328, this Court has held that the trade marks 'REVOX' and 'RIVOX' were not similar as the Plaintiff's user claim was found to be not continuous and dubious. Further, no likelihood of confusion / deception was established.

11.20 In *Sami Khatib v. Seagul Labs* 2001 SCC OnLine Del 845, this Court held that the trade marks 'XYMEX' and 'XENEX' were dissimilar as the words 'XYMEX' and 'XENEX' were held to be derived from enzymes and, therefore, were generic and descriptive.

11.21 In *Schering Corporation & Ors. v. Alkem Laboratories* 2009 SCC OnLine Del 3886, the Division Bench of this Court dismissed the appeal and held that there was no similarity between the trade marks 'TEMOKEN' and 'TEMOGET' as



‘TEMO’ was held to be *publici juris* for the generic term ‘TEMOZOLOMIDE’ and, therefore, the use of the word ‘TEMO’ was descriptive. Also, the price differences between the two drugs was vast and there was no similarity in the getup of the packaging of the two drugs.

11.22 In *Novartis AG v. Wanbury Ltd.*, 2005 SCC OnLine Del 705, this Court has held that the trade marks ‘TRIOMINIC’ & ‘TRIAMINIC’ were dissimilar to the trade mark ‘CORIMINIC’ as the word ‘MINIC’ was found to be generic and there was no similarity found in ‘CORI’ and ‘TRIA’ / ‘TRIO’. Also, the packaging was found to be entirely different.

11.23 In *SBL Limited v. Himalaya Drug Company*, 1997 SCC OnLine Del 571, the Division Bench of this Court has held that the trade marks ‘LIV 52’ and ‘LIV T’ were not similar as the word ‘LIV’ were held to be *publici juris*, with about 100 ‘LIV’ drugs available in the market and that the consumer would, therefore, fixate on the uncommon feature, i.e., ‘T’ and ‘52’, which bear no similarity. Further, it was observed that the packaging of the products were completely different and the packages also prominently contained the name of the contesting parties.

11.24 In *Bal Pharma Ltd. v. Centaur Laboratories Pvt. Ltd.* (2002) 24 PTC 226, the Division Bench of the Bombay High Court held that the trade marks ‘MICRODINE’ and ‘MICRODINE’ were not similar and discussed about the importance of taking a proper search for a trade mark in order to ensure that it is not



the property of another. In this case, the Respondents were registered since 1982, prior to the Appellant's date of first use in 1999. Hence, it was held that the search would have to be conducted prior to making application.

11.25 In *Neon Laboratories Ltd. v. Medical Technologies Ltd.* 2015 SCC OnLine SC 905, the Supreme Court dismissed the appeal and held that that trade marks 'PROFOL' and 'ROFOL' were dissimilar as both the trade marks were held to be extremely phonetically similar to the generic drug 'PROPOFOL'. Also, prior use was given importance as the plaintiff's use of the trade mark pre-dated the defendant's date of registration.

11.26 In *Corona Remedies Private Limited v. Franco-Indian Pharmaceuticals Private Limited*, 2023 SCC OnLine Bom 833, the Division Bench of the Bombay High Court held that the trade marks 'STIMULIV' and 'STIMULET' were not similar on the ground that no exclusivity can be claimed on the generic portion of the trade mark.

11.27 Further, the following marks were held to be dissimilar:

- a. 'AZIWOK' v. 'AZWIN' – *Bal Pharma Ltd. v. Wockhardt Ltd. & Anr.* in Appeal/498/2022.
- b. 'NETROMYCIN' v. 'NETMICIN' – *Schering Corporation & Anr. v. United Biotech (P) & Anr.*, 2005 SCC OnLine Bom 546.
- c. 'ANTITHROX' v. 'LETHYROX' – *Macleods Pharmaceuticals Ltd. v. Intas Pharmaceuticals & Anr.*, 2013 SCC OnLine Bom 1779.



