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

+ C.O. (COMM.IPD-TM) 93/2023 & I.A. 3943/2023

M/S.RSPL HEALTH PRIVATE LIMITED Petitioner
Through: Mr. Rishi Bansal, Mr. Mankaran Singh, Ms. Sugandha Yadav and Mr. Rishabh Gupta, Advs.

versus

RECKITT AND COLMAN (OVERSEAS) HYGIENE HOME LIMITED & ANR. Respondents

Through: Mr. Chander Mohan Lall, Sr. Adv. with Ms. Nancy Roy, Ms. Prakriti Varshney, Ms. Aastha Kakkar, Mr. Prashant, Ms. Yashi Agrawal, Ms. Nida Khanam and Ms. Ananya Chug, Advs. for R-1
Mr. Ripu Daman Bhardwaj, CGSC and Mr. Kushagra Kumar, GP for UOI

+ C.O. (COMM.IPD-TM) 94/2023

M/S. RSPL HEALTH PRIVATE LIMITED Petitioner
Through: Mr. Rishi Bansal, Mr. Mankaran Singh, Ms. Sugandha Yadav and Mr. Rishabh Gupta, Advs.

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Mr. Shoumendu Mukherji, SPC with Ms. Megha Sharma, Advs. for R-2



CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR

J U D G M E N T (O R A L)
22.08.2023

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1. These are petitions preferred under Section 57 of the Trade Marks Act, 1999. They seek rectification of the Register of Trademarks by removal, therefrom, of the word mark “HARPIC DRAINXPERT”. The impugned mark stands registered in favour of Respondent 1 in Classes 3 and 5, *vide* Registration No. 5258906 and 5258907 respectively. Registration no. 5258906, in Class 3, covering “cleaning, polishing, scouring or abrasive preparations; drain and sink cleaning preparations; products for drain maintenance, namely drain openers” forms subject matter of challenge in C.O. (COMM.IPD-TM) 93/2023 and Registration no. 5258907, in Class 5, covering “disinfectants; disinfectant preparations; disinfectants for household used or for hygiene purposes; disinfecting agents and preparations having disinfecting properties; disinfectants for institutional and commercial use” forms subject matter of challenge in C.O. (COMM.IPD-TM) 94/2023.

2. Mr. Rishi Bansal, learned Counsel for the petitioner has predicated his challenge in both these petitions on Section 11(1)(b)¹

¹ 11. **Relative grounds for refusal of registration. –**

(1) Save as provided in section 12, a trade mark shall not be registered if, because of –

(b) its similarity to an earlier trade mark and the identity or similarity of the goods or services covered by the trade mark,
there exists a likelihood of confusion on the part of the public, which includes the likelihood of association with the earlier trade mark.



and Section 11(10)(ii)² of the Trade Marks Act.

3. Mr. Bansal's case is that the impugned word mark "HARPIC DRAINXPERT" of Respondent 1 is similar to earlier trade marks of the petitioner, and is used with respect to goods or services which are similar to the goods or services in respect of which the earlier trade marks of the petitioner stand registered. This, he submits, has resulted in likelihood of confusion on the part of the public or of the public drawing an association between the impugned mark and the registered trade mark of the petitioner. Ergo, submits Mr. Bansal, the impugned trade marks could not have been registered under Section 11(1) and are, therefore, wrongly continuing to remain on the register of Trade Marks within the meaning of Section 57(2)³ of the Trade Marks Act.

4. The issue in controversy is, therefore, mercifully short. All that the court has to see is whether the impugned marks were, or were not, entitled to registration under Section 11(1)(b) of the Trade Marks Act. The submission based on Section 11(10)(ii) is merely a sequitur thereto.

² (10) While considering an application for registration of a trade mark and opposition filed in respect thereof, the Registrar shall –

(ii) take into consideration the bad faith involved either of the applicant or the opponent affecting the right relating to the trade mark.

³ 57. **Power to cancel or vary registration and to rectify the register. –**

(1) On application made in the prescribed manner to the High Court or to the Registrar by any person aggrieved, the Registrar or the High Court, as the case may be, may make such order as it may think fit for cancelling or varying the registration of a trade mark on the ground of any contravention, or failure to observe a condition entered on the register in relation thereto.

