



2025:DHC:2905



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

+ C.O. (COMM.IPD-TM) 76/2021

M/S. MODERN SNACKS PRIVATE LIMITED

.....Petitioner

Through: Mr. Ajay Amitabh Suman, Mr. Shравan Kumar Bansal, Mr. Rishi Bansal, Mr. Deepak Srivastava, Mr. Risabh Gupta, Ms. Shruti Manchanda and Ms. Deesha, Adv.  
M: 99903895539  
Email:  
amitabh@unitedandunited.com

versus

KAMRAN GHANI AND ANR.

.....Respondents

Through: Mr. Rohan Jaitley, CGSC with Mr. Dev Pratap Shahi and Mr. Varun Pratap Singh, Advs. for R-2  
M: 8587967565  
Email: office@rohanjaitley.com

**CORAM:****HON'BLE MS. JUSTICE MINI PUSHKARNA****JUDGMENT**

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**25.04.2025****MINI PUSHKARNA, J:**

1. The present petition has been filed seeking rectification of the Register of Trade Marks by cancellation/removal of the trademark registered in favour of the respondent no. 1, i.e., 'MARDEM' ("impugned mark"), bearing registration no. 3739205 dated 22<sup>nd</sup> July, 2018 in Class 30, on account of being deceptively and identically similar to petitioner's mark, i.e., 'MODERN' in a similar Class, i.e., Class 30.



2. The present petition has been transferred from the Intellectual Property Appellate Board (“**IPAB**”), consequent to its abolition and upon promulgation of the Tribunals Reforms (Rationalization and Conditions of Service) Ordinance, 2021.

3. The facts, as canvassed by the petitioner, in the petition are as follows:

3.1. The petitioner, ‘M/s. Modern Snacks Private Limited’, is a private company incorporated on 07<sup>th</sup> November, 2005 under the provisions of The Companies Act, 1956 (now, The Companies Act, 2013). The petitioner is engaged in the business of manufacturing and marketing a wide range of goods, including namkeens, snacks, confectionary, along with other food items and related goods, falling in Class 30.

3.2. The petitioner holds the proprietorship of the trademark/label ‘MODERN’ (both in English and Hindi), in respect of the said goods, which was originally adopted by its predecessor in interest, i.e., ‘M/s. Modern Namkeen Bhandar’ in the year 1990.


3.3. The mark ‘MODERN’ was duly assigned to the petitioner by its predecessor-in-interest, through an Assignment Deed dated 20<sup>th</sup> October, 2008. As of today, the word ‘MODERN’ constitutes a material part of the petitioner’s trade name.

3.4. In order to distinguish its goods from those of its competitors and to establish and secure its statutory rights under the Trade Marks Act, 1999 (“Trade Marks Act”), the petitioner has filed multiple trademark applications, several of which have been duly registered, while others are pending. In particular, the petitioner is the registered proprietor of the following trademarks in Class 30:




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(i) 'MODERN' (Label)/, bearing registration no. 1745147, registered on 22<sup>nd</sup> February, 2017 with effect from 20<sup>th</sup> October, 2008.




(ii) 'MODERN' (Label)/, bearing registration no. 2688680, registered on 23<sup>rd</sup> August, 2016 with effect from 28<sup>th</sup> February, 2014.

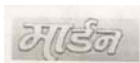


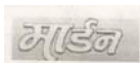
(iii) 'MODERN' (Label)/, bearing registration no. 641088, registered on 13<sup>th</sup> November, 2003 with effect from 23<sup>rd</sup> September, 1994.




(iv) 'MODERN' (Label)/, bearing registration no. 1937328, registered on 10<sup>th</sup> February, 2016 with effect from 17<sup>th</sup> March, 2010.

3.5. The petitioner has, over time, expanded the use of the trademark

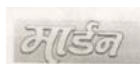


'MODERN'/ into various variants/formative trademarks, i.e.,



, and has been continuously using the same.

