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

\# **CNR No. DLHC010625262024**

\+ C.O. (COMM.IPD-TM) 187/2024 & I.A. 39793/2024

Date of Decision: **13.10.2026**

IN THE MATTER OF:

KIEHBERG GMBH
INDUSTRIESTRAßE 4,
56581 KURTSCHEID, DEUTSCHLAND .....PETITIONER No. 1

SYNDICATE INNOVATIONS INTERNATIONAL LIMITED
G-365, PREET VIHAR
DELHI – 110092 .....PETITIONER No. 2

(*Through: Mr. Prithvi Singh, Mr. Prithvi Gulati and Mr. Ritwik Marwaha, Advs.*)

versus

CAPITAL AIRGUN MANUFACTURERS PRIVATE LIMITED
C- 188, NIARALA NAGAR NA,
LUCKNOW, UTTAR PRADESH – 226020 ...RESPONDENT NO. 1

THE REGISTRAR OF TRADE MARKS
TRADE MARKS REGISTRY
BOUDHIK SAMPADA BHAWAN,
PLOT NO. 32, SECTOR 14,
DWARKA, NEW DELHI-110078 …RESPONDENT NO. 2

(*Through: Mr. Vinay Yadav, CGSC with Mr. R. V. Prabhat and Ms. Kamna Behrani, Advs. for R-2.*)

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CORAM:
HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

J U D G E M E N T

PURUSHAINDRA KUMAR KAURAV, J. (ORAL)

1. The instant cancellation petition has been filed under Section 57 of the Trade Marks Act, 1999 ("the Act") for the following reliefs:

> *"a. Remove the registration no. 6103985 for the mark 'KIEHBERG' in class 13, from the Register of Trade Marks;*
> *b. Pass an order for payment of cost of the proceedings in favour of the Petitioner and against Respondent No. 1;*
> *c. Pass any such order/relief, as this Hon'ble Court may deem fit and proper, to safeguard the interest of the Petitioner."*

2. The prayer for cost is not pressed. Notice was issued on 19.09.2024 and status quo *qua* impugned registration was granted. Respondent No. 1 was served with the complete paperbook on 25.10.2024. It did not file a reply, and *vide* order dated 06.02.2025 Joint Registrar closed its right to file reply. Respondent No. 1 has not appeared before this Court at any stage.

3. Learnd counsel for respondent no.2 submits that the impugned application was examined under Sections 9 and 11 of the Act. The examination report dated 24.11.2023 found no conflicting mark on the record of the Registry. The mark was advertised on 04.12.2023 and, as no opposition was received, hence it was registered on 26.05.2024. The petitioners filed their own applications for the word mark and device mark KIEHBERG in Class 13, being Application Nos. 6490574 and 6490576, only on 21.06.2024. Both have been objected to under Section 11(1) of the Act because they are identical to the impugned mark. He also states that the petitioners did not oppose the impugned application under Section 21 of the

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Act.

4. Since respondent no.1, despite service, has neither filed a reply nor defended the action, the averments in the petition remained unrebutted against it. There are, therefore, no prospects of respondent no.1 successfully contesting the instant case. However, the absence of a reply does not relieve the Court of the duty to examine whether the petitioners' case is made out on the material placed on record. The Court cannot pass an order mechanically for that reason alone, as held by the Supreme Court in ***Balraj Taneja v. Sunil Madan***[1] and reiterated in ***Asma Lateef v. Shabbir Ahmad***[2].

5. The facts of the case indicates that petitioner no.1 is a company registered and existing in Germany, with its registered office at Industriestraße 4, 56581 Kurtscheid, Deutschland, and was incorporated on 06.12.2011. Petitioner no.2, Syndicate Innovations International Limited, was incorporated on 29.11.2011 under the Companies Act, 1956. The petitioners claim to be among the largest distributors, stockists and dealers of sports and outdoor shooting equipment. They claim to have conceptualised the trademark KIEHBERG in 2011 and to have used it in India since 21.03.2012.

6. The petitioners jointly promote KIEHBERG in India, and their business is focused on shooting equipment and accessories sourced from Germany and other European countries. The petitioners claim that, as a result of their efforts, the trademark has become very popular among traders and consumers, who associate it only with the petitioners and their products. They claim that the trademark is well known and respected in India.