d. 'DISPRIN' v. 'MEDISPRIN' – *Reckitt & Colman of India v. Medicross Pharmaceuticals*, 1992 SCC OnLine Bom 195.

e. 'ZANOCIN' v. 'ZENOXIM' – *Ranbaxy Laboratories v. Indchemie Health Specialities*, 2001 SCC OnLine Bom 906.

f. 'CEFO-DT' v. 'CEFI-DT' – *Medley Pharmaceuticals Ltd. v. Khandelwal Laboratories Ltd.*, 2005 SCC OnLine Bom 1160.

g. 'LORAM' v. 'SELORAM' – *Unichem Laboratories Ltd. v. IPCA Laboratories Ltd. & Anr.*, 2011 SCC OnLine Bom 2114.

h. 'NOVIGAN' v. 'NOVALGIN' – *Dr. Anji Reddy v. Hoechst Aktiengessellschaft* 2006 (33) PTC 581 (MAD) (DB).

i. 'METO' v. 'METOX' – *Orchid Chemicals & Pharmaceuticals Ltd. v. Wockhardht Ltd.*, 2013 SCC OnLine Mad 1324.

j. 'CEFI' v. 'ZIFI' – *Khandelwal Laboratories Ltd. v. FDC Ltd.*, 2001 SCC OnLine Del 879.

k. 'ENERJASE' v. 'ENERGEX' – *Indo-pharma Pharmaceuticals v. Citadel Fine Pharma Ltd.*, 1998 SCC OnLine Mad 414.

l. 'TEMODAL' v. 'TEMOGET' – *Schering Corp & Ors. v. Getwell Life Science India* 2008 (37) PTC 487 (DEL).

11.28 Without prejudice to the above submissions, Respondent No. 1 is willing to change its label as under:



11.29 In view of the above, it was submitted that the present Rectification Petition be dismissed and let the registration of the Impugned Mark, 'ACTIVEPUSHPA' continue to remain on the Register of Trade Marks.

REJOINDER SUBMISSIONS ON BEHALF OF THE PETITIONER:

12. Mr. Ajay Amitabh Suman, the learned Counsel for the Petitioner made the following rejoinder submissions:

12.1 Respondent No. 1 relied upon various invoices, which were sent by the group companies of Respondent No. 1, however, the said invoices are computer generated and not supported by an Affidavit in support of electronic evidence. Further, the said invoices are unsigned and issued by Kudos to Kudos. Accordingly, no reliance can be placed on these invoices to support any of the submissions made by Respondent No. 1 as the same are created documents for the purpose of this case.

12.2 As regards 'PUSHPA' being generic and descriptive, the said



argument of Respondent No. 1 is not tenable as the Petitioner has already relied upon several decisions where competing trade marks having common element as suffix were held to be deceptively similar.

- 12.3 In relation to the submission of Respondent No. 1 that the Petitioner cannot assert 'PUSHPA' against the Impugned Mark by virtue of Section 17 of the Act, the said provision is applicable to composite label trade marks consisting of many matters. However, in the present case, the Petitioner's Mark is a Word Mark 'HEMPUSHPA' and compared as a whole with the Impugned Mark 'ACTIVEPUSHPA', both Marks are deceptively similar. In *Shree Nath Heritage* (*supra*) and *Pernod Ricard* (*supra*) composite label was protected despite argument taken on Section 17 of the Act.
- 12.4 The new label filed by Respondent No. 1 was without any permission from the Court and cannot be allowed. Once a party is dishonest, the same cannot be allowed to perpetuate dishonesty by using its variations as held in *Hindustan Pencil* (*supra*) and *Ansul Industries* (*supra*).
- 12.5 Further, Respondent No. 1 did not rebut the submission on passing off, which is one of the grounds for rectification of the registered trade mark as held in *Marie Stopes* (*supra*) and *Amit Sood v. Union of India* Neutral Citation: 2024:DHC:3533.
- 12.6 Further, the decisions relied upon by Respondent No. 1 are distinguishable on the facts of each case as the probability of confusion was less and the Marks in question were found to be



non-distinctive and common in use.

