



2026:DHC:857



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% *Date of Decision: 22nd January, 2026*

+ C.O. (COMM.IPD-TM) 258/2024

WILHELMSSEN SHIPS SERVICE ASPetitioner

Through: Mr. Peeyoosh Kalra, Mr. Gaurav Mukherjee and Ms. Saumya Tripathi, Advocates.

versus

VISHAL ANAND TRADING AS SBA & ANR.Respondents

Through: Respondent No. 1 is *ex parte*.

Ms. Nidhi Raman, CGSC with Mr. Om Ram and Mr. Arnav Mittal, Advocates for R-2.

CORAM:**HON'BLE MS. JUSTICE JYOTI SINGH****JUDGEMENT****JYOTI SINGH, J. (ORAL)**

1. This rectification petition has been filed on behalf of the Petitioner under Sections 47 and 57 of the Trade Marks Act, 1999 ('1999 Act') for removal of entry in respect of trademark SBA under Registration No.3473533 in Class 22 in the name of Respondent No.1 from the Register of Trade Marks as also for costs of the proceedings.

2. To the extent necessary, facts pleaded in the petition are that Petitioner is one of the largest and most reputed global maritime industry groups engaged in providing high quality sea transportation, integrated logistics solutions, ship agency and bunker services, marine products, cruise and passenger vessel management and also insurance requirements to meet day-to-day operational needs in maritime industry. Petitioner has a distinguished history dating back to over 150 years when it was founded by



2026:DHC:857



one Mr. Morten Wilhelm Wilhelmsen in 1861. Petitioner began as a small business venture of ship carriers and has eventually evolved into a leading global maritime industry group with a staggering global presence by way of 241 offices in 57 countries, 11,340 seafarers and 5,316 land-based employees at the end of 2023.

3. It is averred in the petition that Petitioner's presence in India dates back to 1960 with incorporation of its subsidiary Wilhelmsen Port Services India Private Limited. Petitioner has stock locations/warehouses across Indian coastline which serve global and domestic customer vessels offering an extensive range of products such as marine chemicals, gases and refrigerants, welding equipment and accessories, ropes etc. Petitioner claims to have one of the largest and strongest portfolios of brands such as AQUATUFF, ALKLEEN, COOLTREAT, etc. used in relation to marine solutions and one such quality product is the safest conventional mooring ropes under its flagship brand SBA.

4. It is stated that Petitioner's product under the mark SBA comprise of energy absorbing core sitting within the rope which absorbs the snap back forces if the load bearing construction breaks and the product mitigates risks to personnel during mooring operations, creating a safer mooring environment. Petitioner's products under the trademark SBA are a result of laborious process of trial and error with 25 different variations of the system being put through their paces in more than 120 different tests. The products have attained extensive goodwill and reputation globally including India and number of awards/accolades have been received by the Petitioner such as International Safety@Sea Awards, 2020 in Singapore, Maritime Safety Award from the Royal Institute of Naval Architects and Lloyd's Register for its Smart Ropes system, 2021.



5. It is stated that the trademark SBA is registered in numerous jurisdictions of the world including India and some applications are pending. The earliest registration was obtained in Norway and dates back to 2019 in Classes 06, 17 and 22. Information about the Petitioner and its products under trademark SBA is disseminated among the trade and public through its website www.wilhelmsen.com and is also available and frequently accessed through search engines such as www.google.com, www.yahoo.com, www.msn.com. Petitioner's popularity and goodwill is evident from global sales figures of its products under trademark SBA for the period 2018 to 2023 which reflect net sales of USD 0.0916 (in million) in 2018 to USD 21.84 (in million) in 2023. Yearwise sales turnover in India has also significantly increased from USD 0.035 (in million) in 2019 to USD 1.649 (in million) in 2023.

6. It is stated that on 19.06.2020, Petitioner filed an application bearing No.1563408 with WIPO under the Madrid Protocol designating various countries including India, for registration of its mark SBA in Class 22 covering ropes, string, nets, tents, etc. On 08.01.2021, Petitioner was apprised of provisional refusal issued by the Registrar of Trade Marks in India under Section 11(1) of the 1999 Act on the ground that SBA was identical with or similar to the registered trademark 'SBA' of Respondent No.1 under Registration No.3473533 dated 04.02.2017 in Class 22, filed on 'proposed to be used' basis. Aggrieved, Petitioner conducted investigation into the business activities of Respondent No.1 and found that Respondent No.1 is engaged in the business of marketing and online retailing of various mobile accessories and electronic products, viz. mobile chargers, vaporizers, cables, power adapters, etc. and at no point in time had used the mark SBA upon and in relation to goods falling in Class 22 including those under the



impugned mark i.e. *‘Ropes, string, nets, tents, awnings, tarpaulins, sails, sacks and bags (not included in other classes) padding and stuffing materials(except of rubber or plastics); raw fibrous textile materials, sacks and bags.’*

7. It is stated that Petitioner’s enquiries also revealed that Respondent No.1’s registration for the mark SBA in Class 09 covers headphones, mobile accessories etc. and in Class 18 it covers leather and imitations of leather and goods made of these materials, animal skins, hides etc. Petitioner made multiple attempts before the Trade Marks Registry to explain the ‘non-user’ of trademark SBA by Respondent No.1 in relation to goods falling in Class 22 as also the international registrations of Petitioner’s mark SBA, its goodwill, reputation and prior adoption and user of the trademark in respect of the goods falling in Class 22, but to no avail.

