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

+ C.O. (COMM.IPD-TM) 166/2023

ALLIED BLENDERS AND DISTILLERS LIMITED .....Petitioner

Through: Mr. Pravin Anand with Mr. Shrawan  
Chopra, Mr. Achyut Tewari and  
Mr. Aayush Maheshwari, Advocates.  
(M): 8604633567

versus

BOUTIQUE SPIRIT BRANDS PRIVATE LIMITED &  
ANR. ....Respondents

Through: None.

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+ C.O. (COMM.IPD-TM) 167/2023

ALLIED BLENDERS AND DISTILLERS LIMITED .....Petitioner

Through: Mr. Pravin Anand with Mr. Shrawan  
Chopra, Mr. Achyut Tewari and  
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(M): 8604633567

versus

BOUTIQUE SPIRIT BRANDS PRIVATE LIMITED &  
ANR. ....Respondents

Through: None.

**CORAM:**

**HON'BLE MS. JUSTICE MINI PUSHKARNA**

**ORDER**

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**10.02.2025**

**MINI PUSHKARNA, J (ORAL)**

1. The present petitions are filed under Section 57 of the Trade Marks Act, 1999 (“the Act”) seeking cancellation of registration no. 4544212 in Classes 32, and registration no. 4544211 in Class 33 for the mark, ‘BSB MYRON’ in the name of respondent no. 1 and rectification of the Trade



Marks Register under Rule 7 of the Delhi High Court Intellectual Property Rights Division Rules, 2022.

2. It is to be noted that the petitioner herein has also filed a suit, i.e. *CS (COMM) 395/2023*, titled as ***Allied Blenders and Distillers Limited Versus Boutique Spirit Brand Private Limited***, against respondent no. 1, i.e., defendant in the suit, for infringement of their registered mark, 'KYRON', against the usage of the impugned mark, 'MYRON' by defendant/respondent no.1.

3. An interim order dated 01<sup>st</sup> June, 2023 was passed by this Court restraining the defendant/respondent no. 1 from using the marks, 'MYRON', 'BSB MYRON' or any other mark, which includes the word 'MYRON' for Indian Made Foreign Liquor ("IMFL") or for any other allied or cognate goods. The said interim order was made absolute pending disposal of the suit *vide* order dated 18<sup>th</sup> December, 2023.

4. This Court notes that respondent no. 1 was first issued notice in the present petitions on 01<sup>st</sup> June, 2023. Subsequently, *vide* order dated 04<sup>th</sup> September, 2023, the Court directed the petitioner to effect service upon respondent no. 1 by way of email, affixation and publication in one English and one Hindi newspaper, having circulation in the area where the respondent is located. Consequently, the respondent no. 1 was duly served by way of publication on 20<sup>th</sup> December, 2023, the factum of which is recorded in the order dated 18<sup>th</sup> December, 2023.

5. Despite service, none appeared for respondent no. 1, on account of which, the right to file reply in the petitions was closed *vide* order dated 01<sup>st</sup> March, 2024. The respondent no. 1 has failed to make an appearance or put forth any pleadings before this Court. Hence, in view thereof, this Court has



proceeded to finally hear the matter.

6. In both the petitions, respondent no. 2, i.e., Registrar of Trade Marks, is a formal party.

7. Facts, as canvassed in the petitions, are as follows:

7.1 The petitioner is engaged in the business of *inter alia* manufacturing and marketing of alcoholic beverages, including IMFL. The said beverages are sold under different trademarks and labels, i.e. KYRON, OFFICER'S CHOICE, OFFICER'S CHOICE BLUE, CLASS VODKA, LORD & MASTER, CALYPSO, SUMO, 1000 GUINEAS & JOLLY ROGER, OFFICER'S CLUB, CLUB CLASS, STERLING RESERVE, etc.

7.2. The petitioner adopted the mark, 'KYRON' during the year 2010, which is being used openly, continuously, extensively, consistently and exclusively by the petitioner since 2012, for which the petitioner holds registrations in Classes 9, 32 and 33. Further, the origination of the mark 'KYRON' is from the Greek mythological character "CHIRON" who symbolizes strength, thereby, making the said mark as distinctive and arbitrary, for alcoholic beverages in Classes 32 and 33.

