



2025:DHC:1500



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

% *Date of decision: 03rd March, 2025*

+ C.O. (COMM.IPD-TM) 62/2024 with I.A. 29531/2024 & I.A. 40361/2024

KIRANAKART TECHNOLOGIES PRIVATE LIMITED

.....Petitioner

Through: Ms. Shruti Baid, Mr. Aman Sagar &
Mr. Anmol Kasana, Advocates.

versus

MOHAMMAD ARSHAD & ANR.Respondents

Through: Ms. Radhika Bishwajit Dubey, CGSC
with Ms. Gurleen Kaur Waraich &
Mr. Kritarth Upadhyay, Advocates
for R-2.

CORAM:

HON'BLE MR. JUSTICE AMIT BANSAL

AMIT BANSAL, J. (Oral)

1. The present rectification petition has been filed under Sections 47 and 57 of the Trade Marks Act, 1999 (hereinafter 'the Act') seeking cancellation/ removal of the trade mark 'ZEPTO' bearing no. 2773519 in class 35 in the name of the respondent no.1 (hereinafter 'impugned mark') from the Register of Trade Marks.

PROCEEDINGS IN THE PETITION

2. Notice in the present petition was issued to the respondents on 17th May, 2024. Notice was accepted on behalf of the respondent no.2 on the same date.



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3. Notice was served upon the respondent no.1 through email, WhatsApp, speed post and courier, who appeared in person on 25th September, 2024.

4. However, none appeared on behalf of the respondent no.1 on the last date of hearing. In the interest of justice, adverse orders were deferred and it was made clear that the matter would be adjudicated on merits on the next date of hearing.


5. Despite the aforesaid, neither any appearance has been made on behalf of the respondent no.1 today nor has any reply been filed to the present petition.

6. Written submissions, along with judgments in support, on behalf of the petitioner has been filed.

BRIEF FACTS

7. Brief facts set up in the petition, which are relevant for adjudicating the present petition, are as under:

7.1. The petitioner, Kiranakart Technologies Private Limited, is a highly reputed and well-established startup and provides quick commerce service

under the marks ZEPTO and  (hereinafter collectively referred to as 'ZEPTO marks'). The petitioner offers instant consumer goods delivery services for 7000+ products in 20+ categories through its state-of-the-art mobile application, namely, ZEPTO.

7.2. The petitioner has licensed the mark ZEPTO and its mobile application to third-party sellers (hereinafter 'operators') who sell consumer products to the end consumers placing orders on the ZEPTO platform. The petitioner also provides logistics and last mile delivery services and sells



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consumers goods on a B2B basis to these operators.

7.3. The petitioner commenced its business under the ZEPTO marks in July 2021 and within five months of commencement of its business operations, the petitioner's valuation of its business under the ZEPTO marks reached USD 570 million.

7.4. The petitioner has approximately 350 stores/ delivery hubs, 1000+ employees, 40000+ delivery executives and has managed to accomplish over millions of deliveries. The petitioner currently has a presence in over 10 cities across India and over 8 million customers have placed orders on its platform.

7.5. The petitioner's mobile application has received over 1 crore downloads and has a rating of 4.6 on the Google Play Store. The petitioner operates its website, accessible at www.zeptonow.com, which domain was registered in the year 2021. The petitioner also operates its profiles on social media platforms such as Facebook, X, Instagram, YouTube and LinkedIn and has a wide following base on each of its profiles.

7.6. The petitioner's turnover has tremendously increased since its launch in 2021. In the year 2023-24, the petitioner's turnover was approximately Rs. 4252 crores.

7.7. Since its commencement, the petitioner has widely advertised and promoted the ZEPTO marks by way of print, television, digital and outdoor campaigns. The ZEPTO marks are conspicuously displayed on the petitioner's website, mobile application, packaging, delivery executive's apparel, bags, etc. The petitioner has also been actively promoting the ZEPTO marks in the Indian markets by sponsoring events and collaborating with well-known entities and celebrities.



