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

\# **CNR No. DLHC010062922026**

\+ C.O. (COMM.IPD-TM) 52/2026

ESME CONSUMERS PVT LTD .....Petitioner

Through: Mr. Sahil Gupta, Advocate.

versus

KARANJEET SINGH SACHDEVA & ANR. .....Respondents

Through: Mr. Ayush Negi, Ms. Arushi Gupta and Mr. Abhishek Singh, Advocates for R-1.
Ms. Nidhi Raman, CGSC with Ms. Nikita Singh and Ms. Devanshi Dharia, Advocates for R-2.

CORAM:
HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

O R D E R

% 18.11.2026

I.A. 22703/2026 (By respondent no.1 seeking condonation of delay in filing short reply)

1. For the reasons stated in the application, the delay of 4 days in filing the reply stands condoned. The same is taken on record.

2. The application stands disposed of.

C.O. (COMM.IPD-TM) 52/2026 and I.A. 4736/2026,

3. The petition seeks for cancellation/ rectification of the impugned Mark of respondent no.1 namely Sky Heaven/ Sky Heaven having Registration Number 5017200 registered in Class-03 of the Trademarks

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Classes. The said mark was applied for on 24.06.2021 on a “proposed to be used” basis and came to be registered on 12.03.2022.

4. During the pendency of the petition, respondent no.1 has filed an affidavit dated 28.04.2026 stating therein that on 02.04.2026, he has filed an application under Rule 37 of the Trade Marks Rules, 2017 (hereinafter “the Rules”) before the Trade Marks Registry seeking withdrawal of his trade mark application. It is, thus, contended that nothing survives for adjudication and the petition has been rendered infructuous.

5. Learned counsel for the petitioner, however, submits that Rule 37 of the Rules would have no application, as the said rule relates only to correction and amendment of an application for registration. It is, therefore, contended that the application filed by respondent no.1 does not render the present petition infructuous.

6. The Court has heard learned counsel for the parties and perused the record.

7. The question which arises for consideration is whether, after a trade mark has been registered, the Registrar of Trade Marks is empowered to cancel the same at the instance of the registered proprietor himself and, if so, under which provision.

8. Insofar as Rule 37 of the Rules is concerned, the submission of learned counsel for the petitioner merits acceptance. The said rule enables an applicant for registration to seek correction or amendment of his application “whether before or after acceptance of his application but before the registration of the trademark”. Rule 35 of the Rules, which deals with notice of withdrawal of an application, likewise operates only at the pre-registration stage.

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9. In the present case, the impugned mark stood registered on 12.03.2022. Respondent no.1 is, therefore, no longer an applicant but a registered proprietor, and neither Rule 35 nor Rule 37 of the Rules can be pressed into service by him. That, however, does not mean that his request cannot be acted upon, as the Act specifically provides for cancellation of a registered trade mark at the instance of the registered proprietor.

10. Section 58 of the Act, which finds place in Chapter VII titled "Rectification and Correction of the Register", reads as under:

> "*58. Correction of register.—(1) The Registrar may, on application made in the prescribed manner by the registered proprietor,—*
> *(a) correct any error in the name, address or description of the registered proprietor of a trade mark, or any other entry relating to the trade mark;*
> *(b) enter any change in the name, address or description of the person who is registered as proprietor of a trade mark;*
> *(c) cancel the entry of a trade mark on the register;*
> *(d) strike out any goods or classes of goods or services from those in respect of which a trade mark is registered,*
> *and may make any consequential amendment or alteration in the certificate of registration, and for that purpose, may require the certificate of registration to be produced to him.*
> *(2) xxx xxx xxx*"

11. Clause (c) of Section 58(1) of the Act expressly empowers the Registrar to cancel the entry of a trade mark on the register upon an application made by the registered proprietor. The provision, by its very terms, operates after registration, since it speaks of the "registered proprietor" and of an "entry of a trade mark on the register".

12. The manner of making such an application is prescribed under Rule 101(6) of the Rules, which requires the application to be made in Form TM-P and a copy thereof to be served upon the registered users, if any. The fee for a request for cancellation of an entry in the register under Section 58 of

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the Act is provided in the First Schedule to the Rules.

13. Further, the proviso to Rule 100(1) of the Rules, which governs rectification by the Registrar of his own motion under Section 57(4) of the Act, dispenses with notice to the registered proprietor where he has requested or agreed in writing for cancellation of the registration, and provides that the register shall thereupon be rectified accordingly.

14. The Court, therefore, finds that the Registrar of Trade Marks is well within his jurisdiction to cancel a registered trade mark at the instance of the registered proprietor, even after registration, and such power is vested in him by Section 58(1)(c) of the Act.

15. Recourse to Section 58(1)(c) of the Act by a registered proprietor who does not wish to retain his registration is not unknown to our Court. The same has been recognised and acted upon in several matters, including those where proceedings for rectification or infringement were pending before our Court.