7.3 The respondent no. 1 is dealing in alcoholic beverages under the impugned mark, 'BSB MYRON' registered in both Class 32 under registration no. 4544212 dated 28<sup>th</sup> January, 2021 and in Class 33 under registration no. 4544211 dated 29<sup>th</sup> January, 2021, on a '*proposed to be used*' basis.

7.4 The mark of the respondent no. 1 is identical as that of the petitioner. The petitioner came across the impugned mark of respondent no. 1 in March, 2023, and thereafter, the present rectification petitions have been filed.



8. On behalf of the petitioner, the following submissions have been made:

8.1 The petitioner's goods under the mark 'KYRON' are sold all around the country, and have acquired impeccable and formidable reputation and goodwill in relation to its goods, merchandise and business. Further, the petitioner's brandy sold under the said mark has become very popular amongst the trade and public, and has become a source identifier for the petitioner's products.

8.2 By virtue of its quality, characteristics and distinctive packaging, the petitioner's products sold under its 'KYRON' marks, have been awarded the Superior Taste Award in 2021 by the International Taste Institute's Jury of the world's best Chefs and Sommeliers. Further, the petitioner was also awarded the Monde Selection Award 2022 by the International Institute for Quality Selections, Brussels, Belgium.

8.3 The petitioner has made substantial sales under their mark, 'KYRON' and has incurred large expenditure for sales and promotion of the products bearing the petitioner's mark, 'KYRON'. Further, the petitioner has promoted its products through sponsorship events such as KYRON Pondicherry, Kochi, and Hyderabad Fashion Week, as well as through posters, videos, etc.

8.4 The petitioner, on account of continuous and extensive use of the mark, 'KYRON' all over the world, enjoys a reputation and goodwill in the market and with the consumers, who exclusively associate the mark with the petitioner in India and abroad.

8.5 The petitioner has spent considerable time, effort and monetary resources in securing registrations of the mark, 'KYRON' worldwide,



including, India.

8.6 Further, the petitioner has also placed on record the status of pending applications of the petitioner before the Trade Marks Registry, wherein, opposition proceedings are pending, for the label and not over the brand, as such.

8.7 The essential and dominant feature of the respondent no. 1's mark is the word, 'MYRON' in the impugned mark, 'BSB MYRON' which is deceptively similar and a substantial reproduction the petitioner's mark, 'KYRON'. Further, respondent no. 1 is in the same industry and operates its mark under the same Classes, i.e. 32 and 33, for the segment of goods identical to that of the petitioner, which shows the *mala fide* and dishonest adoption by respondent no. 1 in use of the impugned mark, which is substantially similar to that of the petitioner's mark.

8.8 The word, 'MYRON' used by respondent no. 1 is deceptively similar to the petitioner's mark, 'KYRON', thus, the same would cause confusion for an average consumer, considering that products of both the parties are the same. Further, the petitioner has coined the word, 'KYRON' and is the prior adopter of the same. Therefore, on account of the deception, dishonest adoption and subsequent user of respondent no. 1, the mark of respondent no. 1 ought to be removed from the Register of Trade Marks.

8.9 Respondent no. 1 has registered the mark, 'BSB MYRON' in Classes 32 and 33, however, its manner of use of the said mark is only as 'MYRON' and the acronym, 'BSB' has been rendered inconspicuous owing to its reduced font size and separated placement. The same indicates clear intention of mischief on part of respondent no. 1, which is bound to cause confusion between the petitioner's products and that of the respondent no. 1.