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[1] (1999) 8 SCC 396
[2] (2024) 4 SCC 696

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7. The petitioners contend that the trademark KIEHBERG is distinctive and that they adopted it honestly. According to them, the origin of the mark can be traced only to the petitioners, and the mark is *prima facie* distinctive in relation to the goods and services sold under it. They further contend that they adopted the mark honestly and have used it extensively, continuously, openly and without interruption for over 12 years, which has resulted in significant sales.

8. The petitioners contend that respondent no. 1, with *mala fide* intent, filed Application No. 6103985 for the mark KIEHBERG in Class 13, for firearms, ammunition and projectiles, explosives, fireworks, air guns. The application was filed on 11.09.2023 on a "proposed to be used" basis and proceeded to registration on 26.05.2024.

9. The petitioners made enquiries among members of the trade to find out whether products of respondent no.1 bearing the mark KIEHBERG were available in the market. They found that no such product had yet been launched. During these enquiries, the petitioners found the website www.camstarsports.com. The website gives the registered office address of respondent no.1, and it shows that respondent no.1 sells air rifles, air pistols and related accessories under other names. No product is offered on the website under the mark KIEHBERG. In their rejoinder, the petitioners state that respondent no. 1 has not used the impugned mark to date.

10. Learned counsel places reliance on the following decisions: ***S. Syed Mohideen v. P. Sulochana Bai***[3], ***N.R. Dongre and Ors. v. Whirlpool Corporation and Anr.***[4], ***Dorco Co. Ltd. v. Durga Enterprises and Anr.***[5],

[3] (2016) 2 SCC 683
[4] (1996) 5 SCC 714

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Amit Sood v. Union of India and Ors[6], ***Blue Heaven Cosmetics Pvt. Ltd. v. Deepak Arora and Ors.***[7], ***Russell Corp Australia Pty Ltd. v. Ashok Mahajan and Anr.***[8] and ***Crocs Inc. v. Registrar of Trademarks and Anr.***[9]

11. The Court has heard learned counsel for the petitioners and respondent no.2, and perused the record.

12. The first question is whether the petitioners are "persons aggrieved" within the meaning of Section 57(2) of the Act. In ***Hardie Trading Ltd. v. Addisons Paint & Chemicals Ltd.***[10], the Supreme Court held that in an action for an entry wrongly made in the register, *locus standi* is to be judged liberally. In the present case, respondent no.2 itself states in its reply that the petitioners' application nos. 6490574 and 6490576 have been objected to under Section 11(1) of the Act because of the impugned registration. The impugned registration is, therefore, a direct obstacle to the petitioners' own applications. The petitioners are clearly persons aggrieved.

13. Under Section 57(2) of the Act, this Court may expunge or vary an entry where it was made in the register without sufficient cause, or where it is wrongly remaining on the register. This Court, in ***Blue Heaven Cosmetics*** (supra), set out the grounds on which an entry may be cancelled or varied under Section 57. In ***Russell Corp Australia*** (supra), it was further held that a mark is wrongly entered on the register if any ground for refusal of registration under Section 9 or Section 11 of the Act is made out.

14. The material produced on record proves beyond doubt that the

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[5] 2023 SCC OnLine Del 1484
[6] 2024:DHC:3533
[7] 2022:DHC:1953
[8] 2023 SCC OnLine Del 4796
[9] C.O. (COMM.IPD-TM) 779/2022; Dated: 08.04.2024
[10] (2003) 11 SCC 92

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petitioners were the prior users and lawful owners of the KIEHBERG trademark in India and abroad. The petitioners have been continuously and uninterruptedly using the trademark, and they are its rightful owners. The documentary evidence shows that the petitioners are the prior users of the mark and enjoy the goodwill and reputation attached to it.

