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

+ **C.O. (COMM.IPD-TM) 77/2025 & I.A. 6168/2025**

IRISH DISTILLERS INTERNATIONAL LIMITEDPetitioner

Through: Ms. Reha Mohan, Ms. Akanksha
Majumdar and Mr. Sambhav Jain,
Advocates

versus

STARDFORD SPIRITS PVT LTD & ANR.Respondents

Through: Ms. Nidhi Raman, CGSC with Mr.
Om Ram, Mr. Arnav Mittal and Mr.
Mayank Sansanwal, Advocates for
R-2

CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

ORDER

% 19.11.2025

1. The present rectification petition has been filed under Sections 47 and 57 of the Trademarks Act 1999 [‘the Act’], seeking cancellation of the trademark registration of the trademark ‘BLUE SPOT’ registered under no. 3999818 in Class 33 from the Register of Trademarks.

2. The case set up by the counsel in the petition is as under: -

2.1. The Petitioner is part of Group Pernod Ricard, and is engaged in the business of manufacturing and marketing a wide range of whiskies under the brands such as BLUE SPOT, GREEN SPOT, YELLOW SPOT, etc [‘SPOT whiskies’]. The SPOT whiskies are a rare single pot still Irish whiskey, which is made using a unique combination of both malted and unmalted barley.



2.2. Petitioner's predecessor started using the SPOT family of trade marks ['SPOT marks'] in 1900, and it used the SPOT marks with different colours to identify how long the barrels would be matured, illustratively BLUE SPOT-7 years, GREEN SPOT-10 years, RED SPOT-15 years and YELLOW SPOT-12 years. Hence, Petitioner's business of SPOT whiskies came into existence.

2.3. Petitioner's GREEN SPOT whisky was launched in Ireland in 1933, the YELLOW SPOT whisky was launched in 1967, the RED SPOT whisky was launched in the mid-1960s and so on.

2.4. The Petitioner, through its predecessor, first launched BLUE SPOT whiskies in the 1900s in Ireland alongside the aforesaid three core SPOT whiskies. The BLUE SPOT whiskey was reintroduced and made available to consumers in the year 2020.

2.5. It is stated that Petitioner's whiskeys are also available in India, sold through a third-party. Details of Petitioner's sales figures and advertisement expenses for its SPOT whiskies have been set out in paragraph '12.6.1' of the petition.

2.6. It is stated that the Petitioner has trademark registrations for international jurisdiction for its marks YELLOW SPOT, RED SPOT, GREEN SPOT, and BLUE SPOT.

2.7. The Petitioner's earliest registration for the mark "GREEN SPOT" is Registration No. 51438 dated 25.05.1948, registered in Ireland. Details of Petitioner's international SPOT registrations have been set out in paragraph '12.5.1' of the petition.

2.8. Petitioner, on 27.03.2023, filed a trademark application no. 5866618 for YELLOW SPOT in Class 33 for alcoholic beverages. Registration was



granted on 18.05.2024. Details of Petitioner's GREEN SPOT and YELLOW SPOT registrations in India have been set out in paragraph '12.5.2' of the petition.

2.9. It is stated that the earliest BLUE SPOT international trademark registration held by the Petitioner is in Ireland since 05.02.2020.

Genesis of the Dispute

2.10. The Petitioner, with the intention to expand business and brand protection, also applied for registration of the trademark BLUE SPOT bearing application no. 5866619 dated 27.03.2023 in Class 33 in respect of alcoholic beverages in India, which is currently pending registration.

2.11. During the process of examination of the application no. 5866619, the examination report dated 21.10.2023 cited the trademark no. 3999818 as the conflicting mark.

2.12. It was at this stage that the Petitioner learnt that Respondent No.1/Stardford Spirits Pvt. Ltd. had applied for registration of the mark BLUE SPOT ['impugned mark'], bearing no. 3999818 in Class 33, with an application dated 16.11.2018 and claimed use since 14.11.2018. The impugned mark was subsequently registered on 14.05.2019.

2.13. The Petitioner accordingly, on 17.10.2024, engaged an independent investigator to ascertain use of the impugned mark by the proprietor, i.e., Respondent No. 1.

2.14. The investigation revealed that Respondent No. 1 does not exist at the addresses available on the record of the Trademark Registry.

2.15. The investigator contacted the mobile number provided in the trademark application, and a person named Mr. Satpal Tanwar confirmed during the call that Respondent No.1 has not used the impugned mark.



2.16. Market searches were also carried out by the investigator, and no product under the impugned mark BLUE SPOT is available under the name of Respondent No. 1.

2.17. Since the Petitioner's application No. 5866619 has been held up and has not even been advertised, the Petitioner has taken the present step of filing this petition.

Court's Findings

3. This Court has considered the submissions of the Petitioner and perused the record.

4. Service was attempted upon Respondent No. 1 through all permissible modes, including e-mail, WhatsApp and at its registered office address as per the Ministry of Corporate Affairs ['MCA'] records. Service was duly affected through e-mail and WhatsApp. The service on WhatsApp was the mobile number furnished in the records of the Trademark Registry. However, the speed post could not be successfully delivered. To this effect, an affidavit has been filed by the Petitioner dated 07.05.2025.

5. It is a matter of record that notice was issued to Respondent No. 1; however, none appeared on its behalf, and accordingly, the Court proceeded ex-parte against Respondent No. 1 on 17.07.2025.

6. In light of the fact that the petition has been duly verified and is supported by the affidavit of the Petitioner, and the fact that Respondent No. 1 has elected not to enter appearance despite service, therefore all averments made in the petition against Respondent No.1 asserting non-use of the impugned mark remain unrebutted and are deemed to be admitted.

