

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
COMMERCIAL MISCELLANEOUS PETITION NO. 70 OF 2022

Naughty Foods Pvt Ltd.

...Petitioner

Versus

Deepak Dariyani Trading as Asha

Confectionery And Anr.

...Respondents

Mr. Ranit Basu a/w. Ms. Harshada Nirmal, Ms. Maitri Malde, Ms. Dua Shaikh
i/b. Bridgehead Law Partners for the Petitioner.

None for the Respondents.

CORAM : ARIF S. DOCTOR, J.

DATE : 11th MARCH, 2026

P.C.

1. The present Petition has been filed under the provisions of Section 50 of the Copyright Act, 1957 (“**Copyright Act**”), and seeks the cancellation

of the copyright registration granted to Respondent No. 1 in respect of the artistic work titled, 'Tamarind Kulfi with similar shape/design' bearing Registration No. A-123187/2018, dated 16th January 2018 (“**the impugned registration**”). The said work is reproduced as follows:



2. Crucially, the averments made in the Petition have remained uncontroverted since neither of the Respondents have appeared, despite being served.
3. However, before advertng to the Petitioner’s submissions, it is useful for context to set out the following facts:

- i. The Petitioner is a company incorporated in the year 2007 and carries on the business of selling confectionery.
- ii. It is the Petitioner's case that in the year 2012, the Petitioner had imported from China "kulfi-shaped" moulds and that the Petitioner has, since then, been manufacturing and selling "kulfi-shaped" confectionery.
- iii. The Petition also sets out that on 11th July, 2012, the Petitioner filed a police complaint against Respondent No. 1 for poaching the Petitioner's employees, who were stated to have been involved in the research and development of "kulfi-shaped" confectionery products.
- iv. On 28th August, 2017, the Petitioner obtained registration of the "kulfi-shaped" moulds under the provisions of the Designs Act, 2000, and subsequently on 16th September, 2017, the Petitioner, vide Trade Mark Application No. 3636345, applied for registration of the device mark of its "kulfi-shaped" confectionery, which is reproduced as follows:



- v. The Petitioner, thereafter on 17th September, 2017, published a caution notice in Dainik Bhaskar Newspaper having wide circulation throughout India, more specifically in Madhya Pradesh where both the Petitioner and Respondent No. 1 are located and carry on business.
- vi. Respondent No. 1, thereafter, on 28th September, 2017, applied for registration of the trade mark containing the artistic work of the impugned registration, and on 18th October, 2017, Respondent No. 1 applied for registration of the copyright in respect of the same artistic work, which was granted vide the impugned order dated 19th May 2025, without any notice to the Petitioner.

v. Hence, the present Petition.

Submissions on behalf of the Petitioner:

4. Mr. Basu, Learned Counsel appearing on behalf of the Petitioner, submitted that the impugned registration deserves to be cancelled, rectified, and expunged for the following reasons **(I)** to **(V)** below:

I. Non-compliance with the Rules prescribed under the Copyright Act:

5. Mr. Basu at the outset invited my attention to Section 45(1) of the Copyright Act and pointed out that the proviso thereto clearly states that an application for registration of an artistic work which is used, or is capable of being used in relation to any goods or services must be accompanied by a certificate from the Registrar of Trade Marks certifying that no trade mark identical with or deceptively similar to such artistic

work has been registered, or that no application for such registration has been made in that regard.

6. He then placed reliance upon the following registrations and applications for registration obtained and/or applied for by the Petitioner, all of which were in respect of “kulfi-shaped” confectioneries, i.e., the shape of the artistic work in respect of which registration had been granted, viz.

Application No.	Trade Mark	Date of user	Status
2498415	Keshariya Kulfipop	1 st December 2012	Registered
2722929	Naughty Keshariya Kulfipop	4 th April 2004	Rectification filed
3636345	Shape of lollypop	22 nd October 2012	Opposed

Basis the above, he submitted that no such NOC/authorisation could or ought to have been issued by the Trade Marks Registry in favour of Respondent No. 1 and thus the impugned registration granted to Respondent No. 1 was liable to be cancelled since the same was in the teeth of the provisions of Section 45 of the Copyright Act. In support of

this contention, he placed reliance upon the decision of the Delhi High Court in the case of *Mohd. Ershad Sole Proprietor Ek Agencies vs Registrar of Copyrights & Ors.*¹.

