

IN THE HIGH COURT AT CALCUTTA
ORIGINAL SIDE
(Intellectual Property Rights Division)

BEFORE:

The Hon'ble Justice Ravi Krishan Kapur

IA NO: GA-COM/1/2025
with
GA-COM/3/2025
In
IP-COM/11/2025

PARUL RUPARELIA AND ANR
VS
CAMME WANG AND ANR

For the petitioners : Mr. Ranjan Bachawat, Senior Advocate
Mr. Rudraman Bhattacharyya, Senior Advocate
Mr. Sourojit Dasgupta, Advocate
Mr. Victor Dutta, Advocate
Mr. Dhruv Chadha, Advocate

For the respondents : Mr. Jishnu Chowdhury, Senior Advocate
Mr. Ishaan Saha, Advocate
Mr. Abbas Ibrahim Khan, Advocate
Ms. Meena Shabnam, Advocate

Reserved on : 24.11.2025

Judgment on : 05.12.2025

Ravi Krishan Kapur, J.:

1. This is a suit for infringement and passing off.
2. Originally, the petitioners as dealers in diverse types of torches and spare parts were carrying on business from a shop "Variety Stores". In or about 2006, the petitioners decided to import both spare parts and torches for sale in the Indian market and entered into an arrangement whereby the same were imported from the respondent no.1 based in China. Subsequently, the petitioners also began to import rechargeable led pocket lights. It is alleged

that in carrying out such imports of torches the petitioners coined, conceived and adopted the mark “SUPREME”. The petitioners also allege to have adopted other marks such as Bina, Sunled, Kisan King, Gold Led and Chota Kesar.

3. Since 2013, the petitioners decided to further distinguish their products by adding “PL” to the existing mark “SUPREME” and adopted a unique and distinctive mark “PL SUPREME”. It is alleged that the component “PL” was coined and adopted as a contraction of the first name of the petitioner no.1 “PARUL” and also an abbreviation of the words Polar Lights in English translation of the petitioner’s son’s name ‘Dhruv’. Thus, the mark “PL SUPREME”. It is alleged that the petitioners have been using the mark since 2013 whereas the mark “SUPREME” is being used since 2006.
4. The petitioners boast of extensive sales of torches sold under the name “PL SUPREME” and have subsequently obtained registration of the mark “PL SUPREME” in class 11 under the Trade Marks Act, 1999. The petitioners allege to have been importing, selling and supplying torches and spare parts by embossing the mark “PL SUPREME” on an exclusive basis. The said mark had been applied to and in relation to torches and spare parts openly, continuously and uninterruptedly since 2013 and has gained substantial presence in India. In or about December 2024, the petitioners were surprised to find that the respondent no.2 had applied for registration of the marks “RL Supreme” and “PL SUPREME” claiming user since 5 August 2013. Hence, this suit. In this background, the petitioners seek interim protective reliefs. The

respondents have also applied for rectification of the petitioners mark PL Supreme before the Registry and the same is pending final disposal. In support of such contentions, the petitioners rely on the decisions in *A.K.K. Nambiar vs. Union of India* (1969) 3 SCC 864; *Kores (India) Limited vs. Whale Stationery Products Ltd.* 2008 (3) MHLJ 523; *Amaravathi Enterprises vs. Karaikudi Chettinadu* 2007 SCC OnLine Mad 1650; *Pioneer Nuts and Bolts (P) Ltd. v. Goodwill Enterprises* 2009 SCC OnLine Del 2851; *Toyota Jidosha Kabushiki Kaisha vs. Prius Auto Industries Ltd.* (2018) 2 SCC 1; *Exxon Mobil Corporation and Another vs. P.K. Sen* 2018 SCC OnLine Cal 16871 and *Broad Peak Investment Holdings Ltd. vs. Broad Peak Capital Advisors LLP* 2025 SCC OnLine Del 196.