9. I have heard learned counsel for the petitioner and perused the record.
10. At the outset, this Court notes the submission of learned counsel for the petitioner that they have no grievance with respect to respondent no. 1 using only the mark, 'BSB' without the word 'MYRON' included in their mark.
11. The petitioner is the registered owner of several trademarks with the mark 'KYRON', that are valid and subsisting, out of which, the earliest application for registration is dated 12<sup>th</sup> November, 2010. The registrations in favour of the petitioner are reproduced, as under:

Sl. No.	Application No.	Trademark	Class	Date
1.	2053037	KYRON	33	12/11/2010
2.	2053038	KYRON	32	12/11/2010
3.	2798923	 KYRON	32	27/08/2014
4.	2939316	KYRON	9	10/04/2015
5.	3025675	 KYRON	9	05/08/2015
6.	3564109	MASTER CELLAR SELECTION KYRON PREMIUM BRANDY	33	06/06/2017
7.	3732373	KYRON RARE BRANDY	33	19/01/2018
8.	4905990	 KYRON	32	16/03/2021
9.	4981808	 KYRON Soda	32	24/05/2021
10.	5180461	 KYRON Exclusive Brandy	33	20/10/2021



12. The petitioner has placed on record a certified CA Certificate dated 24<sup>th</sup> May, 2023, indicating their usage and sales under the mark 'KYRON' from the years 2012-2013 to 2022-2023 in export and pan India. The sales of petitioner's product bearing the 'KYRON' mark, are indicated in the following table, as given in the petition:

Years-Fiscal year ending on 31 <sup>st</sup> March	Wholesale sales (cases containing 9 litres) (Estimate)	
	Pan India	Export
2012-13	14,040	454
2013-14	39,946	1,455
2014-15	65,821	5,886
2015-16	114,490	8,266
2016-17	154,886	1,450
2017-18	166,664	2,233
2018-19	143,601	-
2019-20	146,954	1,050
2020-21	83,932	1,104
2021-22	107,844	1,437
2022-23	139,771	1,790

13. Further, the petitioner has also placed on record another certified CA Certificate dated 24<sup>th</sup> May, 2023, indicating the expenditure incurred by the petitioner for sales and business promotion for products bearing the mark, 'KYRON' in the years 2011-12 to 2022-23, which is reproduced as under:

Year	Sales Promotion Expenses (Rs. In Lakhs)
2011-12	50.08
2012-13	114.75
2013-14	302.59
2014-15	404.88
2015-16	604.97
2016-17	604.85
2017-18	645.78
2018-19	638.40
2019-20	384.97
2020-21	273.99
2021-22	367.53
2022-23	447.74

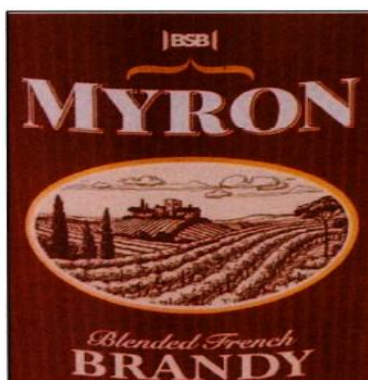


14. The issue for consideration before this Court is whether the mark of respondent no. 1, 'BSB MYRON' is deceptively similar to that of the petitioner's mark, 'KYRON'.

15. It is to be noted that both the parties are in an identical business of selling alcoholic beverages, and their marks are registered under the same Classes, i.e. 32 and 33. Further, both parties are selling the product, i.e. brandy, under their respective marks, which are reproduced as under:

PETITIONER'S MARK	RESPONDENT NO. 1'S MARK
KYRON	BSB MYRON

16. Perusal of the marks makes it evident that, the essential and dominant feature of respondent no. 1's mark is the word 'MYRON', as is indicated in the manner of usage and display of the mark by respondent no. 1 in the label used for their product. Photograph of the label in respondent no. 1's product, is as under:



17. The label as used by respondent no. 1, shows that the word 'MYRON' has been displayed in a large font size with a glaring font, while the acronym, 'BSB' is displayed in a much smaller font size at the top in comparison, making it exceedingly inconspicuous. An average consumer,



when coming across the said display/label, would certainly be focussed on the word 'MYRON', due to its manner of glaring display, and owing to the discreet font size and placement of the acronym, 'BSB', which appears to be the impression attempted to be made by respondent no. 1 through their label in the product. The respondent no. 1, despite seeking registration of the complete word mark, 'BSB MYRON', has surreptitiously rendered the appearance of the acronym 'BSB' otiose due its manner of display. The same is indicative of the dishonest intention on part of respondent no. 1, as despite seeking registration for the complete word, 'BSB MYRON', the manner of usage in the product *prima facie* appears to be clandestine.