12.7 In view of the same, the present Petition be fully allowed.

ANALYSIS AND FINDINGS:

13. In the present case, the Marks in question are 'HEMPUSHPA' and 'ACTIVEPUSHPA'. Both are registered Word Marks. There is no cavil that the Petitioner's Mark has prior registration and user as compared to the Impugned Mark.

14. Accordingly, the Petitioner's Mark is having superior rights over the Impugned Mark. Respondent No. 1 has not questioned the prior use and registration of the Petitioner's Mark, however, the main defence against this Rectification Petition is regarding dissimilarity and the 'anti-dissection rule' of the Marks. Respondent No. 1 has also submitted that the Impugned Mark is phonetically and visually very different and dissimilar from the Petitioner's Mark.

15. Respondent No. 1 has also submitted that the Impugned Mark is a coined word and is a combination of two dictionary words from two different languages. It was also submitted by Respondent No. 1 that the suffix 'PUSHPA' relates to women and as the Impugned Goods being related to women, there are many products with the Trade Mark containing 'PUSHPA' as a suffix. Accordingly, the word 'PUSHPA' cannot be a dominant part of the Petitioner's Mark and assuming the same is dominant, it is non-distinctive and common to trade.

16. Further, Respondent No. 1 has relied upon Sections 15(1), 17(1) and 17(2) of the Act to submit that the registration of the Petitioner's Mark does not confer an exclusive right on the Petitioner to claim monopoly over the part of the Petitioner's Mark, if that part is not registered separately.



Accordingly, the registered Trade Mark has to be considered as a whole and if the Petitioner's Mark and Impugned Mark are compared as a whole, the same are entirely dissimilar and will not cause any confusion or deception in the minds of the users.

17. The Petitioner, on the other hand has relied upon Sections 9, 11, 12, 18, 34, 47, 57 and 125 of the Act to submit that the Petitioner's Mark is a well-known Trade Mark within the meaning of Section 2(1)(zg) of the Act due to extensive use for more than 90 years without any interruption. The adoption by Respondent No. 1 of the Impugned Mark was dishonest as Respondent No. 1 was aware about the goodwill and reputation of the Petitioner and to gain unfair advantage of the same, the Impugned Mark was adopted by Respondent No. 1 to ride on coat tails of the Petitioner's Mark. The Petitioner has statutory as well as common law rights to protect the Petitioner's Mark from being infringed or diluted due to deceptive similarity between the Petitioner's Mark and the Impugned Mark. The adoption of the Impugned Mark by Respondent No. 1 is dishonest, tainted and fraudulent and the registration of the Impugned Mark is illegal.

18. In view of the above submissions made by the Parties and given that there is no dispute with regard to the Petitioner's Mark having prior registration and user and the goods in respect of which both the Petitioner's Mark as well as the Impugned Mark are registered being the same and also the trade channels and the consumer base being identical, the following questions arise for consideration:

- i. Whether the Impugned Mark is deceptively similar to the Petitioner's Mark?
- ii. Whether the word 'PUSHPA' is a dominant part of the



Petitioner's Mark that requires protection or the same is non-descriptive, generic and common to trade?

- iii. Whether Respondent No. 1 is guilty of dishonest adoption and use of the Impugned Mark, which is likely to cause passing off of the Impugned Goods and confusion / deception in the minds of the consumer?
- iv. Whether the Impugned Mark is liable to be rectified and cancelled from the Register of Trade Marks?

19. It is trite law that trade marks are source identifiers and allow the proprietors to establish the trust and develop goodwill with consistent use and providing quality of services or goods. The interest of an average consumer has to be protected by eliminating any likelihood of confusion or deception. On a holistic comparison, if the marks are found to be similar and likely to cause confusion in the minds of an average consumer having imperfect recollection, the mark that is adopted subsequently has to be injunctioned and / or rectified depending on the facts of each case.