3.6. Since its adoption by the petitioner and its predecessor in interest, the



mark  consists of the term 'MODERN' as its prominent feature,



which not only forms part of the trade name of the petitioner but also is distinctively associated with the petitioner. The consumers and members of the trade exclusively associate the mark 'MODERN' with the petitioner, as apparent from its invoices, packaging and branding.

3.7. Respondent no. 1, i.e., Kamran Ghani, is the sole proprietor of the entity, i.e., 'MARDEM NAMKEEN' and is claiming to be engaged in a business that is similar and cognate to that of the petitioner. Both the petitioner and the respondent no. 1 are based in the same area. The respondent no. 1 has received registration for the impugned mark 'MARDEM' in its favour, on account of which the present rectification petition has been filed, seeking its cancellation.

4. Notice was issued to respondent no. 1, i.e., Kamran Ghani, and respondent no. 2, i.e., the Registrar of Trade Marks. However, the notice to respondent no. 1 remained unserved, with the service report indicating '*incomplete address*'. Thereafter, *vide* order dated 10<sup>th</sup> March, 2023, the petitioner was permitted to effect service upon respondent no. 1, through his authorized attorney before the Trade Marks Registry, in view of the petitioner's submission that no alternate address of respondent no. 1, was available with the petitioner.

5. Pursuant thereto, the authorized attorney of respondent no. 1 before the Trade Marks Registry appeared before this Court on 22<sup>nd</sup> August, 2023, and submitted that his power of attorney was limited to the registration of the trademark for respondent no. 1. He further clarified that since the registration for the trademark 'MARDEM' had already been done, he did not possess any authority to represent respondent no. 1 in the present



proceedings. He further stated that he did not have any details pertaining to current whereabouts of respondent no. 1.

6. This Court, *vide* order dated 13<sup>th</sup> November, 2024, took note of the submissions made by learned counsel for the petitioner that in terms of Rule 2(b) of the Delhi High Court Intellectual Property Rights Division Rules, 2022, the respondent no. 1 had already been served. Thus, this Court proceeded to hear the matter.

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

7.1. Since adopting the trademark, i.e., ‘MODERN’, the petitioner has honestly and *bonafidely*, continuously, commercially, openly, exclusively and to the exclusion of others, been using its trademark/label/trade name in connection with its goods and services. Further, the said goods and services, under the trademark ‘MODERN’, are being distributed across major parts of the country.

7.2. The word ‘MODERN’ not only forms an integral part of the petitioner’s trade name, but also constitutes the dominant and distinguishing feature in its other derived trademarks. Consequently, due to such uninterrupted and continuous use of the trademark ‘MODERN’, the petitioner has established a valuable trade, strong reputation and goodwill, thereunder, in respect of its goods and services in Class 30.

7.3. In addition to the statutory rights under the Trade Marks Act, the petitioner has also acquired the proprietary rights and ownership of the copyrights in the artistic works incorporated in its labels as original artistic works under the Indian Copyright Act, 1957 (“**Copyright Act**”). The petitioner has obtained the copyrights registration bearing *nos.* A-



111288/2014 and A-111289/2014 in respect of the artistic work of ‘MODERN NAMKEEN’ (Label). In furtherance to the same, several other copyright registrations for associated artistic works and formative labels are also likely to be granted shortly, in accordance with Section 45 of the Copyright Act, as No Objection Certificates (“NOCs”) have already been issued by the relevant authority.

7.4. In an effort to further strengthen its online presence, the petitioner has registered the domain names [www.modernnamkeen.com](http://www.modernnamkeen.com) and [www.modernnamkeen.theshopfloor.in](http://www.modernnamkeen.theshopfloor.in), in its favour.

