



2025:DHC:11926



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

% *Judgment delivered on: 24.12.2025*

+ **C.O. (COMM.IPD-TM) 119/2021**

**HUBEI JI SU KAN DIAN TECHNOLOGY CO.,
LTD.**

.....Petitioner

versus

**LARK ENGINEERING COMPANY (INDIA) PVT. LTD. AND
ANR.**

.....Respondents

Advocates who appeared in this case

For the Petitioner : Mr. Dheeraj Kapoor, Mr. Gautam Kumar, Ms. Manisha Singh, Mr. Abhai Pandey, Ms. Anju Agrawal, Ms. Swati Mittal, Mr. Nishant Rai, Mr. Manish Aryan, Ms. Shivani Singh & Mr. Akhya Anand, Advocates.

For the Respondents : Mr. Manish Dhir, Advocate for Respondent No.1.

**CORAM:
HON'BLE MR. JUSTICE TEJAS KARIA**

JUDGMENT

TEJAS KARIA, J

1. The present Petition has been filed by the Petitioner under Section 47 and 57 of the Trade Marks Act, 1999 (“Act”), seeking rectification of Trade Mark, ‘LARK’ (“**Impugned Mark**”) bearing Registration No. 3364501 for



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the Mark in the name of Respondent No. 1 in Class 42, from the Register of Trade Marks.

FACTUAL BACKGROUND:

2. The Petitioner is a company incorporated under the laws of China and is engaged in the business of design and development of computer programs and is using the Mark ‘LARK’ for providing the said services for a wide variety of purposes, including but not limited to integrated messaging, video conferencing, schedule management, collaborative documents, cloud storage, e-mail services and workflow applications to provide a collaborative experience to its consumers across all devices.

3. Respondent No. 1 is a company incorporated under the Indian Companies Act, 2013 and carries on business in the field of engineering, especially research and development, manufacture, sale and services in the field of poultry and cattle feed machinery, and its accessories and spares, including but not limited to computer hardware and software.

4. Respondent No. 1 is the registered proprietor of the Impugned Mark bearing Registration No. 3364501, which was applied on 16.09.2016 with the date of use since 25.07.1994, advertised in the Trade Mark Journal No. 1775 dated 12.12.2016 and registered on 03.05.2017 covering the following services included in Class 42: “*scientific and technological services and research and design relating thereto; industrial analysis and research services; design and development of computer hardware and software*”. Respondent No. 1 has multiple registrations for the Mark ‘LARK’ in various classes which are valid and subsisting, and the details of which are as under:



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S. No.	Registered Trade Mark No.	Class	Trade Mark
1.	3364482	7	LARK
2.	3364483	16	LARK
3.	3364501	42	LARK
4.	3364502	40	LARK
5.	3364505	37	LARK

5. The Petitioner claims to be a bona fide user of the mark 'LARK' and its formative marks ("**Petitioner's Mark**") for computer programs, software applications, related tools and has applied for the registration of the said Mark and its variants, the details of which are as under:

S. No.	Trade Mark & Application Number	Class	Status
1.	LARK 4004029	9, 38, 42	Objected and pending advertisement in the Trade Marks Journal.
2.	LARK 4154292	9, 42	Objected.
3.	LARK 4096572	45	Accepted and Advertised.



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6. The Petitioner operates a website with domain name ‘www.larksuite.com’ registered since April 2018. In April 2019, the Petitioner came to know of the registration of the Impugned Mark by Respondent No. 1 in respect of design and development of computer hardware and software (“**Impugned Services**”), as the same was cited in the Examination Report in respect of the Petitioner’s application for the registration of the Petitioner’s Mark under Application No. 4004029 in respect of its services in Class 42 filed on proposed-to-be-used basis on 21.11.2018.

7. Aggrieved by the same, the present Petition has been filed by the Petitioner seeking Rectification of the Impugned Mark to the effect that the specification of the Impugned Services is removed from the scope of rights of Respondent No.1 pertaining to the Impugned Mark.

SUBMISSIONS ON BEHALF OF THE PETITIONER:

8. The learned Counsel for the Petitioner submitted that:

8.1. Respondent No. 1 has obtained registration for the Impugned Mark in Class 42 without any *bona fide* intention to use the same in respect of the Impugned Services. Any registered Mark acquired in a broad classification is required to be rectified by limiting the ambit of registration to the specific articles and usage, which concerns the registrant enjoying the registration.

