



\$~25

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

% *Date of Decision: 20th May, 2026*

+ C.O. (COMM.IPD-TM) 85/2025

DANONE ASIA PACIFIC HOLDINGS PTE. LTD.Petitioner
Through: Mr. V.S. Krishna and Mr. Ashish
Sharma, Advocates.

versus

MANJU KUMARI WIFE OF SUDHIR SUMAN & ANR.

.....Respondents

Through: Respondent No. 1 is *ex parte*.
Ms. Nidhi Raman, CGSC with Mr. Om Ram and
Ms. Nikita Singh, Advocates for R-2.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

JUDGEMENT

JYOTI SINGH, J. (ORAL)

1. This petition is filed on behalf of the Petitioner under Section 57 of the Trade Marks Act, 1999 ('1999 Act') for a direction to Respondent No. 2/Registrar of Trademarks to remove/expunge entry relating to Registration No. 4566089 for the mark 'PROTRILEX' in Class 05.
2. Petitioner is stated to be a part of Danone Group of Companies which is engaged in its business in over 120 countries and is considered one of world's foremost players in specialized nutrition market as well as in the dairy and plant-based-products market with established presence for packaged water as well. Present petition concerns the trademark PROTINEX which has been commercially used in India by Petitioner's



predecessors since 1957 and was originally registered by Dumex Private Limited and later acquired by Pfizer Group in 1972. The trademark was acquired in 2006 by Wockhardt Group and eventually came to be held by Wockhardt EU Operations (Swiss) AG.

3. It is stated in the petition that apart from common law rights in the mark PROTINEX, Petitioner has obtained registrations in several classes, details of which are furnished in paragraph 55 of the petition. Petitioner's product bearing the mark PROTINEX is a scientifically formulated protein supplement developed to address protein deficiency and is marketed in multiple variants catering to different age groups. PROTINEX has been used extensively in India since 1957 and due to long, continuous and extensive use, trademark has made a special place in the minds of members of the public, who associate the mark with the Petitioner alone. The trademark has accumulated immense goodwill and reputation across India amongst substantial segment of the society.

4. It is stated that Petitioner has been extremely vigilant in protecting its intellectual property rights over its trademark PROTINEX and this Court has granted injunctions as also decreed suits in favour of the Petitioner against third-parties infringing the same, as detailed in paragraph 68 of the petition. In the year 2020, Petitioner filed CS (COMM) 306/2020 against Alexi Pharmicia through Mr. Sudhir Kumar Suman, who is the husband of Respondent No.1 herein for permanent injunction against infringement, passing off etc. in respect of trademark PROTILEX. The suit was decreed on 07.04.2022 in terms of settlement between the parties. Another suit being CS(COMM) 905/2024 was filed seeking permanent injunction against Defendants from infringing Plaintiff's trademark and copyright, amongst



other reliefs in respect of impugned marks PROTEX/PROTRILEX, where Respondent No. 1 herein is a party Defendant. *Ex parte* ad interim injunction was granted by the Court on 16.10.2024 restraining the Defendants from using the impugned marks. In the raid conducted on 28.10.2024, Petitioner was made aware that the mark PROTRILEX was registered in favour of Respondent No. 1 under registration no. 4566089 in Class 05 for “*Medicines for Human Consumption, Medicines for veterinary purpose, Ayurvedic Medicines*” on ‘proposed to be used’ basis on 04.02.2021.

5. Learned counsel for the Petitioner submits that Respondent No. 1 has adopted the trademark PROTRILEX *mala fidely* and dishonestly only to create confusion amongst members of public that her products emanate from the Petitioner and/or have some association with it. Petitioner is the prior adopter and user of mark PROTINEX and Respondent No. 1 was completely aware of this position including the formidable goodwill and reputation of the mark and yet she proceeded to adopt the mark PROTRILEX dishonestly as also secure its registration. The mark PROTRILEX is deceptively and confusingly, visually, structurally and phonetically similar to Petitioner’s registered trademark PROTINEX, which was adopted in 1957 and has been continuously used. Nature of the rival products under the rival marks being similar and trade channels and consumer base being common, confusion among members of public and trade and potential customers is inevitable. The application for registration of the impugned mark was filed years after adoption and extensive use of Petitioner’s mark PROTINEX and the Registrar of Trademarks ought to have refused registration under Section 11(1)(b) of the 1999 Act, looking at



the similarity of the rival marks and identity/similarity of the rival goods.

