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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Order reserved on : 26.10.2026	Order pronounced on : 20.11.2026

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THE HON'BLE MR.JUSTICE P.B. BALAJI

(T)OP(TM) No. 452 of 2023

CNR: {HCMA010987612023}

Case QR

Bunge India Private Limited,
No.601C and 601D, 6th Floor,
The capital C-70, G Block,
Bandra Kurla complex, Bandra East,
Mumbai 400051.

(Amended as per order dated 14/12/2023 in (TM)A No.39/2023 in (T)OP(TM) No.452/2023)

..Petitioner(s)

Vs

1. Hatsun Agro Product Limited,
   Domaine, Rajiv Gandhi Salai (OMR)
   Karapakkam,
   Chennai – 600097,
   Tamilnadu.

2. Registrar of Trade Marks,
   Trade Marks Registry,
   Intellectual Property Rights Building,
   Industrial Estate,
   SIDCO RMD Godown Area,
   G.S.T. Road, Guindy,
   Chennai – 600032.

..Respondent(s)

Prayer: Trademark Original Petition filed, praying that the Applicant's application for cancellation/rectification be allowed and the Respondent No. 2 be directed that the entry relating to the impugned registered trade mark No. 1857956 in class-29 for the trade mark in the name of the Respondent No. 1 be

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expunged, removed, cancelled and / or rectified and that the costs of these proceedings be also awarded to the applicant.

For Petitioner(s): Dr.Sheetal Vohra

For Respondent(s): Mr.Surya Senthil
& Mr.Shubham M.George
for M/s.Surana And Surana for R1
Mr.Ravi Meenakshi Sundaram,
Senior Panel Counsel for R2

ORDER

The instant Original Petition was originally filed before the Intellectual Property Appellate Board in Application No. ORA/47/2018/TM/CHN, for removal/ rectification of the trademark हटसन (Hatsun), registered under No. 1857956 in class 29 in the name of the 1st respondent herein. Subsequently, the said proceedings have been transferred to the file of this Court, and re-numbered as (T) OP (TM) No. 452 of 2023.

2. The application in ORA/47/2018/TM/CHN was, in fact, originally filed by M/s. Dalmia Continental Private Limited, which has been subsequently re-named as Bunge India Private Limited. Necessary amendments to the cause title were carried out, even when the matter was pending before the Intellectual Property Appellate Board.

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3. Brief summary of the petition is set out hereunder:

The petitioner is part of the Dalmia companies which came into existence even in the early 1930s and popularly known as the Dalmia Group. The petitioner has been a pioneer in establishing the popularity in use of olive oil in India. In 2003, the petitioner company's flagship product, Leonardo Olive Oil, became the country's leading brand of olive oil. In 2007, the petitioner launched Hudson Canola Oil, and ever since, the petitioner has been continuously producing and distributing the said edible oils and fats throughout the country. The petitioner has all statutory licenses for production, distribution and sale. Canola oil is used ideally for Indian cooking and is extremely healthy with low content of saturated fat, high levels of monosaturated fat, antioxidants and Omega-3. The said edible oils and fats is in great demand throughout the country.

4. The adoption of Hudson Canola Oil was honest and bona fide and way back in 2007, in order to market a premium quality edible oil. The product is of Canadian origin, and the word “HUDSON” is the name of a boy in the English language and also a river in North America. The word is completely unconnected to the goods of the petitioner and has been merely adopted arbitrarily and fancifully. However, the petitioner has exclusively earned and

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acquired an aura of recognition around the said mark, which has been a result of the petitioner's efforts, labour, time, skill, energy and capital besides intellectual investments. The Trademark  and products bearing the said trademark are recognized in the trade and by the public as solely originating from the house of the petitioner. The petitioner has put the trademark to widespread commercial use from 01.06.2007 onwards.

5. The petitioner has filed two separate applications, for registration of its mark  in class 29, bearing Nos. 1704186 dated 27.06.2008, and 35244623 dated 08.05.2017. The office of the 2nd respondent, after thorough scrutiny, has ordered the marks to be advertised in the Trademark Journals dated 09.12.2013 and 19.06.2017. The petitioner has also spent considerable expenses towards advertisement and promotional expenditure of its product, right from 2007 onwards. The petitioner has also sold products worth several crores of rupees and the sales turnover has steadily seen considerable rise, right from 2007 - 2008 onwards.

6. While so, the 1st respondent under number 1857956 dated 03.09.2009 in class 29 registered in respect of milk and dairy products, dairy whitener, buttermilk, paneer, curd, cheese, ice cream, lassi, jams, pickles, meat and meat extracts and fish extracts, claiming user since 01.01.2003, has adopted

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(Hindi Hatsun). Though the 1st respondent has successfully obtained registration in class 29, no documentary evidence has been made available to support the claim of user from 01.01.2003. The goods that are specified in the impugned registration can be sold only under statutory licenses, and the 1st respondent does not possess any such statutory licenses for sale of its products, and therefore no legal use has been made out by the 1st respondent. The entry is therefore wrongly remaining on the register and it is nothing but an error/defect which is liable to be removed/rectified under Section 57 of the Trademark Act. The 1st respondent's website also does not disclose the fact that the 1st respondent is manufacturing and/or marketing edible oils and fats, preserved, dried and cooked fruits and distributes jellies, jams, pickles, meat and meat extracts and fish extracts. The claim of user from 01.01.2003 is false.

