

ORDER SHEET
LAHORE HIGH COURT LAHORE
JUDICIAL DEPARTMENT

Regular First Appeal No. 1099 of 2016

Manzar Latif Mian

Vs

**M/s Depilex (Pvt) Ltd., through its Chief Executive,
Ms. Masarrat Misbah**

Date of hearing	01.10.2025
Appellant by:	Mr. Mehdi Tirmizi, Advocate.
Respondent by:	<ul style="list-style-type: none"> • Barrister Munawar us Salam, Advocate. • Barrister Isha Shahid Bilal Hassan, Advocate. • Mr. Shuaib Rashid, Advocate.

Ch. Sultan Mahmood, J:- This appeal has been preferred against the Judgment and Decree dated 12.07.2016 passed by the learned Presiding Officer, Intellectual Property Tribunal, Lahore, in Suit No. 06/IPT (hereinafter referred to as the “Impugned Judgment”), whereby the suit filed by the respondent was decreed in its favour, declaring the respondent as the lawful owner of the copyright in the name “*Depilex*” and permanently restraining the appellant from using or passing off its business under the said name.

2. Brief facts of the case are that the appellant and respondent entered into a partnership on 28.01.2002 under the name “M & M Enterprises” to operate salon businesses, including a men’s salon at 57-C/1, Gulberg-III, Lahore and a women’s salon in Begumpura, Lahore. Disputes later arose concerning the inclusion and use of the trade name “*Depilex*”. The appellant asserted that the said name was to form part of the partnership, whereas the respondent continued to use it independently. Relations deteriorated,

culminating in a Legal Notice dated 04.07.2008 from the respondent seeking dissolution of the partnership.

3. In response, the appellant filed a civil suit on 16.07.2008 for declaration, dissolution of partnership and rendition of accounts. His application for temporary injunction was dismissed on 28.07.2008, which order was challenged in FAO No. 176/2008 before this Court, wherein *status quo* was granted. Separately, the respondent filed another suit on 01.08.2008 alleging copyright and trademark infringement and obtained an ad-interim injunction. The appellant's application for its vacation was allowed on 22.08.2008, which was challenged through FAO No. 204/2008. Both appeals were decided on 30.10.2008, the partnership was held dissolved, partial interim relief granted to the appellant and the copyright matter remanded for decision on injunction. Subsequently, the learned Additional District Judge dismissed the respondent's injunction application on 20.12.2008, which was set aside in FAO No. 30/2009 by this Court on 17.09.2013. Review was dismissed on 24.01.2014 and the matter ultimately reached the Hon'ble Supreme Court in CPLA No. 1671-L/2013, directing expeditious decision on merits. Issues were framed on 08.01.2015, evidence recorded and upon transfer to the Intellectual Property Tribunal, the suit was decreed on 12.07.2016. Hence the instant appeal.

4. Learned counsel for the appellant submits that the learned Presiding Officer erred both in law and fact by failing to examine the validity of the respondent's copyright certificate and franchise license dated 04.02.2002. It is urged that the impugned judgment merely adopted the respondent's assertions without critical scrutiny. It is contended that the copyright certificate is defective as the mandatory affidavit of the artist, Shafqat Mehmood, dated 22.05.2006, required under the Copyright Rules, 1967, was not produced or verified, rendering the registration irregular and void. Reliance is placed on ***BASHIR AHMAD v. ABDUL WAHID (PLD 1995 Lahore 98)*** and ***M/s ADT Services AG vs. M/s ADT Pakistan Pvt. Ltd. (2005 CLD 1546)***. Further submits that the respondent's

claim is inconsistent, as the alleged design was created in 2004 while the respondent company was incorporated in 1994, undermining its claim of use since 1980. The franchise license relied upon is said to be an inadmissible photocopy, tendered without compliance with Articles 74 and 76 of the Qanun-e-Shahadat Order, 1984 and without examining the alleged signatory, Ms. Talat Misbah, in violation of Articles 77 and 78. No Board resolution authorizing such license was produced. The document, according to counsel, appears backdated and fabricated, preceding the design's creation by two years. It is thus argued that the impugned judgment, having ignored these material legal infirmities, has occasioned a miscarriage of justice and deserves to be set aside. The appellant prays for declaring the copyright certificate null and void and for dismissal of the respondent's suit with costs.

5. Conversely, learned counsel for the respondent contends that the registration of copyright under Sections 39 & 41 of the Copyright Ordinance, 1962, is a regulated process involving scrutiny by the Registrar of Copyrights, who may refuse or allow registration after due inquiry. For artistic works, publication and invitation for objections are mandatory safeguards ensuring transparency. Further submits that no objections were filed by the appellant within the statutory period and no proceedings for rectification or cancellation were initiated under Section 41. It is further argued that the franchise license and copyright registration enjoy a presumption of validity under Section 42 of the Ordinance and any aggrieved person must seek rectification before the Copyright Board under Section 76, within three months of registration. The appellant, having failed to avail these remedies, cannot now challenge the registration collaterally. Reliance is placed on *Abbas Hussain Farooqui v. Messrs Royal Printing Press and Ali Printing Services, Karachi and 10 others* (PLD 1970 Karachi 554) and *Messrs FRIEND EDUCATION PUBLISHER (FEP) (Pvt.) Ltd. v. Messrs FEP INTERNATIONAL (PVT.) LTD. and another* (PLD 1997 Karachi 456), wherein it was held that once registration is completed and not

rectified through the prescribed process, its legality cannot be questioned in collateral proceedings. Further reference is made to NESTLE PAK LIMITED, LAHORE through Authorized Signatory and another v. SHEHRYAR KURESHI and 3 others (2024 CLD 502) and MUHAMMAD WAHID v. ADNAN MEMON and another (2010 CLD 450) to contend that valid copyright registration carries *prima facie* evidentiary value of ownership and cannot be displaced by mere allegations.