7.8. The petitioner, between 2021-22 and 2023-24, has spent over Rs. 187 crores in promoting and advertising its services under the ZEPTO marks.

7.9. The petitioner has obtained trade mark registrations for the ZEPTO marks in classes 29, 30, 31, 32, 34, 39 and 43. A list of the petitioner's registered trademarks and pending trade mark applications is given in paragraph no.18 of the petition.

7.10. In view of the aforesaid, the petitioner is recognized as a renowned company in India and has acquired immense goodwill and reputation under the ZEPTO marks.

7.11. The respondent no.1 has registered the mark ZEPTO in classes 9 and 35. The impugned mark has been registered in the name of the respondent no.1, with effect from 14th July, 2014 with a user claim since 1st April, 2011, in class 35 in relation to *'advertising, export & import, wholesale & retail outlets and shops including services relating to distribution, trading and marketing of mobile phones; mobile internet devices; mobile phone parts & accessories; smart phones; microphones; headsets; batteries; speakers; phone chargers; chips for mobiles, mobile gaming device and accessories, portable communication gazettes & devices; computer software and telecommunication apparatus to enable access to databases and internet; services; wi-fi routers; telephone instruments and devices, technical consultancy'*.

7.12. The respondent no.1 has filed an opposition against the petitioner's trade mark application bearing no. 5079706 for the mark ZEPTO in class 35.

7.13. Aggrieved by the aforesaid, the present petition has been filed.

SUBMISSIONS OF THE PETITIONER

8. Counsel appearing on behalf of the petitioner has made the following



submissions:

8.1. Owing to its continuous and extensive use and pan-India promotion and advertisement activities, the ZEPTO marks are exclusively associated with the petitioner.

8.2. As per the petitioner's knowledge and findings of a third-party independent investigator supported by an affidavit, the impugned mark is neither in use at present nor was ever put to commercial use in relation to the services in class 35 for which the impugned mark has been registered. The respondent no.1's user claim of 1st April, 2014 in the impugned registration is therefore false and misleading.

8.3. The respondent no.1 has no *bona fide* intention to use the impugned mark in relation to the services claimed in the impugned registration. Nearly 8 years have passed since the date when the impugned mark was entered on the Register of Trade Marks, however, the respondent no.1 has failed to use the impugned mark in relation to the aforesaid services in class 35 till date. Therefore, the impugned mark is merely a block on the Register of Trade Marks.

8.4. Despite no active commercial use of the impugned mark by the respondent no.1, he had filed a vexatious opposition against the petitioner's application for the mark ZEPTO in class 35. The grounds taken by the respondent no.1 in its notice of opposition are devoid of any merits. The respondent no.1 has filed the aforesaid opposition against the petitioner's trade mark application merely to unjustly delay the registration and harass the petitioner.

8.5. The respondent no.1's dishonesty is evident from the fact that despite being aware of present proceedings, he has failed to contest the same.



8.6. In July 2024, the respondent no.1 had approached the petitioner indicating his willingness to settle the matter. Between 23rd July, 2024 and 12th September, 2024, the parties were negotiating amongst themselves, however, the respondent no.1 was merely attempting to extort money under the garb of amicable resolution. Accordingly, the settlement did not mature.

8.7. The petitioner is an aggrieved person under the provisions of the Act as the respondent no.1, through the registration of the impugned mark, is posing as hindrance to the registration of the petitioner's mark ZEPTO in class 35.

ANALYSIS AND FINDINGS

9. I have heard the counsel for the petitioner and perused the material on record.

10. The respondent no.1 has not filed his reply to the present petition, which indicates that he has nothing substantial to put forth on merits by way of a response to the averments made in the petition. It is trite law that in the absence of any denial of the averments made in the petition, the same have to be taken as admitted. In view of the above, the averments made in the petition are deemed to be admitted.