7. The registrar of trademarks has failed in his duty to examine the application of the 1st respondent in a judicious manner and has failed to cite deceptively similar marks already existing in the register, especially the registered mark in favour of the petitioner. The registered mark (Hatsun) is also violative of Section 11 of the Act, since there are several earlier trademarks which are visually and/or structurally and/or phonetically similar to the impugned mark of the 1st respondent. The 2nd respondent has failed to comply with the mandate of Rule 33 of Trademark Rules, 2017.

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8. For all the above reasons, the petitioner seeks for removal of the mark in the हटसन (Hatsun).

9. Counter affidavit filed by the 1st respondent, is briefly set out here under:

The use of the word 'Hudson' since 2007 is specifically denied. The various invoices and purchase order relied on by the petitioner are also denied, as not invoices relating to import of Canola oil from Canada. At best, the invoices merely pertain to sale of canola oil and not Hudson brand canola oil. The adoption of Hudson by the petitioner is not bona fide and is only to piggyback ride on the reputation and goodwill of the petitioner's impugned mark हटसन. The 1st respondent has several registrations in various classes, ranging from 29, 30, 31, 32, 35, 42 and 99. The 1st respondent has been doing business under Hatsun and has been selling हटसन (Hatsun) brand products, and adoption of Hudson has been deliberately chosen as it is deceptively similar and phonetically identical to the 1st respondent's trademark. In any event, the trademark हटसन (Hatsun) only denotes the geographical origin of the goods and has no distinctiveness of its own whatsoever. The claim of arbitrary adoption of trademark हटसन

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(Hatsun) is, therefore, contrary to the many claims of the petitioner themself. The self -serving claims that Hudson has become well-known is totally denied. The expenses for advertisements and promotional expenditure are censored in the declarations and have no iota of truth.

10. The 1st respondent has obtained registration for हटसन (Hatsun) under class 29, claiming user from 01.01.2003. The said mark was advertised in the Trademark Journal as early as on 06.12.2010.

11. Under Section 55 of the Trademarks Act, use of associated trademarks is considered as evidence of use of the impugned trademark हटसन (Hatsun), and there has been no irregularity on the part of the 2nd respondent in scrutinizing the 1st respondent's application before registering the said mark.

12. The claim of the petitioner that the 2nd respondent has not conducted mandatory search in terms of Rule 33 of Trademark Rules 2007, is false on the face of the record. The mark हटसन (Hatsun) enjoys presumption of validity under Section 31 of the Trademarks Act and it has been granted on the strength of associated marks of the 1st respondent and therefore, the use of the

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associated trademarks, would be sufficient evidence of use of the impugned mark हटसन (Hatsun). The publication of the 1st respondent's mark in the Journal can only be subject to the registration of the associated marks in favour of the 1st respondent in Application Nos.1301264 and 1857510. The 1st respondent has been in business of the claimed goods and services for more than 50 years, and has all requisite statutory licenses in place. There is no merit in the petition and same is liable to be dismissed.

13. Subsequent to the completion of pleadings, this Court, by Order dated 05.12.2024, has framed the following issues:

1)Whether the petitioner is an aggrieved person entitled to file the Rectification Petition under Sections 47 and 57 of the Trade Marks Act, 1999?

2)Whether the first respondent's use of the trade mark "HATSUN" can be treated as use of its associated trademark "हटसन"?

3)Whether the first respondent has adopted the impugned trade mark "हटसन" in the year of 2003 prior to that of the adoption of the trade mark "Hudson" by the petitioner in the year of 2007?

4)Whether the petitioner has acquiescence of the use of the impugned trade mark "हटसन" by the first respondent under Section 33 of the Trade Marks Act, 1999?

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5)Whether the use of the mark "HATSUN" since 1986, as a trade name by the first respondent confers a better user right to the first respondent?

6)Whether the user claim made by the first respondent dated 01.01.2003 of the impugned trademark bearing registration number 1857956 (Hindi/Devanagari) and English version thereof "HATSUN" for "हटसन" impugned goods "MILK AND DAIRY PRODUCTS, DAIRY WHITENER, BUTTER MILK, PANEER, CURDS, MILK POWDER, MILK SHAKES AND MILK BEVERAGES, EDIBLE OILS AND FATS, GHEE, BUTTER PRESERVED, DRIED AND COOKED FRUITS AND VEGETABLES, JELLIES, JAMS, PICKLES, MEAT AND MEAT EXTRACTS, FISH EGGS" in Class 29 for which the mark has been registered is false and thus the impugned mark "हटसन" is liable to be cancelled/rectified/expunged?