18. Further, it is also made out that the word, 'MYRON' is deceptively similar to the petitioner's word mark, 'KYRON', by manner of its appearance along with the phonetic similarity. Therefore, respondent no. 1 by the approach of its use of the impugned mark, has evidently endeavoured to bring its mark, as close to that of the petitioner's mark. This is clearly in view of the petitioner's presence in a similar business in India and abroad since 2012. It is apparent that the mark of respondent no. 1, 'MYRON' is deceptively similar to the petitioner's mark, 'KYRON' and is likely to cause confusion.

19. This Court in the case of *Lakme Limited Versus Subhash Trading and Others, 1996 SCC OnLine Del 585*, while elucidating on the aspect of phonetic similarity between marks and its likelihood to cause confusion, held as follows:

"xxx xxx xxx"

**12. In the case of K.R. Chinna Krishna Chettiar v. Sri Ambal & Co., (1969) 2 SCC 131; AIR 1970 SC 146 it has been held that the resemblance between the two marks must be considered with**



reference to the ear as well as the eye and ocular comparison is not always the decisive test. Therefore, even if there be no resemblance between the two marks that does not matter when there is a close affinity of sound between the distinctive features of the two marks. The Supreme Court further pointed out that merely because the distinctive words used in both the marks have distinctive meaning it cannot be said that the phonetic resemblance does not lead to confusion, when it is likely that majority of the customers are not capable of understanding the fine distinction between the meanings of the two words. In the same case the Supreme Court was called upon to consider whether there is striking similarity and affinity of sound between the words “AMBAL” and “ANDAL”. After considering various decisions, the Supreme Court held that there is a close affinity of sound between the words “AMBAL” and “ANDAL”.

13. Similarly in the case of *Ruston v. Zamindara Engg. (supra)* the Supreme Court came to consider whether there was resemblance between the words “RUSTON” and “RUSTAM”, and on consideration of various decisions came to uphold the decision of the High Court that there was deceptive resemblance between the words “RUSTON” and “RUSTAM” and therefore, the use of the bare word “RUSTAM” constituted clear infringement of the plaintiff's trade mark “RUSTON”.

14. In this context I may also appropriately refer to a decision of a Division Bench of this Court in *Hitachi Ltd. v. Ajay Kr. Agarwal, 1996 PTC (16) (DB)*. In that case the Court was considering whether there is a similarity between the two trade marks “HITACHI” and “HITAISHI”. The Court, after considering the facts and circumstances of the case and the various decisions of this Court as also of the Supreme Court held that the question as to whether there is a similarity between the two trade marks has to be approached from the point of view of an average man with imperfect memory and that even though the two trade marks, one written in English and the other written in Hindi may not be visually similar because of the difference in script but undoubtedly there is a marked phonetic similarity and therefore, the words “HITACHI” and “HITAISHI” are pronounced almost in the same way and an average or ordinary purchaser will not be able to know the difference between the two when he goes to the market to buy the said product. This is likely to cause deception and confusion in his mind. It is further held that to the purchasers and traders these would sound alike and they would be pronounced in the same way, and therefore, applying the test of ear the Court was of the view that there is real danger of deception and confusion being caused by the two marks because of the similarity in the two marks “HITACHI” and “HITAISHI”.



