



IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION  
IN ITS COMMERCIAL DIVISION

COMMERCIAL MISCELLANEOUS PETITION NO. 439 OF 2022

Air India Ltd. ....Petitioner  
Versus  
Girish Basrimalani Trading As T.G. Exports And Anr. ....Respondents

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Ms. Geetanjali Vishwanathan a/w Drumi Nishar i/b Mayank Samuel, for the Petitioner.

Mr. Yashodeep Deshmukh a/w Mr. Ashutosh Mishra and Ms. Vaidehi Pradeep for Respondent No.2.

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**CORAM :** ARIF S. DOCTOR, J

**DATE :** 10<sup>th</sup> DECEMBER 2025

**P.C.**

1. The Petitioner, by way of the captioned Petition, seeks removal, cancellation, and rectification of the trade mark ("impugned trade mark") bearing Registration No.3487173 in Class 31, registered in the name of Respondent No.1 in respect of the trade mark from the Register of Trade Marks.

2. Ms. Vishwanathan Learned Counsel, appearing on behalf of the Petitioner at the outset, invited my attention to the Order dated 19<sup>th</sup> November 2025, by which this Court, after noting that Respondent No.1 had, despite being granted several opportunities, not appeared, had thus directed that the matter proceed ex-parte against Respondent No.1. Respondent No. 2 is today represented, and thus the matter is taken up for hearing.

### Submissions on behalf of the Petitioner

3. Ms. Vishwanathan submitted that the Petitioner is the registered proprietor of the trade mark “VISTARA®” (“Petitioner’s trade mark”) in several classes in India, the earliest of which dates back to 2014. Learned Counsel then invited my attention to the details of the trade marks registered by the Petitioner in India as set out in paragraph 10 of the Evidence Affidavit filed by the Petitioner before the Intellectual Property Appellate Board (“IPAB”), as also printouts of the e-Register and registration certificates issued by the Trade Marks Registry in respect of the Petitioner’s trade mark which were annexed as Annexure-E to the Petition.

4. Ms. Vishwanathan then pointed out that the Petitioner’s trade mark had been declared as a well-known mark within the meaning of Section 2(1)(zg) of the Trade Marks Act, 1999 (“the Act”) by the Delhi High Court in the case of *TATA SIA Airlines Limited v. M/s Pilot18 Aviation Book Store & Anr.*<sup>1</sup> following which the Plaintiff’s trade mark had been included in the list of well-known trade marks maintained by Respondent No.2, which was publicly accessible on the official website of Respondent No.2 and hence was in the public domain.

5. Ms. Vishwanathan then submitted that the Petitioner provides full-service and low-cost scheduled passenger airline services, cargo belly-hold services and certain other allied businesses. The Petitioner’s predecessor, TATA SIA Airlines Limited announced its intention to use the mark “VISTARA®” for its airlines on

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<sup>1</sup> 2019 SCC OnLine Del 9535

11<sup>th</sup> August 2014 and thereafter launched operations of its full-service airline in January 2015.

6. Ms. Vishwanathan then, by placing reliance upon the Evidence Affidavit filed by the Petitioner pointed out that the Petitioner has extensively used the trade mark “VISTARA®” in relation to a wide range of services, such as vehicle apparatus, transport services, household utensils, clothing, carpets, games, etc., as more particularly set out in a table incorporated in paragraph no.10 of the Petition. Learned Counsel also, from paragraph 6 of the Petition, pointed out the numerous recognitions and awards received by the Petitioner for the exemplary quality of its services under the mark “VISTARA®”. It was also pointed out from the evidence that the Petitioner had incurred substantial costs for continuous advertising and promotional efforts conducted nationwide. It was thus the submission of Learned Counsel that all of this established that the Plaintiff's trade mark had been used extensively across various services and had acquired significant goodwill and reputation.

7. Ms. Vishwanathan then submitted that the registration of the impugned mark was in class 31 and was in respect of “*agricultural, horticultural and forestry products and grains, live animals, fresh fruits and vegetables, seeds, natural plants and flowers, and foodstuffs for animals included in class 31*”. She submitted that the Petitioner also has registrations in Class 39 and 21, viz., transport services, household utensils, which were allied services to those in respect of Class 31, and thus there was an imminent likelihood of the members of the public and of trade alike mistaking the Defendants' goods as those of the Petitioner or as being associated with the Petitioner.

