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

% *Date of Decision: 10th February 2026*

+ C.O. (COMM.IPD-TM) 48/2024

ACKO TECHNOLOGY AND SERVICES PVT. LTD.Petitioner
Through: Ms. Aarti Aggarwal and Ms. V.
Mohini, Advocates.

versus

CHANDRA MOHAN MISHRA & ANR.Respondents
Through: Ms. Nidhi Raman, CGSC with Mr.
Om Ram and Ms. Nikita Singh, Advocates for R2.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

JUDGEMENT

JYOTI SINGH, J. (ORAL)

1. This rectification petition is filed on behalf of the Petitioner under Sections 47 and 57 of The Trade Marks Act, 1999 ('1999 Act') for a direction to the Registrar of Trade Marks to remove the entry in the Register in respect of Registration No. 3713450 in Class 09 in respect of trademark 'ACCKO'.

2. To the extent necessary, the facts as canvassed in the petition are that Petitioner was incorporated in the year 2016 and is the holding company for Acko General Insurance Limited, the first digital company in India to receive a license from IRDAI on 18.09.2017, renowned for its insurance products that are simple, convenient, customer friendly and priced appropriately. Acko was incorporated with an inspiration to build insurtech solutions and products that could define and accelerate the next wave of insurance penetration in India. Petitioner by itself currently provides services focused on auto insurance and mobile products and appliances such



as repairing, servicing of electronic or mechanical gadgets, household appliances etc., and is in the process of creating a high transaction volume-automated pricing and underwriting technology, which insurance companies can use to cater to newer customers faster.

3. It is stated in the petition that Petitioner is the registered proprietor of the mark ACKO HEALTH in Class 09 in respect of “Downloadable software in the nature of a mobile application or website that provides access to information advise, food and exercise databases and circulation tools in the fields of diet, weight loss, diet planning and lifestyle wellness”. ACKO is the predominant feature of its corporate name as well as the name of its subsidiary. The mark ACKO also serves as house mark of the Petitioner/Acko Group along with its distinct and unique stylized representation . In India, the mark was registered on 01.12.2017 in Classes 38 and 42 with first user dating back to 2016. The mark ACKO has been declared as a ‘well-known’ trademark and finds inclusion in the list of well-known trademarks under Application No. 816729 published in Trade Marks Journal No. 2144 dated 19.02.2024. The registrations secured by the Petitioner are as follows:-

Trade Mark	Application No.	Date of Application/ User Claim	Class
ACKO TECHNOLOGY & SERVICES PRIVATE LIMITED	3491654	February 23, 2017 Use Since September 07, 2016	42
ACKO TECHNOLOGY & SERVICES PRIVATE LIMITED	3491656	February 23, 2017 Use Since September 07, 2016	38



ACKO	3691827	December 01, 2017 Proposed to be Used	42
ACKO	3691829	December 01, 2017 Proposed to be Used	38
	4636749	September 02, 2020 Use Since September 27, 2017	35, 36 and 37
ACKO TECHNOLOGY & SERVICES PRIVATE LIMITED	4741592	November 11, 2020 Use Since September 07, 2016	35
ACKO	4741595	November 11, 2020	37

Trade Mark	Application No.	Date of Application/ User Claim	Class
TECHNOLOGY & SERVICES PRIVATE LIMITED		Use Since September 07, 2016	
ACKO TECHNOLOGY & SERVICES PRIVATE LIMITED	4741597	November 11, 2020 Use Since September 07, 2016	44
ACKO HEALTH	4755011	November 24, 2020 Proposed to be Used	9, 35, 36 and 44
	4760008	November 27, 2020 Use Since December 01, 2019	35 and 37



4. It is averred that Petitioner has been vigilant in protecting its intellectual property rights vis-a-vis third parties and has actively taken steps to enforce its rights in the trademark ACKO by sending cease and desist notices to third parties using the mark ACKO and has also filed cancellation/rectification petitions.

5. In this petition, grievance of the Petitioner relates to Respondent No.1's unauthorized adoption and registration of the mark 'ACCKO' under number 3713450 in Class 09, which Petitioner claims is deceptively similar, both visually and phonetically, to Petitioner's prior adopted and distinctive as also well-known registered trademark ACKO in respect of "*mobile and accessories*". Respondent No.1 applied for registration of the impugned mark on 28.12.2017 on 'proposed to be used' basis and the mark was registered on 28.01.2018 in the name of Respondent No.1.