xxx xxx xxx

*16. The specific case of the plaintiff is that the plaintiff is the registered proprietor of the trade mark “LAKME” and the work ‘Designer’ is registered in the name of the plaintiff w.e.f. 1951; whereas the trade mark “LIKE ME” of the defendants is stated to be used from the year 1988 as stated by the defendants in their written statement. The Counsel for the defendants during the course of his arguments stated that it is the specific case of the defendants in the written statement itself that the defendants have nothing to do with the trade mark “LAKSME” & “SWEETY DESIGNER” and that the said trade marks are not being used by the defendants. The defendants however, admit of using the trade mark “LIKE ME”. But according to the said defendants the said trade mark “LIKE ME”, its get-up, design and colour scheme and over-all appearance is different from the product of the plaintiff and accordingly there can be no action of any passing off in respect of the said article. Therefore, it is necessary to find out as to whether the trade mark “LIKE ME” adopted by the defendants is phonetically similar to the registered trade mark “LAKME” of the plaintiff and the use of the former is likely to cause deception and confusion in the minds of the traders and general public inasmuch as the goods of the defendants would be taken as the goods of the plaintiff. The Counsel for the defendants submitted that there is no phonetic resemblance between the two words and that in the word “LIKE ME” there are altogether six letters as against five in the trade mark of the plaintiff “LAKME”. Further there is a hyphen in between the words ‘LIKE’ and ‘ME’. The words “LIKE ME” coined by the defendants actually convey a message and therefore, there could be no confusion and deception.*

**17. The two words with which we are concerned in the present case although may convey a different meaning and also not contain the same letters yet in my opinion both the words bear a close resemblance to the ears. When both the words are articulated, it would be difficult for an ordinary prudent man to distinguish between the two sounds produced by the two words. Applying the test of phonetic resemblance as laid down by the Supreme Court I am of the view that there is a striking resemblance between the two words and there is a real danger of deception and confusion being caused by the two marks in view of the similarity and affinity of sounds between the words “LIKE ME” and “LAKME”.**

xxx xxx xxx”

(Emphasis Supplied)

20. In the present case, the impugned mark of respondent no. 1, ‘BSB MYRON’ is deceptively similar to that of the petitioner’s mark, ‘KYRON’.



Moreover, the parties are dealing in the same business and selling the same product, thereby catering to the same customer base.

21. This Court in the case of *Heifer Project International Versus Heifer Project India Trust, 2024 SCC OnLine Del 2847*, while holding that an impugned mark that is nearly identical, along with a business that is operating in the same areas and targeting the same segments of the public, would be certain to cause deception and confusion among the general public, has held as follows:

“xxx xxx xxx

*30. Indeed, the present case is a classic instance of ‘triple identity.’ **The Impugned trademarks are nearly identical, as are the areas of operation, and the segments of the public they target. Therefore, the Defendants’ use of these nearly identical and deceptively similar marks is certain to cause deception and confusion among the general public. Besides, the Defendants have persistently engaged in activities that unlawfully exploit Plaintiff’s reputation and goodwill.** Even after the termination of their contractual relationship and the explicit withdrawal of rights to use the Plaintiff’s trademarks and logos, Defendants have unauthorisedly continued use of their deceptively similar marks. This defiance not only violates the agreement but also misleads the public and the relevant stakeholders regarding the nature of Defendants’ affiliation with Plaintiff. Defendants have further compounded their infringement by falsely representing their relationship with Plaintiff. They have insinuated to the public and stakeholders that they remain affiliated or integrally connected with Plaintiff, thereby undermining Plaintiff’s brand/trademark integrity and causing confusion about its unique identity in the marketplace. Defendants lack any legal right or justification to the use of contested marks, or applying for their registration of identical marks for conducting any business activities.*

xxx xxx xxx”

(Emphasis Supplied)

22. At this stage, it would be pertinent to consider the usage of the respective marks by the parties. This Court notes that the earliest registration of the petitioner for the mark, ‘KYRON’ in Class 32 dates back to the year





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प्रारूप ओ - 2  
FORM O-2



भारत गणराज्य  
GOVERNMENT OF INDIA

व्यापार चिन्ह रजिस्ट्री  
TRADE MARKS REGISTRY

फ़ार्म नं.  
No. 1056479

व्यापार चिन्ह अधिनियम, 1999

Trade Marks Act, 1999

व्यापार चिन्ह के रजिस्ट्रीकरण का प्रमाणपत्र, धारा 23 (2) नियम 62 (1)  
Certificate of Registration of Trade Mark, Section 23 (2), Rule 62 (1)

