



2025:DHC:11882



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

% *Judgment delivered on: 24.12.2025*

+ **C.O. (COMM.IPD-TM) 251/2024 & I.A. 47352/2024**

**CASETAGRAM LIMITED**

.....Petitioner

versus

**TUSHAR MALHOTRA TRADING AS M/S. NUKKADS  
& ANR.**

.....Respondents

**Advocates who appeared in this case**

For the Petitioner : Mr. Gaurav Gogia and Mr. Mayank Saraf,  
Advocates.

For the Respondents : Ms. Nidhi Raman along with Mr. Om Ram  
and Mr. Mayank Sansanwal, Advocates for  
Respondent No.2.

**CORAM:  
HON'BLE MR. JUSTICE TEJAS KARIA**

**JUDGMENT**

**TEJAS KARIA, J**

**INTRODUCTION:**

1. The present Petition has been filed under Sections 47, 57 and 125 of the Trade Marks Act, 1999 (“**Act**”) seeking removal of the Mark ‘CASETIFY’ (“**Impugned Mark**”) bearing No. 3306261 in Class 35 from the Register of Trade Marks (“**Register**”).



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2. Notice was issued in the present Petition on 06.12.2024, granting the Respondents four weeks' time to file their Reply. Thereafter, *vide* order dated 07.04.2025, Respondent No. 1 was granted additional four weeks to file Reply to the present Petition and at the request of learned counsel for the Parties, the Parties were referred to the Delhi High Court Mediation and Conciliation Centre for exploring the possibility of an amicable settlement. However, as the Mediation was not successful, the Petition was taken up for consideration on merits.

**SUBMISSIONS ON BEHALF OF THE PETITIONER:**

3. The learned Counsel for the Petitioner made the following submissions:

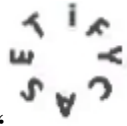
3.1. The Petitioner was incorporated on 01.11.2011 in Hong Kong and is engaged in the business of manufacturing and trading of range of phone cases offering customers the option to personalize their phone cases using photographs from their Instagram accounts, and other electronic accessories adapted for electronic equipment, namely, cell phones, tablet computers, laptop computers, music player, video player, battery chargers (“**Petitioner’s Products**”).

3.2. The Petitioner is known worldwide for the Mark ‘CASETIFY’ also represented through its distinctive labels

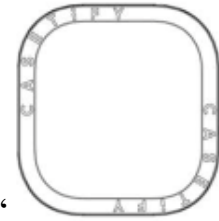




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*Casetify*



and



’ (“**Petitioner’s Mark**”).

- 3.3. The Petitioner adopted Petitioner’s Mark in the year 2014 in respect of the Petitioner’s Products and has been continuously, extensively and uninterruptedly used ever since. The Petitioner has been carrying on its business in India since the year 2012, however, the presence and usage of the Petitioner’s Mark in India can be traced since 2014. The Petitioner is lawful and registered proprietor of the Petitioner’s Mark in relation to Petitioner’s Products in Class 09 having Registration No. 3878274 of the Petitioner’s Mark since 2018 by way of the below Device Mark:

**CASETIFY**

- 3.4. The Petitioner’s Products are sold globally as well as in India through its website, [www.casetify.com](http://www.casetify.com) (“**Petitioner’s Website**”) since the year 2014; and the Domain Name of the Petitioner’s Website was registered in the year 2013.
- 3.5. The Petitioner’s Products under the Petitioner’s Mark are also available for sale and promotion through popular e-commerce



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platforms, such as [www.amazon.com](http://www.amazon.com), [www.ubuy.co.in](http://www.ubuy.co.in), and [www.indiamart.com](http://www.indiamart.com) making them easily accessible to a broad consumer base. Apart from the presence of the Petitioner's Products on the internet, the Petitioner's Marks are also being used by the Petitioner on various mobile application platforms like Android and iOS and have acquired considerable goodwill and reputation thereof. The Petitioner has built up a valuable trade under the Petitioner's Mark.

- 3.6. By virtue of continuous and pervasive use of the Petitioner's Mark in respect of the Petitioner's Products, considerable sales, promotional activities, events and collaboration thereof, the Petitioner's Mark is identified as the source indicator of the Petitioner's Products and services by the general public and relevant section of the trade, on account of which the Petitioner is entitled to the sole, exclusive and undisturbed use of the Petitioner's Mark in respect of the Petitioner's Products and services worldwide, including in India.
- 3.7. The Petitioner's Mark has gained secondary significance during the course of trade in relation to the Petitioner's Products and qualifies as a well-known Trade Mark within the meaning of Section 2(1)(zg) of the Act. Any mark / trade name / copyrights / domain name that is similar or identical to the Petitioner's Mark is likely to create confusion and cause financial harm and damage the Petitioner's goodwill and reputation and, therefore, the Petitioner is entitled to protection against any unauthorized use of the Petitioner's Mark.



