

HIGH COURT OF DELHI
Bench: Justice Prathiba M. Singh
Date of Decision: 11 December, 2023

C.O. (COMM.IPD-TM) 364/2021

GLEN APPLIANCES PVT. LTD. Petitioner

Versus

KUNAL SINGHM, B.I.D. AND ANR. Respondents

AND

C.O. (COMM.IPD-TM) 169/2022

GLEN APPLIANCES PVT LTD Petitioner

versus

KUNAL SINGH AND ANR. Respondents

Legislation:

Section 11, 9(2), 57 ,47 of the Trademarks Act, 1999

Subject: Trademark Cancellation and Trademark Infringement

Headnotes:

Trademark Cancellation - Petitioner seeking cancellation of the mark 'GLEE' - Registration numbers 3675390 and 3770965 under classes 11 and 7 - Petitioner engaged in manufacturing electrical and non-electrical appliances using the mark 'GLEN' - Mark 'GLEE' found deceptively similar to 'GLEN' - Commercial Court's judgment confirming confusion between the marks - Operative portion of Commercial Court's order decreed in favor of the Petitioner - Registration of the mark 'GLEE' deemed violative of Section 11 of the Trademarks Act, 1999 - Cancellation of the mark 'GLEE' ordered.

Trademark Infringement - Respondent adopting deceptively similar trademark 'GLEE' for identical goods - Use of blue logo color and tagline modification observed - Registration found devoid of distinctive character and likely to cause confusion - Mark 'GLEE' liable to be cancelled under Section 11(2) and Section 9(2) of the Trademarks Act - Trademark registrations of the Respondent ordered to be cancelled.

Referred Cases:

Blue Heaven Cosmetics Private Limited v. Deepak Arora and Another, 2022:DHC:1279

Mankind Pharma Ltd. v. Arvind Kumar Trading and Anr., 2023:DHC:2700
CS(COMM) 403/2019 titled Glen Appliances Pvt. Ltd. v. Rudra Marketing and Ors.

Representing Advocates:

Petitioner: Mr. Arun Kumar Jha Adv.

Respondents: None

CORAM:

JUSTICE PRATHIBA M. SINGH

ORDER

1. This hearing has been done through hybrid mode.
2. The present two petitions have been filed by Glen Appliances Pvt. Ltd. seeking cancellation of the mark 'GLEE' bearing registration nos. 3675390 and 3770965 under classes 11 and 7. The mark 'GLEE' is registered in favour of the Respondent No. 1- Kunal Singh, used in respect of hand mixers, electric kitchen mixers, food mixers, grinders *etc.* The journal extracts of the said marks are set out below:

Trade Marks Journal No: 1828 , 18/12/2017 Class 11



GLEE
Improving Life

3675390 11/11/2017

KUNAL SINGH
B.I.D., BLOCK-B, SLUM FLAT, AVANTIKA ENCLAVE, SECTOR-2, ROHINI, DELHI- 110085.
INDIVIDUAL

Address for service in India/Attorney address:

AMANDEEP SINGH
GOEL NIWAS J-62, STREET NO.-4, LAXMI NAGAR, NEW DELHI-110092.

Proposed to be Used

DELHI

Stoves, Gas stoves, Chimney, Chimneys for oil lamps, Cookers, Induction cookers, Apparatus for lighting, heating, steam generating, cooking, refrigerating, drying, ventilating, water supply and sanitary purposes.

Trade Marks Journal No: 1843 , 02/04/2018 Class 7



GLEE
Improving Life

3770965 06/03/2018

KUNAL SINGH
B.I.D., BLOCK-B, SLUM FLAT, AVANTIKA ENCLAVE, SECTOR-2, ROHINI, DELHI- 110085.
INDIVIDUAL

Address for service in India/Attorney address:

AMANDEEP SINGH
GOEL NIWAS J-62, STREET NO.-4, LAXMI NAGAR, NEW DELHI-110092.

Proposed to be Used

DELHI

Hand mixers, Electric kitchen mixers, Food mixers, electric, Electric kitchen grinders, Grinders [machines], Food grinders, electric.