व्यापार चिन्ह संख्या / Trade Mark No. 2053037 दिनांक / Date 12/11/2010 ज.संख्या / J.No. 1515

यह प्रमाणित किया जाता है कि जिस प्रकार चिन्ह की स्थापना इसके साथ संलग्न है, वह \_\_\_\_\_  
के नाम से रजिस्ट्रीकृत हो चुका है।

Certified that the Trade Mark / a representation is annexed hereto, has been registered in the name(s) of

ALLIED BLENDERS AND DISTILLERS PRIVATE LIMITED, A COMPANY INCORPORATED UNDER THE INDIAN COMPANIES ACT 1956, 394-C, LAMINGTON CHAMBERS, LAMINGTON ROAD, MUMBAI 400004, MANUFACTURES AND TRADERS, (Body Incorporate)

In Class 33 Under No. 2053037 as of the Date 12 November 2010 In respect of

WHISKY, RUM, VODKA, GIN, WINE, BRANDY, LIQUORS, SPIRITS, COCKTAILS AND OTHER ALCOHOLIC BEVERAGES.



KYRON

मेरे निदेश पर आज मुंबई के \_\_\_\_\_ मास के \_\_\_\_\_ से दिन को इस पर मुद्रा लगायी गई।  
Sealed at my direction, this 01<sup>st</sup> day of May, 2012

व्यापार चिन्ह रजिस्ट्री,  
Trade Marks Registry, MUMBAI

व्यापार चिन्ह रजिस्ट्रार  
Registrar of Trade Marks

रजिस्ट्रीकरण आवेदन की तारीख से 40 वर्ष की अवधि के लिए प्रदान किया जाएगा और 10 वर्ष की अवधि के अवधान पर भी नवीनीकृत किया जा सकता है।  
Registration is for 10 years from the date of application and may then be renewed for a period of 10 years and also at the expiration of each period of 10 years.  
यह प्रमाणपत्र विधि कार्यवाहियों में प्रयोग के लिये या विदेश में रजिस्ट्रीकरण अधिष्ठापन करने के लिये नहीं है।  
This certificate is not for use in Legal proceedings or for obtaining Registration abroad.

टिप्पणी - इस व्यापार चिन्ह के स्वामित्व में कोई परिवर्तन होने पर, या स्वामित्व के मुख्य स्थान के पते में या भारत में स्थान के लिये पते में परिवर्तन होने पर परिवर्तन के लिये आवेदन तुरंत किया जाना चाहिए।  
Note: Upon any change of ownership of this Trade Mark, or change in address, of the principal place of business or address for service in India a request should AT ONCE be made to register the change.

24. On the other hand, the application of the respondent no. 1 for registration of the mark, 'BSB MYRON' in Class 32 under registration no. 4544212, is dated 25<sup>th</sup> June, 2020, on a 'proposed to be used' basis. The screenshot of the status of registration of respondent no. 1, is reproduced as under:



2025:DHC:1152



(NOT FOR LEGAL USE)

As on Date : 24/04/2023

Status : Registered

[View Registration Certificate](#)[View Examination Report](#)

TM Application No.	4544212
Class	32
Date of Application	25/06/2020
Appropriate Office	DELHI
State	DELHI
Country	India
Filing Mode	e-Filing
TM Applied For	BSB MYRON
TM Category	TRADE MARK
Trade Mark Type	WORD
User Detail	Proposed to be used
Certificate Detail	Certificate No. 2600081 Dated : 28/01/2021 Notified in Journal No : 1986
Valid upto/ Renewed upto	25/06/2030
Proprietor name	(1) BOUTIQUE SPIRIT BRAND PRIVATE LIMITED Body Incorporate
Proprietor Address	418, DLF PRIME TOWERS OKHLA PHASE-1, NEW DELHI- 110020
Email Id	****narwana@gmail.com
Attorney name	SAHIL A. GARG NARWANA[25395]
Attorney Address	B-6, LGF, PANCHSHEEL ENCLAVE, NEW DELHI-110017
Goods & Service Details	[CLASS : 32] Beers, mineral and aerated waters, and other non-alcoholic drinks; fruit drinks and fruit juices; syrups and other preparations for making beverages
Associated Trademarks	3364660
Publication Details	Published in Journal No. : 1959-0 Dated : 03/08/2020