7)Whether the first respondent has played fraud and misrepresentation on the second respondent by giving incorrect date of use and therefore obtained registration of impugned trademark "हटसन" incorrectly for impugned goods in Class 29 and thus the impugned mark "हटसन" is liable to be cancelled/rectified/expunged?

8)Whether the second respondent failed in his duty and allowed the advertisement of the impugned trademark "हटसन" before the acceptance in contravention of Section 23 of the Trade Marks Act, 1999 and the instant

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impugned trademark "" is liable to be cancelled/rectified on this ground alone?

9)Whether the second respondent has failed in his duty to first accept the impugned trademark "" then advertise the impugned trademark "" in the Trade Mark Journal as it was the duty of the second respondent under the Section 23 of the Trade Marks Act, 1999 and the instant impugned trademark "" is liable to be cancelled/rectified on this ground alone?

10) Whether entry pertaining to impugned trademark "" is an entry made in the Register of the trademarks without sufficient cause and wrongly remain in the Register and amounts to an error and/or defect and is therefore liable to be removed/rectified/cancelled/expunged under Section 57 of the Trade Marks Act, 1999?

11)To what other reliefs the petitioner is entitled?

14. The parties chose to lead oral and documentary evidence and before the learned Additional Master. On the side of the petitioner, Exhibits P1 to P37 have been marked, through PW1, Ms. Tanushree Goyal, manager legal of M/s. Bunge India Pvt. Ltd. On the side of the respondents, one Syed Irfan, Officer (Legal) and authorized signatory of the 1st respondent was examined as RW1, and exhibits R1 to R21 have been marked.

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15. I have heard Dr. Sheetal Vohra, learned counsel for the petitioner and Mr. N. Surya Senthil, learned counsel appearing for the 1st respondent.

16. Submissions of Dr. Sheetal Vohra, learned counsel for the petitioner, are briefly set out hereunder:

Taking me through the pleadings as well as oral and documentary evidence, Dr. Sheetal Vohra, learned counsel for the petitioner, would contend that the original petitioner was an original, bona fide and honest adopter of the word mark Hudson and device trademark 

. She would further contend that it is not disputed that the petitioner is now entitled to claim rights that were originally available to Dalmia Continental Private Limited. She would further contend that edible oils and fats being marketed as 

Canola oil is of Canadian origin, and the name was deliberately chosen to reflect the Canadian connection and context. She would reiterate the petition averments with regard to the adoption of 

and that it has nothing to do with the product that is impugned in the present proceedings, and that it has been arbitrarily adopted by the original petitioner, Dalmia Continental Private Limited, in an admirably fanciful manner. She would further contend that under the Asset Transfer Agreement dated 21.11.2018, marked as Exhibit P4, the trademarks have been assigned to the petitioner herein, for a very valuable consideration of Rs. 5,50,00,000/-.

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17. Therefore, Dr. Sheetal Vohra, learned counsel for the petitioner, would contend that the mark adopted honestly and in a *Bonafide* manner, way back in 2007, would ensure to the benefit of the petitioner and be available to the petitioner to claim rights ever since 2018 onwards. As regards expenses for sale promotion and actual sales effected, she relies on Exhibits P14, P15, P21 and P23.

18. Dr. Sheetal Vohra, learned counsel for the petitioner, would further contend that the petitioner is a person aggrieved and entitled to seek for rectification under Sections 47 and 57 of the Trademarks Act, 1999, since the 1st respondent has fraudulently obtained registration of Hudson for the impugned goods, though the 1st respondent has not being using the same, besides the 1st respondent has also opposed the petitioner's mark and therefore the petitioner clearly falls within the phrase "person aggrieved".

19. The petitioner, in fact, obtained a favourable order in opposition proceedings 813519 in class 29, and subsequently the mark Hudson has been registered, in registration number 1704186 dated 27.06.2018. The 1st respondent preferred an appeal before the Delhi High Court, and same is pending.

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20. The learned counsel for the petitioner further states that the 1st respondent had also, in a *malafide* manner, opposed the petitioner's registration in class 29 for Canola oil as well, which opposition was also dismissed by the Deputy Registrar of Trademarks, vide detailed Order dated 10.08.2022. Thereafter the petitioner's trademark Hudson was proceeded for registration, and was registered on 18.08.2022. The 1st respondent preferred an appeal before the Delhi High Court, and, in fact, the Delhi High Court in C.A. (Comm. IPD-TM) No. 156 of 2022 has passed an order on 18.01.2023, dismissing the appeal of the 1st respondent, with cost. The said order has been marked as Exhibit P.32. She would therefore contend that the petitioner certainly qualifies to take umbrage under "person aggrieved" and continue the present proceedings.