II. Copyright subsists in original work:

7. Mr. Basu then submitted that it was well settled that copyright in an artistic work under the Copyright Act subsists only in original works, which are independently created by the author. He therefore submitted that an artistic work capable of registration under the Copyright Act must satisfy the requirement of originality, which the artistic work in respect of which the copyright was granted did not. He pointed out that one Mr. Tanwani who claimed to be the author of the artistic work in respect of which registration was granted, cannot be considered as the “author” within the meaning of Section 2(d) of the Copyright Act since the essential features of the artistic work of which Mr. Tanwani claimed to be the

¹2022 SCC OnLine Del 2815.

author were already conceived, developed, and protected by the Petitioner. He therefore submitted that Mr. Tanwani could not claim independent authorship in respect thereof.

8. Mr. Basu additionally pointed out that Respondent No. 1 had also failed to produce any NOC or authorisation from Mr. Tanwani in support of the claim of authorship, thereby rendering the impugned registration legally unsustainable and liable to be set aside.

III. Non-compliance with the procedural requirements under Rule 70 (9) of the Copyright Rules, 2013:

9. Mr. Basu then invited my attention to Rule 70(9) of the Copyright Rules, 2013 (“**Copyright Rules**”), to point out that notice of an application for copyright is required to be given by an applicant to every person having an interest in the subject matter of the work in respect of which copyright registration was sought. In the present case, he pointed out that the Petitioner had issued a caution notice dated 17th September, 2017, and for

the reasons stated therein, a notice under Rule 70(9) of the Copyright Rules would have to be issued before registration was granted. He submitted that since this had not been done, the registration was procedurally flawed.

10. Mr Basu submitted that Respondent No. 1 had clearly, therefore, surreptitiously obtained the impugned registration without issuing any notice of its application dated 18th October, 2017, to the Petitioner. He reiterated that the impugned registration was liable to be set aside, as Respondent No. 1 failed to comply with the mandatory statutory requirements under the provisions of the Copyright Act. In support of this contention, he placed reliance upon the decision of *M/S. New Bharat Overseas v. M/S. Bhagwati Lacto Vegetarian Exports Pvt. Ltd. And Ors.*²

² [Delhi High Court] Order dated 8th September 2025 in C.O.(COMM.IPD-CR) No. 843 of 2022.

IV. Initial user of Copyright:

11.Mr. Basu then submitted that the Petitioner has enjoyed subsisting and substantial intellectual property rights in respect of the “kulfi-shaped” confectionery products since the year 2012. He further submitted that, in contrast, the import documents relied upon by Respondent No. 1 in the Notice of Opposition unequivocally demonstrate that Respondent No. 1 had procured similar moulds only after 2015, and such a belated procurement clearly establishes the mala fide intent on the part of Respondent No. 1 to copy and sell its goods as if they were the Petitioner's.

V. Target Consumer and Applicable Test:

12.Mr. Basu submitted that both the Petitioner and Respondent No.1 were based in the State of Madhya Pradesh and that their products were primarily targeted at children and those who were not literate or were semi-literate. He therefore submitted that the test for determining whether the confectionery items of Respondent No. 1 were distinct from those of

the Petitioner must be applied from the perspective of such consumers. He submitted that in the present case, the “kulfi shaped” of confectionery constitutes an essential and distinctive feature of the subsisting confectionery items manufactured by both the Petitioner and Respondent No. 1, and therefore, cannot be assessed or applied uniformly in the same manner as in the case of other products meant for a more discerning class of consumers. He submitted that the goodwill is associated with the Petitioner's products, and the balance of convenience therefore lies with the Petitioner, and he thus submitted that the impugned registration deserves to be cancelled.