20. As held in *Cadila Healthcare* (*supra*), the deceptive similarity has to be considered in holistic manner while keeping in mind the nature of the rival marks, the class of consumers and overall circumstances surrounding the trade.

21. The Courts adopt a balanced approach to analyze the deceptive similarity between the two marks after applying the provisions of the Act and the principles evolved through case laws. The doctrines of anti-dissection and dominant mark have to be reconciled to achieve the goal of protecting the interest of the consumer of the rival marks by avoiding any influence on the decision taken by the consumer due to the existence of



similarities that may cause confusion in their minds having imperfect recollection. In *Amritdhara Pharmacy* (*supra*), it is held that the comparison must be made from a person of average intelligence and imperfect recollection. Even minor phonetic or visual similarities may cause confusion, if the marks share prominent or memorable features.

22. The test of deceptive similarity depends on consideration of visual and phonetic similarity of the marks, nature of the goods and class of consumers, especially in the field of pharmaceutical and medicinal goods as the same may directly impact the health of the consumer.

23. As held in *Cadila Healthcare* (*supra*), at the time of comparison, it is the similarity between the marks that has to be considered as compared to the dissimilarity. It is settled law that the Court is not required to do side by side comparison of the rival marks. It is the overall similarity between the marks that has to be seen as held in *Parle Products* (*supra*).

24. In the facts of the present case, it is necessary to analyze if the common element 'PUSHPA' in both the Petitioner's Mark and the Impugned Mark is a dominant part, which would create an exception to 'anti-dissection rule' to eliminate possibility of confusion in the minds of the consumer.

25. As there is no dispute about the nature of the goods in question being identical and the trade channel also being the same, the likelihood of confusion is high. Admittedly, the Petitioner is the prior adopter and user of the Petitioner's Mark, having extensive use and reputation built over 90 years, which is not questioned by Respondent No. 1.

26. Hence, the case laws relied upon by the Parties with regard to the marks that are for different types of goods or services and having different



trade channels or consumer base would not be applicable in the facts of this case.

27. To determine whether the word 'PUSHPA' is the dominant part of the Petitioner's Mark, both Marks have to be compared as a whole without dissecting them into two parts. Both, the Petitioner and Respondent No. 1 agree that the Petitioner's Mark and the Impugned Mark are composite Marks and the same have to be considered in their entirety to determine if they are deceptively similar and likely to cause confusion if applied on the same goods targeted to the same class of consumers. Accordingly, there is no dispute that the 'anti-dissection rule' as per Sections 15 and 17 of the Act shall apply to the facts of this case except if the word 'PUSHPA' is found to be dominant in the Petitioner's Mark resultantly causing confusion as the two identities out of triple identity test are common.

28. Section 2(1)(h) of the Act defines "deceptively similar" if a mark nearly resembles the other mark as to be likely to deceive or cause confusion. Section 9 of the Act provides for the grounds for refusal of registration, *inter alia*, if the trade mark is devoid of any distinctive character. Section 11 of the Act provides that the trade mark shall not be registered if because of its identity / similarity with the earlier trade mark and similarity with the goods or services covered by the earlier trade mark, there exists a likelihood of confusion on the part of public including the likelihood of association with the earlier trade mark.

29. Accordingly, the Trade Mark that is likely to cause confusion or association due to prior registration of identical / similar Trade Mark is required to be rectified by removing from the Register of Trade Marks in order to maintain purity of the Register.



30. When the Impugned Mark was registered, the examination report did not cite the Petitioner's Mark. The cited Marks were in the context of 'ACTIVE' and did not refer to any earlier Trade Marks having registration with the word 'PUSHPA'. This shows that Respondent No. 2 did not consider 'PUSHPA' as the dominant part, whereas found 'ACTIVE' as the dominant part of the Impugned Mark.