7.5. The petitioner has also placed reliance on various documents to establish usage of its mark ‘MODERN’, which includes:

- (i) Sales figures from the year 1991-92 till 2017-2018.
- (ii) Sales figures under the mark ‘MODERN’ from the year 2014 till 28<sup>th</sup> March, 2019.
- (iii) Web extracts from various online websites/marketplaces, such as eSuppliers India.com, tradeIndia.com, indiamart.com etc.
- (iv) Invoices/cash memos of amazon.in showing sale of its products through e-commerce website, amazon.

7.6. The petitioner has also invested substantial amount of money, efforts and time in consistently and continuously promoting its trademark/trade name as well as the goods and business, thereunder.

7.7. Owing to the high-quality of its product, the petitioner’s mark/trade name has become distinctive and has acquired secondary significance with the petitioner and its goods and services. In order to protect its intellectual property, petitioner has taken various steps *via* issuing notices to



infringers/counterfeiters and thereby, creating public awareness about the petitioner's mark.

7.8. As a result of such extensive use, the trademark/trade name, i.e., 'MODERN' has acquired the status of a well-known trademark within the meaning of Section 2(1)(zg) of the Trade Marks Act. Further, the said mark has already become a *distinctive indicum* of the petitioner, and that the purchasing public identifies and distinguishes the said trademark/label with the petitioner.

7.9. The petitioner is the proprietor of its said trademark/label/trade name, both under the statutory law and under the common law, therefore, no third party can be permitted to use or deal with the petitioner's mark, i.e., 'MODERN' or any other trademark/label/trade name that is identical or deceptively similar thereto, in connection with the allied or cognate goods or services as those of the petitioner. Moreover, any such use of the petitioner's mark, 'MODERN', can only be allowed in accordance with the leave and license of the petitioner.

7.10. Respondent no. 1, in order to ride upon the petitioner's hard-earned goodwill, has adopted the dominant feature of the petitioner's trade name, i.e., 'MODERN', by obtaining registration of a phonetically similar impugned mark 'MARDEM', for identical goods covered in Class 30.

7.11. Respondent no. 1, who had previously acted as a vendor to the petitioner, has obtained the registration of its impugned mark in the same line of business, involving manufacturing of similar and identical goods in Class 30, and has sought to create a deceptive association with the petitioner in the minds of the consumers.



7.12. The impugned trademark, as registered in favour of the respondent no. 1, is not distinctive with respect to the impugned goods, neither at the time when the impugned application was applied for, nor at the time the registration was granted, and not even as on date.

7.13. Respondent no. 1 has neither used the impugned trademark 'MARDEM', nor any mark identical or similar thereto, in relation to the impugned goods at any point of time. Respondent no. 1 does not possess any *bonafide* intention to use the impugned mark in future.

7.14. The petitioner is the senior and prior adopter and user of the mark. Consequently, the impugned registration constitutes a wrong entry on the Register, lacking the sufficient cause, and ought to be removed and rectified in the interest of maintaining the purity of the Register.

8. Learned counsel appearing for respondent no. 2 has submitted that they shall comply with any directions passed by this Court.

9. I have heard learned counsel for the parties and have perused the evidence and documents on record.

10. 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 petition have remained uncontroverted. Accordingly, for all purposes, the pleadings herein are deemed to have been admitted by respondent no. 1.

11. This Court notes that, on the basis of the documents placed on record, the petitioner is the registered proprietor of multiple trademarks bearing the mark 'MODERN' (Hindi and English) in Class 30. The petitioner has as many as 11 registrations/applications under the mark 'MODERN' in Class 30, as reproduced below:



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SR. No	Trade Mark	Application No	Class	MARK/ DEVICE	Status
1.		641088	30	Label	Registered
2.		1745147	30	Label	Registered
3.		2688680	30	Label	Registered
4.		1937328	30	Label	Registered

1.		2967730	30	Label	Pending
2.		3050560	30	Label	Pending
3.		3050561	30	Label	Pending
4.		3160822	30	Label	Pending
5.		3726569	30	Label	Pending
6.		4011161	30	Label	Pending
7.		3050562	30	Label	Pending


12. The registration of the mark in question, in favour of the petitioner since 1990, establishes the petitioner as the first and prior adopter of the said mark *qua* the respondent no. 1, in respect of the goods in question. The



petitioner has placed on record the document pertaining to registration of the mark 'MODERN', with a user detail dated 1<sup>st</sup> January, 1990.