6. Learned counsel for the Petitioner submits that the trademark ACKO is registered in Classes 38 and 42 with the registration dating back to 01.12.2017 and user of the mark dating back to 2016. Other ACKO formative marks are registered in Classes 09, 35, 36, 37, 38, 42 and 44 and the registrations are valid and subsisting. ACKO has been declared as a well-known trademark, which reflects the strength of the mark.

7. It is urged that Petitioner has carved a place for itself through extensive sales and promotions under the trademark ACKO in India. The quality products offered by the Petitioner/Acko Group have assisted in attaining extensive goodwill and reputation which is evident from numerous awards/accolades received by it over the years, as mentioned in the petition. In a short span between 2018-2019 Petitioner/Acko Group raised over \$100 million over three funding rounds. Petitioner has been successful in seeking



cancellation of marks deceptively similar to ACKO such as **ACKOFIT**

and  .

8. It is further argued that the impugned mark is liable to be expunged from the Register under Section 47(1)(b) of 1999 Act owing to its non-use for over five years. Petitioner has categorically pleaded in the petition that Respondent No.1 has not used the impugned mark 'ACCKO' despite obtaining registration. Respondent No.1 has chosen not to appear despite service and was proceeded *ex parte* on 09.04.2025. Consequently, no reply has been filed to the petition controverting the averments of non-use and therefore, in light of the judgments in *DORCO Co. Ltd. v. Durga Enterprises and Another, 2023 SCC OnLine Del 1484* and *Kiranakart Technologies Private Limited v. Mohammad Arshad and Another, 2025 SCC OnLine Del 1401*, owing to the absence of specific denial, non-user will be deemed to be admitted.

9. It is further argued that the impugned mark ought to have been refused registration under Section 11(2) of 1999 Act due to its striking phonetic, visual and structural identity/deceptive similarity with Petitioner's coined, prior adopted and used, registered, distinctive and well-known trademark ACKO. Petitioner adopted the mark ACKO in 2016 and has been using the same continuously, extensively and uninterruptedly. The mark was registered on 01.12.2017 in Classes 38 and 42 i.e., prior to the registration of the impugned mark, which is registered for "*mobile and accessories*". Since Petitioner's services include mobile apps etc., there is bound to be confusion amongst the public owing to deceptive similarity of the rival marks and the use of alphabet 'C' in the impugned trademark is insufficient to create



distinctiveness or distinction with Petitioner's mark ACKO. The impugned mark is wrongly remaining in the Register of Trade Marks, which effects public interest and purity of the Register.

10. It is also contended that Respondent No. 1 has attempted to slavishly imitate the mark ACKO to ride on the formidable goodwill and reputation of the Petitioner earned over the years. The impugned mark is bound to result in infringement and passing off, which impinges on the statutory and common law rights of the Petitioner. Confusion becomes pronounced since Petitioner has immense presence in technology sector, including by way of mobile applications and mobile and appliance protection services. It is settled that business and trading activities must be honest and *bona fide*.

11. It is argued that Petitioner is 'person aggrieved' under Section 47 and thus has the right to seek cancellation of the impugned mark and rectification of the Register of Trade Marks. Registration of the impugned mark is diluting the distinctiveness of the prior and well-known trademark of the Petitioner and moreover, Petitioner's services in the field of mobile phones accessories and their repairs and maintenance, overlap with those of Respondent No.1. Reliance is placed on the judgment of the Supreme Court in *Hardie Trading Ltd. and Another v. Addisons Paint & Chemicals Ltd., (2003) 11 SCC 92*, where it was held that Sections 46 and 56 (now Sections 47 and 57) have different connotations. Section 46 deals with removal of a registered trademark on the ground of non-use and pre-supposes that registration which was validly made, is liable to be taken off by subsequent non-user. Section 56 on the other hand deals with situations where initial registration should not have been or was incorrectly granted and in the instant case, the impugned mark falls foul of both the provisions. Reliance is placed on the judgments of this Court in *Kia Wang v. Registrar of*



Trademarks and Another, 2023 SCC OnLine Del 5844 and RPG Enterprises Limited v. RPG Industrial Products Private Limited, 2025 SCC OnLine Del 22.

12. It is also argued that this Court in ***Falcon Licensing Limited v. PRI Enterprises Private Limited and Another, 2025 SCC OnLine Del 2388***, negated the contention of the Respondent that no prejudice was caused to the Petitioner since Respondent No.1 was not manufacturing and marketing similar products. It was held that the test of ‘field of activity’ was no more valid and even if the goods are totally different/dissimilar with no trade connections, there would be a likelihood of deception if the marks are similar. In ***Acko Technology and Services Pvt. Ltd. v. Bal Kishan and Another, 2023 SCC OnLine Del 4631***, this Court cancelled the registration



of the mark **Ackolite** at the instance of the Petitioner, whose mark is ACKO, exercising powers under Section 57 of 1999 Act.