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- 3.8. In the month of November 2022, during a routine search through the Trade Mark Registry for any infringing marks, the Petitioner came across the application of Respondent No. 1 bearing No. 3306261 (“**Impugned Application**”) for the Word Mark ‘CASETIFY’ (“**Impugned Mark**”) in Class 35 for the services online / offline retailing, wholesaling and trading of mobile and its accessories, laptop and its accessories and electronic items and house hold appliances (“**Impugned Services**”).
- 3.9. On a perusal of the Impugned Application, the Petitioner discovered that the Impugned Application was filed on 11.07.2016 claiming user since 15.05.2014. However, no document regarding the use of the Impugned Mark was attached with the Impugned Application. The Impugned Mark was published in the Trade Mark Journal No. 1773-0 on 28.11.2016 and the registration was granted on 19.04.2017.
- 3.10. The Petitioner, thereafter, served a Cease and Desist Notice to Respondent No. 1 on 10.11.2022, calling upon Respondent No. 1 to immediately cease and desist from the unauthorized use, if any, of the Impugned Mark. The Petitioner also included a requisition for the assignment of the Impugned Mark in favor of the Petitioner. However, no response was received from Respondent No. 1 demonstrating Respondent No. 1’s disregard for the Petitioner’s rights and claims addressed in the Cease and Desist Notice.
- 3.11. The user claim of 15.05.2014 by Respondent No. 1 under the Impugned Application is fraudulent as to the best of Petitioner’s knowledge and research / due diligence, Respondent No. 1 is not



using the Impugned Mark anywhere on the internet, nor on the physical addresses. The Petitioner also verified the records of Respondent No. 2 to search for documents in support of the user claim of Respondent No. 1. However, no user affidavit was filed by Respondent No. 1 along with the Impugned Application or thereafter.

- 3.12. The Petitioner further conducted an online search on various e-commerce websites, but the Petitioner found no use of the Impugned Mark by Respondent No. 1 across any e-commerce websites. The Petitioner also did a cursory search over various search engines including Google and Microsoft Bing, however the Impugned Mark related to Respondent No. 1 was not available in any search results.
- 3.13. Respondent No. 1 has in a dishonest and *mala fide* manner obtained registration for the Impugned Mark that is confusingly / deceptively similar to the Petitioner's Mark. The Impugned Mark bears a high degree of resemblance with the Petitioner's Mark such that when viewed as a whole, the Impugned Mark seem to be arising out of or connected / affiliated with the Petitioner. Respondent No. 1 has made a conscious attempt to come as close to the Petitioner's Mark both in terms of conceptual and visual representation of the Impugned Mark.
- 3.14. Reliance was placed on decisions of this Court in ***Kiranakart Technologies Private Limited vs Mohammad Arshad & Anr.***, Neutral Citation- 2025:DHC:1500, ***Roppen Transportation Services Private Limited vs Nipun Gupta & Anr.***, Neutral



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Citation: 2025:DHC:270 and *DORCO Co. Ltd. v. Durga Enterprises*, 2023 SCC OnLine Del 1484 to submit that the Impugned Mark is liable to be removed from the Register on grounds of non-user under Section 47(1)(a) and Section 47(1)(b) of the Act, as Respondent No. 1 applied for the registration of the Impugned Mark without any *bona fide* intention on its part to use the Impugned Mark and there has been no *bona fide* use of the Impugned Mark by Respondent No. 1 for the time being up to the date of three months before the date of the Impugned Application or even after the lapse of almost five years after the registration of the Impugned Mark, till date.

- 3.15. Respondent No. 1 has *mala fide* intention to hoard the Impugned Mark and create confusion and deception in the minds of the general public with respect to its association with the Petitioner. Due to alleged activities of Respondent No. 1, the Petitioner is prevented from the honest usage of the Impugned Mark for which the Petitioner is in fact a prior adopter and has superior rights over the Petitioner's Mark. As a result, the Petitioner would suffer damages, injuries and irreparable loss to its goodwill and reputation, if the Impugned Mark is allowed to stand in the Register.
- 3.16. Respondent No. 1, by falsely claiming the use of the Impugned Mark since 2014, engaged in deceptive practices and the act of making false statements to Respondent No. 2 during the process of the Impugned Application is a serious violation of the integrity and fairness expected in legal proceedings. The misrepresentation of



the facts as exhibited by Respondent No. 1 before Respondent No. 2 is a grave offense and constitutes a valid ground for the cancellation of the Impugned Mark under the provisions of the Act.