7. In these facts, this Court proceeds to examine the averments made in the petition. Respondent No.1 filed an application on 16.11.2018, which was



granted registration on 14.05.2019. It is the averment of the Petitioner that the said registration should be removed on the ground of non-use, as there has been no bona fide use of the impugned mark for a period of more than five [5] years and three [3] months from the date of grant of registration under Section 47 of the Act.

8. It would be relevant to refer to the dicta of **Rong Thai International Group Co. Ltd. v. Ena Footwear Pvt. Ltd.**¹, wherein the Co-ordinate Bench of this Court held that Section 47 allows removal of a trade mark if it has not been genuinely used in commerce for a continuous period of five [5] years, with the burden of proving non-use lies on the person seeking removal of the mark from the register. The relevant paragraphs read as under:

“7. The Court has considered the aforementioned submissions. Section 47 of the Act serves to protect the integrity of the trade mark register by ensuring that registered marks that are not actively used in commerce are removed. In order to prevent the hoarding of trade marks, this Section provides a mechanism for third parties aggrieved by the non-use of a trade mark to apply for its removal. Specifically, Section 47(1)(b) enables the removal of a trade mark from the register if it has not been used *bona fide* for a continuous period of five years or longer. However, the burden of proving that the facts which bring this provision into play rests on the person who seeks to have the trade mark removed from the Register. It is pertinent to note that *bona fide* use typically means genuine use in the course of trade, and not merely token use to maintain the registration.

9. Upon analysing this provision, it emerges that the period of non-use for a trade mark, which can lead to its cancellation, is calculated from the date it is ‘actually entered in the register.’ This start date is crucial as it is not based on the date of filing of application or any other date. Equally important is the endpoint for this calculation of non-use, defined to be ‘three months before the date of the application’ for removal. Therefore, the critical date for assessing the trade mark’s use is three months prior to filing the application for its removal. Notably, any use of the trade mark

¹ 2024 SCC OnLine Del 66



within these three months is disregarded, provided there has been a continuous nonuse for five years leading up to this point. While there are certain exceptions carved out in the statute, they are not pertinent to this discussion and are not analysed here.

10. It also emerges that against the ground of cancellation specified under Section 47(1)(b), a registered trade mark enjoys a sort of ‘grace period’ during the first five years following its entry into the register. This period protects the trade mark from challenges based on non-use. After this period, the trade mark becomes vulnerable to removal due to non-use. A successful challenge must demonstrate a continuous non-use for at least five years from the date of entry into the register up to three months before the application for removal. It is important to note that any bona fide use of the trade mark can interrupt the continuity of non-use, rendering the application for cancellation invalid.”

(emphasis supplied)

9. In the present case, the registration of Respondent No. 1 dates back to 16.11.2018, whereas the instant Petition was filed on 28.01.2025. As per the petition, during this entire intervening period, which exceeds the period of five [5] years and three [3] months, there is no product in the market bearing the impugned mark to indicate that Respondent No. 1 has used the said mark. Though the initial burden of proving non-use of the mark lies on the Petitioner, in the present case, Respondent No. 1, despite service and notice, has failed to appear and has been proceeded ex parte. In this regard, a reference may also be made to the case of **DORCO Co. Ltd. v. Durga Enterprises and Another**², wherein the impugned mark was removed on the ground of non-use. The relevant part of the case reads as under:

"19. In the judgment in *Shell Transource Limited v. Shell International Petroleum Company Ltd.*, 2012 SCC OnLine 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.”

² 2023 SCC OnLine Del 1484



(emphasis supplied)

10. Since Respondent No.1 has failed to take any requisite steps to contest the present petition despite having been afforded sufficient opportunities, its conduct demonstrates a clear lack of intent to defend the present proceedings and its trademark registration, and in view thereof, the Petitioner's assertion in the petition regarding non-use remains unrebutted. The Petitioner has placed on record the investigator's report dated 17.10.2024, with the petition, which pleads the following facts that: -

- a. Respondent No.1 does not exist at the publicly available addresses.
- b. There is no product under the name BLUE SPOT available in the market.
- c. The investigator has also referred to its interaction with Mr. Satpal Tanwar, representative of the Respondent No. 1 available at the mobile number furnished on the TM application, categorically affirming that Respondent No. 1 has not commenced use of the mark since its registration.

11. These unrebutted facts establish that Respondent No. 1 has failed to use the impugned mark in relation to products for which it was registered and therefore, the registration of the mark is without bona fide intention to use the mark. The unrebutted facts show that there has been no use of the impugned mark for a continuous period exceeding five [5] years from the date it was entered in the Register, up to a date three [3] months prior to the filing of the rectification application, thereby satisfying the statutory requirement for removal on the ground of non-use.

12. Therefore, the impugned mark is liable to be removed as per Sections 47(1)(a) and 47(1)(b) of the Act.



13. This Court is satisfied that Petitioner has made out the case for cancellation of the registration.

14. Learned counsel appearing on behalf of the Respondent No. 2 is directed to communicate the order passed today to the registrar for carrying out appropriate corrections in the Registry.

15. Accordingly, the petition, along with pending applications [if any], stands disposed of.

16. The digitally signed copy of this order, duly uploaded on the official website of the Delhi High Court, www.delhihighcourt.nic.in, shall be treated as a certified copy of the order for the purpose of ensuring compliance. No physical copy of order shall be insisted by any authority/entity or litigant.

MANMEET PRITAM SINGH ARORA, J

NOVEMBER 19, 2025/rhc/aa