



2025:DHC:7158



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

% Judgment delivered on: 22.08.2025

+ **C.O. (COMM.IPD-TM) 191/2024 with I.A. 40178/2024 & I.A. 40179/2024**

**ALLIED BLENDERS AND DISTILLERS
LIMITED**

.....Petitioner

Versus

KULBIR SINGH & ANR.

.....Respondents

Advocates who appeared in this case

For the Petitioner : Mr. Pravin Anand, Mr. Shrawan Chopra,
Mr. Achyut Tewari and Mr. Krisha Baweja,
Advocates

For the Respondents : Ms. Nidhi Raman & Mr. Om Ram,
Advocates for R-2.

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

JUDGMENT

TEJAS KARIA, J

1. The present Petition has been filed by the Petitioner under Sections 9, 18, 47 and 57 of the Trade Marks Act, 1999 ('Act') seeking cancellation of the Trade Mark No. 1799370 registered in Class 33 for the Mark **“ROGER”** ('Impugned Mark') in the name of Respondent No.1, and for the rectification of the Trade Marks Register under Rule 7 of the Delhi High Court Intellectual Property Rights Division Rules, 2022.



2025:DHC:7158



FACTUAL BACKGROUND

2. The Petitioner owns and operates a well-established business, *inter alia*, of manufacturing and marketing Indian Made Foreign Liquor and other related goods. The Petitioner's merchandise is sold globally under many distinctive Trade Marks and caters to various consumer segments.

3. Over the past several decades, the Petitioner introduced multiple well-known brands, and many of them have become popular names in the country such as 'OFFICER'S CHOICE', 'OFFICER'S CHOICE BLUE', 'CLASS VODKA', 'CLASS 21', 'CALYPSO', 'SUMO', '1000 GUINEAS', 'LORD & MASTER', 'KYRON', 'STERLING RESERVE', among others.

4. The Petitioner's Trade Mark relevant to the present controversy is 'JOLLY ROGER'. The Petitioner's predecessors had adopted the said mark in the year 1991. The Petitioner's group entity BDA Private Limited had applied for the registration of the Composite Mark 'JOLLY ROGER' in the year 2006, which was granted under Registration No. 1487257 in Class 33. After the merger of the alcohol beverages business with the Petitioner, the said Mark stands registered in the Petitioner's name. The Petitioner has extensively been using the Mark 'JOLLY ROGER' since the year 2010 and the goods bearing the said Mark are sold all around the country by the Petitioner.

5. The Petitioner claims that the Mark 'JOLLY ROGER' has acquired significant goodwill and reputation in the alcoholic beverages market in India. The Petitioner's website (www.abdindia.com) provides information on all their products bearing the Mark 'JOLLY ROGER' which has led to further enhancement of the awareness and recognition of the Petitioner's



products under the said Mark. The Petitioner further claims that it has made significant financial investment to promote the sale of its products bearing the Mark 'JOLLY ROGER'.

6. The Sales Figures of the Petitioner's products bearing the 'JOLLY ROGER' mark are as under:

JOLLY ROGER - Sales Details	
Year	Total (in units)
2023-24	2,15,562
2022-23	3,21,748
2021-22	2,10,856
2020-21	1,24,989
2019-20	68,380
2018-19	1,09,059
2017-18	2,32,525
2016-17	2,67,379
2015-16	3,29,553
2014-15	2,13,111
2013-14	1,94,315
2012-13	1,80,566
2011-12	2,04,062
2010-11	1,47,543

7. The Impugned Mark was registered under the Registration No. 1799370 in Class 33, in the name of Respondent No.1, having address at C/o Roger Industries Limited, Agra-Mathura Road, Artoni, Agra, Uttar Pradesh – 282007. The Application for the registration of the Impugned Mark was filed on 24.03.2009 and the Impugned Mark is valid till 24.03.2029.