5. On behalf of the respondents it is submitted that, they had adopted the mark “PL SUPREME” in China as far back as in 2009. The brand name “PL SUPREME” belongs to them. PL is derived from the company’s name Polar Lights, (P stands for Polar and L stands for Lights). SUPREME is to signify the quality of the products. The logo of the respondents features a round design incorporating the initials of the Chinese company’s name ‘BEI-JI-GUANG’ having an acronym BJG, which in English means ‘Polar Lights’. Thus, there is a combination of both Chinese and English elements in the brand of the respondents.
6. It is further contended that the respondents have been exporting goods through various distributors based at multiple locations since 2010. The respondents had registered the mark “PL SUPREME” in China as far back as

on 7 September 2014. Such goods have also been advertised for distribution and sale by the respondents in India. In support of such contention, the respondents rely on several commercial invoices. Accordingly, the respondents are the prior adopters and users having uninterruptedly exploited the marks to the exclusion of others including the petitioners.

7. It is also contended that there are dues in excess of Rs.7 crores payable by the petitioners to the respondents in respect of imports made by the petitioners. The petitioners have misled this Court into passing reliefs in respect of consignments which had in fact been ordered by them and their associates and this fact had been suppressed from Court. In support of such contentions, the respondents rely on the decisions in *S. Meera Sahib v. Hajee M. Abdul Azeez Sahib* (1937) SCC OnLine Mad 165, *Barbara Taylor Bradford & Anr. vs. Sahara Media Entertainment Ltd. & Ors.* (2004) 1 CHN 448, *Kapil Wadhwa vs. Samsung* (2012) SCC OnLine Del 5172, and *Paramount Surgimed Ltd. vs. Parmount Bed India Pvt. Ltd. & Ors* (2017) SCC OnLine Del 8728.
8. The crux of the case of the petitioners is based on the registration dated 6 December 2019 obtained by the petitioners of the mark “PL SUPREME” dated claiming user since 10 May 2016. On the other hand, the respondents claim to have the mark “PL SUPREME” registered in China as far back as in 2014 and are the prior users and adopters of the impugned marks both in India as well as abroad. Ordinarily, registration of a mark *per se* entitles a party to protection under the Act. The only exception being where the respondents can demonstrate prior use of the impugned marks. This “first user” rule is a

seminal part of the Act and has always enjoyed pre-eminence. (*NR Dongre vs. Whirlpool* (1996) 5 SCC 714, *Milmet Oftho Industries vs. Allergan Inc* (2004) 12 SCC 624, *Neon Laboratories Ltd. vs. Medical Technologies Ltd. & Ors.* (2016) 2 SCC 672 and *S. Syed Mohideen v. P. Sulochana Bai* (2016) 2 SCC 683).

9. As a general rule, ownership of the trademark vests in the person who puts the mark on the product. In this case, it is the manufacturer itself putting its brand name on the goods and the ownership and goodwill of the mark belongs to them. It is essential for customers to identify the product and the trademark affixed on it with the importer or the manufacturer and on seeing the product he or she should believe that the product being purchased was the product of the particular manufacturer or the importer. Having regard to the fact that the invoices raised by the respondents and all the manufacturing activities are taking place in China it is very difficult to believe at this stage that the impugned mark was coined by the petitioners. The petitioners appear to be nothing but re-sellers and importers and the brand belongs to only the respondents i.e. the Chinese manufacturers. [*Imperial Tobacco Co. of India Limited vs. Bonnan & Ors.* (1924) AC 755 and *S. Meera Sahib vs. Hajee M. Abdul Aziz Sahib* AIR 1938 Mad 1].
10. In this context, under section 30 of the Trade Marks Act 1999, the only right of the petitioners is to sell the products imported and no additional right inheres in their favour. In *Samsung Electronics Co. Ltd. & Anr. vs. Kapil Wadhwa & Ors.* 2012 SCC OnLine Del 1004 it has been held as follows:

“42. For the purpose of convenience, the Section concerning the present case is reproduced herein:

