



भारत सरकार / GOVERNMENT OF INDIA
व्यापार चिन्ह-रजिस्ट्री / TRADE MARKS REGISTRY
व्यापार चिन्ह-रजिस्ट्री, प्लॉट नं. 32, सेक्टर 14, गरीबि-110078 फोन: 28082915, 28082916, 28082917
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THE TRADE MARKS ACT, 1999 (Before the Registrar of Trade Marks, Delhi)

IN THE MATTER OF an Application No. 5951297

for registration of a trade mark in class 3

trading as M/s Ankit Agarwal . FD-36, Pitampura, North West Delhi, Delhi - 110034, India..Applicants

AND

IN THE MATTER OF Opposition No.- 1276638

thereto by MR. CHUTRARAM NEMARAM GEHLOT

HOUSE NO. 292, BERA BHERU SAGAR, PACHUNDA KALA, BAGRI, PALI, RAJASTHAN - 306 114,
INDIA... Opponents

Hearing Date : 09.01.2025

Present : Adv. Naseem appeared for the Applicant.

Adv. Madhav Mudhale appeared for the Opponent

ORDER

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1. An Application No. 5951297 for the registration of the mark "Minara Beauty" for Cosmetics and herbal extracts for cosmetic purposes including nail polish and remover, nail glitter, face creams, face pack, lotion, soaps & shampoo, hand-wash, hand cleanser, bleaching preparation for cosmetic use, lip balm, lipstick, mascara, facial pack, kajal, bindi, blusher, eye liner, eye shadow in powder and liquid form, pencil for lips, eyes and eye brows (cosmetics), lip gloss and compact powder(cosmetics), essential oil, hair oil & gel, hair colour & dye, deodorant, fragrances and perfumery products in class 3 was filed on 25/05/2023 by Mr. Ankit Agarwal, filed on "proposed

to be used". The said mark was advertised in Trade Marks Journal No.2125-0 dated 09.10.2023.

2. The application has been opposed by MR. CHUTRARAM NEMARAM GEHLOT through Opposition No. 1276638 on 02.02.2024 on various grounds claiming that the applicant has dishonestly adopted Trademark which is deceptively similar/identical to Opponent's trademark **"NEERA"** registered in multiple classes under various applications, which is nothing but a malafide intention to trade upon the higher reputation and goodwill acquired by the opponent and earn undue advantage and illegal profit.
3. On Completion of pleadings, the matter was listed for final hearing and the arguments were heard on 09.01.2025. Adv. Sh. Naseem appeared for the Applicant and Adv. Sh. Madhav Mudhale appeared for the Opponent. The matter was heard and concluded on 09.01.2025 and the order was reserved.

4. The Ld. Counsel for the Opponent has argued that:

The opponent is engaged in a business of manufacturing and marketing of henna mehendi since 1998. The Opponent is a proprietor of trademark **"NEERA"** under multiple applications in multiple

classes. The opponent adopted its trademark in 2008. The opponent argued that the impugned mark is deceptively and virtually similar to the said trademark and has been adopted knowingly and subsequently by the applicant. The opponent submitted that the applicant's impugned trademark is neither capable of distinguishing nor adapted to distinguish the Applicant's goods and services from the goods of any other person including the opponent. The Applicant has slavishly copied the registered trademark 'NEERA' of the Opponent, the Opponent's trademark "NEERA" has two syllables & phonemes "NEE" & "RA" and Applicant's trademarks "MINARA" has three syllables & phonemes "MI, NA & RA". Thus, it is evident the Opponent's trademark and Applicant's trademark has two similar syllables & phonemes which sounds similar. The applicant is trying to ride upon the goodwill created by the opponents. Thus, the adoption by the applicant is dishonest and malafide. The opponent argued on account of identity and deceptive similarity of the rival marks, it will result into the dilution of the registered trademark and would create confusion and deception in the course of trade as the applicant has not acquired reputation and goodwill as alleged.

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The counsel further submitted that the impugned application has been applied for similar goods of to the Opponent under its prior trademark "NEERA." Hence, the trade and public without an iota of doubt will identify the deceptively and phonetically similar impugned mark with the Opponent's trademark.

5. The Ld. Counsel for the Applicant has argued that:

Firstly, the applicant vehemently denied the grounds of opposition and contended that the applicant is the proprietor of the impugned mark and was adopted honestly and bonafidely. The Applicant's Counsel further argued that their mark is word mark. Furthermore, the Applicant's Counsel submitted that there is no structural or visual similarity between the Applicant's mark and the Opponent's mark. The applicant vehemently argued that the two marks are different and capable of distinguishing the products of the Opponents from that of the applicant. The Opponent's alleged trademark is 'NEERA' which means 'water or palm based drink'. The same has no phonetic, structural and visual similarity with the Applicant's mark 'MINARA BEAUTY'. The Applicant has created its mark with its own intellect. However, the Indian Public

associates the word 'Minara' with large towers like Qutub Minar, Char Minar and Minara Masjid Etc. Therefore, the origin and association of the words NEERA and MINARA are different in toto.