13. There is no appearance on behalf of Respondent No.1 even today, who has been set *ex parte* vide order dated 09.04.2025. No steps have been taken to set aside the order and/or file reply.

14. In the present case, Petitioner seeks cancellation of the impugned mark ‘ACCKO’ on two-fold grounds i.e., non-user under Section 47(1)(b) and under Section 57 of 1999 Act on the ground that registration of the impugned mark ought to have been refused under Section 11(1) and (2).

15. In ***Hardie Trading (supra)***, the Supreme Court laid down the triple test required to be satisfied for removal of a mark under Section 46 of the Trade and Merchandise Marks Act, 1958, which is *pari materia* to Section 47 of 1999 Act and relevant paragraph is as follows:-



“Thus before the High Court or the Registrar directs the removal of the registered trade marks they must be satisfied in respect of the following:

- (1) that the application is by a “person aggrieved”;*
- (2) that the trade mark has not been used by the proprietor for a continuous period of at least five years and one month prior to the date of the application;*
- (3) there were no special circumstances which affected the use of the trade mark during this period by the proprietor.”*

16. In ***Infosys Technologies Limited v. Jupiter Infosys Limited and Another, (2011) 1 SCC 125***, the Supreme Court delineated the legal position with respect to ‘person aggrieved’ as follows:-

“28. The position that emerges from the above provisions is this. Whether the application is under Section 46 or under Section 56 or a composite application under both sections, it is a prerequisite that the applicant must be a person aggrieved. Section 46(1) of the 1958 Act enables any person aggrieved to apply for removal of registered trade mark from the register on the ground of non-use as stated in clause (a) and/or clause (b). To be an aggrieved person under Section 46, he must be one whose interest is affected in some possible way; it must not be a fanciful suggestion of grievance. A likelihood of some injury or damage to the applicant by such trade mark remaining on the register may meet the test of locus standi.

29. In Kerly's Law of Trade Marks and Trade Names (11th Edn.) at p. 166, the legal position with regard to “person aggrieved” has been summarised thus:

The persons who are aggrieved are all persons who are in some way or the other substantially interested in having the mark removed—where it is a question of removal—from the register; including all persons who would be substantially damaged if the mark remained, and all trade rivals over whom an advantage was gained by a trader who was getting the benefit of a registered trade mark to which he was not entitled.

We accept the above statement of law.”

17. Petitioner is a prior adopter/registant/user of the trademark ACKO and has demonstrated through documents the extensive and continuous use of the mark at least from 2016. Respondent No. 1’s mark is registered in Class 09 for “*mobile and accessories*”. Petitioner’s mark ACKO and rival



mark ACCKO are phonetically and visually deceptively similar and as rightly flagged by Petitioner's counsel, the mere addition of alphabet 'C' is insufficient to take away the deceptive similarity. Petitioner avers that it has prior registrations in ACKO and its variations in different classes, including registration in Class 09 for mark ACKO HEALTH and has extensively used and promoted the mark globally as well as in India. Petitioner/Acko Group's presence in technology sector, including by way of mobile phone applications and mobile and appliance protection services is well-founded and the impugned mark is used for mobiles and accessories and hence, the impugned registration is in derogation of Petitioner's rights and it cannot be held that Petitioner is 'person aggrieved' and entitled to file this petition for cancellation of the impugned mark 'ACCKO'.

18. Petitioner has categorically averred in the petition that impugned mark was registered for mobile and accessories on 21.08.2018 and the application was made on 28.12.2017 on a 'proposed to be used' basis, but there is non-use of the mark and the registration has been sought with an intent to traffic in the trademark and block the Trade Marks Register. Section 47(1)(b) of 1999 Act clearly provides that a registered trademark may be taken off the Register in respect of goods or services in respect of which it is registered, if up to a date three months before the date of the application, a continuous period of five years from the date on which the trademark is actually entered in the Register or longer had elapsed during which the trademark was registered and during which there was no *bona fide* use thereof in relation to those goods or services by any proprietor thereof for the time being. Thus, Section 47 envisages that even a validly granted registration can be cancelled by subsequent proven non-user and the objective is clear that the right to use a registered trademark is a valuable



right and therefore, trafficking must be seriously prevented.