13. Further, this Court also takes note of the petitioner's Certificate of Incorporation, which makes it apparent that the petitioner's company was incorporated on 07<sup>th</sup> November, 2005 under the Companies Act, 1956. The said Certificate of Incorporation, is reproduced herein under:


(73)  
ANNEXURE - D  
(18)

  
प्रारूप आई० आर०  
Form I. F.  
निगमन का प्रमाण पत्र  
**CERTIFICATE OF INCORPORATION**

सं० \_\_\_\_\_ का सं० \_\_\_\_\_  
No. U15412UP2005PTC030929 of \_\_\_\_\_

मैं एतद् द्वारा प्रमाणित करता हूँ कि आज \_\_\_\_\_  
कम्पनी अधिनियम  
1956 (सं० 1 का 1) के अधीन निगमित की गई है और यह कम्पनी पंजीकृत है।  
I hereby certify that MODERN SNACKS PRIVATE LIMITED.  
is  
this day incorporated under the Companies Act, 1956 (No. 1 of 1956) and that  
company is limited.

मेरे हस्ताक्षर से आज वा० \_\_\_\_\_ को दिया गया।  
Given under my hand at Kanpur this 07th day  
of November Two thousand Five.

  
(K.L. KAMBOJ)  
कम्पनी रजिस्ट्रार  
उ० प्र० एवं उत्तरांचल कानपुर  
Registrar of Companies  
U. P. & UTTARANCHAL, KANPUR

TRUE COPY  
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14. The petitioner has also placed on record a table of its sales figures for the year 1991-92 till 28<sup>th</sup> March, 2018, which are reproduced as under:



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GSTIN/UIN : 09AAECM7859G1ZZ  
C.S.T. NO. KR-5706739 Dt: 4-11-2006

Contact: 9935556543

# MODERN SNACKS PVT. LTD.

D-44, Panki Industrial Estate, Panki Site-II, Kanpur-208022

Ref. No. \_\_\_\_\_

Date: \_\_\_\_\_

Sales Figures of our company M/s Modern Snacks Pvt. Ltd. under the mark "Modern" for last five year.

Year	Amount (In Ruprees)
2014-2015	4,69,88,407.00
2015-2016	6,85,07,201.00
2016-2017	8,22,55,571.00
2017-2018	20,35,95,230.00
Till 28 <sup>th</sup> March 2019	29,11,27,562.00

The above sales figures & records are true & correct to my Knowledge

For Modern Snacks Pvt Ltd

For Modern Snacks Pvt. Ltd.

Authorised Signatory

ANNEXURE - L

102

157

GSTIN/UIN : 09AAECM7859G1ZZ  
C.S.T. NO. KR-5706739 Dt: 4-11-2006

Contact : 9935556543

# MODERN SNACKS PVT. LTD.

D-44, Panki Industrial Estate, Panki Site-II, Kanpur-208022

Ref. No. \_\_\_\_\_

Date: \_\_\_\_\_

## Annexure-I SALES FIGURES SINCE YEAR 1991-92

Year	Amount (IN Ruprees)
1991-92	15423.00
1992-93	52908.00
1993-94	420757.00
1994-95	580525.00
1995-96	983008.00
1996-97	1342115.00
1997-98	564152.00
1998-99	503925.00
1999-00	435060.00
2000-01	486228.00
2001-02	573528.00
2002-03	784920.00
2003-04	928175.00
2004-05	1290530.00
2005-06	1415251.00
2006-07	832440.00
2007-08	4030860.00
2008-09	6976165.00
2009-10	16494063.00
2010-11	22639227.00
2011-12	27228870.00
2012-13	31283994.00
2013-14	35726295.00
2014-15	46888407.00
2015-16	68507201.00
2016-17	82255571.00
2017-18	203595230.00

The Above Sales Figures & Records Are True & Correct To My Knowledge

For Modern Snacks Pvt. Ltd.