11. Reference in this regard may be made to the case of ***DORCO Co. Ltd. v. Durga Enterprises and Another***, 2023 SCC OnLine Del 1484, wherein I had ordered for removal of the impugned mark therein on the ground of non-use. The relevant observations from ***DORCO*** (supra) are set out below:

“8. In the judgment in Shell Transource Limited v. Shell International Petroleum Company Ltd., 2012 SCC IPAB 29, it was observed by the IPAB that the onus of proving “non-user” is on the person who pleads the same. However, when the applicant pleads “non-user”, the respondent must specifically deny it. Therefore, in the absence of a specific denial, it was held that the allegations of “non-user” stood



admitted.

9. In the present case, the allegations of “non-user” against the respondent no.1 stand admitted in the absence of a specific denial of the same and the impugned trademark is liable to be removed from the Register of Trade Marks on account of “non-user” as contemplated under Section 47(1)(b) of the Act.

[Emphasis supplied]

12. A Coordinate Bench of this Court, in *Russell Corp Australia Pty Ltd. v. Shri. Ashok Mahajan*, 2023 SCC OnLine Del 4796, had observed as follows:

“22. A perusal of the impugned mark in the present case would show that the application for the said impugned mark was filed on 27th February, 2007 and the same was granted on 18th March, 2010. The mark relates to sporting articles. The affidavit of the investigator would show that the clear information received from the Respondent was that the mark ‘SHERRIN’ was discontinued since the year 2010. The present petition was filed in the year 2020 before the IPAB. This affidavit filed by the investigator as also the petition has gone unrebutted by the Respondent. Thus, the requirement of the period of five years & three months stands satisfied.

...

24. ...Under such circumstances, in the absence of denial by the Respondent, the Court has no reason to disbelieve the pleadings as also the investigator’s affidavit on record. The Respondent has chosen not to appear in the matter despite being served. Specific court notice was issued even to the lawyer/trademark agent of the Respondent.

[Emphasis supplied]

13. The aforesaid observations are fully applicable in the present case. The petitioner, in the present case, has filed an affidavit of the authorized representative of an independent investigating agency to support its averments with regard to non-use of the impugned mark by the respondent no.1 for the aforesaid services in class 35 for nearly 8 years up to the date of filing of the present petition.

14. A perusal of Section 47(1)(b) of the Act would reveal that a registered trade mark is liable to be taken off the Register of Trade Marks if up to a



date three months prior to the date of filing of the rectification petition, the same is not used in relation to those goods/ services in respect of which it is registered for a continuous period of at least five years from the date on which the mark is entered in the Register of Trade Marks.

15. While dealing with the issue of non-use of a registered mark by the registered proprietor, this Court, in *Russell Corp* (supra), had held as follows:

25. In the context of non-use, it is the settled legal position that use has to be genuine use in the relevant class of goods and services. Unless the non use is explained by way of special circumstances, the mark would be liable to be removed for non-use. In the present case, no special circumstances have been cited and, in these facts, the mark would be liable to be removed on the ground of non-use itself.”

[Emphasis supplied]

16. The petitioner has continuously and extensively been using the ZEPTO marks since July 2021 in India and, by virtue of their widespread advertisement and promotion, has acquired immense goodwill and reputation thereunder. On the other hand, the respondent no.1 has not made any use the impugned mark in relation to the aforesaid services in class 35. Despite the aforesaid, the respondent no.1 opposed the petitioner's application for the mark ZEPTO in class 35. Considering the aforesaid, I am of the view that the petitioner is aggrieved by the continued subsistence of the impugned mark on the Register of Trade Marks.

17. In view of the above, the impugned mark is liable to be removed from the Register of Trade Marks under the provisions of Section 47(1)(b) of the Act.

18. Accordingly, the present petition is allowed and the Trade Marks Registry is directed to remove the impugned mark 'ZEPTO' bearing the no.



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2773519 in class 35 in the name of the respondent no.1 from the Register of Trade Marks.

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

20. All pending applications stand disposed of.

AMIT BANSAL, J

MARCH 03, 2025

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