Section 30(3) Where the goods bearing a registered trade mark are lawfully acquired by a person, the sale of the goods in the market or otherwise dealing in those goods by that person or by a person claiming under or through him is not infringement of a trade by reason only of:

- (a) the registered trade mark having been assigned by the registered proprietor to some other person, after the acquisition of those goods; or*
- (b) the goods having been put on the market under the registered trade mark by the proprietor or with his consent.*

43. The said Section 30(3) is thus an exception to the rule of infringement as provided Section 29. The said exception operates in the nature of defence to an infringement wherein the person using the mark in a particular form or dealing in the goods under the mark can plead that the said goods are lawfully acquired from the market wherein the proprietor has also put the goods in the market or the proprietor has given consent to the effect of such dealings or usage. It is however another thing which I shall examine later that in what field Section 30(3) operates and whether it can be said to include within its purview the imports.

44. At this stage, for understanding sake about the nature and scope of the provision, it is proper to state that is one of the exceptions to the infringements envisaged under Section 30 and more particularly Section 30(3) operates as an defence to an infringement. This discussion becomes necessary in order to understand the real scope of the provisions as number of submissions have been made at the bar that Section 30(3) provides some right to import genuine goods to the person acquiring the goods. Thus, it became incumbent and inevitable to examine whether the said Section 30(3) is a right conferring section or merely acts a defence to the infringement. In this backdrop, I find that the rights of the proprietor of the registered trade mark are provided under Section 29 and other section relating to other remedies. Section 30 or for that matter Section 30(3) just operates an exception by putting limits to the rights conferred upon the registered proprietor and cannot be equated the one giving some additional right to some other person to import the genuine goods from the international market. Of course, this cannot be intent and purpose of legislating any such limitation to the general rule of infringement of trade marks. The purpose is rather different which is to exclude the person from the purview of infringement if the conditions for applicability of Section 30(3) are satisfied. The limitation or exception will thus operate to that extent only for which it is enacted carving out an exception to the infringement and not beyond the same by giving any additional right to any such person incidentally.

45. The consent of the proprietor operates as a defense to the infringement of the trademark is also observed in the authority namely *Modern Law on Trade Marks, 3rd Edition (2008)* by Morcom, Roughton & Malynicz - LexisNexis, wherein it is said as under:

“16.4 - It is a complete defense in respect of any infringing act, including importation, to show that it has been done with the consent of the proprietor. This has led parallel importers to argue in the ‘international exhaustion’ cases that the mere fact that goods have been put on the market somewhere in the world by the proprietor, or with his consent, can be taken to indicate that he has implicitly consented to their importation into the area of protection of the relevant national or Community trade mark. As we shall see below, this argument has essentially been rejected at the highest level, thus forcing parallel importers to try different arguments, mainly concerning the question of consent, some of which have been more successful than others.”

46. From the above, it is clear that the provision relating to exhaustion or proprietor's consent is a complete defense to an infringement act. However, the same can be seen depending upon the language of the legal provision in the form in which it is couched in order to discern whether it is national exhaustion or international exhaustion and the argument of parallel importers can be accepted or rejected depending upon the scheme of the Act and circumstances arising in view of the legal provisions existing under the law. At this stage, it is only necessary to examine the nature and scope of the provision which is the proprietor's consent is the defence to an infringement.

47. After this discussion, it can be safely said that the nature and the scope of Section 30(3) is that it operates as a defence to the infringing act and cannot be said to giving any additional right beyond the same."

11. Both parties have given their respective versions as to how they came about the mark and how they coined the mark. The explanation provided by the petitioners as to how they conceived the mark SUPREME and PL SUPREME is unconvincing and questionable. The marks had been registered by the respondents in the year 2014 in China showing the date of the manufacture since 2006. In fact, the petitioners through their associate concerns had purchased goods from the respondents under the mark PL SUPREME prior to 2013 and such invoices also bear the description of the goods and are marked. At this stage, the version of the respondents as to how they conceived of the mark is more credible. The petitioners have also been unable to adduce any evidence to show that they can claim any independent reputation as importers *vis-a-vis* the marks. The mere participation in trade fairs held in Nepal and Bangladesh is simply insufficient to claim any such reputation or goodwill. (*Toyota Jidosha Kabushiki Kaisha v. Prius Auto Industries Ltd.*, (2018) 2 SCC 1 @Paras 26, 29 and 40).