8. Ms. Vishwanathan then, to highlight that the conduct of Respondent No. 1 was in bad faith, submitted that Respondent No.1 had made applications in several Classes under the Trade Marks Act for registration of the impugned trade mark. He pointed out that the Petitioner, on discovering the application No.3487175 filed by Respondent No.1 Class 39 issued a cease-and-desist notice, followed by a reminder, after which the Respondent No.1 thereafter withdrew application No.3487175. Respondent No.1 thereafter filed application No.3487171 in Class 29, which was refused by the Registry. She pointed out that subsequent searches revealed that Respondent No.1 had made additional identical device-mark applications bearing No.3487174 in Class 35 and No.3487172 in Class 30, which were deemed to have been abandoned under Section 21(2) of the Act. She submitted that this sequence of repeated filings of identical marks across multiple classes, followed by withdrawals or abandonment whenever challenged, clearly indicated a lack of any *bona fide* intention on the part of Respondent No.1 to use the mark impugned mark and reflect a deliberate attempt to appropriate the Petitioner's well-known trade mark.

9. Learned Counsel further pointed out that Respondent No.1 had chosen to remain absent from present proceedings despite repeated attempts by the Petitioner to serve Respondent No.1. Ms. Vishwanathan thus submitted that there was not even an attempt on the part of Respondent No.1 to demonstrate how the adoption of the impugned mark was either honest or *bona fide*. Learned Counsel also pointed out that there was absolutely no material placed on record to show

that Respondent No.1 has any valid defence or justification available in law to use the impugned trade mark.

10. Basis the above, Ms. Vishwanathan submitted that the Register of Trade Marks was required to be rectified by removing and/or cancelling the impugned trade mark therefrom on the following grounds.

10.1. The mark “**विस्टर्राह**” (“the impugned trade mark”) is phonetically identical and visually and structurally similar to the Petitioner’s well-known mark “**VISTARA®**”, thereby making the Petitioner a “person aggrieved” under Section 57 of the Act. The wrongful registration of such a deceptively similar mark is likely to damage the Petitioner’s goodwill and reputation.

10.2. Section 11(2)(a) of the Act prohibits the registration of a mark which is identical with or similar to an earlier trade mark. The impugned trade mark being virtually identical and phonetically similar to the Petitioner’s well known trade mark “**VISTARA®**”, would thus fall foul of Section 11(2)(a) of the Act and thus could not have been registered.

10.3. The Petitioner has used the mark “**VISTARA®**” continuously and without interruption for a long time, both in India and internationally. As a well-known mark, “**VISTARA®**” enjoys the highest level of statutory protection across all classes, including against use for disparate goods. Respondent No. 1’s registration of the impugned mark “**विस्टर्राह**” in Class 31 is wholly without due cause and is detrimental to the distinctive character and repute of the Petitioner’s well-known mark.

10.4. Section 11(10) of the Act affords special protection to well-known marks. Respondent No. 1 had actual knowledge of the Petitioner's rights through multiple cease-and-desist notices, opposition proceedings, and the present rectification petition. Despite this, the fact that Respondent No. 1 persisted in maintaining the registration of the impugned mark makes apparent the dishonesty and bad faith on the part of Respondent No. 1. The registration therefore also falls foul of Section 11(10) of the Act.

10.5. The Petitioner adopted the mark “**VISTARA®**” in 2014 and commenced commercial operations in 2015, acquiring significant goodwill and reputation. Respondent No. 1's alleged first use is stated to be in 2017, which is plainly subsequent to that of the Petitioner. The Petitioner also uses its mark in connection with meals served onboard and in airport lounges, i.e., services that relate to food and hospitality. Respondent No. 1 claims use of the impugned mark “**Vistarraah**” for allied and cognate goods in Class 31, including agricultural and horticultural products, grains, fresh produce, seeds, and animal foodstuffs. Courts have repeatedly restrained the use of well-known marks for dissimilar goods. In **UltraTech Cement Ltd. v. Ultratech Solar Technologies Pvt. Ltd.**<sup>2</sup> and **Daimler Benz AG v. Hydo Hindustan**<sup>3</sup>, the Bombay and Delhi High Courts, respectively, have held that such use dilutes and tarnishes the reputation of well-known marks, which is impermissible.