8.2. It has been settled by the Supreme Court in ***Nandhini Deluxe v. Karnataka Co-Operative Milk Producers Federation Ltd.*** AIR 2018 SC 3516 that any registered Mark acquired in a broad classification, is liable to be rectified by limiting the ambit of



registration to the specific articles of usage which concerns the trader/manufacturer enjoying the registration.

- 8.3. Furthermore, any manufacturer or trader should not be permitted to enjoy monopoly for a broad classification if he actually trades in only one or some of the articles under that broad classification, as has been held by the Supreme Court in ***Vishnudas Trading v. Vazir Sultan Tobacco Co. Ltd.***, (1997) 4 SCC 201.
- 8.4. Respondent No. 1 has falsely attempted to portray the use of Impugned Mark in relation to ancillary products such as Automation Programmed Logic Circuits (PLC), Computer, UPS, Printer, etc., and the same is completely baseless. Respondent No. 1 is not a software and hardware developer *per se* and any alleged customization of their own machines does not amount to commercial sales of services of computer software and hardware. Respondent No. 1 has failed to establish any use of the Impugned Mark in relation to Impugned Services.
- 8.5. The documents on record relied upon by Respondent No. 1 only establish that Respondent No. 1 is the manufacturer of Agricultural machinery such as Feed machinery, Mixer, Hammer Mill, Pellet Mill, etc., more specifically for poultry and cattle feed, which are goods falling in Class 07 and do not constitute services in Class 42.
- 8.6. Respondent No. 1 has not used the Impugned Mark with respect to the Impugned Services as evident from its website, 'www.larkenggco.com' as well as third party e-commerce



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website 'www.indiamart.com'. Hence, the Impugned Mark is liable to be rectified as per Section 57(1) and 57(2) of the Act.

8.7. Respondent No. 1 has claimed usage of the Impugned Mark regarding the Impugned Services since 25.07.1994, however, the invoices relied upon by Respondent No. 1 are only from 2016 and there is nothing to corroborate the claimed user date. Hence, Respondent No. 1 has falsely claimed that the Impugned Mark has been used for Impugned Services since the year 1994.

8.8. Pertinently, no document has been placed on record by the Respondent No. 1 to establish this user claim of 1994 for the Impugned Services. Respondent No. 1 has fabricated the date of first use to obtain a false registration of the Impugned Mark *qua* Impugned Services. In the absence of any document to corroborate the claimed user date, the Impugned Mark is liable to be expunged/cancelled/rectified *qua* the Impugned Services. In the following cases, it has been held that the Trade Mark shall be removed /expunged for false date of user:

- ***Vivek Kochher & Anr. v. M/s. KYK Corporation Ltd. & Anr.*** 2017 SCC OnLine Del 11383
- ***The Times Publishing House Ltd. v. The Financial Times Ltd.*** 2012 (50) PTC 283 (IPAB)
- ***Relaxo Footwears Limited v. Bata India Limited,*** 2013 SCC OnLine IPAB 20
- ***Khushiram Beharilal v. Jaswant Singh*** 2012 (50) PTC 538 (IPAB)

8.9. Any 'after-sale services' pertaining to installation, maintenance, repair of its machines and / or integrated computer hardware / software would fall in Class 37 and not in Class 42.



8.10. In view of above, the present Petition ought to be allowed and the Impugned Mark be rectified to the extent that it removes the Impugned Services from the scope of rights of the Impugned Mark.

SUBMISSIONS ON BEHALF OF THE RESPONDENTS:

9. The learned Counsel for Respondent No. 1 submitted that:

9.1. Respondent No. 1 has been involved in research and development, which also covers accessories, spares and parts for machines, including but not limited to computer hardware and software, which can be ascertained from the invoices relied upon by Respondent No. 1.

9.2. As per proviso to Section 47(1) of the Act, the usage of the Impugned Services is well-recognized under the Act as Respondent No. 1 has continuously used the Impugned Mark in the course of manufacturing, marketing and sale of its Agricultural Machinery and is also involved in the customization of software for its use, which falls within the definition of use of services in Class 42.

9.3. The phrase ‘goods of the same description’ as provided for under the proviso to Section 47(1) of the Act should not be given a restrictive construction. Further, it is well-settled that the owner of a Mark is always entitled to expand the goods and services as a natural consequence in expansion of its business.

9.4. Respondent No. 1, through its predecessor-in-business has been using the Impugned Mark since the year 1994 for the



development and sale of plant feed machinery, including associated services in respect of their hardware and software.

9.5. The promotional material and advertisement filed by Respondent No. 1 clearly establish continuous and extensive use of the Impugned Mark by Respondent No. 1, *inter alia*, in respect of Impugned Services, which is further corroborated by the invoices filed by Respondent No. 1 in respect of its products, including Impugned Services.