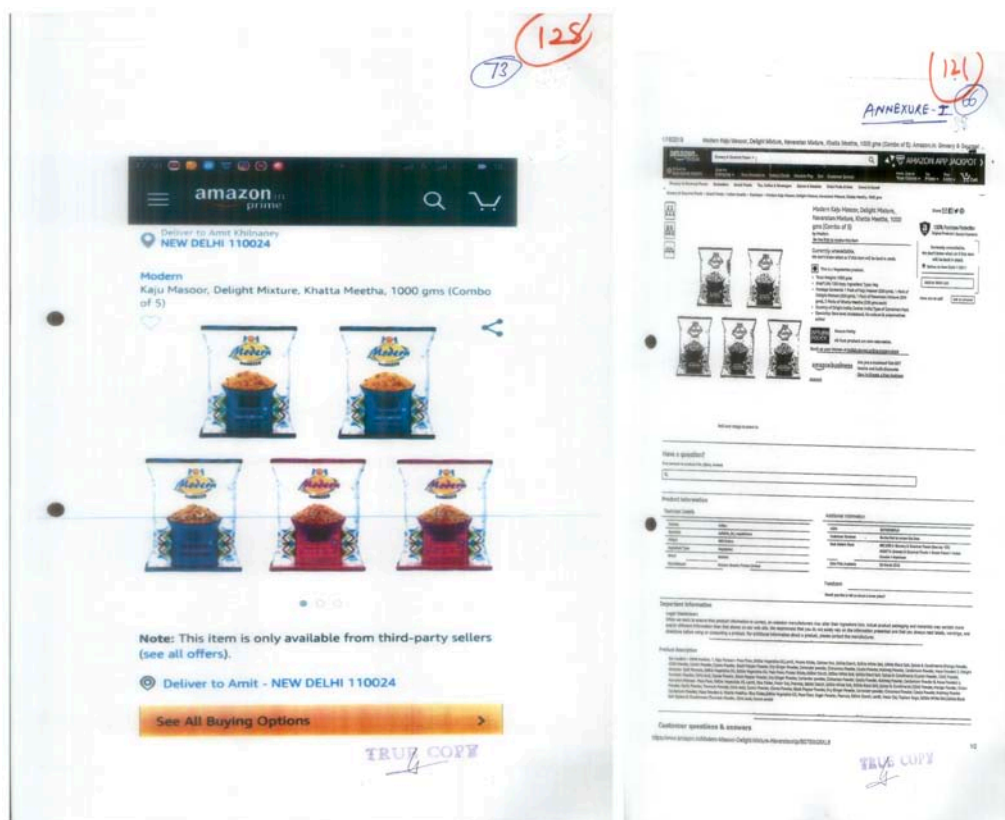
Authorised Signatory

TRUE COPY



15. This Court also takes note of the submission on behalf of the petitioner that its products are present and listed on various e-commerce websites/platforms, such as Indiamart.com, Amazon.com, eSuppliersIndia.com, etc. The documents on record showing the availability of the products of the petitioner on various e-commerce websites/platforms, are reproduced herein below:

The image displays two screenshots of e-commerce websites. The left screenshot is from eSuppliersIndia.com, showing a product page for 'Modern Namkeen'. It includes a search bar, navigation tabs for 'PRODUCTS' and 'SUPPLIERS', and a list of related products such as 'Pack Snacks', 'Goldman With Peas & Beans Bunch', and 'Roasted Dandelion'. The right screenshot is from Indiamart.com, showing a 'COMPANY FACTSHEET' for 'Modern Snacks Pvt. Ltd.' with details on 'Nature of Business', 'Legal Status of Firm', and 'GST No.'. Below this, there is a 'PRODUCTS & SERVICES' section listing items like 'Mixture Namkeen', 'Moong Dal Namkeen', 'Chana Dal Namkeen', and 'Bhujia Namkeen'. Both screenshots have handwritten annotations: 'ANNEXURE-H' and circled numbers '113', '63', and '117'.