31. It is the grievance of the Petitioner that Respondent No. 2 did not examine the application for registration of the Impugned Mark in accordance with the provisions of the Act as the examination report was not exhaustive and considered only first part of the Impugned Mark and not the later part containing the word 'PUSHPA'. As a matter of fact, there are a number of 'PUSHPA' formative Marks including the Petitioner's Mark having registration and user prior to the date of application for registration of the Impugned Mark. Hence, both parts of the Impugned Mark are equally important as Respondent No. 1 itself has submitted that the Impugned Mark is a coined word consisting of two words from two different languages. Hence, both the words comprising the Impugned Mark are equally dominant and must be considered for comparison to determine deceptive similarity with the other earlier Trade Marks.

32. As stated above, the prior adoption, use, registration, goodwill and reputation of the Petitioner's Mark is not in question. Accordingly, the Petitioner's Mark is an earlier Trade Mark within the meaning of the Explanation to Section 11 of the Act. The only question, therefore, is whether the word 'PUSHPA' being common in both the Petitioner's Mark and the Impugned Mark is likely to cause confusion or deception in the minds of the average public having imperfect recollection.



33. To determine the confusion and deception, the manner in which both rival Marks are used on the Petitioner's Goods and the Impugned Goods require consideration. A comparative analysis of the labels containing the Petitioner's Mark and the Impugned Mark in the existing as well as proposed labels submitted by Respondent No. 1 is as under:

Label with the Petitioner's Mark	Existing label with the Impugned Mark
	
Proposed label with the Impugned Mark	
	

34. The above labels using the Petitioner's Mark as well as the Impugned Mark in the existing as well as proposed labels clearly show that Respondent



No. 1 is showing 'PUSHPA' as the dominant part of the Impugned Mark as the word 'PUSHPA' is written in a bigger font as compared to 'ACTIVE', which is the first part of the Impugned Mark as well as 'KUDOS', which is the House Mark of Respondent No. 1. Whereas the Petitioner's Mark is registered as 'HEMPUSHPA' together as one word and in the same font. Even the revised label proposed by Respondent No. 1 contains 'PUSHPA' in bigger fonts as compared to 'ACTIVE' and 'KUDOS'. This conduct of Respondent No. 1 clearly shows the contradiction between their submissions in response to this Petition and actual use of the Impugned Mark.

35. The prominent use of the word 'PUSHPA' by Respondent No. 1 in the Impugned Mark clearly shows that Respondent No. 1 has treated 'PUSHPA' as the dominant part of the Impugned Mark. Even the submission of Respondent No. 1 that the word 'PUSHPA' signifies targeting women justifies the dominant use of the word 'PUSHPA' on the label of the Impugned Goods. Accordingly, it is not open to Respondent No. 1 to contend that the word 'PUSHPA' is not dominant in the Petitioner's Mark.

36. The Petitioner having extensive use and goodwill over a period of 90 years, it was very obvious for Respondent No. 1 to adopt the Impugned Mark that is deceptively similar to the Petitioner's Mark and use the common word between the Petitioner's Mark and the Impugned Mark prominently, which increases the likelihood of confusion in the minds of public at large. Even the test of phonetic similarity is satisfied in the present case as the word 'PUSHPA' is common as held in **K.R. Chinna Krishna** (*supra*).

37. In view of the above, the 'anti-dissection rule' will not apply in the present case as if compared as a whole and without dissecting the rival



Marks, the word ‘PUSHPA’ emerges as a dominant feature of both the Marks especially when seen from the manner in which Respondent No. 1 is using the Impugned Mark. Accordingly, the Impugned Mark is clearly deceptively similar to the prior registered Petitioner’s Mark.

38. It is Respondent No. 1, who has isolated the two parts of a composite Mark being the Impugned Mark and used one part more prominently than the other despite obtaining registration of the Impugned Mark as one single word and claiming to be a coined word. Hence, the dissection by Respondent No. 1 in actual use of the Impugned Mark clearly shows that Respondent No. 1 has adopted the Impugned Mark with dishonest intention to ride on the goodwill of the Petitioner.