19. In the instant case, Respondent No. 1 has consciously chosen to stay away from the proceedings and hence, no reply has been filed to the petition. Consequently, the averments of non-use are uncontroverted and untraversed. In *Kiranakart (supra)*, relying on the judgment of IPAB in *Shell Transource Limited v. Shell International Petroleum Company Ltd., 2012 SCC OnLine IPAB 29* as also in *DORCO (supra)*, this Court has taken a consistent view that onus of proving non-user is on the person who pleads the same, however, the allegation must be specifically denied by the other side and in the absence of specific denial, the only conclusion that can emerge is that the non-user is admitted. Applying the judgments to this case, in the absence of reply and hence non-denial of non-use by Respondent No.1, it is to be presumed that non-use of impugned mark ACCKO is admitted. It is trite that unless the non-use is explained by way of special circumstances, the mark will be liable to be removed for non-use and therefore, in the present facts the impugned mark would be liable to be removed on ground of non-use itself.

20. Petitioner has also assailed the registration of the impugned mark under Section 57 of 1999 Act and hence, I may deal with the same. Section 57 of 1999 Act deals with power to cancel or vary registration and to rectify the Register. As held in *Hardie Trading (supra)* and *Kabushiki Kaisha Toshiba v. Tosiba Appliances Company and Others, (2008) 10 SCC 766*, while Section 47 speaks for private interest, Section 57 speaks of public interest. Section 11 deals with relative grounds for refusal of registration. Sub-Section (1) proscribes registration of a trademark if it is identical with an earlier trademark and there is similarity of goods/services covered by the trademark or where the trademark sought to be registered is similar to an



earlier trademark, there being identity/similarity with goods or services covered by the trademark, because of which there is likelihood of confusion in the public, including likelihood of association with the earlier trademark. The expression 'earlier trademark' is defined in the 'Explanation' to the section and includes a registered trademark. Petitioner's mark ACKO is an earlier trademark having been registered on 01.12.2017, whereas impugned mark ACCKO was applied for on 28.12.2017 on 'proposed to be used' basis and was registered on 21.01.2018. The impugned mark ACCKO is phonetically and visually deceptively similar to Petitioner's prior, adopted, used and registered mark ACKO and the services provided by Petitioner overlap with the products and services of Respondent No. 1. It is, therefore, inevitable that confusion will arise amongst the members of the public. With the formidable reputation and goodwill garnered by the Petitioner, both globally and in India, the unwary consumer with average intelligence and imperfect recollection will be confused into believing that the mobiles and accessories of Respondent No. 1 belong to the Petitioner or have some association with it. This will dilute the distinctive character of Petitioner's mark, which has also been declared as a well-known mark adding strength to the mark. Registration of the impugned mark thus violates both statutory and common law rights of the Petitioner owing to infringement and passing off. The impugned mark is, therefore, hit by Section 11(2) of 1999 Act.

21. *Albeit* in the present case, there is an overlap in the services rendered by the Petitioner under the mark in question and the products/services under the impugned mark, but assuming that there is dissimilarity in the rival goods, this Court in *Falcon Licensing (supra)* has negated the contention that no prejudice will be caused to the Petitioner since Respondent No. 1 therein did not manufacture and market similar products. It was observed



that test of ‘field of activity’ is no more valid and even if the goods are different with no trade connection, if there is likelihood of deception or confusion, the impugned mark must be struck off from the Register of Trade Marks.

22. Petitioner is right in contending that it is unfathomable that Respondent No. 1 was unaware of Petitioner’s trademarks and its reputation and goodwill, more particularly, being engaged in the business of mobile and accessories. Despite this, Respondent No. 1 consciously chose to adopt the mark ACCKO, which is evidence of bad faith. Section 11(10)(ii) of 1999 Act requires the Registrar of Trade Marks to take into consideration the bad faith involved, either of the applicant or the opponent, at the time of registering a mark. This provision was interpreted by this Court in ***BPI Sports LLC v. Saurabh Gulati and Another, 2023 SCC OnLine Del 2424*** and it was held as follows:-

“47. “Bad faith” is not defined in the Trade Marks Act. Courts have, however, cogitated on the concept, in the context of trade mark law. The court of Appeals of England and Wales, in Harrison v. Teton Valley Trading Co. Ltd. [Harrison v. Teton Valley Trading Co. Ltd., (2004) 1 WLR 2577] , observed thus:

“29. In Surene Pty. Ltd. v. Multiple Marketing Ltd. C000479899/1, the proprietor, multiple marketing, distributed the applicant for revocation's products under the trade mark BE NATURAL. The cancellation division held that the application had been made in bad faith. It said:

10. Bad faith is a narrow legal concept in the CTMR system. Bad faith is the opposite of good faith, generally implying or involving, but not limited to, actual or constructive fraud, or a design to mislead or deceive another, or any other sinister motive. Conceptually, bad faith can be understood as a ‘dishonest intention’. This means that bad faith may be interpreted as unfair practices involving lack of any honest intention on the part of the applicant of the CTM at the time of filing.