21. Dr. Sheetal Vohra, learned counsel for the petitioner, would further contend that, it is evident from Exhibit P35 and P36, that the 1st respondent's use of हटसन (Hatsun trademark), cannot be treated as use of associated mark हटसन (Hatsun), since the 2nd respondent has not associated the हटसन (Hatsun) bearing trademark number 1857956, and none of the Hatsun trademarks in class 29 have been associated with each other, by the 2nd

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respondent. She would therefore contend that use of Hudson Hudson trademark cannot be treated as use of impugned trademark, हटसन (Hindi). She would further state that the 1st respondent has obtained registrations for various classes despite knowing fully well that it does not do business for such goods and services. Such registration, if allowed to stand, according to Dr. Sheetal Vohra, learned counsel for the petitioner, would result in the 1st respondent monopolizing the registrations and squat on the marks given for goods and services in which the 1st respondent does not deal in.

22. She would further attack the incorrect date of user given by the 1st respondent as 01.01.2003, and therefore state that the same has to be rectified. She would also contend that the 1st respondent has not produced any documentary evidence of the alleged use of the associated marks from the date of use claimed and the impugned trademark, therefore necessarily requires to be cancelled/rectified on this limited score alone. She would further contend that though the 1st respondent claims to have adopted हटसन (Hatsun) in the year 2003, prior to the adoption of Hudson in English, by the petitioner in the year 2007, the 1st respondent does not use the हटसन (Hindi Hatsun) for all of its goods and therefore even on this ground, the impugned trademark has to be cancelled/rectified.

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23. Dr. Sheetal Vohra, learned counsel for the petitioner, further stated that, admittedly, it has come out in evidence that the 1st respondent does not manufacture edible oils and fats, dried cooked fruits and vegetables, jellies, jams, pickles, meat and meat extracts and fish, eggs, even today. Therefore, the claim of user from 01.01.2003, has been established to be false, even from the own showing of the 1st respondent's witness. She would therefore state that Section 57 of the Trademarks Act can be applied straight away for removing/rectifying the entry made in the register. Learned counsel would also state that, though without any pleadings or evidence, the 1st respondent has, for the first time, stated in written submissions that its trademark IBACO, deals with dried fruits jams and jellies, and such contentions in the written arguments hold no water, without any evidence in that regard.

24. The learned counsel for the petitioner would further state that the petitioner's predecessor had wrongly sought for rectification, finding that the 1st respondent does not deal in edible oils and fats and no goods have been found in the market. She would further state that even during trial the 1st respondent had not filed any documents, to show use of the impugned trademark for the impugned goods for which it enjoys registration. In such view of the matter, it is the contention that petitioners that it cannot be said to have acquiesced to the use of trademark by the 1st respondent under Section 23 of the Act. She would further state that even this defence has not been raised in the counter, but has

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been taken for the first time in the written arguments, and therefore same cannot be considered or looked into by this Court. She would reiterate the petition averment that most of the goods included in the specification of goods, for which the 1st respondent has obtained the impugned registration, are required to be sold only under statutory licenses and the 1st respondent has not been able to demonstrate by leading any satisfactory oral and documentary evidence that the 1st respondent possesses such statutory licenses for all of its products. She would therefore contend that no legal use of the trademarks has been made out for all/most of the specification of the goods and therefore the entry in the register of trademarks remains without sufficient cause and is erroneous and defective and liable to be removed/rectified under Section 57 of the Trademarks Act.

25. She would also take me through the opposition application filed by the petitioner in Exhibit P.25 in class 29 for हटसन (Hindi Hatsun), in which proceedings, the 1st respondent has stated that there is a possibility of the 1st respondent dealing in newer and varied products in future, including and not limited to edible oils and fats. She would therefore state that even on this showing of the 1st respondent, the 1st respondent, as on date, does not deal in edible oils and fats though, attempts to play monopoly by holding registration under class 29. As regards claim of adoption of Hudson in the year 1985

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and actual use since 2003, Dr. Sheetal Vohra, learned counsel for the petitioner, relies on Exhibit R.2, and would contend that it is only for trademark Arokya, that too dealing with milk powder and milkshake powder, invoices have been filed from 1991. RW1 has also not been able to show how the Hindi version of Hudson हटसन has been used ever since 1991, as claimed to the 1st respondent in the pleadings. She would therefore state that the 1st respondent has given a fraudulent and incorrect date of use. She would also draw attention to the written submissions filed by the 1st respondent, where the 1st respondent admits that it was due to a minor overstep and lack of oversight on the part of the filing attorney, that the application was filed for entire specification. She would therefore state that this admission in the written arguments is fatal to the case of the 1st respondent. She would also take me through various other respondent Exhibits namely R5, R9, R10, R12, R14, R15, R16, R17, 20 and 21, and contends that they are all unrelated to the use of the impugned trademark, for all of impugned goods from the date of use as claimed by the 1st respondent, while obtaining registration. She would further state that even the FSSAI certification is obtained only in 2018, that too for milk products alone, and not for the other products for which also registration has been obtained claiming use as on 01.01.2003.