Reasons and conclusions:

13. After having heard the learned counsel for the Petitioner and having considered the material upon which the reliance is placed, I find that the Petitioner has made out a case for seeking cancellation of the impugned registration. I say so for the following reasons:

A. At the outset, it is crucial to note that the averments made in the Petition have not been denied. The Petition *inter alia* sets out, viz.

- i. that the Petitioner has been manufacturing and selling kulfi-shaped" confectionery products since the year 2012 in moulds, which were imported from China in the year 2012. In contrast, Respondent No. 1 has procured moulds only in the year 2015, which establishes the Petitioner's prior adoption and use of the "kulfi shaped" mould for manufacturing confectionery;
- ii. The Petitioner has obtained trade mark registration and also has a pending Application in respect of the "kulfi-shaped" device mark as more particularly set out in paragraph 7 above. Importantly, all of those applications predate the application made by Respondent No. 1 for the impugned registration.
- iii. The Petitioner had, on 17th September 2017, issued a caution notice by which the Petitioner had put the public at large on notice of the

Petitioner's rights/claims in respect of the "kulfi-shaped" confectionery/lollipop and its distinctive shape and design.

- iv. That the artistic work in the impugned registration is not an original work since the same merely improves upon the Petitioner's device mark.

All of the above facts clearly demonstrate that the Petitioner had a direct and subsisting interest in the subject matter forming part of the impugned registration obtained by Respondent No. 1.

B. Section 45 of the Copyrights Act, 1957, provides as follows:

***"45. Entries in Register of Copyrights.—** (1) The author or publisher of, or the owner of or other person interested in the copyright in, any work may make an application in the prescribed form accompanied by the prescribed fee to the Registrar of Copyrights for entering particulars of the work in the Register of Copyrights: Provided that in respect of an artistic work which is used or is capable of being used in relation to any goods or services, the application shall include a statement to that effect and shall be accompanied by a certificate from the Registrar of Trade Marks referred to in section 3 of the Trade Marks Act, 1999, to the effect that no trade mark identical with or deceptively similar to such artistic work has been registered under that Act in the name of, or that no application has*

been made under that Act for such registration by, any person other than the applicant.

(2) On receipt of an application in respect of any work under sub-section (1), the Registrar of Copyrights may, after holding such inquiry as he may deem fit, enter the particulars of the work in the Register of Copyrights.”

Therefore, for the reasons set out in (A) above, it is difficult to comprehend how the Registrar of Trade marks could have issued a certificate to the effect that no trade mark identical with, or deceptively similar to the artistic work of the impugned copyright registration had been registered under the provisions of the Trade Marks Act, 1999.

C. Conversely, if such a certificate had not been issued, even then the impugned registration would be bad in law since the same would be in violation of Section 45. Also, Respondent No. 1 has not produced any NOC or authorisation from Mr. Tanwani in support of its claim of authorship.

D. Therefore plainly the impugned registration appears to be in violation of the provision of Section 45 of the Copyrights Act. Hence, the Petitioner’s

reliance upon the decision in the case of *Mohd. Ershad Sole Proprietor Ek Agencies vs Registrar of Copyrights & Ors.* is entirely apposite.

E. Additionally and crucially, Rule 70(9) of the Copyright Rules provides as follows:

“70. Application for Registration of Copyright. -

(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.”

In the present case, the Petitioner is clearly entitled to notice under Rule 70(9) of the Copyright Rules, for the reasons detailed in (A) above.

Despite this, no notice was given to the Petitioner. In these facts, the decision of the Delhi High Court in the case of *M/S. New Bharat Overseas v. M/S. Bhagwati Lacto Vegetarian Exports Pvt. Ltd. And Ors.*

would, therefore, squarely apply, and therefore, on this ground alone, the registration would have to be set aside.

15. Hence, for the aforesaid reasons, I pass the following order:

- i. The Registration No. A-123187/2018, dated 16th January 2018, be removed from the Register of the copyright.
- ii. There shall be no order as to costs.
- iii. The Petition is accordingly disposed of.

[ARIF S. DOCTOR, J.]