(2) Any person aggrieved by the absence or omission from the register of any entry, or by any entry made in the register without sufficient cause, or by any entry wrongly remaining on the register, or by any error or defect in any entry in the register, may apply in the prescribed manner to the High Court or to the Registrar, and the Registrar or the High Court, as the case may be, may make such order for making, expunging or varying the entry as it may think fit.



5. Section 11(1)(b) requires cumulative satisfaction of three ingredients for a trade mark to be ineligible for registration. They are (i) that the trade mark should be similar to an earlier trade mark, (ii) that the goods or services covered by both the trade marks should be identical or similar and (iii) that, as a consequence of (i) and (ii), there must exist either a likelihood of confusion on the part of the public or of the public drawing an association between the latter mark and the earlier mark.

6. The registrations of the petitioner's trade marks pre-date the applications of Respondent 1 which culminated in the impugned registrations. The petitioner's marks are, therefore, indisputably "earlier trade marks" within the meaning of the Explanation below Section 11(4)⁴ of the Trade Marks Act.

7. The earlier trade marks of the appellant, cited by Mr. Bansal as a basis for discrediting the validity of the impugned marks, are the following:

S. No.	Mark	Reg. No.	Date	Class	Goods/Services
1	XPERT	2594738	11.09.2013	35	Retail, wholesale, distribution and marketing of bleaching preparations and other substances for laundry use, cleaning; polishing, scouring and abrasive preparations; soaps; perfumery, essential

⁴ Explanation. – For the purposes of this section, earlier trade mark means –

(a) a registered trade mark or an application referred to in section 154 which has a date of application earlier than that of the trade mark in question, taking account, where appropriate, of the priorities claimed in respect of the trade marks;

(b) a trade mark which, on the date of the application for registration of the trade mark in question, or where appropriate, of the priority claimed in respect of the application, was entitled to protection as a well-known trade mark.



					oils, cosmetics, hair lotions, dentifrices
2		2638785	06.12.2013	3	Washing soaps, powder, detergent cakes, toiletries bleaching preparations and substances for laundry use, cleaning, polishing, scouring abrasive preparations, perfumery, essential oils, hair lotions, dentifrices
3		3170700	27.01.2016	21	Scrubbers of all types for cleaning of all types of surfaces, wares, utensils, appliances, floors and tiles
4	XPERT DISHWASH ULTRA GEL	4508512	23.05.2020	3	Detergent cake, Detergent powder, Toilet soap, Washing soap, Washing powder, Dish Wash bar, Cleaning powder, Laundry preparations and Toilet preparations
5	XPERT DISHWASH SUPREME GEL	4508513	23.05.2020	3	Detergent cake, Detergent powder, Toilet soap, Washing soap, Washing powder, Dish wash bar, Cleaning powder, Laundry preparations and Toilet preparations
6	XPERT DISHWASH MAXI GEL	4508514	23.05.2020	3	Detergent cake, Detergent powder, Toilet soap, Washing soap, Washing powder, Dish wash bar, Cleaning powder, Laundry preparations and Toilet preparations



7		4801092	30.12.2020	3	Detergent cake, Detergent powder, Toilet soap, Washing soap, Washing powder, Dish wash bar, Cleaning powder, Laundry preparations and Toilet preparations
8		1077473	01.02.2002	3	Washing Soaps, Powder, Detergent Cakes, Toiletries, Bleaching Preparations and Substances for Laundry Use, Cleaning, Polishing, Scouring Abrasive Preparations, Perfumery, Essential Oils, Hair Lotions, Dentifrices included in Class 03
9		1270731	04.03.2004	3	Detergents for Laundry Use and Cleaning Powder, included in Class 3
10		1390217	10.10.2005	3	Washing Powder, Washing Soap, Detergent Powder, Detergent Cake, Soaps, Cosmetics, Cleaning Powder and Preparations, Blue and Toilet Soaps
11		2059382	26.11.2010	3	Detergent Cake, Detergent Powder, Toilet Soap, Washing Soap, Washing Powder, Cosmetics, Blue Hygienic Dish Wash Bar, Cleaning Powder, Laundry Preparations and Toilet Preparations
12		2170335	05.07.2011	3	Detergent Cake, Detergent Powder, Toilet Soap, Washing Soap, Washing Powder, Cosmetics, Blue Hygienic Dish Wash Bar, Cleaning Powder,