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26. She also took me through the cross-examination of RW1, where RW1 admits that the 1st respondent is not selling edible oils and fats and does not have license for selling edible oils and fats also. Similarly, RW1 also affirmed the case of the petitioner that the 1st respondent has not been dealing with preserved and dried and cooked fruits and vegetables, jellies, jams, pickles, meat, meat extracts, fish and eggs. She would therefore state that, neither in the pleadings nor in the evidence, the 1st respondent had made out a case to sustain its registration, as obtained. She would further contend that the 1st respondent has never used Hatsun () for the impugned goods from the date of use claimed and for some goods even till date, and in any event, the mark  (Hatsun) is not novel, but merely a combination of two dictionary words “hat” and “sun”.

27. As regards reliance placed on Dalda, the submission of Dr. Sheetal Vohra, learned counsel for the petitioner, that the said reference, is also without any pleading or evidence and introduced for the first time in the written arguments and hence cannot be given any credence whatsoever. She would further state that impugned mark requires to be rectified. She would also rely on Section 11 of Trademarks Act, and contend that the impugned mark  (Hatsun in Hindi) is similar to earlier trademarks, which had been erroneously ignored by the 2nd respondent, while carrying out examination of the 1st respondent's application.

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28. Dr. Sheetal Vohra, learned counsel for the petitioner, relied on a Division Bench judgment of this Court in *Hatsun Agro Product Limited v. Sri Ganapathy Dairy* reported in *2022 (90) PTC 144 [Mad][DB]*, where the Division Bench held that the registration for "Arun", for ghee was made in class 29 was only in 2006, and that despite such registrations for ghee, the plaintiff does not use the mark for ghee. The Division Bench further held that the plaintiff had miserably failed to establish the status of well-known trademark and finding that the defendant was a prior user/ Bonafide user, held that the defendant cannot be prevented from using the same.

29. Dr. Sheetal Vohra, learned counsel for the petitioner, has also relied on the following decisions:

(i) *Anuj Bindal M/s. Aggarwal Rice and Oil Mills v. Tarsem Chand M/s R.D. Traders and Anr.* in *CO (Comm. IPD – TM) 700 of 2022* in Order dated 29.04.2024.

(ii) *B.S. Ramappa v. B. Monappa* reported in *(1956) 2 MLJ 469*.

(iii) *Suresh Kumar Jain v. Union of India* reported in *2012:DHC:16-DB*

(iv) Vivek Kochher and Ors v. KYK Corporation Ltd. Reported in *2017:DHC:6612.*

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30. Argument of Mr. N. Surya Senthil, learned counsel for the 1st respondent is summarised hereunder:

The petitioner has confused the adoption of the trade name Hatsun, in 1986, from the mark हटसन hindi Hatsun, which has been adopted only from 1998 onwards. He would in any event state that admittedly, petitioner is only into edible oils and fats and does not deal with ghee or other products including jellies, jams, pickles, meat, meat extracts, fish, eggs, etc. He would therefore state that the petitioner cannot claim to be a "person aggrieved" in the first place, much less prosecute the OP seeking removal/ rectification of the 1st respondent's mark in class 29. He would further state that admittedly the 1st respondent deals with milk and milk products and ghee also being related to milk products, falls within the broader definition of kitchen use products, which also includes edible oils and fats. He would further state that Exhibit R2 invoices clearly show prior usage of the mark in 1990s itself, and for full cream in the first decade of the 21st century. He would deny the allegations of fraud and deception and contend that there has been no improper procedure adopted by the 2nd respondent, before granting a registration in favour of the 1st respondent. He would further state that the petitioner has admittedly started using English Hudson in the year 2007, whereas the 1st respondent has been using the mark Hatsun in English since 1994 and in Hindi since 2016-17.

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31. Relying on Section 55 of the Trademarks Act, Mr. N. Surya Senthil, learned counsel for the 1st respondent, contend that the 1st respondent is entitled to benefit of the said provision and there has been no fraud or undue advantage taken, in any manner, by the 1st respondent. He would also distinguish the decisions that have been relied on by the learned counsel for the petitioner as being inapplicable to the facts of the present case, same being rendered on entirely different factual matrix. He would further state that oil is only an extension of ghee, and relying on Section 16 read with Section 55, contends that the 1st respondent is entitled to use its registered marks for associated trademarks as well. He would further state that the incorrect mentioning of the user date should not prejudice the 1st respondent especially when, admittedly, the petitioner is not in the market selling milk or milk products or even ghee, and therefore does not even qualify to be an “aggrieved party” in the 1st place. He would further state that the petition itself is motivated because the 1st respondent opposes the petitioner's application.

32.The learned counsel for the 1st respondent would also rely on Section 57 and the power of this Court to suitably rectify the registration, excluding jam, jelly, meat, pickles, meat extracts and fish and eggs. However, such a concession has been expressly given only subject to the petitioner not opposing registration for ghee, being continued to be enjoyed by the 1st respondent. Alternatively, it is the submission that if the petitioner is not agreeable for the 1st

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respondent venturing into ghee and using हटसन Hindi Hatsun for ghee, then the concession shown for jams, jelly, meat, meat products, fish, eggs would also not be available. Mr. N. Surya Senthil, learned counsel for the 1st respondent, would rely on:

(i) *Jithendra Kumar v. The Registrar of Trademarks, New Delhi and Ors.,* reported in *MANU/DE/3664/2024; and*

(ii) *Allied Blenders and Distillers Ltd v. Boutique Spirit Brands Pvt. Ltd. And Ors.* reported in *MANU/DE/1061//2025*.