8. Mr. Peeyoosh Kalra, learned counsel for the Petitioner submits that Respondent No.1 was served on 24.12.2024 but there was no appearance on 20.02.2025 and the matter was placed before Court by the learned Joint Registrar. On 21.03.2025 counsel for Respondent No.1 submitted before the Court that Respondent No.1 was willing to settle the matter with the Petitioner, however, on 02.09.2025 the stand of the said Respondent was that the settlement talks had failed, which was refuted by counsel for the Petitioner since no one had approached with any proposal. Respondent No.1 was granted final opportunity to file its reply, failing which the right would stand closed and the matter was listed for final arguments on 26.11.2025, on which date there was no representation on behalf of Respondent No.1 and Respondent No.1 was set *ex parte*. It is urged that it is a settled law that where no reply is filed and hence, there is no denial of the averments in the petition, the same shall be deemed to be admitted and therefore, the contents



of the present petition are deemed to be admitted in favour of the Petitioner. In ***DORCO Co. Ltd. v. Durga Enterprises and Another, 2023 SCC OnLine Del 1484***, this Court held that onus of proving ‘non-user’ is on the person who pleads the same, however, when the applicant pleads non-user, Respondent must specifically deny it and in the absence of specific denial, allegation of non-user stands admitted.

9. It is further argued that owing to extensive, continuous and uninterrupted long user of the trademark SBA, Petitioner is the prior adopter and user of the trademark and hence possesses superior rights as opposed to Respondent No.1, notwithstanding its registration for the impugned mark. Petitioner has several worldwide registrations in the trademark SBA and has built an extensive and formidable reputation and goodwill under the said mark. Press releases, copies of which have been placed on record underscores the importance of the latest rope technology by the Petitioner which has taken the industry to new heights and a safer era of vessel mooring.

10. It is argued that the impugned mark is liable to be expunged from the register under Section 47(1)(b) of the 1999 Act since investigations revealed that Respondent No.1 has never used the mark for the goods covered under Class 22 for which it is registered, right from the time registration was granted on 04.02.2017. Respondent No.1 has no *bona fide* intention to use the mark and therefore, the mark is wrongly remaining on the Register for over 8 years. Petitioner has applied for registration of the trademark SBA in Class 22 on ‘proposed to be used’ basis and registration of the impugned mark is the sole reason for provisional refusal. Therefore, Petitioner is a ‘person aggrieved’ within the meaning of Section 47(1)(b) of the 1999 Act, entitled to file the rectification petition. Reliance is placed by learned



counsel on the judgments of this Court in *Russell Corp Australia Pty. Limited v. Ashok Mahajan and Another*, 2023 SCC OnLine Del 4796; *Shell Transource Limited v. Shell International Petroleum Company Ltd.*, 2012 SCC OnLine IPAB 29; and *Kiranakart Technologies Private Limited v. Mohammad Arshad and Another*, 2025 SCC OnLine Del 1401, to buttress the plea that a registered mark is liable to be taken off of the Register of Trade Marks if up to a date three months prior to the date of filing of the rectification petition, the same is not used in relation to those goods/services in respect of which it is registered for a continuous period of at least five years from the date on which the mark is entered in the Register.

11. I have heard learned counsel for the Petitioner and perused the documents on record.

12. Admittedly, Respondent No.1 has not filed its reply to the present petition and was set *ex parte*. In the absence of any reply, the averments in the petition are deemed to be admitted. In *DORCO (supra)*, while dealing with the rectification petition, this Court referred to the judgment in *Shell Transource (supra)* as follows and reiterated this legal position:-

“19. In the judgment in Shell Transource Limited v. Shell International Petroleum Company Ltd., 2012 SCC OnLine IPAB 29, it was observed by the IPAB that the onus of proving “non-user” is on the person who pleads the same. However, when the applicant pleads “non-user”, the respondent must specifically deny it. Therefore, in the absence of a specific denial, it was held that the allegations of “non-user” stood admitted.”

13. The same view has been taken by this Court in *Kiranakart (supra)*. It is thus settled that if the Petitioner pleads ‘non-user’, the onus of proving is on the Petitioner. However, if the Respondent does not specifically deny the pleading, the allegation of ‘non-user’ will stand admitted and the impugned trademark will be liable to be removed from the Register of Trade Marks on



account of ‘non-user’ as contemplated under Section 47(1)(b) of the 1999 Act.