8. On 15.07.2024, the Petitioner received a Cease-and-Desist Notice issued by Roger Industries Limited through its Director, i.e., Respondent No.1, calling upon the Petitioner to cease and desist from its business



2025:DHC:7158



operations using the Mark 'JOLLY ROGER'. The Petitioner sent a detailed Reply dated 25.07.2024 to the Petitioner and subsequently, the present Petition was filed before this Court.

9. *Vide* order dated 01.10.2024, this Court directed that Notice be issued to Respondent No.1 through all modes and granted four weeks' time to file the Reply. Thereafter, this Petition was taken up by this Court on 15.01.2025, however, none appeared for Respondent No.1 despite issuance of Notice *vide* order dated 01.10.2024 and the Respondents were further granted a duration of two weeks to file the Reply.

10. This matter was called again for hearing on 28.04.2025 and this Court in the order of even date noted that despite Respondent No.1 being served on 11.11.2024 *via* speed post, no one had entered appearance on his behalf and no Reply was filed by Respondent No.1 despite repeated liberty being granted to do so. Accordingly, Respondent No.1's right to file a Reply was closed and Respondent No.1 was proceeded *ex-parte vide* order dated 28.04.2025.

SUBMISSIONS ON BEHALF OF THE PETITIONER:






11. Mr. Pravin Anand, the learned Counsel for the Petitioner submitted that the predecessor of the Petitioner adopted the Mark 'JOLLY ROGGER' in the year 1991, in respect of goods falling in Class 33. It is further submitted that the Petitioner has been using the said Mark since the year 2010 and is the registered proprietor of the said Mark. It is further submitted that the Petitioner is the prior adopter and user of the said Mark.

12. The learned Counsel for the Petitioner submitted that the Petitioner has been granted registration for the following Marks in Class 33 reflecting the brand name 'JOLLY ROGGER':



2025:DHC:7158




Serial No.	Application No.	Trade Mark
1	1880332	
2	1487257	JOLLY ROGER
3	2306307	JOLLY ROGER SUPERIOR XXX RUM
4	2337094	
5	4753493	
6	5180462	
7	5589908	Jolly Roger Premium XXX Rum
8	5589909	



2025:DHC:7158



9	5589910	Jolly Roger Premier XXX Rum
10	5589911	
11	5589912	Jolly Roger Select XXX Rum
12	5589913	
13	5589914	Jolly Roger Prime XXX Rum
14	5589915	
15	1845388	JR

13. It was submitted that Respondent No.1 is not the first adopter of the Mark 'ROGER' in India and the said Mark is a common name. It is further submitted that there are several third-parties who have registered their Trade Mark containing the word 'ROGER' and therefore, no monopoly can be claimed by Respondent No.1 over the usage of the said word for all goods and classes.

14. The learned Counsel for the Petitioner submitted that Respondent No.1 completely failed to put the Impugned Mark in use in relation to the



2025:DHC:7158



goods covered in Class 33. It is further submitted that the Affidavit dated 23.08.2024 of Mr. Ankur Sachdeva, Chief Revenue Officer of the Petitioner, clearly shows that there is no product that is marketed by Respondent No.1 in relation to Class 33 goods and that the Impugned Mark is not in use in the market, either by Respondent No.1 or by Roger Industries Limited in relation to Class 33 goods.

15. It was submitted that a bare perusal of the Memorandum of Association of Roger Industries Limited shows that there is no intention to use the Impugned Mark for Class 33 goods. A copy of the said Memorandum of Association was handed over to this Court by the learned Counsel for the Petitioner and the same is taken on record.

16. The learned Counsel for the Petitioner submitted that it is clear from Respondent No.1's Affidavit dated 30.04.2009 filed before the Registrar of Trade Marks during the prosecution of the Impugned Mark that there was no intention to use the Impugned Mark for goods in Class 33, and that the Impugned Mark is used in relation to Respondent No.1's footwear trade.