3. The Petitioner is engaged in the business of manufacturing and selling of electrical and non-electrical appliances including chimney hoods, cooktops, kitchenware *etc.* It is stated that the mark 'GLEN' has been adopted by the Petitioner since the year 1998. The mark is registered by the Petitioner in various classes *i.e.*, 7,9, 11 and 21, the same are set out below:

Trademark	Registration/application No	CI	Dated	TMJ
GELN	1219990	7	04/08/2003	1327
GLEN Live Better !	3528835	7	19/04/2017	1829
GLEN	1324443	9	07/12/2004	1328
GLEN Live Better !	3528837	9	19/04/2017	
GLEN	1219989	11	04/08/2003	1327
GLEN	1334884	11	28/01/2005	1331
GLEN	1334885	11	28/01/2005	1331
GLEN Live Better !	3528836	11	19/04/2017	1801
GLEN Live Better !	3528838	21	19/04/2017	1829

4. The case of the Petitioner is that the mark 'GLEE' of the Respondents is deceptively similar to that of the Petitioner's mark 'GLEN' for similar goods. A comparative table of the Petitioner's and Respondents mark has been set out below:

Petitioner's Mark	Respondents Mark
	

5. None has appeared for the Respondents. Ld. Counsel for the Petitioner brings to the notice of the Court the order dated 1st November, 2023 of the Commercial Court, South, Saket Court passed in **CS(COMM) 403/2019** titled **Glen Appliances Pvt. Ltd. v. Rudra Marketing and Ors.** against the Defendants/Respondent herein:

Defendants in CS(COMM) 403/2019	Respondents in the present Petition CO. (COMM.IPD-TM) 364/2021 & C.O. (COMM.IPD-TM) 169/2022
Rudra Marketing- Defendant No.1	KUNAL SINGHM, BID- Respondent No. 1
Kunal Enterprises- Defendant No.2	The Registrar of Trade
	Marks- Respondent No.2
SSS Gift Centre- Defendant No.3	—

6. A perusal of the said judgment would show that the Commercial Court has come to a conclusion that there is clear confusion between the Plaintiff's mark 'GLEN' and Respondent No.1's mark 'GLEE' and that the mark is deceptively similar to that of the Petitioner's mark . The findings of the Court are set out below:

"11. The court has perused the documents filed with a plaint to decide as to whether the plaintiff is entitled to the decree prayed for in the suit. The plaintiff has placed on record original applications showing registration of the plaintiff Trademark "Glen".

12. As per the documents, the Trademark Glen Appliances Pvt. Ltd. was registered on 04.08.2003. The documents further demonstrate that the plaintiff has got registration of its Trademark for the electronic apparatus, electric iron, switchgears, geyser cum processor, food processor, etc.

13. The plaintiff has also placed on record the documents showing the use of similar trademark by the defendants. These documents are the invoices raised by defendant no.1 for Glee Mixer, Glee Gas Store, Glee Burner, etc.

14. Thus, the documents placed on record by the plaintiff prove that the plaintiff is the registered owner of the Trademark Glen appliances and defendants are using a deceptively similar trademark in relation to the similar goods/products. The customers of the plaintiff and defendants belonged to the same class. Consumer of ordinary prudence is bound to be misled by the trademark of the defendants believing it to be the trademark of the plaintiff. Thus, the defendants are not only violating the rights of the plaintiff in trademark Glen but also are also passing off their goods as those of the plaintiff."

7. In the above order the Court notices that the Respondent No.1 has obtained registration of the mark 'GLEE' for similar products *i.e.* household appliances. The suit has also been decreed for the sum of Rs.5 lakhs and the costs have also been awarded. The operative portion of the said order reads as under:

"16. Accordingly, the suit of the plaintiff is decreed in terms of the prayer clause (a), clause (b), clause (c), clause (d) & clause (f) of the plaint. Cost of the suit are also awarded to the plaintiff. Decree sheet be prepared accordingly."

8. The finding of the Commercial Court would bind the parties. In any event, the registration of the mark 'GLEE' would be violative of Section 11 of the Trademarks Act, 1999.

9. In the case of ***Blue Heaven Cosmetics Private Limited v. Deepak Arora and Another, 2022:DHC:1279*** this Court held that as per section 9(2)(a) and section 11 (2) of the Trade Marks Act, 1999 if a registration of a mark is devoid of distinctive character and is similar or identical to an earlier trademark which causes confusion to the public, the same does not deserve to be registered. The relevant extract of the same is set out below:

27. Thus, as per the settled law, even the appropriation of the word 'Heaven' by Respondent No.1, which is the dominant and prominent feature of the Petitioner's mark, can constitute infringement of Petitioner's rights in the mark "BLUE HEAVEN". Though the words

'Blue' and 'Heaven' are dictionary words, the adoption of both the words in combination and otherwise is a completely arbitrary adoption in respect of cosmetics.