14. In *Russell (supra)* and *Kiranakart (supra)*, this Court also took the view that if investigation by an independent investigator reveals that impugned mark was not used for the goods or services in the class for which it is registered and a categorical stand to this effect is taken in the petition, which is not refuted or denied by the Respondent, the impugned mark is liable to be removed owing to ‘non-use’. In this context, I may refer to the following passages from the judgment in *Kiranakart (supra)*:-

“12. A Coordinate Bench of this Court, in Russell Corp Australia Pty Ltd. v. Shri. Ashok Mahajan, (2023) 4 HCC (Del) 301, had observed as follows:

“22. A perusal of the impugned mark in the present case would show that the application for the said impugned mark was filed on 27th February, 2007 and the same was granted on 18th March, 2010. The mark relates to sporting articles. The affidavit of the investigator would show that the clear information received from the Respondent was that the mark ‘SHERRIN’ was discontinued since the year 2010. The present petition was filed in the year 2020 before the IPAB. This affidavit filed by the investigator as also the petition has gone unrebutted by the Respondent. Thus, the requirement of the period of five years & three months stands satisfied.

...

24. ...Under such circumstances, in the absence of denial by the Respondent, the Court has no reason to disbelieve the pleadings as also the investigator's affidavit on record. The Respondent has chosen not to appear in the matter despite being served. Specific court notice was issued even to the lawyer/trademark agent of the Respondent.

[Emphasis supplied]

13. The aforesaid observations are fully applicable in the present case. The petitioner, in the present case, has filed an affidavit of the authorized representative of an independent investigating agency to support its averments with regard to non-use of the impugned mark by the respondent no. 1 for the aforesaid services in class 35 for nearly 8 years up to the date of filing of the present petition.



14. A perusal of Section 47(1)(b) of the Act would reveal that a registered trade mark is liable to be taken off the Register of Trade Marks if up to a date three months prior to the date of filing of the rectification petition, the same is not used in relation to those goods/services in respect of which it is registered for a continuous period of at least five years from the date on which the mark is entered in the Register of Trade Marks.

15. While dealing with the issue of non-use of a registered mark by the registered proprietor, this Court, in Russell Corp (supra), had held as follows:

25. In the context of non-use, it is the settled legal position that use has to be genuine use in the relevant class of goods and services. Unless the non use is explained by way of special circumstances, the mark would be liable to be removed for non-use. In the present case, no special circumstances have been cited and, in these facts, the mark would be liable to be removed on the ground of non-use itself.”

[Emphasis supplied]

16. The petitioner has continuously and extensively been using the ZEPTO marks since July 2021 in India and, by virtue of their widespread advertisement and promotion, has acquired immense goodwill and reputation thereunder. On the other hand, the respondent no. 1 has not made any use the impugned mark in relation to the aforesaid services in class 35. Despite the aforesaid, the respondent no. 1 opposed the petitioner's application for the mark ZEPTO in class 35. Considering the aforesaid, I am of the view that the petitioner is aggrieved by the continued subsistence of the impugned mark on the Register of Trade Marks.

17. In view of the above, the impugned mark is liable to be removed from the Register of Trade Marks under the provisions of Section 47(1)(b) of the Act.

18. Accordingly, the present petition is allowed and the Trade Marks Registry is directed to remove the impugned mark ‘ZEPTO’ bearing the no. 2773519 in class 35 in the name of the respondent no. 1 from the Register of Trade Marks.”

15. In my view, the aforesaid judgments squarely apply to the instant case. In the present case, Petitioner filed a detailed response before the Registrar of Trade Marks, Mumbai in response to provisional refusal bringing forth the result of investigation which revealed ‘non-user’ of the mark SBA for goods in Class 22 by Respondent No.1, which is filed



along with the petition. In the pleadings also, a categorical stand is taken that investigation revealed that Respondent No.1 has at no point in time used the mark SBA in relation to goods falling under Class 22. *Sans* any reply by Respondent No.1 and consequently, absence of specific denial to this averment and/or documents, this position is unquestionable.

16. Section 47(1)(b) of the 1999 Act provides that a registered trademark is liable to be taken off of the Register of Trade Marks if up to a date three months prior to the date of filing of the rectification petition, the same is not used in relation to those goods or services in respect of which it is registered for a continuous period of at least five years from the date on which the mark is entered in the Register. Petitioner has continuously and extensively used the SBA mark and has registrations in various classes. Over the years, Petitioner has built a formidable goodwill and reputation which is evident from the global sales figures and many of its products are extensively sold the world over. Petitioner applied for registration of mark SBA in Class 22 covering ropes etc. on 19.06.2022 but owing to registration of the impugned mark SBA, its registration was provisionally refused by the Registrar of Trade Marks under Section 11(1) of the 1999 Act citing the impugned mark as being identical and registered in Class 22. The application has been filed by the Petitioner on 'proposed to be used' basis and there is no doubt that Petitioner is a 'person aggrieved' by the continued subsistence of the impugned mark on the Register.

17. In view of the above, the impugned mark is liable to be removed. Accordingly, present petition is allowed and Trade Marks Registry is directed to remove the impugned mark SBA under Registration No.3473533 in Class 22 registered in the name of Respondent No.1 from the Register of Trade Marks and rectify the Register to maintain its purity. The



2026:DHC:857



needful shall be done within two months from the date of receipt of this order.

18. Petition stands disposed of in the aforesaid terms.

JYOTI SINGH, J

JANUARY 22, 2026

S.Sharma