17. It was submitted that the Petitioner has filed and registered several 'JOLLY ROGER' Marks in Class 33 during the period from November 2020 to August 2024, which were not objected to or opposed by Respondent No.1, which establishes that Respondent No.1 never intended to use the Impugned Mark in relation to Class 33 goods.

18. It was submitted that the Petitioner is undergoing immense hardship on account of the registration of the Impugned Mark by Respondent No.1 and therefore, the Petitioner is a 'person aggrieved' as contemplated under Section 47 of the Act. It was further submitted that as the Impugned Mark has not been used in relation to goods in Class 33 for a period of 5 years 3



months before the present Petition was filed, it is liable to be removed from the Register of Trade Marks.

19. In view of the foregoing submissions, it was prayed that the present Petition be allowed and consequently, the Impugned Mark be expunged from the Register of Trade Marks.

SUBMISSIONS ON BEHALF OF RESPONDENT:

20. Respondent No.1, despite repeated opportunities granted by this Court, has failed to enter appearance and file a Reply. Therefore, in accordance with the order dated 28.04.2025, Respondent No.1 was proceeded *ex-parte*.

21. The learned CGSC for Respondent No. 2 submitted that Respondent No. 2 will comply with the directions passed by this Court in this matter.

ANALYSIS AND FINDINGS:

22. At the outset, it is to be noted that in the absence of any appearance and Reply by Respondent No. 1, the pleadings made in the present Petitions remain uncontroverted. It is clear that Respondent No. 1 is not interested in contesting the matter. Accordingly, the pleadings herein are deemed to have been admitted by Respondent No. 1.

23. On the basis of the documents placed on record, the Petitioner is the registered proprietor of multiple Trade Marks bearing the mark 'JOLLY ROGER' in Class 33.

24. Notwithstanding various grounds urged in the petition, the learned Counsel for the Petitioner effectively pressed the ground of non-use of the Impugned Mark under Section 47(1)(b) of the Act.

25. A perusal of Section 47(1)(b) of the Act would reveal that on an application made by an aggrieved person, a registered Trade Mark is liable



2025:DHC:7158



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.

26. In ***Hardie Trading Ltd. v. Addisons Paint & Chemicals Ltd.***,¹ the Supreme Court held as under:

“26. Thus before the High Court or the Registrar directs the removal of the registered trade marks they must be satisfied in respect of the following:

- (1) that the application is by a “person aggrieved”;*
- (2) that the trade mark has not been used by the proprietor for a continuous period of at least five years and one month prior to the date of the application;*
- (3) there were no special circumstances which affected the use of the trade mark during this period by the proprietor.*

27. The onus to establish the first two conditions obviously lies with the applicant, whereas the burden of proving the existence of special circumstances is on the proprietor of the trade marks. These conditions are not to be cumulatively proved but established seriatim. There is no question of the third condition being established unless the second one has already been proved and there is no question of the second one even being considered unless the High Court or the Registrar is satisfied as to the locus standi of the applicant.”

27. In ***Infosys Technologies Ltd. v. Jupiter Infosys Ltd.***,² the Supreme Court described the phrase ‘person aggrieved’ in the following terms:

“28. The position that emerges from the above provisions is this. Whether the application is under Section 46 or under Section 56 or a composite application under both sections, it is a prerequisite that the applicant must be a person aggrieved. Section 46(1) of the 1958 Act enables any person aggrieved to apply for removal of registered

¹ (2003) 11 SCC 92

² (2011) 1 SCC 125



2025:DHC:7158



trade mark from the register on the ground of non-use as stated in clause (a) and/or clause (b). To be an aggrieved person under Section 46, he must be one whose interest is affected in some possible way; it must not be a fanciful suggestion of grievance. A likelihood of some injury or damage to the applicant by such trade mark remaining on the register may meet the test of locus standi.