39. While comparing both the rival Marks, the word ‘PUSHPA’ emerges as the common part, which is likely to be remembered and influence the decision of the consumer while deciding between the Petitioner’s Goods and the Impugned Goods. Therefore, the provisions of Sections 15 and 17 of the Act shall not apply in the present facts as the word ‘PUSHPA’ is the ‘hook’ that acts as a recall value for the consumer as admitted by Respondent No. 1 itself to justify the adoption of the Impugned Mark.

40. Although the Petitioner cannot claim exclusivity on monopoly over the word ‘PUSHPA’, which is a common word being used by many others to identify the products relating to women, the manner in which the Impugned Mark is adopted and used for the identical goods for the same Class-05 subsequent to the adoption and use of the Petitioner’s Mark clearly shows *mala fide* intention to cause confusion and gain benefit out of the same. In case of bad faith adoption of the Mark, the emphasis has to be given on the similarity to decide whether the Impugned Mark deserves to be



cancelled / rectified as held in *Himalaya Wellness Company* (*supra*).

41. The consumers of the Petitioner's Goods as well as the Impugned Goods belong to the same class and may not be highly educated or literate. Given that the Petitioner's Goods and the Impugned Goods are identical having same trade channels, there is no doubt that considering the similarity between the Petitioner's Mark and the Impugned Mark, it will result in confusion and deception in the minds of public having imperfect recollection.

42. The Petitioner's Mark is exclusively associated with the Petitioner's Goods and has acquired distinctiveness through prolonged, continuous and exclusive use without any interruption. Having applied for the Impugned Mark containing the word 'PUSHPA', Respondent No. 1 is not entitled to claim that the word 'PUSHPA' is generic and common to trade. As a registered proprietor of the Impugned Mark containing the word 'PUSHPA', it is not open for Respondent No. 1 to submit that the Petitioner has no right to claim exclusivity over the Petitioner's Mark being a composite Mark containing the word 'PUSHPA'.

43. The purity of the Register of Trade Marks is required to be maintained as Respondent No. 2 failed to cite all the earlier registered Marks containing the suffix 'PUSHPA' as for the same class of goods or services even the suffix can cause similar amount of confusion as the prefix can. Therefore, it is the duty of Respondent No. 2 to point out any likelihood of confusion by citing similar / identical Marks that fall in the category of 'earlier trade mark' in terms of the provisions of the Act. In view of the lapse on the part of Respondent No. 2 to cite the Petitioner's Mark at the time of examination report for the application for registration of the Impugned Mark, the



Petitioner has filed the present Rectification Petition seeking rectification / cancellation / removal of the Impugned Mark from the Register of Trade Marks.

44. As the Petitioner's Mark is having prior registration and use and the Impugned Mark being the subsequent registered Trade Mark, having been registered in violation of Section 11 of the Act, is liable to be cancelled as held in *Dr. Reddy's Laboratories* (*supra*) and *Jainsons Lights* (*supra*).

45. Accordingly, it is held that the Impugned Mark is deceptively similar to the Petitioner's Mark given that the word 'PUSHPA' is a dominant part of the Petitioner's Mark that requires protection and the same is not descriptive, generic or common to trade. Respondent No. 1 is guilty of dishonest adoption and use of the Impugned Mark, which is likely to cause passing off of the Impugned Goods and confusion / deception in the minds of the consumer. As a result, the Impugned Mark is liable to be rectified and cancelled from the Register of Trade Marks.

46. In view of the above, the present Petition is allowed and Respondent No. 2 is directed to cancel / remove / rectify of the registered Trade Mark 'ACTIVEPUSHPA' under Registration No. 2471490 in Class-05 in the name of Respondent No. 1 from the Register of Trade Marks being contrary to the provisions of Sections 9, 11, 12, 18, 34, 47, 57 and 125 of the Act.

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

TEJAS KARIA, J

DECEMBER 24, 2025
'SMS'