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

+ C.O.(COMM.IPD-CR) 750/2022

ANIL KUMAR GERA TRADING AS ALKA FOOD INDUSTRIES

..... Petitioner

Through: Mr. Kunal Khanna & Mr. Vridhi
Pashricha, Advocates.

versus

**MR RAMESH CHANDER TRADING AS ANIL FOOD
INDUSTRIES**

..... Respondent

Through: Mr. Shailen Bhatia, Mr. Sheril Bhatia,
Mr. Amit Jain, Ms. Sreelakshmi and
Ms. Shruti Venugopal, Advocates.
Mr. Harish Vaidyanathan Shankar,
CGSC with Mr. Srish Kumar Mishra,
Mr. Alexander Mathai Paikaday, Mr.
Lakshay Gunawat and Mr. Krishnan
V., Advocates.

+ C.O.(COMM.IPD-CR) 800/2022

ANIL KUMAR GERA TRADING AS ALKA FOOD INDUSTRIES

..... Petitioner

Through: Mr. Kunal Khanna & Mr. Vridhi
Pashricha, Advocates.

versus

**MR RAMESH CHANDER TRADING AS ANIL FOOD
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..... Respondent

Through: Mr. Shailen Bhatia, Mr. Sheril Bhatia,
Mr. Amit Jain, Ms. Sreelakshmi and
Ms. Shruti Venugopal, Advocates.
Mr. Harish Vaidyanathan Shankar,



CGSC with Mr. Srish Kumar Mishra,
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Lakshay Gunawat and Mr. Krishnan
V., Advocates.

+ TR.P.(C.) 176/2023

M/S ANIL FOOD INDUSTRIES

..... Petitioner

Through: Mr. Shailen Bhatia, Mr. Amit Jain,
Ms. Sreelakshmi and Ms. Shruti
Venugopal, Advocates.



2.1. The Petitioner, Mr. Anil Kumar Gera, trading as Alka Food Industries, claims to be the original creator of the artistic work in the packaging label/carton titled TINY MINY , designed by Ankur Advertising and Marketing. The said artwork is depicted as follows:



2.2. grievance arises on account of the copyright registrations No. A-65448/2003 dated 20th October, 2003, and No. A-57086/1999 dated 8th December, 1999, which are depicted as follows³:



³ Black-and-white label is placed on record, while colour copy was handed over across the board in Court.





Rule 70(9) of the Copyright Rules, 2013

70. Application for Registration of Copyright. —

..XX.. ..XX.. ..XX..

(9) The person applying for registration shall give notice of his application to every person who claims or has any interest in the subject-matter of the copyright or disputes the rights of the applicant to it.”

3. The fact that no notice was issued to the Petitioner at the time of the scrutiny and registration of the Impugned Copyrights is not in dispute. Nonetheless, Mr. Shailen Bhatia, counsel for the Respondent, has advanced the following submissions:

3.1. There was no requirement for the Respondent to give notice to the Petitioner at the time of securing the copyright registrations, as the Petitioner

3.2. The design of the label, which is the subject matter of the Impugned Copyrights, has also been registered as a trademark in favour of the Respondent, under No. 557320 in Class 30. Although the Petitioner had filed an opposition to the said trademark application, however, the same was rejected through a speaking order dated 28th November, 2003 passed by the Assistant Registrar of Trademark, which has not been challenged by the Petitioner. Therefore, the said decision has attained finality and the findings rendered therein would apply as *res judicata*, meaning that there was no requirement for the Respondent to have served the Petitioner under Rule 16(3) of the 1958 Rules. Consequently, proprietorship over the Impugned Copyrights is unimpeachable and the entire petition is misconceived.

3.3. The trademark



applications bearing Nos. 539636 in Class 30 and 540086 in Class 5 for registration of the trademark CHATMOLA .

3.4. Without prejudice to the aforementioned contentions, Mr. Bhatia also proposed a resolution to the present matter. He submits that under Section 48 of the Copyright Act, the Register of Copyrights serves only as *prima facie* evidence of the particulars entered in it. Therefore, instead of cancelling the registration of the Impugned Copyrights, the Court could clarify that the Respondent would not rely upon the same for the purpose of deciding the dispute between the parties in the pending lawsuit. In that case, the parties are contesting their claims regarding the trademark CHATMOLA and other issues that also touch upon rights in the impugned label. Mr. Bhatia contends that, in such an event, the Petitioner would not be prejudiced, and if the civil court ultimately rules in favour of the Respondent by upholding their rights in the impugned label, the Respondent would not need to undergo the entire process of securing copyright registration all over again. On the other hand, if the civil court rules against the Respondent, their registrations of the Impugned Copyrights would automatically stand cancelled.