					Laundry Preparations and Toilet Preparations
13		2236519	21.11.2011	21	Scrubber, Scrub Pad and Steel Wool

8. Besides the above, the petitioner also holds registrations of
- (i) the word mark XPERT in
 - (a) Class 34 for “Tobacco, Smokers’ Articles and Matches”,
 - (b) Class 29 for “Meat, Fish, Poultry and game; Meat Extracts; Preserved, Dried and Cooked Fruits and Vegetables; Jellies, Jams, Fruit Sauces; Eggs, milk and milk products; Edible Oils and Fats”,,
 - (c) Class 30 for “Coffee, Tea, Cocoa, Sugar, Rice, Tapioca, Sago, Artificial Coffee, Flour and Preparations made from Cereals, Bread, Pastry and Confectionary, Ices, Honey, Treacle, Yeast, Baking Powder, Salt, Mustard; Vinegar, Sauces (Condiments), Spices and Ice”,
 - (d) Class 32 for “Beers, Mineral and Aerated Waters and other Non-Alcoholic Drinks, Fruit Drinks and Fruit Juices, Syrups and Other Preparations for making Beverages”,
 - (e) Class 4 for “Industrial Oils, Dust Absorbing Wetting and Binding Compositions, Fuels (Including Motor Spirit and Illuminants), Candles and Wicks”,
 - (f) Class 43 for “Services for Providing Food and Drink; Temporary Accommodation”,



(g) Class 8 for “Hand Tools and Implements (Hand-Operated); Cutlery; Side Arms; Razors”,



(ii) the device mark in Class 25 for “Clothing, Footwear and Headgear; included in Class-25”, and



(iii) the device mark in Class 20 for “Furniture, Mirrors, Picture Frames; Goods (Not included in Classes) of Wood, Mattresses, Cushion, Foam, Air & Coir Mattresses and Covers”.

However, as the goods covered by these marks are not similar to the goods covered by the impugned mark of Respondent 1, they are not relevant to the case at hand.

9. *Arguendo*, I will presume that the goods covered by the marks tabulated in para 7 *supra* are similar, within the meaning of Section 11(1)(b) of the Trade Marks Act, to the goods covered by the impugned marks of Respondent 1, inasmuch as they, too, cover products used for disinfecting, cleaning, and the like, or rendition of services connected therewith.

10. Having heard Mr. Bansal, this Court is of the opinion that, of the three ingredients which require cumulative satisfaction for Section 11(1)(b) to apply, the only ingredient which may be said to be satisfied in respect of the impugned marks, which could blight their entitlement to registration, is the similarity of goods or services



covered by the rival marks. The mere fact that the rival marks cover the same, or similar, goods or services would not, however, suffice to invalidate the later registrations. Additionally, it would have to be shown that the marks themselves are confusingly similar to each other, and that, owing to the similarity in the marks and the goods and services which they cover, there is a likelihood of confusion among the public, or a likelihood of the public believing the existence of an association between the marks.

11. These two criteria, in my opinion, are not satisfied in the present case.

12. Addressing, first, the issue of similarity between the marks, all the asserted marks of the petitioner, except the word mark XPERT registered *vide* Registration No. 2594738, are device marks. Of course, that, by itself, may not be determinative, in any manner, of the controversy. In ***K.R. Chinna Krishna Chettiar v. Shri Ambal & Co.***⁵, the Supreme Court held that the words “Shri Andal”, forming part of a device mark aspiring to registration for snuff under the erstwhile Trade & Merchandise Marks Act, 1958, disentitled the mark to registration, as they were phonetically similar to “Shri Ambal”, which was part a device mark which already stood registered for snuff, despite the two marks, in the words of the Supreme Court itself, being, visually, “totally dissimilar”.