6. Learned counsel further submits that Petitioner is a 'person aggrieved' within the scope and meaning of Section 57(2) of the 1999 Act since the impugned mark is deceptively similar to Petitioner's registered mark and owing to the use of impugned mark PROTRILEX, Respondent No. 1 is not only infringing Petitioner's mark but is also passing off its goods as those of the Petitioner and encashing on its reputation, causing irreparable harm. It is further pointed out that Petitioner need not labour in establishing that the impugned mark is deceptively similar to Petitioner's mark PROTINEX since this Court has decreed the suit CS (COMM) 905/2024 vide judgment dated 08.05.2026 with a clear finding that PROTRILEX is deceptively similar to PROTINEX, visually, structurally and phonetically and there is a likelihood of confusion and association in the minds of members of trade and public that mark PROTRILEX originates from or is connected with the Petitioner herein and the adoption is dishonest to derive unfair advantage from and ride upon the goodwill and reputation of the Plaintiff. Copy of the judgment is handed over in Court and taken on record.

7. Notice was issued in this petition on 26.03.2025 returnable on 15.07.2025. On the returnable date, matter was adjourned since service report *qua* Respondent No. 1 was awaited. On 08.08.2025, Court recorded that Respondent No. 1 was served through Speed Post on 08.07.2025 and through email on 30.06.2025. There was, however, no appearance on behalf of Respondent No. 1. By order dated 09.12.2025, Respondent No. 1 was set *ex parte* and no steps were taken thereafter for recall of the order or joining the proceedings. Even today, none appears on behalf of Respondent No. 1.



Accordingly, Court has proceeded to hear counsel for the Petitioner and Respondent No. 2.

8. Ms. Nidhi Raman, learned CGSC appearing for Respondent No. 2 submits that the Court may pass appropriate orders in light of judgment dated 08.05.2026, where Respondent No. 1 herein was a party Defendant.

9. Indisputably, Petitioner has obtained several registrations in the mark PROTINEX and the registrations are stated to be valid and subsisting. The mark PROTINEX was adopted by Petitioner's predecessors in 1957 and has been continuously, extensively and uninterruptedly used for protein supplements. Details of registrations as also the honors and awards earned owing to sale of products under the mark PROTINEX have been furnished in the petition. It is categorically stated in the petition that the impugned mark PROTRILEX is deceptively and confusingly similar to the mark PROTINEX and is being used dishonestly by Respondent No. 1 to establish an association with the Petitioner as also to encash on its formidable reputation garnered over several decades. Each of these averments are uncontroverted as Respondent No. 1 has consciously chosen to remain away from these proceedings despite service.

10. It is significant to note that CS (COMM) 905/2024 was filed by the Petitioner herein against several Defendants, one of which was Respondent No. 1 herein, seeking decree of permanent injunction restraining Defendants No. 1 to 3 from using the mark PROTEX and Defendants No.4 to 6 therein from using the mark PROTRILEX as being deceptively similar to Plaintiff's registered mark PROTINEX. The suit has been decreed on 08.05.2026 and some of the observations, as rightly flagged by counsel for the Petitioner are relevant for this case. Relying on the judgment in the case of *Under Armour*



Inc. v. Anish Agarwal and Another, 2025 SCC OnLine Del 3784, on initial interest confusion, this Court held that Petitioner had acquired substantial goodwill and reputation in the concerned product and that the adoption of the mark PROTRILEX was dishonest since the mark was deceptively similar to PROTINEX, structurally, visually and phonetically and there was a clear likelihood of confusion and association in the minds of members of trade and public that Defendants' product bearing impugned marks originate from or are connected with the Petitioner. In light of this finding, registration of the mark is in the teeth of Section 11(1)(b) of the 1999 Act and cannot be sustained. Counsel for Petitioner has rightly urged that since the mark PROTRILEX is deceptively similar to PROTINEX and is being infringed by Respondent No. 1 as also that she is passing off her goods as those of the Petitioner, there is no gainsaying that Petitioner is the 'person aggrieved' under Section 57(2) of the 1999 Act.

11. Accordingly, this petition is allowed, cancelling the registration granted in favour of Respondent No. 1 for the mark PROTRILEX under registration no. 4566089 in Class 05. Respondent No. 2 is directed to rectify the Register of Trade Marks within four weeks from today to maintain its purity.

12. Petition is disposed of in the aforesaid terms.

JYOTI SINGH, J

MAY 20, 2026

S.Sharma