

Manash Lifestyle Private Limited vs Viraj Harjai & Anr. on 31 March, 2025

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* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ C.O. (COMM.IPD-TM) 212/2024
MANASH LIFESTYLE PRIVATE LIMITEDPetitioner
Through: Mr. Nageshwar Kumar and Mr.
Ayush Dey, Advocates
Mob: 9818823289
versus

VIRAJ HARJAI & ANR.Resp
Through: Mr. R. Venkat Prabhat, SPC w
Kamna Behrani, Mr. Ansh Kalr
Mr. Divyanshu Sinha, Advocat
R-2
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Ms. Nidhi Raman, CGSC with M
Debasish Mishra and Mr. Arna
Mittal, Advocates for R-2
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Kamna Behrani, Mr. Ansh Kalr
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C.O. (COMM.IPD-TM) 212/2024

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CORAM:

HON'BLE MS. JUSTICE MINI PUSHKARNA
ORDER

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10.03.2025

MINI PUSHKARNA, J (ORAL)

1. The present petitions have been filed under Section 57 of the Trade Marks Act, 1999 ("the Act") seeking rectification/removal of the trademark, bearing registration nos. 6236154 and 6234522 ("impugned marks") in Classes 14 and 4 respectively, registered in favour of respondent no. 1.

2. Facts, as canvassed in the petitions, are as follows:

2.1 The petitioner company was incorporated in the year 2011 and operates an Online Beauty and Wellness Store under the name, PURPLLE/. The petitioner operates through its website <https://www.purplle.com/>, wherein, the petitioner offers makeup, skincare, hair, bath and body, herbal, baby care, beauty and wellness, fragrance, beauty appliances, and luxury products.

2.2 The petitioner is the owner and proprietor of several

PURPLLE, , , ,

PURPLLE.COM, , ,

BEAUTY FM, under various Classes, that are valid, subsisting and in continuous and extensive use since the year 2011. The earliest of petitioner's registrations for its marks is vide application dated 19th December, 2014, under registration no. 2865837 dated 24th August, 2019 in Class 44, with a user detail since 14th December, 2011.

2.3 During a routine search of the Trade Marks Registry records, the petitioner came across a trademark application bearing no. 6233974 in Class 3 for the mark PURPLLE TREE/ with respect to Essential Oils filed by respondent no. 1. The said application was objected by the Trade Marks Registry under Section 11 of the Act, citing marks of the petitioner. 2.4 Upon discovery of the said application of respondent no.1, the petitioner conducted a detailed search in the Trademarks Registry records and came across the impugned registrations for the mark, i.e., PURPLLE TREE/ , bearing registrations nos. 6236154 and 6234522 in Classes 14 and 4 respectively, on a 'proposed to be used' basis. Accordingly, the petitioner filed the

present petitions seeking rectification of the impugned marks.

3. On behalf of the petitioner, the following submissions have been made:

3.1 The petitioner is recognized as a market leader in the country and is involved in facilitating access to wide range of global beauty and wellness products that has a selection of over 1000 brands, comprising of more than fifty thousand products, with a customer base that exceeds one million individuals, accessed through its website <https://www.purplle.com/>, that is used by seven million monthly active users.

3.2 The petitioner has conceived and adopted its trademark, 'PURPLLE' in the year 2011. Further, the petitioner is the owner of several trademarks which have been continuously, honestly and concurrently used by the petitioner, and on account of the substantial usage, extensive sales and advertising of the petitioner, the petitioner's marks have acquired an unrestricted and substantial common law right in the same.

3.3 The petitioner has made great efforts in promotion of the products under the trademark, 'PURPLLE' throughout the country, and spent enormous amounts of money and effort in building the brand identity through various forms of media. Further, the petitioner sells its products through its own e-commerce platform, <https://www.purplle.com/>, retails stores and through e-commerce websites, and has domain name registrations, i.e., PURPLLE.COM and PURPLLE.IN, that contain the word 'PURPLLE', which are both valid and registered since 2011 and 2012, respectively.