29. In *Kerly's Law of Trade Marks and Trade Names* (11th Edn.) at p. 166, the legal position with regard to “person aggrieved” has been summarised thus:

The persons who are aggrieved are all persons who are in some way or the other substantially interested in having the mark removed—where it is a question of removal—from the register; including all persons who would be substantially damaged if the mark remained, and all trade rivals over whom an advantage was gained by a trader who was getting the benefit of a registered trade mark to which he was not entitled.

We accept the above statement of law.”

28. In ***Kellogg Company v. Pops Food Products (P) Ltd.***,³ a Coordinate Bench of this Court relied upon the Supreme Court’s ruling in ***Hardie Trading*** (supra) and observed as under:

*“10. In view of the above, the principal issue to be addressed is whether the petitioner is a person aggrieved. In *Hardie Trading Ltd. v. Addisons Paint and Chemicals Ltd.* (Supra), the Supreme Court had explained that the expression “person aggrieved” as used in Section 46 of the 1958 Act (pari materia to Section 47 of the 1999 Act) was materially different from the connotation of the said expression as used under Section 56 of the 1958 Act (which is pari materia to Section 57 of the 1999 Act). The Court had observed that Section 56 of the 1958 Act contemplated situations where the registration should not have been granted or was incorrectly granted. These situations included : (a) contravention of failure to observe a condition for registration; (b) absence of an entry; (c) an entry made without sufficient cause; (d) a wrong entry; and (e) any error or defect in the entry. The Court further explained that such types of*

³ 2018 SCC OnLine Del 6562



2025:DHC:7158



actions were commenced to maintain “the purity of the register” and thus had an element of public interest. In this context, the expression “person aggrieved” would necessarily have a wider sweep. However, there was no element of public mischief in favour in rectification of a register under Section 46 of the 1958 Act (Section 47 of 1999 Act) and thus, the person aggrieved in the context of removal of trademark on account of non-use would necessarily mean a person who is interested in removal of the impugned mark.

*11. The Supreme Court referred to the following passage from the decision of the House of Lords in **Powell's Trade Mark : 1894 11 RPC 4**, in its decision:*

“... although they were no doubt inserted to prevent officious interference by those who had no interest at all in the register being correct, and to exclude a mere common informer, it is undoubtedly of public interest that they should not be unduly limited, inasmuch as it is a public mischief that there should remain upon the register a mark which ought not to be there, and by which many persons may be affected, who, nevertheless, would not be willing to enter upon the risk and expense of litigation.

Whenever it can be shown, as here, that the applicant is in the same trade as the person who has registered the trade mark, and wherever the trade mark, if remaining on the register, would, or might, limit the legal rights of the applicant, so that by reason of the existence of the entry on the register he could not lawfully do that which, but for the existence of the mark upon the register, he could lawfully do, it appears to-me he has a locus standi to be heard as a person aggrieved.”

(emphasis added)

12. The Supreme Court held that the tests as indicated in the above quoted passage would be applicable to determine whether the applicant was a person aggrieved within the meaning of Section 46 of the 1958 Act.”

29. Undoubtedly, the Petitioner was required to establish that it was a ‘person aggrieved’ in order to maintain its Petition under Section 47 of the



Act. It is clear from the facts of the present case that the Petitioner has successfully discharged this burden. *Firstly*, the Petitioner has registered multiple variants of the Mark 'JOLLY ROGER' in Class 33, under which it sells and markets its products. *Secondly*, it is uncontroverted that the Petitioner has been using the Mark 'JOLLY ROGER' since the year 2010 and that its predecessors had adopted the said Mark in 1991. *Thirdly*, the sales figures of the Petitioner's products in Class 33 under the Mark 'JOLLY ROGER' reflects that it is a well-established brand in the alcoholic beverages market in India. *Lastly*, given the similarity between the Impugned Mark and the Petitioner's Mark, an unwary consumer of average intelligence is likely to get confused and deceived by the Impugned Mark.