33. Through the pleadings, the evidence adduced, oral and documentary, in light of the issues framed by this Court, I have to test whether the petitioner can be termed an "aggrieved person", thereby entitling it to seek for rectification under Section 47 and 57 of the Trademarks Act.

34. The English names of the marks, Hudson and Hatsun, are different. The petitioner claims to have adopted the name arbitrarily and fancifully, with the reference to the name of an English boy and the river Hudson in North America, both being totally unrelated to the product, namely edible oils and fats. The 1st respondent claims to have coined हटसन (Hatsun) again, totally unrelated to its products, dealing in milk and milk products. When it comes to हटसन, the Hindi version, it can be clearly spelt as Hudson as

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well as at Hatsun, thereby giving rise to a confusion in the minds of the public. The ultimate users of both the products are also predominantly the same, the products being predominantly used in the kitchens, and also in the hotel industry.

35. Under Section 47, a registered trademark can be taken off the register on the following grounds namely,

(i) registration was without any bona fide intention on the part of the applicant for registration, and that there has been no bona fide use of the mark in relation to those goods or services by any proprietor thereof, for the time being up to a date 3 months before the date of the application, or,

(ii) that up to a date 3 months before the date of application for registration, a continuous period of 5 years from the date on which the trademark was actually entered in the register or longer, had elapsed during which the trademark was registered and during which period there has been no bona fide use thereof in relation to those goods or services by any proprietor thereof for the time being.

36. First proviso to Section 47, entitles the applicant for permission to register an identical or nearly resembling trademark, in respect of goods or services in question where the Registrar or the High Court, is of opinion that the applicant might be permitted to register such trademark.

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37. Section 12 relates to registration in the case of honest and concurrent use, despite marks being identical or similar such registration, subject to such conditions and limitations that the registrar may think fit to impose.

38. On the contrary, Section 57 confers the power to cancel or vary registration and also to rectify the register. This Court is entitled to pass such order as it thinks fit, either for cancelling or varying the registration of the trademark, on the ground of any contravention or failure to observe a condition entered on the register in relation thereto. Under section 57 (2), any person aggrieved by the absence or omission from the register of an entry, or by an entry made in the register without sufficient cause, or by an entry wrongly remaining on the register, or by any error or defect in any entry in the register, is entitled to apply to this Court for such order making, expunging, or varying the entry as this court may think fit.

39. Though the 1st respondent claims prior use of हटसन Hindi Hatsun, it has come out in the evidence and also in the written arguments that the हटसन Hindi version Hatsun has not been used as claimed from 2003 onwards, but much later in 2016-2017. It is not in dispute that if the Hudson is portrayed to reflect the goods of the 1st respondent, there is every

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likelihood of confusion in the minds of public, that the said हटसन (Hindi Hatsun) can be read as either Hudson or Hatsun. It is not in dispute that every kitchen household in the country is likely to use or become aware of the impugned mark. Keeping this in mind, the case of the respective parties has to be decided.

40. With regard to user from 01.01.2003, though it has been claimed by the 1st respondent that all specifications in class 29 have been used from 01.01.2003, however, there is no evidence to substantiate the same. On the contrary, it is the consistent case of the 1st respondent that they primarily deal with milk and milk products. For the 1st time, in the written arguments, without any pleading or evidence, it has been contended that one of its sub brands, Ibaco deals with dry fruits, jams and jellies.

41. Equally relevant is the following sentence in Paragraph 7 of the written arguments filed on behalf of the 1st respondent "*It was due to a minor oversight and lack of oversight on part of the filing attorney that the 1st respondent engaged for the registration engaged for the registration and filing of its trademarks, that the application was filed for the entire specification*." Much has been argued about this on either side.

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42. I am unable to accept the arguments of Mr. Surya Senthi, learned counsel for 1st respondent, that the user claim from 01.01.2003, for all specifications was only an oversight and that it has been fairly conceded in the written arguments. On the contrary, as rightly pointed out by Dr. Sheetal Vora, learned counsel for petitioner, the ground on which the petitioner approached this Court would have to be tested only in the light of the specific case of the parties and cannot be dependent on what has been projected at the time of arguments, without any pleadings or evidence to such effect whatsoever. Admittedly it has come out in the evidence of RW1 also that the 1st respondent is not into edible oils and fats or into jams, jellies etc. In such a view of the matter, to shift the blame on the filing attorney, that too without eliciting the said fact, in the pleadings or evidence, is of no avail.