15. In support of this, the petitioners have placed on record the certificate of incorporation of petitioner no.1 and the master data of petitioner no.2. They have also filed the WHOIS record of the domain name kiehberg.in, which was registered on 15.12.2012, and extracts from their social media accounts, the earliest of which dates back to 2012. In addition, they have filed a Chartered Accountant's certificate with sample invoices. The certificate shows sales of about INR 5.45 billion and promotional expenditure of about INR 173 million between the financial years 2012-13 and 2023-24. This material shows that the petitioners' use of the mark began more than a decade before respondent no.1 filed the impugned application on 11.09.2023.

16. The law is settled that the rights of a prior user are superior to those of a later registrant. In ***S. Syed Mohideen*** (supra), the Supreme Court held as follows, after reading Sections 27, 28 and 34 of the Act together:

> *"30.4. … Thus, the scheme of the Act is such where rights of prior user are recognised superior than that of the registration and even the registered proprietor cannot disturb/interfere with the rights of prior user. …"*

17. The Supreme Court also noted that the Division Bench of this Court in ***Whirlpool*** had held that registration is not an indefeasible right and is subject to the rights of a prior user. That view was affirmed by the Supreme Court in ***N.R. Dongre*** (supra).

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18. Respondent no.1, on the other hand, applied for an identical mark for goods in the very field in which the petitioners trade, on a "proposed to be used" basis. Its own website shows that it deals in air rifles and air pistols. KIEHBERG is not a dictionary word. It is a coined word that also forms part of the corporate name of petitioner no.1. Nothing on record shows how respondent no.1 came to adopt it. When a trader in the same field adopts an identical coined word for identical goods, without any explanation, the only reasonable inference is that the adoption was not honest.

19. In ***Dorco Co. Ltd.*** (supra), this Court held that a respondent cannot claim to be the proprietor of the impugned trademark as there is nothing to show as to how the impugned trademark has been adopted, and that such an application contravenes Section 18(1) of the Act. In ***Russell Corp Australia*** (supra), the adoption of an identical mark for identical goods was held to be an attempt to usurp the reputation of the prior proprietor and dishonest.

20. In view of the petitioners' prior use and goodwill, use of the identical mark by respondent no.1 for identical goods is likely to deceive the public and cause confusion as to the source of the goods. Such use would be liable to be restrained under the law of passing off. The registration was therefore barred by Sections 9(2)(a) and 11(3)(a) of the Act. As held in ***Amit Sood*** (supra), under Section 11 of the Act, any mark that would result in passing off of the business of the applicant of the mark would not be liable to be registered. A similar view was taken in ***Dorco Co. Ltd.*** (supra), where the impugned registration was held to be against Section 11(3)(a) of the Act in view of the petitioner's prior use.

21. The stand of respondent no.2 does not change this conclusion. The Registry, while examining an application, compares it only with marks on its

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own record. It has no means of knowing about an unregistered prior user. The fact that no similar mark was found on the Registry's record does not make the entry one made with sufficient cause. Similarly, the petitioners' failure to oppose the application under Section 21 of the Act does not take away their right under Section 57.

22. In ***Amit Sood*** (supra), this Court held that the mere fact that the Petitioner may have missed opposing the mark does not mean that the cancellation cannot be sought. The Court also observed that in cancellation petitions it has a duty to ensure that the purity of the register is maintained.

23. There is no reply from respondent no.1 to justify or rebut any of the aforesaid aspects. Where the registered proprietor chooses not to appear, the petitioner's pleadings, supported by documents, are to be treated as unrebutted, as held in ***Crocs Inc.*** (supra) and ***Russell Corp Australia*** (supra).

24. In view of the aforesaid, the Court directs cancellation of Registration No. 6103985 dated 11.09.2023 for the trademark "KIEHBERG" in Class 13.

25. Respondent no. 2, the Registrar of Trade Marks, is directed to remove the said registration from the Register of Trade Marks and to rectify the Register accordingly, within a period of four weeks from the date of receipt of a copy of this order.

26. As the prayer for costs has not been pressed, there shall be no order as to costs.

27. The rectification petition stands allowed in the aforesaid terms. The same is, accordingly, disposed of. Pending applications, if any, also stand disposed of.

28. The Registry is directed to send a copy of this order to the Trade

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Marks Registry for compliance.

(PURUSHAINDRA KUMAR KAURAV)
JUDGE

OCTOBER 13, 2026/p

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