3.4 The petitioner has undertaken several promotional activities that have been prominently featured in television commercials, newspapers, magazines, digital platforms, and other mediums. Further, the petitioner has collaborated with well-known film stars and celebrities to endorse their trademarks.

3.5 The petitioner has actively promoted its products under the trademark, 'PURPLLE' across various social media platforms such as, Facebook, Instagram, and YouTube etc., wherein, the petitioner has more than one million followers on Instagram and hundreds of thousands of followers on the other platforms.

3.6 By virtue of prior adoption, continuous and uninterrupted usage, along with extensive promotion of the trademark, 'PURPLLE', the same in respect of cosmetics and skin care products, has exclusively come to be associated with the petitioner. Thus, usage of any mark in relation to the petitioner's mark, without authorization of the petitioner would amount to infringement of petitioner's mark, passing off, dilution and unfair competition.

3.7 The petitioner has been proactive and vigilant in protecting its rights under the mark, 'PURPLLE'. Thus, in the case of Manash Lifestyle Private Limited Versus PURPLLE.LIVE & Ors., CS (COMM) 704/2024, the petitioner secured an ex-parte

ad-interim injunction, vide order dated 21st August, 2024. Similarly, the petitioner secured an ad-interim injunction in the case of Manash Lifestyle Private Limited Versus Ashok Kumar & Ors., CS (COMM) 143/2024, vide order dated 8th April, 2024, in the District Court, Tis Hazari. Further, the petitioner is active before the Trade Marks Registry, as well, wherein, several oppositions filed by the petitioner, have been successful.

3.8 The respondent no. 1 has adopted the impugned mark, PURPLLE TREE/ , which resembles and adopts the petitioner's prior registered mark, 'PURPLLE' in its entirety. The respondent no. 1 has merely added the word 'TREE' to its impugned marks. Furthermore, the respondent no. 1 has no bona fide use of the impugned marks, as the same was filed on a 'proposed to be used' basis, and there exists no usage of the impugned marks by respondent no. 1.

3.9 The mark adopted by respondent no. 1 is deceptively and phonetically similar to that of the petitioner's mark and is bound to cause confusion and deception amongst the members of the trade and public. Further, the impugned mark is likely to cause an unmistakable impression in the minds of the consumers that respondent no. 1 is somehow associated with the petitioner.

3.10 Thus, the impugned registrations violate the provisions of Sections 9(1)(a), 9(2)(a), 11(1), 11(2), 11(3)(a), 11(4), 11(10), 12, 18(1), 18(4) and 32 of the Act, and is thereby, liable to be rectified from the Register of Trade Marks.

4. I have heard learned counsel for the parties and have perused the record.

5. This Court notes that respondent no. 1 was first issued notice vide order dated 24th October, 2024, prior to which, the petitioner had effected service upon the respondent no. 1, on their email, i.e., doytadreams@gmail.com, on 21st October, 2024, towards which, an affidavit of service dated 21st October, 2024, is on record.

6. Subsequently, this Court vide order dated 03rd February, 2025 noted that despite service, respondent no. 1 had not appeared. Therefore, fresh notice was issued to respondent no. 1, through all modes.

7. An affidavit of service in compliance to order dated 03rd February, 2025, has been handed over to this Court, as per which, respondent no. 1, stands served.

8. Despite service, the respondent no. 1 has remained absent and has failed to place on record any reply. Thus, this Court has proceeded to hear the matter.