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**WARNING/DISCLAIMER** : THE DATA OF TRADE MARKS REGISTRY IS UNDER THE PROCESS OF DIGITISATION, IF ANY DISCREPANCY IS OBSERVED IN THE DATA PLEASE CONTACT OR SUBMIT AT APPROPRIATE TRADE MARKS REGISTRY ALONGWITH SUPPORTING DOCUMENTS. THIS WILL HELP IN UPDATION OF ELECTRONIC RECORDS.

25. Likewise, the date of the application for registration of the mark in favour of the respondent no. 1 under registration no. 4544211 in Class 33 is dated 25<sup>th</sup> June, 2020, on a 'proposed to be used' basis, which is reproduced as under:



2025:DHC:1152



(NOT FOR LEGAL USE)

As on Date : 24/04/2023

Status : Registered

[View Registration Certificate](#)[View Examination Report](#)

TM Application No.	4544211
Class	33
Date of Application	25/06/2020
Appropriate Office	DELHI
State	DELHI
Country	India
Filing Mode	e-Filing
TM Applied For	BSB MYRON
TM Category	TRADE MARK
Trade Mark Type	WORD
User Detail	Proposed to be used
Certificate Detail	Certificate No. 2601481 Dated : 29/01/2021 Notified in Journal No : 1986
Valid upto/ Renewed upto	25/06/2030
Proprietor name	(1) BOUTIQUE SPIRIT BRAND PRIVATE LIMITED Body Incorporate
Proprietor Address	418, DLF PRIME TOWERS OKHLA PHASE-1, NEW DELHI- 110020
Email Id	***narwana@gmail.com
Attorney name	SAHIL A. GARG NARWANA[25395]
Attorney Address	B-6, LGF, PANCHSHEEL ENCLAVE, NEW DELHI-110017
Goods & Service Details	[CLASS : 33] Alcoholic beverages(except beers)
Associated Trademarks	3364660
Publication Details	Published in Journal No. : 1959-0 Dated : 03/08/2020

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26. Perusal of the status of the aforesaid registrations, bring to light that the petitioner has its earliest registrations under Classes 32 and 33 in the year 2012, while the respondent no. 1 has filed its applications in the same Classes for its mark in the year 2020, which were subsequently registered in the year 2021. It is also to be noted that the petitioner has placed on record several documents, i.e. CA Certificates dated 24<sup>th</sup> May, 2023 showing the sales and expenditure along with promotional materials and campaigns undertaken by the petitioner for their products, showing their continuous and prior use of their mark, 'KYRON'. Further, the petitioner has also placed on record invoices for sale of its goods under the mark 'KYRON', the earliest



invoice being of the year 2012. Thus, it is manifest that in view of the materials placed on record, and the non-contest on part of respondent no. 1, the petitioner is the prior user with the mark 'KYRON'. The respondent no. 1, is clearly the subsequent user, that also on a 'proposed to be used' basis, and has failed to place on record any usage of its mark, 'BSB MYRON'.

27. Thus, this Court in the case of *Kia Wang Versus Registrar of Trademarks and Another, 2023 SCC OnLine Del 5844*, while dealing with similar facts, wherein the respondent had failed to appear and refute any claims of the petitioner, and upon the petitioner proving their prior user, held that the right of a prior user is superior in comparison to a subsequent user, and cancelled the mark of the respondent. The relevant paras are as under:

“xxx xxx xxx

**17. Having examined the matter further, this Court is of the view that Petitioner has been able to substantiate his case of 'prior user' of the**