10.6. Respondent No. 1's use of the impugned mark is clearly intended to ride on the Petitioner's established goodwill by misrepresenting its goods as those of,

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**2** 2018 SCC OnLine Bom 8644

**3** 1993 SCC OnLine Del 605

or associated with, the Petitioner. Such misrepresentation is likely to confuse the public and the trade, damage the Petitioner's reputation, and amount to passing off.

10.7. Rectification is further justified under Section 11(3) of the Act because continued registration facilitates use that would be restrained in a passing-off action. The Hon'ble Supreme Court in **Corn Products Refining Co. v. Shangrila Food Products Ltd.**<sup>4</sup>, has held that likelihood of confusion must be assessed with reference not only to identical goods but also to allied and cognate goods, as consumers often assume a common origin when marks are similar. Given the Petitioner's association with food-related services, use of the impugned mark for goods in Class 31 would inevitably mislead consumers.

10.8. Section 9(2)(a) of the Act prohibits registration of marks likely to deceive or cause confusion. Respondent No. 1's mark "~~Vistarraah~~" is deceptively similar, phonetically, visually, and structurally, to "**VISTARA®**". The stylisation adds no distinguishing characters. The risk of consumers believing that Respondent No. 1's goods originate from or are associated with the Petitioner is both real and substantial, rendering the registration invalid under Section 9(2)(a) of the Act.

10.9. The Petitioner has never consented to Respondent No. 1's use or registration of the impugned mark in Class 31. Respondent No. 1 therefore cannot rely on Section 11(4) of the Act. Further, no special circumstances exist to justify protection under Section 12 of the Act, nor can Respondent No. 1 claim

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**4** 1959 SCC OnLine SC 11

honest concurrent use, given its repeated attempts to register identical marks despite full knowledge of the Petitioner's rights.

11. On the basis of the above, Ms. Vishwanathan submitted that the registration of the impugned mark was contrary not only to the specific provisions of the Act but also to the well-settled principles of trade mark law. It was thus, she submitted, that the continued existence of the impugned mark on the Register of Trade Marks was bad in law, equity and public interest, and it is only appropriate that the impugned mark ought to be removed/rectified/expunged from the Trade Marks Register to maintain its purity.

12. Furthermore, Ms. Vishwanathan pointed out that the abandonment and the withdrawal by Respondent No.1 of the trade mark Applications in Classes 29, 30, 35, and 39 clearly demonstrate that Respondent No.1 has no genuine intention of using the impugned mark. Learned Counsel submitted that therefore the continued presence of Application No. 3487173 in Class 31 on the Register serves no legitimate purpose and undermines the purity of the Register. She then placed reliance upon the decision of the Hon'ble Supreme Court in the case of *Khoday Distilleries Limited v. Scotch Whisky Association & Ors.*<sup>5</sup>, and the decision of this Court in the case of *Ciba Ltd., Basle Switzerland v. M. Ramalingam & S. Subramaniam*<sup>6</sup>, in support of her contention that marks adopted without *bona fide* intention of use, or in bad faith, are liable to be removed in order to maintain the integrity of the Register.

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**5** (2008) 10 SCC 723

**6** 1957 SCC OnLine Bom 45

13. Ms. Vishwanathan submitted that, in light of the foregoing, the Petition deserves to be allowed and the impugned mark bearing No. 3487173 in Class 31 should be removed from the Register of Trade Marks, not only to safeguard the Petitioner's rights in its prior, registered, and well-known trade mark "VISTARA®", but also to maintain the purity of the Register and protect the interests of the public and members of the trade.

14. Mr. Deshmukh, Learned Counsel appearing on behalf of Respondent No.2 submitted that Respondent No.2 was submitting to the Orders of the Court and thus did not wish to advance any submissions.

### Reasons and Conclusion

15. Having heard Learned Counsel for the Petitioner and noted that Respondent No.2 is submitting to the Orders of this Court, I find the Petition deserves to succeed for the following reasons.

