

IN THE HIGH COURT AT CALCUTTA
ORIGINAL SIDE
(Intellectual Property Rights Division)

IPDCR/32/2022

DHUNSERI PETROCHEM AND TEA LTD. (TP/26/2020/CR/EZ KOL)
VS
MR. DHANRAJ KHATRI AND ANR.

Before:

The Hon'ble Justice RAVI KRISHAN KAPUR

Date: 19th May 2025

Appearance:
Ms. Vaibhavi Pandey, Advocate
Ms. Tiasha Gupta, Advocate
for the petitioner

The Court: This is the application under Section 50 of the Copyright Act 1957.

Briefly, the petitioner, DHUNSERI PETROCHEM AND TEA LTD. is engaged, *inter-alia*, in the business of manufacturing and marketing of tea since 1916. With the passage of time, the name of the petitioner has changed from Dhunseri Tea Company Limited to Dhunseri Tea and Industries Limited and presently to Dhunseri Petrochem & Tea Limited.

The principal trademark of the petitioner under which their goods are marketed and sold is 'Dhunseri'. The said mark has been in use in the category of tea, since inception, i.e. 1916.

Besides the mark Dhunseri, the goods of the petitioner are also sold under various other marks, i.e., "Dhunseri Lal Ghora" and "Dhunseri Kala Ghora". With the passage of time, the above names, i.e., "Dhunseri Lal Ghora" and "Dhunseri Kala Ghora" have become extremely popular. The petitioner is also the registered proprietor of the marks Dhunseri, Dhunseri Kala Ghora, Dhunseri Lal Ghora and Dhunseri Gold the registration and copyright details of which are morefully enumerated in the application. Apart from the above, in view of the distinctive

packaging adopted by the petitioner and the artistic works as defined under the Copyright Act 1957, the petitioner also possess registrations under the Copyright Act 1957, details whereof are provided below;

<i>TITLE</i>	<i>CATEGORY</i>	<i>REGN NO</i>	<i>REGN DT</i>
<i>LAL GHORA</i>	<i>ARTISTIC WORK</i>	<i>A-53869/97</i>	<i>01/05/1997</i>
<i>KALA GHORA</i>	<i>ARTISTIC WORK</i>	<i>A-53867/97</i>	<i>17/04/1997</i>
<i>DHUNSERI GOLD DUST</i>	<i>ARTISTIC WORK</i>	<i>A-54296/97</i>	<i>27/10/1997</i>
<i>DHUNSERI GOLD LEAF</i>	<i>ARTISTIC WORK</i>	<i>A-54295/97</i>	<i>27/10/1997</i>

It is alleged on behalf of the petitioner that the petitioner has been using the above artistic works and labels "Lal Ghora" and "Kala Ghora" since 1988. With the passage of time, the said works have become exclusively associated with the petitioner. All the members of the trade and the general public also associate the above artistic works and labels with the petitioner exclusively and none else.

It is alleged that in or about 1995, the petitioner came to learn that one Govind Ram Khatri trading as Kamlesh Tea Company having its office in Rajasthan was trading in tea in a packaging containing, deceptively similar artistic works as that of the petitioner's products Lal Ghora and Kala Ghora. In view of the above the petitioner was compelled to file a suit before the District Court at Alipore being Title Suit No. 93 of 1995. Pursuant to the filing of the suit, the petitioner also obtained an interim injunction dated 21st September, 1995, inter alia, restraining the said Kamlesh Tea Company from using the packaging, containing the artistic work deceptively similar to that of the petitioner in respect of tea.

In 2001, the petitioner was compelled to file a second suit against the said Kamlesh Tea Company and its proprietor Govind Ram before the Hon'ble High Court at Calcutta on a fresh cause of action being Civil Suit No. 358 of 2001 praying, inter-alia, for an injunction against the use of the impugned packaging,

containing, inter alia, the artistic work in respect of trading in tea by the said Kamlesh Tea Company and its proprietor. By an interim order dated 19 July 2001 the Hon'ble High Court at Calcutta granted an interim order of injunction in favour of the petitioner.