12. The petitioners have throughout been acting as agents or importers in India and admittedly have no experience of manufacturing. *Prima facie*, the respondents have been able to disclose several commercial invoices to

substantiate the fact that they have been manufacturing, selling and distributing their goods under the mark “SUPREME” and “PL SUPREME” both in and outside India. The brand names SUPREME and PL SUPREME appear from the invoices and export documents relied on by the respondents. The claim of prior user by the petitioners is also unbelievable. The documents demonstrate that the respondents have been using the impugned mark “PL SUPREME” long before the date of user i.e. 10 May, 2016 which is reflected in the registration certificate in favour of the petitioners. In this regard, the plea of the date of user being erroneously recorded in the Register is untenable and of no value to the petitioners. Admittedly, there has been no correction of the Register.

13. It is also clear from the certificate issued by the Bureau of Indian Standards (BIS) that the ownership of the mark PL SUPREME belongs to the respondents and that the respondents nominated the petitioners only as an authorized representative of the respondents. Nowhere in such certificate has the ownership of the mark been granted or assigned to the petitioners. On the basis of such certification, the respondents are the brand owners and manufacturers of torches and chargers manufactured under the mark SUPREME and PL SUPREME.

14. In such circumstances, it appears that the respondents are the prior users of the mark PL SUPREME and SUPREME and have been continuously and uninterruptedly using the same. There is nothing to remotely suggest that the respondents were exclusively manufacturing and selling torches for the

petitioners. This is unsubstantiated and contrary to the evidence on record. As such, the respondents have been able to demonstrate a superior right over the petitioners. Such prior use disentitles the petitioners to any reliefs at this stage of the proceedings. In this connection, the draft assignment agreement is an incomplete and inchoate document which does not assist the case of the petitioners. [*M/s. Products and Ideas (India) Pvt. Ltd. vs. Neelkamal Ltd. & Ors.* 2025 SCC OnLine Del 4619, *Harbans Kaur vs. Gurmarg Appliances Pvt. Ltd. & Ors.* 2024 SCC OnLine Del 423, *Trans Tyres (India) Pvt. Ltd. vs. Double Coin Holdings Ltd & Anr.* 2012 SCC OnLine Del 596.

15. In *Sunny Sales & Ors vs. Binod Khanna*, (2014) SCC Online Cal 18505 it has been held as follows:

“...the first question which arises for consideration is that if according to the case run by the plaintiffs, the sewing machines were imported by them from China, the mark on the machines or in any packaging material relating to them, would normally be the mark of the exporter or manufacturer. And as rightly pointed out by Mr. Jishnu Saha learned senior counsel for the defendant, an importer cannot normally claim proprietorship over the mark of an exporter or manufacturer, according to the Court of Appeal of England and Wales in Registered Trade Marks of the Apollinaris Company, Limited reported in 1891 Vol 8 RPC 137, the Chancery Division of its High Court In the matter of the European Blaim Camera Company's Trade Mark reported in 1896 13 RPC 600, in the matter of the Trade Mark of Elaine Inescourt (Trading as Blanche Verlaine) reported in Vol XLVI (1929) RPC 13 and Karo Step Trade Mark reported in 1977 RPC 255. A brand normally belongs to the proprietor of it whether he is the manufacturer or not and does not belong to the distributor [Also see Rangoli Chemfoods Pvt. Ltd. v. Indo Brine Industries Ltd. reported in 2013 53 PTC 606, Double Coin Holdings Ltd. v. Trans Tyres (India) Pvt. Ltd. reported in 2011 (46) PTC 194 (Delhi)]. In Double Coin Holdings Ltd. v. Trans Tyres (India) Pvt. Ltd. reported in 2011 (46) PTC 194 (Delhi) V.K. Jain, J eloquently remarked as follows : -