43. From an overall reading of the pleadings and the oral and documentary evidence, it is clear that though the 1st respondent has obtained registration for jellies, jams, pickles, meat, meat extracts, fish, eggs, etc., admittedly the 1st respondent with a trade name of हटसन (Hatsun) has been dealing only with dairy and allied products like milk, curd, yogurt, paneer and butter from early 1990s. There is also nothing to suggest that the 1st respondent has forayed into ghee. However, the pleadings and evidence also suggests that the 1st respondent is wholly into dairy and dairy products. Though ghee has not

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been in use or shown to be used by the 1st respondent, it is certainly an allied product and as rightly contended by the Mr. N. Surya Senthil, learned counsel for the 1st respondent, it certainly can be associated with the registered mark Hatsun / हटसन (hindi). Further, the petitioner also does not admittedly deal with ghee, for which also there is sufficient pleading and evidence available on record. In such view of the matter, I do not see the rectification being entertained in so far as the specification "ghee" is concerned.

44. In fact, the fulcrum of the case of the petitioner is that edible oils and fats is the main product of the petitioner. However, the 1st respondent has obtained registration for edible oils and fats as well under class 29. Admittedly the 1st respondent has not been producing, marketing or selling edible oils and fats. The claim for user for edible oils and fats from 01.01.2003 falls flat to the ground, in view of the explanation sought to be offered by the 1st respondent in the written arguments. Therefore, in so far as edible oils and fats, Hudson has been adopted by the petitioner in 2011, prior to the 1st respondent, who is in fact yet to associate its trademark हटसन Hindi (Hatsun), to edible oils and fats, as on the date of filing of the rectification petition.

45. I am unable to countenance the arguments of Mr. N. Surya Senthil, learned counsel for the 1st respondent, that edible oils and fats also being an

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essential kitchen component, is a by-product of ghee, milk and milk product and therefore, the 1st respondent is entitled to protection. Edible oils and fats are not a by-product of milk and cannot be termed as a dairy product. For being styled as a dairy product or an allied product, the original source should be from milk, which is not so in the case of edible oils and fats. Therefore, when the 1st respondent has obtained registration for edible oils and fats, without showing any use and admittedly there being no use of the trademark for edible oils and fats ever since its registration till date, continuation of the mark for the specification edible oils and fats is certainly defective and can, at best, be termed as remaining on the register erroneously. In view of the same, the petitioner is certainly entitled to succeed.

46. The other grievance of the petitioner is with regard to jams, jelly, pickle, meat, etc. Admittedly, the petitioner is not into manufacture/production / sale of these products. Therefore, viewing the petitioner's case, within the definition of “person aggrieved”, I am unable to see how the registration of the mark for jams, jelly, pickles, etc., will in any manner harm or cause prejudice to the goodwill and reputation of the petitioner. Petitioner is not an “aggrieved person” as held by this Court and the Hon’ble Supreme Court in various decisions, to seek for rectification in so far as specifications milk, jam, jelly, pickle, etc.

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47. Dr. Sheetal Vohra, learned counsel for the petitioner, relied on the decisions of:

(i) *Anuj Bindal M/s. Aggarwal Rice and Oil Mills v. Tarsem Chand M/s R.D. Traders and Anr.* in *CO (Comm. IPD – TM) 700 of 2022* in Order dated 29.04.2024, where the Delhi High Court held that when there is no evidence of alleged use prior to securing registration, then the impugned registration is liable for cancellation. The Delhi High Court further held that even a CST registration certificate would not evidence use of trademark and that the inability of the 1st respondent to substantiate the user date detail mentioned in the application for registration of the impugned mark with stable evidence and securing a registration based on a false statement of the user, would amount to fraud on the Court, rendering the trademark invalid and not entitling it to be in the register.

(ii) The Division Bench of this Court in *B.S. Ramappa v. B. Monappa* reported in *(1956) 2 MLJ 469*, held that when the original registration was obtained by fraud, then even renewal later would be invalid. However, that was a case where the Court found material suppression of fact with regard to the claim of appellant before the Registrar of Trademarks, that he was the sole proprietor of the trademark. I do not see how the facts and circumstances of the present case, I can apply the ratio laid down in this case to hold that the 1st respondent has played fraud and obtained the registration. Admittedly, the 1st respondent has been incorporated with the tradename Hatsun and has been

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doing business in dairy and dairy products. Therefore, I do not see the allegations of fraud meriting any acceptance.

(iii) *Suresh Kumar Jain v. Union of India* reported in *2012:DHC:16-DB*, the Division Bench of the Delhi High Court found that the appellant was claiming use from 1995, but however, such a claim was not supported by any document and held the mark to be registered on false basis and ought not to have been registered in terms of Section 9 of the Trademark Act, 1999.

(iv) The Delhi High Court in *Vivek Kochher and Ors v. KYK Corporation Ltd.* Reported in *2017:DHC:6612*, again held that if it is established that fraud has been is played by giving a false statement, then the registration has to be cancelled.