16. This Court further notes that the petitioner had filed an application for registration of its mark 'MODERN' under application no. 1745147, way back on 20<sup>th</sup> October, 2008 in Class 30, with a user detail of 01<sup>st</sup> April, 1992. In addition to the above, this Court also notes that the petitioner has placed on record advertisements published in newspapers, to show the use of the mark by the petitioner.

17. It is to be noted that respondent no. 1 has registered the impugned mark, i.e., 'MARDEM' under registration no. 3739205 in Class 30 *vide* application dated 29<sup>th</sup> January, 2018, which is much later to the prior registration of the petitioner's mark 'MODERN'. This Court takes note of the fact that respondent no. 1 had previously acted as a vendor to the petitioner in relation to the goods and services provided by the petitioner under the mark 'MODERN', as stated in the petition. Therefore, it is



apparent that the respondent no. 1 was aware of the petitioner and its mark 'MODERN'.

18. A comparison of the respondent no. 1's impugned mark, i.e., 'MARDEM' with that of the petitioner's mark, i.e., 'MODERN', showcases that the two marks are phonetically and deceptively similar. The word 'MODERN' ends with an alphabet 'N' whereas 'MARDEM' has an 'M' which creates a similar rhythm. The below-mentioned comparison of the two marks clearly establishes the similarity between the two marks:

<b>PETITIONER'S MARK</b>	<b>RESPONDENT NO. 1'S MARK</b>
MODERN	MARDEM

19. The two marks i.e., 'MODERN' and 'MARDEM' are so phonetically similar to each other as to confuse the general public and consumers of the petitioner. This is especially so, taking into account the fact that the aforesaid marks are not in any vernacular language. Besides, this Court notes that both the petitioner and respondent no.1 are located in the same area in Hindi speaking belt. Therefore, the consumers of the products of the petitioner are likely to get confused and not be able to differentiate in the two marks. Although, a critical comparison of the two marks might disclose some differences, however, a purchaser of average intelligence would definitely be deceived by the overall similarity of the two names.

20. On the aspect of deceptive similarity/resemblance, this Court takes note of principle applied by the Supreme Court, in the case of *Amritdhara Pharmacy Versus Satya Deo Gupta, 1962 SCC OnLine SC 13*, wherein, the Supreme Court had stated as under:



“xxx xxx xxx

6. It will be noticed that the words used in the sections and relevant for our purpose are “likely to deceive or cause confusion”. **The Act does not lay down any criteria for determining what is likely to deceive or cause confusion. Therefore, every case must depend on its own particular facts, and the value of authorities lies not so much in the actual decision as in the tests applied for determining what is likely to deceive or cause confusion.** On an application to register, the Registrar or an opponent may object that the trade mark is not registrable by reason of clause (a) of Section 8, or sub-section (I) of Section 10, as in this case. In such a case the onus is on the applicant to satisfy the Registrar that the trade mark applied for is not likely to deceive or cause confusion. In cases in which the tribunal considers that there is doubt as to whether deception is likely, the application should be refused. A trade mark is likely to deceive or cause confusion by its resemblance to another already on the Register if it is likely to do so in the course of its legitimate use in a market where the two marks are assumed to be in use by traders in that market. In considering the matter, all the circumstances of the case must be considered. As was observed by Parker, J., in Pianotist Co Application (1906) 23 RPC 774 which was also a case of the comparison of two words.

