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

% Judgment delivered on: 31.07.2025

+ **C.O. (COMM.IPD-TM) 80/2021**

**SHRI VED PRAKASH GARG TRADING AS M/S PARUL
FOOD PRODUCTS** Petitioner

versus

MR. DHRUV SINGH AND ANR. Respondents

AND

+ **C.O. (COMM.IPD-TM) 121/2022**

**VED PRAKASH GARG, M/S PARUL FOOD PRODUCTS,
KH.NO. 110/10, PHIRNI ROAD, INDUSTRIAL AREA,
MUNDKA, DELHI**Petitioner

versus

**DHRUV SINGH, SINGLE FIRM, 46 OLD GOVINDPURA
EXTN. DELHI-51 AND ANR.**Respondent

Advocates who appeared in this case

For the Petitioner : Mr. Umesh Mishra, Ms. Yashodhara
Raina & Mr. Aakash Bhambri,
Advocates.

For the Respondent No. 2: Mr. Ashish K. Dixit, CGSC with
Mr. Shivam Tiwari, Ms.
Urmila Sharma & Mr. Umar
Hashmi, Advocates.

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



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JUDGMENT

TEJAS KARIA, J

1. The present Petitions have been filed seeking rectification of the Register of Trade Marks by cancellation/removal of the Trade Mark and the Device Mark registered in favour of Mr. Dhruv Singh i.e. Respondent No. 1,



which are “FUNSHINE” and (“**Impugned Marks**”) bearing Application number 3583213 and 3583212 respectively in Class 30, on account of being deceptively and identically similar to Petitioner's Trade Mark, i.e., “FUNFINE”, and other allied Trade Marks.

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

FACTUAL BACKGROUND

3. The Petitioner is the sole proprietor of M/s Parul Food Products. The Petitioner is engaged in the business of manufacturing and marketing of Puffs, Namkeen, Biscuits, Rusk, Chips and Confectionery goods falling in Class 30 since the year 2005. The first registration obtained by the Petitioner with respect to “FUNFINE” was the “FUN FINE (LABEL)”



which was obtained through an Application bearing no. 1743394 dated 14.10.2008.



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4. The Petitioner holds the proprietorship of the Trade Mark, Label and Artistic Work “FUNFINE”, in respect of the said goods falling under Class 30 and started using the Trade Mark, Label and Artistic Work “FUNFINE” since 01.04.2005.

5. 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 Trade Mark applications, several of which have been duly registered, while others are pending. In particular, the Petitioner is the registered proprietor of the following Trade Marks in Class 30:

S. No.	Trade Mark	Class	Application Number
1.	FUNFINE	30	2523520
2.	FUN FINE (LABEL)	30	1743394
3.	FUN FINE HUNDER CHOIC	30	3304607
4.	FUN FINE MOON CHIPS	30	3467514
5.	FUN FINE TWINY WITH DEVICE	30	3648914
6.	FEP FUNFINE	30	2523519
7.	WAH FUN (L)	30	2981984

6. The Petitioner is also the original conceiver, adopter and user of the artistic work “FUNFINE” and it has been continuously, extensively and openly using the distinctive artistic work “FUNFINE” having unique colour combinations, layout and lettering style in relation to the said goods since the year 2005. The aforesaid artistic work used by the Petitioner is an original artistic work within the meaning of Section 2(c) of the Copyright Act, 1957 (“**Copyright Act**”).



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7. The Petitioner is the registered proprietor of the original artistic works “FUNFINE” under Copyright Registration bearing nos. A-96975/2013, A-108162/2013, A-108161/2013, A-108163/2013, A-108160/2013, A-114602/2015, A-117482/2017, A-117481/2017, A-115976/2017, A-115980/2017, A-118692/2017, A-118695/2017, A-126473/2018, A-146471/2018, A-126472/2018, A-126470/2018, A-125487/2018, A-126468/2018, A-126464-2018, A-126467/2018, A-126469/2018.

8. Since its adoption by the Petitioner, the Trade Mark and Artistic Work



consist of the term “FUNFINE” as its prominent feature, which not only forms part of the Trade Name of the Petitioner but is also distinctively associated with the Petitioner. The consumers and members of the trade exclusively associate the mark “FUNFINE” with the Petitioner, as apparent from its invoices, packaging and branding.

9. Respondent No. 1 is engaged in the identical business and manufactures and sells goods identical to that of the Petitioner. Respondent No. 1 is engaged in the business of manufacturing and selling of Puffs, Namkeen, Kurkure and Confectionery items under the Impugned Marks falling in Class 30. Respondent No. 1 has received registration for the Impugned Marks in its favour vide Application Nos. 3583212 and 3583213 dated 03.07.2017, with the user claim as 03.01.2017.