The mark 'BLUE HEAVEN' is thus an inherently distinctive mark. Moreover, the said issue is no longer needed to be adjudicated separately in the present case as there is a clear admission by the Respondent No.1, in the application for rectification of the Petitioner's mark, as to the deceptive similarity of the marks.

*28. In this Court's opinion, registration of the mark "MARC HEAVEN" would be violative of Section 9(1)(a) of the Act, as the same would be devoid of distinctive character inasmuch as it would not distinguish Respondent No.1's products from the Petitioner's products. **Furthermore, as per Section 9(2) of the Act, a mark is not liable to be registered if it is of such a nature so as to deceive the public or causes confusion. Section 11(2) of the Act makes it clear that, if a trademark is identical with or similar to an earlier trademark, the same does not deserve to be registered. In view of these grounds of refusal, which are both absolute grounds and relative grounds under Sections 9 and 11 of the Act, this Court has no hesitation in holding that Respondent No.1's mark is wrongly entered in the register and wrongly remains in the register.***

*29. The trademark " **MARC HEAVEN** " bearing no.4111088 is accordingly directed to be cancelled/removed and*

the register is liable to be rectified by the removing/ expunging of the said mark.

10. The Respondent No.1 in the present case has adopted the impugned mark 'GLEE' by appropriating the blue logo colour as also the tagline 'Live Better' by modifying it to 'Improving Life' of the Petitioners mark. The mark is also being used for similar nature of goods. As per the case of ***Mankind Pharma Ltd. v. Arvind Kumar Trading and Anr., 2023:DHC:2700*** it was observed that adoption of deceptively similar mark for identical goods is done with the sole purpose of deceiving unwary customers and to ride upon the goodwill and reputation of the Petitioner's mark. The relevant observation of the Court is as under:

*15. The adoption and the use of the impugned trademark "NIKIND" by the respondent no.1, which is very similar to the trademark "NIMEKIND" of the petitioner, is likely to create confusion in the market. Not only is the trademark of the respondent no.1 confusingly/deceptively similar to the petitioner's prior adopted, registered, trademark "NIMEKIND" or family of marks of the petitioner but the nature of the goods of the petitioner and the respondent no.1 are identical i.e., medicines for human purpose falling in Class 5. It is clear that the adoption of the said mark by the respondent no.1 is with the sole purpose of trading upon the goodwill and reputation of the petitioner. **The mark of the respondent no.1 is also likely to deceive unwary consumers of its association with the petitioner. Therefore, the aforesaid registration in favour of the respondent no.1 could not have been granted in terms of Section 11(1) and 11(2) of the Act and is liable to be cancelled under Section 57 of the Act.***

16. Respondent has failed to rebut the contention of the petitioner that the impugned trademark was registered without any bonafide intention on the part of the registered proprietor to use the same in relation to the products covered by the registration and there has been no use of the impugned trademark in relation to the products upto a date of three months before the date of the rectification application. Hence, the mark is liable to be removed in terms of Section 47(1)(a) of the Act."

11. Thus in terms of the judgments extracted above it is clear that in the present case Respondent No. 1 is trying to ride on the goodwill of the Petitioner by adopting a deceptively similar trademark for identical nature of goods.
12. In this Court's opinion the registration of the mark 'GLEE' by the Respondent No.1, is devoid of any distinctive character and the mark would not distinguish the Respondent No.1's products from the Petitioner's product which is likely to cause passing off, as the consumers of the products are also same. Furthermore, as per section 11 (2) the mark is not liable to be registered if a trademark is identical and similar to an earlier trademark. Section 9 (2) of the

Act also make it clear that if the mark deceives or creates confusion to the public, the same shall be cancelled.

13. Considering the facts of these two cases, the trade mark registrations of the Respondent are liable to be cancelled. Ordered accordingly.
14. Let the same be reflected on the website of the IP office.
15. The Registry is directed to communicate a copy of the present order to the office of the Controller General of Patents, Designs & Trademarks of India on llc-ipo@gov.in for compliance.
16. The petitions are disposed of.

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*Disclaimer: Always compare with the original copy of judgment from the official website.