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

+ **C.O. (COMM.IPD-TM) 380/2021**

BTB MARKETING PVT. LTD.

..... Petitioner

Through: **Mr. Rishi Kapoor and Ms. Devoleena
Datta, Advs.**

versus

DEEPSHIKHA SINGH AND ANR.

..... Respondents

Through:

CORAM:

HON'BLE MR. JUSTICE ANISH DAYAL

ORDER

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12.03.2024

1. This petition has been filed by petitioner for rectification of respondents' trademark 'BE THE BEER' registered on 05th October, 2017 with effect from 23rd March, 2017 in Class 43 registration No. 3513113.
2. Petitioner claims to be the registered proprietor of the device and the



word mark 'THE BEER CAFÉ'/'

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The Beer Café

vide registration No.2014257 in Class 43 and registration No.3288485 in Class 43, respectively and with effect from 26th August, 2010 and 20th June, 2016, respectively. Further, the detailed tabulation of the said registrations is as under:

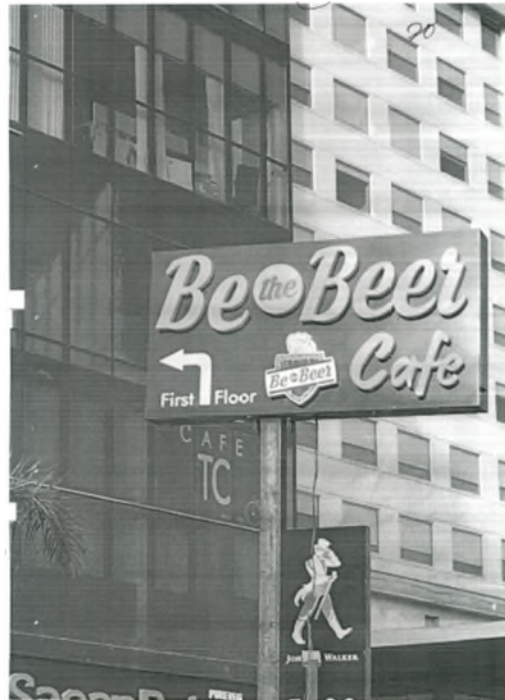


Trade Mark No.	Trade Mark	Date of Application	Class	TM Journal no and date
2014257	THE BEER CAFÉ (with label)	26.08.2010	43	1736 (21.03.2016)
3288485	THE BEER CAFÉ	20.06.2016	43	1793 05.04.2017

3. No one has appeared on behalf of respondent No.1 either before the IPAB (where the matter was initially listed before its abolition in 2021 and transferred to this Court) or before this Court subsequently. It has been noted by the Joint Registrar on 22nd November, 2023 that no one has appeared on behalf of respondent No.1 and the opportunity to reply was, therefore, closed.

4. Petitioner claims to be engaged in the business of running a chain of food and beverage cafés under the brand name and style of ‘THE BEER CAFÉ’ having outlets spread pan-India. Counsel for petitioner states that as of date, they operate more than 120 outlets all over India. The said venture was founded in 2012 by one Mr. Rahul Singh and has since become the fastest growing alco-beverage service brand in India. The first operation started under the said brand name since 2012 in Ambience Mall, Gurugram. Post the registration of the trademarks, petitioner has been using the said marks continuously and extensively across the country.

5. The grievance and consequent rectification is sought in respect of the respondents impugned mark ‘BE THE BEER’, a pictorial representation of it being used for their Café is as under:



6. Counsel for petitioner states that since they are operating in the same industry of food and beverages and running cafes, simply prefixing the word 'BE' is obviously causing deceptive similarity with their registered mark having a prior user. Besides a *cease and desist* notice dated 02nd April 2018 was sent to the respondent which was replied to by communication dated 16th April 2018.
7. In these facts and circumstances, and considering that there is no response from respondent No.1, the averments of petitioner, would stand admitted, aside from the facts of prior registration, user and deceptive similarity.
8. Accordingly, the petition is allowed.
9. The impugned mark of respondent No.1 be removed from the register.
10. The website of Registrar of Trade Marks be updated accordingly.
11. The same may be done within a period of four weeks by the Registrar of Trade Marks.



12. Communication may be sent to the Registrar of Trademarks through email at llc-ipo@gov.in for compliance.
13. Petition is disposed of. Pending applications, if any, are rendered infructuous.
14. Order be uploaded on the website of this Court.

ANISH DAYAL, J

MARCH 12, 2024/MK/NA