- 3.17. Section 18(1) of the Act mandates that an applicant must be a *bona fide* proprietor of the trade mark at the time of filing the application. In the case of the Impugned Mark, the false claims made by Respondent No. 1 concerning the use of the Impugned Mark indicate a lack of *bona fide* intention to use the Impugned Mark in commerce. Respondent No. 1's actions suggest that the Impugned Application was filed with the intention to unjustly mislead Respondent No 2. This contravention of Section 18(1) of the Act forms a basis for the cancellation of the Impugned Mark from the Register.
- 3.18. The maintenance of the Impugned Mark on the Register, in the absence of genuine use and based on false statements, is detrimental to the public interest as it clutters the Register with marks that do not serve their intended purpose of identifying the origin of goods or services.
- 3.19. Respondent No. 1 has recorded himself as the subsequent registered proprietor fraudulently by concealments based on false claims and documents. Therefore, Respondent No. 1 is not entitled to the benefit of Section 12 of the Act, as there are no honest or concurrent use or any other special circumstances as may justify the registration of the Impugned Mark.



- 3.20. Respondent No. 1 with malicious intent filed the Impugned Application for services falling under Class 35 and not under Class 09, which is a core class for mobile cases and accessories to avoid any objections from Respondent No. 2.
- 3.21. The Impugned Mark is liable to be removed from the Register under the common law of passing off by virtue of Section 11 (3) of the Act as the Impugned Mark has slavishly imitated the Petitioner's Mark which can potentially lead to consumer confusion that the Impugned Mark is affiliated with or endorsed by the Petitioner, which is not the case.
- 3.22. The registration of the Impugned Mark has caused unwanted and undue hardship to the Petitioner and the Impugned Mark ought to be cancelled / removed / expunged on grounds of bad faith of adoption and infringement of the Petitioner's rights. Therefore, to uphold the integrity of the Register, it is imperative that the registration of the Impugned Mark be cancelled by expunging the Impugned Mark from the Register.

#### **SUBMISSIONS ON BEHALF OF THE RESPONDENTS:**

4. Despite being afforded repeated opportunities, Respondent No. 1 has not filed Reply to the present Petition, and none appeared on behalf of Respondent No. 1.
5. The learned counsel appearing for Respondent No. 2 submitted that Respondent No. 2 is a *pro forma* party and would abide by the decision passed by this Court.



### ANALYSIS AND FINDINGS:

6. In the absence of Reply to the present Petition by Respondent No. 1, the averments made in the present Petition remain uncontroverted.

7. The material placed on record shows that Respondent No. 1 has not used the Impugned Mark in relation to the Impugned Services since its registration on 11.07.2016. The Petitioner's physical and online investigations, supported by the Investigator's Affidavit dated 03.12.2024, demonstrate that Respondent No. 1 has no commercial presence under the Impugned Mark.

8. The observations of a Coordinate Bench of this Court in *DORCO Co. Ltd.* (*supra*), rendered in the context of a plea of 'non-user' and the absence of a specific denial thereof are applicable, wherein it is held that where allegations of non-use are not specifically denied, the same are deemed to be admitted, rendering the Impugned Mark liable to be removed from the Register under Section 47(1)(b) of the Act.

9. Section 47(1)(b) of the Act provides that a registered mark is liable to be removed from the Register where up to a date three months before the date of the Application, a continuous period of five years from the date on which the trade mark is actually entered in the Register or longer has elapsed during which there was no *bona fide* use thereof in relation to those goods or services by any proprietor thereof.

10. Thus, 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, therefore, the Impugned Mark would be liable to be removed on the ground of non-use itself. The material placed on record shows that the Impugned Application



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records a user claim since 15.05.2014. However, the absence of proof of use, and the unrebutted averments of non-use make the Impugned Mark liable to be removed under Section 47(1)(b) of the Act.

11. In the present case, the allegations of ‘non-user’ against Respondent No. 1 stand admitted in the absence of a specific denial of the same. Accordingly, the Impugned Mark is liable to be removed from the Register on account of ‘non-user’ as contemplated under Section 47(1)(b) of the Act.

12. In view of the above, the present Petition is allowed and Respondent No. 2, the Registrar of Trade Marks, Delhi is directed to remove / cancel / rectify the Impugned Mark ‘CASETIFY’ registered in favour of Respondent No. 1 in Class 35 bearing No. 3306261 from the Register of Trade Marks.

13. A copy of this Order is directed to be sent to the Trade Mark Registry at e-mail: llc-ipo@gov.in for compliance.

**TEJAS KARIA, J**

**DECEMBER 24, 2025**

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