6. Upon examination of the record and submissions, this Court finds that the copyright in “Depilex” was registered in accordance with the statutory requirements under Sections 39, 40, and 41 of the Copyright Ordinance, 1962. The registration process mandates publication and opportunity for objections, none of which were exercised by the appellant. No cogent evidence has been produced to impeach the authenticity of the certificate or the franchise license, nor has any application for rectification been filed before the competent forum. The presumption of correctness attached to registration under Section 42 stands unrebutted. Judicial precedents affirm that a valid certificate of registration cannot be invalidated collaterally unless rectified under Section 41.

7. It is further observed that the process of registration of intellectual property be it a trademark or copyright follows a structured statutory framework ensuring transparency and legal certainty. The Trade Marks Registry examines each application to verify compliance with statutory conditions and to ensure that registration is not prohibited under Sections 8 and 10 of the Trade Marks Act, 1940. The proposed mark is then advertised in the Trade Marks Journal, inviting objections, if any, from the public. In the absence of such opposition, the mark is registered and a Certificate of Registration is issued, conferring upon the proprietor the exclusive right to use it in relation to specified goods or services under Section 21 of the Act. Section 21 explicitly provides that the registration of a person as proprietor of a trademark grants that person the exclusive right to use the mark and that this right is

deemed to be infringed by any other person who, without authorization, uses an identical or deceptively similar mark in the course of trade likely to cause confusion or deception. Furthermore, under Sections 23 and 24 of the Act, such registration constitutes *prima facie* evidence of validity and, after seven years, becomes conclusive evidence of its validity, save for limited statutory exceptions. This statutory scheme reinforces the same principle embodied in copyright law namely, that once registration is duly granted after advertisement and lapse of the objection period, it carries a presumption of legality and validity that cannot be displaced except through the prescribed rectification process. Consequently, a party cannot be permitted to question the validity of such registration collaterally in separate proceedings without first invoking the appropriate statutory mechanism¹ a course of action conspicuously absent in the present case.

8. A careful perusal of the record, particularly Clause 3 of the Partnership Deed dated 28.01.2002, reveals that “*the business of the firm shall be to run a beauty salon for both men and women, for which franchise rights will be obtained from ‘Depilex’*” This clause unequivocally establishes that the trade name “*Depilex*” was intended to be used under a valid franchise arrangement and not independently by either partner. The said clause, therefore, reinforces the respondent’s lawful association with the brand and negates the appellant’s claim of independent ownership or right to use the name “*Depilex*” The findings of the learned court below are in accordance with law and the appellant has failed to point out any illegality or material irregularity in this regard.

9. It also emerges from the record that the appellant continued to use the identical trade name “*Depilex*” for its salon business even after dissolution of the partnership and without holding any valid franchise rights or authorization from the respondent. Such conduct squarely attracts the doctrine of passing

1. *Messrs FRIEND EDUCATION PUBLISHER (FEP) (Pvt) Ltd. v. Messrs FEP INTERNATIONAL (PVT.) LTD. and another* (PLD 1997 Karachi 456)

off, as it amounts to a deliberate attempt to misrepresent the appellant's business as being associated with or endorsed by the respondent, thereby causing deception among the public and injury to the goodwill of the respondent. The use of the name "Depilex" by the appellant, without lawful authority, thus constitutes an actionable wrong under the settled principles of intellectual property law. The salon was originally named "Depilex" pursuant to the aforementioned clause of the Partnership Deed, which clearly provided that the business would operate under a franchise or licence arrangement. Consequently, upon dissolution of the partnership, the continued use of the said name being subject to franchise rights was impermissible and without legal sanction.

10. Furthermore, the appellant's objections regarding the franchise license are unsubstantiated no primary evidence was sought or permitted and no proof of fabrication has been established through credible testimony. It is also settled law, as reiterated in *NESTLE PAK LIMITED. LAHORE through Authorized Signatory and another v. SHEHRYAR KURESHI and 3 others (2024 CLD 502)* and *Glaxo Operations UK Ltd., Middlesex (England), and others v. Samrat Pharmaceuticals, Kanpur (1984 AIR (Delhi) 262)*, that copyright subsists in original artistic works independently of their commercial exploitation, and registration, though evidentiary, is not a precondition for ownership. The respondent's registration, therefore, fortifies rather than creates its rights. The appellant has neither demonstrated any contradictory evidence of title of copyright nor adduced evidence displacing the statutory presumption. The findings of the learned Tribunal are supported by the record and the governing law and call for no interference.

11. Under Section 56 of the Copyright Ordinance, 1962, copyright in an artistic work is deemed to be infringed when any person, without the authorization of the owner, reproduces, publishes, or communicates the work to the public, or uses it in connection with any goods or services in a manner that implies association with the original owner. In the present case, the

appellant's continued use of the identical artistic name and logo "Depilex" forming part of the respondent's registered copyright, without obtaining any assignment or license, clearly falls within the definition of infringement under the said provision. The protection conferred by copyright extends not only to literal reproduction but also to substantial or colourable imitation that tends to misappropriate the creative expression of the author. Therefore, the appellant's use of the protected artistic expression amounts to infringement of the respondent's copyright rather than a mere commercial dispute.

12. For the foregoing reasons, the appeal is **dismissed**. The Impugned Judgment and Decree dated 12.07.2016 passed by the learned Presiding Officer, Intellectual Property Tribunal, Lahore, are upheld. No order as to costs.

(Ch. Sultan Mahmood)
Judge

Approved for reporting

Judge