**“You must take the two words. You must judge them, both by their look and by their sound. You consider the goods to which they are to be applied. You must consider the nature and kind of customer who would be likely to buy those goods. In fact you must consider all the surrounding circumstances; and you must further consider what is likely to happen if each of those trademarks is used in a normal way as a trade mark for the goods of the respective owners of the marks.”** (p. 777)

**For deceptive resemblance two important questions are: (1) who are the persons whom the resemblance must be likely to deceive or confuse, and (2) what rules of comparison are to be adopted in judging whether such resemblance exists.** As to confusion, it is perhaps an appropriate description of the state of mind of a customer who, on seeing a mark thinks that it differs from the mark on goods which he has previously bought, but is doubtful whether that impression is not due to imperfect recollection. (See Kerly on Trade Marks, 8th Edition, p. 400.)

xxx xxx xxx”



(Emphasis Supplied)

21. Moreover, it is pertinent to note that this Court in the case of ***Treasure Studio INC and Another Versus Mohit Khungar and Another, 2024 SCC OnLine Del 6558***, while dealing with similar trademarks has opined that minor variations in the marks would be immaterial, if it is apparent that two marks substantially resemble each other. Thus, it has been held, as under:

“xxx xxx xxx

**21. It is not necessary that in order to constitute infringement, the impugned trademark should be an absolute replica of the registered trademark of the petitioner. It would be sufficient if the petitioner is able to show that the trademark adopted by the respondent resembles its trademark in a substantial degree, on account of extensive use of the main features found in his trademark. Minor variations or distinguishing features of the infringing mark would not be material, in case, resemblance in the two trademarks is found to be substantial to the extent that the impugned trademark is found to be similar to the registered trademark of the petitioner. (See: Greaves Cotton Limited versus Mr. Mohammad Rafi & Ors., 2011 SCC OnLine Del 2596)**

xxx xxx xxx”

(Emphasis Supplied)

22. The respondent no. 1 has registered the impugned mark similar to the mark of the petitioner for identical goods in the market, i.e., snacks, namkeens and other allied/cognate goods. The respondent no. 1 has adopted the impugned mark that is phonetically similar to that of petitioner’s mark for a similar class of purchasers, which is likely to cause confusion in the minds of average consumers. The judgment of the Supreme Court in ***Khoday Distilleries Limited Versus Scotch Whiskey Association and Others, (2008) 10 SCC 723***, has dealt with issue of confusion arising among the class of consumers and has held as under:



“xxx xxx xxx

75 [Ed. : Para 75 corrected vide Official Corrigendum No. F.3/Ed.B.J./83/2008 dated 26-9-2008.]. The tests which are, therefore, required to be applied in each case would be different. **Each word must be taken separately. They should be judged by their look and by their sound and must consider the goods to which they are to be applied. Nature and kind of customers who would likely to buy goods must also be considered. Surrounding circumstances play an important factor. What would be likely to happen if each of those trademarks is used in a normal way as a trade mark of the goods of the respective owners of the marks would also be a relevant factor.** (See Pianotist Co.—s Application, Re [(1906) 23 RPC 774].)

76. **Thus, when and how a person would likely to be confused is a very relevant consideration.**

77. **Where the class of buyers, as noticed hereinbefore, is quite educated and rich, the test to be applied is different from the one where the product would be purchased by the villagers, illiterate and poor. Ordinarily, again they, like tobacco, would purchase alcoholic beverages by their brand name. When, however, the product is to be purchased both by villagers and town people, the test of a prudent man would necessary be applied. It may be true that the tests which are to be applied in a country like India may be different from the tests either in a country of England, the United States of America or Australia.**

xxx xxx xxx”

(Emphasis Supplied)

23. Additionally, the petitioner’s prior user, i.e., since 1990, of the mark ‘MODERN’ and respondent no. 1’s registration of the mark ‘MARDEM’ dated 22<sup>nd</sup> July, 2018, establishes a clear attempt by the respondent no. 1 to bring its mark phonetically, as close to that of the petitioner. Furthermore, marks of the parties fall in the same Class, i.e., Class 30, for similar goods which are snacks and confectionaries consumed by the public. Therefore, the impugned mark of respondent no. 1 would clearly cause confusion and deception, and it is further possible for any consumer to presume that the



respondent no. 1's product, if any, also emanates from the petitioner's business.