9.6. In view of the above, the present Petition deserves to be dismissed.

ANALYSIS AND FINDINGS:

10. Heard the learned Counsel for the Parties and perused the material placed on record.

11. As the present Petition has been filed by the Petitioner for the rectification of the Impugned Mark, the limited issue arises for determination is whether the Impugned Services are liable to be removed from the scope of rights of the Impugned Mark for non-use or obtaining registration by providing false date of use.

Re: Non-Use of the Impugned Mark:

12. The Petitioner has submitted that Respondent No. 1's customization of their own machines and any after-sale service provided by Respondent No. 1 does not amount to providing services of computer hardware and software and does not fall under the definition of use in Class 42. Accordingly, relying upon the judgments of the Supreme Court in *Vishnudas Trading* (supra) and *Nandhini Deluxe* (supra), it was submitted



that the Impugned Services should be removed from the scope of rights of the Impugned Mark due to non-use.

13. *Per Contra*, Respondent No. 1 has opposed this Petition relying upon the invoices and promotional material filed by Respondent No. 1, and submitted that the usage of the Impugned Services is well-recognized under the proviso to Section 47(1) of the Act, and therefore, the principle laid down in ***Vishnudas Trading*** (supra) and ***Nandhini Deluxe*** (supra) does not apply to the facts and circumstances of the present case.

14. Proviso to Section 47(1) of the Act makes it clear that an application under Section 47(1)(a) or (b) of the Act in relation to any goods or services can be refused if it is shown that during the relevant period, there is *bona fide* use of the Trade Mark in question by the proprietor in relation to either goods or services of the same description; or goods or services associated with those goods or services in respect of which the Trade Mark in question is registered. If either of the two conditions of *bona fide* use of the Trade Mark in question by the proprietor is satisfied under the proviso to Section 47(1) of the Act, the application under Section 47(1) for the removal of the Mark on the ground of non-use would be liable to be refused.

15. Respondent No. 1 relied upon the decision in ***Eagle Potteries Private Ltd. v. Eagle Flask Industries Pvt. Ltd.***, 1992 SCC OnLine Bom 490, to contend that the phrase “goods or services of the same description” shall not be given a restrictive meaning. The relevant portion of the said judgment is extracted hereunder:

“43. From the above authorities and the commentary, the following proposition emerges, i.e., each case has to be decided on its own particular facts. In all cases of this kind, nature and composition of goods, their respective uses and functions and trade channel through which they have been marketed and sold have to be



considered. Depending on the goods in question, one or two of these characteristics may have greater significances or emphasis on the other. The matter must be judged in a business sense. Also it must be remembered that the said Act has been enacted to ensure that the registered proprietor of mark has a monopoly right to that mark. Sections 46 and 56 are part of the Legislation and are thus subject to the incident of this legislation. The question, therefore, whether or not goods are of the same description must necessarily be answered in the context of that purpose and the goods of the same description must not be given a restrictive construction. In any event the goods of the same description cannot be restricted to goods which are substantially analogous and must include goods which are commonly used as substitute or alternate for one another.

44. As has been set out earlier, the Respondents have been manufacturing variety of goods, viz., thermos flasks, thermowares which would include jugs, casaorolles, cups, mugs, trays, water containers, ice boxes and lunch boxes. All these are used for storing and serving food, beverages and water. They are all goods which can be and are often manufactured by the same person. They are all goods which would be sold through the same trade channels. These are goods which can only be used in conjunction with crockery, cutlery, earthenware and pots and pans. There can be no doubt that a common man seeing these goods with the brand Eagle on crockery or porcelian ware or earthen ware is likely to be deceived into believing that they all emanate from the same Company. Considering that the source, the trade channel and use are all same, in my view, these are goods of the same description. So far as glass ware is concerned. Respondent No. 1 have shown that they have in fact been manufacturing glass refills for thermos flasks and selling these refills separately. They have, therefore, shown continuous manufacture and use of glassware. In my view, under these circumstances, the discretion which the Court obviously has under Sections 46 and 56 must necessarily be exercised in favour of the 1st Respondent.”

16. From a perusal of the above, it emerges that in order to determine whether goods or services are of the same description under the proviso to Section 47(1) of the Act, the relevant factors to consider are the nature and composition of goods or services, their respective uses and functions, and



the trade channel through which they have been marketed and sold. However, each case has to be decided based on its own facts and circumstances, and depending upon the goods or services in question, one or two of these characteristics may have greater significance or emphasis over the other.