30. In view of the above discussion, this Court has no qualms that there is a likelihood of injury or damage to the Petitioner if the Impugned Mark is not removed from the register. Therefore, the Petitioner satisfies the test of being a 'person aggrieved' under Section 47 of the Act.

31. Under Section 47 of the Act, after establishing its *locus standi*, the Petitioner has to discharge the burden of proving the factum of non-use of the Impugned Mark for a continuous period of at least five years from the date on which the Mark is entered in the Register of Trade Marks, up to a date at least three months prior to the date of filing the Present petition.

32. It is the Petitioner's case that Respondent No.1 never intended to use the Impugned Mark in relation to Class 33 goods. The learned Counsel for the Petitioner drew this Court's attention to the Affidavit of Mr. Ankur Sachdeva, Chief Revenue Officer of the Petitioner, wherein it is clearly stated that the Impugned Mark is not in use in the market in relation to Class



2025:DHC:7158



33 goods and that being in the same industry, he has never come across any product of Respondent No.1 in Class 33.

33. It is further pointed out by the learned Counsel for the Petitioner that in Respondent No.1's Affidavit dated 30.04.2009 filed before the Registrar of Trade Marks during the prosecution of the Impugned Mark, it is admitted that the Trade Mark 'ROGER' is used by Respondent No.1 in relation to its products in footwear trade. The learned Counsel for the Petitioner also relied upon the Memorandum of Association of Roger Industries Limited to contend that Respondent No.1 and Roger Industries Limited had no intention to use the Impugned Mark in relation to goods in Class 33.

34. In *A.K. Al Muhaidib v. Chaman Lal Sachdeva*,⁴ a Coordinate Bench of this Court observed as under:

"28. Therefore, in view of the decision of this Court in Disney Enterprises Inc. v. Balraj Muttneja, 2014 SCC OnLine Del 781, no further evidence would be required in this matter. This position has been reiterated by the Court on several occasions, including recently in Russell Corpn. Australia Pty. Ltd. v. Ashok Mahajan, (2023) 4 HCC (Del) 301, wherein the following relevant observation was made:

"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/trade mark agent of the respondent.

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

⁴ 2024 SCC OnLine Del 1026



2025:DHC:7158



and, in these facts, the mark would be liable to be removed on the ground of non-use itself.”

35. In **DORCO Co. Ltd. v. Durga Enterprises**,⁵ this Court held 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.

20. 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.”

36. Considering that Respondent No. 1 has been proceeded *ex-parte* and no Reply has been filed by it, the Petitioner's averments stand unrebutted. Further, the evidence which has been placed with regard to non-use by the Petitioner can be relied upon, in light of there being no repudiation of the same by Respondent No. 1.

37. The Petitioner has continuously and extensively used the Trade Mark ‘JOLLY ROGER’ for its products in Class 33 since the year 2010, and has acquired significant goodwill and reputation for its product under the said Mark. On the other hand, it is clear that Respondent No.1 has never used the Impugned Mark in relation to goods in Class 33.

38. In view of the aforesaid, the Petitioner is aggrieved by the continued subsistence of the Impugned Mark on the Register of Trade Marks.

⁵ 2023 SCC OnLine Del 1484



Therefore, the Impugned Mark is liable to be removed from the Register of Trade Marks under Section 47(1)(b) of the Act.

39. Accordingly, the present Petition is allowed and the Trade Marks Registry is directed to remove the Impugned Mark 'ROGER' bearing Registration No. 1799370 in Class 33 registered in the name of Respondent No.1, from the Register of Trade Marks.

40. The Register of Trade Marks be rectified accordingly and the website of the Registrar of Trade Marks be updated within a period of four weeks. For compliance, the Registry is directed to supply a copy of the present Order to the Trade Marks Registry through email at llc-ipo@gov.in.

41. Pending Applications stand disposed of.

TEJAS KARIA, J.

AUGUST 22, 2025/st