“What is essential in this regard is that the customer should come to identify the product and the trademark affixed on it with the distributor/importer and on seeing the product he should believe that the product being purchased by him was the product of that particular distributor/importer. While considering the claim of a distributor/importer, the Court needs to keep in mind that even a foreign manufacturer can acquire domestic goodwill in the trademark in addition to the goodwill which it enjoys in foreign market. If, however, the importer/distributor is able to establish that the customer has come to identify the trademark with it rather than with the manufacturer, it may be able to claim that the ownership in the trade mark in the domestic market belongs to him

despite the fact that the goods were not manufactured by it. The most important test in this regard is as to whether customer identifies the trademark with the manufacturer or with the importer/distributor, the presumption of law being that the ownership of the trademark vests in the manufacturer, who puts the mark on the product, and the onus to displace this legal presumption, being on the importer/distributor. In case, there is a dispute between the manufacturer and the distributor/importer with respect to proprietorship of a trademark, the decision of the court would depend on peculiar facts of each case, the guiding factor being that as a general rule, the brand belongs to the manufacturer and not to the importer/distributor.”

16. In *Double Coin Holdings Ltd & Anr. vs. Trans Tyres (India) Pvt. Ltd.* 2011

SCC OnLine Del 1842 it has also been held as follows:

10. *The ownership of a trademark as a general rule vests in the person, who puts the mark on the product. If the manufacturer himself is putting a brand name on the goods, the ownership or goodwill in the trademark, would ordinarily belong to him and a distributor or an importer of such a product cannot claim ownership or goodwill in the trademark already put on the product imported and/or distributed by him. Thus, there is presumption of proprietorship of trademark in favour of the manufacturer when he himself is putting the mark on the product manufactured by him. The relevant consideration in this regard would be to “who invented the trademark”, “who first affixed it on the product”, “who maintains the quality of the product” and “with whom the relevant public identifies the goods”, “to whom it looks for warranty and redressal of complaints” and “who possesses the goodwill associated with the product”. Use of the mark by the importer/distributor of the product is deemed to be a use by the manufacturer of the product, who puts his mark on the product. This ownership and goodwill which the manufacturer of the product enjoys in respect of the trademark under which his goods are sold, is not displaced merely by marketing and promotion of the product by the distributor/importer, even if he uses the mark while advertising/promoting the product. Mere use of the expression “imported by/brought to you by/marketed by” on the promotion and advertisements carried out by the importer/distributor/marketer of the goods is not sufficient to displace the presumption of ownership and goodwill of the brand vesting in the manufacturer of the product. A statement to the customer that the product being purchased by him is an imported product, produced by a foreign manufacturer without anything on the product to connect the brand/work with the importer/distributor/marketer is an indication to the customer that the product as well as the trademark affixed on it belongs to the foreign manufacturer. The presumption of ownership of trademark vesting in the manufacturer may, however, in certain circumstances be rebutted by the importer/distributor of the product. If, for instance, the distributor/importer orders the manufacture of the good or controls their production or the goods or the trademark on the goods is for the first time affixed by an importer/distributor or before selling the product, the distributor/importer, uses his own packaging/label so as to convey a connection between him and the trademark affixed on the product, and the name of the manufacturer is not written on the product or otherwise known to the customer, it may be possible for the*

importer/distributor to claim ownership in the trademark provided he is the first user of that trademark in the concerned territory. What is essential in this regard is that the customer should come to identify the product and the trademark affixed on it with the distributor/importer and on seeing the product he should believe that the product being purchased by him was the product of that particular distributor/importer. While considering the claim of a distributor/importer, the Court needs to keep in mind that even a foreign manufacturer can acquire domestic goodwill in the trademark in addition to the goodwill which it enjoys in foreign market. If, however, the importer/distributor is able to establish that the customer has come to identify the trademark with it rather than with the manufacturer, it may be able to claim that the ownership in the trademark in the domestic market belongs to him despite the fact that the goods were not manufactured by it. The most important test in this regard is as to whether customer identifies the trademark with the manufacturer or with the importer/distributor, the presumption of law being that the ownership of the trademark vests in the manufacturer, who puts the mark on the product, and the onus to displace this legal presumption, being on the importer/distributor.