Pursuant to the above order of restraint and during the pendency of the suit, the brother of the said Govind Ram Khatri being the respondent no. 1 herein, trading as Dhanlaxmi Tobacco Stores having its office in Rajasthan was trading in tea in a packaging containing, inter alia, the trademarks '*Dhanjiri Tea*', along with the device of the head of a man. It is alleged that the impugned packaging, get up, colour combination of the impugned mark is deceptively similar to the registered copyright of Lal Ghora and Kala Ghora in favour of the petitioner. Upon making further enquiries, the petitioner came to learn that the respondent no. 1 and his brother are also carrying at the same premises.

The petitioner humbly submits that the respondent no. 1's registered artistic work is in the nature of deceiving the public and causing confusion in view of the close similarity to the petitioner's pre-existing artistic works "LAL GHORA" and "KALA GHORA".

The artistic work of the respondent no. 1 titled "*Dhanjiri Tea* with the device of a photo of a man" is a substantial reproduction of the petitioner's artistic work "Lal Ghora" and "Kala Ghora" each of them which is an "original work" under the provisions of the Act. The clandestine and surreptitious manner in which the respondent no. 1 is carrying out its illegal and fraudulent activities *vis-a-vis* the mark of the petitioner defeats the very purpose of obtaining registration. It is obvious that the respondent no. 1 along with his brother have colluded intentionally in adopting a deceptively similar packaging and artistic work only to circumvent the above orders of Court. Upon making further enquiries, the

petitioner has come to learn that the respondent no. 1 has also obtained registration being No. A-80634/2007 dated 18th September 2007 for the artistic work *Dhanjiri Tea* with the device of the photo of the man.

For convenience, the rival marks are set out below:

Petitioner's artistic work	Respondent's artistic work
	
	

It is well settled that deceptive similarity or confusion is the principal criterion for determining applications for rectification [*Khoday Distilleries Limited v. Scotch Whisky Association*, 2008 SCC OnLine SC 975 Para 31]. From the above comparative chart of the artistic works of the parties, it is apparent that the respondent no. 1's artistic work is deceptively similar to that of the petitioner. The artistic works being so similar that one is almost an imitation of the other,

there is no justification to reject the rectification application. [*Marico Ltd. v. Jagit Kaur*, 2018 SCC OnLine Del 8488, Para 15]

The respondent no. 1 is manufacturing tea under the above-mentioned artistic work, which is the same product being manufactured by the petitioner. The respondent no. 1 has made cosmetic changes in the petitioner's labels/artistic works by replacing the device of head of a horse with a photograph of a human face having kept all other features like background, colour scheme, get-up and lay out contained in the petitioner's label and artistic works intact. The overall similarities and arrangement of features would clearly prove the *malafides* and dishonest intention of the respondent no. 1. In addition, the work of the respondent no. 1, i.e. "DHANJIRI TEA" is phonetically similar to that of the petitioner, i.e., "DHUNSERI TEA".

The impugned design is a fraudulent and obvious imitation of the artistic work which has been registered in favour of the petitioner.

The entire sequence of events, make it clear that the respondent no. 1 has fraudulently and with ill intent in connivance his brother registered the impugned mark which is deceptively similar to the above registrations in favour of the petitioner. If the impugned registration is allowed to remain on the Register, it would be detrimental to the statutory and propriety rights of the petitioner. The business of the petitioner is bound to be adversely impacted. In view of the larger public interest underlying the Act, the impugned registration is liable to be expunged.

For the above reasons, the impugned registration is directed to be cancelled and the registration granted to the respondent no. 1 under no. A-80635/2007 dated 18 September 2007 for the artistic work titled "DHANJIRI TEA WITH

DEVICE OF PHOTO OF MAN” be expunged in order to maintain purity in the Register.

In such circumstances, IPDCR/32/2022 stands allowed.

Significantly, the matter was taken up for hearing in the third call when both the statutory respondent as well as the private respondent remained unrepresented.

(RAVI KRISHAN KAPUR, J.)

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