13. For the present, I will proceed on the premise that XPERT

⁵ (1969) 2 SCC 131



forms the prominent, or dominant, part of the device marks at S. Nos. 2 to 13 of the table in para 7 *supra*. In any event, the petitioner also holds a registration for the word mark XPERT in Class 35 which, again *arguendo*, may be regarded as covering services which are allied and cognate to the goods covered by the impugned “HARPIC DRAINXPERT” mark of Respondent 1.

14. Even so, treating HARPIC DRAINXPERT as similar to XPERT would, in my mind, be stretching the principle of similarity to an unreasonable extent. The principle of similarity is not so elastic as to be stretched to breaking point. “XPERT” is only half of the second word of Respondent 1’s impugned registered word mark, which is “DRAINXPERT”. It is only, therefore, 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” that the petitioner’s mark and Respondent 1’s mark would become alike.

15. Clause (h) in Section 2 of the Trade Marks Act, however, dovetails, in a sense, the concepts of “deceptive similarity” and “confusing similarity” into one another, by deeming a mark to be “deceptively similar” to another “if it so nearly resembles that other mark as to be likely to deceive or cause confusion”. The principles of confusion and deception may, therefore, be regarded, to an extent as closer statutorily than etymologically, though, in ***Shree Nath Heritage Liquor Pvt Ltd v. Allied Blenders & Distillers Pvt Ltd***⁶, there is an

⁶ 221 (2015) DLT 359 (DB)



illuminating discussion on the subject.

16. One may, therefore, say that similarity is, practically, similarity under the Trade Marks Act, only if it is confusing, to the “public”. The “public”, to whom Section 11(1) adverts, is the mythical “IP customer” of average intelligence and imperfect recollection. Such a customer on coming across Respondent 1’s marks, *vis-à-vis* the petitioner, would have, plainly, no reason to be confused between the two, as Respondent 1’s mark starts prominently with the word “Harpic”. To hold that such a customer would be confused, because of “XPERT” forming the second part of the second word of the impugned mark, between that and the plaintiff’s marks, would be consigning reality to oblivion. The Court cannot, plainly, presume that the mythical “public” would be confused between the two marks, when one is the mere word XPERT *per se* and the other is “HARPIC DRAINXPERT”.

17. Mr. Bansal also sought to contend that the manner in which Respondent 1 was using the impugned mark was such as was likely to create confusion in the market. He submits that, when Section 11(1) refers to confusion on the part of the public, the manner in which the impugned mark was presented to the public is undoubtedly a relevant consideration.

18. Though, as the discussion hereinafter would reveal, the reliance, by Mr. Bansal, on the manner in which the Respondent 1 uses the impugned mark is actually self-defeating, Mr. Lall, learned Senior Counsel for Respondent 1, submits that the manner of use of the rival



marks is irrelevant to a rectification petition, and I think he is right. Rectification of the register of Trade Marks, by removal of a mark therefrom, can be sought, under Section 57(2) (to the extent relevant), either where the mark has been wrongly registered or is wrongly remaining on the register. Either way, what is relevant are the circumstances obtaining at the stage of registration. The Registrar, while registering the marks, does not call for the manner of actual user of the marks. For that matter, marks are often registered on “proposed to be used basis” – as is the case with the impugned marks of the Respondent 1 – where no user of the mark, aspiring to registration, is as yet available. The aspect of similarity, and likelihood of confusion thereby, for the purposes of Section 11(1)(b) has, therefore, to be assessed on a mark-to-mark comparison, and not by reference to the actual user of the mark by the registrant seeking registration, much less the manner in which the mark would be used in future, which would require the Registrar to be attributed a quality of clairvoyance which, ordinarily, he is not expected to possess.