A. The Petitioner has established that it is the prior adopter and registered proprietor of the trade mark "VISTARA®", since 2014. The Petitioner's trade mark has been declared well-known under Section 2(1)(zg) of the Act by the Delhi High Court and has subsequently been entered into the list of well-known marks maintained by Respondent No.2. The impugned trade mark was registered in the year 2017 with a user claim from February 2017, which is clearly after the Petitioner's registration.

B. Respondent No.1, despite repeated opportunities, has chosen

neither to appear nor to contest the proceedings. Thus, there is no opposition to the case put forth by the Petitioner which includes a case of bad faith and dishonesty on the part of Respondent No.1 in adopting the impugned trade mark. Equally, Respondent No.1 has not placed any material on record to establish either *bona fide* adoption, honest concurrent use, or any lawful justification for the impugned registration.

- C. A comparison of the rival marks makes plain that the impugned trade mark is phonetically identical and visually and structurally similar to the Petitioner's well-known mark "**VISTARA®**". The stylisation adopted by Respondent No.1 does not alter the overall commercial impression conveyed to the average consumer through imperfect recollection. Thus, the likelihood of confusion among members of the public and trade alike was imminent.
- D. Section 11(2)(a) of the Act prohibits the registration of a mark which is identical with or similar to an earlier trade mark. There can be no manner of doubt that the impugned trade mark "~~vistarrah~~" is similar to the Petitioner's well known trade mark "**VISTARA®**". Thus, the registration of the impugned trade mark clearly, falls foul of Section 11(2)(a) of the Act. Respondent No.1's adoption of the impugned trade

mark, which, as noted above, is phonetically identical and visually and structurally similar to the Petitioner's well-known mark in Class 31, is clearly without due cause and is inherently detrimental to the Petitioner's distinctive character and reputation.

E. Section 11(10)(i) of the Act mandates protection for well-known marks, and Section 11(10)(ii) of the Act also requires the Registrar to take into consideration bad faith either on the part of an applicant or opponent affecting the right relating to the trade mark in question. Given that the Petitioner's trade mark was declared as a well-known trade mark and was widely advertised throughout the Country, Respondent No.1 was clearly aware of the same and the reputation and goodwill associated with the said mark. Additionally, and crucially, Respondent No.1 was specifically made aware of the same and the Petitioner's rights owing to cease-and-desist notices, opposition proceedings, and this rectification petition. Despite this, Respondent No.1 persisted in maintaining the impugned registration. Such conduct is not merely negligent but clearly is in bad faith, compounded by the fact that Respondent No.1 has not even chosen to appear and justify such adoption.

F. Under Section 11(3) of the Act, a mark cannot remain on the Register if its use is liable to be restrained in a passing-off

action. Respondent No.1 seeks to use the impugned trade mark for goods in Class 31, which are allied or cognate to the Petitioner's services involving food and hospitality as set out in the Petition. As held by the Hon'ble Supreme Court in *Corn Products Refining Co.*, consumers often assume a trade connection when the trade marks in question are similar even if the goods and services are of varied description. The test to be applied is from the perspective of an average consumer with imperfect recollection, who is likely to believe that goods bearing a similar mark originate from the same source or are in some way connected. In the present case, given the similarity in both the marks as noted above, such confusion is imminent.

G. The conduct of Respondent No.1 also speaks volumes. As already noted above, Respondent No.1 has, despite being granted ample opportunity, not appeared. Furthermore, the withdrawal and/or abandonment of applications filed for identical marks across several classes (29, 30, 35, 39) filed by Respondent No.1 also indicates an absence of any genuine intention to either use the impugned trade mark or that Respondent No.1 was in any manner entitled to its use. As recognised in *Khoday Distilleries* and *Ciba Ltd.*, marks adopted without *bona fide* intent or in bad faith undermine the purity of the Register and are liable to be removed.

16. In view of the foregoing discussion and for the reasons set out in paragraphs **A** to **G**, I pass the following Order:

- (i) The captioned Commercial Miscellaneous Petition is allowed in terms of prayer clause (a) and (b) which read as follows:
  - "a) Allow the present rectification petition;*
  - b) Remove/cancel/rectify the registration of the Impugned Mark bearing number 3487173 in class 31."*
- (ii) In the facts and circumstances of the case, there shall be no order as to costs.

[ARIF S. DOCTOR, J.]