It was also submitted that the marks should be compared as a whole and have to be seen in its entirety, rather than breaking up into their component parts for comparison. The Applicant's Mark is a word mark and cannot be dissected.

6. I have perused the case and documents put forth by both the parties and considered the submissions made by the counsels for the parties. The present matter concerns the registration of the word mark "Minara Beauty" for Cosmetics and herbal extracts for cosmetic purposes including nail polish and remover, nail glitter, face creams, face pack, lotion, soaps & shampoo, hand-wash, hand cleanser, bleaching preparation for cosmetic use, lip balm, lipstick, mascara, facial pack, kajal, bindi, blusher, eye liner, eye shadow in powder and liquid form, pencil for lips, eyes and eye brows (cosmetics), lip gloss and compact powder(cosmetics), essential oil, hair oil & gel, hair colour & dye, deodorant, fragrances and perfumery products in class 3. Whereas the

Opponent claims that their mark is "NEERA" and the opponent has relied upon various registrations in multiple classes associated with the mark. The main contention of the Opponent is that the Applicant dishonestly adopted the impugned mark, which is similar to the Opponent's mark and there exists - likelihood of confusion and deception in the market.

7. The rival marks are presented below:

<u>IMPUGNED MARK</u>	<u>OPPONENT'S MARKS</u>
"Minara beauty"	"NEERA"

If we compare both the rival marks, it is evident that the rival marks are word mark, and, when compared, exhibit dissimilarity. The only similarity between the rival marks is last two letters "RA". The rival marks should be seen and compared as whole without vivisecting them into

individual components. Both the marks must be evaluated in their entirety. Moreover, dissecting individual components for comparison is not permissible. The mark of the applicant cannot be stated to resemble the marks of the opponent in any manner and there exists no likelihood of confusion or deception in the minds of general public or any likelihood of association between the marks of the opponent and the applicant's mark. The overall perception of the impugned mark differs significantly from that of the opponent marks. This pronounced dissimilarity renders the impugned mark distinct from the opponent's mark in terms of phonetics, visual representation, and structural composition.

8. It is settled law that a mark has to be read as a whole and cannot be dissected. On a bare perusal of the above-mentioned marks it is palpable that there is no similarity between the marks phonetic, visual or structural. One remotely common factor cannot be taken up for comparison as it would be against the basic essence of the trademark law, which is based on the well-established principle of confusion from the perspective of a person of average intelligence and imperfect recollection not having the benefit

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of comparing the marks side by side. Hence, it can be easily made out that there are enough distinguishable factors which create an identity of the applicant which is independent from the identity of the opponent.

9. The opponent has contended that the Opponent's trademark "NEERA" has two syllables & phonemes "NEE" & "RA" and Applicant's trademarks "MINARA" has three syllables & phonemes "MI, NA & RA". I must respectfully disagree with the opponent's assertion that the sole distinction between the competing marks lies in a two-letter alteration. The Opponent's alleged trademark is 'NEERA' which means 'water or palm-based drink', whereas, the word 'Minara' means towers like Qutub Minar, Char Minar and Minara Masjid, in its entirety the impugned mark has different meaning from the opponent's mark and conceptually the impugned mark is different from the opponent's mark. Conversely, the trademarks invoked by the opponent are conceptually different. There is no similarity between the marks phonetic, visual or structural. Therefore, I maintain that the rival marks are distinctly dissimilar from one another.

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10. The applicant has originally developed the word 'MINARA' by combining the names of female members of his family with the word 'Beauty'. The other ground of opposition is that the adoption of the impugned mark by the applicant is dishonest. It is my considered opinion that when the marks are different, the question of adoption does not arise. Though, the applicant has contended that the impugned mark has been adopted from the name of the Applicant's mother named- Meena, the letter 'R' has been taken from the name of the Applicant's sister-in-law named- Rittu and the letter 'A' has been taken from the name of the Applicant's fiancé named- Aastha.

11. As there is no evidence on record to show that either any confusion among the public caused by the impugned mark or the applicant has dishonestly adopted the impugned mark, I have no hesitation to hold that the applicant's mark is visually, structurally and phonetically different from the Opponent's mark. I uphold the proprietary claims of the applicants under Section 18(1) of the Act. There is no likelihood of confusion or deception in the public and therefore, the application is entitled to registration.



In view of the facts and circumstances discussed above and reasons given, I deem it fit to dismiss the instant Opposition and allow the application for registration of the mark "Minara Beauty" in class 03.

Signed and Sealed at Delhi dated this 15 January, 2025


Abhishek Rai

ASSTT. REGISTRAR OF TRADE MARKS

No.TOP/

Dated:15/01/2025

Copy forwarded for information to :-

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