9. The petitioner has several registrations in its favour for the mark, 'PURPLLE' (word and device) under various Classes, earliest of which, is for the mark, , applied vide application dated 19th December, 2014, bearing registration no. 2865837 dated

24th August, 2019 in Class 44, with a user detail since 14th December, 2011. The registrations in favour of the petitioner, are reproduced as under:

By: AMAN UNIYAL Signing Date: 31.03.2025 15:47:54

10. Evidently, the petitioner has several registrations in its favour under various Classes for the word 'PURPLLE'. The depiction of the word, 'PURPLLE' with addition of two 'L's results into an arbitrary formation of a mark. Hence, any adoption of the same in a manner, as adopted by the petitioner, would amount to a dishonest adoption.

11. The petitioner also owns domain name registrations in its favour, containing the word 'PURPLLE', details of which, are as follows:

12. A comparative representation of the trademark of the petitioner with impugned mark of respondent no.1, is reproduced as under:

PETITIONER'S MARK PURPLLE	RESPONDENT NO. 1's MARK PURPLLE TREE
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13. The impugned mark bears an undeniable resemblance to the prior registered trademark 'PURPLLE' of the petitioner. The respondent no.1 has adopted the mark of the petitioner in its entirety.

14. It is apparent from the examination of the marks that the petitioner's mark is completely subsumed in the mark of respondent no. 1. The respondent no. 1 has added the word, 'TREE' as a suffix to the mark, 'PURPLLE', and added a pictorial representation of a tree. However, despite the endeavour of respondent no.1 to create distinctions, it is crystal clear that the impugned marks of the respondent no.1 are confusingly/deceptively similar to the earlier and registered trademark of the petitioner. Such use of a similar mark will invariably mislead and confuse consumers and members of trade into believing that the goods under the impugned mark are sourced from the petitioner or are in some manner associated with the petitioner.

15. The respondent no.1 has blatantly lifted the prior used and registered trademark 'PURPLLE' and added the word 'TREE', which is hardly a distinguishing factor, to

arrive at the impugned mark. The existence of entirely, phonetically, structurally and confusingly similar marks on the Register of the Trade Marks, is likely to cause confusion, and deception amongst the trade members, and the general public. Thus, the impugned registration directly conflicts with the prior rights of the petitioner in the trademark 'PURPLLE' and amounts to trademark infringement, as well as unfair competition.

16. Given the long, continuous and extensive use and promotional activities undertaken by the petitioner, it is incomprehensible that the respondent no.1 was unaware of the prior use, registrations, goodwill and reputation of the trademark 'PURPLLE'. Thus, considering the facts on record, the adoption of a similar mark by respondent no.1, cannot be considered to be bonafide or honest. Extensive promotion of its products by the petitioner establishes substantial knowledge of the petitioner's marks amongst the consumers and traders. There is ample proof on record that highlights the widespread recognition of the products of the petitioner under the mark 'PURPLLE'. Given the global accessibility of the internet, including, within India, it is evident that knowledge and awareness of the business of the petitioner under its trademark, are widespread and indisputable.

17. Hence, it is apparent that the respondent no.1 has adopted the marks in question knowingly and with dishonest and malafide intention. Therefore, the fact that the marks of respondent no.1 are registered in a different class, would be immaterial.

18. Moreover, it is to be noted that the impugned marks have been registered on a 'proposed to be used' basis and there is no evidence or user placed on record, which indicates any usage of the impugned marks.

19. Thus, while holding that distinction of Class in marks is of no consequence, when the adoption of a mark by a subsequent user is deceitful, the Division Bench of this Court in the case of Tata Sia Airlines Limited Versus Vistara Home Appliances Private Limited and Others, 2023 SCC OnLine Del 3343, has held as follows:

"xxx xxx xxx

20. Similarly, in the opinion of this Court, after finding that there was not "... ..much dissimilarity... .." between the two competing marks as they both "... ..have the phonetic similarity", there was no occasion for the learned Trial Court to deny the relief of injunction merely because the respondents adopted and used the impugned mark VISTARA in different Classes/products, more so, whence the adoption was itself tainted and was not backed by any material particulars. This is so, as it is trite law that competing marks are to be seen and taken as a whole. In effect, what has to be taken into consideration is the overall impact/impression which they are going to have and leave on the minds of the general public and members of the trade. At the end of the day, a trademark is 'what it is', i.e. the name by what it is identified, more

than what it sounds like or looks like or what is its type, as in the opinion of this Court, the aforesaid despite being relevant factors for consideration are secondary to what a trademark is actually known as. For this, even if one mark is a (word) mark and the other is a (device) mark, the same is of hardly any importance, once the learned Trial Court had already held that the conflicting marks were not much dissimilar and were phonetically similar. The similarity was material as both competing marks are same, despite one of them being a (device) mark.

xxx xxx xxx

23. Non-adoption and non-usage of the impugned mark VISTARA in the same Class and for the same goods as that of the appellant are of no essence to the present proceedings as Class discrimination and/or Class distinction are of no consequence when the adoption of the mark by a party like the respondent no. 1 is itself deceitful and tainted under suspicious circumstances and without any palpable reasons. What is required to be valued more is the intention of the adopter, particularly when it is the case of a subsequent adopter like the respondent no. 1, de hors the same mark in a different Class. Admittedly, it is undisputed that appellant is both a prior adopter and a prior user of the trademark 'VISTARA' and the adoption and usage by respondents is all subsequent in point of time. As such, simply because the competing marks are used and registered in a different Class is immaterial, more so, when the adoption per se is sans clarity from the respondents. TM Act does not recognize the wrongful adoption of the mark by any party, much less, a third party as any such adoption will run contra to Section 29 of the Act. The learned Trial Court, ignoring the bona fide adoption and continuous usage of the trademark 'VISTARA' by appellant has instead taken the Class/products for which it was/is being used into account, ignoring the settled principles of law and facts.

xxx xxx xxx"

(Emphasis Supplied)

20. This Court notes that the impugned marks of respondent no. 1 under registration numbers 6236154 and 6234522, are registered on a 'proposed to be used' basis, with both having the date of application as 26th December, 2023. Hence, the date of priority for respondent no. 1's marks would be the said date of application. In contrast, the petitioner's earliest mark, as noted above, has a user claim since 14th December, 2011. Furthermore, the petitioner has domain names, which are registered in its favour since the year 2011, containing the mark 'PURPLLE'.

21. The documents on record show that the petitioner has been continuously and extensively using the mark, 'PURPLLE' since the year 2011. Attention of this Court has been brought to several articles published since the year 2012 till 2024, by various news outlets, which report upon the brand of the petitioner and its activities in the market. The petitioner has also placed on record several invoices from the year 2017, which indicate sales made through the petitioner's e-commerce platform.

22. Therefore, in view of the materials placed on record, it is manifest that the petitioner is the prior user of the mark, 'PURPLLE', whereas, respondent no. 1, having the impugned marks registered on a 'proposed to be used' basis, and on account of non-use, is clearly in all aspects the subsequent user to the petitioner.

23. Thus, in view of the submissions made before this Court, and the detailed discussion hereinabove, the marks of respondent no. 1, i.e. PURPLLE TREE/ , are liable to be removed from the Register of Trade Marks.

24. Accordingly, the following directions are issued:

24.1 The trademark registration no. 6236154 in Class 14 for the mark, , registered in favour of respondent no. 1, is hereby cancelled. 24.2 The trademark registration no. 6234522 in Class 4 for the mark, , registered in favour of respondent no. 1, is hereby cancelled. 24.3 The Registrar of Trade Marks is directed rectify, remove and expunge the aforesaid entries from the Register of Trade Marks.

25. The Registry of this Court is directed to supply a copy of the present order to the Office of the Controller General of Patents, Designs and Trade Marks of India, on E-mail Id: llc-ipo@gov.in, for compliance.

26. The present petitions, are disposed of, in the aforesaid terms.

MINI PUSHKARNA, J MARCH 10, 2025 Ak Corrected and released on:

31st March, 2025