11. Bad faith can be understood either as unfair practices involving lack of good faith on the part of the applicant towards the office at the time of filing, or unfair practices based on acts



infringing a third person's rights. There is bad faith not only in cases where the applicant intentionally submits wrong or misleading by insufficient information to the office, but also in circumstances where he intends, through registration, to lay his hands on the trade mark of a third party with whom he had contractual or pre-contractual relations.

30. *In the Senso Di Donna Trade Mark case C0006716979/1 [Senso Di Donna Trade Mark case C0006716979/1, 2001 ETMR 5] , the first cancellation division said:*

17. Bad faith is a narrow legal concept in the CTMR system. Bad faith is the opposite of good faith, generally implying or involving, but not limited to actual or constructive fraud, or a design to mislead or deceive another, or any other sinister motive. Conceptually, bad faith can be understood as a 'dishonest intention'. This means that bad faith may be interpreted as unfair practices involving lack of any honest intention on the part of the applicant of the CTM at the time of filing. Example: if it can be shown that the parties concerned had been in contact, for instance at an exhibition in the respective trade, and where then one party filed an application for a CTM consisting of the other party's brand, there would be reason to conclude bad faith. In this case, however, according to the meaning of the term 'bad faith', there is no evidence that Senso di Donna Vertriebes — GmbH was acting dishonestly or that they intended any similar act, or were involved in unfair practices or the like.

31. *To similar effect was the decision in Lancôme Parfums et Beauté and Cie's Trade Mark case [Lancôme Parfums et Beauté and Cie's Trade Mark case, 2001 ETMR 89] .*

(emphasis supplied)

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49. *In Gromax Plastics Ltd. v. Don & Low Nonwovens Ltd. [Gromax Plastics Ltd. v. Don & Low Nonwovens Ltd., 1999 RPC 367] , Lindsay, J., defined "bad faith" in the following terms:*

"Plainly it requires dishonesty, as I would hold. It includes also some dealings which fall short of the standards of acceptable commercial behaviour deserved by reasonable and experienced men in the particular area being examined."

50. *The High Court of Punjab and Haryana, in Bhupinder Singh Vohra v. State of Haryana [Bhupinder Singh Vohra v. State of Haryana, 1968 SCC OnLine P&H 74 : AIR 1968 P&H 406] , defined "bad faith" thus:*

"The term 'bad faith' is a shade milder than malice, and implies breach of faith or wilful failure to respond to one's known obligation



or duty. Bad judgment or negligence is not 'bad faith', which imports a dishonest purpose, or some moral obliquity and implies conscious doing of wrong. It is much more than a mistake of judgment and is synonymous with dishonesty."

23. In ***Kia Wang (supra)***, this Court held as follows:-

*"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."*

24. The present case is a textbook case of bad faith on the part of Respondent No. 1. Similarity in the rival marks leaves little doubt that the intention of Respondent No. 1 was dishonest and the impugned mark was adopted in bad faith to encash on the goodwill of the trademark of the Petitioner. The fact that the intention was dishonest is fortified owing to another fact that Respondent No. 1 consciously chose to keep away from these proceedings and let the matter go uncontested, perhaps realising that he had no defence. Removal of the impugned mark from the Register of Trade Marks is also essential to maintain the purity of the Register. In this context, I may refer to the judgment of the Supreme Court in ***Khoday Distilleries Limited v. Scotch Whisky Association and Others, (2008) 10 SCC 723***. Therefore, registration and continuation of the impugned mark on the Register of Trade Marks, will be contrary to Section 47(1)(b) and Section 57 as also prejudicial to public interest and purity of the Register.



2026:DHC:1576



25. Accordingly, for all the aforesaid reasons, this petition is allowed and registration of impugned mark ACCKO is hereby cancelled. Registrar of Trade Marks is directed to take steps to remove the said mark from the Register of Trade Marks and rectify the Register to maintain its purity. The needful shall be done within two months from the date of receipt of the order.

26. Petition stands disposed of in the aforesaid terms.

27. Court places on record its appreciation for the assistance rendered by Mr. Sandeep Sethi, learned Senior Counsel who was called upon to assist on certain legal issues arising in the matter. Court also appreciates the assistance rendered by counsels for the Petitioner.

JYOTI SINGH, J

FEBRUARY 10, 2026/RW