24. Holding that test as to likelihood of confusion or deception arising from similarity of marks, is the same both in infringement and passing off action, Supreme Court in the case of *Ruston & Hornsby Ltd. Versus Zamindara Engineering Co., (1969) 2 SCC 727*, has held as follows:

“xxx xxx xxx

6. *The two actions, however, are closely similar in some respects. As was observed by the Master of the Rolls in Saville Perfumery Ltd. v. June Perfect Ltd. [(1941) 58 RPC 147 at 161]:*

**“The statute law relating to infringement of trade marks is based on the same fundamental idea as the law relating to passing-off. But it differs from that law in two particulars, namely (1) it is concerned only with one method of passing-off, namely, the use of a trade mark, and (2) the statutory protection is absolute in the sense that once a mark is shown to offend, the user of it cannot escape by showing that by something outside the actual mark itself he has distinguished his goods from those of the registered proprietor. Accordingly, in considering the question of infringement the Courts have held, and it is now expressly provided by the Trade Marks Act, 1938, Section 4, that infringement takes place not merely by exact imitation but by the use of a mark so nearly resembling the registered mark as to be likely to deceive.”**

xxx xxx xxx”

(Emphasis Supplied)

25. At this stage, this Court notes that the petitioner herein is in litigation with another party, i.e., Modern Food Enterprises Pvt. Ltd. in two cross suits, being CS(COMM) 299/2020, titled as “*Modern Snacks Pvt. Ltd. Versus Modern Foods Enterprises Pvt. Ltd. (Now, Bimbo Bakeries India Pvt. Ltd.)*” and CS(COMM) 460/2020, titled as “*Modern Food Enterprises Pvt. Ltd. Versus Modern Snacks Pvt. Ltd.*” In the judgment reported as *Modern Snacks Pvt. Ltd. Versus Modern Foods Enterprises Pvt. Ltd., 2023 SCC*



*OnLine Del 3872*, while dealing with the aforesaid cases at interim stage, a bench of this Court, has categorically held that the other party, i.e., Modern Food Enterprises Pvt. Ltd., is the prior adopter of the mark 'MODERN'. However, considering the balance of convenience, the petitioner herein, has been allowed to use the mark 'MODERN' only in the labels that were in use by it on the date of filing of the said suit. The petitioner herein has been restrained from using the mark 'MODERN' (in English or Hindi or other vernacular language) for the goods other than that which were being sold by the petitioner herein using the mark 'MODERN', on the date of filing of the suit by the other party, i.e., Modern Food Enterprises Pvt. Ltd.

26. Accordingly, it is clarified that the present judgment is being passed only with regard to the facts and circumstances of the present case and would have no bearing on the pending suits, i.e., *CS (COMM) 299/2020* and *CS (COMM) 460/2020*, between the petitioner herein and Modern Food Enterprises Pvt. Ltd. (*Now, Bimbo Bakeries India Pvt. Ltd.*). It is also clarified that the petitioner shall claim no equity in its favour on the basis of the present judgment.

27. In the overall conspectus of the facts and law discussed herein above, this Court finds it to be a fit case to allow the present rectification petition. Accordingly, the impugned mark i.e., 'MARDEM' bearing registration no. 3739205 in Class 30, is hereby cancelled. Consequently, rectification shall be carried out in the Register of Trade Marks. The Trade Marks Registry shall also issue an appropriate notification, in this regard.

28. The Registry is directed to supply a copy of the present judgment 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.



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29. The present petition is allowed, in terms of the aforesaid.

**(MINI PUSHKARNA)  
JUDGE**

**APRIL 25, 2025**

Au/Ak/Kr