**trademark** **which was coined and adopted by the Petitioner in 2014 and for which he subsequently secured the domain name [www.rockpapa.com](http://www.rockpapa.com).** To buttress the case of 'prior user', learned counsel relied upon the judgments in *Milmet Oftho (supra)*, *Neon Laboratories (supra)* and *S. Syed Mohideen (supra)*. In *Milmet Oftho (supra)*, the Supreme Court held that the ultimate test should be, who is 'first in the market', where the trademarks are similar. In *Neon Laboratories (supra)* the Supreme Court observed that 'first user' rule is a seminal part of the 1999 Act and in fact recognized that the right of a 'prior user' is superior to a registrant of the trademark, reiterating and reaffirming the law declared in *S. Syed Mohideen (supra)*. **Therefore, it is a well settled principle of Trademark law that a prior user's rights will override the rights of a subsequent user even though the latter's mark may be a registered trademark.** Petitioner has



categorically pleaded use of the trademark from 2014 and



claimed that the same is prior to that of Respondent No. 2, who despite being impleaded as a party by the Petitioner and being served with the notice of this petition, chose to remain absent, instead of contesting the position. **In the absence of a reply controverting the pleadings, the same have to be treated as admitted albeit in this case Petitioner has been able to show 'prior user'. Therefore, in wake of prior use of the**



**trademark** by the Petitioner, coupled with several registrations abroad, in support of which registration certificates, whose validity is unrefuted and unrebutted, have been filed, as well as the continuous and uninterrupted use of the mark in course of trade in respect of the goods aforementioned, the trademark has become distinctive of the goods of the Petitioner and is associated with him.

xxx xxx xxx

20. Clearly, 'bad faith' is an unfair practice involving lack of honest intention, a conscious doing of wrong and not just a mistake. It includes dealings which fall short of standards of acceptable commercial behaviour. When one examines the adoption of the impugned trademark by Respondent No. 2 in the present case, there is little doubt that there was a dishonest intention in adopting Petitioner's similar

mark for identical goods including the word **Rockpapa** in the same colour, font and style, as a part of the device mark. **The dishonest intention is with a view to encash on the goodwill of the trademark of the Petitioner and this gets pronounced by the fact that Respondent No. 2 has allowed the petition to go uncontested without even appearing in the matter, leave alone filing any counter statement or evidence to rebut even the 'prior user'. Therefore, the impugned trademark is liable to be cancelled and removed from the Register of Trade Marks rectifying the Register.**

xxx xxx xxx”

(Emphasis Supplied)

28. Thus, in view of the above, the mark of respondent no. 1, i.e. 'BSB MYRON' is held to be deceptively and phonetically similar to the mark of the petitioner, i.e. 'KYRON', and therefore is likely to cause confusion being under the same Classes, i.e. 32 and 33, especially, on account of the similar products, business and segment of customers that the parties deal in.



Further, it is established that the petitioner's mark has the prior user, and therefore, the impugned mark of the respondent no. 1, is liable to be removed from the Register of Trade Marks.

29. This Court notes the submission of learned counsel appearing for the petitioner that the petitioner gives up its prayer for costs. Further, this Court records the submission made on behalf of the petitioner that the petitioner has no objection to the use of the mark 'BSB' by the respondent no. 1.

30. Accordingly, the following directions are issued:

30.1 The trademark registration no. 4544212 in Class 32 for the mark, 'BSB MYRON', registered in favour of respondent no. 1, is hereby cancelled.

30.2 The trademark registration no. 4544211 in Class 33 for the mark, 'BSB MYRON', registered in favour of respondent no. 1, is hereby cancelled.

30.3 The Registrar of Trade Marks is directed rectify, remove and expunge the aforesaid entries from the Register of Trade Marks.

31. The Registry is directed to supply a copy of the present order to the Office of the Controller General of Patents, Designs and Trade Marks of India, on E-mail Id: [llc-ipo@gov.in](mailto:llc-ipo@gov.in), for compliance.

32. The present petitions are, accordingly, disposed of, with the aforesaid directions.

**MINI PUSHKARNA, J**

**FEBRUARY 10, 2025**

**Corrected & Released on: 22<sup>nd</sup> February, 2025**

*ak*