4. The Court has considered and deliberated upon the above contentions. First and foremost, we must take note of the scope of the ongoing lawsuit between the parties. The Petitioner has instituted the said lawsuit [Suit No. 186/2006/1992⁵], alleging infringement and passing off. From the orders presented to the Court, it is clear that the matter is hotly contested, with multiple orders framing issues. The relevant orders and framed issues are as

⁵ The said suit has been re-numbered as TM 992/2016. It is also noted that the counter-claim filed by the Respondent (Defendant in the suit) has been numbered as TM 924/2016.



follows:

Order dated 29th September, 2004

Issues framed:

- “1. Whether the plaintiff is owner of the trademark ‘Chatmola’ having priority of use? OPP.
2. Whether the defendants are passing of their goods as that of the plaintiff? OPP.
3. Whether the plaintiffs are entitled to the relief of injunction and rendition of account? OPP
4. Whether the defendants are entitled to rendition of accounts as claimed in their counter claim? OPD
5. Relief.”

Order dated 8th February, 2005

Issues framed:

- “1. Whether the plaintiff is the owner of the design and has copyrights in the artistic cartoon Tini Mini/Tiny Miny since the year 1988? OPP**

Order dated 28th April, 2006

Issues framed:

- “1. Whether the plaintiff is owner of the trademark “CHATMOLA” having priority of use? OPP.
2. Whether the defendants are passing of their goods as that of the plaintiff? OPP
3. Whether the plaintiffs are entitled to the relief of Injunction and Rendition of Accounts? OPP
4. Whether defendants are entitled to relief of Injunction and Rendition of Accounts as claimed in the counter claim? OPD
5. Whether the plaintiff is the owner of the design and has copyrights in the artistic cartoon Tini Mini/Tiny Miny since the year 1988? OPP
6. Whether the defendant is the first and prior adopter/user of the trademark “CHATMOLA” and other trademarks such as “CHATBOLS”? OPD
7. Whether the plaintiff is passing off their goods as that of defendant? OPD
8. **Whether the defendant is holding rights in the label consisting of devise of baby elephant and other distinctive features? OPD**
9. Relief.”



Order dated 20th April, 2012

Issues framed:

“1. Whether the defendant is the registered Proprietor of the trade mark “CHATMOLA” under No. 557320 in class 30 and the registration is valid and subsisting? OPD”

5. From the afore-noted issues, it is evident that the civil court is currently adjudicating the claims of both parties concerning the copyright in the artistic work/design of their respective labels, specifically the
TINY MINY CHATMOLA

label, as extracted above. Both parties have been directed to prove their respective rights in the designs. A comparative analysis of the labels reveals

TINY MINY CHATMOLA
labels feature a cartoon baby elephant illustration with a raised arm, set against a yellow and red background, adorned with bubble shapes depicting perhaps *goli* (pill). The colour schemes of the two labels are nearly identical, consisting of a yellow upper half and a red lower half. Additionally, both labels employ stylized lettering for their product names, which include the device of a baby elephant and other distinctive features.

6. In light of the above, the Court finds merit in the contention of Mr. Kunal Khanna, counsel for Petitioner, regarding non-compliance with Rule 16(3) of the 1958 Rules. The lawsuit was filed in 1992, wherein the Respondent (Defendant in the suit) claimed copyright over the artistic work which, on account of the aforementioned similarities, was in direct challenge to
(Plaintiff in the suit) label. Despite this ongoing litigation, the Respondent proceeded to secure registration of the Impugned Copyrights without notifying the Petitioner.



7.

does not persuade the Court. Rule 16(3) of the 1958 Rules mandates that any person applying for copyright registration must give notice to “*every person who claims or has any interest in the subject matter of the copyright or disputes the rights of the applicant.*”

interpretation is accepted for the sake of arguments that the applicant cannot be expected to identify every person who may have an interest in the subject matter the disjunctive wording of the provision, particularly the

or disputes the rights of the applicant , clearly encompasses the Petitioner in this case. The Respondent was fully aware that the Petitioner was disputing their claim over the artistic work in question due to the pending lawsuit. Therefore, the failure to provide notice to the Petitioner, who was

violation of Rule 16(3) of the 1958 Rules. Such non-compliance renders the registration of the Impugned Copyrights invalid.