19. That said, I may note that the manner in which the impugned mark is used by Respondent 1 eliminates all chance of confusion. Assuming, for a minute, that the submission of Mr. Bansal is correct, his reliance, on the manner in which Respondent 1 is using the impugned mark in actual practice, in the opinion of the Court, considerably weakens, rather than strengthens the case of the petitioner. Even as per the plaint, this is how Respondent 1 uses its “HARPIC DRAINXPERT” mark:



When one sees the manner in which Respondent 1 uses the impugned mark “HARPIC DRAINXPERT” on its pack, there is absolutely no chance of any customer getting confused between Respondent 1’s and the petitioner’s mark. The eye is immediately drawn to the “HARPIC” swirl towards the upper half of the pack, rather than to the word “DRAINXPERT” on the lower half, much less to the “XPERT” part thereof.

20. Mr. Bansal has also invited my attention to certain screen shots, to submit that the manner in which Respondent 1’s mark is reflected on websites, is likely to create confusion. Though the relevance of such screenshots, in the backdrop of Section 11(1) of the Trade Marks Act, is highly questionable, even if one were to refer to the said screenshots, it is seen that they clearly identify Respondent 1’s product as a product of “HARPIC”

21. It is not, therefore, as though Respondent 1 has been using the impugned mark in such a manner as to reflect “XPERT” as a sub-brand, as Mr. Bansal would seek to contend.



22. To reiterate, the impugned mark, seen as a whole, is “HARPIC DRAINXPERT” and the most prominent part of the mark is unquestionably “HARPIC”, which is also the house mark in respect of which several of Respondent 1’s marks are registered.

23. Considerable effort was made by Mr. Bansal to state that the essential and dominant part of the petitioner’s, as well as of Respondent 1’s mark, was “XPERT”. I have already expressed my view that this argument is not sustainable. That said, in my opinion, in concentrating on what he considers as essential and dominant part of the rival marks, Mr. Bansal’s submissions actually obfuscate the main issue in consideration. The plain words of Section 11(1)(b) require the court to consider the rival marks and examine whether they are similar to each other and, if they are, whether such similarity is likely to result in confusion on the part of the public.

24. The principle of “essential and dominant part” is actually a principle which relates to Section 17⁷ of the Trade Marks Act, and not Section 11. It is a principle which has been devised by Courts to mitigate the rigour of Section 17 in infringement actions. Section 17

⁷ 17. **Effect of registration of parts of a mark. –**

- (1) When a trade mark consists of several matters, its registration shall confer on the proprietor exclusive right to the use of the trade mark taken as a whole.
- (2) Notwithstanding anything contained in sub-section (1), when a trade mark –
 - (a) contains any part –
 - (i) which is not the subject of a separate application by the proprietor for registration as a trade mark; or
 - (ii) which is not separately registered by the proprietor as a trade mark; or
 - (b) contains any matter which is common to the trade or is otherwise of a non-distinctive character,
 the registration thereof shall not confer any exclusive right in the matter forming only a part of the whole of the trade mark so registered.



prohibits exclusivity being claimed in respect of part of a registered trade mark, where the said part is not separately registered as a trade mark. Courts, prominently the judgment of this Court in ***South India Beverages Pvt Ltd v. General Mills Marketing***⁸, have adopted the view that the anti-dissection rule contained in Section 17 would not inhibit a petitioner from pleading infringement against the respondent, if part of its registered trade mark is the essential or dominant part of the mark and the said dominant part is replicated in the mark of the respondent. In such a case, the petitioner can claim exclusivity over the said dominant part and, if the dominant part is replicated in the impugned mark of the respondent, a case for pleading infringement may be said to arise.

25. *Stricto sensu*, those principles really do not apply to Section 11(1)(b).

26. That said, I may note, here, Mr. Lall's submission, on instructions, that Respondent 1 is not claiming exclusivity over the "XPERT" part of the impugned marks.