17. In addition, there are unsettled accounts between the parties and huge outstandings remain due and payable by the petitioners to the respondents. The case of the respondents that dues payable by the petitioners are in excess of Rs.7 crores cannot be rejected at the interim stage. The petitioners had also not brought to the attention to this Court that the three consignments of torches which have been restrained by Court had been ordered by them as far back as in December 2024 and had arrived in early 2025. All these goods were shipped to and in favour of the petitioner no.2 in the name and style of DP Training Company on credit and the entire outstanding amount on this account remains due and payable to the respondents. Such orders had been mischievously placed prior to the filing of the suit and all this has been intentionally orchestrated and suppressed before this Court. A misleading and distorted impression had been given to Court that in violation of an order of restraint goods were brought in by the respondents which in fact had been imported by them. Subsequently, the petitioners opted not to release the

above goods and all this has been designed with the sinister purpose to pressurize the respondents. The circumstances of the petitioners in instituting this suit are also dubious. *Prima facie*, it appears that the only aim of the petitioners is to intimidate and coerce the respondents.

18. The petitioners also appear to be guilty of underinvoicing and tax evasion which cannot be glossed over. The respondents have disclosed diverse instances of under invoicing and financial irregularities being carried out by the petitioners. The WhatsApp messages between the son of the petitioners and the respondents co-relate that huge sums of money have been paid through third party foreign entities to the respondents on behalf of the petitioners. The respondents have also disclosed a chart containing particulars of under invoicing carried out by the petitioners which has not been controverted. In this connection, the respondents have relied on a chart (Annexure-D to the supplementary affidavit affirmed on 24 November 2025) which indicates that payments had been made to the respondents by and on behalf of the petitioners from accounts linked to Hong Kong, Singapore, Riyadh, Jakarta, Toronto and Kuala Lumpur. *Prima facie*, there is clear evidence to suggest that the petitioners have been underinvoicing huge sums of money approximately 30% of the actual invoice value. All such details have been fully enumerated by the respondents. In view of the seriousness of the allegations made by the respondents, the Chief Commissioner of Customs, Kolkata and Director General Revenue Intelligence, New Delhi are directed to cause an enquiry and investigate into the veracity of the allegations of

underinvoicing and the mechanism of using third party foreign entities to make payment by the petitioners. For such purpose, the respondents are directed to furnish all the necessary details and facts relied on in these proceedings to the Chief Commissioner of Customs, Kolkata and Director General Revenue Intelligence, New Delhi within a week from date. All these factors at the interlocutory stage weigh heavily against the petitioners. Suppression and concealment disentitles any party to relief. [*Barbara Taylor Bradford & Anr. vs. Sahara media Entertainment Ltd & Ors. (2004) 1 CHN 448* and *Kent RO System Ltd & Anr. vs. Gattubhai & Ors. 2022 SCC OnLine Del 791*].

19. In such circumstances, the petitioners have been unable to demonstrate any case in their favour. The balance of convenience and irreparable injury is also against any orders being passed. There is suppression and bad faith by the petitioners which cannot be ignored. It is well settled that he who comes to equity must come with clean hands.

20. For the above reasons, all interim orders stand vacated. GA-COM 1 of 2025 and GA-COM 3 of 2025 stand dismissed. The Special Officer/Receiver stands discharged and is directed to return all the goods to the respondents after making a complete and full inventory of the same and upon notice to the representatives of all the parties.

(Ravi Krishan Kapur, J.)