16. In ***M/s Excell Formulations Pvt. Ltd. v. M/s Excell Nutraceuticals & Anr.***,[1] a petition seeking rectification of the register was pending before our Court against the mark "EXCELL NUTRACEUTICALS". During its pendency, the said mark came to be cancelled by the Trade Marks Registry under Section 58(1)(c) of the Act. The relevant part of the order dated 25.01.2023 reads as under:

> *"1. Mr. Pankaj Kumar, counsel for Petitioner, states that the impugned mark "EXCELL NUTRACEUTICALS" under application No. 1886847, stands cancelled under Section 58(1)(c) of the Trade Marks Act, 1999 pursuant to filing of TM-35 before the Trade Marks Registry. xxx xxx xxx*
> *2. In view of the above, the relief sought in the present petition, has been rendered infructuous. Mr. Kumar states that he has instructions to*

[1] C.O. (COMM.IPD-TM) 451/2022; Dated : 25.01.2023

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withdraw the same.
3. Dismissed as withdrawn."

17. Thus, our Court treated the cancellation of the impugned registration under Section 58(1)(c) of the Act as an effective removal of the mark from the register, which rendered the rectification proceedings infructuous.

18. Similarly, in ***Pentel Kabushiki Kaisha & Anr. v. M/s Arora Stationers & Ors.***,[2] the suit was settled between the parties. Clause (ix) of the settlement agreement dated 11.09.2023, in terms of which our Court decreed the suit on 12.12.2023, reads as under:

> *"(ix) That Mr. Ramanlal Rughnathmalji, the proprietor of Defendant no. 2, agrees and undertakes that it shall seek cancellation of the Registered Trade Mark under Registration no. 3242266 under Section 58 of The Trade Marks Act, 1999 by filing requisite form TM-P and take other necessary steps as may be necessary prior to October 14th, 2023, under intimation to the counsel for First Party / Plaintiffs."*

19. Our Court found the terms of settlement to be legal and in order, and decreed the suit in terms thereof. The undertaking of the defendant to seek cancellation of a registered trade mark under Section 58 of the Act, by filing Form TM-P, thus came to form part of the decree of our Court.

20. More recently, in ***Hedso Health and Wellness Pvt. Ltd. v. Vcos Healthcare Pvt. Ltd.***,[3] the defendant agreed to give up the use of the impugned marks and to seek cancellation of the same from the register. The relevant part of the order dated 03.07.2026 reads as under:

> *"2. …..It is further stated that Defendant shall take recourse to appropriate remedy under Section 58(c) of Trade Marks Act, 1999 within two weeks from today and seek cancellation of the impugned trademarks entered in the Register of Trade Marks and shall not prosecute its*

[2] CS(COMM) 361/2017; Dated : 12.12.2023
[3] CS(COMM) 678/2026; Dated : 03.07.2026

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rectification petition filed against Plaintiff's registered HOOP marks. …..”

21. The said statement was taken on record and accepted by our Court as binding upon the parties, and the suit was decreed, inter alia, in terms of the undertaking given by the defendant.

22. The aforesaid orders demonstrate that our Court has consistently recognised Section 58(1)(c) of the Act as the mechanism by which a registered proprietor may seek cancellation of his own registration, even after registration and even during the pendency of proceedings concerning the said mark.

23. Adverting to the facts of the present case, the application of respondent no.1, though styled as one under Rule 37 of the Rules, is in substance a request for cancellation of the entry of the impugned mark, which squarely falls within the scope of Section 58(1)(c) of the Act.

24. It is settled that the mention of a wrong provision, or the non-mention of the correct provision, does not invalidate an action if the authority otherwise possesses the requisite jurisdiction. Reference can be made to decision of Supreme Court in ***P.K. Palanisamy v. N. Arumugham***[4]. The Registrar can, therefore, treat the application of respondent no.1 as one under Section 58(1)(c) of the Act.

25. Accordingly, the following directions are issued:

i. The Registrar of Trade Marks shall treat the application dated 02.04.2026 filed by respondent no.1 as an application under Section 58(1)(c) of the Act read with Rule 101 of the Rules.

[4] (2009) 9 SCC 173

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ii. In case of any deficiency as to form or fee, respondent no.1 shall cure the same by filing the appropriate Form TM-P within two weeks from today.

iii. The Registrar shall cancel the entry of the impugned mark bearing Registration No. 5017200 in Class 03 with due expedition, and not later than three months from the date of receipt of a copy of this order. The same shall also be reflected on the online records of the Trade Marks Registry.

iv. Respondent no.1 shall remain bound by the statement made in his affidavit dated 28.04.2026.

v. In the event the entry is not cancelled for any reason, the petitioner shall be at liberty to avail remedy available to it in accordance with law.

26. With the aforesaid directions, the petition, along with pending application, stands disposed of.

27. Let a copy of this order be sent to the Registrar of Trade Marks at llc-ipo@gov.in for compliance.

PURUSHAINDRA KUMAR KAURAV, J

NOVEMBER 18, 2026/aks/sa

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