10. The Respondent No. 2 is the Registrar of Trade Marks.

11. Thus, being aggrieved by the subsistence of the Impugned Marks, the present Rectification Petitions have been filed.



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PROCEEDINGS IN THE PRESENT PETITIONS

12. Notice in the present Petitions was issued vide a common order dated 13.10.2022 to the Respondent No. 1 and Respondent No. 2. Vide order dated 04.09.2023, it was recorded that the Notice to Respondent No. 1 remained unserved as the service report indicated “*addressee has left*”. The Petitioner was further allowed to effect service upon Respondent No. 1 by filing a fresh address for Respondent No. 1. Thereafter, vide order dated 30.11.2023, the Petitioner was given liberty 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.

13. Vide order dated 05.09.2024, the Application filed by the Petitioner for substituted service to Respondent No. 1 was allowed and Respondent No. 1 was served through publication. Thus, this Court proceeded to hear the matter. Since no one appeared for Respondent No. 1, this Court vide order dated 02.05.2025, recorded that Respondent No. 1 shall be proceeded against *ex parte*.

SUBMISSIONS ON BEHALF OF THE PETITIONER

14. Mr. Umesh Mishra, the learned Counsel for the Petitioner submitted that since adopting the Trade Mark, i.e., “FUNFINE”, the Petitioner has honestly, continuously, commercially, openly, exclusively and to the exclusion of others, been using its Trade Mark, Label and Artistic Work in connection with its goods and services. Further, the said goods and services, under the Trade Mark “FUNFINE”, are being distributed across major parts of the country.



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15. The learned Counsel for the Petitioner submitted that the Trade Mark “FUNFINE” not only forms an integral part of the Petitioner's Trade name, but also constitutes the dominant and distinguishing feature in its other derived Trade Marks. Consequently, due to such uninterrupted and continuous use of the Trade Mark “FUNFINE”, the Petitioner has established a valuable trade, strong reputation and goodwill in respect of its goods and services in Class 30.

16. The learned Counsel for the Petitioner submitted that 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 Copyright Act.

17. The learned Counsel for the Petitioner further relied on the revenue generated to establish their goodwill in the relevant market. The Petitioner has also invested a substantial amount of money, efforts and time in consistently and continuously promoting its Trade Mark/ Trade Name as well as the goods and business.

18. The learned counsel for the Petitioner submitted that owing to the high quality of its products, the Petitioner's Trade Marks and Trade Name have 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 by issuing notices to infringers and counterfeiters and thereby, creating public awareness about the Petitioner's Trade Marks.

19. The learned counsel for the Petitioner submitted that the Petitioner is the proprietor of its said Trade Mark, Label and Artistic Work, both under



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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., "FUNFINE" or any other Trade Mark, Label and Artistic Work 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, "FUNFINE", can only be allowed in accordance with the leave and license of the Petitioner.

20. The learned counsel for the Petitioner submitted that Respondent No. 1, in order to ride upon the Petitioner's hard-earned goodwill, has adopted the dominant feature of the Petitioner's Trade Mark, i.e., "FUNFINE", by obtaining registration of a phonetically similar Impugned Marks for identical goods covered in Class 30.

21. The learned counsel for the Petitioner submitted that the Impugned Marks, as registered in favour of Respondent No. 1, are neither distinctive with respect to the impugned goods, nor at the time when the applications were applied for by Respondent No. 1 for the Impugned Marks, nor at the time the registration was granted, and not even as on date.

22. The learned counsel for the Petitioner submitted that the Petitioner is the senior and prior adopter and user of the Trade Mark "FUNFINE". Consequently, the impugned registrations constitute wrong entries on the Register, lacking sufficient cause, and ought to be removed and rectified in the interest of maintaining the purity of the Register.

23. In light of the above, it is stated that the Impugned Marks have been wrongly entered in the Register of Trade Marks and therefore are liable to be cancelled in terms of Section 57 of the Trade Marks Act.



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SUBMISSIONS ON BEHALF OF THE RESPONDENTS

24. Respondent No. 1 is proceeded against *ex parte*.

25. Mr. Ashish K. Dixit, learned Counsel appearing for the Respondent No. 2, has submitted that they shall comply with any directions passed by this Court.

ANALYSIS AND FINDINGS

26. At the outset, it is to be noted that in the absence of any appearance and reply by Respondent No. 1 the pleadings made in the present Petitions have remained uncontroverted. Accordingly, for all purposes, the pleadings herein are deemed to have been admitted by Respondent No. 1.

27. On the basis of the documents placed on record, the Petitioner is the registered proprietor of multiple Trade Marks bearing the mark “FUNFINE” in Class 30.

28. The registration of the Trade Mark in favour of the Petitioner since 2008, establishes the Petitioner as the first and prior adopter of the said mark qua Respondent No. 1, in respect of the goods in question. The Petitioner has placed on record the document pertaining to the registration of the mark “FUNFINE”, with a user detail dated 01.04.2005.