17. In the present case, Respondent No. 1 claims that it has been involved in research and development, which cover accessories, spares and parts for its Poultry and Cattle Feed Machinery, including computer hardware and software. Upon perusal of the invoices filed by Respondent No. 1, the said claim of Respondent No. 1 stands confirmed. Respondent No. 1 is involved in the sale of Poultry and Cattle Feed Machinery along with its accessories, spares and parts, which include computer hardware and software, such as, *inter alia*, PLC Panel, Automation System, Desktop, UPS and Printer.

18. There is no cavil that the Poultry and Cattle Feed Machinery developed by Respondent No. 1, is sold under the Impugned Mark. The scope of the Petitioner's claim of non-use of the Impugned Mark is in respect of and is restricted to the Impugned Services. Examination of the invoices filed by Respondent No. 1 makes it clear that the Impugned Services are being provided by Respondent No. 1 in addition to and along with the sale of Poultry and Cattle Feed Machinery. Therefore, the Impugned Services, which include development of computer software and hardware, are being provided in relation to the Poultry and Cattle Feed Machinery, which is developed and sold by Respondent No. 1 under Respondent No. 1's Impugned Mark. The Impugned Services are being provided by Respondent No. 1, and the same can only be used in conjunction with the Poultry and Cattle Machinery sold by Respondent No.



1. Further, the Poultry and Cattle Machinery and the Impugned Services stem from the same source, i.e., Respondent No. 1, and are being sold through the same trade channel as is evident from the invoices filed by Respondent No. 1.

19. Considering that the source and the trade channel of the Poultry and Cattle Feed Machinery and the Impugned Services are the same, and that the latter is used in conjunction with the former, they fall within the same description, and thus, the Impugned Services shall be accorded the protection envisaged under the proviso to Section 47(1) of the Act.

Re: Obtaining Registration by providing False Date of Use:

20. Alternatively, the Petitioner has also submitted that there is no material on record to establish that the Impugned Mark has been used since 1994 for the Impugned Services. Accordingly, the Impugned Mark is liable to be expunged/cancelled/rectified qua the Impugned Services on the ground of false date of use.

21. The Petitioner has claimed that Respondent No. 1 has not been able to establish the user date claimed in its application for the registration of the Impugned Mark, and that there is no document placed on record to corroborate the same. Therefore, it is argued by the Petitioner that in the absence of the documents to establish the claimed user dated, the Impugned Mark is liable to be rectified *qua* Impugned Services. In support of the said contention, the Petitioner has placed reliance on decisions in ***Vivek Kochher*** (supra), ***The Times Publishing House Ltd.*** (supra), ***Relaxo Footwears Limited*** (supra) and ***Khushiram Beharilal*** (supra), wherein it was held that a Mark is liable to be rectified on the ground of false user date.



22. In the facts and circumstances of the present case, there is no force in the Petitioner's contention as the documents relied upon by Respondent No. 1 establish use of the Impugned Mark *per se* since 1994 and *qua* Impugned Services at least since the year 2016. However, the Petitioner filed the Application No. 4004029 for registration of the Plaintiff's Mark in Class 42, was filed on a proposed-to-be-used basis on 21.11.2018.

23. Thus, Respondent No. 1 is the prior registered proprietor and user of the Impugned Mark in respect of services in Class 42. Accordingly, it follows that there is no *mala fide* adoption of the Impugned Mark *qua* Impugned Services by Respondent No. 1 as Respondent No. 1 is the prior-user of the Impugned Mark in respect of the Impugned Services.

24. Moreover, 'LARK' has been the house mark of Respondent No. 1, which has been in use since its incorporation in the year 1994. Further, the advertisement and promotional material filed by Respondent No. 1 reveals that the said promotional material dates back to the year 2000 to show the use of the Mark 'LARK'.

25. Therefore, the Impugned Mark has been put to use and has continuously been used by Respondent No. 1 and its predecessor-in-title for the development of Poultry and Cattle Feed Machinery and its associated software and hardware. Hence, the registration of the Impugned Mark was not obtained on basis of false user claim.

CONCLUSION:

26. In view of the above, the Impugned Mark is not liable to be rectified *qua* Impugned Services as Respondent No. 1 has been able to corroborate its user claim in Class 42.



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27. Accordingly, the present Petition for the rectification of the Impugned Services from the scope of rights of the Impugned Mark is liable to be dismissed. Accordingly, the present Petition stands dismissed with no order as to costs.

DECEMBER 24, 2025
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TEJAS KARIA, J