27. The petitioner has placed reliance on the judgments of the Supreme Court in ***Registrar of Trade Marks v. Ashok Chander Rakhit***⁹ and ***Ram Dev Food Products v. Arvindbhai Rambhai Patel***¹⁰ as well as the judgment of the High Court of Bombay in ***Meher***

⁸ (2015) 61 PTC 231 (Del-DB)

⁹ AIR 1955 SC 558

¹⁰ (2006) 8 SCC 726



***Distilleries Pvt. Ltd. v. SG Worldwide INC.*¹¹**

28. The decision in ***Ashok Chander Rakhit***⁹ examined the correctness of the insertion, by the Registrar while registering the trade mark forming subject matter of dispute, of a disclaimer for the word “Shree”. The disclaimer was inserted as the word “Shree” was found to be a word of common Hindu usage. The High Court reversed the decision of the Registrar, and the Supreme Court set aside the judgment of the High Court holding that the decision of the Registrar was “not so wrong” as to warrant interference. These facts do not directly apply here, as XPERT can hardly be compared to “Shree”. In any event, in view of Mr. Lall’s submission that his client was not claiming exclusivity over the XPERT part of the impugned mark, ***Ashok Chander Rakhit***⁹ ceases to be a precedent of concern.

29. ***Ramdev Food Products***¹⁰, too, does not advance the case of the petitioner, as it merely reiterates the principle statutorily contained in Section 17 of the Trade Marks Act, that the registration of a composite mark in favour of a registrant does not confer him with the right to claim exclusivity in any one part of the mark. There can be no disputing this proposition. In ***Meher Distilleries***¹¹, it was found, on facts, that the rival marks were deceptively similar and it was held that the deceptive similarity could not be wished away by merely prefixing the mark with the Respondent 1’s house mark. In relying on this decision, Mr. Bansal loses sight of the fact that we are concerned, here, not with a case of infringement, but with the entitlement of the

¹¹ 2021 SCC OnLine BOM 2233



petitioner's mark to registration, which requires a comparison *of the two marks, as wholes*. Thus compared, no likelihood of confusion can be said to exist.

30. In ***Amritdhara Pharmacy v. Satya Deo Gupta***¹², the following exordium finds place:

“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 (I) 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 Application***¹³ 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 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)

¹² AIR 1963 SC 449

¹³ (1906) 23 RPC 774



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 Edition, p. 400.)”

31. The decisions cited by Mr. Bansal do not, therefore, further the cause that he seeks to espouse. In a market in which the petitioner’s XPERT mark and Respondent 1’s HARPIC DRAINXPERT mark are sold in the normal way and in the ordinary course of trade, an average customer is, in my opinion, unlikely to confuse one for the other.

32. Apropos Section 11(10)(ii) of the Trade Marks Act, the submission, as advanced by Mr Bansal, finds no factual or legal support. Mr Bansal sought to plead bad faith, on the part of Respondent 1, in adopting the mark HARPIC DRAINXPERT. “Bad faith” is not defined in the Trade Marks Act. ***Harrison v. Telon Valley Trading Co. Ltd***¹⁴ explains the concept thus:

“Bad faith is the opposite of good faith, generally implying or involving, but not limited to, actual constructive fraud, or a design to mislead or deceive another, or any other sinister motive. Conceptually bad faith can be understood as a “dishonest intention”.”

Whether one restricts “bad faith” to a dishonest intention, or extrapolates it to fraud, the existence, or otherwise, of bad faith, is purely a question of fact. It has to be pleaded, and supported by cogent evidence. Mr Bansal pitches his plea of bad faith solely on the fact

¹⁴ (2004) 1 WLR 2577



that Respondent 1 used “XPERT” as part of the impugned mark. Absent infringement or passing off, there is clearly no restriction on Respondent 1 doing so. There is nothing, on the record, on the basis of which the Court could attribute any bad faith to Respondent 1 either.

33. The invocation, by Mr Bansal, of Section 11(10)(ii) is also, therefore, misguided.

Conclusion

34. For the aforesaid reasons, I am of the considered opinion that Mr. Bansal has not been successful in making out a case for invaliding the impugned Registration No. 5258906 and Registration No. 5258907 held by Respondent 1 in respect of the mark “HARPIC DRAINXPERT” in Classes 3 and 5 respectively.

35. The present petitions are, therefore, devoid of merit and are dismissed accordingly.

C.HARI SHANKAR, J

AUGUST 22, 2023

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