8. Both parties were locked in a civil suit over the same labels, making it evident that the Petitioner fell within the category of individuals disputing the rights of the Respondent in the label which is subject matter of the Impugned Copyrights. Consequently, the failure to notify the Plaintiff constitutes a clear violation of Rule 16(3). Moreover, this non-compliance with Rule 16(3) undermines the procedural integrity of the registration process, rendering the registration of the Impugned Copyrights procedurally

only contravenes the R

contest the registration on valid grounds. Therefore, this Court concludes that the registration process was procedurally flawed due to non-compliance



disregarded.

9.

treated as *res judicata* in this matter. However, this Court finds this ground of challenge to be devoid of merit. The concepts of copyright and trademark protection are distinct, each governed by its own set of principles and legal frameworks. Trademark registration primarily serves to distinguish the source of goods or services, while copyright protection is intended to safeguard the originality of artistic or literary creations. Therefore, the recognition of a trademark does not automatically imply copyright ownership, particularly when copyright ownership is directly contested in

registration does not absolve them of the obligation to notify interested parties under Rule 16(3) of the 1958 Rules.

10. Moreover, this Court is presently not tasked with determining who is the original creator of the artistic work. Instead, the focus of this case is on whether there was compliance with Rule 16(3), which requires notification to any person claiming or disputing rights to the subject matter of the

who had already filed a civil suit contesting the same artistic work, constitutes a clear procedural violation. Consequently, the impugned registration process was fundamentally flawed due to non-compliance with the Copyright Rules, and Mr. Bhatia's argument of *res judicata* is inapplicable here.

11. Another factor that has weighed with this Court is that while the



Petitioner had also obtained a copyright registration for their TINI MINY label, the Respondent herein had successfully revoked the same by approaching the Copyright Board alleging violation of Rule 16(3) of the 1958 Rules, i.e., the identical provision urged herein. The Petitioner challenge to the said order was unsuccessful, as ruled by the Division Bench in RFA 15/2006 titled as *Pritam Dass vs. M/s Anil Food Industries*, to the following effect:

- “1. The copyright registration obtained by the appellant has been revoked vide impugned order dated 25.8.2005. Principal ground on which the copyright granted has been revoked is violation of rule 16(3) of the Copyright Rules.*
- 2. Learned counsel for the parties make a joint statement that the instant appeal may be disposed of passing undernoted consent directions ...”*

12. In view of the above, in the opinion of the Court, justice must be administered impartially and consistently. Therefore, any concession to Mr. proposal

reliance on the registration as this would be less prejudicial to them, is untenable.

scrutiny due to non-compliance with Rule 16(3) of the 1958 Rules, then the same standard must be equally applied to the Respondent. Consistency in upholding procedural compliance is essential to maintain the integrity of the legal process. Therefore, any deviation from this standard would unjustly prejudice the Petitioner and undermine the principle of fairness that the Court seeks to uphold.

13. It must also be noted that Mr. Bhatia had made few submissions On this issue, the Court observes that, upon comparison, the artwork/ design of between the Petitioner and the Respondent comprising the baby elephant,



colour scheme, and pills surrounding the elephant appear to be identical. However, the Court refrains from making any definitive comments regarding the originality of the artwork, as the parties are already adjudicating their rights in the civil suit, which is now approaching finality.

14. Accordingly, the following directions are issued:

14.1. The Impugned Copyrights registered under No. A-65448/2003 dated 20th October, 2003, and No. A-57086/1999 dated 8th December, 1999, in favour of the Respondent, would be treated as revoked/ cancelled.

14.2. The original applications filed by the Respondent seeking registration of the copyright in the aforementioned artistic works/ labels would be treated as revived.

14.3. Registrar of Copyright shall grant an opportunity to the Petitioner to file an opposition to the aforementioned applications.

14.4. Registrar of Copyright shall redecide the applications filed by the Respondent seeking registration of the artistic works in accordance with law, uninfluenced by the observations made above.

14.5. The Copyright Office shall endeavour to decide the application within a period of one month from the date of receipt of this order.

15. With the above directions, the above-captioned petitions are disposed of.

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16. The present petitions seek transfer of the pending suits, i.e. TM No. 992/2016 and TM No. 924/2016. The premise for seeking the transfer was that the rectification petitions, C.O.(COMM.IPD-CR) 750/2022 and C.O.(COMM.IPD-CR) 800/2022, pertaining to the copyright in the design/



label that is also the subject matter of the said suits, were pending before this Court. However, in light of the fact that the said rectification petitions have been decided, in the opinion of the Court, the ground for seeking transfer of the pending suits to this Court does not survive. The Court also does not find any other reason to transfer the said lawsuits, as it would only disrupt the trial which is already underway before the Tis Hazari Courts.

17. Accordingly, present petition is disposed of.

SANJEEV NARULA, J

MAY 2, 2024/sapna