48. I had an occasion in *V. Lakshminarayanasamy and Ors. V. Siva Bhaskaren and Ors. In (T)OP (TM) No. 165 of 2023* in Order dated 27.09.2024, where I found that the user claim from 1994 was not established and the documents evidenced that use was only from 2001 onwards, and under such circumstances, I have proceeded to reject the claim of user by the 1st respondent to be November 1994, and I have held that the petitioner was the prior user of the impugned mark in that case. I have already found after elaborate discussion, herein above that, the petitioner is the prior user of Hudson and claim of user for हटसन (hindi Hatsun) was much later and in any event did not relate to edible oils and fats.

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49. Mr. N. Surya Senthil, learned counsel for the 1st respondent, had relied on:

(i) Jithendra Kumar v. The Registrar of Trademarks, New Delhi and Ors., reported in *MANU/DE/3664/2024*, where the Delhi High Court held that when the company or firm operated under a particular business name, then it is not uncommon in practice for such business to use their corporate names, not just as identifiers of the business entity, but also as source identifiers for goods and services, thereby, functioning as trademarks.

(ii) Allied Blenders and Distillers Ltd v. Boutique Spirit Brands Pvt. Ltd. And Ors. reported in *MANU/DE/1061//2025*, where the Delhi High Court held that the right of prior user is superior in comparison to a subsequent user. However, in so far as at least edible oil is concerned, the petitioner has satisfactorily established prior use and therefore is entitled to seek for rectification, though not cancellation in its entirety.

50. Even though the 1st respondent initially gave a concession that the mark can be removed for these specifications since, as of now, the 1st respondent does not propose to expand its production to these items, such concession came with a rider, that it would be available to the petitioner to take advantage of, only if the petitioner had no objection for the registration in respect of edible oils and fats remaining. However, the petitioner does not agree

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for edible oils and fats being remaining in the register and therefore, pressed for rectification of the products like jam, jelly, etc., also. However, in view of the above discussion, since the petitioner cannot claim to be an aggrieved party, in so far as the specifications, jams, jelly, meat etc., and, at best, the petitioner, as already found and discussed, can claim right of prior use only in respect of edible oils and fats alone, I do not see the concession with the rider being put against the 1st respondent.

51. In view of the foregoing discussion, the issues are answered accordingly in the manner following:

Issue No. 1- The petitioner is an "aggrieved person" in so far as edible oils and fats alone is concerned, and is consequently entitled to seek rectification under Section 47 and 57 of the Trademark Act.

Issue No. 2 – The 1st respondents use of trademark English Hatsun cannot be treated as use of associated trademark हटसन (Hindi Hatsun), entitling the 1st respondent to retain its registration for edible oils and fats.

Issue No. 3 - As already discussed, the claim of user of हटसन Hindi Hatsun from 2003 is false and not prior to adoption of Hudson by the petitioner, in 2007.

Issue No. 4 - In so far as acquiescence, from the pleadings and evidence, I hold that the petitioner has not acquiesced in the use of the impugned trademark

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 (Hindi Hatsun) by the 1st respondent.

Issue No. 5 - Though Hatsun as a trade name is being used by the 1st respondent since 1986, it cannot confer a better right when it comes to user of  (Hindi Hatsun), by the petitioner even since 2007 onwards.

Issue No. 6 - Having held that Hindi/ Devnagari registration of the  (Hatsun Hindi), for the impugned goods in class 29, is clearly similar and deceptive to the  in so far as it relates to edible oils and fats and fats, the petitioner is entitled to rectification of the Hindi impugned mark .

Issue No. 7 - the 1st respondent has, on its own showing, established misrepresentation regarding incorrect date of use being furnished and therefore impugned mark  (Hindi Hatsun) is liable to be rectified. However, I do not see any requirement for cancelling or expunging the registration in toto.

Issue Nos. 8 and 9 - The 2nd respondent cannot be accused of failure in its duty and erroneously permitting advertisement of  (Hindi Hatsun), in contravention of the statute, since that by itself, does not afford a ground for cancellation and it is always open for any person to establish to be a “person aggrieved” and seek for either cancellation or rectification of the registered mark.

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Issue No. 10 - Issue number 10 is also answered in favour of the petitioner, since I have already found that the entry pertaining to the trademark हटसन (Hindi Hatsun), is without sufficient cause and remaining wrongly in the register, clearly amounting to an error and defect, liable to be rectified by this Court under Section 57 of the Trademarks Act, by omitting edible oils and fats from the description/ specification of registration of trademark bearing number 1857956 in favour of the 1st respondent.

52. For all the above reasons, the Trademark Original Petition is allowed in part, directing the 2nd respondent to rectify the registered trademark No. 1857956 in class 29, by rectifying the register, omitting edible oils and fats alone. Considering the facts and circumstances, there shall be no orders to cost.

20-11-2026

Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No

ATA

To
Registrar of Trade Marks,
Trade Marks Registry,
Intellectual Property Rights Building,
Industrial Estate,
SIDCIO RMD Godown Area,
G.S.T. Road, Guindy, Chennai - 600032

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P.B.BALAJI, J.

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20-11-2026

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