29. The Petitioner has also placed on record a table of its sales figures for the Financial Year 2009-10 to 2018-19 to demonstrate the goodwill that the Trade Mark “FUNFINE” has amassed. The sales figures of the Petitioner are reproduced as under:

Financial Year	Year-Wise Annual Sales Amount (In Rupees)
2009-10	22,46,247.50/-
2010-11	31,14,935.00/-
2011-12	46,70,701.85/-
2012-13	81,60,229.00/-



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2013-14	1,60,76,240.47/-
2014-15	2,35,84,292.00/-
2015-16	2,29,36,356.50/-
2016-17	4,47,31,826.46/-
2017-18	13,88,74,144.07/-
2018-19 (01.04.2018 to 05.03.2019)	22,12,14,061.92/-

30. The Petitioner had first filed an Application for registration of its



Device Mark under Application No. 1743394 dated 14.10.2008. Thereafter, the Petitioner has obtained various registrations for the Trade Mark “FUNFINE” and other allied marks the prominent feature of whose is the mark “FUNFINE”.

31. Respondent No. 1 has registered the Impugned Marks, in Class 30 vide applications dated 03.07.2017, which are much later than the prior registration of the Petitioner's Trade Mark “FUNFINE”.

32. A comparison of Respondent No. 1's Impugned Marks “FUNSHINE”



and with that of the Petitioner's Trade Mark, “FUNFINE” and other allied marks showcases that the two marks are phonetically and deceptively similar.

33. The two marks, i.e., “FUNFINE” and “FUNSHINE” 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. Therefore,



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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.

34. A holistic comparison of “FUNFINE” and “FUNSHINE” reveals significant phonetic, structural, and visual similarities that are likely to cause confusion among consumers, who may mistakenly believe the products are associated or originating from the same source. Furthermore, the fact that the Impugned Marks have been registered under the same Class and are used for identical goods is of great consequence and detrimental to the case of Respondent No. 1.

35. Considering the aspect of deceptive similarity the principles applied by the Supreme Court in the judgment of *Amritdhara Pharmacy v. Satya Deo Gupta* 1962 SCC OnLine SC 13, wherein it was held that the phrase “likely to deceive or cause confusion” lacks any definitive standard under the Trade Marks Act, requiring each case to be assessed on its specific facts. The primary value of precedents lies in the principles or tests they apply rather than their conclusions. Deceptive similarity, is assessed by considering whether the Trade Mark, in its ordinary use in a relevant market, is likely to mislead or confuse purchasers due to its similarity to an existing registered mark. This requires an evaluation of all surrounding circumstances, including visual and phonetic similarities, the nature of the goods, and the class of purchasers.

36. The Supreme Court in the judgment *Khoday Distilleries Ltd. v. Scotch Whisky Assn.* (2008) 10 SCC 723, emphasised the necessity of



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maintaining the purity of the Register of Trade Marks, underscoring that public interest must be kept in consideration. It was held that the Registrar of Trade Marks, before registering a Trade Mark, must first determine whether, considering the nature of the mark, its intended use, and the class of purchasers, there exists a likelihood of deception or confusion. If such likelihood is found, the process of rectification and correction of the Register may be warranted.

37. This Court in the judgment of *Kia Wang v. Registrar of Trademarks* 2023 SCC OnLine Del 5844, 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.

38. Respondent No. 1 has registered the Impugned Marks similar to the Trade Mark of the Petitioner for identical goods in the market, i.e., snacks, namkeens and other allied and cognate goods. Respondent No. 1 has adopted the Impugned Marks that are phonetically similar to that of Petitioner's mark for a similar class of purchasers which are likely to cause confusion in the minds of average consumers.

39. The Petitioner's prior user, i.e., since 01.04.2005, of the mark "FUNFINE" and Respondent No. 1's registration of the Impugned Marks is dated 03.07.2017, establishes a clear attempt by 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 Marks of Respondent No. 1 would clearly cause confusion and deception, and it is further possible for any consumer to presume that



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Respondent No. 1's product, if any, also emanates from the Petitioner's business.

40. In view of the above analysis, the registration of the Impugned Marks violates Section 9(2)(a), 11(1) and 11(2) read with Section 18 of the Trade Marks Act, and, thus are liable to be removed from the Register under Section 57 of the Trade Marks Act.

41. Accordingly, the present Petitions are allowed with the following directions:

I. Registration under Application No. 3583212 for the



Impugned Mark in Class 30 is cancelled.

II. Registration under Application No. 3583213 for the Impugned Mark "FUNSHINE" in Class 30 is cancelled.

III. The Registrar of Trade Marks is directed to issue an appropriate notification to this effect.

IV. The Registry is directed to supply a copy of the present order to the Trade Marks Registry at llc-ipo@gov.in for compliance.

42. With the aforesaid directions, the present Petitions are disposed of.

TEJAS KARIA, J

JULY 31, 2025/AK